

Resolution 69-08

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.

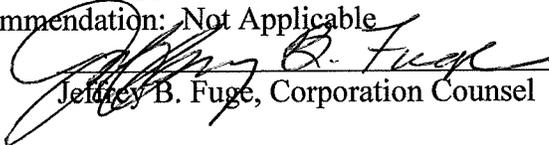
Funding Amount: Not applicable.

Funding Source: Not Applicable

Finance Committee Advised: Not Applicable

Finance Committee Recommendation: Not Applicable

Approved as to Form:


Jeffrey B. Fuge, Corporation Counsel

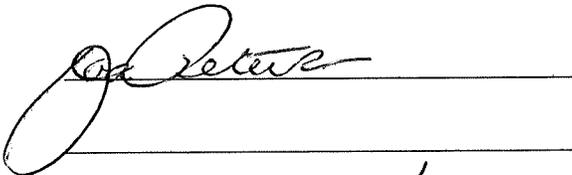
Date Submitted to County Board: Sept 4, 2008

Effective Date: Upon Passage

Submitted and Sponsored By: Property Committee



 9-4-08



 9/14/08

County Board Action: Adopted as Agreement is amended.

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 to the extent that grant and other non levy funds will allow. The Department will perform the initial grading, clearing, signing 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 the trail on the corridor as a component of the state trail system. The Department has the initial obligations to grade, clear, sign and brush the Trail, and protect the Indian burial mounds with such obligations to be performed and completed not later than October, 2008.
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 operate the property as a trail as contemplated by this MOA.

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 seek funds to establish a bike~~ **that it is intended that the County will apply for funds for and to establish a bike trail during the upcoming grant cycle and into the future until funds are secured."**
4. During the term of this agreement, The County will operate, repair, and maintain the Trail to the extent that grant and other non levy funds allow. 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 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. 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 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.

13. *→ To the extent provided by law,* The Dept will indemnify and hold harmless the County, and its employees against all claims, damages, costs, and expenses, including reasonable attorney's fees, arising arising from the performance of this MOA by the Dept, its agents, contractors, servants, licensees, permittees, or employees. In case any action or proceeding is brought against the County or its employees by reason of any such claim, the Dept, upon notice from the County 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 impede 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.

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 Agreement 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:

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 _____ Date _____
Signature

Print Name and Title

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By _____ Date _____
Matt Frank, Secretary

POLK COUNTY BOARD OF SUPERVISORS
6:30 p.m., Tuesday, September 16, 2008
Polk County Government Center - County Board Room
Balsam Lake, WI 54810

Chairman Beseler called the meeting of the Polk County Board of Supervisors to order at 6:30 p.m.

County Clerk informed the Chair that notice of the original agenda was posted in three public buildings, mailed to all of Polk County media, published in the county's legal paper, Tri County and Indianhead Advertisers and posted on the county's website the week of September 8, 2008. The amended agenda was faxed to all media and published on the County website before noon of September 16, 2008. The Corporation Counsel verified that sufficient notice of the meeting was given.

Roll call was taken by County Clerk, Cathy Albrecht. 22 present. Supr. Messicci absent.

Supervisor O'Connell offered prayer.
Chairman Beseler led the Pledge of Allegiance.

Motion (Newville/Jepsen) to suspend the Rules to accept on the amended agenda. Motion carried by a unanimous voice vote.

Motion (Schmidt/Larsen) to approve the amended agenda. Motion carried by a unanimous voice vote.

Motion (Caspersen/Arcand) to approve the minutes of August 19, 2008. Motion carried by a unanimous voice vote.

Supr. Messicci attended the meeting.
Public comments were given.

Motion (Gamache/O'Connell) to strike the 30 minute rule for public comments and extend the time for another 45 minutes. Motion carried by a voice vote.

A briefing of the Court of Appeals decision on the Sale of Golden Age Manor was given by Corporate Counsel, Jeff Fuge.

Duana Bremer gave a presentation on the Salvation Army.

The Chair called a 5 minute recess. Meeting resumed

Finance Report was given by Tonya Weinert, Finance Director.

Res. 59-08 Amendment to the Polk County Shoreland Protection Zoning Ordinance Motion (Newville/Rediske) to reconsider Res. 59-08 that was adopted August 19, 2008. Sara McCurdy, Land Information Director and Gary Spanel, Zoning Administrator, explained the ordinance. **Motion carried** by a voice vote. **Motion (Masters/Brown) to refer back to the committee.** Roll call vote. 3 yes (Suprs. Caspersen, Masters and Newville. 20 no. **Motion failed. Motion (Sample/Rediske) for a two part amendment.**

First: Amend Article 8.D.1, second paragraph to read "Tourist rooming houses are subject to side yard setback to a principal structure as defined in Article II, C, Table 1

Second: "Tourist rooming house" means single family tourist cabins and cottages in which sleeping accommodations are offered for pay to a maximum of 2 tourists or transients per bedroom plus 2, not to exceed 8. It does not include private boarding or rooming houses not accommodating tourists or transients, bed and breakfast establishments regulated under Ch. HFS 197, or hotels and motels. Aye and Nay vote. 17 yes, 6 no. Those voting yes were Suprs.

Dueholm, Peterson, Johansen, Brown, Kienholz, Rediske, Masters, Sample, Messicci, Arcand, Larsen, Luke, Stoneking, Jepsen, O'Connell, Bergstrom and Newville. Those voting no were Suprs. Schmidt, Caspersen, Edgell, Johnson, Gamache and Beseler. **Motion carried.**

Aye and Nay vote on 59-08 as amended. 17 yes, 6 no. Those voting yes were Suprs. Dueholm, Peterson, Johansen, Brown, Kienholz, Rediske, Masters, Sample, Messicci, Arcand, Larsen, Luke, Stoneking, Jepsen, O'Connell, Bergstrom and Newville. Those voting no were Suprs. Schmidt, Caspersen, Edgell, Johnson, Gamache and Beseler. **Res. 59-08 as amended was adopted.**

Res. 68-08 Adopting Revised Zoning District Map for the Town of Balsam Lake Motion (O'Connell/Sample) to adopt Res. 68-08. Sara McCurdy and Gary Spanel spoke to the resolution. **Res. 68-08 was adopted by a voice vote.**

Res. 69-08 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 Motion (Larsen/Jepsen) to adopt Res. 69-08. Deb Peterson, Director of Parks, Buildings and Solid Waste addressed the resolution. **Motion (Larsen/Schmidt) to amend Section V, Number 3 to read "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 that it is intended that the County will apply for funds for and to establish a bike trail during the upcoming grant cycle and into the future until funds are secured."**

And for Section V, Number 13 to read "To the extent provided by law, the Department will indemnify and hold harmless the count, and its employees against all claims, damages, costs and expenses, including attorney reasonable attorney fees, arising from the performance of this MOA by the Department, its, agents, contractors, servants, licensees, permittees or employees. In case any action or proceeding is brought against the County or its employees by reason of any such claim, the Department, upon notice from the County will defend such action or proceeding." **Motion carried by a unanimous voice vote.**

Motion (Edgell/Sample) to amend adding "County Labor" when referring to grant and other non levy funds in maintaining the Trail. Motion failed by a unanimous voice vote. Res. 69-08 as amended was adopted by a voice vote.

Res. 70-08 Support of a Change in the Register of Deeds Recording Fee From A "Per Page" To a "Flat Fee" Motion (Jepsen/Masters) to adopt Res. 70-08 Sara McCurdy addressed the resolution. **Res. 70-08 was adopted by a unanimous voice vote.**

Chair called a 5 minute break. Meeting resumed at 9:45 p.m.

Res. 71-08 To Enter Into an Intergovernmental Agreement with Burnett County and the St. Croix Chippewa Indians of Wisconsin for the Creation and Operation of an Aging and Disabilities Resource Center Motion (Jepsen/Sample) to adopt Res. 71-08. Richard Kammerud, Director of Human Services, addressed the resolution. **Motion (Stoneking/Sample) to amend by deleting the last sentence of Section Twelve of the agreement. Motion carried by a unanimous voice vote. Res. 71-08 as amended was adopted by a unanimous voice vote.**

Res. 72-08 To Authorize Polk County Aquatic Invasive Species Countywide Monitoring and Management Program Grant Motion (Jepsen/Kienholz) to adopt Res. 72-08. Tim Ritten, Director of Land and Water Resources, addressed the resolution. **Res. 72-08 was adopted by a unanimous voice vote.**

Res. 73-08 Restructure of the Department of Administration Motion (Larsen/Masters) to adopt Res. 73-08. Res. 73-08 was adopted by a unanimous voice vote.

Res. 74-08 To Remove Per Diems from the Renewable Energy Committee Motion (Masters/Luke) to adopt Res. 74-08. Res. 74-08 failed by a voice vote.

Res. 75-08 To Rescind Resolution 66-08, Polk County's Cash Handling Policy Motion (Schmidt/Johansen) to adopt Res. 75-08. Motion (Dueholm/Gamache) to refer the policy to each governing committee/board and bring back amendments or recommendation of rescission back to the full Board in January, 2009. Chair ruled to call the question. **Motion (Schmidt/Dueholm) to**

over rule the Chair's decision to call the question. The Chair changed his ruling. Aye and Nay vote on the motion. 17 yes, 6 no. Those voting yes were Suprs. Dueholm, Peterson, Johansen, Schmidt, Brown, Caspersen, Rediske, Edgell, Sample, Messicci, Arcand, Luke, Stoneking, Jepsen, O'Connell, Gamache and Beseler. Those voting no were Supr. Kienholz, Masters, Larsen, Bergstrom, Johnson and Newville. **Motion carried.**

Res. 76-08 To Rescind Polk County Resolution No. 65-08 and Proclaim Support for Enactment of Health Care Form Legislation. Motion (Edgell/Stoneking) to adopt Res. 76-08. Motion (Sample/Rediske) to amend the resolution by striking the second and third "Whereas" paragraphs and the first "Now, Therefore, Be It Resolved paragraph. Chairman Beseler ruled the amendment out of order because it changes the purpose of the resolution. Ballot vote on Res. 76-08. 10 yes, 13 no. Those voting yes were Suprs. Peterson, Schmidt, Brown, Caspersen, Edgell, Masters, O'Connell, Johnson, Gamache and Newville. Those voting no were Suprs. Dueholm, Johansen, Kienholz, Rediske, Sample, Messicci, Arcand, Larsen, Luke, Stoneking, Jepsen, Bergstrom and Beseler. **Res. 76-08 failed.**

Standing Committee reports were given.

Motion (Jepsen/Larsen) to accept the appointments of Nathan Deprey to the Polk County Library Federation Board of Trustees and Kathleen Melin to the list of Appointments for Renewable Energy Committee. Motion carried by a unanimous voice vote.

Motion (Luke/Stoneking) to accept the annual reports for Child Support, Clerk of Circuit Court, Public Health and the 2006 Report for Golden Age Manor. Motion carried by a unanimous voice vote.

Supervisory reports were given.

Chairman's/Administrative Coordinator report was give by Chairman Beseler. He announced that there will be a special County Board meeting held on September 30, 2008 at 6 p.m. hopefully at Unity Schools to address issues regarding the Lime Quarry and Golden Age Manor. Also the annual (budget) meeting will be held on November 12, 2008 from 9 a.m. to 7 p.m. (if needed) and, if needed, November 13, 2008 starting at 10 a.m.

Motion (Newville/Bergstrom) to adjourn. Motion carried. (11:55 p.m.)