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No. 93567-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CONSERVATION NORTHWEST; and METHOW VALLEY
CITIZENS' COUNCIL,

Appellants,

v.

OKANOGAN COUNTY,

Respondent.

RESPONDENT OKANOGAN COUNTY'S RESPONSE TO
APPELLANTS' MOTION TO STRIKE OKANOGAN COUNTY'S
REPLY TO APPELLANTS' ANSWER TO PETITION FOR
DISCRETIONARY REVIEW PURSUANT TO RAP 13.4 OF
COURT OF APPEALS, DIVISION III DECISION IN No. 331946-III

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The Case below originated with the issuance of a determination of non-significance by the Okanogan County Responsible Official under SEPA, Chapter 43.21C RCW, and the subsequent appeal of that decision to the Okanogan County Board of County Commissioners. After an open record hearing by the Board of County Commissioners, the Board voted to deny the appeal.

Conservation Northwest appealed the legislative action (the ATV ordinance) and the administrative denial of the SEPA appeal, citing only RCW 7.24 (declaratory judgments) and RCW 2.08.010, (invoking the general jurisdiction of the Superior Courts (CP at 1-7)), which did not address jurisdictional issues raised, and decided the case on cross motions for Summary Judgment under CR 56. See Memorandum Decision at p. 15 (CP 13-28).

Conservation Northwest appealed to the Court of Appeals Division III and Okanogan County responded raising the same jurisdictional issue arguing that there was no jurisdiction to address the administrative appeal of the SEPA decision because the trial court did not have appellate authority under the jurisdictional

statutes cited by the Appellants, and had no option but to dismiss the case.

The Court of Appeals reversed solely on the strength of RCW 43.21C.075, citing cases which dealt with the timing and sufficiency of a challenge to SEPA under RCW 43.21C.075(2).

Okanogan County sought discretionary review based on the failure to address the appellate jurisdictional issues embedded in RCW 43.21C.075 (3, 5, 6), and based on the plain meaning of the additional language of RCW 43.21C.075 (3, 5, 6).

In its response, Conservation Northwest chose to ignore the issue posed by the Okanogan County Petition for Review concerning the specific language of RCW 43.21C.075 (3, 4, 6) and instead sought to change the issue to one of plenary jurisdiction for all purposes citing only to cases focusing solely on RCW 43.21C.075(2). But as noted in our reply, those cases addressed procedural issues such as the need to issue an EIS before the Agency makes a final decision, *Lands Council v. Washington State Parks and Recreation Comm'n*, 176 Wn.App 787, 309 P.3d 734 (2013), and with passing references to cases involving premature appeals, *Foster v. King County*, 83 Wn. App. 339, 921 P.2d 552

(1996), Standing in *Harris v. Pierce County*, 84 Wn.App. 222, 928 P.2d 1111 (1996), or lack of compliance with the requirement to bring the legislative action properly before the Court in conjunction with the SEPA appeal in *Raynes v. Leavenworth*, 118 Wash.2d 237, 821 P.2d 1204 (1992).

Conservation Northwest seeks to pose the issue before this Court regarding the procedural timing language of RCW 43.21C.075(2), into an additional grant of jurisdictional authority for Superior Courts to make appellate decisions as to the adequacy of a record created in an administrative appeal involving a SEPA decision operating solely under the Civil Rules of Procedure (particularly CR 56) which the case below was decided and upon which superior court jurisdiction was based.

In so responding, Conservation Northwest sought to shift the focus of the Court from the very narrow issue posed by Okanogan County concerning the requirements for a record appeal under RCW 43.21C.075(6) to a new and different authority all together. Okanogan County's reply was filed in light of Conservation Northwest's complete disregard for the issue posed by Okanogan

County and is an effort of misdirection, by citing cases wholly inapposite to the issue raised by the County's request for review.

Okanogan County has no quarrel with the results reached in the timing and compliance cases cited by Conservation Northwest or the Court of Appeals below, but none of them address the issue posed to this Court by Okanogan County—that failure to invoke the appellate jurisdiction of the Court of Appeals to conduct the record review deprived the Superior Court of jurisdiction over the SEPA appeal and therefore the Court was required to dismiss that portion of the Case. For this reason, Okanogan County believes the provisions for a reply in RAP 13(4)(d) have been met.

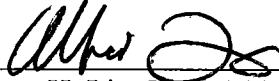
There has never been a decision of this or any other court saying that in adopting RCW 43.21C.075 (2, 3, 5, 6) the legislature intended to do away with the need to invoke appellate review of the record when seeking judicial review of the administrative denial of a SEPA appeal in superior court, particularly in light of the language in 6(a) "...on the record, consistent with other applicable law." And without such jurisdiction in the Superior Court, the Court of Appeals had nothing to review, and its decision must be reversed.

Okanogan County believes that the issue was properly framed in the Petition for Discretionary Review and that the response of Conservation Northwest, in seeking to avoid that issue by securing affirmance on other grounds (the statutory reference to timing and procedural compliance), Okanogan County had the responsibility to point out the differences on reply. We respectfully request the Court deny the Motions to Strike and Request for Sanctions and Attorneys' Fees pursuant to RAP 18.9(a), and grant review on this matter of first impression.

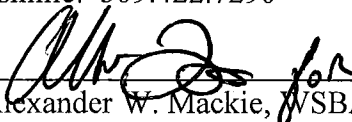
Respectfully Submitted,

Dated: November 30, 2016

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CERTIFICATE OF SERVICE

I, Laura Field, do hereby certify under penalty of perjury that on the 30th day of November, 2016, I caused the **RESPONDENT OKANOGAN COUNTY'S REPLY TO APPELLANTS' ANSWER TO PETITION FOR DISCRETIONARY REVIEW PURSUANT TO RAP 13.4 OF COURT OF APPEALS, DIVISION III DECISION IN NO. 331946-III** and this **CERTIFICATE OF SERVICE** to be filed in the **SUPREME COURT OF THE STATE OF WASHINGTON** and a true copy of the same to be served on the following in the manner indicated below:

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