

FILED

2024 MAR -7 AM 11:00

EMMA ROBE, CLERK
PACIFIC COUNTY, WA

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

SUPERIOR COURT OF THE STATE OF WASHINGTON
 FOR PACIFIC 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.

No. 24-2-00050-25


**NOTICE OF APPEAL OF THE
 FREEDOM 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 (“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.” In the Final Environmental Impact Statement

24-2-00050-25
 CMP 2
 Complaint
 16261394



1
2 (“FEIS”) that DNR prepared to approve the DNR Policy, the Board of Natural Resources (“the
3 Board”) states in the “Board’s Preferred Alternative” that the “10-15 percent older-forest
4 targets” are expected to be accomplished within 70 to 100 years, and that once those targets are
5 met, “structurally complex forest stands that are not needed may be considered for harvest
6 activities.” FEIS at 3-177. The DNR Policy states that, “Once older-forest targets are met,
7 structurally complex forest stands that are not needed to meet the targets may be considered for
8 harvest activities.” DNR Policy at 47.

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

1
2 3. DNR has developed the “forest land plans” required by the HCP to achieve their
3 Older Forest Target in other planning units. However, it has not developed such a plan for the
4 Columbia HCP planning unit.

5 4. An analysis conducted by DNR in 2021 found that protected older forests
6 constitute only one percent of the Columbia HCP planning unit, and that protected, structurally
7 complex forests that are excluded from commercial timber harvest constitute only two percent
8 of the planning unit.

9 5. On January 3, 2024, the Washington Board of Natural Resources (“Board”)
10 authorized the Freedom Timber Sale, No. 30-104775, SEPA File No. 23-121901 (the “Freedom
11 Project”), allowing DNR to auction 138 acres of publicly owned timber in the Columbia HCP
12 planning unit to a private timber company.

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

17 7. The Freedom Project would allow loggers to clearcut approximately 135 acres
18 of rare, naturally regenerated, 90-100 year-old forest in the Grays River watershed of Southwest
19 Washington, including trees that are over four feet in diameter and close to 200 feet tall. These
20 acres qualify as “structurally complex forests” under DNR standards and policies—diverse
21 stands with multiple canopies and plant communities, and trees of various diameters and
22 heights. Designating them as such could help DNR meet its Older Forest Target for the
23 Columbia HCP planning unit.

1
2 8. In reaching its DNS for the Freedom Project, and then approving the Freedom
3 Project for auction, DNR and the Board did not account for the adverse direct, indirect, and
4 cumulative impacts of the Freedom Project. First, DNR failed to consider the direct and indirect
5 impacts of the Freedom Project, identified by Appellant LFDC, including: violations of DNR
6 Policies and DNR Procedures; harm to protected wildlife and plant species, loss of habitat, and
7 the loss of biodiversity in the Columbia HCP planning unit—some of which are identified in
8 LFDC’s January 5, 2024, and February 4, 2024, comment letters—that are required to be
9 protected under those procedures; the loss of ecosystem services that the biodiversity of
10 structurally complex forest in the HCP provides; and the loss of recreation, scenic views, and
11 other public uses by LFDC’s members and Pacific County citizens. Second, DNR failed to
12 address the cumulative impacts of the Freedom Sale in context of other potential timber sales,
13 some of which are listed in Paragraph 60 below.

14 9. The Board’s approval of the Freedom Project was arbitrary and capricious and
15 contrary to law, including the Public Lands Act, chapter 79 RCW. DNR failed to make its
16 threshold determination based on sufficient information to evaluate the impact of the project,
17 in violation of SEPA.

18 10. The Freedom Project violates the requirements set forth in the HCP, DNR
19 Policy, and DNR Procedures.

20 11. DNR has planned other future timber sales in Pacific County that would clearcut
21 thousands of additional acres of structurally complex forests capable of contributing to the
22 Older Forest Target in the Columbia HCP planning unit. If DNR is allowed to continue to
23 violate the requirements of the HCP, DNR Policy, and DNR Procedures, Appellant will

1
2 continue to suffer ongoing procedural and environmental harm. As such, declaratory relief is
3 warranted to stop DNR's future violations.

4 **II. JURISDICTION AND VENUE**

5 12. The Freedom Project is located entirely within Pacific County. Jurisdiction and
6 venue are appropriate before this Court pursuant to RCW 79.02.030 (Public Lands Act) RCW
7 43.21C.075 (SEPA), and RCW 7.24.010 (Declaratory Judgment Act).

8 13. RCW 79.02.030 provides a cause of action for this appeal. RCW 43.21C.075
9 provides a cause of action for this appeal. RCW 7.24.010 provides a cause of action for this
10 appeal.

11 14. Declaratory relief is authorized under RCW 7.24.010. Injunctive relief is
12 authorized under RCW 7.40.010.

13 15. This suit is timely under RCW 79.02.030 because it was filed and served within
14 30 days of the Board's approval of the Freedom Project on February 6, 2024. Appellant
15 participated in all stages of public comment for the Freedom Project and have therefore
16 exhausted all available administrative remedies.

17 **III. PARTIES**

18 16. Appellant the Legacy Forest Defense Coalition ("LFDC") is a Washington
19 State-registered 501(c)(3) non-profit organization based in Tacoma, Washington. LFDC seeks
20 to promote a balanced approach to the management of Washington state forestlands that allows
21 DNR to generate reliable revenue for trust beneficiaries, while preserving and accelerating the
22 development of older forests, as required under the terms and conditions of the HCP, DNR
23 Policy, and DNR Procedures. LFDC's mission is to preserve the genetic, biological, and

1
2 ecological legacies of the native forests that once dominated Western Washington for the
3 benefit of all people, and its members have a particular interest in ensuring that the state's
4 forests are managed in a responsible and lawful manner.

5 17. LFDC's members regularly visit and recreate in DNR-managed forestlands,
6 including those in the Grays River watershed. LFDC's members gain aesthetic enjoyment from
7 visiting older forests and observing the wildlife that inhabits these forests. LFDC's members
8 have visited the Freedom Project area in the past and have plans to do so again in the future.
9 Their enjoyment of the area will be diminished if the logging approved by the Freedom Project
10 goes forward, and the structurally complex forests in that region are degraded or destroyed.
11 Those same interests will be protected if the Court issues injunctive relief to prevent the
12 Freedom Project area from being logged.

13 18. The defendant DNR is an agency of the state of Washington and is responsible
14 for managing forests on Washington state trust lands.

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

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

22 21. DNR's Forest Resources Division manages state trust lands ("DNR State
23 Lands"), and the Forest Practices Division ("DNR Regulatory") reviews forest practices

1
2 applications. DNR State Lands develops potential timber sales and submits them to DNR
3 Regulatory for review and ultimate approval.

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

6 IV. LEGAL BACKGROUND

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

13 24. SEPA imposes both substantive and procedural obligations on DNR's
14 management of public lands.

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

1
2 26. Under SEPA, an agency must consider environmental information – including
3 impacts, alternatives, and mitigation – before committing to a particular course of action.
4 WAC 197-11-055(2)(c). SEPA requires an agency to consider all environmental and ecological
5 factors to the fullest extent when taking major actions significantly affecting the environment.
6 When describing the environmental impacts, an agency must consider direct, indirect, and
7 cumulative impacts.

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

19 28. SEPA requires that lead agencies conduct their analysis with up-to-date
20 information that accurately reflects the impacts of a proposed project. In evaluating an
21 Environmental Checklist for a proposed timber sale, DNR must “make its threshold
22 determination based upon information reasonably sufficient to evaluate the environmental
23 impact of a proposal.” WAC 197-11-335. When information is uncertain, DNR must obtain

1
2 accurate information and perform a new environmental review before proceeding with the
3 project. *See* WAC 197-11-335. If significant new information arises after a SEPA threshold
4 determination indicating that a proposal will have significant adverse environmental impacts,
5 DNR must rescind its threshold determination and prepare a new analysis. *See* WAC 197-11-
6 340(3)(a)(ii). Part of the threshold determination is review of whether the proposal complies
7 with applicable laws and policies. WAC 197-11-330(3)(e)(iii).

8 V. STATEMENT OF THE CASE

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

12 30. The HCP was prepared by DNR and approved by the U.S. Fish and Wildlife
13 Service and the National Marine Fisheries Service, as part of DNR's assurance that its timber
14 management activities would comply with the Federal Endangered Species Act (16 U.S.C. §
15 1531 *et seq.*).

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

22 32. The DNR Policy guides its management and stewardship over state trust lands
23 and was written in part to ensure that DNR complies with the HCP. Along with the associated

1
2 HCP implementation procedures, the DNR Policy constitutes DNR's plan for implementing the
3 HCP. As DNR states in the SEPA Checklist for the Freedom Project, compliance with the HCP
4 implementation procedures "substantially helps the Department to mitigate for cumulative
5 effects" of specific timber sales.

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

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

17 35. DNR's own analysis indicates that forests over 150 years old currently constitute
18 less than one percent of the Columbia HCP planning unit. The agency is thus woefully short
19 of meeting its requirement to develop fully functional forests in the Columbia HCP planning
20 unit.

21 36. One of the intended outcomes of the DNR Policy is to "meet a 10 to 15 percent
22 Older Forest Target for each Western Washington HCP planning unit" within 70 to 100 years.
23 In the FEIS, the Board's selected alternative "emphasizes that the 10 to 15 percent Older Forest

1
2 Targets will be accomplished” within 70 to 100 years – which is equivalent to the term of the
3 HCP.

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

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

11 39. The Freedom Project contains stands in the botanically diverse stage of stand
12 development. These stands have the potential to help DNR meet its Older Forest Target in the
13 Columbia HCP planning unit. The Freedom Project authorizes the logging of these stands.

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

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

1
2 42. DNR has completed forest land plans for other HCP planning units but has not
3 completed a plan for the Columbia HCP planning unit within which the Freedom Project is
4 located.

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

12 44. DNR did not include any of this information in the SEPA Checklist for the
13 Freedom Project.

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

17 46. Data obtained from DNR's Public Disclosure Office indicates that DNR has set
18 aside only 5,815 acres of structurally complex forests in the Columbia HCP planning unit for
19 conservation. This represents just two percent of the Columbia HCP planning unit. DNR has
20 not met its 10 percent minimum requirement under the DNR Procedures to harvest any
21 structurally complex forest in the HCP.

22 47. DNR failed to comply with DNR Procedures by authorizing logging of
23 structurally complex forests in the Freedom Project.

1
2 48. DNR did not make any attempt, through its SEPA threshold determination or
3 elsewhere, to assess whether the Freedom Project complies with DNR Procedures. DNR did
4 not complete the assessments and analyses required by the DNR Procedures for the Freedom
5 Project.

6 49. DNR never acknowledged or explained its failure to comply with the DNR
7 Procedures.

8 50. DNR continues to authorize logging of some of the most biologically diverse
9 and structurally complex forests in the Columbia HCP planning unit based on the assumption
10 that stream buffers and other protected forestlands will provide the required 10 to 15 percent
11 older forests within 70 to 100 years. DNR's own calculations contradict this assumption. Even
12 if true, this assumption does not excuse or remedy the violations of the HCP, DNR Policy, and
13 DNR Procedures.

14 51. In preparation for potential approval of the Freedom Project, DNR conducted a
15 threshold SEPA review, and issued a DNS on December 18, 2023.

16 52. Appellant LFDC submitted public comments in response to the DNS on January
17 5, 2024, raising significant concerns regarding DNR's ability to meet its Older Forest Target in
18 the Columbia HCP planning unit.

19 53. DNR issued a "Notice of Final Determination" retaining the DNS on January 8,
20 2024.

21 54. On January 8, 2024, Appellant LFDC received a letter from Scott Sargent,
22 DNR's Pacific Cascade Region Manager. Mr. Sargent's letter failed to provide any information
23

1
2 or data, or references to any reports, studies, or assessments that refute the facts as set forth
3 above.

4 55. Appellant LFDC submitted additional comments, and photographs of the
5 Freedom timber sale to the Board of Natural Resources on February 4, 2024, to support the
6 conclusion, documented in its original January 5, 2024 comment letter, that the Freedom project
7 ignored established Board policies and procedures.

8 56. Nevertheless, the Board approved the Freedom Project for auction on February
9 6, 2023. The Board is legally required to review and approve sale appraisals before DNR
10 presents the sale for auction. *See* RCW 43.30.215; RCW 79.15.060.

11 57. If logging goes forward under the Freedom project, approximately 135 acres of
12 structurally complex forest capable of contributing to the Older Forest Target for the Columbia
13 HCP planning unit will be logged. DNR failed to consider those impacts, failed to consider the
14 impacts of failing to comply with applicable requirements, policies, and procedures, and
15 incorrectly concluded such impacts would be mitigated through compliance with the HCP.

16 58. DNR is planning many additional timber sales in the Columbia HCP planning
17 unit over the next six years, including, but not limited to, the "Great Divide", "Finale", "Right
18 Fork", "Ten Fir", "Wilson", "Elochomotion", "Stairway to Hemlock", "Channel Change",
19 "Yewtube", "Cheap Thrills", "Highway to Helmo", "Happy Hemlock", "Beavalo", "Gimme
20 Some Thinn", "Pollo Locho", "Pom Poodler", "Tule", "Zephyr", and "Gyppo Dream" timber
21 sales, which would clearcut other structurally complex forests capable of contributing to the
22 Older Forest Target in the Columbia HCP planning unit. These timber sales will have a
23

1
2 significant cumulative effect on DNR's ability to meet its Older Forest Target within 70 to 100
3 years.

4 59. The SEPA Checklist for the Freedom Project did not take into account the
5 cumulative effect of the project along with other past and planned future projects in the area.

6 60. The Public Lands Act requires DNR to make a finding that a timber sale is "in
7 the best interests of the state" prior to offering it for sale. Neither DNR, the Commissioner of
8 Public Lands, nor the Board made a published finding that the Freedom Project is in the best
9 interests of the state.

10 61. The sale is not in the best interests of the state and would undermine DNR's
11 commitment to meet its Older Forest Target in the Columbia HCP planning unit.

12 VI. CLAIMS

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

14 62. Appellant incorporates by reference all preceding paragraphs.

15 63. The decision by DNR, the Board, and the Commissioner to approve the Freedom
16 Project are appealable under the Public Lands Act, RCW 79.02.030, as an "order or decision of
17 the board, or the commissioner" concerning the sale of valuable materials from state lands.

18 64. DNR, the Board, and the Commissioner violated the Public Lands Act by acting
19 arbitrarily and capriciously in approving the Freedom Project for auction based on incomplete
20 and inaccurate information, failing to comply with the HCP, the DNR Policy, and DNR
21 Procedures, without rationale, and ignoring the impact that the project would have on DNR's
22 management objectives.
23

1
2 65. DNR did not provide any information or data to support its departure from the
3 HCP, DNR Policies, and DNR Procedures.

4 66. DNR, the Board, and the Commissioner violated the Public Lands Act by
5 approving the Freedom Project without making a finding that the sale is in the best interests of
6 the State.

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

8 67. Appellant incorporates by reference all preceding paragraphs.

9 68. DNR, the Board, and the Commissioner violated SEPA by approving the
10 Freedom Project based upon a clearly erroneous DNS.

11 69. DNR conducted a SEPA threshold evaluation that terminated SEPA review,
12 which was based on incomplete information because it failed to evaluate the extent to which
13 the Freedom Project would impact DNR's ability to meet its Older Forest Target, failed to
14 consider conflict with the HCP, DNR Policy, and DNR Procedures, and failed to take into
15 account the direct, indirect, and cumulative impacts of the project.

16 70. DNR's SEPA evaluation failed to assess forest conditions in compliance with
17 the HCP, DNR Policy, and DNR Procedures.

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

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

1
2 73. DNR, the Board, and the Commissioner failed to carry out their
3 responsibilities under SEPA. RCW 43.21C.020.

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

5 74. Appellant incorporates by reference all preceding paragraphs.

6 75. DNR takes the legal position that it may continue to log structurally complex
7 forests based on a different interpretation of its obligations under the HCP, DNR Policy, and
8 DNR Procedures. This creates a regular, ongoing, discrete conflict between Appellant and
9 DNR.

10 76. The legal issues in this case were recently litigated in *Center for Responsible*
11 *Forestry v. DNR*, Court of Appeals No. 56964-&-II (Unpublished opinion, decided September
12 26, 2023). While that court ultimately dismissed the appeal as moot because the trees had been
13 harvested during the pendency of the appeal and the court declined to invoke the public interest
14 exception to the mootness doctrine, on page 10 of the court's slip opinion, the court
15 acknowledged that the Center's representation that the old forest legal issue in that case – the
16 identical issue here – would likely repeat itself in at least 69 future cases. Appellant has
17 identified additional future sales presenting the same legal issue in this Complaint. This issue
18 will arise in dozens of future cases in the Columbia HCP planning unit. To provide legal clarity
19 and promote judicial efficiency, a declaratory judgment is warranted.

20 77. Members of Appellant LFDC live near and regularly visit DNR-managed public
21 lands in the Columbia planning unit and Western Washington, and will continue to do so. The
22 logging that DNR carries out pursuant to its legal position regarding structurally complex
23 forests causes ongoing harm and threat of harm to Appellant, members of Appellant and its

1
2 members on a site-specific scale of described forest management, as well as on the larger scale
3 of cumulative harm to biodiversity, forest health and function, and other environmental
4 attributes of structurally complex forests.

5 78. Appellant seeks a declaration pursuant to RCW Chapter 7.24 (the Uniform
6 Declaratory Judgments Act) from this Court setting forth DNR's obligations under the HCP,
7 DNR Policy, and DNR Procedures regarding structurally complex forests and older forests.

8 VII. RELIEF REQUESTED

9 Appellant respectfully requests the following relief:

10 1. An order invalidating the Board's approval of the Freedom Project for auction,
11 based on violations of the Public Lands Act and SEPA;

12 2. An order invalidating the DNS for the Freedom Project as violating SEPA and
13 "clearly erroneous";

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

16 4. An order enjoining or requiring DNR to enjoin all forest practices pursuant to
17 the Freedom Project;

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

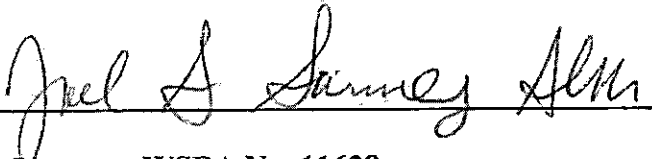
21 6. A declaratory order interpreting DNR's legal obligations with respect to
22 structurally complex forests, older forests, and fully functional forests under the State Trust
23

1
2 Lands Conservation Plan (“HCP”), Policy for Sustainable Forests (“DNR Policy”), and PR 14-
3 004-046 (“DNR Procedures”);

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

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

7
8 DATED this 7th of March, 2024.

9
10 By 

11 **Joel S. Summer, WSBA No. 11638**
12 1530 N. Estate Dr.
13 Tucson, AZ 85715
joel.summer@gmail.com

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

17 Attorneys for Appellant Legacy Forest Defense Coalition
18
19
20
21
22
23