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I. INTRODUCTION

1. The Pennsylvania Environmental Defense Foundation (“PEDF”) is filing this petition for review (“Petition”) pursuant to the fiduciary provisions of the Declaratory Judgments Act, 42 Pa.C.S. § 7535(2),(3), to request this Honorable Court to determine questions arising in the administration of the public trust established under Article I Section 27 of the Pennsylvania Constitution (“Section 27”), and to direct the trustees to take particular actions in their fiduciary capacity.

2. PEDF is filing this petition because the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) adopted a State Forest Resource Management Plan in 2016 (“2016 SFRMP”) that changed the focus and purpose of its management of our State Forest. From 1995 to 2016, DCNR’s strategic plan was to manage our State Forest based on the science of ecosystem management. DCNR’s management of oil and gas lease sales, timber sales and recreational uses of our State Forest were required to be consistent with the paramount goal of maintaining the health of the forest ecosystem. In the 2016 SFRMP, DCNR changed its management paradigm to equate oil and gas economic “values” with the value of the forest ecosystem itself, including people’s “right to clean air, pure water, and the preservation of the natural, scenic, historic and aesthetic values of the [forest] environment.” The 2016 SFRMP now requires DCNR to “balance” the economic value of the oil and gas resources with the ecosystem values of our State

Forest public natural resources protected under Article I Section 27 of the Pennsylvania Constitution.

3. From 2008 to 2010, DCNR was required to lease almost 139,000 acres of State Forest land for oil and gas extraction and sale to capitalize on the new Marcellus Shale gas boom and generate money that was transferred to the General Fund to balance the State budget for fiscal years 2009-2010 and 2010-2011. Beginning with appropriations enacted for fiscal year 2011-2012 and every fiscal year since then, the money from the State Forest oil and gas leases has been appropriated by the Governor and the General Assembly to pay directly for the operations of DCNR. From 2011 through the current fiscal year, DCNR has paid a large portion of its annual operating expenses from money generated by State Forest oil and gas leases deposited into the Oil and Gas Lease Fund. The money from the Oil and Gas Lease Fund used to pay DCNR's annual operating expenses is entirely from extraction and sale of oil and natural gas on our State Forest. This extraction and sale of oil and gas causes immediate and long-term degradation to our State Forest. DCNR, the agency with responsibility under our Constitution for protecting our State Forest public natural resources, has become reliant on the money generated from the degradation of the forest to pay for its annual operations in place of revenue from the General Fund, which was used to pay for these operational expenses for more than 100 years. By paying for DCNR's operations

from the sale of our public natural resources, the Governor and General Assembly have been able to divert revenue from the General Fund previously used to pay for DCNR's operations for other purposes to serve their political needs. DCNR's 2016 SFRMP accepts this new funding paradigm that degrades our State Forest to pay for DCNR's annual operations because it supports "economic" benefits of gas extraction, rather than the value of our public natural resources, as its management directive to satisfy the political interests of the Commonwealth.

4. PEDF is asking this Honorable Court to determine questions arising from the adoption of the 2016 SFRMP by DCNR to administer the public natural resources of our State Forests – part of the corpus of the Section 27 public trust; and to direct DCNR to amend the SFRMP and manage our State Forests consistent with its trustee duties under Article I Section 27 of the Pennsylvania Constitution. A copy of the SFRMP adopted in 2016 is provided as **Exhibit A** to this Petition.

II. STATEMENT OF JURISDICTION

5. The Commonwealth Court has original jurisdiction to review this case pursuant to 42 Pa.C.S. § 761(a)(1) and the Declaratory Judgments Act, 42 Pa.C.S. § 7535.

6. Pursuant to this authority, the Commonwealth Court has jurisdiction to declare the trustee duties of DCNR under to Article I, Section 27 of the

Pennsylvania Constitution, Pa. Const. art. I, § 27, and the Conservation and Natural Resources Act, 71 P.S. §§ 1340.101 *et seq.*

III. PARTIES

7. The Pennsylvania Environmental Defense Foundation, Petitioner, is a non-profit organization incorporated under the laws of Pennsylvania since 1986 for the purposes of protecting and preserving the environmental interests of its members in Pennsylvania. PEDF's President, Ron Evans, resides at 818 Spring Creek Road, Bellefonte, Pennsylvania 16828, and can be contacted at 717-579-2263.

8. DCNR, the Respondent, is an agency of the Commonwealth established in 1995 under the Conservation and Natural Act to manage our State Forests as public natural resources of Pennsylvania to be "conserved and maintained for the use and benefit of all its citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania" and "to assure their long-term health, sustainability and economic use." 71 P.S. §§ 1340.101.

9. Cindy Adams Dunn, the Respondent, is the Secretary of the Conservation and Natural Resources appointed by the Governor and approved by a majority of the members elected to the Senate to serve as the head of DCNR. 71 P.S. § 1340.301. As Secretary, she has taken an oath to "support, obey and defend the Constitution of Pennsylvania." Pa. Const. art. VI, § 3; 71 P.S. § 78.

IV. STATEMENT OF MATERIAL FACTS

7. The State Forest Resource Management Plan “is the primary instrument that the [DCNR Bureau of Forestry] uses to plan, coordinate, and communicate its management of the state forest system.” The SFRMP lays the groundwork for ensuring that the overarching goal of State Forest management – ensuring sustainability – is achieved. 2016 SFRMP at 2.

10. In 2016, DCNR adopted its latest update to the SFRMP and is now updating the State Forest Management Plans for individual State Forest Districts based on the 2016 SFRMP.¹

11. In the 2016 SFRMP, DCNR states that “*[e]xtraction of geologic resources such as coal, oil, and natural gas also has long been a keystone to Pennsylvania’s economy ... Geologic resources on state forest lands offers a variety of environmental, social and economic values that the Bureau considers in ecosystem management.*” 2016 SRRMP at 154.

12. In the 2016 SRRMP, DCNR states its policy that the “*economic use and sound extraction and utilization of [coal, oil, natural gas and other] geologic*

¹ See DCNR State Forest Resource Management Plan at <https://www.dcnr.pa.gov/Conservation/ForestsAndTrees/StateForestManagement/ResourceManagementPlan/Pages/default.aspx>.

resources is (sic) part of the bureau’s mission in managing [State Forest] lands.”

SFRMP at 156.

13. In the 2016 SFRMP, DCNR also states that “[m]anaging the [coal, oil, natural gas and other] geologic resources requires thorough analysis, strategic planning, and attentive oversight to ensure that the value of geologic resources is balanced with other forest uses and values.” *Id.*

14. In 1995, as part of the newly created DCNR, the Bureau of Forestry adopted a strategic plan, entitled *Penn’s Woods, Sustaining Our Forests* (“*Penn’s Woods*”), to manage the public natural resources of our State Forests and to guide the development of future State Forest Resource Management Plans consistent with its trustee duties to conserve and maintain these public trust assets under Section 27. A copy of *Penn’s Woods* is provided as **Exhibit B**.²

15. DCNR established the following formal policies in *Penn’s Woods* to ensure the long-term viability, health and productivity of Pennsylvania’s forests while providing benefits to all Pennsylvanians:

² *Penn’s Woods* was originally published as a report with photographs. The text of the report is available electronically in PDF format on DCNR’s website at the link below; however, this version does not have page numbers. A copy of this document has been included as **Exhibit B** with page numbers added so those page numbers can be used in the citations in this Petition for the convenience of the Court;

http://www.docs.dcnr.pa.gov/cs/groups/public/documents/document/dcnr_20026631.pdf.

(a) Ecosystem Management Policy: Ecosystem management concepts and principles should serve as the fundamental basis for the management of public and private forest lands in the Commonwealth. *Penn's Woods* at 11.

(b) Biodiversity Conservation Policy: The maintenance and restoration of biological diversity should be a key consideration in resource management efforts throughout the Commonwealth. *Penn's Wood* at 12.

(c) Forest Renewal Policy: The successful and timely natural regeneration of diverse forest communities will be promoted on the Commonwealth's forest lands. *Penn's Woods* at 13.

16. The State Forest management goal established by DCNR in *Penn's Woods* is "to manage State Forests under sound ecosystem management, to retain their wild character and maintain biological diversity while providing pure water, opportunities for low-density recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources." *Penn's Woods* at 24.

17. The State Forest minerals policy established by DCNR in *Penn's Woods* is that DCNR "should hold virgin, surface-minable coal as reserves and should explore and develop other minerals on State Forest lands to provide long-term good to the citizens of the Commonwealth only when these activities are consistent with ecosystem management." *Penn's Woods* at 28.

18. In *Penn's Woods*, DCNR articulated “a fundamental change in forest management philosophy predicated on the concept of a sustained forest rather than a sustained yield” and determined that “ecological principles will guide management decisions on State Forest lands.” *Penn's Woods* at 31.

19. To implement the ecosystem management principles established in *Penn's Woods* and comply with its Section 27 trustee duties, DCNR began the development of State Forest Resource Plans consistent with the policies in its strategic plan. *Penn's Woods* at 30.

20. Although the leasing of State Forest land for oil and gas extraction and sale began in 1947, the level of new drilling had declined significantly by the time DCNR adopted the *Penn's Woods* strategic plan and the level of new drilling remained low until technological advances allowed the extraction of natural gas from deep shale formations such as the Marcellus formation in Pennsylvania in the mid-to-late 2000s. DCNR Shale-Gas Monitoring Report, April 2014 (“2014 Shale-Gas Monitoring Report”) at 16-17 (copy provided as **Exhibit C**); *see also* 2016 SFRMP at 157-158.

21. Since the passage of the Oil and Gas Lease Fund Act in 1955, all the proceeds from the lease of State Forest land for oil and gas extraction and sale have been deposited into the Oil and Gas Lease Fund.³ The Oil and Gas Lease Fund Act

³ Act of December 15, 1995, P.L. 865, No. 256.

required that the proceeds from the State Forest lease deposited into this fund be directly appropriated to DCNR (and its predecessors) and used exclusively for conservation, recreation, dams and flood control projects approved by DCNR. In 2009, the General Assembly took control of annual appropriations from the Oil and Gas Lease Fund by enacting Section 1602-E of the Fiscal Code.⁴ When the Supreme Court held that provision to be unconstitutional on June 20, 2017 and reinstated use of the Oil and Gas Lease Fund under the 1955 Oil and Lease Fund Act, the General Assembly repealed that the 1955 Act several months later and continued the Oil and Lease Fund under its control by enacting Section 1601.2-E of the Fiscal Code.⁵

22. DCNR's SFRMP was previously used by DCNR as the legal authority to approve additional State Forest oil and gas leases mandated by the General Assembly and the Governor in 2009 and 2010, even though DCNR had previously determined that it should not issue more leases until it better understood the impacts of the new shale gas development.

23. In August of 2008, DCNR offered over 74,000 acres of State Forest land for the extraction and sale of natural gas from the Marcellus Shale region in northcentral Pennsylvania. DCNR had no prior experience with the unconventional drilling techniques necessary to extract natural gas from shale deposits. Following

⁴ Act of October 9, 2009, P.L. 537, No. 50.

⁵ Act of October 30, 2017, P.L. 725, No. 44.

the award of leases from the 2008 lease offering, DCNR “decided not to enter into further leases for natural gas extraction on State land pending study of the ‘Marcellus play’ and development within 660,000 acres of land already leased in the Marcellus Shale region.” *PEDF v. Commonwealth*, 108 A.3d 140, 144 (Pa. Cmwlth. 2015) (“*PEDF I*”).

24. The former head of DCNR testified that DCNR “believed that there should be no further leasing because we were going to be watching a tremendous amount of gas activity on the state forest for the next 50 years.” *PEDF v. Commonwealth*, 161 A. 3d 911, 921 (Pa. 2017) (“*PEDF II*”).

25. After the 2008 lease sale, the General Assembly and the Governor enacted Section 1604-E of the Fiscal Code in 2009 to transfer \$60,000,000 from the Oil and Gas Lease Fund to the General Fund;⁶ and on the same day enacted the Supplemental General Appropriations Act of 2009 to also transfer \$143,000,000 from the Oil and Gas Lease Fund to the General Fund.⁷ As a result, DCNR had to abandon its self-imposed moratorium on leasing more State Forest land to generate the money for the Oil and Gas Lease Fund transfers to the General Fund. *PEDF II*, 161 A.3d at 921.

26. DCNR held two additional State Forest lease sales in 2009 and 2010 to raise money for the legislated transfers. To support these sales, DCNR published

⁶ Act of October 9, 2008, P.L. 537, No. 50.

⁷ Act of October 9, 2009, P.L. ___, No. 10A, § 1914.

environmental reviews approving the leases even though it had previously issued a moratorium until it could evaluate the continuing impacts from the leasing activities. *Id.* DCNR approved the leases in its environmental reviews because the leases “still meets the Bureau’s management guidelines and protocols.” *Id.* at 922. DCNR relied on the SFRMP’s lack of criteria for evaluating when a State Forest lease sale is justified to approve the 2009 and 2010 lease sales even though DCNR had previously determined that it should not enter into additional leases after the 2008 lease sale until it better understood the consequences of the new shale gas development.

27. Under Section 27, DCNR and Secretary Dunn have the express duty as trustees of our State Forest public natural resources to conserve and maintain these resources for both current and future generations. Pa. Const. art. I, § 27.

28. To conserve and maintain our State Forest public natural resources, DCNR has the duty “to *prevent and remedy* any degradation, diminution, or depletion of our public natural resources. As a fiduciary, [DCNR] has a duty to act toward the corpus of the trust – the public natural resources – with prudence, loyalty, and impartiality. *PEDF II*, 161 A.3d at 932 (emphasis added).

29. DCNR has no authority to act independent of this specific constitutional duty and has no proprietary interest in the public natural resources. *Id.*

30. Oil and natural gas extraction on State Forest land has caused and continues to cause immediate and long-term degradation, depletion and diminution of State Forest public natural resources.

31. Of the approximately 2.2 million acres of State Forest in Pennsylvania, a significant portion – 1.5 million acres – is underlain by Marcellus Shale and other shale formations that contain natural gas. Over 644,000 acres of the State Forest are subject to oil and gas extraction, either through Commonwealth leases or through development on tracts with severed, privately-owned subsurface oil and gas rights. DCNR Shale Gas Monitoring Report, July 2018 (“2018 Shale Gas Monitoring Report”) at 3-7 (copy provided as **Exhibit D**).

32. Of the State Forest acreage subject to oil and gas development, over 90% lies within our State Forest districts in northcentral Pennsylvania (Elk, Loyalsock, Moshannon, Sproul, Susquehannock, Tiadaghton and Tioga). These districts are referred to as the core shale gas districts. *Id.* at 23, Figure 2.2

33. The new State Forest oil and gas leases issued in 2009 and 2010, as well as the existing prior leases, were executed solely for the purposes of “(1) exploring, drilling, operating, producing, and removing oil, gas and liquid hydrocarbons; and (2) at locations approved by the Department, laying pipelines and constructing roads, tanks, towers, stations, and structures thereon to produce, save, take care of, and transport extracted products.” *See, e.g.*, DCNR Oil and Gas

Lease for State Forest Tract No. 027, Contract No. M-110027-12, effective May 10, 2010 (copy provided as **Exhibit E**).

34. The activities authorized under State Forest oil and gas leases cause degradation to our State Forest that must be remedied to comply with Section 27.

35. In the 2014 Shale-Gas Monitoring Report, DCNR states that natural gas development on State Forest land, “especially at the scale seen in the modern shale-gas era, affects a variety of forest resources and values, such as recreational opportunities, the forest’s wild character, scenic beauty, and plant and wildlife habitat.” 2014 Shale-Gas Monitoring Report at 3.

36. To understand impacts to the forest ecosystem, DCNR is monitoring for “changes and impacts to state forest water, air, soil, flora, wildlife, and forest health related to gas development.” 2018 Shale Gas Monitoring Report at 5.

37. While DCNR has embarked on efforts to understand the degradation, diminution and depletion of public natural resources caused by shale gas development on our State Forests, it acknowledges in its 2018 Shale Gas Monitoring Report that, even after eight years of monitoring, only a few trends can be understood and long-term monitoring will be required to understand the full extent of impact of this new industry. *Id.*, Preface.

38. On the State Forest land subject to DCNR oil and gas leases, DCNR estimates that only 30 to 35 percent of the allowable shale gas development has

occurred to date and that full development could result in as many as 1,475 wells on State Forest land. *Id.* at 4.

39. DCNR states that “[s]ince 2010, no new leases have been issued for natural gas development in state forests” and notes that an Executive Order currently prohibits DCNR from leasing State Park and State Forest lands for oil and gas development. *Id.*, Preface. Nonetheless, “significant tracts of state forest land remain subject to development due to severed mineral rights or leasing prior to 2011.” *Id.*

40. The degradation, diminution and depletion of State Forest public natural resources documented by DCNR in its 2018 Shale Gas Monitoring Report include, but are not limited to, the following findings:

(a) Shale gas development in our State Forests since 2008 has converted 1,770 acres of State Forest land from forest to shale gas infrastructure (*id.* at 43), including constructing and operating 265 infrastructure pads (*id.* at 50), constructing 260 miles of new roads and the expansion of scenic State forest roads (*id.* at 44); and constructing 188 miles of gas pipeline corridors (*id.* at 55).

(b) DCNR reports that “noticeable changes to the forest landscape are evident” with the largest increase overall resulting from “an additional 9,913 acres of forest edge (35 percent change in the Elk State Forest specifically).” *Id.* at 64.

(c) Shale gas development has caused greater fragmentation of our State Forest. Since 2008, our core State Forests have lost 15,134 acres of large intact forest blocks, which are unfragmented forest blocks of more than 500 acres.⁸ *Id.* at 65-66. The fragmentation of these large forest blocks resulted in increases in the category of smaller core forest blocks in almost all State Forest Districts, with the Loyalsock State Forest experiencing a 41.3% increase smaller core forest blocks of 250-500 acres and a 30% increase in core forest blocks less than 250 acres in size. *Id.*

(d) DCNR has begun to monitor the impacts to water quality from gas development to assess the health our State Forest ecosystems. *Id.* at 79. Approximately 3,500 miles of stream traverse State Forest land within the core shale gas forest districts, “including many of the best-know fishing and boating waters in Pennsylvania.” *Id.* DCNR states that “maintaining and protecting the quality of water in these streams is one of the bureau’s highest priorities.” In the State Forest core shale gas districts, “most of the streams (> 70%) are first-order streams,” which “means that the steams on state forest land are generally small, headwater streams that can be influenced greatly by the surrounding forest” and “have the potential to affect many others downstream.” *Id.* Over 85% of the

⁸ The monitoring report uses the metric unit of hectares. Large forest blocks are those containing more than 200 hectares, which is equivalent to 247 acres (1 hectare = 2.47 acres).

streams in the State Forest core shale gas districts are classified as either exceptional value or high quality. *Id.* at 80.

(e) The main concerns regarding water quality in areas subject to shale gas development “are from chemicals and salts that can be spilled during transportation or during drilling activities.” *Id.* at 81-82. Other concerns include “increases in water temperature, soil, sedimentation, and turbidity from construction of infrastructure and roads improved to accommodate heavy hauling.” *Id.* Fracturing fluids “can pose a potential spill risk during transportation or during well development operations.” *Id.* Macroinvertebrates were surveyed in 37 stream segments to assess stream health and over one third of these segments (13) fell outside of the range of tolerance for their classification. *Id.* at 78.

(f) The monitoring of forest health has documented the spread of invasive species in the State Forest. DCNR surveyed 238 infrastructure pads associated with oil and gas development in the core shale gas districts and observed invasive species at all but 29 of these pads. *Id.* at 78. Implementation of an early detection and rapid response program “has detected 71 populations of high-threat invasive species.” *Id.* DCNR observes that from 2011 to 2016, “it is evident from the pad surveys that many invasive plant species populations have spread to new sites on state forest land and populations first found from 2011-2013 have expanded at many sites.” *Id.* at 130. DCNR further states that the “proliferation and

colonization of invasive plant species is one of the greatest threats to the health and viability of state forest ecosystems.” *Id.* at 138.

41. While a century of regeneration has certainly improved the condition of our State Forests, recovery from the legacy of past degradation continues. As the 2014 and 2018 Shale Gas Monitoring Reports begin to document, the degradation of our State Forests from the new shale gas development has at a minimum slowed and, in some instances, reversed that recovery.

42. Our State Forests were originally established out of devastation, not preservation, as recently recounted by the Pennsylvania Supreme Court in *PEDF*

II:

It is not a historical accident that the Pennsylvania Constitution now places citizens’ environmental rights on par with their political rights. Approximately three and a half centuries ago, white pine, Eastern hemlock, and mixed hardwood forests covered about 90 percent of the Commonwealth’s surface of over 20 million acres. Two centuries later, the state experienced a lumber harvesting industry boom that, by 1920, had left much of Pennsylvania barren. “Loggers moved to West Virginia and to the lake states, leaving behind thousands of devastated treeless acres,” abandoning sawmills and sounding the death knell for once vibrant towns. Regeneration of our forests (less the diversity of species) has taken decades.

161 A.3d at 916-917 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 960).

43. The forest devastation of more than a century ago led to the creation of Pennsylvania’s Department of Forestry in 1901 to promote reforestation and

manage lands acquired by the Commonwealth for this purpose.⁹ While these and other legislative measures began the slow process of recovery, the people of Pennsylvania understood that something more was needed to prevent the past degradation of our natural resources. As the Supreme Court recognizes in *PEDF II*, “[i]n 1971, by a margin of nearly four to one, the people of Pennsylvania ratified a proposed amendment to the Pennsylvania Constitution’s Declaration of Rights, formally and forcefully recognizing their environmental rights as commensurate with their most sacred political and individual rights.” *Id.* at 916.

44. These rights are established under Article I of Pennsylvania’s Constitution, the inalienable rights of the people. The Supreme Court explained the significance and the intent of the people to impose Article I duties on all branches of the Commonwealth’s government, stating:

That Pennsylvania deliberately chose a course different from virtually all of its sister states speaks to the Commonwealth’s experience of having the benefit of vast natural resources whose virtually unrestrained exploitation, while initially a boon to investors, industry, and citizens, led to destructive and lasting consequences not only for the environment but also for the citizens’ quality of life. Later generations paid and continue to pay a tribute to early uncontrolled and unsustainable development financially, in health and quality of life consequences, and with the relegation to history books of valuable

⁹ Act of February 25, 1901, P.L. 11, No. 9, entitled “An act to establish a Department of Forestry, to provide for its proper administration, to regulate the acquisition of land for the Commonwealth, and to provide for the control, protection and maintenance of Forestry Reservations by the Department of Forestry;” *see also* Act of March 30, 1897 (P.L. 11, No. 10), entitled “An act authorizing the purchase by the Commonwealth of unseated lands for the non-payment of taxes for the purpose of creating a State Forest Reservation.” The powers and duties conferred by these acts are now exercised by DCNR. 71 P.S. § 1340.302.

natural and esthetic aspects of our environmental inheritance. *The drafters and the citizens of the Commonwealth who ratified the [Section 27], aware of this history, articulated the people’s rights and the government’s duties to the people in broad and flexible terms that would permit not only reactive but also anticipatory protection of the environment for the benefit of current and future generations.* (Emphasis added).

Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people’s rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.

Id. at 918-19 (emphasis added).

45. With regard to our State Parks and Forests, the Supreme Court held the following:

Because state parks and forests, including the oil and gas minerals therein, are part of the corpus of Pennsylvania’s environmental public trust, we hold that the Commonwealth, as trustee, must manage them according to the plain language of Section 27, which imposes fiduciary duties consistent with Pennsylvania trust law. We further find that the *constitutional language controls how the Commonwealth may dispose of any proceeds generated from the sale of its public natural resources.*

Id. (emphasis added).

46. The Supreme Court describes the Commonwealth’s duties as the trustee of the Section 27 trust created by the people of Pennsylvania as follows:

As trustee, the Commonwealth is a fiduciary obligated to comply with the terms of the trust and with the standards governing a fiduciary’s conduct. The explicit terms of the trust require the government to “conserve and maintain” the corpus of the trust. The plain meaning of the terms conserve and maintain implicates *a duty to prevent and*

remedy the degradation, diminution, or depletion of our public natural resources.

Id. at 932 (emphasis added) (quoting *Robinson Twp.*, 83 A.3d at 956-57). The Court further describes the Commonwealth’s duties under Section 27 as “a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties”. *Id.* at 933 (citing *Robinson Twp.*, 83 A.3d, 957).

V. REQUESTED RELIEF

A. DCNR Has No Authority to Lease Our State Forest for the Extraction and Sale of Oil and Natural Gas for the Economic Benefit of the Commonwealth

47. In the 2016 SFRMP, DCNR states its new policy that the “*economic use and sound extraction and utilization of [coal, oil, natural gas and other] geologic resources is (sic) part of the [Bureau of Forestry’s] mission in managing [State Forest] lands.*” 2016 SFRMP at 156.

48. By leasing State Forest land for the extraction and sale of oil and gas, DCNR authorizes the degradation, depletion and diminution of our public natural resources. Such leasing is contrary to DCNR’s trustee duties under Section 27 unless DCNR can demonstrate that the proceeds from such leasing will be used to the benefit of our State Forest public natural resources consistent with its trustee duties to conserve and maintain these resources under Section 27, and within the protection of ecosystem management.

49. DCNR cannot authorize use of the proceeds generated by the sale of oil and gas from our State Forest, a public trust asset, for any purpose other than the purpose established by Section 27, which is conserving and maintaining our public natural resources.

50. In the 2016 SFRMP, DCNR cites the authority of the Conservation and Natural Resources Act (CNRA) for its authority to lease our State Forest for the extraction and sale of oil and natural gas, which states, “*whenever it shall appear to the satisfaction of the department that it would be for the best interests of the Commonwealth to make such disposition of those minerals.*” 71 P.S. § 1340.302(a)(6); *see also PEDF II*, 161 A.3d at 920.

51. Under Section 302(a)(6) of the CNRA, the phrase “in the best interest of the Commonwealth” does not mean that DCNR can lease and sell our public natural resources for money for the economic use by the Commonwealth.

52. This statutory authority cannot infringe upon DCNR’s constitutional fiduciary duty under Section 27 to conserve and maintain the State Forest public natural resources for the benefit of the people.

53. The plain meaning of the terms conserve and maintain in Section 27 implicates *a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.*

54. As DCNR has documented in its 2014 and 2018 Shale Gas Monitoring Reports (*see* ¶¶ 30-40 above), the extraction and sale of the oil and gas on our State Forest degrades, depletes and diminishes our State Forest public natural resources, including the natural gas resource itself.

55. The oil and gas itself is a public natural resource that is being depleted without any consideration of the current and future need of the proceeds from this depletion to sustain and enhance our State Forests and State Parks by remedying the degradation, diminution and depletion of these public natural resources from the extraction of geologic resources and from other impacts to these resources that are occurring and will continue to occur.

56. DCNR has no authority to use the corpus of the trust beyond the terms of the trust purpose, to conserve and maintain the State Forest for the benefit of the people. *PEDF II*, 161 A.3d. at 932.

57. DCNR has no proprietary interest in the public natural resources of our State Forests to use the public natural resources beyond the terms of the trust. *Id.* at 932.

58. The corpus of the trust and the rights of the people under the trust are protected under Article I of the Pennsylvania Constitution. *Id.* at 930-931.

59. The Supreme Court did not agree with the Commonwealth's argument in *PEDF II* that it could use money from the sale of State Forest public natural resources for any use that benefits the people, stating:

[T]he Commonwealth insists that the concluding phrase of Section 27, “for the benefit of all the people,” confers discretion upon the General Assembly to direct the proceeds from oil and gas development toward **any** uses that benefit all the people of the Commonwealth, even if those uses do nothing to “conserve and maintain” our public natural resources. Commonwealth’s Brief at 41 (citing *PEDF [v. Commonwealth]*, 108 A.3d [140,] 168 [(Pa. Cmwlth. 2015)]). We are wholly unconvinced. ***The phrase “for the benefit of the people” may not be read in isolation and does not confer upon the Commonwealth a right to spend proceeds [from the Section 27 trust] on general budgetary items.***”

Id. at 934.(emphasis added)

60. The Supreme Court concluded that “the phrase ‘for the benefit of all the people’ is unambiguous and clearly indicates that assets of the trust must be used for conservation and maintenance purposes” and further stated:

By arguing that proceeds obtained from the sale of our natural resources are not part of the corpus of the trust, ***the Commonwealth improperly conceives of itself as a mere proprietor of those public natural resources, rather than as a trustee.*** In the Commonwealth’s view, it may dispose of our public natural resources as it so chooses and for any purpose it so conceives, so long as such disposition broadly benefits the public (apparently without regard to “generations yet to come”). *See* Commonwealth’s Brief at 45. ***As such, it urges us to substantially diminish its fiduciary obligation to prevent and remedy the degradation of our natural resources. We decline to do so.***

Id. at 934-935(emphasis added).

61. The degradation of our State Forest and sale of our oil and natural gas public natural resources for economic uses that do not conserve and maintain the corpus of the public trust – the public natural resources of our State Forests that have been degraded, diminished and depleted – cannot be considered in the best interest of the Commonwealth.

62. The Supreme Court, in summarizing its holding in *PEDF II*, makes clear that use of proceeds from the sale of public natural resources must be governed by Section 27, stating:

Because state parks and forests, including the oil and gas minerals therein, are part of the corpus of Pennsylvania’s environmental public trust, we hold that the Commonwealth, as trustee, must manage them according to the plain language of Section 27, which imposes fiduciary duties consistent with Pennsylvania trust law. ***We further find that the constitutional language controls how the Commonwealth may dispose of any proceeds generated from the sale of its public natural resources.***

Id. at 916 (emphasis added).

63. The Supreme Court held in *PEDF II* that “Pennsylvania trust law dictates that proceeds from the sale of trust assets are trust principle and must remain part of the corpus of the trust. [] When a trust asset is removed from the trust, all revenue received in exchange for the trust asset is returned to the trust as part of its corpus.” *Id.* at 935 (citation omitted).

64. Nothing in the language of the Section 27 supports the concept that our public natural resources can be used for economic benefit, that the resource can

be degraded and/or removed from the corpus of the trust in exchange for money. Nothing in the language supports the concept that the revenue for the degradation and/or sale can be used for economic benefit of the Commonwealth.

65. Under the facts of the case, DCNR and the Commonwealth have been and are using the proceeds from State Forest oil and gas leases for DCNR's operations. The Supreme Court has specifically addressed this use in its evaluation two prior Fiscal Code provisions (§§ 1602-E and 1603-E) that allowed it, finding them unconstitutional because DCNR's operations are "non-trust" purposes. The Supreme Court has stated:

Section 1602-E merely requires the General Assembly to "***consider***" allocating funds to municipalities impacted by a Marcellus well. Section 1603-E limits DCNR's allocation from the [Oil and Gas] Lease Fund to "up to \$50,000,000" from royalties and requires DCNR to "***give preference to the operation and maintenance of State parks and forests rather than to conservation purposes***" ...

We hold, therefore, that sections 1602-E and 1603-E, relating to royalties, are facially unconstitutional. ***They plainly ignore*** the Commonwealth's constitutionally imposed fiduciary duty to manage the corpus of the environmental public trust for the benefit of the people to accomplish its purpose – conserving and maintaining the corpus by, inter alia, preventing and remedying the degradation, diminution and depletion of our public natural resources. [] ***Without any question, these legislative enactments permit the trustee to use trust assets for non-trust purposes, a clear violation of the most basic of a trustee's fiduciary obligations.***

161 3d at 937-938 (footnote and citation omitted; emphasis added).

66. Clearly, the use of trust assets to pay for DCNR's operations and any other uses not compatible with the purposes of the public trust are economic uses that violate Section 27.

67. The Supreme Court in *PEDF II* also found that "the Legislature began using [Oil and Gas Lease Fund] revenue to support the overall budget of DCNR, ***rather than*** obtaining that budget money from the general fund and ***using the*** [Oil and Gas Lease Fund] ***money for conservation purposes*** related to oil and gas extraction." *Id.* at 925 (quoting a law review article by John Dernbach). As the Supreme Court noted, this transfer reduced the trust assets available to DCNR to undertake conservation activities. The replacement of General Fund tax revenue ***is not a trust purpose***, any more than is the payment of DCNR's operating expenses.

68. WHEREFORE, PEDF respectfully request this Honorable Court to declare the following:

(a). The oil and natural gas resources of our State Forest, as the part of the corpus of the public trust under Section 27, cannot be used for economic benefit of the Commonwealth. The purpose of the trust is to conserve and maintain those resources for the benefit of the people. Nothing in the language of the Section 27 authorizes the corpus of the trust to be used for economic purposes.

(b). The extraction and sale of oil and gas and from our State Forests causes immediate and long-term degradation, diminution and depletion of the State

Forest public natural resources, including the oil and gas itself – a public natural resource that is diminished. Nothing in the language of Section 27 supports the concept that the resource can be degraded and/or removed from the corpus of the trust in exchange for money for the economic benefit of the Commonwealth.

(c). The constitutional language in Section 27 controls how the Commonwealth may dispose of any proceeds generated from the extraction and sale of its public natural resources, including oil and natural gas. Nothing in the language of Section 27 supports the concept that the money from the lease of our natural gas can be used for the economic benefit of the Commonwealth. The phrase “for the best interest of this Commonwealth” in Section 302(b)(6) of the Conservation and Natural Resources Act, 71 P.S. § 1340.302(b)(6), must be defined and limited by the constitutional purpose of Section 27, and does not require or authorize DCNR to lease State Forest land for mineral extraction and sell our public natural resources for the economic use of the Commonwealth.

(d). Pennsylvania trust law requires that proceeds from the sale of Section 27 trust assets are trust principle and must remain part of the corpus of the trust. When a trust asset is removed from the trust, all revenue received in exchange for the trust asset is returned to the trust as part of its corpus. Use of trust principle to operate DCNR, and use of the money to replace money from the General Fund for DCNR operations violates Section 27.

(e). DCNR, by approving the policy in the 2016 SFRMP that “*economic use and sound extraction and utilization of [coal, oil, natural gas and other] geologic resources is (sic) part of the [Bureau of Forestry’s] mission in managing [State Forest] lands*”, has violated Section 27.

(f). Cindy Adams Dunn, as Secretary of DCNR, by approving the new SFRMP policy state above, has violated her constitutional duty as trustee of our State Forest under Section 27.

B. DCNR Has No Authority to Balance the Degradation of Our Natural Resources from the Extraction and Sale of Our Oil and Natural Gas on State Forest Land with the Rights and Benefits of the People to the State Forest under Article I Section 27

69. In the 2016 SFRMP. DCNR stated that “*[e]xtraction of geologic resources such as coal, oil, and natural gas also has long been a keystone to Pennsylvania’s economy... Geologic resources on state forest lands offers a variety of environmental, social and economic values that the Bureau considers in ecosystem management.*” 2016 SRRMP at 154.

70. In the 2016 SFRMP, DCNR stated its policy that “*[m]anaging the [coal, oil, natural gas and other] geologic resources requires thorough analysis, strategic planning, and attentive oversight to ensure that the value of geologic resources is balanced with other forest uses and values.*” 2016 SFRMP at 156.

71. DCNR has no authority to balance the extraction and sale of oil and natural gas from our State Forest with the rights and benefits established under

Section 27, including the right to the preservation of the natural, scenic, historic and aesthetic values of our State Forest, the right to common ownership of our public natural resources, and the right to have our public natural resources conserved and maintained by the Commonwealth as trustee for the benefit of the people living today and for future generations, which are protected under Article I of the Pennsylvania Constitution.

72. The Supreme Court in *PEDF II* articulated the significance of inclusion of Section 27 in Article I of the Pennsylvania Constitution, stating:

In 1971, by a margin of nearly four to one, the people of Pennsylvania ratified a proposed amendment to the Pennsylvania Constitution's Declaration of Rights, formally and forcefully recognizing their environmental rights as commensurate with their most sacred political and individual rights.

1613d. at 916.

73. Such "balancing" violates the limitations placed by the people of Pennsylvania on their State government in Article I, Section 25 of the Pennsylvania Constitution, which states: "To guard against the transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate." Pa. Const. art. I, § 25.

74. DCNR cannot "balance" the rights established under Section 27 with the benefit of selling our public natural resources for undefined economic uses.

DCNR is limited by its duty as trustee in any action impacting on our public natural resources that DCNR is mandated to conserve and maintain.

75. The Supreme Court recognized in *PEDF II* that Section 27 grants the following two separate rights to the people of this Commonwealth:

The first right is contained in the first sentence, which is a prohibitory clause declaring the right of citizens to clean air and pure water, and to the preservation of natural, scenic, historic and esthetic values of the environment. *Robinson Twp.*, 83 A.3d at 951. This clause places a limitation on the state’s power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional. *Id.*

The ***second right*** reserved by Section 27, set forth in its second sentence, is the ***common ownership by the people, including future generations, of Pennsylvania’s public natural resources.*** *Id.* at 954. The “public natural resources” referenced in this second sentence include the state forest and park lands leased for oil and gas exploration and, of particular relevance in this case, the oil and gas themselves. *Id.* at 955; *see also* Pa. L. Journal, 154th General Assembly, No. 118, Reg. Sess., 2271–75 (1970). ...

The third clause of Section 27 establishes a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth[] is the trustee, and the people are the named beneficiaries. *Robinson Twp.*, 83 A.3d at 955–56. ***The terms “trust” and “trustee” carry their legal implications under Pennsylvania law at the time the amendment was adopted.***

161 3d at 931-932 (footnote omitted).

76. The extraction and sale of oil and natural gas from our State Forest depletes and diminishes the oil and natural gas public natural resources and degrades the values of the State Forest, including the peoples’ rights to clean air,

pure water and the preservation of the natural, scenic and historic value of our State Forest (*see* ¶¶ 30-40 above).

77. The constitutional rights established under Section 27 cannot be balanced with the benefits of the extraction and sale of the oil and natural gas. Such balancing violates Section 27 and the protections of the inalienable rights established therein under Article I of Pennsylvania's Constitution.

78. WHEREFORE, PEDF respectfully requests this Honorable Court to declare that:

(a). Balancing the alleged "value" of the extraction and sale of oil and gas on State Forest land with the rights to the natural values of the State Forest, including rights and benefits established under Section 27, violates the purpose of Section 27 and the beneficiaries' rights, including the rights to clean air, pure water and to the preservation of the natural, scenic, historic and aesthetic values of our State Forest, as well as the rights of the peoples' common ownership of our public natural resources, and the right to have our public natural resources conserved and maintained by the Commonwealth as trustee for the benefit of the people living today and for future generations;

(b). Section 27 rights are protected under Article I of the Pennsylvania Constitution, and attempts to balance those rights with rights established with other

articles of the Constitution, including economic development, violates Article I Section 25 of the Pennsylvania Constitution;

(c). The leasing of our State Forest land and sale of our oil and natural gas are not constitutional rights established under Section 27;

(d). The extraction and sale of oil and natural gas from our State Forest causes immediate and long-term degradation and depletion of our public natural resources (*see* ¶¶ 30-40 above);

(e). DCNR cannot “balance” the constitutional rights established under Section 27 with any activities or policies involving non-trust purposes;

(f). DCNR cannot “balance” the constitutional rights established under Section 27 with any activities that would result in the degradation, diminution and depletion of the public natural resources of our State Forest, including the oil and natural gas resources that are a part thereof;

(g). DCNR violates both Section 27 and Section 25 of Article I of the Pennsylvania Constitution by approving the stated policy in the 2016 SFRMP that ***“[m]anaging the [coal, oil, natural gas and other] geologic resources requires thorough analysis, strategic planning, and attentive oversight to ensure that the value of geologic resources is balanced with other forest uses and values”***; and

(h). Cindy Dunn, as Secretary of DCNR, violated her duty as trustee of our State Forest under Section 27 by approving the above policy in the 2016

SFRMP authorizing the balancing our constitutional rights under Section 27 with the Commonwealth's economic interests.

C. The 2016 SFRMP Has No Specific Management Plan to Prevent and Remedy the Degradation, Diminution and Depletion of Our State Forest from Existing Leases for Oil and Gas Extraction

79. The core area of our State Forest – 1.5 million acres, which is almost 70% of the entire State Forest – is located in the northcentral region of Pennsylvania and is underlain by shale gas formations. Within that core area, over 644,000 acres (40%), is subject to leases for oil and natural gas extraction.

80. The 2014 and 2018 Shale Gas Monitoring Reports published by DCNR establish that these leases are and will continue to be active for the next 50 years, causing degradation and diminution of our State Forest public natural resources (*see* ¶¶ 30-40 herein). The current and future degradation from the leasing activities is a major threat to our State Forest ecosystem.

81. Yet, the 2016 SFRMP has no management plan to deal with these leases and their impacts.

82. The 2016 SFRMP identifies two primary purposes; first, to provide a framework for forest managers to make management decisions and professional judgments that ensure sustainability across the State Forests; and second, to

communicate to stakeholders—the citizens of Pennsylvania how their forest is being managed. 2016 SFRMP at 20.

83. The 2016 SFRMP does not provide a framework for forest managers to make management decisions to prevent and remedy the current and future degradation of our State Forest from the current and future impacts from the leasing activities evidenced by the 2014 and 2018 Shale Gas Monitoring Reports, which are occurring and will continue to occur for at least the next 50 years.

84. Nor does the 2016 SFRMP provide stakeholders, the beneficiaries of the public trust, with how the forest is being managed to deal with the extraction process in compliance with DCNR's constitutional duties to conserve and maintain the public natural resources under Section 27.

85. The 2014 and 2018 Shale Gas Monitoring Reports are not management plans. They do not provide a framework for forest managers to make decisions to ensure compliance with their constitutional duties under Section 27. They do not provide stakeholders, the beneficiaries of the public trust, with how the forest is being managed to deal with the extraction process in compliance with Section 27.

86. Nor does the 2016 SFRMP consider the current and future financial needs for DCNR to prevent and remedy the degradation, diminution and depletion of these public natural resources.

87. PEDF believes and avers that DCNR has the duty as trustee under Section 27 to include in the current SFRMP a comprehensive management plan to deal with the current and future impacts from the over 644,000 acres of State Forest currently subject to oil and gas development.

88. DCNR, as trustee of Pennsylvania's State Forest under Section 27, has the specific constitutional duty to conserve and maintain the public natural resources, which requires that DCNR prevent and remedy degradation of those resources.

89. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust – the public natural resources – with prudence, loyalty, and impartiality. *PEDF II*, 161 A.3d at 934 (citing *Robinson Twp.*, 83 A. 3d at 956-57); *see also* 20 Pa.C.S. Chapter 77 (Trusts), Subchapter H (Duties and Powers of Trustee).

90. By failing to establish a management plan to deal with the impacts from the over 644,000 acres of State Forest land subject to oil and gas leases over the next 50 years, Secretary Dunn and DCNR violated their Section 27 fiduciary duties to protect the corpus of the trust and the beneficiaries' rights to the corpus.

91. By failing to establish a management plan to deal with the impacts of oil and gas extraction on State Forest lands, DCNR and Secretary Dunn are violating their fiduciary duties of prudence, loyalty and impartiality.

92. The duty of **PRUDENCE** requires a trustee to exercise “such care and skill as a man of ordinary prudence would exercise in dealing with his own property.” *PEDF II*, 161 A.3d at 932 (quoting Restatement (Second) of Trusts § 174 as cited in *In re Mendenhall*, 398 A.2d 951 (Pa. 1979). Under Pennsylvania law, a trustee must “administer the trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by *exercising reasonable care, skill and caution.*” 20 Pa.C.S. § 7774 (emphasis added). A prudent trustee would establish as part of the management of the trust a management plan to prevent and remedy the existing and future degradation.

93. The duty of **LOYALTY** “imposes an obligation to manage the corpus of the trust so as to accomplish the trust’s purposes for the benefits of the trust’s beneficiaries.” *PEDF II*, 161 A.3d at 932-933; *see also* 20 Pa.C.S. § 7772(a) (“A trustee shall administer the trust *solely in the interests of the beneficiaries*” (emphasis added)). The Respondents violated their duty of loyalty to the trust or to the beneficiaries of the trust by failing to have a management plan to manage the corpus of the trust, to accomplish the purposes of the trust in compliance with their duties as trustees, and to prevent and remedy the existing and future degradation, depletion and diminution of our State Forest.

94. The duty of **IMPARTIALITY** “requires the trustee to manage the trust so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust.” *PEDF II*, 161 A.3d at 933; 20 Pa.C.S. § 7773 Restatement (Second) of Trusts § 183; *Estate of Sewell*, 409 A.2d at 402. Without a management plan DCNR cannot ensure the future protection of the rights of generations yet to come.

95. WHEREFORE, PEDF respectfully requests this Honorable Court to declare that:

(a). DCNR and Secretary Dunn have violated their duties as trustee by failing to include in the 2016 SFRMP a specific plan to provide a framework from which the forest managers can make decisions to comply with their constitutional duties under Section 27;

(b). DCNR and Secretary Dunn have violated their duties as trustees by failing to provide stakeholders, the beneficiaries of the public trust, with how the State Forest is and will be managed to deal with the degradation from the oil and gas extraction and sale in compliance with their fiduciary duties under Section 27 to prevent and remedy the degradation;

(c). DCNR must amend the SFRMP to establish a management plan to provide a framework explaining how DCNR, as the trustee of their State Forest and State Park public natural resources, will prevent and remedy the degradation,

diminution and depletion of public natural resources that has occurred and will continue to occur for at least 50 years on the over 644,000 acres of State Forest currently subject to oil and gas extractions; and

(c). DCNR must amend the SFRMP to provide the people of Pennsylvania with an evaluation of the money currently required and that will be required to implement the remedies necessary to both prevent and restore the public natural resources of the State Forests and State Parks from the degradation, diminution and depletion caused by existing and future oil and gas extraction.

D. The 2016 SFRMP Has No Specific Management Plan to Implement Sound Scientific Principles of Ecosystem Management to Sustain the State Forest

96. DCNR's principle constitutional duty as trustee of our State Forest under Section 27 is to conserve and maintain the forest for both current and future generations.

97. To meet its constitutional responsibility, DCNR developed and adopted a strategic plan in 1995, entitled *Penn's Wood – Sustaining Pennsylvania's Forest*. In this plan, DCNR stated that the mission of the Bureau of Forestry is “to ensure the long-term health, viability and productivity of the Commonwealth's forests and to conserve native wild plants.” *Penn's Woods* at 32.

98. First among the ways the bureau will accomplish this mission is by “managing the State Forests under *sound ecosystem management, to retain their*

wild character and maintain biological diversity while providing pure water, opportunities for low-density recreation, habitats for forest plants and animals, sustained yields of quality timber, and *environmentally sound utilization of mineral resources.*” *Id.* (emphasis added).

99. In the 2016 SFRMP, DCNR provides no specific management plan to provide the framework for forest managers to develop and implement ecosystem management to retain the wild character and maintain the biological integrity of the forest to fulfil their constitutional duties to conserve and maintain the corpus of the Section 27 public trust for the benefit of all the people, including future generations.

100. As the administrator of the State Forest public trust under Section 27, DCNR has the duty to ensure the State Forest is being managed for its constitutional purposes. DCNR has published two monitoring reports on the effects of the shale gas extraction and sale on our core State Forest areas – one in 2014 covering data through 2012, and the second in 2018 covering data through 2016; but the monitoring reports are not management plans.

101. In *Penn’s Woods*, the Bureau of Forestry stated that the basic tenet of ecosystem management, “is that forests, rather than being viewed as containing a set of resources, in fact, are more than the sum of their parts. Forests are comprised of quantifiable components such as trees, but forests are also systems performing

various functions and processes ... Thus, *a major step toward maintaining Pennsylvania's environmental heritage and values is to adopt a management strategy geared toward sustaining the long-term health and productivity of forest ecosystems.*" *Id.* at 8.

102. The maintenance of the ecosystem integrity is critical to DCNR's ability to sustainably manage our State Forests in northcentral Pennsylvania. If the State Forests and Parks in this region are degraded and diminished, if their air is not clean, if their waters are not pure, if their natural, scenic, historic and esthetic values are not preserved, the specific mandates of Section 27 to conserve and maintain our public natural resources for present and future generations cannot be met.

103. *Penn's Woods* identifies that *a key element in maintaining ecosystem integrity and viability is the maintenance of biological diversity.* *Id.* at 9. Noting that hundreds of plant and animal species have been lost or are endangered or threatened in Pennsylvania and that over half of our wetland habitat has been lost, *Penn's Woods* concludes that "*habitat destruction and fragmentation, along with degradation from pollution, are the greatest threats to biodiversity.*" *Id.* at 9 (emphasis added). These threats are the same elements of degradation experienced on our State Forests from the extraction and sale of oil and gas natural resources.

104. The *Penn's Woods* strategic plan clearly reflects the intentions of the people who voted to approve the Section 27 trust and understood our history of boom and bust industrial natural resource extraction and the devastation these industries can leave behind. Their purpose in declaring Pennsylvania's public natural resources to be the common property of the people and requiring their government to conserve and maintain these resources as a trustee is to ensure these resources, including our State Forests and State Parks, are restored and maintained as healthy ecosystems that support the natural diversity of plants and animals that can thrive in such ecosystems.

105. Because the General Assembly and the Governor forced DCNR to lease over 132,000 additional acres of State Forest land for oil and gas extraction, required DCNR to use the proceeds from those leases to pay for its operations, and have not appropriated money for DCNR to deal with the degradation caused by the leasing, DCNR is now forced to use the very money that should pay to prevent and remedy the degradation of our State Forest to pay for its own operations, thus turning the agency responsible for ensuring the ecological integrity of our State Forests and Parks into an agency dependent on selling these public natural resources to pay for its annual operations.

106. DCNR has responded to this new reality of reliance on oil and gas lease fund money for operations by adopting a new SFRMP in 2016 that

fundamentally alters the management of our State Forest. Rather than to comply with its fiduciary duties as trustee mandated by Section 27, DCNR is attempting to integrate its new financial reality into a new management concept that promotes a balance between the “economic value” of leasing our State Forest for oil and natural gas extract and the ecological value of our State Forest as a public natural resource.

107. DCNR’s new 2016 SFRMP has returned it to the days of making management decisions about our State Forest public natural resources based on the politics of appropriations, rather than making management decisions based on the constitutionally mandated duty to conserve and maintain our State Forest ecosystem.

108. Only by requiring DCNR to develop a specific management plan based on its own long-established principles of sound ecosystem management can the difficult task of understanding how to prevent and remedy the degradation, diminution and depletion to the public natural resources of our State Forests and Parks become a reality.

109. DCNR’s principle duty as trustee of our State Forest is to prevent and remedy the degradation of these public natural resources, for the specific purpose of sustaining them for generations to come. The only way DCNR can successfully carry out this duty is through ecosystem management. The principles of ecosystem

management, as stated above, must be implemented through a SFRMP that properly identifies measurable goals and objectives to carry out these principles, estimates the costs necessary to achieve them, and provides a framework for forest managers in our State Forest districts to implement them.

110. WHEREFORE, PEDF respectfully requests this Honorable Court declare that:

(a). DCNR and Secretary Dunn have violated their constitutional duties under Section 27 by failing to provide the people of Pennsylvania with a specific plan to implement ecosystem management in compliance with their duties to prevent and remedy the existing and future degradation of our State Forest from the current and future degradation caused by the extraction and sale of the oil and natural gas.

(b). DCNR must amend the 2016 SFRMP to provide the people of Pennsylvania, as well as its own forest managers, with the goals and objectives that DCNR will seek to achieve to enhance and to sustain our State Forest ecosystems consistent with the policies in *Penn's Wood* and to provide them with an evaluation of the cost of the measures necessary to carry out these goals and objectives.

(c). DCNR and Secretary Dunn must include in their 2016 SFRMP a specific plan for developing and implementing ecosystem management to provide a framework for forest managers to make management decisions to ensure that our

State Forests and State Parks are restored and maintained as healthy ecosystems that support the natural diversity of plants and animals that can thrive in such ecosystems, as envisioned by the drafters of Section 27 and voters who overwhelmingly supported this constitutional amendment; and provide an evaluation of the costs to carry out this plan and a process for allocating money from the Oil and Gas Lease Fund to pay those costs.

VI. SUPPORT FOR PETITIONER'S STANDING

111. The interests of PEDF's members are specifically and uniquely focused on the State Forests and State Parks that are impacted by the Marcellus Shale natural gas development occurring on State Forests in northcentral Pennsylvania. All of the areas of interest of PEDF's members and member organizations are located within the geographic areas affected by the Marcellus Shale natural gas development within our State Forests and focus on the preservation of State Forests and State Parks impacted by this gas extraction and sale

112. As set forth in the several affidavits of PEDF's members, their constitutional rights and interests under Section 27 are, have been and continue to be substantially and immediately harmed by the decisions and actions of the Respondents set forth in this Petition. Summarized below are highlights from

affidavits of several of PEDF's members and member organizations attached as **Exhibits F – I** to this Petition.

A. Affidavit of Gary Metzger and the Lycoming Audubon Society

113. Gary Metzger and the Lycoming Audubon Society are members of PEDF. The affidavit of Gary Metzger is attached as **Exhibit F**. The mission of the Lycoming Audubon Society is “[t]o conserve and restore the natural ecosystem focusing on birds and other wildlife, and their habitat for the benefit of humanity and earth’s biological diversity.”

114. The Lycoming Audubon Society has 320 members who live, work and recreate in Lycoming and Clinton Counties. The abundant State public lands, including the State Forests are critical elements of the natural character of the region that are important to them. They hunt, fish, hike, bike, and watch wildlife, including birds. The members believe that the State Forest land is not being protected as provided by Article I Section 27 of the Pennsylvania Constitution. The shale gas development is degrading the biological integrity of the forest, the air and water, and the scenic vistas.

115. Pennsylvania’s tracts of contiguous forested lands provide critically important habitat for a whole suite of forest bird species. Many of these species have declined as a result of habitat impacts.

116. The impacts on State Forest areas that are leased will result in reduction in biodiversity. DCNR states its policy in the 1995 strategic plan, *Penn's Woods*, that “[e]cosystem management concepts and principles should serve as the fundamental basis for the management of public lands in the Commonwealth.” By maintaining suitable habitat for forest bird populations, biological diversity can be protected. The 2016 SFRMP does not include a management plan to maintain such habitat and diversity. Without such a plan, DCNR cannot meet its constitutional duties under Section 27.

B. Affidavit of Jim Weaver and Pine Creek Watershed Council

117. Jim Weaver is a biologist, fisherman and retired Tioga County Planner. His affidavit is attached as **Exhibit G**. He lives at 428 Copp Hollow Road in Wellsboro, Pa. He has lived in the Pine Creek Valley for most of his life and helped to write the Pine Creek Watershed River Conservation Plan. He is currently a member of the board of the Pennsylvania Wilds Center for Entrepreneurship.

118. The wilderness forests and public lands are his source of inspiration, solitude and sustenance. He follows the Pennsylvania visionaries of the past: Mira Lloyd Dock, Pinchot, Rothrock and Goddard, who worked hard to build and protect our State forest. He believes that only with continued reliance on ecosystem management can we sustain this protection.

119. Jim believes the 2016 SFRMP pays lip service to ecosystem management, but is supporting a return to managing our forest for the economic values of selling our timber and our natural gas to generate money.

120. He objects to the to the new policy of attempting to balance he management of the forest resources with the economic value of resource extraction. He argues that all of the uses must be compatible with ecosystem management. He identifies all the types of degradation that are being inflicted from gas extraction, fragmentation, impacts to forestry roads, increased invasive species, loss of aesthetic value, hiking, biking fishing, increased erosion and sedimentation into our exceptional value streams.

121. The Conservation Landscape Initiatives, including the Pennsylvania Wilds, engaging the local communities through entrepreneurship, marketing and planning efforts are just beginning to see results. These initiatives rely on the sustainability of our State Forest. The 2016 SFRMP supports the continued development of timber an oil and natural gas extraction and balancing those activities with protecting our forest. This weakens the ecosystem of the State Forest and the development of sustainable economies based on conservation initiatives with the communities.

C. Affidavit of Roy Siefert

122. Roy Siefert lives in the Pennsylvania Wilds in Tioga County. His affidavit is attached as **Exhibit H**. He is the retired District Forester of the Tioga State Forest District. He has a B.S. degree in Forestry Science. He has spent his entire life working for Pennsylvania's forest.

123. Under the constitutional protections of Section 27, the people of Pennsylvania have committed to sustaining our State Forest for both the present and future. The only way Roy knows to do that is to manage the forest as a biological ecosystem.

124. During the entire tenure of his service as District Forester, the Bureau of Forestry never allowed timber sales, recreational use, or gas extraction to interfere with the forest ecology. The bureau always used the money from those economic activities to fund projects to protect the State Forest.

125. Roy believes strongly that the Bureau of Forestry cannot sell our non-renewable (oil and natural gas) natural resources for economic development. He believes it is wrong to sell our State Forest resources to operate our State agencies.

126. Roy is deeply troubled when he goes back into the forest that he spent his lifetime protecting and sees the degradation occurring from shale gas development. He believes we need to ensure that we retain all of our natural resources to ensure that we can restore and sustain the State Forest for the future.

D. Affidavit of Cindy Bower

127. Cindy Bower is the PEDF vice president of the northcentral region of Pennsylvania. Her affidavit is attached as **Exhibit I**. She is a resident of Lycoming County. Her house borders on the Loyalsock State Forest. She has spent countless hours exploring the Moshannon, Elk, Rothrock, Bald Eagle, Tioga, Sproul and Susquehannock State Forests. Pennsylvania's public natural resources are of utmost and critical importance to her. They are the primary reason she has stayed in northcentral Pennsylvania.

128. Cindy has read the 2016 SFRMP and believes it is contrary to the constitutional mandates of Section 27. The vast proliferation of infrastructure from oil and gas extraction has already fragmented the interior of the State Forest. Roads providing access to scenic forest experiences are now gated.

129. Of particular concern to Cindy is lack of any plan within the 2016 SFRMP to deal with the impacts from the oil and natural gas leases or for implementing ecosystem management. As a result, it provides no management plan to fulfill the constitutionally mandated Section 27 duties.

E. Affidavit of Butch Davies

130. Butch Davies has a bachelor of science degree from Penn State in Forest Management. His affidavit is attached as **Exhibit J**. For 21 years he was the District Forester for the Sproul State Forest. The 2016 State Forestry Plan to use oil and gas for economic benefit does not square with Article I Section 27 because the

new techniques for shale gas drilling cause degradation. Likewise, the economic use of timber sales cannot degrade, diminish or deplete our public natural resources.

131. The 2016 State Forest Resources Management Plan and the 2018 District Plans should be guided by our Strategic Plan, “Penns’ Woods, Sustaining Our Forests.

VII. CONCLUSION

132. For the reasons set forth in this Petition, Petitioner PEDF respectfully requests that this Honorable Court grant the requested declaratory relief set forth herein and direct Respondents’ to amend the 2016 SFRMP consistent with their constitutional trustee duties under Section 27 to ensure our State Forest public natural resources are conserved and maintained.

Respectfully,

John E. Childe
Attorney for Petitioner