

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

FRIENDS OF DEREEF PARK,)
)
Plaintiff,)

v.)

NATIONAL PARK SERVICE;)

SALLY JEWELL, in her official)
capacity as Secretary of the U.S.)
Department of the Interior;)

PHIL GAINES, in his official)
capacity as State Liaison Officer for)
the Land and Water Conservation)
Fund;)

SOUTH CAROLINA)
DEPARTMENT OF PARKS,)
RECREATION AND TOURISM;)

DUANE PARRISH, in his official)
capacity as Director of the South)
Carolina Department of Parks,)
Recreation and Tourism;)

Defendants.)

COMPLAINT

C.A. No. 2:13-cv-03453-DCN

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff Friends of DeReef Park (“FDP”) seeks declaratory and injunctive relief against Defendants National Park Service (“NPS”), Sally Jewell, the Secretary of the U.S. Department of the Interior, in her official capacity, Phil Gaines, the State Liaison Officer for South Carolina, in his official capacity, South Carolina Department of Parks, Recreation and Tourism (“SCPRT”), and Duane Parrish, the Director of SCPRT, in his official capacity, for approving the unlawful conversion of DeReef Park.

DeReef Park is located in the historically African-American neighborhoods of Cannonborough and Elliotborough, a center of African-American commercial and social activity since the late 1800’s. The neighborhood around DeReef Park represents a

microcosm of the South Carolina civil rights movement. At the northern edge of the park sits the Cannon Street YMCA, the proud home of the 1955 Cannon Street All-Stars, an all-black team of 12 year-olds that took the state Little League title after white teams refused to play them. One block away is the site of the former Brooks Motel, a headquarters of the Charleston civil rights movement, where Dr. Martin Luther King, Jr. stayed while he worked to end segregation in Charleston. DeReef Park, named for two prominent African-American leaders of 19th century Charleston, contributed to the importance of this community, providing vital green space where the neighboring Shiloh AME Church could hold picnics, where the Cannon Street YMCA could host practices, and where neighbors could bring their children to play.

In 2008, Defendants wrongfully approved a proposal to convert Land and Water Conservation Fund covenants on DeReef Park to an existing park, Concord Park, located in a tourist district 1.2 miles away by foot. This decision violates the Land and Water Conservation Act, the National Environmental Policy Act, and the National Historic Preservation Act.

Plaintiff asks the court to: (1) declare that Defendants violated federal law; (2) vacate Defendants' 2008 conversion proposal; (3) remand this matter to NPS and require Defendants to initiate a new approval process of the DeReef Park conversion; and (4) award Plaintiff its costs of suit, including reasonable attorneys' fees and expert witness fees.

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. § 1331 because the matter arises under the laws of the United States, including the Declaratory Judgment Act, 28 U.S.C. §§ 2201-22; the Land and Water Conservation Fund Act ("LWCF"), 16 U.S.C.S. §§ 4601 *et seq.*; the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 *et seq.*; the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470 *et seq.*; and the Administrative Procedure Act, ("APA"), 5 U.S.C. §§ 701-706.

2. Venue is proper in this Court under 28 U.S.C. § 1391(e) and Local Rule 3.01(A)(1) because a substantial part of the actions or omissions giving rise to these claims herein occurred in South Carolina, and Defendants conduct business related to the events or omissions alleged herein in South Carolina.

THE PARTIES AND STANDING

3. The Plaintiff is Friends of DeReef Park ("FDP"), a registered not-for profit organization, founded in 2012 in Charleston, South Carolina.

4. As its central mission, FDP seeks to retain open spaces and preserve the historic significance of the Cannonborough-Elliottborough neighborhood.

5. FDP members share that mission and include current residents of Cannonborough-Elliottborough and descendants of past residents.

6. FDP members used DeReef Park for outdoor recreation until developers cleared the property in 2012.
7. Members have an interest in preserving the history of their families' community, protecting the physical embodiments of African-American achievement in the neighborhood, and in maintaining adequate outdoor recreation space in the Cannonborough-Elliotborough neighborhoods.
8. Defendants' 2008 approval ("the 2008 approval") of the DeReef Park conversion injures Plaintiff's recreational, aesthetic, economic, and cultural interests by denying FDP members recreational opportunities in their community, depriving FDP members of a cherished neighborhood asset, withholding an adequate replacement park from the community, and denying members access to information and procedural rights guaranteed under LWCF, NEPA and NHPA.
9. Revoking the 2008 approval will redress FDP's members' injuries by informing members and the general public of the Park's conversion, ensuring that FDP's members have access to adequate outdoor recreation space, and giving members and the public an opportunity to participate in the decisionmaking process.
10. Defendant National Park Service ("NPS") is a federal agency within the U.S. Department of Interior.
11. NPS has the authority to manage the Land and Water Conservation Fund Act State Assistance Program, to promulgate conditions for funding, and to administer funds based on those conditions. The NPS reviews and determines whether to grant approval to all LWCF proposals.
12. Defendant Sally Jewell is the Secretary of the U.S. Department of the Interior and is sued in her official capacity.
13. Secretary Jewell's office is located in the U.S. Department of the Interior headquarters in Washington, D.C.
14. Secretary Jewell is charged with the supervision and management of all U.S. Department of Interior decisions.
15. Defendant Phil Gaines is the LWCF State Liaison Officer ("SLO") for South Carolina and is sued in his official capacity.
16. SLO Gaines administers federal funds allocated through the LWCF Program in South Carolina and must approve any conversion of LWCF properties to a use other than public outdoor recreation and then submit a formal proposal to the NPS.
17. Defendant South Carolina Parks, Recreation & Tourism ("SCPRT") is a state agency that provides assistance to communities for parks, recreation and tourism development and promotion.

18. Under the South Carolina Outdoor Recreation Plan, the SCPRT must ensure the State's compliance with the Land and Water Conservation Fund Act.

19. Defendant Duane Parrish is the Director of SCPRT, and is sued in his official capacity.

20. Under South Carolina law, the Director of SCPRT oversees, manages, and controls the operation, administration, and organization of the Department and must ensure the State complies with the LWCF. South Carolina Code, 1976 § 51-1-10.

LEGAL BACKGROUND

21. Under the Administrative Procedure Act, this court has the authority to hold unlawful and set aside an agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C.A. § 706(2)(a).

Land and Water Conservation Fund Act

22. In 1964, Congress enacted the Land and Water Conservation Fund Act ("LWCF") "to assist in preserving, developing, and assuring accessibility to all citizens of the United States... such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States." Pub. L. No. 88-578, Title I, § 4601-4 (1964) (codified 16 U.S.C.A. 4601-4).

23. To fulfill this purpose, the LWCF Fund matches State spending to acquire and develop property for public outdoor recreation uses.

24. The Act conditions funding on compliance with terms and conditions promulgated by the Secretary of Interior. 16 U.S.C.S. § 4601-8(a); Land and Water Conservation Fund Act Federal Financial Assistance Manual Vol. 69, Oct. 1, 2008 ("Manual") (setting forth the National Park Service's terms and conditions for receiving LWCF funding, including guidelines for compliance with NEPA and NHPA).

25. Under the Act's funding terms and conditions, project sponsors must "commit [their] resources to the perpetual stewardship of the Fund-assisted public outdoor recreation area." Manual, Ch. 3(A)(2).

26. The Act prohibits any conversion of LWCF parkland without the Secretary's approval, and requires that the "Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location." 16 U.S.C.A. § 4601-8 (f)(3).

27. To comply with NPS regulations the State applicant must show that it has evaluated all practical alternatives to the conversion. 36 C.F.R. § 59.3(b)(1).

28. The Act's "reasonably equivalent usefulness" standard requires the State to "determine what recreation needs are being fulfilled by the facilities which exist and the types of outdoor recreation resources and opportunities available," and to determine whether the proposed substitute park "meet[s] recreation needs which are at least like in magnitude and impact to the user community as the converted site." 36 C.F.R. § 59.3(b)(3)(i).

29. Reasonably equivalent location generally "involve[s] the selection of a site serving the same community(ies) or area as the converted site." 36 C.F.R. § 59.3(b)(3)(ii). Exceptions are reserved for special situations, e.g., where demographic shifts reduce the need for recreational opportunities in an area that has transitioned from residential to industrial use. *See id.*

30. NPS regulations require the federal agency to conduct an independent review of the State's conversion application, which must include a Proposal Description and Environmental Screening Form ("PD/ESF"), a boundary map of the parkland proposed for conversion, and a narrative description, among other required documents. Manual, Ch. 4(A).

31. Land currently in public ownership may only qualify as replacement land for a proposed conversion if "the land was not acquired by the sponsor or selling agency for recreation" and "the land has not been dedicated or managed for recreational purposes while in public ownership," among other requirements. 36 C.F.R. § 59.3(b)(4).

32. The manual advises States that "[a] critical first step is for the State and NPS to agree on the size of the Section 6(f) park land impacted by any non-recreation, non-public use, especially prior to any appraisal activity." Manual Ch. 8(E) (emphasis omitted).

33. The Manual contemplates a limited range of "situations which trigger a conversion," including where:

- a) Property interests are conveyed for private use of non-public outdoor recreation uses.
- b) Non-outdoor recreation uses (public or private) are made of the project area, or a portion thereof, including those occurring on pre-existing rights-of-way and easements, or by a lessor.
- c) Unallowable indoor facilities are developed within the project area without NPS approval, such as unauthorized public facilities and sheltering of an outdoor facility.
- d) Public outdoor recreation use of property acquired or developed with LWCF assistance is terminated.

Manual, Ch. 8(E)(1).

34. During the conversion application process, "states are responsible for ensuring, on behalf of the NPS, proposals submitted to the NPS for federal decisions... are developed in accordance with all applicable federal, state and local laws and regulations." Manual,

Ch.4(A). Under the manual, “a State’s submission of a formal conversion request to NPS is a State’s endorsement of the conversion. If a State does not concur or endorse the conversion, then the proposal should not be forwarded to NPS for formal review and decision.” Manual, Ch. 8(E)(4). Moreover, “[r]esponsibility for compliance and enforcement of these provisions rests with the State for both state and locally sponsored projects.” *Id.* at Ch. 8(M)(4).

35. After a conversion has taken place, “the State [is] responsible, as the primary recipient of Federal assistance, for assuring compliance with [LWCF] requirements and for the substitution of replacement property,” where the “local project sponsor” is “unable to replace converted property.” Manual, Ch. 8(E)(3)(c)(3).

National Environmental Policy Act

36. Congress passed the National Environmental Policy Act (“NEPA”) to “encourage productive and enjoyable harmony between man and his environment,” and “to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.” Pub. L. No. 91-190, § 2, 83 Stat. 852 (1969) (codified at 42 U.S.C.A. § 4331, Sec. 101(a)).

37. “NEPA requires all federal agencies to: 1) prepare in-depth studies of the impacts of and alternatives to proposed ‘major federal actions;’ and 2) use the information contained in such studies in deciding whether to proceed with the actions; and 3) diligently attempt to involve the interested and affected public before any decision affecting the environment is made.” Manual, Ch. 4(B)(1).

38. As a federal assistance program, all NPS LWCF decisions must comply with NEPA. Manual, Ch. 4(B)(1).

39. In LWCF conversions, the scope of the environmental analysis includes the park proposed for conversion and the park proposed for replacement, including the proposed development for public recreation use and associated activities. Manual, Ch. 4(B)(5)(c).

40. NPS regulations require the State to submit adequate environmental documentation in a Proposal Document/Environmental Screening Form (“PD/ESF”). Manual, Ch. 4(B)(3). Based on this documentation, the NPS determines what degree of environmental analysis a project requires.

41. Where the documentation indicates that a project will have little or no impact, the agency may issue a Categorical Exclusion (“CE”). Manual, Ch. 4(B)(6)(a). A project with less certain impacts, however, demands an Environmental Assessment (“EA”). Manual, Ch. 4(B)(6)(b).

42. Environmental Assessments must include: (1) a description of proposed alternatives and the no action alternative, including a description of the parkland proposed for conversion, any parkland remaining after the conversion, and a description of the replacement parkland and timetable for completion; (2) a detailed description of the current resources expected to be affected by the conversion, including the park area’s

population services area and demographics; (3) an analysis of how resources will be affected by the proposal presented to the interested and affected public, agencies and decision makers; (4) identities of parties who provided information or consulting for the proposal's production; and (5) an opportunity for the interested and affected public to review and provide written comments on the completed environmental assessment for the LWCF proposal. Manual, Ch. 4(B)(6)(b)(1)-(2).

National Historic Preservation Act, Section 106 Process

43. The National Historic Preservation Act ("NHPA") requires the heads of Federal agencies to consider the effect of any proposed undertaking on a district, site, building, structure, or object that is included in or eligible for inclusion in the National Register before approving the expenditure of Federal funds. Pub. L. 89-665 (codified 16 U.S.C. 470f)("Section 106").

44. The Advisory Council on Historic Preservation must have a reasonable opportunity to comment on the undertaking. Section 106.

45. A property listed in or eligible for listing in the National Register of Historic Places qualifies as a historic property. The State identifies such properties through consultation with agency officials and other interested parties. Manual, Ch. 4(C)(1).

46. A property meets the eligibility requirements if it is "associated with events that have made a significant contribution to the broad patterns of our history," it is "associated with the lives of persons significant in our past," it "embod[ies] the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction," or it "ha[s] yielded, or may be likely to yield, information important in prehistory or history." 36 C.F.R. § 60.4(a)-(d). "Ordinarily . . . structures that have been moved from their original locations . . . shall not be considered eligible for the National Register." 36 C.F.R. § 60.4.

47. The NHPA Section 106 consultation process applies to parkland proposed for conversion as well as the proposed substitute property. Manual, Ch.4(C)(6)(c).

48. The State bears responsibility for conducting the Section 106 review process before formal proposal submission to NPS. Manual, Ch. 4(C)(2).

49. The State Liaison Officer ("SLO") initiates the consultation process with the State Historic Preservation Office ("SHPO") and other consulting parties to define the Area of Potential Affect ("APE") and to determine whether the APE contains any historic properties. Manual, Ch. 4(C)(2). The SLO then recommends a determination of effect. Manual, Ch. 4(C)(8)(b)(1)-(4).

50. If the State determines that the APE contains no historic properties or properties eligible for listing on the National Register, or that the proposed action will not affect any qualifying properties within the APE, the State must provide adequate documentation of

that determination to the SHPO and notify all interested parties that they have 30 days to comment on the finding. Manual, Ch. 4(C)(8)(b)(4)(i).

51. When a project will have adverse effects on a qualifying historic property, the State should consider all feasible and practicable alternatives to avoid or beneficially incorporate the historic properties into the project. Manual, Ch. 4(C)(8)(e).

52. The agency must provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. 36 C.F.R. 800.2 (5)(d)(2).

53. NPS must give guidance to the State and conduct further consultation if necessary. Manual, Ch. 4(C)(3). The NPS cannot accept a LWCF proposal from the State for review until the State completes the Section 106 process. Manual, Ch. 4(C)(8)(c). "The NPS is ultimately responsible for determining whether a project proposal will affect a property in or eligible for listing on the National Register." Manual, Ch. 4(C)(8)(a).

STATEMENT OF FACTS

54. In 1980, the City of Charleston sought LWCF assistance to establish property on the border of the Cannonborough-Elliotborough and Radcliffeborough neighborhoods as an urban park. In seeking LWCF support, the City noted that the densely populated neighboring area lacked available outdoor recreational space and opportunities.

55. SLO supported the City's request for assistance and the NPS approved LWCF assistance in 1981. The City named the park DeReef Park, in recognition of two prominent African-American leaders in the community. DeReef Park lies in a historically African-American neighborhood of Charleston. DeReef Park is bounded by Cannon Street and Morris Street on the north and south sides respectively, and Felix Street and Smith Street to the park's east and west sides respectively.

56. The City executed deeds for the DeReef Park property containing the following clause:

THIS property has been acquired or developed with Federal financial assistance provided by the Heritage Conservation and Recreation Service (formerly the Bureau of Outdoor Recreation) of the Department of the Interior in accordance with the Land and Water Conservation Act of 1965, as amended, 16 U.S.C. § 4601-5 et seq. (1970 ed.). Pursuant to a requirement of that law, this property may not be converted to other than public outdoor recreation uses (whether by transfer, sale, or in any other manner) without the express written approval of the Secretary of the Interior. By law, the Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive state-wide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

57. In 1991, the SLO and NPS entered into an agreement to improve DeReef Park (1991 Improvement Agreement).

58. The 1991 Improvement Agreement budgets a total of \$99,000 to develop a gazebo, playground, walkways, landscaping, and roadways, among other expenses.
59. On September 6, 1991 the City conducted an Environmental Assessment (“1991 EA”) in support of obtaining LWCF support for the improvement.
60. This EA recognizes the “need to provide a neighborhood park for Radcliffborough,” as “[m]ost of these residents do not have much, if any, personal space.”
61. The 1991 EA also notes that the park would provide “much needed urban open space for a predominately minority and low income neighborhood.”
62. The 1991 EA describes DeReef Park as having live oak, wax myrtle, hackberry, mulberry, cherry, and American sycamore trees and as providing recreation for approximately 7,000 residents from a 78% minority community, where 31% of residents live below the poverty line.
63. The 1991 Improvement Agreement references a turn of the century era church on the DeReef Park site, which locals refer to as the “praise church.”
64. The 1991 EA accompanying the Improvement Agreement budgeted \$20,624 to renovate the praise church, with a completion date of June 1, 1992.
65. In 1995, the City received a \$10,000 grant from the South Carolina Department of Archives and History to rehabilitate the praise church into a community building.
66. The praise church met eligibility requirements for listing on the National Register of Historic Places.
67. Despite receipt of funding and official recognition of the praise church’s historic significance, the City never developed the church into a functioning community building.
68. On July 6, 1998, the City acquired property comprising what is commonly known as Concord Park from the South Carolina State Ports Authority. This property is located 1.2 miles by foot to the east of DeReef Park, and is bound by Washington Street on the west, Concord Street to the east, and Calhoun and Laurens Street at the north and south sides respectively.
69. In May 2003, the City of Charleston entered into a Memorandum of Understanding with Civitas, LLC to convey property on the north and south sides of Morris Street, including DeReef Park, for the Smith Morris Neighborhood Planned Unit Development (“PUD”).
70. Upon information and belief, the City did not consult with the National Park Service, the SLO or the Department of Parks, Recreation and Tourism prior to executing the Memorandum of Understanding for the PUD.

71. The PUD Development Guidelines explain “a key element of the proposal is that it contemplates a land-swap with the City government that will allow Civitas to develop homes on a portion of the current DeReef Park across the street” The Development Guidelines anticipated the PUD would occur in two phases.

72. In the first quarter of 2008, the developer completed Phase I of the PUD. Phase I included 32 residential units, two commercial spaces, and two open spaces, which were deeded to the City.

73. The MOU anticipated that the completed project would include 0.6241 acres of open space, including an “urban corner park,” which consists of a cement corner with a fountain on it.

74. The ‘open space’ designated by the PUD in Phase I, located to the south of DeReef Park between two rows of residential buildings is perceived by FDP members and others to be an amenity for the adjacent residents and unwelcoming to the public.

75. On June 23, 2008, an attorney for the City of Charleston sent a letter to State officials (“2008 Letter”) stating that the City needed to identify another property to take on DeReef Park’s restrictive covenants.

76. According to the 2008 Letter, the City “had anticipated that the L&WCF covenants could be converted to . . . new and improved public spaces [in the PUD]; however, in the course of appraising the Project properties, [the City] learned that because [the existing DeReef Park is] slightly larger than the property the City would acquire at the completion of the project, this conversion scenario would not satisfy the legal requirement that the land upon which the covenants would be converted must be of equal value.”

77. The 2008 Letter officially requested a conversion to Concord Park (dubbed “DeReef Replacement Park” by the City), a 0.665 acre site, which the letter describes as “within walking distance” of DeReef Park. In reality, Concord Park is over a mile by foot from DeReef Park.

78. Materials submitted in support of the City’s request for the conversion approval identify the conversion tract as a strip of land within the existing Concord Park, a green space that has historically been used for soccer and lacrosse fields while in public ownership.

79. The 2008 Letter states that the City evaluated all practical alternatives to conversion and “determined that there are none” because the “City has a legal obligation under the Memorandum of Understanding to convey the Project properties to Civitas, LLC.”

80. The 2008 Letter includes various attachments including appraisals, photographs, a Simultaneous Release and Declaration of Restrictive Covenants, and a narrative description of the Replacement Park.

81. The narrative description of DeReef Replacement Park explains the park would consist of four garden rooms and a fountain.

82. The narrative description anticipates the park will provide “primarily passive recreation opportunities, including weddings, special events, poetry readings, art displays, musical productions, seating areas for reading, socializing with friends and family, open areas to enjoy the Cooper River vista and breezes, and other types of outdoor recreation activities for individuals and groups alike.”

83. Construction of Dereef Replacement Park was scheduled to begin in November 2008, but Concord Park (or DeReef Replacement Park) has yet to be improved.

84. On July 15, 2008, three weeks after the City sent a letter requesting the State to seek federal approval of the DeReef Park conversion, the Charleston City Council held a hearing on the conversion.

85. The City failed to notify community residents of the hearing with anything other than a generic, small-print legalistic newspaper notice in The Post and Courier on July 2, 2008.

86. Upon information and belief, no notice of the conversion proposal was posted at, near, or in DeReef Park. Nor was signage identifying DeReef Park as protected by LWCF covenants posted prior to, or during, the conversion process, despite the requirement that all LWCF-acquired properties have such signage.

87. The public comment sign-up sheet at the City’s hearing contains no signatures.

88. The Council did not ask any questions or provide any comments.

89. On July 16, 2008, the State Liaison Officer submitted his version of the conversion request to the NPS on behalf of the SCPRT.

90. The SLO’s proposal refers to converting 0.84 acres of DeReef Park in exchange for 0.66 acres of Concord Park.

91. The SLO’s proposal cuts and pastes language from the City’s 2008 Letter and repeats the City’s materials in claiming Concord Park as “more suitable for development in an area in need of outdoor recreational opportunities.”

92. The SLO’s proposal purports to contain a comparison of the “community and population served by [DeReef Park and Concord Park], including who uses the park and how,” that describes U.S. Census data on the demographic statistics of the areas around the two parks. However, the analysis merely repeats the City’s application materials.

93. The SLO’s proposal depicts DeReef Park as “virtually unimproved,” “greatly underutilized,” and located on a “very narrow strip of property,” that “does not allow for active recreation use.” This too merely repeats the City’s application materials.

94. The SLO's proposal does not mention that area residents held church picnics, conducted athletic practices, walked their dogs, played on the playground equipment, and otherwise used DeReef Park for recreation and enjoyment.

95. In fact, area residents frequently held church picnics, conducted athletic practices, walked their dogs, played on the playground equipment, and otherwise used DeReef Park for recreation and enjoyment.

96. The SLO's proposal represents the two parks as separated "by approximately $\frac{3}{4}$ - mile," so that "a portion of the population will be served by either location."

97. The two parks are 1.2 miles apart by foot, and 1.4 miles apart by car. The $\frac{3}{4}$ mile figure appears to be "as the crow flies," an impossible route by foot or car because of dense urban development.

98. Concord Park will serve a community with only 38% as many residents as DeReef Park, yet the proposal maintains that the park "will be heavily utilized by nearby residents and visitors."

99. A radius map dated July 29, 2008 and attached to the SLO's proposal shows that public parks abound in the area surrounding Concord Park. Specifically, Wragg Square, Wragg Mall, Marion Square, Elizabeth Street Park and Playground, George Anson Street Playground, Liberty Square, Mazyck Square, Charlotte Street Park, and Maritime Center grounds and dock, are all located nearby. Several of these parks pre-existed DeReef Park and are located closer to DeReef Park than Concord Park is.

100. When DeReef Park was created, none of the parks listed in Paragraph 99 were considered to be serving the Cannonborough-Elliottborough neighborhoods.

101. Only two permanently established parks fall within a $\frac{1}{2}$ mile radius of DeReef Park: Mitchell Elementary School playground and Cannon Park, both of which are separated from the Cannonborough-Elliottborough and Radcliffeborough neighborhoods by major four lane roads.

102. Concord Park is separated from DeReef Park by multiple major city thoroughfares.

103. In contrast with the residential character of the area surrounding DeReef Park, the area surrounding Concord Park hosts a variety of tourist destinations, including the Cooper River, Liberty Square, the South Carolina Aquarium, the Fort Sumter Tour Boat Facility, the Charleston Maritime Center, the future Union Pier redevelopment and the future International African American History Museum.

104. The SLO's proposal includes a map of Concord Park.

105. The SLO's proposal does not contain a 6-f Boundary Map of DeReef Park itself.

106. The SLO's proposal includes an Environmental Screening Form ("ESF").

107. The ESF transmitted by the SLO states: "This proposal may require an Environmental Impact Statement (EIS). NPS Guidance is requested per the LWCF Grants Manual."

108. This ESF claims that conversion of DeReef Park has "no impact" or was "not applicable" to:

- a) Land use/ownership patterns; property values; community livability;
- b) Recreation resources, including parks, open space, conservation areas, rec. trail, facilities, services, opportunities, public access, etc.; and
- c) Minority and low-income populations.

109. The ESF asserts that the DeReef Park conversion would have no significant impact on properties listed or eligible for listing on the National Register of Historic Places.

110. The ESF reports that Concord Park "has never been dedicated or managed for recreational purposes while in public ownership," and that the site has served as green space since 1998.

111. On October 2, 2008, the State Historic Preservation Officer (SHPO) responded to the State's request for Section 106 consultation, stating, "[i]t is difficult for us to understand the undertaking that we are reviewing. It is my understanding that L&WCF will be used to develop Concord Park instead of DeReef Park. For that reason, our comments will focus on Concord Park."

112. The SHPO requested more information to better understand the potential effects on the Old Historic Charleston District.

113. On October 27, 2008, the City's consultant completed a Cultural Resources Assessment to comply with the SHPO's request.

114. Consistent with the scope of analysis in the SHPO's letter, the City's consultant limited the Project Area to approximately 5 acres surrounding Concord Park.

115. The Assessment concludes, "no further cultural resources investigations are warranted in connection with the proposed development of Concord Park."

116. The Cultural Resources Assessment includes photographs of Concord Park showing soccer goals and chalk lines, contrary to the State's prior assertion that the City did not manage Concord Park for recreational purposes.

117. On information and belief, the City did not attempt to consult with the public in production of the Cultural Resource Assessment.

118. On November 25, 2008, NPS sent a letter to the State Liaison Officer approving the DeReef Park Conversion. No Environmental Assessment or EIS was completed.

119. The NPS admitted in its approval letter, “the City of Charleston plans to sell the converted land to a developer to be used for residential and commercial development.” However, NPS was aware that the City had obligated itself to convey the land to developers nearly five years prior to conversion approval.

120. On December 2, 2008, NPS and the City of Charleston signed the Simultaneous Release and Declaration of Restrictive Covenants, releasing DeReef Park and transferring those covenants to Concord Park. No public notice was posted notifying neighbors and members of the community that this had occurred.

121. In June of 2012, workers removed the playground equipment from DeReef Park.

122. Prior to June of 2012, FDP was not aware and could not reasonably have been aware that federal LWCF protections had been in place at DeReef Park or that the same had been purportedly removed.

123. On July 31, 2012, a Friends of DeReef Park representative wrote a letter to the Department of Interior asking for assistance in “determining if the City of Charleston, South Carolina misused funds to form the Land & Water Conservation Fund by inappropriately selling a .84 acre neighborhood park with a playground and neglecting to rebuild a .665 acre replacement park as part of a conversion.”

124. On January 15, 2013, the NPS responded, claiming that the conversion “adequately met all of the prerequisites...that must be met before NPS will consider the formal conversion request,” and “the City of Charleston has at a minimum met the terms by ensuring that Concord Park is open and is providing some type of outdoor recreational opportunities to the general public.”

125. A SCPRT inspector visited DeReef Replacement Park on September 6, 2012.

126. The inspector reported “the park now is basically an open, grassed field which has playground equipment on one side, is lined for soccer and lacrosse in the middle, and has an open play area for off-leash dogs.” These amenities remain largely unchanged from those provided before the conversion.

127. In January 2013, the developer moved the praise house from the center of the park into the southeast corner, diminishing its eligibility for listing on the National Register of Historic Places. On information and belief, the South Carolina Department of Archives and History was not made aware of the move, and the building suffered damage during the move.

128. On information and belief, drainage work for the Smith-Morris PUD Phase II commenced in early 2013 in DeReef Park.

CLAIMS FOR RELIEF

CLAIM 1

Defendants' failure to follow required procedures and approval of an inadequate replacement park violated the Land and Water Conservation Fund Act.

129. FDP repeats and incorporates by reference all preceding paragraphs.
130. The Defendants violated the LWCF by failing to provide the public with adequate notice of the conversion, by failing to publicly disclose information on the environmental and historic impact of the conversion, and by failing to apprise interested parties of the decision making process.
131. The Defendants violated the LWCF by failing to consider all practical alternatives before considering and approving conversion of the federal covenants to substitute parkland.
132. The Defendants violated the LWCF by approving an incomplete proposal that had inadequate and misleading environmental, socioeconomic and historic documentation, and that lacked a boundary map of the property proposed for conversion. Among other things, the documentation utilized by Defendants claimed no impacts to community livability, land use, property values, recreation resources, public space or minority and low income populations, even though the conversion would in fact have such impacts. The environmental documentation claimed DeReef Park was devoid of vegetation when in fact earlier environmental documentation described a variety of plants and trees.
133. The Defendants violated the LWCF by approving the transfer of DeReef Park's covenants to an improper and inadequate replacement park. The proposed substitute parkland at Concord Park does not provide reasonably equivalent uses to DeReef Park, serves an entirely separate neighborhood, and was already established as public recreation space prior to the conversion.
134. Defendants' 2008 approval of the conversion proposal for DeReef Park violated the Land and Water Conservation Fund Act and is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(a).

CLAIM 2

Defendants' failure to prepare an adequate environmental analysis and denial of public access to information and participation in the decision making process violated the National Environmental Policy Act.

135. FDP repeats and incorporates by reference all preceding paragraphs.
136. The Defendants violated NEPA by failing to complete an Environmental Assessment or EIS evaluating impacts to the human environment resulting from the destruction of DeReef Park and from the selection of the replacement site at Concord

Park. The environmental screening materials used by Defendants were materially incomplete and facially incorrect and presented a substantially misleading picture of the conversion's impacts on the human environment.

137. The Defendants violated NEPA by denying the public an opportunity to review and comment on the impacts associated with the DeReef Park conversion and alternatives to it prior to approval.

138. The Defendants violated NEPA by failing to provide adequate public notice of the conversion.

139. Defendants' 2008 approval of the conversion proposal for DeReef Park violated the National Environmental Policy Act and is arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(a).

CLAIM 3

The Defendants' failure to include the public in its analysis and improper limitation of the scope of this analysis violated the National Historic Preservation Act Section 106 Process.

140. FDP repeats and incorporates by reference all preceding paragraphs.

141. The Defendants violated NHPA by failing to consult with the public on its determination that the conversion would have no impact on any historic properties.

142. The Defendants violated NHPA by considering only the area surrounding the park proposed for replacement in its analysis, and not DeReef Park itself.

143. The Defendants violated NHPA by failing to consider all feasible and practicable alternatives to avoid or beneficially incorporate the historic properties into the project.

144. The Defendants' violation of the National Historic Preservation Act Section 106 Process was arbitrary, capricious, and not in accordance with law. 5 U.S.C. § 706(2)(a).

PRAYER FOR RELIEF

Plaintiff requests that this Court:

- A. Declare, pursuant to 28 U.S.C. § 2201, that Defendants have violated the Land and Water Conservation Act, the National Environmental Policy Act, the National Historic Preservation Act, and applicable regulations as described above;
- B. Vacate the 2008 conversion approval;
- C. Remand this matter to NPS and require Defendants to initiate a new approval process of the DeReef Park conversion request;

- D. Award Plaintiff its costs of suit, including reasonable attorneys' fees pursuant to 16 U.S.C. § 470w-4, and expert witness fees;
- E. Award Plaintiff all other relief the Court deems just and proper.

Respectfully submitted December 11, 2013.

/s / Davis Whitfield-Cargile

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