

PRAIRIE BAND POTAWATOMI NATION, a federally recognized Indian Tribe, 16281 Q Road, Mayetta, Kansas 66509,

Plaintiff,

COMPLAINT

v.

WOOD COUNTY PARK AND FORESTRY DEPARTMENT, Wood County Courthouse, 400 Market Street, P.O. Box 8095, Wisconsin Rapids, Wisconsin 54494-8095; **WOOD COUNTY PARK COMMITTEE**, Wood County Courthouse, 400 Market Street, Room 114, P.O. Box 8095, Wisconsin Rapids, Wisconsin 54494-8095; **LANCE PLIML**, Chairman, Wood County Park Committee, Office of County Clerk, 400 Market Street, P.O. Box 8095, Wisconsin Rapids, Wisconsin 54494, in his official capacity; **RONALD C. ARENDT**, Administrator, Wood County Park & Forestry, 400 Market Street, P.O. Box 8095, Wisconsin Rapids, Wisconsin 54495, in his official capacity; **WILLIAM GOODNESS**, Chairman of the Wood County Board of Supervisors, 400 Market Street, P.O. Box 8095 Wisconsin Rapids, Wisconsin, 54495, in his official capacity; **WOOD COUNTY BOARD OF SUPERVISORS**, Wood County Courthouse, 400 Market Street, P.O. Box 8095, Wisconsin Rapids, Wisconsin 54494-8095.

Defendants.

Case No.: _____

COMES NOW, the above-named Plaintiff, by its attorneys, Brown & LaCounte, LLP, and Melissa K. Scanlan, Midwest Environmental Advocates, as for a cause of action against the above-named defendants, alleges and asserts to the court as follows:

1. Plaintiff is a federally-recognized Indian Tribe, organized under a Constitution approved by the Tribe on March 29, 2000, and pursuant to 25 U.S.C., *Sec. 476(a)(2) and (d)(2)*.

2. Defendant, **WOOD COUNTY PARK AND FORESTRY DEPARTMENT**, is a duly established County governmental department, having the authority and responsibility over Wood County's forests and parks.

3. Defendant, WOOD COUNTY PARK COMMITTEE, is a duly appointed body established under Sec. 27.05, Wis. Stats. with the supervisory authority over all Wood County Parks.

4. Defendant, LANCE PLIML (Pliml), is the Chairman of the Wood County Park Committee, having the authority over the activities of the Wood County Park Committee.

5. Defendant, RONALD C. ARENDT, (Arendt) is the Administrator of the Wood County Park and Forestry Department, having the powers and duties to administer department programs and functions, including, but not limited to, overseeing the County's operations as they relate to outdoor recreation and forestry management.

6. Defendant, WOOD COUNTY BOARD OF SUPERVISORS, is a body corporate organized pursuant to Chapter 59, Wis. Stats. with the authority to exercise the organizational and administrative powers of Wood County.

7. Powers Bluff County Park is a 160-acre park located in Wood County, which is managed by the Wood County Park and Forestry Department through the Wood County Park Committee.

8. This is a case and controversy arising pursuant to Wisconsin Statutes Section 157.70 and therefore falls under the general jurisdiction of Wood County Circuit Court pursuant to Wisconsin Statutes Section 801.

9. Within Powers Bluff County Park is an area approximately 70 acres, (Skunk Hill) which is considered a sacred site and traditional burial grounds by members of various Indian Tribes, including the Ho-Chunk Nation (See Ho-Chunk Legislature Resolution No. 2-8-00D, attached hereto as Exhibit A and made a part hereof); and the Prairie Band Potawatomi Nation (See letter from Prairie Band Potawatomi Nation to Wood County Board of Supervisors, dated February 2, 2000, attached hereto as Exhibit B and made a part hereof.)

10. All federally acknowledged tribes who have a “cultural, tribal or religious affiliation” with any given property in the State of Wisconsin have an “interest” in such property in accordance with Section 157.70(1)(g) and Section 157.70(4) of Wisconsin Statutes.

11. The State Historical Society of Wisconsin considers Skunk Hill to be one of the most important historic sites of its type in the State of Wisconsin and has acknowledged the Prairie Band Potawatomi’s cultural and religious ties to the Skunk Hill area. (See letter to Wood County Parks and Forestry from the State Historical Society, dated March 10, 2000, attached hereto as Exhibit C and made a part hereof) (See also affidavit of Robert A. Birmingham, State of Wisconsin archaeologist, attached hereto and made a part hereof).

12. The Bureau of Indian Affairs of the United States Department of Interior acknowledges the existence of burial sites on, and the historic and sacred nature of Skunk Hill. (*See* letter to Wood County Board of Supervisors from the Bureau of Indian Affairs Regional Director, dated February 1, 2000, attached hereto as Exhibit D and made a part hereof.)

13. Arendt acknowledges the existence of burial sites on and around Skunk Hill. (*See also* letter to Ronald Arendt from Shawn M. Phillips, State of Wisconsin Burial Sites archaeologist, dated February 1, 2000, attached hereto as Exhibit F and made a part hereof.) (*See also* Powers Bluff Long Range Planning Draft, prepared by Ronald C. Arendt, September 15, 2000, attached hereto as Exhibit G, and made a part hereof.)

14. Municipalities have an affirmative duty to protect burial sites on public lands, pursuant to the Burial Sites Preservation Act, *Sec. 157.70, Wis. Stats.* which states in part:

"Notwithstanding any other provision of this section, a municipality ...shall endeavor to take positive action to preserve any burial site on land it owns through appropriate land use management including but not limited to appropriate multiuse purposes such as nature preserves."

Sec. 157.70(6m)(b)3, Wis. Stats.

15. Upon information and belief, the Wisconsin State Historical Society has met with the Wood County Parks and Forest Department on numerous occasions and have given the Wood County Parks and Forest Department notice that the Historical Society has reasonable grounds to believe that a burial site is being disturbed or may be disturbed by actions or proposed actions of the Parks and Forest Department contrary to the requirements set forth in Section 157.70(4) of the Wisconsin Statutes.

16. In the absence of prior authorization from the director of the Wisconsin State Historical Society, Wisconsin law prohibits the Wood County Parks and Forest Department from intentionally causing or permitting any activity, which would disturb the burial site which is the subject of the above referenced notice. *Sec. 157.70(4), Wis. Stats.*

17. Upon information and belief, the Wisconsin State Historical Society has NOT issued a permit to the Wood County Parks and Forest Department authorizing the disturbance of the site.

18. On or around March 27, 2001, the Wood County Parks and Forest Department conducted a clear cut and timber sale on the portion of Skunk Hill which contains burial sites, which act was committed in complete disregard of its legal obligation under *Sec. 157.70(6m)(b)3, Wis. Stats.* (*See* attached photo color rendition of the burial site area and corresponding affidavit of Germaine Pidgeon, attached hereto and made a part hereof.)

19. On April 4, 2001, at a meeting held by the Wood County Parks Committee, Arendt stated that the Committee will authorize the removal of the stumps, without a permit from the director of the State Historical Society, which action will further desecrate the burial sites in that area, commit substantial and irreparable injury to the interests of the Prairie Band Potawatomi Nation and directly violate Sec. 157.70(4) of the Wisconsin Statutes.

20. Such action to clear-cut was taken in complete disregard of the mutual agreement between the County Parks Committee, the State Historical Society of Wisconsin, and the Committee members of the Powers Bluff Long Range Planning Committee, and without notice to the Powers Bluff Long Range Planning Committee.

21. Such disregard for Wisconsin Statutes, the interests of the Long Range Planning Committee, and the interests of Plaintiff herein displays a blatant failure by the County Parks Committee to acknowledge its statutory duty to preserve burial sites and a failure to negotiate in good faith as the best means to manage the Powers Bluff Park without desecrating burial sites. (*See* attached affidavit of David J. Manthey, attached hereto and made a part hereof.)

CAUSE OF ACTION FOR INJUNCTIVE RELIEF

22. Plaintiff incorporates by reference hereto, as though fully set forth herein, paragraph 1 – 21 inclusive.

23. Defendants have taken action in the area of Skunk Hill without obtaining the proper permit from the State Historical Society required by Sec. 157.70, Wis. Stats.

24. Defendants have contracted to log an area for profit and prepare a sledding and skiing area on a burial site, which is protected by Wisconsin law.

25. The Plaintiff and its members ancestors are buried in the area which are about to be disturbed by the Defendants' acts.

26. The Plaintiff and its members engage in ceremonies and religious rites, in the area about to be disturbed by the Defendant's acts.

27. The disturbance of the burial sites will cause irreparable harm to the Plaintiff and its members.

28. Desecration of the graves and of the ceremonial grounds cannot be compensated.

29. No other remedy exists at law, which will prevent the desecration of the graves and of the ceremonial grounds cannot be

WHEREFORE the Plaintiff demands relief as follows:

1. A temporary restraining order and a preliminary injunction enjoining each Defendant and or their officers or agents from taking any further action which would or would likely desecrate burial grounds and cultural patrimony in the area of Skunk Hill;
2. An order directing the Defendants comply with the parameters of Sec. 157.70 Wis. Stats;
3. A permanent injunction prohibiting the Defendants and or their officers or agents from authorizing or engaging conduct which would desecrate the burial grounds and ceremonial grounds within Powers Bluff County Park;
4. Costs, fees, disbursements, and reasonable attorneys fees incurred by Plaintiff to commence and prosecute this action; and
5. Any other relief at law or in equity to which the Plaintiff may show itself to be justly entitled.

Signed and dated this 12 day of April, 2001.

Respectfully requested,

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