

August 11, 2021

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VIA U.S. MAIL

Governor Tony Evers
115 East, State Capitol
Madison, WI 53702

Attorney General Josh Kaul
Wisconsin Department of Justice
P.O. Box 7857
Madison, WI 53707

Re: Urgent Request to Halt WDNR'S Intimidation and Retaliatory Behavior Against the Friends of Blue Mound State Park

Dear Governor Evers and Attorney General Kaul:

We represent the Friends of Blue Mound State Park (the "Friends Group") and have an urgent matter to bring to your attention.

As you may be aware, for over two decades the Friends Group has had an agreement with the Wisconsin Department of Natural Resources ("WDNR") to support and raise money for Blue Mound State Park (the "Park"). Under Wisconsin law, the WDNR regularly enters into such agreements with friends groups because they provide numerous "benefit[s] to the state parks." Wis. Stat. § 27.01(2)(d); *see also* Wis. Admin. Code. § NR 1.71("To be recognized as a friends group, the group shall organize as a non-profit, non-stock, tax-exempt corporation, and shall be structured through articles of incorporation and by-laws to direct its mission and activities to the support of the property. . .")

On June 25, 2021, in support of the property, the Friends Group filed a lawsuit in Dane County Circuit Court challenging the WDNR and the Natural Resources Board's final decision ("Final Decision") to construct a new snowmobile trail in a sensitive ecological area of the Park. That same day, the Friends Group also filed a petition for a contested case hearing with the WDNR regarding its Final Decision.

The Friends Group's lawsuit and petition argue that the WDNR and NRB's decision to construct a new snowmobile trail in the Park was unlawful and illogical for numerous reasons, including that:

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- there is already a snowmobile trail running through the Park,
- the WDNR has admitted that snowmobile use is declining in the region; and, most importantly,
- just five years ago, the WDNR rejected a proposal to establish a new snowmobile trail in the Pleasure Valley portion of the Park—the same area where the new snowmobile trail is to be constructed—citing the “sensitive ecological landscape”; the prohibitively high cost of maintaining water control measures, culverts, and flood management structures; and a high level of disturbance that “may cause user conflicts and reduce ecological sustainability.”

Soon after the Friends Group filed its case, a Wisconsin Department of Justice (“DOJ”) attorney contacted our firm to discuss next steps. This discussion was focused on various scheduling issues related to the case. Specifically, we asked the DOJ attorney whether the WDNR would agree to stay construction of the snowmobile trail while our lawsuit proceeds. If the WDNR would not agree to do so, we stated that the Friends Group would likely seek an injunction from the court and ask the court to stay construction until the lawsuit is resolved.

Several weeks passed without any word from the DOJ concerning our request for a voluntary stay of construction on the snowmobile trail. Then, last week, on August 5, 2021, two high-ranking WDNR officials—Steven Schmelzer, the WDNR Parks Director, and Missy Vanlanduyt, the Recreational Partnerships Section Chief—abruptly asked representatives of the Friends Group to meet without either party’s counsel present. The Friends Group was willing to do so, in part, because the WDNR officials assured the Friends Group that the lawsuit would not be discussed at the meeting. (This assurance turned out to be false.)

Mr. Schmelzer and Ms. VanLanduyt from the WDNR met with the Friends Group at 2:30 PM at the Friends Shelter at the Park. At the start of the meeting, Mr. Schmelzer cut right to the chase: he informed the Friends Group representatives that if the Friends Group does not drop its pending lawsuit by August 17, 2021—which, coincidentally, is the next filing deadline in the case—then the WDNR will terminate its agreement with the Friends Group, which would end the Friends Groups’ decades-long association with the Park.

There are a lot of words to describe the WDNR’s conduct at this meeting: intimidation and retaliation are a couple that come to mind. The bottom line is that this kind of behavior is not just illegal; it should have *no place* in our state government. No government official, whether at the WDNR or otherwise, should be threatening retaliation against a group of citizens for engaging in constitutionally protected conduct. The Friends Group has a constitutional right to express its opinion concerning WDNR’s management of the Park and to go to court to protect the Park. We

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are sending you this letter as a courtesy, and with the hope that your administrations were not aware of, and did not endorse, this unlawful and unscrupulous behavior.

If your administrations do not immediately remedy this malfeasance and renege on these threats by the close of business on Friday, August 13, 2021, the Friends Group intends to (among other potential actions) seek appropriate relief from the state and/or federal courts to enjoin the WDNR from taking the unconstitutional and retaliatory action of terminating the Friends Group.¹ Such action plainly violates the Friends Group's First Amendment right to free speech and to petition the government for redress of its grievances, and its due process right to seek relief through the judicial system.

Putting aside the legal and ethical issues with the WDNR's behavior, what the WDNR is proposing to do is simply wrong. The Friends Group has been working to protect the Park and to raise money for the WDNR and the Park since 1990. As the WDNR is aware, every year the Friends Group hosts the Horribly Hilly Hundreds bike ride to raise money for the Park. The next such ride is scheduled for August 28, 2021. Over the last decade, this event and the Friends Group have raised—and then donated—over \$1 million dollars to the WDNR for use at the Park.

That the WDNR is willing to potentially jeopardize this funding and this popular and important state event to avoid having to respond to the allegations in the Friends Group's lawsuit is telling. Obviously, these WDNR officials do not believe their decision to propose and approve the construction of a snowmobile trail through the Park is justified—otherwise why would they resort to such tactics?

Prior to being elected, both of your administrations promised to protect the environment. It's time for you to back up those promises with action.

Sincerely,



Brian H. Potts

BHP

¹ The Friends Group also highly recommends that the Attorney General institute an investigation into this matter.

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Cc: WDNR Secretary D. Preston Cole
Senator Tammy Baldwin
Congressman Mark Pocan
Rep. Sondy Pope