

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

SAUK PRAIRIE CONSERVATION ALLIANCE,

Plaintiff,

Civil Action No. _____

v.

U.S. DEPARTMENT OF THE INTERIOR,
SALLY JEWELL *in her official capacity as Secretary*
of the United States Department of Interior,
NATIONAL PARK SERVICE,
MICHAEL REYNOLDS *in his official capacity as*
the Director of the National Park Service,
U.S. GENERAL SERVICES ADMINISTRATION,
AND DENISE TURNER ROTH *in her official*
capacity as Administrator of the General Services
Administration,

Defendants.

COMPLAINT

1. This suit challenges the actions - and inactions - of the U.S. Department of Interior's National Park Service ("NPS") and the U.S. General Services Administration ("GSA") in expressly and/or implicitly allowing the Wisconsin Department of Natural Resources ("WDNR") to permit high-impact recreational uses at the former Badger Army Ammunition Plant lands, now known as the Sauk Prairie State Recreation Area ("Area"), in Sauk County, Wisconsin. The Area is a new, approximately 3,400 acre public recreational property located adjacent to the Wisconsin River and Devil's Lake State Park. It is a unique natural area and home to dozens of threatened and protected bird, plant and wildlife species.

2. Plaintiff challenges the NPS' and GSA's approval and/or failure to object to the WDNR's Master Plan and Final Environmental Impact Statement (the "Plan" and "FEIS") for

the Area, which unlawfully includes several high-impact recreational uses, including dual-sport motorcycle access to trails, access to the Wisconsin Army National Guard for helicopter training exercises, a 72-acre Class II Dog Training Area (which is training and showing dogs with the discharge of guns that shoot blanks), and various as-yet-unspecific high-impact special events (including, at a minimum, paintball).

3. Between 1997 (when the U.S. Army decided to decommission the plant) and 2011 (when Governor Scott Walker's administration took office), numerous politicians on both sides of the aisle in various levels of government worked cooperatively with countless citizens of Sauk County to facilitate the transfer of the former Badger Army Ammunition Plant ("Badger") lands to the Ho-Chunk Nation, U.S.D.A. Dairy Forage Research Center and the WDNR. Republican Congressman Scott Klug, Republican Governor Tommy Thompson, Democratic Congresswoman Tammy Baldwin, Democratic President Bill Clinton's General Services Administration ("GSA"), Republican President George W. Bush's GSA and National Park Service ("NPS"), the Sauk County Board, the Ho-Chunk Nation and countless other local municipalities, entities and citizens - of all political backgrounds - agreed that the property's best use was conservation, education, and low-impact recreation, such as hiking, biking, fishing and hunting.

4. Starting in early 2012, the newly instated WDNR leadership under Governor Scott Walker abandoned this long-term consensus agreement for how the Badger lands should be used. Defying its obligation to use the property for low-impact recreation, the WDNR began to prepare plans for a rifle range and an all-terrain vehicle ("ATV") track. After a massive public outcry, WDNR decided to shelve the gun range (at least temporarily) and ATV track, but instead

proposed off-road (dual-sport) motorcycles, rocketry, helicopter training, and a Class II dog training and trialing area.

5. Over the continued objection of the vast majority of those involved in the process and hundreds of citizens from the area (including a neighboring Badger landowner, the Ho-Chunk Nation), on December 14, 2016, the Wisconsin Natural Resources Board (“NRB”) approved the WDNR’s Master Plan and FEIS with these high-impact uses still included.

6. In making this decision, the WDNR and NRB ignored decades of regional and local planning efforts and violated numerous federal property transfer laws and requirements under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 et seq., and the Wisconsin Environmental Policy Act (“WEPA”), Wis. Stat. § 1.11.

7. These high-impact uses will have significant and immediate adverse environmental effects, will create safety hazards and will be a nuisance for low-impact recreational users and neighboring landowners. Further, the high-impact uses are inconsistent with the ecological management of the Area, the purposes for which the GSA conveyed the property to the NPS, and the purposes for which the NPS conveyed the property to the WDNR.

8. The NPS and GSA failed to fulfill their obligations under the APA, NEPA, the federal procurement laws, and regulations and guidance implementing these statutes. The failure under NEPA is particularly egregious. The NPS and GSA failed to even perform the required, rigorous environmental analysis examining the environmental impacts of these high-impact uses. Instead, the NPS and GSA delegated their NEPA responsibilities to the WDNR, and despite a record of correspondence from the NPS citing the WDNR’s failure to provide sufficient presentation, analysis and discussion of the expected or potential impacts of these recreational

uses, the NPS stood idly by and allowed the WDNR to implement its incomplete and insufficient Plan and FEIS.

9. By this action, Plaintiff seeks an order requiring the Defendants to take action to stop the WDNR's implementation of the high-impact uses and to comply with the specific, mandatory provisions of NEPA, GSA's federal procurement laws, and the Administrative Procedure Act. To that end, Plaintiff requests that this Court order the Defendants to, among other things: (1) withhold or withdraw approval of the Plan and require that the WDNR formally apply to the NPS and/or GSA to amend the Program of Utilization ("POU"), which is the document governing the WDNR's use of the property; (2) provide adequate public notice and comment on such application; and (3) prepare an adequate Environmental Impact Statement ("EIS") evaluating the impacts of allowing high-impact recreational uses on the property, analyzing the adverse environmental effects which cannot be avoided, exploring and evaluating reasonable alternatives, and analyzing the short-term adverse environmental effects in relation to long-term productivity, as required by NEPA.

JURISDICTION AND VENUE

10. This lawsuit alleges violations of the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4331 *et seq*; the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701 *et seq*.; and the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 550.

11. Plaintiff seeks judicial review pursuant to Chapter 7 of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706.

12. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1361.

13. This court may grant declaratory relief pursuant to 28 U.S.C. § 2201, and issue injunctive relief pursuant to 28 U.S.C. § 2202, 5 U.S.C. § 705, 5 U.S.C. § 706(1), and 5 U.S.C. § 706(2)(A) and (D).

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

15. Plaintiff Sauk Prairie Conservation Alliance (the “Alliance”) is a small non-profit corporation located in Sauk County (P.O. Box 403, Baraboo, WI 53913), that promotes education and cooperative conservation on the former Badger Army Ammunition Plant lands and in the surrounding Sauk Prairie area. The Alliance 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 Alliance has demonstrated a long-term commitment, significant engagement, and a deep understanding of the issues related to the Area.

16. The Alliance’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. In addition, Plaintiff has led countless school groups on the property to teach about prairie restoration practices and to give local students lessons on environmental stewardship. For fifteen years, Plaintiff has coordinated volunteer involvement in native prairie restoration at the Hillside Prairie at the Area. The Alliance has also hosted dozens of public education programs and forums about and at the Badger lands, including tours inside the property boundaries.

17. Plaintiff is substantially aggrieved by the Plan’s inclusion of high-impact uses and the inadequate environmental analysis in the FEIS. Plaintiff 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), Mimi Wuest (Reedsburg), Charlie Luthin (Lodi), and

Frank Piraino (Madison), Ruthann Corrao (Prairie du Sac), and Paul Anthony (Sauk City) are all members that live near and/or recreate in the area on a regular basis. The interests of Plaintiff and its members will be irreparably harmed if the GSA and NPS continue to violate NEPA and the other federal laws as described in this Complaint.

18. Defendant United States Department of the Interior is an agency of the United States located at 1849 C Street NW, Washington, D.C. 20240, and is responsible for the proper and lawful management of the federal public lands committed to its control, including the lands administered by the National Park Service.

19. Defendant National Park Service, located at 1849 C Street NW, Washington, D.C. 20240, is an agency within the United States Department of the Interior with responsibility for the proper and lawful management of the national park system. The Park Service is also responsible for the Federal Lands to Parks Program, which helps communities create new parks and recreation areas by transferring surplus Federal land to state and local governments, including the Wisconsin Department of Natural Resources.

20. Defendant Sally Jewell is sued in her official capacity as Secretary of the United States Department of the Interior, which is located at 1849 C Street NW, Washington, D.C. 20240. In that capacity, she is responsible for the activities of the Department of the Interior and its component agencies, including the National Park Service. Her official residence is located at 1849 C Street, N.W., Washington DC 20240.

21. Defendant Michael Reynolds is sued in his official capacity as the Director of the National Park Service, which is located at 1849 C Street NW, Washington, D.C. 20240. In that capacity he administers the National Park Service. His official residence is located at 1849 C Street NW, Washington, DC 20240.

22. Defendant General Services Administration, which is located at 1800 F Street NW, Washington, D.C. 20405, is an independent agency of the United States and helps agencies, like the NPS, facilitate land transfers of surplus federal property.

23. Defendant Denise Turner Roth is sued in her official capacity as Administrator of the General Services Administration, which is located at 1800 F Street NW, Washington, D.C. 20405. In that capacity, she is responsible for the organization and management of the General Services Administration and the disposal of federal surplus property, including the Badger Army Ammunition Plant. Her official residence is located at 1800 F St. NW, Washington, DC 20405-0001.

BACKGROUND

24. The Badger Army Ammunition Plant (“BAAP”) occupied 7,300 acres in the largely rural countryside of Sauk County, Wisconsin. Exhibit 1 at viii-ix. The BAAP, known by many as simply “Badger,” provided ammunition propellant throughout the duration of World War II, and was again operative during the Korean and Vietnam Wars. *Id.* at ix-x. In 1997, the U.S. Department of Defense decommissioned Badger, finding that the facility was no longer needed to meet the nation’s defense needs. Exhibit 2 at 3. Subsequent efforts to define a future for the Badger property proved challenging due to the site’s unusually rich natural and cultural history, the wide range of potential reuse options, and the complexity of local, state, national, and tribal interests involved. *Id.*

25. Local public involvement in the decision-making about the future of Badger began in 1998 when Wisconsin Congressman Scott Klug formed a Citizen’s Task Force. Exhibit 3 at E-9.

26. In June of 1999, Wisconsin 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 Badger. *Id.* “Twenty-one committee members were appointed to the Badger Reuse Committee by the Sauk County Board of Supervisors. *Id.* These members represented the interests of Federal, State, local, and tribal governments and those concerned with the history, culture, education, environment, conservation, and clean up of Badger AAP.” *Id.*

27. The GSA was the federal agency that was originally tasked with the disposition of Badger. 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.” *Id.*

28. The BRC began working in July 2000 and met over the next nine months to develop its report and recommendations. *Id.* The Badger Reuse Committee’s final reuse plan was completed in March 2001, and was subsequently approved by the Sauk County Board of Supervisors. *See Exhibit 2.*

29. According to the reuse plan, the intended management purposes and public use of Badger 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.*

30. Around the same time that the BRC was finalizing the reuse plan in 2001, former Wisconsin 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 4. 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.

31. 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.

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

33. 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 events, dog training with guns or helicopter training. *See Exhibit 2.* In fact, Criterion 5.3 within the plan specifically states that “[r]ecreational activities should focus on

Badger's natural and cultural features and values. Activities should be low-impact in nature and should be compatible with other uses and overall management goals. Efforts shall be made to accommodate appropriate recreational activities, but these activities shall have no significant detrimental impacts on the cultural and natural features of the property." *Id.* at 26.

34. In March of 2003, GSA completed an environmental impact statement ("2003 EIS") analyzing the potential environmental impacts associated with the federal government's disposal of the property pursuant to the GSA's obligations under NEPA. Exhibit 3 ("This Final Environmental Impact Statement (Final EIS) has been prepared pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. § 4321 et seq.)." The 2003 EIS considered numerous uses of the entire 7,354 acre Badger property, including commercial and industrial uses. *Id.* at E-6. In the end, the 2003 EIS and the GSA selected Scenario A as its preferred alternative, which is titled "Low Intensity Use" and "draws upon the values, criteria, and plan elements established by the Badger Reuse Committee." *Id.* at E-13.

35. The 2003 EIS did not consider using any of the Badger property for high-impact recreational uses. *See id.*, § 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 . . .").

36. After completing the 2003 EIS and after the U.S. Army completed its clean-up of

the property, the GSA transferred portions of the property¹ to the NPS, who then, through its Federal Lands to Parks (“FLP”) program, deeded about 3,400 acres of the property to the WDNR in a series of transactions beginning in 2011. *See* Exhibit 1 at 1. Today, the WDNR refers to the land as the Sauk Prairie State Recreation Area.

37. Under 40 U.S.C. § 550(b) and (e), the National Park Service’s FLP program conveys surplus federal lands to communities for public park and recreation purposes. 40 U.S.C. § 550(e)(1) (“The [General Services] Administrator . . . may assign to the Secretary of the Interior for disposal surplus real property . . . that the Secretary recommends as needed for use as a public park or recreation area.”).

38. The FLP program also imposes use restrictions on the 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 5 at 16; Exhibit 6 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]”).

39. Lands deeded through the FLP program must be used solely for public parks and recreation and must be used according to the 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. *See* Exhibit 7 at 4 (“The [WDNR] shall forever use the property exclusively for public park and recreational use in accordance with its application for [the]

¹ Pursuant to the BRC’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.

property, particularly the Program of Utilization contained in Part B of the application, and approved amendments thereto . . .”); *see also* 40 U.S.C. § 550(b)(1) (“[T]he [Secretary of the Interior] shall determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in an instrument by which a transfer under this section is made”).

40. 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 [the WDNR’s] application” Exhibit 5 at 4; Exhibit 6 at 3.

41. 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/historical interpretation.” Exhibit 7 at 9. Further, the POU explains that, “[m]any groups with varying interests in [the Area] share a common goal with the WDNR to convert [the Area] to a recreational property with low impact recreation” *Id.* at 10.

42. 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.” *Id.* at 4 (“The [POU] contained in Part B of the application may be amended only for the continued use of the property for public park or recreational purposes at the request of either the [WDNR] or the [NPS] with the written concurrence of the other party”).

43. The NPS sent letters to the GSA on August 10, 2004 and February 15, 2005 approving the WDNR’s application, requesting assignment of the property for conveyance, and

reiterating that “[t]he DNR will develop and use the property as described in the Program of Utilization” Exhibit 8 at 1; Exhibit 9 at 1. Attached to these letters, the NPS included a Report and Recommendation which recommended transfer of the property to the Department “for public park and recreational use pursuant to the provisions of 40 U.S.C. § 550(e)” Exhibit 8 at 4-5; Exhibit 9 at 4-6. The report also recognized the proposed low-impact uses for the property, stating that “[t]he DNR will convert the site for use primarily as conservation and recreation uses. These uses will include hiking, picnicking, primitive camping, Lake Wisconsin access viewing, prairie, savanna and grassland restoration, environmental education and cultural/historical interpretation. Other recreational uses will include interpretation of the Badger Army Ammunition Plant’s history.” *Id.* at 1.

44. The report also states that “[t]he DNR will develop a master plan for the property that will define appropriate land uses and identify development projects necessary to support the approved uses. This will include evaluating social, environmental and economic impacts of the intended uses.” *Id.*

45. In December 2011, in preparation for its master planning process, the WDNR completed a Rapid Ecological Assessment for the Sauk Prairie Recreation Area “1) identifying and evaluating ecologically important areas, 2) documenting rare species occurrences, and 3) documenting occurrences of high quality natural communities.” Exhibit 10 at 7. In noting “exceptional characteristics” of the Area, the assessment concluded that the Area supports numerous rare species. *Id.* at 6. “Thirty-three rare animals species are known from the SPRA, including four State Threatened and 29 Special Concern species. Seven rare plant species are known from the SPRA, including two State Endangered (one is also Federally Threatened) and five State Threatened species.” *Id.* at 6.

46. The assessment identified two ecologically important sites on the Area which “encompass the best examples of 1) rare and representative natural communities, 2) documented occurrences of rare species populations, and/or 3) opportunities for ecological restoration or connections.” *Id.* The WDNR concluded that “[t]hese sites warrant high protection and/or restoration consideration during the development of the property master plan.” *Id.*

47. Additionally, the assessment added that “[b]iologists and birders are concerned about population declines of many grassland bird species.” *Id.* “[G]rassland birds have declined more steeply than any other group of birds in North America and the Midwest,” however the Area “provides extensive surrogate grassland, shrubland, and savanna habitat for 97 confirmed or probable breeding bird species.” *Id.* “This is an impressive list for an area the size of the SPRA, especially the number and diversity of grassland and shrubland birds (21 species).” *Id.* The map in Figure 6 below identifies the two highest quality habitats for grassland birds in the Area, which are found in the southcentral and northcentral sections of the property. These areas, in particular, “should be contiguous and when combined with the restoration potential of the surrounding property and landscape would offer significant management opportunities for viable populations of grassland and shrubland birds.” *Id.* at 31. Overall, the assessment suggested a significant, *initial* commitment to habitat restoration, biodiversity conservation and management at the Area.

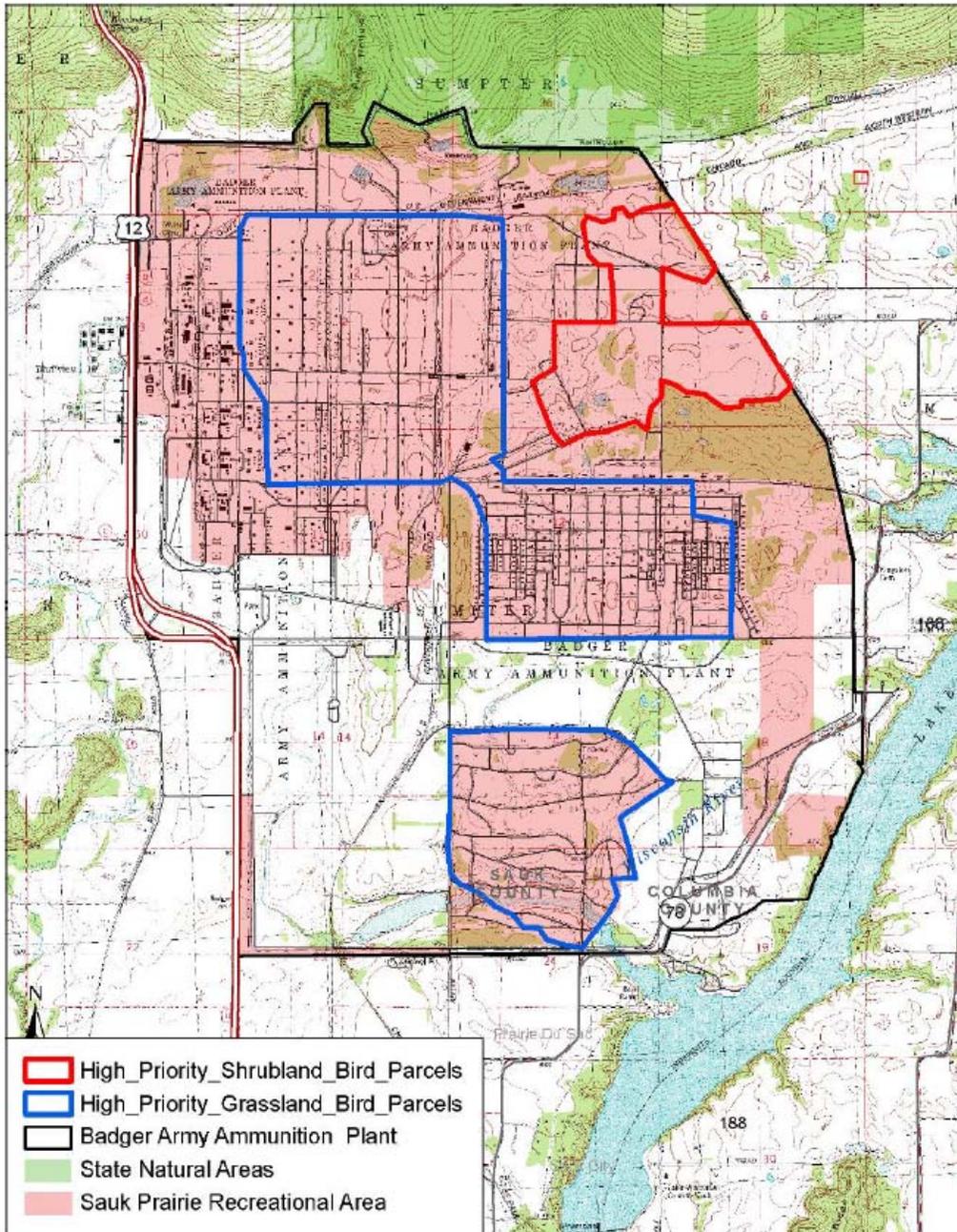
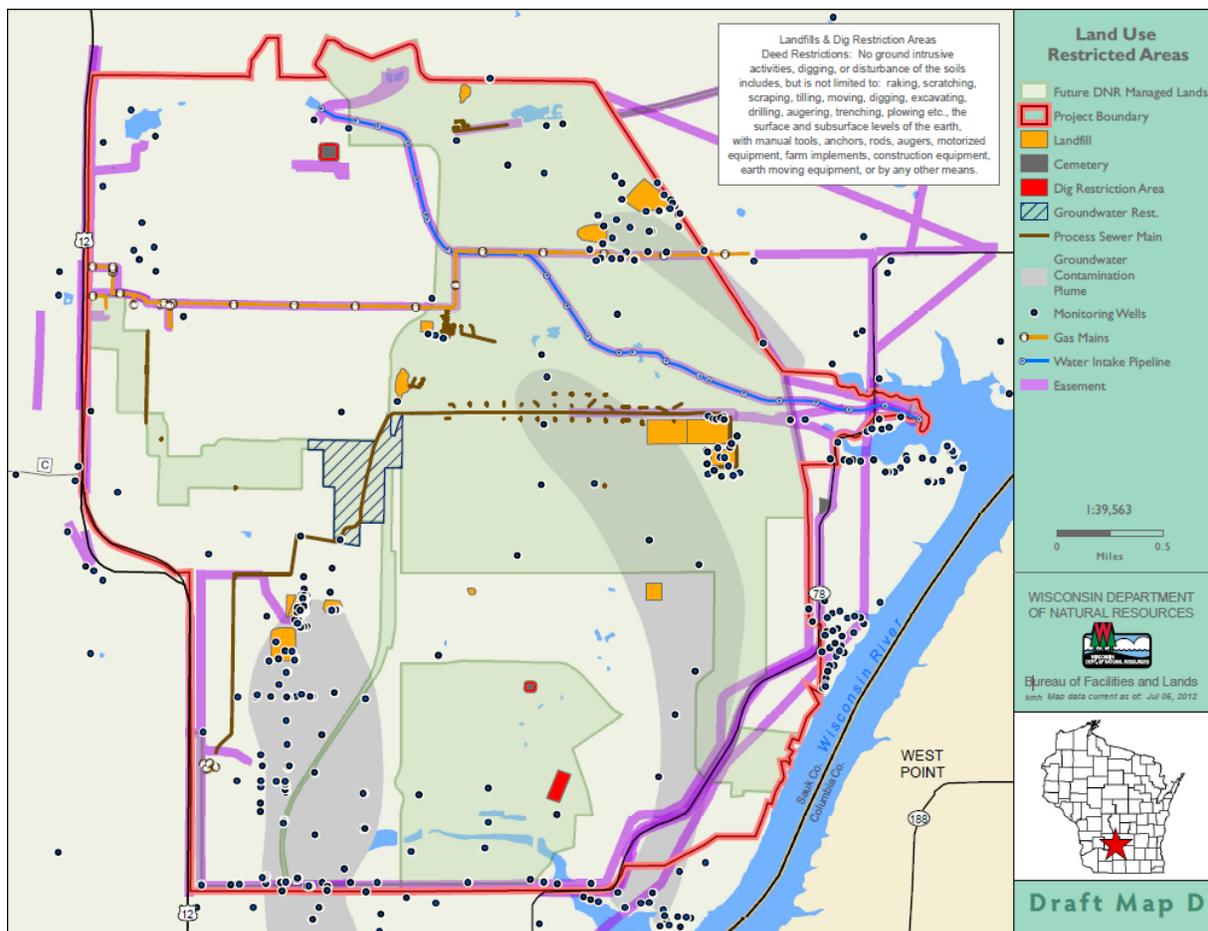


Figure 6. Distribution of Critical Species of open grassland and shrubland habitats at Sauk Prairie Recreation Area, Sauk County, Wisconsin.

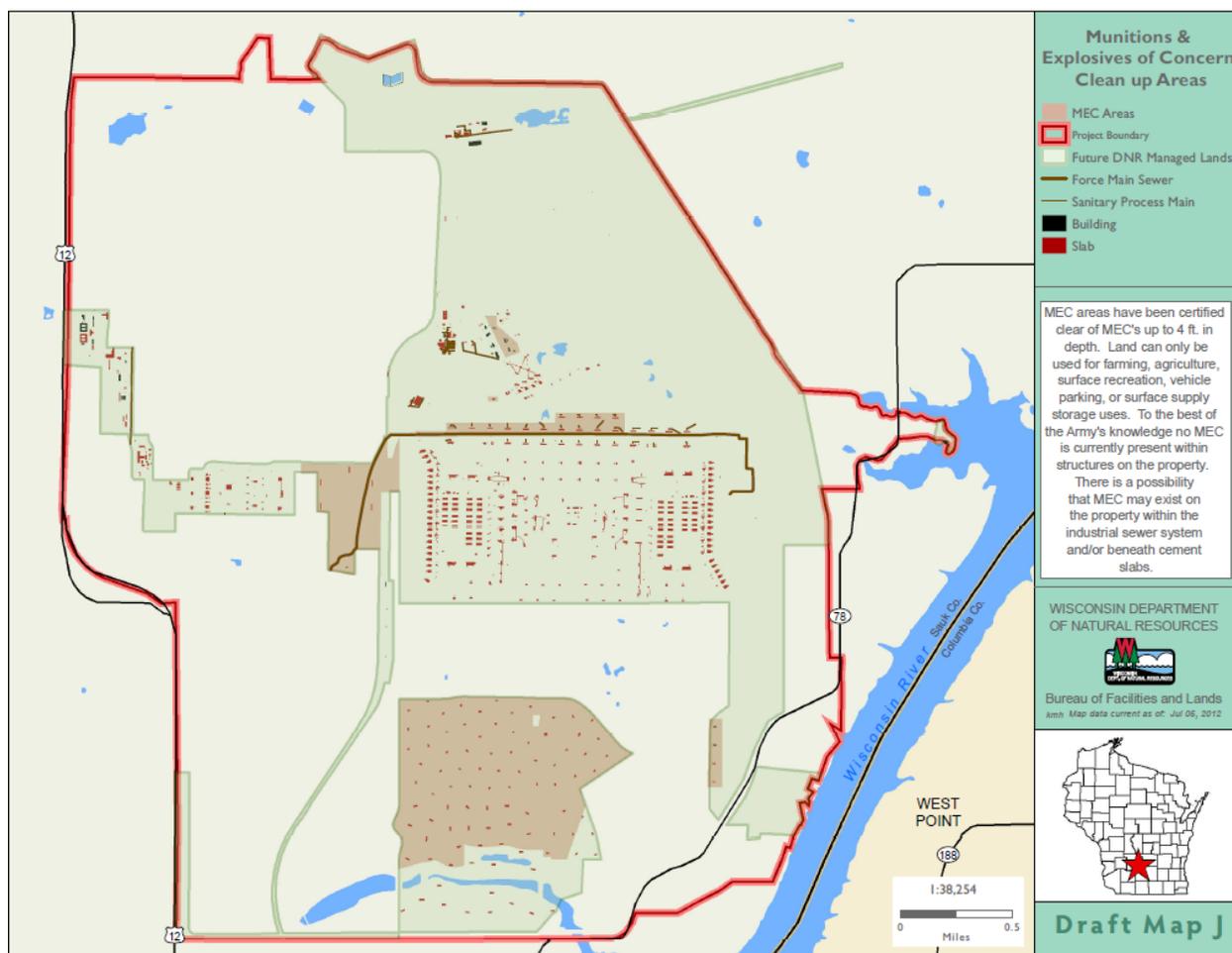
48. The WDNR then officially began its master planning process by releasing a Regional & Property Analysis of the Sauk Prairie Recreation Area in 2012 that, for the first time, considered “non-traditional outdoor recreation uses . . . such [] as rocketeering, shooting ranges,

geocaching, dog parks, paintball . . . and other recreation activities not typically found on Department lands.” Exhibit 11 at 50.

49. Although the WDNR memorialized its intent to allow high-impact recreational activities on the property, the Regional & Property Analysis also identified areas of concern within the Area. For example, Draft Map D, below, identified “Landfills and Dig Restriction Areas” in red, which have deed restrictions that exclude “ground intrusive activities, digging, or disturbance of the soils” such as “raking, scratching, scraping, tilling, moving, digging, excavating, drilling, augering, trenching, plowing, etc. the surface and subsurface levels of the earth, with manual tools, anchors, rods, augers, motorized equipment, farm implements, construction equipment, earth moving equipment, or by any other means.”



50. In addition, Draft Map J below identified “Munitions & Explosives Concern Clean up Areas” located on the property. Although “MEC areas have been certified clear of MEC’s up to 4 ft. in depth,” land use in this area is limited to “farming, agriculture, surface recreation, vehicle parking, or surface supply storage uses.” The Regional & Property Analysis, itself, noted that the “landfills, dig restriction areas, and Munitions and Explosives of Concern (MEC) as well as areas of cultural and historical importance [] limit the extent of disturbance, and therefore use, allowed.” Exhibit 11 at 50.



51. On July 2, 2012, Plaintiff provided the WDNR with a detailed comment letter regarding the Regional & Property Analysis and its inclusion of high-impact uses. Exhibit 12.

Plaintiff 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, as approved by the NPS, does not allow for high-impact uses on the property. Exhibit 13.

52. 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 Plaintiff's analysis that the property could only be used for low-impact recreational uses. *See* Exhibit 14.

53. 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 15. With respect to the Three Draft Conceptual Alternatives, the first two alternatives were essentially "no action" options, where neither proposed new development on the property. *Id.* at 2-3. However the third alternative, clearly the WDNR's preferred choice, lumped all recreational uses together including horseback riding, use of a shooting range, motorized use, hunting, fishing, and trapping. *Id.* at 3-4. Additionally, the WDNR publicly stated an intention to use large parts of the area for an all-terrain vehicle ("ATV") track.

54. On August 29, 2013, the Plaintiff 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 16. The Plaintiff also reminded the WDNR that such high-impact uses of the property would have significant impacts, and including them in the master plan would require completion of a full environmental impact statement. *Id.* at 5-6. This letter also identified various deficiencies in the public comment process to date. *Id.* at 7.

Plaintiff sent a carbon copy of this letter to Elyse LaForest, Program Manager for the NPS' Federal Lands to Parks Program. *Id.* at 8.

55. On August 11, 2015, the WDNR released its first draft master plan and environmental impact statement for the Area. Exhibit 17. This draft master plan removed some, but not all, of the proposed high-impact uses. The draft master plan still included 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 access to the WI Army National Guard for helicopter training exercises.

56. Again, on September 24, 2015, Plaintiff sent comments to the WDNR, with a carbon copy sent to the NPS, 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 18. Plaintiff also sent the WDNR a study which the Alliance had previously commissioned in response to a prior proposal to locate a shooting range in the Area. Exhibit 19. Although WDNR's 2015 and 2016 Plans no longer include proposals for a shooting range in the immediate future - the 2016 Master Plan and FEIS state an intention to continue evaluating the potential for a shooting range at the Area - the results are relevant to the Department's proposal for a Class II dog training. *See* Exhibit 1 at xi (“[t]he department will continue evaluating options to meet [the need for a shooting range] at one of its properties in the area, including . . . SPSRA”). The study found that the use of firearms in the Area would “have immediate adverse impacts on current breeding populations of vireos, meadowlarks, grosbeaks, warblers, and grassland sparrows, and will prohibit the re-establishment of former breeding populations of upland sandpipers.” Exhibit 19 at 2.

57. On January 21, 2016, the Alliance sent comments directly to the NPS regarding the WDNR's process for receiving the NPS' approval of the draft master plan and Plaintiff's objections to the plan's environmental impacts. Exhibit 20. The Alliance explained "that the WDNR should be required to follow a formal process to amend its [POU]" and prepare "[a] formal EIS . . . under [NEPA] before the NPS approves any plan that significantly changes the allowed uses for the Area." *Id.* at 1. Additionally, the Alliance concluded that even if the NPS approves some form of the WDNR's plan as an amendment to the POU, "the NPS must still conduct a review of the environmental impacts under the federal NEPA process before approving any plan that includes high-impact uses." *Id.* at 3-4.

58. 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. Exhibit 21. Of the several issues of concern, some examples included "the level of opposition to some of the forms of recreation proposed, specifically dual purpose motorcycles, rocketry, and to a lesser degree snowmobiles, and dog training," insufficient disclosure and evaluation of potential environmental impacts, lacking documentation supporting the basis for the WDNR's many analyses and conclusions, and the NPS' position that the National Guard's helicopter training "is not a recreational use and is not allowable under the requirements of the FLP program." *Id.* at 3, 5.

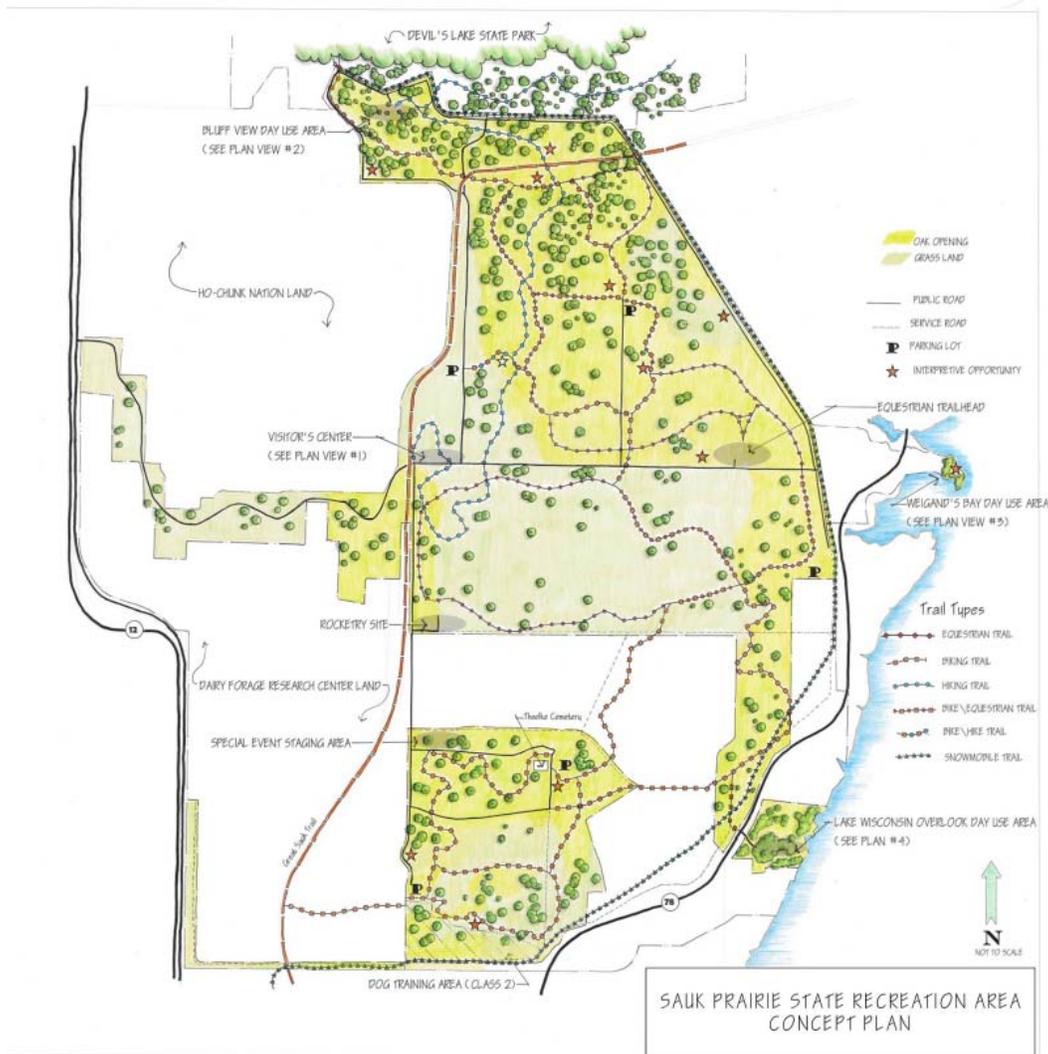
59. The WDNR responded to the NPS on June 8, 2016, effectively denying that the original POU included only low-impact uses and stating that "[t]he POU did not list the recreation opportunities that would be provided at the property because they were not known

when the DNR submitted its application.” Exhibit 22 at 1-2. Additionally, because “[t]he master plan does not deviate from the DNR’s application to receive the property through the Federal Lands to Parks program . . . there is not a need to amend or change the POU.” *Id.* at 2. The Department also referred to its inclusion of rocketry and dual-sport motorcycles in the Plan as “uncommon,” and reiterated the fact that “limited research has been conducted on the impacts of different recreation activities on habitats, species, and other property visitors.” *Id.* at 2-3

60. Ignoring these warnings from Plaintiff 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. *See* Exhibit 1. The Plan also failed to address any potential impacts from areas of concern previously identified in the Regional & Property Analysis, like the Munitions and Explosives of Concern and Land Use Restricted areas, and failed to reference the Alliance’s noise study demonstrating the significant impacts upon birds from the use of firearms.

61. In terms of location for the high-impact recreational uses, the WDNR placed the Special Event Staging Area squarely within the land previously identified as a site warranting “high protection and/or restoration consideration” and a prime habitat for declining grassland bird species. *Compare* Exhibit 10 at 6, 31, *with* Figure 1: Sauk Prairie State Recreation Concept Plan. The Plan also failed to identify exactly which trails and roads would be repurposed for dual-sport motorcycles. The NPS also identified this issue in its May 3, 2016 letter as an issue of concern. *See* Exhibit 21 at 5 (“while the plan includes dual purpose motorcycles [sic] use on repurposed biking and horse trails, no specific area at SPRA is designated for the motorcycle

use”). This is particularly concerning in light of the several trails that tread dangerously close to areas prohibiting ground intrusive activities with the potential to adversely impact soils. Compare Draft Map D, with Figure 1: Sauk Prairie State Recreation Area Concept Plan. There is also the potential for dual-sport motorcycle usage throughout Munitions & Explosives of Concern areas. Compare Draft Map J, with Figure 1: Sauk Prairie State Recreation Area Concept Plan.



62. By letter dated 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 despite the

WDNR's prior insistence that it did not even need an amendment. Exhibit 23. That same day, members of the Badger Reuse Committee submitted written comments to the WDNR, with a carbon copy sent to the NPS, 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 24 at 2.

63. On December 9, 2016, before the December 8, 2016 letter from the NPS had been made public by the WDNR, Plaintiff submitted comments to the NRB and the NPS 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. Exhibit 25.

64. On December 13, 2016, Plaintiff sent comments to the NPS as a reminder 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. Exhibit 26.

65. On December 14, 2016, Plaintiff testified at a public hearing before 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.

66. 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. Additionally, despite the

Master Plan and FEIS' acknowledgement that the NPS required the agency to "phase out" the Wisconsin Army National Guard's use of the property for helicopter training exercises, (Exhibit 1 at 35; *see also* Exhibit 21 at 8), Diane Brusoe, Property Planning Section Chief of the WDNR, testified that "this use has been included in the final land transfer via the National Park Service, and it would be a continuing use on the property." Natural Resources Board Hearing at 0:43:50 (2016),

<http://dnrmedia.wi.gov/main/Play/f1f71109966243779b6759ea059a5d1e1d?catalog=9da0bb43-2fd4-48a6-9d86-756192a62f17&playFrom=1464&autoStart=true>.

67. 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 approximately 14 miles of trails in the Area, and various as-yet-unspecific high-impact special events.²

68. According to the Plan, the public can immediately begin undertaking these high-impact recreational uses on the property. Exhibit 1 at 108-09.

69. 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 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.

² 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.

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

71. Plaintiffs have also filed two petitions for judicial review in Sauk County Circuit Court challenging the WDNR's failure to abide by state law with regards to the draft and final Plan and FEIS. Case No. 2016-CV-000642; Case No. 2016-CV-000662. None of the Defendants in this case is a party to the state court proceedings.

VIOLATIONS OF LAW

COUNT I

Violation of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 550: Failure to Enforce Instruments Transferring Property

72. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 71.

73. The Federal Property and Administrative Services Act of 1949 requires the General Services Administration and the Secretary of the Interior to “determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in an instrument by which a transfer under this section is made.” 40 U.S.C. § 550(b)(1)-(2)(C).

74. The GSA assigned the Badger Army Ammunition Plant, as surplus real property, to the Secretary of the Interior for disposal and use as a public park or recreation area pursuant to 40 U.S.C. § 550(e).

75. Defendants GSA and NPS explicitly reiterated the application of this statute within deeds and correspondence throughout the land transfer process. *See, e.g.*, Exhibits 5-6, 8-9.

76. The deed of conveyance of any surplus real property disposed of under this subsection, like the Badger Army Ammunition Plant, “shall provide that all of the property be used and maintained *for the purpose for which it was conveyed in perpetuity*, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government” 40 U.S.C. § 550(e)(4); 41 C.F.R. § 102-75.680 (emphasis added).

77. The deeds of conveyance for the Badger Army Ammunition Plant state “[t]hat the property shall be used and maintained exclusively for public park or public recreation purposes . . . as set forth in the program of utilization and plan.” Exhibit 5 at 4; Exhibit 6 at 3.

78. The deeds also provide that the GSA deemed the property to be in surplus, and thus conveyable, “contingent on its issuance of: Final Environmental Impact Statement Badger Army Ammunition Plant, dated March 2003,” which only analyzed the environmental impacts of low-impact recreational uses on the property. Exhibit 5 at 3; Exhibit 6 at 3.

79. In the same vein, the Program of Utilization emphasizes a commitment to “low impact recreation,” including “hiking, picnicking, primitive camping, Lake Wisconsin access and viewing, savanna and grassland restoration, environmental education and cultural/historical interpretation.” Exhibit 7 at 9-10. The POU does not consider high-impact recreational uses.

80. Defendants GSA and NPS violated § 550(b) and (e) by explicitly or implicitly approving the WDNR’s Master Plan and FEIS, which includes several high-impact recreational uses, like dual-sport motorcycle usage and helicopter training, that were not considered in the deeds transferring the land or the POU and have not undergone the rigorous, NEPA prescribed analysis of environmental impacts.

81. These statutes require the Defendants to, at a minimum, enforce the terms of the original conveyance.

COUNT II

Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(c)(i), of the Council on Environmental Quality’s Regulations Implementing the National Environmental Policy Act, 40 C.F.R. § 1508.18, and the Secretary of the Interior’s Regulations Implementing the National Environmental Policy Act, 43 C.F.R. §§ 46.30, 46.100: Failure to Prepare an Environmental Impact Statement

82. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 81.

83. NEPA requires federal agencies to prepare a detailed environmental impact statement on every proposal for a major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(c)(i). Action subject to NEPA’s procedural requirements includes a planned activity by a non-federal actor that would cause effects on the human environment and is subject to control by the National Park Service. *See* 40 C.F.R. § 1508.18; 43 C.F.R. §§ 46.30, 46.100.

84. The NPS explicitly recognized its NEPA compliance obligations in its May 3, 2016 letter to the WDNR, stating that the agency “must consider proposed changes [to the Area] that would require an amendment to the POU, *and evaluate and disclose impacts from those uses*, in light of [NEPA], and guidance and regulations from the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508), as well as Department of the Interior policy and procedures.” Exhibit 21 at 1 (emphasis added). In the letter, the NPS stated that the Master Plan was “insufficient to disclose or evaluate potential impacts.” *Id.* at 4.

85. The NPS also effectively delegated its NEPA responsibilities to the WDNR, stating that “we are relying on [the WDNR] to provide the information needed to meet our federal NEPA responsibility.” *Id.* at 3.

86. The GSA’s 2003 EIS failed to consider high-impact recreational uses entirely, and the WDNR’s Plan and FEIS failed to fully and adequately analyze the newly incorporated high-impact uses’ many likely environmental harms to the property and the community.

87. Although the NPS purported to treat the Plan and FEIS as an amendment to the POU per its December 8, 2016 letter, the NPS did not have the authority to approve the inclusion of high-impact uses at the property without conducting a rigorous analysis of environmental impacts in compliance with NEPA, which was not done here.

88. The GSA and NPS’ approval of the Master Plan and FEIS is a major federal action that may, and indeed will, have a significant impact on the quality of the human environment.

89. Defendants have not prepared an EIS containing a detailed discussion of the environmental consequences of allowing high-impact recreational uses, including but not limited to dual-sport motorcycle usage and a Class II dog training Area.

90. Therefore, Defendants must conduct a rigorous analysis of environmental impacts in compliance with NEPA prior to approving the inclusion of high-impact uses at the property as an amendment to the POU.

COUNT III

**Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(c)(ii), and of the Council on Environmental Quality's Regulations Implementing the National Environmental Policy Act, 40 C.F.R. §§ 1500.1, 1502.1, 1502.16, 1502.22, 1502.24, 1508.7, 1508.8, and the Secretary of the Interior's Regulations Implementing the National Environmental Policy Act, 43 C.F.R. §§ 46.145, 46.30:
Failure to Analyze Adverse Environmental Effects**

91. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 90.

92. NEPA requires that an EIS address “any adverse environmental effects which cannot be avoided should the proposal be implemented.” 42 U.S.C. § 4332(c)(ii). CEQ regulations require that an EIS must have a “full and fair discussion of significant environmental impacts.” 40 C.F.R. §§ 1502.1; 1502.16.

93. NEPA requires that an EIS address direct effects, such as those “caused by the action and occur[ing] at the same time and place,” and also indirect effects “caused by the action [] later in time or farther removed in distance, but [] still reasonably foreseeable.” 40 C.F.R. § 1508.8. These effects include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” *Id.* “Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” *Id.*; *see also* 40 C.F.R. § 1508.7.

94. The GSA and NPS' approval of the Master Plan and FEIS is a major federal action significantly affecting the quality of the human environment.

95. Defendants' Master Plan and FEIS is rife with conclusory statements and analysis that wholly lack supporting documentation. Aside from an appendix with a list of references that

the WDNR staff apparently used to help inform their assessment of environmental impacts, the Master Plan and FEIS does not specifically cite any of these studies in support of its analysis.

96. Defendants' Master Plan and FEIS completely neglects certain substantial environmental impacts including, among other things, air pollution, fire risks, impacts upon rare and threatened plant and animal species, impacts to nesting birds, soil and dust-borne soil disturbance, and noise impacts. For example, while the Master Plan and FEIS mentions that the Area may be considered for a shooting range in the future, it omits any analysis of the environmental impacts of a shooting range, an omission which the NPS once referenced to as an issue of concern. *See* Exhibit 21 at 8. The Master Plan and FEIS did not consider the environmental impacts from dog training and trialing, which will involve firearm use, and fails to consider the cumulative impacts of allowing the various high-impact uses in the Area and the interaction among the various high-impact uses. 40 C.F.R. § 1508.7

97. The inadequacy of documentation in the Master Plan and FEIS is reinforced by the standard outlined in the NPS' 2015 NEPA Handbook. The agencies "must be able to carry out a meaningful analysis of impacts based on the available data in order to support a decision to take an action. Analyses should be substantiated by information included in the decision file, and peer review should be used when appropriate." Exhibit 27 at 16. Notably, "[i]f there are key uncertainties regarding the environmental effects of an action under consideration, an adaptive management approach should be used when appropriate." *Id.*; *see also* 43 C.F.R. § 46.145, § 46.30.

98. The Council on Environmental Quality provides that "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality.

Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1. Further, “[i]n cases where [agencies] have no data or poor quality data, [agencies] are required to obtain additional information that is ‘relevant to reasonably foreseeable significant adverse impacts,’ if it is ‘essential to a reasoned choice among alternatives,’ and if ‘the overall costs of obtaining it are not exorbitant.’” *Id.*; *see also* 40 C.F.R. § 1502.22. “When information cannot be obtained, existing credible scientific evidence must be summarized and the impact predicted based on this evidence.” *Id.*; *see also* 40 C.F.R. § 1502.22, 1502.24.

99. Defendants must prepare an adequate EIS considering the adverse environmental effects which cannot be avoided if the Plan is implemented, in compliance with NEPA, prior to approving the inclusion of high-impact uses at the property as an amendment to the POU.

COUNT IV

Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(c)(iii), 42 U.S.C. § 4332(e), and of the Council on Environmental Quality’s Regulations Implementing the National Environmental Policy Act, 40 C.F.R. § 1502.14: Failure to Adequately Analyze Alternatives

100. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 99.

101. NEPA requires an analysis of the “alternatives to the proposed action.” 42 U.S.C. § 4332(c)(iii). The alternatives analysis “is the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. This section should “[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated, devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits, include reasonable alternatives not within the jurisdiction of the lead

agency, [and] include the alternative of no action.” 40 C.F.R. § 1502.14(a)-(d). This section also requires that agencies identify their “preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement,” and “include appropriate mitigation measures not already included in the proposed action or alternatives. 40 C.F.R. § 1502.14(e)-(f).

102. NEPA also requires that agencies “study, develop, and describe appropriate alternatives” for every proposed action involving “unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(e).

103. The GSA and NPS’ explicit or implicit approval of the Master Plan and FEIS is a major federal action significantly affecting the quality of the human environment.

104. However, the Master Plan and FEIS does not include a detailed analysis of any reasonable alternatives. While the analysis of the WDNR’s preferred alternative is 40 pages, the Master Plan devotes a mere 12 pages to discussing all other alternatives, including alternatives that are not reasonable. The discussion of alternatives in Chapter V of the Master Plan and FEIS is far too short and superficial to satisfy the requirements of NEPA.

105. Moreover, several alternatives discussed in the Master Plan and FEIS are not reasonable because they are neither practical nor feasible. These alternatives would violate federal law and the deed covenants on the property, and would thus jeopardize the WDNR’s ownership of the Area. For example, the alternative of converting land to row crops was explicitly prohibited in the deeds to the property. Exhibit 1 at 181. Similarly, the no-action alternative, which the Master Plan and FEIS describes as a minimal management approach, would result in the decline of roads, habitat, and recreation areas, and could lead to the NPS considering the property to be in noncompliance with the FLP requirements. The NPS itself

noted that the agency “would likely consider the property to be in neglect and noncompliance with the justification for obtaining the property and the commitments made in the [POU], which would potentially put the property in jeopardy of reversion to the Federal government” should the State follow this approach. Exhibit 21 at 4.

106. Nonetheless, the WDNR kept its flawed version of the “no-action alternative” in its Plan and FEIS.

107. Defendants must rigorously explore and evaluate all reasonable alternatives to allowing high-impact recreational uses prior to approving such uses as an amendment to the POU. This had to include, at a bare minimum, evaluating an alternative that included the low-impact uses in the chosen alternative without including any high-impact recreational activities.

COUNT V

Violation of the National Environmental Policy Act, 42 U.S.C. § 4332(c)(iv): Failure to Analyze Short-Term Adverse Environmental Effects in Relation to Long-Term Productivity

108. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 107.

109. NEPA requires a detailed statement on “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity.” 42 U.S.C. § 4332(c)(iv).

110. The GSA and NPS’ explicit or implicit approval of the Master Plan and FEIS is a major federal action significantly affecting the quality of the human environment.

111. The Master Plan and FEIS examines only fifteen years of Plan implementation impacts. Exhibit 1 at 127 (“this [environmental impact] section only addresses those impacts, positive and negative, that are expected to occur over the next 15 years”). Defendants have not

prepared an EIS examining the relationship between local short term and long-term uses of the Area.

112. Therefore, Defendants must prepare an adequate EIS examining more long-term implementation impacts prior to approving high-impact recreational uses as an amendment to the POU.

COUNT VI

Violation of the Council on Environmental Quality's Regulations Implementing the National Environmental Policy Act, 40 C.F.R. §§ 1502.16(c), 1503.4, 1506.2(d)

113. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 112.

114. "To better integrate environmental impact statements into State or local planning processes," NEPA requires that agencies create statements "discuss[ing] any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law." 40 C.F.R. § 1506.2(d).

115. This includes a discussion of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. 40 C.F.R. § 1502.16.

116. In addition, a final environmental impact statement must assess and consider comments, and respond by one or more of the following means: (1) modify alternatives including the proposed action, (2) develop and evaluate alternatives not previously given serious consideration, (3) supplement, improve, or modify its analyses, and (4) make factual corrections. 40 C.F.R. 1503.4.

117. The GSA and NPS' explicit or implicit approval of the Master Plan and FEIS is a major federal action significantly affecting the quality of the human environment.

118. There are significant inconsistencies between the WDNR's proposal of the Plan and FEIS with high-impact recreational uses and the objectives of a wealth of both governmental and non-governmental entities. In 2001 when then Governor Tommy Thompson, on behalf of the State of Wisconsin, first expressed an interest in the Badger Army Ammunition Plant, the State's primary purposes were ecological preservation, restoration, and development. Exhibit 4. On December 8, 2016, fifteen of the original twenty-one members of the Badger Reuse Committee, including Darrell Bazzell, Secretary of the DNR under former Governor Thompson and Governor Scott McCallum, sent comments to the NRB expressing deep concern over the inclusion of high-impact uses "that run counter to the Badger Reuse Plan's clear consensus to emphasize and include only *compatible, low-impact recreational opportunities*." Exhibit 24 at 2. To date, out of the over 250 public, written comments to its Plan, the WDNR received around 190 comments in favor of "quiet nature-based" recreation and in opposition to "on/off road motorcycles, dog training, 6 mo. [sic] hunting, or high power rocketry." See Exhibit 28; Natural Resources Board Hearing at 0:47:05 (2016), <http://dnrmedia.wi.gov/main/Play/f1f71109966243779b6759ea059a5d1e1d?catalog=9da0bb43-2fd4-48a6-9d86-756192a62f17&playFrom=1464&autoStart=true>. Only 23 individuals submitted written comments in support of motorcycle use. Exhibit 28. Although the WDNR testified during its December 14, 2016 hearing before the NRB that its relationship with its partners has been "collaborative," the Plan is also inconsistent with the plans of the Ho-Chunk Nation. Natural Resources Board Hearing at 2:57:39, (2016), <http://dnrmedia.wi.gov/main/Play/f1f71109966243779b6759ea059a5d1e1d?catalog=9da0bb43-2fd4-48a6-9d86-756192a62f17&playFrom=1464&autoStart=true>. Contrary to the Plan, the

Nation opposes the proposed dual sport motorcycle use and believes that “[f]uture land use and management of the property should focus on conservation with opportunities for low impact recreation.” Exhibit 29.

119. Therefore, Defendants must prepare an adequate EIS identifying and discussing the many conflicts between high-impact recreational uses implemented in the Plan and the objectives of other Federal, regional, State, and local land use plans, policies and controls, consistent with NEPA.

COUNT VII

Violation of the Administrative Procedure Act, 5 U.S.C. § 706

120. Plaintiff repeats and incorporates by reference the allegations contained in paragraphs 1 through 119.

121. The National Park Service and the General Services Administration’s actions as described above were arbitrary, capricious, not in accordance with law, and without observance of procedures required by law, within the meaning of the Administrative Procedure Act, 5 U.S.C. § 706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that Defendants’ failure to prepare an adequate EIS before approving the Master Plan and FEIS as an amendment to the POU constitutes a violation of NEPA and the APA.
2. Issue a declaratory judgment that any express or implicit approval by NPS of the Master Plan and FEIS to date, including through its December 8, 2016 letter to WDNR, was invalid.

3. Order the Defendants to withhold, withdraw, or reject approval of the Master Plan and FEIS, to enforce the terms of the original conveyance and/or to take control of the Area;
4. Order the Defendants to comply with the provisions of NEPA by preparing a legally adequate EIS, conducting further analysis of environmental impacts, analyzing the adverse environmental effects which cannot be avoided, exploring and evaluating reasonable alternatives, and analyzing the short-term adverse environmental effects in relation to long-term productivity.
5. Award Plaintiffs their costs, including attorneys' fees, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(a),(d).
6. Order such interlocutory or final relief as is necessary to preserve the interests of Plaintiff and other members of the public.
7. Grant such other and further relief as the court may deem just and equitable.

DATED: January 13, 2017

s/ Brian H. Potts

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