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WAHKIAKUM COUNTY, WA

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SUPERIOR COURT OF WASHINGTON
FOR WAHKIAKUM COUNTY

CENTER FOR RESPONSIBLE FORESTRY,)

Appellant,)

v.)

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

Respondents.)

NO. 21-2-00023-35

NOTICE OF APPEAL OF THE
ELOCHOMOTIVE TIMBER SALE AND
ASSOCIATED ENVIRONMENTAL
REVIEW

ELOCHOMOTIVE TIMBER SALE APPEAL - 1
No.

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I. INTRODUCTION

1. On May 4, 2021, the Washington Board of Natural Resources (“Board”) authorized the Elochomotive Sorts Timber Sale, No. 101651 (the “Elochomotive Project”), allowing the Washington Department of Natural Resources (“DNR”) to auction approximately 108 acres of publicly owned timber in Wahkiakum County.

2. The Elochomotive Project would allow loggers to clearcut approximately 42 acres of naturally regenerated, low-elevation forest in the lower Columbia River Basin, including trees that are more than 90 years old and 180 feet tall. The logging operation would convert a natural and structurally complex forest into a commercial tree plantation, permanently transforming the character of the land and composition of the forest, and destroying native ecosystems and critical wildlife habitat.

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

4. In performing this threshold SEPA evaluation, DNR claimed the cumulative effects of the Elochomotive Project would be mitigated through compliance with its Habitat Conservation Plan (“HCP”), which it developed in consultation with the U.S. Fish and Wildlife Service as part of its compliance with the federal Endangered Species Act.

5. The Board adopted DNR’s Policy for Sustainable Forests (“Sustainable Forest Policy”) in part to ensure that state trust lands are managed in accordance with the HCP. The Sustainable Forest Policy requires DNR to work to maintain 10 to 15 percent of each HCP planning unit as “older-forest” within 70 to 100 years (the “Older Forest Target”). DNR has

1 developed a strategy to achieve this target in other planning units through the creation of forest
2 land plans. However, it has failed to develop such a plan for the Columbia HCP unit in which
3 the Elochromotive Project is located.

4
5 6. The SEPA evaluation for the Elochromotive Project fails to consider how the
6 project will impact DNR's ability to meet the Older Forest Target for the Columbia HCP
7 planning unit. With no plan in place to meet its Older Forest Target, DNR has no basis for
8 claiming that either its Sustainable Forest Policy or the HCP will mitigate the effects of timber
9 sales that would clearcut forests capable of contributing to that target in the Columbia HCP
10 planning unit.

11
12 7. In reaching its DNS for the Elochromotive Project, and then approving that sale,
13 DNR and the Board thus failed to account for the adverse direct, indirect, and cumulative
14 impacts of the sale on DNR's ability to comply with its own policy.

15
16 8. The Center for Responsible Forestry (the "Center") hereby appeals the Board's
17 approval of the Elochromotive Project because it was arbitrary and capricious and not in the best
18 interests of the state, and thus violated the Public Lands Act, RCW Title 79, and because DNR
19 failed to make its threshold determination based on sufficient information to evaluate the impact
20 of the project, in violation of SEPA, RCW Ch. 43.21C.

21 **II. JURISDICTION AND VENUE**

22 9. The Elochromotive Project is located wholly within Wahkiakum County.
23 Jurisdiction and venue are appropriate before this Court pursuant to RCW 79.02.030 (Public
24 Lands Act) and RCW 43.21C.075 (SEPA). Declaratory relief is authorized under RCW
25 7.24.010 and injunctive relief is authorized under RCW 7.40.010.
26
27

1 10. This suit is timely under RCW 79.02.030 because it was filed and served within
2 30 days of the Board’s approval of the Elochromotive Project on May 4, 2021. Appellant
3 participated in all stages of public comment for the Elochromotive Project and has therefore
4 exhausted all available administrative remedies.
5

6 **III. PARTIES**

7 11. Appellant the Center for Responsible Forestry (the “Center”) is a Washington
8 State-registered non-profit organization based in Tacoma, Washington. The Center seeks to
9 promote a balanced approach to the management of Washington state forestlands that allows
10 DNR to generate reliable revenue for trust beneficiaries, while preserving and accelerating the
11 development of older forests, as required under the terms and conditions of the HCP and the
12 Sustainable Forest Policy. The Center’s mission is to preserve the genetic, biological, and
13 ecological legacies of old growth forests that once dominated Western Washington for the
14



27 *A Center member stands amid a structurally complex forest within the Elochromotive
Project area. (Photo courtesy of the Center.)*

1 benefit of all people, and its members have a particular interest in ensuring that the state's
2 forests are managed in a responsible and lawful manner.

3
4 12. The Center's members regularly visit and recreate in DNR-managed forestlands,
5 including those in the lower Columbia River Basin. The Center's members gain aesthetic
6 enjoyment from visiting older-forests and observing the wildlife that inhabits these forests. The
7 Center's members have visited the Elochomotive Project area in the past and have plans to do
8 so again in the near future. Their enjoyment of the area will be diminished if the logging
9 approved by the Elochomotive Project goes forward, and the structurally complex forests in
10 that region are degraded or destroyed. Those same interests will be protected if the Court issues
11 injunctive relief to prevent logging from going forward under the Elochomotive Project.
12

13 13. DNR is an agency of the state of Washington and is responsible for managing
14 forests on Washington trust lands, including state forestlands that it manages on behalf of
15 Washington counties.

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

21 15. As the Commissioner of Public Lands ("Commissioner"), Hilary Franz has a
22 seat on the Board and is the administrator for DNR, with jurisdiction over all the powers, duties,
23 and functions of DNR, except those specifically assigned to the Board.
24

25 16. DNR's Forest Resources Division manages state trust lands ("DNR State
26 Lands"), and the Forest Practices Division reviews forest practices applications ("DNR
27 Regulatory"). DNR State Lands develops potential timber sales and submits them to DNR

1 Regulatory for review and ultimate approval. Once DNR Regulatory has approved a permit,
2 DNR State Lands acts through the Board to determine whether to offer logging rights for sale
3 at public auction.¹

4 IV. LEGAL BACKGROUND

5
6 17. The Public Lands Act authorizes and governs DNR's management of public
7 lands, including land suitable for state forests that the state has acquired in various ways, such
8 as ceded by the counties for the state to manage. These lands are known as "state forestlands."
9 RCW 79.02.010(14). DNR must prepare and auction timber sales on state-owned lands to
10 generate revenue on a sustained yield basis. RCW 79.10.320. DNR and the Board may only put
11 a timber sale on state forestlands up for auction if DNR "finds such sale or lease to be in the
12 best interests of the state and approves the terms and conditions thereof." RCW 79.22.050. DNR
13 State Lands administers the Public Lands Act.
14

15 18. The Forest Practices Act, RCW Ch. 76.09, regulates logging on both state and
16 private lands in Washington. Under the Forest Practices Act, a landowner may not grow,
17 harvest, process, or manage timber absent an approved forest practice application authorizing
18 that activity. DNR Regulatory administers the Forest Practices Act.
19

20 19. SEPA is Washington's basic environmental charter, which imposes both
21 substantive and procedural obligations on DNR's management of public lands.

22 20. The purposes of SEPA are: (1) to declare a state policy which will encourage
23 productive and enjoyable harmony between humankind and the environment; (2) to promote
24 efforts which will prevent or eliminate damage to the environment and biosphere; (3) to
25 stimulate the health and welfare of human beings; and (4) to enrich the understanding of the
26

27 ¹ The term "DNR" refers to DNR State Lands unless specified.

1 ecological systems and natural resources important to the state and nation. RCW 43.21C.010.
2 SEPA is designed to provide decision makers and the public with full information about the
3 potential adverse environmental impacts of a proposed action, and to ensure that decisions are
4 made after thorough scientific analysis, consideration of expert comments, and public scrutiny.
5

6 21. Under SEPA, an agency must consider environmental information—including
7 impacts, alternatives, and mitigation—before committing to a particular course of action. WAC
8 197-11-055(2)(c). SEPA requires an agency to consider all environmental and ecological
9 factors to the fullest extent when taking major actions significantly affecting the environment.
10 When describing the environmental impacts, an agency must consider direct, indirect, and
11 cumulative impacts.

12 22. SEPA requires DNR to prepare an Environmental Checklist for each timber sale
13 (“SEPA Checklist”), so it can conduct a threshold analysis to determine if that sale will have a
14 “probable significant, adverse environmental impact.” RCW 43.21C.031. An environmental
15 impact is considered to be “significant” if there is a reasonable likelihood that it will have more
16 than a moderate adverse impact on environmental quality. WAC 197-11-794. If an agency
17 makes a determination of significance, it must prepare an environmental impact statement that
18 includes analysis of reasonable alternatives that achieve similar goals with less environmental
19 impact. Environmental impacts include factors such as impacts to fish and wildlife, plants and
20 animals, surface water quality and runoff, aesthetics, recreation, and parks. WAC 197-11-752;
21
22 WAC 197-11-444.

23
24 23. SEPA requires that lead agencies conduct their analysis with up-to-date
25 information that accurately reflects the impacts of a proposed project. In evaluating an
26 Environmental Checklist for a proposed timber sale, DNR must “make its threshold
27

1 determination based upon information reasonably sufficient to evaluate the environmental
2 impact of a proposal." WAC 197-11-335. When information is uncertain, DNR must obtain
3 accurate information and perform a new environmental review before proceeding with the
4 project. See WAC 197-11-335. If significant new information arises after a SEPA threshold
5 determination indicating that a proposal will have significant adverse environmental impacts,
6 DNR must rescind its threshold determination and prepare a new analysis. See WAC 197-11-
7 340(3)(a)(ii).

9 24. The threshold determination is an agency's initial SEPA assessment, and "must
10 indicate that the agency has taken a searching, realistic look at the potential hazards and, with
11 reasoned thought and analysis, candidly and methodically addressed those concerns." *Conserv.*
12 *Nw. v. Okanogan Cty.*, No. 33194-6-III, 2016 Wash. App. LEXIS 1410, *88-89 (Ct. App. June
13 16, 2016) (unpublished decision lacking binding authority); see also WAC 197-11-335. A
14 "significance" determination "involves context and intensity" and "the context may vary with
15 the setting." WAC 197-11-794.

17 **V. STATEMENT OF THE CASE**

18 25. DNR's timber sales must comply with the terms and conditions of the HCP and
19 the Sustainable Forest Policy, see WAC 332-41-665(1)(f), which together are used to constitute
20 mitigation for logging on state forestlands.

22 26. The HCP was prepared by DNR and approved by the U.S. Fish and Wildlife
23 Service and the National Marine Fisheries Service, as part of DNR's assurance that its timber
24 management would comply with the Federal Endangered Species Act (16 U.S.C. § 1531 *et*
25 *seq.*). Timber sales that may result in the incidental take of federal threatened or endangered
26 species must satisfy the terms and conditions of the HCP.

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

8 28. DNR's Sustainable Forest Policy guides its management and stewardship over
9 state trust lands and was written in part to ensure that DNR complies with the HCP. Along with
10 the associated HCP implementation procedures, the Sustainable Forest Policy constitutes
11 DNR's plan for implementing the HCP. As DNR states in the SEPA Checklist for the
12 Elochomotive Project, compliance with the HCP implementation procedures "substantially
13 helps the Department to mitigate for cumulative effects" of specific timber sales.

15 29. The Sustainable Forest Policy defines the preservation of biodiversity as a
16 "fundamental guiding principle for sustainable forest management." It directs DNR to protect
17 wildlife species and habitats by working to conserve "upland, riparian, and aquatic wildlife
18 species, including fish and their habitats, species listed as threatened and endangered, and non-
19 listed species...with a focus on ecosystem sustainability and the conservation of biodiversity
20 across forested landscapes."

22 30. A core objective of the multispecies conservation strategy is to work toward
23 maintaining 10 to 15 percent of forests within each HCP planning unit in the most structurally
24 complex stage of stand development (called the "fully functional stage") over a period of 100
25 years. The HCP indicates that a minimum of 150 years is required for a forest to reach the fully
26 functional stage of development.

1 31. The Sustainable Forest Policy lists as one of its intended outcomes to “meet a
2 10 percent to 15 percent older-forest target for each Western Washington HCP planning unit”
3 within 70 to 100 years.

4 32. Under the Sustainable Forest Policy, DNR is committed to “actively manage
5 structurally complex forests, especially those suitable stands in the botanically diverse stage of
6 stand development, to achieve older-forest structures across 10-15 percent of each Western
7 Washington HCP planning unit in 70-100 years.” Older-forest structures that contribute to this
8 target are defined as “stands in the fully functional or niche diversification stage of stand
9 development.”

10 33. According to DNR’s guide to Identifying Mature and Old Forests, stands in the
11 niche diversification and fully functional stages of development are generally more than 210
12 years old.

13 34. The Sustainable Forest Policy requires DNR to identify suitable structurally
14 complex forest stands to be managed to help meet its Older Forest Target. It dictates that “[o]nce
15 older-forest targets are met, structurally complex stands that are not needed to meet the targets
16 may be considered for harvest activities.”

17 35. In the Final Environmental Impact Statement for the Sustainable Forest Policy,
18 the Board’s selected alternative “emphasizes that the 10 to 15 percent older-forest targets will
19 be accomplished” within 70 to 100 years—which is equivalent to the term of the HCP.

20 36. DNR’s HCP implementation procedure for Identifying and Managing
21 Structurally Complex Forests to Meet Older Forest Targets (PR 14-004-046) dictates that “the
22 identification and review of landscape level management strategies to achieve the 10 to 15
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1 percent older-forest target will be completed during the forest land planning process that will
2 be conducted for each HCP planning unit.”

3 37. DNR has completed forest land plans for other HCP planning units but has not
4 completed a plan for the Columbia HCP planning unit within which the Elochomotive Project
5 is located.
6

7 38. DNR did not make any attempt, through its SEPA threshold determination or
8 elsewhere, to assess whether the Elochomotive Project complies with the HCP, the Sustainable
9 Forest Policy, or DNR’s implementing procedures, including PR 14-004-046.

10 39. Until a forest land plan is completed, PR 14-004-046 requires that any proposed
11 harvest activities in areas that are considered structurally complex forests “*must* be
12 accompanied by the following information: a) an assessment of forest conditions using readily
13 available information, b) an analysis of the known landscape management strategies and, c)
14 role of the structurally complex stand in meeting older forest targets” (emphasis added). PR 13-
15 004-046 further requires that the information DNR gathers to satisfy these requirements “be
16 included in the [SEPA] checklist for the proposed harvest activity for public review.”
17

18 40. DNR did not include any of this information in the SEPA Checklist for the
19 Elochomotive Project.
20

21 41. The Sustainable Forest Policy defines structurally complex forests as those
22 where multiple canopies of trees and communities of forest floor plants are evident; and large
23 and small trees have a variety of diameters and heights. Decayed and fallen trees may or may
24 not be abundant.

25 42. The forest that will be logged through the Elochomotive Project was selectively
26 (or partially) harvested in approximately 1930. It meets the definition of a structurally complex
27

1 stand presented in the HCP and the Sustainable Forest Policy and has the potential to contribute
2 to DNR's Older Forest Target within 70 to 100 years.

3 43. DNR did not complete the assessments and analyses required by PR14-004-046
4 for the Elochomotive Project.

5 44. The Final Environmental Impact Statement on Alternatives for Sustainable
6 Harvest Management of State Trust Lands in Western Washington indicates that in 2004, only
7 16,116 acres of land (about one percent of the state trust lands in Western Washington) could
8 be classified as being in the niche diversification or fully functional stages of development.
9

10 45. Based on DNR's best available forest inventory data, less than one percent of
11 lands within the Columbia HCP planning unit, where the Elochomotive Project is located,
12 currently meet the HCP's minimum 150-year age threshold for fully functional forests.
13

14 46. DNR publicly acknowledged on June 1, 2021, that lands designated by DNR to
15 meet the Older Forest Target in the Columbia HCP planning unit currently contribute only 1
16 percent to the required 10 to 15 percent of older forests.

17 47. Although DNR claims that it is on track to meet its Older Forest Target in the
18 Columbia HCP planning unit by the year 2100, it has provided no evidence or data to support
19 this claim.
20

21 48. In practice, DNR has assumed that existing natural areas, riparian reserves, and
22 other forested areas specifically set aside to provide habitat for federally threatened and
23 endangered species, collectively referred to as "special ecological management areas," are
24 sufficient to meet the needs of unlisted species, and that any stands located outside of these
25 areas are "available for timber harvest."
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1 49. Based on the best available DNR forest-inventory data, only about three percent
2 of lands within the Columbia HCP planning unit are both (a) contained within one or more
3 special ecological management areas designated to meet the Older Forest Target; and (b) old
4 enough to reach the minimum 150-year age threshold for fully functional forests by the end of
5 the 100-year time period established by the HCP.
6

7 50. DNR has not demonstrated that special ecological management areas provide
8 the necessary habitat to mitigate for the taking of unlisted species of concern described in the
9 HCP's multispecies conservation strategy.

10 51. Most of the special ecological management areas in the lower Columbia River
11 Basin are concentrated in the coastal uplands, primarily because that is where marbled murrelet
12 populations prefer to nest. Lands that are designated to provide suitable habitat for the marbled
13 murrelet do not explicitly account for the habitat requirements of unlisted species of concern.
14

15 52. The HCP explicitly states that "species-specific forest practices have become an
16 inefficient and impractical means of attaining wildlife conservation objectives[.]" Instead, the
17 HCP dictates that the multispecies conservation strategy objectives be met through "forest
18 management that provides a variety of well-distributed, interconnected habitats," in order to
19 support the continued presence of suitable habitat for each species "over as much of its historic
20 range as possible," thereby ensuring the "successful reproduction of wide-ranging unlisted
21 species[.]"
22

23 53. DNR justifies the continued logging of some of the most biologically and
24 structurally diverse forests in the Columbia HCP planning unit based on the expectation that
25 riparian reserves and other special ecological management areas will provide the required 10 to
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1 15 percent older forests within 70 to 100 years. DNR has failed to provide any data to support
2 this expectation.

3 54. About two-thirds of all special ecological management areas are riparian buffers.
4 A management strategy that relies heavily on riparian buffers to achieve conservation objectives
5 results in a fragmented landscape that is subject to edge effects, lacks interior forest habitat,
6 lacks large conifers, and is often dominated by alder and other early successional or invasive
7 species.
8

9 55. DNR does not need to harvest 90-year-old, 180-foot-tall trees to meet its current
10 obligations to Wahkiakum County. DNR's forest inventory data indicates there are
11 approximately 217 MMBF of conifers between 40 and 60 years old that are ready to harvest on
12 state forest transfer lands in Wahkiakum County, and that most of that volume is Douglas fir.
13 This is more than enough volume to satisfy both overall sustainable harvest targets for the
14 current planning decade, and arrearage from the previous planning decade.
15

16 56. In preparation for potential approval of the Elochomotive Project, DNR
17 conducted a threshold SEPA review, and issued a DNS on February 26, 2021.

18 57. DNR's SEPA Checklist sets forth in bare terms some potential impacts of the
19 sale. The SEPA Checklist claims that any potential environmental impacts of the Project will
20 be mitigated by the HCP and its multispecies conservation strategy, which "requires the
21 Department to manage landscapes to provide and sustain long-term habitat" and "substantially
22 helps the Department to mitigate for cumulative effects related to management activities."
23

24 58. Appellant submitted public comments in response to the DNS on February 23,
25 2021, raising significant concerns regarding DNR's ability to meet its Older Forest Target in
26 the Columbia HCP planning unit.
27

1 59. DNR did not reply to Appellant’s comment letter and issued a “Notice of Final
2 Determination” retaining the DNS on March 16, 2021.

3 60. Appellant emailed DNR on April 26, 2021 requesting that DNR respond to its
4 comment letter. On April 27, 2021, Appellant received a letter from Steve Ogden, DNR’s
5 Assistant Region Manager, thanking Appellant for the comments it submitted on February 23,
6 2021. Mr. Ogden’s response claims that designated special ecological management areas
7 located within the Columbia HCP planning unit will achieve older-forest structures across 10
8 to 15 percent of the planning unit over 70 to 100 years. Mr. Ogden states that because no part
9 of the Elochomotive Project had been designated to meet Older Forest Target, the land was
10 therefore available for harvest.
11

12 61. Mr. Ogden’s letter failed to provide any information or data, or references to
13 any assessments or to substantiate his claim that existing special ecological management areas
14 are sufficient to meet the Older Forest Target.
15

16 62. Appellant submitted comments, maps, photographs, and additional data to the
17 Board to support the conclusion, documented in its original February 23, 2021 comment letter,
18 that existing special ecological management areas are not sufficient to meet the Older Forest
19 Target within 70 to 100 years.
20

21 63. Nevertheless, the Board approved the Elochomotive Project for auction on May
22 4, 2021. This decision was a legal prerequisite to proceeding with the sale, because the Board
23 must review sale appraisals and make the ultimate decision to proceed with a given timber sale
24 over a minimum value. *See* RCW 43.30.215; RCW 79.15.060.

25 64. If logging goes forward under the project, 42 acres of structurally complex forest
26 capable of contributing to the Older Forest Target will be clearcut. DNR failed to consider how
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1 to mitigate those impacts, or whether alternative approaches (such as conducting a thinning
2 operation or excluding a portion of Unit 2 containing structurally complex forests from the
3 timber sale) would prevent this environmental harm.

4 65. DNR is planning several additional timber sales in close proximity to the
5 Elochomotive Project, including the Green Thomas sale and the Zephyr Sorts sale, which would
6 clearcut other structurally complex forests capable of contributing to the Older Forest Target.
7 These sales will have a significant cumulative effect on DNR's ability to meet that target within
8 70 to 100 years.

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

11 67. The Public Lands Act requires DNR to make a finding that a timber sale is "in
12 the best interests of the state" prior to offering it for sale. Neither DNR, the Commissioner of
13 Public Lands, nor the Board made a published finding that the Elochomotive Project is in the
14 best interests of the state. To the extent that DNR considered some benefits of the sale to the
15 state, it did not conduct an even-handed analysis, taking into account the short- and long-term
16 harm to the interests of the state, especially in light of the sale's lack of compliance with the
17 Sustainable Forest Policy.

18 68. The sale is not in the best interests of the state. It would provide one lump-sum
19 payment to junior taxing districts in Wahkiakum County, while forever significantly altering
20 the character of the county's forests, and undermining DNR's commitment to work toward
21 meeting its Older Forest Target in the Columbia HCP planning unit. As designed, the
22 Elochomotive Project takes the most aggressive logging approach allowed under applicable
23 regulations, ignoring other ways to better balance forestry and conservation goals.
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VI. CAUSES OF ACTION

Claim One—Violations of the Public Lands Act

69. Appellant incorporates by reference all preceding paragraphs.

70. The decision by DNR, the Board, and the Commissioner to approve the Elochomotive Project are appealable under the Public Lands Act, RCW 79.02.030, as “any order or decision of the board, or the commissioner” concerning the sale of valuable materials from state lands.

71. DNR, the Board, and the Commissioner violated the Public Lands Act by failing to make a finding that the Elochomotive Project was in the best interests of the state, as required by RCW 79.22.050.

72. DNR, the Board, and the Commissioner violated the Public Lands Act by approving the Elochomotive Project for auction even though the sale is not in the best interests of the state.

73. DNR, the Board, and the Commissioner further violated the Public Lands Act by acting arbitrarily and capriciously in approving the Elochomotive Project for auction based on incomplete and inaccurate information, and while ignoring the impact that the project would have on DNR’s goals, including those expressed in the HCP, the Sustainable Forest Policy, and DNR’s HCP implementation procedures, including PR 14-004-046. *See Nw. Alloys, Inc. v. Dept. of Nat. Res.*, 10 Wn. App. 2d 169, 14, 447 P.3d 620, 629 (2019) (holding that when agencies act in their administrative function, review is of whether they acted arbitrarily, capriciously, or contrary to law).

Claim Two—Violations of the State Environmental Policy Act

74. Appellant incorporates by reference all preceding paragraphs.

1 75. DNR, the Board, and the Commissioner violated SEPA by approving the
2 Elochomotive Project based upon an unlawful and clearly erroneous DNS.

3 76. DNR conducted a SEPA threshold evaluation that terminated SEPA review,
4 which was not based on reasonably accurate information, failed to evaluate the extent to which
5 the Elochomotive Project would impact DNR's ability to meet its Older Forest Target, and
6 failed to take into account the direct, indirect, and cumulative impacts of the project. DNR
7 unlawfully isolated its analysis of the Elochomotive Project from related sales, taking a
8 piecemeal approach to minimize the environmental impact of each individual project.
9

10 77. DNR's SEPA evaluation failed to assess forest conditions using readily
11 available information; did not utilize known landscape management strategies; and ignored the
12 role of the structurally complex stand within the Elochomotive Project in meeting its Older
13 Forest Target as required by PR 14-004-046, the HCP implementation procedure for Identifying
14 and Managing Structurally Complex Forests to Meet Older Forest Targets.
15

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

20 79. DNR failed to prepare an environmental impact statement for the Elochomotive
21 Project, despite the fact that the project will have more than a moderate adverse impact on
22 environmental quality. DNR failed to withdraw its DNS and prepare an environmental impact
23 statement despite significant information indicating the proposal's probable significant adverse
24 environmental impacts. WAC 197-11-340(3)(a)(ii).

25 80. DNR, the Board, and the Commissioner failed to comply with their substantive
26 obligations under SEPA, which include acting as trustees of the environment for future
27

1 generations and attaining the widest range of beneficial uses of the environment without
2 degradation, risk to health or safety, or other undesirable and unintended consequences. RCW
3 43.21C.020.

4 **VII. RELIEF REQUESTED**

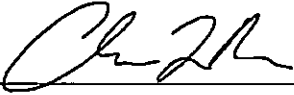
5 Appellant respectfully requests the following relief:

- 6 1. An order invalidating the Board's approval of the Elochomotive Project for
7 auction.
8
- 9 2. An order invalidating the DNS for the Elochomotive Project as "clearly
10 erroneous."
11
- 12 3. A declaration that the Elochomotive Project could have probable, significant
13 adverse impacts to the environment, necessitating preparation of an environmental impact
14 statement.
- 15 4. An order enjoining all forest practices pursuant to the Elochomotive Project.
- 16 5. If necessary and appropriate, an order requiring mitigation for any impacts of
17 the Elochomotive Project.
- 18 6. An order granting Appellant its costs and attorneys' fees based on the Equal
19 Access to Justice Act, RCW Ch. 4.84, or any other applicable provision of law.
- 20 7. Any other relief that this Court deems just and proper.
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Respectfully submitted this 2nd day of June 2021.

ANIMAL & EARTH ADVOCATES, PLLC

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