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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

CASCADIA WILDLANDS, an Oregon non-profit corporation; AUDUBON SOCIETY OF PORTLAND, an Oregon non-profit corporation; the CENTER FOR BIOLOGICAL DIVERSITY, a California corporation; and JOSHUA LAUGHLIN,

Petitioners,

vs.

OREGON DEPARTMENT OF STATE LANDS, an administrative agency of the State of Oregon,

Respondent.

Case No.

PETITION FOR REVIEW OF AN AGENCY ORDER

(Administrative Procedure Act, ORS 183.310 *et seq.*)

INTRODUCTION

1.

Petitioners Cascadia Wildlands, the Audubon Society of Portland, the Center for Biological Diversity, and Joshua Laughlin (hereafter “Petitioners”) bring this Petition for Review of an agency order against the Oregon Department of State Lands (hereafter “DSL” or “Respondent”) under the provisions of the Oregon Administrative Procedure Act, ORS 183.310 *et seq.*

2.

On April 15, 2014, Respondent entered into a Purchase and Sale Agreement, a final agency order, to sell 788 acres of the Elliott State Forest to Seneca Jones Timber Company. A copy of the Purchase and Sale Agreement is attached hereto.

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3.

The vast majority of the parcel, called the East Hakki Ridge parcel, was part of the National Forest System on February 25, 1913, and was selected by, and patented to, the State of Oregon for the purpose of establishing the Elliott State Forest.

4.

The sale of such lands is expressly prohibited by ORS 530.450.

5.

Petitioners seek a declaration, pursuant to ORS 183.484(6) or other authority, that (1) Respondent has erroneously interpreted a provision of law and that a correct interpretation compels the withdrawal of the East Hakki Ridge parcel from sale, (2) that the sale of the East Hakki Ridge parcel and the final agency order for the sale of the parcel is outside the range of discretion delegated to Respondent by law and otherwise in violation of a constitutional or statutory provision, namely ORS 530.450, and (3) that the final agency order is not supported by substantial evidence in the record.

6.

Petitioners further seek an injunction against the sale of the East Hakki Ridge parcel, and to have the agency order finalizing the sale vacated, reversed, set aside and/or remanded to the agency pursuant to ORS 183.484(5).

PARTIES

7.

Petitioner CASCADIA WILDLANDS is an Oregon non-profit corporation headquartered in Eugene, Oregon. Founded in 1998, Cascadia Wildlands represents over 15,000 members and supporters, and has a mission to educate, agitate, and inspire a movement to protect and restore Cascadia's wild ecosystems. Cascadia Wildlands envisions vast old-growth forests, rivers full of salmon, wolves howling in the backcountry, and vibrant communities sustained by the unique landscapes of the Cascadia Bioregion. Cascadia Wildlands has been extensively involved in the conservation and management of the Elliott State Forest over the past 12 years. Cascadia Wildlands'

1 principle business office is in Lane County, Oregon.

2 8.

3 Petitioner AUDUBON SOCIETY OF PORTLAND is an Oregon non-profit
4 corporation with a mission to promote the enjoyment, understanding and protection of
5 native birds, other wildlife and their habitats. Audubon Society of Portland currently has
6 approximately 14,000 members, including many who use Oregon’s coastal forests for a
7 wide variety of recreational purposes. Audubon Society of Portland been involved with
8 state forest-related issues over the past five years including sitting on three different
9 advisory committees that looked at issues including the “greatest permanent value” of
10 state-owned forest lands, Oregon Department of Forestry funding, marbled murrelet
11 management, and conservation issues with the Board of Forestry. Audubon Society of
12 Portland has also testified numerous times regarding harvest levels on state forests and
13 state forest management plans.

14 9.

15 Petitioner CENTER FOR BIOLOGICAL DIVERSITY (“the Center”) is a
16 California non-profit corporation dedicated to the preservation, protection and restoration
17 of biodiversity, native species, and ecosystems. The Center has over 50,000 members
18 worldwide, including members within this county. The Center has offices in Tucson,
19 Arizona; Silver City, New Mexico; Washington, D.C., San Francisco, Los Angeles, and
20 Joshua Tree, California; Portland, Oregon; Seattle, Washington; Minneapolis, Minnesota;
21 Richmond, Vermont; and Anchorage, Alaska. The Center is actively involved in oversight
22 of state forest management in Oregon, including o the Elliott State Forest.

23 10.

24 Petitioner JOSHUA LAUGHLIN is an adult citizen of the United States and a
25 resident of Lane County, Oregon. He is employed by Cascadia Wildlands, but brings this
26 action in his individual capacity.

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11.

Respondent OREGON DEPARTMENT OF STATE LANDS (“DSL”) is an administrative agency of the Oregon State Land Board. DSL, by and through its director Mary Abrams, entered into the Purchase and Sale Agreement for East Hakki Ridge parcel on April 15, 2014.

THE NATURE OF PETITIONERS’ INTERESTS

12.

Petitioner Joshua Laughlin has visited the Elliott State Forest on numerous occasions, including the East Hakki Ridge parcel. Mr. Laughlin has spent years of his life working to protect the forests, waters, and wildlife of the Elliott State Forest from clearcutting and other environmentally destructive practices. Mr. Laughlin enjoys visiting the Elliott State Forest and the East Hakki Ridge parcel, including hiking, looking for wildlife, and experiencing the peace and solitude of some of the last intact and unlogged coastal forests in Oregon. Mr. Laughlin has definite plans to return to the Elliott State Forest and the East Hakki Ridge parcel.

13.

Mr. Laughlin will be adversely affected and aggrieved by the sale of the East Hakki Ridge parcel because privatization will prevent him from using, enjoying, and experiencing the land in the future. Selling the land to Seneca Jones Timber Company to be clearcut will further affect and aggrieve Mr. Laughlin’s use and enjoyment of the land because clearcutting causes irreparable damage to the native forests and unique habitat that currently exists there. The native forests of the East Hakki Ridge parcel are more than one hundred years old, and provide a unique and increasingly rare experience for Mr. Laughlin. If logged, these forests will not grow back within Mr. Laughlin’s lifetime.

14.

Petitioners Cascadia Wildlands, Center for Biological Diversity, and Audubon Society of Portland are all registered non-profit corporations with charitable missions that include protecting and restoring Oregon’s environment, wildlife, and biological diversity.

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1 Petitioners have a specific and particular interest in the protection and recovery of the
2 Elliott State Forest and the imperiled wildlife that lives there. The Elliott State Forest plays
3 a unique and important role in restoring and maintaining the balance and health of
4 Oregon’s greater natural environment. The Elliott State Forest is a 93,000 acre mostly
5 contiguous block of coastal rainforest located between Reedsport and Coos Bay, Oregon,
6 just inland from the Pacific Ocean. The Elliott State Forest contains some of the last
7 unlogged coastal rainforest in Oregon, and is critically important habitat for endangered
8 species such as coastal coho salmon, northern spotted owls, and marbled murrelets. For
9 this reason and others, Petitioners have advocated for years for the conservation and
10 protection of the Elliott State Forest.

11 15.

12 Many of Petitioners’ staff, boards, and members have been to the Elliott State
13 Forest, including the East Hakki Ridge parcel, and some have worked and recreated on the
14 Elliott State Forest on a regular basis. Petitioners have hosted and continue to host public
15 outreach and educational events in and about the Elliott State Forest, including
16 presentations by experts, film showings, outdoor excursions, and other on-site and off-site
17 events. The Elliott State Forest is regularly featured in Petitioners’ newsletters, on their
18 websites, and other published materials.

19 16.

20 Petitioners have a real and direct interest in the conservation of the Elliott State
21 Forest and have dedicated substantial time, money, and resources toward that goal. Selling
22 this public land to the highest bidder to be clearcut will adversely affect Petitioners in a
23 variety of ways. Privatizing the East Hakki Ridge parcel will prevent Petitioners from
24 going there and using the land for public hikes, educational events, and other outdoor
25 activities. Selling the land to Seneca Jones Timber Company to be clearcut, aerially
26 sprayed, and industrially managed will directly affect Petitioners’ ongoing mission to
27 protect the land, its habitat, and the fish and wildlife that live there. Petitioners cannot
28 fulfill their organizational missions and goals to protect the Elliott State Forest if it is

1 privatized. Respondent's action causes severe and direct injury to Petitioners interests in
2 the conservation of the Elliott State Forest because the agency is disposing of 788 acres of
3 the forest. The disposal of the Elliott State Forest may also limit the ability of Petitioners
4 to attract new members, retain current members, and to obtain financial support for their
5 continuing work.

6 17.

7 Petitioners have further interest in the proper and lawful management of Oregon's
8 state lands, and in Respondent's compliance with Oregon laws surrounding the Elliott State
9 Forest. By this action, Petitioners seek to further interests that the legislature expressly
10 wished to have considered.

11 18.

12 Petitioners' injuries are irreparable, and there is an appreciable threat of ongoing
13 harm to Petitioners. Once the land is privatized, public access and Petitioners' ability to
14 use and enjoy the land as they currently do is permanently impeded. The loss of native
15 forests in particular, which cannot be replaced in the span of a lifetime, causes Petitioners
16 ongoing and irreparable harm for which there is no remedy at law. The environmental
17 harm from converting a mature native public forest to a private industrial tree farm cannot
18 be remedied by monetary damages and is permanent and irreparable.

19 **JURISDICTION AND LEGAL BACKGROUND**

20 19.

21 Judicial review of an agency order in other than a contested case is governed by
22 ORS 183.480 and 183.484. ORS 183.480(1) states, "any person adversely affected or
23 aggrieved by an order or any party to an agency proceeding is entitled to judicial review of
24 a final order, whether such order is affirmative or negative in form."

25 20.

26 "Jurisdiction for judicial review of orders other than contested cases is conferred
27 upon the Circuit Court for Marion County and upon the circuit court for the county in
28 which the petitioner resides or has a principal business office." ORS 183.484(1).

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21.

“The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously interpreted a provision of law and that a correct interpretation compels a particular action, it shall: (A) Set aside or modify the order; or (B) Remand the case to the agency for further action under a correct interpretation of the provision of law.” ORS 183.484(5)(a).

22.

“The court shall remand the order to the agency if it finds the agency’s exercise of discretion to be: (A) Outside the range of discretion delegated to the agency by law; (B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or (C) Otherwise in violation of a constitutional or statutory provision.” ORS 183.484(5)(b).

23.

“The court shall set aside or remand the order if it finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding.” ORS 183.484(5)(c).

24.

ORS 530.450 states, “Any lands in the national forests on February 25, 1913, selected by, and patented to, the State of Oregon, for the purpose of establishing a state forest, hereby are withdrawn from sale except as provided in ORS 530.510. The state forest shall be known as the Elliott State Forest.”

25.

“Final order” means final agency action expressed in writing. ORS 183.310(6)(b). The Purchase and Sale Agreement for the sale of the East Hakki Ridge parcel is a final order subject to judicial review under ORS 183.484.

1 **FACTUAL BACKGROUND**

2 26.

3 The Oregon Admission Act of 1859 granted the State of Oregon two square miles
4 out of every thirty-six, sections 16 and 36 in each township and totaling approximately 3.5
5 million acres, with the income received therefrom to go to the benefit of the Common
6 School Fund.

7 27.

8 For many years, the State of Oregon disposed of these lands to raise revenue, and
9 by the early 1900s only about 130,000 acres of the land remained under state ownership.
10 Such tracts were typically located within the boundaries of the national forests and were
11 scattered and isolated, creating administrative challenges. It was for this reason that then-
12 Oregon State Forester, Francis Elliott, along with then-Governor Oswald West, started a
13 process to exchange the remaining scattered lands with the federal government for a solid
14 block of national forest land.

15 28.

16 The Elliott State Forest was created when approximately 70,000 acres of state lands
17 scattered within the national forests were exchanged for a solid block of national forest
18 land, then the southern tip of the Siuslaw National Forest in Coos and Douglas Counties.
19 In connection with this exchange, the state legislature withdrew the sale of the Elliott State
20 Forest for fifty years, meeting the federal requirement that any national forest land patented
21 to the state should be withdrawn from sale for a period of fifty years. In 1957, with the
22 expiration of that fifty-year commitment approaching, the Oregon Legislature passed ORS
23 530.450 to reaffirm its commitment indefinitely.

24 29.

25 On December 10, 2013, the State Land Board authorized the Department of State
26 Lands to pursue selling five tracts within the Elliott State Forest. The majority of one of
27 these tracts, the East Hakki Ridge parcel, was in the national forest system on February 25,
28

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1 1913 and was selected by, and patented to, the State of Oregon for the purpose of
2 establishing the Elliott State Forest.

3 30.

4 The East Hakki Ridge parcel is a 788-acre parcel on the northern end of the Elliott
5 State Forest, near the southern banks of the Umpqua River in Douglas County, Oregon.

6 31.

7 Before, during, and after the approval of this sale, Petitioners provided notice to the
8 State Land Board and Respondents of the legal concerns at issue here, and specifically
9 pointed Respondents to ORS 530.450 and the fact that the East Hakki Ridge parcel is
10 withdrawn from sale by law. Petitioners have also previously contacted the purchaser,
11 Seneca Jones Timber Company, to advise it that purchasing and logging this area is
12 unlawful.

13 32.

14 Respondents entered into a Purchase and Sale Agreement for the East Hakki Ridge
15 parcel on April 15, 2014, finalizing the agency's action in writing and ripening this case for
16 judicial review. Petitioners were provided a copy of the final agency order after 5:00pm on
17 Friday, April 19, 2014.

18 **GROUND FOR RELIEF**

19 33.

20 Petitioners incorporate by reference all preceding paragraphs.

21 34.

22 The majority of the East Hakki Ridge parcel was within the national forest system
23 on February 25, 1913 and was selected by, and patented to, the State of Oregon, for the
24 purpose of establishing the Elliott State Forest. The sale of such land is expressly
25 prohibited by law. ORS 530.450.

26 35.

27 On April 15, 2014, Respondent entered into a Purchase and Sale Agreement, a final
28 agency order, to sell the East Hakki Ridge parcel to Seneca Jones Timber Company.

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36.

The sale of this land is not an exchange of land pursuant to ORS 530.510.

37.

The final agency order for the sale of the East Hakki Ridge parcel is outside the range of discretion delegated to Respondent by law and otherwise in violation of ORS 530.450.

38.

Respondents have erroneously interpreted a provision of law, and the correct interpretation requires that the East Hakki Ridge parcel be withdrawn from sale.

39.

The final order for the sale of the East Hakki Ridge parcel is not supported by substantial evidence in the record.

40.

The final agency order authorizing the sale of the East Hakki Ridge parcel must be vacated, reversed, set aside and/or remanded to the agency under ORS 183.484.

PETITIONERS' PRAYER FOR RELIEF

41.

Petitioners respectfully request that this Court:

1. Declare that the sale of the East Hakki Ridge parcel and the final agency order for the sale of the parcel violates state law, specifically ORS 530.450 and the Oregon Administrative Procedure Act;
2. Vacate, reverse, set aside and/or remand the final agency order, and enjoin Respondent from selling the East Hakki Ridge parcel in violation of ORS 530.450;
3. In the event that the sale is finalized or the deed for the land is transferred prior to the conclusion of this case, vacate and reverse the sale of the land and order that the deed for the land be transferred back to the state;
4. Award Petitioners their reasonable costs and attorneys' fees pursuant to ORS 183.497 or other authority; and

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1 5. Grant Petitioners such other and further relief as the Court deems just and equitable.
2 Respectfully submitted and dated this 21st day of April, 2014.

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