

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. RESPONSE TO FACTUAL ALLEGATIONS	3
A. <u>Characterization of the Commission’s Action</u>	3
B. <u>No Prior Plan and EIS for the Subject Lands Has Been Prepared by the Agency</u>	5
C. <u>The Lands at Issue Have Extraordinary Environmental Value</u>	7
D. <u>The Future EIS Will Not Address the Issues That Would Have Been Addressed in a Timely EIS</u>	10
III. ARGUMENT	11
A. <u>The Commission’s Classification and Conceptual Plan Approvals Were Major Actions with Probable Environmental Consequences That Could and Should Have Been Analyzed Before the Commission Acted</u>	11
B. <u>Members of the Lands Council Will Be Impacted by the Redesignation Decision and, Therefore, the Lands Council Has Standing</u>	18
C. <u>The Lands Council Alleges Action That is Illegal and/or Arbitrary or Capricious</u>	24
IV. CONCLUSION	25

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Five Corners Family Farmers v. State</i> , 173 Wn.2d 296, 268 P.3d 892 (2011).....	21
<i>Harris v. Pierce County</i> , 84 Wn. App. 222, 928 P.2d 1111 (1996).....	23, 24
<i>King County v. Washington State Boundary Review Board</i> , 122 Wn.2d 648, 860 P.2d 1024 (1994).....	14, 15, 16, 23, 24
<i>Lawson Partners v. Hearings Board</i> , 165 Wn.2d 677, 269 P.3d 300 (2011).....	15
<i>Magnolia Neighborhood Planning Association v. City of Seattle</i> , 155 Wn. App. 305, 230 P.3d 190 (2010).....	19, 20, 23, 24
<i>SAVE v. City of Bothell</i> , 89 Wn. 2d 862, 576 P.2d 401 (1978)	22-23, 24
<i>State v. Grays Harbor County</i> , 122 Wn.2d 244, 857 P.2d 1039 (1993).....	24
<i>West 514 v. County of Spokane</i> , 53 Wn. App. 838, 77 P.2d 1065 (1989).....	16
<u>Statutes and Regulations</u>	<u>Page</u>
RCW 43.21C.075 (1).....	24
WAC 197-11-055.....	13, 14
WAC 197-11-060(5)(b)	17
WAC 197-11-070(1).....	14

WAC 197-11-330(2).....	17
WAC 197-11-400(2).....	21
WAC 197-11-406.....	14

I. INTRODUCTION

According to the Parks and Recreation Commission's Staff Report, the forests at issue in this case "represent the highest level of significance of natural resources in the State Parks system." CP 101. The agency's governing body, the Commission, had a decision to make: protect these forests with the highly protective "Natural Forest Area" designation; allow some or all of the forest to be developed with a downhill ski area; or choose some intermediate designation alternative. This designation decision was a critical, determinative step. Staff "determined that the proposed ski area expansion is likely to have a significant adverse impact on the environment." CP 104. An environmental impact statement should have been prepared before the Commission made this critical decision.

The limited environmental review which preceded the Commission's decision did not provide the Commission with the detailed analysis required by SEPA. As staff recognized, "[w]ith limited understanding of a complex system as found in the PASEA, impacts from development risks unintended consequences and could permanently harm other parts of the system, particularly elements (*e.g.*, plants and animals) most sensitive to change." CP

102. Subsequent environmental review would be too late to inform the Commission's designation decision.

The Commission's decision has been made. The Commission will not be involved in any future steps regarding the choice of a particular layout of trails and lifts. The fundamental decision of whether to protect these forests or allow them to be developed as a ski area has been made by the Commission and will not be revisited with the benefit of the subsequently prepared EIS.

The Parks Commission's Response Brief repeatedly attempts to downplay the significance of the Commission's decision. The brief never even acknowledges that the Commission's decision was its final action with regard to this proposal. Nor does the brief acknowledge that two sister agencies – the Washington Department of Fish and Wildlife and the Washington Department of Natural Resources – both advocated for preparation of an EIS *at this stage*, not later after the die was cast. But ignoring these facts do not make them go away.

SEPA was designed to ensure that detailed environmental review in the form of an EIS is completed prior to agencies taking major action with significant environmental impacts. The Commission's staff acknowledged

that this action would have probably significant impacts, but wrongly decided that preparing an EIS later would somehow satisfy SEPA's command that the governing body making the decision – the Commission – have the benefit of the detailed review in an EIS prior to making *its* decision. The agency's environmental review process defies logic and the law. The Court should vacate the Commission's decision and remand the matter for preparation of an EIS.

II. RESPONSE TO FACTUAL ALLEGATIONS

A. Characterization of the Commission's Action

There are two aspects of the Response Brief's characterization of the Commission's action with which we take issue. One, the Response Brief repeatedly focuses on the Commission's classification decision without acknowledging that the Commission also approved MS2000's conceptual plan. In the words of the Commission's SEPA Responsible Official, Randy Kline:

At the meeting, the Commission debated the benefits and impacts of each alternative and ultimately approved (1) the lessee's development concept, and (2) a hybrid of the four management classification proposals.

CP 82.

Second, the Response Brief repeatedly refers to “approximately 60 acres” classified as recreation, Response Brief at 6, as if only 60 acres were impacted by the Commission’s decision. The Response Brief barely acknowledges that the Commission authorized development of 289 acres for ski area expansion. *See, e.g., id.* at 6, n.27. The 60 acre figure (this number is actually 82 acres, CP 94) refers only to the surface area of the ski runs themselves. It omits the islands of trees that would remain between the ski runs but the natural value of which would be impacted by the ski runs. The 289 acre figure encompasses the entire area to be dedicated to the downhill skiing, including the ski runs and the treed areas between them.

The Commission’s action allows “clearing of trees, snags, understory vegetation and downed woody debris” to provide ski routes through the islands. CP 124. Thus, the Response Brief is wrong when it states “90 percent of the potential expansion area could not be altered from its natural state consistent with existing uses.” Response Br. at 6.

Indeed, development of the 289 acres will also impact, through fragmentation, the remaining forested area on the northwest side of the mountain. As the Washington Department of Fish and Wildlife stated:

It is misleading to portray the plan to reduce the initial size of the planned expansion from x acres to y acres as mitigation to

compensate for potential impacts. Reduction of the size of a non-existent footprint falls short of true mitigation for real impacts the project will incur.

Mount Spokane has been described as “the” important core area for wildlife in several landscape assessment documents . . . The proposed land use action will effectively eliminate nearly 300 acres of core old-growth forest habitat and reduce the overall ecological value and function of the remaining habitat.

CP 127 (WDFW letter, Mar. 21, 2011). *See also* CP 101 (Staff Report: the area’s environmental significance is due to the “assemblage” of all of the area’s natural features, “their interdependence, their undisturbed extent, and the diversity of habitats they create together”).

The inference in the Commission’s Response Brief that the only impact is the loss of 60 (or 82) acres of trees removed for the ski runs themselves is just the sort of short-sighted, uninformed analysis that SEPA is designed to avoid.

B. No Prior Plan and EIS for the Subject Lands Has Been Prepared by the Agency

The agency’s Response Brief provides a somewhat confusing and incomplete description of prior planning and environmental review for Mount Spokane State Park as a whole and the subject lands, in particular. *See, e.g.*, Response Br. at 18. A more complete and accurate description is provided in

the declaration of the agency's SEPA Responsible Official, Randy Kline. CP 76-82. As Mr. Kline explains, no environmental impact statement has ever been prepared for the subject lands. Nor have they ever been classified by the Commission. They are a blank spot on the agency's map. As Mr. Kline explains, the agency's 1999 classification process left the PASEA "unclassified." CP 78 at line 3. In August 2010, the agency prepared a new Facilities Master Plan and an associated EIS for the entire park. *Id.* (at lines 4-5). But "[b]ecause the lessee was no longer pursuing its 2008 plan of development for the PASEA, the Facilities Master Plan did not address the classification of activities that would be allowed in the PASEA." *Id.*

The Commission's action at issue in this case is the first time the Commission filled in the blank spot on the map. It did so without the benefit of an EIS that addressed the diverse impacts associated with a variety of classification options that were available to the Commission.

Thus, when the issue came to the Commission in 2011, staff presented the Commission with a wide variety of designation options. As Mr. Kline explained, the Commission was presented with "four scenarios that authorized activities ranging from no development, to low impact activities,

to the proposed ski run expansion in a portion of the PASEA.” *Id.* (lines 18-20).

While an EIS had been prepared for the agency’s prior decision on classifications elsewhere in the park, no EIS had previously been prepared regarding the environmental issues associated with deciding among the classification options for the PASEA. The only environmental review prepared for the Commission’s decision at issue here was an environmental checklist and some limited environmental studies. Appropriately, the Response Brief does not contend that the environmental checklist and the limited studies serve as an adequate substitute for the detailed review provided by an EIS.

C. The Lands at Issue Have Extraordinary Environmental Value

The Commission’s brief all but ignores the extraordinary environmental resources of the lands at issue here. The Response Brief merely refers to consideration of options which would leave those lands in their “natural condition,” without describing those natural conditions. Response Br. at 4. That gap is filled, in part, by staff’s description of the subject lands:

The forests of the PASEA meet or exceed agency Natural Forest Area criteria and represent the highest level of

significance of natural resources in the state park system. They are a matrix of young to late successional stands of trees (including old growth), intermixed with abundant wetlands, small meadows, and talus slopes. The area is rich in native structure, composition, and functioning processes, providing habitat for a large (and unknown) population of species ranging from large animals to a multitude of often overlooked invertebrates, fungi, and micro-organisms.

Based on two biological inventories of the area, the PASEA is known to support sensitive plant associations and habitats suitable for Canada Lynx, Grey Wolf, and Wolverine listed as threatened, endangered, and candidate species respectively by the US Fish and Wildlife Service. Habitat provided in the PASEA retains its integrity given limited past disturbance by humans and its connectivity to other functional habitats throughout the park, Spokane County, and the greater Washington-Idaho landscape. In time, as climatic conditions change, the PASEA (especially the highest areas on the mountain) may serve as a critical refuge for migrating and resident wildlife species.

Although allowing the expansion of alpine ski facilities as a conditional use in an area classified as Resource Recreation in the PASEA will offer some resource protection, it will not eliminate the full impact. From a biological perspective, the PASEA's significance is not inherent in its individual significant natural features, *e.g.*, wetlands, old growth trees, or non-forested meadows, but in the assemblage of all of them, their interdependence, their undisturbed extent, and the diversity of habitats they create together. Protecting the most significant individual features and removing those of lesser significance may undermine their biological integrity by reducing connectivity and biologically fragmenting one natural system from another. Additional human presence would also result in impacts to resident wildlife species sensitive to large numbers of people and intense activity. Species such as Lynx and Wolverine, if they do occur in the

PASEA, do not readily adapt to human disturbance and could be driven away.

CP 101. *See also* CP 126-129 (WDFW letter); CP 139-158 (The Lands Council letters).

The Response Brief notes that the Commission had the benefit of the environmental checklist and “25 documents and reports.” Response Br. at 5. As we noted above, the agency does not claim that these reports provide an adequate substitute for an EIS. The agency’s own staff recognized this. Staff explained the incredibly rich ecosystem in this part of the park was a composite of many different resources and features and that the whole was greater than the sum of its parts. Locating a ski area in the midst of this incredibly rich and diverse area would have uncertain consequences:

Healthy ecosystems are finely balanced ecological mechanisms, where interaction and interdependence of component parts varies from site to site, proceeds mostly unseen, and remains only minimally understood. With limited understanding of a complex system as found in the PASEA, impacts from development risks unintended consequences and could permanently harm other parts of the system, particularly elements (*e.g.*, plants and animals) most sensitive to change.

CP 102.

Thus, it is clear that neither the EIS prepared for classifying other portions of the park nor the limited environmental information developed for

the current MS 2000 proposal provide an adequate substitute for the detailed environmental review in an EIS. An environmental impact statement would have provided the Commission with information on the existing environmental resources, impacts to those resources, potential mitigation measures, and unavoidable impacts associated with each of the various classification options. The agency's Response Brief continuously avoids addressing these irrefutable facts.

D. The Future EIS Will Not Address the Issues That Would Have Been Addressed in a Timely EIS

The Response Brief continues to make reference to the EIS that the agency committed to prepare after the classification decision was made, but prior to making a decision on a specific layout of the ski runs and the chair lift. The agency does not dispute, however, that the EIS is not examining the alternatives that were before the Commission when it made the land classification and conceptual approval decisions at issue here. That is, rather than preparing an EIS that examines the environmental impacts associated with the classification options presented to the Commission (*e.g.*, four scenarios "ranging from no development, to low impact activities, to the proposed ski area expansion," CP 79), the subsequent EIS is merely addressing different layouts of the ski runs. Those alternatives include

seemingly minor variations. The ski runs themselves seem to be in the alternatives seem to be in identical locations; the only difference appears to be the extent of clearing and grading within the designated ski runs. *Compare CP 190 with CP 191.*

Nor does the agency's Response Brief dispute that the subsequent EIS will come too late to inform the Commission's classification decisions. The Response Brief does not dispute that the remaining decision to be made (regarding the layout of the ski runs) will be made by staff, not the Commission.

III. ARGUMENT

A. The Commission's Classification and Conceptual Plan Approvals Were Major Actions with Probable Environmental Consequences That Could and Should Have Been Analyzed Before the Commission Acted

The agency's Response Brief attempts to characterize the Commission's decision as a tentative step, approving only a "conceptual plan." According to the Response Brief, the real decision on whether the subject lands will be developed as a ski area will come later – when staff decides on a specific layout of the ski runs. This characterization of the Commission's decision ignores the record and the law.

The record demonstrates that the Commission's decision carries far more weight than the agency acknowledges in its brief. There is nothing speculative about the likely course of events – and resulting environmental impacts – that flow from the Commission's decision. Everyone recognized that the Commission's decision would determine whether the subject lands would be developed for downhill skiing. Thus, staff summarized the benefits and drawbacks of Option 3 (adopted, with revisions, by the Commission) in these terms:

Principle benefits of Option 3 include:

1. The most extensive expansion of alpine skiing opportunities;
2. This option would allow a more expansive tree skiing experience between formal ski runs;

* * *

Principle drawbacks of Option 3 include:

1. This option *would result in the most destructive impact* to alpine and sub-alpine forest ecosystems;
2. The Recreation classification allows the greatest intensity of use in the PASEA with resulting impacts;
3. Areas in the PASEA classified as Recreation would be subject to the highest degree of vegetation removal with resulting impacts;

* * *

5. The site is no longer suitable for research of intact natural forests and changes the focus of interpretation to generally balancing conservation with recreation.

CP 99-100 (bolding in original; italics added).

The agency's Response Brief asserts that the proposal "is not specific enough to identify actions that will produce impacts." Response Br. at 10. Both of the decisions made by the Commission were specific enough to allow for environmental review. The classification decision was very specific. It opted for a classification that would allow downhill skiing as opposed to a classification decision that would preserve the natural forest (or a classification of some intermediate variety). The impacts of preserving a forest in its natural state versus dedicating it to downhill skiing are specific actions which allow for environmental review.

The Commission's second decision was to approve MS 2000's conceptual plan. That plan, too, though dubbed "conceptual," was specific enough to allow for review of impacts. Indeed, an EIS is currently being prepared with regard to that "conceptual" plan. The issue is not whether the conceptual plan was specific enough to allow for environmental review, but rather, when that environmental review would occur.

In our Opening Brief, we highlighted that the SEPA rules forcefully and repeatedly admonish that environmental review should occur as early in the process as possible. *See* Op. Br. at 19-21 (*citing* WAC 197-11-055;

-070(1); -406). The agency's Response Brief quotes WAC 197-11-055 but totally fails to discuss the multiple rules that compel environmental review at the earliest time possible. The agency's Response Brief totally ignores WAC 197-11-406 (quoted and discussed in our Opening Brief at 20-21). That rule requires the EIS to "be completed in time . . . to be included in appropriate recommendations or reports on the proposal."

In our Opening Brief, we also discussed the case law that echoes the SEPA rules and requires preparation of an EIS early in the process before agency inertia and the "snowballing effect." *See, e.g., Op. Br. at 21-22* (discussing *King County v. Washington State Boundary Review Board*, 122 Wn.2d 648, 860 P.2d 1024 (1994)). The agency's Response Brief acknowledges that *King County* "stands for the proposition that some nonproject land-use planning decisions require the preparation of an EIS." Response Br. at 12. But the agency's response brief then argues that as long as the agency "addressed and conditioned generalized impacts from opening the land to development and ensured detailed review of specific project impacts [later], the Commission's determinations were consistent with SEPA." *Id.* But that assertion is followed by no citation to any regulation or case law. There simply is no rule or case that supports the agency's claim.

Indeed, the agency acknowledges that *King County* stands for the proposition that when a land use planning decision will lead to probable adverse impacts “foregoing EIS evaluation in these circumstances is likely to undercut the purpose of SEPA – fully informed decision-making in the face of articulable and likely impacts.” Response Br. at 13 (*citing King County*).

The agency attempts to distinguish *King County* on grounds that in that case the lands being annexed to the City did not consist of “one specific project on a parcel of state-owned land that remains under the control of the state landowner.” Response Br. at 14. That attempted distinction fails factually and legally. Factually, the parcel involved in the Black Diamond case was under single ownership. A decade later, development of that parcel – owned by Yarrow Bay Development – was again before the courts. *Lawson Partners v. Hearings Board*, 165 Wn.2d 677, 269 P.3d 300 (2011).

That the land in this case is publicly owned and, nominally, “remains under control of the state landowner” would be relevant *if* the Commission had not in its designation decision decided the issue of whether the land would be available for downhill skiing. That decision has now been made. The decision left to staff is simply to decide on the layout of the runs. While staff “retains control” over the layout of the runs, the decision on whether to

allow downhill skiing is not in staff's control. That decision has been made—without the benefit of the required EIS.

The agency's response brief includes a lengthy section arguing that environmental review is not necessary at this time. *Id.* at 12-15. Notably, this entire discussion is bereft of any citation to the administrative record or case law (other than its failed effort at distinguishing *King County*). The omission of factual or legal authority for any of this argument is testament to the weakness of the argument.

Finally, the agency's brief invokes SEPA's "phased review" provisions. *See* Response Br. at 16-18. But phased review clearly is not appropriate here. This is not a case where an EIS was prepared on the broad issues inherent in classifying the land for ski area development in lieu of providing greater protection for its unique natural forests. Instead, here the agency is not doing any detailed review at this critical stage and instead deferring (not "phasing") review until later. Thus, this case is unlike *West 514 v. County of Spokane*, 53 Wn. App. 838, 77 P.2d 1065 (1989) (cited by the agency at 17). In *West 514*, the County relied on an earlier EIS and adopted it by reference. *Id.* at 840. That is not the case here. While an earlier EIS was prepared, it did not address the issues specific to the lands at

issue here, but rather addressed other lands in the park – as even the agency acknowledges. Response Br. at 4, n.11.

The SEPA rules quite clearly preclude using phased review in a situation such as this. When phased review is used, each phase must “focus on issues that are ready for decision and exclude from consideration issues already decided or not yet ready.” WAC 197-11-060(5)(b). In this case, the issue “ready for decision” was whether to protect the subject lands as natural forests, allow them to be used for a downhill ski project, or adopt some intermediate classification. The agency determined that those issues would have probable significant impacts. CP 104. An EIS should have been prepared before that decision was made. Those probable significant impacts were not “mitigated” by a decision to prepare an EIS later when deciding where to locate the specific runs. The issues inherent in classifying the land for downhill skiing and approving MS 2000’s conceptual proposal were “ready for decision” last year. Indeed, those were the decisions that the Commission made. Phased review provides no justification for failing to provide the Commissioners with an EIS before they made that decision.

In this section of its brief, the agency also relies on WAC 197-11-330(2) which states that at the threshold determination stage, the agency

should determine whether “environmental analysis would be more useful or appropriate in the future in which case the agency shall commit to timely, subsequent environmental review, . . .” Response Br. at 17. But deferring preparation of an EIS until after the Commission made its decisions would not be “more useful.” Rather, it would be useless. The EIS currently under preparation will provide no benefit to the Commission. The Commission’s classification decision and approval of the MS 2000 concept are already done. Preparing an EIS later is useless, not “useful” as far as the Commission’s critical decisions are concerned.

B. Members of the Lands Council Will Be Impacted by the Redesignation Decision and, Therefore, the Lands Council Has Standing

The Parks and Recreation Commission disputes that The Lands Council has standing to challenge the Commission’s action. The agency does not dispute that The Lands Council meets the first part of the standing test, *i.e.*, that its interests are within the zone of interests protected by SEPA. *See* Resp. Br. at 18. But the agency does challenge whether the Commission’s decisions result in injury in fact. Most of that argument is a re-hash of its argument on the merits. The agency claims that the Commission’s decisions are too conceptual to give rise to concrete injury at this time. The agency’s

effort to re-argue the substance of this case in the guise of a standing challenge should be rejected for both procedural and substantive reasons.

Procedurally, the agency's argument runs afoul of the rule that precludes arguing the merits of the case in the context of a standing argument. A similar effort was made in *Magnolia Neighborhood Planning Association v. City of Seattle*, 155 Wn. App. 305, 230 P.3d 190 (2010). There, the City of Seattle approved a plan for the redevelopment of land it was to obtain from the federal government. The City's plan approval was challenged on grounds that it had failed to comply with SEPA. The City defended the SEPA claims on grounds similar to those advanced by the agency here, *i.e.*, that the plan approval was too preliminary to allow for SEPA review. The City then advanced a similar argument clothed in standing garb, arguing that because the City's planning decision was preliminary, any harm flowing from it was speculative, and would not give rise to the "injury-in-fact" required for standing. The Court of Appeals rejected this argument on both procedural and substantive grounds. Procedurally, the Court characterized the City's argument as one "directed to the merits, *i.e.*, whether the SEPA exemption for non-project actions subject to federal approval applies, rather than an argument against standing . . ." *Id.* at 312. Then, rather than address the argument in the

context of standing the Court referenced its substantive discussion of the City's SEPA obligations: "[A]s discussed below, the SEPA exemption does not apply here." *Id.*

The primary issue on appeal in this case is whether the agency erred in failing to prepare an EIS before the Commission made its land classification and concept approval decisions. The Court should not address the essence of those decisions again in the context of a standing challenge.

In any event, the agency's position is wrong substantively, too. The only standing issue posed by the agency is whether The Lands Council has demonstrated injury in fact. Here, The Lands Council alleges two distinct injuries: the loss of a procedural right (*i.e.*, the failure of the Commission to follow the procedural requirements of SEPA) and the subsequent physical loss of a forest and the values it contains.

The agency has not met its *prima facie* burden because it has not addressed the procedural injury suffered by The Lands Council. Where the injury complained of is procedural in nature, the procedural harm itself can satisfy the "injury-in-fact" test. That is, not obtaining a procedure guaranteed by statute constitutes "injury in fact" even without looking downstream to subsequent physical injuries that likely will result from the procedural harm.

For instance, in *Five Corners Family Farmers v. State*, 173 Wn. 2d 296, 268 P.3d 892 (2011), the Supreme Court agreed that the appellants had standing to challenge the issuance of a water right exemption by the Department of Ecology, finding that their procedural harm was a sufficient basis: “The procedural right Appellants were allegedly denied was to have the Department review a permit application and consider, among other things, whether the withdrawal of groundwater would ‘impair existing rights or be detrimental to the public welfare.’” *Id.*

Here, The Lands Council seeks review of the agency’s failure to prepare an EIS *before* approving the ski area expansion and re-designating the land to accommodate that project. Staff’s failure to prepare an EIS resulted in the Commission making its key land use decision without the benefit of the required environmental analysis. SEPA is intended to inform both the public and decision makers before key decisions are made. *See, e.g.*, WAC 197-11-400(2) (purpose of EIS is to “inform decision makers and the public”). The alleged failure of the agency to follow correct procedures caused “injury in fact” to the public, including The Lands Council and its members. The agency’s brief fails to address this form of injury in fact, even though it was the subject of briefing in the superior court.

Looking beyond the procedural injury, The Lands Council also has standing because the agency's decision will result in adverse impacts on the ground. Individual members of The Lands Council utilize the proposed ski expansion area for a variety of purposes as was detailed in the declarations filed herein. CP 135-137 (Petersen Dec.); CP 131-132 (Bradford Dec.); CP 159-162 (Weiler Dec.).

The agency's argument ignores that courts routinely allow challenges to land classification decisions (*e.g.*, zoning decisions) before project permits are sought or obtained. For instance, as discussed previously, in *Magnolia Neighborhood Planning Association v. City of Seattle*, *supra*, the city argued that the neighbors lacked standing on grounds that their injuries "are speculative because they depend on 'rank speculation about future federal government and City action.'" *Id.* at 312. But even though further approvals were required from both the federal and municipal governments, the court rejected the city's argument: "Applying relevant standing law, the trial court correctly concluded that Magnolia has established standing: it is a party representing interests of those owning property adjacent to a City-proposed project and who allege that the project will injure their property without SEPA review." *Id.* at 312 - 313. *See also SAVE v. City of Bothell*, 89 Wn.

2d 862, 576 P.2d 401 (1978) (neighbors have standing to challenge land classification (zoning) decision in advance of final project permit decisions). *Cf. King Cy. v. King Cy BRB, supra* (noting the snowballing effect of early planning decisions).

To support its claim that the petitioners would not suffer “injury in fact,” the Commission cites *Harris v. Pierce County*, 84 Wn. App. 222, 928 P.2d 1111 (1996). In that case, the court rejected an extremely attenuated effort by the petitioners to demonstrate standing based upon economic injury and a threat of condemnation of petitioners’ property. The challenged action was the approval of trail plan. The petitioners’ only allegation of standing was that they were owners of property that might be condemned as a result of the action. There was no assertion of environmental harm and no allegation that condemnation would occur with any certainty. The court found that SEPA’s zone of interest does not include purely economic interests and that the condemnation complained of was uncertain. *Id.* at 231-32.

The facts in the present case are nothing like those in *Harris*. We are faced with no such convoluted, incongruous assertion of injury-in-fact in this case. The allegations in the Petition and declarations cited specific environmental harms (*e.g.*, recreation, aesthetics, wildlife habitat, old growth).

This case is much closer to those involving challenge to zoning and environmental decisions. *See Magnolia*, 155 Wn. App. at 312-13, *King County*, 122 Wn.2d at 664; *SAVE v. City of Bothell*, *supra*. The agency's standing argument should be rejected.

C. The Lands Council Alleges Action That is Illegal and/or Arbitrary or Capricious

The agency does not contest that jurisdiction is provided by SEPA itself. As that statute says: "The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter." RCW 43.21C.075 (1). "[T]he Washington State Environmental Policy Act of 1971 (SEPA) gives an aggrieved person the right to judicial review . . ." *State v. Grays Harbor County*, 122 Wn.2d 244, 248, 857 P.2d 1039 (1993).

Instead, the agency advances an irrelevant argument about an alternative jurisdictional basis for judicial review (the constitutional writ of review). This Court need not address the writ issue because the Superior Court had jurisdiction pursuant to the direct cause of action created by SEPA. If the Court addresses the issue, all it need do is note that the petition alleged jurisdiction pursuant to SEPA; that SEPA provides for a direct cause of action; and that the agency has not contended otherwise. If the Court were to

delve into the constitutional writ issue, it should reject the agency's arguments for the reasons set forth in our Opening Brief at 11-17.

IV. CONCLUSION

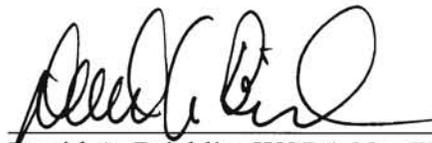
For the foregoing reasons, the decision of the superior court should be reversed. This Court should determine that jurisdiction to hear this matter was available pursuant to SEPA (or, in the alternative, pursuant to the constitutional writ of review) and that the Washington State Parks Commission violated SEPA when it amended its Management Classification Plan and approved the lessee's conceptual plan to allow downhill skiing on 279 acres of old growth forest without the benefit of an environmental impact statement.

Dated this 9 day of September, 2012.

Respectfully submitted,

BRICKLIN & NEWMAN, LLP

By:



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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,

and

MOUNT SPOKANE 2000,

Intervenor.

NO. 11-2-01340-2

DECLARATION OF SERVICE

STATE OF WASHINGTON)
)
COUNTY OF KING) ss.

I, ANNE BRICKLIN, under penalty of perjury under the laws of the State of Washington,
declare as follows:

I am the legal assistant for Bricklin & Newman, LLP, attorneys for petitioner The Lands
Council herein. On the date and in the manner indicated below, I caused the Reply Brief of The
Lands Council to be served on:

1 James R. Schwartz
2 Jessica Fogel
3 Assistant Attorneys General
4 1125 Washington Street SE
5 PO Box 40100
6 Olympia, WA 98504-0100
7 (Attorneys for Washington State Department of Fish and Wildlife)

8 By United States Mail
9 By Legal Messenger
10 By Facsimile
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32 DATED this 10th day of September, 2012, at Seattle, Washington.

33 
34 ANNE BRICKLIN

35 Decsv