

---

GRANDAD BLUFF COALITION,  
BLUFFSIDE NEIGHBORHOOD RESIDENTS, AND  
CITY OF LA CROSSE CITIZENS CONCERNED  
WITH THE PROTECTION AND PRESERVATION  
OF GRANDAD BLUFF, including

Ann Brice & Bill Haviland  
211 29<sup>th</sup> St. So.  
La Crosse, WI 54601

Iris Boots  
28<sup>th</sup> St. So.  
La Crosse, WI 54601

Case No.

Terry and Diane Baier  
3200 Ebner Coulee Rd.  
La Crosse, WI 54601

Lynn and Jim Hobart  
2812 Bliss Rd.  
La Crosse, WI 54601

Terry and Indra Barma  
134 29<sup>th</sup> St. So.  
La Crosse, WI 54601

Rich and Jill Pein  
109 29<sup>th</sup> St. So.  
La Crosse, WI 54601

Rob and Mary Percy  
2931 Ebner Coulee Rd.  
La Crosse, WI 54601

Scott Halweg and Lesley Charlton  
128 28<sup>th</sup> St.  
La Crosse, WI 54601

Petitioner,

vs

CITY OF LA CROSSE  
400 La Crosse Street  
La Crosse, WI 54601

Respondent.

---

PETITIONERS NOTICE OF PETITION AND

PETITION FOR A TEMPORARY RESTRAINING ORDER AND PERMANENT INJUNCTION

---

TO: City of La Crosse  
c/o Mayor Tim Kabat  
400 La Crosse Street  
La Crosse, WI 54601

PLEASE TAKE NOTICE that Grandad Bluff Coalition, Bluffside Neighborhood Residents, and City of La Crosse Concerned Citizens for the Protection and Preservation of Grandad Bluff, and named Petitioners in this action, hereby move the Court, pursuant to Wis. Stat. 813.02, for a temporary restraining order and permanent injunction prohibiting the City of La Crosse and any contracted agency, company, or organization or party engaged by or on behalf of the City of La Crosse (including any subdivisions or departments within the City) from proceeding with construction on a series of mountain bike trails on Grandad Bluff (referred to as "Grandma's Gateway".)

Specifically, Petitioners seek a temporary restraining order and permanent injunction prohibiting the City from beginning construction on, or about, May 20, 2020 for trails on the North, West and South faces of Grandad Bluff; trails 1a, 1b, 2a, 2b1, 3c, 4b2, 5a, 2 & 3 connect trail.

Without a temporary restraining order and permanent injunction Petitioner will suffer irreparable harm.

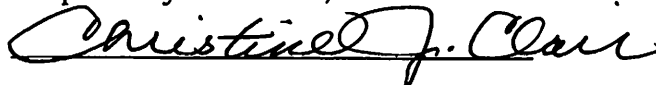
Petitioner has exhausted all other remedies of law and a temporary restraining order and permanent injunction is the only means available to prevent irreparable harm.

Petitioner asserts a temporary restraining order and permanent injunction is the only means available to preserve the status quo.

Petitioner further asserts that Petitioner has a reasonable probability of success on the merits.

The support for the Petitioner's request for injunctive relief is set forth in the attached brief in support of the Petition for Temporary Restraining Order and Permanent Injunction.

Respectfully submitted,

A handwritten signature in black ink, reading "Christine J. Clair". The signature is fluid and cursive, with the first name "Christine" being more prominent and the last name "Clair" following in a similar style.

Atty. Christine J. Clair (SBN 1000339)

PO Box 1511

La Crosse, WI 54601

(608) 519-3173

Attorney for Petitioner

## TABLE OF CONTENTS

INTRODUCTION.....	page 1
BACKGROUND.....	page 2
A. Board of Park Commissioners' Meeting – January 26, 2020.....	page 5
B. Re-zoning Meetings – February 3, 4, and 13, 2020.....	page 7
C. City of La Crosse Community Information Meeting – March 6, 2020.....	page 9
D. Plaintiff Retaining Civil and Environmental Engineer – March 17, 2020...	page 11
E. Additional Information and Actions.....	page 14
ARGUMENT.....	page 15
A. Irreparable Harm.....	page 15
B. No Adequate Remedy at Law.....	page 17
C. Preserve the Status Quo.....	page 17
D. Reasonable Probability of Success on the Merits.....	page 18
CONCLUSION.....	page 18

## **INTRODUCTION**

This Petition for Temporary Restraining Order and Permanent Injunction seeks to protect the geological, environmental, and cultural integrity of Grandad Bluff and it seeks to protect the lives and property of the residents who live on, adjacent and below Grandad Bluff. The City of La Crosse (the "City") has disregarded the serious safety concerns raised by La Crosse citizens and neighborhood residents. The City has ignored scientific evidence that validate those concerns, specifically regarding the plan for constructing a recreational series of mountain bike trails on Grandad Bluff (known as "Grandma's Gateway").

Petitioners have raised these concerns and presented a plethora of evidence through every available City municipal process, both formally and informally. Petitioners were directed to multiple departments, boards, committees, and councils only to be informed they had no administrative or legal means to affect the outcome.

When public property owned by the community – Grandad Bluff – and citizens' lives and personal property are put in peril by others; citizens' rights are infringed and they are entitled to object, seek redress, and be awarded damages if appropriate. When those actions are taken by local government without a meaningful opportunity for citizens' input regarding protection of their persons or protection of public and private property, and when the government has no legitimate public policy basis that would outweigh the rights of the citizens; those citizens' rights are infringed and they are entitled to object, seek redress, and be awarded damages if appropriate.

Petitioners seek a temporary restraining order to prevent the City from initiating construction of mountain bike trails on iconic Grandad Bluff (as outlined in "Grandma's Gateway" map) which would cause irreparable harm to Grandad Bluff, public and private property adjacent to and near Grandad Bluff, and which would endanger the lives of the residents living adjacent to and below Grandad Bluff. Petitioner is only requesting a temporary restraining order for trails on the North, West and South faces of Grandad Bluff; specifically trails 1a, 1b, 2a, 2b, 2b1, 3c, 4b2, 5a, and 2 & 3 connect trail. Construction is scheduled to begin May 20, 2020. *(Attached hereto as Exhibit A – Current Grandma's Gateway map)*

Petitioners further seek a permanent injunction to prevent the City from causing irreparable harm to iconic Grandad Bluff, public and private property adjacent to and near Grandad Bluff, and which would endanger the lives of the residents living adjacent to and below Grandad Bluff. Petitioner is only requesting a permanent injunction for trails on the North, West and South faces of Grandad Bluff; specifically trails 1a, 1b, 2a, 2b, 2b1, 3c, 4b2, 5a, and 2 & 3 connect trail. Petitioner does not oppose the scheduling of a hearing on the permanent injunction to allow further evidence and testimony to be presented, if a temporary restraining order is granted to protect Petitioner pending a final hearing. *(Attached hereto as Exhibit A – Current Grandma’s Gateway map)*

### **BACKGROUND**

In early December 2019, several residents on, and around, 29<sup>th</sup> St. South and Ebner Coulee Road became aware of the City’s plan to construct numerous recreational mountain bike trails on Grandad Bluff. Neighborhood residents had concerns over the two neighborhood access points planned on 29<sup>th</sup> St. South (between Bliss Road and Cass Street/Ebner Coulee Road) and on Ebner Coulee Road (just east of 29<sup>th</sup> St. South) and on the trails proposed on the North, West and South faces of Grandad Bluff which were directly above residential homes. The details of these access points and trails were not publicly known by the residents that would be directly impacted by this plan. Residents were never notified or informed of the general plan by the City; much less the specifics of the trail plan on 29<sup>th</sup> St. South, on Ebner Coulee Rd, and how the residential homes directly below the trails would be impacted. Upon learning of this recreational plan, residents reached out to the City to obtain more information.

Petitioner subsequently learned that this recreational mountain bike trail plan had been in the development for several years and was a plan by the City of La Crosse and Outdoor Recreational Alliance (ORA.) Petitioners learned that the City, and specifically the Parks, Recreation and Forestry Department (Parks Dept), have had a working relationship with ORA on many recreational plans in the area. For this particular plan, it appeared that the Parks Dept. had delegated much of the community informational aspects of the plan to

ORA, as opposed to City representatives being responsible for this. It also appeared that ORA would be responsible for supervising maintenance of the proposed trails in this plan, as well as other trail maintenance that was being done. Maintenance would be done by volunteers. This relationship and delegation by the City to ORA created difficulties for Petitioner in obtaining information, as the Petitioner was not privy nor did they have access to information, documents, plans, etc. held by ORA. Petitioner has relied on the City to share all relevant information. Petitioner has also directed all communication and requests to the City, since the City owns the property on which the trails are to be built

Petitioner subsequently learned that numerous legal commitments were jointly drafted between the City and ORA, including the Request for Quotations regarding the construction contract for this plan.<sup>1</sup> The details of other legal commitments or relationships regarding this recreational plan with the City and other agencies, companies, non-profits, etc. are unknown to Petitioner. Petitioner is naming the City of La Crosse as respondent in this case, but if other parties should be included, we ask that the Court reserve our right to amend named respondents, if needed.

After residents reached out to the City, the City did share some information regarding the recreational mountain bike trail plan with a small group of 29<sup>th</sup> St. South residents in mid-December 2019. At that meeting, residents also shared with City representatives some of their safety concerns.<sup>2</sup> Concerns were based on residents' history in the neighborhood<sup>3</sup> and focused on traffic flow, sightlines on 29<sup>th</sup> St. and from residential driveways, past environmental incidences that impacted residences and neighborhood, and recent changes with stormwater flow from Grandad Bluff, etc. Concerns raised were as follows. (*Attached hereto as Exhibit b –Original Grandma Gateway map*)

---

<sup>1</sup> It should be noted that Grandma's Gateway is a 3-Phase Plan, with Grandad Bluff trail plan being Phase 1.

<sup>2</sup> A map of the proposed trails was given to meeting participants. Residents were not able to determine from looking at this map where 29<sup>th</sup> St. South was located or where their homes were in relation to the trails. Consequently, City representatives had to individually point out these points on the map.

<sup>3</sup> Most residents have lived in the neighborhood for 15+ years.

- Safe accessibility to/from homes with projected added traffic and parking needs from trail users.
  - All homes on 29<sup>th</sup> St. are built into the bluff, with driveway entrances to their homes on an angle and driveways either going up or down from 29<sup>th</sup> St. This results in all driveways being “blind” driveways to 29<sup>th</sup> St. The concerns raised by residents were regarding how additional traffic and parking would impede and prevent safe entrance and exiting from residential driveways.
- Safety risks to the users of the trail access point on 29<sup>th</sup>, given its location at the peak of the 29<sup>th</sup> St. hill.
  - Traffic on 29<sup>th</sup> St. from south to north has limited visibility at the top of the hill, the point where users of the trail would be entering the street. This risk would be increased if vehicles were parked on the street. Neighborhood residents expressed concern and fear for potential users of the trails as the risk of vehicles not seeing pedestrians would be great, especially with increased parking in that area.
- Safety risks to homeowners and their property due to land disturbing activities during the construction, and during the use of trails. These land disturbing activities would cause soil and sedimentation loss that would impact erosion, sedimentation, stormwater flowage changes, landslide risks, boulder dislocations, etc.
  - The residents provided to City representatives numerous examples of increased environmental changes observed by area residents over the last several years due to climate changes. Examples were flooding and stormwater leakage in basements in the spring of 2019 due to the deep freeze, large snowfall and rapid surface melting; increased erosion over the years; and higher amounts of sedimentation in the summer of 2019, etc.
- Disruption to wildlife.
- Disruption to the topography and the integrity of Grandad Bluff itself, given its slope and sensitive soil and rock composition.

- Examples of prior instability issues with Grandad Bluff were discussed; such as Bliss Road cave-in, boulder dislocation off the northwest corner of bluff in 1960, City improvement to viewing area at Grandad Bluff top that required steel beams being inserted to support the area, etc.

After the mid-December meeting with City representatives, 29<sup>th</sup> St. residents received a notice from the City that they could present their concerns regarding Grandma's Gateway plan to the Board of Park Commissioners ("Park Board") on January 16, 2020. That notice was mailed to residents and was the first notice residents received regarding this recreational plan. On the notice the agenda item was listed as the "removal of two access points on 29<sup>th</sup> St. and Ebner Coulee Rd." No explanation of the meeting process, availability to speak, what options were available (request for a deferral), or the availability to supplement the record through testimony or written documentation was offered by the City. *(Attached hereto as Exhibit C – Notice from Parks Dept)*

#### Board of Park Commissioners' Meeting – January 16, 2020

Over 30 neighborhood residents and other concerned citizens spoke at the January 16, 2020 Park Board meeting expressing their apprehensions and to request additional information regarding their safety concerns. Also present were members of ORA supporting the plan. The Parks, Recreation and Forestry Department ("Parks Dept.") presented testimony that other City departments, a trail building company, and the Environmental Leadership Forum (ELF) had previously given their approval of the plan. When asked for written evidence of that, the Parks Dept. did not respond. The Park Board relied on the representations of the Parks Dept. and denied neighborhood residents and concerned citizens request to remove the two access points to the trails and suspend the trail plan.

An Open Records Request was filed on January 22, 2020 with the City of La Crosse Parks Dept. by Atty. Christine J. Clair. Atty. Clair had contact with multiple entities cited by the



Parks Dept. at the Park Board meeting. Additionally, the Director of Parks Dept. contacted Atty. Clair by phone in response to the Open Records Request and stated that there were no written reports to substantiate the approvals the Parks Dept. referred to at the January 16<sup>th</sup> Park Board meeting. *(Attached hereto as Exhibit D – Open Records Request)*

The City Parks Department failed to provide accurate and complete information during the City approval and review process, including the following deficiencies:

1. Subject: Parks Dept. representation that other City departments had reviewed and approved Grandma's Gateway plan.

On January 22<sup>nd</sup>, Atty. Christine Clair had a phone conversation with Parks Dept. Director, Jay Odegaard. When Atty. Clair asked Mr. Odegaard what the City departments "approval" entailed, Mr. Odegaard stated that he showed City Department heads the Grandma's Gateway written plan and map, with no other information. Mr. Odegaard admitted that safety issues that neighbors had raised were not addressed specifically with any of these City Department heads.. There were no professional reports or written approvals prepared or provided. *(Affidavit will be submitted into the record)*

2. Subject: Parks Dept. representation that an outside organization/trail specialist had reviewed and approved Grandma's Gateway plan. The organization referenced by the Parks Dept. was identified as the International Mountain Biking Association (IMBA) and Trail Alliance, which is the trail building branch of IMBA.

Atty. Clair contacted IMBA on January 21<sup>st</sup> and spoke with Mike Repyak. Mr. Repyak stated he was familiar with Grandma's Gateway plan and that Trail Alliance had been on site twice – once in late fall 2018 and once in April 2019, for six days. Mr. Repyak stated that the April visit was for flagging potential trails, assessing materials needed for future building, and reviewing the totality of the plan. Atty. Clair specifically asked if Trail Alliance had performed any testing regarding the slope, soil composition, stormwater drainage patterns, history of rockslides or boulder dislocation, etc. Mr. Repyak stated NO, that there were no resource specialists from Trail Alliance on site, and that the City had not identified any need for this testing or study. Mr. Repyak had no knowledge of any safety issues raised by neighborhood residents. Mr. Repyak also acknowledged they would be bidding for the trail building contract for Grandma's Gateway construction. *(Affidavit will be submitted into the record)*

3. Subject: Parks Dept. representation that the Environmental Leadership Forum (ELF) had reviewed and approved GG plan. The Environmental Leadership Forum had been formed by the Parks Dept.

Atty. Clair spoke with several members of ELF and was told that some were presented with the written Grandma's Gateway proposed plan, that Outdoor Recreational Alliance (ORA) representatives presented the plan, they were presented with the plan as it existed then, they were shown maps and general questions were answered. Some ELF members were told that neighborhood homeowners and citizens were aware of Grandma's Gateway plan (including the two access points and lower bluff trails) and they were in favor of the plan. ELF members stated they were not asked to give approval for the plan and they did not give formal approval of the plan. Therefore, no written approval was prepared. No information was presented regarding the safety concerns raised by neighbors. *(Affidavit will be submitted into the record)*

Petitioner requested to be put on the next Park Board's meeting agenda (February 20, 2020) to request the Park Board reconsider their January 16<sup>th</sup> decision, given the misrepresentations of facts by the Parks Dept. This request was in letter form and sent to the Park Board on January 28<sup>th</sup>. *(Attached hereto as Exhibit E – Parks Board letter)*

The request to be on the Parks Board agenda was denied on February 20<sup>th</sup> (the date of the meeting) by the Chairman of the Park Board. In an email, Chairman Medinger stated that the correct procedure to be put on the agenda had not been followed. No one informed Atty. Clair, or any neighborhood resident, of this procedure prior to that date. *(Attached hereto as Exhibit F – Chairman Medinger email)*

#### RE-ZONING MEETINGS – February 3, 4 and 13, 2020

Residents on 29<sup>th</sup> St. were sent notices of three re-zoning hearings – City Planning Commission on February 3; Judiciary and Administration Committee on February 4; and Common Council on February 13. The City's request was to re-zone the access point property on 29<sup>th</sup> St. from residential to conservancy.<sup>4</sup> Residents were told rezoning was

---

<sup>4</sup> The City of La Crosse owned two parcels of the east side of 29<sup>th</sup> St. that were zoned "residential." It was these parcels that the City was asking to be rezoned "conservancy."

needed in order for the City to expand the proposed trails onto 29<sup>th</sup> St., so as to have a 29<sup>th</sup> St. entrance and exit point to the trails above. <sup>5</sup> *(Attached hereto as Exhibit F – Re-Zoning meeting notices)*

Residents on 29<sup>th</sup> St. submitted fourteen (14) notarized objections to the rezoning ordinance proposal and submitted the objections into the City legislative record.

53.55% of all residents in 200' of subject parcels to be rezoned objected.  
(26 property owners in this area – 3 City of La Crosse, 1 a real estate company,  
5 did not objecting, 17 objected)  
34.89% of all residents adjacent to subject parcels objected  
(5 property owners in this area – 1 City of La Crosse, 4 objecting)  
100% of all residents opposite to subject parcels objected

Due to the number of objections received, affirmative action required three fourths vote by Common Council. *(Attached hereto as Exhibit G – Objection Calculations)*

Petitioner attended and presented written and oral objections to the Planning Commission public meeting on February 3<sup>rd</sup>. Written objections and public objection petitions were submitted into the legislative record. A USDA 2020 Custom Soil Resource Report detailing recreational use assessments for Grandad Bluff specifically, was also submitted into the legislative record. This report concluded that the soil composition and slope of Grandad Bluff was not suitable for recreational path and trail use.

The Planning Commission was informed by the Parks Dept. that Grandma's Gateway plan could proceed even if the rezoning did not occur. The Commission then determined that the safety concerns of the Petitioner were not relevant to rezoning, and the proper venue for Petitioner's concerns was the Park Board. The Planning Commission voted to move the re-zoning ordinance forward. *(Attached hereto as Exhibit H – Planning Commission letter; Exhibit I – USDA 2020 Custom Soil Resource Report & Exhibit T - Petitions)*

---

<sup>5</sup> No action was taken on the Ebner Coulee Rd. access point.

Petitioner attended and presented written and oral objections to the Judiciary and Administration Committee public meeting on February 5<sup>th</sup>. Written objections and additional public objection petitions were submitted into the legislative record. The Committee was informed by the Parks Dept. that Grandma's Gateway plan could proceed even if the rezoning did not occur. The Committee then determined that the safety concerns of the Petitioner were not relevant to rezoning, and the proper venue for Petitioner's concerns was the Park Board. The Judiciary and Administration Committee voted to move the re-zoning ordinance forward. *(Attached hereto as Exhibit J – Judiciary and Administration Committee letter & Exhibit T - Petitions )*

Petitioner attended the Common Council public meeting on February 13<sup>th</sup>. Public input was not allowed, but Petitioner did submit written objections to the Common Council through the legislative record and submitted additional public objection petitions.<sup>6</sup> The Common Council determined that the safety concerns of the Petitioner were not relevant to rezoning and the proper venue for Petitioner's concerns was the Park Board. *(Attached hereto as Exhibit K – Common Council letter & Exhibit T - Petitions)*

As stated earlier, Petitioner's request to be added to the Park Board February 20<sup>th</sup> meeting agenda was denied, on February 20<sup>th</sup>.

#### CITY OF LA CROSSE COMMUNITY INFORMATION MEETING – March 6, 2020

The Parks Dept. held a public meeting on Grandma's Gateway plan on March 6, 2020. The Parks Dept. did present a second amended map that showed part of the trails the Petitioner had objected to, had been modified. That was a positive step. Unfortunately, it did not address all the trails on the North, West, and South faces of Grandad Bluff, the access points or the overall concern with the impact the proposed trail plan will have on the integrity of

---

<sup>6</sup> Petitioner did not attach the over 650 petition signatures due to size, but they will be submitted into the record if a final injunction hearing is scheduled.

Grandad Bluff itself.<sup>7</sup> The scientific evidence that has been attained and shared with the City clearly states that the soil composition, slope, and geological composition of Grandad Bluff does not support the recreational plan of Grandma's Gateway and would cause irreparable harm to Grandad Bluff. Any harm to the integrity of the Grandad Bluff would directly impact the residents, the residential property and the public property below the proposed trails. Petitioner is requested by removed from the current plan.

At the March 6<sup>th</sup> informational meeting, some public questions were allowed. One such question that is relevant to Petitioner's position was:

- Width of trails on bluff sides will be approximately 30 inches. The City acknowledged that if people meet on the proposed trails, SOMEONE WILL HAVE TO STEP OFF TRAIL to allow the other person(s) to pass. This will create additional soil disruption, which will increase erosion, produce additional sedimentation, create rockslides, create boulder dislocations, etc.<sup>8</sup>

The City allowed citizens to submit questions ahead of the meeting, that the City answered at the meeting (and later) and subsequently posted online. Some Parks Dept. answers that are relevant to this petition are as follows.

- Bike Races:  
*"The City hosts 2 (bike) races annual on trails. The Hixon 50 and WORS race. At this time we are not comfortable eliminating the possibility of races/events utilizing the trails."<sup>9</sup>*
- Environmental Impact Study:  
*"Trail projects are built from more of a design/build perspective with the ability to make decisions about geography and environment as the trails are being built. Our past experience shows us that this helps mitigate erosion."*

---

<sup>7</sup> The reason part of trail 1b was modified was due to the rockslide and boulder dislocation at 117 29<sup>th</sup> St. South after the City had contracted trail flagging. The soil composition, slope and geological composition is the same throughout Grandad Bluff.

<sup>8</sup> The City has maintained that these trails are multi-use – for bikers, hikers, etc. This assertion is highly disputed.

<sup>9</sup> The City has repeatedly told property owners that these trails and access points are intended for neighborhood residents, not the general public. Utilizing these trails for bike races will result in hundreds of users from out of the City, County, State and possibly country, racing on these trails and parking in these residential neighborhoods. The additional wear on trails will increase irreparable harm to Grandad Bluff. The additional neighborhood traffic and parking will directly impact residents.

- Closing Trails:  
*"The decision to close trails will be done on a case by case basis depending upon the conditions. This decision is made by the Parks Department."*
- Liability for Damages to Homes:  
*"The City of La Crosse would need to be notified, but the city is protected under Wisconsin's Recreational Immunity Statute Section 895.52."*
- Monitoring the trails:  
*"This will have to be self-monitored by the users of the trails, the same as if you were at a ski resort or state park."*
- Hydrological Studies about the Waterflow changes  
*"We did ask the engineering firm of SHE to tell us if they thought what we were doing would have an effect on the floodway study they were doing for Ebner Coulee. They thought the effect would be minimal if at all."*
- Consultation with the US Geological Service regarding proposed trail area.  
*"We have consulted their website to compare the terrain in this area(a) versus the terrain where trails are currently located."*
- Eligibility for property owners to get FEMA funds if there is land or mudslide  
*That would have to be a decision made at the time of that occurrence."  
(Attached hereto as Exhibit K – City Information Meeting Question and Answer document)*

#### PETITIONER RETAINING CIVIL AND ENVIRONMENTAL ENGINEER – March 17, 2020

Petitioner's multiple requests to the City regarding concerns were met with placation, with the City refusing to provide us with any credible information to reassure us about the safety, environmental, geological and cultural impacts Grandma's Gateway would have on the north, west and south faces of Grandad Bluff and therefore on our persons and personal property. When the City was asked directly to conduct an environmental impact study prior to construction, the City refused citing cost of such a study and damage to the bluff by conducting such a study.

Therefore, Petitioner was compelled to seek an independent evaluation to provide a factual and scientific assessment regarding our concerns. Specifically, we were looking for an evaluation for address bluffside stability, erosivity, and potential degradation of Grandad Bluff from mountain bike trail construction, operation, and maintenance. We did not know what the results of such an assessment would be, but, given the City's denial to legitimately

address our concerns, this was the only viable means to obtain credible information to either give us reassurance the proposed trails presented no risk or to professionally delineate the risks and consequences of this proposal. Attached is the CV and report of Dr. James M. Tinjum - Civil and Environmental Engineer, Associate Professor and Director of the Geological Engineering Program at the University of Wisconsin-Madison. *(Attached hereto as Exhibit L – Dr. Tinjum Evaluation and Curriculum Vitae)*

Dr. Tinjum's evaluation addressed three (3) areas relevant to Grandad Bluff and Grandma's Gateway trail plan. He then made his specific conclusion as it relates to Grandad Bluff.

1. "Bike paths should not be located within 100m upslope of occupied residencies or structures as there is the potential for safety issues related to rockfalls or other slope movements caused by disturbances of naturally steep slopes."

  - "'Rockfall' is defined as the movement of rock of any size from a bluff or other slope that is so steep the mass continues to move down the slope."
  - "Movement may be by free-falling, bouncing, rolling or sliding."
  - "The second major cause of rockfall is freeze-thaw cycles. Because of the channelization and routing of water along or across trails on steep slopes, construction of trails on these steep slopes generally enhance the potential for freeze-thaw cycles and thus the potential for increased rockfall occurrences."
  - "There is further evidence that shallow slope failures are possible, associated even with structural elements."

2. "Construction of trails on steep slopes such as those found throughout Grandad Bluff would lead to the modification of existing drainage patterns, the removal of the thin upper soil horizon, soil compaction in places, and also the potential for an opening of the canopy which could lead to modification in micro-topography and micro-climate."

  - "Erosion and increased storm water conveyance (as would be conveyed on paths...) would be exacerbated by climatic issues such as increased occurrence of precipitation events and intensity of such events."

- “Because of shallow surface soils across Grandad Bluff, there is very limited capacity for shallow soil to absorb, retain, and moderate stormwater conveyance.”

3. High-intensity mountain biking on Grandad Bluff would indelibly and irreparably impact the tranquility, setting, and nature of these areas.

- “On the geological and cultural significance of Grandad Bluff, I believe that construction, operation, and maintenance on an extensive set of off-road biking paths would cause irreparable harm.”
- “Grandad Bluff – an elevated mesa with a flat top and steep cliff sides – is a highly visible icon of geologic forces.”
- “Grandad Bluff has unique rock outcroppings, including the dolomite of the Prairie du Chien group capping Cambrian-era Jordan Sandstone.”
- “This geological setting is not only geologically unique, but also susceptible to mass movements.”

Dr. Tinjum’s conclusion:

- “(I)t is my expert opinion that construction and operation of an extensive set of mountain biking trails on Grandad Bluff would cause irreparable harm to the unique geological and cultural history of Grandad Bluff.”

Given Dr. Tinjum’s opinion, we proposed the following to the City in a May 4<sup>th</sup> letter addressed to Mayor Kabat.

1. *“Planned work on Grandma’s Gateway be immediately suspended; specifically, we propose that work on the north, west and south faces of Grandad Bluff - trails 1a, 1b, 2a, 2b, 2b1, 3c, 4b2, 5a, 2 & 3 connect trail, and any other trail that is in contradiction with Dr. Tinjum’s conclusions. The topography and risk from construction of these trails are specified and referred to in Dr. Tinjum’s report on pages 3-5 (Summary of Opinions) and referenced figures and photos.*
2. *The City of La Crosse respond to us in writing by 5 pm, May 8<sup>th</sup> (email response on that date preferred, with mailed response following.) Grandad Bluff Coalition can*



*be reached at the above contact information and we will forward it to governing members.)*

3. *We continue to be open to discussion, contingent on the suspension of the current timeframe for trail construction as outlined in (1) above. (According to the La Crosse Tribune construction is set to begin May 20th.)”*

*(Attached hereto as Exhibit M – Petitioner’s letter to Mayor Kabat)*

Mayor Kabat responded in a May 8, 2020 letter **denying** our request for a suspension of the above trails. *(Attached hereto as Exhibit N – Letter from Mayor Kabat)*

### ADDITIONAL INFORMATION AND ACTIONS

Grandad Bluff and Hixon forest were donated to the City by the Hixon family in 1915. Frederick Hixon Glore has communicated and sent letters to Mayor Kabat objecting to Grandma’s Gateway due to potential environmental and geological risks to the integrity and stability of Grandad Bluff. *(Attached hereto as Exhibits O & P – Letters from Fred Hixon Glore to Mayor Kabat)*

Numerous other recreational and conservation groups have voiced opinions regarding Grandma’s Gateway plan in regard to Grandad Bluff. Conservancy of the bluff lands continues to be a local priority for environmentalists. Additionally, concerns have been raised of the equity of recreational use formats (hiking, biking, birdwatching, etc.) not being in conformity with citizen’s wishes.<sup>10</sup> These groups have advocated for the development of an updated and comprehensive environmental and recreational plan prior to moving forward with any plan that could create environmental harm or create risks to the environment.

---

<sup>10</sup> The Blufflands, A Plan for Conservation and Recreation Throughout the La Crosse – La Crescent Region July 15, 2016 documented hiking as the most popular type of recreation and the recreation the region needs more of.

Additionally, the University of Wisconsin Student Senate adopted a Resolution to Protect and Preserve Grandad Bluff and the objectives listed in the citizens' petition that was delivered to Mayor Kabat. (Attached hereto as Exhibit U – UWL Student Senate Resolution)

### **ARGUMENT**

Temporary Restraining Orders in Wisconsin are governed by Wis. Stat. 813.02(1). To obtain a temporary restraining order, the petitioner must show a likelihood of irreparable harm, an inadequate remedy at law, a likelihood of success on the merits, and that the injunction is necessary to preserve the status quo. Spheeris Sporting Goods, Inc. v. Spheeris on Capitol, 157 Wis. 2d 298 (Ct App. 1990); School District of Slinger v. WIAA, 210 Wis2d 366 (Ct. App. 1997); Kohlbeck v. Reliance Construction Co. Inc., 256 Wis.2d 235 (Ct. App. 2002)

### **IRREPARABLE HARM**

A temporary restraining order is necessary to prevent the City from causing irreparable harm to the geological, environmental, and cultural integrity of Grandad Bluff and it will prevent the City from causing irreparable harm to the lives and property of the residents who live on, adjacent and below Grandad Bluff.

- There is evidence of recent rockslides and boulder dislocations in the area where the City contracted for trail flagging in the summer of 2019. This evidence was submitted to the City on December 29, 2019 and is factual evidence of geological instability. Petitioner asserts this land disturbance and increased human contact of trail flagging contributed to, if not was responsible for, this life-threatening occurrence.  
*(117 29<sup>th</sup> St. So., La Crosse) (Attached hereto as Exhibit Q – Kirk Olson email and photos)*
- There is scientific evidence that the soil composition and slope of Grandad Bluff is not recommended for planned recreational trails/paths. The USDA prepares custom soil resource reports as planning tools for public and private lands. They highlight soil limitations that affect various land uses. Soil scientists assign soils to taxonomic classes and each taxonomic class has a set of soil characteristics with precisely defined limits.  
*(Attached hereto as Exhibit I – USDA report, 2020)*
- There is a comprehensive community report stating that additional trails should not be approved on non-disturbed or relatively non-disturbed lands

and recreational activities that significantly increase threats to personal safety or potential for negative impacts on habitat, promote erosion, reduce tranquility, etc. shall be prohibited.

*(Attached hereto as Exhibit R - Hixon Forest Comprehensive Plan 2005)*

- There is a comprehensive report stating that every Bluff land site is unique, and each site should be evaluated for recreation suitability, and many sites have areas deserving protection from recreational use, such as dry bluff prairies or steep, erodible slopes.

*(Attached hereto as Exhibit S - The Blufflands, A plan for Conservation and Recreation Throughout the La Crosse-La Crescent Region July 15, 2016)*

- There is a geological and environmental report issued by Dr. James Tinjum that concludes construction and operation of an extensive set of mountain biking trails on Grandad Bluff would cause irreparable harm to the unique geological and cultural history of Grandad Bluff.

*(Attached hereto as Exhibit L -Dr. James Tinjum report; May 1, 2020)*

Petitioner's concern for Grandad Bluff is joined by the 650+ La Crosse citizens who signed petitions and the La Crosse area collective community as a whole. Grandad Bluff is the environmental icon and connector of the La Crosse area. Citizens have loved Grandad Bluff for centuries. The historical connections of Grandad Bluff and the growth of the La Crosse area are voluminous. The protection and preservation of Grandad Bluff for generations is well documented and the basis that the Hixon family purchased, and then donated the property to the City of La Crosse. The Hixon family continues to advocate for it's protection and preservation. Petitioner and hundreds of La Crosse area residents also advocate for the preservation and protection of Grandad Bluff. *(Attached hereto as Exhibits O & P - Letters from Fred Hixon Glore to Mayor Kabat)*

Any disruption of Grandad Bluff's fragile topography would cause disastrous damage to residential homes below and potential injury or death to its residents. There is historical evidence of this for Grandad Bluff and neighboring bluffs.

"When the granting of the injunction will be of little or no injury to the defendant, and the refusal to grant it will be of great and irreparable damage to the plaintiff, courts usually

grant the injunction pending the litigation.” Pioneer Wood Pulp Co. v. Bensley, 70 Wis. 476 (1988)

### NO ADEQUATE REMEDY AT LAW

A temporary restraining order is necessary as Petitioner has no other adequate remedy at law. Grandad Bluff Coalition, Bluffside neighbors and City of La Crosse citizens have participated in every formal and informal governmental option to be heard regarding safety concerns, requesting independent scientific evaluations, requesting construction be suspended until reassurances could be had through independent and scientific evaluations, etc. All attempts have been met with denial and disregard.

Consequently, Petitioner has obtained independent, scientific evidence and presented that to the City. Evidence presented includes the 2020 USDA Custom Soil Report for Grandad Bluff and Dr. James Tinjum Evaluation of Bluffside Stability, Erosivity, and Potential Degradation of Grandad Bluff. The City presented no contrary scientific evidence.

Of equal concern is the City’s written assertion that the City is protected under Wisconsin’s Recreational Immunity Statute Section 895.52.<sup>11</sup> Residents, City of La Crosse and public users of the trails would potentially be barred from recovering equitable damages, if those damages exceeded the Recreational Immunity cap. Injured parties (including neighborhood residents and property owners) would have to retain private counsel. Additionally, any potential judgment for liability against the City would ultimately be transferred to the citizens and taxpayers of La Crosse.

### PRESERVE THE STATUS QUO

A temporary Restraining Order is necessary to preserve the status quo. **Once construction is started on May 20, irreparable harm will be done** to Grandad Bluff itself, as well as

---

<sup>11</sup> The City’s Project question and answer sheet from March 6, 2020 public hearing, posted on City’s webpage.

harm to the persons and personal property of neighborhood residents. All attempts to work with, mediate, compromise, share information, propose alternatives, etc. have been met with dismissal from the City. This is true, even when Petitioner presented to the City over 650 petition signatures of City of La Crosse citizens who shared concerns and objected to the City's action without scientific evidence that irreparable harm will not occur.

A temporary restraining order will not harm the City, other than to suspend the construction start of a recreational project. Since December 2019, Petitioner has continuously requested this plan be suspended to address safety concerns. The City has refused, even after the submission of scientific evidence outlining the risks and harm that will occur if this plan moves forward.

The purpose of a temporary injunction is to "mitigate the damage that can be done during the interim period before a legal issue is finally resolved on its merits." A & F Enterprises, 742 F3d 763 (2014)

#### REASONABLE PROBABILITY OF SUCCESS ON THE MERITS

Petitioner has a reasonable probability of success on the merits as they have scientific and credible evidence that details the irreparable harm Grandma's Gateway will have on Grandad Bluff itself and the safety risks to the residents and private property located adjacent to and below the proposed trails. Petitioner has voiced serious and legitimate concerns that the Respondent, City of La Crosse has ignored without the City providing evidence rebutting the concerns or mitigating the risks identified.

The City's actions are in violation of the rights of neighborhood residents and City of La Crosse citizens to be safe in their homes and to have access to their homes.

## **CONCLUSION**

Petitioner has utilized every means available to obtain information, share information, work with City representatives toward a resolution that would protect and preserve the iconic Grandad Bluff, ensure residents' and citizens' safety, protect the private property of neighborhood residents and allow the remaining parts of Grandma's Gateway plan to proceed. Petitioners have consistently limited their objections to the trails on the North, West and South faces of Grandad Bluff; specifically trails 1a, 1b, 2a, 2b, 2b1, 3c, 4b2, 5a, 2 & 3 connect trail. This limiting of objections was Petitioner's attempt to show good faith and allow other parts of Grandma's Gateway plan to proceed – a safe and responsible compromise.

The City has dismissed all scientific evidence presented by Petitioner. The City has dismissed over 650 citizens' objections to proceed without first assessing environmental risks to Grandad Bluff. The City has dismissed neighborhood residents' concerns regarding access to, and protection of, their property. The City has dismissed local recreational groups request for an updated comprehensive environmental and recreational plan before proceeding with this trail construction. And, the City has dismissed the Hixon family requests to uphold the family's wishes of preservation and protection of Grandad Bluff.

There has been, and is, nothing more Petitioner can do to prevent irreparable harm to Grandad Bluff. Grandad Bluff is an iconic landmark that distinguishes La Crosse worldwide. This Petition is needed to protect and preserve Grandad Bluff for all to enjoy – now and in the future. Irreparable harm is just that, irreparable.

There has been, and is, nothing more Petitioner can do to prevent irreparable harm to the lives and personal property of neighborhood residents. Irreparable harm is just that, irreparable.

Therefore, petitioners request the Court grant a Temporary Restraining Order and Permanent Injunction prohibiting the City from constructing trails as listed above.

Alternatively, Petitioner requests the Court grant a Temporary Restraining Order and schedule a hearing on the Permanent Injunction, to allow parties to present testimony and evidence.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine J. Clair". The signature is written in black ink and is positioned above a horizontal line.

Atty. Christine J. Clair (SBN 1000339)  
PO Box 1511  
La Crosse, WI 54601  
(608) 519-3173

Representative for Petitioner