

IN THE 47th CIRCUIT COURT
DELTA COUNTY, MICHIGAN

GARDEN PENINSULA FOUNDATION,
JERRY COLLINS, BYRON HAZEL,
MICHAEL and SUE ROCHEFORT,
and NICOLE YOUNG,

Plaintiffs,

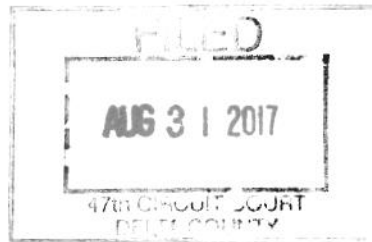
v

HERITAGE SUSTAINABLE ENERGY, LLC,
and HERITAGE GARDEN WIND FARM I, LLC,

Defendants.

Case No. 17-23605-CH
John B. Economopoulos
Judge P58074

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**COMPLAINT FOR DAMAGES, DECLARATORY JUDGMENT,
AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs, Garden Peninsula Foundation (the "Foundation"), and Jerry Collins, Byron Hazel, Michael and Sue Rochefort, and Nicole Young (the individual Plaintiffs, together, the "Local Residents"), and for their Complaint under the laws of the State of Michigan, including the Michigan Environmental Protection Act ("MEPA") and Michigan common law, state as follows:

INTRODUCTION

1. In September 2012, Defendant Heritage Sustainable Energy, LLC (together with Defendant Heritage Garden Wind Farm I, LLC, "Defendant Heritage" or "Heritage") began

operating 14 wind turbines (the “Wind Turbines” or the “Phase I Project”) on Michigan’s Garden Peninsula in Delta County. The Wind Turbines are located on lands leased from private individuals and/or businesses located in Garden Township, Delta County, in the Garden Peninsula, Michigan.

2. The Garden Peninsula is home to generations of farmers and is a rural and picturesque community on the shores of Lake Michigan. Also, it is a well-known migratory bird haven in a crucial migratory pathway. Heritage constructed and began operating its Wind Turbines with no environmental impact assessment performed by any federal or state agency, despite known use of the area for nesting, foraging and migration by numerous birds, including eagles and protected species. The Garden Peninsula also is known for its extraordinary bat populations.

3. Since September 2012, the environmental and human impacts of Heritage’s Wind Turbines have become more and more known to residents of the Garden Peninsula, including the Foundation and the Local Residents in this case. Plaintiffs seek **declaratory relief and injunctive relief (and damages?)** under the MEPA (First Claim for Relief) to halt the Wind Turbines’ continued killing of migratory birds and bats. The Local Residents also seek compensation for the negative impacts to their health and well-being, use and enjoyment of their property, and diminution in value of their properties, caused by the excessive noise, vibrations, and “shadow flicker” emitted by Heritage’s Wind Turbines, pursuant to claims for private nuisance (Second Claim for Relief), public nuisance (Third Claim for Relief), and negligence (Fourth Claim for Relief).

JURISDICTION AND VENUE

4. Plaintiffs originally asserted the Michigan state law claims set forth in this Complaint, along with certain federal law claims, pursuant to a Complaint for Damages, Declaratory Relief, and Injunctive Relief Plaintiffs filed in the United States District Court for the Western District of Michigan on January 16, 2015. After the federal court dismissed Plaintiffs' federal law claims, by a Judgment entered July 28, 2017, that court declined to exercise supplemental jurisdiction over Plaintiffs' state law claims asserted in this Complaint. Plaintiffs are re-filing their Michigan state law claims in this Court pursuant to this Complaint.

5. This Court has jurisdiction over this action as the Plaintiffs seek equitable relief and the amount in controversy exceeds \$25,000.

6. Venue is proper in this Court because Defendant Heritage's Wind Turbines are located in Delta County and the events giving rise to Plaintiffs' claims are occurring in Delta County.

PARTIES

7. Plaintiff Garden Peninsula Foundation is a Michigan non-profit corporation whose members reside or own property in Delta or Schoolcraft Counties, Michigan. The Foundation is a non-profit grassroots community organization based in the Garden Peninsula, whose members either reside or own property in the Garden Peninsula, and who enjoy watching eagles and other migratory birds and bats in the Garden Peninsula, including in the vicinity of the Wind Turbines. In addition, the Foundation and its members are involved in education and advocacy issues related to the negative impacts of wind turbines when sited improperly; they have used their limited resources for the protection of the migratory birds and bats, and their habitats located in the Garden Peninsula and in the vicinity of Heritage's Wind Turbines. The Foundation brings this action on its own behalf and on behalf of its adversely-affected members who live in and recreate in the Garden Peninsula and who enjoy the local ecosystems and the species there for

recreation, scientific, spiritual, educational, and aesthetic purposes. The Foundation members also include Garden community residents living in close proximity to the Wind Turbines who enjoy the natural benefits provided by the migratory birds and bats, such as tourism during migration periods, photography, and insect control.

8. Plaintiffs Jerry and Jean Collins, Byron Hazel, Michael and Sue Rochefort, and Nicole Young are residents and property owners in Delta County.

9. Defendant Heritage Sustainable Energy, LLC is a Michigan limited liability company formed in 2006 which at times all relevant hereto has been doing business in the State of Michigan. It is the manager/operator of the Wind Turbines.

10. Defendant Heritage Garden Wind Farm I, LLC is a Michigan limited liability company formed in 2009 which at times all relevant hereto has been doing business in the State of Michigan. It is the owner of the Wind Turbines.

11. The existing Wind Turbines, and Heritage's proposed Phase II expansion plans for additional wind turbines in Delta County, are and will be located in migratory bird and bat pathways, and will "take" (kill) migratory birds, song birds, eagles, Northern long-eared bats, Kirtland's warblers, and other endangered or protected species, all of which constitute "natural resources" under the MEPA, (MCL 324.1702 et seq.). These unlawful takes violate the MEPA and injure the Foundation and its members, who derive recreation, scientific, spiritual, educational, aesthetic benefits from the local ecosystems and from such birds and bats.

12. The Local Residents reside in and among the Wind Turbines and the disturbing audible noise, vibrations, and shadow flicker from the Wind Turbines have invaded the Local Residents' homes and properties, have caused them to suffer physical discomforts, [physical impacts] and

have diminished the value of their properties. The Local Residents seek damages and injunctive relief under Michigan common law, pursuant to claims of nuisance and negligence.

THE MICHIGAN ENVIRONMENTAL PROTECTION ACT

13. Part 17 of the Natural Resources and Environmental Protection Act, also known as the Michigan Environmental Protection Act provides:

... any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water and other natural resources and the public trust in these resources from pollution, impairment or destruction. MCL 324.1702(1).

14. The MEPA further provides:

The court may grant temporary and permanent equitable relief or may impose conditions on the defendant that are required to protect the air, water, and other natural resources or the public trust in the resources from pollution, impairment or destruction. MCL 324.1704(1).

FACTUAL BACKGROUND

A. The Garden Peninsula

15. The Garden Peninsula is a known migratory bird and bat flyway and is of recognized ornithological interest and importance, particularly during the avian and bat migration periods.

16. The Garden Peninsula's status as an important migratory bird and bat pathway has been recognized by many organizations, including the American Bird Conservancy, the FWS, and Heritage itself.

17. On information and belief, Heritage possesses significant data indicating extraordinary bat and bird populations on the Garden Peninsula

B. Heritage's Phase I Project

18. Heritage is in the business of building, operating, and maintaining utility-scale wind turbine projects in the State of Michigan, including the Stoney Corners project in McBain,