

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

**IN THE MATTER OF THE SAUK PRAIRIE STATE RECREATION AREA
DRAFT MASTER PLAN AND FINAL ENVIRONMENTAL IMPACT STATEMENT
RELEASED ON NOVEMBER 8, 2016**

**PETITION FOR CONTESTED CASE HEARING
PURSUANT TO WIS. STAT. § 227.42**

To the Wisconsin Department of Natural Resources:

Office of the Secretary
P.O. Box 7921
101 S. Webster Street, 5th Floor
Madison, Wisconsin, 53707-7921

The Sauk Prairie Conservation Alliance (the “Alliance” or “Petitioner”), by its attorneys Perkins Coie LLP, hereby requests that a hearing be held as a contested case under Wis. Stat. § 227.42 and pursuant to Wis. Admin. Code NR §§ 2.03, 2.05, and 2.085 regarding the Sauk Prairie State Recreation Area Draft Master Plan and Final Environmental Impact Statement (the “Plan” and “FEIS”) that was issued by the Wisconsin Department of Natural Resources (the “WDNR”) on November 8, 2016, and that the WDNR will present to the Natural Resources Board on December 14, 2016. A copy of the Plan and FEIS are included as Attachment 1.

**I. AGENCY ACTION OR INACTION WHICH IS THE BASIS FOR THE
REQUEST FOR A HEARING.**

The WDNR’s Plan and FEIS are patently unlawful. The FEIS portion of the document is—to put it mildly—an environmental impact statement in name only. It doesn’t sufficiently identify or evaluate alternatives, it fails to 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. As the WDNR is 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 (not including appendices). This “FEIS” pales in comparison.

Petitioner challenges the WDNR’s issuance of the Plan and FEIS because the Plan unlawfully includes several high-impact uses, including a 72-acre Class II Dog Training Area, access to a rocketry site ten days per year, access to the Wisconsin Army National Guard for helicopter training exercises, dual-sport motorcycle access to trails in the Sauk Prairie Recreation Area (the “Area”), and various as-yet-unspecific high-impact special events.¹ These high-impact uses will, among other things, harm important native plant and animal species, create a nuisance to neighbors, detrimentally impact other owners of the former Badger Army Ammunition Plant property, and create conflicts for users of the Area. In fact, on page 161 (and elsewhere) in the Plan and FEIS, the WDNR admits that these high-impact uses could have “negative cumulative impacts on wildlife and visitors seeking quite experiences.” Rather than study these potential impacts, however, the WDNR merely notes that it “is not aware of any research” related to such impacts. This is not the type of rigorous environmental analysis that is required by the Wisconsin Environmental Policy Act (“WEPA”) and the National Environmental Policy Act (“NEPA”).

In any event, the WDNR does not have the legal authority to even allow these high-impact uses in the Area. The National Park Service (the “NPS”) deeded the Area to the WDNR through the Federal Lands to Parks (“FLP”) program, which imposes use restrictions on the property. The high-impact uses identified above are outside the scope of the purposes for which the NPS conveyed the property and are contrary to the Area’s deed restrictions. NPS conveyed

¹ The Plan and FEIS state that high-impact uses will be allowed for certain special events on a case-by-case basis. For example, on page 102 of the Plan and FEIS, the WDNR notes that paintball will be allowed as a special event. 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.

the Area subject to the WDNR's submitted Program of Utilization, which included only low-impact uses. As the WDNR has been instructed numerous times (including by the NPS and the Wisconsin Legislative Council), in order to potentially include these high-impact uses, the WDNR must formally apply to NPS for an amendment to its Program of Utilization, provide NPS and the public with much more environmental impact information and analyses, and secure NPS' approval before moving forward.

II. SUBSTANTIAL INTEREST OF THE PETITIONER

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. Petitioner is a small non-profit corporation that promotes education and cooperative conservation on the former Badger Army Ammunition Plant lands and in the surrounding Sauk Prairie area. 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 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.

The Petitioner has led countless school groups on to the property to teach about prairie restoration practices and to give local students lessons on environmental stewardship. For fifteen years, Petitioner has also coordinated volunteer involvement in native prairie restoration at the Hillside Prairie at Badger, now located on state-managed property. Furthermore, the

organization has hosted dozens of public education programs and forums about and at the Badger lands, including tours inside the property boundaries.

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. For example, Curt Meine (Sauk City), Bill & Donna Stehling (Sauk City), Mari Larson (Sauk City), Mimi Wuest (Reedsburg), Charlie Luthin (Lodi), and Frank Piraino (Madison) are all members that live near and/or recreate in the area on a regular basis. Petitioner's and its members' substantial interests are injured in fact, threatened with injury, and are adversely and irreparably affected by the WDNR's issuance of the Plan and FEIS because federal and Wisconsin law require the WDNR to develop the Area for the low-impact uses described in the Program of Utilization that was approved by NPS, to follow the procedural requirements of NEPA and WEPA, and to meaningfully consider and respond to public comment.

III. BASIS FOR THE FINDING THAT THERE IS NO EVIDENCE OF LEGISLATIVE INTENT THAT THE INTEREST IS NOT TO BE PROTECTED.

There is no evidence of legislative intent that Petitioner's or its members' substantial interests are not to be protected. Where the Legislature has intended that a hearing not be granted under Wis. Stat. § 227.42, it has so specified. *See* Wis. Stat. §§ 227.42(3)–(6).

IV. THE INJURY TO THE PETITIONER IS DIFFERENT IN KIND OR DEGREE FROM INJURY TO THE GENERAL PUBLIC.

The injury to Petitioner is different in kind and degree from that of the general public for the reasons outlined above.

V. DISPUTES OF MATERIAL FACT AND REASONS WHY A HEARING IS WARRANTED.

A. Petitioner alleges that a full evidentiary contested case hearing is necessary to present testimony, exhibits, and argument to resolve the factual and legal issues outlined herein.

B. Further, disputes of material fact exist, including the environmental effects of the high-impact uses proposed by the WDNR.

C. Petitioner alleges that the Plan and FEIS are unlawful for at least the following reasons:

(1) The WDNR does not have the legal authority from the NPS to include the high-impact uses referenced above in the Plan.

(2) The WDNR's inclusion of high-impact uses in the Plan was arbitrary, capricious, an abuse of discretion and otherwise unlawful, especially given that this decision allows NPS to take the property back from the WDNR for failure to comply with the approved Program of Utilization.

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

(4) The WDNR's public input process in adopting the master plan and refusing to consider public comments or adequately consult with agencies was contrary to law, and otherwise arbitrary, capricious, and an abuse of discretion.

(5) The WDNR'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.

(6) The WDNR's failure to classify all, or at least more, of the Area as a Habitat Management Area and/or Native Community Management Area rather than a Recreation

Management Area and Special Management Area pursuant to Wis. Admin. Code NR § 44.06 was arbitrary, capricious, an abuse of discretion and otherwise unlawful.

(7) 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.

(8) The WDNR's designation of the Area as a Type 3 and Type 4 property 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 Program of Utilization.

(9) The WDNR's draft EIS and FEIS were unlawful and woefully deficient under Wis. Stat. § 1.11 and Wis. Admin. Code NR § 150. For example, the draft EIS included only about sixteen pages of "environmental analysis" and 10 pages of analysis of alternatives. The FEIS failed to adequately consider environmental justice and socioeconomic impacts or impacts to rare, endangered and protected species. The FEIS was also inappropriately limited to examining only fifteen years of implementation. Moreover, numerous times throughout the FEIS, the WDNR simply states that it is not aware of any studies that address certain impacts, and then moves on without further analysis (*see, e.g.*, page 161). This is not a sufficient "hard look" under NEPA or WEPA.

(10) 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.

(11) In violation of state law, the WDNR failed to adequately report 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).

(12) In violation of state law, the WDNR 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).

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

(14) Because the procedures in Wis. Stat. § 1.11 have not been complied with, the WDNR does not have the authority pursuant to Wis. Stat. § 23.091(2) to designate the property as a recreation area, and to the extent the Plan and FEIS attempt to do so, they are unlawful.

(15) 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).

(16) 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 Program of Utilization was not analyzed. *See* Wis. Admin. Code NR § 150.30(2)(e).

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

(18) In violation of WEPA regulations, the WDNR failed to include the draft EIS in the Plan and FEIS and fails 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).

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

(20) 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.

(21) In violation of Wis. Admin. Code NR § 1.60(4)(b), the WDNR failed in its 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 its Plan and FEIS in a manner that ensures such impacts will be avoided wherever practicable.

VI. PETITIONER'S RIGHT TO A HEARING.

Petitioner is specifically provided a right to a contested case hearing by Wis. Stat. § 227.42.

VII. RELIEF DESIRED.

Petitioner requests the following relief:

(1) that the WDNR be required to amend the Plan and FEIS to omit high-impact uses and to otherwise be consistent with the NPS-approved Program of Utilization;

(2) that the WDNR be required to undertake the necessary environmental review of the draft and final Plan pursuant to NEPA and WEPA;

(3) that the WDNR be ordered to re-conduct the Plan process to follow all of the required procedures in Wis. Admin. Code NR ch. 44 and NR § 1.60;

(4) that the WDNR be ordered to amend the Plan to only allow for Type 2 uses on the property pursuant to Wis. Admin. Code NR § 44.07;

(5) that the WDNR be ordered 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;

(6) that the WDNR be required to provide lawful public input opportunities on the Plan, draft and final EIS and respond to any and all comments fully;

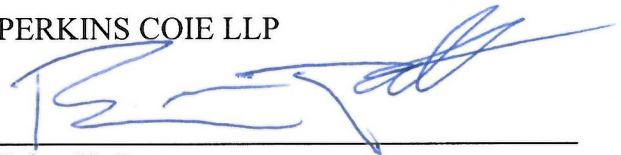
(7) that the WDNR be required to consult with the Nonmotorized Recreation and Transportation Trails Council before issuing the Plan and FEIS; and

(8) any and all other relief available pursuant to this Petition.

WHEREFORE, the Alliance petitions for a contested case hearing regarding the Plan and FEIS, pursuant to Wis. Stat. § 227.42 and Wis. Admin. Code NR §§ 2.03, 2.05, and 2.085.

Dated this 8th day of December, 2016.

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