

**RESOLUTION # 36-2014**

Resolution offered by the Supervisors of the Forestry, Land and Recreation Committee.

Resolved by the Board of Supervisors of Oneida County, Wisconsin:

**WHEREAS**, Oneida County has lands enrolled as County Forest pursuant to s. 28.11, Wis. Stats.;

**WHEREAS**, the County Board of Supervisors on 4/17/06 adopted resolution #38-2006 approving the Oneida County Forest Comprehensive land Use Plan for a period of 15 years;

**WHEREAS**, the County Board has the authority to acquire properties for the purpose of establishing County Forest land pursuant to s. 28.10, Wis. Stats and as outlined in Chapter 400 of the Oneida County Forest Comprehensive Land Use Plan;

**WHEREAS**, acquisition of said properties would perpetually provide forest products to our local economy, revenues to the County, outdoor recreation opportunities to the public, and improve property administration on the County Forest;

**WHEREAS**, Oneida County is eligible to participate and make application to the Knowles-Nelson Stewardship Land Acquisition Grant program for land acquisition consistent with said Plan;

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

**WHEREAS**, participation in the grant program requires a county to enter into a Memorandum of Agreement (MOA) with the Department of Natural Resources (as required by s. NR 51.963 Wis. Adm. Code) to define the criteria for participating in the grant program;

**NOW, THEREFORE, BE IT RESOLVED** that the Oneida County Board of Supervisors approves the MOA with the Department of Natural Resources;

**BE IT FURTHER RESOLVED** that any potential County Forest land acquisitions eligible for Knowles-Nelson Land Acquisition Stewardship grant funding will be brought before the Oneida County Board for approval prior to making application;

**BE IT FURTHER RESOLVED** that the Forestry, Land and Recreation Committee is directed to forward this signed MOA to the Department of Natural Resources;

**BE IT FURTHER RESOLVED** that the Oneida County Board of Supervisors grants the authority to sign amendments to this MOA to the County Board Chair, Forestry Committee Chair, and County Forest Administrator;

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

**BE IT FURTHER RESOLVED** that the County Board will be notified if grant funding

52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92

becomes available and then will consider authorization for the acquisition.

Vote Required: Majority = \_\_\_\_\_ 2/3 Majority = \_\_\_\_\_ 3/4 Majority = \_\_\_\_\_

The County Board has the legal authority to adopt: Yes \_\_\_\_\_ No \_\_\_\_\_ as reviewed by the Corporation Counsel, \_\_\_\_\_, Date: \_\_\_\_\_

Approved by the Forestry, Land and Recreation Committee this 7<sup>th</sup> day of May, 2014.

Consent Agenda Item:  YES  NO

Offered and passage moved by:

\_\_\_\_\_  
Supervisor  
\_\_\_\_\_  
Supervisor  
\_\_\_\_\_  
Supervisor  
\_\_\_\_\_  
Supervisor  
\_\_\_\_\_  
Supervisor

\_\_\_\_\_ Ayes  
\_\_\_\_\_ Nays  
\_\_\_\_\_ Absent  
\_\_\_\_\_ Abstain  
\_\_\_\_\_ Adopted

by the County Board of Supervisors this 20<sup>th</sup> day May, 2014.

\_\_\_\_\_ Defeated

\_\_\_\_\_  
Mary Bartelt, County Clerk

\_\_\_\_\_  
David Hintz, County Board Chair

# MEMORANDUM OF AGREEMENT

BETWEEN

WISCONSIN DEPARTMENT OF NATURAL RESOURCES,

and the

Counties with County Forests as defined under ss. 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 Resources (DNR) 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 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. Adm. Code. This Agreement establishes the procedures for a County project submission, priorities for acquisition, eligible costs, funding availability, project ranking criteria and process, and project approval, 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 Forest projects will be evaluated using the ranking criteria and process in section A. B. & C. of this Agreement. Cumulatively, the Counties will be eligible to receive the amount allocated from the appropriation under s. 20. 866(2) (ta) , Stats. to County Forest projects as a portion of the allocation to the category including DNR easements and County Forest projects, or a minimum of 25 of stewardship land acquisition subprogram funding allocated from the appropriation under s. 20. 866 (2)(ta) , Stats. to the DNR Division of Forestry each fiscal year, whichever is greater. If there is a specific amount appropriated to County Forests provided for by state statute, then that amount shall determine the funding level for County Forest projects. The DNR Deputy Bureau Director Facilities and Land, the Land and Forestry Division Administrators, the County Forest Specialist, and the Wisconsin County Forests Association Executive Director shall assess the projected demand for County Forest grants and other anticipated draws on Stewardship funding annually to recommend an initial allocation for County Forest projects each fiscal year. County projects submitted in excess of the initial allocation for County Forest projects may receive funding dependent on their ranking under this Agreement and the availability of funding not utilized on DNR acquisitions or easements. Additionally, funds allocated for Knowles-Nelson Stewardship

grants to nonprofit conservation organizations during the previous fiscal year that remain unobligated may be available for County Forest projects in the subsequent fiscal year.

If County Forest projects will be funded as any portion of the DNR Division of Forestry allocation, State Forest projects shall be evaluated using the same ranking criteria and process in section V. B & C of this Agreement. County projects in excess of the 25 may receive funding dependent on their ranking under this Agreement amongst all projects (State Forest & County Forest) submitted.

Per s. NR 51.964(2) Wis. Adm. Code, any portion of each fiscal year's funding allotment designated for County purchases not awarded by the following February 28<sup>th</sup> shall revert to the DNR for land acquisition under s. 23.0917(3), Stats. If after January 31 the amount of project requests anticipated will not exhaust the amount initially allocated, as described earlier in this section, then the anticipated excess amount may be reverted to the DNR farmland acquisition under s. 23.0917(3), Stats; however, such a reversion would not preclude funding additional County Forest projects if reverted funding was not already obligated for other purposes.

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

### 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 ss. 23.0917(b) to (d), Stats.
  - b. Associated costs including appraisal work, land surveys, relocation payments, title evidence, recording fees, initial posting of signage consistent with s. 23.09165(3), Stats., with cost share not to exceed \$1,000, attorney fees for DNR required reviews with cost share not to exceed \$1,000, historical, cultural, and environmental assessments required by the DNR completed through contract by professional consultants 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. Adm. 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 the time of application). 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 consider 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. Adm. Code. Appraisals must be ordered by the County in order to be considered for grant funding purposes; appraisals ordered by the seller will not be considered for determining a grant award amount, but may be utilized for estimating costs during application.
  - 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 landowners 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. Adm. Code).
2. Application Submission -
  - a. Applications shall be accepted throughout the year by the DNR 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 from making an award in any fiscal year, a County may request that the DNR 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 V.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), Stats. State Forest projects ranked by the following criteria must meet the purposes identified in s. 28.04(2), Stats.
  - b. Management Efficiency and Connectivity 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. Degree to which the project adds to the protection of large blocks of connected public or conserved lands, including consideration of the total size of the project
  - iii. Degree to which the project increases management efficiency or prevents future increased management costs (e.g. ease of access, blocking lands, roads, recreation trails, surveys and boundary lines)
  - iv. Degree to which project minimizes the need for fiscal investments in restoration or infrastructure improvements
  - v. Whether the project would allow for extinguishment of previously secured easements or land use agreements across County, State, or private lands or resolve or reduce non-conformance issues, conflicts and/or safety issues
  - vi. Whether the project is free of existing structures or developments, or if structures exist they are either of low value and can they be easily removed or of strategic value to the County to be utilized for purposes consistent with the county forest law
  - vii. 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.
- c. Natural Resource criteria:
- d. 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 protects large blocks of habitat or provides linkages between blocks of existing public land or critical linkages 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).
  - vii. Whether the project protects significant cultural or archeological sites
- d. Recreation criteria:
- i. Whether the project either maintains, significantly improves, or provides new public access, especially but not limited 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), State Master Plan, or identified in the project application materials
  - iii. Degree to which the project provides connectivity for existing or planned linear trails; connecting existing public trails and creating additional trail opportunities
  - iv. Whether the project would enhance a recreational niche (unique or high-use) of the area
  - v. Degree to which the project provides a physical buffer to land uses that would diminish visitor experience

vi. Degree to which the project would help to serve large population centers or serve as a high use recreation destination point, or is 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. Degree to which the project increases 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 10caVregionalai tourism economy and direct program revenues
- 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, or donations, and demonstrating a good public economic benefit 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
- ii community and other interested external organizations
- iii Degree to which multiple organizations contribute to the acquisition costs  
Whether the sellers are willing to donate a portion of the property value
- iv Degree to which project provides opportunity for joint and f or collaborative management from interested external organizations
- v Whether the project helps protect tribal gathering rights or other culturally important locations

g. Threats Risks and Opportunities criteria:

- i Whether the project area 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 property is currently, or will soon be, listed on the open market and / or has a highly motivated seller
- iii Whether the project will acquire a portion of a larger parcel owned by the same entity with anticipation of acquiring additional holdings
- iv 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 allocation described in section IV. of this Agreement.
2. If the initial allocation is not totally encumbered during the May 1<sup>st</sup> and October 15<sup>th</sup> application periods, other County applications that meet the eligibility requirements will be evaluated and funded as they are received until January 31<sup>st</sup>. up to the limits of the allocation described in section IV. of this Agreement.

3. Applications received after the initial allocation is encumbered for a fiscal year will be evaluated and considered jointly with DNR easement projects being considered for that fiscal year, and may be funded dependent on a project's ranking and remaining available funding, as long as County Forest and DNR easements are funded by the same allocation as directed by statute. If County Forest projects are being funded from the Division of Forestry allocation, as described under section IV. of this Agreement, applications received after the 25 allocation is encumbered for the 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
  6. Applications shall be rated by a panel consisting of the DNR County Forest Specialist, Chief State Forester or designee, Wisconsin County Forests Association (WCFA) Executive Director or designee, and another individual selected by the WCFA Board of Directors. If County Forest projects are being funded from the Division of Forestry allocation, as described under section IV. of this Agreement, then the DNR State Forest Specialist shall be included as a member of the ranking panel.
  - b. Applications shall be rated based on the criteria in section V. B.3 of this Agreement.
  - c. Projects with an average total weighted ranking panel score of less than 5.0 on a 0-10 scale shall not be funded even if eligible., in order to ensure that Stewardship funds are spent on projects that provide significant public benefits.
  - d. As funding is available and applications are submitted, awards may be made on a continuous basis.
  - e. Frequency and recent history of a County receiving Stewardship land acquisition grants may be considered as a tie breaker in cases of multiple projects with similar ranking scores, when competing for limited funding.

## 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 or designee, and the complainant shall collaborate to resolve the issue. If no resolution can be reached:

- B. B. Level 2 - The project ranking panel, consisting of the DNR County Forest Specialist, DNR Chief State Forester or designee, Executive Director of WCFA or designee, 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 Facilities and Lands 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, 2020. 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, 2020 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.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the last date written below.

Wisconsin Department of Natural Resources

By: \_\_\_\_\_ Date

DNR Secretary

\_\_\_\_\_ County

By: \_\_\_\_\_

\_\_\_\_\_ County Board Chair Date

By: \_\_\_\_\_

\_\_\_\_\_ County Forestry Committee Chair Date

By \_\_\_\_\_

\_\_\_\_\_ County Forest Administrator Date