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8 **STATE OF WASHINGTON**
9 **CLARK COUNTY SUPERIOR COURT**

10 LEGACY FOREST DEFENSE COALITION, a
11 Washington non-profit corporation, and FRIENDS
OF CLARK COUNTY, a Washington non-profit
corporation,

12 Appellants,

13 v.

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

16 Respondents,

17 and

18 STIMSON LUMBER CO.,

19 Intervenor.

NO. 24-2-04429-06

**APPELLANTS' MOTION TO
VOLUNTARILY DISMISS
PUBLIC LANDS ACT AND STATE
ENVIRONMENTAL POLICY ACT
CLAIMS**

1
2 **I.**

3 **MOTION**

4 Pursuant to CR 41(a)(1)(B), Appellants Legacy Forest Defense Coalition (“LFDC”) and
5 Friends of Clark County (“FOCC”) hereby move this Court for an order voluntarily dismissing,
6 without prejudice, their remaining claims under the Public Lands Act and the State Environmental
7 Policy Act (“SEPA”) challenging the Department of Natural Resources’ (DNR) approval of the
8 Dabbler Timber Sale.

9 This motion is brought with solemnity for the cultural and ecological heritage that has been
10 irreparably destroyed. It is not a concession on the law, nor a waiver of the rights at issue. Instead,
11 it reflects the grim reality that in this instance, Appellants have been functionally denied access to
12 a complete remedy where DNR failed to comply with RCW 79.02.030 in timely producing the
13 administrative record evidence, while simultaneously approving expedited logging to commence,
14 and where despite motions by Appellants, the status quo was not maintained pending a decision
15 on the merits.

16 **II.**

17 **INTRODUCTION**

18 Appellants do not take this action lightly. The forest at issue, known as the Dabbler sale,
19 represented some of the last remaining tracts of naturally regenerated, structurally complex
20 forest in the Columbia Habitat Conservation Plan (HCP) planning unit and in all of Clark
21 County. These forests, documented to be over 110 years old and designated by DNR as
22 structurally complex "Maturation II" stands, play a vital role in conserving biodiversity,
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mitigating climate change, and ensuring compliance with DNR's long-standing policy objectives and federal obligations under the Habitat Conservation Plan.

The below photos were taken inside the Dabbler timber sale before logging began:





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2 This motion is necessitated by Respondent Washington Department of Natural
3 Resources' (DNR) decision to allow Stimson Lumber to proceed with logging of the Dabbler
4 legacy forest despite:

- 5 1. *DNR's failure to timely produce the administrative record*, evidence the agency was
6 required to timely produce under RCW 79.02.030;
- 7 2. *Appellants' timely request for injunctive relief*, which was denied where DNR opposed
8 maintaining the status quo pending a resolution on the merits despite being in violation
9 of its statutory obligation to produce the administrative record;
- 10 3. *Irreversible harm now resulting in at least partial and potentially full mootness of*
11 *Appellants' claims*, where the requested remedy is not available because 100+ year old
12 forests have been clearcut and cannot simply be put back, and
- 13 4. *Repeat conduct by DNR in other pending appeals*, creating a systemic deprivation of
14 judicial review while eroding the court's ability to provide a complete remedy.

15 LFDC and FOCC are small public-interest nonprofits with limited staff and funding. They
16 must allocate their resources strategically to cases where the legal system provides access to a
17 full and fair remedy.

18 **III.**
19 **PROCEDURAL BACKGROUND AND**
20 **STATEMENT OF CIRCUMSTANCES**

21 LFDC filed this action on December 23, 2024, pursuant to RCW 79.02.030 and SEPA.
22 Under RCW 79.02.030, DNR was required to certify and file the administrative record within
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2 30 days. Yet, even as of the March 24, 2025 preliminary injunction hearing, DNR had failed to
3 do so. It did not produce the administrative record for the sale until April 14th, 75 days late.

4 Meanwhile, DNR granted discretionary operational approval to Stimson Lumber to
5 begin logging on Thursday February 13, 2025 with only hours' notice to LFDC (during a
6 snowstorm that closed the Court on Friday February 14, the day before a three-day holiday). At
7 the time of exercising their discretion to allow Stimson to proceed with the logging, DNR was
8 fully aware that no administrative record had been produced and that litigation was active.
9 Taken in context, this act by DNR undermined both the letter and spirit of SEPA and the
10 Administrative Procedure Act resulting in immediate harvesting of some of the legacy forest.

11 Thus, logging began before DNR ever produced the administrative record, *despite*
12 *Appellants' repeated, early warnings to both DNR and this Court that such actions would*
13 *render the case moot and any future relief impossible.* Indeed, Appellants timely filed their
14 lawsuit challenging DNR's approval of the sale before DNR put the sale up for auction, and
15 before the Intervenor Stimson Lumber Company ever bid on the sale.

16 Even more troubling, DNR's own internal communications acknowledge that these
17 forests had been designated to meet older forest targets, until the agency without explanation
18 reclassified and auctioned them anyway.

19 DNR likewise knew, or reasonably should have known, that authorizing logging to
20 proceed would force Appellants into litigating temporary restraining order and preliminary
21 injunction proceedings to preserve the status quo of the stands to prevent a likely finding of
22 mootness after the timber had been removed. Appellants were thus forced to submit preliminary
23 injunction briefs requiring them to prove a "likelihood of success on the merits" without having

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2 received from DNR the administrative record evidence to prove their case on the merits. This
3 left Appellants in the untenable position of having to prove their case without the record.

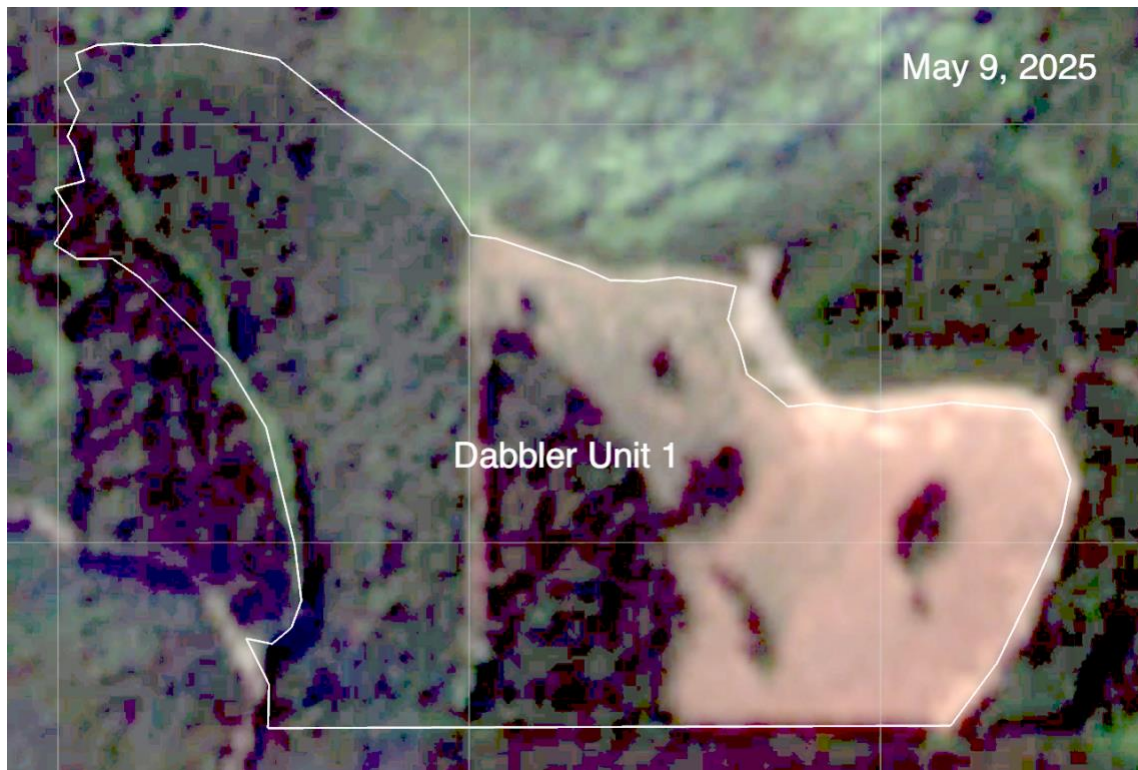
4 Despite Appellants posting a bond and submitting clear, unrefuted declarations and
5 photographic evidence of the forest's ecological significance, this Court denied a preliminary
6 injunction. The Court denied the request for a preliminary injunction on the basis that
7 Appellants had not shown a likelihood of success on the merits. This decision was rendered
8 based on briefing filed before DNR provided Appellants the administrative record for the case.

9 The combination of DNR's auctioning of the sale after the administrative appeal was
10 filed, DNR's decision to lift winter restrictions on logging and road building and approve
11 expedited logging in February well before the original contract date of May 1, and knowing
12 delay in producing the administrative record by 75 days, collectively and knowingly allowed
13 irreversible logging and damage to occur within the Dabbler timber sale.

14 Intervenor's harvesting of the Dabbler legacy forest began in earnest on February 14,
15 2025. After 13 days, this court issued a TRO restraining Intervenor from any further harvesting
16 until the Court could hold a hearing. The Court held a hearing February 26, and the Appellants
17 provided photographic evidence of harvesting which appeared mostly to be the trees that
18 Appellants alleged were structurally complex and should have been designated toward DNR
19 meeting its Older Forest Targets. On March 28, this Court issued a ruling dissolving the TRO
20 and denying Appellants' motion for a preliminary injunction. Thereafter Intervenor Stimson
21 Lumber Company continued logging the sale.
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2 As of today, much of the Dabbler legacy forest has been felled. Intervenor Stimson
3 Lumber Company has been unwilling to voluntarily halt logging until a decision on the merits
4 is rendered, and DNR has been unwilling to enforce its contractual rights to temporarily pause
5 logging operations in the Dabbler sale until a ruling on the merits.

6 The orange area in the map below shows the extent of logging as of five days ago.



18 The below photos show the rapid extent of logging damage already inflicted by March
19 9, 2025, with more than two additional months passing of unhindered cutting:





Given the amount of timber harvested between February 14th and February 27th, and the above data, Appellants have no reason to believe that harvesting of the Dabbler legacy forest has not continued in earnest since the Court dissolved the TRO. The evidence is to the contrary.

The merits hearing in this case is not scheduled until late June 2025. Even if Appellants prevail on the merits this summer, the vast majority of the forest will almost certainly be logged and gone. Thus, even if Appellants prevailed, there would not be a judicial remedy available to preserve the legacy forest at the heart of this action because the majority of the forest will have been clearcut. Appellants believe that, even if the Court ultimately rules in favor of Appellant, the forest this action was attempting to save will be harvested by the next hearing, likely making this case moot. *Center for Responsible Forestry v. Washington State Dep't of Nat. Res.*, No. 56964-7-II, 2023 Wash. App. LEXIS 1816, at *1 (Ct. App. Sep. 26, 2023) (unpublished opinion subject to GR 14.1).

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2 This result stands in stark contrast to decisions from other Washington courts that
3 recognized the importance of status quo preservation in forest cases. Jefferson County, Mason
4 County, and Grays Harbor County all entered preliminary injunctions to maintain the status quo
5 pending resolution on the merits, with hearings set in July 2025. And the Court of Appeals
6 issued a temporary administrative stay and injunction in the Freedom case to “in order to allow
7 for a full, fair, and just appeal while protecting the fruits of the appeal.” LeDuc Decl., Ex. D.

8 This is one of approximately 40 timber sale appeals involving the same legal issues filed
9 statewide. Initially, LFDC filed a Uniform Declaratory Judgment Act claim to declare DNR’s
10 obligations in managing structurally complex forests to meet Older Forest Targets, to inform
11 and resolve litigation of these dozens of timber sales. But DNR vehemently opposed LFDC’s
12 approach, filed repeat motions to dismiss the UDJA claims, and repeatedly argued that LFDC
13 must appeal and litigate each timber sale of structurally complex forests individually. This has,
14 by necessity, resulted in an impact litigation approach compelled by DNR’s own legal response.

15 Courts have recognized the harm being caused by DNR’s misconduct and failure to
16 comply with its statutory obligation to timely produce the administrative record. In 2024, the
17 Pacific County Superior Court heard oral argument from LFDC regarding the Freedom timber
18 sale about DNR’s conduct throughout these related cases that resulted in LFDC’s cases being
19 dismissed, rendered moot, pulled by DNR before a decision on the merits, or otherwise
20 prevented from reaching the Court of Appeals so that this issue may be globally resolved for
21 all interested parties *with the forests still intact*. The Court expressly warned DNR counsel:

22 THE COURT: ... And I’ll just be very clear: I’m not issuing an injunction. But a
23 large part of the Court’s analysis depended on the fact that there was a remedy
that’s being sought and can be effective. **There’s allegations and other**

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2 **litigations that things have been done to basically eviscerate the ability of**
3 **the Court then to deliver a remedy. So, for whatever dicta it may be, I**
4 **would not appreciate that type of behavior in this case. Is that clear?**

5 MR. WELNA [DNR COUNSEL]: **That's absolutely clear.**

6 LeDuc Decl., Ex. A (Hearing Transcript Excerpt) (emphasis added).

7 In contravention of the Court's warning, DNR has continued using a tactic of delaying
8 review while allowing logging activity to eviscerate the Court's ability to deliver a complete
9 judicial remedy and consume Appellant's limited resources and attorney time on repetitive
10 preliminary remedies just to maintain the status quo before a merits hearing. The Pacific County
11 Superior Court eventually sanctioned DNR on May 9, 2025, ordering DNR to produce timber
12 sale administrative records within 30 days for five consolidated cases where it was severely
13 overdue, imposing penalties of \$2,500 per day if the agency failed to meet the 30-day deadline,
14 awarding attorney fees to LFDC, threatening to impose interest if the agency did not remit the
15 attorney fee award to LFDC within 30 days, and making a finding that DNR had violated its
16 statutory obligation under RCW 70.02.030. LeDuc Decl., Ex. B (Signed Order).

17 The Whatcom County Superior Court also sanctioned DNR for failing to timely produce
18 the administrative record while simultaneously allowing logging operations to proceed. On
19 May 14, 2025, the Court determined DNR's conduct was "bad faith" and ordered attorney fees
20 be paid to LFDC and the administrative record be produced within days. LeDuc Decl., ¶ 4.

21 The King County Superior Court found DNR violated its statutory obligation under
22 RCW 70.02.030 in failing to timely produce the administrative record for the Sylvan Pearl
23 timber sale, which in part cause the Court to administratively close and then re-open the case.
LeDuc Decl., Ex. C. On May 12, 2025, the Mason County Superior Court ordered DNR to

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2 waive costs to LFDC to access the late-file record for the Serendipity timber sale. LeDuc Decl.,
3 ¶ 3.

4 LFDC and FOCC are small, donation-supported nonprofits and primarily volunteer
5 resources. Due to severe resource constraints, Appellants face the grim reality of prioritizing those
6 cases where a meaningful and complete legal remedy remains possible (i.e. the legacy timber has
7 been preserved pending a decision on the merits). Thus, it is difficult to continue with expensive
8 and time-consuming administrative record litigation where, as here, the bulk of the structurally
9 complex forests have been clearcut with more than a month to go before the merits hearing.

10 Therefore, with heavy hearts, Appellants voluntarily move to dismiss this case to focus
11 their efforts on fighting to preserve the last of Western Washington's remaining legacy forests
12 that are still standing.



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2 IV.

3 LEGAL STANDARD

4 Under CR 41(a)(1)(B), a plaintiff may voluntarily dismiss an action at any time before
5 resting its case at trial. This right is preserved even when other substantive motions (e.g.,
6 preliminary injunctions) have been litigated. *See Elliott v. Peterson*, 92 Wn.2d 586, 588
7 (1979); *Gutierrez v. Icicle Seafoods, Inc.*, 198 Wn. App. 549, 554–55 (2017).

8 CR 41(a)(1)(B) states in part that: “(a) Voluntary Dismissal. (1) *Mandatory*. Subject to the
9 provisions of rules 23(e) and 23.1, any action shall be dismissed by the court . . . (B) By Plaintiff
10 Before Resting. Upon motion of the plaintiff at any time before plaintiff rests at the conclusion of
11 plaintiff’s opening case.”

12 The right to a voluntary dismissal is measured by the posture of the case at the time the
13 motion is made, and the right to a dismissal is fixed at that point. *Elliott v. Peterson*, 92 Wash.2d
14 586, 588 (1979). “[W]here a motion for voluntary nonsuit is filed and called to the attention of
15 the trial court before the hearing on a summary judgment motion has started, the motion must be
16 granted as a matter of right.” *Gutierrez v. Icicle Seafoods, Inc.*, 198 Wn. App. 549, 554–55 (2017).
17 A plaintiff has a right to a voluntary dismissal when the motion to dismiss is filed in lieu of filing
18 responding affidavits to a motion for summary judgment. *Paulson v. Wahl*, 10 Wn. App. 53, 57
19 (1973) (“We hold that a reasonable and proper interpretation of CR 41(a)(1)(B) and CR 56 dictates
20 that a nonmoving plaintiff in a summary judgment procedure retains the right to a voluntary
21 nonsuit until the motion for summary judgment has been submitted to the court for decision[.]”).
22 Courts have concluded that a case has been “submitted” for decision only once oral argument on
23 summary judgment is waived or has convened. *See Paulson*, 10 Wn. App. at 57 (noting that there

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2 had been no submission of a case for final decision “where no hearing has begun and the court has
3 not otherwise exercised its discretion in the matter.”); *Greenlaw v. Renn*, 64 Wn. App. 499, 503
4 (1992).

5 Where a plaintiff voluntarily dismisses an action before resting its case, that dismissal is
6 presumptively without prejudice. *Greenlaw v. Renn*, 64 Wn. App. At 503; *Gutierrez v. Icicle*
7 *Seafoods, Inc.*, 198 Wn. App. at 556; (“Because no hearing had started, the parties had not
8 submitted the case for decision, and the trial court properly dismissed it without prejudice.”). Only
9 after a plaintiff rests its case does the right to a voluntary nonsuit, pursuant to CR 41(a)(1)(B),
10 become no longer absolute and a voluntary nonsuit can be granted “only upon a showing of good
11 cause.” *Greenlaw* at 501–02. Although the Court has the discretion to dismiss with prejudice as
12 appropriate, the Court must be cautious not to abuse that discretion. *Escude v. King County Public*
13 *Hosp. Dist. No. 2*, 117 Wn. App. at 190 (Orders regarding a motion to dismiss are reviewed for
14 “manifest abuse of discretion.”).

15 V.

16 ARGUMENT

17 Appellants have not rested and are entitled to dismissal as a matter of right. Appellants
18 move to voluntarily dismiss its claims under the Public Lands Act and State Environmental Policy
19 Act (all remaining claims) before resting at the conclusion of its opening case, therefore their
20 claims “shall be dismissed by the court” without prejudice. CR 41(a)(1)(B); *Greenlaw* at 503;
21 *Gutierrez* at 554-55. Here, a dispositive merits motion has not been argued and submitted to the
22 Court. The hearing on the matter is set for late June 2025 and has not started, and the Court has
23 given no indication of its decision on the final merits motion, although it did rule in the preliminary

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2 injunction proceeds that Appellants had failed to demonstrate a likelihood of success on the merits.
3 Appellants do not intend to file an opening merits brief for the reasons outlined above.

4 Further, Appellants motion to voluntarily withdraw its Public Lands Act and SEPA claims
5 is in the interest of judicial economy as it resolves the case without expending further judicial or
6 Party resources in reviewing extensive merits briefing that tends to exceed 40+ pages in each brief
7 and involves navigating an administrative record of more than 10,000 pages.

8 **VI.**

9 **CONCLUSION**

10 Based on the foregoing, Appellant LFDC respectfully requests this Court enter an order
11 dismissing Appellants' claims without prejudice.

12 DATED: May 14, 2025.

13 *Respectfully Submitted,*

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22 *and Friends of Clark County*

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of Washington State that on May 14, 2025, I caused to be served a true and correct copy of **APPELLANTS' MOTION TO VOLUNTARILY DISMISS PUBLIC LANDS ACT AND STATE ENVIRONMENTAL POLICY ACT CLAIMS** on the below parties via email to the addresses below:

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DATED: May 14, 2025.

/s/ David LeDuc Montgomery

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