

State of Wisconsin
 Department of Natural Resources
 P.O. Box 7921
 Madison, WI 53707-7921

**RECREATIONAL TRAIL
 EASEMENT**

Wis. Stats. ss. 23.09(2)(h) and 23.09(10)
 Form 2200-14

THIS EASEMENT is made by and between the State of Wisconsin Department of Natural Resources (hereinafter referred to as “Grantor”) and Dane County (hereinafter referred to as “Grantee”).

RECITALS

WHEREAS, the Grantor is the owner of 265 acres of land known as Upper Waubesa Fisheries Area in Dane County;

WHEREAS, the Grantee wishes to provide a multi-use trail for bicycles and pedestrians, to connect Dane County’s Lake Farm County Park and the Capital City State Trail to McDaniel Park in the Village of McFarland;

WHEREAS, it is the policy of the Grantor to cooperate with local units of government in providing public recreational trail use of lands of the State;

WHEREAS, the Grantee desires to construct, operate, and maintain a 410 foot x 12 feet wide trail (hereinafter referred to as “Easement 1”) over the following described premises of the Grantor in Dane County, Wisconsin, described as follows:

Township 7 North, Range 10 East, City of Madison
 Section 32:

Commencing at the southwest corner of said Northeast 1/4; thence North 01°31'42" East along the west line of said Northeast 1/4, 971.25 feet to the intersection of said west line and the westerly line of lands owned by Dane County Parks – Lake Farm Park also being the southerly line of lands owned by State of Wisconsin Department of Natural Resources also being the point of beginning; thence continuing North 01°31'42" East along said west line, 44.19 feet; thence North 39°30'24" East, 378.34 feet to a point on said westerly line; thence South 35°44'29" West along said westerly line, 414.07 feet to the point of beginning.

WHEREAS, the Grantee also desires to construct, operate, and maintain a 2787 foot x 16 feet wide trail (hereinafter referred to as “Easement 2”) over the following described premises of the Grantor in Dane County, Wisconsin, described as follows:

Township 7 North, Range 10 East, City of Madison and Village of McFarland

Section 33: Part of the NW1/4 of the NE ¼; NE ¼ of the NW ¼

Section 28: Part of the SE ¼ of the SW ¼; described as follows:

Recording Area

Return: Department of Natural Resources
 Bureau of Facilities & Land – LF/6
 P.O. Box 7921
 Madison, Wisconsin 53707-7921
 Attn: Sharene Smith (CE-9320)

Parcel Identification Number (PIN):

Part of 251/0710-321-0098-6;
 Part of 251/0710-283-0097-0;
 Part of 251/0710-332-0099-1;
 Part of 154/0710-331-8270-3;
 Part of 154/0710-331-8220-3

Commencing at the southeast corner of the Northeast 1/4 of Section 33, Township 7 North, Range 10 East, in the Village of McFarland, Dane County, Wisconsin; thence North 02°05'45" West, 128.72 feet to the beginning of a curve to the left having a radius of 5,640.15 and a chord of 197.54 feet which bears North 45°16'45" West; thence northwesterly along the arc of said curve 197.55 feet to the southerly line of McDaniel Park; thence South 61°26'30" West, 10.50 feet to the beginning of a curve to the left having a radius of 5,630.15 feet and a chord of 198.11 feet which bears North 47°19'23" West; thence northwesterly along the arc of said curve 198.12 feet; thence North 20°41'36" West, 42.84 feet to the beginning of a curve to the left having a radius of 5,650.15 feet and a chord of 287.28 feet which bears North 50°10'22" West; thence northwesterly along the arc of said curve, 287.31 feet to the beginning of a curve to the left having a radius of 50.00 feet and a chord of 57.18 feet which bears North 86°30'22" West; thence westerly along the arc of said curve, 60.87 feet; thence South 58°37'02" West, 74.23 feet; thence North 31°22'58" West, 102.29; thence North 76°28'28" West, 111.33 feet to the beginning of a curve to the right having a radius of 370.00 feet and a chord of 180.84 feet which bears North 62°19'47" West; thence westerly along the arc of said curve, 182.69 feet to the ordinary high water mark; thence North 49°19'42" West along said water mark, 222.17 feet; thence North 48°14'13" West along said water mark, 272.78 feet; thence North 52°52'35" West along said water mark, 122.97 feet; thence North 48°26'06" West along said water mark, 134.52 feet; thence North 51°37'05" West along said water mark, 13.89 feet to the northerly line of lands owned by the Village of McFarland also being the point of beginning; thence continuing North 51°37'05" West along said water mark, 248.65 feet; thence North 42°41'20" West along said water mark, 450.95 feet; thence North 49°49'46" West along said water mark, 264.23 feet; thence North 60°22'23" West along said water mark, 118.07 feet; thence North 56°00'43" West along said water mark, 244.74 feet; thence North 48°28'10" West along said water mark, 35.15 feet; thence North 43°30'38" West along said water mark, 68.66 feet; thence North 54°28'03" West along said water mark, 145.83 feet; thence North 62°07'22" West along said water mark, 59.66 feet; thence North 58°02'12" West along said water mark, 255.65 feet; thence North 50°52'15" West along said water mark, 65.90 feet; thence North 59°41'07" West along said water mark, 85.64 feet; thence North 45°42'39" West along said water mark, 89.46 feet; thence North 64°53'53" West along said water mark, 70.89 feet; thence North 53°20'43" West along said water mark, 224.77 feet; thence North 44°56'55" West along said water mark, 200.47 feet; thence North 28°24'30" West along said water mark, 42.97 feet to the southerly line of lands owned by the State of Wisconsin Department of Transportation; thence South 53°31'55" East along said line, 2,194.00 feet to the beginning of a curve to the right having a radius of 525.00 feet and a chord of 48.32 feet which bears South 41°37'58" East; thence southeasterly along the arc of said curve 48.34 feet; thence South 38°59'42" East, 103.25 feet to the beginning of a curve to the left having a radius of 475.00 feet with a chord of 78.50 feet which bears South 43°44'05" East; thence southeasterly along the arc of said curve, 78.59 feet; thence South 48°28'29" East, 142.06 feet to the beginning of a curve to the left having a radius of 475.00 feet with a chord of 107.94 feet which bears South 54°59'56" East; thence southerly along the arc of said curve, 108.18 feet; thence South 61°31'23" East, 36.59 feet to the beginning of a curve to the right having a radius of 275.00 feet with a chord of 18.09 feet which bears South 59°38'17" East; thence southeasterly along the arc of said curve, 18.10 feet to said northerly line; thence South 87°33'52" West along said northerly line, 92.69 feet to the point of beginning.

WHEREAS, the Grantor may enter into this easement pursuant to sections 23.09(2)(h) and 23.09(10), Wis. Stats.;

NOW THEREFORE, for good and valuable consideration and the mutual covenants hereinafter set forth, the Grantor does hereby convey to Grantee, a non-exclusive easement for the purpose of development and maintenance, including constructing, operating, repairing, removing and replacing the public recreational trails totaling 3197 feet and not to exceed 16 feet in width on the above described premises.

It is understood by the Grantor and the Grantee that this grant of easement is subject to the following conditions:

1. The parties hereto confirm and agree that the recitals set forth above are true and correct and incorporate the same herein for all purposes.
2. The Grantor shall follow the guidance provided in the Final Concurrence letter dated October 8, 2014 from Eric Heggelund, Wisconsin Department of Natural Resources, to Chris James, Dane County Parks Department, attached hereto and made a part hereof as Exhibit "A".
3. The Grantee shall provide construction plans for the Grantor's review and approval. Grantor shall be notified and consulted prior to any construction or maintenance of the recreational trails and has final authority over issues relating to the management of the trails. The Grantee shall be responsible for construction oversight and coordination and shall be responsible for all future operation and maintenance of the trail and related facilities with the eased areas. The Grantee may request State Trail designation under section NR 51.73 Wis. Admin. Code, upon completion of the trail. The development of the eased area shall conform to all applicable state and federal standards including the American Association of State Highway and Transportation Officials guidelines and the Grantor's standards contained in the Grantor's *Trails Handbook* 2540.5. An exercise of the authority by Grantor pursuant to this paragraph shall not require any action that results in additional expenditures by Grantee without Grantee's express written consent.

4. The Grantee may cut, trim and remove any brush, trees, logs, stumps or branches which by reason of their proximity may endanger or interfere with the recreational trails or the operation thereof. Any such undertakings shall be approved by the Grantor.
5. Structures may be placed with the approval of the Grantor.
6. In the exercise of its rights herein, including but not limited to the operation of the eased property for recreational trails, the Grantee 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.
7. The Grantee shall post signs at the property which identify the property for public use and inform the public of the source of funds used for the development and/or maintenance of the area. The Grantor shall have approval authority over all signage on the property, prior to installation. All signage shall comply with the Grantor's standards and policies. Any signage relating to the public recreational trails shall clearly identify the property as owned by the Grantor and under the management of the Grantee.
8. The Grantee is responsible for determining the location of any existing utility lines and infrastructure, above and below ground, located within the easement area and for any and all damages, costs or liabilities that result from any damages to these lines caused by the Grantee.
9. Any future site development shall conform to Grantor design standards, including complying with applicable state and local floodplain regulations and all State of Wisconsin Historical Society guidelines for development of the described area. The Grantee, shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, reinstallation, replacement, of the public access site including, without limitation, zoning, building, health, environmental permits or licenses, and shall indemnify the Grantor 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. If required by law, the Grantee shall apply for any and all Chapter 30 and 31, Wis. Stats., licenses, permits or approvals necessary for implementing the rights granted to the Grantee pursuant to this easement. The Grantor agrees to cooperate with the Grantee in securing any such permits or licenses by providing information and data upon request.
10. The Grantee 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 statewide public access site or any portion of the eased premises.
11. Grantor reserves no control over the employment, discharge, compensation of, or services rendered by the Grantee employees or contractors, and the Grantee 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 Grantee and Grantor and employees of the Grantee or employees of any contractor shall not be considered Grantor employees.
12. In connection with the performance of any work under the easement, the Grantee agrees not to discriminate against any employee or applicant for employment because of age, handicap, physical condition, developmental disability as defined in § 51.01(5), Wis. 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 Grantee agrees to take affirmative action to ensure employment opportunities for persons with physical disabilities.

13. The Grantor and the Grantee agree that the provisions of Chapter NR 45, Wis. Adm. Code remain applicable to the subject property. Pursuant to section NR 45.02(2), Wis. Adm. Code, the Grantor retains control over the property for the purpose of enforcing Chapter NR 45, Wis. Adm. Code only when needed to protect the property. Daily routine enforcement shall be the responsibility of the Grantee.
14. Change in trail uses, special events, and other situations related to the use of the Grantor's property not specifically addressed in this agreement may take place only with the approval of the Grantor and shall be consistent with the Grantor's policies.
15. The Grantee shall comply with statutory inspection requirements pursuant to section 23.115(2), Wis. Stats., further described in Grantor's Manual Code 2527.20 and shall provide the Grantor a copy of the inspection reports. Grantor shall provide Grantee a copy of the above Manual Code.
16. This easement shall be nonexclusive, and the Grantor retains the right to sell, lease or convey other easements 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. If the Grantor conveys any additional easements within the above-described property, the Grantor will require the respective grantees to restore the public access site to the satisfaction of the Grantee.
17. Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, subcontractors, boards, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities, which are attributable to such acts, errors, or omissions including providing its own defense. In situations including joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, agents, subcontractors, boards, commissions, agencies, officers and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.
18. This easement shall continue in effect in perpetuity unless there is a violation of the terms and conditions hereof, in which such case the easement may be terminated following a 90 day notice of violation if the violation is not subsequently corrected OR 2 years of non-use. In the case of non-use, this easement title shall revert to the Grantor and any facilities or materials will be removed by the Grantee at its expense or it ownership transferred to the Grantor.
19. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
20. This easement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this easement and duly recorded in the office of the Register of Deeds of Dane County, Wisconsin.
21. If any term or condition of this easement shall be deemed invalid or unenforceable, the remainder of this easement shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
22. Enforcement of this easement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this easement, either to restrain or

prevent the violation or to obtain any other relief. If a suit is brought to enforce this easement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

23. The rights granted to the Grantee by this Recreational Trail Easement are and shall remain subordinate to the obligations of the Grantor and the rights granted the Department of the Interior, National Park Service (NPS) under the Land and Water Conservation Act of 1965 dedicating the lands for public outdoor recreation purposes.

END OF CONDITIONS

IN WITNESS WHEREOF, the Grantor has caused this instrument to be executed on its' behalf this _____ day _____, 2015.

State of Wisconsin
Department of Natural Resources
For the Secretary

By _____ (SEAL)
Douglas J. Haag
Deputy Bureau Director Facilities and Land

State of Wisconsin)
) ss.
Dane County)

Personally came before me this _____ day of _____, 2015, the above named Douglas J. Haag, Deputy Bureau Director Facilities and Land, State of Wisconsin Department of Natural Resources, to me known to be the person who executed the foregoing instrument and acknowledged that he executed and delivered the same as for the act and deed of said Department of Natural Resources.

Sharene J. Smith
Notary Public, State of Wisconsin
My Commission (expires)(is) _____

IN WITNESS WHEREOF, the Grantee has agreed to and caused this Easement to be executed on its behalf this ____ day _____, 2015.

County of Dane

By _____ (SEAL)
Scott McDonnell
County Clerk

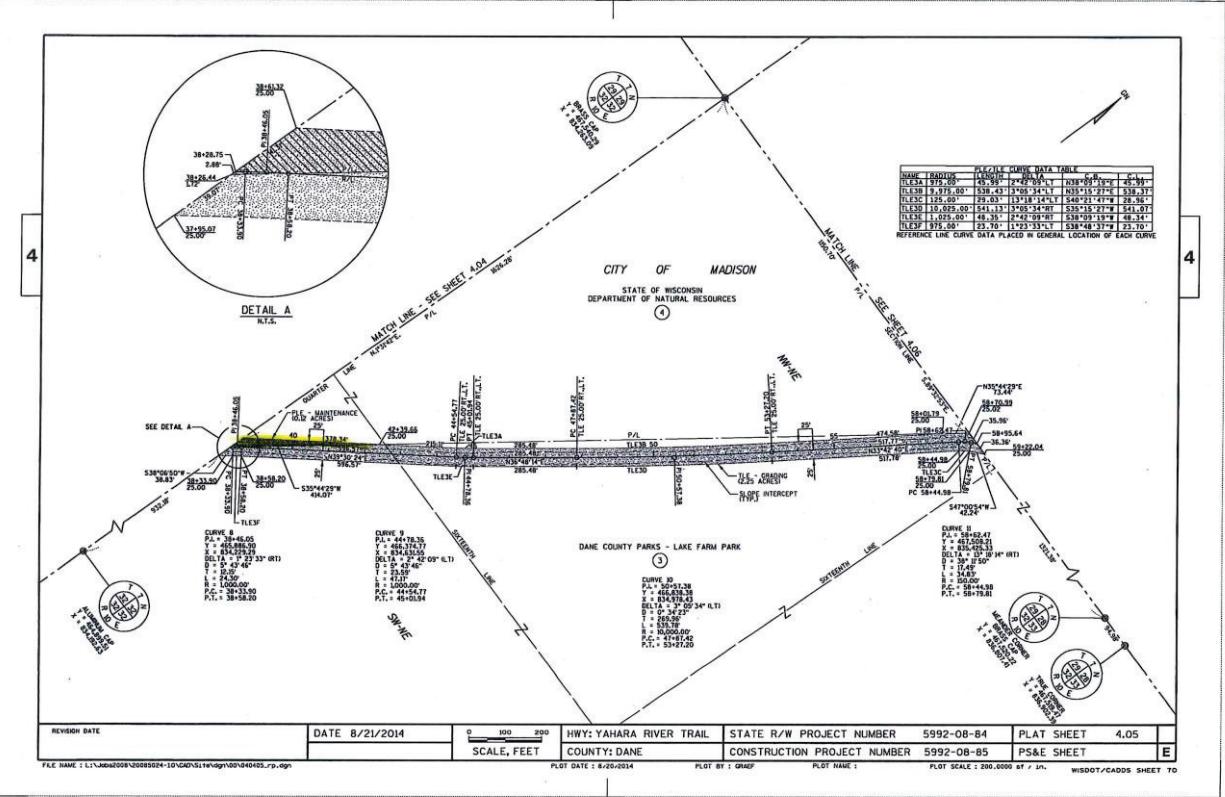
State of Wisconsin)
) ss.
Dane County)

Personally appeared before me this _____ day of _____ 2015, the above named Scott McDonnell, Dane County Clerk, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity therein stated and for the purpose therein contained.

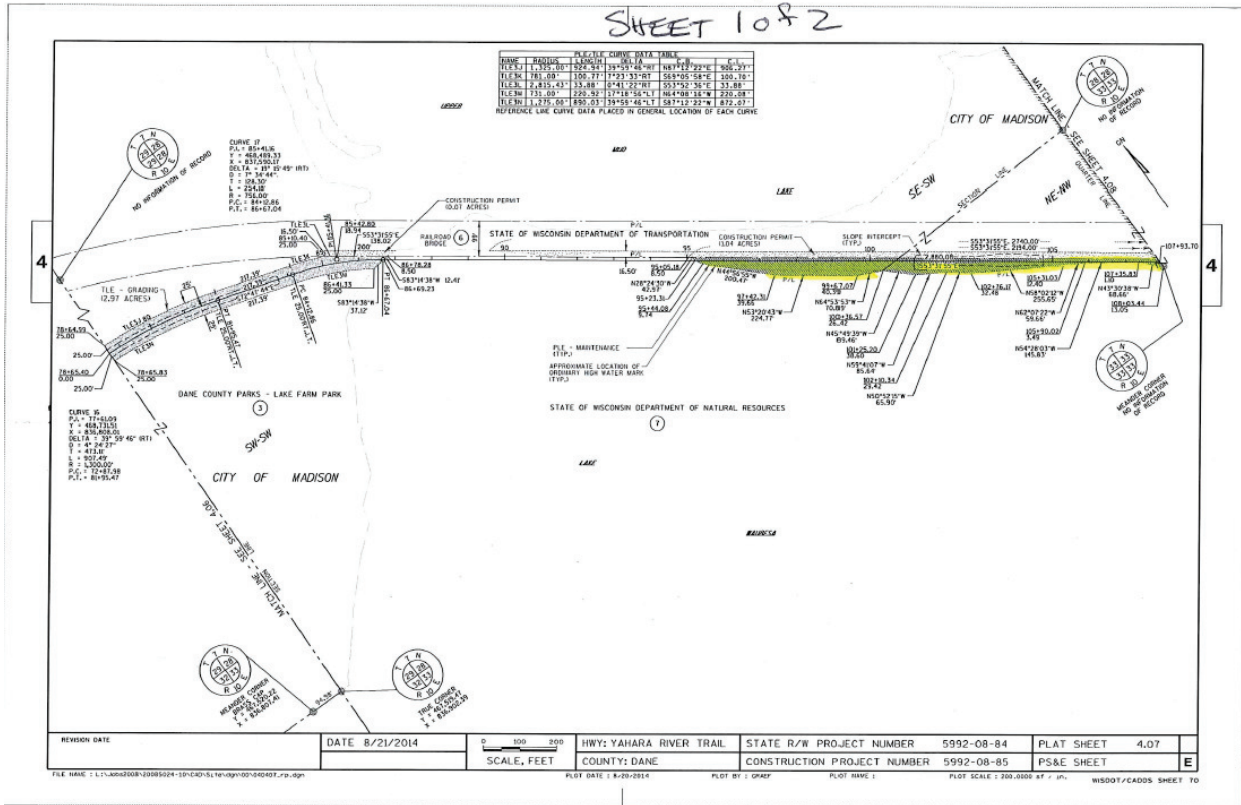
*
Notary Public, State of Wisconsin
My commission (expires) (is) _____

This instrument drafted by:
Attorney Kristin A. Hess
State Bar # 1001214
State of Wisconsin
Department of Natural Resources

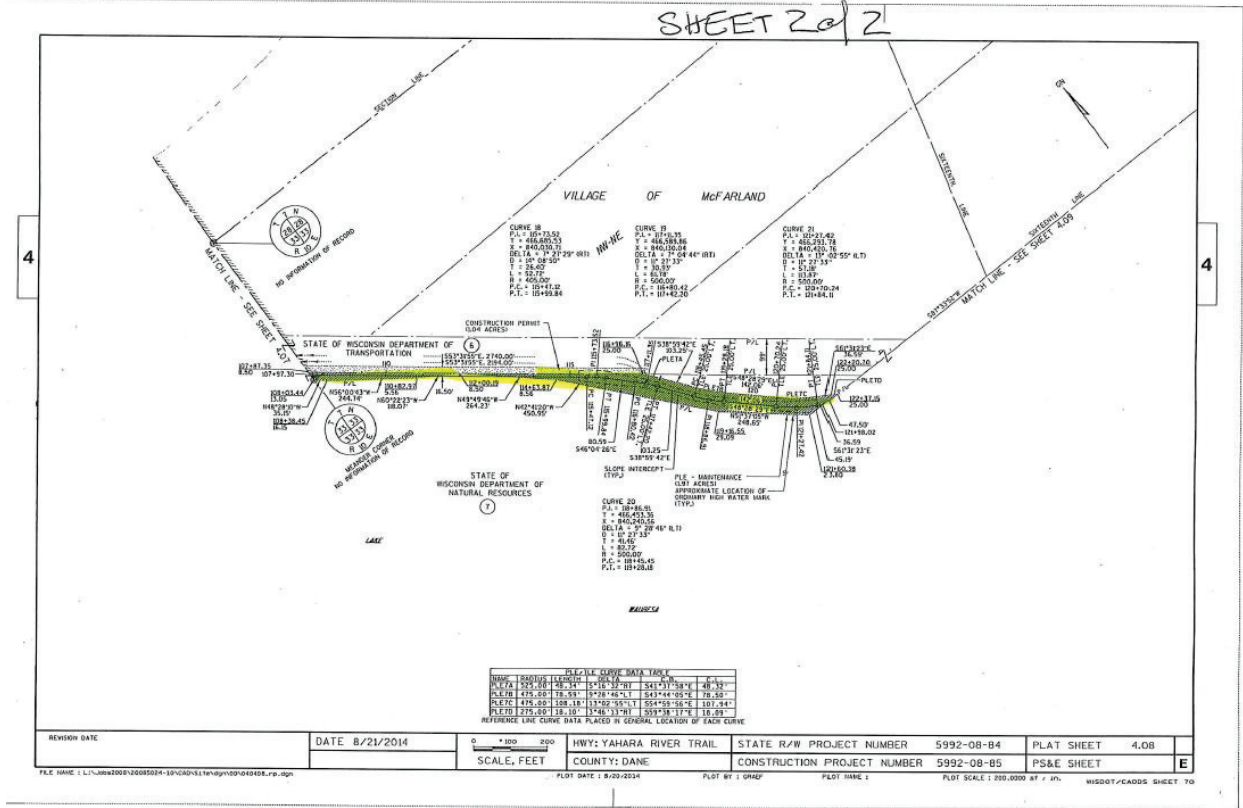
EASEMENT 17



EASEMENT '2" SHEET 1082



EASEMENT 2"
SHEET 2 of 2



REVISION DATE	DATE 8/21/2014	SCALE, FEET	HWY: YAHARA RIVER TRAIL	STATE R/W PROJECT NUMBER	5992-08-B4	PLAT SHEET	4.08
			COUNTY: DANE	CONSTRUCTION PROJECT NUMBER	5992-08-B5	PS&E SHEET	E

FILE NAME: I:\L\6042008\0005004-10\CAD\11\trav\YR080408A.dwg
 PLOT DATE: 8/20/2014
 PLOT BY: J. GRAY
 PLOT SCALE: 1" = 200.0000 FT.
 WISDOT/CADDIS SHEET 70

EXHIBIT "A" Page 1 of 2

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
South Central Region Headquarters
3911 Fish Hatchery Road
Fitchburg, WI 53711-5397

Scott Walker, Governor
Cathy Stepp, Secretary
Mark Aquino, Regional Director
Telephone 608-275-3266
FAX 608-275-3338
TTY Access via relay - 711



October 8, 2014

Chris James
Dane County Parks Department
1 Fen Oak Ct
Madison, WI 53718

Subject: **Final Concurrence**
Project I.D. 5992-08-84/85
Lower Yahara River Trail Phase One
Capital City Trail to McDaniel Park
Dane County

Dear Chris:

Thank you for the information concerning Phase 1 of a multi-use trail connecting McDaniel Park in McFarland to Dane County's Lake Farm County Park. Future phases of the project propose to continue the trail south to the City of Stoughton. The current phase of the trail is located along the shoreline of Lake Waubesa and passes through several sensitive areas including floodplain forest wetlands, the Department of Natural Resources managed Upper Waubesa Fishery Area and an archeological district. The project includes several trail configurations and structures including a ten foot wide at-grade path, 12-foot wide wetland boardwalk, lake-span boardwalk along the shoreline of the lake, and a bridge spanning the navigation channel to Upper Mud Lake. The project also includes an accessible fishing pier and lake two viewing platforms. Based on the information provided to us on September 26, 2014 the final project design addresses the environmental issues raised through the initial review letter and coordination process.

The Department has determined that the water quality, floodplain and wetland protection objectives of the DOT/DNR Cooperative Agreement have been met. This concurrence also constitutes Water Quality Certification pursuant to Section 401, Clean Water Act. The Department has evaluated this proposal and has determined that this activity will be conducted in a manner which is consistent with the standards contained in NR 103 and NR 299, Wisconsin Administrative Code and water quality certification is granted.

Should the scope of the project change, consultation with this agency must be reinitiated. Further comment on the project may be presented at the preconstruction conference. This final concurrence is conditioned on the project construction being in conformance with our initial review letter and other previous coordination, with the DOT/DNR Cooperative Agreement and on the following project specific conditions:

Wetlands

The project will result in impacts to 2.2 acres of wetlands. Wetland impacts include 0.8 acres of direct wetland fill, 0.7 acres of secondary impacts to wetlands from the proposed bridges and wetland boardwalk, and 0.7 acres of impacts to aquatic bed habitat caused by the proposed bridges and lake-span boardwalk. The Department understands that these losses will be charged against the Patrick Marsh (Vale) bank in Dane County and/or the London Wetland Mitigation Bank in Jefferson County. The wetland types include wet meadow, shrub swamp, riparian wooded/floodplain forest, and aquatic bed.

EXHIBIT 'A' PAGE 2 OF 2

Page 2

Floodplain

The project includes filling and grading in the Flood Fringe area. The project has been found to conform to the Dane County floodplain regulations by the Dane County Department of Planning and Development.

Navigation

There is a significant amount of recreational boat travel between Lake Waubesa and Upper Mud Lake through the WSOR Bridge span. We expect that navigation will remain open through this area during construction. It will be necessary to place navigational aids around the area during construction and a waterway marker application and permit is required to place *danger, information or navigation* type buoys. See the DNR initial comment letter dated August 1, 2012 for further information or contact Penny Kanable, DNR Boating Program Specialist at 608-228-9352 or penny.kanable@wisconsin.gov.

Erosion Control

This is a sensitive natural corridor and proper erosion control measures must be used and maintained both during and after construction. We expect that temporary disturbance will be minimized and measures will be taken to prevent unnecessary damage to floodplain forest trees, the shoreline of Lake Waubesa and other sensitive resources. Temporarily disturbed wetland areas should be seeded with an appropriate native wetland seed mix and restored as soon as practicable. An erosion control implementation plan (ECIP) must be developed by the contractor and submitted to this office 14 days prior to the preconstruction conference.

If you have any questions, please contact this office at 608-275-3301.

Sincerely,

Eric Heggelund

Eric Heggelund
Environmental Analysis & Review Specialist
South Central Region

CC: Steve Huberty, Graef
Simone Kolb, USACE
Bill Biesmann, KJohnson Engineers
Russ Anderson, WDNR
Kurt Welke, WDNR
Pam Phelan, WDNR
Penny Kanable, WDNR