

Resolution to Approve a Memorandum of Agreement with the Wisconsin Department of Natural Resources, Division of Forestry to participate in the Knowles-Nelson Stewardship Land Acquisition Grant Program

TO THE HONORABLE SUPERVISORS OF THE COUNTY BOARD OF THE COUNTY OF POLK:

Ladies and Gentlemen:

WHEREAS, Polk County has lands enrolled as county forest pursuant to s. 28.11 of the Wisconsin Statutes, and;

WHEREAS, on October 1, 2006, the Polk County Board of Supervisors adopted Resolution #49-06, resulting in the approval of the 15-Year (2006-2020) Polk County Forest Comprehensive Land Use Plan ("Plan") in accordance with Wisconsin Statute Section 28.11(5)(a); and

WHEREAS, as described in Chapter 400 of the Polk County Forest Comprehensive Land Use Plan, the Polk County Board of Supervisors has the authority, pursuant to Wisconsin Statute Section 28.10, to acquire properties for the purpose of establishing county forest land; and

WHEREAS, the acquisition of said properties are beneficial to Polk County by perpetually providing forest products to our local economy, increasing and sustaining revenues to the County, providing outdoor recreation opportunities to the public, and improving property administration on the county forest; and

WHEREAS, Polk County is eligible to participate and make application to the Knowles-Nelson Stewardship Land Acquisition Grant Program for land acquisition consistent with said plan; and

WHEREAS, grant funding may provide funding up to 50% of the acquisition price; and

WHEREAS, as a condition of the eligibility to county forest land grants, Polk County must enter into a Memorandum of Agreement (MOA) with the Wisconsin Department of Natural Resources, Division of Forestry; and

NOW, THEREFORE, BE IT RESOLVED, the Polk County Board of Supervisors approves and adopts the Memorandum of Agreement with the Wisconsin Department of Natural Resources, Division of Forestry.

BE IT FURTHER RESOLVED that the future acquisition of any county forest land eligible for Knowles-Nelson Land Acquisition Stewardship Grant funding shall require additional approval of the Polk County Board of Supervisors prior to making application;

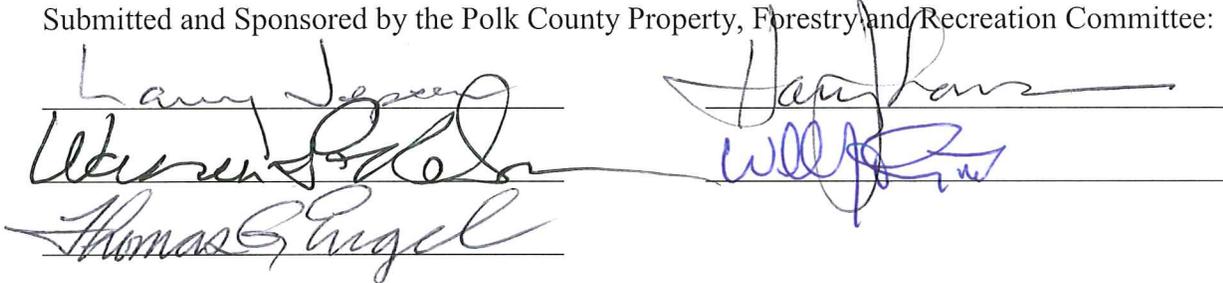
BE IT FURTHER RESOLVED that the Polk County Board of Supervisors directs the Polk County Forester to forward a signed MOA to the Wisconsin Department of Natural Resources.

BE IT FURTHER RESOLVED that Polk County recognizes and acknowledges that if financial assistance is made available by the Wisconsin Department of Natural Resources, and Polk County accepts said financial assistance, then Polk County will comply with state rules for the program and meet the financial obligations under the grant;

BE IT FURTHER RESOLVED that if grant funding becomes available, then the Polk County Forester shall seek the recommendation from the Property, Forestry and Recreation Committee on a County Board resolution, as appropriate, to authorize said future acquisition.

Funding Amount: Not Applicable      Funding Source: Not Applicable  
Finance Committee Advised: Not Applicable  
Date Submitted to County Board: March 19, 2013      Effective Date: Upon passage

Submitted and Sponsored by the Polk County Property, Forestry and Recreation Committee:

  
Larry Jensen  
Warren B. Koenig  
Thomas Engel  
Dan Kars  
Will Frew

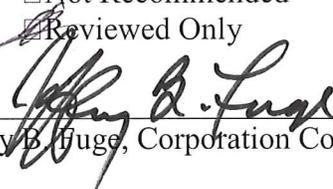
Review by County Administrator:

- Recommended
- Not Recommended
- Reviewed Only

\_\_\_\_\_  
Dana Frey, County Administrator

Review by Corporation Counsel

- Approved as to Form
- Recommended
- Not Recommended
- Reviewed Only

  
\_\_\_\_\_  
Jeffrey B. Fugle, Corporation Counsel

County Board Action:

On the 19<sup>th</sup> day of March, 2013, the Polk County Board of Supervisors adopted Resolution No. 12-13: Resolution to Approve a Memorandum of Agreement with the Wisconsin Department of Natural Resources, Division of Forestry to Participate in the Knowles-Nelson Stewardship Land Acquisition Grant Program, by a majority vote of supervisors of \_\_\_\_\_ in favor and \_\_\_\_\_ against. *by unanimous voice vote*

*William F. Johnson, IV*  
William F. Johnson, IV  
Chairperson

ATTEST:

*Carole T. Wondra*  
Carole T. Wondra, County Clerk

Dated this 21<sup>st</sup> day of Mar, 2013

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# MEMORANDUM OF AGREEMENT

BETWEEN

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

and the

Counties with County Forests as defined under s. 28.10 & 28.11 Wis. Stats

## **Warren Knowles-Gaylord Nelson Stewardship Program 2010-2020 Land Acquisition subprogram**

### **I. PURPOSE**

The purpose of this Memorandum of Understanding (Agreement) is to allow the Wisconsin Department of Natural Resource's (DNR) Division of Forestry and any of the signatory twenty nine counties (Counties) to this Agreement that partner in the management of the Wisconsin County Forests as established under s. 28.10 and s. 28.11 Stats., to work cooperatively in maximizing and prioritizing available land acquisition subprogram funding for the betterment of conservation and nature-based outdoor recreation in Wisconsin.

### **II. SCOPE**

This Agreement constitutes the "memorandum of agreement" referenced in s. NR 51.963 Wis. Admin. Code. This Agreement establishes the procedures for a County project submission, priorities for acquisition, eligible costs and funding availability, and which shall be coordinated through the DNR Division of Forestry.

### **III. DEFINITIONS**

Words and phrases defined in s. NR 51.002 and subchapter XIV, NR 51, Wis. Admin. Code, are used in the same sense in this Agreement unless a different definition is specifically provided.

### **IV. FUNDING**

All County and State Forestry projects will be evaluated using the ranking criteria and process in section IV. B & C of this Agreement. Cumulatively, the Counties will be eligible to receive a minimum of 25% of stewardship land acquisition subprogram funding allocated from the appropriation under s. 20.866 (2) (ta) to the DNR Division of Forestry each fiscal year if eligible County projects totaling that amount have been submitted by the Counties. County projects in excess of the 25% may receive funding dependent on their ranking under this Agreement amongst all projects (DNR & County) submitted.

Any portion of each fiscal year's funding allotment designated for County purchases not awarded by the following February 28 shall revert to the Department for land acquisition under s. 23.0917(3), Stats.

## V. PROJECT ELIGIBILITY, APPLICATION, APPROVAL AND INVOICING

### A. Eligibility

1. Any County having property entered in the county forest law program under s. 28.11(4) Stats. may apply for funding of a project.
2. A project must be for acquisition of property suitable for entry in county forest under s. 28.11(4), Stats.
3. The following property types are ineligible for project funding:
  - a. Any property that has restrictions or other covenants that prevent or limit the property from being managed under ss. 28.11(1) or 23.09(2)(d) Stats.
  - b. Property acquired more than one year prior to a request for funding under this Agreement
  - c. Property used for licensed game farms, fur farms, deer farms, shooting preserves, forest nurseries, or experimental purposes
  - d. Property used for commercial or industrial purposes inconsistent with the purposes of the county forest law in s. 28.11(1) Stats.
  - e. Property with perpetual easements which are inconsistent with the purposes of the County Forest law in s. 28.11(1) Stats.
4. Eligible costs
  - a. Fair market value of the property as determined by DNR appraisal guidelines except as provided in s. 23.0917(b) to (d), Stats.
  - b. Associated costs including appraisal work, land surveys, relocation payments, title evidence, recording fees, historical and cultural assessments required by DNR, and environmental inspections and assessments incurred up to one year before the date of the application submittal.
5. Ineligible costs. Ineligible costs include, but are not limited to, environmental cleanup costs, brokerage fees, real estate transfer taxes, or any other costs not identified in ss. NR 51.002(1) and NR 51.006(2), Wis. Adm. Code., or in section V. A. 4.

### B. Application Process

1. Application content. The following components are required for a county to apply for Stewardship Land acquisition subprogram funding:
  - a. Basic applicant information, on a form provided by DNR.
  - b. A comprehensive description of the property to be acquired, including proposed land use, future operation and maintenance plans, and public access provisions consistent with s. 23.0916(2), Stats.
  - c. A map of the property that identifies land forms, water features, forest types, and trail systems.
  - d. A completed checklist as provided under s. NR 52.03(2)(a), Wis. Admin. Code., which is incorporated into the Application Form.

- e. An estimate of eligible project costs as provided under section V. A. 4. (Note: The applicant is not required to have appraisals completed at this time. The application may include an estimate of the fair market value of the property based on the applicant's knowledge of the local real estate market. Any estimate of the value of the property should include comparable arms-length sales that are similar to the subject project. If the project is approved for funding the applicant will be required to comply with s. NR 51.967, Wis. Admin. Code.)
  - f. A County Board resolution authorizing the application.
  - g. A real estate option to purchase signed by the seller or a letter of intent indicating the landowner's willingness to sell the property subject to terms to be agreed upon at a later date.
  - h. Proof of applicant match for the project, (consistent with s. NR 51.962(4), Wis. Admin. Code).
2. Application Submission –
- a. Applications shall be accepted throughout the year by the Division of Forestry, County Forest Specialist at: 101 S. Webster St., Box 7921, FR/4 Madison, WI. 53707.
  - b. If insufficient funds prevent the DNR or Division of Forestry from making an award in any fiscal year, a county may request that the DNR or Division of Forestry consider the application in a subsequent fiscal year or when additional funds become available.
  - c. While property acquired more than one year prior to a request for funding remains ineligible for funding per section IV.A.3.b. of this Agreement, as an alternative the county may withdraw the application if the timing of the application precludes funding.
3. Ranking criteria
- a. All projects must satisfy the purposes identified in s. 28.11(1) and s. 28.04(2), Stats.
  - b. Management criteria
    - i. Degree to which the property is located within the forest blocking boundaries as identified in the County Forest Comprehensive Land Use Plan (County 15 Yr. Plan) or State Forest Master Plan.
    - ii. Size of the project
    - iii. Degree to which the project provides a physical buffer against land uses that would diminish habitat, management or visitor experience
    - iv. Whether the project would allow for extinguishment of previously secured easements or land use agreements across State / County lands
    - v. Whether the project is free of existing structures or developments
    - vi. Whether the project is identified within an existing plan including the land legacy report, statewide forestry plan, forest legacy plan, Statewide Comprehensive Outdoor Recreation Plan (SCORP), county outdoor recreation plan, county 15 yr. plan, or other similar plans.
    - vii. Frequency and recent history of a County receiving Stewardship land acquisition grants
  - c. Natural Resource criteria
    - i. Whether the project encompasses or protects exemplary natural communities (high conservation value forests) and / or habitats for rare, threatened, and endangered species as identified in the natural heritage database or the wildlife action plan.
    - ii. Degree to which the project provides linkages between blocks of existing public land for habitat connectivity

- iii. Whether the project supports and / or protects highly productive forest land
  - iv. Whether the project contains extraordinary scenic features of regional or statewide significance such as vistas or other significant geological formations.
  - v. Whether the project protects undeveloped / remote lakes, ponds, rivers, undeveloped shoreline, headwaters areas, or recharge areas
  - vi. Degree to which the project protects critical water resources including wetlands, headwaters, groundwater-charge areas or other areas that encompass high quality water resources (Designated Outstanding & Exceptional Water Resources, Wild Rivers, Trout streams).
- d. Recreation criteria
- i. Whether the project either maintains or provides new public access, especially to lakes, streams and rivers
  - ii. Degree to which the project contributes to the development of planned facility / infrastructure identified in a County Forest Comprehensive Land Use Plan (County 15 yr. plan) or State Master Plan
  - iii. Degree to which the project provides connectivity for linear trails; connecting existing public land and creating additional trail opportunities
  - iv. Degree to which the project would help to serve a large populations center or serve as a high use recreation destination point, or located along a major travel corridor for easy access.
- e. Economic criteria
- In addition to considering the economic benefits related to management efficiencies, natural resources and recreation elements above:
- i. Increase the ability to provide direct and indirect benefits from tourism/recreation and timber economies to local and statewide businesses (consider percent in productive forest and current and future timber values and potential for short term sustainable timber harvests)
  - ii. Degree to which the project expands upon or creates a new recreational use which would benefit the local/regional tourism economy
  - iii. Degree to which the project would reduce current and future costs of services to local units of government or existing State & County ownerships (surveys, encroachments, road maintenance)
  - iv. Whether the project would provide a considerable value for the cost, taking advantage of cost share opportunities, grants, donations to provide a good economic return for the Stewardship funding
  - v. Degree to which the project would maximize Stewardship funds through acquisition at a low cost/acre.
- f. Partnership criteria
- i. Degree to which the project has local / regional support and commitment from the community
  - ii. Degree to which multiple organizations contribute to the acquisition costs
  - iii. Whether the sellers are willing to donate a portion of the property value
  - iv. Whether the project helps protect tribal gathering rights or other culturally important locations
- g. Threats /Risks and Opportunity criteria
- i. Whether the project is at high risk for permanent conversion to development or other land use inconsistent with the purposes of the State or County Forests

- ii. Whether the project is in one larger parcel (360+ acres) or consolidates multiple smaller parcels
- iii. Whether the project is a large working forest within or adjacent to an existing project boundary

### **C. Approval and Ranking process**

1. County stewardship applications received by May 1<sup>st</sup> of the year preceding the State fiscal funding year will be evaluated in that year's initial ranking process against the aforementioned criteria to determine funding up to the 25% allocation provided in section IV. of this Agreement.
2. If the 25% allocation is not totally encumbered during the May 1<sup>st</sup> application period other county applications that meet the eligibility requirements will be funded up to the limits of the 25% allocation.
3. Applications received after the 25% allocation is encumbered for a fiscal year will be evaluated jointly with State forest acquisitions based on the criteria in section V. B.3 of this Agreement.
4. Acquisitions that include a restriction on hunting, fishing, trapping, hiking, or cross country skiing will require approval of the Natural Resources Board
5. Ranking process
  - a. Applications shall be rated by a panel consisting of the DNR County Forest Specialist, DNR State Forest Specialist, Chief State Forester or designee, Wisconsin County Forests Association (WCFA) Executive Director, and another individual selected by the WCFA Board of Directors.
  - b. Applications shall be rated based on the criteria in section V. B.3 of this Agreement using the worksheet "State & County Forest Land Acquisition (project) Priority Ranking Tool" that is appended to this Agreement.
  - c. As funding is available and applications are submitted, awards may be made on a continuous basis.

### **VI. CONFLICT RESOLUTION**

In the event a disagreement over a decision made under the terms of this Agreement occurs, a stepped-approach, more specifically described below, will be used to resolve the issue. Unresolved issues will be forwarded to the next level within 30 days of a decision at the prior level. A summary of the discussion and unresolved issues at the prior level shall accompany the request for review at successive levels.

Initial review shall be conducted by:

- A.** Level 1 - The DNR County Forest Specialist, WCFA Executive Director, and the complainant shall collaborate to resolve the issue. If no resolution can be reached:
- B.** Level 2 - The project ranking panel, consisting of the DNR County Forest Specialist, DNR State Forest Specialist, DNR Chief State Forester or designee, Executive Director of WCFA

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and one member appointed by the WCFA Board of Directors shall convene. If no resolution can be reached:

- C. Level 3 - The DNR Chief State Forester, County Board Chair from the county of the complainant, the President of the WCFA Board of Directors, and the Director of the DNR Bureau of Community Financial Assistance will be the final arbiters of the dispute.

## **VII. NOTICE**

The DNR agrees to provide the Counties with prompt notice of changes to the statutes, administrative rules, guidance, and practices that may impact the Parties and the Agreement if such changes are identified by the DNR.

## **VIII. TERM OF AGREEMENT**

The Agreement will take effect for each signatory County upon signature by the DNR and the signatory County, and shall continue through June 30, 2015. Sixty days prior to the termination date, the Parties shall evaluate and negotiate necessary changes. If no changes are required, the Agreement will automatically renew for an additional five years.

## **IX. TERMINATION**

Termination prior to June 30, 2015 is possible upon 60 days written notice by either DNR or any signatory county following the Conflict Resolution process outlined in Section VI. All projects approved prior to the termination date will continue to completion. Termination by an individual County shall only impact that County with respect to this Agreement, and shall not constitute termination of the Agreement for any other signatory County to this Agreement.

## **X. LIABILITY**

On behalf of itself, its officers, directors, members, employees, personnel, agents, and representatives, all Parties agree that they shall be responsible for their own acts and omissions and the results thereof and shall not be responsible for the acts or omissions of the other Parties, nor the results thereof to the extent authorized by Wisconsin law.

## **XI. ASSIGNMENT**

No right or duty of this Agreement, in whole or in part, may be assigned, delegated or subcontracted without the written consent of all Parties.

## **XII. AMENDMENT**

No amendment to this Agreement shall be effective except in writing and signed by all Parties.

## **XIII. COMPLETE AGREEMENT**

The Agreement incorporates all attached appendices and documents, and supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Agreement between the Parties. The Parties shall make copies of the Agreement available to appropriate staff.

**XIV. CONTROLLING LAW**

The interpretation and performance of this Agreement shall be governed by the laws of the State of Wisconsin.

**XV. LIBERAL CONSTRUCTION**

Any general rule of construction to the contrary notwithstanding this Agreement shall be liberally construed in favor of the Agreement to effect the purpose and scope of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose and scope of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

**XVI. SEVERABILITY**

If any provision of the Agreement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

**XVII. SIGNATURES**

The DNR and Counties may separately sign this Agreement which shall, in the aggregate, be signed by all Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it. In the event of any disparity between the counterparts produced, the counterpart held by the DNR shall be controlling.

Wisconsin Department of Natural Resources

By: \_\_\_\_\_  
DNR Secretary

\_\_\_\_\_  
Date

POLK County

By: Will [Signature]  
Polk County Board Chair

02.11.2013  
Date

By: Larry [Signature]  
Polk County Forestry Committee Chair

2-11-13  
Date

By: \_\_\_\_\_  
Polk County Forest Administrator

\_\_\_\_\_  
Date