

1 Resolution No. 59-17
2 Resolution Affirming Polk County as Sponsor and Managing Coordinator of
3 The Stower Seven Lakes State Trail

4 TO THE HONORABLE BOARD OF SUPERVISORS OF THE COUNTY OF POLK,
5 WISCONSIN:

6 Gentlemen:

7 WHEREAS, the Wisconsin Department of Natural Resources (WDNR) administers the State Trail
8 System, through which Polk County has entered into agreements for the cooperative development,
9 administration and management of Stower Seven Lakes State Trails (Trail); and

10 WHEREAS, in receiving State Trail grants, Polk County has served as sponsor and managing
11 coordinator for the Trail and has the responsibility to prepare all necessary cooperative plans,
12 specifications and environmental reports, including citizen participation, for the Trail, and submit them
13 to WDNR for written approval prior to the commencement of any development or improvement of the
14 Trail and before implementing any change in use of the Trail; and

15 WHEREAS, in adopting Polk County Resolution No. 43-17, the Polk County Board of Supervisors
16 expressed its intent for the Polk County to continue as sponsor and managing coordinator of the Trail
17 and to undertake the initiative of developing a cooperative trail plan for Trail as a multi-use, multi-
18 season trail;

19 WHEREAS, the initial agreements entered into by WDNR and Polk County for the coordinated
20 management of the Trail have lapsed; and

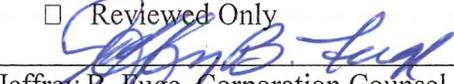
21 WHEREAS, it is in the interest of Polk County to continue as sponsor and managing coordinator of
22 the Trail.

23 NOW, THEREFORE BE IT RESOLVED that the Polk County Board of Supervisors affirms the
24 commitment of Polk County to serve as sponsor and managing coordinator of the Stower Seven Lakes
25 State Trail and to perform or carry-out all responsibilities of sponsor and managing coordinator of the
26 Trail consistent with applicable federal and state law, regulatory provisions and grant conditions.

27 BE IT FURTHER RESOLVED that the Polk County Board of Supervisors agrees to the terms of the
28 Memorandum of Understanding and Cooperative Easement, attached hereto.

29 BE IT FURTHER RESOLVED that the Polk County Board of Supervisors authorizes the Parks and
30 Recreations Director to execute and administer on behalf of Polk County the Memorandum of
31 Understanding and Cooperative Easement.

Resolution No. 59-17
 Resolution Affirming Polk County as Sponsor and Managing Coordinator of
 The Stower Seven Lakes State Trail

Funding Source/ Funding Amount:	
Date Reviewed as to Appropriations:	
Committee Recommendation as To Appropriation:	Passage
Effective Date:	Upon Passage
Dated Submitted To County Board	First Reading – September 19, 2017
Submitted and Sponsored By:	_____
 Review By County Administrator: <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended <input checked="" type="checkbox"/> Reviewed Only _____ Dana Frey, County Administrator	Review By Corporation Counsel: <input checked="" type="checkbox"/> Approved as to Form <input checked="" type="checkbox"/> Recommended <input type="checkbox"/> Not Recommended <input type="checkbox"/> Reviewed Only  _____ Jeffrey B. Fuge, Corporation Counsel
Acknowledgement of County Board Action	
Mark As Appropriate: At its regular business meeting on the <u>17</u> of <u>October</u> , 2017, the Polk County Board of Supervisors considered and acted on the above resolution, Resolution No. <u>59</u> -17: Resolution Affirming Polk County as Sponsor and Managing Coordinator of The Stower Seven Lakes State Trail, as follows: <input checked="" type="checkbox"/> Adopted by simple majority of the board of supervisors by a vote of <u>12</u> in favor and <u>3</u> against. <input type="checkbox"/> Adopted by unanimous vote. <input type="checkbox"/> Defeated by a vote of _____ in favor and _____ against. <input type="checkbox"/> Defeated by voice vote. <input type="checkbox"/> Action Deferred by Procedural Action, as follows: _____	
SIGNED BY:  _____ Dean Johansen, County Board Chairperson Attest:  _____ Sharon Jorgenson, County Clerk	

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

I. Introduction

The purpose of this Memorandum of Understanding (MOU) 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, and operation of approximately 13.48 miles of former rail corridor located in Polk County formerly known as the Amery to Dresser State Trail and now known as the Stower-Seven Lakes State Trail (Trail). The property on which the Trail is located (Property) is presently owned by the Department, and has been operated by the County and/or the Friends of the Amery-Dresser State Trail since 2010.

The Department is interested in preserving former rail corridors for trail purposes and in creating trails for public use. The County has developed the Trail through earlier agreements with the Department, and is interested in continuing to maintain and operate the Trail as a public recreational trail. The County and the Department agree to work together to achieve their mutual goals as set forth below, and they agree that this MOU and the trail easement it references shall replace and supersede all earlier agreements between the Department and the County that pertain to the Trail.

II. Description of the Property

The property subject to this MOU is described generally as the grade from Amery to a point just southeast of Dresser, Wisconsin. An exact legal description of the property is attached to this document as Exhibit A and a map of the Property attached hereto as Exhibit B. The trail easement referred to in this MOU, when executed, shall include and incorporate this MOU and all of its exhibits.

III. Consideration

The Department has acquired the grade from Amery to Dresser from the corridor owner. The DNR will execute a trail easement with the County for the purposes contained in this document. The County will operate, repair, and maintain the Trail. The Department will not acquire additional land for the Trail through the eminent domain process.

IV. Obligations of the Department

1. The Department will convey by easement to the County the right to develop, continue to operate, repair, and maintain the Trail as a component of the State Trail System. The County accepts the property "as is" on the date of conveyance.
2. 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 MOU exists that would inhibit the ability of the County to possess and

improve the property as contemplated by this MOU. If, however, such prohibitive conditions are discovered, either the Department shall take all steps reasonably necessary to remove such conditions or the intent of this MOU being frustrated, the MOU shall terminate.

3. The Department will work with the County to identify funding sources for the development and repair of the Trail.
4. The Department will continue to 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 continue to make its Adopt-A-Trail program available to the County. The Department has an application process for groups interested in adopting a section of State Trail. This program is similar to the Department of Transportation's Adopt-A-Highway program.
6. The Department and the Natural Resources Board, with input from the County, will determine the allowable hunting, fishing, and trapping opportunities on the Property pursuant to section 29.089, Wis. Stats.

V. Obligations of the County

1. The County, with the assistance of the Department, will coordinate and prepare a plan for the Trail that describes trail management and development within two years of the conveyance of the easement. Specific recreational uses will be determined through the planning process. Per section NR 44.04 (13), Wis. Adm. Code this cooperatively prepared plan is not required to comply with Chapter NR 44, Wis. Adm. Code; however, the plan shall be consistent with Chapter NR 44, Wis. Adm. Code to the extent practicable.
2. The plan must include, at a minimum:
 - a. A public notification and participation process allowing for public comments on the draft plan.
 - b. A list of allowed trail uses, including where and when they are allowed (e.g. snowmobiles allowed from Hwy Y to the Main Street trailhead, only when snow cover is 6" or greater). Year-round bicycling is encouraged and may be allowed in conjunction with snowmobiling. Walking must be allowed on the Property at all times (section NR 1.61, Wis. Adm. Code).
 - c. A list of hunting, fishing, and trapping activities and areas as determined by the Department and Natural Resources Board pursuant to section 29.089, Wis. Stats. (shown on a map).
 - d. A list of existing and anticipated support facilities (e.g. restrooms, parking lots).
 - e. A map showing locations of existing and anticipated support facilities and use zones.
 - f. Projected development costs.

- b. Non-tree vegetation including saplings, shrubs, and herbaceous vegetation
 - 1. Management for routine trail maintenance. A minimum maintained (clear) shoulder of at least 2 feet on either side of the trail tread (the traveled portion of the trail) is recommended. Acceptable maintenance techniques can include mowing, brushing, chainsaw work, and or pesticide application.
 - 2. Habitat conversion or establishment. If there is an opportunity to develop or enhance native habitat types, as established in the trail plan, the County will consult with the Department in the development of habitat projects. Such projects may include developing a prairie on a larger block of land within the trail right-of-way or along the trail corridor. Projects will be considered for approval by the Department if they are not adverse to existing laws or Department policy, and if they do not negatively impact an existing use.
 - c. Pesticide application. Any pesticide application should be in accordance with Department Manual Code 4230.1 concerning DATCP (Department of Agriculture, Trade and Consumer Protection) certification and Department policy. The Department shall be notified of any proposed pesticide application in early fall of the year preceding the proposed application, to ensure that the required process can be followed for pesticide use on Department lands (Department Manual Code 4230.1).
9. The County shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, and/or reinstallation of the Trail including, without limitation, zoning, building, health, environmental permits or licenses. The County shall indemnify the Department against payment of the costs therefore and against any fines or penalties that may be levied for the County's failure to procure or to comply with such permits or licenses, and the County shall pay any remedial costs to cure violations of federal, state or local laws. The Department agrees to cooperate with the County in securing any such permits or licenses by providing information and data upon request.
10. The County agrees that any signage or display material relating to the Trail shall clearly identify the property is a State Trail owned by the Department and under the management and control of the County. No commercial advertising shall be allowed on the Property, unless the signage is placed in accordance with Department policy. 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. In the event that the Department's signage policy is modified, the above section on signage shall automatically reflect the modification.
11. The County, in connection with this MOU, shall open Trail-related 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 Property for the purpose of enforcing Chapter NR 45, Wis. Adm. Code, when needed to protect the public or 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 by ordinance.

B. Admission Fees.
The County must use the Department's trail pass fee program if it charges a fee for use of 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, whose date as determined by the Department, and on 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 that must be used for Trail operations and maintenance as provided for in section 27.01 (8m), Wis. 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 passes.

If section 27.01(8) or (8m), Wis. Stats., is modified, this section on admission fees shall automatically reflect the modification.

12. In the exercise of its rights herein, including but not limited to the operation of the Property as a 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.
13. The County may enter into an agreement with a Friends Group which meets the criteria in section NR 1.71, Wis. Adm. Code, and Department policy to carry out the County's duties under this MOU. In recognition of the status of this Trail as a State Trail, the County agrees that the Department shall also be a co-signer of any Friends agreement.
14. The County may enroll volunteers in the Department's Adopt-A-Trail program, in accordance with Department policies and procedures.
15. 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 MOU 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 MOU is subject to all applicable laws and regulations.
2. This MOU 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, crossings, and easements for the Property 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 driveway and road crossings will be provided to the County. If a request conforms to the guidelines, it will be referred to the Department. If a request does 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 MOU 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 County assumes complete responsibility for the development, operation, maintenance, and repair of the Trail. The Department has no obligation to develop, operate, maintain, or repair the Trail at any time.
7. This MOU does not create an employment or agency relationship between the Department and the County, any employees or agents of the County, or any third parties.

VII. Termination

1. County. The County may terminate this MOU by providing to Department ninety (90) days written notice of said termination. In the event the County terminates this MOU or the easement from the Department, the County will assume compliance responsibility for any state or federal grant obtained for Trail development and support purposes.

Document Number	Document Title
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State of Wisconsin
 Department of Natural Resources
 P.O. Box 7921
 Madison, WI 53707

**COOPERATIVE STATE TRAIL
 EASEMENT**

Section 23.09(10), Wis. Stats.
 Form 2200-161

THIS EASEMENT made by and between the State of Wisconsin, Department of Natural Resources (hereinafter referred to as the "Department") and Polk County (hereinafter referred to as the "County").

RECITALS

WHEREAS, the Department has acquired the former Amery to Dresser railroad corridor for the purpose of developing, constructing, operating, maintaining and repairing a recreational trail on said lands (hereinafter referred to as the "Trail");

WHEREAS, the Trail is identified in the legal description marked as Exhibit "A" attached hereto and made a part hereof and the maps marked as Exhibit "B" attached hereto and made a part hereof;

WHEREAS, prior to the acquisition of the Trail, the Department and the County entered into a Memorandum of Understanding for the purpose of allowing the County to develop, construct, operate, maintain and repair said Trail;

NOW, THEREFORE, the Department, for mutual benefits and consideration, the sufficiency of which are hereby acknowledged, does hereby convey to the County, a nonexclusive easement for the purpose of developing, constructing, operating, maintaining and repairing the Trail.

It is understood by the Department and the County that this grant of non-exclusive easement is subject to the following conditions:

1. The County shall have the right to develop, construct, maintain, operate and repair, a recreational trail on the above-described lands located within the corridors of the former railroad grade, now known as the "Stower-Seven Lakes State Trail" for the purpose of bicycling, walking, snowmobiling or other mutually agreed upon compatible uses, as determined through the trail planning process as referenced in the Memorandum of Understanding signed _____, 2017, marked as Exhibit "C", attached hereto and made a part hereof.
2. The County agrees the Trail will be remain open for public use. If the Trail ever ceases to be used for recreational trail purposes for a period of 2 years, then all easement rights, title and interest to the eased premises shall automatically revert to and revest in the Department without necessity of reentry.
3. The County shall open the Trail and its associated facilities to the general public subject to reasonable rules and regulations, fees, and charges, as the County deems necessary for the management and operation of the recreational trail. Admission fees, if any, charged by the County shall not exceed those established in s. 27.01(7), Wis. Stats. Other fees shall remain similar to those contained in Chapter NR 45, Wisconsin

Recording Area
 Return: Department of Natural Resources
 Bureau of Facilities & Land – LF/6
 P.O. Box 7921
 Madison, WI 53707-7921
 Attn: Closing Officer (E-)

Parcel Identification Number (PIN):

Administrative Code. The fees collected shall be split between the Department and the County and spent in accordance with s. 27.01(8m), Stats. If admission fees are charged, the conservation patron license and senior citizen card issued by the Department shall be honored without additional admission charges.

4. Development of the Trail shall conform to Department state recreational trail standards.
5. All fencing, surveying, signing, and similar activities which are related to the development, maintenance and operation of the Trail shall be the responsibility of the County.
6. This easement shall be nonexclusive, and the Department retains the right to sell, lease or convey other easements, including utility easements in and to the eased property, to one or more person(s), company(s) or entity(s), provided that any such subsequent use, lease or conveyance does not interfere with the rights granted hereunder. 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. All proceeds from these transactions shall be payable to the Department. If the Department conveys any additional easements within the above-described property, the Department will require the respective grantees to restore the recreational trail to the satisfaction of the County.
7. The County shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance and repair of the recreational trail including, without limitation, zoning, building, health, environmental permits or licenses, and shall indemnify the Department against payment of the costs therefor 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.
8. The County will not permit any mortgage, pledge, security interest, lien or encumbrance, including without limitation tax liens or encumbrances and liens or encumbrances with respect to work performed or equipment furnished in connection with the construction, installation, repair, maintenance or operation of the recreational trail or any portion of the eased premises.
9. The County agrees to record this easement and to pay all transfer taxes, recording costs or fees, or any similar expense in connection with the recording or filing of this easement.
10. In the exercise of its rights herein, including but not limited to the operation of the eased property as a recreational 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 component of the military forces of the United States.
11. The Department reserves no control over the employment, discharge, compensation of or services rendered by the County employees or contractors, and the County shall be and remain an independent party, and nothing herein shall be construed as inconsistent with the status or as creating or implying any partnership or joint venture between the County and Department and employees of the County or employees of any contractor shall not be considered Department employees.

12. In connection with the performance of any work under the easement, the County agrees not to discriminate against any employee or applicant for employment because of age, handicap, physical condition, developmental disability as defined in s. 51.01(5), Stats., race, religion, sex, color, sexual orientation or national origin regarding employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The County agrees to take affirmative action to ensure employment opportunities for persons with physical disabilities.
13. The Department and the County agree that the provisions of Chapter NR 45, Wisconsin Administrative Code, remain applicable to the subject property. Pursuant to s. NR 45.01(1), Wisconsin Administrative Code, the Department retains management, supervision, and control over the property for the purpose of enforcing Chapter NR 45, Wisconsin Administrative Code, when needed to protect the property. Daily routine enforcement remains the responsibility of the County.
14. Initial work to address boundary disputes, encroachment, trespass and other claims shall be the responsibility of the County. Since the County is more familiar with the trail, the County shall act as the first point of contact to identify boundary disputes, encroachments, trespass and other claims and inform the respective landowners of the same. The Department upon mutual agreement of both parties may enter into agreements for remnants of the property not needed for recreational trail purposes. Any such agreements may be subject to approval of the Natural Resources Board and the Governor and also subject to item 17 below. Should any of the adjacent landowners challenge County's and/or the State of Wisconsin's right to develop this trail by way of court action in either State or Federal court, or by other judicial or administrative challenge, the State will fully defend its rights to develop, in conjunction with the County, the trail which is the subject of this easement agreement.
15. The County agrees to save, hold harmless, defend, and indemnify the Department, and all of its officers, employees agents against any and all liability, claims, and costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the County's occupancy, use, service, operation, or performance of work in connection with this easement, except for any liability, claim or cost resulting from the negligent or intentional acts or omissions of the Department, its officers, employees or agents.
16. This easement shall be in effect as of the date it is signed by both the Department and the County (whichever signs second).
17. Conveyance of this easement may be encumbered by federal or state railroad interest and subject to future restoration and reconstruction of the right-of-way for rail purposes consistent with Section 208 of the National Trails System Act Amendment of 1983, Publ. L. No. 98-11 (16 U.S.C. 1247(d)) or Wis. Stat. s. 85.09, including possible termination of this easement, and subject to reservations, exceptions and leases, agreements and permits authorized by the former railroad company or owners, or the Department prior to the execution of this easement. The Department shall provide written notice of the necessity for the reestablishment of railroad or future highway project, which may result in the termination of this easement upon the discretion of the railroad or WisDOT. The County shall: (1) not materially change the grade or topography of the Trail; (2) not construct and install or remove any permanent improvement which violates American Railway Engineering and Maintenance-of-Way Association ("AREMA"), or its successors, published practices and procedures or would make such reestablishment of railroad impracticable; and (3) not allow the installation of any facility, above or below grade that does not conform to AREMA's standards or clearances for railroad.

END OF CONDITIONS

