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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

LEGACY FOREST DEFENSE COALITION, a
Washington non-profit corporation, and NORTH
CASCADES CONSERVATION COUNCIL, a
Washington non-profit corporation,

Appellants,

v.

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

Respondents.

24-2-05089-31

No.

**NOTICE OF APPEAL OF THE
STILLY REVISITED TIMBER SALE
AND ASSOCIATED
ENVIRONMENTAL REVIEW AND
COMPLAINT SEEKING
DECLARATORY JUDGMENT**

I. INTRODUCTION

1. This case concerns the State of Washington’s decision to approve clearcut logging of mature forests in the Stilly Revisited timber sale on slopes just 2 miles downstream from the site of the 2014 Oso landslide which killed 43 people and destroyed 49 homes, and the State’s failures to identify, account for, and prevent the known environmental impacts that will result from this decision if it is allowed to go forward. Appellants seek to stop this sale in order to protect the people, property, and forests put at risk by this Stilly Revisited project.

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2 2. The Washington State Department of Natural Resources (“DNR”) is required
3 under the terms and conditions of its 1997 State Lands Habitat Conservation Plan (“HCP”), and
4 2006 Policy for Sustainable Forests (hereinafter “DNR Policy”), to develop a plan to restore
5 “fully functional” or “old growth-like” forests across 10 to 15 percent of state forestlands,
6 within each of six HCP planning units in Western Washington. DNR commonly refers to the
7 10 to 15 percent targets as the “Older Forest Targets.” The DNR Policy states that one of the
8 intended outcomes of the Policy is “to meet a 10 percent to 15 percent older-forest target for
9 each Western Washington HCP planning unit, over [a period of] 70 years”. DNR Policy at 6.
10 The DNR Policy states that, “Once older-forest targets are met, structurally complex forest
11 stands that are not needed to meet the targets may be considered for harvest activities.” DNR
12 Policy at 47.

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

4 4. DNR has developed the Forest Land Plans required by the HCP to achieve their
5 Older Forest Target in other planning units. However, it has not developed such a plan for the
6 North Puget Sound HCP planning unit.

7 5. The Stilly Revisited Project would allow loggers to clearcut approximately 152
8 acres of 97- to 125-year-old, structurally complex, naturally regenerated, mixed hardwood and
9 conifer forest, including dozens of trees that are more than 130 years old. These acres qualify
10 as “structurally complex forests” under DNR standards and policies—diverse stands with
11 multiple canopies and plant communities, and trees of various diameters and heights.
12 Designating them as protected “structurally complex forests” would help DNR meet its Older
13 Forest Target for the North Puget Sound HCP planning unit.

14 6. DNR failed to consider the direct and indirect impacts of logging structurally
15 complex forests located within the boundaries of the Stilly Revisited Project, including:
16 violations of DNR Policies and DNR Procedures; harm to wildlife and plant species; loss of
17 habitat for sensitive or at-risk species; and loss of biodiversity in the North Puget Sound HCP
18 planning unit—described in LFDC and NCCC’s February 13, 2024 comment letter, and
19 LFDC’s June 3, 2024 comment letter.

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

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2 8. DNR failed to address the cumulative impacts of the Stilly Revisited Project in
3 context of other future timber sales planned in the Stillaguamish River watershed and the North
4 Puget Sound HCP planning unit.

5 9. If the Stilly Revisited Project is allowed to proceed, Appellants will suffer
6 ongoing procedural and environmental harm. As such, declaratory relief is warranted, to stop
7 DNR's future violations of policies and procedures that are intended to old growth conditions
8 across the North Puget Sound HCP planning unit.

9 **I. JURISDICTION AND VENUE**

10 10. The Stilly Revisited Project is located entirely within Snohomish County.
11 Jurisdiction and venue are appropriate before this Court pursuant to RCW 79.02.030 (Public
12 Lands Act) RCW 43.21C.075 (SEPA), and RCW 7.24.010 (Declaratory Judgment Act).

13 11. RCW 79.02.030 provides a cause of action for this appeal. RCW 43.21C.075
14 provides a cause of action for this appeal. RCW 7.24.010 provides a cause of action for this
15 appeal.

16 12. Declaratory relief is authorized under RCW 7.24.010. Injunctive relief is
17 authorized under RCW 7.40.010.

18 13. This suit is timely under RCW 79.02.030 because it was filed and served within
19 30 days of the Board of Natural Resources' ("Board") approval of the Stilly Revisited Project
20 on June 4, 2024. Appellants LFDC and NCCC participated in all stages of public comment for
21 the Stilly Revisited Project and have therefore exhausted all available administrative remedies.
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2 **II. PARTIES**

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

12 15. Appellant North Cascades Conservation Council (“NCCC”) is a Washington
13 State-registered 501(c)(3) non-profit organization based in Seattle, Washington. NCCC is an
14 independent, all-volunteer organization whose work is carried out by its board and more than
15 200 members. NCCC’s mission is to protect and preserve the North Cascades’ scenic,
16 scientific, recreational, educational, and wilderness values. NCCC actively supports expanding
17 the North Cascades National Park, establishing new Wilderness Areas, protecting wildlife,
18 promoting environmentally sound recreational use in wild areas, and protecting old-growth
19 forests. NCCC takes action to stop damaging timber sales, support responsible forest
20 management, and protect forestlands from conversion to non-forest uses.

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

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

8 17. Respondent Department of Natural Resources ("DNR") is an agency of the state
9 of Washington and is responsible for managing forests on Washington state trust lands.

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

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

17 20. DNR's Forest Resources Division manages state trust lands ("DNR State
18 Lands"), and the Forest Practices Division ("DNR Regulatory") reviews forest practices
19 applications, including those proposed to the Board by the DNR State Lands Division. DNR
20 State Lands develops potential timber sales and submits them to DNR Regulatory for review
21 and ultimate approval.

22 21. Unless otherwise specified, as used herein "DNR" refers to the Board, DNR,
23 and Commissioner of Public Lands collectively.

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2 **IV. LEGAL BACKGROUND**

3 22. 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 23. SEPA imposes both substantive and procedural obligations on DNR’s
10 management of public lands.

11 24. 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 25. Under SEPA, agencies must consider environmental information – including
20 impacts, alternatives, and mitigation – before committing to a course of action. WAC 197-11-
21 055(2)(c). SEPA requires agencies to fully consider all environmental and ecological factors
22 when taking major actions significantly affecting the environment. When describing the
23 environmental impacts, agencies must consider direct, indirect, and cumulative impacts.

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

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

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2 **V. STATEMENT OF THE CASE**

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

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

10 30. The HCP’s “Multispecies Conservation Strategy” requires DNR to provide
11 suitable habitat for unlisted “animal species of concern and other unlisted animal species.” It
12 names 62 animal species of concern, and provides that other species are likely to be added to
13 the list, because it is “difficult to predict which species are at the brink of ‘at risk.’” The HCP
14 requires multispecies conservation strategies to be “implemented on DNR-managed lands in
15 the five west-side planning units,” which include the North Puget Sound HCP planning unit.

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

22 32. The DNR Policy identifies the preservation of biodiversity as a “fundamental
23 guiding principle for sustainable forest management.” It directs DNR to protect wildlife species

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2 and habitats by working to conserve “upland, riparian, and aquatic wildlife species, including
3 fish and their habitats, species listed as threatened and endangered, and non-listed
4 species...with a focus on ecosystem sustainability and the conservation of biodiversity across
5 forested landscapes.”

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

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

15 35. One intended outcome of the DNR Policy is “to meet a 10 percent to 15 percent
16 older-forest target for each Western Washington HCP planning unit, over [a period of] 70
17 years.” In the FEIS, the Board’s selected alternative “emphasizes that the 10 to 15 percent older
18 forest targets *will* be accomplished” within 70 to 100 years – equivalent to the term of the HCP.

19 36. An analysis conducted by DNR in 2021 found that protected older forests
20 constitute only 3.3 percent of the North Puget Sound HCP planning unit. This is well below the
21 required 10 to 15 percent target.

22 37. The DNR Policy requires DNR to identify suitable structurally complex forest
23 stands to be managed to help meet its Older Forest Target. Under the DNR Policy, DNR is

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2 required to “actively manage structurally complex forests, **especially those suitable stands in**
3 **the botanically diverse stage** of stand development, to achieve older-forest structures across
4 10 to 15 percent of each Western Washington HCP planning unit in 70-100 years.”

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

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

12 40. The DNR Policy dictates that “[o]nce older forest targets are met, structurally
13 complex forest stands that are not needed to meet the targets may be considered for harvest
14 activities.” Under the Policy, DNR may not authorize logging of structurally complex forests
15 in a planning unit until the 10 to 15 percent Older Forest Target is met in the planning unit.

16 41. The DNR Procedures dictate that “the identification and review of landscape
17 level management strategies to achieve the 10 to 15 percent older forest target will be completed
18 during the forest land planning process that will be conducted for each HCP planning unit.”

19 42. DNR has completed Forest Land Plans for other HCP planning units but has not
20 completed a plan for the North Puget Sound HCP planning unit, within which the Stilly
21 Revisited Project is located.

22 43. DNR procedures require that until a Forest Land Plan is completed, any
23 proposed harvest activities in areas that are considered structurally complex forests “must be

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

7 44. DNR did not include any of the information referenced in paragraph 43 above
8 in the SEPA Checklist for the Stilly Revisited Project. An addendum to the SEPA Checklist,
9 dated May 22, 2024 (more than three months after the public comment period ended, and close
10 to three months after the Notice of Final determination, retaining the DNS, had been signed)
11 states that forests in the Stilly Revisited Project have not been identified as those needed to meet
12 older forest targets over time, but fails to provide any of the required information. Instead, the
13 SEPA Checklist addendum references a post-hoc assessment produced by DNR, also in May
14 of 2024, entitled “Landscape Assessment to Identify and Manage Structurally Complex Stands
15 to Meet Older-Forest Targets in Western Washington” to support its assertion that forests in the
16 Stilly Revisited Project are not needed to meet the Older Forest Target. This assessment was
17 not included with the addendum and has not been made available to the public.

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

21 46. Data obtained from DNR’s Public Disclosure Office reveals that protected,
22 structurally complex forests constitute just 34,547 acres (7.5 percent) of the North Puget Sound
23 HCP planning unit. DNR has not met its 10 percent minimum requirement under the DNR

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2 Procedures to harvest any structurally complex forest in the HCP. Furthermore, based on data
3 obtained from DNR, close to half of the 34,547 acres of protected structurally complex forests
4 in the North Puget Sound HCP planning unit are located within stream buffers. Stream buffers
5 in isolation are not “forests” and were never intended to provide suitable habitat for species that
6 require older forest habitat. Stream buffers are long and narrow and often composed entirely
7 of edge habitat. According to the Final Environmental Impact Statement (“FEIS”) that
8 accompanies the DNR Policy, forests influenced by edge conditions “are not expected to
9 provide fully functioning old growth forest conditions.” Even if one were to assume that the
10 Older Forest Target could be met by protecting stream buffers (which it cannot), it does not
11 excuse or remedy Respondents’ violations of the HCP, DNR Policy, and DNR Procedures.

12 47. DNR failed to comply with DNR Procedures by authorizing logging of
13 structurally complex forests in the Stilly Revisited Project.

14 48. DNR did not make any attempt, through its SEPA threshold determination or
15 elsewhere, to assess whether the Stilly Revisited Project complies with DNR Procedures. DNR
16 did not produce the assessments and analyses required by the DNR Procedures for the Stilly
17 Revisited Project.

18 49. DNR is planning many other timber sales in the North Puget Sound HCP
19 planning unit over the next five years, which would clearcut other structurally complex forests
20 capable of contributing to the Older Forest Target in the North Puget Sound HCP planning unit.
21 These timber sales will have a significant cumulative effect on DNR’s ability to meet its Older
22 Forest Target within 70 to 100 years.

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2 50. The SEPA Checklist for the Stilly Revisited Project did not consider the
3 cumulative effect of the project along with other past and planned future projects in the area.

4 51. Landslide deposits and scarps are a common geologic feature of the North Fork
5 Stillaguamish River valley. A portion of the Stilly Revisited Project area is located directly on
6 top of a recent landslide deposit, and adjacent to a topographic groundwater recharge area, and
7 steep bedrock hollows and gorges created by previous landslides. Slopes of up to 175 percent
8 were reported by DNR within the project area. DNR geologist Greg Morrow stated in a report
9 that was attached to the forest practices application for the Stilly Revisited Project (FPA No.
10 2819253) that “without subsurface information, it is not possible to infer groundwater
11 infiltration pathways and flow directions through bedrock [and]... it is not possible to fully
12 define the geologic conditions of the site.” The geologist's report concluded that “it is not
13 possible to predict slope movement with certainty with the available scientific knowledge.”

14 52. The SEPA checklist for the Stilly Revisited Project states that “statewide
15 landslide inventory (LSI) screening tool indicates no presence of polygons mapped as landslides
16 within the proposed harvest unit boundaries.” This statement is false. The LSI screening tool
17 clearly shows that the harvest unit boundaries overlap recent landslide deposits, scarps, and
18 flanks, which collectively occupy close to 20 acres (or about 60 percent) of Unit 5 of the Stilly
19 Revisited Project.¹ The SEPA checklist also asserts that the Stilly Revisited Project does not
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22 ¹ See Washington Geological Information Portal, WASHINGTON DEPARTMENT OF
23 [https://geologyportal.dnr.wa.gov/2d-view#natural_hazards?-13591604,-13573259,6148770,6157913?Landslides,WGS-Protocol Landslide Mapping,Recent Landslides,Fans,Rock Fall Scarps,Rock Fall Deposits,Scarps,Scarps and Flanks,Landslide Deposit,SLIP Landslides,SLIP Fans,Study Areas,Ot](https://geologyportal.dnr.wa.gov/2d-view#natural_hazards?-13591604,-13573259,6148770,6157913?Landslides,WGS-Protocol%20Landslide%20Mapping,Recent%20Landslides,Fans,Rock%20Fall%20Scarps,Rock%20Fall%20Deposits,Scarps,Scarps%20and%20Flanks,Landslide%20Deposit,SLIP%20Landslides,SLIP%20Fans,Study%20Areas,Ot)

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2 include any harvest on potentially unstable slopes or landforms but provides no data or
3 information to support this assertion. To the contrary, data obtained by LFDC from DNR’s
4 Public Disclosure Office reveals that, out of the 152 acres that DNR plans to harvest in the
5 Stilly Revisited Project, 11 acres are located on hillslopes DNR has classified as unstable.
6 Additional unstable slopes have been mapped adjacent to, between, and within the vicinity of
7 the Stilly Revisited Project harvest units.

8 53. There are several streams running through, between, and in close proximity to
9 the Stilly Revisited Project area that flow into the North Fork Stillaguamish River. Streams
10 serve as conduits for the transport of sediment and debris, and landslides and debris flows are
11 more common where streams are present.

12 54. On March 22, 2014, the Oso landslide sent a torrent of mud and debris into the
13 Stillaguamish River valley, killing 43 people and destroying 49 homes. DNR paid \$50 million
14 to settle resulting lawsuits, which alleged that actions on state land and nearby logging caused
15 an increase in runoff above the slide and increased the risk of the landslide occurring.²

16 55. The Stilly Revisited Project is located *only two miles from the Oso landslide*,
17 on the *same side of the river*, and on both *higher and steeper ground*. Yet DNR *does not even*
18 *mention the Oso landslide* in its geologist's report, SEPA checklist, or FPA for the Stilly
19

20 [her Compiled Landslide Mapping,Landslide Compilation,Landslide Compilation Study Footprints](#)

21 ² See Mike Carter, “*This must never happen again*”: *Oso landslide survivors reach*
22 *settlements totaling \$60M*, THE SEATTLE TIMES (October 10, 2016, updated March 15, 2024),
23 *available at* <https://www.seattletimes.com/seattle-news/timber-company-reaches-10m-settlement-in-oso-landslide-suit/>; Hal Berton, *State reaches \$50M settlement in Oso landslide suit*, THE SEATTLE TIMES (updated March 15, 2024), *available at* <https://www.seattletimes.com/seattle-news/50m-settlement-reached-in-oso-landslide-suit/>.

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2 Revisited project, or any consideration of the similarities between the two sites, or the role that
3 timber harvest played in causing the landslide near Oso.

4 56. DNR's failure to consider the Oso landslide in its assessments for the Stilly
5 Revisited Project shows a reckless disregard for the life and safety of residents of the
6 Stillaguamish River valley and their property.

7 57. A major landslide originating within the Stilly Revisited Project area could send
8 an even larger torrent of mud and debris into the river valley, potentially damming the river,
9 flooding and/or burying a portion of the valley, and threatening human and animal lives, private
10 homes, and property located adjacent to and across the river from the likely debris flow path.

11 58. DNR mischaracterized publicly available landslide inventory data, and failed to
12 conduct its analysis with up-to-date information that accurately reflected the risk of a landslide
13 within the vicinity of the proposed project; failed to make its threshold determination based
14 upon information reasonably sufficient to evaluate the risk of a landslide in the area; and made
15 no attempt to obtain additional information on the potential of the project to increase that risk
16 before proceeding with the project, despite its own conclusion that "without subsurface
17 information, it is not possible... to fully define the geologic conditions of the site... [or] predict
18 slope movement with certainty."

19 59. DNR has no basis to conclude that the Stilly Revisited Project is unlikely to have
20 more than a moderate adverse impact on environmental quality, because it did not fully consider
21 the risk that logging an area that has a demonstrated history of landslides would increase the
22 risk of a future landslide, and did not consider the impact the project will have on DNR's ability
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2 to comply with provisions of the DNR Policy and Procedures intended to restore old growth
3 conditions across 10 to 15 percent of the North Puget Sound HCP planning unit.

4 60. LFDC submitted public comments on February 13, 2024, raising significant
5 concerns regarding the impact of the Stilly Revisited Project on the risk of landslides in the
6 area, and DNR’s failure to comply with its own older forest policies and procedures.

7 61. Despite receiving this information, DNR issued a “Notice of Final
8 Determination” retaining the DNS on February 25, 2024.

9 62. LFDC submitted additional comments, and photographs of the Stilly Revisited
10 Project to the Board of Natural Resources on June 3, 2024, to support the conclusion
11 documented in LFDC’s original February 13, 2024 comment letter that DNR failed to fully
12 consider the environmental impacts of the Stilly Revisited Project.

13 63. Nevertheless, on June 4, 2024, the Washington Board of Natural Resources
14 (“Board”) authorized the Stilly Revisited Timber Sale, No. 93860, SEPA File No. 24-013101
15 (the “Stilly Revisited Project”), allowing DNR to auction 152 acres of publicly owned timber
16 in the North Puget Sound HCP planning unit to a private timber company. The Board is legally
17 required to review and approve sale appraisals before DNR presents the sale for auction. *See*
18 RCW 43.30.215; RCW 79.15.060.

19 64. DNR never acknowledged or explained its failure to comply with the DNR
20 Policy or Procedures.

21 65. If logging goes forward under the Stilly Revisited Project, approximately 152
22 acres of structurally complex forest capable of contributing to the Older Forest Target for the
23 North Puget Sound HCP planning unit will be logged. DNR failed to consider the impacts of

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2 the Stilly Revisited Project on its ability to comply with applicable requirements, policies, and
3 procedures, and incorrectly concluded such impacts would be mitigated through compliance
4 with the HCP and the DNR Policy.

5 66. The Public Lands Act requires DNR to make a finding that a timber sale is “in
6 the best interests of the state” prior to offering it for sale. Neither DNR, the Commissioner of
7 Public Lands, nor the Board made a published finding that the Stilly Revisited Project is in the
8 best interests of the state.

9 67. The Stilly Revisited Project is not in the best interests of the state; would
10 undermine DNR’s ability to meet its Older Forest Target in the North Puget Sound HCP
11 planning unit; would result in direct and cumulative harm to biodiversity, ecosystem
12 sustainability, wildlife species and habitats, including fish and their habitats, species listed as
13 threatened and endangered, and non-listed species, and other environmental services provided
14 by structurally complex forests; and could increase the risk of a major landslide, which could
15 have devastating adverse impacts on water quality and fish habitat within the North Fork
16 Stillaguamish River.

17 **VI. CLAIMS**

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

19 68. Appellants incorporate by reference all preceding paragraphs.

20 69. DNR, the Board, and the Commissioner’s decision to approve the Stilly
21 Revisited Project are appealable under the Public Lands Act, RCW 79.02.030, as an “order or
22 decision of the board, or the commissioner” concerning the sale of valuable materials from state
23 lands.

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

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

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

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

13 73. Appellants incorporate by reference all preceding paragraphs.

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

16 75. 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 Stilly Revisited Project would impact DNR's ability to meet its Older Forest Target, failed
19 to 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 76. 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 77. 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 78. 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 79. 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 80. Appellants incorporate by reference all preceding paragraphs.

12 81. 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 82. 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 83. Members of Appellants LFDC and NCCC live near and regularly visit DNR-
3 managed public lands in the North Puget Sound HCP planning unit and Western Washington
4 and will continue to do so. The logging that DNR carries out pursuant to its legal position
5 regarding structurally complex forests causes ongoing harm and threat of harm to Appellants
6 and their members, supporters, staff, and volunteers, on a site-specific scale of described forest
7 management, as well as on the larger scale of cumulative harm to biodiversity; ecosystem
8 sustainability; wildlife species and habitats, including fish and their habitats, species listed as
9 threatened and endangered, and non-listed species; and other environmental services provided
10 by structurally complex forests.

11 84. Appellants seek a declaration pursuant to RCW Chapter 7.24 (the Uniform
12 Declaratory Judgments Act) from this Court setting forth DNR's obligations under the HCP,
13 DNR Policy, and DNR Procedures regarding structurally complex forests and older forests.

14 **VII. RELIEF REQUESTED**

15 Appellants LFDC and NCCC respectfully request the following relief:

- 16 1. An order invalidating the Board's approval of the Stilly Revisited Project for
17 auction, based on violations of the Public Lands Act and SEPA;
- 18 2. An order invalidating the DNS for the Stilly Revisited Project as violating SEPA
19 and "clearly erroneous";
- 20 3. An order declaring the Stilly Revisited Project has probable, significant adverse
21 impacts to the environment, necessitating preparation of an environmental impact statement;
- 22 4. An order enjoining or requiring DNR to enjoin all forest practices pursuant to
23 the Stilly Revisited Project;

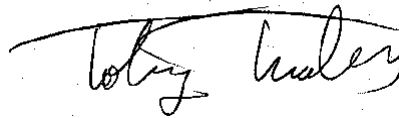
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2 5. If forest practices are carried out prior to the requested relief before this Court
3 or on review in a court of appeals, an order requiring mitigation for any and all impacts of the
4 Stilly Revisited Project;

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 Appellants their 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 July 2, 2024.

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14 

15 By _____
16 **Toby Thaler, WSBA No. 8318**
17 P.O. Box 1188
18 Seattle, WA 98111-1188
19 toby@thaler.org

20 **Alicia J. LeDuc Montgomery, OSB No. 173963**
21 *Pro Hac Vice application forthcoming*
22 LeDuc Montgomery LLC
23 2210 W Main Street, Suite 107-328
Battle Ground, WA 98604
alicia@leducmontgomery.com

Attorneys for Appellants Legacy Forest Defense
Coalition and North Cascades Conservation Council