

THIS LAND USE AGREEMENT (Agreement) is made by and between the State of Wisconsin Department of Natural Resources (Department) and Town of Woodboro (Town) and Oneida County (County). Collectively the Town and County are referred to as Cooperator.

RECITALS

WHEREAS, the Department owns certain real property located in the

SE ¼ of the SE ¼ of Section 7, Township 36, North, Range 7 ⊙ E ○ W,
Town/City/Village of Woodboro, Oneida County, Wisconsin that is known as
Woodboro Lakes Wildlife Area

NE ¼ of the SE ¼ of Section 18, Township 36, North, Range 7 ⊙ E ○ W,
Town/City/Village of _____, _____ County, Wisconsin that is known as
Woodboro Lakes Wildlife Area

NW ¼ of the SE ¼ of Section 18, Township 36, North, Range 7 ⊙ E ○ W,
Town/City/Village of Woodboro, Oneida County, Wisconsin that is known as
Woodboro Lakes Wildlife Area

S2 ¼ of the SE ¼ of Section 18, Township 36, North, Range 7 ⊙ E ○ W,
Town/City/Village of Woodboro, Oneida County, Wisconsin that is known as
Woodboro Lakes Wildlife Area

SE ¼ of the SW ¼ of Section 18, Township 36, North, Range 7 ⊙ E ○ W,
Town/City/Village of Woodboro, Oneida County, Wisconsin that is known as
Woodboro Lakes Wildlife Area

and referred to in this Agreement as the Premises.

WHEREAS, the Department may enter into agreements permitting others to engage in mutually beneficial activities on its property under sections 23.09 (2)(h) and 23.0912 (1g) of Wis. Stats.;

WHEREAS, the Cooperator desires to *construct, maintain, and operate an ATV/UTV trail (hereinafter referred to as Trail) within the Premises;* and

WHEREAS, the Department is willing to allow the described activities under the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, for public good and mutual benefit, the Department and Cooperator enter into this Agreement which is subject to the following terms and conditions:

- Purpose.** Department agrees that Cooperator may
The Town will be responsible for the development, oversight, and coordination of the Trail construction project.
The County will be responsible for the maintenance and operation of the Trail as part of the motorized trail recreation opportunities in the County.

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If winter trail grooming or snow plowing will be performed under this Agreement, check this box.

2. **Parties.** The terms Department and Cooperator, when used herein, shall mean either singular or plural, as the case may be, and the provisions of this Agreement shall bind the parties mutually, as well as their employees, agents and legal representatives.
3. **Term.** This Agreement shall be in effect for a two-year period commencing upon final signature by all parties on this Agreement. The Department may renew this Agreement for an additional two years with the written agreement of both parties.
4. **Termination.** The Department may terminate this Agreement upon ninety (90) days written notice to the Cooperator if it is determined that the continued use of the Premises by the Cooperator under this Agreement is not consistent with the Department's future management objectives for the Premises. The Department may also terminate if the Department determines that the Cooperator has failed, neglected or refused to comply with this Agreement (a material breach of the contract). Upon material breach of contract by Cooperator, Department shall provide written notice to Cooperator detailing the breach. Cooperator shall then have thirty (30) days to cure said breach. In the event said breach is not cured within thirty (30) days, Department may terminate this agreement upon written notice to Cooperator.
5. **Non-Assignment.** Neither this Agreement nor any right or duty in whole or in part by the Cooperator under this Agreement may be assigned, delegated or subcontracted without the prior written consent of the Department. If the Cooperator intends to hire a contractor or otherwise engage a third-party to perform work under this agreement, and the Department agrees to this, check this box .

Any contract or agreement between the Cooperator and a third party to perform duties authorized by this Agreement must bind the third party to the Cooperator's obligations under this Agreement. ~~The Cooperator must include the intent to hire a third party to perform work under this Agreement in the Work Plan, and it must be agreed to by the Department before the third party is hired.~~ The Cooperator must report the value of the work performed by the third party to the Department and the Department must follow the procedure for the value of the Cooperator's donation in accordance with Department manual code. DJK

6. **Maintenance.** The Cooperator shall maintain the Premises in a safe condition at all times.
7. **Work Planning.** At least once per year, the Cooperator shall submit a Work Plan to the Department for its approval. The plan shall describe the work intended to be performed on the Premises, any proposed signage (permanent or temporary), any supplies and materials that are to be requested from the Department, and all activities which will be performed or otherwise undertaken pursuant to this Agreement. Both parties to this Agreement must agree to the location and specifications for any trail work to be performed under this Agreement by the Cooperator and the Cooperator's agents. Specifications include trail tread width and surfacing types (if impacted by the work performed under this Agreement), trail corridor cleared width and height, and turn radii appropriate for the allowed public trail uses and maintenance equipment, as determined by the Department. Work Plans must be approved by the Department prior to work taking place and must be consistent with existing plans for the Premises such as those developed in accordance with chapter NR 44, Wis. Admin. Code (master plans). No deviations from the approved Work Plan shall be allowed except with the prior written approval of the Department.
8. **Signage.** The content and placement of any signs, postings and other markers proposed by the Cooperator to be located on the Premises must be approved by the Department prior to placement.
9. **Use of Non-Department Equipment.** The Cooperator may utilize equipment not owned by the Department on the Premises, subject to the following terms and conditions. The Cooperator shall supply a complete list of non-Department equipment to be utilized by the Cooperator on the Premises and the

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intended uses for such equipment (attached as Exhibit B). The Cooperator shall submit to the Department in writing any updates to the list of equipment, with the exception of hand tools (a tool operated without electricity or other non-manual (human) power), before the additional equipment may be utilized on the Premises. The Department makes no warranty, express or implied, as to the condition or fitness for any purpose of any non-Department equipment, and any use of such equipment by the Cooperator shall be at the sole risk of the Cooperator. The Cooperator shall provide appropriate operation and safety training to any and all persons who will use or operate non-Department equipment prior to the use of such equipment on the Premises to ensure its safe use. The Cooperator shall ensure that such training, and any operation and maintenance protocols, are in accordance with manufacturer's instructions. The Cooperator shall review safety with users and operators of non-Department equipment whenever appropriate (for example, a group safety talk may be held before a volunteer workday or a review of the operator's manual may be required if an operator has not operated the equipment for an extended period of time). The Cooperator shall ensure equipment is regularly maintained, in good condition, and appropriate for the intended job. The Cooperator shall regularly inspect the equipment for damage and take such steps as may be necessary to ensure the repair or discontinued use of damaged equipment, as appropriate.

10. **Use of Department Equipment.** Use of Department-owned equipment on the Premises for purposes consistent with this Agreement is subject to the approval of the Department and those terms and conditions identified in a separate Equipment Use Agreement, which shall be executed in writing by the parties. If the Cooperator desires to use Department equipment, check this box.
11. **No Storage.** The Cooperator shall not at any time store on the Premises any vehicles or non-Department equipment, including structures such as storage sheds or storage trailers, unless the Cooperator first obtains written approval from the Department. Such written approval shall include a list of vehicles and non-Department equipment for which approval has been granted and the location where each item may be stored. If both the Cooperator and the Department agree that the Cooperator may store items on the Premises vehicles or equipment, check this box.
12. **Vegetative Management.** No cutting or trimming of trees shall be done without the prior written approval of the Department, except for dead and down trees that obstruct passage of the Premises may be removed without such written approval. Any trees removed from the Premises remain the property of the Department. All trees having commercial value including firewood shall be cut in standard lengths and be piled at a location on the Premises designated by the Department. All stumps, slash, waste materials and other debris shall be disposed of by the Cooperator as directed by the Department. An integrated pest management approach, which may include the use of pesticides, shall be used to control undesirable vegetation. Use of pesticides (including herbicides) shall be in accordance with the Department's pesticide use policy (manual code 4230.1) and shall only be allowed with the prior approval of the Department. No pesticides listed as "prohibited" on the Forest Stewardship Council® [highly hazardous pesticide list](#) may be used. The Cooperator shall report to the Department no later than December 1 of each year information about the pesticides applied on the Premises by the Cooperator including the habitat treated, treatment dates, applicator name and DATCP certification number, product trade names and EPA registration numbers, application method, targets, total area treated (in acres), total quantity and units of pesticide used, and the following attachments as PDFs: map showing treated location, pesticide labels, and pesticide safety data sheets. A complete list of the required information is listed in Exhibit C.
13. **Public Use.** The Cooperator understands that the Premises are open to the public. The Premises are open for use to all members of the general public without regard to race, creed, marital status, color, sex, national origin, age, handicap, ancestry, sexual orientation, arrest record or conviction record.
14. **Safety and Damage Notification.** The Cooperator shall notify the Department of any and all potentially unsafe conditions existing on the Premises and/or damage to property or the Premises caused by activities authorized by this Agreement as soon as practicable but not more than 48 hours after discovering the conditions or damage.

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15. **Closure.** The Department retains management, supervision and control over the Premises and retains the right to close the Premises in whole or part to any and all use in accordance with s. NR 45.04(1)(b), Wis. Admin. Code. Notwithstanding the foregoing, the Department shall not exercise its right to close all or part of the premises in an unreasonable fashion.
16. **Liability.** Cooperators are volunteers and not officers, employees, or agents of the State of Wisconsin, or the Wisconsin Department of Natural Resources. Any injuries, claims, liabilities, suits or costs relating to this Agreement shall be the sole responsibility of the Cooperator. Cooperator must ensure that participants in the Cooperator-sponsored volunteer groups shall agree to obey and abide by the terms of this Agreement and all laws and regulations ~~and conditions as may be required by the Department.~~ The Cooperator is responsible for sharing the terms and conditions of this Agreement with any volunteers of the Cooperator acting under this Agreement and shall make reasonable efforts to ensure volunteers act in accordance with this Agreement. DJ
17. **Indemnity.** The Department shall be responsible for the consequences of its own negligence and willful misconduct and that of its employees, agents, contractors, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions. The Cooperator recognizes and understands that it may be responsible for the consequences of its own negligence and willful misconduct and that of its employees, agents, boards, commissions, agencies, officers and representatives, 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, boards, commissions, agencies, officers and representatives. This clause applies only to the actions of each party pursuant to this Agreement and does not apply to actions or events that occur outside the scope of this Agreement.
18. **Insurance.**
 - A) The Cooperator shall provide proof of general liability insurance including blanket contractual liability insurance, to include coverage of the Cooperator and its agents for all activities associated with this Agreement, effective as of the date of this Agreement or before. The insurance coverage shall be in the amount of a minimum of \$1,000,000 liability for bodily and personal injury and \$50,000 for property damage. The insurance shall name the Department of Natural Resources and its employees as additional named insureds (listing the Department as a "certificate holder" is not sufficient). The Cooperator shall furnish the Department with a certificate of insurance annually showing that the insurance is provided during the period of this Agreement and that notice of any cancellation is sent immediately to the Department. This Agreement is conditional upon the Department's approval of the insurance policy, and the Cooperator's continued maintenance of insurance coverage.
 - B) The Cooperator shall provide the Department with a certificate of insurance indicating that Worker's Compensation Insurance coverage is provided for any paid employees of the Cooperator, in compliance with Chapter 102, Wis. Stats. The policy shall require that notice of cancellation be sent immediately to the Department if coverage is canceled, and no work by uncovered employees is allowed. A Cooperator claiming that coverage is not required under Chapter 102, Wis. Stats., shall, upon request, provide the basis for such opinion in writing. This Agreement is conditioned on the Department's approval of the insurance certificate or opinion of exemption.
 - C) It is the responsibility of the Cooperator to ensure that they have adequate insurance coverage beyond the stated requirements to cover its activities and Cooperators' property.
 - D) Insurance requirements may be waived for units of government with alternative insurance coverage in place. However if the unit of government is the Cooperator in this Agreement and plans to contract or otherwise engage a third party, such as a volunteer organization or private contractor, to perform work under this agreement, this must be indicated in provision five (5) of this Agreement and the insurance requirements in this section and all other requirements of this Agreement must be complied with by any and all third-parties engaged by the Cooperator.

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19. **Nondiscrimination.** In connection with the performance of work under this Agreement, the Cooperator agrees not to discriminate against any employee, applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Cooperator further agrees to take affirmative action to ensure equal employment opportunities. The Cooperator agrees to make available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
20. **Affirmative Action.** If the Cooperator employs 50 or more employees and engages in work on the Premises that is estimated to cost fifty thousand dollars (\$50,000) or more, Cooperator acknowledges they have a written affirmative action plan in place and upon request will provide it to the Department.
21. **Record Keeping.** The Cooperator shall to the best of their ability keep record of the labor and materials donated to the Department under this Agreement and provide this information annually to the Department or use the electronic volunteer tracking system to report this information.
22. **Notices.** All notices to either the Department or the Cooperator concerning this Agreement shall be delivered electronically or sent by certified mail, postage prepaid, return receipt requested, to the other party to the address listed below. Either party may change its address for notice by providing written notice to the other party.
 - a) To the Department: Woodboro Lakes Wildlife Area, Wisconsin Department of Natural Resources,
*107 Sutliff Ave
Rhinelander, WI 54501
715-365-8999
Jeremy.Holtz@wisconsin.gov*
 - b) To the Cooperator:
*Town of Woodboro
Phil Kriesel, Town Chairperson
8672 Old Hwy K Rd
Harshaw, WI 54529
715-282-5607
500sks@gmail.com*

*Oneida County
Eric Rady, Assistant Forest Director
P.O. Box 400, 1 S. Oneida Ave
Rhinelander, WI 54501
715-369-6140
erady@co.oneida.wi.us*
23. **Compliance.** The Cooperator shall comply with all applicable Wisconsin Statutes and the Wisconsin Administrative Code in carrying out this Agreement. The Cooperator is granted no rights not otherwise afforded the general public except as contained herein.

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24. **Invalidity.** If any term or condition of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
25. **Enforcement.** It is intended that this Agreement shall be construed as being adequate and legally enforceable. Enforcement of this Agreement 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 Agreement, either to restrain or prevent the violation or to obtain any other relief.
26. **Headings.** The headings of clauses contained in this Agreement are used for convenience and ease of reference only and do not limit the scope or intent of the clause.
27. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
28. **Entire Agreement.** This Agreement, together with the specifications in any required plan and its referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to this Agreement are hereby superseded. Any revisions including cost adjustments and time extensions must be made by an amendment to this Agreement or other written documentation, signed by both parties at least 30 days prior to the ending date of this Agreement.
29. **Additional Conditions.** Additional terms and conditions that apply to this Agreement are enumerated below:
 - a. The County will be responsible for inspections of the Trail as required by s. 23.115(2), Wis. Stats.
 - b. The Department must approve, and has sole discretion over, all land transactions, crossings, and easements for the Property, but shall notify the Cooperator of any potential impacts arising from said matters.
 - c. The Town agrees that the development and construction of the Trail will meet or exceed trail descriptions as presented in the Woodboro Lakes Wildlife Area Master Plan and any applicable standards mandated by state or federal law. The Town will award bids conditioned on bids being covered by grants obtained for development of the Trail.
 - d. The Town shall secure and comply with all federal, state and local permits and licenses required for the construction and installation of the Trail including, without limitation, zoning, building, health, environmental permits or licenses. The Town shall indemnify the Department against payment of the costs therefor and against any fines or penalties that may be levied for the Town's failure to procure or to comply with such permits or licenses, and the Town shall pay any remedial costs to cure violations of federal, state, or local laws. The Department agrees to cooperate with the Town in securing any such permits or licenses by providing information and data upon request.
 - e. The Town in the construction phase and the County in ongoing maintenance and operations will work cooperatively with the Department on signage relating to the Trail. The Town and County agree that any signage or display material relating to the Trail shall clearly identify the property is owned by the Department and under the management of the County. No commercial advertising shall be allowed on the Property, unless the signage and its placement is in accordance with Department policy. The Town 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 Department signage policy is modified, the above section on signage shall automatically reflect the modification.
 - f. Once trail construction is complete, the County agrees to maintain and operate the Trail.
 - g. The County agrees that the maintenance and operation of the Trail will meet or exceed trail descriptions as presented in the Woodboro Lakes Wildlife Area Master Plan and any applicable standards mandated by state or federal law.

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h. Proposed vegetative management activities will be included in the Work Plan for Department review and approval. No cutting, trimming, or road building (soil disturbance) should take place from April 15 to July 15 in areas where oak could potentially be damaged.

i. **Legal Protections.** It is agreed by the parties that nothing in this Contract, including but not limited to indemnification and duty to defend clauses, in any way constitutes a waiver or estoppel of the County or its insurer, of its right to rely upon the limitations, defenses, privileges, limitations of liability or immunities contained within Wisconsin law, including but not limited to those contained within Wisconsin Statutes 893.80, 895.52 and 345.05. To the extent that indemnification or duty to defend is available and enforceable, neither the County nor its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for claims against counties established by Wisconsin law. To the extent that any provision of this Contract is found by any court of competent jurisdiction to conflict with any such legal protection, then whichever protections, either legal or contractual, provide a greater benefit to the County shall apply, unless the County elects otherwise.

j. **Open Records Assistance.** The parties agree that, should either receive an open records request, the response to which reasonably requires the assistance of the other, reasonable assistance shall be provided, and the party providing assistance shall bear the cost of providing assistance.

END OF TERMS AND CONDITIONS

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IN WITNESS WHEREOF, the Cooperator and Department hereby accept and consent to the terms and conditions of this Agreement.

Phil Kriesel (Cooperator)
Representative of Town of Woodboro (Town)

Date

Dave Hintz & Jack Sorensen (Cooperator)
Representatives of Oneida County (County)

Date

State of Wisconsin
Department of Natural Resources
For the Secretary

Jeremy Holtz (Department)
Property Manager

Date

Niccole Smith (Department)
Real Estate Specialist

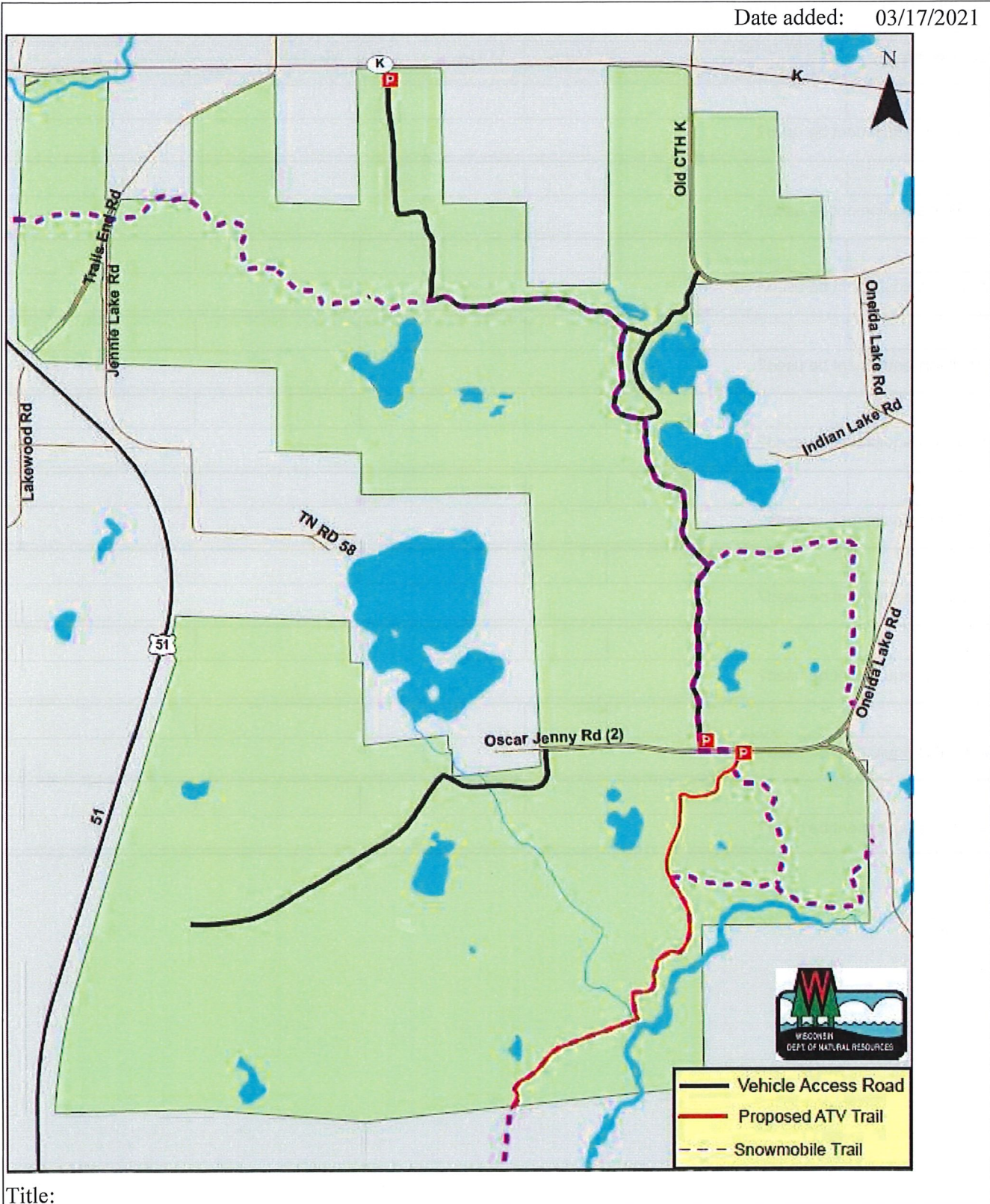
Date

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

Exhibit A

MAP

Date added: 03/17/2021 X



Title:

Exhibit C

This is a list of the information required for every pesticide applied on Department lands. This information is due to the Department annually by December 1. Cooperator may be asked to fill out Form 4200-012, External Pesticide Use Report.

- Property Name
- County
- Site Name
- Habitat Type
- Targets
- Start Date
- End Date
- # of treatment days
- Start Time (WPS)
- End Time (WPS)
- Application Method
- Acres treated
- Applicator Name
- Type
- DATCP cert #
- Trade name
- EPA #
- Quantity/units
- Map of application location (Attachment)
- Pesticide Label (Attachment; pdf required)
- Pesticide Safety Data Sheet (Attachment; pdf required)

