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2  
3 SUPERIOR COURT OF WASHINGTON  
4 FOR KING COUNTY

5 CONSERVATION NORTHWEST; OLYMPIC  
6 FOREST COALITION; WASHINGTON  
7 ENVIRONMENTAL COUNCIL; HOLLY  
8 KOON and MAX DUNCAN, a married couple;  
9 MIKE TOWN and MEG TOWN, a married  
10 couple; LINDA LORENZ, an individual; PETER  
11 BAHLS, an individual; SCOTT WALLACE, an  
12 individual, and MARCY GOLDE, an individual;

13 Plaintiffs,

14 v.

15 COMMISSIONER OF PUBLIC LANDS  
16 HILARY FRANZ (in her official capacity), the  
17 WASHINGTON STATE DEPARTMENT OF  
18 NATURAL RESOURCES, and the  
19 WASHINGTON STATE BOARD OF  
20 NATURAL RESOURCES,

21 Defendants.

NO.

COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND PETITION FOR  
CONSTITUTIONAL WRITS OF  
CERTIORARI

22 **I. INTRODUCTION**

23 1. Plaintiffs seek a declaratory judgment interpreting the state constitution's direction for  
24 management of state lands, and separately petition for writs of certiorari regarding the Board of  
25 Natural Resources' approval of Resolution Nos. 1559 and 1560.

26 2. This case asks the Court to declare that the Washington State Constitution, through its mandate  
that "[a]ll the public lands granted to the state are held in trust for all the people," requires the State  
to not only manage forests to produce revenue from timber harvest, but also to promote the broader  
public interest. Art. XVI, sect. 1. With control of over 3 million acres of federally granted lands,

1 and 546,000 acres of lands transferred from counties, the State has the opportunity and obligation  
2 to transition from an antiquated system which strictly prioritizes generating revenue from logging  
3 to an approach that balances commercial logging with promotion of forest health, diverse regional  
4 economies, and the vast carbon sequestration value of some of the world's most productive forests.  
5 This better, more balanced approach would allow the State to manage public lands for the public  
6 interest, as the plain language of the state constitution requires.

7  
8 3. The Department of Natural Resources (DNR or Department) and its Board of Natural  
9 Resources (BNR or Board) assert they must treat public lands as a private trust, in which the agency  
10 is the trustee and specific state and local government entities are the trust beneficiaries. Under this  
11 view, DNR must as a matter of law manage public lands for the exclusive best financial interest  
12 of beneficiaries, and that this legal duty does not permit the BNR or DNR to implement any  
13 approach that reduces revenue return for the benefit of any broader public interest. DNR refers to  
14 this view as the "trust mandate."  
15

16 4. As a result of DNR fealty to the perceived trust mandate, the DNR manages public lands in a  
17 manner similar to a private timber company or real estate development entity, and regularly makes  
18 decisions that provide cash benefit to trust beneficiaries while imposing significant costs on  
19 plaintiffs, the broader public, and future generations. DNR's implementation of the trust mandate  
20 constrains and shapes agency decisions on both landscape and site-specific levels and violates the  
21 Washington State Constitution's clear command to manage public lands for "all the people."  
22

23 5. There is deep on-going conflict between DNR's status as a state agency, which administers  
24 public lands with publicly-elected leadership, state employees, and some state funding, and the  
25 agency's view that it must absolutely prioritize maximizing revenue from public lands. These dual  
26 missions are increasingly incompatible as Washington's population increases and expands into

1 areas traditionally focused on logging, logging is generally becoming less capable of supporting  
2 local economies and generates relatively less revenue, and public and scientific understanding of  
3 the non-timber value of forests grows. As set forth in this Complaint, DNR's view of its trust  
4 mandate is often at odds with the community in which it seeks to carry out logging activities,  
5 constrains agency staff from implementing creative management solutions that they may otherwise  
6 pursue, and harms public interests in a stable climate, public safety, and a vibrant local economy.

7  
8 6. On December 3, 2019, the BNR approved two major resolutions that shape the future of forest  
9 management on public lands. Resolution 1559 adopted DNR's "Sustainable Harvest Calculation,"  
10 which dictates the volume and location of timber from state lands that must be logged in the next  
11 decade and whether and how quickly prior years' deficits must be logged. Resolution 1560  
12 adopted a major amendment to DNR's federal Habitat Conservation Plan for the marbled murrelet,  
13 known as the "Marbled Murrelet Long-Term Conservation Strategy." DNR and BNR expressly  
14 relied on and sought to implement the trust mandate as part of the development and approval of  
15 both of these land management decisions.  
16

17 7. DNR's implementation of the "trust mandate" violates Plaintiffs' constitutional right to have  
18 their interests taken into account in on-going projects and at site-specific levels, and also  
19 undermines DNR's larger planning efforts in the approval of the sustainable harvest calculation  
20 and the marbled murrelet long-term conservation strategy challenged here. The request for  
21 declaratory judgment and appeals of Resolutions 1559 and 1560 each require the Court's  
22 interpretation of article XVI, section 1 of the Washington Constitution.  
23

24 8. While revenue from timber harvest on federally granted State lands goes in part to fund public  
25 school construction (today comprising less than 10% of such funds), those funds are inconsistent  
26 and insufficient. The perverse system of intensively managing public forests to fund school

1 construction—the very forests upon which future generations rely for clean water and a safe  
2 climate—is part of an antiquated funding structure that the Washington Supreme Court ruled was  
3 “broken” and violates the State constitution. *McCleary v. State*, 173 Wash. 2d 477, 539, 269 P.3d  
4 227, 258 (2012).

5  
6 9. Indeed, Superintendent of Public Instruction Christopher Reykdal, who by statute has a  
7 position on the Board of Natural Resources, said the following at the BNR’s December 2, 2019  
8 meeting regarding management of State forests:

9 the State of Washington needs something else...my school districts right now are  
10 sticking this money into a common construction account that is becoming an almost  
11 invisible share of the 3.5 billion we spend every year on school construction. This  
12 is not the future of school construction. It just isn’t. This money would be better  
used to protect species, to protect habitat, and to take care of industries and the  
impacted counties.

13 10. The status quo approach under DNR’s trust mandate is both proving harmful to the public good  
14 and incapable of adequately supporting the growing needs of state and local institutions and rural  
15 economies. Plaintiffs support ongoing sustainable and environmentally-sound logging on state  
16 forests and revenue distribution to trust beneficiaries. However, to actually sustain economies and  
17 promote the public interest DNR must manage public lands according to the constitutional  
18 requirement to benefit “all the people.”

19  
20 11. DNR oversees a management system that is not serving either the trust beneficiaries or the  
21 general public. While logging provides some local employment and revenue in rural parts of  
22 Washington, it has not proven able to adequately support those economies and institutions.  
23 Mechanization and outsourcing of milling to other countries (of logs from private lands) has  
24 rendered the forest industry less and less capable of supporting rural economies. DNR’s studies  
25 report that it takes at least one million board feet per year of timber volume from public lands to  
26

1 provide just 7.8 jobs. As evidenced by a complaint filed by Skagit County on December 30, 2019  
2 for breach of trust against DNR, many trust beneficiaries are dissatisfied. Given these disputes  
3 and the great implications, clear judicial resolution of DNR’s constitutional authority and  
4 obligations in the management of public lands is required.

5  
6 12. While DNR, some beneficiaries, and the timber industry trade associations rely on the  
7 Washington Supreme Court case *Skamania v. State*, 102 Wn. 2d 127, 685 P.2d 576 (1984) for the  
8 principle that DNR must manage public lands to maximize revenue for the enumerated trust  
9 beneficiaries, that is a mistaken and overly broad reading of dicta in that case. *Skamania* concerned  
10 the outcome of timber sales that had already been planned and sold at public auction to timber  
11 companies. Following a downturn in residential construction that coincided with the recession of  
12 the early 1980’s, the State passed legislation releasing timber companies from their contracts.  
13 *Skamania* only stands for the unremarkable proposition that, consistent with the Washington State  
14 Constitution, when the State sells trust assets it must do so at “full market value” and cannot give  
15 away legally-secured funds to private timber companies. Indeed, the first sentence of the opinion  
16 states: “This case concerns the **sale** of timber from state lands.” 102 Wash. 2d 127, 129 (emphasis  
17 added).  
18

19 13. Unlike *Skamania*, this case pertains to the scope of the State’s duties when **managing** public  
20 lands. Management encompasses the many decisions the DNR makes regarding where, when, and  
21 how to conduct forestry and facilitate other uses of public lands. Well-managed public forests are  
22 one of the State’s greatest resources. They hold immense potential value based on their ability to  
23 generate revenue from logging, sequester carbon, provide resilience from climate change, promote  
24 diverse and strong economies, and preserve fish and wildlife habitat.  
25  
26

1 14. Plaintiffs’ success in this suit would require DNR to take into account “all the people” when it  
2 makes decisions in managing State forests. In most instances, that would still entail commercial  
3 forestry to generate revenue for specific trust beneficiaries. A ruling for the plaintiffs would simply  
4 give DNR broader authority and obligation to consider more than simply maximizing cash revenue  
5 for a narrow subset of Washington residents. The more inclusive approach complies with the  
6 Washington State Constitution, diversifies use of public lands, and allows DNR to adapt to a  
7 modern world where forests have increasingly recognized economic and social value.  
8

9 **II. PARTIES**

10 ***Conservation Northwest***

11 15. Conservation Northwest is a non-profit organization whose mission is to protect, connect and  
12 restore wildlands and wildlife from the Washington Coast to the British Columbia Rockies.  
13 Conservation Northwest has approximately 4,000 members, most of whom reside in Washington  
14 State. Conservation Northwest and its members have tirelessly advocated for protection of wildlife  
15 and connectivity on Washington State lands for decades.  
16

17 16. Conservation Northwest prioritizes collaboration between stakeholders in the management of  
18 natural resources. For example, the organization has spent years working effectively with ranchers  
19 to reduce wolf-livestock conflicts, to both promote ranching and allow wolf populations to thrive.  
20 The organization has taken a similar approach to forestry, collaborating on federal and state lands  
21 to advocate for balanced forestry that takes into account the needs of local communities, the most  
22 recent science, and impacts to the public. Conservation Northwest spends significant staff  
23 resources advocating for supplemental non-timber revenue for trust beneficiaries, including  
24 actively participating in a “Solutions Table” convened by DNR attempting to resolve the ongoing  
25 tension between the interests of different stakeholders for public lands.  
26

1 ***Washington Environmental Council***

2 17. WEC is a nonprofit, statewide advocacy organization that has been driving positive change to  
3 solve Washington’s most critical environmental challenges since 1967. WEC’s mission is to  
4 protect, restore, and sustain Washington’s environment for all.

5 18. For over 50 years, WEC has championed and defended the laws and programs that make  
6 Washington a national leader in environmental protection. WEC’s fundamental strategies have  
7 been to build partnerships, find common ground, mobilize the public and involve voters, engage  
8 decision-makers, and, when necessary, take legal action.

9 19. WEC has over 34,000 members. WEC is guided by a 21-member Board representing a non-  
10 partisan and diverse set of interests from business, labor, conservation, and academic  
11 communities with expertise in climate change, forestry, water quality, equity, and health. WEC,  
12 through staff, lobbyists, and members, has long sought to promote supplemental non-timber  
13 revenue for trust beneficiaries, including actively participating in the DNR “Solutions Table.”  
14

15 ***Olympic Forest Coalition***

16 20. OFCO is a non-profit corporation organized and existing under the laws of the State of  
17 Washington since 2002. The organization’s purpose is to promote the protection, conservation  
18 and restoration of natural forest ecosystems and their processes on the Olympic Peninsula,  
19 including fish and wildlife habitat, and surrounding ecosystems. OFCO maintains its principal  
20 place of business in Jefferson County, Washington. OFCO members have monitored timber sales,  
21 commented on individual sales and land plans throughout the Olympic Peninsula; calling for  
22 science-based solutions that meet the needs of local communities, government services, and  
23 education while also preserving habitats and species.  
24  
25  
26

1 21. OFCO members, grandparents and parents have dedicated their time, resources and efforts to  
2 preserve, protect and restore ecological treasures—particularly the iconic forests of the Olympic  
3 Peninsula—for future generations. OFCO’s members are witnessing the effects of climate change  
4 on public forests and marine waters of the Olympic Peninsula. Important species of trees and  
5 mosses are struggling to adapt to the changing climate. Wildfires in 2018 and 2019 on the  
6 Peninsula were viewed as a clarion warning bell concerning business-as-usual management of  
7 public forest lands.  
8

9 22. The OFCO Board of Directors has resolved to prioritize conservation action to reduce and  
10 mitigate effects of climate change as a foundational principle of the organization. In the face of  
11 the climate crisis, OFCO seeks to raise the public interest for this generation and future  
12 generations, and to the honor the sacred trust we have as human beings in defense of wildlife,  
13 waterways, salmon, and the majestic trees that give life. OFCO recognizes the need to develop  
14 revenues to supplement those supplied by logging to communities and schools, and also dedicated  
15 significant resources to DNR’s Solutions Table. Supplemental revenues based on the irreplaceable  
16 values of ecosystem services would promote the resiliency and future well-being of Washington’s  
17 citizenry.  
18

19 ***Mike and Meg Town***

20 23. Mike Town, and his wife, Meg Town, are members of the public residing in Duvall, WA. Mr.  
21 Town has a B.S. in environmental science from Huxley College of the Environment (Western  
22 Washington University) with a concentration in terrestrial ecosystem analysis and a master’s  
23 degree in education from the University of Washington. He worked as a silviculturist for the US  
24 Forest Service and conducted extensive research on mountain pine beetles. He taught science in  
25 public schools for 33 years including courses in environmental science and forestry. He also was  
26



1 an Einstein Fellow for the National Science Foundation in Washington, DC and served for 6 years  
2 on the Teachers Advisory Committee for the National Academy of Science. Ms. Town taught in  
3 the Sultan School District and the Towns have been very active in volunteering for their local  
4 schools. The couple share a passion for protection and sound management of Reiter Foothills, as  
5 well as for securing an adequate and reliable source of funding for schools and local government.  
6

7 ***Holly Koon and Max Duncan***

8 24. Holly Koon and Max Duncan are married members of the public residing with their child in  
9 Kendall, WA, in Whatcom County. Their home is at the base of Sumas Mountain, below State  
10 forests that DNR manages. Mr. Duncan works at the nearby Kendall Elementary School.

11 ***Peter Bahls***

12 25. Peter Bahls is a member of the public residing in Port Townsend, WA, in Jefferson County.

13 26. Mr. Bahls is Executive Director of the Northwest Watershed Institute, a non-profit  
14 organization. NWI's mission is to provide scientific and technical support to protect and restore  
15 fish and wildlife habitats and watershed ecosystems of the Pacific Northwest.  
16

17 ***Marcy Golde***

18 27. Marcy Golde is a member of the public residing in Seattle, WA, who spends significant time  
19 at her cabin in Jefferson County, WA, in close proximity to State forests. Ms. Golde participates  
20 in this lawsuit both as a member of the public and in her capacity as a founding member of the  
21 Olympic Forest Coalition.  
22

23 28. Ms. Golde is an avid and longtime forest advocate. She has followed and commented on DNR  
24 policy from an environment perspective since 1979, including the negotiation of the 2005-2014  
25 Sustainable Harvest Calculation settlement, and the 20-year effort to secure a long-term  
26 conservation strategy for the marbled murrelet. Ms. Golde has provided public comment on the

1 DNR trust mandate, the development of the 2015-2024 Sustainable Harvest Calculation, and the  
2 long-term conservation strategy. Ms. Golde has also overseen the creation of a database  
3 monitoring DNR timber sales in the Olympic Experimental State Forest from 2004 to the present.  
4

5 ***Scott Wallace***

6 29. Scott Wallace is a member of the public residing in Twisp, WA, Okanogan County.

7 30. Mr. Wallace owns property adjacent to 160 acres of DNR property slated to be transferred to  
8 the land bank for sale along with several other parcels within the surrounding area of Twisp and  
9 his neighborhood. Mr. Wallace's interest in conservation was forged on his family dairy farm in  
10 the Snoqualmie Valley in King County. The property along the Snoqualmie river was bisected by  
11 streams that contained essential salmon spawning beds. Over the decades, runoff from ridgeline  
12 development had major impact on the valley floor. As young dairy farmer and student he worked  
13 on the Farmland Preservation Program, a successful, and ongoing, King County effort to preserve  
14 farmland from development. This early effort informs his current concerns with DNR's planned  
15 sale of public lands adjacent to his home.  
16

17 ***Linda Lorenz***

18 31. Linda Lorenz is a member of the public who owns property across from DNR forests near the  
19 East Fork of the Lewis River in Clark County. Ms. Lorenz' property is directly across from the  
20 East Fork of the Lewis River, near the Moulton Falls and Hantwick Trail trailheads. Ms. Lorenz  
21 uses the Hantwick Trail on a regular basis and has spent years working with the local community  
22 to protect it and the forested corridor in which the trail lies. The Hantwick Trail is unique in that  
23 it is accessible to disabled individuals and provides health and recreational benefits to a broad  
24 community who enjoy the East Fork of the Lewis river watershed.  
25

26 ***Defendants***

1 32. The Washington State Department of Natural Resources is an agency of the State of  
2 Washington and is responsible for managing forests on Washington State lands. *See* RCW  
3 43.30.030.

4 33. The Board of Natural Resources is part of DNR, RCW 43.30.030, and has the authority and  
5 duty to set land management policy according to sound principles of resource management.

6 RCW 43.30.215. In this Complaint, unless otherwise specified, reference to DNR includes the  
7 BNR.

8 34. Commissioner of Public Lands Hilary Franz is the administrator of the DNR, responsible for  
9 performing all the powers, duties, and functions of DNR except those specifically assigned to the  
10 Board. RCW 43.30.105; RCW 43.30.421. The Commissioner of Public Lands has a seat on the  
11 Board by law, RCW 43.30.205, and is chair of the Board by choice of the other Board members.  
12 The Commissioner also chairs the Forest Practices Board. RCW 76.09.030.

13 35. The state constitution requires that the Commissioner is “severally chosen by the qualified  
14 electors of the state at the same time and place of voting as for the members of the legislature.”  
15 Art. III, section 1. The Commissioner’s duties and compensation are established and may be  
16 changed by the Legislature. Art. III, section 23.

17  
18  
19 **III. JURISDICTION AND VENUE**

20 36. With respect to the declaratory judgment claim in Count I, the Court has jurisdiction pursuant  
21 to RCW 7.24.010. RCW 7.24.010, *et. seq.*, authorizes declaratory relief.

22 37. With respect to the appeals of Board Resolutions 1559 and 1560, the Court has jurisdiction  
23 and authority to issue a constitutional writ of certiorari pursuant to the Washington State  
24 Constitution, art. IV, section 6, and the Court’s resulting “inherent constitutional power to review  
25 illegal or manifestly arbitrary and capricious action violative of fundamental rights.” *Pierce*  
26

1 *County Sheriff v. Civil Service Comm'n for Sheriff's Emps.*, 98 Wn.2d 690, 693, 658 P.2d 648  
2 (1983) (internal quotation omitted); *Saldin Sec. v. Snohomish County*, 134 Wn.2d 288, 292-294  
3 (Wash. 1998).

4 38. King County is an appropriate venue because a Washington State agency and official are  
5 defendants, and because plaintiffs Conservation Northwest and Washington Environmental  
6 Council have their principal place of business in King County, and because plaintiff Marcy Golde  
7 resides in King County. RCW 4.92.010.

9 39. All claims in this case are timely filed. Claim I is timely and justiciable because the correct  
10 interpretation of the trust mandate is an issue of significant public concern, the parties have settled  
11 legal positions, and because Plaintiffs are today members of “all the people” of Washington who  
12 have been harmed or threatened by the current interpretation of the trust mandate and suffer a  
13 concrete threat to their interests resulting from DNR’s pending actions and decisions.

14 40. Claims II and III timely seek writs of review of two Board resolutions approved on December  
15 3, 2019. Plaintiffs seek a constitutional writ of certiorari to appeal the two Board Resolutions  
16 because DNR’s proprietary decisions in the management of public lands are considered exempt  
17 from judicial review under the Administrative Procedure Act (APA). RCW 34.05.010(3)(c).  
18 While there is no prescribed appeal deadline for seeking a constitutional writ of certiorari, courts  
19 often apply the analogous 30-day appeal deadline imposed by the APA, RCW 34.05.542(2). In  
20 the event it is determined that the appealed Board Resolutions are subject to the APA, Plaintiffs  
21 appeal in the alternative under RCW 34.05.570.

22 41. As detailed in the complaint, Plaintiffs have standing to pursue the declaratory judgment  
23 action. The individual plaintiffs, and members of plaintiff organizations, are affected members of  
24 the public who face ongoing procedural and substantive harm caused by DNR’s management of  
25  
26

1 public lands. With respect to each plaintiff DNR has caused procedural harm by asserting that, as  
2 a matter of law, DNR must strictly prioritize its perceived fiduciary obligations to specific trust  
3 beneficiaries and may not manage public lands in a manner that reduces harms to Plaintiffs if it  
4 potentially lessens financial returns to trust beneficiaries. DNR's legal position is incorrect and  
5 violates Plaintiffs' procedural rights under the Washington State Constitution to have their  
6 interests taken into account when DNR manages state forests.  
7

8 42. Individual plaintiffs and members of plaintiff organizations reside near and regularly visit State  
9 forests managed by DNR, and have concrete plans to do so in the future. Plaintiffs suffer resulting  
10 concrete harm or imminent threat of harm to their safety, recreational, aesthetic, and other interests  
11 as a result of DNR's management of state forests.  
12

13 43. Plaintiffs also have standing to challenge the BNR's adoption of Resolutions 1559 and 1560.  
14 The plaintiff organizations Conservation Northwest, Washington Environmental Council, and  
15 Olympic Forest Coalition each have missions that include advocating for sound management of  
16 public lands in Washington. The organizations have extensively participated in the administrative  
17 processes leading up to the BNR's adoption of Resolutions 1559 and 1560, including repeated  
18 written and oral comments submitted to BNR and DNR. Some of the organizations' comments  
19 were dismissed by DNR and BNR as non-compliant with the perceived trust mandate. Members  
20 of plaintiff organizations suffer procedural and substantive harm from the implementation of the  
21 trust mandate, as well as the SHC and marbled murrelet long-term conservation strategy. Members  
22 of each organization regularly visit State forests managed by DNR, have concrete plans to do so  
23 in the future, and suffer health, economic, recreational, aesthetic, and/or other harms from logging  
24 carried out under the sustainable harvest calculation (SHC) and the marbled murrelet long-term  
25  
26

1 conservation strategy (MMLTCS or “long-term strategy”). Members of each organization are also  
2 harmed by the reduced opportunity to view marbled murrelets as a result of DNR’s logging.

3 44. A grant of the requested relief would redress Plaintiffs’ injuries. Correct interpretation of the  
4 constitution to require DNR to manage state forests on behalf of “all the people” would require  
5 DNR to take Plaintiffs’ interests into account when managing state forests where management  
6 decisions impact Plaintiffs, including on a site-specific basis and when determining the SHC and  
7 long-term strategy.  
8

9 **IV. STATEMENT OF THE CASE**

10 ***Background and Legal Framework***

11 45. Washington is blessed with some of the richest and most vibrant forests in the world. In  
12 western Washington, prolific rain, a moderate climate, and rich soils grow large trees quickly.  
13 Those forests support vibrant ecosystems of salmon, old-growth dependent species, wolves, bears,  
14 orcas, owls, and plant life. In eastern Washington, mature dry forests benefit from abundant sun  
15 and snow, and provide valuable shade, fire resiliency, and wildlife habitat.  
16

17 46. In 1889, forests were among the most commercially valuable natural resource in Washington.  
18 The Federal government granted the territory of Washington approximately 3 million acres of  
19 lands in the Omnibus Enabling Act of 1889 (25 U.S. Statutes at Large, c. 180 p. 676) in a  
20 checkerboard pattern of the 16<sup>th</sup> and 36<sup>th</sup> sections of each township. The lands were granted “in  
21 the support of common schools,” § 10, and the Enabling Act mandates that “all lands herein  
22 granted for educational purposes shall be disposed of only at public sale, and at a price not less  
23 than ten dollars per acre, the proceeds to constitute a permanent school fund.” *Id.* at § 11. The  
24 Enabling Act never uses the word “trust,” “fiduciary,” or “beneficiary.”  
25  
26

1 47. The grant provided a low-cost means for the Federal government to provide startup revenue to  
2 new states. The federally granted lands include forest land, range land, and agricultural land, and  
3 lands which now comprise commercial real estate. Washington accepted the granted lands. At  
4 the constitutional convention, the Framers considered, but rejected, an amendment to require  
5 revenue maximization from the management of state lands.  
6

7 48. Art. XVI, sect. 1 specifies that state lands are managed for “all the people” and must be  
8 “disposed of” at full market value, section 2 details the manner of sale at public auction, and section  
9 3 states that “[n]o more than one-fourth of the land granted to the state for educational purposes  
10 shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905.” Section  
11 3 also authorizes the State to sell “timber or stone off of any of the state lands in such manner and  
12 on such terms as may be prescribed by law....”  
13

14 49. Read together, article XVI, sections 1-3 evidence the understanding that lands and timber  
15 would be held and managed for the interests of “all the people” until sold, but when lands and  
16 timber are sold they must be sold in a transparent process for full market value as prescribed by  
17 the Constitution and applicable law. Funds generated from sale would be dedicated to K-12 school  
18 construction and other designated state institutions. This corresponded with the prevailing concern  
19 of the era regarding public land, which was that corrupt state governments would give away public  
20 lands to well-connected timber barons.  
21

22 50. Unlike other western states, Washington opted to retain nearly all of the federally granted lands  
23 and specifically dedicated them to “all the people.” The Washington State Legislature delegated  
24 management of state forests to the Department of Natural Resources and the Board of Natural  
25 Resources. Over time, DNR consolidated grant lands into larger blocks through land swaps,  
26

1 auctions, and purchases. Through this process the federally granted lands morphed from fractured  
2 and scattered parcels to a consolidated land base.

3 51. DNR also owns and manages approximately 546,000 acres of forests acquired from  
4 Washington counties. After logging old growth on private lands, many private individuals and  
5 entities largely abandoned their cutover lands, and in the 1920s and 1930s, counties acquired these  
6 forest lands through tax foreclosures. Later, 21 of these counties opted to transfer lands to the state  
7 of Washington to make use of the State’s considerable management resources. In exchange for  
8 the deed transfer, the county and junior taxing districts in which the land is located are given a  
9 majority of the revenue from timber sales and other revenue-producing activities on these lands.  
10 The Legislature has directed that the “state forest transfer lands” be managed in the same manner  
11 as the federal grant lands. RCW 79.22.040. From time to time, the State also acquires forest lands  
12 via purchase or donation, referred to as state purchase lands. There are approximately 80,000 acres  
13 of such lands.  
14  
15

16 52. State forests therefore are comprised primarily of forests in three categories: federal grant  
17 lands, which derive from lands received at Statehood, “forest board transfer lands,” which were  
18 acquired from certain Counties, and “state forest purchase lands,” which DNR has acquired via  
19 purchase or donation. Collectively DNR manages these forests under the same interpretation of  
20 the “trust mandate.” Plaintiffs refer to these forested lands collectively as “state forests,” and all  
21 forested and non-forested lands collectively as “public lands.”  
22

23 53. Each stand of trees within DNR’s forests are assigned to a specific entity based on the origin  
24 of the lands used to acquire the property. DNR serves a variety of specific entities, including the  
25 common schools construction fund, various state universities, and prisons, as well as the 21  
26 counties who transferred lands to the state for management. DNR refers to these entities as “trust



1 beneficiaries.” The county trust beneficiaries in turn distribute funds to junior taxing districts in  
2 proportions determined by the counties.

3 ***DNR’s Timber Management System under the “Trust Mandate”***

4 54. DNR’s view is that under the Washington State Constitution, the Enabling Act, and common  
5 law, all legally available forests must be logged in a manner designed to generate maximum  
6 revenue for the trust beneficiaries. DNR implements a management system focused on the  
7 development and auction of timber sales with the primary objective of maximizing revenue. As a  
8 result, DNR manages State forests in a manner similar to a private timber company or investment  
9 entity and real estate developer.  
10

11 55. DNR carries out its duties subject to state and federal law. Specific laws directing public lands  
12 management are set forth in the Public Lands Act, RCW 79.10.010 *et seq.* The State Legislature  
13 has never set forth its understanding of the trust mandate in statute, and provides BNR and DNR  
14 with broad discretion in management of public lands.  
15

16 56. The BNR’s organic act tasks BNR with the obligation to “[e]stablish policies to ensure that the  
17 acquisition, management, and disposition of all lands and resources within the department’s  
18 jurisdiction are based on sound principles designed to achieve the maximum effective development  
19 and use of such lands and resources consistent with laws applicable thereto.” RCW 43.30.215(2).  
20 The Public Lands Act requires that logging be conducted on lands “which are primarily valuable  
21 for the purpose of growing forest crops” on a sustained yield basis, but does not preclude lands  
22 having other values and does not require logging to occur for maximum sustained yield. RCW  
23 79.10.320. The Act also provides that “the department is authorized to identify and to withdraw  
24 from all conflicting uses at such times and for such periods as it shall determine appropriate,  
25 limited acreages of public lands under its jurisdiction.” RCW 79.10.210. These set-aside lands  
26

1 “shall be maintained for the benefit of the public and, in particular, of the public schools, colleges,  
2 and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the  
3 natural ecological systems thereon.” *Id.* With respect to non-timber values, the Public Lands Act  
4 recognizes and authorizes “uses additional to and compatible with those basic activities necessary  
5 to fulfill the financial obligations of trust management,” but does not set forth what those basic  
6 activities or financial obligations are. RCW 79.10.120.

7  
8 57. The DNR and BNR have never promulgated regulations explaining the nature or scope of the  
9 trust mandate.

10 58. DNR’s management of public lands is subject to the State Environmental Policy Act, RCW  
11 43.21C.010, *et seq.*. There, the Legislature established *inter alia* that “it is the continuing  
12 responsibility of the state of Washington and all agencies of the state to use all practicable means,  
13 consistent with other essential considerations of state policy, to improve and coordinate plans,  
14 functions, programs, and resources to the end that the state and its citizens may: (a) Fulfill the  
15 responsibilities of each generation as trustee of the environment for succeeding generations.”  
16 RCW 43.21C.020(2).

17  
18 59. DNR manages State forests under several programmatic legal requirements and policies,  
19 including the 2006 “Policy for Sustainable Forests,” which sets forth broad objectives for forest  
20 management, a 1997 “Habitat Conservation Plan” that addresses obligations under the Federal  
21 Endangered Species Act and long-term strategy, and the 2015-2024 sustainable harvest  
22 calculation, which projects decadal timber volumes, and which sets forth broad agency policies  
23 for management related to issues such as recreation and aesthetics. In developing, adopting, and  
24 implementing these policies, DNR takes the legal position that the “trust mandate” requires that  
25  
26

1 the agency provide the minimum protections necessary to comply with applicable law, but  
2 otherwise must maximize revenue for trust beneficiaries as its primary objective.

3 60. In the Policy for Sustainable Forests, DNR states: “[t]he state of Washington, acting through  
4 DNR, has specific obligations in managing the forestlands that are covered by the Policy for  
5 Sustainable Forests because they are trust lands.... With the state as trustee, the Legislature has  
6 designated DNR as manager of the Federal Grant Lands and State Forest Lands. The fiduciary  
7 aspect of trust management requires DNR to manage these lands to produce perpetual income for  
8 the beneficiaries (the trusts).” *See* Policy at 14-15.

10 61. In the Final Environmental Impact Statement for the SHC, DNR references and incorporates  
11 the Policy for Sustainable Forests and states: “As a trust lands manager, DNR must follow the  
12 common law duties of a trustee. Two of these duties were defined in the 1984 landmark decision  
13 *County of Skamania v. State of Washington*: 1) a trustee must act with undivided loyalty to the  
14 trust beneficiaries *to the exclusion of all other interests*, and 2) a state’s duty as trustee is to manage  
15 trust assets prudently.” SHC EIS at 1-5 (emphasis added).

17 62. To implement its legal interpretations and policies, DNR staff uses modelling to project harvest  
18 over the next 100 years. DNR staff plans individual timber sales and conducts review of proposed  
19 sales under the State Environmental Policy Act (SEPA), RCW Chapter 43.21C, the Forest  
20 Practices Act, Chapter RCW 76.09, and other statutes and policies.

22 63. A typical timber sale is a major industrial undertaking which involves road construction;  
23 logging with a feller-buncher and other machinery; yarding, stacking, sorting, and hauling logs;  
24 replanting; and spraying of herbicides and fertilizers. DNR’s most common management regime  
25 is “variable retention harvest,” a technical term for what is commonly known as clearcutting. In a  
26 variable retention harvest, DNR leaves 8 trees per acre and some additional trees around protected

1 resources (primarily fish-bearing streams and steep and unstable slopes). The result of this  
2 approach over time is that more than 85 percent of DNR-managed forests are in “competitive  
3 exclusion phase,” comprised of densely packed stands of relatively young, homogenous  
4 commercial trees that are replanted following logging.

5  
6 64. The Forest Practices Act and SEPA provide for public comment. Often, affected members of  
7 the public provide input on anticipated impacts of the proposed sale. Despite accepting public  
8 comment, DNR takes the legal position that regardless of identified impacts or concerns, as a  
9 matter of law the only measures DNR may take in response to public comment is to adjust legally  
10 required protections but only to the extent those adjustments do not reduce revenue for trust  
11 beneficiaries.

12  
13 65. Following public comment and SEPA review, DNR presents those sales for approval to the  
14 Board of Natural Resources, which is primarily comprised of representatives of entities that benefit  
15 from timber sale revenue. The BNR approves the sales and they are presented for public auction.  
16 At auction, a small number of private timber companies bid for the right to harvest the timber from  
17 State forests according to the specifications in the sale. DNR takes 25 to 50 percent of the revenue  
18 to fund management and pay other administrative costs, depending on the land classification. The  
19 remaining revenue is distributed to specific trust beneficiaries.<sup>1</sup>

20  
21 66. Logging on state forests comprises an important source of revenue through timber auctions,  
22 taxes, and employment. However, due to past overharvest, planning challenges, and increasing  
23 administrative costs, the volume of timber and resulting revenue delivered to specified trust  
24

25  
26  

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<sup>1</sup> DNR takes 50% of the revenue for state forest purchase lands. These lands are those donated or purchased for counties at low value, and may be in poor condition and require greater management expenditures.

1 beneficiaries is often erratic and is generally declining both in an absolute sense and relative to the  
2 funding needs of the trust beneficiaries.

3 67. As a result of DNR's primary objective of maximizing revenue, the agency designs intensive  
4 timber harvest that can easily be carried out by machine, and the agency cannot take into account  
5 local economic benefits of forestry other than revenue generated at auction. Greatly increased  
6 mechanization and consolidation of the timber and milling industries mean that even when there  
7 is significant timber volume, the number and quality of local jobs is declining. DNR's studies  
8 report that it takes at least one million board feet per year of timber volume to provide 7.8 jobs,  
9 and that logging on state forests has little impact on paper manufacturing and wood products  
10 manufacturing jobs. *See* Marbled Murrelet EIS at 3-79.

11  
12 68. In addition to timber harvest, DNR generates revenue for trust beneficiaries from land leasing  
13 and commercial real estate on forested and non-forested lands. In making land management  
14 decisions DNR asserts that it must consider only the financial interests of the trust beneficiaries,  
15 and may take into account the interests of the general public only to the extent it does not affect  
16 such revenue.

17  
18 69. Pursuant to its perceived trust mandate and RCW Ch. 79.19, DNR is engaging in an aggressive  
19 program to auction and swap out lands that it deems to be insufficiently economically productive.  
20 This program is focused on lands in areas of high social and ecological value, where surrounding  
21 communities oppose intensive logging and other management. In implementing the land exchange  
22 program and selecting properties for exchange, DNR contends that it must solely focus on potential  
23 revenue for trust beneficiaries, and consideration of broader public or ecological impacts have no  
24 role in the agency's decisionmaking.

25  
26 ***Impacts and Costs of DNR's Timber Management System Pursuant to the "Trust Mandate"***

1 70. DNR faces serious challenges in its attempts to apply the private trust legal framework to  
2 management of public lands. There is untenable tension between DNR's status as a state agency,  
3 with publicly-elected leadership, state employees, state facilities, and oversight of public lands,  
4 and the agency's view that it must absolutely prioritize maximizing revenue from public lands.  
5 These dual missions are increasingly incompatible as Washington's population grows and expands  
6 into areas traditionally focused on logging, and public and scientific understanding of the non-  
7 timber value of forests grows. The result is a management system that is failing to serve both the  
8 trust beneficiaries and the general public.

10 71. Logging and associated forest practices as carried out by DNR under its perceived legal  
11 obligations generate diverse and significant costs to the public and public resources. Plaintiffs and  
12 members of Plaintiff organizations are members of the public affected by DNR's management of  
13 public lands, and therefore have a right under the Washington State Constitution to have DNR take  
14 their interests into account in making management decisions. As detailed below for purposes of  
15 establishing Plaintiffs' claim for declaratory judgment, DNR violates Plaintiffs' rights under  
16 article XVI of the constitution. The individuals highlighted below are illustrative, and similar  
17 harms are also suffered by members of each of the Plaintiff organizations.

### 19 **Climate Change Impacts**

20 72. In a January 4, 2018 letter to the Washington State Legislature, Commissioner Franz wrote  
21 "we know with certainty that climate change will impact our wildfires, forests, waters and soils,  
22 and the timber, fish, shellfish, crops, and wild plants that sustain our communities. In fact, we are  
23 already living with such impacts and know that they will grow in the coming decades." She then  
24 urged that "[t]he threats to our healthy and productive lands are real, we are already late in  
25 responding, and we cannot afford to wait for others to bring leadership to this challenge."  
26

1 73. Commissioner Franz went on to explain DNR’s newly established “resilience principles.”  
2 With respect to forest management, these principles include to “[i]ncentivize and invest in the  
3 management of working forests in ways that increase carbon storage, grow forest management  
4 jobs, increase soil moisture storage, increase timber value, sustain timber production, improve  
5 summer stream flows, and increase resilience to disturbance.”<sup>2</sup> This letter correctly describes the  
6 fact that forest management can optimize carbon sequestration, revenue, and jobs.  
7

8 74. Unfortunately, despite these public statements, the well-established relationship between  
9 forestry and climate change, and the vast carbon sequestration potential of public lands in  
10 Washington, DNR no plans in place to adapt to climate change, promote resilience, or to prioritize  
11 sequestration of carbon. By the agency’s own admission “DNR does not currently have a policy  
12 that specifically addresses climate change.” SHC EIS at 3-13. Instead, DNR adheres to an  
13 outdated 2006 Policy for Sustainable Forests (PSF), which mentions climate change exactly once,  
14 in passing. PSF at 31. DNR also has not implemented creative opportunities like carbon projects  
15 that would benefit both climate impacts from additional carbon storage as well as provide a  
16 diversified source of revenue for beneficiaries. While these projects can be more complicated on  
17 public lands, they have shown to be successful in other areas, including WEC’s Nisqually Carbon  
18 Project.<sup>3</sup> Instead, DNR is pursuing a status-quo continuation of commercial forestry, in large part  
19 to serve what it views as its legal obligation under the trust mandate to prioritize financial value  
20 from logging.  
21  
22

23  
24 \_\_\_\_\_  
25 <sup>2</sup> *Washington State Department of Natural Resources Resilience Principles*. Available at  
[https://www.dnr.wa.gov/publications/em\\_resilience\\_principles.pdf](https://www.dnr.wa.gov/publications/em_resilience_principles.pdf)

26 <sup>3</sup> *Swedeen Lessons from Exploring the Use of California’s Carbon Market to Leverage Forest Conservation in Washington State. The Nisqually Land Trust Case*. (2016.) Available at [https://wecprotects.org/wp-content/uploads/2016/11/Nisqually-Lessons-Learned\\_full.pdf](https://wecprotects.org/wp-content/uploads/2016/11/Nisqually-Lessons-Learned_full.pdf)

1 75. Every aspect of forest management is affected by climate change. According to DNR in a  
2 summary of climate change impacts, “[t]imber production may be negatively affected by increased  
3 disturbance and prolonged moisture stress in some locations. Increased disturbance will likely  
4 affect critical habitats for forest dependent species and may challenge the existing strategies that  
5 support species recovery. Increased landslide risk may result from heavier rainfall and more rain  
6 in winter, potentially threatening public safety, damaging public resources such as fish and water,  
7 and causing the loss of productive timber lands. Seed diversity and supply may be insufficient to  
8 support reforestation needs. The financial viability of dry forests in eastern Washington is expected  
9 to become more challenging due to reduced productivity. Reforestation of some dry forest areas  
10 may no longer be ecologically viable due to low moisture levels.”<sup>4</sup>

11  
12 76. DNR further predicts that public safety will be placed at risk, as “[l]arge fires are projected to  
13 become more frequent and the fire season is likely to start earlier and last longer, requiring  
14 increased resources over a longer period. Increased wildfire activity is expected to increase the  
15 risk to wildland firefighters, communities, infrastructure and natural resources across the state.”

16  
17 77. DNR’s forestry contributes to climate change, both from emissions and foregone sequestration.  
18 Wood product emissions are the result of fuel burned by logging equipment, the hauling of timber,  
19 milling, wood burned during forestry activities, and the ongoing decomposition of trees after they  
20 are cut. Relative to preservation or less intensive, longer-rotation forestry, DNR’s industrial  
21 forestry is a significant source of carbon emissions, both as a result of timber harvesting operations  
22 and related trucking and milling, and as a result of foregone carbon sequestration. A recent study  
23  
24

25  
26 <sup>4</sup> *Assessment of Climate Change-Related Risks to DNR’s Mission, Responsibilities and Operations, 2014-2016 Summary of Results, Department of Natural Resources, 1,*  
[https://www.dnr.wa.gov/publications/em\\_climate\\_assessment010418.pdf?ovn8b8](https://www.dnr.wa.gov/publications/em_climate_assessment010418.pdf?ovn8b8).



1 titled “Land use strategies to mitigate climate change in carbon dense temperate forests,” (Law et  
2 al. 2018) concluded that forestry is Oregon’s single largest carbon polluter.<sup>5</sup> While forestry under  
3 Oregon law is more intensive than in Washington, similar practices and conditions strongly  
4 suggest high carbon emissions from logging on DNR-managed State forests.

5  
6 78. The location and extent of DNR-managed State forests positions those forests to sequester and  
7 store vast amounts of carbon in trees, roots, and soils if allowed to grow older and not over-  
8 harvested. A recent study, which includes consideration of private lands, suggests that carbon  
9 sequestration in Washington’s forests could be increased by 44% and timber production by 2%  
10 through adoption of more protective management standards coupled with longer rotations.<sup>6</sup>

11 79. A separate study, published by Oregon State University, identifies forests in southwest  
12 Washington and the Olympic Peninsula as “high” forest carbon priority rank. It is titled “Carbon  
13 sequestration and biodiversity co-benefits of preserving forests in the western USA,” by Buotte et  
14 al.<sup>7</sup> The paper concludes that preserving high-carbon-priority forests in the western United States,  
15 which include DNR-managed forests in southwestern Washington and the Olympic Peninsula,  
16 would offset approximately 6 years of regional fossil fuel emissions.

17  
18 80. The 2019 OSU study concludes in part that in high priority forests, “proforestation,” which  
19 consists of measures to return forests to a more natural ecological state, has tremendous potential  
20 to prevent and mitigate the catastrophic impacts of climate change. The paper states:

21  
22       Preservation of high carbon density Pacific Northwest forests that are also  
23       economically valuable for timber production will have costs and benefits to  
24       consider, including socioenvironmental benefits, the feasibility of preservation, and

25 <sup>5</sup> Law et al., *Land use strategies to mitigate climate change in carbon dense temperate forests*. (2018) Available  
26 here: <https://www.pnas.org/content/pnas/115/14/3663.full.pdf>

<sup>6</sup> Davies et al., *Climate Smart Forestry for a Carbon-Constrained World* (Sept. 12, 2017)  
[us.fsc.org/download.ecotrust-forest-carbon-report.415.htm](http://us.fsc.org/download.ecotrust-forest-carbon-report.415.htm).

<sup>7</sup> Buotte et al., *Carbon sequestration and biodiversity co-benefits of preserving forests in the western United States*.  
(Dec. 4, 2019) Available here: <http://dx.doi.org/10.1002/eap.2039>

1 opportunity costs harvest. There is tremendous potential for proforestation,  
2 growing existing forests intact to their ecological potential, which is an effective,  
3 immediate, and low-cost approach to removing carbon dioxide from the  
4 atmosphere (Moomaw et al. 2019). Proforestation serves the greatest public good  
5 by maximizing co-benefits such as biological carbon sequestration and unparalleled  
ecosystem services including biodiversity enhancement, water and air quality,  
flood and erosion control, and low impact recreation. The development of  
governance programs to promote forest preservation will be critical.

6 DNR has not contended with the costs and benefits of managing forest for carbon  
7 sequestration or developed corresponding policies.

8  
9 81. Climate change poses a severe threat to the wellbeing and livelihoods of Washington's  
10 residents, and also to the health and productivity of State forests and other public lands. Governor  
11 Jay Inslee has recognized that immediate actions can and must be taken to protect families and  
12 businesses from the threat of climate change. According to Governor Inslee, Washington leaders  
13 simply "cannot be passive witnesses to catastrophic change." To spur agencies to take much-  
14 needed action, he issued Executive Order 18-01, State Efficiency and Environmental Performance  
15 (Jan. 16, 2018). The Order directs all Washington agencies to consider how their actions contribute  
16 to climate change and to find solutions that will reduce greenhouse gas emissions. According to  
17 the Governor, "if we don't act, our children and grandchildren will inherit these problems on a  
18 scale that's hard to imagine."<sup>8</sup>

19  
20 82. As detailed herein, DNR's failure to adjust to climate change and take advantage of the  
21 opportunity presented by modernizing management of the enormous carbon sink embodied in  
22 State forests harms Plaintiffs, members of Plaintiff organizations, and the people of Washington,  
23 and fails the constitutional requirement to manage State forests on behalf of "all the people."  
24

25  
26 <sup>8</sup> Governor Jay Inslee, *Climate Impacts in Washington State*,  
<https://www.governor.wa.gov/issues/issues/energy-environment/climate-impacts-washingtonstate>  
(last visited May 17, 2019).

1        **Public Safety**

2        83. State forests are often located between rural residential areas and private forestlands. As  
3        Washington’s population and economy quickly grow, there is increasing pressure created by the  
4        incompatibility between industrial, clearcut logging and the many other economic and social  
5        values of forest land.

6        84. DNR’s legacy of decades of intensive logging has drastically reduced old forest conditions and  
7        complex forests on DNR lands. By DNR’s account, 86% of State forests in western Washington  
8        (1.27 million acres) are in a “competitive exclusion phase,” which refers to the dense homogenous  
9        forests that occur after logging. SHC EIS 3-27.

10       85. Increasingly, wildfires occur in both western and eastern Washington. While DNR seeks to  
11       carry out thinning and prescribed burns to reduce fire risk and has focused recent attention on fire  
12       and forest health planning, DNR contends that it is unable to adequately treat overstocked stands  
13       due to the lack of sufficient revenue generated. Similarly, after forests burn, in pursuit of revenue  
14       maximization DNR carries out intensive post-fire salvage sales in a manner that increases risk of  
15       post-fire flooding and decreases ecological elements that support healthy forest restoration.  
16       DNR’s perceived trust mandate constrains the agency from taking adequate measures to reduce  
17       fire risk, and thereby increase risks to Plaintiffs. Forest fires and their effects threaten the safety  
18       and well-being of local communities, including members of Plaintiff organizations whom have  
19       had to evacuate their homes and wear respirators to enable them to simply breathe when forest  
20       fires encroach upon them.  
21       and well-being of local communities, including members of Plaintiff organizations whom have  
22       had to evacuate their homes and wear respirators to enable them to simply breathe when forest  
23       fires encroach upon them.

24       86. Subject to limitations in the Forest Practices Rules, DNR carries out logging and other forest  
25       practices on steep and potentially unstable slopes. Logging on steep or unstable slopes, even under  
26

1 applicable forest practices rules, can increase risk of landslides, which can threaten human lives  
2 and infrastructure and degrade water quality and aquatic habitat.

3 87. Plaintiffs Holly Koon and Max Duncan provide a site-specific example of the public safety  
4 risks imposed by DNR's logging pursuant to the trust mandate. Ms. Koon and Mr. Duncan and  
5 their family live on Sumas Mountain, in Whatcom County. In 2015, DNR proposed the North  
6 Zender timber sale above their house. The two harvest units (~100 acres total) and a new road  
7 segment (~2,300 feet) were located directly on two large deep-seated landslides on Sumas  
8 Mountain. An elementary school, at least 15 residential structures, access roads, a domestic water  
9 supply intake, and a fish hatchery are all also within the potential runout paths of these two large  
10 deep-seated landslides. There are also a significant number of salmon runs (including Coho, Bull  
11 Trout, Pink, Chinook, Steelhead, and Cutthroat) and some wetlands with valuable wildlife habitat  
12 directly downstream of the two landslides in Kendall Creek. In this particular setting, the  
13 confidence in the slope stability assessment must be high because the potential for harm to the  
14 Koon family, the public, and public resources if a landslide were to destabilize is high.

15  
16  
17 88. Concerned about public safety, Ms. Koon and Mr. Duncan retained legal counsel and consulted  
18 with a geologist, Dan McShane (President and Senior Geologist at Stratum Group) who reviewed  
19 the bare earth LiDAR topographic images for the site, and conducted a site visit. Mr. McShane's  
20 opinion was that the proposed logging increased risk of reactivation of the underlying slides.  
21 Subsequently, Dr. David Montgomery, a distinguished professor of Earth and Space Sciences at  
22 the University of Washington) independently and separately provided an opinion to the Seattle  
23 Times that DNR's proposed logging directly over this landslide was imprudent, if not reckless.  
24 Field review and local knowledge documents strong evidence of slope movement, including mass-  
25 wasting sites, pistol-butted trees, cracks in the earth, sharp incipient scarps above the headwall  
26

1 | scarps, road bench failures with ensuing landslides, inner gorge slides on headwater streams, not  
2 | fully developed drainage systems, and unstable worn bedrock.

3 | 89. Local slides in the recent past, such as the 2009 deep-seated landslide in Racehorse Creek  
4 | drainage following DNR logging, help to confirm concerns of potential slide activation.

5 | 90. Working with a local organization, Ms. Koon and Mr. Duncan appealed the forest practices  
6 | permit approval, stating in a declaration that “[i]n the past two decades, multiple mass-wasting  
7 | landslides have damaged our property, closed off road access to our property, and cost us money  
8 | to clean up. Most of these landslides originated from sites in the middle of an old DNR unit above  
9 | our property. Landslides leading from DNR logging roads have also failed and served as the  
10 | starting point for small landslides directly above our property. These slides increased the flow of  
11 | surface water onto our property, requiring us to hand-dig mitigating ditches to handle the increased  
12 | surface flow from DNR land.”  
13 |  
14 |

15 | 91. DNR withdrew the North Zender FPA before logging commenced but has never made a formal  
16 | declaration that the logging application will not be re-filed. Ms. Koon and Mr. Duncan have a  
17 | reasonable fear that should the North Zender timber sale application ever be refiled and approved,  
18 | the resultant deforestation above their home located on steep slopes on top of a deep seated  
19 | landslide could cause devastating harm to their property, their families, their recreational interests,  
20 | and their jobs as Mr. Duncan works at the Kendall Elementary School which is also located directly  
21 | under the path of any reactivation of the deep seated landslide.  
22 |

23 | 92. DNR has advised Ms. Koon and Mr. Duncan that the DNR “trust mandate” requires DNR to  
24 | conduct logging on DNR lands--if such logging is consistent with the applicable forest practice  
25 | rules and DNR policies regardless of whether or not the proposed logging is desirable or prudent  
26 | given the location directly above homes or schools. As a result of concerns that the existing

1 regulations were insufficiently stringent, Ms. Koon and Mr. Duncan were also plaintiffs in a  
2 lawsuit appealing the update to the Washington Forest Practices Board’s Board Manual governing  
3 logging on steep and unstable slopes that were instituted following the landslide at Oso.

4 93. Ms. Koon and Mr. Duncan now enjoy a mutually respectful relationship with their local DNR  
5 staff. After several years of collaboratively and creatively addressing local issues as they arise,  
6 Ms. Koon and Mr. Duncan have come to trust the competence and critical judgement of the DNR  
7 professionals with whom they have worked. For this reason, they were reluctant to join this lawsuit  
8 as plaintiffs. However, they made the decision to join in part out of concern that, pursuant to  
9 DNR’s view of its legal obligations, the North Zender Timber Sale or a similar sale could be  
10 reactivated. In Ms. Koon and Mr. Duncan’s view, the problem lies not with staff, but rather the  
11 “trust mandate” and forest practices rules under which those personnel are obliged to operate. In  
12 Ms. Koon and Mr. Duncan’s experience, local forest managers are constrained by the trust mandate  
13 from finding sensible compromise and creative solutions that would benefit the local community  
14 and trust beneficiaries.  
15

16 94. Ms. Koon and Mr. Duncan also joined this suit because they have a strong conviction that, in  
17 a world of climate change models which predict complex conditions not even imagined when  
18 current laws were written, competent DNR professionals and local experts on the ground should  
19 be free to use their professional judgement to place the interests of ALL of Washington’s citizens-  
20 -current and future—at the heart of the decision-making process.  
21

22 95. Finally, Ms. Koon and Mr. Duncan strongly believe that no other homeowner need face the  
23 mental harm caused by lying awake at night during a rain-on-snow event (or increasingly common  
24 severe rain storm) wondering if a clear-cut above their home may be increasing the likelihood  
25 of initiating a landslide that could bury them alive. They believe that a more holistic view of  
26

1 DNR's management obligations to serve the public would allow individual foresters needed  
2 flexibility to both generate revenue and take into account the reasonable public safety concerns of  
3 the local community. Such a broader consideration would allow foresters the discretion to consider  
4 not only the degree of risk of slide created by proposed forest practices on public lands, but also  
5 the consequences of a slide if it were to occur.  
6

### 7 **Forest Health**

8 96. DNR's focus on revenue from logging as the primary objective has led the agency to forego  
9 many necessary measures to promote forest health. While the agency has made efforts to improve  
10 forest health, those efforts are severely constrained by the perceived trust mandate. DNR claims  
11 that ecological thinning, prescribed burns, and other forest health measures are insufficiently  
12 lucrative and therefore cannot be carried out absent allocations of outside funds.  
13

14 97. In western Washington, DNR has acknowledged that historical logging of riparian buffers  
15 (protective forests surrounding streams) has led to dense stands that require thinning in order to  
16 promote large woody debris, water quality protection, and salmon habitat. As part of its Habitat  
17 Conservation Plan and associated Federal law obligations the agency agreed to carry out ecological  
18 thinning in these areas according to strict standards.  
19

20 98. However, DNR has determined that ecological thinning practices are insufficiently lucrative  
21 to carry out to the extent needed. As a result, in the 2005-2014 SHC DNR performed only a small  
22 fraction of anticipated thinning. The agency committed to 394 million board feet of thinning but  
23 only performed 39 million board feet, less than 1 percent of which occurred in riparian areas. SHC  
24 EIS at 2-4. In the upcoming sustainable harvest calculation the BNR chose an alternative with the  
25 least riparian restoration, and elected not to include such logging in the sustainable harvest  
26

1 calculation because it is not lucrative and reliable enough. “Harvest activities are expected to take  
2 place on an average of 11,447 acres and thinning on 1,592 acres per year.” SHC EIS at 2-15.

3 99. In eastern Washington, DNR’s historical overharvest, particularly of the largest diameter trees  
4 (termed “high-grading”) has resulted in extensive acreage of dense, overstocked stands that present  
5 great risk of wildfire. In a DNR report titled “The Case for Active Management of Dry Forests  
6 Types in Eastern Washington: Perpetuating and Creating Old Forest Structures and Functions,”  
7 DNR argues for active management of dry forest types in eastern Washington in order to preserve  
8 and perpetuate older forest structures and functions. Specifically, the report details the values of  
9 large old trees and older forest structures in these dry forests, presents the scientific evidence that  
10 substantiates sustain-able active forest management, and offers management guidelines for the  
11 restoration and maintenance of older forest conditions.<sup>9</sup>

12  
13  
14 100. In DNR’s “Assessment of Climate Change Related Risks” document, the agency notes that  
15 “[f]orest health treatment needs exceed the pace and scale possible with current resources. Tree  
16 mortality will likely increase due to interactions between reduced soil moisture, pests, and  
17 pathogens, especially in eastern Washington,” and also describes increased risk of wildfire.<sup>10</sup> In  
18 DNR’s “20 Year Forest Health Strategic Plan,” the agency writes that restoring stand diversity is  
19 important for fire resilience, but that “most DNR trust lands will likely provide early to midseral  
20 stage forests [dense young forests] where revenue production is a primary objective.”<sup>11</sup>

21  
22  
23  
24 <sup>9</sup> Franklin et al., *The Case for Active Management of Dry Forest Types in Eastern Washington: Perpetuating and  
Creating Old Forest Structures and Functions*. (Sept. 2008) Available at  
[https://www.dnr.wa.gov/Publications/lm\\_ess\\_eog\\_mgmt.pdf](https://www.dnr.wa.gov/Publications/lm_ess_eog_mgmt.pdf)

25 <sup>10</sup> *Washington State Department of Natural Resources Assessment of Climate Change-Related Risks to DNR’s  
Mission, Responsibilities and Operations, 2014-2016 Summary of Results*. Available at  
26 [https://www.dnr.wa.gov/publications/em\\_climate\\_assessment010418.pdf?f4d80f](https://www.dnr.wa.gov/publications/em_climate_assessment010418.pdf?f4d80f)

<sup>11</sup> *Washington State Department of Natural Resources 20-Year Forest Health Strategic Plan, Eastern Washington*.  
Available at [https://www.dnr.wa.gov/publications/rp\\_forest\\_health\\_20\\_year\\_strategic\\_plan.pdf?fuivas](https://www.dnr.wa.gov/publications/rp_forest_health_20_year_strategic_plan.pdf?fuivas)



1 101. DNR both recognizes the need to protect and promote forest health in western and eastern  
2 Washington, but does not do so as a result of the agency’s view that it must prioritize maximization  
3 of revenue. In many instances where thinning of small-diameter trees and retention of larger, older  
4 trees is needed to promote fire resilience and healthy forests, DNR instead chooses to log large  
5 diameter trees in order to meet volume and revenue goals.

7 102. DNR’s view that it must maximize revenue prevents the agency from adequately protecting  
8 and promoting forest health, with resulting harms to native ecosystems. Members of Plaintiff  
9 organizations reside near unhealthy state forests, and live in fire-prone areas near state forests.  
10 Plaintiff organizations have regularly advocated DNR for improved measures to promote forest  
11 health, and have been advised by DNR that forest management must maximize revenue. DNR’s  
12 failure to manage forests for “all the people” further creates increased risk of wildfire and  
13 associated public safety hazards throughout Washington that harm Plaintiffs.

15 **Economic and Recreational Impact**

16 103. The industrial forestry carried out by DNR creates significant economic harms, particularly  
17 in communities where recreation is an economic driver. In many locations, timber harvest on DNR  
18 lands is compatible with the surrounding “working forest” landscape. In other locations,  
19 particularly near rapidly-growing urban or suburban areas, DNR’s trust mandate-driven policy of  
20 maintaining an aggressive timber program collides with the interests of local residents or the  
21 general recreating public’s desire for public lands that provide clean water, recreation, scenic  
22 beauty, and trails running through natural Northwest forests. In these areas, tourism, recreation,  
23 hunting and fishing, and property taxes often provide much greater economic value over time than  
24 a timber harvest every 40-70 years (the approximate range of “harvest rotations” typically  
25 employed by DNR).  
26

1 104. Plaintiffs Mike and Meg Town provide a site-specific example of the economic impacts of  
2 DNR’s logging pursuant to the trust mandate, in the Reiter Foothills state forest. The Reiter  
3 Foothills forest surrounds Wallace Falls State Park in Snohomish County. The park is accessed  
4 from the town of Gold Bar, off State Highway 2. Gold Bar, Index, and surrounding towns have  
5 increasingly become home to commuters who work in Everett, Edmonds, and Seattle but desire  
6 high quality of life and recreation offered by rural communities.  
7

8 105. Wallace Falls State Park is a popular forested park featuring the Wallace River and several  
9 waterfalls. The Seattle Times documented Wallace Falls as a place where “[m]ossy, old-growth  
10 trees and gorgeous waterfalls treat hikers to a sense of wilderness, but the beautiful vistas at  
11 Wallace Falls are less than an hour’s drive from Everett.” The Park and surrounding area is often  
12 celebrated by the local chamber of commerce, local politicians, and non-profits as a stunning  
13 attraction, and it draws heavy use from throughout the State year-round. Surveys by Wallace Falls  
14 staff indicate that between 2011 and 2016, park use increased from 140,000 annual visitors to  
15 175,000. The Washington Trails Association’s website describes Wallace Falls as “one of the  
16 State’s most popular attractions,” and posts a warning that parking may be unavailable for visitors.  
17 Snohomish County acquired additional land in order to provide parking and greater trail access.  
18

19 106. The popularity of Wallace Falls State Park has pushed trail users and recreation to the  
20 surrounding DNR-managed State forest. In 2012, DNR received a \$325,000 grant from the  
21 Recreation and Conservation Funding Board to create trails in the area surrounding Wallace Falls  
22 State Park.  
23

24 107. Wallace Falls and the surrounding lands are a key driver of the regional economy.  
25 Snohomish County’s recent “Tourism Strategic Plan” recognizes public land as integral to  
26 economic growth, and Governor Inslee’s Executive Order 14-01 (“Establishing a Blue Ribbon

1 Task Force to Develop a Transformation Strategy for Outdoor Recreation in Washington State”)  
2 states that “outdoor recreation activities in Washington directly support 227,000 jobs and  
3 consumers spend \$22.5 billion on outdoor recreation equipment, apparel, lodging, and other  
4 services, generating \$1.6 billion in state and local tax revenue.”

5  
6 108. Despite the pristine beauty and popularity of Wallace Falls, DNR insists that the trust  
7 mandate requires it to undertake business-as-usual industrial logging directly adjacent to the  
8 boundaries of the park. In March 2014 DNR proposed an approximately 187-acre state timber  
9 sale, known as “Singletary,” directly to the east of Wallace Falls.

10 109. DNR waited for approximately two years as a result of permit delays due to a bridge permit,  
11 and then brought the sale back to the Board of Natural Resources for consideration in the fall of  
12 2016 and winter of 2017. The sale encountered substantial local opposition and requests for the  
13 sale to be reconfigured to be less impactful. According to a Snohomish County joint resolution,  
14 Wallace Falls is “one of the county's great hiking trails, tourist attractions, and recreational and  
15 economic assets.” Indeed, the county first urged DNR to reduce the size of the sale to reflect  
16 Snohomish County’s wish to protect some of the forest. DNR rejected that request based on its  
17 belief that the trust mandate precludes the agency, *even at the request of a beneficiary*, from  
18 foregoing potential revenue. Snohomish County later offered to sacrifice its share of the timber  
19 revenue for a 25-acre reconveyance from DNR, and sought a delay of the timber sale to acquire  
20 funds to compensate junior taxing districts for the remaining lost timber revenue.  
21

22  
23 110. On October 19, 2016, the Mayor of Gold Bar wrote to DNR: “Regarding the upcoming  
24 Singletary Timber sale in Snohomish County, the City also recognizes such timber sales and the  
25 income generated for local taxing districts to be one-time events with a potential of fifty to sixty  
26 year harvest cycles. Visitors to the Wallace Falls State Park bring a sustainable source of income

1 to the Skykomish Valley. Since its inception, this Park has been a perennial favorite with hikers  
2 and it is anticipated that this demand will only continue to grow.... A timber sale such as Singletary  
3 will potentially have negative impacts on both the contributions to current local economies, and  
4 the tourism industry.”

5  
6 111. Local conservation organizations appealed the sale to Snohomish County Superior Court  
7 under the State Environmental Policy Act and prevailed on a narrow issue that required  
8 reconsideration of environmental impacts by DNR. Following that decision, and to demonstrate  
9 to DNR and affected trust beneficiaries that the citizens who opposed the Singletary sale  
10 acknowledge that forestry, scenic resources, and recreation are not necessarily incompatible, local  
11 citizens commissioned a independent professional forestry plan for the Reiter Forest generally and  
12 the Singletary area specifically. This plan sought to locate smaller clear-cuts away from  
13 recreational trails and the State park while, at the same time, producing timber that would achieve  
14 approximately 60% of DNR’s harvest volume target.  
15

16 112. Despite these good faith attempts to compromise, DNR pushed forward. DNR announced  
17 in October 2019 that pursuant to its trust mandate it was proceeding forward with a re-designed  
18 sale, renamed the “Middle May” timber sale. DNR is pursuing several additional timber sales in  
19 close proximity to Wallace Falls State Park. The Middle May sale involves roughly the same  
20 number of acres as Singletary but the logging units are more spread out and the area around the  
21 biggest trails would be thinned for northern spotted owl habitat instead of clear-cut. This  
22 reconfiguration demonstrates DNR’s view that it may only adjust timber sales according to  
23 existing legal requirements, and the degree to which the perceived trust mandate constrains DNR  
24 staff. Throughout the planning process, both in statements to the public and to the BNR, DNR  
25  
26

1 staff has expressed that their ability to find a compromise solution is greatly constrained by the  
2 agency's perceived trust mandate.

3 113. City of Gold Bar resolution No. 19-15, dated December 17, 2019, confirms that the local  
4 government remains concerned about the negative economic impacts of DNR's logging in the  
5 vicinity of Wallace Falls State Park. It states in part that "the City of Gold Bar has a history of  
6 mining and logging that, while an important part of history and heritage, no longer serves as viable  
7 sources of employment or income for its residents," that "timber sales, whether the Singletary plan,  
8 the newly proposed plan called Middle May, or other such plans to harvest vast amounts of forest  
9 in the surrounding area will negatively and drastically impact both the beauty and functionality of  
10 the forests for many decades to come," and "economic growth for Gold Bar and the Skykomish  
11 valley is primarily going to come through tourism and services in the next fifty years and not  
12 through selling natural resources." The resolution requests that DNR and local governments "find  
13 ways to manage the land being proposed for harvesting that will preserve the natural beauty and  
14 outdoor recreation, and that will provide sustainable economic benefit for years to come."

15 114. Plaintiff Mike Town has been a leader in protecting and promoting Reiter Foothills. He  
16 has volunteered over a thousand hours working on DNR-related forest issues in the Reiter Foothills  
17 Forest, including the Singletary proposed sale and others in the vicinity. Mr. Town serves on the  
18 Reiter Foothills Forest Recreation Advisory Board. Mr. Town has also worked with Washington  
19 State Parks to protect and to explore the expansion of Wallace Falls State Park into the DNR lands  
20 that lie adjacent to it. Mr. Town has participated in dozens of meetings with DNR staff relating to  
21 proposed logging in Reiter Foothills Forest.

22 115. Mr. Town has visited the site of the proposed Singletary sale hundreds of times and has  
23 concrete plans to continue to do so in the future. He has given tours of the site multiple times. He  
24  
25  
26

1 has a passionate personal interest in the well-being of the Reiter Foothills Forest and has dedicated  
2 much of his life to its protection. DNR's continued pursuit of highly impactful timber sales in  
3 Reiter Foothills pursuant to its perceived trust mandate, and inability to modify timber harvest to  
4 accommodate interests other than maximization of revenue, harms Mr. Town.

5  
6 116. Another example of the trust mandate compromising the greater public interest is playing  
7 out today in Clark County. There Plaintiff Linda Lorenz owns property near DNR managed State  
8 forests, which include the regionally popular wheelchair-accessible Hantwick Trail. In mid-2018,  
9 Ms. Lorenz learned that DNR was planning a timber sale known as "Michigan Trotter." Unit 1 of  
10 this sale includes the area above and to the south of a large portion of the Hantwick Trail as well  
11 as the East Fork of the Lewis River, which comprises valuable steelhead habitat. Since that time,  
12 Ms. Lorenz has attended multiple meetings with DNR about Unit 1 of the sale, has organized local  
13 and regional activists, and helped convince the Clark County Council to work hard to prevent  
14 DNR's logging from damaging the trail and surrounding forest, polluting the river, and potentially  
15 harming the river's population of threatened steelhead.  
16

17 117. DNR staff have informed Ms. Lorenz that, as a result of DNR's trust mandate, the agency  
18 has no choice but to log the forests above the trail included in the Michigan Trotter sale and future  
19 sales, and absent financial compensation may not provide any additional buffers to protect the  
20 Hantwick Trail, public safety, recreational and health benefits, or steelhead habitat. If the forests  
21 above the Hantwick Trail are intensively logged as DNR plans, it will reduce Ms. Lorenz's  
22 enjoyment of her property and the Hantwick Trail. DNR's proposed logging and ongoing threat  
23 of logging in the surrounding forest pursuant to its trust mandate causes recreational, aesthetic,  
24 and health impacts to Ms. Lorenz.  
25

26 **DNR's Sale and Exchange of Forests and other Public Lands Deemed "Unproductive."**

1 118. In response to the pressures of population growth, DNR has increasingly decided to auction  
2 or exchange forest land in suburban and surrounding areas, resulting in logging and conversion to  
3 commercial and residential use. Where DNR elects to auction or exchange forest lands for  
4 commercial use, public resources are significantly degraded, if not completely lost.

5  
6 119. The basis for DNR’s land auctions and exchanges is its perceived trust mandate and uses  
7 the “land bank” program created in RCW Ch. 79.19. DNR is currently pursuing the 2019 Land  
8 Bank Exchange. It describes the goals of the program as follows: “DNR proposes to exchange  
9 State trust lands, which are no longer suitable for trust ownership, with properties that have greater  
10 revenue potential to support the trust beneficiaries. Following the exchange, the properties no  
11 longer held in trust ownership will be positioned for sale, with proceeds used to purchase more  
12 productive properties.”<sup>12</sup>

13  
14 120. In support of the claim seeking declaratory judgment, Plaintiffs Peter Bahls and Scott  
15 Wallace provide examples of the impacts of DNR’s forest conversion efforts. Plaintiff Peter Bahls  
16 is impacted by DNR’s proposed sale of two parcels in Jefferson County near Hood Canal, known  
17 as the “Paradise 40” and the “Canal 40.” One of the parcels, the Paradise 40 remains heavily  
18 forested; the other, the Canal 40, has been logged.

19  
20 121. Both the Canal and Paradise 40 liquidations raised immediate environmental concerns from  
21 private citizens, local government, three Indian tribes, and three environmental organizations. The  
22 Jefferson County Commissioners advised DNR that it “opposed the sale.” The Commissioners  
23 reasoned that the sales threatened to convert working forest land into development lands, and are  
24 inconsistent with the County’s unanimous decision in 2011 encouraging DNR to consider an  
25

26  

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<sup>12</sup> Washington State Department of Natural Resources Land Bank Exchange 2019. Available at  
<https://www.dnr.wa.gov/managed-lands/land-transactions/land-bank-exchange-2019>

1 alternative forest asset management plan, prepared by a retired DNR forester with 20 years of  
2 experience, urging DNR to retain its holdings in the eastern portion of Jefferson County.

3 122. Jefferson County Commissioners further noted that the Canal 40 sale contains core habitat  
4 for the lower Duckabush elk herd, and that the Paradise 40 was development-prone forest land  
5 near Port Ludlow.

6  
7 123. Mr. Bahls is adversely impacted by DNR's proposal to sell "Canal 40" and "Paradise 40."  
8 He has a strong interest in advocating for public resources, including clean water and wildlife  
9 habitat, and regularly recreates on sites in E. Jefferson County and visits these sites.

10 124. Plaintiff Scott Wallace of Okanogan County is affected by a similar auction proposed by  
11 DNR of approximately 490 acres just outside Twisp, WA. The lands are undeveloped shrub steppe  
12 and riparian area habitat. DNR desires to sell them based on the belief that the agency must make  
13 more money for the trusts. Development of these parcels could have multiple adverse  
14 environmental impacts, including increasing sprawl, straining limited water resources, and  
15 developing shrub steppe and riparian habitat.

16  
17 125. Like many residents and visitors, Mr. Wallace uses these public lands for recreation and  
18 the opportunity for viewing wildlife. These parcels slated for sale provide habitat for denning  
19 rattlesnakes, nesting raptors and browse for mule and whitetail deer as well as a host of birds and  
20 other wildlife. Mr. Wallace and his neighbors have worked to keep trails accessible and free of  
21 litter and noxious weeds. Mr. Wallace's recreational and aesthetic enjoyment of the lands and his  
22 property would be diminished by the auction.

### 23 **Water Quality, Salmon, Wildlife, and Native Ecology.**

24  
25 126. DNR's history of conversion of complex, old forests to homogenous plantations has  
26 profound ecosystem impacts to wildlife and humans. As compared to more complex forests, the



1 1.27 million acres of State forests in competitive exclusion phase provide limited wildlife or  
2 ecosystem value, and lead to greatly reduced surface water quantity and quality. DNR concedes  
3 that in these forests “[t]rees fully occupy the site, competing for light, water, nutrients, and space.  
4 Dense overstory means there are few or no shrubs or groundcovers and relatively little wildlife  
5 use.” SHC EIS at 3-17.

6  
7 127. DNR’s logging of State forests with complex stand structure and rare ecological conditions  
8 is causing continuing harm to the public interest. As one example in support of the claim for  
9 declaratory judgment, Plaintiffs Mr. Bahls, the Washington Environmental Council, and the  
10 Olympic Forest Coalition, are deeply concerned with DNR’s planning of timber sales that involve  
11 the harvest of known rare forest plant associations in the vicinity of the Dabob Bay Natural Area  
12 in Jefferson County. Within the harvest unit boundaries of planned DNR timber sales in the Dabob  
13 Bay area, Natural Heritage Program botanists documented at least two globally imperiled forest  
14 types endemic to the Puget Trough in Washington with very few known good quality occurrences.

15  
16 128. At one point in time, DNR had included these forests in a proposed expansion of the  
17 Natural Area, but they were later excluded from the Natural Area at the request of the DNR  
18 Olympic Region Office in order to meet the planned sales and expected volume. DNR’s expressed  
19 view is that it must log these forests to the full extent allowable, regardless of the Plaintiffs’  
20 concern regarding extremely rare ecological features. The logging proposals are a direct result of  
21 DNR’s perceived trust mandate.

22  
23 129. DNR’s logging and associated forest practices also adversely impact water quality and  
24 quantity. Forest practices rules and DNR policies allow logging around headwater streams, and a  
25 dense network of logging roads increases sediment in streams. For example, the Olympic  
26 Experimental State Forest, managed by DNR, contains very high road density ranging from 3.7 to

1 5.0 miles of forest road per square mile of forest. In one study carried out in the same region,  
2 watersheds with a road density of 4 miles per square mile had elevated sediment loads between  
3 2.6 to 4.3 times the expected natural background rate from basins without logging and logging  
4 roads.<sup>13</sup> Sediment in streams harms adult fish, reduces spawning substrate, and can reduce benthic  
5 insect life and cover salmon redds and eggs.

7 130. Recent studies conclude that logging in Douglas fir dominant forests (which State forests  
8 primarily are), results in sustained depletion of late spring, summer and fall streamflow by up to  
9 50% for periods of greater than 50 years after logging.<sup>14</sup> Decreased stream flow leads to decreased  
10 fish passage and warmer temperatures.

11 131. DNR concedes that its activities degrade wildlife habitat and water quality, with associated  
12 harms to threatened and endangered species, and for that reason applied for and received  
13 “incidental take permits” to harm threatened and endangered species issued by the U.S. Fish and  
14 Wildlife Service and the National Marine Fisheries Service.

16 132. While DNR has protections in place for water quality and wildlife, those protections serve  
17 to somewhat reduce ongoing harm to those resources to the minimum extent allowable. Under the  
18 correct reading of the Washington State Constitution, DNR would not always protect wildlife  
19 instead of logging, but DNR would have the ability to adjust its management in appropriate  
20 circumstances to reflect impacts to the public’s interest in preservation and recovery of native  
21 ecosystems.

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23  
24 <sup>13</sup> Cedarholme et al. 1981. *Cumulative Effects of Logging Road Sediment on Salmonid Populations in the  
Clearwater River, Jefferson County, Washington*. Available here:

25 [http://www.krisweb.com/biblio/gen\\_uofw\\_cederholmetal\\_1981\\_impacts.pdf](http://www.krisweb.com/biblio/gen_uofw_cederholmetal_1981_impacts.pdf)

26 <sup>14</sup> Perry, T.D., and J.A. Jones. 2016. *Summer streamflow deficits from regenerating Douglas-fir forest in the Pacific  
Northwest, USA. Ecohydrology* 2016:1-13. DOI 10.1002/eco.1790; see also Memo from Chris Frissell, PhD,  
*Implications of Perry and Jones (2016) study of streamflow depletion caused by logging for water resources and  
forest management in the Pacific Northwest*, available here: [http://oregon-stream-protection-coalition.com/wp-  
content/uploads/2017/10/MEMO-RE-Implications-of-Perry-and-Jones-2016.pdf](http://oregon-stream-protection-coalition.com/wp-content/uploads/2017/10/MEMO-RE-Implications-of-Perry-and-Jones-2016.pdf)

1 133. DNR’s view is that it must log to the greatest extent allowable, irrespective of impacts to  
2 wildlife or native ecosystems that are not strictly protected. Plaintiffs, including Marcy Golde,  
3 who enjoys the opportunity to view marbled murrelets, salmon, and other wildlife on state forests  
4 and surrounding lands in Jefferson County, are harmed by DNR’s interpretation of its trust  
5 mandate and the agency’s resulting land management.  
6

7 ***The Board of Natural Resources’ Adoption of Resolutions 1559 and 1560***

8 134. On December 3, 2019, the BNR adopted Resolutions 1559 and 1560, concerning the long-  
9 term marbled murrelet conservation strategy and the sustainable harvest calculation. Plaintiffs  
10 seek writs of certiorari to appeal both of these decisions. As detailed below, in both of these major  
11 decisions, the Board’s discretion was severely limited and compromised by its incorrect and  
12 unconstitutional perception of its trust mandate and the alleged limits on its authority to protect  
13 the broader public interest.  
14

15 **The Sustainable Harvest Calculation**

16 135. The SHC is the “volume of timber scheduled for sale from state-owned lands during a  
17 planning decade as calculated by DNR and approved by the Board.” RCW 79.10.300 (5).  
18 “Sustainable” means “harvesting on a continuing basis without major prolonged curtailment or  
19 cessation of harvest.” RCW 79.10.310. The broad definition allows DNR significant discretion  
20 in setting the method, volume, rotation length, and location of anticipated logging.  
21

22 136. DNR conducts the SHC calculation by dividing up all state forests into sustainable harvest  
23 units and the Olympic Experimental State Forest. This calculation takes into consideration the  
24 overall forest land base of State forests and the multiple regulatory and policy restrictions  
25 governing logging on state forests.  
26

1 137. To set the level of harvest for the next decade, DNR recently evaluated six alternatives  
2 with varying volume levels. The alternatives ranged in proposed average annual “harvest acres”  
3 from 8,900 acres per year and 384 million board feet of timber to 12,500 acres per year and 550  
4 million board feet of timber. The range of average annual acres of thinning activities undertaken  
5 to improve forest health ranged from approximately 1,600 to 7,500.  
6

7 138. Throughout the process of selecting the SHC, DNR and the BNR stated the belief that the  
8 agency was legally required to adopt the SHC that maximized financial returns to trust  
9 beneficiaries. A stated objective constraining DNR’s evaluation of alternatives was to “[e]nsure  
10 alternatives analyzed are reasonable, feasible, and consistent with DNR’s trust management  
11 obligations, existing DNR policies, and applicable state and federal laws.” SHC EIS at S-2.  
12

13 139. On December 3, 2019, the BNR approved Resolution 1560, which *inter alia*, selected  
14 “alternative 6” for the SHC. The selected alternative includes an average of 11,400 acres of upland  
15 logging per year to deliver 465 million board feet on average. The BNR selected the least amount  
16 of thinning, at approximately 1,600 acres per year, and further directed that volume from thinning  
17 not count toward the SHC. BNR directed DNR to implement the SHC selection by preparing  
18 timber sales that deliver the requested volume. The result of this decision is continue status quo  
19 industrial logging. To the extent BNR made changes in approach, it opted to strongly de-  
20 emphasize forest health restoration and to further focus and intensify “variable retention harvest,”  
21 clearcutting, in the uplands.  
22

23 140. DNR also elected not to meaningfully update its 2006 Policy for Sustainable Forests, which  
24 guides implementation of the SHC, even though that Policy by its own terms required revision as  
25 of 2011, is not based on best available forest science, contains one mention of climate change, and  
26 does not consider the value of carbon sequestration.

1 141. Decades of industrial logging practices have degraded DNR’s state forests, and  
2 meaningfully improving forest health would require a significant change in management approach.  
3 About 86% of its forests (1.27 mil. acres) are in a crowded “competitive exclusion stage,” and only  
4 10% of them are in the “Structurally Complex,” a stage which provides significantly more benefits  
5 for other values.<sup>15</sup> However, as a result of its perception of the trust mandate, with the adoption  
6 of the 2015-2024 SHC DNR plans to continue approximately its status quo approach of industrial  
7 logging to maximize revenue. DNR’s past policy has been to harvest “structurally and biologically  
8 diverse stands and converting them into even-aged young stands dominated by Douglas Fir.” SHC  
9 FEIS, at 5-3. None of DNR’s considered alternatives will appreciably improve the structural  
10 complexity of State forests over the next 50 years. SHC EIS at 4-19.  
11

12 142. DNR's Federal Habitat Conservation Plan does drive some improvement in structural  
13 complexity over time. However, these improvements are not expanded in the general management  
14 of DNR lands under the newly adopted SHC given the stated constraints of the Trust  
15 Mandate. This decision will leave the majority of DNR's forests in western Washington in a less  
16 ecologically resilient status than is needed to adapt to climate change and support the state's native  
17 biological diversity.  
18

19 143. BNR’s decision to continue a status quo approach to logging means that the agency is  
20 foreclosing the opportunity to implement a meaningful climate policy because DNR will instead  
21 be driven by delivering the volume for specific trust units in the manner and time set forth in the  
22 SHC.  
23

24  
25  
26  

---

<sup>15</sup> SHC EIS, at 3-27. “Structurally-complex” forests “increase species diversity and greater abundance of understory species, particularly those associated with older forest conditions. SHC FEIS, at 4-19.

1 144. While the SHC included an objective to “[c]onsider climate change as part of the affected  
2 environment, analyze climate change impacts and benefits of the alternatives, and identify possible  
3 mitigation measures that will reduce or eliminate any identified adverse environmental climate  
4 change impacts of the proposal,” SHC EIS at 5-2, the agency did not consider or evaluate adoption  
5 of any forest management standard dictated by sound climate policy. Instead, DNR gave itself  
6 “credit” for forests that the Legislature has already approved funds for DNR to preserve in natural  
7 or recreational status park status (termed Natural Resource Conservation Areas and Natural Area  
8 Preserves) and its federal HCP. DNR arbitrarily and capriciously determined that its logging  
9 regime selected in the SHC EIS has no adverse climate change impacts and failed to implement  
10 any climate change policy.  
11

12 145. The BNR’s adoption of the SHC was based on an erroneous and unconstitutional  
13 interpretation of its perceived trust mandate, which unlawfully limited its jurisdiction. The  
14 adoption was arbitrary and capricious and justifies review by constitutional writ of certiorari.  
15

#### 16 **The Marbled Murrelet Long-Term Conservation Strategy**

17 146. DNR implements the Trust Lands Habitat Conservation Plan, signed in 1997. Adherence  
18 to the HCP provides DNR with a permit to harm threatened and endangered species through its  
19 forest practices. One of the species harmed by DNR logging is the marbled murrelet, a federal and  
20 State-listed threatened seabird.  
21

22 147. The marbled murrelet is a true Pacific Northwest icon because it raises its young in large  
23 stands of mature conifer forests and dives for fish in the cold, rich waters of the Pacific Ocean and  
24 Puget Sound. Marbled murrelets fill a narrow biological niche within their rugged habitat. The  
25 adult female lays a single egg on a wide mossy branch of a Douglas fir, western hemlock, Sitka  
26 spruce, western red cedar, or big leaf maple tree. Once the egg has hatched, the parents take turns

1 protecting the egg and flying up to 55 miles from the nest to marine waters to gather food for the  
2 chick. To catch fish and marine life, the marbled murrelet flies under water like a penguin. To  
3 complete its round-trip journey, short, strong wing beats power the bird at speeds up to one hundred  
4 miles an hour. Murrelet chicks are no less impressive. Their feet barely touch the ground—after  
5 molting, they leap from the nesting platform and either crash to the forest floor far below or  
6 successfully take flight, bound directly for the salt water. The marbled murrelet is dependent upon  
7 large, contiguous stands of mature forests for nesting habitat.  
8

9 148. Logging adversely affects marbled murrelets in many ways, including decreasing the  
10 proportion of marbled murrelets able to find nest sites, fragmenting and creating “edges” around  
11 blocks of habitat (which allows greater depredation by crows and other corvids and other  
12 detrimental edge effects), and forcing murrelets into lower-quality habitat with negative  
13 consequences for nest success. The noise disturbance created by road construction and heavy  
14 logging machinery also adversely impacts murrelets.  
15

16 149. The U.S. Fish and Wildlife Service (USFWS), Washington Department of Fish and Wildlife  
17 (WDFW), and DNR have all confirmed that loss of habitat due to logging is the leading cause of  
18 continued decline of marbled murrelets in Washington. For example, a 2008 DNR report  
19 concluded that the “greatest threat identified to marbled murrelets in Washington” is “loss of  
20 habitat-containing quality nesting sites” and “an increase in forest fragmentation which is thought  
21 to increase predation and decrease nesting success.”  
22

23 150. Over the past several decades, commercial timber harvest has decimated marbled murrelet  
24 populations. Across its range, murrelets lost nearly 30 percent of their remaining non-Federal  
25 habitat (State and private forests) in the single decade between 1996 and 2006. Between 2000 and  
26 2010, marbled murrelet populations declined by 29 percent. Between 2001 and 2016, the marbled

1 murrelet population declined at an average annual rate of 3.9%. The decline has been even more  
2 severe in southwest Washington, where the majority of remaining marbled murrelet habitat is on  
3 state land. Between 2000 to 2010, the murrelet population in southwest Washington declined by  
4 6.5 percent annually, for a cumulative ten-year decline of approximately 46 percent. If populations  
5 decline by half every ten years, marbled murrelets will be extirpated from the region well before  
6 the end of the century.  
7

8 151. When DNR obtained its HCP in 1997, neither the USFWS nor DNR knew much about the  
9 biology or habitat of the reclusive murrelet. In order to develop the necessary information to  
10 conserve the species, DNR agreed to implement a 5-step “interim strategy”, culminating in the  
11 development and adoption of a science-based long-term conservation strategy. In the 1997 DNR  
12 HCP, the agency committed to “help meet the recovery objectives of the U.S. Fish and Wildlife  
13 Service, contribute to the conservation efforts of the President's Northwest Forest Plan, and make  
14 a significant contribution to maintaining and protecting marbled murrelet populations in western  
15 Washington over the life of the HCP” and “result in improved conditions for the murrelet over  
16 time” (p. IV-44).  
17

18 152. DNR delayed implementation of the long-term conservation strategy over more than a 20-  
19 year period, starting and stopping various attempts. In 2012, DNR published a “Purpose and Need”  
20 statement which set forth objectives which would guide the development and consideration of  
21 alternatives for the LTCS. The statement provided that the first objective of the amendment was  
22 to “generate revenue and other benefits for each trust by meeting DNR’s trust responsibilities.” In  
23 2019, the Final Environmental Impact Statement confirmed that “DNR needs to obtain long-term  
24 certainty for timber harvest and other management activities on forested state lands, consistent  
25  
26



1 with commitments in the 1997 HCP and DNR’s fiduciary responsibilities to the trust beneficiaries  
2 as defined by law.” FEIS at S-1.

3 153. Between the years 2012 and 2019, DNR conducted a complex NEPA and SEPA-guided  
4 process to evaluate a spectrum of alternative long-term conservation strategies. DNR ultimately  
5 set eight (8) potential alternatives, Alt. A, B, C, D, E, F, and G.<sup>16</sup> Each of these alternatives had  
6 different effects on the three key indicators of murrelet survival and recovery: population size,  
7 reproduction, and distribution.  
8

9 154. In written public comments agencies (WDFW and the federal Environmental Protection  
10 Agency) and multiple conservation organizations asked DNR to adopt an alternative that is more  
11 scientifically precautionary and is more certain to facilitate the species’ survival and recovery.  
12

13 155. DNR ultimately selected the second most logging intensive alternative, “alternative H,” as  
14 its preferred alternative and submitted that alternative to USFWS for approval as a major  
15 amendment to DNR’s HCP. The agency’s decision was largely based on DNR’s stated constraint  
16 of achieving its perceived trust mandate. DNR’s logging under Alternative H would lead to the  
17 harvest of 38,744 raw acres of murrelet habitat (or 11,085 adjusted acres) primarily in the first  
18 decades of implementation, and that this harm will be mitigated by Alt. H’s highly-speculative and  
19 risky commitment to grow back a roughly equivalent amount of habitat, 11,905 adjusted acres  
20 measured by footprint, over the remaining 48 years of DNR’s HCP. The proposed, uncertain  
21 benefit to offset this harm is insufficient to mitigate the risk of Alt. H. Given their dangerously  
22 precarious population trend, the inherent biological risks of DNR’s mitigation strategy, and loss  
23 of habitat, a proposed 706 “adjusted” acre gain over 48 years (15 surplus acres a year across all of  
24  
25  
26

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<sup>16</sup> MM FEIS, at S-4.

1 western Washington) does not make a significant contribution to murrelet protection and  
2 population stability.

3 156. Despite having committed to making a significant contribution to marbled murrelet  
4 conservation, DNR determined that it could not comply with this agreement and dedicate any more  
5 lands to recover this forest-dependent species than the minimum required to secure a federal  
6 incidental take permit. In the FEIS, DNR stated that “[w]hile the long-term conservation strategy  
7 is likely to improve the conditions for the marbled murrelet over time thereby contributing to the  
8 recovery of the species, the state’s responsibility is not to provide for recovery of the species. If  
9 the state and trust beneficiaries are required to manage for a standard higher than this, it is within  
10 the state’s authority to terminate the HCP and manage these lands utilizing a ‘take’ avoidance  
11 strategies.” MM FEIS, at App. A-13.  
12

13  
14 157. USFWS approved DNR’s amendment request. On December 3, 2019 the BNR decided to  
15 accept the HCP and permit amendment. The BNR’s approval was based on an erroneous and  
16 unconstitutional interpretation of its perceived trust mandate, which unlawfully limited its  
17 jurisdiction. The adoption was arbitrary and capricious and illegal, and justifies review by  
18 constitutional writ of certiorari.  
19

## 20 V. CLAIMS

### 21 **Claim One—Declaratory Judgment that DNR’s Interpretation and Application of the 22 Trust Mandate Is Inconsistent with and Violates Article XVI of the State Constitution**

- 23 1. Claim one incorporates paragraphs 1-157 above, to the extent applicable.
- 24 2. DNR and BNR take the legal position that the State of Washington must manage public lands  
25 to as private trusts to maximize financial return for specific beneficiaries. DNR and BNR utilize  
26 the trust mandate in virtually every forest planning, management, and operational decision.

1 DNR has candidly admitted in public meetings that this leads to DNR prioritizing maximizing  
2 revenue over all other interests when managing State forests.

3 3. The conflict regarding DNR’s legal position relative to the trust mandate is ongoing, well-  
4 developed and discrete. DNR presents its view of its perceived “trust mandate” at virtually every  
5 Board meeting and instructs the Board members that it is legally bound to uphold the obligations  
6 of a private trustee. DNR’s interpretation of its federal lands also directly affects how DNR  
7 manages forest board transfer lands and state forest purchase lands. *See* RCW 79.22.050.

8  
9 4. Plaintiffs and members of Plaintiff organizations live near and regularly visit DNR-managed  
10 public lands in Washington, and will continue to do so. Throughout Washington, DNR’s  
11 interpretation of its perceived trust mandate harms Plaintiffs and members of Plaintiff  
12 organizations. DNR’s trust mandate eliminates the ability of Plaintiffs and members of Plaintiff  
13 organizations to have their interests taken into account in the management of public lands, and  
14 thereby violates their rights under the Washington State Constitution. The logging that DNR  
15 carries out pursuant to the trust mandate causes ongoing harm and threat of harm to Plaintiffs and  
16 members of Plaintiff organizations on the site-specific scale of described forest management, as  
17 well as on the larger scale of fire risk, carbon emissions, poor forest health, and degraded water  
18 quality.  
19

20  
21 5. Plaintiffs seek a declaration from this Court interpreting the meaning of the phrase “all the  
22 people” in article XVI, section 1 of the constitution. The Court should declare that the  
23 constitution mandates that DNR has an obligation to manage State forests on behalf of “all the  
24 people,” which includes the duty to consider impacts to public interests as part of the agency’s  
25 discretionary management decisions.  
26

1 6. Plaintiffs further seek a declaration that DNR’s systematic assertion that it must prioritize the  
2 financial interests of specific beneficiaries and cannot consider broader public interests in  
3 management of State forests violates Plaintiffs’ rights established in article XVI, section 1 of the  
4 constitution.

5  
6 **Claim Two – Writ of Constitutional Certiorari and Invalidation of the Board of Natural  
Resources’ Approval of the Sustainable Harvest Calculation.**

- 7 1. Claim two incorporates paragraphs 1-157 above, to the extent applicable.  
8  
9 2. As set forth in this Complaint, Plaintiffs allege that the Board of Natural Resources’ decision  
10 approving the sustainable harvest calculation is illegal, unconstitutional, and manifestly arbitrary  
11 and capricious. These allegations justify issuance of a writ of constitutional certiorari and  
12 preparation of an administrative record.  
13  
14 3. Plaintiffs request an order from this Court declaring that the BNR’s approval of the SHC is  
15 illegal, unconstitutional, and manifestly arbitrary and capricious, invalidating the approval, and  
16 remanding the SHC to the Board for appropriate reconsideration.

17 **Claim Three—Writ of Constitutional Certiorari and Invalidation of the Board of Natural  
Resources’ Approval of the Marbled Murrelet Longterm Conservation Strategy.**

- 18 1. Claim three incorporates paragraphs 1-157 above, to the extent applicable.  
19  
20 2. As set forth in the Complaint, Plaintiffs allege that the Board of Natural Resources’ decision  
21 approving the Marbled Murrelet Long-term Conservation Strategy is, to the extent it is based on  
22 DNR’s misinterpretation of the trust mandate, illegal, unconstitutional, and manifestly arbitrary  
23 and capricious. These allegations justify issuance of a writ of constitutional certiorari and  
24 preparation of an administrative record.  
25  
26 3. Plaintiffs request an order from this Court declaring that the BNR’s approval of the marbled  
murrelet long-term conservation strategy is illegal, unconstitutional, and manifestly arbitrary and

1 capricious; invalidating the approval; and remanding the marbled murrelet long-term  
2 conservation strategy to the Board for appropriate reconsideration.

3 **VI. RELIEF REQUESTED**

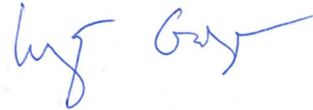
4 Plaintiffs respectfully request the following relief:

- 5
- 6 1. Grant of declaratory relief set forth in Claim One above.
- 7
- 8 2. Based on the facts alleged herein, to grant the petition for writ of constitutional certiorari for  
9 review of the Board of Natural Resources' decision to approve the Sustainable Harvest Calculation  
10 at its December 3, 2019 meeting, and to direct the Defendants to prepare an administrative record.  
11 For sake of judicial efficiency and reduced cost to the parties, Plaintiffs request that the Court  
12 direct the parties to work collaboratively on preparation of an electronic administrative record that  
13 is narrowed as appropriate to address Plaintiffs' claims.
- 14
- 15 3. Based on the facts alleged herein, to grant the petition for writ of constitutional certiorari for  
16 review of the Board of Natural Resources' decision to approve the marbled murrelet long-term  
17 conservation strategy at its December 3, 2019 meeting, and to direct the Defendants to prepare an  
18 administrative record. For sake of judicial efficiency and reduced cost to the parties, Plaintiffs  
19 request that the Court direct the parties to work collaboratively on preparation of an electronic  
20 administrative record that is narrowed as appropriate to address Plaintiffs' claims.
- 21
- 22 4. Enter an order invalidating the Board's approval of the sustainable harvest calculation in  
23 Resolution 1560 and remand to the Department of Natural Resources and Board of Natural  
24 Resources for reconsideration.
- 25
- 26 5. Enter an order invalidating the Board's approval of the Marbled Murrelet Long-term  
Conservation Strategy in Resolution 1559 and remand to the Department of Natural Resources and  
Board of Natural Resources for reconsideration.

1 6. Enter an order granting Plaintiffs their costs and attorneys' fees based on the Equal Access to  
2 Justice Act, RCW 4.84, or any other applicable provision of law.

3 7. Any other relief that this Court deems to be just and proper.  
4

5 Dated this 2<sup>nd</sup> day of January, 2020.  
6

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