

Enrolled 157-60
PROPOSED ORDINANCE 157-61

APPROVE CONTRACT WITH THE WISCONSIN DEPARTMENT OF
AGRICULTURE, TRADE AND CONSUMER PROTECTION TO PARTICIPATE
IN THE CONSERVATION RESERVE ENHANCEMENT PROGRAM (CREP)

WHEREAS research shows that vegetative buffers along the shores of lakes and streams can significantly reduce water pollution caused by stormwater runoff from urban and agricultural lands, and

WHEREAS the Waukesha County Board of Supervisors on February 23, 1999 approved the Waukesha County Land and Water Resource Management Plan, which targeted activities to encourage shoreland buffers, and

WHEREAS the United States Department of Agriculture (USDA) and Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) jointly administer grants to agricultural landowners for the installation of shoreland buffers through the Conservation Reserve Enhancement Program (CREP) program, which is eligible in 51 counties in Wisconsin, including Waukesha County, and

WHEREAS for landowners in the targeted counties to be eligible for the additional grants offered through CREP, each county must enter into a contract with DATCP to provide technical and administrative services, using existing state grant funds aimed to support the implementation of their county land and water resource management plan, and

WHEREAS DATCP has offered a contract to Waukesha County that currently commits \$400,000 in state bonding funds to pay agricultural landowners in the county for shoreland buffers, with future contracts/amendments likely.

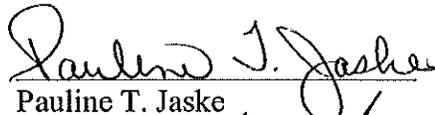
THE BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the County Executive is authorized to enter into necessary contracts with Wisconsin Department of Agriculture, Trade and Consumer Protection for the purpose of administering the Conservation Reserve Enhancement Program in Waukesha County, contingent on the program eligibility boundaries being expanded to include the Fox River Watershed in Waukesha County.

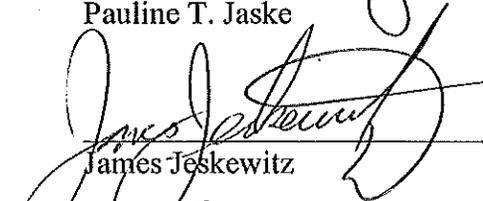
BE IT FURTHER ORDAINED that the Director of Parks and Land Use or designee is authorized to execute this program on behalf of the County, including the approval of landowner payments and the acceptance of perpetual easements for buffers that, in the opinion of the Land Use Parks and Environment Committee, may help implement county greenway plans as described in the Waukesha County Park and Open Space Plan.

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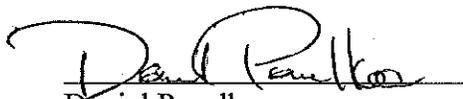
Presented by:
Land Use, Parks, and Environment Committee


Walter L. Kolb, Chair


Pauline T. Jaske


James Jeskewitz

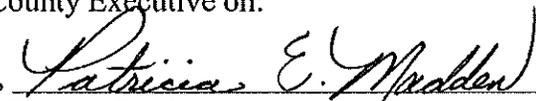

Scott J. Klein


Daniel Pavelko


Vera Stroud


Matt Thomas

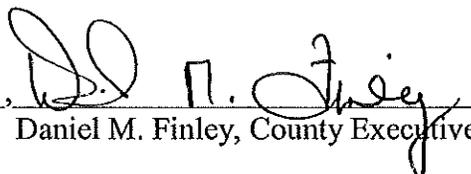
The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: October 11, 2002 
Patricia E. Madden, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved:

Vetoed:

Date: 10-18-02 
Daniel M. Finley, County Executive

WISCONSIN CONSERVATION RESERVE ENHANCEMENT PROGRAM CONTRACT

The Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) and

Waukesha County enter into the following contract concerning the Wisconsin conservation reserve enhancement program.

Contract Period	Contact Name, Title, Phone Number, and Address
10/01/2001 to 2/15/2005	Perry Lindquist Land Resources Manager 262-896-8300
Spending Authority \$400,000	Waukesha County Land Resources Division 1320 Pewaukee Road, Room 260 Waukesha WI 53188-3868

The Wisconsin Department of Agriculture, Trade and Consumer Protection ("DATCP") and Waukesha County ("County") enter into this contract to provide conservation reserve enhancement program ("CREP") grants to county landowners, through the Office of the County Executive or designee, up to the specified spending authority in this contract and subject to the conditions specified in this contract.

Funds under this contract are from the sale of tax-exempt general obligation State of Wisconsin bonds, issued under the provisions of s. 93.70, Wis. Stats., and the appropriation account under s. 20.866(2)(wf), Wis. Stats., to improve water quality, erosion control and wildlife habitat through participation in the United States Department of Agriculture (USDA) CREP, under 16 USC 3834(f)(4).

This contract, including the attached appendices A, B and C, constitute the entire contract between DATCP and the County for administration of the Wisconsin CREP. This contract supersedes any prior communications or understandings related to the subject matter of this contract. The parties may agree in writing to amend this contract, prior to the ending date of this contract.

I. THE COUNTY AGREES TO:

A. STAFFING.

Provide staff and necessary support costs to implement CREP on eligible lands within the boundaries of the County as specified on the map (Appendix B), up to a maximum commitment determined by the County. The County may seek reimbursement for these costs from DATCP through the soil and water resource management grant program up to the amount and provisions of the County's annual grant allocation award included in the approved annual allocation plan. Nothing in this contract requires the County to hire additional staff to perform the activities required under the contract. The County staff shall provide services related to CREP as outlined in sections B. through G.

157-0-064

B. CREP STATE APPLICATION PROCESS.

Assist landowners in completing the state CREP application, and any required attachments including the federal W-9 form, for the state portion of CREP. The County shall include the tax parcel identification number and an acceptable location description for each parcel(s) to be entered into CREP. The location description must be at least to the level of the quarter quarter section ($\frac{1}{4}$, $\frac{1}{4}$ sec). The County will also provide a copy of a county 2000 aerial orthophoto with the applicable parcel(s) delineated for inclusion with the file.

C. CREP STATE 15-YEAR AGREEMENT PROCESS.

Assist landowners, as applicable, with completion of state 15-year agreement forms. USDA, Farm Services Agency (FSA) makes the initial determination of eligibility for CREP. The County shall enter into 15-year state CREP agreements with a landowner, only after receipt of an approved USDA form CRP-1, executed by the FSA county committee. The 15-year agreement shall be executed on forms provided by DATCP. The County may assist USDA in monitoring compliance with the 15-year agreement; USDA is primarily responsible to monitor lands during the term of the federal CRP/CREP contract.

D. CREP PERPETUAL CONSERVATION EASEMENT PROCESS.

Assist landowners, as applicable, with completion of the state perpetual conservation easement forms. USDA-FSA makes the initial determination of eligibility for CREP. The County shall notify an applying landowner, upon receipt of the completed and signed USDA form CRP-23 from FSA, that a title search report on the applicable parcel(s) is required to further process the application for the easement. The County shall notify the landowner that the costs of a title search are reimbursable only upon execution and recording of the perpetual conservation easement. The County shall then also obtain a location coordinate digital file (Arcview Shapefile®). This file shall be collected using Global Positioning System (GPS) methods and equipment. The County will obtain coordinates for each point used for defining the perpetual easement parcel(s). The points shall be expressed as latitude and longitude in decimal degrees. Each location will start at a commencing point, which is defined as a Public Land Survey System (PLSS) Monument. The USDA, Natural Resource Conservation Service (NRCS) may assist counties in obtaining the GPS location coordinate information as a part of their efforts to locate federally enrolled parcels. In lieu of the above, the County may use other easement location protocols mutually agreed upon between the County and DATCP.

Forward, upon receipt, the approved CRP-2 and CRP-23 forms, executed by the FSA county committee, the title search report and the GPS information, on computer disk, for the applicable parcel(s), to DATCP, along with the completed state application form, the signed W-9 form, the tax parcel identification number and any orthophoto map. DATCP will develop a legal description for the applicable parcel(s) and a perpetual conservation easement document, which it will return to the County for execution. (See section II, C.)

Enter into perpetual conservation easements with a landowner, only after receipt from DATCP of the perpetual conservation easement document with the applicable legal description(s), and receipt of the applicable CRP-1 form. At its option, the County may elect to request that the state, rather than the County, hold the perpetual conservation easement. The County shall declare its intent to hold the easement itself, or request that the state hold it, in writing, at the time it submits the materials to DATCP for the development of the legal description and easement document. The County shall notify the landowner that the costs of recording are reimbursable. If the easement is held by the state, the County shall return the original document to DATCP for execution, after its signing by the County and the landowner.

Submit to DATCP, for execution and recording, the original perpetual conservation easement executed by the County and the landowner if the state will hold the easement, along with the landowner's check made out to the County register of deeds for the recording fee.

Forward to the County register of deeds for recording, the original perpetual conservation easement if the County will hold the easement, along with the landowner's check made out to the register of deeds for the recording fee.

Assist USDA, as desired, in monitoring compliance with the perpetual conservation easements during the first 15 years; USDA is primarily responsible to monitor lands during the 15-year term of the federal CRP/CREP contract. If the County holds the perpetual conservation easement on the lands, the County is then responsible to monitor the lands, after the 15-year period, in perpetuity.

E. CREP STATE PAYMENT REQUEST PROCESS.

Calculate the payment requests under the state CREP for landowners approved to participate in the Wisconsin CREP. The County shall use only payment request forms provided by DATCP. It is understood that the County has no direct expenditure authority in connection with this contract and that all payments shall be handled as two party checks in the name of Waukesha County and the landowner. The County Executive has authorized the Director of the Department of Parks and Land Use and the Land Resources Manager to endorse all CREP related payments from DATCP on behalf of Waukesha County.

Submit the payment requests for state incentive payments and any practice payments for conservation practices to DATCP as follows:

1. All incentive payment requests for 15-year agreements shall be submitted only after the 15-year agreement is fully executed. The request shall include the following attachments: the 15-year agreement, the completed state CREP application form, the completed federal W-9 form, a copy of the CRP-1 form, the applicable tax parcel identification number(s) and any orthophoto map. The County shall also include the completed environmental benefit report for the parcel(s). (See paragraph 5 below.)
2. All incentive payment requests for perpetual conservation easements held by the County shall be submitted only after the easement is fully executed and recorded. The request shall include the following attachments: a copy of the paid invoices for the title search report, a copy of the perpetual conservation easement document, clearly indicating the recording information and the fees for such recording, and the completed environmental benefit report for the parcel(s).
3. All incentive payment requests for perpetual conservation easements held by the state shall be submitted to DATCP at the time the County submits the title search report and GPS or other locational information. The request shall include the following attachments: a copy of the paid invoices for the title search report, and the completed environmental benefit report for the parcel(s).
4. All practice payment requests shall be submitted only after installation of the FSA cost-shared conservation practices, if any. The request shall include the following: the completed and executed USDA form AD-862 from FSA.
5. All environmental benefit reports shall be made on forms provided by DATCP. The report shall include: the amount of phosphorus, nitrogen and sediment annually estimated to be removed from the future runoff on the parcel as a result of installation of the conservation practices; an estimate of the miles of stream buffered (as applicable); and the acres of grassland established with the grassland project areas (as applicable). The County shall report information by project area (grassland or riparian), by watershed, and by name of the immediate downstream water body.

Submit all payment requests to DATCP in a timely manner, and no later than February 15, 2005.

Endorse over to the appropriate landowner any and all two party payments received by the County from DATCP regarding CREP. The County shall authorize one or more individuals of its choosing to endorse these CREP payments.

F. CREP STATE QUARTERLY REPORTING PROCESS.

Provide DATCP, on a quarterly basis (by January 15, April 15, July 15 and October 15, 2002; January 15, April 15, July 15, and October 15, 2003; January 15, April 15, July 15 and October 15, 2004; and January 15

and April 15, 2005), or more frequently at the request of DATCP, the following materials regarding implementation of CREP during the previous 3-month period:

1. A copy of any completed state CREP application and all attachments, not previously submitted.
2. A copy of any completed, and executed, state CREP 15-year agreement, not previously submitted.
3. A copy of any completed, and executed, perpetual conservation easement that the County will hold, or the original completed, and executed, perpetual conservation easement if the County is requesting that DATCP hold the easement, and all required attachments, not previously submitted.
4. Any outstanding request for CREP payment, not previously submitted. The County may send the CREP payment requests into DATCP at any time with the required supporting documents, but submission must be at least quarterly. Any request for payment for installation of any necessary conservation practices must include a copy of the USDA form AD-862 signed by an authorized agricultural engineering practitioner. State payments will be made only after receipt of such certification that installation met USDA standards.
5. A copy of a summary of County costs to implement CREP that includes County staff costs and any other County costs during the previous 3-month period.

G. CREP RECORDS RETENTION AND DISTRIBUTION PROCESS; PROGRAM RESTRICTIONS.

Send copies of the state application forms (with all attachments except the W-9 form), signed state 15-year agreements, and signed perpetual conservation easements to FSA, as completed and executed. The County shall also send copies of completed state application forms, without the W-9 attachment, to NRCS.

Receive, retain and provide access to federal and state CREP documents as specified in section I., RECORDS; ACCESS in Appendix A.

Execute any 15-year agreements and any perpetual conservation easements only upon receipt of the applicable, approved CRP-1 from FSA, executed before January 1, 2003. Any CRP-1 executed after December 31, 2002, is void and the state CREP application process is thereby terminated.

Hold execution of all 15-year agreements and perpetual conservation easements, and the applicable payment requests associated with those agreements and easements, to a cumulative total that does not exceed the County's spending authority under this contract.

II. DATCP AGREES TO:

A. Issue two party payments to the County and the landowners in a timely manner after receipt of a valid payment request under section I. E. and all required attachments, for approved grants for eligible conservation practices and other eligible payments, except that the combined total payments issued cannot exceed the spending authority specified in this contract. (Appendix C lists the conservation practices and any other payments that are eligible for state funds under CREP.) DATCP may make payments in installments, and may make payments on a partially completed conservation practice if the partially completed conservation practice has independent conservation benefits, and complies with the CREP agreement. All requests for payment under this contract must be received by DATCP before February 15, 2005, or they are barred from payment.

B. Provide the County with copies of the following: the state CREP application form, the state 15-year agreement form, the state/county perpetual easement form, the federal W-9 form, the state payment request forms, the state environmental benefit report form, and the state quarterly report form.

C. Determine, upon receipt from the County of the location coordinate information, state application with required attachments, CRP-2, CRP-23, and the title search report for proposed perpetual easement parcels, the eligibility of the parcel(s) for a perpetual conservation easement under the state CREP program. If eligible, DATCP will provide the County with the applicable legal description for the parcel(s) and the perpetual conservation easement document. If any ambiguities, encumbrances or title defects are found in the review of the materials provided by the County, DATCP will contact the County in an attempt to resolve

the issues before declaring the parcels ineligible for perpetual conservation easement. Parcels declared ineligible for perpetual easement may be enrolled in the state 15-year agreement.

D. Forward to the County register of deeds for recording the fully executed perpetual conservation easement, when the easement is held by the state, along with the landowner's check for the recording fee.

E. Acknowledge that the County may set fees for services to offset the County's administering of CREP. The CREP applicant will be responsible for fee payment. The County Board shall be responsible for setting fee policy and schedule. Any funds collected from CREP applicants will not be applied to offset expenses that are funded by DATCP SWRM allocation

F. Support the expansion of CREP eligibility boundaries to include the entire Fox River Watershed within Waukesha County.

III. TERM OF THE CONTRACT.

This contract takes effect upon signing by both parties and ends on February 15, 2005.

State of Wisconsin
Department of Agriculture, Trade and
Consumer Protection

Authorized County Signature

Signed By	Signed By
James E. Harsdorf, Secretary Department of Agriculture, Trade and Consumer Protection	Dale R. Shaver Director, Department of Parks & Land Use Waukesha County
Date	Date

APPENDIX A

STANDARD CONTRACT PROVISIONS

I. RECORDS; ACCESS:

The COUNTY will keep records of the COUNTY'S activities under this contract, including records of all funds received and spent, and proof of COUNTY endorsement of DATCP checks. The COUNTY will keep financial records according to generally accepted accounting principles and practices.

The COUNTY will keep the following records, for each individual landowner, for at least 3 years past the termination date of the state CREP agreement or the federal CREP agreement, whichever occurs later: USDA Conservation Reserve Program Worksheet, CRP-2; USDA Conservation Reserve Program Contract, CRP-1; Notice Regarding CRP Accepted Offers, CRP-23; Notice of Unaccepted Offer, CRP-26; Notice of Contract Approval, CRP-24; USDA Request for Cost-Share, AD-245; USDA Conservation Reporting and Evaluation System, AD-862.

The COUNTY will keep the following records relating to perpetual conservation easements, in perpetuity, for each individual landowner: USDA Conservation Reserve Program Worksheet, CRP-2; USDA Conservation Reserve Program Contract, CRP-1; USDA Conservation Reporting and Evaluation System, AD-862; CREP Perpetual Conservation Easement, ARM-LWR-281.

The COUNTY will make the records available to DATCP or its designee for inspection, audit and copying upon request. The COUNTY will provide proper facilities for the inspection, audit or copying. In the event of a dispute involving any records, DATCP may require the COUNTY to keep those records for an additional period of time specified by DATCP.

II. ASSIGNMENT:

The COUNTY may not assign, delegate or subcontract any portion of this contract without the prior written consent of DATCP.

III. INDEPENDENT CONTRACTOR:

The COUNTY and its employees and agents, are an independent contractor for all purposes, including workers' compensation, and are not an employee or agent of DATCP or the State of Wisconsin.

IV. INDEMNIFICATION:

Each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, boards, agencies, commissions, agencies, officers, and representatives and shall be responsible for any losses, claims, and liabilities which are attributable to such acts, errors, or omissions 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. It is not the intent of the parties to impose liability beyond that imposed by state statutes.

V. NONDISCRIMINATION:

In connection with the performance on work under this contract, the COUNTY, agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical conditions, developmental disability, sexual orientation, or national origin, as

defined in section 51.01(5), Wis. Stats. 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 COUNTY further agrees to take affirmative action to ensure equal employment opportunities.

The COUNTY agrees to post in conspicuous places, available for employees and applicants for employment, notice of this nondiscrimination clause. DATCP will provide the COUNTY with a copy of the notice. Failure to comply with the conditions of this clause may result in the COUNTY being declared an "ineligible" COUNTY, termination of the contract, or withholding of payment.

VI. AFFIRMATIVE ACTION:

The COUNTY is exempt from the requirement of submitting a written affirmative action plan.

VII. APPLICABLE LAW:

The laws of the State of Wisconsin shall govern this contract. The COUNTY shall at all times comply with all federal, state, and local laws, ordinances, and regulations in effect during the period of this contract. The COUNTY shall not use money received under this contract for any illegal activities.

VIII. ANTI-TRUST ASSIGNMENT:

The COUNTY and DATCP recognize that, in actual economic practice, overcharges resulting from anti-trust violations are in fact usually borne by DATCP. Therefore, the COUNTY hereby assigns to DATCP any and all claims for such overcharges as to goods, materials, or services purchased in connection with this contract.

IX. LOBBYING:

The COUNTY may not use funds received under this contract, directly or indirectly, for lobbying activities of any kind. Materials printed, reproduced or distributed under this contract may not advocate a particular position on any state legislation or state agency action, nor may they encourage the recipient to contact or lobby any state legislative or agency official for lobbying purposes.

X. TERMINATION OF CONTRACT:

Either party may terminate this contract by giving at least 30 days prior written notice to the other party. DATCP reserves the right to cancel any contract, in whole or in part, without penalty, due to non-appropriation of funds or the COUNTY'S failure to comply with this contract. Termination of this contract by DATCP does not obligate the COUNTY to pay funds to landowners regarding 15-year agreements or perpetual conservation easements.

XI. AUDIT:

DATCP may conduct an audit of COUNTY operations and administration of grant payments under this contract, and any additional audits it deems necessary.

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-10/08/02

(ORD) NUMBER-1570064

1 K. HERRO.....AYE
 3 D. STAMSTA.....AYE
 5 J. MARCHESE.....AYE
 7 J. JESKEWITZ.....AYE
 9 P. HAUKOHL.....AYE
 11 K. HARENDA.....AYE
 13 J. MORRIS.....
 15 D. SWAN.....AYE
 17 J. BEHREND.....AYE
 19 M. SONNENTAG.....AYE
 21 W. KOLB.....AYE
 23 P. PRONOLD.....AYE
 25 K. CUMMINGS.....AYE
 27 D. PAULSON.....AYE
 29 M. THOMAS.....AYE
 31 V. STROUD.....AYE
 33 D. PAVELKO.....AYE
 35 C. SEITZ.....AYE

2 R. THELEN.....AYE
 4 H. CARLSON.....AYE
 6 D. BROESCH.....AYE
 8 J. DWYER.....AYE
 10 S. WOLFF.....
 12 J. GRIFFIN.....AYE
 14 J. LA PORTE.....AYE
 16 R. MANKE.....AYE
 18 D. FANFELLE.....NAY
 20 M. KIPP.....NAY
 22 G. BRUCE.....AYE
 24 A. SILVA.....AYE
 26 S. KLEIN.....AYE
 28 P. JASKE.....AYE
 30 K. NILSON.....AYE
 32 P. GUNDRUM.....AYE
 34 R. SINGERT.....AYE

TOTAL AYES-31

TOTAL NAYS-02

CARRIED X

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-33