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7 SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 FOR KING COUNTY

9 CENTER FOR SUSTAINABLE ECONOMY, )  
10 LEGACY FOREST DEFENSE COALITION )  
and SAVE THE OLYMPIC PENINSULA )

11 Appellants, )

12 v. )

13 WASHINGTON STATE DEPARTMENT OF )  
14 NATURAL RESOURCES, BOARD OF )  
15 NATURAL RESOURCES, WASHINGTON )  
STATE DEPARTMENT OF ECOLOGY; and )  
16 COMMISSIONER OF PUBLIC LANDS )  
HILARY FRANZ, in her official capacity, )

17 Respondents.  
18

19 THIS MATTER came before the Court as an appeal by Center for Sustainable Economy,  
20 Save the Olympic Peninsula, and Legacy Forest Defense Coalition (collectively “Appellants”) of  
21 the Department of Natural Resources (DNR) Determination of Nonsignificance (DNS) issued  
22 under the State Environmental Policy Act (SEPA) for the Wishbone timber sale. The Court has  
23 read the parties’ briefing, heard oral arguments, and considered the administrative record and now  
24 concludes and orders as follows: ~~issues the following:~~ (–kb)

25 1. The clearly erroneous standard of review applies to this Court’s review of the DNS.  
26

*Wild Fish Conservancy v. Dep’t of Fish and Wildlife*, 198 Wn.2d 846, 502 P.3d 359 (2022). The

1 court applies the *de novo* standard of review to questions of law that are presented in the appeal.

2       2.       The content of environmental review that is required for a threshold determination  
3 is specified in WAC 197-11-330 and WAC 197-11-444. WAC 197-11-060(2)(b). Climate change  
4 and greenhouse gases are included as elements of the environment that must be considered by the  
5 SEPA responsible official when making a threshold determination. WAC 197-11-060(2)(b); WAC  
6 197-11-444(b); WAC 197-11-960. *Wash. State Dairy Fed. v. State*, 18 Wn. App. 2d 259, 307-309,  
7 490 P.3d 290 (2021).

9       3.       “SEPA seeks to ensure that environmental impacts are considered and that decisions  
10 to proceed, even those completed with knowledge of likely adverse environmental impacts, are  
11 ‘rational and well documented.’” *Columbia Riverkeeper v. Port of Vancouver USA*, 188 Wn.2d 80,  
12 92, 392 P.3d 1025 (2017). This rational and well documented information must be adequate to  
13 demonstrate that the agency has taken the requisite “hard look” at environmental impacts. *Pub.*  
14 *Util. Dist. No. 1 of Clark County*, 137 Wn. App 150, 158, 151 P.3d 1067 (2007).

16       4.       The Wishbone sale requires its own separate and independent SEPA review. SEPA  
17 review is required for each individual “action” that an agency takes. RCW 43.21C.030(2)(c); WAC  
18 197-11-310; WAC 197-11-704. *See also Kucera v. State, Dep’t of Transp.*, 140 Wn.2d 200, 995  
19 P.2d 63 (2000). The question before this court, therefore, is whether DNR conducted an adequate  
20 review of the climate change impacts of the Wishbone sale specifically.

22       5.       In its SEPA checklist for the Wishbone sale, DNR concluded that proposed timber  
23 removal “will result in minor amounts of CO2 emissions from the direct proposal site.” AR 010101.  
24 For this conclusion, DNR relied on the broad assessment of climate impacts of its timber harvests  
25 at the landscape level provided in the Alternatives for the Establishment of a Sustainable Harvest  
26 Level Final Environmental Impact Statement (2019) and the Long-Term Conservation Strategy for

1 the Marbled Murrelet Final Environmental Impact Statement (2019). DNR did not quantify the  
2 specific Wishbone project-specific emissions, nor did it assess the specific loss of sequestration  
3 capacity that will result from logging the Wishbone sale area. DNR did not assess how its activities  
4 would increase climate vulnerability in the Wishbone sale area.

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6 6. DNR argued that the 2019 FEIS analyses demonstrated that DNR managed lands  
7 sequester more carbon than they emit. According to DNR, because carbon is sequestered to a  
8 certain (unknown) degree on all DNR-managed forest lands, the Wishbone sale will result in only  
9 minor CO2 emissions.

10 7. This rationale is unjustified. DNR cannot circumvent an examination of the impacts  
11 of logging on a specific parcel of land by relying on carbon sequestration benefits from other lands  
12 that it manages. In addition, even if it is true that DNR's managed lands capture more carbon than  
13 they release, it does not follow that individual logging projects will result in a minor amount of  
14 greenhouse gas emissions.

15  
16 8. To add to that, DNR's claim that its managed lands capture "far more" carbon than  
17 they release is inconsistent with the conclusions and data provided in the Washington Forest  
18 Ecosystem Carbon Inventory (2020). AR 006338-9; AR 006200.

19  
20 9. DNR did not conduct any meaningful analysis of carbon emissions from the  
21 Wishbone Timber Sale. Based on life cycle analysis of logging related GHG emissions conducted  
22 by researchers at the University of Idaho, Oregon State, and Tufts University, Appellants estimated  
23 that the Wishbone timber sale is likely to emit 48,700 metric tons of CO2. AR 010883. DNR is  
24 required by SEPA to assess the specific climate change impacts of this individual project. That  
25 assessment will lead to consideration of mitigation that is specific to and applicable to the  
26 Wishbone sale.

1           10.     The 2019 FEISs did not assess the specific greenhouse gas emissions (from both  
2 biogenic and fossil fuel sources) that will be caused by the Wishbone project; the amount of carbon  
3 dioxide that would be sequestered and stored by the trees in the Wishbone sale area if left unlogged;  
4 nor the impact that logging will have on the area's vulnerability to climate change effects, such as  
5 increases in temperature extremes, reductions in water flow, and increases in wildfire risk.  
6

7           11.     SEPA also requires that state agencies study, develop, and describe appropriate  
8 alternatives to recommended courses of action in any proposal which involves unresolved conflicts  
9 concerning alternative uses of available resources. RCW 43.21C.030(2)(e). An agency is required  
10 to assess alternatives to a proposal as required by this provision even when that agency issues a  
11 DNS when the situation involves unresolved conflicts concerning uses of available resources. *Wild*  
12 *Fish Conservancy*, 198 Wn.2d at 862. DNR did not conduct this analysis for the Wishbone sale.  
13

14           12.     Unlike the situation in *Wild Fish Conservancy*, this case involves competition over  
15 the use of a resource whereby selecting one manner of using the resource will preclude other uses.  
16 The Wishbone sale proposes the commercial harvest (using variable retention harvesting (VRH))  
17 of approximately 68 acres of structurally complex, naturally regenerated, 90- to 110-year old forest,  
18 dominated by large conifers soaring between 150 to 200 feet tall. Prioritizing revenue generation  
19 from timber harvest of these old trees will preclude the use of this same unique resource to combat  
20 climate change impacts.  
21

22           13.     DNR has broad discretion on how to manage these lands or otherwise serve the  
23 interests of the beneficiaries and the public at large. *Conservation Northwest v. Commissioner of*  
24 *Public Lands*, 199 Wn.2d 813, 514 P.3d 174 (2022). As stated in *Conservation Northwest*, “[t]here  
25 appear to be myriad ways that DNR could choose to generate revenue” from the lands or “otherwise  
26 put them to use for the benefit” of the beneficiaries. Alternatives that could be studied include

1 employing variable density thinning techniques instead of VRH, potentially earning revenues from  
2 carbon payments under Washington's carbon market, or earning revenue by creating opportunities  
3 for scientific research or opening lands for sustainable foraging.

4 14. DNR failed to conduct an adequate review of the climate change impacts of the  
5 Wishbone Timber Sale.

6 15. The court concludes that DNR clearly erred when it issued its DNS for the  
7 Wishbone Timber Sale. The court also concludes that DNR was required to conduct an alternatives  
8 analysis pursuant to RCW 43.21C.030(2)(e).

9 16. Because it was not preceded by a proper threshold determination process, the timber  
10 sale itself must be declared void. *Juliana Bay Valley Community Ass'n v. City of Kirkland*, 9 Wn.  
11 App. 59, 73-74, 510 P.2d 1140 (1973).

12 17. *The appellants' stated basis for an award of attorneys' fees and costs—the Equal*  
13 *Access to Justice Act (EAJA)—applies only to “judicial review of an agency action.” RCW*  
14 *4.84.350(1). “Judicial review” and “agency action” are defined as those terms are defined in the*  
15 *Administrative Procedure Act (APA) (chapter 34.05 RCW). RCW 4.84.340(2), (4). The APA*  
16 *excludes “any sale, lease, contract, or other proprietary decision in the management of public*  
17 *lands or real property interests” from the definition of “agency action.” RCW 34.05.010(3).*  
18 *Appellants claim that nevertheless they are entitled to bring an action under SEPA, and that the*  
19 *EAJA applies to that action. But SEPA states that it does not create a standalone cause of action,*  
20 *and that violations of SEPA may be litigated only as part of another action. See generally RCW*  
21 *43.21C.075. (--kb)*

22 Based on the foregoing, IT IS HEREBY ORDERED:  
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1. The DNS that was issued for the Wishbone timber sale is reversed and is hereby declared void.

2. The Board's approval of the Wishbone timber sale is also hereby declared void because it was based on improper SEPA process.

3. On remand, DNR shall assess the site-specific climate change impacts that will result from and are associated with the Wishbone timber sale pursuant to SEPA before it approves the Wishbone sale (or replacement sale) again.

4. On remand, DNR shall study, develop, and describe appropriate alternatives to the on-the-ground activities proposed in the Wishbone sale as required by RCW 43.21C.030(2)(e) before it approves the Wishbone sale (or replacement sale) again. This requirement applies regardless of whether DNR concludes that the Wishbone timber sale climate change impacts are not significant in a new threshold determination.

5. ~~Appellants are entitled to an award of attorneys' fees and reimbursement of costs as allowed by law in an amount to be determined following final judgment. Appellants' request for an award of attorneys' fees and reimbursement of costs is denied. (--kb)~~

Dated this 28th day of March, 2024.

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JUDGE KRISTIN BALLINGER

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King County Superior Court  
Judicial Electronic Signature Page

Case Number: 23-2-11799-9  
Case Title: CENTER FOR SUSTAINABLE ECONOMY ET AL VS  
WASHINGTON STATE OF NATURAL RESOURCES ET AL  
Document Title: ORDER RE DECISION ON APPEAL

Signed By: Kristin Ballinger  
Date: March 28, 2024



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Judge: Kristin Ballinger

This document is signed in accordance with the provisions in GR 30.

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