

State of Wisconsin
Department of Natural Resources
Box 7921
Madison, WI 53707

**MAINTENANCE
FACILITY SITE EASEMENT**

Wis. Stat. ss. 23.09(10) and 27.01(2)(g)

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

RECITALS

WHEREAS, the Grantor is the fee title owner of lands known as Capital Springs State Park (hereinafter referred to as the “Park”) located within the larger Capital Springs State Recreation Area (hereinafter referred to as the “Recreation Area”), in Dane County, Wisconsin;

WHEREAS, the Park includes a Capital Spring State Park Maintenance Facility Site that is depicted on Exhibit “A” and more accurately described in Exhibit “B” (both of which are attached hereto and incorporated herein);

WHEREAS, it is the policy of the Grantor to cooperate with local units of government in providing and managing recreational opportunities on land resources of the Grantor and it has entered into a Management and Operations Agreement with the Grantee, signed in 2011, as described in Exhibit “C” (which is attached hereto and incorporated herein) and which outlines the joint and cooperative management responsibilities of the parties for their respective properties within the Recreation Area;

WHEREAS, the Grantor’s Park property contains the Libby Road Support Facilities that includes a cold storage building and a shed and inventoried as DNR building numbers 6841 and 6842, respectively;

WHEREAS, the Grantee, pursuant to the master plan as approved for Capital Springs State Recreation Area on October 27, 2010 by the Natural Resources Board, and on June 17, 2010 by the Dane County Board, plans to build a new maintenance facility building for the benefit of recreation grounds maintenance and equipment storage which will benefit the Grantor and the Grantee in their cooperative efforts to manage the Recreation Area;

WHEREAS, the new maintenance facility building at the Libby Road Support Facilities will provide both Grantor and Grantee a secure and safe site for storage of equipment and materials used to manage the Recreation Area;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Grantor hereby conveys to the Grantee a non-exclusive easement to construct, develop, operate, maintain, repair, remove and replace, with or without state or federal grants in aid, a new maintenance facility building on the eased premises.

Recording Area

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

Parcel Identification Number (PIN):
See attached Exhibit “B”

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

1. The Grantee shall construct, maintain and operate the new maintenance facility building at the Libby Road Support Facilities, including the use of the facilities for the purpose of: repair and storage of machinery and equipment, staff restroom, bulk storage of gravel, compost, and other bulk materials.
2. The Grantee agrees to construct a new maintenance facility located approximately on "Footprint A" as indicated on Exhibit "A". In addition, the Grantee agrees to demolish and remove the Grantor's existing building located closest to Footprint A (inventoried as DNR building 6841).
3. The parties acknowledge that the above described new maintenance facility is only a general description of the proposed facility, which will be as described in the final plans and specifications to be provided to the Grantor's Regional Park Supervisor no later than July 31, 2014. Once these plans are filed with the Grantor, the Grantee may modify this new maintenance facility or structure only with the advance written approval of the Grantor.
4. The Grantee shall maintain the area in a neat, safe, sanitary, and useable condition, remove litter and solid waste and in compliance with the standards in s. NR 1.91(8), Wis. Adm. Code. The area should be operated in a manner to achieve safety, preserve and protect property, public health and welfare. Fencing of the boundary with the adjacent private ownership to the west shall be maintained.
5. The Grantee shall bear all utility costs associated with the construction and operation of the new maintenance facility building, and it shall maintain a minimum of a 75 foot setback from property lines and public right of ways.
6. The Grantee shall, at its expense, remove snow and otherwise maintain the surface of the road and parking area and mow grass as necessary at the Libby Road Support Facilities to enhance access for equipment and Recreation Area staff.
7. The Grantee is responsible for maintaining site security and erecting traffic and regulatory signs including but not limited to parking signs, which shall be in conformance with State of Wisconsin codes and standards, County or City Ordinance standards.
8. The Grantee shall comply with section 106 of National Historic Preservation Act, the National Environmental Policy Act, the Endangered Species Act, State of Wisconsin Historical Society guidelines and other applicable Federal legislation.
9. The Grantee shall secure and comply with all federal, state and local permits and licenses required for the construction, installation, operation, maintenance, repair, reinstallation, or replacement of the new maintenance facility 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.
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 new maintenance facility or any portion of the eased premises.

11. The 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. 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 s. 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.
12. In the exercise of its rights herein, 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.
13. The provisions of Chapter NR 45, Wisconsin Administrative Code, remain applicable to the eased premises. Pursuant to s. 45.01(1), Wis. Adm. Code, the Grantor retains management, supervision, and control over the eased premises for the purpose of enforcing Chapter NR 45, Wisconsin Administrative Code, when needed to protect the property. Daily routine enforcement will be the responsibility of the Grantee.
14. This easement shall be non-exclusive, and the Grantor retains the right to sell, lease or convey additional 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. Grantor also retains the right of access for its operations, management and easement compliance associated with the joint management of the Recreation Area.
15. All rights, duties and responsibilities herein of the Grantee shall be effect upon the full execution of this document. 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 ninety (90) day notice of violation if the violation is not subsequently corrected OR two (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.
16. The maintenance facility building and its fixtures, furnishings and signs shall remain the property of Grantee and may be removed upon the termination of this easement.
17. The rights and obligations of the Grantee under this easement may not be assigned, delegated or subcontracted in whole or in part without advance written consent of the Grantor.
18. Grantee's obligation to perform shall be limited to resources that the Grantee is reasonably able to provide and within the limits of available state and/or federal funds and of county funds required to be appropriated to match any state and/or federal funds.
19. Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, 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 of joint liability, each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, agents, boards, commissions, agencies, officers

and representatives. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

- 20. This easement shall be binding on the parties hereto and their successors and assigns.
- 21. This easement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
- 22. 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.
- 23. 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.
- 24. 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.

END OF CONDITIONS

IN WITNESS WHEREOF the Grantor has caused this instrument to be executed on its behalf this ____ day _____, 2014.

State of Wisconsin
Department of Natural Resources
For the Secretary

By _____ (SEAL)
Douglas J. Haag, Natural Resources Real Estate Director

State of Wisconsin)
) ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, the above named Douglas J. Haag, 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 accepted the terms and conditions of this easement on its behalf this ____ day _____, 2014.

County of Dane

By _____ (SEAL)

State of Wisconsin)
) ss.
County of Dane)

Personally came before me this _____ day of _____, 2014, the above named _____, of Dane County Parks, 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 Dane County Parks.

*
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

EXHIBIT "A" MAP OF PROPERTY



<p>PROPOSED LIBBY ROAD STORAGE FACILITY</p> <p>4401 LIBBY ROAD MADISON, WI 53711</p> <p>CAPITAL SPRINGS RECREATION AREA</p>	<p>SITE AND GRADING PLAN</p>	<p>SCALE: 1" = 60'</p>	<p>CREATED BY: ERIC GUMM</p> <p>REVISED BY: LINDSAY SPERBER</p> <p>ORIGINAL DATE: 8.21.2012</p> <p>REVISED DATE: 4.18.2014</p>	<p>H:\Parks\Mapping\Parks\CapitalSprings\recreation Area\LibbyRoadShop\LibbyRoadSitePlan_1_2_14</p>
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EXHIBIT "B"
LEGAL DESCRIPTION

Township 7 North, Range 10 East, Blooming Grove Township

Section 32: An approximate 5.0-acre parcel of land described as follows: Beginning at the S1/4 corner of above mentioned Section 32; thence N along the N and S1/4 line 1237.0 feet; thence W 602.3 feet; thence N 770.5 feet to the point of beginning; thence continuing N 469 feet; thence W 173.0 feet; thence N 129.0 feet to the south right of way line of Libby Road, thence E 495.0 feet along said right of way; thence S 598 feet; thence W 327 feet to the point of beginning.

Parcel Identification Numbers (PIN): part of 008-071-323-8000-9