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7 STATE OF WASHINGTON
8 KING COUNTY SUPERIOR COURT

9 SEATTLE AUDUBON SOCIETY and)
10 OLYMPIC FOREST COALITION,)

11 Plaintiffs/Petitioners,)

12 v.)

13 WASHINGTON STATE BOARD OF)
14 NATURAL RESOURCES; WASHINGTON)
15 STATE DEPARTMENT OF NATURAL)
16 RESOURCES; PETER GOLDMARK,)
17 Commissioner of Public Lands and Chair)
18 of the Board of Natural Resources, and)
19 LOREN TORGERSON, the SEPA Responsible)
20 Official.)

21 Defendants/Respondents.)
22)

No. **12-2-19053-4SEA**

) COMPLAINT FOR DECLARATORY
) AND INJUNCTIVE RELIEF, PETITION
) FOR REVIEW, NOTICE OF APPEAL,
) APPLICATION FOR CONSTITUTIONAL
) WRIT OF CERTIORARI

23 I. INTRODUCTION

24 1.1 Plaintiffs Seattle Audubon Society and Olympic Forest Coalition (collectively
25 “Audubon”) seek review of a May 1, 2012 decision by the Board of Natural Resources (“BNR”)
26 approving a so-called “minor amendment” (“Amendment”) to Washington State’s federal
27 Habitat Conservation Plan (“HCP”) pertaining to the marbled murrelet, a critically imperiled bird
28 listed as threatened under the federal Endangered Species Act. If approved by the U.S. Fish and
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1 Wildlife Service, the Amendment would, among other things, permit the Washington State
2 Department of Natural Resources (“DNR”) to log approximately 12,000 acres (nearly 19 square
3 miles) of State-owned higher quality “reclassified” marbled murrelet habitat in Southwest
4 Washington (“SWWA”), habitat that is, today, off limits for timber harvest under the express
5 terms of Washington’s HCP and the DNR’s current forest policies. The logging facilitated by
6 the Amendment will have significant direct adverse environmental impacts on the marbled
7 murrelet and its current and potential habitat and could potentially preclude important long-term
8 conservation options to protect this habitat under the DNR’s just-commenced “Long-term
9 Marbled Murrelet Conservation Strategy” planning process. The BNR’s decision approving the
10 Amendment was accomplished by way of a “Determination of Non-significance” (“DNS”) under
11 the Washington State Environmental Policy Act (“SEPA”) instead of the more rigorous SEPA
12 Determination of Significance process, which requires preparation of an Environmental Impact
13 Statement (“EIS”). Audubon respectfully asks the Court to find that the DNS on which the BNR
14 and DNR relied was clearly erroneous under SEPA, because the Amendment will have
15 significant adverse environmental impacts, and to order DNR to prepare an EIS pursuant to
16 RCW 43.21C.031. Audubon also asks the Court to enjoin, as necessary and if moved for in a
17 motion for preliminary injunction, any reliance by DNR or BNR on the Amendment or the DNS
18 for timber sales or for environmental review conducted for any such timber sale.
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23 II. PARTIES

24 2.1 Plaintiff Seattle Audubon Society (“Seattle Audubon”) is suing on behalf of itself
25 and its members. Seattle Audubon, which maintains its principal place of business in King
26 County, Washington, is a non-profit corporation organized and existing under the laws of the
27 State of Washington. Seattle Audubon is a chapter of the National Audubon Society, and its
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1 purpose is to foster the public's understanding and appreciation of birds and their habitat and to
2 advocate for these birds in all available venues and forums. Staff and members of Seattle
3 Audubon have participated in marbled murrelet conservation efforts in SWWA, most recently in
4 relation to the proposed wind farm on Radar Ridge. Seattle Audubon staff and members plan to
5 continue to advocate for marbled murrelet conservation throughout Washington, including
6 SWWA, and their members have visited, and intend in the future to visit, locations that are
7 impacted by the logging allowed under the Amendment at issue in this case.
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9 2.2 Plaintiff Olympic Forest Coalition ("OFCO") is a non-profit volunteer
10 conservation organization incorporated under the laws of the State of Washington. OFCO is
11 dedicated to promoting the protection, conservation and restoration of natural forest ecosystems
12 and their processes on the Olympic Peninsula, including fish and wildlife habitat, and
13 surrounding ecosystems. OFCO members commented in opposition to the proposed wind farm
14 on Radar Ridge. OFCO members have also consistently advocated for marbled murrelet
15 conservation on Washington State Trust Lands, including those in SWWA, and plan to continue
16 conservation on Washington State Trust Lands, including those in SWWA, and plan to continue
17 to do so. OFCO board members plan to continue to advocate for marbled murrelet conservation
18 throughout Washington, including SWWA, and their members have visited, and intend in the
19 future to visit, locations that are impacted by the logging allowed under the Amendment at issue
20 in this case.
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22 2.3 Plaintiffs and their members enjoy both looking for and observing marbled
23 murrelets in Western Washington, including those that nest in DNR Trust Lands in SWWA, and
24 plan to continue to do so. By advocating for full consideration of impacts to marbled murrelets,
25 Plaintiffs seek to prevent damage to the environment and enrich the understanding of the
26 ecological systems and natural resources important to the state and Nation.
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1 up to fifty miles inland. The marbled murrelet is a dove-sized black and white bird that belongs
2 in the same family as puffins.

3 4.2 The United States Fish and Wildlife Service (“USFWS”) listed the marbled
4 murrelet as threatened under the Endangered Species Act (“ESA”) in 1992, citing logging of its
5 habitat as a leading cause of the decline. The marbled murrelet is also a Washington State
6 threatened species and a “Red List” globally endangered species. Populations of marbled
7 murrelets in Washington are declining precipitously, at a rate of over 7% per year. At this rate,
8 marbled murrelets are projected to be extirpated from Washington by 2084. This species decline
9 is largely caused by extensive logging of late-successional and old growth coastal forests which
10 serve as nesting habitat.
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12 4.3 The DNR owns, manages, and authorizes logging on approximately 1.8 million
13 acres of State owned or managed forestland in Washington, including SWWA. In January 1997,
14 DNR entered into a federal “Habitat Conservation Plan” with the USFWS (“DNR HCP”) for its
15 forests on the westside of the State. An HCP provides immunity for landowners from the ESA’s
16 prohibition of “take” of threatened or endangered species (an “Incidental Take Permit”) in
17 exchange for the landowner’s agreement to take additional measures to protect and recover the
18 species over the life of the HCP. 16 U.S.C. 1531 (10)(a)(1)-(3)(b).
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20 4.4 On January 30, 1997, DNR and USFWS signed the DNR HCP. At that time, the
21 agencies had what the HCP describes as “extremely limited” scientific information about
22 marbled murrelet populations, habitat, and biology. To account for this lack of knowledge, DNR
23 and USFWS agreed to separate western Washington into six planning units, and to follow a five-
24 step “interim strategy” by which the agencies would research and develop a “long-term
25 conservation strategy” for each unit. The agencies planned to complete this process concurrently
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1 for each planning unit, to finish all units in approximately four years, by 2001. The HCP
2 requires that the long-term strategy take into account the information gathered in the first five
3 steps and make a contribution to the recovery of marbled murrelets by both protecting occupied
4 areas and developing additional habitat.

5 4.5 Because the content of the long-term conservation strategy for marbled murrelets
6 had not yet been determined, DNR committed to maintain certain “interim” strategies until the
7 long-term strategy was officially adopted.

8 4.6 The DNR HCP identified SWWA as particularly critical to long-term marbled
9 murrelet conservation. This area includes the area west of Interstate 5, south of Highway 8, east
10 of the Pacific Ocean, and north of the Columbia River. SWWA is particularly important for
11 marbled murrelets from a biological standpoint because it connects the murrelet-populated
12 forests near the Strait of Juan de la Fuca with imperiled sub-populations in Oregon and
13 California. Marbled murrelets in SWWA are particularly vulnerable to the impacts of logging
14 because such logging fragments their habitat and exposes their young to predators. Also, there
15 are virtually no federal lands in this region of the State and decades of intensive industrial
16 forestry on adjacent private lands has left the region with very limited remaining marbled
17 murrelet habitat.

18 4.7 The USFWS recognized the critical biological importance of SWWA to the
19 viability of the overall murrelet population when it designated critical habitat under Section 4 of
20 the ESA in 1996. The USFWS found a great probability that the high-quality murrelet habitat in
21 SWWA would be densely occupied, due to the low amount of suitable murrelet habitat in that
22 area.
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1 4.8 The DNR HCP required the DNR to deploy an “interim strategy” for protecting
2 marbled murrelets and their habitat on DNR forests. DNR agreed to: (1) identify and defer
3 harvest on areas determined to be potential marbled murrelet habitat; (2) conduct a “habitat
4 relationship study” that uses analytic models to determine where suitable nesting sites may occur
5 within the potential habitat; (3) determine the area expected to have 5% of the nesting sites and
6 release that area (termed reclassified “marginal habitat”) for logging; (4) determine the area
7 expected to have 95% of the occupied sites (termed “higher quality” habitat or “Reclassified
8 Habitat”), survey that area for marbled murrelets, preserve all the occupied area as habitat, and
9 preserve at least 50% of the remaining higher-quality habitat until the development of a long-
10 term conservation strategy; and (5) develop a long-term conservation strategy. Regardless of the
11 kind of habitat, no known occupied sites may be logged. DNR HCP, at 39-40.

14 4.9 Due to the limited potential habitat in SWWA and its critical biological
15 importance, DNR’s “interim strategy” for SWWA was more rigorous than elsewhere in Western
16 Washington. The HCP explicitly provides that Reclassified, higher-quality habitat will not be
17 “released” for logging unless (a) the long-term conservation strategy has been completed; or (b)
18 at least 12 months have passed since the initiation of negotiations of the draft long-term plan
19 without completion of those negotiations. DNR HCP, at IV-40.

22 4.10 DNR completed steps 1-4 of the interim strategy in SWWA by 2002, but has not
23 yet completed or adopted a long-term conservation strategy. In fact, after a failed attempt to
24 start development of a long-term strategy in 2006, the planning process and a joint USFWS and
25 DNR environmental review for the long-term strategy just began in Spring 2012. In the habitat
26 relationship study process, DNR identified over 522,000 acres of marginal habitat for logging
27 and only approximately 20,000 acres of higher quality “reclassified” habitat. Under DNR’s
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1 HCP, this “reclassified” habitat must be protected until DNR adopts its long-time promised long-
2 term conservation strategy. In the contested Amendment to the HCP at issue in this suit, DNR
3 seeks to log over 12,000 of those protected 20,000 acres.

4 4.11 DNR surveyed SWWA for marbled murrelets from 1998-2002, under the Pacific
5 Seabird Protocol in place at that time. In 2003, the protocol changed significantly and, as a
6 result, DNR likely missed approximately 20% of the murrelet sites. The Washington
7 Department of Fish and Wildlife (“WDFW”) confirmed this error when it reviewed DNR
8 surveys and determined that DNR had been applying an overly narrow definition of “occupied”
9 in its surveys. In fact, WDFW reviewed 36 sites where DNR had found no occupancy and found
10 marbled murrelets occupying 28 of those sites. WDFW estimated that this 78% of error was
11 likely replicated in other areas in the State densely populated by murrelets. WDFW raised
12 significant concerns about DNR’s surveying in comment letters submitted in 2009 as well as for
13 the proposed Amendment.
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16 4.12 In the nearly fifteen years since DNR completed the habitat models and surveys in
17 SWWA, higher-quality habitat has continued to develop into older-aged stands, making them
18 more suitable for murrelet habitat. Marbled murrelets often move nesting sites from year to year.
19 Changed habitat conditions and changed occupancy over time further render DNR’s surveys
20 unreliable.
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23 4.13 To inform its long-term conservation strategy, DNR convened a team of
24 distinguished scientists in 2004 to generate recommendations for murrelet recovery on DNR’s
25 lands in Western Washington. These scientists ultimately produced a 2008 report entitled
26 “Recommendations and Supporting Analysis of Conservation Opportunities for the Marbled
27 Murrelet Long-Term Conservation Strategy.” (hereinafter the “Science Report”). The Science
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1 Report recommended that, to protect and recover marbled murrelets on DNR's forests consistent
2 with the intent of the DNR HCP, DNR grow blocks of contiguous, un-fragmented marbled
3 murrelet habitat termed "Marbled Murrelet Management Areas" ("MMMAs") in SWWA. In
4 the MMMAs, logging of any habitat would be prohibited and only thinning intended to
5 accelerate habitat development would be allowed. The authors of the Science Report intended
6 that DNR develop the MMMAs into solid blocks of "100% habitat" before the end of the HCP in
7 2067, and concluded that the development of this habitat was crucial to marbled murrelet
8 recovery.
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10 4.14 DNR adopted official guidance documents governing its interim strategy pending
11 the adoption of the long-term conservation strategy. The most recent guidance document is
12 dated February 17, 2011 and provides that DNR would "[d]efer timber harvest activities in
13 reclassified and extra deferral areas within the [MMMAs] in South Coast and Columbia HCP
14 planning units." These planning units are partially included in SWWA. DNR also committed to
15 protect "old" forest in the Olympic Experimental State Forest: "defer timber harvest activities in
16 Old Forest and Reclassified Habitat in the [MMMAs] in OESF."
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19 4.15 In letters dated January 22, 2010 and June 7, 2011, USFWS notified DNR that
20 DNR's continued delay in implementing a long-term conservation strategy and that some of
21 DNR's recent proposed logging was potentially inconsistent with the requirements of the HCP
22 and the recommendations of DNR's 2008 Science Report. Specifically, the January 22 letter
23 informed DNR that "regeneration harvesting of mature timber within the [MMMAs] that has the
24 potential to become future marbled murrelet nesting habitat may lengthen the time horizon on
25 achieving the conservation goals for those areas." In its June 7 letter, USFWS instructed DNR to
26 mitigate this delay by not conducting logging that would preclude implementation of the 2008
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1 Science Report as a possible long-term strategy. Specifically, the June 7 letter stated, “We
2 recognize that the [2008 Science] Report is not the long-term strategy and that the Report
3 recommendations do not constitute the only acceptable means to complete the long-term
4 strategy. However, the Report is a thoughtful and scientifically credible proposal based on sound
5 conservation principles. We expect that any acceptable long-term strategy proposed by DNR
6 and approved by the Service will achieve the purposes of the [MMMAs].”

8 4.16 By 2012, DNR had still not implemented a long-term conservation strategy and,
9 therefore, under the express terms of its HCP, was not permitted to log any of its higher-quality
10 “reclassified” habitat in SWWA. But DNR shifted gears in early 2012 and decided to seek
11 logging access to this “higher quality” habitat. To accomplish this logging, on February 24th,
12 2012, DNR issued a notice of an amendment to the HCP’s requirements for SWWA
13 (“Amendment”).

15 4.17 This Amendment would allow DNR to log 12,120 acres of higher-quality
16 “reclassified” habitat *outside* MMMAs. It would also allow clearcutting and extensive
17 “commercial thinning” of between 300 to 2,500 acres *within* MMMAs, contrary to the USFWS
18 letter dated June 7, 2011. Commercial thinning is different than and does not have the same
19 conservation benefits as habitat restoration thinning. The amendment would also permit DNR to
20 conduct “thinning sales” in areas beyond 165 feet of occupied sites and to conduct “stand
21 replacement” sales in areas beyond a half-mile of occupied sites and adjacent areas of
22 “reclassified” habitat.” These activities will have the probable significant adverse environmental
23 impact of destroying and further fragmenting current and potential murrelet habitat.
24 Fragmentation increases the presence of marbled murrelet predators within current nesting areas
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1 and areas necessary to develop future habitat for the species. Distinguished scientists have made
2 this point beyond debate. 61 Fed. Reg. 26,256, 26,260.

3 4.18 Any mitigation the Amendment offers is ineffective and is only temporary until
4 the long-term conservation strategy is adopted. DNR imposed no obligation to retain any
5 restrictions on logging after the strategy is finished in 2014.

6 4.19 The Amendment also offered no additional protections in the OESF, and requires
7 paltry mitigation, including planting of “robust seedlings” in MMMA’s. But a robust seedling
8 requires 100 to 200 years to develop into a tree capable of providing murrelet habitat. The
9 USFWS did not formally oppose DNR’s minor amendment but, in a letter dated April 17, 2012,
10 merely said that that DNR’s logging of the “reclassified habitat” outside the MMMA’s was
11 “better” than logging such habitat within the MMMA’s.
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13 4.20 The logging of high-quality “reclassified” murrelet habitat outside the MMMA’s
14 *before* the DNR even makes an official commitment to permanently delineate and protect the
15 MMMA’s is directly contrary to DNR’s HCP. And this step would prevent the currently
16 protected 12,120 acres of “reclassified” higher quality habitat from serving as marbled murrelet
17 habitat for at least 100 years, which is after the projected extirpation of the species. In other
18 words, DNR is seeking to benefit from the *release* of reclassified, higher quality habitat without
19 first actually developing a long-term conservation strategy that may, in fact, require the
20 preservation of this habitat.
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22 4.21 DNR conducted review of its Amendment under SEPA. DNR determined that the
23 logging of currently protected 12,120 acres of high-quality murrelet habitat and extensive
24 logging within MMMA’s would not have a probable significant adverse environmental impact,
25 and issued a DNS under the State Environmental Policy Act, RCW Ch. 43.21C, *et. seq.* on
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1 February 24, 2012. After extensive critical comments from WDFW, Seattle Audubon, OFCO,
2 and the Columbia River Alliance for Nature and the Environment (“CRANE”), DNR published a
3 DNS Addendum on April 23, 2012. The Addendum offered responses to the comments and
4 maintained the DNS.

5 4.22 On April 30, 2012, DNR held an initial public “scoping” meeting on the
6 development of a long-term conservation strategy for all six planning units, including the areas
7 in SWWA. In the scoping process, DNR and USFWS plan to consider public comment on
8 alternatives for forest management in each of the planning units. DNR and USFWS
9 acknowledge that the long-term conservation strategy will have a significant adverse impact on
10 the environment, and therefore are creating a joint NEPA and SEPA EIS.

11 4.23 The next morning, on May 1, 2012, BNR approved the amendment to the interim
12 strategy. In enacting the amendment, DNR determined that certain areas in the MMAs are
13 important to preserve for possible inclusion in the long-term strategy, while other areas of high-
14 quality murrelet habitat are not. The Amendment will allow DNR to process timber sale SEPA
15 documents for at least 12,120 total acres of SWWA forest important to marbled murrelet
16 conservation, prior to the 2014 implementation of the long-term conservation strategy.

17 **V. CLAIMS FOR RELIEF**

18 **First Cause of Action** 19 **(State Environmental Policy Act)**

20 5.1 Plaintiffs incorporate by this reference all of the facts, allegations and claims
21 stated above.

22 5.2 SEPA requires the preparation of an EIS for all “major actions having a probable
23 significant, adverse environmental impact.” RCW 43.21C.031. “Significant” under SEPA
24 “means a reasonable likelihood of more than a moderate adverse impact on environmental
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1 quality.” WAC 197-11-794. “Significance involves context and intensity” and “the context may
2 vary with the setting.” *Id.* Because the determination of significance is a consideration of both
3 the likelihood of impact and the severity of the potential impact, “An impact may be significant
4 if its chance of occurrence is not great, but the resulting environmental impact would be severe if
5 it occurred.” WAC 197-11-794(1)(2).
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7 5.3 In order to determine whether an EIS is required for a specific action, the decision
8 making agency conducts a “threshold review.” WAC 197-11-310. When conducting the
9 threshold analysis, the agency “shall not balance whether the beneficial aspects of a proposal
10 outweigh its adverse impacts, but rather, shall consider whether a proposal has any probable
11 significant adverse environmental impacts.” WAC 197-11-330(5); *Alpine Lakes Protection*
12 *Society v. Washington State Dep’t of Natural Resources*, 102 Wn. App. 1, 15, 979 P.2d 929
13 (1999) (“SEPA regulations do not allow threshold determinations to be made by balancing the
14 potential “good/bad” effects of a proposal.”).
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17 5.4 Quality information is essential to making an accurate threshold determination. If
18 the information required is uncertain or incomplete, the agency must acknowledge the
19 deficiencies and seek to obtain better information. If it is unable to do so, the agency should
20 assume a worst-case scenario in its assessment. WAC 197-11-080.
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22 5.5 The agency’s threshold determination is reviewed under the “clearly erroneous”
23 standard and must consider the public policy and environmental values of SEPA. A court must
24 reverse a DNS if the Court, after review of the entire record, is left with “the definite and firm
25 conviction that a mistake has been committed.” *Norway Hill Preserv. & Prot. Ass’n v. King*
26 *County Council*, 87 Wn.2d 267, 274, 552 P.2d 674 (1976). While phased review may be utilized
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1 in some cases, it may not be used to avoid consideration of cumulative impacts or to segment or
2 avoid present consideration of proposals. WAC 197-11-060.

3 5.6 The potential environmental impacts of an action under SEPA must be measured
4 against a baseline. *Chuckanut Conservancy v. DNR*, 156 Wn. App. 274, 283-84 n. 8, 232 P. 2d
5 1154 (2010). Here, DNR's "baseline" is the agreed-upon interim strategies in the DNR HCP, as
6 implemented by DNR guidance documents, such as the one dated February 17, 2011. BNR's
7 adoption of the Amendment proposes logging well-beyond this "baseline" by allowing DNR to
8 log more than 12,000 acres of previously protected high-quality "reclassified" murrelet habitat
9 *outside* the MMMAs, up to 2,500 acres of currently-protected areas *inside* the MMMAs (which
10 logging the U.S. Fish and Wildlife Service advised DNR in its June 7, 2011 letter it should not
11 conduct to remain in compliance with its HCP), and to log near occupied sites by leaving
12 insufficient 165' buffers around site centers. The logging facilitated by the Amendment thus will
13 have both a direct impact on the marbled murrelet today (within the MMMAs and on occupied
14 sites) and will preclude DNR from potentially using this "reclassified" habitat in its long-term
15 conservation strategy. The Amendment creates more than a moderate likelihood of short and
16 long-term, direct, indirect, and cumulative adverse impacts on wildlife resources and is a
17 significant action requiring preparation of an EIS. DNR cannot in the threshold determination,
18 as it did, conclude that protecting 700-900 acres within the MMMAs would mitigate the effect of
19 logging 12,120 acres of "reclassified" habitat outside the MMMAs.

20 5.7 DNR violated SEPA by adopting the Amendment based upon an unlawful DNS.
21 DNR, in making its DNS committed errors including the following: (1) unlawfully balancing
22 beneficial and adverse impacts in the threshold determination; (2) relying upon flawed and
23 obsolete survey data proven to be highly inaccurate in subsequent studies; (3) failing to take into
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1 account the risk that unoccupied stands surveyed over ten years ago with an obsolete protocol
2 may be presently occupied, and therefore logging those stands creates a risk of severe impact; (4)
3 failing to consider the preclusive effect of the action on future actions, particularly the long-term
4 conservation strategy that USFWS and DNR are currently developing for the same species in the
5 same forests; and (5) incorrectly establishing the environmental baseline and therefore both
6 failing to consider the impacts of deviation from that baseline and incorrectly considering
7 already-required protections to be mitigation.
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9 **Second Cause of Action**

10 **(Declaratory Judgment)**

11 5.8 Plaintiffs incorporate by this reference all of the facts, allegations and claims
12 stated above.
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14 5.9 Plaintiffs request the Court, pursuant to ch. 7.24 RCW et seq., to declare and
15 affirm that DNR's DNS for the Amendment is an inadequate and improper SEPA threshold
16 determination, and that an EIS should be prepared for any amendment to the HCP that allows
17 additional logging that may impact the marbled murrelet.
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19 **Third Cause of Action**

20 **(Arbitrary and Capricious Agency Action)**

21 5.10 Plaintiffs incorporate by this reference all of the facts, allegations and claims
22 stated above.
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24 5.11 Together, Wash. Const. Art. IV, Section 6 and RCW Ch. 7.16 and common law
25 permit plaintiffs to challenge government agency decisions that are arbitrary and capricious.
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1 6.2 That the Court declare invalid, or issue a writ invalidating, DNR's Amendment
2 approved on May 1, 2012 adopting changes to DNR policies and procedures for harvesting
3 forests in a manner that could affect to marbled murrelets or their present or future habitat.

4 6.3 That the Court issue a declaratory judgment that DNR's decision to amend the
5 HCP was made in violation of DNR's statutory duties to conduct a thorough environmental
6 analysis under SEPA prior to making such decision.

7 6.4 That the Court direct, or issue a writ directing, that prior to any amendment of its
8 current marbled murrelet interim strategy, DNR must prepare an EIS adequately examining: (1)
9 all reasonable alternatives for managing logging so as to meet its duties under the HCP and ESA;
10 (2) the short and long-term, direct, indirect and cumulative impacts of the proposed amendment;
11 and (3) measures to mitigate the impacts of logging under the amendment on the recreational and
12 scenic/aesthetic values and fish and wildlife resources in the affected area.

13 6.5 That the Court issue a preliminary and permanent injunction enjoining DNR from
14 conducting or approving any forest practices under the Amendment until DNR prepares an EIS
15 containing analyses of the environmental impacts of the proposed Amendment, together with
16 comparative analysis of a reasonable range of alternatives, including those likely to meet the
17 purpose and need with lower environmental cost.

18 6.6 That the Court preliminarily and permanently enjoin DNR and BNR from relying
19 on the Amendment in any manner in DNR's SEPA analysis for any timber sale within the
20 marbled murrelet planning areas contained in the DNR HCP until DNR prepares an EIS for the
21 Amendment.
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