IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

WASHINGTON FARM FORESTRY ASSOCIATION and WASHINGTON FOREST PROTECTION ASSOCIATION, Petitioners, v. WASHINGTON FOREST PRACTICES BOARD; WASHINGTON DEPARTMENT OF ECOLOGY; and WASHINGTON DEPARTMENT OF NATURAL RESOURCES, Respondents.	No. PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

I. INTRODUCTION

Petitioners Washington Farm Forestry Association and Washington Forest Protection Association challenge a rule issued by the Forest Practices Board (the "Board") that violates numerous laws, upends the longstanding scientific and consensus-driven process the legislature created to manage timberlands, and will cause billions of dollars of economic losses across western Washington and put generational family tree farms out of business. Petitioners urge the Court to vacate the rule and remand it to the Board.

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The rule challenged in this case dramatically expands buffers along small forest streams where no tree harvesting is allowed. These streams can flow year-round or intermittently but do not bear fish, and are referred to by the Board as "Type Np" streams (non-fish, perennial). The rule significantly expands the no-harvest buffers required by the prior rule. Under the prior rule, Type Np streams generally required 50-foot buffers on each side for at least half the stream's length, with more coverage in sensitive areas. The new rule generally requires 75-foot buffers on each side for the entire length of the stream. The required new buffers are thus approximately 50 percent wider and 100 percent longer, and take hundreds of thousands of additional acres of forestland out of timber production. Forest landowners like Petitioners' members are harmed by the rule from reduced harvestable acreage, inaccessible timber, increased logging costs, safety issues, and reduced property values.

The fundamental problem with the rule is that the Board failed to follow the science-based process required by statute for amending its rules. The prior, 50-foot buffers were implemented in 2001 as one element of an historic agreement between private timberland owners, tribes, and state and federal government agencies called the Forests and Fish Report. The report, negotiated over two years, established a collaborative agreement to govern forestry practices in the State to contribute to the State's Statewide Salmon Recovery Strategy and meet the requirements under the Endangered Species Act and Clean Water Act while protecting the economic viability of the timber industry.

The Legislature found that implementing the Forest and Fish Report's recommendations, "will lead to the protection of aquatic resources to the maximum extent practicable consistent with maintaining commercial forest management as an economically viable use of lands suitable for

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that purpose" and "provide a regulatory climate and structure more likely to keep landowners from converting forestlands to other uses that would be less desirable for salmon recovery." RCW 77.85.180(1). The Legislature urged the Board to adopt "permanent rules" to implement the recommendations of the report. RCW 76.09.370(1). The prior rule requiring 50-foot buffers was one such "permanent rule."

To preserve the historic agreement, the Legislature also established a science-based process to review and, if appropriate, change these permanent rules. By statute, permanent rules can only be changed if they are failing to achieve "resource objectives," such as protection of salmon habitat and water quality, according to "the best available science and information." RCW 76.09.370(6)–(7).

In this case, the Board never made the requisite statutory finding that the 50-foot buffers were failing to achieve resource objectives. Instead, at the insistence of the Department of Ecology ("Ecology"), the Board made up a new standard whereby buffers must be expanded if there is any "measurable change" in Type Np stream water temperature after timber harvesting with buffers prescribed by the prior rule, even though any such change may only be temporary without downstream effects on temperature or salmon. That new standard has no basis in law or science, and is not tied to the failure to achieve any specified resource objective. The Board itself acknowledged that any "improved conditions" from the expanded buffers "do not persist far downstream," and thus have no benefit to salmon or habitat.

Forest landowners had faith in the process for changing the permanent rules coming out of the Forests and Fish Report: they understood that changes may be necessary, but would only occur as needed to achieve resource objectives based on the best available science, while maintaining

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the economic viability of the timber industry. The Board and Ecology subverted that scientific process and violated the historic agreement achieved by the Forests and Fish Report by imposing a rule with no statutory basis and no grounding in science. The Seattle Times rightly observed that the new rule is "the result of a flawed process that failed to consider fully the economic harm that awaits the state's forestland owners—without demonstrating sufficient environmental benefits that merit the change."

The rule has other fatal flaws. The Board only analyzed a single action and failed to evaluate alternatives, violating the most basic requirement of administrative law. Despite acknowledging that this was a "significant legislative rule," the Board failed to comply with the statutory requirements for such rules to determine "after considering alternative versions of the rule," that "the rule being adopted is the least burdensome alternative." RCW 34.05.328(1)(d)–(e). The cost-benefit analysis the Board prepared to make the requisite finding that "the probable benefits of the rule are greater than its probable costs," RCW 34.05.328(1)(d), overlooks obvious costs that will result from the rule—like from the additional roads that will be needed to harvest timber in compliance with the expanded buffers, and impacts to the state's economy and lost timber tax revenue—while overestimating purported environmental benefits through speculative or unsupported assumptions and methodologies, including reliance on a "willingness-to-pay" metric for improvements to water quality despite negligible downstream water-quality improvement, unsubstantiated claims of climate benefits, and habitat gains with limited connection to the specific goals and objectives of the FPA that the rule purports to implement..

The Board also shirked its basic responsibilities under the State Environmental Policy Act ("SEPA") to assess the impacts of the rule and summarily determined that such an assessment

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would "not contribute meaningfully to the analysis of the proposal." For a major rule affecting hundreds of thousands of acres and causing billions of dollars in losses, SEPA required the Board to do more. The Board received multiple comments on its SEPA determination that the rule would have no probable, significant environmental impacts, but the Board inexplicably failed to respond to any of those comments by wrongly asserting they were not "timely" filed.

The end result is an unlawful, arbitrary rule with deep substantive and procedural flaws that will cost billions of dollars and provide little benefit to salmon or fish habitat. The Court should vacate the rule and remand it to the Board with instructions to comply with the Forest Practices Act, SEPA, and the Administrative Procedure Act.

II. PARTIES

1. Washington Farm Forestry Association ("WFFA") is a 501(c)(5) non-profit association representing small forest landowners in Washington State. WFFA's membership includes over 1,300 members who manage over 150,000 acres of forest land in Washington. WFFA members are subject to and harmed by the rule at issue.

2. Washington Forest Protection Association ("WFPA") is a trade association representing private forest landowners in Washington State. WFPA's membership includes large and small companies who manage nearly 4 million acres of forest land in Washington. WFPA members are subject to and harmed by the rule at issue.

3. The Forest Practices Board is a public agency and department of the State of Washington, created and organized under Title 76 RCW, with its headquarters in Thurston County, Washington. The Legislature has charged the Board with adopting forest practices rules, including rules pertaining to water quality protection. *See* RCW 76.09.040(1)(b). The Board must

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promulgate these rules in accordance with Washington's Administrative Procedure Act ("APA"), Chapter 34.05 RCW. *See* RCW 76.09.040(1)(a).

4. The Washington State Department of Ecology is a public agency and department of the State of Washington, created and organized under Title 43 RCW, with its headquarters in Thurston County, Washington. The Board must reach agreement with the Director of Ecology on any forest practices rule pertaining to water quality protection before the Board may adopt it. RCW 76.09.040(1)(b).

5. The Washington State Department of Natural Resources ("DNR") is a public agency and department of the State of Washington, created and organized under Title 43 RCW, with its headquarters in Thurston County, Washington. DNR has the exclusive authority to administer and enforce the forest practices rules adopted by the Board, unless otherwise provided by Chapter 34.05 RCW. RCW 76.09.040(1)(c); *see also* RCW 76.09.020(10).

III. AGENCY ACTIONS AT ISSUE

6. Petitioners are challenging four discrete but interrelated agency actions:

(1). The Board's Type Np Water Buffer Rule for Western Washington (referred to herein as the "Expanded Buffer Rule") adopted by the Boad on November 12, 2025, which modifies existing forest practice rule WAC 222-30-2021;

(2). The Board's Determination of Non-Significance for the Expanded Buffer Rule under WAC 197-11-340, issued on July 2, 2025 with SEPA #202502780;

(3). Ecology's revised interpretation of WAC 173-201A-320 as prohibiting "measurable change" in temperature in Type Np streams under buffers required by the Board's prior buffer rule for such streams; and

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(4). Ecology's "Water Quality Program Concurrence with the Forest Practices Board's Proposed Western Washington Type Np Waters Buffer Rule" and its enclosed Tier II analysis for the Expanded Buffer Rule pursuant to WAC 173-201A-320, titled "Final Tier II Antidegradation Analysis For The Washington Forest Practices Board's Proposed Western Washington Type Np Waters Buffer Rule," dated November 2025 (Publication 25-10-083).

IV. JURISDICTION, STANDING, AND VENUE

7. This action arises out of the Forest Practices Act, Chapter 76.09 RCW, SEPA, Chapter 43.21C RCW, and APA, Chapter 34.05 RCW.

8. This Court has personal jurisdiction over the parties and has subject-matter jurisdiction over this action under RCW 34.05.570(2), which authorizes judicial review of an agency rule, and RCW 34.05.570(4), which authorizes judicial review of "other agency action." This Court may either affirm the agency's action or order the agency to take action required by law, order an agency to exercise discretion required by law, set aside agency action, enjoin or stay the agency's action, remand the matter for further proceedings, or enter a declaratory judgment order. *See* RCW 34.05.574(1).

9. Because the Court has subject-matter jurisdiction over this action under RCW 34.05.570(2) and (4), the Court also has subject-matter jurisdiction over Petitioners' SEPA claims. *See* RCW 43.21C.075(1), (3); *State v. Grays Harbor Cnty.*, 122 Wn.2d 244, 252, 857 P.2d 1039 (1993).

10. Petitioners have standing to bring this action on behalf of themselves and their members. *See Wash. Fed'n of State Emps. v. State*, 2 Wn.3d 1, 15, 534 P.3d 320 (2023) (associational standing); *Lands Council v. Wash. State Parks Recreation Comm'n*, 176 Wn. App.

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787, 799, 309 P.3d 734 (2013) (SEPA standing); RCW 34.05.530 (APA standing for "person[s]"); *see also* RCW 34.05.010(14) (defining "person" to include "association[s]").

11. Petitioners' members have been and will continue to be harmed by the new Type Np Water Buffer Rule for Western Washington the Board adopted on November 12, 2025 ("Expanded Buffer Rule"). Membership in WFFA and WFPA includes forest landowners who face substantial financial consequences, compliance costs, loss of property value, inaccessible timber, and disruptions to their timber harvest plans from the Expanded Buffer Rule. For some members, compliance with the Expanded Buffer Rule will not be economically feasible and may result in loss of their businesses. Although the effective date for the Expanded Buffer Rule is August 31, 2026, WFFA and WFPA members are already being harmed by the rule from disruption to their timber harvest plans, compliance costs, and loss of property value.

12. A judgment in favor of Petitioners would substantially eliminate or redress the harm to their members that the Expanded Buffer Rule has caused and will cause.

13. Petitioners' members would have standing to bring this action in their own right and the interests Petitioners seek to protect are germane to each organization's purpose as a member organization. *See Allan v. Univ. of Wash.*, 140 Wn.2d 323, 326, 997 P.2d 360 (2000) (APA standing, quoting RCW 34.05.530); *Kucera v. State, Dep't of Transp.*, 140 Wn.2d 200, 212, 995 P.2d 63 (2000) (SEPA standing); *Wash. Bankers Ass'n v. State*, 198 Wn.2d 418, 455–56, 495 P.3d 808 (2021) (Uniform Declaratory Judgment Act standing). Neither the claims asserted nor the relief requested in this petition require the participation of Petitioners' individual members.

14. Venue is proper in this Court under RCW 34.05.570(2)(b)(ii)(A) and RCW 4.12.025, as this action involves a rule challenge under RCW 34.05.570(2) and (4).

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V. LEGAL AND REGULATORY BACKGROUND

A. The Forest Practices Act

15. In 1974, the Legislature passed the Forest Practices Act ("FPA"), Chapter 76.09 RCW, finding that "forestland resources are among the most valuable of all resources in the state," "that a viable forest products industry is of prime importance to the state's economy," and "that it is in the public interest for public and private commercial forestlands to be managed consistent with sound policies of natural resource protection." RCW 76.09.010(1).

16. Consistent with these findings, the Legislature adopted "a comprehensive statewide system of laws and forest practices rules" to advance "profitable growing and harvesting of timber" while complying "with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices[.]" RCW 76.09.010(2)(c), (g). The Legislature found it is "in the public interest of this state" that rules governing forest practices "[r]ecognize both the public and private interest in the profitable growing and harvesting of timber." RCW 76.09.010(2)(c). The Legislature directed that the timber industry have "maximum operating freedom consistent with the other purposes and policies" of the FPA. RCW 76.09.010(2)(d).

i. Federal and state law on nonpoint source water pollution

17. Under the federal Clean Water Act, each state must set water quality standards within its boundaries. *See* 33 U.S.C. § 1313(a)–(d). These standards consist of designated uses of waters subject to Clean Water Act jurisdiction (e.g., fishable, swimmable), water quality criteria for such waters based on those uses, and an antidegradation policy to maintain water quality to protect existing uses, while allowing lowering of high-quality waters when necessary for important

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economic or social development, so long as uses and criteria continue to be met. *See* 40 C.F.R. Part 131, Subpart B. Washington's Water Pollution Control Act, Chapter 90.48 RCW, establishes Ecology's rulemaking authority to promulgate water quality standards, *see* RCW 90.48.035.

18. Chapter 173-201A WAC establishes the water quality standards for surface waters in Washington, including designated uses and criteria. *See, e.g.,* WAC 173-201A-200, Table (1)(c) (establishing a temperature criterion of 16°C for core summer salmonid habitat). For activities which generate nonpoint source pollution, such as forest practices, "[t]he primary means to be used for requiring compliance with the [water quality] standards shall be through best management practices[.]" WAC 173-201A-510(3)(a). Best management practices ("BMPs") for nonpoint sources of pollution are applied to achieve compliance with water quality criteria. *See* WAC 173-201A-510(3)(b). Washington has an antidegradation policy, including for high quality waters. WAC 173-201A-300, -320.

19. The Water Pollution Control Act prohibits Ecology from establishing a permitting program for nonpoint source pollution from forestry and confirms that the FPA and forest practices rules are the primary means of regulating nonpoint source pollution from forest practices and meeting the relevant requirements of the Clean Water Act. RCW 90.48.420(3); RCW 90.48.425; *Kettle Range Conserv. Grp. v. Wash. Dep't of Nat. Res.*, 120 Wn. App. 434, 454, 85 P.3d 894 (2003).

B. The Forests and Fish Report

20. In 1999, in response to Endangered Species Act listings of salmon, water quality impairments, and ongoing litigation, federal agencies, state agencies (including DNR and Ecology), the timber industry including small and large forest landowners, and treaty tribes

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negotiated the Forests and Fish Report to craft a durable, science-based framework for Washington's forest practices.

21. The Forests and Fish Report established the basis for Washington's forest practices to meet federal and state water quality requirements. The Report's recommendations balanced timber industry viability with long-term protection of fish and aquatic habitat. The parties also specifically designed the Forests and Fish Report to meet the requirements of the Clean Water Act with respect to nonpoint source pollution attributable to forest practices, including beneficial uses, numeric and narrative criteria, and antidegradation policies.

22. Appendix B of the Forests and Fish Report contains riparian buffer prescriptions to protect water quality, including prescriptions for Type Np streams. These prescriptions are the basis for the original Type Np stream buffer rule adopted in 2001 ("Forest and Fish Buffer Rule"). The goals of the Forests and Fish Report were to ensure timber industry economic viability, comply with the Endangered Species Act and the Clean Water Act, and restore habitat to support a harvestable supply of fish and the viability of other covered species.

23. The Forests and Fish Report includes several key mechanisms, including (i) the Adaptive Management Program ("AMP") and (ii) the Clean Water Act assurances mechanism from the U.S. Environmental Protection Agency ("EPA") and Ecology.

i. <u>The Adaptive Management Program</u>

24. Appendix L of the Forests and Fish Report established the AMP as the mechanism for ensuring the forest practices rules meet resource objectives while sustaining the economic viability of the timber industry. The AMP is a structured, science-based process for reducing uncertainty, testing the effectiveness of rules, and making changes where monitoring shows they

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are needed to meet resource objectives.

25. The AMP consists of an independent peer-reviewed science work group called the Cooperative Monitoring Evaluation and Research ("CMER") Committee, and a policy work group called the Timber, Fish, and Wildlife ("TFW") Policy Committee, which is staffed by representatives from nine different stakeholder caucuses including the environmental community, the timber industry including large and small forest landowners, tribal governments, counties, and state and federal agencies.

26. A central feature of the AMP is "closing the loop"—the commitment to act on what monitoring and research reveal. Closing the loop has three desired outcomes: (1) changing the rules to protect resources only if peer-reviewed science shows the rules are not working; (2) providing predictability and stability so landowners, regulators, and the public can anticipate how and when changes will occur; and (3) applying quality controls to study design, execution, and interpretation so that decisions are grounded in credible science and standards.

27. Progress under the AMP is measured against resource objectives—benchmarks that translate broad statutory and policy goals into specific, measurable outcomes. Resource objectives serve as the yardstick for evaluating whether forest practices rules are effective. Schedule L-1 of the Forests and Fish Report sets the specific performance goals, resource objectives, and performance targets, for the AMP.

28. The overall performance goal is to ensure that forest practices—either singularly or cumulatively—do not *significantly impair* the capacity of aquatic habitat to (i) support harvestable levels of salmonids, (ii) support the long-term viability of other covered species, or (iii) meet or exceed water quality standards.

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29. Resource objectives are designed to meet the overall performance goals. For stream temperature, the objective is to provide cool water by maintaining shade, groundwater temperature, flow, and other watershed processes that control stream temperature.

30. Resource objectives are evaluated for significant impairment by measuring performance targets. Performance targets are the measurable criteria that define specific, attainable forest conditions and processes. For temperature, streams are to meet existing and anticipated water quality standards. The water quality criteria for protecting designated uses are the primary metric.

ii. Clean Water Act Assurances

31. Schedule M-2 of the Forests and Fish Report contains what are known as "Clean Water Act Assurances" from EPA and Ecology that define the terms and conditions for application of Clean Water Act Section 303(d). That provision requires preparation of Total Maximum Daily Load plans, known as TMDLs, that calculate the maximum amount of a pollutant allowed to enter a waterbody so that the waterbody will meet water quality standards on impaired water bodies (waters not meeting water quality criteria). The Clean Water Act Assurances established that the Board's forest practices rules, as updated through the AMP, would be used as the primary mechanism to bring forested watersheds into, and to maintain, compliance with water quality standards.

32. EPA and Ecology recognized the Forests and Fish Report as the most efficient path to meet state water quality standards.

33. The Clean Water Act Assurances have since been renewed multiple times, most recently in 2022.

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C. Legislative Implementation of the Forests & Fish Report

i. Practical, Science-Based Rules for Aquatic Resources that Protect Timber Industry Viability

34. In 1999, the Legislature amended the FPA and encouraged the Board to adopt rules implementing the recommendations of the Forests and Fish Report. *See* RCW 76.09.370(1). The Forests and Fish Report's recommended changes to forest practices rules were the product of extensive negotiations, were scientifically based, and advanced salmon recovery and water quality enhancement while protecting the state's interest in commercial timber harvesting. RCW 77.85.180(1)–(2).

35. The viability of timber harvesting was a defining objective of the Forests and Fish Report. The Legislature found that the amendments to the forest practices rules from the Forests and Fish Report would result in "the protection of aquatic resources to the maximum extent practicable *consistent with maintaining commercial forest management as an economically viable use of lands suitable for that purpose*." RCW 77.85.180(1)(b) (emphasis added). Thus, aquatic resource protections had to be practicable when evaluated against commercial forest management, consistent with the Legislature's direction to maintain a viable timber industry.

36. The Legislature recognized that protecting profitable timber harvesting facilitated salmon recovery. The Legislature found that the changes in laws and rules contemplated in the Forests and Fish Report, including the AMP, fully satisfy the requirements of the Clean Water Act with respect to nonpoint source pollution attributable to forest practices, and will provide a regulatory climate and structure more likely to keep landowners from converting forestlands to other uses less desirable for salmon recovery. *See* RCW 77.85.180(1)–(2). The Legislature

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recognized that forest practices rules "impose substantial financial burdens on forestland owners" that, without offsets through other changes in the laws and rules governing forestry, could translate into long-term adverse effects on fish and wildlife. RCW 77.85.180(1)(c). The Legislature saw the forest practices rules as designed to encourage "continued investments in [nonfederal forestlands] for commercial forestry purposes." RCW 77.85.180(3). Thus, maintaining a viable commercial forestry industry is essential to salmon recovery, and undue financial burdens on landowners can jeopardize salmon recovery efforts.

ii. The Legislature Constrained Future Rulemaking to Preserve the Forests & Fish Report's Recommendations

37. The Legislature directed that changes to the negotiated, science-based "permanent rules" emanating from the Forests and Fish Report occur only where the best available science establishes that those rules are failing to meet resource objectives. RCW 76.09.370(6)–(7).

38. The Legislature authorized the Board to change these permanent rules "only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board." RCW 76.09.370(6). The Legislature specified that the AMP is used to adjust "forest practices that are not achieving the resource objectives." RCW 76.09.370(7). The Legislature also directed that the AMP "shall incorporate the best available science and information," as well as "protocols and standards," and that rule changes must be designed "to meet timber industry viability and salmon recovery." *Id.* The Legislature, intent on preserving the balance struck in the Forests and Fish Report, required the Board to notify the Legislature when its rules departed from the report's recommendations. RCW 76.09.370(1).

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39. Consistent with the Forests and Fish Report and FPA amendments, the purpose of the AMP "is to provide science-based recommendations and technical information to assist the [B]oard in determining *if and when* it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource goals and objectives." WAC 222-12-045(1). The goal of the AMP "is to effect change when it is necessary or advisable to adjust rules and guidance to achieve the goals of the forests and fish report or other goals identified by the [B]oard." *Id.* The Board's rules confirm: "Resource objectives are intended to ensure that forest practices, either singularly or cumulatively, will not significantly impair the capacity of aquatic habitat to: (A) Support harvestable levels of salmonids; (B) Support the long-term viability of other covered species; or (C) Meet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and antidegradation)." WAC 222-12-045(2)(a)(ii).

40. Thus, if, and only if, there has been some finding that existing forest practices are not achieving the resource objectives, the AMP proceeds to evaluate whether it is necessary or advisable to adjust rules and guidance for aquatic resources to achieve resource objectives.

iii. <u>The Legislature Clarified Ecology's Role in a Manner that Prioritizes the Board's Authority</u>

41. The Legislature also intended that the Board—rather than Ecology—formulate forest practices rules relating to water quality. The Legislature limited Ecology's role in rulemaking by giving the Board authority to adopt changes to the forest practices rules. *See* RCW 76.09.040(1)(a). Before 1999, Ecology was required to co-promulgate any forest practices rule relating to water quality. Following the Forests and Fish Report, the Legislature amended the law to specify that only the Board can adopt forest practices rules relating to water quality, provided

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Ecology agrees. RCW 76.09.040(1)(b), (2)(a); RCW 90.48.420(2). The Legislature thus intended for the Board to have primary authority to implement the FPA, with Ecology playing a supporting role when it comes to forest practices that affect water quality.

D. The Board Must Adopt Forest Practices Rules in Accordance with the Washington Administrative Procedure Act

42. The Board is authorized to adopt forest practices rules under the FPA but must do so in accordance with the APA. *See* RCW 76.09.040(1)(a).

43. RCW 34.05.570(2)(c) allows the court to invalidate an agency rule if it finds that the rule exceeds the agency's statutory authority, is arbitrary and capricious, was adopted without compliance with statutory rule-making procedures, or is unconstitutional.

44. RCW 34.05.570(4)(c) allows a person aggrieved by the performance of an agency action, including the exercise of agency discretion, to seek relief if the court determines the action is outside the statutory authority of the agency or the authority conferred by a provision of law, is arbitrary or capricious, or is unconstitutional.

E. The Board Must Comply with SEPA

45. SEPA establishes procedures for evaluating environmental impacts and alternatives for proposed actions. SEPA seeks to "[a]ssure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings," "[a]ttain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences," and "[a]chieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities." RCW 43.21C.020(2). SEPA requires all governmental agencies to consider environmental and

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socioeconomic impacts of a proposal before making decisions. *See generally* Chapter 43.21C RCW.

46. The purpose of SEPA documents is to improve decision-making by informing decision-makers and the public about impacts of government action and soliciting feedback. *See* WAC 197-11-400. SEPA documents should be "concise, clear, and . . . supported by evidence that the necessary environmental analyses have been made," and requires careful consideration of "the range of probable impacts, including short-term and long-term effects" and "direct and indirect impacts." WAC 197-11-030(2)(c); WAC 197-11-060(4)(c)–(d).

47. An environmental impact statement ("EIS") must be prepared for all proposals significantly affecting the quality of the environment. *See* WAC 197-11-330. The determination of whether a proposed action is likely to result in significant adverse impacts is termed a SEPA "threshold determination." *See* WAC 197-11-310; WAC 197-11-330. The primary means of making a threshold determination is to analyze information provided in response to a series of questions set out in a form known as the "SEPA Checklist." *See* WAC 197-11-315; WAC 197-11-960. The environmental elements for consideration under SEPA are expansive and include water and air emissions, climate, energy and natural resources, land and shoreline use, housing, transportation, and critical public services, amongst many others. *See* WAC 197-11-444; WAC 197-11-960 (Part B, Environmental Elements).

48. If a proposal will likely have significant adverse impacts on the environment, then the lead agency must then prepare an EIS. RCW 43.21C.031.

49. Judicial review of all SEPA and non-SEPA challenges to government action must occur simultaneously. RCW 43.21C.075(6)(c). Agency actions taken in violation of SEPA are

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ultra vires, invalid and void *ab initio*. *See Weyerhaeuser v. Pierce Cnty.*, 124 Wn.2d 26, 42, 873 P.2d 498 (1994).

F. The Uniform Declaratory Judgment Act

50. Under the Uniform Declaratory Judgment Act ("UDJA"), a party whose rights, status, or legal relations are affected by a statute, ordinance, contract, or other legal instrument may seek a judicial determination of any question regarding the construction or validity of the instrument and obtain a declaration of their rights or legal relations. *See* RCW 7.24.020. The Legislature has granted Washington courts the authority to issue such declarations. *See* RCW 7.24.010. The UDJA is remedial in nature and is intended to be liberally construed. *See DiNino v. State ex rel. Gorton*, 102 Wn.2d 327, 330, 684 P.2d 1297 (1984) (citing, *inter alia*, RCW 7.24.120). The Legislature has also authorized Washington courts to order any further relief based on a declaratory judgment "whenever necessary or proper." RCW 7.24.080.

VI. FACTS

A. The Forest and Fish Report Type Np Buffer Rule

51. In 2001, the Board adopted permanent rules to implement the Forests and Fish Report, including the Forest and Fish Buffer Rule establishing riparian management prescriptions for timber harvest around Type Np streams specifically designed to meet timber industry viability and Clean Water Act requirements.

52. Type Np streams are perennial non-fish bearing streams. *See* WAC 222-16-030(3). These streams make up the headwaters of larger, fish bearing streams, referred to as Type F streams. During harvests, forestland owners are required to leave trees along the entire length of

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Type F streams as buffers to protect water quality and other riparian functions of those streams as part of the existing regulatory framework. WAC 222-30-021*(1).

53. The Forest and Fish Buffer Rule restricts forestland owners from harvesting timber within 50 feet of the water along the lower 300–500 feet (depending on total stream length) of a Type Np stream measured from the confluence of that Type Np stream and a Type F stream. Upstream from this mandatory buffer area, landowners are required to leave 50-foot buffers along both sides of at least 50 percent of the remaining length of the Type Np stream. Within certain parameters to protect sensitive areas, determining which segments of the Type Np stream will remain buffered is left to the forestland owner's discretion. WAC 222-30-021*(2).

54. In 2006, federal agencies approved the Forest Practices Habitat Conservation Plan ("Forest Practices HCP"), which is a 50-year agreement to ensure that Washington's forest practices protect aquatic species and habitat. The Forest Practices HCP acknowledged that there could be temporary warming in Type Np streams under the Forest and Fish Buffer Rule. However, the Forest Practices HCP noted these waters "had minimal influence on downstream water temperature" in Type F streams due "primarily" to differences in flow volumes, and explained that even if non-fish-bearing streams exhibited some warming, fish-bearing waters responded "quickly" in returning to "equilibrium with downstream conditions." In other words, minor elevation of temperature in Type Np streams was anticipated and does not translate into warmer temperatures downstream in Type F streams where fish live.

B. 2009 Clean Water Act Assurances

55. In 2009, Ecology completed a review of Washington's forest practices program and the AMP's effectiveness in bringing waters into compliance with state water quality standards to

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maintain the Clean Water Act Assurances.

56. Ecology set out a series of "milestones"—i.e., AMP research projects, monitoring tasks, and administrative steps—that Ecology claimed were needed to maintain Clean Water Act Assurances over the long term.

57. The 2009 Clean Water Act Assurances Review reaffirmed the AMP as the primary mechanism to ensure that forest practices protect water quality. Ecology acknowledged that meeting the milestones would demonstrate sufficient progress toward satisfying the state water quality standards nonpoint source implementation provisions at WAC 173-201A-510(3), which states that compliance with water quality standards "shall be through best management practices" and that "best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented." WAC 173-201A-510(3)(a)–(b).

58. Among the milestones, Ecology highlighted effectiveness monitoring of Type Np buffers. In the context of temperature, the core scientific question for AMP resource objective monitoring was whether Type Np rules meet or exceeded stream temperature criteria.

C. AMP Studies Indicate Type Np Buffers Are Meeting Applicable Temperature Resource Objectives

59. The Board's science work group undertook two studies to test the effectiveness of riparian buffers on Type Np streams in western Washington. These studies are known as the "Hard Rock" and "Soft Rock" studies in reference to the relative hardness of streambed rocks or sediments in streams the studies examined.

60. Both the Hard Rock and Soft Rock studies were designed to examine full-basin

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harvest scenarios, which are unusual, extreme scenarios representing less than two percent of real-world timber harvests, to generate conservative results regarding potential impacts on aquatic habitat, including stream temperature, from timber harvesting.

61. The findings from these studies indicate that, even under the conservative, worst-case harvest scenarios, the Forest and Fish Buffer Rule does not significantly impair the capacity of aquatic habitat to meet or exceed water quality criteria. Downstream use of Type F streams as core summer salmonid habitat establishes the water quality criteria, including temperature, for upstream tributaries (i.e. Type Np streams). Post-harvest stream temperatures remained below the core 16°C water quality criterion for summer salmonid habitat in 93 percent of all observations in both studies, with most streams in the 12–14°C range before and after harvest.

62. Where temperature increases occurred in Type Np streams following timber harvest, they (i) averaged ~0.6–1.1°C, (ii) were temporary (recovering to preharvest conditions in three to nine years), and (iii) dissipated downstream once flows entered perennial fish bearing (Type F) segments that are already fully buffered.

63. Because real-world harvests are substantially less intensive than the full-basin harvest scenarios evaluated in these studies, actual harvest operations likely result in smaller and more limited temperature changes than those documented in the studies.

64. These studies support the conclusion that timber harvesting under the Forest and Fish Buffer Rule does not result in violations of water quality criteria, nor does it significantly impair the capacity of aquatic habitat to achieve resource objectives.

D. The Board's Expansion of Type Np Buffers

65. Despite substantial evidence that the Forest and Fish Buffer Rule was achieving

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resource objectives, including for temperature, in November 2025 the Board adopted the rule at issue and significantly expanded Type Np buffer requirements.

66. Under the new Expanded Buffer Rule, landowners must leave buffers along the entire length of Type Np streams. Where 85 percent or more of a basin is planned to be harvested in a five-year period, forest landowners must leave 75-foot, two-sided buffers along the entire length of all Type Np streams in that basin. In more common harvest scenarios, forest landowners are required to leave 75-foot, two-sided buffers along the lower 600 feet of a Type Np stream (measured from the confluence of the Type Np streams and Type F streams), and additional two-sided buffers along the remaining stream length with buffer size varying based on the width of the stream and landowner choice of thinning or no harvest.

67. The table below provides a side-by-side comparison of the Forest and Fish Buffer Rule and the Expanded Buffer Rule:

	Forest and Fish Buffer Rule	**Expanded Buffer Rule**		
	WAC 222-30-021*(2)	Scenario 1 (Basin <30 acres and/or <85% harvest planned within 5-y period		Scenario 2 (Basin ≥30 acres and ≥85% harvest planned within 5-y period
		1A	1B	
Lower Reach of Stream	50’ no-harvest buffer for lowest 500’ of stream if stream is greater than 1000’ total (shorter buffers for shorter streams)	75’ no-harvest buffer for lowest 600’ of stream	75’ no-harvest buffer for lowest 600’ of stream	75’ no-harvest buffer for entire length of stream

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	Forest and Fish Buffer Rule	Expanded Buffer Rule		
Upper Reach of Stream	At least 50% of stream's length must be protected on both sides of the stream, buffers required for designated sensitive sites	Width >3': 50' no-harvest buffer + additional 25' outer buffer representing 50% partial harvest zone Width <3': 50' no-harvest buffer	65' no-harvest buffer along remaining stream reach.	N/A

68. The expanded buffers are estimated to remove over 200,000 acres of harvestable forestland in Washington, cause losses of up to $1 billion in land value in the first year the rule is in effect, and eliminate up to 112 million board feet of log supply from the western Washington forest products market (equivalent to losing 1 to 2 mid-sized sawmills, nearly 2,000 direct jobs, and enough wood to build 10,000 to 15,000 homes annually). Broader, regional losses in wages, revenue, and state and local harvest taxes are estimated at $157 million to $315 million per year, with approximately $5 billion to $8 billion in total impact over 45 years. These impacts will be concentrated in economically distressed rural areas and reflect only a single harvest rotation.

69. The Expanded Buffer Rule did not arise from the conclusion that the Forest and Fish Buffer Rule was failing to achieve applicable resource objectives. Instead, the buffer expansion stemmed from a series of substantive and procedural defects that occurred throughout the development of the rule.

70. In particular, Ecology incorrectly instructed the Board that Ecology's Tier II antidegradation regulations mandate *no* measurable temperature change from forest practices post-harvest on Type Np streams. That interpretation conflicted with the plain language of the Tier II

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regulations and Ecology's longstanding interpretation of them and also conflicted with the governing statutory framework. The Board then adopted Ecology's misinterpretation of the Tier II regulations as the basis for changing the Forest and Fish Buffer Rule, which constrained the Board's development and evaluation of alternatives, and also tainted its cost–benefit analysis, small business economic impact statement, and the Board's SEPA determination of non-significance. The following sections describe these issues in detail.

E. Breakdown of the Science-Based AMP Process: The Misapplication of Tier II Antidegradation

i. Tier II Antidegradation and Its Role in the Forest and Fish Framework

71. Prior to 2003, Ecology determined that lowering of water quality from permanent forest practices rules implementing the recommendations of the Forests and Fish Report, including under the Forest and Fish Buffer Rule, was authorized because the rules (1) serve the overriding public interest by creating a framework to meet water quality standards across the state while protecting the economic viability of the timber industry, (2) incorporate reasonable BMPs, and (3) ensure water quality remains sufficient to meet the applicable criteria, subject to evaluation through the AMP.

72. In 2003, Ecology adopted its current antidegradation regulations under the Water Pollution Control Act. The regulations are stratified into three tiers. Tier II applies to surface water that is of higher quality than the applicable criterion designated for that water. WAC 173-201A-320. Type Np waters fall under Tier II for temperature because they are generally higher quality (e.g., colder) than the applicable temperature water quality criteria.

73. Ecology's 2003 Tier II regulations provide that "new or expanded actions" that "are

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expected to cause a measurable change in the quality of the water…may not be allowed unless [Ecology] determines that the lowering of water quality is necessary and in the overriding public interest." WAC 173-201A-320(1). A "measurable change" is therefore not prohibited, but merely triggers an analysis to determine whether the change should be allowed as within the public interest. For temperature, a "measurable change" is a "[t]emperature increase of 0.3°C or greater." WAC 173-201A-320(1)(3)(a). Tier II therefore expressly allows ≥0.3°C change under certain conditions.

74. Ecology confirmed this understanding of Tier II in its 2003 rulemaking record, stating that lowering in water quality that does not violate water quality criteria is consistent with state and federal antidegradation law and that Tier II "is not meant to greatly restrict the actions that are approved under the water quality standards."

75. Tier II also only applies to specific "new or expanded actions." WAC 173-201A-320(1). Ecology defines "new or expanded actions" as "human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003." WAC 173-201-020. Ecology considers the Forest Practices Rules as an "other water pollution control program," which is one of four categories of new of expanded actions referenced in Tier II. WAC 173-201A-320(2)(d). Tier II review of such programs occurs "at the time [Ecology] develops and approves the . . . program." WAC 173-201A-320(6). Ecology approved the Forests and Fish Framework in 1999 and the resulting permanent forest practices rules, including the Forest and Fish Buffer Rule, in 2001. Tier II therefore does not apply retroactively to the 2001 Forest and Fish Buffer Rule.

76. Tier II also states that when a water pollution control program includes an adaptive

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management process, like the Board's AMP, Tier II requirements are "considered met." WAC 173-201A-320(6)(c).

77. Despite the longstanding interpretation and application of Tier II, following the results of the AMP studies, Ecology instructed the Board and its AMP that the 50-foot buffers under the Forest and Fish Buffer Rule must demonstrate compliance with a Tier II "measurable change standard," asserted that any measurable warming violates Tier II, and directed that new Type Np stream buffer prescriptions were required and must be designed to prohibit measurable temperature change. Ecology further claimed that the Hard Rock and Soft Rock studies demonstrated violations of Tier II because they showed "measurable change" in water temperature under the Forest and Fish Buffer Rule.

ii. Introduction of the Tier II "Prohibition on Measurable Temperature Change" into the AMP

78. In response to the Hard Rock study, in 2018, the TFW Policy Committee then formed the Type Np Technical Workgroup. Acting on Ecology's direction, the Workgroup's 2021 technical report framed "the problem" it was tasked to solve: that studies showed that "[t]he average temperature increases [in Type NP streams] exceed the Washington measurable change standards" and "[t]he state water quality measurable change standards permit no temperature increase of 0.3°C or greater." The report goes on to misinterpret Tier II:

> Streams on lands under forest management are managed in a way that assumes that waters qualify as Tier II. WAC 173-201A-320 states that changes to Tier II waters are generally not allowed. In subsection (3) it states that the quality of such waters may not measurably change and defines such change for water temperature again as increases of 0.3°C or greater.

The report misinterprets Tier II by stating that "measurable change" is prohibited and that Tier II

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waters "may not measurably change" more than 0.3°C. This erroneous statement tainted the process and drove the Technical Workgroup to evaluate only buffer alternatives designed to meet the supposed 0.3°C prohibition, excluding consideration of the Forest and Fish Buffer Rule or other viable adaptive management alternatives.

79. The Technical Workgroup itself described avoiding measurable temperature change as an "arbitrary threshold," and observed that its biological significance depends on how close a stream's temperature is to the State's numeric criteria. The Technical Workgroup recognized that temperature increases in streams well below temperature criteria differ in biological significance from increases in streams above the criteria.

80. The Technical Workgroup also concluded that habitat protection could be achieved despite any measurable temperature change, and it identified several alternative approaches for evaluating thermal impacts. The Technical Workgroup had to develop prescription alternatives to achieve no measurable temperature change, even as it acknowledged that retaining buffers solely to prevent a measurable temperature increase required trade-offs with economic viability.

81. The Technical Workgroup's discussion demonstrates that misinterpreting Tier II as prohibiting a measurable temperature change compromised its analysis, precluded the use of best available science in analyzing the relevance of AMP studies, and prevented it from providing "recommendations to the Board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery" as required by RCW 76.09.370(7).

iii. <u>AMP Dispute Resolution Centers on Meeting a Tier II Prohibition on Measurable Temperature Change</u>

82. After accepting the Technical Workgroup's final report, the TFW Policy

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Committee could not agree on a buffer recommendation to present to the Board.

83. Because of this lack of consensus, on November 4, 2021, the Conservation Caucus representative in the TFW Policy Committee invoked the Board's dispute resolution process. *See* WAC 222-12-045(h)(A).

84. The 2022 dispute resolution mediator's report identified the application of antidegradation to forest buffers as the central dispute.

85. The dispute resolution process produced two proposals: the Minority and Majority Proposals. The Minority Proposal, which was advanced by small and large forest landowners and the Washington Association of Counties, proposed buffer adjustments tied to AMP study results and focused on compliance with water quality criteria. The Majority Proposal, which was authored by Ecology and its caucus affiliates, proposed continuous, expanded buffers explicitly designed to satisfy the purported 0.3°C temperature change "prohibition." In other words, the Majority Proposal explicitly adopted Ecology's misinterpretation of Tier II regulations, stating:

> When Washington adopted antidegradation provisions, as required by EPA, it was made clear that the Forest and Fish rules would need to meet the Tier 2 antidegradation requirements. Thus, the majority caucuses understand warming of Type Np streams should be limited to 0.3°C in accordance with the state's Tier II antidegradation standards.

86. Ecology repeatedly claimed that the Forest and Fish Buffer Rule does not protect water quality and threatened to withdraw Clean Water Act Assurances unless the Board amended the Forest and Fish Buffer Rule. For instance, in November 2022, Ecology stated in a Clean Water Act Assurances letter that "studies demonstrated that all riparian buffer treatment options resulted in temperature increases that greatly exceeded the allowable increase of 0.3 degrees Celsius" and

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incorrectly noted that "[t]he 0.3 degrees Celsius *limit* is based on Washington's antidegradation water quality standard."

87. The objective of avoiding measurable temperature change culminated in an AMP process that failed to incorporate best available science and information to produce recommendations to meet timber industry viability and salmon recovery. RCW 76.09.370(7).

F. The Board's Decision to Advance only the Majority Proposal to Rulemaking – Eliminating the Minority Proposal without Analysis

88. On November 9, 2022, a majority of Board members (7–6) voted to allow only the Majority Proposal to move forward through the rulemaking process, including the development of the CR-102 package, cost-benefit analysis, draft rule language, and other supporting documents.

89. On August 9, 2023, in response to allegations that a majority of Board members coordinated and "pre-decided" the outcome of the vote in violation of the Open Public Meeting Act, the Board voted to rescind the November 2022 vote. Prior to the vote, the Board chair emphasized the importance of the legitimacy and integrity of the Board's decisions.

90. Following the rescission, the Board reconsidered whether to advance the Majority and Minority Proposals to the CR-102 rulemaking stage.

91. Ecology told the Board it was up to Ecology to determine whether the Board's Type Np stream buffers are sufficient and it promised to veto any alternative for rulemaking that did not meet the "measurable change" standard Ecology had invented. Ecology presented the Board with a letter stating that Ecology, not the Board, is charged with determining whether forest practices meet the Board's forest practices goals for water quality. The letter stated that current Type Np stream buffers "are not protective" and told the Board that the Board must "take action" because

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the Forest and Fish Buffer Rule allows "waters to warm." Ecology then threatened to nullify any rulemaking other than one based on Ecology's favored Majority Proposal. Disregarding the science, Ecology stated that the Minority Proposal "would allow Washington's waters to continue to warm" and "falls far short of what is needed to protect water quality." Ecology stated it would oppose a rule based on the Minority Proposal.

92. The Board chair questioned Ecology's statement that the Minority Proposal will not meet water quality standards and indicated there was no Board study showing that. The Board chair noted that Ecology's position appeared to be a prejudgment of a process that had not happened yet. Other Board members identified the inherent problems with Ecology's direction and with proceeding to rulemaking based exclusively on the Majority Proposal and eliminating feasible alternatives before they have been evaluated.

93. The Board ultimately voted by a one-vote margin (7–6) to advance only the Majority Proposal, with several Board members stating their deference to Ecology's direction and the futility of advancing the Minority Proposal because Ecology threatened to veto any rulemaking other than one based on the Majority Proposal. The decision concluded the alternative dispute resolution process.

G. The Board's CR-102 Notice of Proposed Expanded Buffer Rule

94. On June 17, 2025, the Board issued a CR-102 notice of proposed rulemaking. The CR-102 was published in the State Register on June 26, 2025, opening the public comment process. Petitioners timely submitted comments on Board's proposed rule.

95. The CR-102 rule states that the AMP studies "determined that the current buffer prescriptions for forest adjacent to Type Np waters were insufficient to ensure that streams

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consistently meet state water quality standards with regard to stream temperature. Specifically, the water quality standards mandate no temperature increase of 0.3°C or greater (measured by the seven-day maximum temperatures) above natural condition." The CR-102 notice grossly misinterpreted Ecology's Tier II antidegradation policy at WAC 173-201A-320.

H. The Board's Cost-Benefit Analysis and Small Business Economic Impact Statement

96. The Board also published at the same time as the CR-102 notice its Cost-Benefit Analysis ("CBA") and the Small Business Economic Impact Statement ("SBEIS") for the proposed Expanded Buffer Rule.

97. The CBA forecasted a loss of over 170,000 acres of harvestable forestland in Washington and up to $1 billion in decreased forestland values due to the Expanded Buffer Rule—all in the first year that rule would be in effect. Studies submitted to the Board indicate the losses could be even more significant, with harvestable forestland losses over 200,000 acres. Studies also show these losses would eliminate up to 112 million board feet of log supply from the western Washington forests products market, equivalent to losing one to two mid-sized sawmills, nearly 2,000 direct jobs, and enough wood to build 10,000 to 15,000 homes annually.

98. Broader, regional economic losses in wages, revenue, and state and local harvest taxes are estimated at $157 million to $315 million per year, with approximately $5 billion to $8 billion of total impact over the next 45 years. The CBA, however, omitted other costs associated with the Expanded Buffer Rule. The CBA focused on lost timber and land value costs associated with landowners, but not additional costs associated with stranded timber, operational inefficiencies, and safety issues. The CBA also omitted any discussion of costs related to both public and private interest in the profitable growing and harvesting of timber.

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99. On the contrary, the purported benefits cited by the CBA are largely qualitative, have little or nothing to do with the purpose of the rule or the Board's statutory objectives, and rely on categories of purported benefits that are speculative, unsupported, or otherwise premised on flawed methodologies for evaluating regulatory benefits. For instance, the CBA cites as a major benefit the public's "willingness-to-pay" for improvements to water quality. But the forestlands in question are private forestlands with no recreational or direct public use context and the CBA recognizes negligible improvement to downstream aquatic habitat. Without empirical data linking the buffer expansion to measurable downstream water quality improvements, assigning a 'willingness-to-pay" value as a major benefit is arbitrary. These and other qualitative benefits are overstated relative to rule's actual effects.

100. The CBA portrayed this rule as having a net climate benefit due to increased carbon sequestration. This analysis, however, failed to adequately account for several critical factors. For instance, while the CBA addressed leakage—i.e., the idea that the restriction of timber harvest in Washington will result in increases in harvests in other parts of the world—it entirely failed to account for the increase in carbon emissions attributable to the transportation of any imported timber into Washington state from abroad that would not have occurred without the rule. The CBA also failed to adequately explain why it did not use the actual market value of carbon, which is quantifiable in Washington state based on the price for carbon allowances in the state's Cap-and-Invest Program. Instead, the CBA simply stated without citation that it did not use carbon market prices because they "are unlikely to accurately reflect the true social cost of carbon." Even if the Board did not ultimately rely on any carbon sequestration calculations for its CBA conclusions, the CBA should have nonetheless used carbon market prices to make such calculations for the

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Board to consider. Using actual market value would have dramatically decreased the purported benefit of any potentially sequestered carbon.

101. The CBA also assumed that the proposed rule would not meaningfully change wildfire risk and consequently did not incorporate such a risk into its climate analysis. As the CBA observes, unmanaged forests in no-harvest buffers are more vulnerable to wildfires, which in turn increases emissions. The CBA dismisses this major risk without any attempt to assign either a qualitative or quantitative cost to this risk.

102. The CBA also cited purported habitat improvements for terrestrial species as a major benefit of the Expanded Buffer Rule; however, these species include mammals and birds with limited or no relevance to the aquatic habitat objectives of the statutory provisions the rule is purported to implement. Similarly, the CBA declined to put any weight on the costs from increased conversion of land uses outside of the proposed buffers due to the adoption of the rule. Rather than evaluating the potential adverse effects of increased conversion on fish, the CBA simply assumes that the proposed rule will not have any significant effect on conversion and that small forest landowners will not sell their land because of existing financial assistance programs. These are erroneous assumptions.

103. Finally, the CBA assumes that cooler water is inherently a net benefit. However, this assumption is unsupported by any considerations of benefits and costs of warmer water, both to fish and the surrounding ecosystem.

104. The SBEIS also suffers from multiple flaws. For example, the SBEIS asserts that there was no way to identify the impact to small forest landowners who are subject to the SBEIS requirements. *But see* RCW 19.85.040(2)(d) (requiring "[a]n estimate of the number of jobs that

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will be created or lost as the result of compliance with the proposed rule"). Therefore, small forest landowners, represented by Petitioner, WFFA, requested additional analysis by the University of Washington to identify likely rule impacts. The University of Washington performed a census-based analysis that forecasted a loss of over 200,000 acres of harvestable forestland in Washington with an immediate asset forfeiture of $1.8 billion due to the Expanded Buffer Rule across all affected landowners. These losses are for the buffer timber only and do not include lost land value, inaccessible timber, or increased road building and operational costs.

105. The mitigation solutions for small forest landowners provided in the SBEIS and in the Board's final rule package are outside the authority of the Board. For example, through discretionary appropriations, the Legislature controls funding for the Forest Riparian Easement Program ("FREP") which can cover most of the lost timber value in riparian zones owned by qualified applicants, mostly small forest landowners. *See* RCW 76.13.140. However, state law requires an adjacent commercially viable harvest to qualify for FREP. RCW 76.13.120(2)(c)(iii)(C). The greatest costs of the Expanded Buffer Rule on small forest landowners are associated with lost timber, land, and carbon value, inaccessible timber, increased road building and harvesting costs, reduced availability of timber workers, and reduced access to markets. In some instances, the entire property can become uneconomic to harvest, especially with loss of markets, thus eliminating FREP as a possible mitigation solution.

106. SBEIS mitigation solutions for small forest landowners that reduce land and timber taxes are also outside the Board's authority. These mitigation solutions, even if implemented, would amplify the negative impacts to rural timber-dependent counties which bear a significant burden from this rule through reduced excise tax, loss of milling and harvesting infrastructure, and

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subsequent economic decline.

107. Petitioners timely submitted comments on the CBA and SBEIS in their comments on the proposed rule.

I. The Board's Determination of Non-Significance under SEPA

108. On July 2, 2025, the Board issued a Determination of Non-Significance ("DNS") under SEPA, concluding that the proposed rule would not have any significant adverse environmental and socioeconomic impacts.

109. The Board's DNS, however, was incomplete. The Board failed to prepare Part B of the SEPA Checklist (Environmental Elements), asserting that it would "not contribute meaningfully to the analysis of this non-project action." The Board's DNS contained no evaluation of direct, indirect, and short-term and long-term impacts from the proposed rule. The Board's DNS did not assess the increased risk of forestland disturbance and conversion to other land uses and resulting impacts to salmon habitat that the Legislature specifically identified as a risk from increased regulation and financial burden on landowners. The DNS also omitted any evaluation of carbon emissions and energy impacts from harvest leakage and displacement of up to 112 million board feet of log supply from the Western Washington forest products market or of the socioeconomic effects from the proposed rule and its foreseeable environmental consequences.

110. The Board also improperly considered beneficial aspects of the proposal. *See King Cnty. v. Friends of Sammamish Valley*, 3 Wn.3d 793, 823–24, 556 P.3d 132 (2024) (noting that "[p]otential positive impacts are irrelevant" to a SEPA threshold determination). In response to the SEPA Checklist question, "How would the proposal be likely to affect plants, animals, fish, or marine life[?]", the Board responded that the proposal would "increase water quality" and "provide

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important ecosystem services." The Board provided no comment on the potential adverse environmental impacts in response to this question.

111. The Board requested that comments on the DNS be submitted by July 16, 2025. Petitioners submitted a timely comment letter on July 16, 2025. The Board did not respond to these comments, erroneously claiming that no "timely" comments were received.

J. Ecology's Preliminary and Final Tier II Analysis

112. In May 2025, Ecology issued a preliminary Tier II analysis for the proposed CR-102 Rule. This analysis marked a significant departure from Ecology's past practice, as it was the first Tier II analysis of its kind completed for new or amended forest practices rules since the adoption of the permanent rules in 2001. The Board has adopted numerous forest practices rules affecting water quality, yet for none of those rules has Ecology ever prepared, circulated for public comment, or finalized an independent Tier II antidegradation analysis. Instead, for this rule alone, Ecology created a new, ad hoc Tier II process designed to justify the Expanded Buffer Rule, reflecting an arbitrary departure from past practice.

113. Ecology's preliminary Tier II analysis acknowledged that Tier II allows for measurable changes in water quality when deemed necessary and in the overriding public interest. This acknowledgment contradicted Ecology's earlier application of a 0.3°C temperature change prohibition, which it expressed at multiple key milestones in the development of alternatives, and which was the stated purpose for the proposed rule and for the exclusion of the Minority Proposal.

114. Ecology published its Tier II analysis for the Expanded Buffer Rule in November 2025. In its Tier II analysis, Ecology again acknowledged that 0.3°C measurable temperature change was not a prohibition, but rather a trigger for the need for a Tier II analysis to determine if

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the lowering of water quality is necessary and in the overriding public interest. This acknowledgement directly conflicts with Ecology's earlier statements and the Board's justification for the Expanded Buffer Rule.

115. Ecology also repeatedly emphasized that Tier II applies only to "new or expanded actions." Ecology explained that the Board's proposed Expanded Buffer Rule in 2025 is the new or expanded action that triggered its Tier II analysis. In response to a comment asking Ecology to explain the discrepancy in its earlier insistence on Tier II compliance "when no proposed rules were before the Board," Ecology responded that the Tier II trigger was "outside the scope of this Tier II analysis." In other words, Ecology refused to explain its capricious statements that directly conflicted with its prior statements that provided the purported justification for the Board's Expanded Buffer Rule.

116. Ecology's Tier II analysis suffers from multiple other flaws, including its overriding public interest analysis and application of scientific information.

K. The Board's CR-103 and Adoption of the Expanded Buffer Rule

117. On October 29, 2025, the Board published a Concise Explanatory Statement ("CES") for the adoption of the proposed Expanded Buffer Rule. The CES noted that, while the process of seeking agreement of Ecology regarding forest practices rules pertaining to water quality is not defined by statute or any regulations, the Board "has relied on expert testimony of Ecology . . . on matters pertaining to water quality and the interpretation of water quality rules that are adopted by reference in forest practices rules."

118. The CES also acknowledged the nearly 500 comments opposing the rule. However, its responses to a substantial number of these comments were non-substantive and cursory. For

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instance, in response to concerns about the AMP process and the misapplied findings of the Hard Rock and Soft Rock studies, the Board simply stated without elaboration that the studies "show[ed] temperature increases associated with the current Type Np stream buffer prescription" and "were the results of the rigorous process for study design and review required under WAC 222-12-045(2)(c)."

119. The Board also did not substantively respond to comments that raised concerns about Ecology's erroneous interpretation of Tier II. Despite clearly relying upon this changed interpretation of Tier II as the basis for making rule changes and the basis for the proposed Expanded Buffer Rule, the Board claimed that "Ecology's interpretation of the water quality rules is outside the Board's scope of this rulemaking."

120. The Board claimed that "[t]he Board did not receive any timely comments on the SEPA determination of non-significance." The Board noted in its CES, however, that it received four comments related to the SEPA Checklist for the proposed rule; however, like with comments in Tier II, the Board refused to provide any substantive response, stating simply that "[w]hile the SEPA process is related to this rulemaking these comments are outside the scope of this public record."

121. On November 1, 2025, members of the Washington House Agriculture and Natural Resources Committee wrote a letter to the Board "express[ing] concern and seek[ing] clarification regarding the [Board's] recent planned adoption of the Western Washington Type Np (non-fish perennial) stream buffer rule." Ten bi-partisan legislative representatives indicated concerns with process integrity and public transparency, the scientific and technical foundations of the proposed rule, and Ecology's role in the process. The members also suggested that the Board did not

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demonstrate, pursuant to RCW 34.05.328, that probable benefits of the proposed rule outweighed probable costs and that the adopted rule is the least burdensome alternative consistent with the Board's statutory objectives.

122. On November 7, 2025, the EPA sent a letter to Ecology and the Board "provid[ing] clarification regarding federal versus state law requirements and [EPA's] role in implementation of the state of Washington's antidegradation policy." The EPA clarified that the Expanded Buffer Rule "is not required by the Clean Water Act or 40 CFR § 131.12 [EPA's antidegradation regulations]." It further urged Ecology and the Board "to be transparent throughout the rulemaking process when it is operating under provisions of state law, especially when the state chooses to develop regulations applicable to certain nonpoint sources or discretionary screening thresholds, which are not required by the Clean Water Act or the EPA's regulations."

123. On November 12, 2025, the Board met to discuss adoption of the Expanded Buffer Rule. After Board staff introduced the proposed Expanded Buffer Rule and prior to any discussion of the proposed rule, Ecology Director Casey Sixkiller immediately moved to adopt the proposed rule with a delayed effective date of August 31, 2026. Director Sixkiller stated that the rule would help "guarantee there would be no impact to water quality." The FPA and federally approved Forest Practices HCP do not guarantee "no impact" to water quality. Director Sixkiller's statement indicates that Ecology's goals are different than the Legislature's goals as reflected by its implementation of the Forests and Fish Report and FPA amendments.

124. A number of other Board members echoed the concerns of the public regarding the process for developing the rule and its adverse economic consequences. For instance, the Board member representing the Washington Department of Agriculture noted that the rule before the

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Board was "artificially constrained" because there were no alternatives to consider, in large part due to the Board's failure to advance the Minority Proposal for consideration. Other Board members echoed these concerns.

125. Board staff noted that, according to the CBA, the costs of the proposed rule would be massive and "almost entirely borne by a single economic sector." A Board member representing the general public indicated her concerns with these economic losses, noting that the $1 billion in estimated economic losses "are not adequately mitigated, and the SEPA determination of non-significance failed to analyze foreseeable adverse impacts." Another Board member echoed these concerns, noting that there would be substantial tax repercussions that would be felt outside of the timber industry as well.

126. Several Board members noted the lack of scientific evidence supporting any need to revise the Forest and Fish Buffer Rule. The statutorily designated small forest landowner Board Member, who was involved in the Technical Workgroup in the AMP process, noted that the Hard Rock and Soft Rock studies demonstrated that the Forest and Fish Buffer Rule already met temperature requirements.

127. Board members also commented that the proposed rule not only relies upon Ecology's erroneous interpretation that Tier II prohibits any "measurable change," but was initiated precisely because of that interpretation. The Board Chair noted that she thought "the Tier II analysis does demonstrate the need for increased buffers," suggesting that she and other members of the Board viewed Tier II as an analysis of the need to conduct rulemaking rather than a tool to evaluate a new or expanded action. Another Board member noted that "[t]he 0.3 degrees Celsius measurable change standard, while relevant in some context, does not impact fish and was

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never intended to be a hard limit under Tier II[.]"

128. Despite these numerous concerns, the Board ultimately voted 7–5–1 to adopt the proposed rule. The Board agreed to postpone the effective date of the Expanded Buffer Rule until August 31, 2026.

VII. CAUSES OF ACTION

FIRST CAUSE OF ACTION: Washington Administrative Procedure Act—Exceeds the Statutory Authority of the Agency (Board)

129. The above paragraphs are repeated and adopted as if fully set forth here.

130. The Forest and Fish Buffer Rule was adopted in 2001 under RCW 76.09.370(2) as a "permanent rule" to implement the recommendations of the Forests and Fish Report.

131. Under the FPA, the Board can only revise permanent rules for Type Np streams if the Board finds that the rules are not achieving resource objectives. RCW 76.09.370(6) (the Board can modify its rules "only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board"); RCW 76.09.370(7) ("The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives."). The Legislature set this objective standard for revising the rules to provide assurances to landowners that the rules would only be changed if needed to achieve resource objectives, and not for some other purpose. *See* WAC 222-12-045(1) (the "desired outcomes" for adaptive management include "[c]ertainty of change as needed to protect targeted resources" and "predictability and stability of the process of change so that landowners, regulators and interested members of the public can anticipate and prepare for change").

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132. Resource objectives "are intended to ensure that forest practices will not significantly impair the capacity of aquatic habitat to," among other things, "[m]eet or exceed water quality standards (protection of beneficial uses, narrative and numeric criteria, and antidegradation)." WAC 222-12-045(2)(a)(ii). Thus, determining that there has been a failure to achieve a resource objective requires a showing of significant impairment of the capacity of the aquatic habitat to, among other things, meet water quality standards. *Id*.

133. Water quality standards are set forth in WAC 173-201A. *See* WAC 173-201A.010(1) ("The purpose of this chapter is to establish water quality standards for surface waters of the state of Washington…"). For example, the water temperature criteria for Core Summer Salmonid Habitat is 16 degrees Celsius. WAC 173-201A-200(1)(c).

134. When it promulgated the Expanded Buffer Rule, the Board made no finding that the existing rules were failing to achieve any resource objective. The Board made no finding that the capacity of the aquatic habitat to meet water quality standards was significantly impaired as a result of the Forest and Fish Buffer Rule. The Board nowhere suggested, for example, that the Forest and Fish Buffer Rule was significantly impairing the capacity of the aquatic habitat to achieve water temperature of 16 degrees Celsius in Core Summer Salmon Habitat.

135. Without making such findings, the Board lacked authority under RCW 76.09.370(6)-(7) to promulgate the Expanded Buffer Rule.

136. Instead of making the findings required by RCW 76.09.370(6)-(7) of a failure to achieve resource objectives, the Board instead concocted its own standard for action that has no basis in law. The Board attempted to justify the Expanded Buffer Rule by stating that the existing rules were insufficient to ensure that Type Np streams consistently met water quality standards,

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and that, "Specifically, the water quality standards mandate no temperature increase of 0.3° C or greater…above natural condition." There is no water quality standard in Washington for Type Np streams that mandates no temperature increase of 0.3° C or greater above natural condition.

137. The Board adopted this incorrect standard by erroneously deferring to so-called "expert" guidance from Ecology about the State's water quality standards. Ecology misinformed the Board that the water quality antidegradation rules for Tier II waters "permit no temperature increase of 0.3°C or greater." But those antidegradation rules only apply to "new or expanded actions," WAC 173-201A-320(1)–(2), not to the Forest and Fish Buffer Rule for Type Np streams adopted by the Board in 2001. *See* WAC 173-201-020 (noting that "new or expanded actions" are "human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003"). Nor do the antidegradation rules proscribe a "measurable change." Rather, a measurable change "may not be allowed unless the department determines that the lowering of water quality is necessary and in the overriding public interest." WAC 173-201A-320(1).

138. Ecology's misinterpretation of the Tier II antidegradation rules led the Board into error. When it promulgated the Expanded Buffer Rule, the Board stated that "Ecology's interpretation of the water quality rules is outside the Board's scope of this rulemaking." But it was Ecology's misinterpretation of those rules that provided the sole underlying premise for the Board's action.

139. The Board failed to rely on the AMP to identify a failure to achieve a resource objective as required by RCW 76.09.370(6)–(7), and instead deferred without statutory authority to Ecology's misinterpretation of the water quality rules to identify a basis for the Board's action.

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140. Without a finding that the existing rules were failing to achieve resource objectives, the Board exceeded its statutory authority when it promulgated the Expanded Buffer Rule.

141. Under the APA, this Court "shall" declare a rule invalid if it finds that the rule "exceeds the statutory authority of the agency." RCW 34.05.570(2)(c); *Nw. Pulp & Paper Ass'n v. Dep't of Ecology*, 200 Wn.2d 666, 672, 520 P.3d 985 (2022).

142. The Expanded Buffer Rule is unlawful because the Board exceeded its statutory authority when promulgating it.

SECOND CAUSE OF ACTION:
Washington Administrative Procedure Act—Arbitrary and Capricious Action (Board)

143. The above paragraphs are repeated and adopted as if fully set forth here.

144. Under the APA, the Court "shall declare" a rule invalid if it finds that "the rule is arbitrary and capricious." RCW 34.05.570(2)(c). A rule is arbitrary or capricious when it "is willful and unreasoning and taken without regard to the attending facts or circumstances." *Wash. Indep. Tel. Ass'n v. Wash. Utils. Transp. Comm'n*, 149 Wn.2d 17, 26, 65 P.3d 319 (2003).

145. The Expanded Buffer Rule is arbitrary and capricious because the purported objective of preventing "measurable change" to water temperature in Type Np streams has no scientific justification, no biological relevance, and is not related to the achievement of any resource objective. The Board's Technical Workgroup itself labeled this objective an "arbitrary threshold."

146. The Board also disregarded key facts and circumstances that undercut the purpose and effect of the rule. For example, the Board insisted on continuous buffers for the entire length of Type Np streams, but failed to consider how the orientation of a stream relative to the sun bears

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upon the effectiveness of stream buffers and how, in some cases, leaving a buffer provides no additional shade, nor acknowledges shade from topographic slopes, a common practice to ensure streams are adequately shaded. The Board also failed to consider that any warming of water by harvesting timber near Type Np streams is limited in time and distance. Timber harvesting does not result in permanent shade loss; after trees are cut, replanting and regrowth occurs to restore shade. In addition, water from Type Np streams flows downstream into larger, fish-bearing streams that are already protected by continuous buffers that provide cooling benefits. That is why the cost-benefit analysis acknowledged that "improved conditions [from larger Type Np buffers] do not persist far downstream."

147. The Board also disregarded key findings from the Hard Rock and Soft Rock studies developed through the AMP, which showed that Forest and Fish Buffer Rule provides for cool water in 93 percent of all observations in both studies. The Board then relied on a handful of extreme examples unrepresentative of the norm where lack of buffers caused warming of approximately 1°C or less on average to impose continuous Type Np stream buffers throughout all of Western Washington. Nor did the Board ever explain how limiting warming to 0.3 degrees in Type Np streams has any biological significance or downstream benefit to fish, or tie that limitation to any resource objective.

148. The Board also accepted Ecology's predetermination—before the analyses were complete—that the only possible solution to the stated problem was to impose continuous, 50–75 foot, dual-sided buffers on Type Np streams, and nothing less or more narrowly tailored would work. The Expanded Buffer Rule was driven by the outcome, not by science and agency processes consistent with the law.

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149. For all these reasons and other to be adjudicated, the Board's action was arbitrary and capricious and thus unlawful.

THIRD CAUSE OF ACTION:
Washington Administrative Procedure Act—Failure to Consider Alternatives (Board)

150. The Expanded Buffer Rule is a "significant legislative rule" of the Board as defined in RCW 34.05.328(5)(c)(iii).

151. As such, the Board was required by statute to, among other things, "analyze alternatives to rule making." RCW 34.05.328(1)(b).

152. The Board was also required by statute to determine, "after considering alternative versions of the rule and the analysis required" by the statute, "that the rule being adopted is the least burdensome alternative for those required to comply with it" and will achieve the rule's objectives. RCW 34.05.328(1)(e).

153. The Board considered only one action for rulemaking for Type Np buffers, and failed to analyze a single alternative, let alone "alternatives" as required by statute. Without alternatives, the Board had no ability to determine that the rule adopted was the least burdensome alternative.

154. By failing to analyze alternatives, the Board violated RCW 34.05.328(1)(b) and (e).

155. The Expanded Buffer Rule is unlawful because the Board failed to comply with applicable statutory requirements, and the Board's determination that no other alternatives exist or were less burdensome than the Expanded Buffer Rule was arbitrary and capricious.

FOURTH CAUSE OF ACTION:
Washington Administrative Procedure Act—Inadequate Cost Benefit Analysis (Board)

156. The above paragraphs are repeated and adopted as if fully set forth here.

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157. Because the Expanded Buffer Rule is a Significant Legislative Rule under the APA, the Board was required by statute to perform a "cost-benefit analysis," and "determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented." RCW 34.05.328(1)(c)–(d).

158. The "statute being implemented" by the Expanded Buffer Rule is the FPA in which the Legislature declared, among other things, "that the forestland resources are among the most valuable of all resources in the state" and "that a viable forest products industry is of prime importance to the state's economy." RCW 76.09.010(1); *see also* RCW 34.05.328(1)(d).

159. The CBA for the Expanded Buffer Rule failed to include any analysis of costs of the potential for increased road development necessary to harvest timber under the new rule, potential for increased conversion of forest land into other uses like housing development that provide fewer ecological benefits, and other obvious categories of costs associated with increased Type Np buffers, including impacts to the state's economy and the public interest in commercial harvest the Legislature recognized in the FPA. Nor does the CBA or SBEIS consider the real and significant increase in state mitigation costs for small forest landowners under the Expanded Buffer Rule.

160. The CBA for the Expanded Buffer Rule also overestimates benefits that are speculative, unsupported, rely on flawed methodologies, or that have little or nothing to do with the stated purpose of the rule or the directives of the FPA it is purported to implement. The CBA states that the "primary objective of this rule is to improve temperature protections for Type Np streams in western Washington," but the report acknowledges that "cooler water" and other

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"improved conditions do not persist far downstream." The CBA assigns a major "willingness-to-pay" value for water-quality improvements even though the rule applies to private forestlands with no public-use context and the CBA itself acknowledges negligible downstream water-quality effects. The CBA also lists habitat gains for various terrestrial species as a major benefit, even though these species are largely unrelated to the aquatic-habitat objectives the rule is intended to address. The CBA fails to adequately consider the net climate effects of the Expanded Buffer Rule, including externalities associated with leakage and increased wildfire risk. The CBA also relies on erroneous assumptions in declining to adequately address the effect of land conversion on fish. The CBA concedes that the Expanded Buffer Rule will have negligible benefits downstream (where fish live), but will impose "losses of $320 million to $1.0 billion, reflecting added [timber] harvest restrictions"

161. The Board's CBA failed to comply with the requirements of RCW 34.05.328(c)–(d), and the Board's determination that the Expanded Buffer Rule's likely benefits exceed its costs is arbitrary and capricious.

FIFTH CAUSE OF ACTION:
Washington Administrative Procedure Act—Adopted Without Compliance with Statutory Rulemaking Procedures (Board)

162. The above paragraphs are repeated and adopted as if fully set forth here.

163. The APA requires the Board to "prepare a concise explanatory statement" of the Expanded Buffer Rule before filing the adopted rule with the code reviser. RCW 34.05.325(6)(a). This concise explanatory statement must (1) identify the agency's reasons for adopting the rule, (2) describe with explanation any differences between the text of the proposed rule and the text of the rule as adopted, and (3) "summariz[e] all comments received regarding the proposed rule." *Id.*

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164. The Board must also "respond[] to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so." RCW 34.05.325(6)(a)(iii). Washington courts have held that "[f]ull consideration of public comment prior to agency action is both a statutory and constitutional imperative." *Mahoney v. Shinpoch*, 107 Wn.2d 679, 691, 732 P.2d 510 (1987) (citations omitted).

165. Here, the Board failed to adequately respond to hundreds of comments in its CES. For instance, in response to concerns about the AMP process and the misapplied findings of the Hard Rock and Soft Rock studies, the Board simply stated without elaboration that the studies "show[ed] temperature increases associated with the current Type Np stream buffer prescription" and "were the results of the rigorous process for study design and review required under WAC 222-12-045(2)(c)." Similarly, despite relying on Tier II as the grounds for rulemaking, the Board claimed without elaboration or authority that "Ecology's interpretation of the water quality rules is outside the Board's scope of this rulemaking."

166. The Board claimed that "[t]he Board did not receive any timely comments on the SEPA determination of non-significance." The Board noted in its CES, however, that it received four comments related to the SEPA Checklist for the proposed rule; however, like with comments on Tier II, the Board refused to provide any substantive response, stating simply that "[w]hile the SEPA process is related to this rulemaking these comments are outside the scope of this public record."

167. The Board's cursory and non-substantive responses to public comments in its CES do not satisfy its mandatory statutory obligations under the APA, as they do not reflect how the final rule reflects agency consideration of the comments or why it fails to do so. *See* RCW

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34.05.325(6)(a)(iii).

168. The Board's failure to adequately consider public comments is not only arbitrary and capricious but also results in the Expanded Buffer Rule being adopted without compliance with rulemaking procedures. *See* RCW 34.05.570(2)(c).

SIXTH CAUSE OF ACTION:
Washington State Environmental Protection Act—Failure to Consider Probable and Significant Adverse Environmental Impacts (Board)

169. The above paragraphs are repeated and adopted as if fully set forth here.

170. SEPA requires the Board to prepare an EIS for actions having a probable significant, adverse environmental impact. RCW 43.21C.031(1). To determine whether an EIS is required, agencies must make a threshold determination of significance or non-significance. *See* RCW 43.21C.033. To make this determination, Ecology requires agencies like the Board to use the SEPA Environmental Checklist. WAC 197-11-315(1). Part A of the checklist provides basic background information about the rule. Part B of the checklist covers sixteen different "Environmental Elements" that assist agencies in assessing potential impacts that bear on the determination of significance and whether an EIS is required.

171. In this case, the Board made a threshold Determination of Non-Significance ("DNS"), finding that the Expanded Buffer Rule would have no probable, significant adverse environmental impacts. But the Board arbitrarily determined that Part B of the SEPA Environmental Checklist would not meaningfully contribute to the analysis of whether the Rule would have probable significant adverse environmental impact, contrary to the evidence before it, and failed to complete Part B. The Board's failure to analyze the questions in Part B prevented the Board from meeting SEPA's most basic procedural requirement.

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172. The DNS improperly considers the beneficial aspects of the proposal while failing to consider any of the proposal's adverse impacts including, among other impacts, the increased risk of forestland disturbance and conversion, increased road building and stream crossings needed to harvest timber in compliance with the new rules, the increased carbon emissions and energy impacts from harvest leakage and displacement of up to 112 million board feet of log supply from Western Washington forest products market, or the socioeconomic effects from the costly proposed rule with foreseeable environmental consequences.

173. Had the Board prepared Part B of the checklist, it would have necessarily determined that the Expanded Buffer Rule would have probable significant adverse environmental impacts requiring preparation of an EIS.

174. The Board's DNS was arbitrary and capricious, and its failure to prepare an EIS violated SEPA.

SEVENTH CAUSE OF ACTION:
Washington Administrative Procedure Act— Outside Statutory Authority of Agency, Arbitrary and Capricious Action (Ecology)

175. The above paragraphs are repeated and adopted as if fully set forth here.

176. During the AMP's evaluation of the Type Np buffer effectiveness studies, Ecology reinterpreted its antidegradation rules for Tier II waters, WAC 173-201A-320, and instructed the AMP and the Board that these rules "permit no temperature increase of 0.3°C or greater."

177. This reinterpretation conflicted with the plain language of the regulations and Ecology's prior interpretation of them.

178. Ecology effectively rewrote its regulations without formal rulemaking procedures.

179. Ecology then instructed the Board that it must change the permanent rules for Type

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Np buffers in order to prevent any temperature increase of 0.3 degrees Celsius or greater in accordance with Ecology's reinterpretation of its antidegradation rules for Tier II waters. Ecology then instructed the Board, prior to the completion of analyses, that only a single regulatory action would comport with Ecology's new interpretation and that Ecology would not support another proposal that had been under development.

180. While the Board and Ecology must reach "agreement" before the Board may adopt a forest practices rule pertaining to water quality, RCW 76.09.040(1)(b), Ecology has no statutory authority to unilaterally impose its preferred policy through control of forest practices rule development. If this were the case, there would be no need for the Board and all forest practices rules pertaining to water quality would be under the sole review authority of Ecology. The Legislature did not intend that result when it enacted the FPA.

181. Ecology lacks statutory veto power over the science-based adaptive management process required by the FPA under RCW 76.09.370.

182. Ecology's action usurped the Board's authority and violates the statutory directive that the AMP be used to produce rule changes per RCW 76.09.370(6) and (7).

183. When it promulgated the Expanded Buffer Rule, the Board stated that "Ecology's interpretation of the water quality rules is outside the Board's scope of this rulemaking." That assertion is incorrect but, to the extent the Court agrees with it, then Ecology's determinations constitute "other agency action" that can be independently challenged under RCW 34.05.570(4).

184. Ecology's actions exceed the scope of Ecology's authority and are also arbitrary and capricious.

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EIGHTH CAUSE OF ACTION:
Washington Administrative Procedure Act—Other Agency Action: Arbitrary & Capricious (Ecology)

185. The above paragraphs are repeated and adopted as if fully set forth here.

186. Ecology's Tier II analysis suffers from myriad regulatory, technical, and scientific inaccuracies and interpretations.

187. Ecology created a new, ad hoc Tier II process designed to justify the Expanded Buffer Rule, reflecting a complete departure from past practice that is the hallmark of arbitrary and capricious agency action.

188. Ecology's Tier II analysis relies upon newly invented interpretations of "new or expanded" actions contrary to WAC 173-201A-020 and 320.

189. Ecology's Tier II analysis misapplies temperature thresholds in WAC 173-201A-320 to eliminate viable alternatives from consideration and drive a preferred outcome contrary to Chapter 34.05 RCW, RCW 43.21C.030, RCW 76.09.370, and the principles of the AMP.

190. Ecology's Tier II analysis utilizes a deeply flawed necessity and overriding public interest analysis that ignores alternative options with less disproportionate impacts and the Legislature's directive to maintain the economic viability of the timber industry.

191. Ecology's Tier II analysis selectively presents scientific findings while ignoring context and scientific uncertainty.

192. Ecology's Tier II analysis offers no workable Tier II compliance framework.

193. Ecology's Tier II analysis undermines the integrity of both the AMP and public trust in the Board's rulemaking authority.

194. Ecology's Tier II analysis therefore exceeds its authority under the FPA and its own

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regulations under the Water Pollution Control Act, and is otherwise arbitrary and capricious.

NINTH CAUSE OF ACTION:
Uniform Declaratory Judgment Act (Ecology)

195. The above paragraphs are repeated and adopted as if fully set forth here.

196. Ecology's Tier II analysis exceeds its authority under the FPA and its own regulations under the Water Pollution Control Act, and is otherwise arbitrary and capricious.

197. Ecology's Tier II antidegradation policy at WAC 173-201A-320 does not apply to the Board's permanent rules for Type Np streams adopted to implement the recommendations of the Forests and Fish Report in accordance with RCW 76.09.370(2).

198. Ecology's Tier II antidegradation regulations do not proscribe a temperature increase of 0.3°C or greater, but rather that any such "measurable change" triggers a necessary and overriding public interest analysis.

VIII. PRAYER FOR RELIEF

The Petitioners request the following relief:

A. A declaration that the Expanded Buffer Rule is unlawful and invalid because it was adopted by the Board in violation of the FPA;

B. A declaration that the Expanded Buffer Rule is unlawful and invalid because it was adopted by the Board in violation of the APA;

C. A declaration that the Expanded Buffer Rule is unlawful and invalid because it was adopted by the Board in violation of SEPA;

D. A declaration that Ecology's Tier II antidegradation policy at WAC 173-201A-320 does not apply to the Board's permanent rules for Type Np streams adopted to implement the

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recommendations of the Forests and Fish Report in accordance with RCW 76.09.370(2);

E. A declaration that Ecology's Tier II antidegradation regulations do not proscribe a temperature increase of 0.3°C or greater, but rather that any such "measurable change" triggers a necessary and overriding public interest analysis;

F. An order vacating the Expanded Buffer Rule and remanding it to the Board;

G. A preliminary and permanent injunction enjoining DNR from implementing and enforcing the Expanded Buffer Rule;

H. A permanent injunction enjoining Ecology from implementing or providing any guidance regarding its unlawful interpretation of the Tier II antidegradation regulations at WAC 173-201A-320(3)(a);

I. An award of reasonable attorney's fees and other expenses pursuant to RCW 4.84.350; and

J. Other just relief as the Court deems proper.

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DATED this 26th day of November, 2025.

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