

MEMORANDUM OF UNDERSTANDING
between the
WISCONSIN DEPARTMENT OF TRANSPORTATION
and the
BADGER ARMY AMMUNITION PLANT
INTERIM OVERSIGHT AND MANAGEMENT COMMISSION

INTRODUCTION

This Memorandum of Understanding (“MOU”) is entered into as of this 5th day of March, 2009 by and between the Wisconsin Department of Transportation (“WisDOT”), a government agency of the State of Wisconsin, and the Badger Army Ammunition Plant’s (“Badger”) Interim Oversight And Management Commission (“IOMC”). This MOU addresses issues related to the management of the Easement Area located on the Badger property, as described in the Permanent Easement attached hereto as Exhibit A (“Easement”).

PURPOSE

WisDOT’s paramount interest is in preserving the Easement for present and future railroad and transportation purposes. The IOMC’s primary objective is to ensure that the Badger property is managed and used in conformance with the Badger Reuse Plan. After reviewing the Easement language, the IOMC and WisDOT enter into this MOU to best preserve both parties’ goals for the Easement Area.

LIST OF AGREED TERMS

1. NATURE OF EASEMENT – The Easement granted to WisDOT by the United States General Services Administration (“GSA”) is a permanent easement for present and future railroad and transportation purposes including interim utility and public recreational trail use if such use is subject to restoration or reconstruction for railroad and other transportation purposes.
2. CONVERSION TO TRAIL USE – It is WisDOT’s intent to use its best efforts to cooperate with the conversion of the Easement Area to an interim trail use, as defined by and pursuant to state law and the National Trails System Act (16 U.S.C. 1247(d)), when the use of the Easement for current commercial railroad purposes has been discontinued for a period of 2 consecutive years, or if the rail property is removed or rendered unfit for service. WisDOT will also use its best efforts when negotiating lease or other terms with a rail operator for use of the Easement to ensure that the rail operator does not unreasonably undermine the Parties’ intent herein.
3. Cooperation with WDNR – WisDOT will consult with the Wisconsin Department of Natural Resources (“WDNR”) prior to any significant decisions regarding the use of the Easement Area. WisDOT agrees to use its best efforts to work with the WDNR should the WDNR have any requests related to the Easement Area that are allowable under the terms of the Easement. Further, to the extent possible without interfering with an operator’s ability to provide rail service, WisDOT will conduct activities pursuant to the

Easement as agreed to with the WNDR. WisDOT also agrees to work through WNDR to consult with the IOMC prior to making any significant decisions regarding the Easement Area.

4. Rail Car Storage – As provided in the Easement, WisDOT shall make a good faith effort to negotiate a separate standing or special agreement with the U.S. Dairy Forage Research Center (“Dairy Forage”) that would allow for the storage of rail cars in any portion of the Easement Area over property controlled by Dairy Forage. It is the intent of this provision that storage of cars in the area subject to Dairy Forage control shall reduce or, if possible, preclude the need to store rail cars on or adjacent to WNDR land within Badger, as long as such agreement is in place.
5. Fencing – Under the terms of the Easement, in the event the Easement Area converts to a trail pursuant to the National Trails System Act, WisDOT agrees to maintain and repair fence on both sides of the Easement Area in those areas where the United States of America owns the servient tenement. WisDOT agrees to use its best efforts to work with the owner of such servient tenement and any trail sponsor to limit fencing to the extent practicable in the event the Easement Area converts to interim trail use.
6. Ho-Chunk Dismantling Activities – WisDOT and IOMC recognize the Ho-Chunk Nation as an “appropriate governmental body” that shall be authorized to use rail service provided on the Easement Area to facilitate the dismantling of the Badger Army Ammunition Plant.
7. Critical Nature of Corridor – In general, use of the Easement Area shall respect its critical function as a link across the Badger property with respect to numerous interests and issues of local, regional and state significance including but not limited to issues of ecological, environmental, economic, social, cultural, recreational and transportation importance.
8. ASSIGNMENT – Subject to prior approval from WisDOT, the IOMC can assign this MOU to the Oversight And Management Commission when the IOMC sheds its interim status.
9. EFFECTIVE DATE – This MOU shall become effective upon the final conveyance of the Easement to WisDOT.

For the Wisconsin Department of Transportation:

Ronald E. Adams
Ronald E. Adams, Chief
Railroads and Harbors Section

March 5, 2009
Date

For the IOMC:

William F. Wenzel, Chair

Date