

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

**WHIDBEY ENVIRONMENTAL ACTION
NETWORK,**

Appellant,

v.

**WASHINGTON STATE DEPARTMENT OF
NATURAL RESOURCES,**

and

**ROELIF & RUTH LAUGHLIN, LAURENCE
LAUGHLIN**

Respondents

PCHB No. _____

NOTICE OF APPEAL

(FPA/N No. NW-FPA-26-9078)

I. Decision Appealed

Appellant Whidbey Environmental Action Network ("WEAN") appeals the Washington State Department of Natural Resources' ("DNR") Notice of Decision approving Forest Practices Application/Notification No. NW-FPA-26-9078 ("Laughlin 2026"), issued and made effective August 19, 2026. WEAN received the decision on August 20, 2026. This appeal is filed with the Pollution Control Hearings Board ("Board") under RCW 76.09.205 and WAC 371-08-335, within thirty days of receipt. Concurrently with filing, WEAN is serving copies on DNR and on the Attorney General, as RCW 76.09.205 requires. The applicant for this forest practice is named in the caption of this Notice and has also been concurrently served at the address listed in the FPA/N, as required by WAC 371-08-340(2).

II. Appellant

WEAN is represented in this matter by Marnie Jackson, who serves as Executive Director of WEAN. WEAN's contact information is:

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WEAN will accept electronic service from the other parties at the above email address.

III. Standing

WEAN is a 501(c)(3) environmental nonprofit organization, organized under the laws of Washington, with members who reside in, recreate in, and otherwise use and enjoy areas surrounding the subject parcel and affected areas near the downstream waters, including fish-bearing Quade Creek. WEAN submitted written comments on the predecessor application, NW-FPA-26-8637, on July 10, 2026, and on the present application, NW-FPA-26-9078, on August 20, 2026. WEAN and its members have concrete interests in water quality, fish and wildlife habitat, and slope stability in the project area that will be injured by the approved forest practice. WEAN is therefore a "person aggrieved by the approval" within the meaning of RCW 76.09.205. WEAN members use and enjoy the Outdoor Classroom, a public resource near this project area where school children from the South Whidbey School District release salmon fry. This activity, among others, will likely be severely inhibited by silt originating from the project site. Additionally, WEAN has members whose nearby private property is likely to be impacted by hydrological changes resulting from the proposed project. Exhibits G through R, signed declarations from said members, accompany the Motion For Stay that is enclosed with this Notice of Appeal.

IV. Background

The application authorizes approximately 37.02 acres of timber harvest, roughly 2,435 feet of new forest road, and water-crossing culverts on property in Sections 33 and 34, Township 29 North, Range 3 East, on Whidbey Island, Island County. It is a resubmittal of the withdrawn application NW-FPA-26-8637. An interdisciplinary ("ID") team met on site July 29, 2026; the resulting Informal Conference Note (NW-ICN-26-2457) was signed August 10 and circulated August 12, after the replacement application had already been filed on August 4, 2026. DNR classified the application Class III, conducted no review under the State Environmental Policy Act ("SEPA"), and approved it on August 19, 2026.

V. Grounds for Appeal

In appeals under RCW 76.09.050(9) there is no presumption of correctness of DNR's position. WEAN appeals on the following grounds, and reserves the right to supplement them:

1. Premature decision, not justified under WAC 222-12-030(3). DNR issued the approval on August 19, 2026—before the comment deadline DNR itself had posted (comments due August 21, 2026), before the posted decision-due date (September 3, 2026), and without considering WEAN's timely August 20, 2026 comment. To the extent DNR relies on WAC 222-12-030(3) as authority to decide early, that reliance is misplaced for three independent reasons. First, the provision's fourteen-day language is expressly limited to "Class III applications *not requiring additional field review*." This application required field review: DNR's own Office Checklist marks "FPF Verification Needed" for both wetland and water, and the Office Resource Review flagged slope stability, forested and Type B wetlands, and typed water as subject to field verification. The fourteen-day directive therefore does not apply by its own terms. Second, even where it applies, the provision directs DNR to act promptly within a thirty-day ceiling; it is a

diligence instruction, not authority to truncate a comment period DNR had posted or to decide before considering a comment timely received. Third, measured from the August 4 receipt date DNR used to set its own September 3 decision deadline, the approval issued on the fifteenth day—outside the fourteen-day period the rule describes. Nothing in WAC 222-12-030 compelled a decision before August 21; DNR had until September 3. And no scheduling directive can cure the completeness, accuracy, classification, and field-verification defects set out below—RCW 76.09.050 and RCW 76.09.060 govern whether the application could lawfully be approved, and a timing provision does not displace them. No presumption of correctness attaches to DNR's position. RCW 76.09.050(9).

2. Erroneous classification / failure to conduct SEPA review. The application should have been classified Class IV-Special, triggering environmental review under chapter 43.21C RCW and chapter 222-10 WAC, because of potential unstable slopes and landforms under WAC 222-16-050(1)(d) and the foreseeable risk to public resources. DNR's own Office Resource Review flags slope stability as both High and Moderate, SLPSTAB at 40%+ and 70%+, and ground-based equipment on slopes at or over 40% — directly contradicting the Class III determination and the application's "No" answer to unstable slopes at Question 10.

3. Approval of an incomplete and inaccurate application. Under RCW 76.09.050 and RCW 76.09.060, the application could not lawfully be approved as submitted. It contains numerous internal contradictions — including conflicting road lengths (1,750 vs. 2,350 feet), conflicting culvert dimensions (18" vs. 24"), a crossing count that does not match the crossing table, tenfold-different wetland-fill figures (0.04 vs. 0.4 acre), inconsistent harvest acreage (37.02 vs. 37.1), and a "saltwater island" answer reversed to "No" for a demonstrably saltwater island — none of which can be squared with the Question 29 certification that the information is true. The Office Checklist itself marks "FPF Verification Needed" for both wetland and water.

4. Failure to require ID-team-directed field delineation. The only ID team review in this record was conducted on July 29, 2026 under the predecessor application NW-FPA-26-8637, and its Informal Conference Note (NW-ICN-26-2457) left required work expressly unfinished. In its Decisions Made, the ID team directed that the Type B wetland conditions "will need to be further delineated and added to the FPA, along with associated WMZ buffers"; that the proponent "will delineate wetland features along W-100" and add road-building lengths and the culverts installed within typed waters and wetlands; and that "Quade Creek and associated stream will be further delineated and added to the FPA." The Note was signed August 10 and emailed August 12, 2026. DNR nonetheless approved the resubmitted application NW-FPA-26-9078 on August 19, 2026 without completing or incorporating these delineations. DNR thus approved an application its own ID team had determined was not yet complete.

5. Water type break established without the anadromous fish floor delineation required by WAC 222-16-0301. The subject waters connect to saltwater—Quade Creek to Maxwellton Creek to Puget Sound—and support documented anadromous fish, so an anadromous fish floor ("AFF") governs them under WAC 222-16-0301, effective March 1, 2026. That rule presumes anadromous fish habitat within the AFF; prohibits using default physical characteristics or a FHAM protocol survey to set a Type F/N break within the AFF; and permits those methods only upstream of an AFF delineated by measurable natural stream characteristics, with the AFF's

upstream extent serving as the documented survey initiation point. DNR never delineated the AFF. Its own Informal Conference Note (NW-ICN-26-2457) states that the ID team "concurred that Np1 and Np2 are not located within the AFF," while conceding in the same decision that "the AFF isn't specifically defined in this proposal but is presumed west of the parcel." Placing waters outside a boundary DNR admits it never drew is not the verification the rule requires. Compounding the error, DNR recorded that the channel at the west end of Np1—the very reach where it presumes the AFF lies—"becomes less defined and highly manipulated once it leaves the property." An AFF must be fixed by natural stream characteristics; an artificial or manipulated channel cannot lawfully establish or relocate a Type F/N break, the presence of an artificial barrier alone is not sufficient to establish the break, and fish habitat by definition includes potential habitat recoverable by restoration or management. The Type Np typing rests on a single May 20, 2026 observation, was not field-verified as the Office Checklist requires, and cannot support the reduced riparian buffers that depend on it; the Type F (F-1) concurrence further misidentifies the water as "Quade Creek" when it is an unnamed tributary within the Quade Creek system. No presumption of correctness attaches to DNR's position. RCW 76.09.050(9).

6. Failure to evaluate foreseeable risk to public resources. The record contains no evaluation of the French Road culverts and no coordination with Island County, despite the foreseeable risk of sediment delivery, culvert blockage, and damage to the county road prism and to water quality in fish-bearing Quade Creek.

VI. Relief Requested

WEAN respectfully requests that the Board:

- (a) reverse and vacate DNR's approval of NW-FPA-26-9078;
- (b) alternatively, remand to DNR with directions to require the field delineation of wetlands, water types, and the anadromous fish floor; a geotechnical evaluation and Appendix D Slope Stability Informational Form; reclassification as Class IV-Special with SEPA review; and reconciliation of the record contradictions before any decision;
- (c) stay the approval pending this appeal, as set out in WEAN's concurrently filed Motion for Stay; and
- (d) grant such other relief as the Board deems just and proper.

Respectfully submitted,



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