

Resolution to create the Betsie Valley Trailway Management Council
Approved by the Benzie County Board of Commissioners
July 21, 1998

Moved by Pitcher

Supported by Walterhouse

RESOLVED:

That the Betsie Valley Trailway Management Council (BVTMC) is hereby created as an agency of the Benzie County Board of Commissioners, for the purpose of managing, operating and maintaining the Betsie Valley Trail, a trailway as defined in Act 451 of the Public Act of 1994, as amended.

BVTMC will have the legal authority as provided by Public Act 451 of 1994, Part 721, as amended, and may enter into Interlocal Agreements as provided by the Urban Cooperation Act, P.A. 7 of 1967, as amended and other pertinent statutes with full responsibility to carry out the responsibilities described below.

SECTION I: PURPOSE

The BVTMC is created with the powers, functions and duties provided herein for the purposes of planning, developing, operating and maintaining a multi-use recreational trailway within Benzie County and shall have the right to approve any land use consistent with the use of, the management of, and the purposes of a trailway on lands which come under jurisdiction of the BVTMC. The use, management and purpose of said Trailway shall be consistent with the health, safety and welfare of the public as defined within Act 451 of 1994, Part 721, as amended, and for the portion therein described shall also be in accordance with the Consent Judgment in the case of Bigelow et al, attached hereto as Attachment A.

The Trailway shall consist of the Betsie Valley Trail constructed on the former Ann Arbor Railroad corridor in Benzie County, and such other adjacent related properties as may hereafter be submitted to the jurisdiction of the BVTMC which are consistent with the health, safety and welfare of the public, in the best interest of the State, and declared to be a public purpose as defined within Section 72102 of Act 451 of 1994, Part 721, and accepted by the BVTMC, for management.

The BVTMC shall be a public body corporate having the powers and duties as set forth in this Resolution, subject to the limitations set forth.

SECTION II: MEMBERSHIP

MEMBER UNITS of the BVTMC shall be those governmental units which have a written agreement with the BVTMC to transfer to the BVTMC limited use of property in a form acceptable to BVTMC for inclusion in the Trailway and managed by the BVTMC, under all of the terms hereof. The BVTMC may require, as a condition of membership, a fair contribution agreement between the BVTMC and any proposed MEMBER UNIT if the BVTMC determines that such an agreement is necessary to provide fair allocation of costs among present and proposed MEMBER UNITS. This Agreement and any agreement entered into or obligation incurred by any MEMBER UNIT in accordance with this agreement shall be binding upon that MEMBER UNITS successor in interest, if any.

SECTION III GOVERNANCE

A. COUNCIL:

1. The BVTMC shall be composed of the following members:
 - a. Five (5) persons appointed by the Benzie County Board of Commissioners, two of whom shall be nominated by the Crystal Lake Property Rights Association or its designated successor;
 - b. One person from the Michigan Department of Natural Resources, a MEMBER UNIT of the BVTMC.
 - c. One person representing each of the other participating MEMBER UNITS, appointed by the legislative or governing body of the member unit;
2. Each council member shall serve a term of four (4) years, except that of the members first appointed, one (1) shall serve for one (1) year; two shall serve for two (2) years; and one (1) shall serve for three (3) years except for members first appointed whose term shall include also that fraction of a year preceding their first January 1st in office.
3. Council Members shall serve at the pleasure of their MEMBER UNITS and may be removed by resolution of the MEMBER UNIT governing board.
4. Any vacancy on the BVTMC arising for any reason shall be filled by appointment of the MEMBER UNIT governing board that made the original appointment, within forty-five (45) days of the vacancy, for the remainder of the unexpired term.
5. The Benzie County Board of Commissioners, the Crystal Lake Property Rights Association, the MDNR and each MEMBER UNIT governing board may also appoint an alternate council member who shall serve with full privileges and duties in the absence of the regular member.

B. OFFICERS

1. The BVTMC shall elect from its membership a Chairperson, Vice Chairperson, Secretary, Treasurer and such other officers as it may deem appropriate. Each shall serve a term of one (1) year commencing January 1st, except for the officers first elected whose term shall include also that fraction of a year preceding their first January 1st in office.
2. Officers shall serve at the pleasure of the BVTMC and may be removed by resolution of 2/3 of those appointed and serving.
3. Vacancies in any office shall be filled by BVTMC election within thirty (30) days of the vacancy, for the remainder of the unexpired term.
4. The BVTMC Chairperson shall preside at all meetings of the BVTMC and shall have all privileges and duties of a BVTMC member.
5. The Vice Chairman shall preside at all meetings of the BVTMC at which the chairperson is absent.
6. The BVTMC Secretary shall keep or cause to be made all non-financial reports, records and minutes required by this Agreement or applicable law and shall be charged with assuring compliance with notice requirements of the Michigan Open Meetings Act and the Michigan Freedom of Information Act.

7. The BVTMC Treasurer shall have control of all BVTMC funds, including appropriations from grants, gifts, bequests and/or surplus funds which shall be deposited, invested, and/or disbursed by the Treasurer as directed by the BVTMC in accordance with SECTION 6: FINANCE, as set forth below. The treasurer shall be charged with assuring complete financial records and reports as required by this Agreement or applicable law or contract provisions.

SECTION IV: MEETINGS

A. SCHEDULE OF MEETINGS

1. The BVTMC shall meet at least quarterly and shall annually establish a regular meeting schedule which shall be posted at the offices of the MEMBER UNIT governing boards in similar form and within similar times as required by law for governmental meeting schedules.

2. Special meetings of the BVTMC may be called by the Chairperson, or in the absence of the Chairperson, by the Vice Chairperson.

B. NOTICE

Five (5) days written notice of all regular meetings and 48 hours written notice of all special meetings shall be given to each BVTMC member with an agenda for that meeting. All notices of all meetings shall also be posted as required by the Michigan Open Meetings Act.

C. RULES

Roberts Rules of Order, when not in conflict with this agreement or written standing rules which the BVTMC may adopt, shall govern all meetings.

D. QUORUM

A simple majority of those appointed and serving shall constitute a quorum.

SECTION V: POWERS

A. GENERAL POWERS

The BVTMC shall have the following powers, authority and obligations:

1. All powers set forth in Section 5 of Public Act 7 of 1967, as amended and as hereafter amended.

2. Plan, develop, implement, build, improve, operate and maintain a recreational trailway on land or easements owned by the Michigan Department of Natural Resources (MDNR) and designated as the Betsie Valley Trail and on land owned by other MEMBER UNITS, provided such land is or will be contiguous to or is part of the BETSIE VALLEY TRAIL. The MEMBER UNIT owning such land must indicate in writing that it wishes that land to come under the jurisdiction of the BVTMC for these purposes and accepted by the BVTMC. The agreement between the BVTMC and the MEMBER UNIT shall describe the specific uses of the land the MEMBER UNIT is transferring to the BVTMC and any restrictions which may apply.

3. Purchase, lease, receive, acquire, hold title in, trade, sell, lease or rent to others, dispose of, divide, distribute, own or exercise right of dominion over, and exercise the aforesaid powers over other property, real or personal, and any improvements thereon. The disposition of real property shall have the approval of the Board of Commissioners. The disposition of property acquired with state or federal funds shall have the approval of the state or federal agency involved, if required by the agency. All property under authority of the BVTMC shall be used solely for the purposes stated in this agreement.
4. Contract or cooperate with other governmental units, or private parties, as appropriate to carry out the functions and/or fulfill obligations of the BVTMC; employ agencies and employees, and hire such personnel as it may be determined necessary.
5. All contracts of the BVTMC which are of a routine nature and for which budgeted funds are available may be approved in the sole discretion of the BVTMC. Contracts which, if approved, shall result in additional contributions from the parties being necessary to keep the annual budget in balance, or contracts or actions which would constitute debts, liabilities or obligations of any party, shall be presented to each affected party for approval prior to being executed.
6. Accept funds, user fees, voluntary work, or other assistance to carry out BVTMC functions or obligations, from any source, public or private, including, but not limited to, local governmental funding of specific projects, state and federal grants, and private donations. A complete record of all funds from all sources shall be maintained and made part of the annual financial report.
7. Establish in addition to the state land rules (state lands other than state parks and recreation areas, R299.331 through 299.335 of the Michigan Administrative Code), and the Land Use Orders of the Director of the MDNR, additional policies and rules governing use of the Betsie Valley Trailway land or facilities.
8. Apply for and receive grants from federal, state and private sources for purposes consistent with the terms of this Agreement. MEMBER UNITS shall co-sign applications for grants and/or contracts for construction on their property before they may be submitted.
- 9.. Recommend local ordinance provisions and signage to MEMBER UNITS, as necessary, to provide for the safety of the public using trailway land or facilities, and to enhance the public purpose of the Betsie Valley Trailway. Require compliance with the provisions contained in the Consent Judgment in Bigelow et al V. MDOT et al (Attachment A). MEMBER UNITS will be responsible for signage on their property.
10. Request federal, state or other funds payable to the one or more MEMBER UNITS or the BVTMC appropriate to carry out the BVTMC functions.

B. LIABILITY COVERAGE

1. Each MEMBER UNIT shall hold harmless and indemnify the BVTMC and the other MEMBER UNITS from any and all causes of action, including reasonable attorney's fees, and for which that MEMBER UNIT is liable.
2. The BVTMC shall procure a policy of liability insurance or otherwise obtain coverage for public liability through self insurance or otherwise and shall name each of the MEMBER UNITS as named insured.
3. Each MEMBER UNIT agrees that in the event liability is established beyond the amount of the policy limits as set forth in the liability coverage, that liability, to the extent it is assessed against MEMBER UNITS shall be several and in accordance with

an allocation formula related to the relative trailway mileage owned by each MEMBER UNIT.

C. REPORTS

The BVTMC shall, at least annually, make a full and complete report of all its activities to the Board of Commissioners and to the governing boards of all MEMBER UNITS.

D. LIMITATIONS

The BVTMC shall have no power or authority to levy any tax or issue any bonds in its own name, obligate any MEMBER UNIT in any way except as provided in this agreement and except as provided by law or condemn any land for any purpose.

SECTION VI: FINANCE

A. FISCAL YEAR

The fiscal year of the BVTMC shall be from January 1st to December 31st.

B. OPERATING BUDGET

The BVTMC shall each year develop an operating budget sufficient to allow it to meet its functions and obligations. Except for operating expenses the BVTMC agrees to pay, each MEMBER UNIT will be responsible for all expenses of property it owns. The County of Benzie shall maintain office facilities and specifically designated personnel for operation of the BVTMC and for operating and maintaining the Betsie Valley Trailway, in accordance with the budget developed by the BVTMC and approved by the Benzie County Board of Commissioners.

Funds specified for operation of the trailway will be deposited with the County Treasurer in a separate BETSIE VALLEY TRAILWAY MANAGEMENT COUNCIL FUND and will be used only for the Trailway in a manner approved by the BVTMC.

C. PROJECT BUDGETS

The BVTMC shall develop separate project budgets, as it deems appropriate, for all other costs and may recommend and contract with MEMBER UNITS or other parties as necessary to pay such costs.

D. FINANCIAL AUDITS AND REPORTS

The Treasurer shall make or cause to be made a full and complete financial report to MEMBER UNITS of all financial transactions and affairs of the BVTMC at the end of each fiscal year. Said report shall include a complete audit by a certified public accountant. State and federal audit requirements shall be fully met as applicable.

SECTION VII: TERMINATION AND DISSOLUTION

A. MEMBER UNIT TERMINATION

A MEMBER UNIT may terminate its membership not less than ninety (90) days after giving written notice to the BVTMC, pursuant to the resolution of said MEMBER UNIT'S governing body. A MEMBER UNIT terminating its membership shall remain liable for all obligations incurred by it pursuant to this agreement and prior to termination.

B. BVTMC DISSOLUTION

If the Department of Natural Resources and/or Benzie County terminate their membership, the Betsie Valley Trailway will cease as an entity and the BVTMC shall be considered dissolved.

1. Upon dissolution, property owned by a former MEMBER UNIT and any improvements thereon shall remain in the ownership of that unit of government. The use of the trailway components and any improvements thereon shall remain subject to all applicable deed restrictions and applicable provisions of law or contract.
2. After dissolution, if any former MEMBER UNIT fails to honor obligations made under the stipulations of this Agreement, any of the other former MEMBER UNITS shall have cause to enforce compliance, provided, however, that failure to seek enforcement of any provision shall not constitute a waiver.
3. Upon dissolution, surplus funds shall revert to the Benzie County Board of Commissioners.

SECTION VIII: RECORDS

Meetings of the BVTMC shall be open to the public, and the BVTMC shall retain records and conduct its affairs in accordance with the Open Meeting Act, act 267, Public Acts of Michigan, 1976, as amended, and the Freedom of Information Act, Act 442, public acts of Michigan, 1976, as amended.

SECTION IX: AMENDMENTS

This agreement may be amended in whole or in part by written agreement of all of the MEMBER UNITS.

ATTACHMENT

A. BIGELOW ET AL V. MDOT ET AL CONSENT AGREEMENT