

February 11, 2021

Board of Natural Resources
MS 47000
Olympia, WA 98504-7000



Submitted via email: bnr@dnr.wa.gov

Re: Smuggler VRH & RMZ Timber Sale Agreement #30-099053
FPA No. 2421793 / SEPA File No. 20-090101

Dear Chair Franz and Board Members,

The above-referenced timber sale, as offered during auction last November, includes the harvest of old growth forest, and the removal of dozens of very large, structurally unique trees, in violation of the DNR Habitat Conservation Plan ("HCP"), and the Department's Old Growth Timber Harvest Deferral and Protection policy (PR 14-004-045).

We are submitting this letter to the Board because we believe that the State Department of Natural Resources disregarded and contradicted its own findings, policies and procedures in an attempt to maximize volume and revenue generated by this timber sale, failed to inform the Board of its intent to remove dozens of very large structural trees, and ignored or concealed information from the public during the application and SEPA review process that would lead parts of the sale to be classified as old growth:

- There is no suggestion in either the FPA or the SEPA documents that any old growth habitat (WOGH) assessment was conducted for this timber sale, and no hint that there might be anything in this sale that would trigger an old growth assessment.
- It does not appear that any attempt was made to identify or tag large, structurally unique trees within this timber sale. Few if any of the likely dozens of trees scattered throughout unit 1 that exceed 60 inches in diameter were inventoried, marked or flagged for retention.
- The origin date of unit 1 is listed in the SEPA checklist as 1880-1956, which would imply that the older forest within the unit conveniently falls 30 years short of the origin date of 1850 used to designate stands for protection as old growth; ten years short of the 150 year threshold age for fully functioning stands; and 20 years short of the 160 year threshold for old growth as defined in the HCP. Recent increment cores demonstrate that these origin dates are incorrect.
- Gates leading to the timber sale were locked for months prior to the auction date, and the public was denied access to the timber sale during the SEPA review process, preventing local residents and other reviewers from gathering important information on this timber sale. When we called the Region Office to request gate

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access during the SEPA review period in September, the office insisted in September that *only bidders* are allowed access to timber sales prior to auction. The Region office continues to deny our requests to access this timber sale, even on foot, and has posted "no trespassing" signs outside of units 1 and 2, despite the fact that, according to DNR staff, no operations are planned in these units this winter.

The decision, announced during the Board meeting last Tuesday, to exclude two acres of old growth from the north end of unit 1, would still allow the logging of approximately nine additional acres in unit 1 that meet criteria for protection as old growth as defined in the HCP, as well as the removal of dozens of very large, structurally unique trees and smaller old growth remnants that should have been flagged for retention.

We request that the Board order the South Puget Sound Region office to:

- (A) re-negotiate the agreement with the purchaser to exclude all of unit 1 from the sale; and
- (B) conduct a thorough re-assessment of the entire timber sale to identify and tag any large, structurally unique trees that meet the criteria for retention provided in PR 14-004-045.

Further, we ask that the Board consider the underlying "policies", including the "20% rule" being relied upon by Department staff to justify old-growth logging. Pursuant to Washington law, policies of this nature need to be encoded in administrative rule and go through the SEPA process prior to being implemented.

Summary of Complaint

There is no question that this project, as offered at auction, will commercially log old-growth trees, but has been characterized by Department staff as non-old-growth. This is problematic. In response to numerous complaints and requests for additional information over the last two months, the Department finally acknowledged during a video conference on January 27th that the area that is designated for harvest does in fact include old growth forest that meets the criteria for protection or deferment under PR 14-004-045. The Department also acknowledged that they failed to identify or mark individual structurally unique trees exceeding 60 inches in diameter within unit 1 that should have been marked for retention.

Despite these acknowledgements, we are concerned that the Department still has failed to map the full extent of old growth within the remaining portions of this timber sale, that RMZ boundaries have not been properly marked on the ground, and that patches of old growth, and dozens of structurally unique trees exceeding 60 inches in diameter have still not been tagged for retention.

The decision, announced during the Board meeting last Tuesday, to exclude two acres from the north end of unit 1, ignores other parts of unit 1 of this timber sale that the Department admits have never been logged, which contain trees that have been classified by DNR as originating

before Euro-American settlement, in which the dominant trees that form the upper canopy layer range in age from ~ 145 to 163 years old. The Department claims that these areas do not qualify for protection as old growth, because less than 20% of the upper canopy layer is dominated by trees that are more than 170 years old. We find this decision to be arbitrary and inconsistent with the HCP.

Finally, we are concerned that this timber sale as a whole hinders the Department's ability to meet its still outstanding obligations under the multispecies conservation strategy of the HCP to work toward maintaining at least 10% to 15% of the land base in the "fully functioning" stage of development by 2067; and violates the policy for Identifying and Managing Structurally Complex Forests (PR 14-004-046).

Detailed Complaint

The Smuggler VRH & RMZ Timber Sale is located on the west side of Capitol State Forest. All seven units of this sale drain to Eld Inlet. Independent observations indicate that at least 11 acres of forest in unit 1 of this sale have never been logged, and contain very large trees measuring up to nine feet in diameter (see attached photographs). We learned from DNR staff in November that the South Puget Sound Region wildlife biologist, Alan Mainwaring, completed a weighted old growth habitat assessment report for this timber sale in June 30, 2020. In the report, which was obtained by request from the Department on November 30th, Mr. Mainwaring states that "much of the stand keys out to Maturation II." Maturation II is a development stage defined by Robert Van Pelt that corresponds to stands that originated before Euro-American settlement. Dan Donato, the scientist at DNR who is responsible for stewarding the old growth program, confirmed during a video conference on January 27th that up to half of the dominant trees within the 11-acre patch of forest that was been evaluated may key out to Maturation II. This forest, which extends *well beyond the boundaries of the two-acre patch of forest* that the Department now acknowledges is old growth, should have been excluded from harvest under the terms of the HCP and PR 14-004-045 (see attached map).

Mr. Mainwaring, however, stated in his report that the stand "does not meet the criteria to be deferred under DNR's old-growth policy" because the old growth remnants "make up less than 1 percent of the canopy." This statement is inconsistent with his own conclusion that "much of the stand" keys out to Maturation II, and with Mr. Donato's finding that up to half the dominant trees within the area may key out to Maturation II.

Mr. Mainwaring also states in his report that the stand he evaluated is 140 years old, which again contradicts his own conclusion that much of the stand keys out to Maturation II. This age determination was apparently based off of the boring of a single, relatively-small diameter tree. Mr. Donato, who reviewed the report prepared by Alan Mainwaring, argued during a video conference on December 4th that a stand-replacing fire in the late 1800's killed all but a few of the larger Douglas fir that were present in units 1 and 2 of this timber sale, and he had determined that, because the surviving trees occupy less than 20% of the upper canopy layer of the existing stand, the stand does not meet the Department's criteria for old growth. He stated in a follow-up email to Allen Estep on December 14th that his conclusion was based on (1) the theory that Douglas fir only establishes in discrete, pulsed cohorts; (2) core samples that were

taken from "quite a few" additional trees within the stand, including trees "near 5' in diameter;" (3) evidence of branch stubs that are still present on the "lower third of the stem" of most of the larger trees in the stand; and (4) his observation that the dominant trees in the existing stand have "few if any epicormic branches," "perfectly formed juvenile crown tops," and "little to no decadence."

We find these assertions to be dubious, inaccurate, and inconsistent with our own observations, additional data collected by the Department in January, and the findings of the old growth assessment conducted by Alan Mainwaring.

First, the assertion that there was a stand-replacing fire is contradicted by the absence of large dead snags within the 11-acre stand, and by the report prepared by Mr. Mainwaring, which states that the fire killed only "the existing thin barked understory trees" and that the "dominant Douglas-fir overstory largely survived the fire." Mr. Donato acknowledged during the video conference on December 4th that parts of the sale have never been logged, but asserts that the "old growth remnants" or larger old-growth trees *must occupy 20% of the upper canopy* to even be considered in the stand aging process. This is especially problematic here because the timber sale is targeting areas with diverse origins that overlap and extend beyond the boundaries of this timber sale. Units 1 and 2 of the timber sale intersect multiple draws and exhibit a great deal of spatial, geologic, and environmental heterogeneity, so it is likely that any wildfire did not affect the entire stand evenly. The stands in and around units 1 and 2 of this timber sale have been subject to multiple disturbances over the past 200 years, including both natural (wildfire) and human (early, selective timber harvest) disturbances. In an apparent reversal, Mr. Donato acknowledged on January 27th that the sale in fact has been influenced by multiple wildfires that have burned different parts of the sale unevenly, and that there was not one single stand-replacing fire that killed all but a few of the trees in units 1 and 2. More importantly, Mr. Donato confirmed in writing in December that the "20% rule" the Department is relying upon to determine that the majority of the area planned for harvest is not old-growth, is "not encoded into a policy" that has been approved by the Board.

Second, Mr. Donato stated in his email on December 14th that "quite a few trees" were "cored and otherwise sampled," but Mr. Mainwaring states in his report that only one tree was cored within the stand and that he estimated that it was 43" in diameter and about 145 years old. If other larger trees were cored, they are not described in the report, and the data was never shared with the public. Independent observations suggest that a 43" diameter tree is on the low end of the size range of the dominant "cohort" in this stand. In another apparent reversal, Mr. Donato acknowledged on January 27th that additional increment cores analyzed in January show that there are *many trees* in this sale that are *more than 160 years old*, and that they range in age up to 400 years old. The HCP defines old growth as "stands containing Douglas fir older than 160 years" with a "dominant dbh of 30 inches or greater; usually more than eight dominant trees/acre; three or more canopy layers with less than complete canopy closure; several snags/acre with a 20 inch dbh or greater; and several down logs per acre with a 24 inch dbh or greater. A large portion of unit 1 likely meets these criteria. Importantly, the Department chose to disqualify areas where the dominant trees were less than 170 years old, therefore *ignoring areas where the dominant trees are 160 years old*.

Third, we question the assertion that dominant trees within unit 1 still have "branch stubs present on the lower third of the stem." This statement is inconsistent with Mr. Donato's finding that up to half of the trees in the area he evaluated keyed out to Maturation II. Independent observations suggest that many of the dominant trees in units 1 and 2 lack branch stubs on the lower two-thirds of the stem. Photographs taken of this unit tend to substantiate this observation. We also question the implied assertion that a lack of "decadence" and epicormic branching can be used to distinguish between trees that originated within five or ten years before or after 1850.

Fourth, we find the "area of maturation" delineated by Alan Mainwaring to be inaccurate and based on a misleading and out-of-focus aerial photo of the timber sale taken in 1958. Mr. Donato admitted in an email to Allen Estep that he cannot "speak to their accuracy or relevance" because "can't recall specifically" how they "line up" with his own observations. More recent aerial photos and independent ground-based observations and GPS data suggest that this area extends further to the south and west, over approximately 11 acres, that cut stumps are absent within this area, and that there may be additional patches of old growth in other parts of unit 1.

Petition to Board

This timber sale, as offered at auction, and marked on the ground, violates the HCP and PR 14-004-045 requirements to retain old-growth and large, structurally unique trees. The purchaser and the Department are responsible for ensuring that the sale is consistent with the Habitat Conservation Plan and Department policies. Given that there are patches of older forest scattered throughout unit 1 that either meet or come very close to meeting the criteria for protection as old growth, the prudent course of action would be to exclude unit 1 from the timber sale entirely. At a minimum, we request that the Board order the Contract Administrator to suspend the implementation of this timber sale until the factual inconsistencies surrounding this sale are addressed and resolved, the boundaries of the timber sale have been confirmed and marked on the ground, and the entire sale has been re-assessed to determine the distribution and abundance of old growth forest and large, structurally unique trees. Pursuant to sections G-220 and G-062 of the Smuggler timber-sale contract, the Department has this authority to suspend operations when there is a reasonable expectation the State will suffer environmental damage or where such operations violate the terms of the HCP:

By signing this contract, Purchaser agrees to comply with the terms and conditions of the ITP, and the HCP, which shall become terms of this contract. The state agrees to authorize the lawful activities of the Purchaser carried out pursuant to this contract, PROVIDED the Purchaser remains in compliance with the terms and conditions of both the HCP and ITP. The requirements set forth in this contract are intended to comply with the terms and conditions of the HCP and ITP. Accordingly, non-compliance with the terms and conditions of the HCP and ITP will render the authorization provided in this paragraph void, be deemed a breach of the contract and may subject Purchaser to liability for violation of the Endangered Species Act.

The Contract Administrator may suspend any operation of Purchaser under this contract when the State is suffering, or there is a reasonable expectation the State will suffer environmental, monetary, or other damage if the operation is allowed to continue.

From a broader perspective, the question of whether the "younger" cohort originated before or after 1850 is irrelevant. This sale as a whole may represent the closest thing to "old growth" that remains anywhere in the Central Puget Sound lowland ecoregion. Logging this forest to generate short-term revenue for the trust is irresponsible, short-sighted, and careless, particularly when there are thousands of acres of marketable and accessible timber in the 40-60 year age class in Capitol State Forest that are available for harvest but not currently scheduled for sale anytime within the next five years. The continued logging of the oldest and most structurally diverse stands in the South Puget Sound region defies the multi-species conservation strategy, and potentially diminishes the genetic and biological diversity of the region as a whole.

We would welcome the opportunity to accompany Department staff and interested Board members to visit this stand and view the areas that we believe qualify for protection as old growth. We also request that the Board should consider this project at a public meeting to solicit information from the public, given that the determinations made by DNR staff are inconsistent with their own data and ground observations.

Please feel free to contact us with any questions. Thank you.

Sincerely,

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Attachments: Photographs of units 1, 2, and 3
Map of unit 1