

EXPEDITE (if filing within 5 court days
of hearing)
No hearing is set.
Hearing is set
Date: _____
Time: _____
Judge/Calendar: The Hon.

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

LEGACY FOREST DEFENSE COALITION, a
Washington non-profit corporation,

Appellant,

v.

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

Respondents.

24-2-04505-31

No.

**NOTICE OF APPEAL OF THE
BOLOGNA TIMBER SALE AND
ASSOCIATED ENVIRONMENTAL
REVIEW AND**

**COMPLAINT SEEKING
DECLARATORY JUDGMENT**

I. INTRODUCTION

1. The Washington State Department of Natural Resources (“DNR”) is required under the terms and conditions of its 1997 State Lands Habitat Conservation Plan (“HCP”), and 2006 Policy for Sustainable Forests (hereinafter “DNR Policy”), to develop a plan to restore “fully functional” or “old growth-like” forests across 10 to 15 percent of state forestlands, within each of six HCP planning units in Western Washington. DNR commonly refers to the 10 to 15 percent targets as the “Older Forest Targets.” The DNR Policy states that one of the

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2 intended outcomes of the Policy is “to meet a 10 percent to 15 percent older-forest target for
3 each Western Washington HCP planning unit, over [a period of] 70 years”. DNR Policy at 6.
4 The DNR Policy states that, “Once older-forest targets are met, structurally complex forest
5 stands that are not needed to meet the targets may be considered for harvest activities.” DNR
6 Policy at 47.

7 2. To achieve the Older Forest Targets, DNR established procedures for
8 “Identifying and Managing Structurally Complex Forests to Meet Older Forest Targets” (PR
9 14-004-046) (hereinafter “DNR Procedures”). DNR Procedures require DNR to inventory
10 structurally complex forests in each HCP planning unit and create a plan to protect and manage
11 structurally complex forests to meet the Older Forest Targets. Prior to development of a forest
12 land plan, DNR Procedures require, consistent with the DNR Policy, that DNR develop a
13 landscape assessment for the planning unit to determine if the planning unit contains 10 to 15
14 percent structurally complex forest prioritized to meet older forest targets. If yes, then anything
15 above that designated amount may be considered for harvest activities. If the landscape
16 assessment shows less than 10 percent structurally complex forest have been designated, then
17 DNR must designate additional structurally complex forest to reach at least 10 percent before
18 such stands are available for timber harvest.

19 3. DNR has developed the “forest land plans” required by the HCP to achieve their
20 Older Forest Target in other planning units. However, it has not developed such a plan for the
21 North Puget Sound HCP planning unit.

22 4. An analysis conducted by DNR in 2021 found that protected older forests
23 constitute only 3.3 percent of the North Puget Sound HCP planning unit, and that protected,

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2 structurally complex forests that have been designated to meet older forest targets constitute
3 only 7.5 percent of the planning unit. This is well below the required 10 to 15 percent target.

4 5. On May 14, 2024, the Washington Board of Natural Resources (“Board”)
5 authorized the Bologna Timber Sale, No. 103769, SEPA File No. 23-121901 (the “Bologna
6 Project”), allowing DNR to auction 92 acres of publicly owned timber in the North Puget Sound
7 HCP planning unit to a private timber company.

8 6. The Board approved the Bologna Project after DNR determined that it would
9 not have a “probable significant adverse impact on the environment” and issued a threshold
10 Determination of Nonsignificance (“DNS”) under the State Environmental Policy Act
11 (“SEPA”), chapter 43.21C RCW.

12 7. The Bologna Project would allow loggers to clearcut approximately 25 acres of
13 80-to-93-year-old, structurally complex, naturally regenerated, mixed hardwood and conifer
14 forest along the Pilchuck River, including dozens of trees that are over three feet in diameter
15 and close to 200 feet tall. These acres qualify as “structurally complex forests” under DNR
16 standards and policies—diverse stands with multiple canopies and plant communities, and trees
17 of various diameters and heights. Designating them as protected “structurally complex forests”
18 would help DNR meet its Older Forest Target for the North Puget Sound HCP planning unit.

19 8. In reaching its DNS for the Bologna Project, and then approving the Bologna
20 Project for auction, DNR and the Board did not account for the adverse direct, indirect, and
21 cumulative impacts of the Bologna Project.

22 9. DNR failed to consider the direct and indirect impacts of logging structurally
23 complex forests located within the boundaries of the Bologna Project, identified by LFDC,

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2 including: violations of DNR Policies and DNR Procedures; harm to protected wildlife and
3 plant species, loss of habitat, and loss of biodiversity in the North Puget Sound HCP planning
4 unit—some of which are identified in LFDC’s February 27, 2024, and May 13, 2024 comment
5 letters—that are required to be protected under those procedures; the loss of ecosystem services
6 that the biodiversity of structurally complex forest in the HCP provides; and loss of recreation,
7 scenic views, and other public uses by LFDC’s members and Snohomish County citizens.

8 10. DNR also failed to address the cumulative impacts of the Bologna Project in
9 context of other future timber sales planned in the Pilchuck River watershed and the North
10 Puget Sound HCP planning unit.

11 11. DNR has planned other future timber sales that would clearcut thousands of
12 additional acres of structurally complex forests capable of contributing to the Older Forest
13 Target in the North Puget Sound HCP planning unit.

14 12. The Bologna Project would also clearcut mature forests within 200 feet of the
15 channel migration zone (“CMZ”) of the Pilchuck River, a clear violation of forest practices
16 rules under WAC 222-030-021.

17 13. If DNR is allowed to continue to violate the requirements of the HCP, DNR
18 Policy, and DNR Procedures, Appellant will continue to suffer ongoing procedural and
19 environmental harm. As such, declaratory relief is warranted to stop DNR’s future violations.

20 **II. JURISDICTION AND VENUE**

21 14. The Bologna Project is located entirely within Snohomish County. Jurisdiction
22 and venue are appropriate before this Court pursuant to RCW 79.02.030 (Public Lands Act)
23 RCW 43.21C.075 (SEPA), and RCW 7.24.010 (Declaratory Judgment Act).

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2 15. RCW 79.02.030 provides a cause of action for this appeal. RCW 43.21C.075
3 provides a cause of action for this appeal. RCW 7.24.010 provides a cause of action for this
4 appeal.

5 16. Declaratory relief is authorized under RCW 7.24.010. Injunctive relief is
6 authorized under RCW 7.40.010.

7 17. This suit is timely under RCW 79.02.030 because it was filed and served within
8 30 days of the Board’s approval of the Bologna Project on May 14, 2024. Appellant LFDC
9 participated in all stages of public comment for the Bologna Project and have therefore
10 exhausted all available administrative remedies.

11 **III. PARTIES**

12 18. Appellant the Legacy Forest Defense Coalition (“LFDC”) is a Washington
13 State-registered 501(c)(3) non-profit organization based in Tacoma, Washington. LFDC seeks
14 to promote a balanced approach to the management of Washington state forestlands that allows
15 DNR to generate reliable revenue for trust beneficiaries, while preserving and accelerating the
16 development of older forests, as required under the terms and conditions of the HCP, DNR
17 Policy, and DNR Procedures. LFDC’s mission is to preserve the genetic, biological, and
18 ecological legacies of the native forests that once dominated Western Washington for the
19 benefit of all people, and its members have a particular interest in ensuring that the state’s
20 forests are managed in a responsible and lawful manner.

21 19. LFDC’s supporters, staff, and volunteers regularly visit and recreate in DNR-
22 managed forestlands, including those in the Pilchuck River watershed, and gain aesthetic
23 enjoyment from visiting older forests and observing the wildlife that inhabits these forests.

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2 LFDC’s supporters, staff, and volunteers have visited the Bologna Project area in the past and
3 have plans to do so again in the future. Their enjoyment of the area will be diminished if the
4 logging approved by the Bologna Project goes forward, and the structurally complex forests in
5 that region are degraded or destroyed. Those same interests will be protected if the Court issues
6 injunctive relief to prevent the Bologna Project area from being logged.

7 20. Respondent Department of Natural Resources (“DNR”) is an agency of the state
8 of Washington and is responsible for managing forests on Washington state trust lands.

9 21. Respondent Board of Natural Resources (“Board”) sets policies that guide how
10 DNR manages state trust lands. Its powers and duties include appraisal and approval of timber
11 sales on state forestlands prior to auction. The Board must review and approve timber sales on
12 state trust land before those sales are presented for auction.

13 22. Respondent Commissioner of Public Lands (“Commissioner”) Hilary Franz has
14 a seat on the Board and is the administrator for DNR, with jurisdiction over all the powers,
15 duties, and functions of DNR, except those specifically assigned to the Board.

16 23. DNR’s Forest Resources Division manages state trust lands (“DNR State
17 Lands”), and the Forest Practices Division (“DNR Regulatory”) reviews forest practices
18 applications. DNR State Lands develops potential timber sales and submits them to DNR
19 Regulatory for review and ultimate approval.

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

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2 **IV. LEGAL BACKGROUND**

3 25. The Public Lands Act authorizes and governs DNR’s management of public
4 lands, including land suitable for state forests that the state has acquired in various ways, such
5 as land ceded by the federal government for the state to manage. These lands are known as the
6 “state lands” and the “state forestlands.” RCW 79.02.010(14)-(15). DNR is authorized to
7 prepare and auction timber sales to generate revenue for trust beneficiaries on a sustained yield
8 basis. RCW 79.10.320. DNR State Lands administers the Public Lands Act.

9 26. SEPA imposes both substantive and procedural obligations on DNR’s
10 management of public lands.

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

19 28. Under SEPA, an agency must consider environmental information – including
20 impacts, alternatives, and mitigation – before committing to a particular course of action.
21 WAC 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.
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2 When describing the environmental impacts, an agency must consider direct, indirect, and
3 cumulative impacts.

4 29. SEPA requires DNR to prepare an Environmental Checklist for each timber sale
5 (“SEPA Checklist”) so it can conduct a threshold analysis to determine if that sale will have a
6 “probable significant, adverse environmental impact.” RCW 43.21C.031. An environmental
7 impact is considered to be “significant” if there is a reasonable likelihood that it will have more
8 than a moderate adverse impact on environmental quality. WAC 197-11-794. A “significance”
9 determination “involves context and intensity” and “the context may vary with the setting.”
10 WAC 197-11-794. If an agency makes a determination of significance, it must prepare an
11 environmental impact statement that includes analysis of reasonable alternatives that achieve
12 similar goals with less environmental impact. Environmental impacts include factors such as
13 impacts to fish and wildlife, plants and animals, surface water quality and runoff, aesthetics,
14 recreation, and parks. WAC 197-11-752; WAC 197-11-444.

15 30. SEPA requires that lead agencies conduct their analysis with up-to-date
16 information that accurately reflects the impacts of a proposed project. In evaluating an
17 Environmental Checklist for a proposed timber sale, DNR must “make its threshold
18 determination based upon information reasonably sufficient to evaluate the environmental
19 impact of a proposal.” WAC 197-11-335. When information is uncertain, DNR must obtain
20 accurate information and perform a new environmental review before proceeding with the
21 project. *Id.* If significant new information arises after a SEPA threshold determination
22 indicating that a proposal will have significant adverse environmental impacts, DNR must
23 rescind its threshold determination and prepare a new analysis. WAC 197-11-340(3)(a)(ii).

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2 Part of the threshold determination is review of whether the proposal complies with applicable
3 laws and policies. WAC 197-11-330(3)(e)(iii).

4 **V. STATEMENT OF THE CASE**

5 31. DNR's timber sales must comply with the terms and conditions of the HCP,
6 DNR Policy, and DNR Procedures, *see* WAC 332-41-665(1)(f), which together constitute
7 mitigation for timber harvest on state forestlands.

8 32. The HCP was prepared by DNR and approved by the U.S. Fish and Wildlife
9 Service and the National Marine Fisheries Service, as part of DNR's assurance that its timber
10 management activities would comply with the Federal Endangered Species Act, 16 U.S.C. §
11 1531 *et seq.*

12 33. The HCP's multispecies conservation strategy requires DNR to provide suitable
13 habitat for unlisted "animal species of concern and other unlisted animal species." It names 62
14 animal species of concern, and provides that other species are likely to be added to the list,
15 because it is "difficult to predict which species are at the brink of 'at risk.'" The HCP requires
16 multispecies conservation strategies to be "implemented on DNR-managed lands in the five
17 west-side planning units," which include the North Puget Sound HCP planning unit.

18 34. The DNR Policy guides its management and stewardship over state trust lands
19 and was written in part to ensure that DNR complies with the HCP. The DNR Policy, together
20 with detailed HCP implementation procedures adopted by DNR, constitutes DNR's plan for
21 implementing the HCP. As DNR states in the SEPA Checklist for the Bologna Project,
22 compliance with the HCP implementation procedures "substantially helps the Department to
23 mitigate for cumulative effects" of specific timber sales.

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2 35. The DNR Policy identifies the preservation of biodiversity as a “fundamental
3 guiding principle for sustainable forest management.” It directs DNR to protect wildlife species
4 and habitats by working to conserve “upland, riparian, and aquatic wildlife species, including
5 fish and their habitats, species listed as threatened and endangered, and non-listed
6 species...with a focus on ecosystem sustainability and the conservation of biodiversity across
7 forested landscapes.”

8 36. A core requirement of the multispecies conservation strategy of the HCP is to
9 identify, protect, and restore 10 to 15 percent of forests within each HCP planning unit to the
10 most structurally complex stage of stand development (called the “fully functional stage”)
11 within 100 years. The HCP suggests that a minimum of 150 years is required for a forest to
12 reach the fully functional stage of development.

13 37. DNR’s own analysis indicates that forests over 150 years old currently constitute
14 less than three percent of the North Puget Sound HCP planning unit. The agency is thus
15 woefully short of meeting its requirement to develop fully functional forests in the North Puget
16 Sound HCP planning unit.

17 38. One of the intended outcomes of the DNR Policy is to “meet a 10 to 15 percent
18 Older Forest Target for each Western Washington HCP planning unit” within 70 to 100 years.
19 In the FEIS, the Board’s selected alternative “emphasizes that the 10 to 15 percent Older Forest
20 Targets *will* be accomplished” within 70 to 100 years – equivalent to the term of the HCP.

21 39. Under the DNR Policy, DNR is required to “actively manage structurally
22 complex forests, especially those suitable stands in the botanically diverse stage of stand
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2 development, to achieve older-forest structures across 10 to 15 percent of each Western
3 Washington HCP planning unit in 70-100 years.”

4 40. DNR defines botanically diverse stands as those in which “multiple canopies of
5 trees and communities of forest floor plants are evident” and “large and small trees have a
6 variety of diameters and heights.”

7 41. The Bologna Project contains stands in the botanically diverse stage of stand
8 development. These stands have the potential to help DNR meet its Older Forest Target in the
9 North Puget Sound HCP planning unit. The Bologna Project authorizes the logging of these
10 stands.

11 42. The DNR Policy requires DNR to identify suitable structurally complex forest
12 stands to be managed to help meet its Older Forest Target. It dictates that “[o]nce Older Forest
13 Targets are met, structurally complex forest stands that are not needed to meet the targets may
14 be considered for harvest activities.” Under the DNR Policy, DNR may not authorize logging
15 of structurally complex forests in a planning unit until the 10 to 15 percent Older Forest Target
16 is met in that planning unit.

17 43. The DNR Procedures dictate that “the identification and review of landscape
18 level management strategies to achieve the 10 to 15 percent Older Forest Target will be
19 completed during the forest land planning process that will be conducted for each HCP planning
20 unit.”

21 44. DNR has completed forest land plans for other HCP planning units but has not
22 completed a plan for the North Puget Sound HCP planning unit, within which the Bologna
23 Project is located.

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2 45. DNR procedures require that until a forest land plan is completed, any proposed
3 harvest activities in areas that are considered structurally complex forests “must be
4 accompanied by the following information: a) an assessment of forest conditions using readily
5 available information, b) an analysis of the known landscape management strategies and, c)
6 role of the structurally complex stand in meeting Older Forest Targets.” DNR Procedures
7 further require that the information DNR gathers to satisfy these requirements “be included in
8 the [SEPA] checklist for the proposed harvest activity for public review.”

9 46. DNR did not include any of this information in the SEPA Checklist for the
10 Bologna Project. An addendum to the SEPA Checklist, dated May 8, 2024 (more than two
11 months after the public comment period ended, and two months after the Notice of Final
12 determination, retaining the DNS, had been signed) states that stands in the Bologna timber sale
13 have not been identified as those needed to meet older forest targets over time, but fails to
14 provide any of the required information. Instead, the SEPA Checklist addendum simply
15 references a post-hoc assessment produced by DNR, also in May of 2024, entitled “Landscape
16 Assessment to Identify and Manage Structurally Complex Stands to Meet Older-Forest Targets
17 in Western Washington.” This assessment was not included with the addendum and has not
18 been made available to the public.

19 47. DNR Procedures require DNR to designate and set aside structurally complex
20 forests across at least 10 percent of the HCP planning unit before it can make any structurally
21 complex forests available for harvest.

22 48. Data obtained from DNR’s Public Disclosure Office indicates that DNR has set
23 aside 34,547 acres of structurally complex forests in the North Puget Sound HCP planning unit

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2 for conservation. This represents 7.5 percent of the North Puget Sound HCP planning unit.
3 DNR has not met its 10 percent minimum requirement under the DNR Procedures to harvest
4 any structurally complex forest in the HCP.

5 49. DNR failed to comply with DNR Procedures by authorizing logging of
6 structurally complex forests in the Bologna Project.

7 50. DNR did not make any attempt, through its SEPA threshold determination or
8 elsewhere, to assess whether the Bologna Project complies with DNR Procedures. DNR did
9 not produce the assessments and analyses required by the DNR Procedures for the Bologna
10 Project.

11 51. DNR never acknowledged or explained its failure to comply with the DNR
12 Procedures.

13 52. DNR continues to authorize logging of some of the oldest, most biologically
14 diverse and structurally complex forests in the North Puget Sound HCP planning unit based on
15 the assumption that stream buffers, and other younger forests, will provide the required 10 to
16 15 percent older forests within 70 to 100 years. Based on data obtained from DNR, close to
17 half of all protected structurally complex forests in the North Puget Sound HCP planning unit
18 are located within stream buffers. However, stream buffers in isolation are not “forests” and
19 were never intended to provide suitable habitat for species that require older forest habitat.
20 Stream buffers are long and narrow and often composed entirely of edge habitat. According to
21 the Final Environmental Impact Statement (“FEIS”) that accompanies the DNR Policy, forests
22 influenced by edge conditions “are not expected to provide fully functioning old growth forest
23 conditions.” Even if true, the assumption that the Older Forest Target will eventually be met by

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2 protecting stream buffers and other younger forests does not excuse or remedy Respondents'
3 violations of the HCP, DNR Policy, and DNR Procedures.

4 53. The Forest Practices Act prohibits timber harvest within 50 to 200 feet of the
5 CMZ, depending on a variety of factors. WAC 222-30-021. The Bologna Project would
6 clearcut mature forests within the CMZ of the Pilchuck River. DNR geologists Noah Dudley
7 and Zach Click conducted a CMZ analysis, which is cited in the SEPA checklist for the Bologna
8 Project in the Geologic Memorandum for the Bologna Timber Harvest and attached to the
9 Forest Practices Application for the Bologna Project. The CMZ analysis concluded that the
10 Bologna Project timber sale boundaries are located outside of the CMZ boundaries. *See*
11 Geologic Memorandum for the Bologna Timber Harvest, Figure 5.

12 54. This CMZ analysis conducted by Dudley and Click is significantly flawed and
13 relies upon a number of demonstrably false assumptions, including assuming that:

- 14 a) The rate of channel migration over the next 140 years will be similar to the rate
15 of channel migration over the past 67 years;
- 16 b) There is no risk of an avulsion¹ within 250 feet of the northwest edge of Unit 1
17 of the Bologna timber sale;

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20 ¹ A river avulsion is a process in which the course of a river rapidly changes to a new channel. This shift often
21 occurs in the lower part of river systems, where sediment builds up, raising the riverbed and making the river
22 more prone to overflowing its banks. An avulsion might also happen due to sudden events like heavy rainfall or
23 melting snow, which can lead to the river breaching its levee and carving a new channel. Avulsions differ from
the more gradual process of river meandering, where the bends in the river slowly migrate over time. Avulsions
can have significant impacts on the landscape and human activities, as they can dramatically alter the flow of
water and sediment, affect flood risks, and change land ownership boundaries when rivers are used as natural
borders. Clearcut logging can exacerbate the conditions that lead to river avulsions by increasing runoff,
reducing soil stability, altering water and sediment flow, and reducing the landscape's ability to naturally manage
these elements.

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- 2 c) There has been no measurable retreat of the river bank north of Unit 2 within the
- 3 past 67 years; and
- 4 d) The glacial outwash terraces are resistant to erosion.

5 55. All of these assumptions are either unsupported by existing DNR data, or are

6 contradicted by field observations and historical trends. There is no reason to believe that the

7 rate of channel migration over the past 67 years is typical or indicative of the future rate of

8 channel migration. Intensive logging within the floodplain, and removal of large woody debris

9 from the river, have increased the rate of relative sediment transport and led to riverbed

10 degradation (lowering of the riverbed elevation), and a dearth of large, habitat-forming wood.

11 While the risk of an avulsion across the floodplain just north of Unit 1 of the Bologna Project

12 may currently be low, the risk is likely to increase as wood is reintroduced, and the riverbed

13 once again begins to aggrade.

14 56. According to the Forest Practices Board Manual, the CMZ consists of four

15 components: the historical channel migration zone (HMZ), avulsion hazard zone (AHZ),

16 erosion hazard zone (EHA), and disconnected migration area (DMA).

17 57. The HMZ is the total area that the river channel has occupied since 1900.

18 Dudley and Click only considered the area occupied by the river channel after 1954. There is

19 a wide alluvial terrace than borders Unit 1 of the timber sale.² LiDAR imagery suggests that

20 the river recently occupied a path running along the southern edge of the alluvial terrace

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22 ² An alluvial terrace is a relatively level plain that is formed by the deposition of river sediments. Alluvial

23 terraces can be inundated during floods, and are generally remnants of earlier floodplains that existed at a time

when the river was flowing at a higher elevation before its channel downcut to create a new floodplain at a lower elevation.

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2 adjacent to Unit 1 of the timber sale. Dudley and Click failed to recognize these features or
3 explain why they excluded these areas from the HMZ.

4 58. The AHZ is the area not included in the HMZ where the channel is prone to
5 move by avulsion. Dudley and Click provide no basis for concluding that the AHZ stops 200
6 feet short of the edge of Unit 1 of the Bologna timber sale.

7 59. Dudley and Click made no attempt to map the edge of the EHZ. Their statement
8 that there has been no measurable retreat of the river bank north of Unit 2 within the past 67
9 years is contradicted by their own analysis. Figure 5 of their memorandum, which is based on
10 DNR's historic aerial photos, reveals that the river bank has retreated by nearly 200 feet. Recent
11 observations and photographs of the site reveal that the river is still actively eroding the glacial
12 outwash terrace at this location. A large portion of that terrace recently collapsed. This is
13 pattern repeats itself and will repeat itself here: the river undermines the terrace until the slope
14 cannot support its own weight, the bank collapses, and the river moves further inland.

15 60. Dudley and Click also provide no data or evidence to support their assertion that
16 the glacial outwash terraces, upon which Units 1 and 2 of the Bologna Project are located, are
17 resistant to erosion.³ The historical trends and field observations suggest just the opposite.
18 Units 1 and 2 of the Bologna Project are located directly on top of one of the last remaining
19 glacial outwash terraces in the Pilchuck River valley. There is no basis to conclude that this
20 terrace is any less erodible than those terraces which were historically present but have almost
21 all been washed away by the river.

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23 ³ A glacial outwash terrace is a remnant of a plain formed by a glacier. As it flows, the glacier grinds the
underlying rock surface and carries the debris along. The meltwater at the lower terminus of the glacier deposits
its load of sediment over the outwash plain.

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2 61. Dudley and Click failed to consider how historic wood removal, changes in
3 wood recruitment, and the construction and removal of a downstream dam, have historically
4 affected the extents of the CMZ, or will affect the extents of the CMZ in the future.

5 62. In preparation for potential approval of the Bologna Project, DNR conducted a
6 threshold SEPA review. The SEPA checklist cited the CMZ analysis conducted by Dudley and
7 Click and admitted that “channel migration, scouring, and deposition of material can be in
8 channels across the WAU(s).” Nevertheless, DNR issued a DNS on February 6, 2024.

9 63. LFDC submitted public comments from an experienced hydrologist in response
10 to the DNS on February 27, 2024, raising significant concerns regarding DNR’s CMZ analysis,
11 and DNR’s ability to meet its Older Forest Target in the North Puget Sound HCP planning unit.

12 64. DNR issued a “Notice of Final Determination” retaining the DNS on March 1,
13 2024.

14 65. LFDC submitted additional comments, and photographs of the Bologna timber
15 sale to the Board of Natural Resources on May 13, 2024, to support the conclusion documented
16 in LFDC’s original February 27, 2024 comment letter that the Bologna Project ignores
17 established policies and procedures, and violates the Forest Practices Act.

18 66. Nevertheless, the Board approved the Bologna Project for auction on May 14,
19 2024. The Board is legally required to review and approve sale appraisals before DNR presents
20 the sale for auction. *See* RCW 43.30.215; RCW 79.15.060.

21 67. If logging goes forward under the Bologna Project, approximately 25 acres of
22 structurally complex forest capable of contributing to the Older Forest Target for the North
23 Puget Sound HCP planning unit will be logged, and up to another 12 acres of mature forest

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2 within the CMZ of the Pilchuck River. DNR failed to consider those impacts, failed to consider
3 the impacts of failing to comply with applicable requirements, policies, and procedures, and
4 incorrectly concluded such impacts would be mitigated through compliance with the HCP.

5 68. DNR is planning many other timber sales in the North Puget Sound HCP
6 planning unit over the next five years, which would clearcut other structurally complex forests
7 capable of contributing to the Older Forest Target in the North Puget Sound HCP planning unit.
8 These timber sales will have a significant cumulative effect on DNR's ability to meet its Older
9 Forest Target within 70 to 100 years.

10 69. The SEPA Checklist for the Bologna Project did not take into account the
11 cumulative effect of the project along with other past and planned future projects in the area.

12 70. The Public Lands Act requires DNR to make a finding that a timber sale is "in
13 the best interests of the state" prior to offering it for sale. Neither DNR, the Commissioner of
14 Public Lands, nor the Board made a published finding that the Bologna Project is in the best
15 interests of the state.

16 71. The Bologna Project is not in the best interests of the state and would undermine
17 DNR's ability to meet its Older Forest Target in the North Puget Sound HCP planning unit.

18 VI. CLAIMS

19 Claim One— Violation of The Public Lands Act, RCW 79.02.030

20 72. Appellant incorporates by reference all preceding paragraphs.

21 73. DNR, the Board, and the Commissioner's decision to approve the Bologna
22 Project are appealable under the Public Lands Act, RCW 79.02.030, as an "order or decision of
23 the board, or the commissioner" concerning the sale of valuable materials from state lands.

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2 74. DNR, the Board, and the Commissioner violated the Public Lands Act by acting
3 arbitrarily and capriciously in approving the Bologna Project for auction based on incomplete
4 and inaccurate information, failing to comply with the HCP, the DNR Policy, and DNR
5 Procedures, without rationale, and ignoring the impact that the project would have on DNR's
6 management objectives.

7 75. DNR did not provide any information or data to support its departure from the
8 HCP, DNR Policies, and DNR Procedures.

9 76. DNR, the Board, and the Commissioner violated the Public Lands Act by
10 approving the Bologna Project without making a finding that the sale is in the best interests of
11 the State.

12 **Claim Two—Violation of The State Environmental Policy Act, RCW 43.21C.075**

13 77. Appellant incorporates by reference all preceding paragraphs.

14 78. DNR, the Board, and the Commissioner violated SEPA by approving the
15 Bologna Project based upon a clearly erroneous DNS.

16 79. DNR conducted a SEPA threshold evaluation that terminated SEPA review,
17 which was based on incomplete information because it failed to evaluate the extent to which
18 the Bologna Project would impact DNR's ability to meet its Older Forest Target, failed to
19 consider conflict with the HCP, DNR Policy, and DNR Procedures, and failed to take into
20 account the direct, indirect, and cumulative impacts of the project.

21 80. DNR's SEPA evaluation failed to assess forest conditions in compliance with
22 the HCP, DNR Policy, and DNR Procedures.

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

5 82. DNR did not withdraw its DNS and prepare an environmental impact statement
6 despite significant information indicating the proposal's probable significant adverse
7 environmental impacts. WAC 197-11-340(3)(a)(ii).

8 83. DNR, the Board, and the Commissioner failed to carry out their
9 responsibilities under SEPA. RCW 43.21C.020.

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

11 84. Appellant incorporates by reference all preceding paragraphs.

12 85. DNR takes the legal position that it may continue to log structurally complex
13 forests based on a different interpretation of its obligations under the HCP, DNR Policy, and
14 DNR Procedures. This creates a regular, ongoing, discrete conflict between LFDC and DNR.

15 86. The legal issues in this case were recently litigated in *Center for Responsible*
16 *Forestry v. DNR*, Court of Appeals No. 56964-&-II (Unpublished opinion, decided September
17 26, 2023). While that court ultimately dismissed the appeal as moot because the trees had been
18 harvested during the pendency of the appeal and the court declined to invoke the public interest
19 exception to the mootness doctrine, on page 10 of the court's slip opinion, the court
20 acknowledged that the Center's representation that the old forest legal issue in that case – the
21 identical issue here – would likely repeat itself in at least 69 future cases. This issue will arise
22 in dozens of future cases in the North Puget Sound HCP planning unit. To provide legal clarity
23 and promote judicial efficiency, a declaratory judgment is warranted.

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2 87. Members of Appellant LFDC live near and regularly visit DNR-managed public
3 lands in the North Puget Sound HCP planning unit and Western Washington and will continue
4 to do so. The logging that DNR carries out pursuant to its legal position regarding structurally
5 complex forests causes ongoing harm and threat of harm to Appellant and its supporters, staff,
6 and volunteers, on a site-specific scale of described forest management, as well as on the larger
7 scale of cumulative harm to biodiversity, forest health and function, and other environmental
8 attributes of structurally complex forests.

9 88. Appellant seeks a declaration pursuant to RCW Chapter 7.24 (the Uniform
10 Declaratory Judgments Act) from this Court setting forth DNR’s obligations under the HCP,
11 DNR Policy, and DNR Procedures regarding structurally complex forests and older forests.

12 **VII. RELIEF REQUESTED**

13 Appellant Legacy Forest Defense Coalition respectfully requests the following relief:

14 1. An order invalidating the Board’s approval of the Bologna Project for auction,
15 based on violations of the Public Lands Act and SEPA;

16 2. An order invalidating the DNS for the Bologna Project as violating SEPA and
17 “clearly erroneous”;

18 3. An order declaring that the Bologna Project has probable, significant adverse
19 impacts to the environment, necessitating preparation of an environmental impact statement;

20 4. An order enjoining or requiring DNR to enjoin all forest practices pursuant to
21 the Bologna Project;

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2 5. If forest practices are carried out prior to the requested relief before this Court
3 or on review in a court of appeals, an order requiring mitigation for any and all impacts of the
4 Bologna Project;

5 6. A declaratory order interpreting DNR's legal obligations with respect to
6 structurally complex forests, older forests, and fully functional forests under the State Trust
7 Lands Habitat Conservation Plan ("HCP"), Policy for Sustainable Forests ("DNR Policy"), and
8 PR 14-004-046 ("DNR Procedures");

9 7. An order granting Appellant its costs and attorneys' fees based on the Equal
10 Access to Justice Act, RCW Ch. 4.84, or any other applicable provision of law; and

11 8. Any other relief that this Court deems just and proper.

12 DATED June 12, 2024.

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14
15 By 

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