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October 23, 2014

John Lunz, President
Preserve Our Parks, Inc.
1845 N. Farwell Avenue, Suite 100
Milwaukee, WI 53202

RE: 2013 Wisconsin Act 140

Dear Mr. Lunz:

You have requested an opinion as to the constitutionality of 2013 Wisconsin Act 140. The Act creates Wis. Stat. § 30.2038 and includes related non-statutory provisions. Subsection (1)(a) of the statute purports to establish the boundary of the lakebed of Lake Michigan in the City of Milwaukee, from the easterly extension of East Lafayette Place on the north to the north harbor entrance wall of the Milwaukee River on the south. Under the Act, the Lake Michigan shoreline is declared to be coextensive with a "division line" established by agreement between the City and the Chicago & Northwestern Railway Company, recorded in 1913. That line is east of the east boundary of Milwaukee County's downtown Transit Center.

The Legislature's designation of the boundary, if valid, would have the effect of alienating public rights under the Public Trust Doctrine, Art. IX, sec. 1 of the Wisconsin Constitution. As detailed in the attached memo, we conclude that that Act violates the separation of powers doctrine under the Wisconsin Constitution because it appropriates to the Legislature a core function of the courts to adjudicate suits to declare interests in property. That judicial power is committed solely to the courts under Article VII, Sec. 2 of the Wisconsin Constitution.

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The Act also unconstitutionally deprives citizens of a protected property interest under the Public Trust Doctrine without due process of law as required by Article I, Section 1 of the Wisconsin Constitution and the Fourteenth Amendment of the federal Constitution. Because the Act provides that the Legislature's determination of the shoreline is made in lieu of, and has the same effect as, a court's decision, the Act deprives citizens of their right to bring evidence and to seek judicial review of the Legislature's findings (nonstatutory provisions) purporting to support the deemed location of the Lake Michigan shoreline.

In our opinion, there is a significant likelihood that a court would invalidate the Act as unconstitutional for the reasons set forth above. The delineation of the boundary of Lake Michigan as set forth in the Act has no force or effect unless a court of competent jurisdiction comes to the same conclusion based on adjudicated facts.

Sincerely,

WHEELER, VAN SICKLE & ANDERSON, S.C.



William P. O'Connor
Mary Beth Peranteau