

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

CHESAPEAKE & OHIO CANAL ASSOCIATION)
P.O. Box 366)
Glen Echo, MD 20812-0366.)

No.

WASHINGTON CANOE CLUB,)
3700 WATER STREET, NW)
Washington, DC 20001)

Plaintiffs,)

v.)

GALE NORTON, in her official capacity as)
Secretary of the)
U.S. DEPARTMENT OF THE INTERIOR,)
an Agency of the United States,)
1849 C Street, N.W.)
Washington, D.C. 20240)

FRAN MAINELLA, in her official capacity as)
Director, National Park Service,)
1849 C Street, N.W.)
Washington, D.C. 20240)

Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Chesapeake & Ohio Canal Association and the Washington Canoe Club (“Plaintiffs”) file this complaint for declaratory and injunctive relief challenging the lawfulness of the actions of Defendants Department of the Interior and National Park Service (“NPS”), in entering into an agreement with the President and Directors of Georgetown College

(“Georgetown University”) for the exchange of land in order to allow Georgetown University to establish a private boathouse on NPS land within the Chesapeake and Ohio Canal National Historical Park in Washington, D.C., in violation of the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, the National Historic Preservation Act (“NHPA”), 16 U.S.C. §§ 470f, 470h-2(*l*), and Section 22(b) of the Land, Water, and Conservation Fund Act (“LWCF”), as amended, 6 U.S.C. § 4601-22(b).

2. The National Park Service violated NEPA by determining that its proposed land exchange would have no significant impact on the environment, including the Chesapeake and Ohio Canal National Historical Park, which is listed in the National Register of Historic Places, the Capital Crescent Trail, or other historic and natural resources in the immediate vicinity, and by failing to evaluate reasonable alternatives to the proposed land exchange.

3. The National Park Service’s approval of the land exchange also violated the National Historic Preservation Act (“NHPA”), and the binding Memorandum of Agreement, dated April 21, 1998, entered into by NPS to carry out its obligations under Section 106 of the NHPA, which requires the NPS to ensure that “the facility’s footprint or aggregate footprints are not more than 15,000 square feet for a building rising no more than 40 feet above grade.”

4. The National Park Service violated Section 22(b) of the Land, Water, and Conservation Fund Act (“LWCF”), by approving the exchange of valuable federal parkland for land owned by Georgetown University that has a significantly lower value, without requiring a cash payment from Georgetown to equalize the value of the exchange.

5. Plaintiffs seek declaratory and injunctive relief to declare the National Park Service’s agreement unlawful and invalid, and to prohibit the NPS from closing on this exchange or take

any further action in furtherance of the exchange unless and until such time as the Park Service complies with NEPA, the National Historic Preservation Act, LWCF, and implementing regulations.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-2202, 28 U.S.C. § 1361, 16 U.S.C. § 470w-4, and 5 U.S.C. § 702. Venue is proper in this district under 28 U.S.C. § 1391(e) and 5 U.S.C. § 703.

PARTIES

7. Plaintiff Chesapeake & Ohio Canal Association (“C & O Canal Association” or “Association”) was formed to protect, preserve and promote the conservation of the natural and historic environment the C & O Canal and the Potomac River Basin, and to support the preservation and promotion of the 184-mile tow path and the open spaces within the C & O Canal National Historical Park. The Association is a nonprofit membership association incorporated as a nonprofit in the State of Maryland on January 6, 1986. The Association has approximately 1,200 individual members, many of whom reside in Virginia, Maryland, and the District of Columbia.

8. The C & O Canal Association in its organizational capacity, and the Association’s members, are within the zone of interests intended to be protected by NEPA, the NHPA, and LWCF. The Association’s members use, enjoy, and appreciate the historic resources of the C & O Canal National Historical Park. The Association sponsors a spring and fall hike, a continuing hike series on various Saturday and Sunday mornings throughout the year, bike trips on the towpath and canoe trips on the Potomac River. Many Association members participate in the

“Level Walkers Program,” which is made up of volunteers who, on a regular basis, walk assigned sections of the towpath to publicize the Canal, collect trash, if needed, and provide written reports to the National Park Service on the physical condition of the towpath. As a result, the Association has an interest in protecting the historic resources in the C & O Canal National Historical Park.

9. Plaintiff Washington Canoe Club (“WCC” or “the Canoe Club”) was founded in 1904 as a voluntary association and was incorporated as a District of Columbia nonprofit corporation on September 21, 1905, for the promotion of physical culture and the art of canoeing and kayaking. The Canoe Club owns the Washington Canoe Club, a historic boathouse constructed in 1904 on land leased from the National Park Service. The Canoe club is located within the boundaries of the C & O Canal National Historical Park. The Canoe Club’s boathouse is listed as an individual landmark in the National Register of Historic Places, and is considered one of the finest examples of shingle style architecture in Washington. Plaintiff WCC has approximately 250 members who reside in Maryland, Virginia, and the District of Columbia.

10. The proposed Boathouse to be constructed by Georgetown University will be seven times the volume and four times the square footage of the historic Washington Canoe Club, and will be incompatible in size and massing with the Canoe Club’s historic structure. Members of WCC frequently use the area of Potomac River adjacent to the Canoe Club building for canoeing, kayaking, and swimming. The dock of the proposed Georgetown Boathouse will block three lanes from the well-established WCC racecourse on the Potomac River, and the placement of a rowing facility directly upstream of a sprint canoeing facility will compromise the safety of WCC’s members using the area of the Potomac River adjacent to the boathouse by creating

conflicts between the faster, backward traveling rowing shells and the slower, forward-facing canoes and kayaks. Plaintiff WCC brings this action on behalf of itself and its adversely affected members.

11. The interests of the Association, WCC, and their respective members in using, enjoying, protecting and appreciating the historic and natural resources of public parkland are threatened and adversely affected by the Defendants' actions and omissions complained of herein. These members would thus have standing to sue in their own right. The Association and WCC, and their respective members, are and will continue to be aggrieved and adversely affected by the actions of the Defendants, and they have suffered and will continue to suffer injury in fact due to the Defendants' past, current, ongoing, and prospective failure to comply with the law.

12. Defendant Gale Norton is sued in her official capacity as the U.S. Secretary of the Interior. In that capacity, defendant Norton is responsible for the administration, operations, and activities of the Defendant Department of the Interior, including the administration, operations, and activities of the National Park Service, an agency within the Department of the Interior. She is responsible for ensuring that the Department of the Interior and the NPS complies with the requirements of the NEPA, the NHPA, LWCF, and other legal requirements applicable to the management and disposition of federal parkland.

13. Defendant Department of the Interior is an agency of the United States 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.

14. Defendant Fran Mainella is sued in her official capacity as the Director of the National Park Service. In that capacity, Defendant Mainella is responsible for the administration,

operations, and activities of the National Park Service, including the management of the Chesapeake and Ohio Canal National Historical Park. She is responsible for ensuring that the NPS complies with the requirements of the NEPA, the NHPA, LWCF, and other legal requirements applicable to the management and disposition of federal parkland.

FACTS

15. The Chesapeake & Ohio (“C & O”) Canal was acquired by the National Park Service in 1937, and was established by Congress as the Chesapeake and Ohio National Historical Park in 1971 in order to preserve and interpret its historic and scenic features and develop the potential of the canal for public recreation. P. L. 91-666, § 3, 84 Stat. 1978 (Jan. 8, 1971), codified at 16 U.S.C. § 410y *et seq.* The C&O Canal National Historical Park is one of the most actively used parks in the United States, with approximately two to eight million visitors per year. The Chesapeake and Ohio National Historical Park is listed in the National Register of Historic Place, and the unspoiled, natural setting of the area is an important contributing feature to this historic linear park.

16. In 1987, the NPS, in cooperation with various entities including the D.C. Government and the National Capitol Planning Commission, released the Plan for the Georgetown Waterfront Park and the C&O Canal National Historical Park (“Georgetown Waterfront Plan”). This plan identified a proposed area for a boathouse extending for a maximum of 1,000 feet west from Key Bridge for possible construction of a boathouse, but specifically provided that “The area assigned to boathouses does not extend west of Key Bridge more than 1,100 feet because of the policy aimed at preservation of the natural appearances of the Palisades.”

17. In 1989, the NPS conducted another study on Non-motorized Boating in the Potomac

and Anacostia Rivers - Washington, D.C. (1989 Special Study). This study identified the NPS site as a possible location for an “average-sized (6,000 to 8,000 square foot)” boathouse, and recommended that the NPS consider entering into a cooperative agreement with a nonprofit consortium of rowing groups the best option for building or operating a new boathouse.

18. On July 14, 1995, the National Park Service issued an “Environmental Assessment for the Proposed Exchange of Properties between the National Park Service and Georgetown University within the District of Columbia and within the Boundary of Potomac Palisades Park within the Chesapeake and Ohio Canal National Historical Park.” The Environmental Assessment (“EA”) described the proposed action as a proposal to exchange a 1.09-acre parcel of land owned by the National Park Service (Tract 102-114) with a parcel of land approximately one mile upriver, which is owned by Georgetown University as a privately owned inholding (Tract 102-109). The stated purpose of the land exchange was to allow the NPS to acquire and protect Georgetown University’s upriver parcel (Tract 102-109), and to allow Georgetown University to gain “a location to place a collegiate boathouse.” EA at 2.

19. Tract 102-114, owned by the NPS, is located approximately 910 feet west from the southwesterly corner of the intersection of 35th and K (Water) Streets, N.W., bounded by the Potomac River shoreline and on the north by the C & O Canal Tow path and the Capital Crescent Trail, highly popular recreational and bicycle commuter trails used heavily throughout all seasons of the year. Tract 102-114 is located in the Georgetown Historic District and within the boundaries of the Chesapeake and Ohio Canal National Historical Park.

20. Tract 102-109, owned by Georgetown University, is a rectangular-shaped parcel with an average width of approximately 44 feet, located in the Chesapeake and Ohio Canal National

Historical Park approximately 5,000 feet west from the terminus of Water Street, N.W., bounded on the south by the Potomac River shoreline and on the north by the Capital Crescent Trail.

There is no public road access to Tract 102-109.

21. The EA identified two alternatives to the proposed action: Alternative A: “no action,” and Alternative B: “National Park Service placement of boathouse on its tract.” The EA stated that these alternatives would not preclude Georgetown from developing its upstream property. EA, at 8.

22. The EA acknowledges that Georgetown University’s intention is to construct a boathouse on Tract 102-114, and that the boathouse will impact access along the Capital Crescent Trail, but does not discuss the impacts of the design or construction of the proposed boathouse on the Chesapeake and Ohio Canal National Historical Park and other historic and natural resources.

23. On September 6, 1995, the National Park Service issued its Finding of No Significant Impact (“FONSI”), concluding that “the project is not a major Federal action significantly affecting the human environment, nor is it environmentally highly controversial,” and that “the impact of this proposal is not of a cumulative nature, either in itself or in conjunction with other Federal or non-Federal projects.” The FONSI acknowledged that the boathouse would be located within the 100-year floodplain and would also impact wetlands, and that the C & O Canal National Historic Park and the historic Washington Canoe Club structure “will be affected by the future erection of a boathouse on this tract.” FONSI, at 2-3. Nonetheless, the Park Service concluded that the proposal did not require the preparation of an Environmental Impact Statement.

24. On or about August 8, 1995, the NPS initiated consultation with the D.C. State Historic Preservation Officer (“SHPO”) under Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f. During the course of that process, the DC SHPO determined that the proposed exchange may constitute an adverse effect on the Georgetown Historic District and the C & O Canal National Historical Park.

25. On October 15, 1998, the Advisory Council on Historic Preservation executed a Memorandum of Agreement (“MOA”) with the National Park Service and the DC SHPO in connection with the proposed exchange of land between the NPS and Georgetown University in accordance with the regulations implementing Section 106 of the National Historic Preservation Act. The MOA recognizes that the boathouse “may have a potential for adverse effect on historic properties” and includes a stipulation requiring that any land exchange agreement entered into by the NPS and the University “*shall* contain the following provisions concerning the parcel that the University would receive: “that the facility’s footprint or aggregate footprints are not more than 15,000 square feet for a building rising no more than 40 feet above grade.” MOA, Stipulation 1.a. (emphasis added).

26. On October 7, 1998, Joseph M. Lawler, Acting Regional Director, National Capital Region, National Park Service, U.S. Department of the Interior, executed a preliminary agreement to exchange real property pursuant to 16 U.S.C. § 4601-22(b). The agreement was counter-signed by Georgetown University on October 20, 1995.

27. The preliminary land exchange agreement provides that, before Georgetown University submits the design of the boathouse to local planning and zoning authorities, “the University shall obtain the approval of the United States of such design, which approval . . .

shall not be withheld provided such design . . . “does not have a footprint or aggregate footprints of more than 15,000 square feet for a boathouse structure(s) not exceeding 40 feet in height (excluding space at grade and below the building and such additional height as is necessary to accommodate design features).” Land Exchange Agreement, § 11(a)(iii)

28. This agreement was recorded in the land records of the District of Columbia on November 12, 1998.

29. The only appraisal conducted prior to the execution of the land exchange agreement was a desk review without any field review prepared in October 1992. This appraisal indicated that Georgetown University’s parcel (Tract 102-109) had no public road access, and that the only possible use of the site was for boat rental and/or storage.

30. In March 1999, the National Park Service contracted for an updated appraisal of Tracts 102-109 and 102-114. The appraiser concluded that, due to the marginal access to Tract 102-109, owned by Georgetown University, and the limitations to development posed by the tract’s topography, the site was unbuildable, and its highest and best use was incorporation within the Chesapeake and Ohio Canal National Historical Park. By contrast, Tract 102-114, owned by the National Park Service, was found to be capable of providing a suitable building area for a boathouse.

31. In April 2004, the D.C. Zoning Commission approved an application by the National Park Service and Georgetown University for a special exception to construct a boathouse on the NPS site with a total square footage of approximately 35,000 square feet (with a first floor footprint of 18,682 square feet), standing 54 feet at its highest point. It will extend 1,200 feet upstream from Key Bridge, thereby encroaching on the area designated in the 1987 Georgetown

Waterfront Plan for preservation of the natural appearance of the Palisades, with a dock that will extend 75 feet out into the Potomac River. In addition, the roofline of the structure will be more than nine feet above the C & O Canal Tow path and clearly visible from both the C & O Canal National Historical Park and the Capital Crescent Trail.

32. The paved portion of the Capital Crescent Trail will be shifted 10 feet to the north to accommodate a new 15-foot wide access roadway to the boathouse, thereby eliminating the soft shoulders currently on both sides of the trail for 800 feet, and effectively reducing the width of the trail from 14 to 10 feet, thereby increasing congestion on the trail for its thousands of users and reducing its accessibility.

**FIRST CLAIM FOR RELIEF
(Violation of National Environmental Policy Act)**

33. Plaintiffs repeat and re-allege the foregoing paragraphs.

34. The National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321, *et seq.*, ("NEPA"), requires, among other things, that federal agencies prepare a detailed statement on every proposal for a major federal action that may "significantly affect the quality of the human environment." 42 U.S.C. § 4332(2)(C).

35. NEPA further requires that every environmental document must be prepared with objective good faith and must fully and fairly discuss, among other things, the adverse environmental effects of the proposed action and the alternatives to the proposed action that may avoid or minimize these adverse effects. 42 U.S.C. §§ 4332(2)(C) and (E).

36. The environmental document must include the specific information required by the NEPA regulations of the Council on Environmental Quality ("CEQ"). 40 C.F.R. Part 1500, *et seq.* These regulations are binding on all federal agencies. *Id.* § 1500.1(a).

37. The “detailed written statement” required by NEPA is known as an “Environmental Impact Statement” (“EIS”). *Id.* § 1508.11.

38. An agency may prepare an Environmental Assessment (“EA”) to determine whether to prepare an EIS. *Id.* §§ 1501.3, 1501.4. An EA is a “concise public document for which a Federal agency is responsible that serves to: . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.” *Id.* § 1508.9(a). An EA must contain a discussion of alternatives and of the environmental impacts of the proposed action and alternatives. *Id.* § 1508.9(b).

39. The CEQ regulations define “effects” as including aesthetic, historic, and cultural effects. *Id.* § 1508.8.

40. In determining whether an action will have a significant effect on the environment, the National Park Service handbook on NEPA compliance directs the park decision-maker to consider the following criteria: “Any unique characteristics of the area (proximity to historic or cultural resources, wild and scenic rivers, ecologically critical areas, wetlands or floodplains, and so forth,” and “The degree to which the action may adversely affect historic properties in or eligible for listing in the National Register of Historic Places, or other significant scientific, archeological, or cultural resources.” National Park Service, Director’s Order 12, §§ 4.2.B.3, 4.2.B.7.

41. The CEQ regulations require federal agencies to consider various factors in determining whether a proposed federal action “significantly” affects the quality of the human environment. 40 C.F.R. § 1508.27. Among the factors identified by the CEQ regulations are the proximity of the proposed action to ecologically critical areas; whether the possible effects on the

environment are highly controversial, highly uncertain, or involve unique or unknown risks; whether the action represents a precedent for future actions with significant effects; whether the action is related to other actions whose cumulative impacts are significant. 40 C.F.R. §§ 1508.27(b)(3)-(7), (9).

42. The “effects” that must be discussed in the EA or EIS include, among other considerations, the direct environmental impacts of the proposed action, the indirect effects of the proposed action, and the cumulative impacts of the proposed action. *Id.* § 1508.8. The CEQ’s regulations define “indirect effects” as effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *Id.* § 1508.8(b). Indirect effects include the “growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” *Id.* § 1508.8(b).

43. The construction of a boathouse by Georgetown is a reasonably foreseeable impact of the land exchange agreement whose effects must be analyzed under NEPA.

44. The NPS violated NEPA by failing to adequately analyze the reasonably foreseeable environmental impacts of the land exchange agreement with Georgetown University. These impacts include, but are not limited to, the possible construction of a boathouse with a footprint of more than 15,000 square feet, the visual intrusion of such a boathouse on the C & O Canal National Historical Park, the interference with use of and access to the Capital Crescent Trail, the possible increase of pollutants to the Potomac River resulting from the removal of vegetation and construction of a boathouse, the destruction of federally-protected wetlands, and the potential impact to the Canal embankment from changes in shoreline or surface conditions.

45. The NPS's Finding of No Significant Impact is arbitrary and capricious because it is premised on an unsubstantiated assumption that development of the Tract 102-109 could occur absent the land exchange agreement, and is improperly based on conclusions regarding the relative degree of harm as between the proposed action and the "no action" alternative rather than an evaluation of the cumulative impacts of the preferred alternative.

46. The NPS's Finding of No Significant Impact is arbitrary and capricious because it overstates the benefits of the proposed land exchange without balancing these benefits against the environmental impacts, and fails to identify the benefits of alternatives to the proposed land exchange agreement.

47. The NPS violated NEPA by failing to analyze all reasonable alternatives to the proposed action, including the alternative of the NPS acquiring the Georgetown University parcel by purchase or condemnation rather than through the exchange of land, facilitating boathouse use of the NPS site through a cooperative agreement with a nonprofit organization, school, or consortium, or a combined alternative including purchase of the Georgetown University tract and NPS development of a boathouse on the NPS tract.

48. The NPS violated NEPA by failing to consider measures to mitigate harm to the environment resulting from the proposed action, including restrictions on the boathouse design and location to conform to the Georgetown Waterfront Plan.

49. Accordingly, an injunction should be issued to stay the exchange of land and halt any construction of the boathouse until the NPS complies with NEPA.

SECOND CLAIM FOR RELIEF
(Violation of Section 106 of the National Historic Preservation Act –
Violation of Memorandum of Agreement)

50. Plaintiffs repeat and re-allege the foregoing paragraphs.

51. The National Historic Preservation Act (“NHPA”) contains congressional findings, among others, that the nation’s historic resources should be preserved; that the preservation of this irreplaceable heritage is in the public interest; that encouragement of preserving our historic resources will improve the planning and execution of federal projects and will assist economic growth and development; and that it is necessary and appropriate for the federal government to accelerate its preservation programs and activities. 16 U.S.C. § 470(b). The NHPA further provides that it shall be the policy of the federal government to provide leadership in the preservation of America’s historic resources and to “administer federally owned, administered, or controlled . . . historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations.” *Id.* § 470-1.

52. Section 106 of the NHPA, 16 U.S.C. § 470f, prohibits federal agencies from engaging in any federal undertaking (or federally assisted, licensed or permitted undertaking) unless the agency first (1) takes into account the potential effects of the undertaking on historic properties; and (2) affords the Advisory Council on Historic Preservation (“Advisory Council” or “ACHP”) a reasonable opportunity to comment on the undertaking. 16 U.S.C. § 470f.

53. The Advisory Council is an independent federal agency responsible for the implementation and enforcement of the NHPA in its entirety. 16 U.S.C. §§ 470i, 470j, 470k, 470s. The ACHP is responsible for promulgating regulations implementing Section 106 of the NHPA. 16 U.S.C. § 470s. These regulations are binding on all federal agencies, including the National Park Service.

54. An agency may conclude its Section 106 obligations with respect to an

undertaking by executing a “Memorandum of Agreement” (“MOA”) with consulting parties setting forth agreed-upon alternatives or modifications to the undertaking to avoid, minimize, or mitigate adverse effects or by formally seeking and responding to the comments of the Advisory Council. 36 C.F.R. §§ 800.6(b), 800.7, 800.14(b). An MOA serves as a binding and enforceable contract that governs the undertaking and all of its parts. 16 U.S.C. § 470h-2(l).

55. The boathouse, as designed, will intrude on the views from the C & O Canal and towpath, and have an adverse effect on the Chesapeake and Ohio National Historical Park, which is listed in the National Register of Historic Places, and on other historic properties.

56. The NPS violated Stipulation 1 of the MOA by approving and submitting to the Zoning Commission a design that permits Georgetown University to construct a boathouse with a footprint of more than 15,000 square feet and that exceeds 40 feet in height, in violation of Stipulation 1 of the MOA.

57. Accordingly, an injunction should be issued halting any construction of the boathouse until the NPS complies with Stipulation 1 of the MOA. Unless such an injunction is issued, Plaintiffs will be irreparably harmed.

THIRD CLAIM FOR RELIEF
(Violation of 16 U.S.C. § 4601-22(b))

58. Plaintiffs repeat and re-allege the foregoing paragraphs.

59. Section 22(b) of the Land, Water, and Conservation Fund Act provides that:

The Secretary of the Interior is authorized to accept title to any non-Federal property or interest therein within a unit of the National Park System or miscellaneous area under his administration, and in exchange therefor he may convey to the grantor of such property or interest any Federally-owned property or interest therein under his jurisdiction which he determines is suitable for exchange or other disposal and which is located in the same State as the non-Federal property to

be acquired: *Provided, however,* That timber lands subject to harvest under a sustained yield program shall not be so exchanged. Upon request of a State or a political subdivision thereof, or of a party in interest, prior to such exchange the Secretary or his designee shall hold a public hearing in the area where the lands to be exchanged are located. The values of the properties so exchanged, either shall be approximately equal, or if they are not approximately equal, the values shall be equalized by the payment of cash to the grantor from funds appropriated for the acquisition of land for the area, or to the Secretary as the circumstances require.

16 U.S.C. § 4601-22(b).

60. The values of Tract 102-109 and 102-114 are not approximately equal. Instead, Tract 102-114, the parcel owned by the National Park Service, has a significantly higher value than Tract 102-109, because Tract 102-114 is suitable for construction of a boathouse, while Tract 102-109 is unbuildable.

61. The National Park Service violated Section 22(b) of the Land and Water Conservation Fund Act by approving the exchange of Tract 102-114 for Tract 102-109 without requiring Georgetown University to make a payment to the Secretary of the Interior to equalize the value of the land exchange.

62. Accordingly, an injunction should be issued to stay the closing of any land exchange and halt any construction of the boathouse until the NPS complies 16 U.S.C. § 4601-22(b). Unless such an injunction is issued, Plaintiffs will be irreparably harmed.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request this Court to grant the following relief:

1. Adjudge and declare that Defendants have violated NEPA, 42 U.S.C. §§ 4332(2)(C) and (E).

2. Adjudge and declare that Defendants have violated Section 106 of the NHPA, 16 U.S.C. § 470f, and the Memorandum of Agreement executed by the National Park Service to discharge its Section 106 obligations Adjudge and declare that Defendants have violated Section 110(l) of the NHPA, 16 U.S.C. § 470h-2(l).
3. Adjudge and declare that Defendants have violated the LWCF, 16 U.S.C. § 4601-22(b).
4. Adjudge and declare that the preliminary land exchange agreement executed by the National Park Service on October 7, 1998, is unlawful, invalid, null, and void.
5. Stay the issuance of the execution of any deed closing on the exchange and transfer of land pursuant to the preliminary land exchange agreement.
6. Preliminarily and permanently enjoin Defendants from issuing or reissuing any permits or authorizations relating to the land exchange agreement until such time as Defendants can demonstrate compliance with NEPA, Section 106 of the NHPA, and the LWCF..
7. Award Plaintiffs their attorneys' fees, costs, and disbursements, pursuant to 16 U.S.C. § 470w-4 and other applicable statutes authorizing court-awarded attorney's fees.
8. Award such other and further relief as the Court may deem appropriate.

DATED this ____ day of October, 2004.

Respectfully submitted

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