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

THE LANDS COUNCIL,

Petitioner,

v.

WASHINGTON STATE PARKS AND
RECREATION COMMISSION

Respondent.

NO:

PETITION FOR JUDICIAL REVIEW;
PETITION FOR WRIT OF REVIEW;
AND COMPLAINT FOR
DECLARATORY JUDGMENT

I. INTRODUCTION

1.1 This action challenges the May 19, 2011 decision by Respondent Washington State Parks and Recreation Commission (“the Commission”), approving a formal land classification for an approximately 850 acre area known as the Potential Alpine Ski Expansion Area (“PASEA”) at Mount Spokane State Park, located in Spokane County. The decision would allow the development of one new ski lift and seven new ski runs on 279 acres of largely undisturbed forest lands. Comments submitted to the Commission by the Washington Departments of Fish and Wildlife and the Washington Department of Natural Resources, as well as the Commission’s own study indicate that the development of new ski facilities in this area will significantly and adversely impact wildlife habitat, old growth forest, wetlands, and other

1 natural resources. Despite this, the Commission failed to adequately consider these impacts in
2 issuing a Mitigated Determination of Nonsignificance (“MDNS”), instead of an Environmental
3 Impact Statement (“EIS”) as required by the State Environmental Policy Act (“SEPA”).

4 1.2 Petitioner seeks judicial review and reversal of the Park decision and MDNS
5 pursuant to the Washington Administrative Procedure Act (“APA”), Ch. 34.05 RCW.
6

7 II. IDENTIFICATION OF PARTIES

8 2.1 Petitioner THE LANDS COUNCIL (“TLC”) is a Washington nonprofit
9 organization dedicated to protecting and conserving the natural resources and quality of life of the
10 Inland Pacific Northwest. TLC’s principal office is located in Spokane, Washington. TLC, as an
11 organization and on behalf of its staff and members, has been extensively involved in seeking to
12 promote sound land management practices, including protection and recovery of wildlife habitat
13 and intact forest ecosystems on state and federal lands. TLC and its members regularly visit and
14 utilize Mount Spokane State Park for numerous reasons, including hiking, snowshoeing, cross-
15 country and downhill skiing, and other recreational and aesthetic pursuits. The Commission’s
16 issuance of the decision and MDNS prejudices TLC’s cognizable interests in the public resources
17 that will be harmed by the action. TLC’s interests are intended to be protected by SEPA. A
18 ruling by this Court requiring the Commission to properly apply SEPA to the decision will
19 redress TLC’s grievances.
20

21 2.2 TLC’s mail address is:

22 The Lands Council
23 25 West Main Avenue, Suite 222
24 Spokane, WA 99201

25 2.3 TLC is represented by David Bricklin and Rick Eichstaedt, whose mailing address
26 is:

1 Bricklin & Newman, LLP
2 1001 Fourth Avenue, Suite 3303
3 Seattle, WA 98154

4 2.4 Respondent WASHINGTON STATE PARKS AND RECREATION

5 COMMISSION is an agency of the State of Washington, and located at 1111 Israel Road S.W.,
6 Olympia, WA 98504-2650. The mission of the Commission is to acquire, operate, enhance and
7 protect a diverse system of recreational, cultural, historical and natural sites in an effort to leave a
8 valued legacy to future generations. The Legislature has established the statutory powers and
9 duties of the Commission including “the care, charge, control, and supervision of all the
10 Commission and parkways acquired or set aside by the state for park or parkway purposes.”
11 RCW 79A.05.030(1). The Commission approved the decision designating the property within
12 Mount Spokane State Park at its May 19, 2011 meeting in Spokane, Washington.

13
14 **III. AGENCY ACTIONS SUBJECT TO REVIEW**

15 3.1 Petitioner seeks review of the Commission’s May 3, 2011 Mitigated
16 Determination of Nonsignificance (“MDNS”) and the adoption of Amended Option 3 of Agenda
17 Item E-3: Mount Spokane State Park-Potential Ski Area Expansion and Land Classification-
18 Requested Action (hereinafter referred to as “the decision”). Copies of these documents are
19 attached as Exhibits A and B hereto.

20
21 **IV. JURISDICTION AND VENUE**

22 4.1 This Court has jurisdiction pursuant to RCW 34.05.570(4)(APA), chapter 43.21C
23 RCW (SEPA), chapter 7.24 RCW (Declaratory and Injunctive Relief); chapter 7.16 RCW
24 (Statutory Writ of Certiorari); and the inherent power of the judiciary under Article IV, Section 6
25 of the Washington Constitution (Constitutional Writ of Certiorari). Venue is proper in Thurston
26 County pursuant to RCW 34.05.514 and RCW 4.12.025.

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V. STATEMENT OF FACTS

5.1 Mt. Spokane is Washington State's largest state park. An existing ski area, known as Mt. Spokane Ski and Snowboard Park, encompasses 1,425 acres or about 10% of the park. Mount Spokane Ski and Snow Board Park operates and maintains five chairlifts and 32 ski runs, two lodges, and a ski patrol building.

5.2 As part of its October 1999 Classification and Management Planning action for Mt. Spokane State Park, the Commission left unclassified a portion of the park covered by the current ski area concession agreement known as the Potential Alpine Ski Expansion Area ("PASEA").

5.3 In 2006, Mount Spokane 2000 ("MS 2000"), the ski area concessionaire, proposed expanding skiing into approximately 400 acres of the 850-acre PASEA.

5.4 The Commission engaged in a master facilities planning process that resulted in the adoption of the Mt Spokane Master Facilities Plan and Final Environmental Impact Statement in August, 2010. The Master Facilities Plan explicitly excluded the PASEA from the planning effort. The Commission called for the PASEA to be studied separately after completion of the Mt. Spokane Master Facilities Plan.

5.5 In December 2010, the Commission received biological survey data from MS 2000 and its consultant, Pacific Biodiversity Institute, that was collected in the PASEA in 2010. That study identified a number of concerns with expansion in the PASEA, concluding in part:

Nearly all the forest stands in the [Biological Survey Area] have abundant large and small snags of various decay classes, providing abundant habitat for wildlife species that depend on snags for nesting, foraging and roosting. In some stands, snags are more common than live trees. Likewise, there is an abundance of coarse

1 woody debris in the forests of the BSA. Many polygons¹ within the
2 BSA have very high levels of large coarse woody debris. There is
3 no lack of habitat for wildlife species that depend on coarse woody
4 debris for any of their life stages or activities within the BSA.
Outside of the BSA, most forest stands also have abundant snags
and coarse woody debris.

5 5.6 In January 2011, the Commission received a new conceptual proposal from
6 MS2000 that purportedly addressed information from the biological survey.

7 5.7 The revised proposal would allow ski area expansion on 279 acres within the
8 boundary of the PASEA. The proposal would add one new ski lift (chair 6) and seven new ski
9 trails in an 82 acre area. The new lift would require up to 20 lift towers. A lower loading
10 terminal would be located at approximately 4,420 feet in elevation and would require
11 approximately 0.75 acres of excavation and grading. The new top terminal near the summit of
12 Mount Spokane would require approximately 0.5 acres of excavation and grading.

13 5.8 Rather than conducting a full and thorough environmental review of the impacts of
14 expansion of skiing into the PASEA, the Commission decided to segment its review into a
15 number of phases. First, the Commission issued a Mitigated Determination of Non-Significance
16 on February 16, 2011 concerning the proposed action to consider the conceptual expansion of the
17 developed area of the ski area. After completion of that document, the Commission determined
18 that a separate SEPA checklist and threshold determination (*i.e.*, whether an EIS would be
19 written) would be prepared for the land classification within the PASEA. Lastly, the Commission
20 determined that a third phase of SEPA review would occur for the actual design of the expansion.
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¹ Here, "polygon" refers to a defined area within the larger study area.

1 5.9 Extensive comments were submitted on the environmental impacts of the possible
2 ski area expansion into the PASEA. On January 29, 2007, the Washington Department of Fish
3 and Wildlife (“WDFW”) submitted a letter expressing concern with the impact of development:

4 The native mature forest habitat on the northern aspect of Mt.
5 Spokane is an extremely unique forest ecosystem with a high value
6 for wildlife and species biodiversity. Considering its size, its un-
7 fragmented condition along with its stage of forest succession and
8 structure, a similar forest could not be found anywhere else in
9 Spokane County nor replicated. ... WDFW is opposed to the
Proposed Alpine Ski Area Expansion (PASEA) proposal due to the
unavoidable and extensive impacts to wildlife habitat and wildlife
species associated with such a proposed ski expansion.

10 5.10 On February 15, 2007, the Washington Department of Natural Resources
11 submitted comments expressing concern with the development of the ski area expansion. In this
12 letter, DNR stated that while the sub-alpine ecosystem present at the site “warrants special
13 recognition and attention so that it continues to add to the diversity of the park as an important
14 natural destination in Washington.”

15 5.11 On March 19, 2011, Petitioner, along with a number of other community
16 organizations, submitted comments to the Commission indicating, in part, opposition to the ski
17 area expansion proposal due to impacts to year around recreation, destruction of native and old
18 forests, impacts to the sub-alpine ecosystem, invasion of noxious weeds, negative impacts to
19 wildlife and wildlife corridors, impacts to Blanchard Creek and wetlands, and scenic view
20 impacts.

21 5.12 On March 21, 2011, WDFW submitted another letter on the MDNS for the
22 proposal, stating in part:

23 WDFW is concerned about the Mitigated Determination of Non-
24 Significance because the proposed land use action will effectively
25 eliminate nearly 300 areas of old-growth forest habitat and reduce
26

1 the ecological value and function of the remaining habitat.
2 ...Applying mitigation measures *during* construction and
3 completing an Environmental Impact Statement (EIS) *after* issuing
4 an MDNS does not effectively mitigate all probable significant
5 adverse impacts on the environment. The issuance of an MDNS
6 prior to completion of an EIS would suggest that the full extent of
7 the environmental impacts from the project are known and
8 understood. In order for this project to be an MDNS, a suitable
9 alternative must be available that does not have significant impacts
10 (e.g., Alternative 2). We believe that analysis of these two
11 alternatives and possibly others should be done within an EIS using
12 Best Available Science prior to the issuance of an MDNS.

13 5.13 Despite comments calling for full consideration of environmental impacts and the
14 completion of a detailed Environmental Impact Statement that would consider other alternatives,
15 an MDNS for the land classification decision was issued by the agency's Randy Klein on May 3,
16 2011. This MDNS purported to be part of a plan for "phased review" and contained
17 approximately 45 mitigation measures that purported to address impacts of development
18 consistent with the determination concerning the land classification and conditional uses in the
19 PASEA:

20 Phased review allows the Commission to focus on the decision
21 regarding land classification. In using phased review, the Lead
22 Agency has determined that the scope and level of detail of
23 environmental review used to make this determination is
24 appropriate for this point in the planning and decision-making
25 process.

26 The Lead Agency for this proposal has determined that the attached
mitigating conditions, along with required compliance with
Washington State Parks and Recreation Commission adopted
policies and applicable local, state and federal regulations, will
mitigate probable significant adverse impacts on the environment.
An environmental impact statement (EIS) is not required under
RCW 43.21C.030 (2) (c). This decision was made after review of a
completed environmental checklist and other environmental
information on file with the lead agency.

1 5.14 Further segmenting and deferring the Commission's environmental review
2 responsibilities, the MDNS called for the later preparation of a Supplemental Environmental
3 Impact Statement, as a supplement to the August 4, 2010 Final Environmental Impact Statement
4 for the Mount Spokane State Park Master Facilities Plan.

5 5.15 The concerns addressed in public comment were not addressed in the MDNS.

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7 5.16 On May 19, 2011, the Commission adopted what was known as "Amended Option
8 3" for the classification of the PASEA that called for the area to be designated as
9 recreation/resource recreation in an area of approximately 279 acres and resource recreation in an
10 area north of the proposed 279 acre ski area and north of the Chair 4 Road. This decision would
11 allow MS2000 to develop one lift and seven ski runs on the 279 acres. The decision also allows
12 development of toilet facilities, a warming hut, and other "support facilities." The Commission's
13 decision was predicated on a number of conditions, including "[s]uccessful project level
14 environmental review and permitting."
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16 VI. CLAIMS FOR RELIEF

17 6.1 Petitioner seeks judicial review pursuant to the Washington APA, RCW
18 34.05.510, chapter 43.21C RCW (SEPA), chapter 7.24 RCW (Declaratory and Injunctive Relief);
19 chapter 7.16 RCW (Statutory Writ of Certiorari); and the inherent power of the judiciary under
20 Article IV, Section 6 of the Washington Constitution (Constitutional Writ of Certiorari).
21

22 The actions described herein constitute a violation of the State Environmental Policy Act,
23 ch. 43.21C RCW, and the implementing regulations, ch. 197-11 WAC. SEPA imposes on each
24 and every public agency in the State the duty to fully consider environmental impacts of certain
25 decisions. Petitioner asks the Court to hold that the Commission violated SEPA, its
26 implementing regulations, and Commission laws, regulations, and policy when issuing the

1 decision and MDNS. The Court should also hold that the Commission's issuance of the decision
2 and MDNS was arbitrary and capricious and outside the agency's authority because it violated
3 applicable law and regulation and because it ignored studies and comments indicating significant
4 impacts with the decision. Petitioner thus asks the Court to set aside and reverse the decision and
5 MDNS as being arbitrary, capricious, and contrary to law as set forth herein.
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7 6.2 By approving the classification as alleged herein, the Commission has violated
8 SEPA's mandate that it must prepare a detailed Environmental Impact Statement to assess
9 environmental impacts of a "major action significantly affecting the quality of the environment."

10 6.3 The Commission has further violated SEPA by failing to study and develop
11 alternatives and failing to utilize ecological information in the planning and development of the
12 MDNS.
13

14 6.4 The Commission has further violated SEPA by issuing an MDNS that was not
15 based on sufficient or adequate information to make a determination of no significant impacts
16 with respect to a number of impacts. The Commission erred when it failed to require sufficient or
17 adequate information showing compliance with certain requirements of SEPA prior to the
18 issuance of the MDNS.
19

20 6.5 The evidence shows that there will be probable significant adverse environmental
21 impacts that will be caused by this decision and the Commission must prepare an Environmental
22 Impact Statement.

23 6.6 The Commission erred when it concluded that impacts associated with the
24 decision will be adequately mitigated. The evidence does not support such a conclusion.
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