

# WISCONSIN RIVER RAIL TRANSIT COMMISSION

PO Box 262 • 20 S Court Street • Platteville, Wisconsin 53818

Alan Sweeney, Chair • Commission Office Phone 608.342.1637 • Fax 608.342.1220 • Website [www.wrrtc.org](http://www.wrrtc.org)  
MEMBER COUNTIES: CRAWFORD • DANE • GRANT • GREEN • IOWA • JEFFERSON • ROCK • SAUK • WALWORTH • WAUKESHA

SUBJECT: Friday, June 4<sup>th</sup>, 2021 Meeting Agenda  
TO: Wisconsin River Rail Transit Commissioners & Other Interested Persons  
FROM: Matthew Honer, WRRTC Administrator

## Wisconsin River Rail Transit Commission

Meeting Friday, June 4<sup>th</sup>, 2021 @ 10 AM

Jefferson County Highway Department

1425 S. Wisconsin Drive, Jefferson, WI

And via ZOOM

<https://zoom.us/j/94525597582?pwd=am5qaTFUci8yUCsydXRaOHdVZnQ1UT09>

Join by Phone: 1 (312) 626-6799

Meeting ID: 945 2559 7582

Passcode: 532803

### WRRTC's Schedule of Meetings:

2021
January 8 <sup>th</sup>
February 5 <sup>th</sup>
March 5 <sup>th</sup>
April 9 <sup>th</sup>
May 7 <sup>th</sup>
June 4 <sup>th</sup>
July 9 <sup>th</sup>
August 6 <sup>th</sup>
September 10 <sup>th</sup>
October 8 <sup>th</sup>
November 5 <sup>th</sup>
December 10 <sup>th</sup>

**NOTE:** The WRRTC's meetings are **usually** held at 10:00 AM on the **first Friday after the first Tuesday of the month** at the **Dane County Highway Building** in Madison, WI. If you plan to attend a WRRTC meeting and require specific accommodations, please contact the Administrator at least 3 days in advance of the meeting at 608-342-1637.

**NOTICE is sent to:** County Clerks in WRRTC's Region for Posting and to Local News Media as an FYI.

*Thank you for your interest and assistance.*

# Wisconsin River Rail Transit Commission

Meeting - Friday, June 4<sup>th</sup>, 2021 @ 10 AM

Online Meeting via Zoom

1. 10:00 AM *10 minutes estimated | Action Items*  
**Call to Order** – Alan Sweeney, Chair
2. Roll Call. **Establishment of Quorum** – Matt Honer, Admin.
3. Action Item. **Certification of Meeting’s Public Notice** – Noticed by Admin.
4. Action Item. **Approval of Agenda** – Prepared by Admin.
5. Action Item. **Approval of draft May 2021 Meeting Minutes**
6. Updates. **Public Comment** – Time for public comment may be limited by the Chair
7. Updates. **Announcements by Commissioners** – No Discussion Permitted

## REPORTS & COMMISSION BUSINESS

8. *10 minutes estimated | Update and Action Items*  
**WRRTC Financial Report** – Jeff Huttenburg, Treasurer.
  - Treasurer’s Report.
  - Payment of Bills.
  
9. *10 minutes estimated | Update*  
**Wisconsin & Southern Railroad’s Report on Operations** – Ken Lucht and Roger Schaalma, WSOR
  - Update on Monthly Maintenance Activities
  - Update on Capital Projects
  - Other Issues/ Topics
  - Update on Business Development
  
10. *10 minutes estimated | Update*  
**WisDOT Report** – Lisa Stern, WisDOT
  - Update on Property Issues
  - Other Issues/Topics
  - Update on Grant Funding and Projects
  
11. *5 minutes estimated | Update*  
**WRRTC Communications and Administrator’s Report** – Honer, Admin.
  - Communications
  - Project Updates
  
12. *15 minutes estimated | Action Item*  
**Discussion and Action on Memorandum of Understanding related to a Farm Crossing in Belden, Illinois** – Honer, Admin.
  
13. *5 minutes estimated | Action Item*  
**Discussion and Possible Action on July, August, and September Meetings** – Sweeney, Chair and Honer, Admin.
  
14. *10 minutes estimated | Presentation*  
**Presentation on WisDOT FRPP and FRIIP Programs**– Lisa Stern, WisDOT
  
15. Action Item. **Adjournment**

**WRRTC MAY 2021 MEETING MINUTES – DRAFT FOR APPROVAL**

**Wisconsin River Rail Transit Commission  
Commission Meeting – Friday, May 7<sup>th</sup>, 2021 at 10:00 am  
Meeting via Zoom**

1. 10:00 AM **Call to Order – Alan Sweeney, Chair**

2. Roll Call. **Establishment of Quorum – Matt Honer, Admin**

Crawford	Carl Orr, <i>2<sup>nd</sup> Vice Chair</i>	<i>Absent</i>	Jefferson	Mary Roberts	<i>Absent</i>
	Derek Flansburgh	<i>Absent</i>		John Kannard	X
	Tom Cornford	X			
Dane	Kevin Potter	X	Rock	Russ Podzilni	X
	Jeff Huttenburg, <i>Treasurer</i>	X		Wayne Gustina	X
	Chris James, <i>1<sup>st</sup> Vice Secretary</i>	<i>Absent</i>		Alan Sweeney, <i>Chair</i>	X
Grant	Gary Ranum	X	Sauk	Brian Peper	<i>Absent</i>
	Mike Lieurance	X		Dave Riek, <i>2<sup>nd</sup> Vice Treasurer</i>	X
	Robert Scallon, <i>1<sup>st</sup> Vice Chair</i>	X		Marty Krueger	X
				Tim McCumber, <i>Alternate</i>	X
Green	Harvey Kubly, <i>1<sup>st</sup> Vice Treasurer</i>	<i>Absent</i>	Walworth	Al Stanek	<i>Absent</i>
	Oscar Olson	X		Richard Kuhnke, <i>2<sup>nd</sup> Vice Secretary</i>	<i>Absent</i>
	John Buol	<i>Absent</i>		Allan Polyock	<i>Excused</i>
Iowa	Charles Anderson, <i>Secretary</i>	<i>Excused</i>	Waukesha	Dick Mace	X
	Kate Reimann	X		Richard Morris	X
	Susan Storti	X		Karl Nilson, <i>3<sup>rd</sup> Vice Treasurer</i>	X

Commission met quorum.

**Others present for all or some of the meeting:**

<ul style="list-style-type: none"> <li>Ken Lucht, Roger Schaalma – <i>WSOR</i></li> <li>Eileen Brownlee, Julia Potter - BoardmanClark</li> </ul>	<ul style="list-style-type: none"> <li>Lisa Stern, Teri Beckman, – <i>WisDOT</i></li> <li>Alan Anderson – <i>Pink Lady RTC</i></li> <li>Mark Opitz – <i>City of Middleton.</i></li> </ul>
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3. Action Item. **Certification of Meeting’s Public Notice – Noticed by Honer.**

- o *Motion to approve meeting’s public notice –Morris/Reiman. Passed Unanimously.*

4. Action Item. **Approval of Agenda – Prepared by Honer.**

- o *Motion to approve the agenda. Podzilni/Gustina. – Passed Unanimously.*

5. Action Item. **Approval of draft April 2021 Meeting Minutes – Prepared by Honer.**

- o *Motion to approve the draft April 2021 meeting minutes with minor clarifications. Cornford/Mace. Passed Unanimously.*

6. Updates. **Public Comment – Time for public comment may be limited by the Chair.**

No Public Comment.

7. Updates. **Announcements by Commissioners**

No Announcement by Commissioners.

**REPORTS & COMMISSION BUSINESS**

8. **WRRTC Financial Report – Huttenburg, Treasurer.**

Huttenburg reported one bill for payment from Dane County accounting and three receivables (WSOR, Nurtrien Ag, Crawford County). Grant and Sauk County Contributions are outstanding. Ranum stated Grant County has not received the invoice to date. Honer will follow up.

Huttenburg shared the maintenance and capital expenditures for the southern division of WSOR (WRRTC property) which shows almost \$7M was expended by WSOR on the property in 2020. Sweeney asked Brownlee if there is a responsibility to report the maintenance expenditures. Brownlee stated that she does not believe so. Sweeney stated that Jeff presenting this information is a good policy and should continue. Nilson stated the counties are getting great rate of return based on this.

Jeff suggested the Commission have WSOR pay the Illinois Real Estate and Railroad Taxes directly. Huttenburg stated that if WSOR pays these taxes directly it is only two steps. If the Commission pays the bill, it is a six-step process. Brownlee stated that if this happens, WRRTC needs to make sure

## WRRTC MAY 2021 MEETING MINUTES – DRAFT FOR APPROVAL

that the State of Illinois is crediting it correctly, rather than it falling through the cracks as has happened in the past. Honer suggested he can provide correspondence and follow up to make sure that WSOR's payments are being credited to the Commission.

- *Motion to approve the Treasurer's Report and payment of two bills. Mace/Storti. Passed Unanimously.*

### **9. Wisconsin & Southern Railroad's Report on Operations – Ken Lucht, Roger Schaalma – WSOR**

Lucht provided an update on the Janesville Bridge project and stated WSOR had a follow up with the Union Pacific regarding the ownership of bridges to discuss potential joint ownership of the UP's existing bridges that the WSOR utilizes. Lucht considered this progress. Lucht provided an update of a rail customer's investment of a new grain bin on the Fox Lake Subdivision in Zenda. Lucht reported jersey barriers were installed in Sun Prairie to address trespass and encroachment issues. WSOR finds Jersey barriers very effective in managing encroachments and trespass on the right-of-way. Lucht stated WSOR is getting ahead of the Continuous Welded Rail Project on the Prairie Sub. and approaching communities between Woodman and Avoca to consider light density public for voluntary closings by the communities. Gustina asked how many carloads per year service the facility in Zenda. Lucht stated he does not have the numbers but it is substantial and is likely close to 3-4 million bushels of grain are hauled outbound from the facility. The new facility they are building provides nearly 2 million more bushels of storage capacity. Olson asked about the reconstruction of the Highway 11 crossing in Juda. Schaalma stated that grade crossing and signals at State Hwy 11 in Juda is being replaced and is likely to be reopened in a day or two.

Schaalma reported that Bridge 226 near Fox Lake is complete and Schaalma will be sharing before and after photos in June. Tie installation on the Madison Sub. will take place in June, surfacing will follow. Fourteen at-grade crossings will be done this year by WSOR. CWR and tie plates are scheduled to arrive in June/July for the Waukesha project. Bids were opened for the Reedsburg Sub. of Phase 1 tie project, Fitchburg – Waunakee on the Reedsburg Sub. and the Cottage Grove Sub. The response was competitive and the project also includes 11 grade crossings. Bridges A494 near Bardwell (Fox Lake Sub.) will be kicking off in the coming weeks. WSOR is reconstructing a double track tie deck in Waunakee. The first bridge on the Prairie Sub. bridge project was awarded, just east of PdC, and came in under budget. There is one bridge still out for bid on the Prairie Sub. project and the remaining seven bridges of this project are being group together, as they are being replaced with culverts. Schaalma stated WSOR surpassed a three year and million manhour period without a reportable injury.

### **10. WisDOT Report – Lisa Stern - WisDOT.**

Stern stated the real estate person will be attending the next meeting. The bureau director and Kim Toller's former position are also being filled. Stern stated WisDOT is looking at the possibility of changing the grant submitted for the Janesville Bridge Project in response to UP's cooperation with addressing the issue. WisDOT is also submitting another grant for the Janesville Bridge in the case of the INFRA project is not selected. It is likely WisDOT will be coming to the Commission in June for another letter of support. Stern is working on a presentation of the recent grant projects. Sweeney extended a standing invitation to the new bureau director.

### **11. WRRTC Correspondence/Communications and Administrator's Report – Honer, Admin.**

Honer reported the City of Middleton's petition for the Aurora Street Crossing is still an open case and he has not heard anything further from the Office of the Commissioner of Railroads. Honer reported that he has had a good amount of correspondence over the past month, some were directed to WisDOT and others were regarding other railroads properties. He received some correspondence this week regarding the unauthorized use of the Commission owned bridge in Janesville and he followed up with the individual and the City of Janesville Police who informed him that the individual Honer spoke to has had discussions already with the City's Police Department. Honer also responded to requests for information about the potential return of rail on the Richland Center Subdivision.

Honer reported that he is currently working with WisDOT to determine the ownership of a bridge in Walworth County. The bridge is an old wooden humpback bridge that Commissioner Polyock provided historical minutes that indicate the Milwaukee Road sold the bridge to the local township. Honer will continue to work with WisDOT, WSOR, and Walworth County to determine ownership and maintenance responsibilities for this bridge and for other similar bridges

Honer made a site visit to Devil's Lake in Sauk County along with Lucht and Sauk County and WIDNR Staff. The discussion focused on potential solutions to addressing the trespass issue in the park and how the County intends to connect the Great Sauk Trail.

Nilson asked which road in Walworth was being considered. Honer stated it was Hillside Rd Bridge. Ranum asked for clarifications regarding the reinstallation of rail on the Richland Sub. Honer stated he provided information regarding the likely cost of investment to reinstall rail along this corridor and what number of carloads may potentially justify the investment. Lucht added justification for return of rail also includes issues other than carloads. Lucht stated that an individual did a survey of businesses in Richland County in the recent past. Alan Anderson stated the Pine River Trail is primarily utilized for snowmobile trails and encourages discussions.

### **12. Discussion and Possible Action on Private Crossing Policy – Honer, Huttenburg.**

Honer provided a report on what is considered a private crossing or a public crossing and the Commission's responsibility has been in the past. Honer stated that much of the report outlines the established process and priorities the Commission currently has. Key outstanding questions include how to monitor and license crossings that are clearly considered private crossings, how to better define the difference between a "farm crossing" and a private crossing, and how to make agreements more attainable for crossing users when appropriate.

Jeff stated there is no definition of what a private crossing is and farm crossings are vaguely defined in state statute. There are 245 crossings on the division, 53 have documented agreements, and it is likely 50% of those agreements are no longer valid due to change in ownership.

Sweeney asked Julia Potter and Eileen Brownlee if it makes sense for the Commission to develop its own policies and then submit those policies to the state legislature asking them to take action at the state level to define and put procedures behind private crossings. Brownlee stated the existing agreements don't necessarily allow WRRTC to push responsibility to the WSOR or WisDOT. Brownlee stated that asking the state legislature is a good idea, but not likely to be effective in this political climate. Sweeney asked if the Commission should offer definitions and submit them to the state in considering the possibility of future legal actions. Brownlee stated that there is some guidance at the state level but it is not entirely clear. Brownlee stated she can try and put something together but whether that can be enforceable is a question. Kevin Potter stated the WRRTC can put together rules, but without authority to enforce people are going to challenge the Commission if there is no law or administrative rules. Kevin Potter believes the Commission and WSOR should work on policy and definitions to submit to the legislature for potential administrative rules or law.

Lucht agreed there is a lack of guidance and would like to see similar guidance from the state similar to Trans 29 guidance regarding the installation of utilities. Lucht stated he provided Honer with comparisons of other Midwest state's definitions of private crossings. Lucht suggests the Commission look at drafting guidance and submitting it to the state legislature for consideration.

Brownlee stated that legislation or administrative rule making is the ideal solution but it takes a long time. There are a lot of stakeholders and the Commission needs to consider its trackage in Illinois. She believes the Commission needs to work on the policy for the near term. Brownlee stated farm crossings and public crossings are well defined, which are both ends of the spectrum, and she suggested the Commission work on defining the middle ground. Julia Potter agreed there needs to be guidance and policy for the near term. Potter stated there were a few minor tweaks and clarifications need to be made to the guidelines distributed by Honer. Potter stated the Commission is only involved with Crossings in Wisconsin due to contractual requirements not due to land ownership or operatorship, Illinois is different. Potter stated the existing operating agreements place the responsibility of the private crossings to be the WRRTC's and any change of that would require a change in all of the grant, land use, and operating agreements. Stern stated WisDOT is in agreement with Brownlee and Potter's position, and believes the current draft is a good start and WisDOT can provide additional guidance.

Nilson stated asking the state legislature to weigh in on this is a bad idea. Nilson stated the railroad needs to have a say because it is their liability and the WRRTC should provide greater guidance because they are responsible. Kevin Potter agrees the Commission needs to put together a strong guidance policy and without case law or administrative rules, special interests will continue to have influence, except it will be in the courts where the Commission has lesser influence. Sweeney stated WSOR needs some guidelines from this Commission for definitions and enforcement. Sweeney suggested starting with defining farm crossings. Julia Potter stated that farm crossings are defined and do not require much work from the Commission. She stated that farm crossings are allowed by state law and if they want anything more than a minimal crossing, a private crossing agreement is required. Mace asked if there is value in seeking definitions rather than trying to write a new code.

Honer commented that both ends of the spectrum and defined for the Commission, farm crossings and public crossings. The Commission's responsibility is to define the middle and set up priorities. Honer stated he would like to the Commission work with WisDOT and WSOR to further define the guidelines. Julia Potter stated the background principle is that private parties are not allowed to trespass on railroad property and if they are allowed to be on railroad property, there needs to be documentation to allow for it. The problem the Commission has run into recently is the Commission attempts to license crossings when it does not have a lot of leverage, so it is important to address this when the Commission has the best ability to address it.

Huttenburg stated the Commission has not recently enforced these issues and having guidelines are not very helpful without enforcement. Julia Potter stated the agreements place responsibility on WSOR for enforcement of trespass. Kannard stated the last application the Commission reviewed on the Waukesha Sub.; the applicant stated insurance requirements would have cost him \$4-5k a year and he is not in a position to afford that.

Sweeney asked if the Commission is willing to work more on the guidelines and prioritize private crossings where the Commission has leverage. Eileen and Julia agreed that would be a good idea. Mace asked where the Commission is given the authority to enter into agreements with the State and WSOR and if this authority would allow for enforcement. Brownlee stated WRRTC has the authority to compel WSOR to deal with enforcement based on the contact we have with WSOR, and this is provided by the Commission's legal ability to enter into contract. Brownlee stated that Kevin Potter's point of defining trespass is important.

Honer suggested to the Commission that he will work with WSOR, WisDOT, and Julia Potter to refine and work through the draft guidelines and priorities and bring them back to the Commission for another review. Sweeney stated this is a good way to move ahead.

### **13. Discussion and Possible Action on future in-person Commission meetings – Sweeney, Chair.**

Honer stated the results of the poll he sent out, was that the majority of the Commission would like to meet in person. The reason the Commission is not in Dane County following the poll is because the County building is not open for public meetings yet. Honer stated that Commission can hold meetings both in person and by Zoom, but it does come with problems. Honer stated that Brownlee informed him that the Commission should take action if they want to return to in person meetings. Honer also stated that he has the Jefferson County Highway Building reserved for the June Commission meeting. Sweeney asked if a dual meeting can be held in Jefferson. Honer confirmed Zoom will also be available. Mace asked if Sauk County is available for a meeting. Sauk is willing to hold the July meeting. Kannard stated the County Board room is also available in Jefferson County. Storti stated that Iowa County does dual meetings.

## WRTC MAY 2021 MEETING MINUTES – DRAFT FOR APPROVAL

Honer stated that he is happy to provide the dual meeting for the upcoming meetings but would encourage the Commission to consider the return to full in person meetings. Honer stated Zoom offers Commissioners a convenience that wasn't available prior to COVID-19 and so there has been talk of continuing to allow both in-person and zoom meetings. Honer stated he would like the Commission to have a discussion about this issue and if a commitment to being a Commission also involves a commitment to regular in-person meetings.

- *Motion to hold a meeting in Jefferson County Nilson/Morris. Passed Unanimously.*

Cornford stated he was approached by an individual who wants to offer a passenger train between Prairie du Chien and Spring Green. Cornford was advised that individual should contact WSOR.

### 14. **Adjournment.**

- *Motion to Adjourn at 11:40 pm – Cornford/Gustina. Passed Unanimously.*

**Wiscons River Rail Transit Commission**

Revenue/Expense Statement

For 5 Month(s) Ending May 2021

	WRRTC Funds	Project Funds	Total Funds	Budget 2021	Difference
<u>Revenues</u>					
WSOR Lease	25,000.00	0.00	25,000.00	50,000.00	25,000.00
Land Leases	6,117.03	0.00	6,117.03	105.00	-6,012.03
Permits	800.00	0.00	800.00	1,800.00	1,000.00
Interest WRRTC	77.38	0.00	77.38	1,000.00	922.62
Taxes Reimbursed	0.00	0.00	0.00	56,500.00	56,500.00
County-Operating Revenue	13,000.00	0.00	13,000.00	13,000.00	0
County-Project Revenue-2021		232,000.00	232,000.00	262,000.00	30,000.00
County-Project Revenue-2020*	0.00	244,500.00	244,500.00	244,500.00	0.00
County-Project Revenue-2019**	0.00	243,000.00	243,000.00	243,000.00	0.00
	*-Funds received in 2020				
	**-Funds received in 2019				
<b>Total Revenues</b>	44,994.41	719,500.00	764,494.41	871,905.00	107,410.59
<u>Expenses</u>					
General	98.48	0.00	98.48	100	1.52
Management	13,750.00	0.00	13,750.00	28,500.00	14,750.00
Accounting	2,277.59	0.00	2,277.59	4,000.00	1,722.41
Auditing	4,000.00	0.00	4,000.00	5,500.00	1,500.00
Legal	1,545.00	0.00	1,545.00	12,000.00	10,455.00
Insurance	0.00	0.00	0.00	15,800.00	15,800.00
2021 Rail Project-Balance	0.00	0.00	0.00	108,000.00	108,000.00
2021 Rail Project-WisDOT Loan Payoff	0.00	154,444.62	154,444.62	154,000.00	-444.62
2020 Rail Project	0.00	0.00	0.00	244,500.00	244,500.00
2019 Rail Project	0.00	0.00	0.00	243,000.00	243,000.00
Reimbursable Taxes	0.00	0.00	0.00	56,500.00	56,500.00
<b>Total Expenses</b>	21,671.07	154,444.62	176,115.69	871,900.00	695,784.31
<b>Net Income</b>	23,323.34	565,055.38	588,378.72	5.00	-588,373.72

**WRRTC  
Cash Flow Statement  
5/1 /21 to 5/31/21**

<b>CHECKING</b>		<b>Checking</b>				
		<b>WRRTC</b>	<b>2019 Project</b>	<b>2020 Project</b>	<b>2021 Project</b>	<b>Total</b>
	Beginning Balance	29,128.82				29,128.82
Check#	<b>DISBURSEMENTS:</b>					
1477	Johnson Block - 2020 Audit	4,000.00				4,000.00
	Total Disbursements	4,000.00				4,000.00
	<b>RECEIPTS:</b>					
	Nicor - Lease	80.00				80.00
	Total Receipts	80.00				80.00
	Ending Balance	25,208.82	-	-		25,208.82

<b>LOCAL GOV'T INVESTMENT POOL</b>		<b>WRRTC</b>	<b>2019 Project</b>	<b>2020 Project</b>	<b>2021 Project</b>	<b>Total</b>
	Beginning Balance	47,975.43	243,000.00	244,500.00	48,000.00	583,475.43
	<b>DISBURSEMENTS:</b>					
	WRRTC Checking Account (request made)	0.00	0.00	0.00	0.00	0.00
	Total Disbursements	0.00	0.00	0.00	0.00	0.00
	<b>RECEIPTS:</b>					
	Interest-April	22.09				22.09
	Sauk County				30,000.00	30,000.00
	Total Receipts			-	30,000.00	30,022.09
	Ending Balance	47,997.52	243,000.00	244,500.00	78,000.00	613,497.52
	Total Cash	73,206.34	243,000.00	244,500.00	78,000.00	638,706.34
					Double Check	<u>638,706.34</u>

**ADDITIONAL FINANCIAL INFORMATION**

**RECEIVABLES**

Crawford County (Prior Years)	39,560.00
Grant County	30,000.00

Tax Bill from McHenry County for \$42,488.46 was received and forwarded to WSOR for payment.  
(Last year's tax bill was \$51,255.40)



## Memorandum of Understanding

This Memorandum of Understanding (“MOU”) is made this 4<sup>th</sup> day of June, 2021 by and between the Wisconsin River Rail Transit Commission, PO Box 262, Platteville, Wisconsin, 53818 (“WRRTC”) and James Michael Ponder dba Drakes Only LLC (“Landowner”), whose address is 41281 N Point Drive, Antioch, Illinois 60002.

### Recitals

- A. Landowner is under contract to purchase farmland on either side of WRRTC’s right-of-way on the Fox Lake line segment of trackage located in the Township of Hebron, McHenry County, Illinois (“Property”).
- B. There is an existing crossing between the two portions of the Property across WRRTC’s right-of-way on the Fox Lake line segment of trackage at milepost 63.12, further identified as DOT/AAR Number 387906C, at the location shown on the attached **Exhibit A** (“Crossing”).
- C. Landowner seeks written confirmation from WRRTC that, based on the factual representations made to WRRTC staff by Landowner and upon Landowner’s acquisition of the Property, Landowner may continue to use the Crossing as a farm crossing in a manner consistent with Illinois law and has offered to provide an indemnity in exchange for such written confirmation, along with other good and valuable consideration.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, WRRTC and Landowner agree as follows:

- 1. **Farm Crossing.** Based solely upon the factual representations made by Landowner to WRRTC staff concerning the past and intended use of the Crossing and the Property, WRRTC understands the Crossing to be a farm crossing and therefore, under Illinois law, Landowner, upon acquisition of the Property, may continue the use of the Crossing as a farm crossing in a manner consistent with Illinois law governing farm crossings. Landowner represents and warrants that the factual representations he has made to WRRTC staff are true and correct to the best of his knowledge.
- 2. **Change in Use.** Any change in use of the Crossing or the Property that would render the Crossing no longer a farm crossing under Illinois law, or that would involve the installation of crossing improvements beyond the minimum required for a farm crossing under Illinois law, is not permitted without the express written consent of WRRTC. In such case, WRRTC will require Landowner to enter into a private crossing agreement that will include, among other things, requirements related to Landowner’s insurance and the maintenance and use of the crossing.
- 3. **Safe Use.** Landowner shall require all vehicles approaching the Crossing to stop a safe distance from the tracks before crossing the tracks. Landowner shall not do, suffer, or

permit anything to be done which may obstruct, endanger, or interfere with, or hinder or delay the maintenance and operation of WRRTC's railroad tracks or appurtenant facilities or the facilities or equipment of others lawfully using WRRTC's property. Landowner shall adequately supervise and police the use of the Crossing so that no person, vehicle, or livestock stops or stands on the railroad tracks or attempts to cross the Railroad tracks when a railroad train, engine, equipment, or car is approaching or occupying the Crossing. Landowner assumes all risk associated with the use of the Crossing.

4. **Indemnification.** Landowner assumes the risk, and irrespective of any negligence of WRRTC or its member counties, of Wisconsin and Southern Railroad Co. LLC ("WSOR"), or of the Wisconsin Department of Transportation ("WisDOT"), Landowner shall save and hold WRRTC and its member counties, WisDOT, WSOR, Watco Companies and their members, officers, employees, subsidiaries, affiliates, successors, and assigns harmless from and against all liability, damage, loss, claims, demands, and actions of any nature whatsoever which arises out of or is directly connected with, or is directly connected with, any act, omission, or operation of Landowner, servants, subcontractors, or employees, or which arises out of or is directly connected with, or arises out of any accident or occurrence which happens in or about the Crossing or WRRTC's right-of-way due to the act or omission of Landowner. The Landowner shall at its own expense, investigate all such claims and demands, attend to their settlement or other disposition, defend all actions based thereon, and pay all charges of attorneys and all other costs and expenses of any kind arising from any such liability, damage loss, claims, demands, and actions. This indemnification agreement by Landowner includes liability for the indemnitees' own negligence. The obligation contained in this Section 4 shall survive the termination of this MOU.
5. **Personal to Landowner.** This MOU is personal to Landowner, shall not run with the land, and shall not be assigned or transferred in whole or in part by Landowner without the prior written consent of WRRTC. This MOU may not be recorded with the Recorder of Deeds.
6. **Amendment.** This MOU embodies the entire agreement between WRRTC and Landowner and supersedes all prior agreements and understandings relating to the Property or the Crossing. This MOU may be amended or supplemented only by an instrument in writing executed by and with the full authority of both WRRTC and Landowner.
7. **Severability.** If any portion of this MOU is held invalid or unenforceable, then so far as is reasonable and possible, such portion shall be severed and shall be inoperative and the remainder of this MOU will be deemed valid and operative. To the greatest extent legally possible, effect will be given to the intent manifested by the portion held invalid or unenforceable. The failure by either WRRTC or Landowner to enforce against the

other any term or provision will not be deemed a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

8. **No Third-Party Beneficiaries.** Except for the indemnification in Section 4, this MOU is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third-party beneficiary, decree, or otherwise.

IN WITNESS WHEREOF, WRRTC and Landowner have caused this MOU to be executed as of the date and year first herein written.

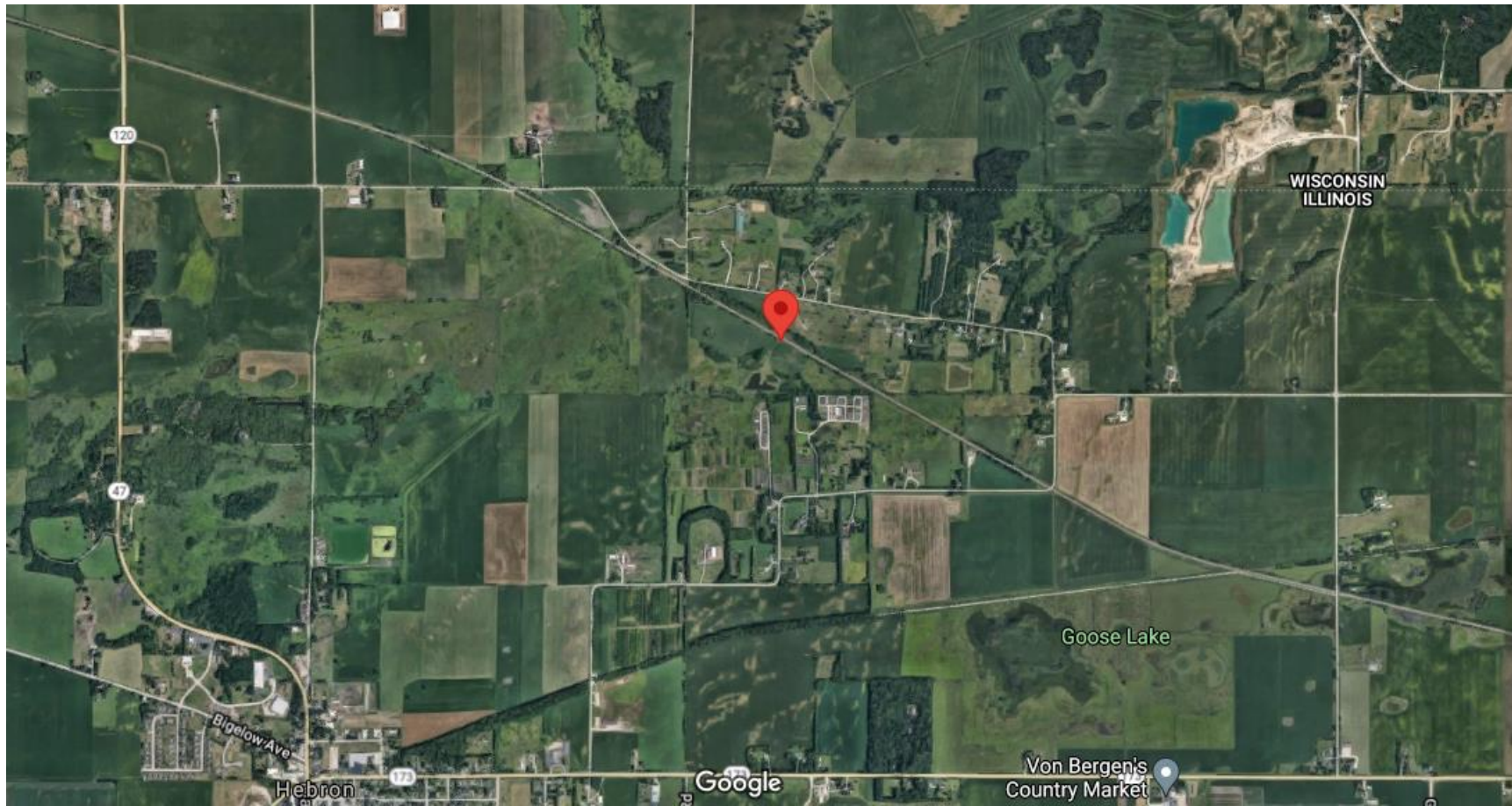
<b>Wisconsin River Rail Transit Commission</b> By:  _____ Alan Sweeney, Chairman  _____ Charles Anderson, Secretary	<b>Landowner</b>  _____ James Michael Ponder  _____ Print Name: _____ Title: _____ of Drakes Only LLC
--	---

**Wisconsin & Southern Railroad Co. LLC consents to the above MOU.**

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A: James Michael Ponder/ Drakes Only LLC Farm Crossing**





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guarantee of accuracy, completeness, or currency.

## STATE OF ILLINOIS

§ 625 ILCS 5/18c-7504. Construction of Fences, Farm Crossings, and Damages

Construction of Fences, Farm Crossings, and Damages. (1) Fencing. Every rail carrier shall, within 6 months after any part of its line is open for use, erect and thereafter maintain fences on both sides of its road or so much thereof as is open for use, suitable and sufficient to prevent cattle, horses, sheep, hogs or other livestock from getting on such railroad, provided that the other 3 sides of the property are enclosed, except at the crossings of public roads and highways, and within such portion of cities and incorporated towns and villages as are or may be hereafter laid out and platted into lots and blocks, with gates at the farm crossings of such railroad, which farm crossings shall be constructed by such rail carrier when and where the same may become necessary, for the use of the proprietors of the lands adjoining such railroad; and when such fences are not made as aforesaid, or when such fences are not kept in good repair, such rail carrier shall be liable for all damages which may be done by the agents, engines or cars of such rail carrier, to such cattle, horses, sheep, hogs or other livestock thereof, and reasonable attorney's fees in any court wherein suit is brought for such damages, or to which the same may be appealed; but where such fences have been duly made and kept in good repair, such rail carrier shall not be liable for any such damages, unless negligently or willfully done.

**DOT/AAR Number 387906C**

**Milepost 63.12 Fox Lake Subdivision**

**Photos of Existing Crossing, 5.25.21**









# WisDOT - RHS Freight Railroad Preservation Program (FRPP) Update

Lisa A. Stern, P.E.

June 6, 2021

Wisconsin River Railroad Transit Commission



# Recent FRPP State Budgets

- **FY 2015-17      \$29.8 Million**
- **FY 2017-19      \$12 Million**
- **FY 2019-21      \$30 Million**



# Active Projects in WRRTC System

Project ID	Project Name	Year	FRIP	FRPP	Local	Total
0495-45-63	Watertown Sub Track Rehab	2016	\$520,166	\$4,161,328	\$520,166	\$5,201,660
0496-74-16	Waukesha Sub CWR Phase 2 Milton to Whitewater (15 miles)	2017	\$884,410	\$7,075,280	\$884,410	\$8,844,100
0499-25-48	Prairie Sub Bridges B356 & B368	2019	\$73,925	\$591,400	\$73,925	\$739,250
0499-25-49	Fox Lake Bridges A492 & A494	2019	\$119,490	\$955,920	\$119,490	\$1,194,900
0499-70-08	Merrimac Phase 2	2019	\$333,290	\$2,666,320	\$333,290	\$3,332,900
0490-25-08	Reedsburg Sub Bridges 266 & 272	2020	\$60,762	\$486,096	\$60,762	\$607,620
0490-25-48	Prairie Sub 9 Bridges	2020	\$349,266	\$2,794,128	\$349,266	\$3,492,660
0490-70-16	Waukesha Sub Whitewater to Eagle Rail (12.5 miles)	2020	\$572,265	\$4,578,120	\$572,265	\$5,722,650
0490-71-08	Fitchburg-Waunakee Track Rehab	2020	\$613,740	\$4,909,920	\$613,740	\$6,137,400
0490-70-16	Waukesha Sub Eagle – Waukesha Rail (12.1 miles)	2021	\$559,911	\$4,479,288	\$559,911	\$5,599,110



# Merrimac Bridge Phase 2



Active and Pending WSOR FRPP Projects as of April 2021

Project ID	Project Name	Status Note
<u>Active</u>		
0495-41-38	Cambria Sub Bridge Rehab	Completion expected in 2021
0495-45-63	Watertown Sub Track Rehab	Awaiting resolution of Watertown-Dayton St stormwater issue
0496-71-16	WAUKESHA SUBDIVISION CWR PHASE 2	Awaiting completion of 3 street closures in Eagle & Palmyra
0497-70-39	BRANDON-RIPON RAIL REPLACEMENT	Siding near Oshkosh complete. Awaiting punch list completion.
0499-25-48	Prairie Sub Bridges B-356 & B-368	Recently completed
0499-25-49	Fox Lake Sub Bridges A-492 & A-494	Expected completion in 2021
0499-70-08	Rehabilitation of RR Structure 334 at Merrimac Phase 2	Completion pending
0499-70-39	RIPON TO FISK RAIL REPLACEMENT	Awaiting punch list completion
0490-25-08	Reedsburg Sub Bridges 226 & 272	Completion pending
0490-25-48	FY2020 Prairie Sub Bridges	Nine bridges. Construction beginning this year.
0490-70-16	Whitewater to Eagle Rail Replacement	Recently completed
0490-70-39	FISK to Oshkosh RAIL REPLACEMENT	Awaiting punch list completion
0490-71-08	Fitchburg-Waunakee & Madison-CG Track Rehab	Tie replacement contract has been awarded. Construction to begin spring of 2021
0491-70-16	Eagle to Waukesha Rail Replacement	Rail and Plates contract has been awarded. Construction to begin summer of 2021
<u>Pending</u>		
0491-70-08	Rehabilitation of Merrimac Bridge Phase 3	Federal INFRA grant; construction beginning in late 2021 or early 2022
0491-25-08	Reedsburg Sub Bridges FY2021	Construction beginning in 2021
0491-71-48	Crawford to Wauzeka Rail Replacement	Rail delivery begins in 2021; completion expected in 2022
0491-25-48	Prairie Sub Bridges FY2021	Construction beginning in late 2021 or early 2022
0491-25-90	Monroe Sub Bridges FY2021	Construction beginning in late 2021 or early 2022



# 2021 Award Project Details

**Waukesha Subdivision Phase 5 Rail Replacement** — The project has been awarded a FRPP grant of up to \$4,479,288 and a FRIIP loan up to \$559,911 to replace existing rail with 115-lb. CWR on 12.1 miles of track between Eagle and Waukesha.

**Prairie Subdivision Phase 2 Rail Replacement** — The project has been awarded a FRPP grant of up to \$4,055,826 and a FRIIP loan up to \$506,978 to replace existing rail with 115-lb. continuous welded rail on 10.6 miles of track between Crawford and Wauzeka.

**Prairie Subdivision Bridge Replacement** — A FRPP grant up to \$933,647 and FRIIP loan up to \$166,706 have been awarded to replace bridge B-338½ with a culvert and replace bridges B-344 and B-344½ with new steel trestles on the Prairie Subdivision.

**Reedsburg Subdivision Bridge Rehabilitation and Replacement** — A FRPP grant up to \$618,852 and FRIIP loan up to \$77,357 have been awarded to replace bridge 341¼ with a culvert, replace the span of bridge 363 with a new span and rehabilitate its abutments, and rehabilitate bridge 368 on the Reedsburg Subdivision.

