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 PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

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

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I. INTRODUCTION

In approving a land classification for a portion of Mount Spokane State Park to allow a modest expansion of an existing ski area at the park, the Washington State Parks and Recreation Commission (Commission) struck an appropriate balance between its twin mandates of providing recreation opportunities and protecting natural and cultural resources. The Commission action at issue in this case classified 279 acres of an approximately 800-acre area of the park known as the Potential Alpine Ski Expansion Area (PASEA) in order to allow expansion of the Mount Spokane Ski Area, operated by a concessionaire, Mount Spokane 2000 (MS 2000).

The court of appeals' decision below does not warrant review by this Court under RAP 13.4(b)(1), (2), or (4). The court of appeals majority correctly held that the Commission's land classification decision was not arbitrary and capricious. In particular, that court correctly determined that the Commission's action did not deviate from its natural resources policy and that the policy did not dictate a different decision by the Commission. This Court should deny review.

II. COUNTERSTATEMENT OF THE ISSUES

Did the Commission's land classification decision that allows for a modest ski area expansion on a portion of the PASEA deviate from or conflict with the Commission's natural resources policy and, if so, was it therefore arbitrary and capricious?

III. COUNTERSTATEMENT OF THE CASE

A. The Commission's Classification of Lands at Mount Spokane State Park

By law, the Commission is charged with managing state park lands for both recreation and conservation of natural and cultural resources. *See, e.g.*, RCW 79A.05.030, .035, .055, .070. To aid in this management, the Commission has created a system to classify lands under its control based on permitted use. *See* WAC 352-16-020 (attached hereto as Appendix A). Reflecting the Commission's twin mandates to manage its lands for both recreation and conservation, the Commission's land classification system includes six land use classifications, each allowing for a certain level of recreational use, ranging from high-intensity, to medium-intensity, to low-intensity, with only lower-intensity recreational uses being permitted in areas classified to promote greater conservation. *Id.*; AR 00874-884.

The Commission has a natural resources policy, Policy No. 73-04-1, entitled "Protecting Washington State Parks Natural Resources." CP 265-288. Generally, the natural resources policy guides State Parks in its management of resources under its control in a way that balances the agency's dual mandate to promote recreational opportunities while preserving natural and cultural resources. *Id.* The natural resources policy recognizes that "State Parks has a mission of protecting resources of the [State Park] system while providing for recreational use by the

public." *Id.* at 277. One section of that policy is specifically addressed to Commission land classification decisions. *See* CP 281. Section E suggests which land classification should typically be applied to lands with certain natural resources characteristics: the policy says that lands with particularly high-value natural resources should typically be classified more restrictively. *Id.*

Most of the over 13,000 acres of Mount Spokane State Park were classified according to this land classification system in 1999. AR 00208; AR 00859. However, the area at issue in this case, the PASEA, was not classified at that time. *Id.* The PASEA was excepted from the 1999 land classification process in order to allow for greater study and public process regarding appropriate use of that area in anticipation of possible ski area expansion into that area in the future. *Id.* Of the acres that were classified by the Commission in 1999, over 80 percent were classified for low-to-moderate intensity recreational use under the "natural area" or "resource recreation" classifications. CP 295.

B. Mount Spokane State Park and Mount Spokane Ski Area

Skiing and other winter recreation activities have a long history at Mount Spokane, including in and around the PASEA. CP 322-25, 384; AR 00266-267. Construction of the first ski amenities at Mount Spokane began in the 1930s. CP 323. Eventually significant developments,

including alpine skiing facilities, a ski lodge, and a restaurant, were constructed just outside the PASEA, with some developed facilities within the PASEA; these facilities were operated until the lodge was destroyed in 1952. AR 00859; AR 00863. Included among these facilities were two rope tows that passed through the southeast corner of the PASEA. AR 00863.

The Mount Spokane Ski and Snowboard Park operates on approximately 1,400 acres of the park on the east slopes of Mount Spokane. AR 00859. The ski area has been operated at that location since the 1950s. CP 384. The ski area is currently operated by MS 2000, a community non-profit, under a concession agreement with Washington State Parks. AR 00859. Because the PASEA enjoys higher snow quality and excellent tree skiing, it has become a popular destination for skiers seeking a lift-served backcountry skiing experience outside the currently established ski area. AR 00269. As a result, MS 2000's volunteer ski patrol has provided emergency response in the PASEA to lost and injured skiers on a nearly weekly basis. AR 00269; AR 00390.

C. The Ski Area Expansion Proposal

MS 2000 desires to expand the ski area into a portion of the PASEA in order to increase lift-served ski terrain to meet recreational demand and to allow more effective search and rescue of an area already

frequented by backcountry skiers. AR 00266-269. Expansion of the ski area has been under consideration since at least the early 1990s. AR 00266. The PASEA affords ideal features for skiing, including generally good snow conditions (in both volume and quality of snow) and medium gradient slopes appropriate for intermediate skill level skiers. AR 00268-269. Also, expansion of the developed ski area is expected to make the skiing experience at Mount Spokane more safe. AR 00269.

In 2010, MS 2000 formally proposed expansion into the PASEA, beginning a period of intensive review of that proposal. AR 00266-268. Although earlier proposals had envisioned an expansion into 400 acres of the PASEA, including two chairlifts and 15 runs (AR 00272; AR 00777), the 2010 proposal is smaller in scale in order to reduce the footprint and environmental effects of the expansion: 279 acres, 7 runs, and 1 chairlift. AR 00266-67; AR 00272. Under the current expansion proposal, only about 75 acres, less than 10 percent of the PASEA, will be disturbed for ski runs. AR 00757. Because the PASEA was not classified by the Commission in 1999, classification of the lands within the PASEA was a prerequisite of any expansion.

D. Environmental Review of and Public Input on the Proposed Expansion Into the PASEA

State Parks extensively studied the possible impacts of the proposed ski area expansion on the natural and cultural resources of Mount Spokane State Park and the surrounding environment, and provided numerous opportunities for public input on the proposal. A full Final Environmental Impact Statement (FEIS) pursuant to the State Environmental Policy Act (SEPA) was prepared following an exhaustive SEPA process. AR 00202-419. The FEIS considered a range of possible alternatives to the expansion and related land classification, including MS 2000's proposal and a "no action" alternative. AR 00218-221; AR 00254-257; AR 00274-276. The FEIS identified a number of mitigation measures to lessen the impacts to the environment caused by the expansion. AR 00281-287.

Extensive public comment was received as part of the SEPA process, including at the scoping phase and following release of a draft environmental impact statement (DEIS). The scoping notice for the SEPA process generated over 600 comments. AR 00210. The DEIS generated over 700 written comments. AR 00270. The summary of the wide variety of comments and the responses to each comment are in the record at AR 00420-573. As part of the long period of consideration of expansion

into the PASEA, the public was invited to provide comments regarding the expansion to the Commission and Parks staff on at least 12 occasions. AR 00580. This period of study and public process resulted in the development of a robust body of factual information about, on the one hand, the demand for and community support of developed recreational facilities within the PASEA and, on the other hand, the significant natural and cultural resources within the PASEA and the desire among others in the community to see those resources preserved.

E. Staff Recommend a Land Classification Mix for the PASEA That Will Facilitate the Proposed Ski Area Expansion

Following this long period of study and public scrutiny, State Parks staff presented a detailed and carefully considered recommendation to the Commission to classify the PASEA with a mix of classifications that would allow the ski area expansion proposed by MS 2000, but also reserve the vast majority of that area for undeveloped, low-intensity recreation and for conservation. AR 00859-869. This recommended action (designated "Alternative 4") included classifying the PASEA into three land-use classifications: Recreation (the 279 acres of the ski area expansion); resource recreation (351 acres); and natural area (170 acres). *Id.* Under this recommended classification mix, less than 35 percent of the PASEA is classified to allow development and high-intensity recreation,

while the remaining 65 percent is limited to less-intensive recreation and no development, in order to promote conservation. *Id.* Staff also recommended the Commission approve expansion of the ski area consistent with a plan of development whereby only approximately 75 acres, 10 percent of the PASEA, would be disturbed. *Id.*

F. The Commission's Public Process and Deliberations on the Land Classification Decision for the PASEA

After hearing extensive public comment the previous evening, AR 00574-726, the Commission acted on the staff recommendation on land classification for the PASEA at its regular Commission meeting, held in Spokane on November 20, 2014. AR 00906-907; AR 00747-799. Before voting, the Commissioners, in turn, expressed their thinking about the proposal, expressing their careful consideration of the Commission's recreation and conservation mandates in deciding how to manage the PASEA. *Id.*

Commissioner Mark Brown stated as follows:

> And in my mind I have to remind myself and colleagues that there is the word "and," a-n-d, between parks and recreation. They are both part of our name, and they're both part of our charge.

AR 00767.

> On the other hand [from habitat value], and part of this balancing act, there's a question of enhanced recreational opportunities . . . if the question before us was first ever developed alpine skiing at Mount Spokane, the introduction

> for the first time of lifts and runs, I think it's a pretty easy no vote for me. But that's not the question before us, and it certainly is not the history.

AR 00769.

> And, you know, this picture on the cover of the lodge and skiing, it stated 1940, although it's my understanding that the ski club there goes back to the early 1930s. And so there's been skiing there, developed skiing there, for a long, long time, and interestingly enough to me, and I think to all of you, almost all of that within what's now the PASEA.

AR 00770.

> I've weighed all of this [evidence] in my mind, and it is a damn tough decision. . . . I'm going to come down on the side of history that includes a mountain that has been an active-use playground for Spokane people for decades. . . . I'm going to come down on the side of the preponderance of public comments and public testimony and the fact that the two major legislative bodies in this region, both the City of Spokane and the County of Spokane, are supporting expansion. And I'm going to come down on that side of the question with absolute confidence that we have an adequate EIS and that in partnership with Mount Spokane 2000 [the concessionaire] we're going to be able to minimize and mitigate the environmental impacts that are inevitable. . . .

AR 00774-775.

> Commissioner Steve Milner stated:
>
> It came as no surprise to learn that our allied natural resource agencies do not support the staff's recommended action for the PASEA. This reflects differences in missions, programs, projects and roles each agency plays in the matrixed approach to public land management in this country.
>
> The role of state parks, no matter what state you're in, includes absorbing the footprint of low, medium and high-

> intensity outdoor recreation ... while sustaining to the extent possible its natural function.

AR 00777.

Commissioner Milner noted the original expansion area was downsized from 400 acres to 279 acres with high standards of natural resource protection in the plan of development. AR 00777.

Commissioner Patricia Lantz, who voted against the expansion, acknowledged the difficulty of the decision and that the decision must reflect the dual mission of State Parks:

> We're here in a really interesting situation because it, of course, is a dual mission. We are to protect the natural resources, and we are to provide recreation. Both of these benefits accrue to all Washingtonians .... What we're doing today is making a value judgment. There is competing goods, recreation and preservation of natural resources. There's not one good that trumps the other.

AR 00782.

Commissioner Ken Bounds, who also voted against the proposal, acknowledged that the selected alternative was "certainly a legitimate conclusion." AR 00791. He further stated that adding a chairlift in the PASEA would address a safety concern by enabling the ski patrol to get people out of the PASEA. AR 00793.

Commissioner Cindy Whaley recognized the historic recreational uses within the PASEA, noting a ski lodge once existed there and backcountry skiing and biking continue there. AR 00796-797.

> In the PASEA we have cell towers, we have transportation -- the State Patrol just put a new cell tower in there. We have the remnants of pre-existing ski lodges, ski lodges that -- I take that back. We don't have the existing remnants of ski lodges, but we had ski lodges on the back side paid for by this Commission, $152,000 in 1952, I believe, or '51, to develop a ski lodge on the back side of the mountain.

AR 00796-797.

Following the deliberations reflected in the excerpts above, the Commission approved the land classification recommended by staff. AR 00799; AR 00907-908. The Commission also unanimously approved the restrictive plan of development that accompanied the project proposal passed the same day. AR 00812; AR 00908.

G. Procedural History of This Case

After the Commission's vote to approve the land classification of the PASEA recommended by staff, Petitioners filed a writ of review in Thurston County Superior Court. CP 004-020. The Superior Court denied the writ and affirmed the Commission's land classification decision. CP 439-41; 469-70. Petitioners then appealed to the Court of Appeals. In a two-to-one decision, the Court of Appeals also affirmed the Commission's decision. *Roskelley, et al. v. Wash. State Parks & Recreation Comm'n*, 2017 WL 1163714 (Wash. Ct. App. Mar. 28, 2017).

IV. REASONS WHY REVIEW SHOULD BE DENIED

Petitioners seek review under RAP 13.4(b)(1) and (2), claiming that the court of appeals' decision is in conflict with decisions of this Court and the court of appeals, and under RAP 13.4(b)(4), claiming that this case involves an issue of substantial public interest that this Court should determine. Neither is an appropriate basis for review.

A. The Decision Below Is Not in Conflict With Any Decision of This Court or Any Published Decision of the Court of Appeals

Contrary to Petitioners' claim, the court of appeals' decision is not in conflict with any decision of this Court, or any published decision of the court of appeals. Petitioners incorrectly argue that the decision below conflicts with cases finding agency action arbitrary and capricious, claiming that because the Commission's decision classifying the PASEA was allegedly inconsistent with the Commission's natural resources policy, it was necessarily arbitrary and capricious. But Petitioners' argument is premised entirely on a misreading of the Commission's natural resources policy. Simply put, the Commission's natural resources policy does not say what Petitioners would lead this Court to believe it says, and the Commission's action did not deviate from or conflict with the natural resources policy.

As noted above, the natural resources policy, in general, guides State Parks in balancing its dual mission of promoting recreation and preserving its natural and cultural recourses. CP 267-284. The policy expressly acknowledges the need to balance these twin mandates. CP 277.

The part of the natural resources policy that applies to Commission land classification, Section E, provides guidance to the Commission on what classifications *should typically* apply to lands with high natural resource values; it does not dictate the Commission's classification decisions as Petitioners wish it did. In particular, Section E of the natural resources policy does not require a restrictive classification for the PASEA. Section E of the natural resources policy says, in relevant part:

> Areas of a park containing natural resources of regional or statewide significance . . . **should** be classified restrictively to allow only low-intensity uses and minor facilities development. **Typically**, one of three natural area classifications should be applied to such areas. . . .

(Emphasis added.)

Contrary to Petitioners' argument, Section E does not *require* only low-intensity recreational uses in areas with significant natural resources, such as the PASEA. The words "*should*" and "*typically*" plainly mean that low-intensity uses are suggested, but not required, and thus higher intensity uses may be allowed based on countervailing considerations such as public demand for higher intensity recreational use or public safety considerations. The word "should" has been held to be "permissible and expresses a desire or request," *State v. Garrett*, 80 Wn. App. 651, 653, 910 P.2d 552 (1996), as opposed to the mandatory "shall."[1] Petitioners would have this Court rewrite the Commission's policy so that it says areas with significant natural resources *shall* be classified restrictively and that one of

[1] In drafting the natural resources policy, the Commission used "will," "must," and "shall" when it intended to mandate a particular action.

the three natural resource classifications *must always* be applied to such areas. But that is simply not what Section E says, and there is no basis for this Court to second-guess the Commission's policy and rewrite it to suit Petitioners' wishes.

Nor does subsection 2 of Section D of the natural resources policy dictate any particular land classification for the PASEA, as Petitioners incorrectly claim. That subsection is plainly not applicable to the Commission's action at issue in this case. Petitioners point to one sentence in Section D 2, completely removed from its context, and argue that it mandates a particular land classification. The sentence in question says that "[w]here significant natural and cultural resources exist at a site or within a landscape, *agency staff* must protect the integrity of all significant resources." (Emphasis added.) It does not apply to land classification decisions by the Commission. Section E, discussed above, applies to such decisions.

The natural resources policy afforded the Commission discretion to classify the PASEA as it did, with a portion (less than 35 percent) classified to allow for some high-intensity use and development, with the remainder (over 65 percent) classified to permit no development and only low-intensity recreational uses. Because the Commission appropriately exercised its discretion after much study and consideration, the court of appeals' decision does not conflict with *Rios v. Washington Department of Labor and Industries*, 145 Wn.2d 483, 39 P.3d 961 (2002), or *Probst v. State Department of Retirement Systems*, 167 Wn. App. 180, 271 P.3d 966

(2012), as claimed by Petitioners. Applying the appropriate standard to determine whether agency action is arbitrary and capricious (i.e., whether the action was "willful and unreasoning and taken without regard to the attending facts or circumstances," *Washington Independent Telephone Ass'n v. WUTC*, 148 Wn.2d 887, 905, 64 P.3d 606 (2003)), the court of appeals correctly held that the Commission's land classification was neither.

In *Rios*, this Court held that the Department of Labor and Industries' decision not to enact rules requiring certain monitoring for pesticide exposure was arbitrary and capricious. *Rios*, 145 Wn.2d at 508. The agency's failure to enact rules was "unreasoning and taken without regard to the attending facts and circumstances," *id.*, and therefore arbitrary and capricious, because the agency's own experts had studied the matter and "deemed a monitoring program both necessary and doable." *Id.* The Department of Labor and Industries was under a mandatory statutory duty to set regulatory standards to protect workers, when to do so would be feasible and effective. *Id.* The agency's failure to enact rules, given its own evidence and its legal duty, was unlawful. *Id.*

In *Probst*, the Department of Retirement Systems' use of a quarterly interest calculation method that the agency itself recognized as unfair, and which did not have any advantage over a more fair alternative method, was determined to be arbitrary and capricious. *Probst*, 167 Wn. App. at 193-94. The court of appeals observed that the agency "consistently recognized the advantages that would be realized by moving

to a more frequent interest calculation, but rejected such a move without identifying any reasons for doing so. The decision to continue using the quarterly interest calculation method was therefore undertaken in willful and unreasoning disregard of the facts and circumstances, making it arbitrary and capricious." *Id.* Basically, the court held that the agency's action was arbitrary and capricious because there was no good reason for it.

Here, by contrast, the Commission's reasons for classifying the PASEA as it did are manifest from the record, *see, e.g.*, AR 00747-749. And while there is room for disagreement about the Commission's decision, it was not willful and unreasoning and taken without regard to the attending facts or circumstances. The Commission thoroughly 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 its dual mandate to promote recreation and preserve natural and cultural resources, this weighing was entirely appropriate.

Petitioners claim that the "facts and circumstances" the Commission failed to give regard to in deciding the land use classification for the PASEA was the Commission's natural resources policy. Petition at 12-13. But as discussed above, the Commission's natural resources policy did not dictate a restrictive land use classification for the PASEA. Instead, the natural resources policy merely suggests that a restrictive land use classification *should typically* be applied to lands with significant

natural resources, leaving the Commission free to choose a classification that allows for development and higher-intensity recreational use when countervailing considerations warrant it. Here, the countervailing consideration was the demand for developed ski facilities and the safety of the recreating public. The fact of that demand is well established by the record the Commission had before it.

The Commission's decision to classify the PASEA as it did was not willful and unreasoning and taken without consideration of the facts and circumstances. To the contrary, the Commission carefully considered the facts in the record and its decision is well supported by those facts. Furthermore, the Commission's decision did not deviate from its natural resources policy. The court of appeals correctly concluded based on these reasons that the Commission's decision was not arbitrary and capricious. That decision did not conflict with any decision of this Court or any published decision of the court of appeals. Therefore, review is not warranted under RAP 13.4(b)(1) or (2).

B. The Decision Below Does Not Involve an Issue of Substantial Public Interest That Should Be Decided by This Court

While management of Mount Spokane State Park is doubtless an issue of substantial public interest, discretion to manage the park is vested by law in the Commission. As discussed above, the Commission properly exercised its discretion in determining the proper land classification for the PASEA; its land classification was not arbitrary and capricious. The Commission's land classification decision was made following extensive

study and a lengthy public process, and reflects a careful balancing of the twin mandates of the Commission (promoting recreation and preserving natural resource and cultural resources). This Court should not second-guess the Commission's proper discretionary decision.

Furthermore, this case does not provide this Court an opportunity to establish "guideposts" regarding whether an agency's deviation from its agency policy necessarily represents arbitrary and capricious action, as Petitioners suggest. Again, the Commission action at issue in this case did not deviate from its natural resources policy. Therefore, this case does not present an opportunity for this Court to establish case law regarding an agency's deviation from its own policy.

The federal cases cited by Petitioners differ fundamentally from this case. Each involved a federal agency clearly deviating from a long-established policy upon which members of the regulated community had come to rely, or reversing course 180 degrees. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 129 S. Ct. 1800 (2009), and *CBS Corp. v. FCC*, 663 F.3d 122 (3d Cir. 2011), both involved the FCC's change in policy on how it enforces fleeting indecent material broadcast on the airwaves. Critically, the holdings in *Fox* and *CBS Corp.* were premised on a finding that the agency had deviated from an established policy. As discussed above, the Commission's decision at issue in this case did not deviate from its natural resources policy because that policy did not mandate any particular land use classification for the PASEA. For that reason, this case is not analogous to *Fox* and *CBS Corp.*

In *Organized Village of Kake v. United States Department of Agriculture*, 795 F.3d 956 (9th Cir. 2015), the Ninth Circuit ruled that the U.S. Forest Service had acted arbitrarily and capriciously when it reversed a decision applying the so-called "roadless rule" to the Tsongas National Forest in Alaska. The Ninth Circuit held that the Forest Service's 180-degree reversal of the agency's position was arbitrary and capricious because the reasons for the agency's "dramatically changed finding," *id.* at 959, were not adequately explained. *Id.* at 967-70.

Here, by contrast, there has been no reversal of a Commission decision or policy. Considering all the facts in the record, including the facts demonstrating demand for increased recreation opportunities at Mount Spokane and public safety concerns, and the facts demonstrating the natural resource and cultural values of the PASEA, the Commission made a reasoned decision to balance the recreational demand and the resource values and classify the PASEA to allow for a modest expansion of the Mount Spokane Ski Area. And as explained throughout this brief, in so deciding, the Commission did not deviate from its natural resources policy. This case is, therefore, not analogous to *Kake*.

V. CONCLUSION

This Court should deny review of the court of appeals' decision. That decision is not in conflict with any decision of this Court or any published decision of the court of appeals. And the court of appeals'

decision does not involve an issue of substantial public interest that should be decided by this Court.

RESPECTFULLY SUBMITTED this 26th day of May, 2017.

ROBERT W. FERGUSON
Attorney General

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

Attorneys for Respondent Washington State Parks and Recreation Commission

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.comb
newman@bnd-law.com
telegin@bnd-law.com
cahill@bnd-law.com
miller@bnd-law.com

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 26th day of May, 2017, at Olympia, Washington.

Dominique Starnes

Dominique P. Starnes
Legal Assistant

Appendix A

WAC 352-16-020

Land classification system.

State park areas are of statewide natural, cultural and/or recreational significance and/or outstanding scenic beauty. They provide varied facilities serving low-intensity, medium-intensity, and high-intensity outdoor recreation activities, areas reserved for preservation, scientific research, education, public assembly, and/or environmental interpretation, and support facilities. They may be classified in whole or part as follows:

(1) **Recreation areas** are suited and/or developed for high-intensity outdoor recreational use, conference, cultural and/or educational centers, or other uses serving large numbers of people.

(2) **Resource recreation areas** are suited and/or developed for natural and/or cultural resource-based medium-intensity and low-intensity outdoor recreational use.

(3) **Natural areas** are designated for preservation, restoration, and interpretation of natural processes and/or features of significant ecological, geological or paleontological value while providing for low-intensity outdoor recreation activities as subordinate uses.

(4) **Heritage areas** are designated for preservation, restoration, and interpretation of unique or unusual archaeological, historical, scientific, and/or cultural features, and traditional cultural properties, which are of statewide or national significance.

(5) **Natural forest areas** are designated for preservation, restoration, and interpretation of natural forest processes while providing for low-intensity outdoor recreation activities as subordinate uses, and which contain:

(a) Old-growth forest communities that have developed for one hundred fifty years or longer and have the following structural characteristics: Large old-growth trees, large snags, large logs on land, and large logs in streams; or

(b) Mature forest communities that have developed for ninety years or longer; or

(c) Unusual forest communities and/or interrelated vegetative communities of significant ecological value.

(6) **Natural area preserves** are designated for preservation of rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are registered and committed as a natural area preserve through a cooperative agreement with an appropriate natural resource agency pursuant to chapter **79.70** RCW and chapter **332-60** WAC.

[Statutory Authority: RCW **43.51.040**(1), [43.51.]045, [43.51.]050, [43.51.]060(1), [43.51.]061 and [43.51.]395. WSR 96-01-078, § 352-16-020, filed 12/18/95, effective 1/18/96. Statutory Authority: RCW **43.51.040** and **43.51.045**. WSR 84-08-016 (Resolution No. 74), § 352-16-020, filed 3/27/84; Order 31, § 352-16-020, filed 3/28/77; Order 18, § 352-16-020, filed 2/1/74; Order 7, § 352-16-020, filed 4/1/70.]

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

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