

Enrolled 158-8
~~PROPOSED ORDINANCE 158-7~~

HINTZ PROPERTY WETLAND MITIGATION PROJECT

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5 WHEREAS the Donald L. Hintz Property Acquisition was adopted by the Waukesha, County
6 Board of Supervisors on October 10, 2000, and
7

8 WHEREAS the Department of Parks and Land Use, Land Resources Division partnered with the
9 State of Wisconsin, Department of Natural Resources and the Fox River Commission to initiate a
10 wetland/mitigation project for said property, and
11

12 WHEREAS Jerald L. Wuhrman and Hillcrest Development and Building, Inc have entered into a
13 consent agreement and final order (CAFO) with the United States Environmental Protection
14 Agency regarding the mitigation of wetlands allegedly destroyed at the property known as the
15 Hillcrest Development in Waukesha, Wisconsin, and
16

17 WHEREAS Jerald L. Wuhrman and Waukesha County wish to enter into an agreement to satisfy
18 the CAFO order through the implementation of the Hintz Property Restoration Plan Agreement,
19 (refer to Exhibit 1), and
20

21 WHEREAS said work is to be performed by Retzer Nature Center staff and volunteers as a part
22 of their normal duties and responsibilities over a three-year period of time, and
23

24 WHEREAS Jerald L. Wuhrman has agreed to provide funds in the amount of \$50,000 to cover
25 the projected cost to implement the Hintz Property Restoration Plan, and
26

27 WHEREAS enrolled Waukesha County ordinance 152-99 provides that annual non-levy
28 revenues in excess of 20 percent of direct Retzer Nature Center operating expense be transferred
29 to the Tarmann Fund at year end.
30

31 THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES
32 ORDAIN that the Waukesha County Department of Parks and Land Use be authorized on behalf
33 of Waukesha County to execute the Hintz Property Restoration Plan at a cost no greater than
34 \$50,000.
35

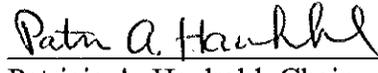
36 BE IT FURTHER ORDAINED that monies received for completion of the Restoration Plan be
37 deposited in the Retzer Nature Center Revenue Account 010-106400-9750.

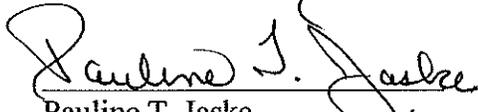
HINTZ PROPERTY WETLAND MITIGATION PROJECT

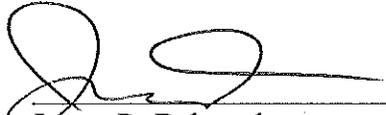
Presented by:
Land Use, Parks and
Environment Committee

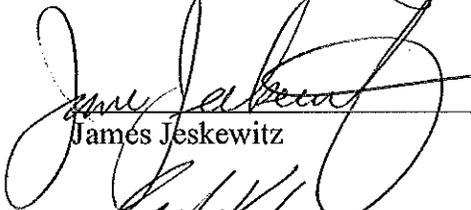
Approved by:
Finance Committee


Walter L. Kolb, Chair


Patricia A. Haukohl, Chair


Pauline T. Jaske

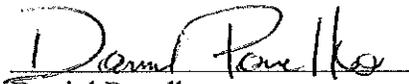

James R. Behrend

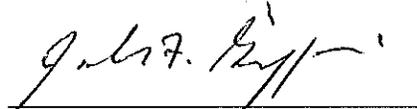

James Jeskewitz

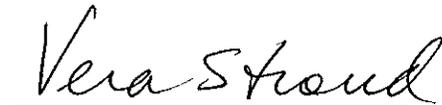

Donald M. Broesch

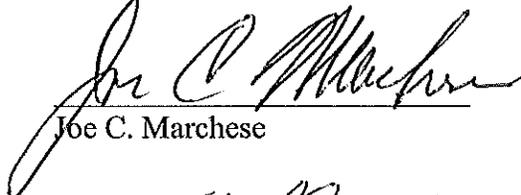

Scott J. Klein

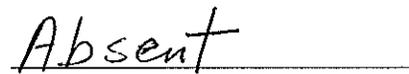

Genia C. Bruce

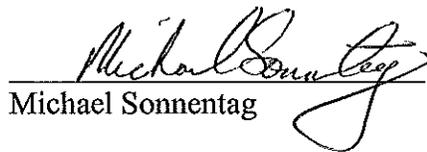

Daniel Pavelko


Joseph F. Griffin

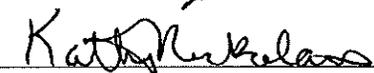

Vera Stroud


Joe C. Marchese


Matt Thomas

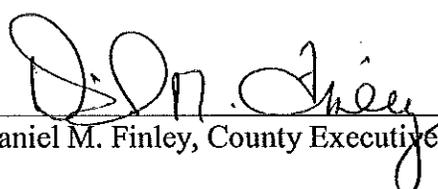

Michael Sonnentag

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

Date: May 16, 2003, 
Kathy Nickolaus, County Clerk

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

Approved:
Vetoed:

Date: 5-16-03, 
Daniel M. Finley, County Executive

158-0-004

EXHIBIT "A"

Hintz Property Restoration Plan & Cost Estimate

Install Perimeter Fire & Patrol Breaks	16 days	03/20/2003 8:00	04/10/2003 17:00	\$600.00
Maintain Perimeter Fire & Patrol Breaks	174 days	04/01/2003 8:00	11/28/2003 17:00	\$750.00
a. June Maintenance Mowing	21 days	06/02/2003 8:00	06/30/2003 17:00	\$350.00
b. August Maintenance Mowing	21 days	08/01/2003 8:00	08/29/2003 17:00	\$350.00
c. Monthly Patrol	174 days	04/01/2003 8:00	11/28/2003 17:00	\$50.00
Maintain Existing Gravel Lane	66 days	05/14/2003 8:00	08/13/2003 17:00	\$1,800.00
a. Road Maintenance	23 days	07/01/2003 8:00	07/31/2003 17:00	\$300.00
b. Patrol & Mow Road Shoulder	66 days	05/14/2003 8:00	08/13/2003 17:00	\$1,500.00
1. May	1 day	05/14/2003 8:00	05/14/2003 17:00	\$500.00
2. June	1 day	06/18/2003 8:00	06/18/2003 17:00	\$500.00
3. August	1 day	08/13/2003 8:00	08/13/2003 17:00	\$500.00
Burn Management or Mowing Management	522 days	08/29/2003 8:00	08/26/2005 17:00	\$3,030.00
a. Burn or Brush Hog Mowing	177 days	08/29/2003 8:00	04/30/2004 17:00	\$2,500.00
1. The equivalent of one to two clean burns will be accomplished				
b. Flail Mowing of Brush Suckers				
c. Monitoring & Preparation of 3 Progress Reports				
1. Progress reports to be submitted by the end of each calendar year.	10 days	08/02/2004 8:00	08/13/2004 17:00	\$330.00
Selective Weed Control By Hand	521 days	09/01/2003 8:00	08/26/2005 17:00	\$200.00
a. 2003	677 days	04/15/2003 8:00	11/15/2005 17:00	\$7,390.00
b. 2004	154 days	04/15/2003 8:00	11/14/2003 17:00	\$2,475.00
c. 2005	153 days	04/15/2004 8:00	11/15/2004 17:00	\$2,475.00
Selective Brush Control By Hand	153 days	04/15/2005 8:00	11/15/2005 17:00	\$2,440.00
a. 2003	527 days	08/01/2003 8:00	08/05/2005 17:00	\$1,100.00
b. 2004	21 days	08/01/2003 8:00	08/29/2003 17:00	\$400.00
c. 2005	21 days	08/02/2004 8:00	08/30/2004 17:00	\$400.00
Transplanting 80 Cordgrass Plants	4 days	08/02/2005 8:00	08/05/2005 17:00	\$300.00
a. Transplant 80 Cordgrass Plants	281 days	05/21/2003 8:00	06/15/2004 17:00	\$1,600.00
b. Monitor Plantings	263 days	05/21/2003 8:00	05/20/2004 17:00	\$1,400.00
Seeded Plantings of Cordgrass	262 days	06/17/2003 8:00	06/15/2004 17:00	\$200.00
a. Seeded Plantings of Cordgrass	99 days	06/01/2004 8:00	10/15/2004 17:00	\$1,990.00
b. Monitor Seeded Plantings	22 days	06/01/2004 8:00	06/30/2004 17:00	\$1,590.00
Accelerate Plant Succession / Interplant Native Wet Meadow Species	99 days	06/01/2004 8:00	10/15/2004 17:00	\$400.00

a. Interplant Native Grasses, Rushes, Sedges and Forbs From Adjacent Property	396 days	04/14/2003 8:00	10/15/2004 17:00	\$22,000.00
b. Maintain transplanted material	396 days	04/14/2003 8:00	10/15/2004 17:00	\$14,000.00
Transplant Trees / Shrubs From Our Adjacent Properties	396 days	04/14/2003 8:00	10/15/2004 17:00	\$8,000.00
a. Labor and Maintenance of 150 plants	135 days	04/12/2004 8:00	10/15/2004 17:00	\$3,500.00
b. Heart-leaved Willow, Swamp Oak, etc Plantings	135 days	04/12/2004 8:00	10/15/2004 17:00	\$3,300.00
c. Monitor Plantings	135 days	04/12/2004 8:00	10/15/2004 17:00	\$0.00
Plant Purchased Native Trees in Northeast Borderlands	135 days	04/12/2004 8:00	10/15/2004 17:00	\$200.00
a. Labor to plant & maintain native trees	135 days	04/12/2004 8:00	10/15/2004 17:00	\$6,240.00
b. Purchase 55 Wisconsin Tamarack & 25 Black Ash	135 days	04/12/2004 8:00	10/15/2004 17:00	\$4,290.00
c. Monitoring	135 days	04/12/2004 8:00	10/15/2004 17:00	\$1,750.00
				\$200.00

Total Cost

\$50,000.00

158-0-004

ESCROW TRUST AGREEMENT TO RECOVER
COSTS OF MITIGATION WORK (rev 2/7/03)

Parties: Waukesha County
Hillcrest Development and Building, Inc.
Jerald L. Wuhrman

To: Wisconsin Title Insurance Company

WHEREAS, Jerald L. Wuhrman (JLW) and the United States of America on behalf of the United States Environmental Protection Agency (EPA) entered into a Consent Agreement and Final Order (CAFO) on _____, 2003, regarding mitigation of wetlands allegedly destroyed at the property known as the Hillcrest Development in Waukesha, Wisconsin, a copy of which is attached as Exhibit 1; and,

WHEREAS, pursuant to that CAFO restoration and/or mitigation work is to be performed on the Hintz Property wetlands by County and located in Waukesha County, Wisconsin (Wetlands) and owned by the County; and,

WHEREAS, pursuant to that CAFO, Hillcrest Development and Building, Inc. (Hillcrest), JLW and the Waukesha County Department of Parks and Land Use (County) entered into the Hintz Property Restoration Plan Agreement (Plan) dated _____, 2003, a copy of which is attached as Exhibit 2; and,

WHEREAS, the Plan defines the scope of restoration on the 42 acre Hintz parcel and outlines the activities the escrow can be used for in satisfying JLW mitigation obligations to the EPA; and,

WHEREAS, pursuant to the Plan between JLW and the County, JLW agreed to provide funds to the County for the cost of certain work to be performed by the County implementing the Plan; and,

WHEREAS, JLW shall contribute funds in the amount of \$50,000 through this Agreement for completion of the Plan; and,

WHEREAS, the parties to the CAFO now wish to implement the Plan by providing the County and their successors, as managers of the Wetlands, with available funds from this Escrow Trust Agreement to cover the JLW portion of the expenses of restoration, mitigation and maintenance of the Wetlands; and,

WHEREAS, JLW agrees to set up an escrow account in which JLW will deposit \$50,000.00 for the purpose of carrying out the Plan; and,

WHEREAS, upon execution of the Plan and pursuant to the CAFO, JLW shall relinquish all right, claim, and title to the funds to be deposited in the escrow account.

158-0-004

NOW, THEREFORE, in consideration of mutual covenants contained herein, JLW and the County agree as follows:

1. Upon full execution of this Escrow Agreement, JLW will deposit in escrow with Wisconsin Title Insurance Company, via wire transfer, \$50,000.00 to be delivered to the Escrow Trustee for the County, or their EPA-approved successors upon the following conditions:
 - a. After entry of the CAFO court order, and at such time as the Escrow Trustee receives from a Property Manager an itemized written statement, which statement sets forth in reasonable detail to whom money in the escrow account shall be disbursed, for what services rendered and in what amount, Escrow Trustee shall disburse said amount to the specified payee within five days of the Property manager's submission of said statement. Each Property Manager agrees to send EPA a copy of any statement(s) sent to the Escrow Trustee at the same time said statement(s) is sent to the Escrow Trustee.
 - b. Escrow Trustee shall deliver up to a total of \$50,000.00 plus any accrued interest on the escrowed amounts to the Property Manager as set forth in Section 1 (a) above.
 - c. At such time that the total sum contained in the escrow account has been delivered to the Property Managers or their designated payees, Escrow Trustee shall notify the Property Managers and the EPA in writing that the escrow account has been exhausted.
2. The Escrow Trustee is hereby expressly authorized to comply with and obey and all orders, judgments, or decrees entered or issued by any courts requiring the escrow deposit. In the event that said Escrow Trustee obeys or complies with any such order, judgment or decree, the Escrow Trustee shall not be liable to any of the parties to this Agreement or any other person or entity by reason of such compliance.
3. The mailing addresses of the parties are:

Jerald L. Wuhrman &
Hillcrest Development and Building, Inc.
154 Commodore Drive
Jupiter, FL 33477
Phone: 561-747-2200
Fax: 561-745-7347

158-0-004

Dale Shaver
Waukesha County Department of Parks and Land Use
1320 Pewaukee Road, Room 260
Waukesha, WI 53188
Phone: 262-896-8300
Fax: 262-896-8298

4. Any notice to or correspondence with EPA regarding this Escrow Agreement or disbursement of funds shall be directed to:

United States Environmental Protection Agency, Region 5
Gregory Carlson (WW-16J)
77 West Jackson Boulevard
Chicago, IL 60604-3590

5. Deposits made pursuant to these instructions may be invested on behalf of any party or parties to this agreement, provided: (a) that any direction to the Escrow Trustee for such investment shall be expressed in writing and contain the consent of all other parties to this escrow; (b) that Escrow Trustee is in receipt of JLW taxpayer identification number and investment forms as required; and (c) that JLW consent shall not be required after, and its right, if any, to direct investment shall terminate upon, entry of the CAFO court order.
6. Except as to deposits of funds for which the Escrow Trustee has received written direction concerning investment or other handling, the parties to this Agreement agree that the Escrow Trustee shall be under no duty to invest or reinvest any deposits at any time held by it pursuant to this Agreement; and further, that Escrow Trustee may commingle such deposits with other deposits or with its own funds in the manner provided for the administration of funds under the Wisconsin Banking and Finance Act and may use any part or all such funds for its own benefit without obligation to pay any party for interest or earnings derived thereby, if any; Provided, however, that nothing herein shall diminish Escrow Trustee's obligation to apply the full amount of the deposits in accordance with this Agreement.
7. No claim of a default shall be valid if the party making same is itself in default, unless said default is caused by a failure of the other party to take some action required by the escrow trust.
8. Wherever under the terms and provisions of this Agreement the time for performance of a condition falls upon a Saturday, Sunday, or holiday, such time for performance shall be extended to the next business day.

This Escrow Agreement may be executed in counterparts by the parties designated above. The parties have fully executed this Agreement as of the _____ day of _____, 2003.

158-0-004

JERALD L. WUHRMAN

HILLCREST DEVELOPMENT AND
BUILDING, INC.

Printed:

WAUKESHA COUNTY DEPARTMENT
OF PARKS AND LAND USE

Printed:

ACCEPTED AND AGREED THIS _____ DAY OF _____, 2003

WISCONSIN TITLE INSURANCE COMPANY

BY:

Printed:

Title:

158-0-004

Hintz Property Restoration Plan Agreement

WHEREAS, Jerald L. Wuhrman and Hillcrest Development and Building, Inc. (JLW) has entered into a Consent Agreement and Final Order (CAFO) with the United States Environmental Protection Agency Region 5 which requires the mitigation of Property owned by Waukesha County (County) known as the Hintz property, and

WHEREAS, the County and JLW wish to enter into an agreement for the purpose of implementing the Hintz Property Restoration Plan in accordance with Exhibit A, attached, and

WHEREAS, the parties to this agreement have agreed to an escrow arrangement according to which JLW will deposit \$50,000.00 to fund and Waukesha County will implement the plan outlined in Exhibit A, and

WHEREAS, the Escrow Agreement between the parties is attached as Exhibit B.

THEREFORE, the parties agree as follows:

1. The County will implement the Hintz Property Restoration Plan over a 3-year period and has a total projected budget of \$50,000.00.
2. Simultaneous with the execution of this agreement and execution of the Escrow Agreement, JLW will deposit the sum of \$50,000.00 with the Escrow Agent to compensate the County for the costs to implement Exhibit A.
3. The County will timely notify the EPA of work completed and will otherwise comply with all terms of Exhibits A and B and shall keep the subject site in conservancy in perpetuity.
4. The EPA will monitor the County's implementation of the plan and County will provide a minimum of three annual reports in 2003, 2004, and 2005 regarding implementation and will certify completion of the work identified in Exhibit A in accordance with the provisions of Exhibit B.
5. In the event that the County fails to undertake and complete the work delineated in the attached mitigation plan, the portion of activity designated towards JLW's contribution will be undertaken and completed by JLW in a timely manner upon written demand by the EPA. In the event that JLW undertakes a task that the County fails to perform or complete, JLW shall promptly notify the EPA project coordinator in writing requesting to draw on funds from escrow and identifying the work to be completed by JLW.

Dated this _____ day of _____, 2003.

Waukesha County
Dale Shayer, Director
Department of Parks and Land Use

Hillcrest Development and Building, Inc
Jerald L. Wuhrman

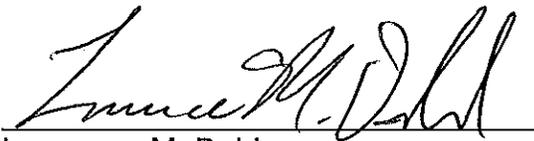
FISCAL NOTE

HINTZ PROPERTY WETLAND MITIGATION PROJECT

This ordinance authorizes the Department of Parks and Land Use to undertake a wetland mitigation project funded by Jerald L. Wuhrman and Hillcrest Development and Building, Inc. in satisfaction of a consent agreement and final order (CAFO) between Hillcrest and the U.S. Environmental Protection Agency. Under the order, Wuhrman will deposit \$50,000 in an escrow account with Wisconsin Title Insurance Company. The Parks and Land Use Department will draw on these funds over the course of the three-year project (2003-2005).

No additional expenditure authority is being appropriated through this ordinance, as the Department anticipates performing the necessary work within annual operating budget appropriations included in the Retzer Nature Center budget for 2003. The department indicates that they will not require any additional resources, over base 2003 expenditures, to continue the program in 2004 and 2005.

Pursuant to Enrolled Ordinance 152-99, annual Retzer Nature Center revenue in excess of 20% of direct operating costs is transferred to the Tarmann Fund at year-end. These additional revenues, to the extent they cause Retzer revenue to exceed 20% of annual operating costs, will be transferred to the Tarmann Fund.



Lawrence M. Dahl
Accounting Services Manager

LMD
4/14/03

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158-0-004

WAUKESHA COUNTY BOARD OF SUPERVISORS

EO 158-8

V

DATE-05/13/03

(ORD) NUMBER-1580004

- 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.....AYE
- 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.....AYE
- 12 J. GRIFFIN.....AYE
- 14 J. LA PORTE.....AYE
- 16 R. MANKE.....AYE
- 18 D. FANFELLE.....
- 20 M. KIPP.....
- 22 G. BRUCE.....AYE
- 24 A. SILVA.....AYE
- 26 S. KLEIN.....AYE
- 28 P. JASKE.....AYE
- 30 K. NILSON.....AYE
- 32 P. GUNDRUM.....
- 34 R. SINGERT.....AYE

TOTAL AYES-32

TOTAL NAYS-00

CARRIED X

DEFEATED _____

UNANIMOUS X

TOTAL VOTES-32