

Resolution 62-08

To Approve and Enter Into a Memorandum of Agreement with the Wisconsin Department of Natural Resources Regarding the Use and Development of the Amery to Dresser Trail

WHEREAS, the Wisconsin Department of Natural Resources manages for the State of Wisconsin approximately 14 miles of former rail corridor known as the Amery to Dresser Trail and has an interest in seeking an agreement with Polk County for the development, maintenance and operation of the corridor as a trail.

BE IT THEREFORE RESOLVED that the Polk County Board of Supervisors approves and enters into the attached Memorandum of Agreement, which is incorporated herein, with the Wisconsin Department of Natural Resources.

BE IT FURTHER RESOLVED that the Polk County Board of Supervisors authorizes the Director of Parks, Buildings and Solid Waste to execute and administer on behalf of Polk County said agreement consistent with its terms and the Polk County Court decision that limits trail usage to non-motorized activity.

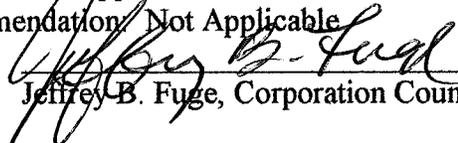
Funding Amount: Not applicable.

Funding Source: Not Applicable

Finance Committee Advised: Not Applicable

Finance Committee Recommendation: Not Applicable

Approved as to Form:


Jeffrey B. Fuge, Corporation Counsel

Date Submitted to County Board: August 19, 2008

Effective Date: Upon Passage

Submitted and Sponsored By:



County Board Action:



**MEMORANDUM OF AGREEMENT
BETWEEN POLK COUNTY AND
THE STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES**

I. Introduction

The purpose of this Memorandum of Agreement, (MOA) is to set forth the agreements and understandings which have been reached between Polk County, (County) and the State of Wisconsin Department of Natural Resources (Department) regarding the development, maintenance and operation of approximately 14 miles of the former rail corridor located in Polk County known as the Amery to Dresser State Trail (Trail). The property is presently owned by the Wisconsin Department of Natural Resources.

The Department is interested in preserving the corridor for trail purposes. The County is interested in maintaining and operating a trail on the corridor. The County and the Department agree to work together to achieve their mutual goals as set forth below.

II. Description of the Property

The property subject to this MOA is described generally as the grade from Amery to a point just southeast of Dresser, Wisconsin. A *Land Use Agreement* providing the County with operational authority shall contain the legal description of the property.

III. Consideration

The Department has acquired the grade from Amery to Dresser from the corridor owner. The DNR will execute a trail Land Use Agreement with the County for the Trail. The County will operate, repair, and maintain the Trail. The Department will perform the initial grading, clearing and brushing of the Trail.

IV. Obligations of the Department

1. The Department will grant to the County by Land Use Agreement the rights to develop, operate, repair, and maintain pedestrian only trail on the corridor as a component of the state trail system. The Department has the initial obligations to grade, clear and brush the Trail, and protect the Indian burial mounds with such obligations to be performed and completed not later than October, 2008. The County accepts the property "as is" on the date of the signing of the Land Use Agreement, subject to obligations of the Department.
2. The Department has completed an environmental review process of the property pursuant to s. 1.11, Stats., and Chapter NR 150, Wis. Adm. Code, and the Department represents that it has made reasonable inquiry and has no reason to believe that hazardous waste, noxious waste, or any other condition of the land subject to this MOA exists that would inhibit the ability of the County to possess and operate the property as a pedestrian trail as contemplated by this MOA.

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3. The Department will work with the County to identify funding sources for the development and repair of the Trail.
4. The Department will designate the trail as a "State Trail" under section NR 51.73, Wis. Adm. Code. The Trail will be included in any appropriate list of state trails.
5. The Department will make its Adopt-A-Trail program available to the County. The Department has an application process for groups interested in adopting a section of Trail. This program is similar to the Department of Transportation's Adopt-A-Highway program.

V. Obligations of the County

1. The County will participate in public meetings, which may be necessary for the establishment and development, management, and improvements of the Trail project.
2. The County has completed a master plan for a multi-use trail on the corridor. The Land Use Agreement will only recognize and allow the non-motorized uses described in the Master Plan.
3. The County will enter into a Land Use Agreement with an initial length of five years with the Department. The Land Use Agreement will identify that the Trail will initially be for foot travel and the County will be required to seek funds for and establish a bike trail.
4. The County, after acceptance of the Land Use Agreement, and until funds are secured, must apply for monies (via grants or other sources) for the development and operation of a bicycle trail on the Amery to Dresser State Trail. Thereafter, and during the term of this agreement, the County shall, maintain, repair, and operate the Trail located within the County for non-motorized recreational purposes which will include a hiking and bicycle trail. The County will share all monitoring, enforcement, and maintenance responsibilities with the Department. It is understood that the County has an enforcement ordinance that will ensure the Trail can be managed to only allow authorized uses.
5. The County agrees the Trail will meet Department trail standards.
6. The County shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, and reinstallation, of the Trail including, without limitation, zoning, building, health, environmental permits or licenses, and shall indemnify the Department against payment of the costs therefore and against any fines or penalties that may be levied for failure to procure or to comply with such permits or licenses as well as any remedial costs to cure violations thereof. The Department agrees to cooperate with the County in securing any such permits or licenses by providing information and data upon request.
7. The County agrees that any signage or display material relating to the Trail shall clearly identify the property is owned by the Department and under the management and control of the County. No commercial advertising shall be allowed on the property. The County may allow signs providing directional information about Trail-related services. No

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specific business names, commercial logos or fonts, trademarks, or other advertising shall appear in signage within the Trail corridor. The Department reserves the right to remove non-compliant signage located on the property.

8. The County, in connection with this MOA, shall open the facilities to the general public subject to reasonable rules and regulations, fees, and charges, as outlined below for the management and operation of the Trail.
 - A. Rules and regulations.

Pursuant to section NR 45.02, Wis. Adm. Code, the Department retains management, supervision, and control over the Trail premises for the purpose of enforcing Chapter NR 45, Wis. Adm. Code, when needed to protect the property. Daily routine enforcement remains the responsibility of the County. The County and other local units of government may adopt Chapter NR 45, Wis. Adm. Code provisions as ordinance.
 - B. Admission Fees.

The County must use the Department's trail pass fee program should it charge a fee on the Trail. If admission fees are charged, the State Trail Pass, (both annual and daily), the conservation patron license, and senior citizen recreation card issued by the Department shall be honored without additional admission charges. The County shall agree to waive all admission fees on State Parks Open House Day, date as determined by the Department, and National Trails Day. National Trails Day is the first Saturday in June.

If the County uses the Department's trail pass fee program, the County may retain a commission to be used for Trail operations and maintenance as provided for in s. 27.01 (8m), Stats. A separate Trail Pass Sales Agreement between the County and the Department will be executed, detailing the sales and remittance procedures. The County may use sub-vendors to sell the pass.

In the event ss. 27.01(8) or (8m), Stats. is modified, the above section on admission fees shall automatically reflect the modification.
9. In the exercise of its right herein, including but not limited to the operation of the Trail, the County shall not discriminate against any member of the public on the basis of age, race, creed, color, handicap, sex, marital status, arrest or conviction records, ancestry, sexual orientation, or membership in the National Guard, state defense force or any other reserve successors or designees.
10. The County may enter into agreement with a Friends Group which meets the criteria in section NR 1.71, Wis. Adm. Code. In recognition of the status of this Trail as a State Trail, the Department shall also be a co-signer of any Friends agreement.
11. The County may enroll volunteers in the Adopt-A-Trail program sponsored by the Department, following Department policies and procedures.
12. The County will indemnify and hold harmless the Department and its employees against all claims, damages, costs, and expenses, including reasonable attorney's fees, arising

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from the performance of this MOA by the County, its agents, contractors, servants, licensees, permittees, or employees. In case any action or proceeding is brought against the Department or its employees by reason of any such claim, the County, upon notice from the Department, will defend such action or proceeding.

VI. General

1. This Memorandum of Agreement is subject to all applicable laws and regulations. The establishment of this Trail is subject to approval by the Natural Resources Board and Governor.
2. This Memorandum of Agreement may be revised or amended by mutual written agreement of the Department and the County.
3. The Department must approve, and has sole discretion over, all land transactions, trail crossings, and easements for the Trail corridor, but the County will be the first point of contact for inquiries from the public and/or private entities on these matters. Guidelines relating to easements for the driveways and road crossings will be provided to the County. If requests conform to the guidelines, they will be referred to the Department for executing an easement, lease, or agreement. If the requests do not conform to Department guidelines, the County will deny the request. The Department retains the right to issue other non-conflicting easements, leases, or permits but shall make every effort to not enter into agreements that would physically alter the Trail or its uses. All proceeds from these transactions shall be payable to the Department.
4. An annual meeting between the County and Department will take place to review development and acquisition progress, operational problems and maintenance standards needing attention and to exchange ideas and information for the good of the Trail project.
5. This MOA shall not be construed as creating a public debt on the part of the Department in contravention of Article VIII, Wisconsin Constitution and all payments or obligations hereunder are subject to the availability of future appropriations.
6. The Department has no obligation to develop, operate, maintain, or repair the Trail at any time.

VII. Termination

1. County. The County may terminate the Memorandum of Agreement or the Land Use Agreement from the Department by providing to the Department ninety (90) days written notice of said termination. In the event the County terminates this Memorandum of Understanding or Land Use Agreement, the County will assume compliance responsibility for any state or federal grant obtained for trail development and support purposes.
2. Department. The Department may terminate this Memorandum of Agreement or the Land Use Agreement with the County in the event that:

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- A. The County breaches any term or condition in the Memorandum of Agreement or the Land Use Agreement and said breach remains uncorrected for a period of sixty (60) days from the receipt by the County of the Department's written notification of said breach. In the event the County breaches any term or condition of this Memorandum of Agreement or the Land Use Agreement from the Department, the County will assume compliance responsibility for any state or federal grant assisted areas.

- B. The Department determines that the continued use of the premises as a trail would be inconsistent with the management needs or objectives of the Department or the State of Wisconsin. In exercising its termination rights under this provision the Department shall give the County 180 days written notice of termination and reimburse the County for developed improvements, subject to consideration of any state or federal grant funds used in the development of the improvements and the availability of future appropriations. The Department will assume compliance responsibility for any federal grant assisted areas.

IN WITNESS WHEREOF, the Department and the County have caused this Memorandum to be executed in their respective names by their respective duly authorized representatives

POLK COUNTY

By _____
Signature Date

Print Name and Title

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By _____
Matt Frank, Secretary Date

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