

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

SAUK COUNTY

SAUK PRAIRIE CONSERVATION
ALLIANCE.

P.O. Box 403
Baraboo, WI 53913,

Petitioner,

v.

WISCONSIN NATURAL RESOURCES
BOARD AND WISCONSIN DEPARTMENT
OF NATURAL RESOURCES

101 S. Webster Street
Madison, WI 53707,

Respondents.

Case No.

Case Code: 30607

Administrative Agency Review

PETITION FOR JUDICIAL REVIEW

The Sauk Prairie Conservation Alliance (the “Alliance” or “Petitioner”), by its undersigned attorneys Perkins Coie LLP, hereby petitions this court pursuant to Wis. Stat. §§ 227.52 and 227.53 for judicial review of the Wisconsin Natural Resources Board’s (the “NRB”) final decision approving the master plan (the “Plan”) and Final Environmental Impact Statement (“FEIS”) for the Sauk Prairie State Recreation Area on December 14, 2016.

Petitioner further states as follows:

CHALLENGED DECISION

1. On December 14, 2016, the NRB approved the Plan and FEIS for the Area. A copy of the Plan and FEIS, which the NRB adopted with one amendment to remove high-power

rockets,¹ is attached as Exhibit 1. The Plan and FEIS approved by the NRB and WDNR are the challenged decision.

PARTIES

2. Petitioner is a small non-profit corporation located in Sauk County that promotes education and cooperative conservation on the former Badger Army Ammunition Plant lands and in the surrounding Sauk Prairie area. Its address is P.O. Box 403, Baraboo, WI 53913 (location address being 125 15th Avenue, Baraboo, WI 53913).

3. The Wisconsin Natural Resources Board and the Wisconsin Department of Natural Resources (“WDNR”) are “agencies” of the State of Wisconsin, as that term is defined by Wis. Stat. § 227.01(1) and used throughout Wis. Stat. Ch. 227. The WDNR’s and the NRB’s principal offices are located at 101 S. Webster Street, Madison, Wisconsin 53707.

JURISDICTION AND VENUE

4. Petitioner’s principal place of business is in Sauk County and Petitioner is therefore a “resident” of Sauk County.

5. Sauk County Circuit Court is the proper venue for this action as specified in Wis. Stat. § 227.53(1)(a)(3).

6. The Plan and FEIS are final agency actions subject to judicial review under Wis. Stat. §§ 227.52 and 227.53.

7. This petition is timely filed.

¹ Although the NRB amended the Draft Plan and FEIS to remove high-power rockets, model rockets will still be allowed in the Area pursuant to the approved Plan. However, based on the testimony of numerous high-school students at the recent public hearing, the Petitioner has become convinced that non-high powered model rockets are not a high-impact use.

BACKGROUND

8. This petition concerns the Sauk Prairie State Recreation Area (the “Area”), which is located on the lands of the former Badger Army Ammunition Plant (the “Badger Lands”). The Area contains approximately 7,300 acres south of, and immediately adjacent to, Devil’s Lake State Park in Sauk County, Wisconsin.

9. The U.S. Department of Defense decommissioned the Badger Army Ammunition Plant in 1997.²

10. The local public involvement in the decision-making about the future of the Badger Lands began shortly thereafter in 1998 when Congressman Scott Klug formed a Citizen’s Task Force.

11. In June of 1999, Congresswoman Tammy Baldwin began work in collaboration with local officials to create the Badger Reuse Committee (“BRC”) to make recommendations on the future use of the Badger Lands.

12. The U.S. General Services Administration (“GSA”) was the federal agency that was originally tasked with the disposition of the Badger Lands. In July of 2000, the U.S. House of Representatives acknowledged GSA’s relationship with the Badger Reuse Committee, directing GSA to “work with the Sauk County Badger Army Ammunition Plant Reuse Committee in the development of a mutually acceptable reuse plan for this property.” Exhibit 14 at E-9.

13. The Badger Reuse Committee began working in July 2000 and met over the next nine months to develop its report and recommendations. The Badger Reuse Committee’s final report (known as the “Reuse Plan”) was completed in March 2001, and was subsequently

² Exhibit 1 at 1.

approved by the Sauk County Board of Supervisors. A copy of the Reuse Plan is included as Exhibit 15.

14. According to the Reuse Plan, the intended management purposes and public use of the Badger Lands was to include cooperatively managing the property as a unified whole for ecological restoration, recreation, agriculture, education, and research purposes, and promoting the ecological and physical continuity of the landscape through the establishment of uninterrupted links between the Baraboo Range and the Wisconsin River Valley, some of Wisconsin's most significant regional ecosystems. *See id.*

15. Around the same time that the Badger Reuse Committee was finalizing the reuse plan, in 2001 former Governor Tommy Thompson sent a letter to the GSA formally expressing an interest in having the WDNR take over a portion of the property. This letter is attached as Exhibit 16. In the letter, Governor Thompson says the following:

The State of Wisconsin is hereby expressing interest in the lands of the Badger Army Ammunition Plant . . . Wisconsin is interested in ownership and management of BAAP lands for the following purposes:

- For the ecological restoration of a regionally significant block of endangered grassland and savanna habitat and associated wildlife species such as grassland birds;
- To preserve and enhance the ecological transition between the hardwood forests of the Baraboo Hills and the grasslands and savannas of the adjoining Sauk Prairie;
- To preserve and enhance the ecological corridor between the Baraboo Hills and the Wisconsin River; and
- To develop and maintain a recreational corridor between Devil's Lake State Park within the Baraboo Hills and the shorelands of Lake Wisconsin.

Id. at 1.

16. The Thompson letter then goes on to state that "Wisconsin's interest is predicated on the following: . . . Wisconsin's ownership and management interests will be consistent with the BAAP Reuse Committee's final recommendations and/or other compatible uses." *Id.* at 1.

17. Nowhere in Governor Thompson's letter does he mention using the property for a gun range, motorcycle races, dog training with guns, or helicopter training. *See id.*

18. And nowhere in the Badger Reuse Committee's Reuse Plan - which constitutes its final recommendations - does the Badger Reuse Committee recommend using the property for a gun range, motorcycle races, dog training with guns or helicopter training. *See Exhibit 15.*

19. In March of 2003, GSA completed a more than three hundred page, full environmental impact statement ("2003 EIS") analyzing the potential environmental impacts associated with the Federal government's disposal of the property. Exhibit 14. The 2003 EIS considered numerous uses of the entire 7,300 acre Badger property, including commercial and industrial uses. In the end, the 2003 EIS and the GSA selected Scenario A as its preferred alternative, which was titled "Low Intensity Use" and "draws upon the values, criteria, and plan elements established by the Badger Reuse Committee." *See Exhibit 14 at E-13.*

20. This 2003 EIS did not consider using any of the Badger Lands for high-impact recreational uses. *See Exhibit 14 at § 2.4.3* ("Because Badger AAP is close to Devil's Lake State Park, low intensity recreation use would be most appropriate under this land use. Low intensity uses would include passive, non-invasive, and nature-based 'ecotourist' activities like hiking and camping. Biking, horseback riding, snowmobiling, interpretive trails, and nature programs would also be included . . .").

21. After completing the 2003 EIS and after the U.S. Army completed its clean-up of the property, the GSA transferred portions of the property³ to the National Park Service ("NPS")

³ Pursuant to the Badger Reuse Committee's Reuse Plan and the 2003 EIS, portions of the property were also deeded (or are in the process of being deeded) to the Ho-Chunk Nation and U.S. Dairy Forage.

who then, through its Federal Lands to Parks (“FLP”) program, deeded more than 3,000 acres of the property to the WDNR in a series of transactions starting in 2011.⁴

22. The FLP program also imposes use restrictions on deeded property, and if the WDNR does not comply with these use restrictions, federal law and the deeds conveying the property provide that ownership of the Area will revert back to the federal government. *See* 40 U.S.C. § 550(e)(4)(A) (“[I]f the property ceases to be used or maintained for [the purpose for which it was conveyed], all or any portion of the property shall . . . revert to the Government”); *see also* Exhibit 2 at 16; Exhibit 3 at 17 (“In the event there is a breach of any of the conditions and covenants herein . . . all right, title and interest in and to the [Area] shall revert to and become the property of the [NPS]”).

23. Lands deeded through the FLP program must be used solely for public parks and recreation and must be used according to the Program of Utilization (“POU”) submitted as part of the WDNR’s FLP application to NPS and according to the uses approved by the GSA in its original transfer of the property to the NPS.

24. More specifically, the deeds for the property provide that “the property shall be used and maintained exclusively for public park or [the] public recreation purposes for which it was conveyed . . . and as set forth in the program of utilization and plan contained in [WDNR’s] application” Exhibit 2 at 4; Exhibit 3 at 3.

25. Like the 2003 EIS, the POU - a plan which the WDNR itself prepared and submitted to the NPS as part of its FLP application prior to the property being conveyed - includes only the following uses: “hiking, picnicking, primitive camping, Lake Wisconsin access and viewing, [ecological] restoration, environmental education, and cultural/historic interpretation.” Exhibit 4 at 9. Further, the POU explains that, “[m]any groups with varying

⁴ Exhibit 1 at 1.

interests in [the Area] share a common goal with the WDNR to convert [the Area] to a recreational property with low impact recreation” Exhibit 4 at 10.

26. The FLP program allows changes of uses and amendments to the POU, but only with the concurrence of the NPS and only if those changes are “consistent with the purposes for which the property was originally transferred.” Exhibit 4 at 4.

27. After the WDNR received the property, state law required the WDNR and NRB to approve a master plan for the property.⁵

28. State law, including Wis. Stat. § 1.11 and Wis. Admin. Code NR Ch. 150, also requires the WDNR and NRB to assess the environmental impacts of all significant proposed actions, including the issuance of a master plan.⁶

29. Notwithstanding the 2003 EIS, the POU, the property deed, and state law, the WDNR began its master planning process by releasing a Regional & Property Analysis of the Sauk Prairie Recreation Area in 2012 that, for the first time, included “non-traditional outdoor recreation uses....such [] as rocketeering, shooting ranges, geocaching, dog parks, paintball...and other recreation activities not typically found on Department lands.” Exhibit 5 at 50.

30. On July 2, 2012, the Petitioner provided the WDNR with a detailed comment letter regarding the Regional & Property Analysis. Exhibit 6. Petitioner also provided supplemental comments on August 17, 2012, to the WDNR explaining that the WDNR must remove all references to high-impact uses in its Regional & Property Analysis because the existing POU does not allow for high-impact uses on the property. Exhibit 7 at 1-2.

⁵ Wis. Stat. § 23.091(b); *see also* Wis. Admin. Code NR § 44.04.

⁶ Wis. Admin. Code NR § 150.30.

31. Soon after, at the request of Representative Fred Clark, the nonpartisan Wisconsin Legislative Council looked into the issue, and in December of 2012, agreed with the Petitioner's analysis that the property could only be used for low-impact recreational uses. *See* Exhibit 8.

32. The WDNR then issued its Preliminary Vision and Goal Statements and Three Draft Conceptual Alternatives document on July 12, 2013, which continued to include numerous high-impact uses, such as a gun range and motorized recreation opportunities. *See* Exhibit 9. Additionally, the WDNR publicly stated an intention to use large parts of the area for an all-terrain vehicle ("ATV") track.

33. On August 29, 2013, the Petitioner provided the WDNR with another detailed comment letter explaining again that the existing POU and NPS approval do not allow for high-impact uses on the property. *See* Exhibit 10. The Petitioner also reminded the WDNR that such high-impact uses of the property would have significant environmental impacts, and including them in the master plan would require completion of a full environmental impact statement. *Id.* at p. 5-6. This letter also identified various deficiencies in the public comment process to date. *Id.* at p. 7.

34. On August 11, 2015, the WDNR released its first draft master plan for the Area. Exhibit 17. This draft master plan removed some (e.g. ATV usage), but not all (e.g., possible rifle range), of the proposed high-impact uses and added new high impact recreation activities, including proposals for using the Area for dual-sport motorcycle access, a Class II Dog Training Area (which involves training dogs with guns), a rocketry launch site, and "special uses" not clearly defined by WDNR that may also be high-impact in nature.

35. Again, on September 24, 2015, the Petitioner sent comments to the WDNR reminding the agency that it does not have the authority to include these high-impact uses in the

master plan and that its environmental analysis of these uses was deficient. Exhibit 11. The Petitioner also then sent similar comments to the NPS on January 21, 2016. Exhibit 12.

36. On May 3, 2016, the NPS also provided comments to the WDNR on its Draft Plan and FEIS for the Area. NPS agreed that WDNR's proposed high-impact uses required an amendment to the POU, which WDNR had not obtained, and would require significant additional environmental analysis, which WDNR had not conducted. *See* Exhibit 13.

37. Ignoring these warnings from Petitioner and the federal government, the WDNR issued the Draft Plan and FEIS on November 8, 2016, without removing these high-impact uses, formally applying to the NPS for a POU amendment, conducting the required environmental analysis of these high-impact uses, or otherwise correcting the numerous deficiencies already identified in the master planning process to date.

38. On December 8, 2016, without public notice or public participation of any kind in NPS' decision making process, the NPS notified the WDNR that it would consider the Plan and FEIS, after approval by the NRB, to be an amendment to the POU. That same day, members of the Badger Reuse Committee submitted written comments to the WDNR objecting to the high-impact recreational activities "that run counter to the Badger Reuse Plan's clear consensus to emphasize and include only compatible, low-impact recreational opportunities." Exhibit 18 at 2.

39. On December 9, 2016, the Petitioner submitted comments to the NRB objecting to the Draft Plan and FEIS on the grounds that the NRB does not have the legal authority to approve the Draft Plan and FEIS without removing these high-impact uses, applying to the NPS for a POU amendment, conducting the required environmental analysis of these high-impact uses, or otherwise correcting the numerous deficiencies already identified in the master planning process to date.

40. On December 13, 2016, the Petitioner sent comments to the NPS to remind it that it must comply with NEPA prior to approving any amendment to the POU, and to restate the legal deficiencies in the Draft Plan and FEIS.

41. On December 14, 2016, the Petitioner testified at a public hearing before the NRB, objecting to the Draft Plan and FEIS on the grounds that the board does not have the legal authority to approve the Draft Plan and FEIS without removing these high-impact uses, applying to the NPS for a POU amendment, conducting the required environmental analysis of these high-impact uses, or otherwise correcting the numerous deficiencies already identified in the master planning process to date.

42. Notwithstanding the numerous legal deficiencies in the Draft Plan and FEIS and the master planning process, the NRB adopted the Draft Plan and FEIS, with one amendment to remove high-power rockets from the Plan, on December 14, 2016.

43. The final Plan still allows for several high-impact uses, including a 72-acre Class II Dog Training Area, access to the Wisconsin Army National Guard for helicopter training exercises, dual-sport motorcycle access to trails in the Area, and various as-yet-unspecific high-impact special events.⁷

44. According to the Plan, the public can immediately begin undertaking these high-impact recreational uses on the property. Exhibit 1 at 108-109.

45. If these high-impact uses occur on the property, they will significantly harm important native plant and animal species, create a nuisance to neighbors, detrimentally impact

⁷ The Plan and FEIS state that high-impact uses will be allowed for certain special events on a case-by-case basis. For example, page 102 of the Plan and FEIS notes that paintball will be allowed as a special event. *See* Exhibit 1 at 102. Any references in this petition to high-impact uses shall also include any as-yet-unidentified high-impact uses associated with special events at the Area.

other owners of the former Badger Army Ammunition Plant property and property owners near the Sauk Prairie State Recreation Area, and create conflicts for users of the Area.

46. The WDNR and NRB have failed to provide an adequate analysis of the environmental impacts associated with these high-impact uses prior to considering and approving the Plan.

INTEREST OF THE PETITIONER

47. Petitioner is not normally a litigious group; in fact, this is the first time in its nineteen years of existence that it has felt the need to resort to litigation.

48. The Petitioner and its individual citizen members have been involved in the process of determining the future use of the former Badger lands for almost two decades. The organization has hosted dozens of public education programs and forums about and at Badger, including tours inside the property boundaries. For fifteen years, the Petitioner has coordinated volunteer involvement in native prairie restoration at what is called the Hillside Prairie at Badger, now located on state-managed property.

49. The Petitioner has demonstrated a long-term commitment, significant engagement, and a deep understanding of the issues related to the Area. Petitioner's priorities have been consistent for many years: to provide for the restoration of the native prairie and savanna in the Area; to support compatible, low-impact recreational opportunities at the Area that allow visitors to enjoy and learn from the natural and cultural features of the land; and to ensure that the former Badger lands are cooperatively and collaboratively managed by the landowners.

50. The Petitioner has led numerous school groups on to the property to teach about prairie restoration practices and to give local students lessons on environmental stewardship.

51. Petitioner and its members are substantially aggrieved by the Plan's inclusion of high-impact uses and the inadequate environmental analysis in the FEIS. The Petitioner has many members that live near the Area and have and will continue to recreate in the Area.

52. For example, Curt Meine (Sauk City), Bill & Donna Stehling (Sauk City), Mimi Wuest (Reedsburg), Charlie Luthin (Lodi), Ruthann Corrao (Prairie du Sac) and Frank Piraino (Madison) are all members that live near and/or recreate in the Area on a regular basis.

53. Petitioner and its members' uses of the property will be disturbed if high-impact uses are allowed on the property. Petitioner's longstanding educational and prairie restoration efforts will be thwarted in many areas of the property. For example, the trails it uses are likely to be damaged by high-impact uses; the 600-acre "Special Use Area" would provide exclusive access to certain groups for part of the year, thereby denying Petitioner access to a site (Hillside Prairie) where it regularly holds restoration events; and motorcycle use could create a dangerous situation, create a nuisance and impact breeding by important bird species.

54. Petitioner's and its members' substantial interests are injured in fact, threatened with injury, and are adversely and irreparably affected by the NRB's approval of the Plan and FEIS. Both federal and Wisconsin law require the NRB to approve a master plan for the Area that will permit only the low-impact uses described in the original POU for the Area and the 2003 EIS, to follow the procedural requirements of the National Environmental Policy Act ("NEPA") and the Wisconsin Environmental Policy Act ("WEPA") prior to adopting a master plan or amending the POU, and to meaningfully consider and respond to public comment.

GROUND FOR REVERSAL

55. Wis. Stat. § 1.11 and Wis. Admin. Code NR Ch. 150 describe the NEPA and WEPA requirements applicable to the WDNR and the NRB in this case.

56. NEPA, 42 U.S.C. §§ 4321 et seq., is a procedural law that requires federal agencies to follow established environmental review procedures, which include reviewing and documenting the environmental impact of their actions. *See* 42 C.F.R. § 137.287 (describing NEPA). WEPA is its state counterpart. *See* Wis. Stat. § 1.11.

57. Because GSA and NPS are involved with the Area, both NEPA and WEPA apply to the master planning process for the Area.

58. Under both NEPA and WEPA, an action must (1) be categorically excluded from environmental review; (2) require a more limited environmental assessment; or (3) require an environmental impact statement (“EIS”).

59. In this case, the NPS has admitted that it must conduct an EIS in order to include high-impact uses at the property. Exhibit 13 at 1-2.

60. The Plan and FEIS, however, do not comply with NEPA or WEPA and are patently unlawful. The FEIS portion of the document is—to put it mildly—an environmental impact statement in name only. Among other deficiencies, it does not sufficiently identify or evaluate alternatives, it fails to fully and adequately analyze the high-impact uses’ many likely environmental harms to the property and the community, and it gives short shrift to the public input process and the public comments received. In fact, on page 161 (and elsewhere) in the Plan and FEIS, the WDNR admits that the high-impact uses could have “negative cumulative impacts on wildlife and visitors seeking quiet experiences.” *See, e.g.*, Exhibit 1 at 161. Rather than study these potential impacts, however, the WDNR merely notes that it “is not aware of any research” related to such impacts. *Id.* This is not the type of rigorous environmental analysis that is required by WEPA and NEPA.

61. As the WDNR and the NRB are well aware, a true and complete environmental impact statement takes years to create and is usually three to five hundred or more pages in length. *See, e.g.*, Exhibit 14. This “FEIS” pales in comparison. In fact, the draft EIS included only about sixteen pages of “environmental analysis” and 10 pages of analysis of alternatives. GSA’s 2003 draft EIS, on the other hand, was two volumes, each of which comprised about 300 pages.⁸

62. In any event, and as outlined above, the WDNR and NRB do not even have the legal authority to allow these high-impact uses in the Area. *See* 40 U.S.C. § 550(e)(4)(A) (“if the property ceases to be used or maintained for [the purpose for which it was conveyed], all or any portion of the property shall . . . revert to the Government”); *see also* Exhibit 2 at 16; Exhibit 3 at 17 (“In the event there is a breach of any of the conditions and covenants herein . . . all right, title and interest in and to the [Area] shall revert to and become the property of the [NPS]”).

63. The high-impact uses are outside the scope of the purposes for which the GSA conveyed the property to the NPS, outside the scope of the purposes for which the NPS conveyed the property to the WDNR and are contrary to the Area’s deed restrictions. Exhibit 2 at 13-17; Exhibit 3 at 15-18. The GSA conveyed the property to the NPS subject to its environmental analysis in 2003, which did not consider high-impact recreational uses, and NPS conveyed the Area subject to the POU submitted with the WDNR’s FLP application, which included only low-impact uses. *See* Exhibit 4. As the WDNR has been reminded numerous times (including by the NPS), in order to alter the POU and include these high-impact uses, the WDNR would have to (1) apply to NPS for a formal amendment to the POU; (2) provide NPS and the public with the required environmental impact information and analyses; and (3) secure

⁸ Counsel for Petitioner has a copy of this draft EIS in its files; however, the draft EIS has not been included as an exhibit due to its length. If the Court would like a copy, we are happy to provide one.

the approval of NPS before moving forward. GSA would also need to be involved in any such decision. Neither the WDNR nor the NRB has taken any of these actions.

64. Although the NPS purported to treat the Plan and FEIS as an amendment to the POU, the NPS did not have the authority to approve the inclusion of high-impact uses at the property because it received the property from GSA under the assumption that the property would only be used for low-impact recreational uses. In any event, NPS could not consider or approve an amendment to the POU prior to conducting a rigorous analysis of environmental impacts in compliance with NEPA, which was not done here.

65. The WDNR's and NRB's inclusion of high-impact uses in the Plan is arbitrary, capricious, an abuse of discretion, and otherwise unlawful.

66. The WDNR and NRB failed to abide by their master planning rules and state law regarding master planning for state properties, like the Area. *See* Wis. Admin. Code NR § 44.04(2).

67. The WDNR's and NRB's inclusion of high-impact uses in the Plan is arbitrary and capricious and fails to comply with Wis. Admin. Code NR § 44.06(8)(b) because those uses are incompatible with the site's ecological capability.

68. The WDNR's and NRB's failure to classify all, or at least most, of the Area as a Habitat Management Area and/or Native Community Management Area, rather than a Recreation Management Area and Special Management Area in the Plan pursuant to Wis. Admin. Code NR § 44.06 was arbitrary, capricious, an abuse of discretion and otherwise unlawful.

69. The WDNR's and NRB's approval of the Plan and FEIS despite the WDNR's failure to consult with the Nonmotorized Recreation and Transportation Trails Council while drafting the Plan and FEIS was unlawful. *See* Wis. Stat. § 23.177.

70. The WDNR's and NRB's designation of the Area as a Type 3 and Type 4 property in the Plan was arbitrary, capricious, an abuse of discretion and otherwise unlawful pursuant to Wis. Stat. § 23.091(3), Wis. Admin. Code NR §§ 44.06 and 44.07, and the POU.

71. The draft EIS and FEIS are unlawful and woefully deficient under Wis. Stat. § 1.11 and Wis. Admin. Code NR Ch. 150. Among other things, the draft and final EIS failed to adequately consider environmental justice and socioeconomic impacts or impacts to rare, endangered and protected species. The FEIS was also inappropriately limited to only examining fifteen years of Plan implementation. Moreover, numerous times throughout the FEIS, the NRB simply states that it is not aware of any studies that address certain impacts, and then moves on without further analysis (*see, e.g.*, Exhibit 1 at 161). This is not a sufficient "hard look" under NEPA or WEPA.

72. The WDNR did not follow the proper procedures when issuing the draft and the final EIS. For example, the WDNR did not adequately summarize changes between the draft EIS and FEIS and did not adequately respond to comments.

73. In violation of state law, the WDNR and NRB failed to adequately analyze the environmental impacts of high-impact uses in the Area; the adverse environmental effects which cannot be avoided if the Plan is implemented (including, among other things, air pollution, fire and noise impacts); reasonable alternatives; or the relationship between local short-term uses of the Area and the maintenance and enhancement of long-term productive uses. *See* Wis. Stat. § 1.11(2)(c)(1-4).

74. In violation of state law, the WDNR and NRB failed to consult with agencies with jurisdiction or special expertise with respect to environmental impacts of the proposed high-impact uses of the Area. *See* Wis. Stat. § 1.11(2)(d).

75. In violation of state law, the Plan and FEIS inadequately analyze reasonable alternatives, including but not limited to low-impact uses described in the original POU and other more complete uses of the property. *See* Wis. Stat. § 1.11(2)(e).

76. Because the procedures in Wis. Stat. § 1.11 have not been complied with, the WDNR and NRB do not have the authority pursuant to Wis. Stat. § 23.091(2) to approve a master plan that designates the Area as a recreation area. To the extent the Plan and FEIS attempt to do so, that effort is unlawful.

77. In violation of WEPA regulations, the Plan and FEIS fail to adequately provide a list of state, federal, tribal, and local approvals required for the proposed high-impact uses. *See* Wis. Admin. Code NR § 150.30(2)(c).

78. In violation of WEPA regulations, the Plan and FEIS fail to provide a list of reasonable alternatives to the proposed high-impact uses, fail to describe potential preventative and mitigating measures, and fail to explain why a management alternative that incorporated only the low-impact uses approved in the POU was not analyzed. *See* Wis. Admin. Code NR § 150.30(2)(e).

79. In violation of WEPA regulations, the WDNR and NRB failed to evaluate the consistency of the Plan and FEIS with plans or policies of the National Park Service, the Ho-Chunk Nation, and other federal, state, local, or tribal governments. *See* Wis. Admin. Code NR § 150.30(2)(g)(3).

80. In violation of WEPA regulations, the WDNR and NRB failed to include the draft EIS in the Plan and FEIS. The NRB also failed to adequately explain how it revised the draft EIS or its plans for the Area in response to public comments and concerns. *See* Wis. Admin. Code NR § 150.30(4)(b).

81. In violation of Wis. Admin. Code NR § 1.60(2), the WDNR and NRB failed to adequately base their management decisions on local and regional perspectives.

82. In violation of Wis. Admin. Code NR § 1.60(4)(a), the high impact uses in the Plan and FEIS are not compatible with the land's ability to support and sustain the intended management, development or recreational use.

83. In violation of Wis. Admin. Code NR § 1.60(4)(b), the WDNR and NRB failed in their planning efforts to adequately consider the effects of the proposed high-impact uses on adjacent management areas, such as Devil's Lake State Park, and did not issue their Plan and FEIS in a manner that ensures such impacts will be avoided wherever practicable.

RELIEF REQUESTED

WHEREFORE, Petitioner requests judgment in its favor as follows:

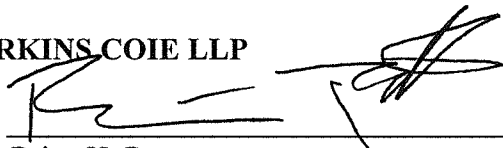
1. Setting aside the Plan and FEIS as unlawful;
2. Declaring that the WDNR and/or NRB are required to undertake the necessary environmental review of the Plan pursuant to NEPA and WEPA;
3. Declaring that the WDNR and/or NRB are required to amend the Plan to omit high-impact uses in order to be consistent with the original POU and the original purposes for which the property was conveyed;

4. Declaring that the WDNR and/or NRB are required to reissue the Plan to designate all or at least more of the Area as a Habitat Management Area and/or Native Community Management Area;
5. Declaring that the WDNR and/or NRB are required to provide lawful public input opportunities on the Plan, as well as on the draft and final EIS, and to respond to any and all comments fully, but that WDNR and NRB failed to do so;
6. Declaring that the WDNR and/or NRB are required to amend the Plan to only allow for Type 2 uses on the property pursuant to Wis. Admin. Code NR § 44.07;
7. Ordering the WDNR and NRB to re-conduct the master planning process for the Area to follow all of the required procedures in Wis. Admin. Code NR Ch. 44 and NR § 1.60;
8. Remanding the Plan and the FEIS to the WDNR and NRB and directing the WDNR and NRB to amend the Plan, conduct further analysis, and perform additional consultation as necessary;
9. Ordering such interlocutory or final relief as is necessary to preserve the interests of Petitioner and other members of the public; and
10. Other relief as the court may deem just and equitable.

DATED: December 20, 2016

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