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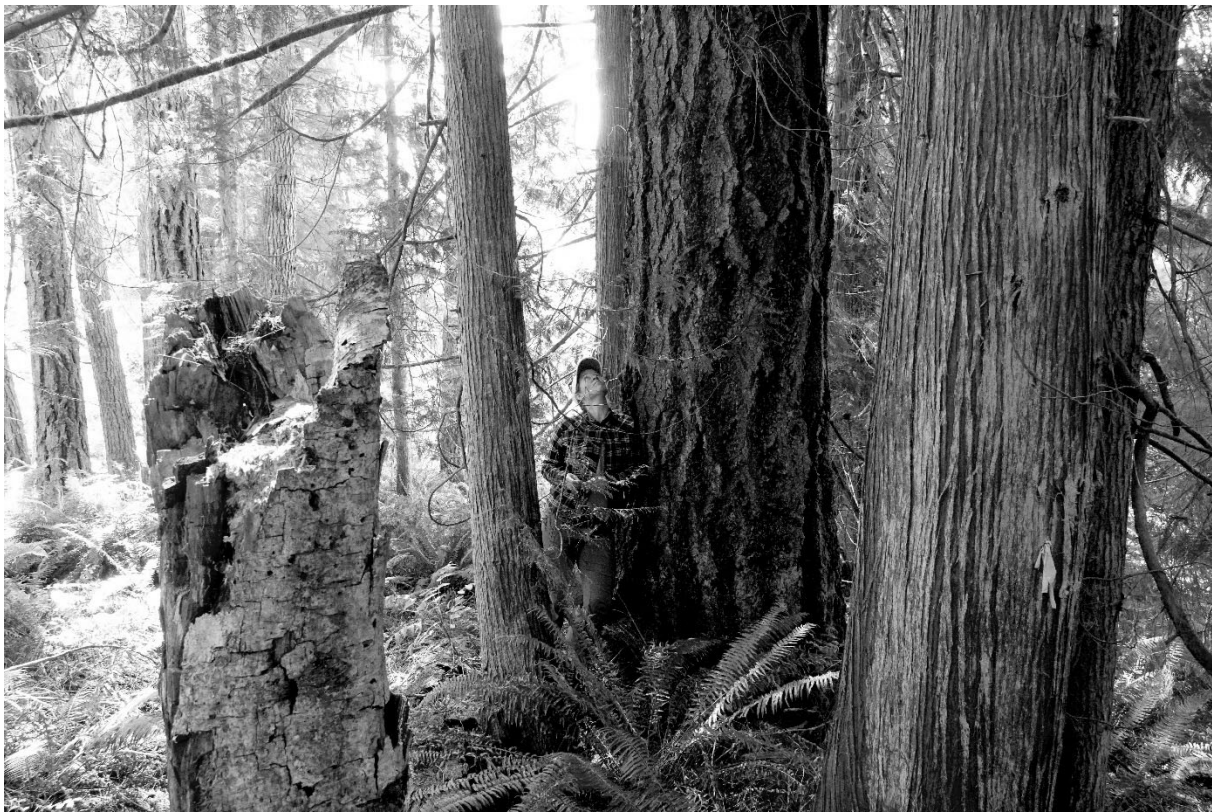
SUPERIOR COURT OF WASHINGTON
FOR JEFFERSON COUNTY

LEGACY FOREST DEFENSE COALITION,)	
)	
Appellant,)	NO.
)	
v.)	
)	
WASHINGTON STATE DEPARTMENT OF)	NOTICE OF APPEAL OF THE LAST
NATURAL RESOURCES, BOARD OF)	CROCKER TIMBER SORTS SALE
NATURAL RESOURCES, and)	AND ASSOCIATED
COMMISSIONER OF PUBLIC LANDS)	ENVIRONMENTAL REVIEW
HILARY FRANZ, in her official capacity,)	AND COMPLAINT SEEKING
)	DECLARATORY JUDGMENT
Respondents.)	
)	
)	

I. INTRODUCTION

1. On November 7, 2023, the Washington Board of Natural Resources (“Board”) authorized the Last Crocker Sorts Timber Sale, No. 30-104812, SEPA File No. 23-091301 (“Last Crocker”), allowing the Washington Department of Natural Resources (“DNR”) to auction 142 acres of publicly owned timber in Jefferson County for logging by a private company. Appellant the Legacy Forest Defense Coalition (“Coalition”) challenges the Board’s approval and the associated State Environmental Policy Act Mitigated Determination of Non-Significance, and seeks a declaratory judgment as set forth herein.

1 2. Last Crocker would allow loggers to cut 76 acres of rare, naturally regenerated,
2 structurally complex, old forest, located in the Andrews Creek watershed, and in the headwaters
3 of the Little Quilcene watershed, north of Quilcene Bay. These acres qualify as “structurally
4 complex forest” under DNR standards and policies—diverse and old stands of large trees that
5 are poised to grow into older forest and fully functional forest with old growth conditions. The
6 Board’s authorization was unlawful because the Board and DNR did not follow policies and
7 requirements established to protect and develop structurally complex and older forests that
8 DNR has promised to set aside to protect forest ecosystem diversity and regrow a small fraction
9 of the old growth forests that have been decimated by logging.
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A structurally complex forest in Last Crocker. The painted tree in the foreground indicates the centerline of new logging road. (Photo courtesy of the Coalition.)

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26 3. The approved logging operation would convert mature, natural forest,
27 dominated by trees that are close to four feet in diameter and 160 to 200 feet tall, into a

1 commercial tree plantation, permanently transforming the character of the land and composition
2 of the forest, and irreversibly destroying native ecosystems and critical wildlife habitat.

3 4. The Board approved Last Crocker after DNR determined that it would not have
4 a “probable significant adverse impact on the environment” and issued a threshold
5 Determination of Nonsignificance (“DNS”) under the State Environmental Policy Act
6 (“SEPA”).
7

8 5. Protection of structurally complex forests on State lands in Washington is
9 governed by a tiered set of policies and procedures: the State Trust Lands Habitat Conservation
10 Plan (“HCP”), which DNR developed in consultation with the U.S. Fish and Wildlife Service
11 as part of its compliance with the federal Endangered Species Act; the Policy for Sustainable
12 Forests, which the Board adopted in part to ensure that state trust lands are managed in
13 accordance with the HCP; and an internal procedure titled “Identifying and Managing
14 Structurally Complex Forests to Meet Older Forest Targets” (“PR 14-004-046”).
15

16 6. Although DNR asserts compliance with applicable laws as mitigation in its
17 SEPA process, Last Crocker violates the requirements and arbitrarily deviates from the
18 procedures set forth in the HCP, Policy for Sustainable Forests, and PR 14-004-046. The HCP
19 requires DNR to achieve 10 to 15 percent “fully functional” forest in each planning unit. “Fully
20 functional” forests are commonly understood to be those demonstrating conditions similar to
21 old growth, and are generally 150 years old or older. “Older forest” is a different term used by
22 DNR for similar forest conditions. The Policy for Sustainable Forests requires DNR to achieve
23 10 to 15 percent of “older forests” in each planning unit.
24

25 7. To achieve these objectives, PR 14-004-046 requires DNR to inventory
26 structurally complex forests in each planning unit, create a plan to attain the required thresholds,
27

1 and in the absence of a plan, refrain from logging structurally complex forests. PR 14-004-046
2 is the mechanism to ensure compliance with the HCP and the Policy for Sustainable Forests.

3 8. Last Crocker is located in the Straits planning unit. DNR has not created the
4 required forest plan for the Straits planning unit. DNR's own data demonstrates that the agency
5 is woefully short of its requirements in the Straits planning unit. Stands over 150 years old in
6 conservation areas currently constitute less than **one percent** of the Straits HCP planning unit.
7 Just five percent of the Straits HCP planning unit consists of protected, structurally complex
8 forests that are excluded from commercial timber harvest. Despite lacking the requisite
9 structurally complex forests and lacking a plan to meet its requirements, DNR has unlawfully
10 chosen to log the structurally complex forests in Last Crocker.
11

12 9. The Board's approval of Last Crocker was arbitrary and capricious and contrary
13 to law, including the Public Lands Act, RCW Title 79. DNR failed to make its threshold
14 determination based on sufficient information to evaluate the impact of the project, and that
15 threshold determination was clearly erroneous, in violation of SEPA, RCW Ch. 43.21C.
16

17 10. DNR's violations are not isolated to Last Crocker. DNR and the Board's
18 violations of the requirements and procedures in place to protect and manage structurally
19 complex forests to meet older forest targets affect timber sales across the Straits planning unit
20 and western Washington, resulting in ongoing procedural and environmental harm to
21 Appellants. As a result, declaratory relief is warranted.
22

23 II. JURISDICTION AND VENUE

24 11. Last Crocker is located entirely within Jefferson County. Jurisdiction and venue
25 are appropriate before this Court pursuant to RCW 79.02.030 (Public Lands Act), RCW
26 43.21C.075 (SEPA), and RCW 7.24.010 (Declaratory Judgment Act).
27

1 logging approved by Last Crocker goes forward, and the structurally complex forests in that
2 region are degraded or destroyed. Those same interests will be protected if the Court issues
3 relief to prevent logging from going forward under Last Crocker and to correct DNR’s legal
4 errors.

5
6 17. DNR is an agency of the state of Washington and is responsible for managing
7 forests on Washington trust lands.

8 18. The Board sets policies that guide how DNR manages state trust lands. Its
9 powers and duties include appraisal and approval of timber sales on state forestlands prior to
10 auction. The Board must review and approve timber sales on state trust land before those sales
11 are presented for auction.

12 19. The Commissioner of Public Lands (“Commissioner”), Hilary Franz is the
13 current chairperson on the Board and is the administrator for DNR, with jurisdiction over all
14 the powers, duties, and functions of DNR, except those specifically assigned to the Board.

15 20. Unless otherwise specified, as used herein “DNR” refers to the Board, DNR,
16 and Commissioner of Public Lands collectively.

17
18 **IV. LEGAL BACKGROUND**

19 21. The Public Lands Act authorizes and governs DNR’s management of public
20 lands, including land suitable for state forests that the state has acquired in a grant from the
21 United States and other mechanisms. These lands are known as the “state lands” and the “state
22 forestlands.” RCW 79.02.010(14) and .010 (15). DNR prepares timber sales to generate revenue
23 on a sustained yield basis. RCW 79.10.320. DNR administers the Public Lands Act.

24 22. As set forth in *Conservation Northwest v. Commissioner of Public Lands*, 199
25 Wn. 2d 813, 514 P.3d 174 (2022), DNR and the Board of Natural Resources must comply with
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27

1 three legal duties in the management of State forests: 1) a common law trust duty to generate
2 some amount of revenue or services for the identified institutional beneficiaries (*id.* at 828); 2)
3 a “constitutional mandate” to serve the general public, “all the people,” pursuant to Art. XVI,
4 Section 1 of the State constitution (*id.* at 835); and 3) compliance with applicable state and
5 federal laws (*id.* at 832). In balancing these duties DNR must both provide benefits to trust
6 beneficiaries and the broader public, including environmental benefits.
7

8 23. SEPA is Washington’s basic environmental charter, which imposes both
9 substantive and procedural obligations on DNR’s management of public lands.

10 24. The purposes of SEPA are: (1) to declare a state policy which will encourage
11 productive and enjoyable harmony between humankind and the environment; (2) to promote
12 efforts which will prevent or eliminate damage to the environment and biosphere; (3) to
13 stimulate the health and welfare of human beings; and (4) to enrich the understanding of the
14 ecological systems and natural resources important to the state and nation. RCW 43.21C.010.
15 SEPA is designed to provide decision makers and the public with full information about the
16 potential adverse environmental impacts of a proposed action, and to ensure that decisions are
17 made after thorough scientific analysis, consideration of expert comments, and public scrutiny.
18

19 25. Under SEPA, an agency must consider environmental information – including
20 impacts, alternatives, and mitigation – before committing to a particular course of action. WAC
21 197-11-055(2)(c). SEPA requires an agency to consider all environmental and ecological
22 factors to the fullest extent when taking major actions significantly affecting the environment.
23 When describing the environmental impacts, an agency must consider direct, indirect, and
24 cumulative impacts.
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1 26. SEPA requires DNR to prepare an Environmental Checklist for each timber sale
2 (“SEPA Checklist”), so it can conduct a threshold analysis to determine if that sale will have a
3 “probable significant, adverse environmental impact.” RCW 43.21C.031. An environmental
4 impact is considered to be “significant” if there is a reasonable likelihood that it will have more
5 than a moderate adverse impact on environmental quality. WAC 197-11-794. If an agency
6 makes a determination of significance, it must prepare an environmental impact statement that
7 includes analysis of reasonable alternatives that achieve similar goals with less environmental
8 impact. Environmental impacts include factors such as impacts to fish and wildlife, plants and
9 animals, surface water quality and runoff, aesthetics, recreation, and parks. WAC 197-11-752;
10 WAC 197-11-444.
11

12 27. SEPA requires that lead agencies conduct their analysis with full information
13 that accurately reflects the impacts of a proposed project. In evaluating an Environmental
14 Checklist for a proposed timber sale, DNR must “make its threshold determination based upon
15 information reasonably sufficient to evaluate the environmental impact of a proposal.” WAC
16 197-11-335. When information is uncertain, DNR must obtain accurate information and
17 perform a new environmental review before proceeding with the project. *See* WAC 197-11-
18 335. If significant new information arises after a SEPA threshold determination indicating that
19 a proposal will have significant adverse environmental impacts, DNR must rescind its threshold
20 determination and prepare a new analysis. *See* WAC 197-11-340(3)(a)(ii). Part of the threshold
21 determination is review of whether the proposal complies with applicable laws and policies.
22 WAC 197-11-330(3)(e)(iii).
23
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25 28. The threshold determination is an agency’s initial SEPA assessment, and “must
26 indicate that the agency has taken a searching, realistic look at the potential hazards and, with
27

1 reasoned thought and analysis, candidly and methodically addressed those concerns.” *Conserv.*
2 *Nw. v. Okanogan Cty.*, No. 33194-6-III, 2016 Wash. App. LEXIS 1410, *88-89 (Ct. App. June
3 16, 2016) (unpublished decision lacking binding authority under Washington General Rule
4 14.1); *see also* WAC 197-11-335. A “significance” determination “involves context and
5 intensity” and “the context may vary with the setting.” WAC 197-11-794.
6

7 V. STATEMENT OF THE CASE

8 29. DNR’s timber sales must comply with the terms and conditions of the HCP and
9 the Policy for Sustainable Forests along with the associated policies and procedures
10 implementing those terms and conditions, *see* WAC 332-41-665(1)(f), which together
11 constitute mitigation for the impacts of logging.
12

13 30. The HCP was prepared by DNR and approved by the U.S. Fish and Wildlife
14 Service and the National Marine Fisheries Service, as part of DNR’s assurance that its timber
15 management would comply with the Federal Endangered Species Act (16 U.S.C. § 1531 *et*
16 *seq.*). The HCP allows DNR to receive an incidental “take” permit allowing what would
17 otherwise be unlawful harm caused by logging to species listed as threatened or endangered
18 under the ESA.
19

20 31. The HCP’s multispecies conservation strategy requires DNR to provide suitable
21 habitat for both listed species and unlisted “animal species of concern and other unlisted animal
22 species.” It names 62 animal species of concern, and provides that other species are likely to be
23 added to the list, because it is “difficult to predict which species are at the brink of ‘at risk.’”
24 The HCP requires multispecies conservation strategies to be “implemented on DNR-managed
25 lands in the five west-side planning units,” which include the Straits HCP planning unit. As
26 DNR states in the SEPA Checklist for Last Crocker, compliance with the HCP implementation
27

1 procedures “substantially helps the Department to mitigate for cumulative effects” of specific
2 timber sales (attached hereto as Exh. A).

3 32. DNR’s Policy for Sustainable Forests guides its management and stewardship
4 over state trust lands and was written in part to ensure that DNR complies with the HCP. Along
5 with the associated HCP implementation procedures, the Policy for Sustainable Forests
6 constitutes DNR’s plan for implementing the HCP.
7

8 33. The Policy for Sustainable Forests defines the preservation of biodiversity as
9 “the fundamental guiding principle for sustainable forest management.” It directs DNR to
10 protect wildlife species and habitats by working to conserve “upland, riparian, and aquatic
11 wildlife species, including fish and their habitats, species listed as threatened and endangered,
12 and non-listed species...with a focus on ecosystem sustainability and the conservation of
13 biodiversity across forested landscapes.”
14

15 34. A core requirement of the multispecies conservation strategy of the HCP is to
16 identify, protect, and maintain at least 10 to 15 percent of forests within each HCP planning
17 unit to the most structurally complex stage of stand development (called the “fully functional
18 stage”) within 100 years. This stand development stage is commonly referred to as “old
19 growth”. The HCP suggests that a minimum of 150 years is required for a forest to reach the
20 fully functional stage of development. In other words, the HCP requires DNR to restore old
21 growth conditions on 10 to 15 percent of each planning unit.
22

23 35. DNR’s own analysis indicates that stands over 150 years old in conservation
24 areas currently constitute less than **one percent** of the Straits HCP planning unit. The agency
25 is far off track from meeting its requirements to develop fully functional forests under the State
26
27

1 Trust Lands HCP. Authorization of Lost Crocker increases the extent to which DNR is out of
2 compliance with its HCP's protections for structurally complex forests.

3 36. Relatedly, the Policy for Sustainable Forests directs DNR to "meet a 10 to 15
4 percent Older Forest Target for each Western Washington HCP planning unit."

5 37. Structurally complex forests are those forest stands poised to develop into older
6 forest and fully functional forests. The Policy for Sustainable Forests defines structurally
7 complex forests as those where multiple canopies of trees and communities of forest floor plants
8 are evident; and large and small trees have a variety of diameters and heights.

9 38. Carefully managing and protecting structurally complex forests is essential to
10 achieving compliance with the HCP and Policy for Sustainable Forests. Under the Policy for
11 Sustainable Forests, DNR is committed to "actively manage structurally complex forests,
12 especially those suitable stands in the botanically diverse stage of stand development, to achieve
13 older-forest structures across 10 to 15 percent of each Western Washington HCP planning unit
14 in 70-100 years."

15 39. Lost Crocker contains structurally complex forests. Lost Crocker authorizes
16 logging of structurally complex forests.

17 40. Units 1 and 2 of Last Crocker were selectively logged in the 1930's. Forest
18 stands within these units, approximately 76 acres, are over 80 years old and currently exhibit
19 the characteristics of structurally complex forests. These areas meet the definition of
20 structurally complex stands described in the Policy for Sustainable Forests, and if not logged
21 would contribute to DNR's Older Forest Target.

22 41. The Policy for Sustainable Forests requires DNR to identify suitable structurally
23 complex forest stands to be managed to help meet its Older Forest Target. It dictates that
24

1 “[o]nce Older Forest Targets are met, structurally complex forest stands that are not needed to
2 meet the targets may be considered for harvest activities.” This requirement means that DNR
3 may not authorize logging of structurally complex forests in a planning unit until the 10 to 15
4 percent older forest objectives are met in that planning unit.
5

6 42. The Straits planning unit has not met the Older Forest Targets. DNR’s
7 authorization of logging of structurally complex forest in Lost Crocker violates the Policy for
8 Sustainable Forests.

9 43. DNR’s HCP implementation procedure for Identifying and Managing
10 Structurally Complex Forests to Meet Older Forest Targets (“PR 14-004-046”) dictates that
11 “the identification and review of landscape level management strategies to achieve the 10 to 15
12 percent Older Forest Target will be completed during the forest land planning process that will
13 be conducted for each HCP planning unit.”
14

15 44. DNR has completed forest land plans for other HCP planning units but has not
16 completed a plan for the Straits planning unit within which Last Crocker is located.

17 45. Until a forest land plan is completed, PR 14-004-046 requires that any proposed
18 harvest activities in areas that are considered structurally complex forests “must be
19 accompanied by the following information: a) an assessment of forest conditions using readily
20 available information, b) an analysis of the known landscape management strategies and, c)
21 role of the structurally complex stand in meeting Older Forest Targets.” PR 14-004-046 further
22 requires that the information DNR gathers to satisfy these requirements “be included in the
23 [SEPA] checklist for the proposed harvest activity for public review.”
24

25 46. DNR did not include the information required by PR 14-004-046 in the SEPA
26 Checklist for Last Crocker.
27

1 47. PR 14-004-046 further requires that until enough forest lands were designated
2 to constitute 10 percent of the area to be structurally complex, structurally complex stands
3 would not be available for harvest.

4 48. Data obtained from DNR’s Public Disclosure Office indicates that DNR has
5 only set aside 5,836 acres of structurally complex forests in the Straits HCP planning unit for
6 conservation, which represents just five percent of the Straits HCP planning unit that has
7 protected, structurally complex forests that are excluded from commercial timber harvest. This
8 is well below the required 10 percent. Accordingly, under PR 14-004-046, the structurally
9 complex forests in Lost Crocker are not available for logging.

10 49. DNR did not make any attempt, through its SEPA threshold determination or
11 elsewhere, to assess whether Last Crocker complies with PR 14-004-046. DNR did not
12 complete the assessments and analyses required by PR 14-004-046 for Last Crocker.
13

14 50. DNR deviated from PR 14-004-046 by authorizing logging of structurally
15 complex forests in Lost Crocker.
16

17 51. DNR never acknowledged or explained its deviation from PR 14-004-046.

18 52. DNR justifies the continued logging of some of the most biologically and
19 structurally diverse forests in the Straits HCP planning unit based on the assumption that
20 riparian reserves and other special ecological management areas will provide the required 10 to
21 15 percent older forests within 70 to 100 years, but DNR has provided no data to support this
22 assumption. Even if true, these assumptions would not excuse or remedy the violations of the
23 HCP, Policy for Sustainable Forests, and PR 14-004-046 set forth above.
24

25 53. In preparation for potential approval of Last Crocker, DNR conducted a
26 threshold SEPA review, and issued a DNS on September 7, 2023 (attached hereto as Exh. B).
27

1 54. Appellant submitted public comments in response to the DNS on September 27,
2 2023, raising significant concerns regarding DNR’s ability to meet its Older Forest Target in
3 the Straits HCP planning unit.

4 55. DNR issued a “Notice of Final Determination” retaining the DNS on October
5 13, 2023, accompanied by a limited response to comments (attached hereto as Exh. C).

6 56. Appellant submitted additional comments and photographs of Last Crocker
7 forest conditions to the Board on November 6, 2023, to support the conclusion, documented in
8 its original September 27 comment letter, that Last Crocker approval ignored established Board
9 policies and procedures.

10 57. The Board approved Last Crocker for auction on November 7, 2023. This
11 decision was a legal prerequisite to proceeding with the sale, because the Board must review
12 sale appraisals and make the ultimate decision to proceed with a given timber sale over a
13 minimum value. *See* RCW 43.30.215; RCW 79.15.060.

14 58. If logging goes forward under the project, 76 acres of structurally complex forest
15 capable of contributing to the Older Forest Target will be logged. DNR failed to consider those
16 impacts, failed to consider the impacts of deviation from applicable requirements, policies, and
17 procedures, and incorrectly concluded they would be mitigated through compliance with the
18 HCP, Policy for Sustainable Forests, and implementing procedures.

19 59. DNR is planning additional timber sales within the Straits HCP planning unit
20 over the next six years, including the “Upper Salmon Creek,” “Ode to Joyce,” “Salt and
21 Pepper,” “By a Whisker,” “Birds Eye View,” “King Tut,” “Hey June,” “Crescent Wrench,”
22 “Riverview,” “Coyle Leftovers,” “Big Woods,” “Disco Sorts,” “Burnt Capitol,” “Fishhook,”
23 “Kicker,” and “Maladjusted” timber sales, which are each partially or entirely composed of
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1 structurally complex forests. These timber sales will have a significant cumulative effect on
2 DNR's ability to meet that Older Forest Target.

3 60. The SEPA Checklist for Last Crocker did not take into account the cumulative
4 effect of the project along with other past and planned future projects in the area.

5 61. The Public Lands Act requires DNR to make a finding that a timber sale on State
6 forestlands is "in the best interests of the state" prior to offering it for sale. RCW 79.22.050.
7 Neither DNR, the Commissioner of Public Lands, nor the Board made a published finding that
8 Last Crocker is in the best interests of the state. To the extent that DNR considered some
9 benefits of the sale to the state, that consideration was arbitrary and capricious.
10

11 62. The sale is not in the best interests of the state and would undermine DNR's
12 commitment to work toward meeting its Older Forest Target in the Straits HCP planning unit.
13

14 VI. CLAIMS

15 Claim One— The Public Lands Act, RCW 79.02.030

16 63. Appellant incorporates by reference all preceding paragraphs.

17 64. The decision by DNR, the Board, and the Commissioner to approve Last
18 Crocker are appealable under the Public Lands Act, RCW 79.02.030, as "any order or decision
19 of the board, or the commissioner" concerning the sale of valuable materials from state lands.
20 DNR must prepare an administrative record within 30 days. To minimize expense and waste,
21 Appellants request an electronic administrative record.
22

23 65. DNR, the Board, and the Commissioner violated the Public Lands Act by acting
24 arbitrarily and capriciously in approving Last Crocker for auction based on incomplete and
25 inaccurate information, deviating from the HCP, the Policy for Sustainable Forests, and DNR's
26 HCP implementation procedures, including PR 14-004-046 without rationale, and while
27

1 ignoring the impact that the project would have on DNR’s management objectives. *See Nw.*
2 *Alloys, Inc. v. Dept. of Nat. Res.*, 10 Wn. App. 2d 169, 14, 447 P.3d 620, 629 (2019) (holding
3 that when agencies act in their administrative function, review is of whether they acted
4 arbitrarily, capriciously, or contrary to law).

5
6 66. Any purported DNR “rationale” for not following PR 14-004-046 or for
7 concluding that DNR followed it in good faith is not supported by credible scientific data in the
8 record. DNR has never presented evidence that PR 14-004-046 was rescinded or does not apply
9 to the Last Crocker timber sale.

10 67. DNR, the Board, and the Commissioner violated the Public Lands Act by
11 approving Last Crocker without making a finding that the auction is in the best interests of the
12 State, and even though the sale is not in the best interests of the state.

13
14 **Claim Two—State Environmental Policy Act, RCW 43.21C.075**

15 68. Appellant incorporates by reference all preceding paragraphs.

16 69. DNR, the Board, and the Commissioner violated SEPA by approving Last
17 Crocker based upon an unlawful and clearly erroneous DNS.

18 70. DNR conducted a SEPA threshold evaluation that terminated SEPA review,
19 which was not based on reasonably accurate information, failed to evaluate the extent to which
20 Last Crocker would impact DNR’s ability to meet its Older Forest Target, failed to consider
21 conflict with the HCP, Policy for Sustainable Forests, and PR 14-004-046, and failed to take
22 into account the direct, indirect, and cumulative impacts of the project. DNR unlawfully relied
23 upon compliance with the HCP, Policy for Sustainable Forests, and implementing procedures
24 when in fact the agency violated those requirements and guidelines.
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1 71. DNR failed to consider cumulative effects and isolated its analysis of Last
2 Crocker from related sales.

3 72. DNR's SEPA evaluation failed to assess forest conditions using readily
4 available information; did not utilize required landscape management strategies; and ignored
5 the role of the structurally complex stand within Last Crocker in meeting its Older Forest Target
6 as required by PR 14-004-046, the HCP implementation procedure for Identifying and
7 Managing Structurally Complex Forests to Meet Older Forest Targets.
8

9 73. DNR failed to base its threshold determination on information that accurately
10 reflected its ability to meet its own policy objectives and failed to resolve uncertainties by
11 conducting further study or performing further environmental review. *See* WAC 197-11-335.
12

13 74. DNR failed to prepare an environmental impact statement for Last Crocker,
14 despite the fact that the project will have more than a moderate adverse impact on environmental
15 quality. DNR failed to withdraw its DNS and prepare an environmental impact statement
16 despite significant information indicating the proposal's probable significant adverse
17 environmental impacts. WAC 197-11-340(3)(a)(ii).

18 75. DNR, the Board, and the Commissioner failed to comply with their substantive
19 obligations under SEPA, which include acting as trustees of the environment for future
20 generations and attaining the widest range of beneficial uses of the environment without
21 degradation, risk to health or safety, or other undesirable and unintended consequences. RCW
22 43.21C.020.
23

24 **Claim Three – Uniform Declaratory Judgments Act, RCW 7.24.010, et seq.**

25 76. DNR takes the legal position that it may continue to log structurally complex
26 forests based on a different interpretation of its obligations under the HCP, Policy for
27

1 Sustainable Forests, and PR 14-004-046. This creates a regular, ongoing, discrete conflict
2 between Appellants and DNR.

3 77. The legal issues in this case were recently litigated in *Center for Responsible*
4 *Forestry v. DNR*, Court of Appeals No. 56964-7-II (Unpublished opinion, decided September
5 26, 2023) (attached hereto as Exh. D). While that court ultimately dismissed the appeal as
6 moot because the trees had been harvested during the pendency of the appeal and the court
7 declined to invoke the public interest exception to the mootness doctrine, on page 10 of the
8 court’s slip opinion, the court acknowledged the Center’s representation that the old forest
9 legal issue in that case would likely repeat itself in at least 69 future cases. The Coalition has
10 identified additional future sales presenting the same legal issue in this Complaint. To
11 provide legal clarity and promote judicial efficiency, a declaratory judgment is warranted.
12

13 78. Members of the Coalition live near and regularly visit DNR-managed public
14 lands in the Straits planning unit and western Washington, and will continue to do so. The
15 logging that DNR carries out pursuant to its legal position regarding structurally complex
16 forests causes ongoing harm and threat of harm to the Coalition and its members on the site-
17 specific scale of described forest management, as well as on the larger scale of cumulative
18 harm to biodiversity, forest health and function, and other environmental attributes of
19 structurally complex forests.
20

21 79. The Coalition seeks a declaration pursuant to RCW Chapter 7.24 (the Uniform
22 Declaratory Judgments Act) from this Court setting forth DNR’s obligations under the HCP,
23 Policy for Sustainable Forests, and PR 14-004-046 regarding structurally complex forests and
24 older forests.
25
26
27

1 **VII. RELIEF REQUESTED**

2 Appellant respectfully requests the following relief:

3 1. Based on the facts alleged herein, to direct the Defendants to prepare an
4 administrative record. For sake of judicial efficiency and reduced cost to the parties, Appellant
5 requests that the Court direct the parties to work collaboratively on preparation of an electronic
6 administrative record that is narrowed as appropriate to address Appellant’s claims.
7

8 2. Enter an order invalidating the Board’s approval of Last Crocker for auction,
9 based on violations of the Public Lands Act, SEPA, and other applicable law and policies.

10 3. Enter an order invalidating the DNS for Last Crocker as violating SEPA statute
11 and regulations and “clearly erroneous.”
12

13 4. Enter an order declaring that Last Crocker has probable, significant adverse
14 impacts to the environment, necessitating preparation of an environmental impact statement.

15 5. Enter an order enjoining or requiring DNR to enjoin all forest practices pursuant
16 to Last Crocker.

17 6. If forest practices are carried out prior to the requested relief before this Court
18 or on review in a court of appeals, entry of an order requiring mitigation for any and all impacts
19 of Last Crocker.
20

21 7. A declaratory order interpreting DNR’s legal obligations with respect to
22 structurally complex forests, older forests, and fully functional forests under the State Trust
23 Lands Habitat Conservation Plan, Policy for Sustainable Forests, and PR 14-004-046.

24 8. Enter an order granting Appellant its costs and attorneys’ fees based on the Equal
25 Access to Justice Act, RCW Ch. 4.84, or any other applicable provision of law.

26 9. Any other relief that this Court deems just and proper.
27

1 Dated this 7th day of December, 2023.

2 Respectfully submitted,

3 ZIONTZ CHESTNUT

4 /s/ Wyatt Golding

5 Wyatt Golding, WSBA #44412

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EXHIBIT A

Date: _____ Page: _____

STATE FOREST LAND
SEPA ENVIRONMENTAL CHECKLIST

Purpose of checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

Questions in italics are supplemental to Ecology's standard environmental checklist. They have been added by the DNR to assist in the review of state forest land proposals. Adjacency and landscape/watershed-administrative-unit (WAU) maps for this proposal are available on the DNR internet website at <http://www.dnr.wa.gov/sepa>. These maps may also be reviewed at the DNR regional office responsible for the proposal. This checklist is to be used for SEPA evaluation of state forest land activities.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Instructions for Lead Agencies:

Additional information may be necessary to evaluate the existing environment, all interrelated aspects of the proposal and an analysis of adverse impacts. The checklist is considered the first but not necessarily the only source of information needed to make an adequate threshold determination. Once a threshold determination is made, the lead agency is responsible for the completeness and accuracy of the checklist and other supporting documents.

Use of checklist for nonproject proposals:

For nonproject proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D). Please completely answer all questions that apply and note that the words "project," "applicant," and "property or site" should be read as "proposal," "proponent," and "affected geographic area," respectively. The lead agency may exclude (for non-projects) questions in Part B - Environmental Elements –that do not contribute meaningfully to the analysis of the proposal.

A. BACKGROUND

1. Name of proposed project, if applicable:

Timber Sale Name: **LAST CROCKER SORTS**
Agreement # **30-104812**

2. Name of applicant: **Washington Department of Natural Resources**

3. Address and phone number of applicant and contact person:

Mark Benner
Department of Natural Resources
411 Tillicum Lane
Forks, WA 98331
(360) 374-2800

4. Date checklist prepared: **07/19/2023**

5. Agency requesting checklist: **Washington Department of Natural Resources**

6. Proposed timing or schedule (including phasing, if applicable):

a. Auction Date:
12/13/2023

b. Planned contract end date (but may be extended):
02/28/2025

c. Phasing:
None

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

No, go to question 8. *Yes, identify any plans under A-7-a through A-7-d:*

a. Site Preparation:

For units 1 - 4: Assessment for treatment will occur after completion of harvest. Site preparation including a chemical herbicide application, may be used to ensure that planting is successful at acceptable levels to meet or exceed Forest Practice standards.

b. Regeneration Method:

Units 1 - 4 will be hand planted with native species seedlings following harvest.

c. Vegetation Management:

A continued assessment of units to determine future vegetation management strategy will be required. Treatments will be based on vegetative competition and will ensure a free-to-grow status that complies with Forest Practice standards.

d. Other:

Road maintenance assessments will be conducted and may include periodic ditch and culvert cleanout, and grading as necessary.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. *Note: All documents are available upon request at the DNR Region Office.*

- 303 (d) – listed water body in WAU:
 - temp
 - sediment
 - completed TMDL (total maximum daily load)

- Landscape plan:
- Watershed analysis:
- Interdisciplinary team (ID Team) report:
- Road design plan: **dated 07/24/2023**
- Wildlife report:
- Geotechnical report:
- Other specialist report(s):
- Memorandum of understanding (sportsmen’s groups, neighborhood associations, tribes, etc.):
- Rock pit plan:
- Other:

The following analyses, policies, procedures, documents, and data layers directly pertain to or were reviewed as part of this proposal:

- **DNR Policies and Implementation**
 - o Policy for Sustainable Forests (PSF; 2006a)
 - o Final Environmental Impact Statement on the Policy for Sustainable Forests (2006b)
 - o Alternatives for the Establishment of a Sustainable Harvest Level for Forested State Trust Lands in Western Washington Final Environmental Impact Statement (2019)
 - o Silvicultural Rotational Prescriptions
 - o Land Resource Manager Reports and associated maps
- **DNR Trust Lands Habitat Conservation Plan and Supplemental Information**
 - o Final Habitat Conservation Plan (HCP; 1997)
 - o Final (Merged) Environmental Impact Statement for the Habitat Conservation Plan (1998)
 - o Long-Term Conservation Strategy for the Marbled Murrelet Final Environmental Impact Statement (2019)
 - o Final State Trust Lands Habitat Conservation Plan Amendment: Marbled Murrelet Long-term Conservation Strategy
 - o Riparian Forest Restoration Strategy (RFRS; 2006)
 - o Spotted Owl Habitat Layer
 - o Marbled Murrelet Habitat Layer
 - o WAU Rain-On-Snow GIS Layer and Reports
- **Forest Practices Regulations and Compliance**
 - o Forest Practices Board Manual
 - o Forest Practices Activity Maps
 - o Trust Lands HCP Addendum and Checklist
- **Supporting Data for Unstable Slopes Review**
 - o State Lands Geologist Remote Review (SLGRR)

- o Landslide Remote Identification Model (LRIM) tool
- o Forest Practices Statewide Landslide Inventory (LSI) screening tool
- Supporting Data for Cultural Resources Review
 - o Historical Aerial Photographs
 - o USGS and GLO maps
 - o Department of Archaeology and Historic Preservation database for architectural and archaeological resources and reports (WISAARD)
- Additional Supporting Data for Policy Compliance
 - o Weighted Old Growth Habitat Index (WOGHI)
 - o State Soil Survey

Referenced documents may be obtained at the region office responsible for this proposal.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

None known.

10. List any government approvals or permits that will be needed for your proposal, if known.

- FPA* *FPHP* *Board of Natural Resources Approval*
 Burning permit *Shoreline permit* *Existing HPA*
 Other:

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

a. Complete proposal description:

The Last Crocker Sorts timber sale includes four variable retention harvest (VRH) units totaling 141 net harvest acres and two right-of-way units totaling 1 acre. The cruised volume is 5,447 MBF. The sale area will be harvested using only ground-based shovel equipment.

The initial proposal area evaluated for harvest encompassed 177 acres. The 35 acres excluded from harvest include 7 acres for Riparian Management Zones (RMZs), 7 acres of unmanaged Wetland Management Zone (WMZ), and 21 acres of leave tree areas.

The proposal also includes maintenance, reconstruction and construction of forest roads. Road maintenance work will include roadside brushing, rocking, grading, ditch maintenance, and replacement of cross drains, as needed. Rock will come from a commercial source.

Unit	Gross Proposal (Acres)	Riparian Management Zones/Unstable Slope Protection (Acres)	Wetland Management Zones (Acres)	Existing Roads (Acres)	Leave Tree Area (Acres)	Net Harvest (Acres)
1	56	0	0	3	5	48
2	43	0	0	0	6	37
3	12	2	1	0	1	8
4	68	5	6	0	9	48
5 RW	0.2	0	0	0	0	0.2
6 RW	0.8	0	0	0	0	0.8
Totals	180	7	7	3	21	142

b. Describe the stand of timber pre-harvest (include major timber species and origin date), type of harvest and overall unit objectives.

Pre-harvest Stand Description:

Unit	Origin Date	Major Timber Species	MBF/acre	Slope (%)	Elevation Range (ft)
1	1932 & 1938	Douglas-fir (DF), red alder (RA) & western red cedar (RC)	45	8	280-680
2	1934	DF, RA, & RC	35	10	280-680
3	1946	DF & RC	35	7	280-680
4	1946 & 1965	DF & RA	30	16	280-680
5 RW	1987	DF	10	1	280-680
6 RW	1946 & 2004	DF	20	6	280-680

Type of Harvest:

Unit	Harvest Type (VDT/VRH/etc)	Volume to be Harvested (mbf)	Volume to be Harvested (%)	Individual Leave Trees	Clumped Leave Trees	Total Leave Trees
1	VRH	2,117	95	65	410	475
2	VRH	1,526	95	28	468	496
3	VRH	299	95	22	56	78
4	VRH	1,491	90	28	745	773
5 RW	ROW	11	100	0	0	0
6 RW	ROW	3	100	0	0	0

Overall Unit Objectives:

The overall objectives for this sale includes the production of saw logs and pulp material to generate revenue for trusts while expediting the development of a more diverse multi-storied canopy layer in the future stand. This will be accomplished through the leave tree

retention strategy and riparian management zones. These stands will be managed to protect site productivity and maintain the integrity and water quality of adjacent streams.

Ecological- Promote diverse forest structure across the landscape while preserving ecological integrity and function.

Economic- Generate revenue for the State trust beneficiaries.

Statute- Comply with the DNR’s HCP, the Policy for Sustainable Forests, and Forest Practice Rules and Regulations.

Social- Accommodate dispersed informal recreational activities on DNR managed lands and identify and protect historical and archaeological sites consistent with state/federal law. Reduce aesthetic impact of harvest from Highway 101.

c. Describe planned road activity. Include information on any rock pits that will be used in this proposal. See associated forest practice application (FPA) for maps and more details.

Type of Activity	How Many	Length (feet) (Estimated)	Acres (Estimated)	Fish Barrier Removals (#)
Construction		3,615	1.4	0
Reconstruction		425		0
Maintenance		17,095		0
Abandonment		0	0	0
Bridge Install/Replace	0			0
Stream Culvert Install/Replace (fish)	0			0
Stream Culvert Install/Replace (no fish)	1			
Cross-Drain Install/Replace	14			

* Construction acreage based on 17-foot subgrade.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist (See “WAU Map(s)” and “Timber Harvest Unit Adjacency Map(s)” as referenced on the DNR website: <http://www.dnr.wa.gov/sepa>. Click on the DNR region of this proposal under the Topic “Current SEPA Project Actions - Timber Sales.” Proposal documents also available for review at the DNR Region Office.)

a. Legal description: T28-0N R2-0W S13

b. Distance and direction from nearest town:

The sale is located approximately 14 miles by road north of Quilcene.

From Highway 104 just west of milepost 2 turn south on the PT-O-3000 under the power lines. Go through the orange gate and follow the main road around for 0.3 mile to the yellow gate at the State property line. Travel 0.9 mile through this second gate to the PT-O-3200 junction. Stay straight for 0.5 mile to the end of the PT-O-3200 and walk in through Unit 5 tagged right-of-way to the top of Unit 2, or stay west on the PT-O-3000 for 0.4 mile to the middle of Unit 1. Continue on the PT-O-3000 for another 0.3 mile to the PT-O-3400 junction. Turn left and drive 0.4 mile to the end of the PT-O-3400 at the bottom of Unit 2, or only go 0.1 mile and park at the junction of the PT-O-3410 to walk in to Unit 6 tagged right-of-way and Unit 3. Turning right at the PT-O-3400 junction and driving 0.2 mile leads to Unit 4.

13. Cumulative Effects

- a. *Briefly describe any known environmental concerns that exist regarding elements of the environment in the associated WAU(s). (See WAC 197-11-444 for what is considered an element of the environment).*

This proposal is located within the Discovery Bay and Little Quil WAUs. Ownership across the WAUs includes large industrial forests, private land owners, federal lands, and Department of Natural Resources managed forests. Forested stands within the WAU appear to be primarily second and third growth stands with some old growth stands. The number of forest practice activities shown on the WAU maps, along with observations within the WAU indicate that it is still intensively managed for timber production. Land uses within the WAU are trending toward conversion from forest and agriculture use to residential use. This trend is expected to continue on private lands. Lands that remain under DNR stewardship will continue to be managed as forestland.

Howe Creek, Ripley Creek, the Little Quilcene River, Leland Creek and Donovan Creek are listed as 303(d) waterbodies for temperature downstream of the proposal area.

DNR analyzed carbon sequestration and carbon emissions from projected land management activities within its final environmental impact (FEIS) statement for the 2015-2024 Sustainable Harvest Calculation and the FEIS for the 2019 HCP Long-Term Conservation Strategy for the Marbled Murrelet. At the western Washington scale, land management activities on DNR-managed lands sequester more carbon than emitted. Individual activities, such as this proposal, are likely to emit some greenhouse gases, including CO₂; however, at the landscape scale, DNR's sustainable land management activities, including this proposal, sequester more carbon than they emit. Evaluating carbon sequestration at the western Washington scale is appropriate because a determination of net carbon emissions must consider both the carbon sequestered and the carbon emissions from management within the same analysis area (western Washington).

Recognizing the climate and carbon benefits of working forests in Washington's Climate Commitment Act (RCW 70A.45.005), the legislature found that Washington should maintain and enhance the state's ability to continue to sequester carbon through natural and working lands and forest products. Further, "Washington's existing forest products sector, including public and private working forests and the harvesting, transportation, and manufacturing sectors that enable working forests to remain on the land and the state to be a global supplier

of forest products, is, according to a University of Washington study analyzing the global warming mitigating role of wood products from Washington's private forests, an industrial sector that currently operates as a significant net sequesterer of carbon. This value, which is only provided through the maintenance of an intact and synergistic industrial sector, is an integral component of the state's contribution to the global climate response and efforts to mitigate carbon emissions.” RCW 70A.45.090(1)(a).

The legislature also found that the 2019 Intergovernmental Panel on Climate Change (IPCC) report “identifies several measures where sustainable forest management and forest products may be utilized to maintain and enhance carbon sequestration. These include increasing the carbon sequestration potential of forests and forest products by maintaining and expanding the forestland base, reducing emissions from land conversion to non-forest uses, increasing forest resiliency to reduce the risk of carbon releases from disturbances such as wildfire, pest infestation, and disease, and applying sustainable forest management techniques to maintain or enhance forest carbon stocks and forest carbon sinks, including through the transference of carbon to wood products” (2020 Washington Laws Ch. 120 §1(2)).

DNR is legally required (RCW 79.10.320) to periodically calculate a sustainable harvest level and manages state trust lands sustainably. DNR has also maintained (statewide) a forest management certificate to the Sustainable Forestry Initiative standard since 2006. In managing state trust lands sustainably, DNR sequesters more carbon than it emits while conducting land management activities such as this proposal.

The timber harvested from DNR-managed lands is used to produce climate-smart forest products. The climate impacts of DNR’s land management are analyzed in multiple environmental impact statements that have informed the Board of Natural Resources’ decisions and are consistent with the IPCC, which states that “[m]eeting society’s needs for timber through intensive management of a smaller forest area creates opportunities for enhanced forest protection and conservation in other areas, thus contributing to climate change mitigation.”

b. Briefly describe existing plans and programs (i.e. the HCP, DNR landscape plans, retention tree plans) and current forest practice rules that provide/require mitigation to protect against potential impacts to environmental concerns listed in question A-13-a.

This proposal and all future management activities on DNR lands will be conducted in accordance with the DNR’s Habitat Conservation Plan (HCP, 1997), the Policy for Sustainable Forests (2006), and Forest Practice Rules. The HCP is an agreement with the federal government that requires the DNR to manage the landscapes with the intent to preserve and enhance habitat. In accordance with its terms, the following applicable strategies are found to provide a conservation benefit for multiple species:

- Establishing Riparian Management Zones (RMZs) along Type 3 and 4 streams.
- These RMZs also provide protection for stream temperature by retaining canopy cover which provides shade.
- Protecting small forested wetlands and Type 5 streams with leave trees.
- Establishing Wetland Management Zones (WMZs) around large wetlands.
- Protecting uncommon habitats under the multispecies conservation strategy.
- Implementing strategies designed to protect the marbled murrelet and northern spotted owl.
- Retaining a minimum of eight leave trees per acre dispersed and aggregated throughout

the harvest units and identifying and protecting dominant, large-diameter, and structurally unique trees as part of the leave tree strategy.

- Designing, constructing, and maintaining a road system in a manner that will minimize potential adverse effects on the environment.

In concert, the HCP strategies for Northern Spotted Owl, Marbled Murrelet, and riparian conservation will contribute to the retention and development of older forests, while the leave tree procedure will enhance the structural diversity of forests across the landscape.

The leave tree strategy objectives for this sale also include mitigation of aesthetic impacts from Highway 101, designing the sale for winter operating near seasonally saturated soils, protecting Type 5 streams during seasonal high flows, and limiting the potential for erosion and other soil impacts on steeper slopes. Normal leave tree targets have been exceeded to achieve all of these objectives, while still meeting distribution requirements.

In addition, road construction and maintenance standards will improve the quality of the existing road network and reduce impacts on the environment.

Development of older forests is an expected outcome of the 1997 HCP, and a policy objective stated in the Policy for Sustainable Forests. The HCP riparian and wildlife conservation strategies will contribute to the retention and development of older forests, while the leave tree procedure will enhance the structural diversity of forests across the landscape. Landscape assessments made in May 2021 demonstrate that, through implementation of the HCP and other policies and laws, older forest targets will be met in conservation areas over time. These conservation areas include identified long-term forest cover under the marbled murrelet long-term conservation strategy, riparian areas, areas conserved under the multispecies conservation strategy, potentially unstable slopes, spotted owl nest patches, and spotted owl habitat that must be maintained to comply with the northern spotted owl conservation strategy. The Straits HCP Planning Unit, which includes this proposal site, will meet at least 10% older forest within conservation areas by 2090.

c. Briefly describe any specific mitigation measures proposed, in addition to the mitigation provided by plans and programs listed under question A-13-b.

All mitigation measures are clearly outlined in the HCP. No additional mitigation measures have been developed for this proposal.

d. Based on the answers in questions A-13-a through A-13-c, is it likely potential impacts from this proposal could contribute to any environmental concerns listed in question A-13-a?

It is not likely potential impacts from this proposal will contribute to the environmental concerns listed in question A-13-a. DNR's HCP, the Policy for Sustainable Forests, and the Forest Practice rules substantially helps the Department to mitigate for cumulative effects related to management activities. These strategies have been incorporated in this proposal.

e. Complete the table below with the reasonably foreseeable future activities within the associated WAU(s) (add more lines as needed). Future is generally defined as occurring within the next 7

years. This data was obtained from DNR's Land Resource Manager System on the date of processing this checklist and may be subject to change.

WAU Name	Total WAU Acres	DNR-managed WAU Acres	Acres of DNR proposed even-aged harvest in the future	Acres of DNR proposed uneven-aged harvest in the future	Acres of proposed harvest on non-DNR-managed lands currently under active FP permits
LITTLE QUIL	27662	2487	258	177	859
DISCOVERY BAY	75263	9326	602	741	2049

Other management activities, such as stand and road maintenance, will likely occur within the associated WAU(s).

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (check one):

- Flat, Rolling, Hilly, Steep Slopes, Mountainous, Other:

1. *General description of the associated WAU(s) or sub-basin(s) within the proposal (landforms, climate, elevations, and forest vegetation zone).*

WAU: LITTLE QUIL
WAU Acres: 27662
Elevation Range: 0 - 6265 ft.
Mean Elevation: 1255 ft.
Average Precipitation: 45 in./year
Primary Forest Vegetation Zone: Western Hemlock

WAU: DISCOVERY BAY
WAU Acres: 75263
Elevation Range: 0 - 4258 ft.
Mean Elevation: 600 ft.
Average Precipitation: 25 in./year
Primary Forest Vegetation Zone: Western Hemlock

2. *Identify any difference between the proposal location and the general description of the WAU or sub-basin(s).*

This proposal is a representative example of the WAUs at the same elevation and aspect. In general it is located at lower elevation.

b. What is the steepest slope on the site (approximate percent slope)?

44%

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

Note: The following table is created from state soil survey data. It is an overview of general soils information for the soils found in the sale area. The actual soil conditions in the sale area may vary considerably based on land-form shapes, presence of erosive situations, and other factors.

State Soil Survey #	Soil Texture
0056	GRAVELLY SANDY LOAM
0064	GRAVELLY SANDY LOAM
0973	GRAVELLY SILT LOAM
0048	GRAVELLY LOAM

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

No, go to question B-1-e.

Yes, briefly describe potentially unstable slopes or landforms in or around the area of the proposal site. For further information, see question A-8 for related slope stability documents and question A-10 for the FPA number(s) associated with this proposal.

There is an inner gorge feature located between Units 3 and 4, and another northwest of Unit 4.

- 1) Does the proposal include any management activities proposed on potentially unstable slopes or landforms?

No Yes, describe the proposed activities:

- 2) Describe any slope stability protection measures (including sale boundary location, road, and harvest system decisions) incorporated into this proposal.

There are no rule identified landforms in the proposed sale area. The inner gorge slopes are fully contained within the riparian management zones. The steepest slopes in the sale have been protected with leave tree areas as well.

- e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

Approx. acreage new roads: 1.4 Acres

Approx. acreage new landings: 2.7 Acres (based on 100 ft x 100 ft impacted area)

Fill Source: Native on-site material will be excavated during road and landing construction. This material will be used for fill as needed. Rock for ballast and surfacing will come from a commercial source (approx. 9,800 CY).

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
Yes. Some erosion could occur as a result of building new roads, installing culverts, and hauling timber.
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? *Approximate percent of proposal in permanent road running surface (includes gravel roads):*
Approximately 1% of the site will remain as gravel roads.
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:
(Include protection measures for minimizing compaction or rutting.)
Harvesting and road construction will be restricted during periods of heavy rainfall when rutting and surface erosion may occur. Roads will be constructed with properly located ditches, ditch-outs, and cross-drains to divert water onto stable forest floors and/or into stable natural drainages. Best management practices will be utilized as necessary in proximity to live waters. Ground based operations will be suspended during periods of wet weather or wet soil conditions when rutting of shovel roads begins.

The sale will be harvested using only shovel equipment. Lead end suspension will also be required for all yarding activities. A timing restriction from November 1st to June 30th will be applied to the steeper ground in the southwest part of Unit 4, when subsurface flow is predicted to be near the surface.

2. Air

- a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.
Minor amounts of engine exhaust from logging and road construction equipment and dust from vehicle traffic on roads will be emitted during proposed activities. If landing debris is burned after harvest is completed, smoke will be generated. There will be no emissions once the proposal is complete.
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
None known.
- c. Proposed measures to reduce or control emissions or other impacts to air, if any:
If landing debris is burned, it will be in accordance with Washington State's Smoke Management Plan. A burn permit will be obtained before burning occurs.

3. Water

- a. Surface Water:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it

flows into. (See “WAU Map(s)” and “Timber Harvest Unit Adjacency Map(s)” as referenced on the DNR website: <http://www.dnr.wa.gov/sepa>. Click on the DNR region of this proposal under the Topic “Current SEPA Project Actions - Timber Sales.” Proposal documents also available for review at the DNR Region Office.)

No Yes, describe in 3-a-1-a through 3-a-1-c below

a. Downstream water bodies:

Streams near the north boundary of Unit 1 flow to Crocker Lake and Andrews Creek, which feed into Snow Creek and Discovery Bay. All other streams associated with the sale flow south into Leland Creek, which makes its way to the Little Quilcene River before entering Quilcene Bay.

b. Complete the following riparian & wetland management zone table:

Wetland, Stream, Lake, Pond, or Saltwater Name (if any)	Water Type	Number (how many?)	Avg RMZ/WMZ Width in feet (per side for streams)
Wetland (>1.0 acre)	Forested	3	150
Wetland (<0.25 acre)	Forested	8	N/A
Streams	3	1	150
Streams	4	1	100
Streams	5	8	N/A

c. List any additional RMZ/WMZ protection measures including silvicultural prescriptions, road-related RMZ/WMZ protection measures and wind buffers. **All of the small forested wetlands and Type 5 streams are protected by large leave tree areas (except at one designated crossing), or are located outside the sale boundaries. Harvesting will not occur within the RMZs or WMZs. Wind buffers are not applied.**

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

No

Yes (See RMZ/WMZ table above and timber sale maps which are available on the DNR website: <http://www.dnr.wa.gov/sepa>. Timber sale maps are also available at the DNR region office.)

Description (include culverts):

Timber felling, bucking, yarding, or road work will occur within 200 feet of all the described waters above. All activities will be done in accordance with the DNR’s HCP and Forest Practice rules. Timber harvest will occur within 200’ of typed waters, but no closer than described above in questions B.3.a.1.b and B.3.a.1.c. There will be one designated crossing of a Type 5 stream in Unit 1. Culvert work listed in A.11.C will also occur over a Type 5 stream. A 24” x 30’ culvert will be installed at this location on the PT-O-3400 road. See the Forest Practice Application with accompanying maps and plans for more details.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

A temporary log fill crossing will be constructed across a Type 5 stream in Unit 1. The designated crossing will be limited to the State's location. An 18" x 20' culvert will be laid in the stream channel, and logs shall be placed around the pipe up to the level of the stream banks with a shovel. The structure shall be removed immediately upon completion of yarding. See the Forest Practice Application with accompanying maps and plans for more details.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. (*Include diversions for fish-passage culvert installation.*)

No Yes, description:

Temporary water diversion may be required for the Type 5 pipe replacement, depending upon the exhibited flow and timing of road work.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

No Yes, describe activity and location:

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

It is not likely that any waste materials will be discharged into the surface water(s). However, minor amounts of oil, fuel, and other lubricants may inadvertently be discharged to the adjacent surface water(s) as a result of heavy equipment use or mechanical failure. No lubricants will be disposed of on-site.

- 7) *Is there a potential for eroded material to enter surface water as a result of the proposal considering the protection measures incorporated into the proposal's design?*

No Yes, describe:

Soils and terrain susceptible to surface erosion are generally located on slopes steeper than 70%. The potential for eroded material to enter surface water is minimized due to the erosion control measures and operational procedures outlined in B-1-h.

- 8) *What are the approximate road miles per square mile in the associated WAU(s)?*

LITTLE QUIL = 3.9 (mi./sq. mi.), DISCOVERY BAY = 3.7 (mi./sq. mi.)

- 9) *Are there forest roads or ditches within the associated WAU(s) that deliver surface water to streams, rather than back to the forest floor?*

No Yes, describe:

It is likely some roads or road ditches within the WAU intercept sub-surface flow and deliver surface water to streams, however current road work standards will be

applied that address this issue by installing cross-drains to deliver ditch water to stable forest floors.

10) *Is there evidence of changes to channels associated with peak flows in the proposal area (accelerated aggradations, surface erosion, mass wasting, decrease in large organic debris (LOD), change in channel dimensions)?*

No Yes, describe observations:

11) *Describe any anticipated contributions to peak flows resulting from this proposal's activities which could impact areas downstream or downslope of the proposal area. It is not likely the proposed activity will change the timing, duration, or volume of water during a peak flow event. This proposal limits harvest unit size and proximity to other recent harvests, minimizes the extent of the road network, incorporates road drainage disconnected from stream networks, and implements wide riparian buffers which all have mitigating effects on the potential for this proposal to increase peak flows that could impact areas downstream or downslope of the proposal area.*

12) *Is there a water resource (public, domestic, agricultural, hatchery, etc.), or area of slope instability, downstream or downslope of the proposed activity?*

No Yes, describe the water resource(s):

There are inner gorge areas below Units 3 & 4 fully contained in the RMZ. There are no known water intakes directly downstream of the proposal.

a. Is it likely a water resource or an area of slope instability listed in B-3-12 (above) will be affected by changes in amounts, quality or movements of surface water as a result of this proposal?

No Yes, describe possible impacts:

13) *Describe any protection measures, in addition to those required by other existing plans and programs (i.e. the HCP, DNR landscape plans) and current forest practice rules included in this proposal that mitigate potential negative effects on water quality and peak flow impacts.*

Two temporary log fill crossings will also be constructed across a wet swale in Unit 4 which seasonally exhibits areas of standing, ponded water. This will prevent soil disturbance within the banks of the swale, and reduce the potential for sediment to be delivered to the initiation point of the Type 5 stream below.

Restricting timber harvest and road maintenance activities during peak rain events will allow for increased resource protection. Road development and maintenance standards will minimize impacts by using cross-drains and ditch-outs to release ditch water onto stable forest floors where flow energy can dissipate prior to reach stream channels. Best management practices, including installation of sediment traps and silt fencing and seeding/mulching of exposed soils, also will help mitigate potential

negative effects on water quality. Maintaining RMZs and leave tree areas on streams will aid bank stability, hydrologic functions, and provide recruitment of LWD. Further peak flow mitigation is accomplished by harvest planning design at the landscape level by limiting harvest unit size, distributing units across the landscape, and by adhering to sustainable harvest rates. See B.1.d.2, B.1.h, and B.3.a.1 for additional details on protections measures within this proposal.

b. Ground Water:

- 1) Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

No water will be withdrawn or discharged.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

Minor amounts of oil, fuel, and other lubricants may inadvertently be discharged to the ground as a result of heavy equipment use or mechanical failure. No lubricants will be disposed of on-site. All spills are required to be contained and cleaned-up. This proposal is expected to have no impact on ground water.

- 3) *Is there a water resource use (public, domestic, agricultural, hatchery, etc.), or area of slope instability, downstream or downslope of the proposed activity?*

No Yes, describe:

There are inner gorge areas below Units 3 & 4 fully contained in the RMZ. There are no known water intakes directly downstream of the proposal.

a. Is it likely a water resource or an area of slope instability listed in B-3-b-3 (above) could be affected by changes in amounts, timing, or movements of groundwater as a result this proposal?

No Yes, describe possible impacts:

Note protection measures, if any:

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.

Water runoff, including storm water, from road surfaces will be collected by roadside ditches and diverted onto the forest floor via ditch-outs and cross drain culverts.

2) Could waste materials enter ground or surface waters? If so, generally describe.

No Yes, describe:

Waste materials, such as sediment or slash, may enter surface water.

Note protection measures, if any:

No additional protection measures will be necessary to protect these resources beyond those described in B-1-d-2, B-1-h, B-3-a-2, and B-3-a-13.

3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.

No changes to drainage patterns are expected.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

See surface water, ground water, and water runoff sections above, questions B-3-a-1-c, B-3-a-13, B-3-b-3, and B-3-c-2.

4. Plants

a. Check the types of vegetation found on the site:

Deciduous tree:

Alder Aspen Birch Cottonwood Maple Western Larch

Other: **cherry**

Evergreen tree:

Douglas-Fir Engelmann Spruce Grand Fir Lodgepole Pine
 Mountain Hemlock Noble Fir Pacific Silver Fir Ponderosa Pine
 Sitka Spruce Western Hemlock Western Redcedar Yellow Cedar

Other:

Shrubs:

Huckleberry Rhododendron Salmonberry Salal

Other: **Oregon grape, ocean spray, elderberry, blackberry, vine maple**

Ferns

Grass

Pasture

Crop or Grain

Orchards Vineyard Other Permanent Crops

Wet Soil Plants:

Bullrush Buttercup Cattail Devil's Club Skunk Cabbage

Other: **sedge, piggyback plant, nettle**

Water plants:

Eelgrass Milfoil Water Lily

Other:

Other types of vegetation:

Plant communities of concern:

- b. What kind and amount of vegetation will be removed or altered? (Also see answers to questions A-11-a, A-11-b and B-3-a-2).

Approximately 5,447 MBF of 19-91 year-old timber will be harvested with this proposal.

- 1) *Describe the species, age, and structural diversity of the timber types immediately adjacent to the removal area. (See "WAU Map(s)" and "Timber Harvest Unit Adjacency Map(s)" on the DNR website: <http://www.dnr.wa.gov/sepa>. Click on the DNR region of this proposal under the Topic "Current SEPA Project Actions - Timber Sales." Proposal documents also available for review at the DNR Region Office.)*

The removal area is part of a managed forestland landscape. All adjacent timber stands are Western Hemlock Zone forests largely composed of Douglas-fir, western hemlock, western redcedar and red alder. The stand descriptions below are derived in part from DNR's Forest Resource Inventory System (FRIS) Age Class spatial dataset.

Unit 1 is bordered by the following State timber of listed age: 27 year Douglas fir and alder plantation, and a short segment of 85 year mature timber to the north; 36 year thinned Douglas fir plantation to the east; 27 year Douglas fir and alder plantation the south; and both 5 and 19 year old plantations to the west.

Unit 2 is bordered by a 36 year thinned Douglas fir plantation to the north; privately owned 12 and 25 year Douglas fir plantations to the east; 19 year Douglas fir plantation to the south; and 27 year mixed Douglas fir and alder plantation to the west.

Unit 3 is bordered by a 19 year Douglas fir plantation to the north; recently harvested private land to the south; and 77 year mature timber to the east and west.

Unit 4 is bordered by 19 year Douglas fir plantation to the north; 77 year mature timber to the east; recently harvested private land to the south; and 58 year old private and State timber comprised mostly of alder to the west.

Units 5 and 6 are right-of-ways through 36 and 19 year old stands of Douglas fir respectively.

- c. List threatened and endangered *plant* species known to be on or near the site.

None found in corporate database.

- d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

Retaining existing stands within bounded out areas throughout the proposal, leave tree areas within harvest units, and replanting with native conifer species in the VRH units following harvest. Other native conifer and deciduous species may regenerate naturally.

Leave trees provide a dominant cohort for the next stand as well as a source for future snags and down dead wood. They also serve as a native seed source, representing the diversity of species within the current stand. Leave trees were

selected to meet or exceed the required minimum density of at least eight trees per sale acre. These numbers were exceeded significantly in Unit 4, to in part, achieve the objective of visual mitigation from Highway 101. At least two leave trees per acre were selected from the largest diameter or dominant crown class.

The proposal area was gridded in the field for the presence of both individual old growth trees and old growth stands exceeding 5 acres, per DNR policy. The units and adjacent stands were also vetted remotely using ArcGIS spatial datasets to identify areas with a moderate or high probability of old growth occurrence (RS-FRIS Combined Origin Year raster layer, and Weighted Old Growth Habitat Index [WOGHI] point and polygon layers).

Only one true old growth remnant was found, and it was marked as a leave tree. No stands were identified. Several of the next oldest cohort, generally represented by trees in the 90-150 year age class, were preserved as leave trees within the units. These “transitional” trees most often represented the largest diameter and crown in the stand.

- e. List all noxious weeds and invasive species known to be on or near the site.
Scotch broom.

5. Animals

- a. List any birds and other animals *or unique habitats* which have been observed on or near the site or are known to be on or near the site. Examples include:
 - birds:
 - eagle hawk heron owls songbirds
 - other: **dove, grouse**
 - mammals:
 - bear beaver coyote cougar deer elk
 - other: **bobcat**
 - fish:
 - bass herring salmon shellfish trout
 - other:
 - amphibians/reptiles:*
 - frog lizard salamander snake turtle
 - other:
 - unique habitats:*
 - balds caves cliffs mineral springs oak woodlands talus slopes
 - other:

- b. List any threatened and endangered species known to be on or near the site (*include federal- and state-listed species*).

TSU Number	Common Name	Federal Listing Status	State Listing Status
LAST CROCKER U1	Marbled murrelet	Threatened	Endangered

- c. Is the site part of a migration route? If so, explain.

Pacific flyway *Other migration route:*

Explain:

All of Washington State is considered part of the Pacific Flyway. No impacts are anticipated as a result of this proposal.

- d. Proposed measures to preserve or enhance wildlife, if any:

- 1) *Note existing or proposed protection measures, if any, for the complete proposal described in question A-11.*

Species /Habitat: **Marbled Murrelet**

Protection Measures:

The Special Concerns Report identified a biotic detection for marbled murrelet north of Unit 1, however the proposal is far removed from any special habitat area, occupied site or buffer. Unit 4 borders identified long term forest cover (LTFC) within an adjacent wetland management zone. Previously modeled possible LTFC is being updated as a result of fieldwork. Some long term forest cover will be preserved through establishment of riparian and wetland management zones. Planned activities are beyond threshold distances for disturbance, and no timing restrictions are required.

Species /Habitat: **Riparian and Wetland**

Protection Measures:

Buffers have been applied to all Type 3 and 4 waters, and the larger wetlands as described in B.3.a.1.b. Buffers are designed to protect the stream banks, protect waters and wetlands from siltation, and decrease water temperatures by providing shade and cover. Furthermore, these buffers will provide long term forest cover that, in combination with the murrelet strategy, will help support old-forest dependent wildlife.

Species /Habitat: **Upland**

Protection Measures:

Wind-firm, dominant, and structurally unique trees were targeted for retention. A minimum of eight trees per acre were retained individually and in clumps to provide habitat structures for wildlife species within VRH units. Timber removal will temporarily create open environments that provide valuable foraging and potential habitat for a variety of wildlife species associated with early-stage forest environments.

- e. List any invasive animal species known to be on or near the site.
None known.

6. Energy and natural resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
Petroleum fuel (diesel or gasoline) will be used for heavy equipment during active road building, timber harvest operations, and for transportation. No energy sources will be needed following project completion.
- b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
No.
- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
None.

7. Environmental health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.
 - 1) Describe any known or possible contamination at the site from present or past uses.
None known.
 - 2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.
None known.
 - 3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.
Petroleum-based fuel and lubricants may be used and stored on site during the operating life of this project.
 - 4) Describe special emergency services that might be required.
The Department of Natural Resources, private, and fire protection district suppression crews may be needed in case of wildfire. In the event of personal injuries, emergency medical services may be required. Hazardous material spills may require Department of Ecology and/or county assistance.
 - 5) Proposed measures to reduce or control environmental health hazards, if any:
No petroleum-based products will be disposed of on site. If a spill occurs, containment and cleanup will be required. Spill kits are required to be onsite during all heavy equipment operations. The cessation of operations may occur during periods of increased fire risk. Fire tools and equipment, including

pump trucks and/or pump trailers, will be required on site during fire season.

NOTE: If contamination of the environment is suspected, the proponent must contact the Department of Ecology.

b. Noise

- 1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

None.

- 2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

There will be short term, low level and high level noise created by the use of harvesting equipment and hauling operations within the proposal area. This type of noise has been historically present in this geographical area.

- 3) Proposed measures to reduce or control noise impacts, if any:

Operations will not be permitted on weekends and State-recognized holidays.

8. Land and shoreline use

- a. What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe. (*Site includes the complete proposal, e.g. rock pits and access roads.*)

Current use of site and adjacent land types: This proposal will not change the use of or affect the current/long term land use of areas associated with this sale.

- b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

This proposal site has been used as working forest lands. This proposal will retain the site in working forest lands.

- 1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how:

No.

- c. Describe any structures on the site.

None.

- d. Will any structures be demolished? If so, what?

No.

- e. What is the current zoning classification of the site?
Commercial Forest (CF-80).
- f. What is the current comprehensive plan designation of the site?
Commercial Forest (CF-80).
- g. If applicable, what is the current shoreline master program designation of the site?
Not applicable.
- h. Has any part of the site been classified as a critical area by the city or county? If so, specify.
Portions of Units 2 and 4 have been classified as slight landslide hazard areas by Jefferson County.
- i. Approximately how many people would reside or work in the completed project?
None.
- j. Approximately how many people would the completed project displace?
None.
- k. Proposed measures to avoid or reduce displacement impacts, if any:
Does not apply.
- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
This project is consistent with current comprehensive plans and zoning classifications.
- m. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any:
None.

9. Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
Does not apply.
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
Does not apply.
- c. Proposed measures to reduce or control housing impacts, if any:
None.

10. Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

Does not apply.

b. What views in the immediate vicinity would be altered or obstructed?

1) *Is this proposal visible from a residential area, town, city, recreation site, major transportation route or designated scenic corridor (e.g., county road, state or interstate highway, US route, river or Columbia Gorge SMA)?*

No Yes, name of the location, transportation route or scenic corridor:
Views in the immediate vicinity of Highway 101, including views from residences near the harvest area, would be altered.

2) *How will this proposal affect any views described above?*

The current views from affected areas are of forested flats and hillsides. This proposal will result in the removal of mature timber. Over the next several years, the harvest area will be more easily identifiable within the view shed. The area will return to fully stocked condition, and blend in with the rest of the view shed as the planted trees grow toward canopy closure.

c. Proposed measures to reduce or control aesthetic impacts, if any:

Clumped and dispersed leave trees in Unit 4 have been strategically placed to provide visual breaks over the harvest area when viewed from the highway. The timber sale will be replanted with native species following harvest. The distribution of harvests in the view shed over time will also help reduce aesthetic impacts.

11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

None.

b. Could light or glare from the finished project be a safety hazard or interfere with views?

No.

c. What existing off-site sources of light or glare may affect your proposal?

None.

d. Proposed measures to reduce or control light and glare impacts, if any:

None.

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

Dispersed informal recreation in the form of hiking, hunting, berry picking, and sightseeing. Logging road are also used for ATV/motorcycles, mountain bike, and horseback riding.

- b. Would the proposed project displace any existing recreational uses? If so, describe.
There may be some disruptions to recreational use during periods of harvesting and hauling.
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:
None.

13. Historic and cultural preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.
Site JE00411 is west of this proposal and well outside of the sale area.
- b. Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.
No. A trained DNR forester screened potential features in the field identified by the Cultural Resource Technician (CRT) during the desk review. None were found to exist.
- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.
Historical maps and DAHP database of known archaeological sites were reviewed. Historic USGS, Government Land Office Maps, Topographic maps and Land Resource Manager (LRM) Special Concerns Report were used to identify cultural resources in the proposed project area. An office review by a Cultural Resource Technician and a field review by a forester trained in cultural resource identification were completed.
- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.
If a presently-unknown cultural resource is discovered during project operations, DNR will comply with the Cultural Resources Inadvertent Discovery Guidance dated March 2010 or its successor procedure.

14. Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.
The proposal site is accessed via Highway 104, and the PT-O-3000 State road system.
- b. Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?
No. Nearest transit spot is approximately 4 miles away.

- c. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

Yes, see A-11-c.

- 1) *How does this proposal impact the overall transportation system/circulation in the surrounding area and any existing safety problem(s), if at all?*

This project will have minimal to no additional impacts on the overall transportation system in the area.

- d. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No.

- e. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non-passenger vehicles). What data or transportation models were used to make these estimates?

Approximately 10 to 15 truck trips per day while the operation is active. Peak volumes would occur during the yarding and loading activities between 4:00 a.m. and 4:00 p.m. of the operating period. The completed project will generate less than one vehicular trip per day. Estimates are based on the observed harvest traffic of past projects.

- f. Will the proposal interfere with, affect or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

No.

- g. Proposed measures to reduce or control transportation impacts, if any:

Warning signs and CB channel information for truck haul will be posted. The existing private gate and the State's existing gate on the PT-O-3000 road system will be kept locked during periods of inactivity.

15. Public services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

No.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

None.

16. Utilities

- a. Check utilities currently available at the site:

electricity natural gas water refuse service telephone sanitary sewer
 septic system other:

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

None.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: Mark Benner

Name of signee Mark R Benner

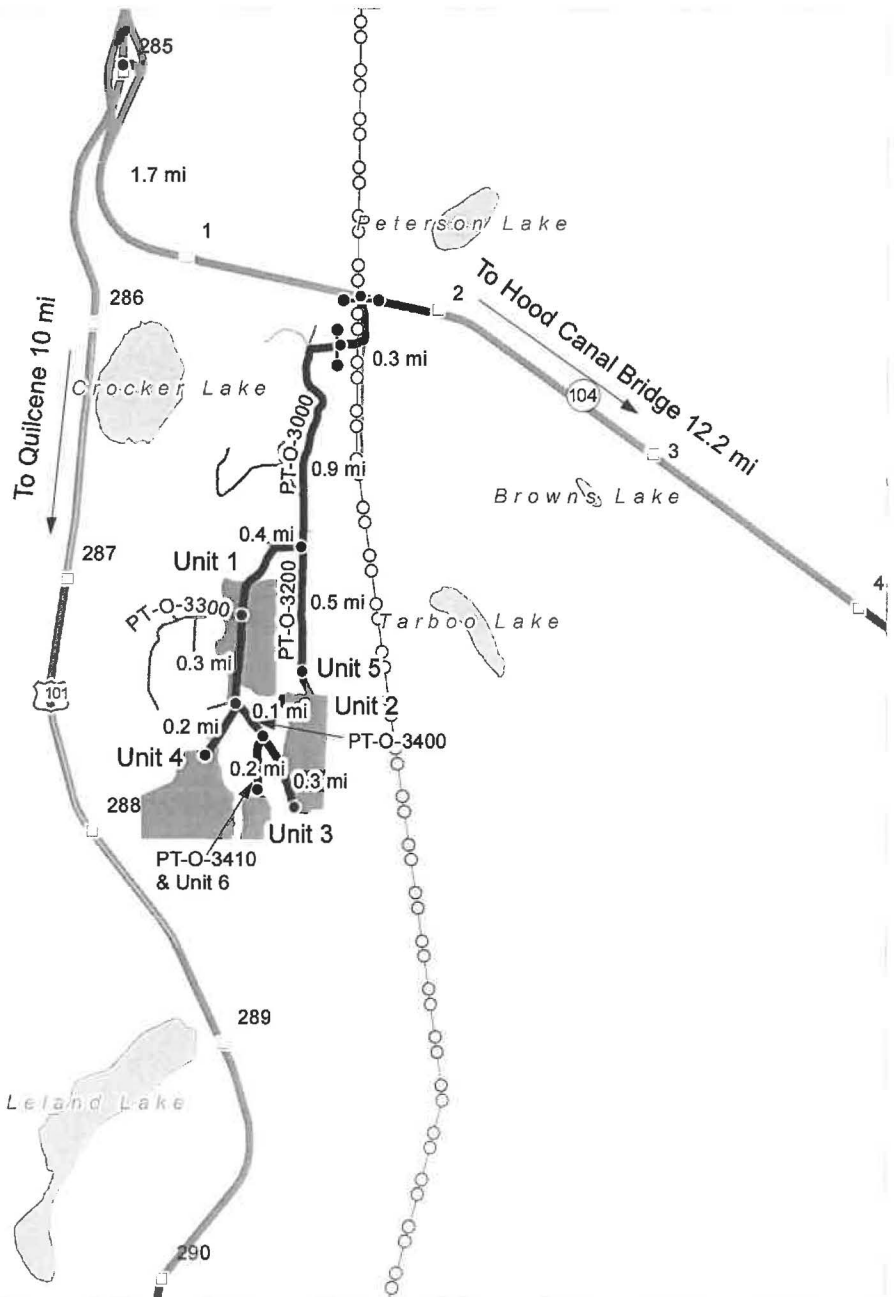
Position and Agency/Organization Center Unit Coordinator/DNR Olympic Region

Date Submitted: 08/09/2023

DRIVING MAP

SALE NAME: LAST CROCKER SORTS
AGREEMENT#: 30-104812
TOWNSHIP(S): T28R2W
TRUST(S): State Forest Transfer (1)

REGION: Olympic Region
COUNTY(S): Jefferson
ELEVATION RGE: 280-680



Map may not be to scale

	Timber Sale Unit
	Highway
	Haul Route
	Other Road
	Milepost Markers
	Distance Indicator
	Gate AA-1
	Power Lines

DRIVING DIRECTIONS:

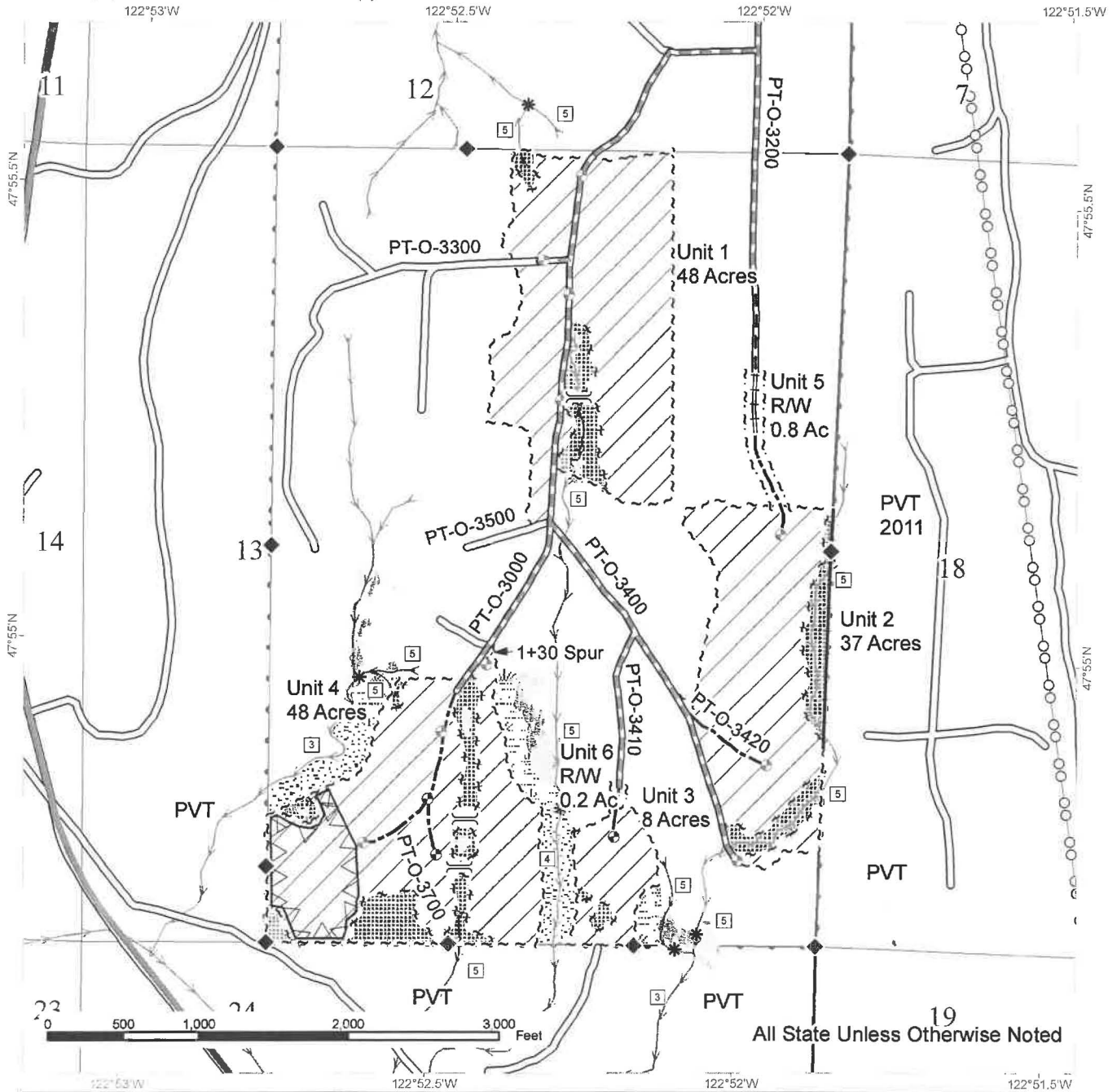
From Highway 104 just west of milepost 2 turn south on the PT-O-3000 under the powerlines. Go through the orange gate and follow the main road around for 0.3 mile to the yellow gate at the State property line. Travel 0.9 mile through this second gate to the PT-O-3200 junction. Stay straight for 0.5 mile to the end of the PT-O-3200 and walk in through Unit 5 tagged right-of-way to the top of Unit 2, or stay west on the PT-O-3000 for 0.4 mile to the middle of Unit 1. Continue on the PT-O-3000 for another 0.3 mile to the PT-O-3400 junction. Turn left and drive 0.4 mile to the end of the PT-O-3400 at the bottom of Unit 2, or only go 0.1 mile and park at the junction of the PT-O-3410 to walk in to Unit 6 tagged right-of-way and Unit 3. Turning right at the PT-O-3400 junction and driving 0.2 mile leads to Unit 4.



TIMBER SALE MAP

SALE NAME: LAST CROCKER SORTS
AGREEMENT #: 30-104812
TOWNSHIP(S): T28R2W
TRUST(S): State Forest Transfer (1)

REGION: Olympic Region
COUNTY(S): Jefferson
ELEVATION RGE: 280-680



All State Unless Otherwise Noted

Legend

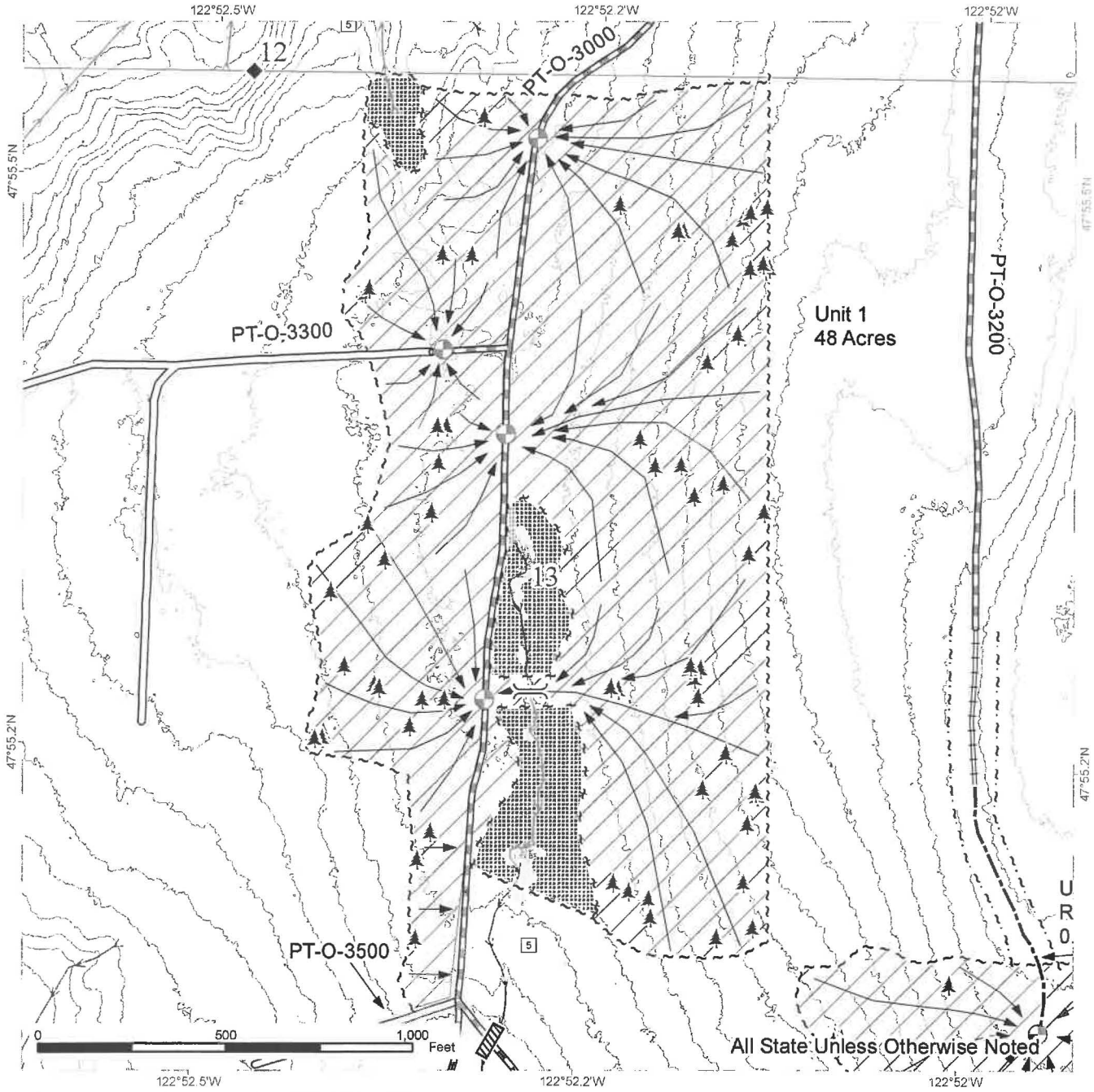
Sale Area	Sale Boundary Tags	Highway	Stream Type 3
Leave Tree Area	Timber Type Change	Existing Roads	Stream Type 4
Riparian Mgt Zone	Leave Tree Tags	Required Pre-Haul Maintenance	Stream Type 5
Forested Wetland	Right of Way Tags	Required Reconstruction	Stream Break
Wetland Mgt Zone	Property Line	Optional Construction	Proposed Landing
Timing Restriction	Property Line	Power Lines	Designated Crossing
	streams	Survey Monument	



LOGGING PLAN MAP

SALE NAME: LAST CROCKER SORTS
AGREEMENT#: 30-104812
TOWNSHIP(S): T28R2W
TRUST(S): State Forest Transfer (1)

REGION: Olympic Region
COUNTY(S): Jefferson
ELEVATION RGE: 280-680



All State Unless Otherwise Noted

Legend

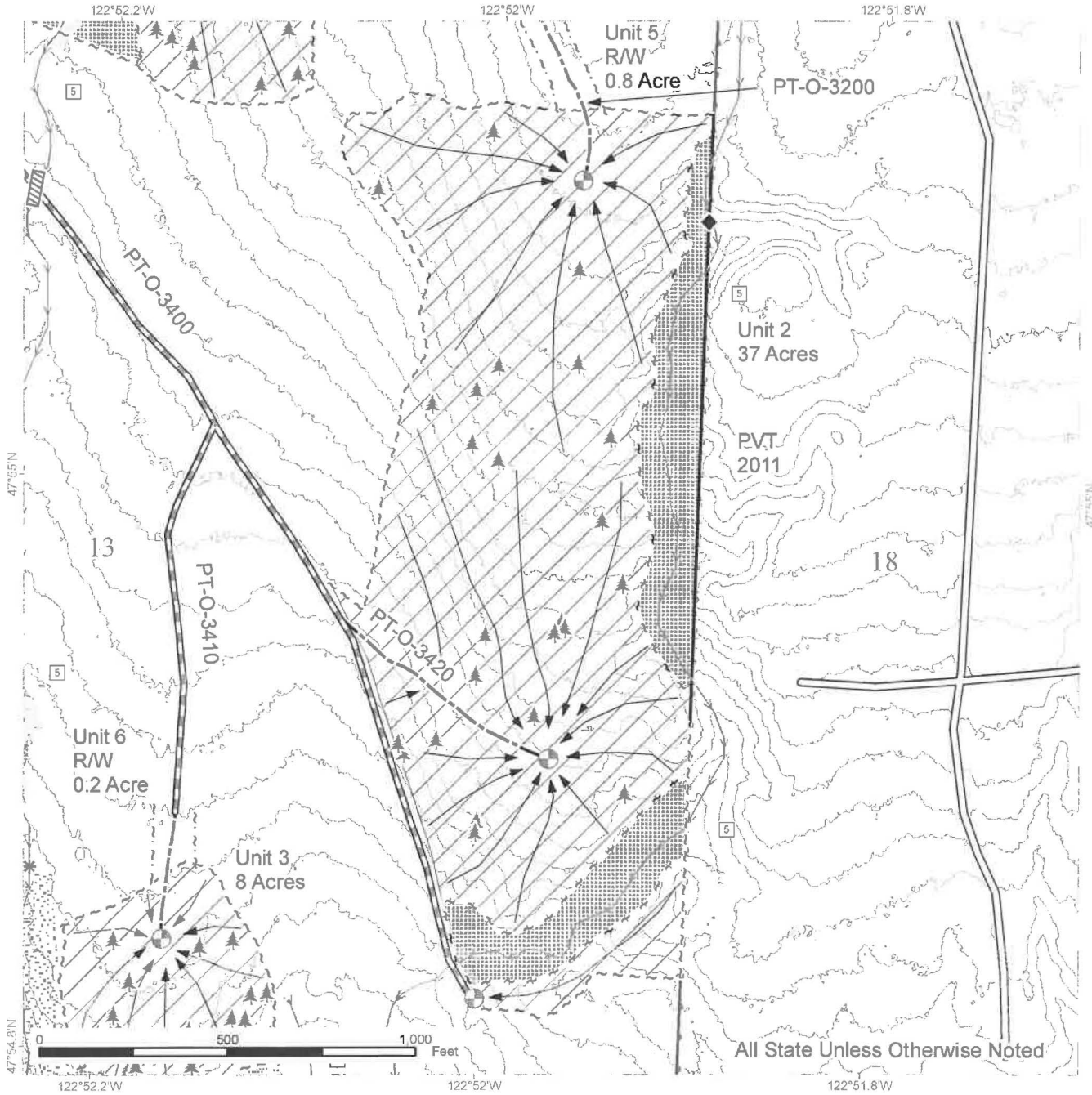
- | | | | | |
|----------------------------|--------------------|-------------------------------|---------------|---------------------|
| Shovel Only | Sale Boundary Tags | Highway | streams | Leave Tree |
| Variable Retention Harvest | Timber Type Change | Existing Roads | Stream Type 3 | Landing - Proposed |
| Leave Tree Area | Leave Tree Tags | Required Pre-Haul Maintenance | Stream Type 4 | Designated Crossing |
| Riparian Mgt Zone | Right of Way Tags | Required Reconstruction | Stream Type 5 | Culvert |
| Forested Wetland | Property Line | Optional Construction | Stream Break | Survey Monument |
| Wetland Mgt Zone | | Ground Harvest | | |
| Timing Restriction | | Contours 10 ft | | |



LOGGING PLAN MAP

SALE NAME: LAST CROCKER SORTS
AGREEMENT#: 30-104812
TOWNSHIP(S): T28R2W
TRUST(S): State Forest Transfer (1)

REGION: Olympic Region
COUNTY(S): Jefferson
ELEVATION RGE: 280-680



All State Unless Otherwise Noted

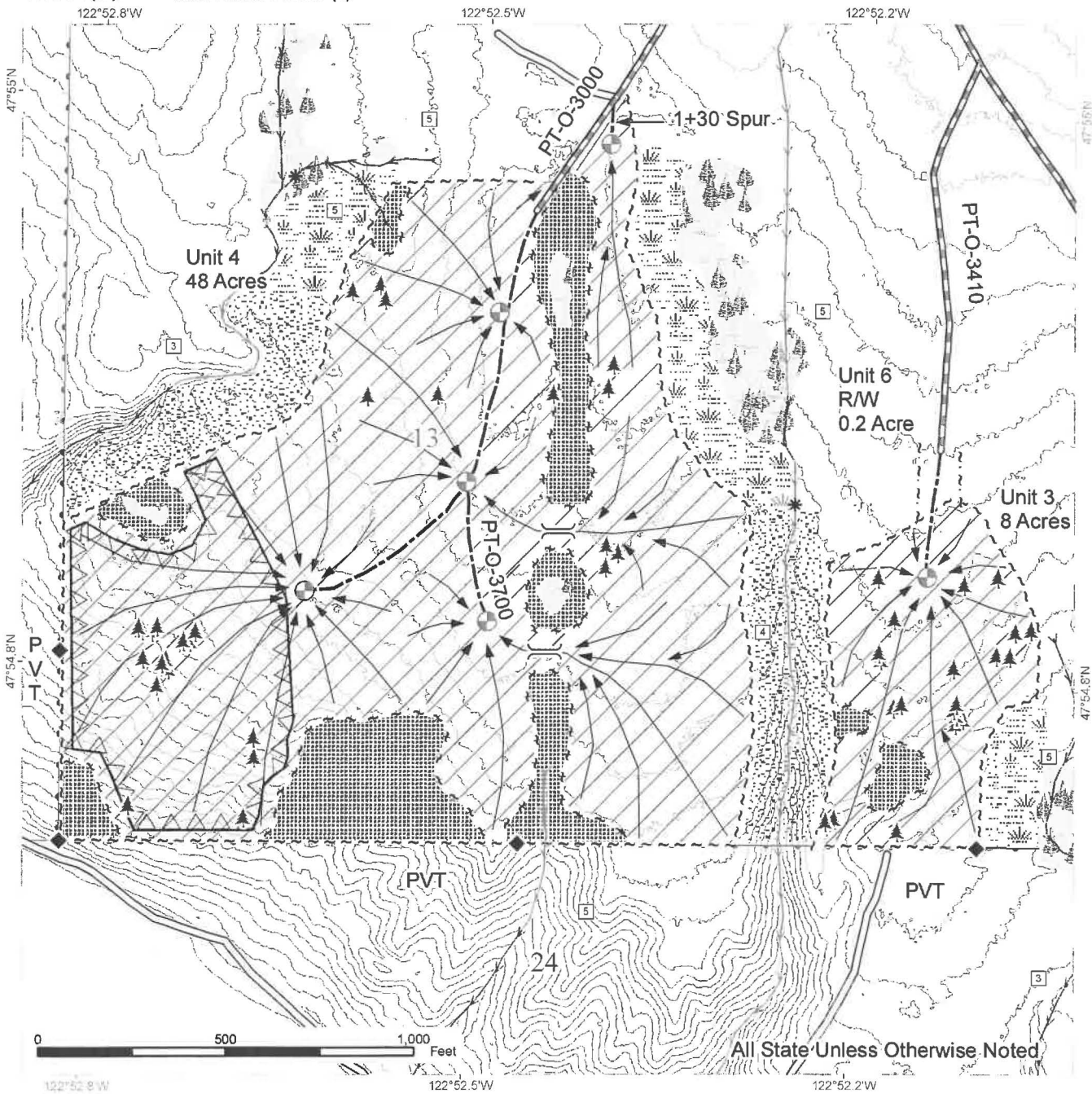
Legend			
	Shovel Only		Sale Boundary Tags
	Variable Retention Harvest		Timber Type Change
	Leave Tree Area		Existing Roads
	Riparian Mgt Zone		Required Pre-Haul Maintenance
	Forested Wetland		Required Reconstruction
	Wetland Mgt Zone		Optional Construction
	Timing Restriction		Ground Harvest
			Contours 10 ft
	Highway		streams
	Leave Tree Tags		Stream Type 3
	Right of Way Tags		Stream Type 4
	Property Line		Stream Type 5
			Landing - Proposed
			Designated Crossing
			Culvert
			Stream Break
			Survey Monument



LOGGING PLAN MAP

SALE NAME: LAST CROCKER SORTS
AGREEMENT#: 30-104812
TOWNSHIP(S): T28R2W
TRUST(S): State Forest Transfer (1)

REGION: Olympic Region
COUNTY(S): Jefferson
ELEVATION RGE: 280-680



Legend			
	Shovel Only		Sale Boundary Tags
	Variable Retention Harvest		Timber Type Change
	Leave Tree Area		Existing Roads
	Riparian Mgt Zone		Required Pre-Haul Maintenance
	Forested Wetland		Required Reconstruction
	Wetland Mgt Zone		Optional Construction
	Timing Restriction		Ground Harvest
			Contours 10 ft
			Highway
			Streams
			Stream Type 3
			Stream Type 4
			Stream Type 5
			Stream Break
			Landing - Proposed
			Designated Crossing
			Culvert
			Survey Monument



EXHIBIT B



**DEPARTMENT OF
NATURAL RESOURCES**

OLYMPIC REGION
411 Tillicum Lane
Forks, WA 98331

360-374-2800
OLYMPIC.REGION@DNR.WA.GOV
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DETERMINATION OF NONSIGNIFICANCE

Description of proposal: The Last Crocker Sorts timber sale, Agreement No. 30-104812 and Forest Practices Application No. 2618086, consists of four variable retention harvest (VRH) units totaling 141 net harvest acres and two right-of-way units totaling 1 acre. The proposed sale is located within the Discovery Bay and Little Quil WAUs. The cruised volume is 5,447 MBF. The sale is to be harvested using ground-based shovel methods, with a timing restriction area in Unit 4. The initial proposal area evaluated for harvest encompassed 177 acres. The 35 acres excluded from harvest include 7 acres for Riparian Management Zones (RMZs), 7 acres of wetland and unmanaged Wetland Management Zone (WMZ), and 21 acres of leave tree areas. The proposal involves 3,615 feet of optional construction, 425 feet of required reconstruction, and 17,095 feet of required pre-haul road maintenance. Rock for this road work will come from commercial sources.

The Last Crocker Sorts timber sale was designed under the guidelines and procedures of the State Trust Lands Habitat Conservation Plan (HCP).

Proponent: Washington Department of Natural Resources – Olympic Region

Location of proposal, including street address, if any: Section 13, Township 28N, Range 02W, W.M., approximately 14 road miles from Quilcene, in eastern Jefferson County.

Lead agency: Washington Department of Natural Resources

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21c.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS

This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 14 days from September 13, 2023. Comments must be submitted by September 27, 2023.

Responsible official: Jill DeCianne

Position/Title: Olympic Region Manager

Phone: 360-374-2800

**Address: Washington Department of Natural Resources Olympic Region, 411 Tillicum Lane
Forks, WA 98331-9271**

Date: 9/7/2023

Signature: *Jill DeCianne*

There is no DNR administrative SEPA appeal.

EXHIBIT C



DEPARTMENT OF
NATURAL RESOURCES

OLYMPIC REGION
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October 13, 2023

Notice of Final Determination
Last Crocker Sorts Timber Sale #104812
SEPA File No. 23-091301

The Department of Natural Resources issued a Determination of Non-significance (DNS), Mitigated Determination of Non-significance (MDNS), Modified DNS/MDNS on **September 13, 2023** for this proposal under the State Environmental Policy Act (SEPA) and WAC 197-11-340(2).

This threshold determination is hereby:

Retained.

Modified. Modifications to this threshold determination include the following:

Withdrawn. This threshold determination has been withdrawn due to the following:

Delayed. A final threshold determination has been delayed due to the following:

Summary of Comments and Responses (if applicable):

Comments were received from the Legacy Forest Defense Fund, Sara Post, Center for Responsible Forestry, Center for Sustainable Economy, James Oliver, and Joshua Wright. See attached response.

Responsible Official: Jill DeCianne

Position/title: Acting Olympic Region Manager

Phone: 360-374-2800

Address: 411 Tillicum Lane
Forks, WA 98331

Date:

10/19/2023

Signature:

Jill DeCianne

There is no DNR administrative SEPA appeal.

Thank you for providing comments regarding the Last Crocker Sorts timber sale, SEPA File No. 23-091301, located in the Jefferson County, as well as regarding Washington DNR's timber harvest program for trust beneficiaries. This letter is in response to your comments and provides information outlining how this proposal is consistent with all applicable laws, rules, policies and procedures, including the 1997 Habitat Conservation Plan (HCP) and 2006 Policy for Sustainable Forests (PSF).

As described in the SEPA checklist, the Last Crocker Sorts timber sale proposal, Agreement No. 30-104812 is a variable retention harvest (VRH) composed of 4 units and associated right-of-ways located in the Discovery Bay and Little Quil WAUs totaling 141 net harvestable acres. The net acreage includes deduction for leave tree areas within the traversed boundaries. The proposed timber sale is to be harvested using ground-based harvest systems with applied timing and equipment restrictions to further limit impacts to the site.

Your letter submitted on the Last Crocker Sorts proposal is nearly identical to letters submitted on other proposals, with the exception of the details at the county level. Given the similarities of your letters, you'll find our responses are similarly connected. While your letter does touch on some specifics of this proposed timber harvest, the bulk of your comments are directed toward the broader policies and plans that guide our management at the statewide level. We conduct SEPA analyses at the project level for individual planned timber harvests; we conduct environmental impact statements before adopting new policies and whenever we develop statewide plans that set standards for the use of the environment (WAC 197-11-704(2)(b)(i)). The Agency does not agree that the analysis you recommend is appropriate for including in the project level checklist. The Department will however address some of the concerns raised in your letter.

At this level of project review with a Determination of Nonsignificance, the appropriate form used is the Department of Ecology's environmental checklist, WAC 197-11-960. At this time, the SEPA Environmental Checklist does not include analysis of climate impacts. The topic of climate impacts is an evolving issue as new science emerges and agencies work to include that new science in their work. When the Department of Ecology establishes criteria that provides meaningful analysis of climate impacts at the project level, it is expected they will make updates to WAC 197-11-960 that include climate impacts in the SEPA checklist.

Sustainable Forestry

In addition to the existing SEPA process, DNR is a leader in its development of best practices in sustainable forestry. Resource and environmental protections are applied to all DNR timber harvests following the 1997 Habitat Conservation Plan, 2006 Policy for Sustainable Forests, current Forest Practices rules, and the associated Forest Practices HCP, all of which have gone through rigorous EIS reviews. Discussed in more detail below, some of these measures include riparian and wetland buffers, leaving a minimum of eight trees per acre in variable retention harvests, limiting overall size of harvest areas, maintaining hydrologic maturity, excluding work on potentially unstable slopes, and maintaining and improving road infrastructure including replacing undersized culverts to improve fish passage and water drainage.

All DNR-managed forestlands and conservation areas in Washington State are certified under the Sustainable Forestry Initiative® (SFI) program Standard. Additionally, about 176,000 acres of

those forestlands are also certified under the Forest Stewardship Council® (FSC®) US Forest Management Standard. Certified forests are grown to an approved set of standards which demonstrate environmentally responsible, socially beneficial and economically viable management practices that promote responsible forestry. This unique commitment to responsible forestry recognizes that forest landowners play a critical role in ensuring the long-term health and sustainability of our forests.

The Department agrees the pledge made at the 2021 COP 26 meeting in Glasgow was historic, and we applaud the stance taken there against deforestation. However, deforestation is not the same as sustainably harvesting trees from managed forest lands. Deforestation refers to the permanent conversion of forestlands to non-forest usage such as agriculture, grazing, and commercial or residential development. Following all even-age harvests on DNR-managed lands, native trees species are replanted at stocking levels higher than existed pre-harvest. This ensures all State-owned forests are renewed, resulting in sustained levels of forest cover into the future.

Carbon Sequestration

Like you, leadership and staff at DNR are concerned about how sustainable forest management can mitigate the effects of climate change. For instance, the DNR's Natural and Working Lands Carbon Sequestration Advisory Group is actively considering our role in carbon sequestration on managed and un-managed forest lands. Forests are the most efficient means we have for removing carbon from the atmosphere. They draw in vast amounts of carbon dioxide and store carbon as biomass. But we know this is only one way that forests contribute to climate solutions. By balancing ecological, economic, and social outcomes, we can compound the benefits forests provide. To begin with, active management of forests for timber and revenue enables us to push back against economic pressure to convert those forestlands to non-forest uses. Management for timber also helps maintain a steady supply of local logs to local mills. When we source our wood from nearby forests, we reduce the amount of fossil fuel required to bring logs from forests to mills and from mills to local retailers. We know that a substantial percentage of wood from State lands ends up as dimensional lumber, plywood, and other manufactured building materials. Forest products used in construction store more carbon—and their manufacture emits far less carbon dioxide, methane, and nitrous oxide—compared to non-wood alternatives such as concrete, steel, brick, and plastics.

When it comes to sequestering carbon in our working forests, DNR does more than most large forest landowners in Washington. For example, our rotation ages tend to exceed the industry average for forest managers in the Pacific Northwest. On lands covered by our Habitat Conservation Plan, we leave larger riparian buffers and more habitat trees than are required by law. In total, close to half of the forested trust lands we manage are deferred from harvest for ecological reasons. To quantify these carbon benefits, we worked with partners at the US Forest Service to conduct an inventory of carbon on both private and public forestlands across Washington.

Depleted Water Supplies

The DNR is aware of the recent literature concerning the impact of harvesting on peak and long-term summer stream flows in the Pacific Northwest. In small basins (area < 10km²), summer low flows may decrease following the establishment of a younger stand if that replanted cohort is not managed in a way that balances changes in runoff caused by different stand ages (Moore et al., 2020). Young stands (0 to approximately 15 years) can increase the amount of precipitation that enters the soil and becomes runoff relative to natural, older stands (Grant et al., 2008). As the stand ages, evapotranspiration rates increase and eventually exceed evapotranspiration rates typical of a natural, older forest (Perry and Jones, 2017). We are presently reviewing the newest low-flow science; however, given the protections afforded by the HCP and PSF, a relatively small proportion of the basin area is managed for timber production in DNR-managed watersheds compared to those studied and we suspect that DNR harvest impacts on summer-low flows are low. For example all DNR-watersheds include wide, continuous riparian buffers and other protected areas that provide considerably larger protections than regulatory requirements in Oregon. Also, riparian buffers cited in Segura et al. 2020 measured 15 meters, while HCP prescribed riparian buffers range from 30 to over 55 meters. In addition, the DNR manages 75 percent of basins in the rain-on-snow zone as hydrologically mature forest cover. As the summer-low flow science matures the DNR will evaluate if the adaptive management process needs to be updated to account for potential DNR-management effects on low flows.

Additionally, the DNR is presently monitoring stream flow in small, headwater channels in the Olympic Experimental State Forest (OESF) as part of the Long Term Riparian Monitoring Study. The intent of that study is to evaluate if the DNR is meeting the HCP riparian conservation objectives and to guide the integration of habitat conservation and timber production. These flow records may provide additional insight on whether or not DNR forest management are impacting low-flows.

Finally, unlike the large-scale clear cuts of the past, the DNR aims to distribute smaller timber harvests across the landscape, separated by riparian and habitat buffers, reducing the impacts to any single watershed. At any given time, most medium-to-large catchments (area > 10 km²) have a mix of harvest units in various stages of growth which may result in varied levels of late summer streamflow generation at the stand level, but more stable levels at the landscape level. In addition, larger catchments also have more storage reservoirs such as wetlands, lakes, and deeper aquifers, which may sustain low flows.

Warming waters

The stream buffers required by our Habitat Conservation Plan are designed to protect streams from temperature fluctuations. Potential impacts on summer stream temperature in the perennial channels caused by tree harvests can be inferred from the forest hydrology literature. In a study on buffer width and stream temperature in perennial streams, Janisch et al. (2012) observed that summer water temperature can increase in streams protected by a buffer width of 10 to 15 meters, or 32 to 49 feet, but that increase depends on the length of the channel and the presence of wetlands in the harvest area. Generally, impacts on water temperature have been found to be insignificant at buffer widths \geq 30 meters or 97 feet (Brazier and Brown, 1973; Davies and Nelson, 1994; Gomi et al., 2006; Sweeney and Newbold, 2014). If all perennial streams and a

buffer width of 30 meters are excluded from harvest, the potential for changes in summer stream temperature in the perennial streams is considered low.

The Riparian Management Zones (RMZ) prescribed in the DNR State Lands HCP are larger than the findings discussed above. The HCP prescribed buffer widths on Type 1, 2, 3, and 4 streams are at least 100 feet, exceeding the 30 meter (97 feet) wide buffer where impacts to water temperatures were found to be insignificant. [In the OESF, the Department does have the ability to go under 100 feet with the use of allotted acres.] These RMZ buffers, which were evaluated in the FEIS for the State Lands HCP, are, in part, in place to shade streams and prevent stream warming. Stream protections for the Last Crocker Sorts proposal, described in section 3.b of the checklist, includes average 150 foot buffers on Type 3 streams and a minimum 100-foot buffer on Type 4 streams. Seasonal channels and smaller perennial channels, or Type 5 streams, may not have a buffer, but are often protected with leave trees.

As science on this topic evolves with changes to the climate, it may potentially change or inform our adaptive management process for determining DNR buffer specifications. The DNR is currently researching the impacts of forestry at the watershed level in the Olympic Experimental State Forest (OESF). This research is part of DNR's adaptive management commitment in the State Lands HCP. Water temperature is one of the elements that is being studied.

Increased wildfire risk

DNR is acutely aware of the challenges inherent in meeting our economic, ecological, and social goals while making the forested landscape more resilient to catastrophic wildfire. We have been hard at work developing solutions. In 2017, the State legislature passed Engrossed Second Substitute House Bill 1711 Prioritizing lands to receive forest health treatments. That law directed DNR to develop and implement a policy for prioritizing investments in forest health treatments to protect State lands and state forestlands. Work under 1711 has enabled DNR to identify, prioritize, and treat forest stands east of the Cascade crest that are less resistant to disease and insect outbreaks and therefore more susceptible to catastrophic wildfire. These treatments include site preparation, reforestation, even- and uneven-age harvest, road realignment for fire protection and aquatic improvement, and prescribed burning.

[On the west side, we rely on the full range of options in our silvicultural toolbox to keep stands healthy and help decrease wildfire risks. Site preparation and vegetation management, for example, keep brush species and invasive weeds at bay and expedite the establishment of young stands. Burning slash piles can help commercial forest managers like us decrease the risks described in the Stone, Hudak, and Morgan article you referenced. Precommercial thinning treatments lower density, reduce a stand's fuel load, decrease competition, and lead to larger and healthier trees. But regardless of our forest management practices, we know that fire on the landscape is natural and cannot completely be avoided. To help communities in the wildland urban interface protect themselves from wildfire, DNR works with local fire districts, conservation districts, counties, and WSU Extension programs to help Washington residents benefit from the Firewise USA Program.]

Increased incidence and severity of landslides

We agree that it is widely accepted that timber harvest reduces root strength for approximately 3 to 15 years after harvest and root strength reduction can increase landslide hazards. All DNR

timber sales are screened for slope stability hazards by a team of geologists both remotely prior to field work commencing and in the field as the site specific geology warrants. The geologists also provide recommendations during the harvest layout process to protect areas with elevated shallow landslide hazards. The Forest Practice Application (FPA) process, which includes Timber, Fish, and Wildlife (TFW) review, involves a review by a Forest Practices geologist. The Forest Practices geologist evaluates proposals to verify compliance with regulations that are designed to limit the potential impacts to slope stability.

We understand that forest roads can change hillslope hydrology, which can result in landslides and stream sedimentation. Engineers carefully design roads with input from geologists to minimize landslides hazards and to disperse runoff onto stable hillslopes, not into streams. DNR road construction and maintenance is designed to avoid directing runoff into the stream channel networks and to meet and often exceed Forest Practices rules including frequent cross drains, properly-sized culverts, and erosion mitigation measures. In addition, our staff conduct road patrols throughout the winter to quickly respond to drainage issues that arise during rain events.

Increased risk of flooding

Harvest area thresholds at which a measureable increase in peak flow rate occurs (Grant et al., 2008) are used to guide DNR harvest plans upstream of a potentially sensitive channel.

Depending on channel morphology, the peak flow rate at which the channel bed becomes unstable ranges from roughly a 1-year flow (a flow magnitude that occurs on average once per year) in lowland channels to a 25 to 50-year flow in headwater, cascade, or colluvial channels. In rain-dominated watersheds (watersheds in which peak flow rates are generally in response to rainfall events), flow rates larger than a roughly 6-year event are not affected by surface runoff changes caused by harvests (Grant et al., 2008). In contrast, peak flow rates in rain-on-snow or snow-dominated watersheds may be more sensitive to hydrologic changes caused by tree harvests. In snow or rain-on-snow dominated zones, a channel stability assessment conducted by a forest hydrologist or other trained specialist is often used to determine suitable harvest size. Regardless of location, through careful planning, the harvest location, logging method, and roads are tailored to avoid impacts to floods and/or damage to the channel network.

DNR State Lands' HCP protects streams with riparian buffers, protects wetlands with wetland buffers, and has a minimum of 8 leave trees per acre which help capture rain water and ground runoff. DNR has a hydrologic maturity procedure to minimize adverse effects of rain-on-snow events to ecosystems that support salmonids. DNR additionally is researching the impacts of forestry at the watershed level in the Olympic Experimental State Forest (OESF). This research is part of DNR's adaptive management commitment in the State Lands' HCP. Peak flow is one of the elements that is being studied.

The Department also adheres to current Forest Practices rules and best management practices for road construction and maintenance. This work helps prevent sediment delivery to typed waters, avoid improper drainage patterns that may create slope failures, and reduce flood impacts and risks. This includes replacing or repairing undersized culverts to improve fish passage and water drainage.

Invasive species risk

Invasive plant species are a challenge for all land managers, regardless of ownership or land use. DNR actively manages to reduce the impact of invasive species through roadside brushing and/or herbicide applications as well as in-unit silviculture treatments. As part of the planning process for each harvest unit, region silviculture staff works with the local foresters to create a silviculture plan, including type and species of seedlings and series of silviculture treatments specific to that site to ensure a successful regenerated stand of trees. DNR's strategy for disrupting the spread of invasive species is to conduct roadside herbicide treatment of the haul routes leading to planned sales the year prior to the sale for reduction of spread to the harvested unit. Rock pits are also commonly planned for treatment of invasive species. Additionally, contractual language is often used for sales where there is a higher concern of invasive species spread. This contractual language requires operators to clean vehicles and equipment prior to entering State lands as a means to limit the potential spread of invasive species.

Increased risk of harmful algal bloom

As discussed above, the DNR State Lands' HCP protects streams with riparian buffers and protects wetlands with wetland buffers. These buffers, such as those discussed above for this proposal, keep streams and wetlands shaded preventing stream warming. These buffers also protect water from forestry related chemicals. Forestry related herbicides and fertilizers are not used within the buffers of streams or wetlands on DNR-managed lands including along roads. At this time, the only fertilizer being applied on State lands is in the form of post-consumer biosolids and this is only being applied in King and Mason counties through lease agreements. The DNR does not currently apply chemical fertilizers on State lands. The decision to use fertilizer is based on foreseeable challenges to reestablishing a healthy stand where fertilizers can help mitigate that risk. DNR is actively researching impacts of forestry, including stream temperatures, and peak flow.

Old Forest

The stands contained within this proposal are representative of those found within this landscape and have experienced logging activity prior to stand initiation. Regarding your comments related to older forest thresholds, DNR implements practices to achieve older forest structure (not old growth) across 10-15% of the Straits HCP Planning Unit over the next 70-100 years. Stands designated to meet this goal include old growth stands and structurally complex forests located in special ecological management areas such as Marbled Murrelet habitat areas, riparian and wetlands management zones, areas of potentially unstable slopes, natural areas, gene pool reserves, etc. The Straits Planning Unit is on track to meet at least 10% older forest within conservation areas by 2100. Other areas not designated to meet this goal, like the stands in this proposal, are available for timber harvest consistent with previously mentioned policies and BNR approved sustainable harvest levels. DNR staff has provided information to the Board of Natural Resources in a series of Board meetings to address concerns about the amount of structurally complex forests that is expected to be on the DNR-managed landscape at the termination of the 1997 HCP, fifty years in the future.

As described in the SEPA checklist, 35 acres immediately adjacent to the 141-acre proposed harvest are being retained for riparian and wetland protection; this is the same stand type as the proposed harvest area. Approximately 21 acres of clumped leave tree areas, plus additional scattered leave trees, were identified, with an emphasis on preserving areas of older and larger trees that will contribute to future stand structure. These areas comprise 20% of the total area evaluated for harvest that will be deferred from harvest and will contribute to the older forest thresholds.

In summary the Last Crocker Sorts Timber Sale was designed to be consistent with DNR's management framework (WAC 332-41- 665(1)(t)). The harvest was designed in accordance with DNR's Habitat Conservation Plan and Policy for Sustainable Forests. While your comments express disagreement with that framework, it does not identify a probable, significant, adverse environmental impact which was not analyzed in the environmental impact statements for the programmatic decisions or an inadequacy in the SEPA checklist prepared for the Last Crocker Sorts Timber Sale.

References

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- Moore D., Gronsdaahl S., McCleary R. (2020) Effects of forest harvesting on warm-season low flows in the Pacific Northwest: A review. Confluence. V. 4 n. 1
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EXHIBIT D

September 26, 2023

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

CENTER FOR RESPONSIBLE FORESTRY,

Appellant,

v.

WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES, BOARD OF
NATURAL RESOURCES, and
COMMISSIONER OF PUBLIC LANDS
HILARY FRANZ, in her official capacity,

Respondents,

MURPHY COMPANY, DBA MURPHY
COMPANY OF OREGON,

Intervenor.

No. 56964-7-II

UNPUBLISHED OPINION

PRICE J. — The Center for Responsible Forestry (Center) appeals the superior court’s dismissal of its challenge to the Department of Natural Resources’ (DNR) approval of a timber sale, called “About Time.”

During the course of the appeal, the harvest of the About Time timber proceeded and is now complete. The purchaser of the About Time timber rights, intervenor Murphy Company, moved to dismiss the Center’s appeal as moot. Because the Center’s requested relief can no longer be granted by us and no compelling exception to mootness exists, we dismiss the Center’s appeal.

FACTS

I. ABOUT TIME TIMBER SALE

About Time was a timber sale located in Grays Harbor County, involving 75 acres in the Lower Chehalis State Forest. As part of state-owned forest land, the area was held by the State in trust for public beneficiaries and was managed by the DNR. About Time and the surrounding forest had previously been managed for timber production. Some stands of timber within About Time were 84 years old and considered “botanically diverse.” 4 Admin. R. (AR) at 1046.

In 2021, DNR proposed the About Time sale to the Board of Natural Resources. DNR had previously completed a State Environmental Policy Act (SEPA)¹ checklist and issued a determination of nonsignificance (DNS) for the sale. In September 2021, the Board of Natural Resources approved the sale. The rights to harvest the timber were then sold to Murphy Company.

II. THE CENTER’S APPEAL OF ABOUT TIME AND OTHER SALES TO THE SUPERIOR COURT

One month later, the Center appealed the sale to the superior court. The Center argued the approval violated the “Public Lands Act”² and SEPA. Specifically, the Center claimed that DNR failed to comply with a final “Habitat Conservation Plan” (HCP) for the area and the Board of Natural Resources’ Policy for Sustainable Forests, making the approval arbitrary and capricious and contrary to law.

The HCP and Policy for Sustainable Forests are documents related to the federal conservation of endangered species populations. Two of these species, the northern spotted owl

¹ Ch. 43.21C RCW.

² Ch. 79.02 RCW.

and marbled murrelet, were listed as endangered in 1990 and 1992. Forests across Washington provide habitats for these endangered species, including lands held in trust for public beneficiaries. In order to auction the rights to harvest timber on trust lands that provide habitat to endangered species, DNR was required to obtain an incidental take permit from the federal government to better ensure that harvest activities would not harm the endangered species. To obtain the permit, DNR had to receive approval of its HCP from the Secretary of the Interior. The HCP includes an estimate that after 100 years of forest management in accordance with its requirements, between 10 and 15 percent of forests in the forest planning units in Western Washington would be “fully functional,” meaning the stands of trees in those forested areas would be at least 150 years old. 35 Admin. R. (AR) at 3654.

Following implementation of the HCP, DNR created the Policy for Sustainable Forests (PSF). The PSF commits DNR to manage its forests to achieve a 10 to 15 percent target of “older forest” conditions in each HCP planning unit within 70 to 100 years of the PSF’s implementation.

The Center argued that DNR violated the Public Lands Act because the predictions and goals of the HCP and PSF had not yet been met. The Center based its argument on the results of a DNR analysis, entitled Identifying Stands to Meet Older Forest Targets in Western Washington (Stand Identification Memo), commissioned in May of 2021. The Stand Identification Memo showed that in About Time’s planning unit, the goals set forth in the HCP and PSF were not yet met.³ The Center claimed that About Time, if left unharvested, would be able to help fulfill unmet

³ By 2100, the Stand Identification Memo predicted that 12.5 percent of the planning unit About Time is located in would have older forest conditions.

No. 56964-7-II

commitments in these documents because of the ages of About Time stands and its characterization as botanically diverse.

The Center also argued that DNR violated SEPA because noncompliance with the HCP and PSF showed that harvesting timber from About Time would have significant adverse environmental impacts, contrary to the DNS.

In addition to the About Time sale, the Center appealed the approval of at least five other timber sales. Two of the other appeals were for timber sales named Bluehorse and Prospero, which were also located in Grays Harbor County. The other appeals were similarly based on DNR's alleged noncompliance with the HCP and PSF.

The superior court consolidated the Center's appeal of About Time with its appeals of Bluehorse and Prospero. Following oral argument, the superior court dismissed the consolidated appeals and affirmed the timber sales.

III. THE CENTER'S APPEAL TO THIS COURT

The Center appealed the superior court's decision for About Time to this court, again arguing that DNR was not compliant with the HCP and the PSF. The Center also asserted noncompliance with a third document, a January 2007 DNR internal policy entitled Identifying and Managing Structurally Complex Forests to Meet Older Forest Targets (Westside) (2007 Procedure).

The 2007 Procedure was an internal policy adopted by DNR to fulfill its obligations in the PSF. The 2007 Procedure contained additional guidance for timber harvests for structurally complex forests, including that if less than 10 percent of an HCP planning unit contained "structurally complex forests prioritized to meet" the PSF conservation goals, DNR was required

to designate additional suitable forests to help meet the goals. 6 AR at 1269. Until enough forest lands were designated to constitute 10 percent of the area to be “structurally complex,” other stands would not be available for harvest. 6 AR at 1269.

The 2007 Procedure additionally called for the creation of a “forest land plan” to help meet the PSF goals. 6 AR at 1269. Until a forest land plan was created, proposed tree harvests with structurally complex forests like About Time were required to include specific detailed information, including an assessment of forest conditions, an analysis of known landscape management strategies, and the specific stand’s role in meeting the PSF older forest goals.

According to the Center, DNR violated the 2007 Procedure in at least two ways. First, the Center argued that because less than 10 percent of About Time’s planning unit was structurally complex, About Time was not available for harvest under the 2007 Procedure. Thus, the approval of the sale was arbitrary and capricious.

Second, the Center argued that there was no evidence that DNR had completed a forest land plan. Therefore, the proposal for the About Time sale should have been accompanied by the detailed information required by the 2007 Procedure prior to the sale’s approval.

DNR conceded it had not created a forest land plan under the 2007 Procedure. However, *after* the sale was approved, DNR identified sources for the required detailed information; an October 2021 “About Time Stand Analysis” for the sale, and the SEPA checklist. 4 AR at 1042. DNR explained that the About Time Stand Analysis and SEPA checklist both contained analyses of the About Time forest conditions, and the SEPA checklist also disclosed known landscape management strategies by referencing the HCP and PSF. And DNR argued that it did not need to explain About Time’s role in meeting the PSF goals because DNR was on track to meet its older

forest goals in About Time's planning unit. The Center characterized this explanation and the use of the post-sale About Time Stand Analysis to fulfill the 2007 Procedure's requirements as an invalid "post-hoc rationalization" for About Time's approval. Appellant's Reply Br. at 14.

The Center also reasserted that About Time's DNS violated SEPA. The Center argued that SEPA required DNR to disclose conflicts with environmental law within the DNS, but that DNR did not specifically disclose the alleged conflicts with the HCP, PSF, or 2007 Procedure.

Based on its arguments, the Center requested that the About Time sale be invalidated as arbitrary and capricious and contrary to law.⁴

IV. COMPLETION OF THE TIMBER HARVEST AND MURPHY COMPANY'S MOTION TO DISMISS

Meanwhile, Murphy Company continued harvesting the About Time timber. Despite this, the Center did not obtain a stay to enjoin the harvesting. In February 2023, Murphy Company completed the timber harvest. Thereafter, DNR and Murphy Company completed an "Operating Release," ending the contract and terminating any further harvesting rights. *See* Mot. to Dismiss Appeal as Moot at 7; Decl. of Lawrence Knox Marshall in Supp. of Mot. to Dismiss Appeal as Moot, Ex. 1.

With the harvesting complete, Murphy Company moved to dismiss the Center's appeal as moot, arguing we could no longer grant the Center's requested relief. DNR joined the motion.

ANALYSIS

Murphy Company argues that the Center's appeal is moot because the About Time timber sale has been completed in its entirety. The Center disagrees, but argues that even if its appeal is

⁴ Notably, the Center's opening brief did not mention either the Bluehorse or Prospero timber sales.

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technically moot, the public interest exception to mootness applies and review is still warranted.

We hold the Center's appeal is moot and does not meet the public interest exception.

I. LEGAL PRINCIPLES

We will dismiss an appeal if it is moot. RAP 18.9(c). An appeal is moot if “the matter is ‘purely academic’ such that the court cannot provide effective relief.” *Ctr. for Biological Diversity v. Dep’t of Fish & Wildlife*, 14 Wn. App. 2d 945, 985, 474 P.3d 1107 (2020) (internal quotation marks omitted) (quoting *City of Sequim v. Malkasian*, 157 Wn.2d 251, 258, 138 P.3d 943 (2006)).

Although moot cases are generally dismissed, we may exercise our discretion to retain and decide cases in “rare” instances when there is a substantial and continuing public interest. *State ex rel. Evans v. Amusement Ass’n of Wash., Inc.*, 7 Wn. App. 305, 307, 499 P.2d 906 (1972). We consider three factors when evaluating whether to issue an opinion in moot cases:

“[(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question.”

State v. Hunley, 175 Wn.2d 901, 906, 287 P.3d 584 (2012) (alterations in original) (internal quotation marks omitted) (quoting *In re Pers. Restraint of Mattson*, 166 Wn.2d 730, 736, 214 P.3d 141 (2009)). We may additionally consider “ ‘the likelihood that the issue will escape review because the facts of the controversy are short-lived.’ ” *Westerman v. Cary*, 125 Wn.2d 277, 286-87, 892 P.2d 1067 (1994) (quoting *Seattle v. State*, 100 Wn.2d 232, 250, 668 P.2d 1266 (1983)).

II. THE CENTER’S APPEAL IS MOOT

Here, the core relief requested by the Center was the invalidation of the About Time timber sale based on noncompliance with the Public Lands Act and SEPA. The Center’s arguments identified specific characteristics of the About Time sale that it believed made harvesting contrary

to the HCP, PSF, and 2007 Procedure—specifically, that the stand characteristics in About Time made it capable of contributing to the projections and goals in the documents.⁵ The appeal was focused on conserving the timber to meet the requirements with which the Center contended DNR was failing to comply. But About Time is clearly no longer available for this conservation, making this relief impossible for us to provide. It is moot.

III. PUBLIC INTEREST EXCEPTION TO MOOTNESS DOES NOT APPLY

Even if moot, the Center argues the public interest exception should apply because the outcome of this appeal would be useful to inform the courts for other timber sales. The Center also points to ecological issues at stake to argue there is a substantial and continuing public interest to warrant determining this appeal. We disagree and decline to apply the public interest exception to decide this otherwise moot appeal.

Consideration of the three factors for public interest exception shows this is not the “rare” moot case that should be reviewed. The first factor—whether questions presented are public or

⁵ The Center also argues its appeal is not moot because we could provide declaratory relief or order mitigation measures be implemented for About Time. But nothing in the Center’s briefing or assignments of error shows it was requesting these remedies. The Center’s only mention of something akin to declaratory relief is a vague request on the final page of its opening brief that we “declare that approval of About Time violated the Public Lands Act, the State Environmental Policy Act, and was arbitrary and capricious, and contrary to law.” Appellant’s Opening Br. at 62. Because the Center did not include actual argument about these remedies, we do not consider them to overcome mootness. See RAP 10.3(a)(6); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (we will not consider issues that are not supported by argument, references to the record, and legal authority).

The Center also argues that its appeal is not moot because the timber sales that were consolidated by the superior court, Bluehorse and Prospero, have not been completed. However, when the briefing before us contains no arguments or citations to the record about these other sales, they cannot defeat the mootness of this appeal. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

private—may weigh in favor of the exception, especially if one accepts the Center’s characterization of the issues as ecological. But the other two factors do not.

The second factor—whether an authoritative determination to guide DNR is desirable—does not help the Center. Several of the Center’s arguments in this appeal are unique to the About Time sale, focusing on DNR’s *specific* actions taken in this *specific* sale. For example, the Center argues that DNR failed to fulfill the requirements for the 2007 Procedure when it failed to identify the specific items of required information when there is no forest plan. After the completion of the sale, DNR attempted to respond to these allegations through the creation of the About Time Stand Analysis and its listing of specific information. The Center alleged it was an improper post-hoc rationalization for the validity of this particular sale. Nothing in the record shows these issues permeate other timber sales.

Another aspect tied narrowly to the About Time sale is the allegation of SEPA violations. The Center asserts DNR violated SEPA because it failed to identify in the About Time DNS specific conflicts with the HCP, PSF, and 2007 Procedure. These allegations identify specific acts DNR failed to do in its particular approval for the About Time sale. With these important arguments tied solely to the details of the About Time sale and its specific SEPA checklist, any value of “an authoritative determination” is limited. Thus, the second factor supports dismissing the Center’s appeal as moot.

Whether the third factor—the likelihood of future recurrence of the question—weighs against or in favor of review depends on what the “question” is. It is true that aspects of DNR’s general interpretations of the HCP, PSF, and 2007 Procedure will likely recur with future timber sales. But, as shown above, the details of how these interpretations applied to the About Time sale

will not. Viewing this particular appeal as a whole, the Center’s grievances with DNR’s general interpretations of its obligations are too intertwined with the specifics of the About Time sale to be able to easily disentangle them for a decision on a question that will likely recur in the future.

But the most compelling reason to reject the use of the public interest exception comes from the additional consideration implicated by the exception—whether the issue is likely to escape review in future appeals. The Center, itself, makes this point when it argues that numerous challenges to DNR’s decisions are either imminent or actually pending. In its recent briefing before us, the Center alleges that in August 2022, 69 additional timber sales containing structurally complex forests were planned for auction, and even more timber sales have been approved since then. Additionally, at least two other timber sales are alleged to have been appealed by other plaintiffs. Assuming the requirements for an injunction can be met and a stay is prudently obtained, there is no reason to assume review of those sales would not occur. And if, as argued by the Center, the About Time sale shares important issues common to these numerous other timber sales, these common issues will not likely escape review in the future. Except that such review will involve the potential for tangible relief, rather than being a “purely academic” exercise. *See Malkasian*, 157 Wn.2d at 258.

After considering the three factors, we determine that this is not a “rare” case that meets the public interest exception. Accordingly, we dismiss the Center’s appeal of the About Time sale as moot.

CONCLUSION


Because the Center’s requested relief can no longer be granted by us and no compelling exception to mootness exists, we dismiss the Center’s appeal.

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A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


PRICE, J.

We concur:


VELJACIC, P.J.


CHE, J.