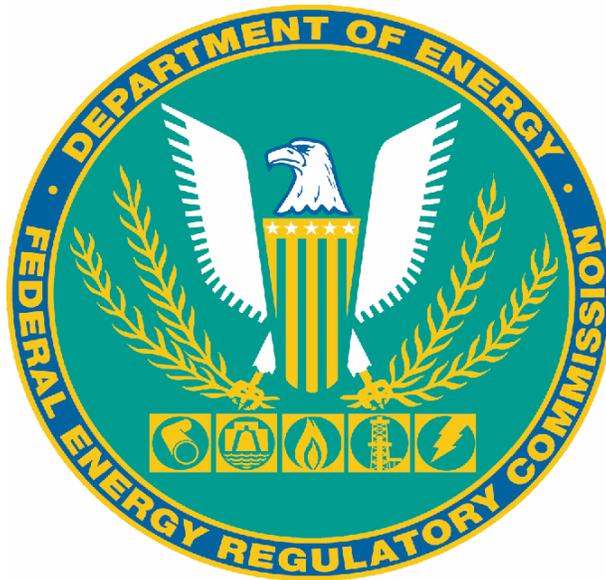


FINAL ENVIRONMENTAL ASSESSMENT

**APPLICATION FOR CONVEYANCE AND ACQUISITION
OF PROJECT LANDS**

**Consolidated Water Power Company
Wood County, Wisconsin**

**Biron Hydroelectric Project
FERC Project No. 2192-022**



**Federal Energy Regulatory Commission
Office of Energy Projects
Division of Hydropower Administration and Compliance**

**888 First Street, NE
Washington, DC 20426**

September 2006

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ACRONYMS AND ABBREVIATIONS

cfs	cubic feet per second
Classic	Classic Development Corporation
Commission	Federal Energy Regulatory Commission
Corps	U.S. Army Corps of Engineers
CWPC	Consolidated Water Power Company
DO	dissolved oxygen
DEA	Draft Environmental Assessment
EA	Environmental Assessment
ESCP	Erosion and Sediment Control Plan
FEA	Final Environmental Assessment
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
FWS	U.S. Fish and Wildlife Service
HRMP	Historic Resources Management Plan
Interior	U.S. Department of the Interior
licensee	Consolidated Water Power Company
MOU	Memorandum of Understanding
NGVD	National Geodetic Vertical Datum
NHPA	National Historic Preservation Act
National Register	National Register of Historic Places
NPS	National Park Service
PA	Programmatic Agreement
project	Biron Hydroelectric Project
RM	river mile
ROW	right-of-way
SHPO	State Historic Preservation Officer
USEPA	U.S. Environmental Protection Agency
WCMP	Wisconsin Coastal Management Program
WDNR	Wisconsin Department of Natural Resources

1.0 APPLICATION

Application Type: Conveyance and Acquisition of Project Lands
Date Filed: May 24, 2005 (supplemented December 16, 2005)
Applicant: Consolidated Water Power Company
Water Body: Wisconsin River
Nearest Town: Village of Biron, Wisconsin (figure 1)
County & State: Wood County, Wisconsin

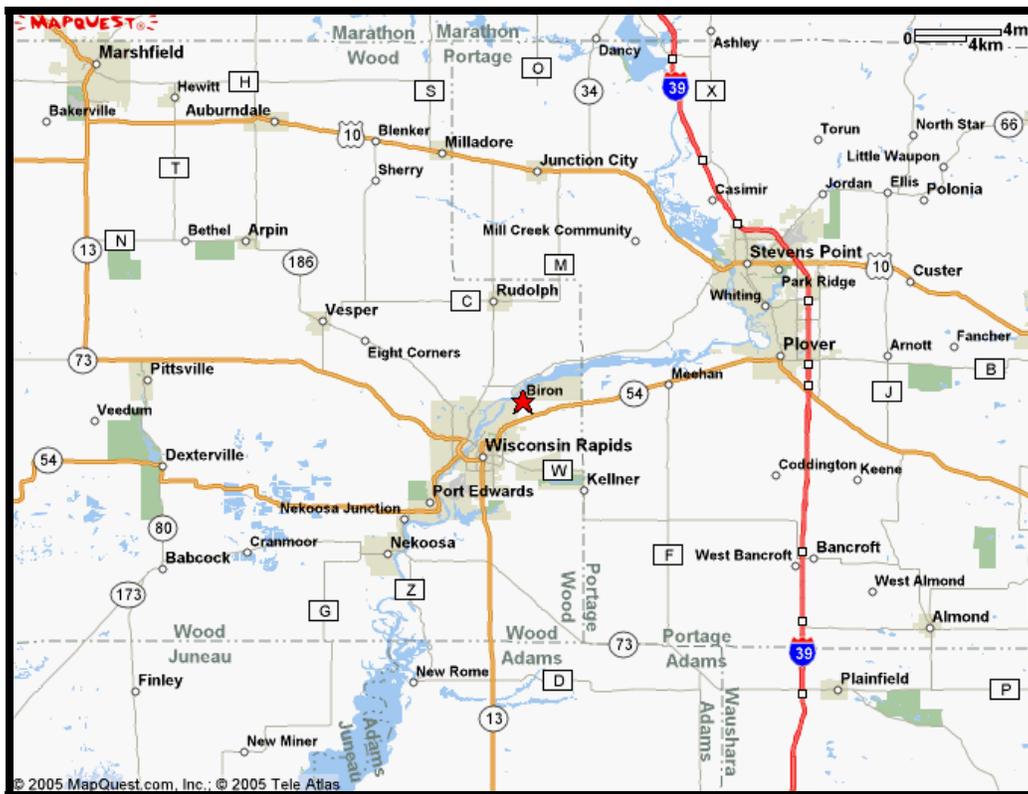


Figure 1. Map of the region around the Village of Biron, Wisconsin

2.0 PURPOSE AND NEED FOR ACTION

On May 24, 2005, Consolidated Water Power Company (CWPC or licensee), licensee for the Biron Hydroelectric Project, Federal Energy Regulatory Commission (FERC or Commission) Project No. 2192, filed an application for conveyance and acquisition of project lands. The licensee supplemented the application on December 16, 2005).

The licensee proposes to exchange approximately 3.14 acres of licensee-owned lands, with 3,000 linear feet of riverfront shoreline along the Biron flowage, for three different parcels of land totaling approximately 205.213 total acres. The first parcel has 830 linear feet of shoreline and consists of 47.546 acres. The second parcel has 126 linear feet of shoreline, and consists of 2.960 acres abutting an existing licensee-owned boat launch. The third parcel consists of islands in the river, peninsulas, and a roadside access totaling 154.84 acres (48.82 acres above water). These island perimeters, peninsulas, and the roadside access total 33,749 linear feet of waterfront. All lands are currently within the project boundary, and the licensee proposes to retain flowage rights over any transferred lands, and to retain all lands within the project boundary.

The Commission has conducted an environmental analysis of the licensee's application to determine whether and under what conditions it should be approved. This Final Environmental Assessment (FEA), which addresses all relevant issues raised in this proceeding, will be used to support the Commission's decision on the licensee's application.

3.0 PROPOSED ACTION AND ALTERNATIVES

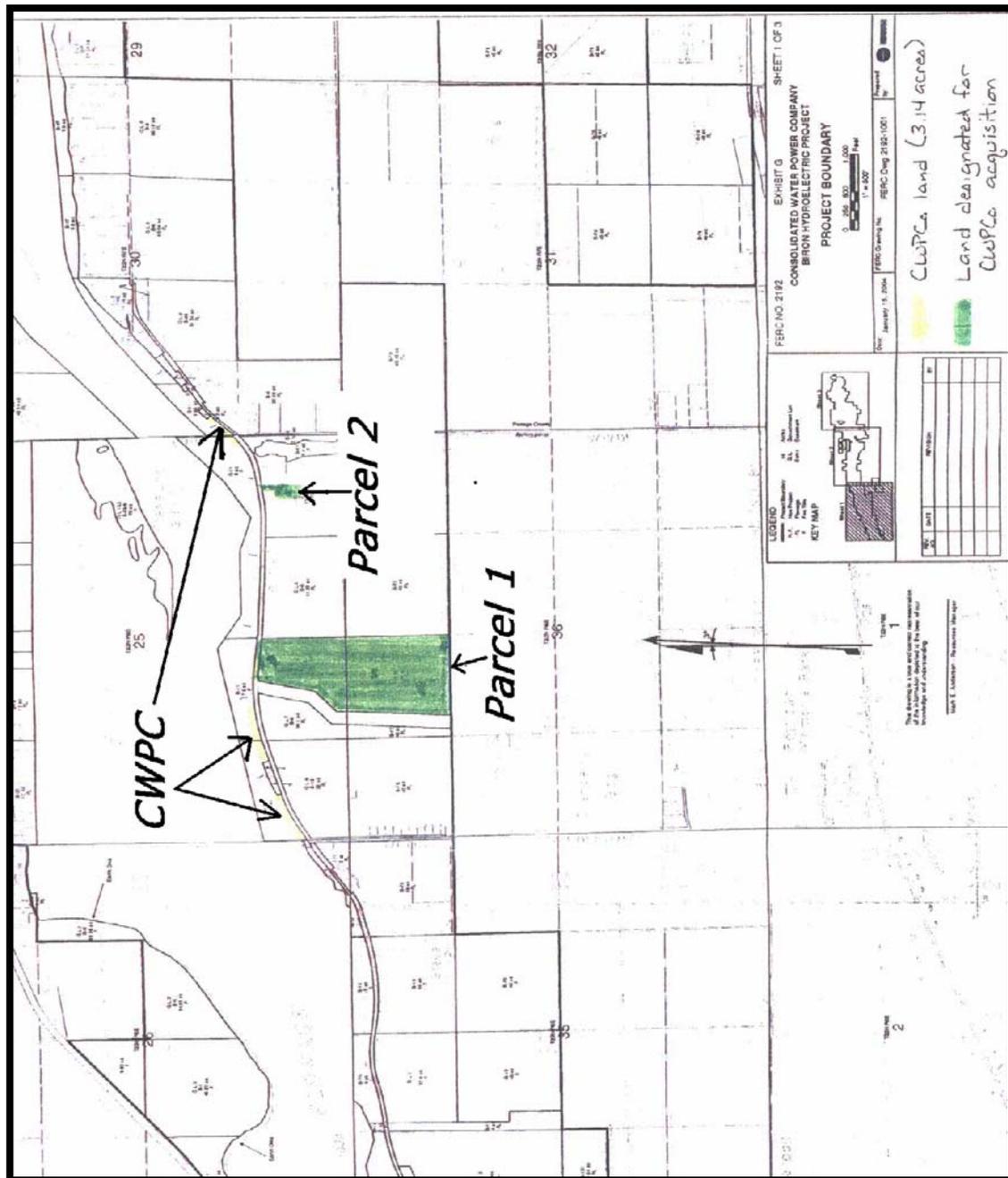
3.1 PROPOSED ACTION

3.1.1 The Licensee's Proposal

In 2002, the licensee recognized that public pressure for river access at the Biron Project could eventually result in the need to develop additional public access sites. The licensee has only limited fee title ownership of land along the project reservoir (referred to as the Biron Flowage) (about 6.5 percent of the total available shoreline), most of which is associated with the dike on the northern shoreline adjacent to the dam. The dike and the lands behind it are available to the public for passive recreation, but the purpose of the structure does not allow for the installation of any type of boat access. Most other lands owned by the licensee within the project boundary are in low-lying or marginally developable areas.

The licensee states that the single area where it owns land with riverfront shoreline access suitable for recreational development is a strip between North Biron Drive (referred to as County Highway U) and the Biron Flowage's southern shoreline (figure 2). The licensee owns four distinct parcels within this strip, and each of these parcels is separated from the others by parcels under private ownership.¹

¹ For convenience, in this FEA, we refer to these four parcels as the 3.14-acre parcel.



**Figure 2. Map of the licensee's 3.14-acre parcel and Parcels 1 and 2
(See Figure 3 for Parcel 3.)**

(Source: CWPC 2005b; modified by staff)

For many years, the licensee has leased recreational lots within these four parcels to private leaseholders on annual leases. Some of these leaseholders have constructed structures on the leased lands, effectively eliminating public access to the shoreline. These structures have been constructed even though the annual leases stipulated that the public has the right to access the water via the licensee's land.

Recognizing the potential need to provide additional access to the riverfront shoreline and the constraints of its existing land ownership situation, in 2003 the licensee announced its intention to terminate these annual leases, remove the structures that had been constructed, and restore the shoreline to full public use. At that time, the licensee stated that termination of the leases would be completed by 2008 and would be the best means to ensure that its riverfront shoreline property would be available for future public access.

In response to the licensee's 2003 proposal to terminate the leases, many of the leaseholders and some local and state officials filed letters of opposition with the Commission. Those in opposition sought a resolution that would address the licensee's need for additional shoreline access while allowing the leaseholders to continue their existing annual leases. Some of the leaseholders formed the Biron Licensee Group, LLC (BLG) and began working with a private developer, Classic Development Corporation (Classic), to identify tracts of land that offered potential for future recreational development. BLG and Classic approached the licensee with a counter-proposal that would allow the leaseholders to take fee title ownership of the project land they were leasing by exchanging private land owned by BLG and Classic for the leased land owned by the licensee. The licensee agreed to this proposal, and on May 24, 2005, applied for Commission approval of the proposed land exchange. The licensee supplemented its application on December 16, 2005 to clarify its proposal.

Given that background, the licensee's current proposal is to exchange 3.14 acres of CWPC-owned land with 3,000 linear feet of shoreline along the Biron Flowage for three different parcels of privately-owned land totaling 205.346 acres (99.326 acres above water), with 34,705 linear feet of shoreline. All lands involved in the proposed conveyance are currently located within the Biron Project boundary. The licensee proposes to keep the conveyed lands within the project boundary after the conveyance, and to retain flowage rights over any conveyed lands. Therefore, under its proposal the licensee would have no net gain or loss of project land, but would have a net gain of 202.206 acres (96.186 acres above water) in fee title ownership where it previously had only flowage rights.

The licensee's 3.14-acre parcel has been developed and used for seasonal and year-round recreational lots for many years. This acreage is within a strip of land (ranging in depth from 5 feet to 75 feet) along the Biron Flowage shoreline (figure 2). The average river shoreline frontage per lot is 124 feet.

The first privately-owned parcel, Parcel 1, consists of 47.546 acres and has 830 linear feet of river shoreline (figure 2). This parcel, which is currently owned by Classic, has a combination of upland forested softwood and hardwood species with pockets of natural wetlands interspersed. If the proposed land exchange is approved, Parcel 1 would become property of the licensee and would be developed as a public park with river access. A 30-vehicle parking area would be constructed, covering less than 2.0 acres, and a low-

impact trail linking the parking area to the shoreline would be installed, providing an environmentally sound means of crossing any wetlands.

The second privately-owned parcel, Parcel 2, consists of 2.960 acres and has 126 linear feet of riverfront shoreline (figure 2). This parcel, which is currently owned by Classic, abuts an existing CWPC-owned public boat launch on County Highway U. If the proposed land exchange is approved, Parcel 2 would become property of the licensee and would be developed as a 3.0-acre parking area (with 20 vehicle stalls and 80 vehicle/trailer stalls) for a new public boat launch that the licensee would construct just east of its existing boat launch.

The third privately-owned parcel, Parcel 3, consists of a group of islands and peninsulas in the Wisconsin River and roadside access located about 9 miles upstream (east) of Biron Dam (figure 3) in Portage County, Wisconsin. Parcel 3, also known as the Kubisiak Islands, consists of 154.84 acres (48.82 acres above water) and has 33,749 linear feet of river shoreline. Parcel 3 is currently owned by Classic, but if the proposed land conveyance is approved it would become property of the licensee, and would be kept in its present condition and used for passive, undeveloped recreation (e.g., hiking, fishing, wildlife viewing) and wildlife habitat. Recreationists would need to take a boat to the islands. Ole River Road, a town road near Mill Creek, is the way to the end of the peninsula. At this time, there is no improved public access.

The licensee states that if County Highway U were to be relocated, a strip of riverfront land located immediately east of Parcel 2 would become available for public access, bank fishing opportunities, and travel from the current road intersection to the proposed boat launch. This strip of land would comprise an additional 522 linear feet of shoreline which would be accessible to the public. The licensee would become fee-title owner of 219 linear feet of this shoreline, and would retain a permanent limited easement on the remaining 303 linear feet to guarantee public access.² Creation of this strip along the shoreline of the

² Classic's June 12, 2006 filing (see section 4.3) explains that in the event County Highway U is relocated, the abandoned highway's vacated right-of-way (ROW) would be divided among the owners of land on each side of the ROW in accordance with Wisconsin state law. For the abandoned segment of highway located immediately east of Parcel 2, the northern half of the vacated ROW would revert to CWPC for the first 303 feet, and the entire vacated ROW would revert to CWPC for the next 219 feet. Classic's June 12 filing also explains that under a real estate exchange and purchase agreement among CWPC, Classic, and BLG, CWPC would convey to Classic the above 303-foot-long strip of land, and to BLG and Classic other portions of the northern half of the vacated ROW in which CWPC would acquire an ownership interest as a result of the highway's relocation. Specifically, CWPC would convey to BLG its acquired portion of the ROW located immediately to the south of the leased properties, and to Classic its acquired portion of the ROW located between Parcel 1 and Parcel 2.

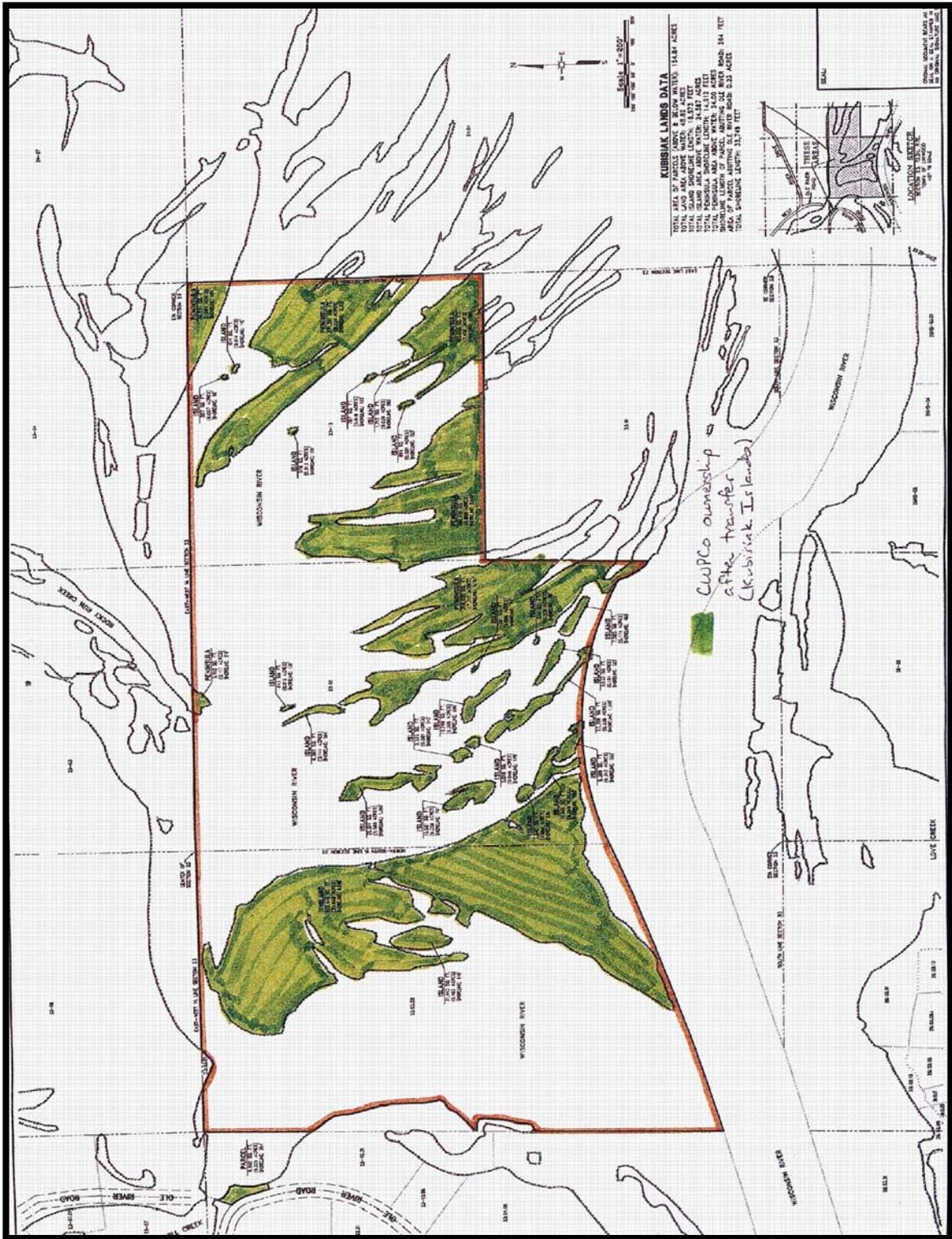


Figure 3. Map of Parcel 3
 (Source: CWPC 2005b; modified by staff)

flowage also would link the proposed boat-launch parking facility in Parcel2 to a parcel of licensee-owned land, with 1,000 linear feet of shoreline along the east side of an existing pond, which currently has no available parking.

3.1.2 Possible Future Actions

Actions proposed by private developers and individuals other than the licensee are not part of the licensee's application. However, the licensee states that the proposed land conveyance is contingent upon state and local government approval of the proposed relocation of County Highway U away from the Biron Flowage shoreline. In turn, relocating County Highway U would likely result in an effort by Classic to develop a riverfront residential community/business park and additional recreational amenities along the Biron Flowage shoreline.

Although these possible future actions are not part of the licensee's application, we discuss their potential impacts as cumulative impacts in section 5.2.11 of this FEA because they would occur: (1) within the current Biron Project boundary; and (2) within the reasonably foreseeable future. To the extent that these or other future developments would use and/or occupy project lands and/or waters, the licensee may need to apply for Commission approval to permit or convey any interests in project lands or waters.³ Such future applications would be subject to review by Commission staff.

3.2 ACTION ALTERNATIVES

3.2.1 The Licensee's Proposal With Other Staff-Identified Measures

The only action alternative that has been identified for the proposed land exchange is the licensee's proposal with additional staff recommendations. Based on our environmental analyses in section 5.2, the licensee would be required to implement the following additional staff-recommended measures for the protection, mitigation of adverse impacts to, and enhancement of project resources:

- (1) establish a "no development" corridor at least 100 feet wide along the Biron Flowage shoreline from the east side of one of the licensee's four parcels proposed for conveyance, located just west of Parcel 1 and the Northland Cranberry Ditch, to

³Article 5 of the Commission's Standard Articles (Form L-5) states that a licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. Article 412 of the Biron Project license specifies the conditions under which the licensee may convey Biron Project land without prior approval of the Commission.

the current intersection of County Highway U, east of Parcel 2 and an existing pond (excluding a trail from the parking area in Parcel 1 to the shoreline, the relocated Aqua Skiers site, the boat launch in Parcel 2, our recommended shoreline trail, and any future recreational facilities that may be proposed by the licensee and approved by the Commission) and re-vegetate the unpaved areas of the corridor using native vegetation (sections 5.2.2 and 5.2.4);

(2) prior to conveyance to the leaseholders any leased properties with existing, abandoned, or proposed septic systems, to protect public health, safety, and welfare, and prevent human health hazards, provide to the Commission thorough documentation that each individual septic system meets the requirements of the Wisconsin Administrative Code Chapters Comm81 to Comm87, including an inspection by a Wisconsin-licensed master plumber, and that all required state, county, and local permits and approvals have been obtained (section 5.2.2);

(3) develop, and file for Commission approval, a resource conservation plan for the long-term monitoring and protection of vegetation and wildlife in the "no development" corridor recommended in item 1, above (section 5.2.4);

(4) prior to commencing construction of a trail from the proposed parking area in Parcel 1 to the Biron Flowage shoreline and main shoreline trail, submit for Commission approval a final trail design that avoids or minimizes impacts to wetlands (section 5.2.5);

(5) prior to conveyance to the leaseholders any leased properties with existing or proposed permanent improvements (including septic systems), provide to the Commission thorough documentation that any permanent improvements have been executed in compliance with the conditions specified in the existing annual leases; local land use regulations; floodplain ordinances; zoning ordinances; WDNR's permitting process; and all required state, county, and local permits for the improvements (section 5.2.7);

(6) develop, and file for Commission approval, a plan for acquiring, if abandoned, the entire County Highway U roadbed and ROW within the shoreline corridor recommended in item 1, above and developing it as a shoreline trail (section 5.2.8);

(7) prior to commencing construction of the parking area in Parcel 1, and the parking area and boat launch in Parcel 2, submit for Commission approval final designs for these facilities (section 5.2.8); and

(8) relocate the Aqua Skiers practice area to Parcel 1, with the west side of the new site located no less than 300 feet from the east side of Northland Cranberry Ditch (section 5.2.8).

3.2.2 Other Action Alternatives

At least one alternative plan has been identified for Classic's proposed residential community/business park. However, because Classic's development is not part of the licensee's proposal, a review of such alternative plans is beyond the scope of this FEA.

3.3 NO-ACTION ALTERNATIVE

Under the no-action alternative, the Commission would deny the licensee's application for conveyance and acquisition of project lands. The licensee would still be faced with the possible need to provide additional public access along the Biron Flowage, and with the decision of whether or not to terminate the existing annual leases on its 3.14-acre parcel.

4.0 AGENCY CONSULTATION AND PUBLIC INVOLVEMENT

4.1 CONSULTATION CONDUCTED BY THE LICENSEE

The licensee's application documents consultation with various Federal, state, and local agencies, and the public, to elicit comments on the proposed land exchange. Table 1 lists the correspondence included in the licensee's application from the consulted agencies, organizations, and individuals.

**Table 1. Correspondence received by the licensee
in response to the proposed land exchange**

Agency, Organization, or Individual	Letter Date
Aqua Skiers, Inc.	November 1, 2004
Wisconsin Historical Society	March 16, 2005
Wisconsin Department of Natural Resources	March 21, 2005
National Park Service	March 30, 2005

In its letter of November 1, 2004, Aqua Skiers, Inc. (a local competitive water ski team) states that the proposed land exchange, and in particular the proposed relocation of the Aqua Skiers practice area, would be beneficial to the local communities and would provide a safer area for their guests and members.

In its letter of March 16, 2005, the Wisconsin Historical Society, the State Historic Preservation Officer (SHPO) for Wisconsin, states that based on the information provided, the proposed land exchange "will result in no historic properties affected pursuant to 36 CFR 800.4(d)(1)."

WDNR, in its e-mail message of March 21, 2005, recommends that the Aqua Skiers practice area be located as far from the mouth of the Northland Cranberry Ditch (on the western border of Parcel 1) as possible to avoid conflicts with bank fishing.

In its e-mail message of March 30, 2005, the National Park Service (NPS) states that the public gains from the proposed land exchange would be “significant in acreage, linear feet along the shoreline, and recreational facilities.” The NPS recommends, however, that a 100-foot riverfront corridor on parcels to be developed be re-vegetated using native tree saplings and that the area not be mowed to encourage a naturally vegetated riparian buffer. The NPS states that this buffer is important for filtration of lawn chemicals, storm water runoff control, scenic screening from the river vantage, and wildlife habitat creation. The NPS recommends that a conservation easement for this buffer strip be donated to a local land trust with funding for monitoring to ensure that the area is allowed to re-vegetate and remain in a natural condition.

4.2 CONSULTATION CONDUCTED BY THE COMMISSION

The Commission issued Notices of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests on June 29 and July 20, 2005. The notices provided a 30-day period for interested parties to file comments. The Commission received numerous comments from the agencies, organizations, and individuals listed in table 2, and summarized below. Although some letters were received after the August 22, 2005 notice deadline, we have considered the information and comments contained in these filings in our review of the application. Table 3 lists the entities who have requested status as interveners in this proceeding.

Table 2. Comments filed in response to the Commission’s June 29 and July 20, 2005 notices

Agency, Organization, or Individual	Letter Date
Allan and Elizabeth Musch	July 12, 2005
Gary Phillips	July 12, 2005
Mike and Shirley Stensberg	July 12, 2005
Lisa Rasmussen	July 15, 2005
Kenneth Barrington	July 16, 2005
Ann W. Rushevics	July 16, 2005
Tom and Carole Haferman	July 17, 2005
Doug and Karen Pagel	July 18, 2005
Richard and Rita Waters	July 18, 2005
Maxwell O. Andrae	July 19, 2005 and May 22, 2006
Pam Witt	July 19, 2005

**Table 2. Comments filed in response to the Commission's
June 29 and July 20, 2005 notices (continued)**

Agency, Organization, or Individual	Letter Date
David Bean	July 20, 2005
Annette Hendrickson	July 20, 2005
Richard J. Kenney	July 20, 2005
James R. Kolinski	July 20, 2005
Gregory H. Nettesheim for William and Phyllis Huffman	July 21, 2005
Lawrence B. and Judith A. Shepard	July 21, 2005
Michael T. Stark	July 21, 2005
Carl R. Lemke	July 22, 2005
The Boys & Girls Club of the Wisconsin Rapids Area	July 22, 2005
Wisconsin Department of Administration	July 22, 2005
Allen and Donna Rasmussen	July 23, 2005
Daniel A. Smith	July 23, 2005
Michelle Rasmussen	July 24, 2005
U.S. Department of the Interior, Office of Environmental Policy and Compliance	July 25 and August 17, 2005
Kenneth M. Hill for Carol Wilkinson	July 26, 2005
Andrew M. Lucas, M.D.	July 26, 2005
Mark Honkomp	July 27, 2005
Wisconsin Department of Natural Resources	July 28, 2005
Marvin Bocaner	July 28, 2005
Mr. and Mrs. Kenneth Hagan	August 8, 2005
Elaine M. Gill	August 10, 2005
Cynthia Henke	August 12, 2005
Biron Licensee Group, LLC	August 15, 2005
Lori Lampert-Wilke	August 15, 2005
Connie M. and Gary D. Stout	August 18, 2005
Gloria Bocaner	August 21, 2005
Jon T. Evenson, President, Village of Biron Board of Trustees	August 21, 2005
Jerry A. Feith	August 22, 2005 and April 28, 2006
Keith Helmrick, David W. Moodie, and Classic Development Corporation	August 22, 2005
Kenneth R. Jinsky	August 22, 2005 and February 28, 2006
George W. Mead and Susan Feith	August 22, 2005 and April 26, 2006

**Table 2. Comments filed in response to the Commission's
June 29 and July 20, 2005 notices (continued)**

Agency, Organization, or Individual	Letter Date
The River Alliance of Wisconsin	August 22, 2005 and January 13, 2006
Donald E. Maslowski	September 7, 2005
Heart of Wisconsin Business and Economic Alliance	January 13, 2006
Boardman Law Firm on behalf of 239 Wood County Residents	January 19, 2006
First Law Group on behalf of 701 residents in the immediate and surrounding areas of the Biron Project	February 3, 2006

**Table 3. Interventions filed in response to the Commission's
June 29 and July 20, 2005 notices**

Agency, Organization, or Individual	Letter Date
Wisconsin Department of Natural Resources	July 28, 2005
Biron Licensee Group, LLC ¹	August 18, 2005
Keith Helmrick, David W. Moodie, and Classic Development Corporation ¹	August 22, 2005
George W. Mead and Susan Feith ²	August 22, 2005
The River Alliance of Wisconsin ²	August 22, 2005
¹ Motion to Intervene in Support	
² Motion to Intervene in Opposition	

4.2.1 Agency and Tribal Comments

In its letter of July 22, 2005, the Wisconsin Department of Administration, the agency which administers the Wisconsin Coastal Management Program, states that the proposed land exchange would occur outside of Wisconsin's coastal zone and would be unlikely to affect coastal uses or resources.

In its letters of July 25 and August 17, 2005, the U.S. Department of the Interior (Interior), Office of Environmental Policy and Compliance, states that it has no comment on the proposed land exchange.

WDNR submitted comments and provided its notice of intervention in the proceeding in its letter dated July 28, 2005. In its comments, WDNR notes the following concerns with the proposed land exchange:

- The issue of scenic beauty along the flowage shoreline and the walking, biking, and driving recreational uses associated with the existing highway are of major importance and value to the local residents.
- Although there is no evidence to document the existence of failing or improperly functioning septic systems, it is probable that they might occur on the licensee's shoreline property (leased to private homeowners) based on the age, size, and location of the systems.

On January 26, 2006, the Commission sent a letter to the Lac Vieux Desert Tribe, the Lac du Flambeau Band of Lake Superior Chippewa Tribe, the Menominee Indian Tribe, the Bad River Band of Chippewa Tribe, the Mole Lake Chippewa Tribe, the Red Cliff Chippewa Tribe, the St. Croix Chippewa Tribe, the Lac Courte d'Oreilles Chippewa Tribe, the Great Lakes Indian Fish and Wildlife Commission, and the U.S. Department of the Interior's Bureau of Indian Affairs. The letter, which was sent pursuant to 36 CFR 800 implementing Section 106 of the National Historic Preservation Act (NHPA), as amended (16 U.S.C. Section 470 f), briefly described the proposed land exchange, forwarded excerpts from the licensee's application, and requested comments and recommendations on the licensee's proposal within 30 days of receiving the letter.

The Lac du Flambeau Band of Lake Superior Chippewa Tribe responded to the Commission's letter on March 16, 2006. The Band states that it is concerned about impacts to historic properties from the proposed land exchange because the affected lands are located within areas that were previously occupied by the Northern Ojibwe Bands. The Band states that there are places that are significant because of natural features and not necessarily because of manmade features, and that archaeological investigations might not be the proper tool for identifying such natural features. Therefore, the Band states that it needs a direct role in determining what methods would be used to identify historic properties within the area of potential effect. The Band recommends that the agencies work directly with the potentially affected tribes before hiring consultants and that archaeologists work directly with tribal experts when identifying and evaluating historic properties.

The Lac du Flambeau Band also states that the documents it received describing the proposed land exchange are not clear, and asks if the agencies have made any effort to identify historic properties within the area of potential effect. The Band requests consultation pursuant to Section 106 of the NHPA for any impacts or effects to historic properties resulting from the proposed land exchange.

4.2.2 Individuals Commenting in Support of the Proposed Action

Several individuals submitted comments expressing support for the proposed land exchange, citing the potential benefits discussed under each sub-heading below. Comments

submitted to express support for the possible future actions are addressed under cumulative impacts in section 5.2.11.

Current Leaseholders

- Current leaseholders would be allowed to remain on the land they lease and would not be forced to relocate.

Parcel 1

- The park would be well-utilized and would provide a much safer location for recreational activities than the County Highway U ROW. The park would include a vehicle parking area; currently there is no established parking area for the public along the existing project lands.
- The park would provide a multi-purpose trail for walking, jogging, biking, skating, and other activities. Only one other similar access area (Galecke Park) exists on the Biron Flowage, and it is several miles upstream of Parcel 1, is quite small, and is on a narrow stretch of river that is frequently very congested with boat traffic.
- The licensee and Wood County are negotiating a co-management agreement that would allow Wood County to sponsor the proposed park and pursue grant funding that would provide additional recreational improvements to the area.

Parcel 2

- The boat launch and parking area would provide safer access to the river than the existing boat launch, which is unsafe because people launching boats have to back across North Biron Drive and there is no established parking area. During peak summer use periods, cars with boat trailers are parked along the shoulders of North Biron Drive; this creates a dangerous situation as well as an aesthetic impact.

Parcel 3

- The addition of over 154 acres to the project lands would provide significant wildlife habitat and public recreational opportunities. Some people use this area for recreation now, and more will once it becomes a part of the project.

Aqua Skiers Practice Area

- The Aqua Skiers practice area would be relocated to the park in Parcel 1. They are currently located along County Highway U with no parking or viewing area except

the road ROW, and this creates an unsafe situation. The Aqua Skiers must park across the road from their practice area, and there are many small children and young adults going back and forth across the road. Also, for anyone to sit and watch the skiers they have to park on the road and watch from the side of the road.

Taxes and Economic Development

- The proposed land exchange would return the leased lands to the property tax rolls, generating property tax revenues for the Village of Biron.

4.2.3 Individuals Commenting in Opposition to the Proposed Action

Conversely, several individuals submitted comments expressing opposition to the proposed land exchange, citing the issues and potential impacts discussed under each sub-heading below. Comments submitted to express opposition to the possible future actions are addressed under cumulative impacts in section 5.2.11.

Lack of Full Disclosure of the Licensee's Proposed Land Exchange Action

- The licensee has not fully disclosed the details of the proposed land exchange. For example, the licensee does not fully disclose correct and accurate information regarding actual land ownership; the correct and actual number of acres involved; and the eventual disposition of the properties involved.
- The proposed transfer greatly reduces public access along the Wisconsin River shoreline to allow for residential riverfront development, conveyance to current lessees of valuable riverfront land, continued existence of noncompliant structures and septic systems which violate lease provisions and state and/or local laws, and reduction of costs for the licensee in providing public recreation facilities and opportunities. Inspection of the licensee's lease files would likely show that many of the lessees' improvements did not receive approval from the licensee.
- The proposed transfer would enable Wisconsin River shoreline to be sold by private parties at the expense of the public. At a conservative value of \$1,000 per linear foot, the BLG's current 3,395 feet of Wisconsin River shoreline has a value of \$3,395,000. The transfer of 5,857 feet of accessible and valuable shoreline has a conservative value of \$5,800,000. In contrast, the 48 acres of inaccessible land and peninsulas was recently purchased by the current owner for only \$50,000 total sale price.
- Few of the current lessees actually reside on the leased land. Of the 26 lessees, 10 are dock leases only with no other structures; 11 are seasonal cottages; and 5 are homes. Total personal property has only been assessed at \$535,300. The purpose of

the annual leases was always to allow for recreational use only, and only 4 to 5 of the parcels had permitted residences.

- The licensee could continue annual leases while implementing a discontinuation program, instead of conveying this riverfront shoreline to the current lessees.

Loss of Public Access to Recreational Areas

- The 3.14-acre parcel is not “marginal” in its value or usefulness for recreation. Similar widths of riverfront property within 5 miles of this parcel have been developed into public access, high-use parks, boat landings, and multi-use trailways.
- Under the licensee's proposal the public would lose access to not only the 3,000 feet of shoreline within the 3.14-acre parcel, but also to an additional 2,264 linear feet of County Highway U ROW along the shoreline. In total, the public would lose access to 5,264 linear feet of shoreline.
- The value of any recreation that may be provided in a transfer is nowhere close to the value of what would be lost. This shoreline is so valuable that once public access to it is lost, the public would not be able to afford to purchase it for public access ever again, and it will be gone forever.
- The 5,264 feet of shoreline proposed for exchange is important to the public because it provides both active and passive recreation as well as panoramic views of the Wisconsin River. It provides the opportunity for walking, bicycling, fishing, driving, and picnicking along the shoreline.
- If the licensee had terminated the leases as it originally proposed it would have added over 3,000 feet of shoreline property to public access. The licensee's current proposal not only gives this land to private ownership, but further reduces the existing shoreline access on County Highway U to less than 850 linear feet, over 200 feet of which has been promised to the Aqua Skiers for their use 5 to 6 nights per week and possibly on weekends.
- Further reducing public access is the fact that the 200-plus feet reserved for the Aqua Skiers is not on either edge of the proposed park in Parcel 1, but rather is in the center of the park area, leaving only two small, fragmented pieces for public use.
- Most of the 205 acres to be gained by the licensee is inaccessible for recreation. Over half of this acreage is under water. Almost 50 percent of the land that is above water is made up of islands and peninsulas, and a significant portion of this area is in wetlands. Of the 34,705 feet of shoreline, less than 3 percent would be readily accessible to the public.

- A bike shoreline trail along the existing County Highway U ROW would be a vital portion of a bike trail extending from Port Edwards through Wisconsin Rapids, Biron, and Plover to connect with a “Green Circle” around Stevens Point. The current approved *Wood County Bicycle and Pedestrian Plan* cites the preferred location for a trail to be at the river’s edge for aesthetic purposes. Loss of this shoreline area would make improved walking and bicycle paths (which are handicapped-accessible) along this area impossible.

Current Leaseholders

- Current leaseholders would retain their existing leased property and would then be free to sell their waterfront property at premium prices. The water ski enthusiasts would inherit private parking and boating facilities, all at the expense of the general public.
- All structures on the leased lots are nonconforming to current zoning regulations and WDNR setback regulations. Removal of these leases and nonconforming structures over time is highly preferable to the alternative of privatizing them or approving further development to them. Through attrition, if not based upon other ordinance criteria, these properties should be removed from the river’s edge.
- The structures on the leased properties are too close to the water and their septic systems constitute a health hazard. Therefore, it would seem the most practical solution would be to have the leases terminated, the properties cleared to eliminate health hazards, and made available to the public to enjoy.

Parcel 1

- The shoreline associated with the park is not an addition to public access, but rather a retention of public access already held. If County Highway U is relocated away from the shoreline and no trail from the proposed parking lot to the shoreline is constructed, there would effectively be no public land access to 830 linear feet of river frontage.
- To use the river frontage in the park, a person would have to park in a parking lot that is located over 500 feet from the water’s edge and cross over a wetland area. The licensee has not made any provisions for public access to the actual waterfront area. The licensee projects a possible handicap-accessible platform at the river’s edge; however, the parking area would be over 500 feet away and handicapped persons would have to traverse a wetland on a “low-impact trail” for which no funding has been provided.

- The green space would include over 50 percent wetlands in the 31-acre portion south of the proposed relocated County Highway U. The relocation of County Highway U would bisect the land designated for green space or park.
- The most reasonable place for a park would be next to the proposed boat landing in Parcel 2, but because this is the most valuable piece of land to the private developer, the “park” turns out to be in a wetland area unsuitable for any other private development.

Parcel 2

- Parcel 2 provides the public with no additional shoreline. Rather it would provide an inland area for an 80 car/trailer and 20 car parking lot to provide parking for the boat launch. While an improved boat parking facility in this area would be welcome, this improvement could certainly be provided without closing the public ROW.
- The sizing, location, and layout of the proposed parking lot show no consideration for optimum public use but rather accommodate the private developer’s wish to maximize the number of buildable lots. The size of the proposed parking lot does not reflect the boat usage documented in the licensee’s application.
- The proposed parking lot would not provide any additional protection to water quality as outlined in the licensee’s application.

Parcel 3

- The islands in Parcel 3 are remote, wet, and inaccessible to the vast majority of the public. There are no roads, boat docks, or boat landing sites and no trails or paths. The area is choked with underbrush and basically inhospitable.
- The islands and peninsulas are located a significant distance away from the land proposed for exchange and are located on the north side of the Biron Flowage in Portage County. These islands and peninsulas do nothing to expand recreational uses and increase public access along the south side of the Flowage where public access would be lost due to the proposed exchange.
- The 33,749 linear feet comprising the edges of Parcel 3 is only accessible to users who have shallow-draft boats which can be launched from a single, unimproved boat landing at the end of an unpaved road on the opposite shore of the river. This area is 4.25 to 4.50 miles (“as the crow flies”) away from the river access which would be eliminated by the proposed land exchange.

- The licensee already has fee title to shoreline property similar to the Parcel 3 property for access to canoe and kayak users, and rarely, if ever, are the interior lowlands and wetlands contained in those already owned islands and peninsulas accessed by such users. In fact, these islands on the river to the southwest are located closer to the current lost access than Parcel 3.

Costs to Local Governments

- Not only has the licensee asked Wood County to maintain the licensee-owned park in Parcel 1, but it has also asked for taxpayer-sponsored grants to provide improvements in its privately-owned park.
- The recreational amenities in Parcel 1 would be provided on private property through public, taxpayer grants—otherwise, funding would not be forthcoming and most likely the improvements would not be provided. The Commission should not consider undeveloped green space with unfunded amenities as a satisfaction of the licensee’s recreational requirements under their hydropower license.

Aqua Skiers Practice Area

- The 830 linear feet of river frontage along the park in Parcel 1 would have an undetermined length of front footage licensed to the Aqua Skiers for their exclusive use during three seasons of the year. This relocation near the Northland Cranberry Ditch would not benefit the general public and would injure public fishing opportunities.
- WDNR indicates that the Aqua Skiers practice zone should be located as far from the mouth of the Northland Cranberry Ditch as possible to avoid conflicts with “the best bank fishing opportunity in the area.”

4.3 DRAFT ENVIRONMENTAL ASSESSMENT

On May 12, 2006, the Commission issued a Notice of Availability of Draft Environmental Assessment (DEA) on the application. The notice was published in the Federal Register. The deadline for filing comments on the DEA was June 12, 2006. The Commission received the following filings from interested entities in response to the notice. Appendix A provides Commission staff’s responses to the comments contained in these filings.

Entity	Filing Date
Wisconsin Rapids Aqua Skiers, Inc.	May 30, 2006 and June 21, 2006
River Alliance of Wisconsin	June 8, 2006
Wood County, WI	June 8, 2006 and June 13, 2006
Consolidated Water Power Company	June 12, 2006
Biron Licensee Group, LLC	June 12, 2006
Classic Development of Plover	June 12, 2006, June 13, 2006, and July 17, 2006
George Mead and Susan Feith	June 12, 2006 and June 30, 2006
Jerry Feith	June 12, 2006, June 12, 2006 and June 16, 2006
Village of Biron, WI	June 12, 2006
Spyros Heniadis	June 12, 2006 and June 12, 2006
U.S. Representative David R. Obey	June 12, 2006
U.S. Fish and Wildlife Service	June 13, 2006
Aldo Leopold Audubon Society	June 20, 2006
967-Signature Petition asking FERC to preserve access to Wisconsin River and reject transfer of riverfront shoreline lands, submitted by Lawrie J. Kobza	June 23, 2006
U.S. Environmental Protection Agency	July 5, 2006

By letter dated May 12, 2006, Commission staff requested, within 30 days from the date of receipt of its letter, the FWS's written determination as to whether it concurs with staff's DEA assessment of the effects of the proposed land exchange, with staff's recommended measures, on Federally-listed threatened and endangered species. By letter filed June 13, 2006, the FWS concurs with staff's conclusion that the proposal is not likely to adversely affect the bald eagle or Karner blue butterfly. However, it states that if the current proposal is modified, or if there is a significant lag between plan completion and construction, an updated review should be conducted.

5.0 ENVIRONMENTAL ANALYSIS

5.1 GENERAL SETTING⁴

The Biron Hydroelectric Project is located in the Village of Biron, Wisconsin, and impounds the Wisconsin River at river mile (RM) 219. The Biron Project boundary covers about 7,860 acres or 12 square miles. Land area within the boundary comprises 5,782 acres, of which the licensee owns 700 in fee ownership.

The Biron Flowage is a 2,078-acre reservoir with a water surface elevation of 1,035.3 feet National Geodetic Vertical Datum (NGVD) and a storage capacity of 19,500 acre-feet. The flowage, which extends about 14 river miles from its headwaters to the tail water of the dam, is best characterized as riverine, with an average width of about 0.2 mile. At its widest point just upstream of the dam, the flowage is about 0.5 mile wide.

The lower and upper thirds of the Biron Flowage have the majority of residential development, while the center third is more rural in nature. The flowage is a popular destination point for the public from adjacent communities due to its length and the multiple recreational opportunities it offers. Popular recreational activities include camping, fishing, water skiing, jet skiing, pleasure boating, hiking, biking, site-seeing, waterfowl and upland game hunting, ice fishing, and snowmobiling.

5.2 THE PROPOSED ACTION AND ACTION ALTERNATIVES

In this section of the FEA, we analyze the impacts of the licensee's proposed action and action alternatives on the project's environmental resources. For each environmental resource, we first describe the potentially affected environment. We then discuss the direct and indirect impacts of the licensee's proposal. Next, we discuss the impacts of the licensee's proposal with our additional recommendations. Finally, we discuss the cumulative impacts of other possible future actions. The geographic and temporal scope of these discussions varies with each resource and issue under consideration.

5.2.1 Geology and Soils

Affected Environment

The Biron Project is located just beyond the southern margin of the Northern Highland in the Central Plains Physiographic Province. The Central Plains consists of a relatively flat landscape broken by occasional bedrock outcroppings. The bedrock within

⁴ Unless otherwise referenced, material on the affected environment was excerpted from the licensee's application (CWPC 2005a; CWPC 2005b), the Commission's EA for the Biron Project license (FERC 2003a), and the Commission's License Order for the Biron Project (FERC 2003b).

the Central Plains is comprised of Cambrian sandstones with several hills formed from quartzites, as well as several crystalline Precambrian formations. In the general vicinity of the Biron Project, bedrock geology consists of Proterozoic porphyritic biotite granite and quartz diorite intrusions at the north end of the project and highly-erosive Cambrian sandstones at the south end of the project.

The surficial geologic deposits in and near the Biron Project area include predominantly Pleistocene glacial deposits. More modern alluvial terrace and sediment deposits have been developed in the existing Wisconsin River floodplain near the vicinity of the project. The Biron Flowage is situated at the north end of prehistoric Glacial Lake Wisconsin, a regional proglacial lake that was formed 19,000 years ago and inundated most of what is now Portage and Wood counties. The lake drained approximately 14,000 years ago as a result of glacial retreat, leaving behind large amounts of sandy glacial lake deposits and a vast level landscape.

Soils in the Biron Project area formed from glacial parent material and are characterized as being well-drained and sandy. Three soil associations are present on project lands. The Alluvial Land, Wet Association occupies most of the flowage shoreline and floodplain area, including the land areas proposed for exchange. Soils from this association are nearly level and are poorly-drained sand and sandy loams. The shoreline area along the licensee's 3.14-acre parcel has experienced some erosion, but has been stabilized using a combination of rock riprap, sheet piling, and other materials.

Environmental Effects

The Licensee's Proposal

Exchanging the 3.14-acre parcel is not likely to have major impacts related to soil erosion because this stretch of shoreline has been previously disturbed by the construction of County Highway U and the existing boat docks, cottages, and homes. Further, the licensee has stabilized the shoreline with riprap, sheet piling, and other materials to prevent additional erosion.

Increased soil erosion is more likely to occur during construction of the licensee's proposed parking area in Parcel 1 and parking area and boat launch in Parcel 2. Excavation of the parking areas (less than 2.0 acres in Parcel 1 and about 3.0 acres in Parcel 2) could result in some erosion in the immediate vicinity, and excavation of the boat launch would likely result in erosion and runoff directly to the Biron Flowage. However, the soil erosion at each of these sites would be temporary and limited to a small area, and could be minimized by implementing best management practices to control erosion during construction. Examples of best management practices include the use of silt fences and barriers during excavation at all sites, excavation at the boat launch site only when water

levels in the Biron Flowage are low, and proper re-vegetation of all disturbed areas that are not to be paved.

The increased wave action that would result from increased boat traffic in this part of the Biron Flowage due to the proposed parking area and boat launch in Parcel 2 could create a long-term increase in soil erosion along the shoreline. Although the licensee's existing efforts to stabilize this stretch of shoreline would help reduce long-term impacts, the licensee should monitor this shoreline carefully and, if necessary, implement measures to minimize or eliminate increases in soil erosion related to the additional boat traffic.⁵

Although the licensee proposes no ground-disturbing activities in Parcel 3, it is possible that the increased use of these lands for recreation could increase soil erosion along shoreline areas.

5.2.2 Water Quantity and Quality

Affected Environment

The Biron Project is located on the Wisconsin River, which originates at Lac Vieux Desert on the Wisconsin/Michigan border and extends approximately 430 miles to the Mississippi River. The Wisconsin River basin has a total drainage area of approximately 12,280 square miles and is regulated by 26 hydroelectric dams and 21 storage reservoirs.

The Biron Project is the 22nd hydroelectric dam downstream of the Wisconsin River headwaters. The Biron Flowage receives drainage from the Upper Wisconsin River basin, which totals 5,400 square miles at the Biron Dam. For the period 1958–1995, average monthly inflows to the Biron Project ranged from a low of 3,070 cubic feet per second (cfs) in August to a high of 10,600 cfs in April, as measured at the project site.

The Biron Project is operated in a run-of-river mode due to its limited storage capacity, with no minimum flow required. The headwater is maintained between 1,034.5 and 1,035.3 feet NGVD, with a target elevation of 1,034.9 feet NGVD. The flowage at the target elevation is approximately 2,078 surface acres with 19,500 acre-feet of capacity and a mean hydraulic retention time of two days.

⁵ Article 19 of the license requires that, in the construction, maintenance, or operation of the project, the licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution, as detailed in the article.

Water quality in the Biron Flowage is generally characterized as good, with no recent problems involving low dissolved oxygen (DO) or biological or chemical oxygen demands. The State of Wisconsin has established standards for several water quality parameters, including DO, temperature, and pH, and water quality in the Biron Flowage is currently in compliance with the state standards. However, ongoing water quality concerns include high nutrient loading (particularly phosphorus), algal blooms and die-offs, and re-suspension of particulate matter from areas of sediment deposition. The re-suspension of fine silts, clays, and organic matter may also suspend PCBs, dioxins, and other contaminants. Despite these concerns, the Wisconsin River at the Biron Project is designated under Wisconsin Administrative Code NR 104 for support of warm water fish and aquatic life and recreational use.

Environmental Effects

The Licensee's Proposal

The licensee's proposal does not involve any water withdrawals; therefore, it would not affect water quantity in the Biron Flowage.

As discussed in section 5.2.1, the licensee's proposal to exchange its 3.14-acre parcel is not likely to result in soil erosion, and is therefore not likely to have major impacts on water quality due to increased sedimentation in the Biron Flowage.

The licensee's proposal would, however, allow the continued operation of private septic systems on some of the leased recreational lots within the 3.14-acre parcel. WDNR states that there is no evidence to document the existence of failing or improperly functioning septic systems associated with these leased properties. However, WDNR concludes that some of the septic systems might be failing or functioning improperly based on their age, size, and location. To the extent that these septic systems are contributing to water quality impacts in the Biron Flowage, the impacts would continue (and probably get worse with time) under the licensee's proposal.

Increased sedimentation is more likely during construction of the licensee's proposed parking area and boat launch in Parcel 2. Excavation of the parking area and the boat launch would likely result in increased erosion and subsequent sedimentation in the Biron Flowage. However, the water quality impacts at this site would be temporary and limited to a very small area, and could be minimized by implementing the best management practices discussed in section 5.2.1.

The increased boat traffic that would result in this part of the Biron Flowage due to the licensee's proposed parking area and boat launch in Parcel 2 would create long-term impacts to water quality by increasing shoreline erosion and sedimentation related to wave

action. Although the licensee's existing efforts to stabilize this stretch of shoreline would help reduce the long-term water quality impacts of increased wave action, the licensee should monitor this shoreline carefully and, if necessary, implement measures to minimize or eliminate increases in soil erosion (section 5.2.1).

Also, increases in boat traffic due to the new parking area and boat launch in Parcel 2 would increase spills of gasoline and oil from boats operating in the flowage and increase the runoff of gasoline and oil to the flowage from cars and boats in the parking area. Although this increase in spills and runoff would adversely affect water quality, it is likely that the overall impact to water quality in the Biron Flowage would be localized and relatively minor.

It is also possible that the increased recreational use of shoreline areas in Parcel 3 could affect water quality by increasing soil erosion and sedimentation.

The Licensee's Proposal with Other Staff-Identified Measures

NPS recommends that a 100-foot riverfront corridor be established on parcels to be developed, including Parcels 1 and 2, and that the corridor be re-vegetated using native tree saplings. NPS also recommends that the corridor not be mowed to encourage a naturally vegetated riparian buffer. NPS states that this buffer is important for water quality because it would help filter lawn chemicals and control storm water runoff that could drain into the Biron Flowage. We agree with the NPS recommendation that the licensee establish a "no development" corridor of at least 100 feet along the shoreline from the current intersection of County Highway U, east of Parcel 2 and the existing pond, to the east end of one of four parcels comprising the licensee's 3.14-acre parcel (see footnote 1), just west of Parcel 1 and the Northland Cranberry Ditch.

We note, however, that this 100-foot corridor should not preclude development of a trail leading from the proposed parking area in Parcel 1 to the shoreline (section 5.2.5), the proposed boat launch in Parcel 2, the shoreline trail that we recommend in section 5.2.8, or any future recreation facilities that may be proposed by the licensee and approved by the Commission. Unpaved areas within this corridor should be re-vegetated using native species, and should not be mowed (except in areas where not mowing would create safety concerns or interfere with project operations) to encourage a natural riparian buffer. We agree with NPS that such a buffer would help protect water quality in the Biron Flowage.

Some of the septic systems installed on leased properties within the licensee's 3.14 acres might be failing or functioning improperly and the potential for water quality impacts in the Biron Flowage is likely to increase over time. Article 412 of the project license states that:

"If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values . . . the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities."

Therefore, we conclude that prior to the conveyance to the leaseholders of any leased properties with existing or proposed septic systems, to protect the public health, safety, and welfare, and prevent human health hazards, the licensee should provide to the Commission, before the property is conveyed, thorough documentation that each individual septic system meets the requirements of the Wisconsin Administrative Code Chapters Comm81 to Comm87, including inspection by a Wisconsin-licensed master plumber. All required state, county, and local permits must be obtained, approved, and made part of the documentation.

5.2.3 Aquatic Resources

Affected Environment

The upper section of the Biron Flowage is riverine, with moderate to slow-flowing channels that transition to relatively wide, deep lacustrine sections in the lower part of the flowage. The upper section includes a complex of islands with numerous channels and backwaters that provide a diversity of habitats for aquatic species. Shallow protected areas exist in island complexes with narrow channels. Aquatic vegetation in the flowage is limited primarily to backwater areas. Fish habitat in the flowage includes islands, backwaters, seasonal wetland areas, shallows, aquatic macrophyte beds, tree stumps, large woody debris, and natural and man-made rock structures.

Fish surveys conducted in the Biron Flowage have documented a diverse fish community including 42 species. Walleye is the primary gamefish because of its abundance. Other game species in high abundance include northern pike, muskellunge, smallmouth and largemouth bass, bluegill, black crappie, and yellow perch. Non-game species include carp, white sucker, redhorse sucker, and bullheads.

The licensee states that the 3.14-acre strip of shoreline it proposes to exchange has no useful aquatic habitat because the littoral zone has been essentially cleared of natural vegetation for the installation of riprap and the construction of boat docks, piers, and decks. Conversely, all of the shoreline along the islands and peninsulas in Parcel 3 is undeveloped and has numerous deadfalls and other woody debris which create optimal aquatic habitat.

Environmental Effects

The Licensee's Proposal

As discussed in section 5.2.2, exchanging the 3.14-acre parcel is not likely to result in major impacts to water quality in the Biron Flowage so long as potential issues related to erosion and sedimentation and septic systems are addressed. Therefore, it is also not likely that this part of the licensee's proposal would have major impacts on aquatic resources in the flowage.

Impacts to aquatic resources as a result of increased sedimentation are more likely during construction of the licensee's proposed parking area and boat launch in Parcel 2. However, the potential impacts at this site would be temporary and limited to a very small area, and could be minimized by implementing the best management practices discussed in section 5.2.1.

Increases in boat traffic due to the new parking area and boat launch in Parcel 2 would increase spills of gasoline and oil from boats operating in the flowage and increase the runoff of gasoline and oil to the flowage from cars and boats in the parking area. Although this increase in spills and runoff could adversely affect aquatic resources, the overall impact to aquatic resources in the Biron Flowage is expected to be localized and relatively minor.

It is also possible that the increased recreational use of shoreline areas in Parcel 3 could affect aquatic resources by increasing soil erosion and sedimentation in the Biron Flowage. Conversely, by acquiring and preserving the private lands in Parcel 3, the licensee could help protect existing aquatic habitat.

The Licensee's Proposal with Other Staff-Identified Measures

We conclude that the additional measures we recommend to reduce erosion and sedimentation (section 5.2.1) and protect water quality (section 5.2.2) would adequately protect aquatic resources in the Biron Flowage. Therefore, we have identified no additional measures for aquatic resources.

5.2.4 Terrestrial Resources

Affected Environment

Plants

The Biron Project is located in the region of Wisconsin known as the Central Plain or Central Sands. Vegetation in this region is generally divided between the lowlands

associated with the Wisconsin River and its tributaries and the surrounding uplands. Vegetative communities in the project area are typified by lowland communities along the shoreline of the flowage, which merge with upland communities away from the shoreline in a mix of small parcels. The vegetative communities generally fall within the vegetation “Tension Zone,” an interface between northern coniferous and southern deciduous/prairie plant communities. Species typical of the area include jack pine, red pine, Hill’s oak, black oak, huckleberry, and blueberry.

Wetland types found in the Biron Project area include approximately 1,878 acres of floodplain forest, shrub swamp, alder thicket, and shallow marsh. Most of the wetland habitats occur along the shorelines of the flowage and tributary streams. Section 5.2.5 contains additional information about wetlands at the Biron Project.

Parcel 1 consists of a combination of upland forested softwood/hardwood species with pockets of natural wetlands interspersed. Parcel 2 also consists of upland forested softwood/hardwood species, but does not include any wetlands. Parcel 3 consists of numerous backwaters, fringe wetlands, and upland/lowland mix hardwoods. All of the shoreline along the islands and peninsulas in Parcel 3 is undeveloped and has numerous deadfalls and other woody debris.

Wildlife

Habitat within the Biron Project boundary provides a wide range of wildlife with foraging, nesting, and breeding opportunities. However, human disturbance, primarily associated with summer recreation and forest harvesting, has reduced wildlife activity in the area, depending on the species and its habitat needs. Wildlife species typically found in the project area include: (1) mammals such as white-tailed deer, eastern cottontail rabbit, woodchuck, raccoon, gray squirrel, muskrat and beaver; (2) a wide variety of local and migratory birds; (3) waterfowl such as great blue heron and cormorants; (4) raptors such as red shouldered hawks, ospreys, and bald eagles; and (5) many reptiles and amphibians such as American toad, bullfrog, snapping turtle, and eastern garter snake.

In particular, the Biron Project area provides a variety of bottomland and upland habitat for both local and migratory birds. The flowage, backwater areas, islands, and uplands associated with the project offer seclusion, nesting areas, and food sources for both aquatic and upland birds. Waterfowl/water bird surveys conducted in the spring, summer, and fall of 1996 indicated limited waterfowl use of the flowage and open water and limited numbers of nesting ducks. Geese were observed in greater numbers. Water birds, such as great blue herons and cormorants, were also observed; however, no rookeries were found.

Environmental Effects

The Licensee's Proposal

Exchanging the 3.14-acre parcel is not likely to result in major impacts to plant or wildlife species because this stretch of shoreline has been previously disturbed by the construction of County Highway U, and boat docks, cottages, and homes.

Impacts to vegetation and wildlife are more likely to result from construction of the licensee's proposed parking area in Parcel 1 and proposed parking area and boat launch in Parcel 2. Construction of these facilities would require the clearing of about 2.0 and 3.0 acres in Parcels 1 and 2, respectively, of upland forested softwood/hardwood species. However, the overall impact is expected to be minor because the areas to be cleared are relatively small and do not contain any wetlands, protected plant or animal species (section 5.2.6), or critical habitat. However, if the licensee constructs a trail from the parking area in Parcel 1 to the shoreline, it would have to cross a small wetland (section 5.2.5).

Although the licensee proposes no ground-disturbing activities in Parcel 3, it is possible that the increased use of these lands for recreation could increase impacts to vegetation and wildlife. Conversely, by acquiring and preserving the private lands in Parcel 3, the licensee could help protect existing vegetation and wildlife.

The Licensee's Proposal with Other Staff-Identified Measures

As discussed in section 5.2.2, NPS recommends that the 100-foot riverfront corridor be re-vegetated using native tree saplings and that the area not be mowed to encourage a naturally vegetated riparian buffer. NPS further recommends that a conservation easement for this corridor be donated to a local land trust with funding for monitoring to ensure that the area is allowed to re-vegetate and remain in a natural condition.

We agree with the NPS recommendation that the licensee establish a "no development" corridor of at least 100 feet along the shoreline (section 5.2.2). We do not agree, however, with the NPS recommendation that a conservation easement for this corridor be donated to a local land trust. We conclude that the corridor should remain within the project boundary and that the licensee should be responsible for long-term monitoring and management to ensure that the area is allowed to re-vegetate and remain in a natural condition. To that end, the licensee should consult with the Village of Biron, Wood County Parks and Forestry, Wood County Planning and Zoning, the Lac du Flambeau Band of Lake Superior Chippewa Tribe, the SHPO, the NPS, the River Alliance

of Wisconsin, the U.S. Fish and Wildlife Service, and the WDNR to develop and implement a long-term resource conservation plan for monitoring and protecting vegetation and wildlife in the riverfront corridor. The plan should detail the licensee's proposed measures and schedule for re-vegetating, monitoring, and maintaining the riverfront corridor. The licensee should submit the final plan for Commission approval. Implementation of the approved plan would protect and enhance the shoreline corridor's vegetative cover and riparian-habitat conditions.

5.2.5 Wetlands

Affected Environment

Wetland types found in the Biron Project boundary include approximately 1,878 acres of floodplain forest, shrub swamp, alder thicket, and shallow marsh. Most of the wetland habitats occur along the shorelines of the flowage and tributary streams. A mosaic of emergent, scrub-shrub, and forested wetlands intermixed with islands of forested uplands comprise the wetland habitat within the flowage. The emergent wetlands include a mix of grasses, sedges, and rushes, dominated by cattails along the edge of open water. The scrub-shrub wetlands have an understory of emergent plant species with a woody shrub overstory comprised of species such as river birch, red-osier dogwood, and alder. Forested wetlands are dominated by eastern cottonwood and willow species.

Some of the Biron Project wetlands occur on Parcels 1 and 3. Parcel 1 is a combination of upland forested softwood and hardwood species with pockets of natural wetlands interspersed. The licensee states that the northern half of Parcel 1 (north of the proposed relocated County Highway U) contains 1.5 acres of wetlands. The southern half of Parcel 1 has not been delineated for wetlands; however, the licensee estimates that as much as 50 percent of this area (approximately 15 acres) is comprised of wetlands. Parcel 3 consists of numerous backwaters, fringe wetlands, and upland- and lowland-mix hardwoods.

Environmental Effects

The Licensee's Proposal

Exchanging the 3.14-acre parcel would not affect any wetlands because there are no wetlands within the parcel. Similarly, construction of the proposed parking area in Parcel 1 and the proposed parking area and boat launch in Parcel 2 would not affect any wetlands. However, the licensee proposes to construct a "low impact" trail from the parking area in Parcel 1 to the Biron Flowage shoreline, and this trail would have to cross a small portion of a wetland.

Although the licensee proposes no ground-disturbing activities in Parcel 3, it is possible that increased use of these lands for recreation could impact wetlands. Conversely, by acquiring and preserving the private lands in Parcel 3, the licensee could help protect existing wetlands.

The Licensee’s Proposal with Other Staff-Identified Measures

The licensee's proposal does not include any specifics about designing or constructing a trail from the proposed parking area in Parcel 1 to the Biron Flowage shoreline. The licensee should design the trail to avoid impacts to wetlands, to the extent possible, and should submit the design for review by the U.S. Army Corps of Engineers (Corps) and WDNR. Prior to commencing any ground-disturbing activities associated with the trail’s construction, the licensee should submit the trail design, including documentation of agency consultation, for Commission approval.

5.2.6 Threatened and Endangered Species

Affected Environment

According to FWS, there are no Federally-listed threatened or endangered plant species in Wood County (FWS 2006). There are, however, five state-listed threatened and endangered plant species in WDNR’s Natural Heritage Inventory database for Wood County (table 4) (WDNR 2006).

Table 4. State-listed plant species in Wood County, Wisconsin

Common name	Scientific name	State status
Bog fern	<i>Thelypteris simulate</i>	Threatened
Crossleaf milkwort	<i>Polygala cruciata</i>	Threatened
Dwarf milkweed	<i>Asclepias ovalifolia</i>	Threatened
Little goblin moonwort	<i>Botrychium mormo</i>	Endangered
Pale green orchid	<i>Platanthera flava var. herbiola</i>	Threatened
<i>Source: WDNR 2006</i>		

There are five Federally-listed threatened or endangered wildlife species (including candidate and proposed species) in Wood County (FWS 2006). There are also 16 state-listed threatened and endangered wildlife species in WDNR’s Natural Heritage Inventory database for Wood County (WDNR 2006). Table 5 provides the names and status of these Federally- and/or state-listed wildlife species.

Table 5. Federally- and state-listed wildlife species in Wood County, Wisconsin

Common name	Scientific name	Federal status	State status
Mammals			
Gray wolf	<i>Canis lupus</i>	Endangered	Threatened
Birds			
Bald eagle	<i>Haliaeetus leucocephalus</i>	Threatened	Species of concern
Barn owl	<i>Tyto alba</i>		Endangered
Greater prairie-chicken	<i>Tympanuchus cupido</i>		Threatened
Osprey	<i>Pandion haliaetus</i>		Threatened
Red-necked grebe	<i>Podiceps grisegena</i>		Endangered
Red-shouldered hawk	<i>Buteo lineatus</i>		Threatened
Trumpeter swan	<i>Cygnus buccinator</i>		Endangered
Whooping crane	<i>Grus americanus</i>	Endangered	
Reptiles and Amphibians			
Blanchard's cricket frog	<i>Acris crepitans blanchardi</i>		Endangered
Blanding's turtle	<i>Emydoidea blandingii</i>		Threatened
Eastern massasauga rattlesnake	<i>Sistrurus catenatus catenatus</i>	Candidate	Endangered
Western slender glass lizard	<i>Ophisaurus attenuatus</i>		Endangered
Wood turtle	<i>Clemmys insculpta</i>		Threatened
Fish			
Redfin shiner	<i>Lythrurus umbratilis</i>		Threatened
Insects			
Frosted elfin	<i>Incisalia irus</i>		Threatened
Karner blue butterfly	<i>Lycaeides melissa samuelis</i>	Endangered	Species of concern
<i>Sources: FWS 2006; WDNR 2006</i>			

The Federally-listed bald eagle (threatened), gray wolf (endangered), and Karner blue butterfly (endangered) are known to occur in the general region of the Biron Project. Surveys conducted by the licensee in 1996 determined that bald eagles feed within the project area during the spring and summer. However, bald eagles were not observed in the vicinity of the project tailraces during the 1996 over-wintering survey. Article 406 of the project license (FERC 2003b) incorporates the *Bald Eagle Management and Protection Plan* filed by the licensee in June 1998.

The Karner blue butterfly typically occurs in central and northwestern Wisconsin, and has been documented in Wood County. The licensee, WDNR, and FWS conducted field investigations for the butterfly on project lands in 1996. Although extensive habitat exists within the Biron Project area, no Karner blue butterflies, nor any evidence of their specific feeding on the lupine plants, were found during presence/absence surveys. Article 407 of the project license incorporates the *Karner Blue Butterfly Management and Protection Plan* filed by the licensee in June 1998.

Environmental Effects

The Licensee's Proposal

Exchanging the 3.14-acre parcel would not affect any Federally-listed threatened or endangered species because none have been documented in the vicinity of the parcel and there is no designated critical habitat for these species in the area. For the same reasons, construction of the proposed parking areas in Parcels 1 and 2, and the boat launch in Parcel 2, would not affect threatened or endangered species.

Although the licensee proposes no ground-disturbing activities in Parcel 3, it is possible (but not likely) that the increased use of these lands for recreation could affect habitat for threatened and endangered species.

The Licensee's Proposal with Other Staff-Identified Measures

We conclude that continued implementation of the licensee's *Bald Eagle Management and Protection Plan* and *Karner Blue Butterfly Management and Protection Plan*, along with implementation of the long-term resource conservation plan we recommend in section 5.2.4, would prevent adverse effects on threatened and endangered species. Therefore, we have identified no additional measures to protect those species.

5.2.7 Land Use

Affected Environment

The Biron Project boundary encompasses a total area of approximately 7,860 acres, of which 2,078 acres (26.4 percent) is covered by surface water. The other 5,782 acres are above water and are comprised of undeveloped open space (2,743 acres or 34.9 percent), farmland and other agricultural development (1,391 acres or 17.9 percent), residential development (872 acres or 11.0 percent), land that is dedicated to public recreation (731 acres or 9.3 percent), and the Biron Project works (45 acres or 0.5 percent).

The licensee owns about 700 acres (12 percent) of the 5,782 upland acres within the Biron Project boundary, and holds flowage easements on the privately-owned land within

the project boundary. The licensee manages about 630 acres (90 percent) of its 700 acres as “Protected Open Space” under its 1998 *Biron Hydroelectric Project Land Management Plan*. The licensee manages the other 70 acres (10 percent), including the 3.14 acres proposed for exchange, as “Managed Open Space.” Most of the licensee’s lands are separate parcels scattered along the Biron Flowage shoreline. The licensee owns about 2 miles of the project’s total 35 miles of shoreline.

The licensee's 3.14-acre parcel has been developed and used for seasonal cottages and year-round residences for many years. This acreage is within a thin strip of land (ranging from 5 feet to 75 feet) between the Biron Flowage and County Highway U. Many of the cottages and residences have boat houses, or docks, and some have installed septic systems.

Parcel 1 is owned by Classic and consists of 47.546 acres with 830 linear feet of river shoreline. This area is undeveloped and covered with forest. Parcel 2 is owned by Classic and consists of 2.960 acres with 126 linear feet of river shoreline. This area is undeveloped and covered with forest, but it abuts an existing CWPC-owned public boat launch to the north and a private residence with detached garage facilities to the east. Parcel 3 is owned by Classic and consists of a group of islands and peninsulas in the Wisconsin River and roadside access located about 9 miles upstream (east) of Biron Dam. Parcel 3 consists of 154.84 acres (48.82 acres of which are above water) with 33,749 linear feet of river shoreline. The lands in Parcel 3 are undeveloped and covered with forest and wetlands.

Environmental Effects

The Licensee’s Proposal

Exchanging the 3.14-acre parcel would not result in major land use changes because existing uses of the recreational lots (i.e., cottages, homes, boat houses, and boat docks) would continue. Although ownership of the parcel would be conveyed from the licensee to the current leaseholders, the parcel would remain within the project boundary and the licensee would retain flowage rights over the land. Therefore, there would be no impact to the existing project boundary or flowage rights in this portion of the Biron Flowage.

For the current leaseholders, the proposed land exchange would allow them to remain on the properties they currently lease, and to take fee title ownership of those properties. The value of the properties would likely increase over time, and could thereby increase property tax revenues.

Also, based on staff observations during site visits to the Biron Project, it appears that some of the improvements made on the leased properties are non-compliant with the terms of the annual leases and might be non-compliant with the Village of Biron and Wood

County land use regulations, zoning ordinances, and WDNR's permitting process. Thus, the proposed land exchange could have the adverse effect of continuing these non-compliant land uses.

Direct land use changes would result from the licensee's proposal to develop a park and construct a parking area in Parcel 1, and to construct a parking area and boat launch in Parcel 2. Land use in these currently undeveloped parcels would change to developed recreational use with the addition of these permanent facilities. However, the licensee would take ownership of Parcels 1 and 2, would retain flowage rights on the parcels, and would keep the parcels within the project boundary. There would be no impact to the project's existing boundary or flowage rights.

Although the licensee proposes no ground-disturbing activities in Parcel 3, land use changes could occur as a result of the increased use of these lands for recreation. Conversely, by acquiring and preserving the lands in Parcel 3, the licensee could help protect existing land uses. The licensee would take ownership of Parcel 3, would retain flowage rights on the parcel, and would keep the parcel within the project boundary. Therefore, there would be no impact to the project's existing boundary or flowage rights.

The Licensee's Proposal with Other Staff-Identified Measures

Some of the structures and modifications made on the leased recreational lots might be non-compliant with the terms of the annual leases, with the Village of Biron and Wood County land use regulations, zoning ordinances, and/or with WDNR's permitting process. Article 412 of the project license states that:

"If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values . . . the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities."

Therefore, we conclude that prior to conveyance to the leaseholders of any leased properties with existing or proposed improvements (including septic systems), the licensee should provide thorough documentation to the Commission that any structures or modifications have been executed in compliance with the conditions specified in the existing annual leases, local land use regulations, zoning ordinances, and WDNR's permitting process. All required state, county, and local permits for the improvements must be made part of the documentation. If the leaseholder cannot provide such documentation, we recommend that the licensee retain the property until the non-compliant structures or facilities are brought into compliance.

Prior to the conveyance to the leaseholders, of any leased properties with existing or proposed septic systems, to protect the public health, safety, and welfare, and prevent human health hazards, the licensee should provide to the Commission, thorough documentation that each individual septic system meets the requirements of the Wisconsin Administrative Code Chapters Comm81 to Comm87, including inspection by a Wisconsin-licensed master plumber. All required state, county, and local permits must be obtained, approved, and made part of the documentation.

For the lands the licensee would acquire in Parcels 1, 2, and 3, we conclude that continued implementation of the existing *Biron Hydroelectric Project Land Management Plan* (CWPC 2003d) would also help minimize potential impacts to existing land uses. Also, the establishment of our recommended 100-foot, no-development corridor would provide an effective means of controlling shoreline uses and occupancies within the corridor, and a sufficient building-setback distance for adjacent back-lying lands.

5.2.8 Recreation

Affected Environment

The Biron Project is a popular recreational destination for local residents because of the length of its flowage and the multiple recreational opportunities it offers. Popular activities include camping, fishing, water skiing, jet skiing, pleasure boating, hiking, biking, site-seeing, waterfowl and upland game hunting, ice fishing, and snowmobiling.

Based on the 2003 FERC Form 80 Recreation Report filed by the licensee, the total number of annual daytime recreation days⁶ at facilities located at the Biron Project was 4,600. Total annual nighttime recreation use was 20, peak weekend daytime use was 125, and peak weekend nighttime use was 4 (CWPC 2003a).

Based on the 2003 FERC Form 80 Recreation Report data, the approximate percentage of facility capacity used at existing recreational facilities around the Biron Project is relatively low at this time. These estimates are based on non-peak weekend use and report the percentage of use observed for a given facility type (e.g. if during the survey only 50 percent of the available boat ramps were used then the capacity is estimated at 50 percent). Facility use at the Biron Project is highest for camping areas and tent/trailer/RV sites (70 percent each), undeveloped access areas (65 percent), and a golf course (50 percent). Use of all other facility types was at or below 40 percent, including parks (40 percent), boat ramps (25 percent), and boat launching lanes (20 percent).

⁶A recreation day is defined as each visit by a person to a development for recreational purposes during any portion of a 24-hour period.

There are no public recreational facilities on the licensee's 3.14-acre parcel, but some of the current leaseholders have built private recreational cottages, boat houses, and boat docks. Although the licensee is required under Article 412 of the project license to allow public access to the Biron Flowage for recreational use, existing use of the 3.14-acre parcel is primarily limited to the current leaseholders. Nonetheless, the permits issued by the licensee do not grant the permittee the right to exclude the public from using the subject land. The permittee does have the right to exclude the public from using the boat dock and stairways.⁷

The Biron Flowage shoreline along County Highway U between Parcels 1 and 2 is a very popular recreational area for local residents. County Highway U is used by people who want to view the Biron Flowage while walking, riding bicycles, and driving cars. The licensee owns and maintains a boat launch on County Highway U just west of Parcel 2 that is heavily used during summer months. The Aqua Skiers practice area is currently located on the flowage shoreline east of Parcel 1, and this area is heavily used by the team and its spectators during the summer. The outlet from the Northland Cranberry Ditch just west of Parcel 1 is a popular destination for bank fishing. To access each of these areas, users currently park their cars and trailers along the shoulder of County Highway U opposite the flowage.

There are no developed recreational facilities in Parcels 1 and 2, and there is no existing recreational use of these lands. There are also no developed recreational facilities on Parcel 3, but these lands are accessible by boat and there is some limited recreational use (primarily hiking, fishing, and wildlife viewing).

Environmental Effects

The Licensee's Proposal

Conveying the 3.14-acre parcel would have a negligible impact on public recreation because the parcel currently has no public recreation facilities, and its use is limited almost exclusively to the current leaseholders, rather than the public. The licensee states that even if its 3.14-acre parcel were completely restored to a natural condition, the potential to develop public recreational opportunities on the parcel would be limited. The licensee also states that public access, parking, and recreational activities would be marginal because of the parcel's physical layout, the fact that it is fragmented by private land ownership, and its proximity to County Highway U. The licensee further states that the proximity of private

⁷ Biron Hydroelectric Project Land Management Plan, filed June 26, 1998, and approved in the new license, issued by the Commission July 30, 2003.

residences and County Highway U would create a high potential for user conflicts and safety hazards if the parcel were developed for recreation. We agree with these statements.

The licensee's proposal for Parcel 1 would have long-term beneficial effects on recreation. The proposed 47.5-acre public park would provide users with a large area for potential recreational developments and access to 830 linear feet of the Biron Flowage shoreline. The proposed 30-car parking area would provide parking for the general public while recreating in the park and on the shoreline. The parking area would help alleviate the existing traffic and safety problems associated with recreational users parking along the shoulder of County Highway U. The parking area could also be used by the Aqua Skiers and the spectators drawn to the shoreline for viewing their practices and shows. The licensee's proposal for Parcel 1 also includes constructing a "low impact" trail from the parking area to the Biron Flowage shoreline.

The licensee's proposal to relocate the Aqua Skiers' practice area from its current location to a new location within Parcel 1 would have both beneficial and adverse effects on recreation. The relocation would have beneficial effects by concentrating the team's practices near the shoreline of the public park and parking area within Parcel 1 (although the team would not have "exclusive use" of the area as stated in some public comments). This would offer spectators a better location from which to watch the team, and would help alleviate some of the existing traffic and safety problems caused by the team and their spectators parking along County Highway U. The licensee states that an added benefit of relocating the Aqua Skiers is that the team's dock and viewing platform would allow for additional public access, to include handicap accessibility for viewing and bank fishing.

Conversely, relocating the Aqua Skiers would have adverse effects by concentrating their practices near the popular bank fishing area at the outlet of the Northland Cranberry Ditch on the west side of Parcel 1. This could disturb fish and anglers by increasing the amount of boat traffic in the vicinity and the number of people along the shoreline. For this reason, WDNR recommends that the Aqua Skiers' practice area be located as far from the outlet of the Northland Cranberry Ditch as possible. Also, some public comments have suggested that relocating the Aqua Skiers from their current location to Parcel 1 would reduce public access because the new practice area would be in the center of the proposed park, leaving only two small, fragmented pieces of shoreline on either end of the park for public use.

The licensee states that during the summer months (June-August), the Aqua Skiers practice approximately twice a week (about 20 practices per year) for 2 to 4 hours each practice. The licensee contends that relocating the team would not affect the public's ability to fish near the Northland Cranberry Ditch during peak fishing times (morning and late afternoon) because the team normally practices in the mid-afternoon when fish species are in deeper waters due to mid-day temperatures and light conditions. However, to address WDNR's concerns, the licensee proposes to relocate the practice area about 200 feet east of

the Northland Cranberry Ditch. Also, in light of the Commission's concerns, CWPC suggests moving the practice area an additional 100 feet to the east, if necessary.

The licensee's proposal for Parcel 2 would have long-term beneficial effects on recreation. The proposed parking area would accommodate 80 vehicle/trailers and 20 vehicles. This would help alleviate existing traffic and safety problems on County Highway U because there is currently no parking area adjacent to the existing boat launch and users must park along the highway's shoulder. The licensee states that the size of the proposed parking lot reflects peak current and potential future use of the existing boat launch, as site visits on peak holiday weekends have counted as many as 50-60 car/trailers parked along County Highway U. The licensee's proposal for Parcel 2 would also benefit recreation by providing an improved boat launch and vehicle turnaround area that would be connected to the new parking area just east of the existing boat launch. In addition, a 522-foot-long strip of land would connect this new parking area to 1,000 linear feet of licensee-owned land adjacent to a nearby pond. This linkage would provide bank fishing opportunities to the public along the shoreline of this pond, as well as the flowage.

The licensee's proposal for Parcel 3 would have long-term beneficial effects on recreation by protecting 48.82 acres of land while providing public access for passive, undeveloped recreational uses (e.g., hiking, fishing, and wildlife viewing). The licensee states that these lands would provide for significant increases in public access from a local road (Ole River Road) to the river. WDNR states that the lands in Parcel 3 have "outstanding fish, wildlife, and recreation value and would substantially improve regional public access to habitat and recreational opportunities."

The Licensee's Proposal with Other Staff-Identified Measures

We conclude that the licensee's parking-area and boat-launch proposals for Parcels 1 and 2 would enhance recreational access for the general public. We recommend that the licensee develop and maintain these facilities to ensure that they are available for public use as part of the project in a timely manner. Prior to commencing construction of the parking areas and boat launch (or any other recreational facilities), the licensee should submit for Commission approval final designs for these facilities, along with a schedule for their completion.

If Wood County constructs a new County Highway U, we also recommend that the licensee prepare and implement a plan for acquiring the existing County Highway U roadbed and ROW and developing it as a shoreline trail. We make this recommendation to ensure that this trail is also available for public use as part of the project in a timely manner. The licensee should consult with the Village of Biron, the Wood County Highway Commission, Wood County Parks and Forestry, Wood County Planning and Zoning, the Lac du Flambeau Band of Lake Superior Chippewa Tribe, the SHPO, the NPS, the River Alliance of Wisconsin, the U.S. Fish and Wildlife Service, and the WDNR in preparing the

plan for developing the shoreline trail. Vehicle access to the trail should be restricted, except for Aqua Skier equipment trucks and emergency vehicles. The licensee should submit the final plan, which should include an implementation schedule, for Commission approval, along with documentation of agency consultation. By acquiring the roadbed and ROW and developing the shoreline trail, the licensee would provide additional public access to the Biron Flowage.

Finally, we conclude that the licensee should relocate the Aqua Skiers practice area to Parcel 1, with the west side of the new site located no less than 300 feet from the east side of Northland Cranberry Ditch. This would offer spectators a better location to watch the team, provide better public access, and alleviate conflicts with shoreline fishing.

5.2.9 Aesthetic Resources

Affected Environment

The Biron Flowage is riverine in its upper reaches, but gradually widens to an impoundment as one travels downstream toward the dam. The flowage has many scattered, wooded islands that help create a natural setting that is visually compatible with the surrounding rural character. The flowage shoreline is characterized by groups of lake front homes and cottages, rural residences, and farms set among large stretches of open space. Most of the residential development along the shoreline is located in scattered pockets along the lower and upper portions of the flowage. The middle portion of the flowage is more rural in nature.

Views of the project flowage from the principal road corridors are limited particularly in the upper reaches due to the vegetated character of the shorelines, the location of road corridors away from the shorelines, and private holdings. Vistas are possible from Biron Drive in the area adjacent to the southern shore of the flowage. Several high, wooded slopes exist on the Biron flowage which provide potential for panoramic views. However, these slopes are in private ownership and are not accessible to the public. Vistas in the upper reach are quite limited due to the narrow character of the flowage and private ownership which limits public access (CWPC, 2005b).

The licensee's 3.14-acre parcel is located in the lower portion of the Biron Flowage, on the southern shore. The parcel is characterized by recreational lots (seasonal cottages and year-round residences with boat houses and docks) along the shoreline adjacent to County Highway U. Parcels 1 and 2 abut the 3.14-acre parcel, and are characterized by a mix of forested areas and wetlands. Parcel 3 is located approximately 9 miles upstream, in Portage County, in the upstream northern portion of the Biron Flowage. This parcel is characterized by a mix of forested areas and wetlands along the flowage shoreline.

Environmental Effects

The Licensee's Proposal

Exchanging the 3.14-acre parcel would not have major impacts on aesthetic resources because there would be no project-related development that would alter the area's existing aesthetic character. Impacts to aesthetic resources are more likely to result from construction and operation of the licensee's proposed parking area in Parcel 1 and parking area and boat launch in Parcel 2. Clearing the land and constructing the parking areas and boat launch would involve the use of heavy machinery that would generate short-term visual and aural impacts in the immediate vicinity. Long-term visual and aural impacts would result from permanently clearing about 2.0 and 3.0 acres in Parcels 1 and 2, respectively, and from increasing vehicular and boat traffic associated with the parking areas and the boat launch. However, the overall aesthetic impact of these facilities is expected to be minor because the areas to be cleared are relatively small and there is already considerable vehicular and boat traffic in the vicinity. Increased use of Parcel 3 for recreation would have no appreciable effect on the area's aesthetic resources.

The Licensee's Proposal with Other Staff-Identified Measures

No additional measures have been identified for aesthetic resources. Our recommended 100-foot, no-development corridor, and associated re-vegetation measures, would protect and enhance the visual quality of the Biron Flowage shoreline.

5.2.10 Cultural Resources

Affected Environment

In 1996, the licensee conducted a Phase I archaeology survey of project lands along the Biron Flowage shoreline to identify archaeological sites. The survey identified 21 previously recorded archaeological sites and 5 historic sites within or adjacent to the Biron Project's area of potential effect (APE). Nearly all of these sites are located more than 50 meters from the Biron Flowage shoreline.

The Phase I survey also discovered 19 new archaeological sites. Twelve of these new sites are exposed when the Biron Flowage is at normal operating levels and appear to have been affected by project operations. All 12 of the exposed sites contained potentially intact archaeological deposits above the lake bank, and therefore all were recommended for a Phase II investigation.

The licensee's 1996 Phase II survey report concluded that none of the three new archaeological sites in Wood County is eligible for inclusion in the National Register of Historic Places (NRHP). Both 1996 reports concluded that there are no historic structures

within or adjacent to the project's APE that are included in or eligible for inclusion in the NRHP.

Surveys conducted to date have revealed no evidence of any archaeological or historical sites eligible for inclusion in the NRHP on the licensee's 3.14-acre parcel. Because this strip of land has had significant disturbance associated with boat dock, cottage, and home construction (including the installation of septic tanks and drain fields), road construction, and shoreline stabilization, the probability of finding any intact cultural artifacts is low. However, the 1996 surveys did not include areas away from the shoreline within Parcels 1, 2, or 3.

Environmental Effects

The Licensee's Proposal

For the licensee's proposal, we define the APE for cultural resources as the lands that would be involved in the proposed exchange, including the licensee's 3.14-acre parcel and Parcels 1, 2, and 3. The Wisconsin SHPO has stated that based on the information provided, the proposed land exchange would "result in no historic properties affected pursuant to 36 CFR 800.4(d)(1)." However, the SHPO's conclusion does not address potential impacts to undiscovered archaeological resources in areas that have not been surveyed.

The Lac du Flambeau Band of Lake Superior Chippewa Tribe states that it is concerned about impacts to cultural resources because the affected lands are located within areas that were previously occupied by the Northern Ojibwe Bands. The Band states that there are places that are significant because of natural features and not necessarily because of manmade features, and that archaeological investigations might not be the proper tool for identifying such natural features. Therefore, the Band states that it needs a direct role in determining what methods would be used to identify cultural resources within the APE. The Band recommends that the agencies work directly with the potentially affected tribes before hiring consultants, and that archaeologists work directly with tribal experts when identifying and evaluating cultural resources. The Band requests consultation pursuant to Section 106 of the NHPA for any impacts or effects to cultural resources resulting from the proposed land exchange.

It is not likely that exchanging the 3.14-acre parcel would affect undiscovered cultural resources for three reasons. First, the licensee's 1996 surveys revealed no evidence of any historical or archaeological sites eligible for inclusion in the NRHP along this 3.14-acre stretch of shoreline. Second, the land along this stretch of shoreline has already experienced significant disturbance, and the probability of finding any intact cultural artifacts is low. Third, no new land-disturbing activities are proposed for this parcel.

It is more likely that construction of the licensee's proposed parking area in Parcel 1 and parking area and boat launch in Parcel 2 would affect undiscovered cultural resources for two reasons. First, it appears that the land areas away from the shoreline within Parcels 1 and 2 have not been surveyed for archaeological resources. Second, much of the land that would be disturbed for the proposed recreational facilities in Parcels 1 and 2 is covered with forest and has not been previously disturbed.

For these same reasons, impacts to undiscovered archaeological resources could also occur in Parcel 3. Although the licensee proposes no ground-disturbing activities in Parcel 3, it is possible that undiscovered archaeological resources could be affected by increased recreational use of these lands, if they were to become part of the project and open to the public.

The licensee's Historic Resources Management Plan (HRMP) for the Biron Project (FERC 2004) stipulates that:

"when ground-breaking activities, including recreational developments, are proposed within the project's APE the licensee will first conduct an archeological survey of the affected area. Results of the survey will be submitted to the SHPO for consultation and analysis. If no historical sites are identified the licensee may proceed with the ground-disturbing activity. If a site is present, the licensee may propose methods that will have no effect on the site or choose to conduct additional research to determine NHRP eligibility. If additional research occurs, a copy of the results will be analyzed by the SHPO and the licensee will proceed with the activity if the site is not NHRP eligible. The licensee will implement appropriate mitigation measures after consulting with the SHPO if the site is eligible. When appropriate, preservation in-place will be the primary method for mitigation used by the licensee."

The HRMP also stipulates that if any previously undiscovered cultural resources are discovered during ground-breaking activities, the licensee should make an effort to:

"contact any Native American tribes that may have had a historical presence in the area and would be interested in the unanticipated discovery. If appropriate, the tribes should be included in consultation concerning mitigation or preservation of the finds."

Therefore, pursuant to the HRMP the licensee would conduct archaeological surveys in the areas that would be disturbed in Parcels 1 and 2. Further, the licensee would follow the procedures outlined in the HRMP for consulting with the SHPO and any affected tribes, including the Lac du Flambeau Band of Lake Superior Chippewa, if any archeological or historic remains are discovered during construction, operation, and maintenance activities

on Parcels 1 or 2, or during recreational use of Parcel 3. We conclude that these provisions would prevent adverse impacts to cultural resources.

The Licensee's Proposal with Other Staff-Identified Measures

Given the existing provisions of the licensee's HRMP discussed above, we have no additional measures for cultural resources.

5.2.11 Cumulative Impacts

The licensee states that the proposed land exchange is contingent upon state and local government approval of the proposed relocation of County Highway U away from the Biron Flowage shoreline. In turn, the relocation of County Highway U would likely result in an effort by Classic to develop a residential community/business park and additional recreational amenities along the Biron Flowage shoreline. These possible future actions are not part of the licensee's application, but we assess their impacts as cumulative impacts because the relocation of County Highway U is likely to occur, and Classic's developments are likely to be proposed within: (1) the current Biron Project boundary; and (2) the reasonably foreseeable future. If and when such actions are proposed, Commission staff will determine what authorizations may be needed and what environmental review may be required.

Geology and Soils, Water Quality, and Aquatic Resources

In terms of soil erosion and impacts to water quality and aquatic resources due to sedimentation, it is likely that the cumulative impacts of removing and relocating County Highway U, constructing a residential community/business park, and constructing additional recreational amenities within the residential community and along the Biron Flowage shoreline would be much larger than the impacts of the licensee's proposal. Although their impacts would be limited to the construction period, each of these actions would involve the excavation of land areas that would be much larger than the two parking areas and the boat launch included in the licensee's proposal.

Some individuals have commented that relocating County Highway U would improve water quality in the Biron Flowage by relocating a source of gasoline, oil, road salts, and other chemicals that runoff from the highway into the flowage. While it is likely that such a beneficial effect would occur, it is also likely that this effect would be offset by long-term impacts to water quality from several sources, including: (1) the licensee's proposed parking areas in Parcels 1 and 2 and boat launch in Parcel 2 (which would increase gasoline and oil spills from increased vehicular and boat traffic); (2) the residential community/business park between Parcels 1 and 2 (which would increase gasoline and oil spills from increased vehicular traffic and would likely increase the use of fertilizers, pesticides, and herbicides); and (3) the additional recreational amenities proposed within the residential community and along the shoreline (which would increase soil erosion and sedimentation and gasoline and oil spills from increased boat traffic).

Some individuals have commented that the proposed residential community/business park would extend the Village of Biron sewage service to the area, allowing some leaseholders on the licensee's 3.14 acres to connect with the Village's service and remove their existing septic systems. This, in turn, could help improve water quality in the Biron Flowage if some of these existing septic systems are failing or functioning improperly. In March 2005, the Village of Biron Board of Trustees voted in favor of providing water and sewer utility services to existing and future homes in the proposed land exchange area. In April 2005, the Village of Biron Board of Trustees voted to authorize the Biron Planning Commission to pursue Tax Increment Financing in the proposed land exchange area to assist the Village financially in the provision of water and sewer services.

Terrestrial Resources, Wetlands, and Threatened and Endangered Species

It is also likely that the cumulative impacts of the possible future actions on plant and wildlife species would be much larger than the impacts of the licensee's proposal because each of the future actions would involve clearing vegetation and wildlife habitat from land areas that would be much larger than the relatively small areas that would be cleared in Parcels 1 and 2 under the licensee's proposal. Also, most of the land areas that would be cleared for the future actions are previously undisturbed, have a combination of upland forested softwood/hardwood plant species with pockets of natural wetlands interspersed, and provide high-quality habitat for a variety of wildlife species.

Similarly, the cumulative impacts of the possible future actions on wetlands would be larger than the impacts of the licensee's proposal. In 2004, Classic hired a Registered Professional Soil Scientist to prepare a wetland delineation map of the property on which it would develop the proposed residential community/business park. In a letter dated November 18, 2004, the Corps stated its concurrence that the wetland boundary on the property had been established in accordance with the 1987 *Corps of Engineers Wetland Delineation Manual* and was adequate to establish the limits of the Corps' jurisdiction. The Corps' letter concluded that the wetlands are under Corps jurisdiction pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

Although the licensee states that Classic has tried to avoid wetlands to the extent possible in designing its development, and has proposed some long-term measures to protect and enhance plant species, wetlands could be affected during construction by soil erosion associated with excavation. If the development were constructed, wetlands could be affected by runoff containing gasoline, motor oil, fertilizers, pesticides, and herbicides from the residential community/business park. In addition, the relocated County Highway U would cross a wetland at the western end of the development, and one of the roads proposed within the development would cross a wetland south of the relocated County Highway U.

The cumulative impacts to threatened and endangered species of relocating County Highway U, constructing a residential community/business park, and constructing additional recreational amenities within the residential community could also be larger than the impacts of the licensee's proposal because each of these actions would involve clearing vegetation and wildlife habitat from land areas that would be larger than the relatively small areas that would be cleared in Parcels 1 and 2.

Land Use and Recreation

The possible future actions would also result in larger land use changes than the licensee's proposal. Existing use of the affected lands would change dramatically, from undeveloped forest and wetlands to a large-scale development that would include transportation, residential, business, and recreational uses. It appears, however, that the proposed relocation of County Highway U and construction of the residential community would not violate local land use regulations because the Wood County Board of Supervisors unanimously approved the highway's relocation (February 2005) and the Village of Biron Board of Trustees unanimously approved a resolution in support of both the highway relocation and the residential development (May 2005).

Relocating County Highway U, constructing a residential community/business park, and constructing additional recreational amenities within the residential community would all have both beneficial and adverse impacts on recreation. The licensee states that the existing County Highway U ROW makes using the entire 3,094 linear feet of shoreline in this area impractical and unsafe. The licensee states that except for the existing boat launch, the current Aqua Skiers practice area, and the area around the outlet of the Northland Cranberry Ditch, the public does not have a safe or practical way to access the flowage. Therefore, the licensee contends that from a qualitative and practical viewpoint, the public does not have access to the flowage along the stretch of County Highway U that would be relocated. Relocating the highway would have a long-term beneficial effect on recreation by removing the existing traffic and safety problems associated with using these popular areas.

Relocating County Highway U would provide the licensee, Classic, Wood County, and the Village of Biron with opportunities to develop additional recreational amenities along the Biron Flowage shoreline. In this context, WDNR recommends that if relocating the highway includes relocating an existing dam from the north end to the south end of the small pond east of Parcel 2, the abandoned highway ROW northeast of the pond should revert to the licensee and be added to the Biron Project for recreational access (primarily bank fishing). The licensee states that this strip of abandoned highway ROW would be available for public access, bank fishing opportunities, and travel from the present intersection of County Highway U and East Biron Drive to the proposed boat launch area.

The licensee acknowledges that relocating County Highway U would have the adverse impact of eliminating the popular existing activity of driving along the highway to view the Biron Flowage. However, the licensee contends that the proposed park in Parcel 1 would offer the same view corridor as provided by the existing County Highway U, except that the new park would become a destination point to enjoy the river's aesthetic resources rather than a scenic drive that creates vehicular and pedestrian safety hazards.

To the extent that it would provide additional facilities for public use, Classic's proposal to construct a residential community/business park and additional recreational amenities could have beneficial effects on recreation. Classic proposes to add 225 feet of Biron Flowage shoreline to the west side of Parcel 1, so that the park would cover 47.8 acres (rather than 47.5 acres) and would have 1,055 feet of river frontage (rather than 830 feet). Classic states that this addition would provide for direct automobile access to the park (i.e., from what would remain of County Highway U west of Parcel 1) and additional shoreline fishing and other recreational opportunities (including a handicap accessible fishing pier).

Not all of Classic's proposed recreational amenities would benefit public recreation. Classic proposes to construct cluster docks along the Biron Flowage shoreline to reduce the number of piers required to support its proposed residential development. It also proposes to develop a "safe harbor water area" and an inland waterway channel connected to the Biron Flowage. Although these proposals would enhance recreational opportunities for residents of the proposed development, they would not enhance recreational opportunities for the general public. In fact, they could decrease public recreational opportunities by occupying project lands and waters that could be developed by the licensee or others for public recreation.

Aesthetic Resources

The cumulative aesthetic impacts of relocating County Highway U, developing a residential community/business park, and developing additional recreational amenities within the residential community would be much larger than the impacts of the licensee's proposal. Each of these actions would involve clearing vegetation and constructing roads, buildings, and other permanent structures on land areas that are currently undeveloped and much larger than the areas that would be affected in Parcels 1 and 2. In particular, the proposed residential community/business park would not be consistent with the area's existing aesthetic character.

The use of heavy machinery that would be required to remove the existing County Highway U, clear land for and construct the relocated County Highway U, and clear land for and construct the proposed residential community/business park and recreational amenities would generate short-term visual and aural impacts in the immediate vicinity.

These impacts would be on a much larger scale, and would last longer, than the aesthetic impacts associated with the licensee's proposal.

Long-term visual and aural impacts would result from permanently clearing the land for the large residential community/business park and the long-term presence of new roads, lights, utility lines, residential structures, business structures, and recreational amenities. Also, the development would result in long-term aesthetic impacts associated with increased vehicle traffic in the area.

Cultural Resources

For the same reasons as discussed for the licensee's proposal, it is not likely that Classic's proposal to develop recreational amenities along the Biron Flowage shoreline would affect undiscovered archaeological resources. It is more likely that the excavation associated with relocating County Highway U and constructing the proposed residential community/business park would affect undiscovered archaeological resources because most of the land areas that would be excavated are covered with forest, have not been previously disturbed, and may not have been surveyed for archaeological resources.

5.3 NO-ACTION ALTERNATIVE

Under the no-action alternative, the Commission would deny the licensee's application for conveyance and acquisition of project lands and the beneficial and adverse effects of the licensee's proposal as discussed in section 5.2 would not occur. The licensee would still be faced with the possible need to provide additional public access along the Biron Flowage, and with the decision of whether or not to terminate the existing annual leases on its 3.14-acre parcel.

6.0 CONCLUSIONS AND RECOMMENDATIONS

6.1 CONCLUSIONS

Based on the information available to us, and our analysis of that information as described in this FEA, we find that the licensee's proposed conveyance and acquisition of project lands would not constitute a major Federal action significantly affecting the quality of the human environment. While the proposed land exchange would have minor adverse impacts to most resource areas, we conclude that the beneficial effects of the licensee's proposal, with staff's recommendations, would outweigh any adverse impacts. This is particularly true for land use and recreation because the licensee would gain important areas for public shoreline access.

The licensee's proposed land conveyance is based on the premise that public pressure for access to the Biron Flowage could eventually result in the need to develop additional

public access sites. Based on the 2003 Form 80 data provided by the licensee, it is not clear that significant public pressure for additional access exists at this time. These data indicate that existing use of the types of facilities the licensee proposes is below capacity (i.e., parks are at 40 percent of capacity, boat ramps at 25 percent, and boat launch lanes at 20 percent).

However, in the EA prepared by Commission staff for the new project license (FERC 2003a), the licensee committed to keeping the undeveloped land it owns within the project boundary open to the public for dispersed recreational activities. The licensee also committed to continue evaluating the project's recreational needs based on its monitoring program and continued consultation with agencies and local recreation managers. Therefore, it is reasonable for the licensee to assume that use of the project's existing recreation facilities, as well as the demand for additional public access, will increase from community growth and greater numbers of project visitors. Thus, we conclude that it is reasonable for the licensee to address potential future needs by exchanging developed lands for undeveloped lands to increase public access to the Biron Flowage.

Despite this, some public comments have expressed concern that the licensee's proposals for Parcels 1, 2, and 3 would not offset the impact of losing public access to the 3.14-acre parcel. We conclude, however, that the opportunities for providing enhanced public access along the shoreline would offset any loss of access along the 3.14-acre parcel.

The possible future actions discussed in this FEA are not part of the licensee's application. To the extent that these or other actions would occur within the project boundary, the licensee may need to apply for Commission approval to permit the use of, or the conveyance of interests in project lands and waters. Such future applications would be subject to review by Commission staff.

6.2 RECOMMENDATIONS

We recommend that the Commission conditionally approve the licensee's application for conveyance and acquisition of project lands. Under this alternative, the licensee would implement the resource protection, impact-mitigation, and enhancement measures it proposes in its application, as well as those required by Federal, state, and local resource agencies and other entities. The licensee would also implement the following additional staff-recommended measures:

- (1) establish a "no development" corridor at least 100 feet wide along the Biron Flowage shoreline from the east side of one of the licensee's four parcels proposed for conveyance, located just west of Parcel 1 and the Northland Cranberry Ditch, to the current intersection of County Highway U, east of Parcel 2 and an existing pond (excluding a trail from the parking area in Parcel 1 to the shoreline, the relocated Aqua Skiers site, the boat launch in Parcel 2, our recommended shoreline trail, and any future recreational facilities that may be proposed by the licensee and approved

by the Commission) and re-vegetate the unpaved areas of the corridor using native vegetation (sections 5.2.2 and 5.2.4);

(2) prior to conveyance to the leaseholders any leased properties with existing, abandoned, or proposed septic systems, to protect public health, safety, and welfare, and prevent human health hazards, provide to the Commission thorough documentation that each individual septic system meets the requirements of the Wisconsin Administrative Code Chapters Comm81 to Comm87, including an inspection by a Wisconsin-licensed master plumber, and that all required state, county, and local permits and approvals have been obtained (section 5.2.2);

(3) develop, and file for Commission approval, a resource conservation plan for the long-term monitoring and protection of vegetation and wildlife in the "no development" corridor recommended in item 1, above (section 5.2.4);

(4) prior to commencing construction of a trail from the proposed parking area in Parcel 1 to the Biron Flowage shoreline and main shoreline trail, submit for Commission approval a final trail design that avoids or minimizes impacts to wetlands (section 5.2.5);

(5) prior to conveyance to the leaseholders any leased properties with existing or proposed permanent improvements (including septic systems), provide to the Commission thorough documentation that any permanent improvements have been executed in compliance with the conditions specified in the existing annual leases; local land use regulations; zoning ordinances; WDNR's permitting process; and all required state, county, and local permits for the improvements (section 5.2.7);

(6) develop and file for Commission approval, a plan for acquiring, if abandoned, the entire County Highway U roadbed and ROW within the shoreline corridor recommended in item 1, above and developing it as a shoreline trail (section 5.2.8);

(7) prior to commencing construction of the parking area in Parcel 1, and the parking area and boat launch in Parcel 2, submit for Commission approval final designs for these facilities (section 5.2.8); and

(8) relocate the Aqua Skiers practice area to Parcel 1, with the west side of the new site located no less than 300 feet from the east side of Northland Cranberry Ditch (section 5.2.8).

In its comments on the DEA, CWPC states that in light of Commission staff's recommendation that the licensee acquire the existing County Highway U roadbed and right-of-way, and the licensee's intent to establish and maintain a public trail and shoreline access along the abandoned County Highway U, it no longer believes that the Kubisiak

Islands (Parcel 3) are a necessary part of the proposed conveyance. Accordingly, CWPC requests that the Commission not require it to acquire Parcel 3 as part of the proposed conveyance.

The Kubisiak Islands have extensive water frontage and provide good wildlife habitat. However, public access to, and recreational use of these lands is limited by private-ownership and terrain constraints.

Under the staff-modified proposal, the licensee would: (1) acquire certain shoreline lands and develop a shoreline trail; (2) establish a "no development" shoreline corridor with associated resource-conservation provisions; (3) construct parking areas on Parcels 1 and 2, and a new boat-launch facility on Parcel 2; (4) provide a low-impact trail from the Parcel-1 parking area to the main shoreline trail; (5) permit the relocation of the Aqua Skiers practice area; and (6) ensure that all leased properties with permanent improvements (including septic systems) properly comply with all applicable permits and requirements before their conveyance.

After weighing the above factors, we find that, on balance, CWPC's acquisition of Parcel 3 is not necessary in order to have a fair and equitable land exchange. Therefore, we recommend that the licensee not be required to acquire this parcel as part of our conditional approval of its application.

7.0 LITERATURE CITED

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- CWPC. 2003b. Biron Bald Eagle Management and Protection Plan, filed June 26, 1998, and approved by the Commission in the license order issued July 30, 2003.
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- CWPC. 2003d. Biron Hydroelectric Project Land Management Plan, filed June 26, 1998, and approved by the Commission in the license order issued July 30, 2003.
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8.0 LIST OF PREPARERS

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APPENDIX A

RESPONSES TO COMMENTS ON DRAFT ENVIRONMENTAL ASSESSMENT

Application for Conveyance and Acquisition of Project Lands

Biron Project - Wisconsin

FERC No. 2192-022

We have responded to the comments summarized in this appendix in the same order that they were filed. For any subsequent filings that had essentially the same comment, we have not addressed it again. We have only addressed similar comments in the first instance. For those comments agreeing with the Commission's analysis or recommendation, we have entered the comment for the record, but have not included a response.

Wisconsin Rapids Aqua Skiers, Inc.

COMMENT 1 - The Aqua Skiers need direct access to the practice site for equipment trucks and emergency vehicles.

RESPONSE 1 – Equipment trucks and emergency vehicles would be able to get to the Aqua Skiers relocated practice site. The shoreline trail would allow for such access. We have revised Section 5.2.8 of the FEA to clarify and include a restriction on vehicle access to the shoreline trail, except for Aqua Skier equipment trucks and emergency vehicles.

COMMENT 2 - The Aqua Skiers need to provide safe access for the public to watch water skiing and attend our "learn to water ski" activities.

RESPONSE 2 - With the relocation of the Aqua Skiers practice site, and the development of the shoreline trail, it would be even easier and safer for the general public to watch ski practices and attend the "learn to water ski" activities.

COMMENT 3 - There is a need for parking-facility proximity to the practice site for the ski team and audiences, and the general public when the Aqua Skiers are not using the site.

RESPONSE 3 - There would be two parking areas (Parcel 1 and Parcel 2), which would be in proximity to the new site.

COMMENT 4 - Our practice facilities should be available for use by the general public when we are not using them.

RESPONSE 4 - It is going to be even safer and more convenient for the general public to access your practice facilities when the shoreline trail is developed, and the your practice site moved to its new location.

River Alliance of Wisconsin

COMMENT 1 – We concur with the Commission’s recommendation that the licensee develop and implement a soil erosion plan for Parcel 3.

RESPONSE 1 – After further consideration, we find insufficient justification for such a plan.

COMMENT 2 – We concur with the Commission’s recommendation for a 100-foot no-development buffer zone and recreation trail along the Wisconsin River. However, rather than stopping the trail at the east end of Parcel 2, the 100 foot buffer zone should be continued through to the west end of the 3.14 acre parcel, and the recreational trail should be built upon the existing county road bed. The trail should extend to the County Road where it parallels the river east of Parcel 1, making the trail much more publicly accessible.

RESPONSE 2 – We have extended the length of our recommended trail. Our intent for the shoreline trail is that it be built on the existing County Highway U roadbed, as you describe

COMMENT 3 - A 100-foot buffer zone in Parcel 2 would ensure sufficient setbacks from the river for any lots that might be developed there, minimizing runoff from lawns and driveway, and creating a visual buffer from the aspect of viewing the land from the river.

RESPONSE 3 - There are no homes proposed in Parcel 2. It consists of a parking lot and a boat ramp. However, we recognize your support for a 100-foot buffer zone along the river.

COMMENT 4 – We concur with the Commission staff’s recommendations that: (1) the riparian area along the river remain within the project boundary; (2) the septic systems within the 3.14 acre parcel be proven to be in compliance with state and local codes; (3) a resource conservation plan be prepared for the no-development corridor along Biron flowage; (4) the Parcel-1 trail design minimize wetlands impacts; and (5) the licensee document any permanent changes or improvements that have occurred on the leased properties.

RESPONSE 4 – Comments noted.

COMMENT 5 – The Commission should carefully evaluate final designs for the parking-area and boat-launch facilities in Parcel 2. Boat launchers should not cross the proposed shoreline recreational trail.

RESPONSE 5 – We recommend in the FEA that the licensee submit its final designs for these facilities to the Commission for review and approval.

Consolidated Water Power Company

COMMENT 1 – The Aqua Skiers practice area should be relocated to the area known as Parcel 1 because it offers spectators a better location to watch the team and more public access. The practice area could move an additional 100 feet to the east (300 feet total) within Parcel 1 to be away from the Northland Cranberry Ditch bank fishing.

RESPONSE 1 - The licensee's site-location recommendation satisfies our concerns related to bank fishing at the Northland Cranberry Ditch. Therefore, we agree that the Aqua Skiers practice site should move to Parcel 1, with the distance between the eastern side of the ditch and the western side of the site being no less than 300 feet.

COMMENT 2 – The licensee requests the FERC to require it to own the entire 100-foot, no-development buffer zone.

RESPONSE 2 – The 100-foot, no-development corridor would be located within the project boundary along the river. The licensee's ownership of this corridor is needed for resource protection and shoreline control.

COMMENT 3 - If the FERC authorizes the proposed conveyance, the licensee proposes to develop a shoreline commons area management plan, authorizing neighboring property owners the right to use the shoreline commons area to establish pathways to the shoreline, maintain view corridors, and construct and maintain docks.

RESPONSE 3 – The development of a shoreline commons area management plan would be inconsistent with the purposes of our recommended no-development corridor and public recreation trail. Therefore, we do not agree with this proposal.

COMMENT 4 - The Commission should not require the licensee to acquire the Kubisiak islands (Parcel 3). Classic should convey this parcel to some other entity to ensure the lands remain open to the public for passive recreation.

RESPONSE 4 – As discussed in detail in the Recommendations section of the FEA, CWPC's acquisition of Parcel 3 is not necessary in order to have a fair and equitable land exchange. Therefore, we are recommending that the licensee not be required to acquire this parcel as part of our conditional approval of its application. The Commission's regulatory

jurisdiction extends to the licensee only. The Commission does not have the authority to require a third party to convey Parcel 3.

Biron Licensee Group

COMMENT 1 - If Classic cannot obtain ownership of the County Highway U ROW, and property between the ROW and the river, it will not be getting the necessary components of the transaction to make it feasible, and the transaction may fall apart. Ownership should be transferred to Classic.

RESPONSE 1- See our response to CWPC comment 2.

COMMENT 2 - Move the Aqua Skiers to Parcel 1.

RESPONSE 2 – See earlier comments and responses regarding this issue.

COMMENT 3 - Primary benefit of Kubisiak islands is for fish and wildlife habitat purposes, but there is opportunity for fishing, hiking, and other passive recreational activities. The southern shoreline is used extensively for beach parties in the summer months, and it is the most popular place on the flowage for this type of recreational activity. Much of the property can be accessed by powerboat or pontoon boat, and there is 217 feet of shoreline adjacent to a popular fishing location on Ole River Road.

RESPONSE 3 – We have considered the benefits of the Kubisiak islands in our review of the proposed land exchange.

COMMENT 4 - The statement that the leased lands already are intended to provide public access is technically correct, but as a practical matter, the public has made little use of these lands in the last 50 years.

RESPONSE 4 – We agree that the public has made little use of these lands.

COMMENT 5 - None of the lots currently meet Village of Biron or Town of Plover zoning standards for lot size, and are not worth \$1,000 per linear foot.

RESPONSE 5 - These river shoreline properties are considered recreational lots. We have considered the recreational value of these lots in our review of the proposed land exchange.

COMMENT 6 – The lessees obtained approval before any significant improvements were made on the leased lands. Building permits were obtained from appropriate governmental bodies.

RESPONSE 6 - We recommend in the FEA that the licensee provide documentation that any improvements on the leased lots are in compliance with applicable land use regulations and zoning ordinances.

Classic Development of Plover

COMMENT 1 - Classic would like the FERC to consider the entire real estate agreement that Classic has now brought to its attention.

RESPONSE 1 – We have considered all available information in our comprehensive review of the licensee’s application.

COMMENT 1: Classic would like the FERC to consider its rebuttal to the comments of George Mead and Susan Feith Mead, and of the Aldo Leopold Audubon Society.

RESPONSE 1: We have considered all relevant comments and responses in our review of the licensee’s application.

George Mead and Susan Feith Mead

COMMENT 1 - The public currently has the right to access over 5,200 linear feet of Wisconsin River shoreline in this area. Approval of this request to convey the 3.14 acres on the riverfront shoreline would reduce the accessible shoreline by over 3,000 feet. The licensee owns little shoreline in the project area, and the loss of readily accessible public access cannot be replaced.

RESPONSE 1 – As discussed in the FEA, the licensee’s acquisition of Parcels 1 and 2, and the abandoned County Highway U ROW; the development of a public shoreline trail, the establishment of a 100-foot, no-development corridor and associated resource-conservation provisions; and other proposed and recommended public-access improvements would outweigh the impacts of conveying ownership of the 3.14 acre parcel.

COMMENT 2 - FERC states that Parcel 1 has 830 linear feet of shoreline, and Parcel 2 has 126 linear feet of shoreline. These are already owned by the licensee, and the proposed trade does not provide either the licensee or the public any additional shoreline, but rather property inland of the shoreline. No additional shoreline is gained from Parcels 1 or 2.

RESPONSE 2 - Comment noted.

COMMENT 3 - On June 7, 2006, a site inspection by WDNR and others discovered the recent nesting presence of a red-shouldered hawk, which is a state threatened species, in

the area immediately adjacent to the 3.14 acre parcel. The statement in the DEA is incorrect, because the area does provide critical habitat for state threatened species.

RESPONSE 3 - The likely presence of the red shouldered hawk has been noted in the FEA. Our recommended no-development corridor and resource-conservation plan would provide for the protection of any shoreline habitat used by this species.

COMMENT 4 - On June 7, 2006, a site inspection by WDNR showed that there are significantly more wetlands in the area than were mapped by the proposed developer. These wetlands are expected to have an impact on the location of the proposed replacement facilities and the road needed to get to those facilities.

RESPONSE 4 – The proposed County Highway U relocation and related residential development are outside the scope of the licensee’s application. The issue of impacts to wetlands has been adequately addressed in section 5.2.5 of the FEA.

COMMENT 5 – We are concerned about the conflict between walkers and bicyclists using the shoreline recreational trail vs. the cars and trailers using the boat ramp. Is the 80-vehicle parking lot proposed to increase usage of the boat ramp? Increased usage creates greater public safety concerns for the shoreline recreational trail. Each use of the boat ramp would require a vehicle to cross the trail 4 times, which poses a significant hazard to trail users.

RESPONSE 5 – As recommended in the FEA, the licensee is to submit final designs for these facilities to the Commission for approval. Public safety is expected to be an important design consideration.

COMMENT 6 - Based upon historical records, it appears that the land leased to the lessees, and on which County Highway U is built, is part of the Biron hydro project works. County Highway U runs along the shoreline of the Biron flowage and sits on top of an embankment that was created and maintained by the licensee as part of its hydro project. The dike was used as the base for the road. The effect of removing that dike or any portion of it would be taking the shores of the river away, and the licensee could not maintain the proper head.

RESPONSE 6 – These factors have been considered in our review of the proposed land exchange.

COMMENT 7 - The licensee is requesting permission to transfer 3.14 acres to the lessees of the leased recreation lots. The lots are part of a larger parcel. The properties to the east of Huffman Road are part of Tax Parcel #2400018, consisting of 49.04 acres, with only 2.77 acres of this total being above water. Will the licensee only transfer the area above water to the lessees, in which case the area will need to be divided and a new tax

parcel number assigned? Or will the licensee transfer to the lessees all of the area identified by the tax parcel number?

RESPONSE 7 – As described in the licensee’s application, the 3.14 acres of leased lots is comprised of four narrow strips of land varying in width from 5 to 75 feet. Exhibit A of the Real Estate Exchange and Purchase Agreement enclosed in Classic’s April 26, 2006 filing specifically describes these four parcels, which lie north of County Highway U and south of the high water mark of the Wisconsin River.

COMMENT 8 - DEA should refer to the measurements of land consistently. If the land proposed to be conveyed includes the underwater land, then for comparison purposes, FERC should either use total property measurements for both the land transferred by and the land transferred to the licensee. Or, it should just use dry land measurements for both. It should not use dry land measurements for the land to be transferred by the licensee, and total property measurements for the land transferred to the licensee.

RESPONSE 8 – We agree that there should be consistency in the use of land measurements, and the FEA has been modified to provide this consistency.

COMMENT 9 - To the east of Parcel 2, the licensee currently owns property along a slough. This property is currently bounded by County Highway U and the Wisconsin River to the north, and by County Highway U to the east, where County Highway U makes a 90-degree turn. The 100-foot, no-development corridor should be extended to both the east and west in order to provide a more meaningful continuous corridor for public use. To the east of Parcel 2, the 100-foot corridor should extend past the slough and connect to the adjacent roads so that recreational use of the corridor can include use as a portion of a longer trail system. To the west of Parcel 1 is the Northland Cranberry Ditch used for bank fishing and most of the recreational lots making up the 3.14 acres. County Highway U is immediately to the south of these parcels.

REPOSNE 9 - We agree that the 100-foot, no-development corridor should have the eastern and western termini extended to enable better public access and use along the river. The FEA reflects this extension.

COMMENT 10 - If County Highway U is abandoned, the licensee should acquire and maintain the abandoned ROW so that the natural corridor along the Wisconsin River is connected to County Highway U and Huffman Road. In this way, the natural corridor could form a key piece of a longer trail and provide a greater area-wide recreational benefit. Without this connection, the corridor would primarily serve as a local amenity for the proposed subdivision and its inhabitants, since it would be unlikely that others would drive out to the corridor to bike or walk along a 1/2 mile trail.

RESPONSE 10 - We agree that the abandoned County Highway U ROW should have the eastern and western termini extended to enable better public use and access, with this corridor forming a section of longer regional trail, thus providing a greater regional public recreational benefit. The FEA reflects this concept.

COMMENT 11 – We concur with FERC staff that the no-development corridor should be 100 feet wide along the Biron flowage riverfront shoreline to provide a sufficient natural wildlife corridor and screening for canoeists and others viewing the shoreline from the river, consistent with the Petenwell-Castle Rock Project’s 100-foot buffer zone.

RESPONSE 11 - Comment noted.

COMMENT 12 – We concur with FERC’s native vegetation of 100-foot, no-development corridor.

RESPONSE 12 - Comment noted.

COMMENT 13 – We concur with FERC that a 100-foot, no-development corridor should remain within the project boundary and that the licensee should be responsible for the long-term monitoring and management of the corridor.

RESPONSE 13 - Comment noted.

COMMENT 14 – We concur with FERC that the County Highway U ROW and roadbed should be developed as a shoreline trail.

RESPONSE 14 - Comment noted.

COMMENT 15 – We concur with FERC that the lessees must confirm that all existing or proposed septic systems meet all required state, county, and local requirements, and that a master plumber inspect them. If the lessees cannot meet this requirement, the properties should not be conveyed. However, FERC should also require that private septic systems that are going to be closed need to be done so in accordance with the same state regulations prior to any conveyance of the properties.

RESPONSE 15 - Comment noted. It is our intent that all septic systems, including any abandoned septic systems, meet these requirements. This has been clarified in the FEA.

COMMENT 16 - We concur with FERC that any and all permanent improvements on the leased properties be documented as having been executed in compliance with all applicable regulations and permitting requirements. If a leaseholder cannot provide such

documentation, the licensee should retain the property until the non-compliant structures or facilities are brought into compliance.

RESPONSE 16 - Comment noted.

COMMENT 17 - We concur with FERC that the Aqua Skiers practice area should remain in its existing location.

RESPONSE 17 - See earlier comments regarding this issue.

COMMENT 18 - We are concerned about the open-endedness of the development and maintenance of promised recreation facilities "in a timely manner." A definite date should be set for construction of any improvements.

RESPONSE 18 - A definite date would be set for constructing any required improvements in the Commission's order in this proceeding.

COMMENT 19 - The FEMA map for the area, including the 3.14 acre parcel proposed to be transferred to the Biron Licensee Group, shows that the 3.14 acres, which is waterside of County Highway U, is located in the floodway. The floodway is the channel of the river, and those portions of the floodplain adjoining the channel, required to carry the regional flood discharge. Would it be wise to allow the licensee to transfer fee-simple ownership of property located in the project's floodway to private parties?

RESPONSE 19 - Comments noted. The floodway status of this property has been considered in this proceeding.

COMMENT 20 - Under WDNR regulations and Village of Biron floodplain ordinances, residential use is not permitted in the floodway, and any existing residential use in this area is a non-conforming use. No modification or addition to any non-conforming structure may be made over the life of the structure that would exceed 50 percent of its present assessed value. Consequently, the ability to have continued residential use of the properties proposed to be transferred to the Biron Licensee Group is extremely limited.

RESPONSE 20 - Comment noted. The floodway status of this property has been consideration in this proceeding.

Spyros J. Heniadis

COMMENT 1 - I concur with FERC's 100-foot, no-development shoreline buffer zone.

RESPONSE 1 - Comment noted.

COMMENT 2 - I concur with FERC's requirement of documentation of all improvements on the licensee's land.

RESPONSE 2 - Comment noted.

COMMENT 3 - I concur with FERC's requirement of documentation regarding septic and/or well systems on these non-conforming leased lots. There are possibly many illegal septic/well systems currently on the 3.14 acre parcel.

RESPONSE 3 - Comment noted.

COMMENT 4 - The licensee should acquire and develop the abandoned portion of County Highway U as a shoreline trail and public access feature.

RESPONSE 4 – We have recommended that the licensee develop, and file for Commission approval, a plan for acquiring, if abandoned, the entire County Highway U roadbed and ROW within our recommended shoreline buffer, and developing it as a shoreline trail.

COMMENT 5 - Leave the Aqua Skiers where they are because it leaves the parcel earmarked for park development open to full park use, rather than restricted by the use of the area by the Aqua Skiers.

RESPONSE 5 - See earlier comments regarding this issue.

COMMENT 6 - Institute a timeline or deadline for development of the shoreline trail in order to assure the public easy access to the riverfront shoreline.

RESPONSE 6 - A definite date would be set for construction of any improvements required as a result of this proceeding.

COMMENT 7 - Permanently address public safety, welfare, and human hazards as a result of illegal septic/well systems and prevent any future detrimental results from continued use of these systems, or when they are abandoned, and public utilities are accessible to the developed area.

RESPONSE 7 – We recommend in the FEA that prior to the conveyance of any leased recreation lots, the licensee provide thorough documentation that all existing lot improvements, including septic systems, are in compliance with the conditions specified in local land use regulations, flood plain ordinances, zoning ordinances, and the WDNR permitting process.

COMMENT 8 - Parcel 1 is designated to become a park and there should be a low/no impact trail from the parking lot to the shoreline area. The licensee should also develop and implement a plan for a walking trail system throughout the proposed park area. These should also have a deadline.

RESPONSE 8 – The licensee plans to provide a low-impact trail connecting the parking lot to the shoreline. We have recommended that the licensee submit to the Commission, for approval, a final design for the trail prior to its construction. We consider the proposed parking lot and trail to be adequate recreation improvements to Parcel 1 for the proposed land exchange. The licensee states in its application that a cooperative management partnership being sought with Wood County and the Village of Biron would allow for these government entities to apply for grants, which would be used to significantly increase the quality of the proposed improvements, or provide additional amenities for Parcel 1. We consider this partnering effort to be a reasonable approach for providing, as appropriate, any further recreational enhancements to this park. See earlier comments regarding a construction schedule.

COMMENT 9 - Should the licensee ever relinquish its status as a utility, these public access features should be preserved and transferred to an entity with specific conditions in place requiring maintenance of these features into the future.

RESPONSE 9 – If the licensee were to apply for surrender of its project license in the future, the disposition of the project’s public-access features would be determined in the Commission’s license-surrender proceeding.

Jerry Feith

COMMENT 1 - The leased lands are divided by private holdings; however, they still have great public use potential. The two most westerly parcels have shorelines of 1,895 feet and 950 feet. These are significant, long, continuous, and valuable parcels.

RESPONSE 1 – See our response to comment 1 of George Mead and Suzan Feith Mead, above.

COMMENT 2 - The leases should not have effectively eliminated public access to the shoreline. The fact that they were allowed to do so does not relieve the licensee from re-establishing that access.

RESPONSE 2 - Article 18 of the project license requires the licensee to allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the licensee for the purpose of full utilization of such lands and waters for navigation and for outdoor recreational purposes. Also, this article provides that the licensee may reserve from public access such portions of the project waters, adjacent lands,

and project facilities as may be necessary for the protection of life, health, and property. The licensee has not reserved the subject shoreline areas from public access. However, we agree that leasing these areas as private recreational lots has effectively closed these areas to the public. The licensee's land-exchange application, with Commission staff's recommendations, is considered a reasonable approach to opening other shoreline areas for public recreation and navigation.

COMMENT 3 - Although State officials originally opposed terminating the leases, they no longer oppose their termination, and are on record as such.

RESPONSE 3 – Comment noted and considered.

COMMENT 4 - Parcel 1 is all inland acreage with no shoreline and wetlands cover over one half of the southern portion of this parcel, or about 15 acres. Parcel 2 is all inland acreage with no shoreline. The licensee states that the developer owns the property, when in fact the leaseholder organization (BLG) does.

RESPONSE 4 – Comments noted and considered.

COMMENT 5 - Parcel 3 is difficult for the public to access; the island acreage is low-lying and is of little recreational use.

RESPONSE 5 - Comment noted and considered.

COMMENT 6 - The licensee states that there will be additional access, when there is none. There is no additional access provided through relocation of County Highway U. Access is already available through access to the licensee's project shoreline and the County Highway U ROW.

RESPONSE 6 - See our previous responses related to this comment.

COMMENT 7 - This trade is giving more than a mile of recreationally valuable shoreline currently available to the public, for zero linear feet of shoreline that is not already accessible to the public, some paving, and access to about 100 acres of inland property, of which only 35 acres is not wetlands or seasonally flooded.

RESPONSE 7 – See our previous responses related to this comment.

COMMENT 8 - County Highway U is built on a dike and the licensee retains the right to raise or lower the dike and the right to maintain and repair the dike under its FERC license. The leased parcels will expand to the south across the ROW to become private riverfront lots. Future development in compliance with standard setbacks make the ROW

the most logical place for construction on some of the lots. Won't this compromise the licensee's ability to operate the dike and ensure continued safety for the Village of Biron?

RESPONSE 8 – Article 5 of the project license requires the licensee to acquire and retain sufficient land rights for the construction, operation, and maintenance of the project. Under this article, the licensee is expected to hold the necessary rights to all project property covered by the license, including the project dike.

COMMENT 9 - The DEA notes that the licensee has allowed non-complying uses on its land over time. Why does the Commission feel that the licensee will live up to any new commitments when it did not meet the requirements set forth in Article 412?

RESPONSE 9 – We recommend in the FEA that prior to conveying any of the leased lots, the licensee provide the Commission written documentation that all improvements have been constructed in compliance with applicable lease conditions, local land use regulations, flood plain ordinances, zoning ordinances, and required permits. We will monitor the licensee's compliance with any requirements resulting from this proceeding.

COMMENT 10 - Pleasure driving, which was left off the list of recreation activities, is open to the widest cross section of the population and may be the only way that certain segments of the population, especially those not owning watercraft, less well-off, or disabled, may enjoy the river.

RESPONSE 10 - The public access areas and facilities that are proposed and recommended in the FEA would provide enhanced recreation opportunities to a wide range of project visitors. Although vehicular access to the shoreline trail would be restricted, walkers, bicyclists, and persons with disabilities would be able to fully use the shoreline trail.

COMMENT 11 - Consider some other, additional reasonable recreation development at the project. Many opportunities for reasonable recreation development that are consistent with the goals of all parties have not been considered.

RESPONSE 11 – We consider the recreation developments proposed in the licensee's application, with staff's recommended modifications, to be reasonable, balanced, and properly targeted. The licensee is required to continuously monitor whether the project's recreation facilities are meeting public recreation needs. Any demand for additional recreation development would be reflected in the licensee's FERC Form 80 recreation reports periodically filed with the Commission.

COMMENT 12 - The strip to link the licensee-owned shoreline with the proposed boat ramp is already public and accessible without the need for additional connecting easements.

RESPONSE 12 – The lands recommended in the FEA for licensee acquisition are consistent with the property-ownership information available in the CWPC’s application and other filings in this proceeding.

COMMENT 13 – I concur with the transfer of the Parcel-3 islands to the licensee. However, the licensee already owns considerable lands of a similar nature that are closer to the area under consideration. Adding to the stock of these fish and wildlife lands should not be related to this particular trade.

RESPONSE 13 - Comment noted. See previous responses related to this issue.

COMMENT 14 - The FERC should require that the licensee to preserve and protect for the public the dike and public land that is to the west of Parcel 1, to preserve other options for public recreation.

RESPONSE 14 – The lands included in the licensee’s proposal, with Commission staff’s modifications, are considered adequate to assure optimum development of the recreational resources afforded by the project. See related response to comment 11, above.

COMMENT 15 - The no-action alternative should be implemented. Of the 26 lessees, only 4 have permanent residences; 12 of the recreational lots are currently vacant, without structures, or have docks; and 10 of the recreational lots have cottages. Predominantly, the lessees do not reside on the land.

RESPONSE 15 – Comments noted. As part of its review of the licensee’s application, Commission staff visited the project to observe the existing condition of the lots and other shoreline areas involved in the proposed land exchange. Based on these observations, and the analyses and assessments contained in the FEA, we find that the net benefits of the licensee’s proposal, with staff’s modifications, outweigh the status quo of taking no action.

COMMENT 16 - The licensee, BLG, and Classic are signatories to a three-way real estate and purchase agreement that binds each party to numerous other conditions upon which the exchange is contingent.

RESPONSE 16 - Commission staff has independently reviewed all of the available information related to the proposed land exchange in order to determine whether, and under what conditions, the Commission should approve the licensee’s application. A copy of the referenced conditional agreement is part of that informational record.

COMMENT 17 - Although the licensee stated that the river shoreline frontage has been developed as residential property for many years, in fact most of the riverfront footage

is unsuitable for residential occupancy and was developed as recreational lots for dock-only use or seasonal use.

RESPONSE 17 - Comments noted. See previous responses related to these comments.

COMMENT 18 - Land ownership needs to be clarified in view of the conflicting amounts and locations of acreages, shoreline lengths, and other misstatements regarding who owns what land and how much.

RESPONSE 18 - Comment noted. See previous response related to this issue.

COMMENT 19 - The 3.14-acre parcel cannot be developed into residences. Over half of the front footage of the 3.14 acres will remain unsuitable for residential development because of parcel depth considerations even if all land exchanges agreed to by the parties do occur. In the event that residences are constructed on those parcels, they will be in violation of all generally recognized setback requirements. Associated septic systems that exist on these lands could not be constructed under present rules. The four existing residences are currently out of compliance with typical setback requirements. The land conveyance would open the door to unwise development of the shoreline and the diminution of public access.

RESPONSE 19 - Comments noted. See previous responses related to these comments.

COMMENT 20 - The 3,395 feet of leased project shoreline will be permanently privatized. Although the raw numbers look convincing: 3.14 acres in exchange for 205 acres, and 3,395 feet of shoreline for 34,000 feet, the licensee avoids the fact that the 34,000 feet of shoreline is largely inaccessible from the land because the land is low-lying and islands, and there is no additional benefit from being able to access the shoreline from the water, because that right already exists under Wisconsin law.

RESPONSE 20 – On balance, the land acquisitions and recreational improvements we recommend in the FEA outweigh the recreational value of the shoreline areas that would be conveyed in the proposed land exchange.

COMMENT 21 - Information obtained from Wood County and Portage County indicates that development that has taken place on the 3.14 acre parcel is largely out of compliance with state regulations on setbacks and permitting of septic systems. Only one application has been made for construction of a main building on the parcels, nine permits have been issued for repairs to non-permitted main buildings or additions or outbuildings, and only four permits for septic or holding tanks have been applied for in all the years the

lands have been leased. The licensee has not administered and enforced the specific language in the leases, violating their own pier and dock permitting process.

RESPONSE 21 - Comments noted. See previous comments and responses related to these issues.

Wood County, Wisconsin

COMMENT 1 - The Aqua Skiers should be relocated to the proposed new park rather than remaining in their current location.

RESPONSE 1 - See earlier comments regarding this issue.

COMMENT 2 - The National Park Service recommends a 100-foot riverfront corridor. Wood County prefers that a 35-foot, no-development buffer zone instead of a 100-foot, no-development buffer. The clear cutting of trees and shrubbery should be allowed.

RESPONSE 2 – We consider a 35-foot buffer with clear-cutting allowances to be insufficient for the purposes of public recreation, resource protection, and shoreline control. Our recommended 100-foot, resource-conservation buffer, with no allowable development except for certain specified recreational-access facilities, is considered appropriate for this multi-purpose corridor.

COMMENT 3 - Requiring leaseholders to bring septic systems into compliance with Wisconsin State standards prior to a conveyance would place undue expense on the leaseholders and would create a delay in the conveyance of the property to the leaseholders. Wood County's ordinance 702 should be used instead.

RESPONSE 3 - Because of the potential impact on water quality in the Wisconsin River, and to protect public health, safety, and welfare and prevent human health hazards, documentation of full compliance with the requirements of Wisconsin Administrative Code Chapters Comm81 to Comm87, including inspection by a Wisconsin-licensed master plumber, is considered necessary.

COMMENT 4 – The trail design should meet the standards of the American Association of State Highway and Transportation Officials (AASHTO) for bicycle facilities, and the access and grade guidelines of the Americans with Disabilities Act (ADA).

RESPONSE 4 - Comment noted. The referenced ASSHTO standards appear to relate to highway design, not the kind of trail to be designed here. The licensee's obligation

to comply with the ADA exists independent of its project license, and the Commission has no statutory role in implementing or enforcing the ADA as it applies to licenses.

COMMENT 5 - Relocate the Aqua Skiers' practice area to Parcel 1.

RESPONSE 5 - See previous response related to this comment.

Village of Biron

COMMENT 1 - Reduce the 100-foot, no-development corridor to 35 feet.

RESPONSE 1 – See previous response related to this comment.

COMMENT 2 - Wisconsin comprehensive planning law lists six governmental actions that shall be consistent with that local governmental unit's comprehensive plan. This includes a 35-foot buffer zone.

RESPONSE 2 - Neither the Village of Biron nor Wood County has a comprehensive land use plan. Consequently, there is no consistency issue to consider. See previous comments and responses related to this issue.

COMMENT 3 - Move the Aqua Skiers' practice area to a location in Parcel 1, which is safer and more accessible for ski team members and observers. Aqua Skiers have a very limited schedule at the Biron practice site because all show performances are held at Lake Wazeecha in southeastern Wood County.

COMMENT 3 - See previous response related to this issue.

U.S. Department of the Interior, U.S. Fish and Wildlife Service

COMMENT 1 - Over time, habitats at or near the project site may be utilized by Federally-listed or proposed species not present at this time, species occurring within the project area may become Federally listed or proposed for listing, and critical habitat could be proposed or designated for a species. If the proposal is modified, or if there is a significant lag between plan completion and construction, an updated review should be conducted.

RESPONSE - Comments noted.

Aldo Leopold Audubon Society

COMMENT 1 - The no-action alternative is favored. The licensee should terminate the existing annual leases on the 3.14-acre parcel and make the land available for public access, which was the original, legal intent.

RESPONSE 1 - Comments noted. See previous responses related to this issue.

COMMENT 2 - If a public roadway (County Highway U) is moved to accommodate this real estate developer, any corporation will be able to press for moving any public roadway in Wisconsin for any reason whatsoever.

RESPONSE 2 - The proposed relocation of County Highway U is beyond the scope of the licensee's proposal.

COMMENT 3 - The conveyance and acquisition of project lands will be the first domino; the second will be the pressure for relocation of County Highway U, and that will permit the third domino leading to residential real estate development, which will jeopardize hardwood forests on project lands.

RESPONSE 3 - Comments noted. We have considered these possible future actions in our analysis of cumulative environmental impacts. As stated in the conclusion section of the FEA, to the extent that these or other actions would occur within the project boundary, the licensee may need to apply for Commission approval to permit the use of, or the conveyance of interests in project lands and waters.

COMMENT 4 - Two probable red-shouldered hawk nests, used this year, were found by experts within a short distance of the proposed relocation of County Highway U. The relocation of County Highway U to the middle of this hardwood forest would eliminate satisfactory habitat for nests of this Wisconsin threatened species.

RESPONSE 4 - Although the proposed land exchange is contingent on the relocation of County Highway U, it is not a part of the licensee's application. Any related effects on nesting habitat would need to be considered in the planning and review processes for the highway's relocation.

David R. Obey

COMMENT 1 - Take under full consideration the local comments related to the no-development corridor.

RESPONSE 1 - These comments have received full consideration in our review of the proposed land exchange.

COMMENT 2 - Relocate the Aqua Skiers to Parcel 1.

RESPONSE 2 - See our previous response related to this issue.

Petition Signed by 967 People, submitted by Lawrie J. Kobza

COMMENT 1- Retain the existing County Trunk Highway U ROW, which parallels the edge of the Wisconsin River and provides public access to the river for walking, bicycling, fishing, driving, scenic vista aesthetics, picnicking along the shoreline, and other recreational pursuits. Reject all requests and efforts to vacate this ROW and transfer this invaluable property to private entities.

RESPONSE 1 – See our responses to previous comments related to this issue.

U.S. Environmental Protection Agency

COMMENT 1- A detailed review of the proposal has not been conducted, but the right to conduct a review at future stages, or if significant new data is made available, is reserved.

RESPONSE 1 - Comments noted.