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April 28, 2025

Pottawattamie County Board of Supervisors
Pottawattamie County Courthouse, 2nd Floor
227 S. 6th Street
Council Bluffs, IA 51501

Re: County Attorney Written Opinion Re: Sale or Lease of Crescent Hill

Members of the Board:

Upon request, I have reviewed the legality of the Board of Supervisors to either sell or lease Crescent Hill at Hitchcock to an outside party. The short answer is that the Board of Supervisors does not have the legal authority to consider any disposition of this property.

Initially, I would note that the property in question was purchased with a combination of a grant from the Iowa West Foundation and the use of ARPA funds. Any attempt for the County to divest itself of this property would necessarily have to involve communication with both the Iowa West Foundation and the federal government to ensure both compliance with the implied and express terms of those grants.

With regard to the Iowa West Foundation, a sale or lease of this property to an outside party after such a sizable grant would jeopardize future grant opportunities if Iowa West was not supportive of such a transfer of rights. This may not be a strictly legal impediment, but a failure to honor the spirit of an agreement from such an important partner to Pottawattamie County would be disappointing at best and could cause significant financial harm to the County at worst.

With regard to the federal government, the U.S. Department of Treasury has particular asset disposition rules which may require federal approval and/or repayment of federal funds used in

the original purchase by the County. Again, a failure to consult with the federal government prior to executing a purchase or lease agreement would be legally problematic at best.

An additional issue is the potential for litigation from private citizens alleging a violation of the “public trust doctrine.” Traditionally, the public trust doctrine is a legal principle that protects public lands and natural resources, particularly those meant for public use, recreation, and environmental conservation. Historically, the public trust doctrine protected access to navigable waters. The Iowa Supreme Court has been hesitant to expand the doctrine too expansively; however, in some cases it has been applied to parks and conservation areas. Of concern in Pottawattamie County to this particular parcel of real estate is that it is part of a globally significant landform – the Loess Hills. It may be possible (or even likely) that the County would prevail in arguing against the extension of the public trust doctrine to Crescent Hill, but it is almost certain that litigation to formally determine the issue would take a number of years to finally resolve.

There are also some procedural legalities which must be observed prior to consideration of any agreement of this type. Iowa Code 331.361(2) requires that any disposition of county property by sale or by lease of more than three years be preceded by a public hearing regarding the proposal. Such public hearing must be held after publication of a proposed resolution and the resolution would then have to be passed by the Board of Supervisors prior to execution of any purchase or lease agreement.

All of these preliminary considerations notwithstanding – the property is not the Board’s to sell. While the land is technically titled in the name of Pottawattamie County, Iowa Code 350.4 gives “custody, control and management” of the property to the county conservation board. An Iowa Attorney General opinion on the topic makes the issue clear: **“[T]he county board of supervisors can not sell county park lands without a determination by the county conservation board that the park lands proposed for sale are no longer needed for park purposes.” Opinion No. 74-5-11.**

My understanding is that the county conservation board has had a strategic plan in place since at least 1997. The long-term plan is for the Hitchcock Nature Center to incrementally add targeted parcels of land as they become available in order to eventually be able to reintroduce bison and elk to the property. Indeed, the discussion of this strategic plan was a significant part of the Board’s discussions back in 2021 when the land upon which Crescent Hill sits was being purchased. Crescent Hill has been managed by park full-time and seasonal staff for longer than three years and the Board of Supervisors took the additional step of establishing an Enterprise Fund for the operation of Crescent Hill by the Conservation Department as well.

If the Board of Supervisors is interested in exploring different options for the management of Crescent Hill, the county conservation board needs to be a part of those discussions. Regardless, the Board of Supervisors is legally obligated to get the approval of the county conservation board before entering into any agreement which could affect the “custody, control and management” of the property in question.

In conclusion, without the support and consent of the conservation board, Pottawattamie County does not have the legal authority to enter into any agreement regarding the disposition of Crescent Hill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew D. Wilber", with a stylized, flowing script.

Matthew D. Wilber
Pottawattamie County Attorney