FILED
SUPREME COURT
STATE OF WASHINGTON
7/18/2017 3:56 PM
BY SUSAN L. CARLSON
CLERK

NO. 94437-7

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN ROSKELLEY, FAYETTE KRAUSE, SPOKANE AUDUBON SOCIETY, SPOKANE MOUNTAINEERS, and THE LANDS COUNCIL,

Petitioners,

v.

WASHINGTON STATE PARKS AND RECREATION COMMISSION and MOUNT SPOKANE 2000,

Respondents.

WASHINGTON STATE PARKS AND RECREATION COMMISSION'S ANSWER TO AMICUS CURIAE MEMORANDUM OF SPOKANE RIVERKEEPER IN SUPPORT OF PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

Michael M. Young
Assistant Attorney General
WSBA No. 35562
Post Office Box 40100
Olympia, Washington 98504-0100
(360) 664-2962
OID No. 91033

In arguing that this Court should accept review of the Court of Appeals' decision below, amicus curiae Spokane Riverkeeper (Riverkeeper) makes the same fundamental error that Petitioners do. Like Petitioners, Riverkeeper bases its argument on the erroneous conclusion that the Washington State Parks and Recreation Commission (Commission) deviated from its natural resources policy in classifying certain lands at Mount Spokane State Park to allow for a modest expansion of an existing ski area. Contrary to what Riverkeeper and Petitioners argue, the Commission's natural resource policy did not dictate a restrictive land classification for the land area at issue in this case, and so the Commission was free to adopt the land classification mix it did. The Commission's land classification decision followed an extensive public process and the reasons for the decision are readily apparent from the record. It was not arbitrary and capricious. This Court should deny review.

As explained in Respondent's Answer to the Petition for Review, the section of the Commission's natural resource policy applicable to land classification, Section E, does not dictate any particular land classification decision. *See* CP 281. Instead, it provides guidance to the Commission on what classifications *should typically* apply to lands with higher natural resources values. *Id.* Under this permissive language, the Commission was free to adopt the land classification it did for the land at issue in this case, the Potential Alpine Ski Expansion Area (PASEA). Contrary to what Riverkeeper and Petitioners would have this Court believe, nothing in the Commission's natural resource policy says that any particular land

classification must be applied to lands with certain characteristics. Tellingly, Riverkeeper does not even attempt to point the Court to any particular language in the natural resources policy that so dictates; it simply claims the policy says so.

Under the Commission's land classification decision for the PASEA, 279 acres of the 800-acre PASEA were classified to allow more intensive recreational use and development while the remaining 521 acres were classified more restrictively.[1] This decision followed a years-long public process, including full State Environmental Policy Act (SEPA) review and extensive public input. The record makes clear that the Commission made the land classification decision it did based on the need to balance its twin mandates of providing recreation opportunities and protecting natural and cultural resources. *See* AR 727-99. It considered and weighed the facts demonstrating the demand for recreational use of the PASEA on one hand, and considered the facts demonstrating the natural and cultural resource values of that area on the other hand. *Id.* Given this extensive public process, including the Commission's public deliberations in which it weighed these competing considerations, the Commission's land classification decision for the PASEA cannot be considered arbitrary and capricious.[2]

---

[1] The 279 acres of the ski area expansion area were classified as "Recreation," 351 acres were classified as "Resource Recreation," and 170 acres were classified as "Natural Area."

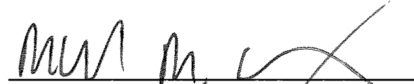
[2] Riverkeeper claims that the natural resources policy was not expressly mentioned during the Commission's deliberations. Amicus Curiae Memorandum of Spokane Riverkeeper in Support of Petition for Review (Amicus Brief) at 2. Not so. As reflected in the transcript of the November 14, 2014, public hearing, the natural resources

Given these facts, this case does not afford the Court an opportunity to "provide agencies with much needed clarity in how an agency's own policies are to be followed . . . ." Amicus Brief at 4. Here, the Commission's natural resources policy did not direct or dictate any particular outcome on the land classification decision; it merely provided guidance to the Commission on what classification should typically apply, leaving the Commission free to fully exercise its discretion and choose any classification it deemed appropriate based on the facts before it. Under these facts, with an entirely permissive policy, the Court cannot provide meaningful guidance on whether an agency's policies are to be followed.

For the reasons stated herein and in Respondent's Answer to the Petition for Review, this Court should deny review of the Court of Appeals' decision.

RESPECTFULLY SUBMITTED this 18th day of July, 2017.

ROBERT W. FERGUSON
Attorney General



MICHAEL M. YOUNG, WSBA # 35562
Assistant Attorney General
Post Office Box 40100
Olympia, Washington 98504-0100
OID No. 91033
Attorneys for Respondent Washington State Parks and Recreation Commission

---

policy was discussed by Commission staff during the public hearing in response to a specific question about that policy from a member of the Commission. AR 754-55.

PROOF OF SERVICE

I certify that I served a copy of this document on all parties or their counsel of record on the date below as follows:

☒ via e-mail to:

David Alan Bricklin
Claudia MacIntosh Newman
Bryan James Telegin
Bricklin & Newman, LLP
1424 Fourth Avenue, Suite 500
Seattle, Washington 98101-2258
bricklin@bnd-law.com
newman@bnd-law.com
telegin@bnd-law.com
cahill@bnd-law.com
miller@bnd-law.com

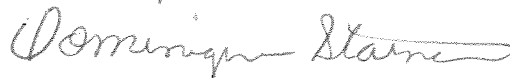
Rich Eichstaedt
University Legal Assistance
721 North Cincinnati Street
Post Office Box 3528
Spokane, Washington 99220
ricke@cforjustice.org

Jacob Earl Brooks
Bricklin & Newman
25 West Main Avenue, Suite 234
Spokane, Washington 99201-5090
brooks@bnd-law.com

Nathan Graham Smith
Kutak Rock LLP
510 W. Riverside Avenue, Suite 800
Spokane, Washington 99201-0506
Nathan.Smith@KutakRock.com

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 18th day of July, 2017, at Olympia, Washington.



Dominique Starnes
Legal Assistant

FISH, WILDLIFE, & PARKS DIVISION - ATTORNEY GENERAL'S OFFICE

July 18, 2017 - 3:56 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94437-7
Appellate Court Case Title:	John Roskelley, et al. v. State Parks and Recreation Commission, et al.
Superior Court Case Number:	15-2-00527-5

The following documents have been uploaded:

- 944377_Other_20170718154712SC374118_4004.pdf
  This File Contains:
  Other - Answer to Amicus Curiae Memorandum
  The Original File Name was Parks_Answer to Riverkeeper Amicus Brief.pdf

A copy of the uploaded files will be sent to:

- Brian.Kistler@KutakRock.com
- bricklin@bnd-law.com
- brooks@bnd-law.com
- cahill@bnd-law.com
- miller@bnd-law.com
- nathan.smith@kutakrock.com
- newman@bnd-law.com
- ricke@cforjustice.org
- telegin@bnd-law.com

Comments:

Washington State Parks and Recreation Commission's Answer to Amicus Curiae Memorandum of Spokane Riverkeeper in Support of Petition for Review

---

Sender Name: Hang Nguyen-Le - Email: hangn@atg.wa.gov
Filing on Behalf of: Michael Mackaman Young - Email: michaely@atg.wa.gov (Alternate Email:)

Address:
1125 Washington Street SE
PO Box 40100
Olympia, WA, 98504
Phone: (360) 753-2498

Note: The Filing Id is 20170718154712SC374118