

WISCONSIN DEPARTMENT OF ADMINISTRATION

APPROVAL OF THE FINAL TOWN OF BURKE, VILLAGE OF DeFOREST,
CITY OF SUN PRAIRIE, AND CITY OF MADISON COOPERATIVE PLAN

May 2007

Introduction

The boundary change pursuant to approved cooperative plan procedure as set forth in s. 66.0307, Wis. Stats., affords any combination of cities, villages and towns the opportunity to establish boundary lines and services between or amongst themselves pursuant to a cooperative plan and agreement approved by the Wisconsin Department of Administration (Department). Municipalities interested in learning more about this statute are encouraged to review explanatory materials available upon request from the Department. This is the nineteenth cooperative plan submitted to, and approved by, the Department.

On February 5th, 2007, the Department of Administration received the *Final Town of Burke, Village of De Forest, City of Sun Prairie, and City of Madison Cooperative Plan*, dated January 5, 2007, (hereinafter called either the "Agreement," "Plan," "Cooperative Plan," or "Cooperative Plan Agreement"). This Agreement was preceded by resolutions authorizing participation in the preparation of a cooperative plan pursuant to s. 66.0307, Wis. Stats., variously dated February 6th through 9th, 2006, and the required joint public hearing was held August 10, 2006.

The purpose of this complex four-way Agreement is to address the existing fragmented nature of the Town of Burke and establish new, mutually agreed upon boundaries for the two cities and one village that, at the end of the Protected Period, will result in the eventual dissolution of the Town of Burke. To that end, this Agreement establishes a basis for intergovernmental cooperation, provides for an orderly transition of Town territory to the Village of DeForest, City of Madison and City of Sun Prairie, authorizing the two cities and village to exercise their respective statutory official map, extraterritorial zoning and subdivision jurisdiction within their respective Boundary Adjustment Areas, and preserves the Town's financial viability while it remains a Town. This agreement provides for the eventual dissolution of the Town through gradual owner-driven transition after a "protected period" of approximately 30 years.

This Agreement takes effect upon approval by the Department and terminates at 12:01 a.m. on October 27, 2036 (the "Transition Date").¹ A detailed discussion of the purposes, issues, problems, and opportunities that led to this 30-year transition period are discussed in Section 4 beginning on page 6 of the Agreement.² During the pendency of the agreement, the Town retains full and independent governmental authority throughout the Town, agreeing to "... exercise that authority in good faith in order to protect the Town's interests and to assure that the Town's finances and property are in reasonable condition for transfer to DeForest, Madison, and Sun Prairie at the end of the Protected Period."³ Throughout the Agreement certain specified obligations, not limited to those described in Sections 8 (relating to sanitary sewer and water service) and 17 (relating to job continuity for town employees), will remain in force beyond the termination date.

The affected territory and Final Boundary Adjustment Area is shown on the Cooperative Plan map submitted with the Agreement as Exhibit 3. The territory affected by this plan is located entirely within the Town of Burke, Dane County, Wisconsin (Town 8 North, Range 10 East).

¹ "Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan," p. 9, by Final Attachment Ordinances for which the Town can seek specific performance in the event one of the three parties fails to adopt their ordinance, pp. 27-28

² Id.

³ Id., p. 9

Subsequent paragraphs of this approval document will describe the Agreement in more detail. It is important to understand that this approval document is not a complete restatement of the Agreement, nor should it be construed as containing all of the nuances and conditions of the Agreement. Instead, this approval document is designed to examine the ways in which this Cooperative Plan and Agreement *complies* with the Department's approval requirements. This narrative touches mainly on the principal components of the Agreement, not the specific details. Specific details can be found in the text of the document. This approval document is prepared pursuant to s. 66.0307(5)(a), Wis. Stats., which requires that the Department review cooperative plans and issue findings based on criteria found in s. 66.0307(5)(c), Wis. Stats.

Before cooperative plans are submitted to the Department, a joint public hearing conducted by the parties to the agreement in order to receive public comment is required. Pursuant to s. 66.0307(4)(a), Wis. Stats., a joint public hearing was held by the four parties to the Agreement on August 10, 2006.⁴ The hearing record following Exhibit 13 of the Agreement indicates that 29 individual registrations were received and 18 speakers provided testimony during the hearing. In addition the hearing record contains approximately 170 pages of written submissions and petitions. A subsequent nine-page staff report titled "Public Comment Report on proposed Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan" outlines salient issues discussed at the hearing, and describes how the four participating municipalities considered the comments and briefly summarizes the subsequent revisions to the Agreement: These changes include extending the term of the agreement by 11 years, eliminating an "early termination" provision unless a full Plan amendment occurs, addressing concerns about special assessments for public infrastructure, and providing greater flexibility and opportunity for refining eventual open-space separation requirements between Madison and Sun Prairie.⁵

Attachment 1 of the Agreement contains copies of authorizing resolutions approved by the City and Town, and identifies the governmental units that were provided notice pursuant to s. 66.0307(4), Wis. Stats. They include the Wisconsin Department of Natural Resources (WisDNR), Wisconsin Department of Transportation (WisDOT), the Wisconsin Department of Agriculture, Trade and Consumer Protection (WisDAICP), Dane County Planning and Development Department, 15 area school districts, 52 municipal clerks, 21 sewerage and sanitation districts, the county clerk, the Ho-Chunk Nation, and this Department.

Following local approval of a cooperative plan, an advisory referendum on plan adoption may be conducted by the governing bodies of the participating municipalities if requested by qualified electors. In this instance, no formal advisory referendum was requested prior to submission of this Cooperative Plan and Agreement to the state.

After the Department receives a cooperative plan for review and approval, a public hearing may be requested by any person, or the Department may, on its own motion, conduct a public hearing. In this instance, although a number of affected individuals or representatives of groups contacted the Department and raised questions or concerns about the Agreement prior to receipt of the Agreement by the Department, no such request for public hearing has been

⁴ Id., Attachment 3

⁵ Memorandum entitled "Public Comment Report on proposed Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan" dated December 20, 2006, by James M. Voss, et al., to Mayor Cieslewicz and Members of the Common Council, p. 9

received by this Department,⁶ and the Department believes that the purpose of this Agreement is clear and that the information submitted to the Department by the four participating parties is sufficiently adequate so that no additional public hearing is necessary.

Description of Territory Subject to the Cooperative Plan and Boundary Adjustment Methodology

Boundary adjustment area

The territory contained in the Cooperative Plan constitutes the entire remaining territory of the Town of Burke, Dane County, Wisconsin (T8N, R10E). A recent small annexation of Town of Burke territory in the far SW corner to the Village of Maple Bluff preceded the municipal resolutions adopting the Plan and forwarding it to the Department for review. This last-minute annexation was anticipated by the parties and does not affect this Agreement that identifies Boundary Adjustment Areas containing territory that ultimately transfers to DeForest, Sun Prairie, and Madison (see the map Exhibits 3 and 4 of the Agreement).

Methods and conditions of transfer of territory

In addition to defining the circumstances under which landowners within the respective Boundary Adjustment Areas may seek attachment by DeForest, Sun Prairie, and Madison, the Agreement also provides that the municipal parties may "... by agreement with Burke and the affected property owner, detach lands to Burke in order to consolidate parcels under common ownership into a single jurisdiction."⁷

While each of the three respective Boundary Adjustment Areas share similar provisions for transfer of Burke territory, such as allowing property owners outside of "Protected Areas" to determine the timing of the transfer upon acceptance by the particular municipality without limitation,⁸ and requiring all remaining property to transfer at the expiration of the Agreement (the end of the "Protected Period"), there are subtle differences between the three incorporated jurisdictions. Acceptance of attachments within the Boundary Adjustment Area-DeForest is at the discretion of the Village, territory within the Protected Areas must wait until the end of the Agreement before attaching; transfer by attachment within the Boundary Adjustment Area-Sun Prairie and Boundary Adjustment Area-Madison is similarly worded, except that territory from a Protected Area in the Boundary Adjustment Area-Sun Prairie may attach at any time provided approval is received from both Burke and Sun Prairie.

Within the Boundary Adjustment Area-Madison for that portion lying within the DeForest Area School District, Section 3.3 of the Agreement provides for an annual building permit allocation limitation in order to accommodate public school planning by the district.⁹ The parties provide that this allocation may be reviewed and modified by mutual agreement of De Forest and Madison through a s. 66.0301, Wis. Stats., intergovernmental agreement.

Approval Criteria Applicable to the Department

⁶ Section 66.0307 (5) (b), Wis. Stats., provides 10 days following receipt of the Cooperative Plan by the Department within which a hearing may be requested by any person.

⁷ Id., Section 3, p. 3. In a similar vein, the parties agree not to attach territory (except as part of the Final Attachment, or as otherwise provided) to the two cities and village without the express approval of the property owners. See p. 27.

⁸ Id., p. 26.

⁹ Id., the allocation formula is explained on pp. 4-5; maintaining this allocation also responds to a shared concern held by other municipalities who are part of the De Forest School District.

A cooperative plan shall be approved by the Department if the Department determines that all of the following numbered criteria from s 66.0307(5)(c), Wis. Stats., apply:

(1) The content of the plan under sub. S. 66.0307(3)(c) to (e) is sufficient to enable the Department to make the determinations under subs. 2 to 5m.

This Cooperative Plan and Agreement contains sufficient information to enable the Department to approve it. Information required by statute, and provided by the parties, includes the following: Identification of current land use conditions of the territory designated by the proposed agreement; identification of a time period specifying the duration of the cooperative agreement, identification of boundary change areas and the conditions for the changes and when they may occur; a statement as to why the boundary area is appropriate; the availability of services and the method for provision of services to the identified territory; maps that sufficiently identify the area of the Cooperative Plan; fiscal activities necessary for the planned territory are stated; potential environmental consequences of the Plan have been considered and evaluated; housing activities within the area affected by the Plan are described; all permits, ordinances and sources of jurisdiction necessary are identified for plan activities to occur within the territory – either before or after attachment to the city; the Plan and other submissions contain evidence that opportunities for public, municipal, and public agency comments were provided during preparation of the plan; and finally, the Plan is deemed consistent with applicable state and federal codes, and with adopted city, town, county and regional plans.

(2) The cooperative plan is consistent with current state laws, municipal regulations and administrative rules that apply to the territory affected by the plan.

The Boundary Adjustment Areas will be consistent with and governed by applicable City, County and Town general ordinances and plans as described in Sections 7 and 18 of the Agreement, beginning on pages 12 and 51, respectively. These and other sections of the Cooperative Agreement enumerate particular ordinances, including street graphics control, stormwater management, special assessment, as well as ordinances and county/regional plans prepared by the former Dane County Regional Planning Commission (DCRPC) such as the “Dane County Land Use and Transportation Plan” and “Water Quality Management Plan” that will continue to apply until revised or replaced within territory covered by the agreement. In addition, the territory remains subject to transportation improvements recommended by the existing Madison Area Metropolitan Planning Organization (MPO). In addition, individual comprehensive plans, popularly known as “smart growth” plans complying with s. 66.1001, Wis. Stats., for the territory contained by this Plan, have been prepared and adopted by the Town of Burke, the Village of De Forest, and the City of Madison. City of Sun Prairie is currently utilizing the existing City of Sun Prairie Master Plan 2020, and expects to replace this with a s. 66.1001, Wis. Stats., comprehensive plan sometime during the term of this Agreement.

At the neighborhood and parcel level, specific neighborhood plans developed by the City of Madison (Rattman, Nelson, Hanson, and Felland Neighborhood Development Plans), and City of Sun Prairie (Westside Neighborhood Land Use and Transportation Plan, Residential Development Phasing Plan, and intends to develop additional plans for the territory within the Boundary Adjustment Area-Sun Prairie), will assist in guiding land use and development

decisions. Village of De Forest will rely upon its' Comprehensive Plan for land use and development guidance.

Through this Agreement, the Cities of Madison and Sun Prairie expect to modify their Community Separation agreement originally adopted on March 25, 1991, and subsequently amended in 1993 and 1995. The terms of this modification as shown in Exhibits 11 and 12 are not enforceable by the other two parties to this Agreement, and is made in part in order to respond to comments from property owners received during and after the public hearing

The preceding comments, in addition to the assertions by the parties on page 52 of the Agreement, along with the Department's analysis of the Agreement, suggest that the Plan as approved should not be in opposition to existing law. Existing and proposed development within the territory of the Cooperative Plan and Agreement will be consistent with local, state, and federal laws. As stated on page 8 of the December 20, 2006, Memorandum on "Public Comment Report on Proposed ... Cooperative Plan," in response to written comments received from Dane County Planning and Development Department, envisioned future growth is already included in the respective adopted growth and development plans, and no new issues are " ... being caused, created, or exacerbated by this Plan "

(3) Adequate provision is made in the cooperative plan for the delivery of necessary municipal services to the territory covered by the plan.

The Department finds that adequate provision has been made for delivery of services.

As stated in Section 8 of the Agreement, the Plan provides for the provision of municipal sewer and water, storm water and transportation infrastructure to be provided throughout the Boundary Adjustment Areas exclusive of the Protected Areas as " ... Town lands become attached to and developed in the respective City or Village."¹⁰ Within the Agreement, each city and village has its own specific provisions for extending full urban services into the Boundary Adjustment Areas

For the De Forest Boundary Adjustment Area, public water and sewer service provided by the Token Creek Sanitary District has been transferred to the Village pursuant to a service agreement already approved by the Wisconsin Public Service Commission (Exhibit 8 of the Agreement, and as modified by this Agreement).

During the term of the Agreement, the Boundary Adjustment Area to be attached to Sun Prairie will be served when the City determines that such services should be extended, or could be more efficiently provided through intergovernmental agreement by the City of Madison as infrastructure is extended by Madison into the adjoining Boundary Adjustment Area-Madison.

Within the Boundary Adjustment Area-Madison, Section 12 of the Agreement describes the conditions for receiving service: Services must be reasonably available to the subject parcel(s), property must be located within the approved Urban Service Area pursuant to the Dane County Land Use and Transportation Plan and the Water Quality Management Plan, the owner must agree to pay the cost of service extension, and also agree to an irrevocable commitment to

¹⁰ Id.; pp. 18-19, and 26. This Agreement maintains the provisions of 2003 Act 317 that provides towns with compensation of 5 years of local-purpose property taxes equal to the amount levied in the year of attachment

attach property to Madison within 5 years or by whatever schedule is in place. The City recognizes that implementation of these provisions will necessitate coordination with, and approvals from, the Dane County Planning and the Wisconsin Department of Natural Resources. Exhibit 9 of the Agreement states that Madison is purchasing the entirety of Burke Utility District Number One, and will assume responsibility for providing service to this designated territory.

Currently DeForest is providing water and sewer service to existing customers within its extraterritorial area lying within the Boundary Adjustment Area slated to go to Madison (Exhibit 6), and this service will continue and be extended to new customers within the area according to the provisions found in Exhibit 6 and 8 and on pages 20 and following of the Agreement. It is evident that Madison and DeForest have arrived at a process to assure continued services to existing and future customers in the affected area, and have established a process and procedure with terms described on pages 21-25 of the Agreement, including a provision for initiating modifications to these arrangements through future s. 66.0301, Wis Stats., agreements.

As parcels within the respective Boundary Adjustment Areas may remain in the Town for a significant period of time, Section 12, pages 31-32 of the Cooperative Plan provides for a blanket pre-approval provision by the Town for special assessments levied by the respective City or Village on parcels that will ultimately attach to them. In the event this blanket pre-approval is not possible (and it is a potential legal question the Department deems lies beyond the scope of Departmental approval authority for the Cooperative Plan), the Town agrees to the extent it is able, to timely approve each special assessment levy. Section 12 further identifies the type of improvement activity for which special assessments would be levied, and for the Boundary Adjustment Area-Madison, a list of streets for which assessments for physical improvements would be sought.

(4) Any boundary maintained or any boundary change under the cooperative plan is reasonably compatible with the characteristics of the surrounding community, taking into consideration present and potential transportation, sewer, water and storm drainage facilities and other infrastructure, fiscal capacity, previous political boundaries and shopping and social customs.

Political boundaries

The three Boundary Adjustment Areas for the respective parties are located entirely within the civil township of Burke, Dane County, Wisconsin, Town 8 North, Range 10 East. These Boundary Agreement Areas include fragments of town territory in the southeast corner that border the Towns of Sun Prairie and Blooming Grove,¹¹ as well as larger blocks of Town territory lying south of the City of Sun Prairie and adjoining the Town of Sun Prairie lying to the east. Other Town lands exist west and north of the Dane County Airport adjoining the Towns of Westport on the west, and extending to the northerly border with the Town of Windsor and Village of DeForest. The last remaining significant Town commercial area that has not been annexed is the Token Creek truck stop territory at the intersection of USH 51 and IH 90-94.

¹¹ The Town of Blooming Grove also participated in the development of a s. 66.0307, Wis Stats., cooperative plan and agreement with the City of Madison, approved by the Department in 2006.

The various map Exhibits, such as Exhibit 7, Current Land Use, illustrate the very complex and fragmented municipal boundary situation that the four parties are seeking to resolve through this agreement, while respecting landowner wishes balanced against the development pressures being experienced by the entire Boundary Agreement Area (with the exception of the reserved park and open space lands of Token Creek and Cherokee Marsh), and the concomitant need for joint planning and orderly growth. While not necessarily pleasing all residents, the parties made significant effort in a majority of instances to recognize the affinity of existing subdivisions with a particular incorporated community. In order to accommodate certain affected subdivisions included in the Boundary Agreement Area-Madison, this Agreement was extended to 30 years in order to preserve residents' ability to remain in the Town, and the need and likelihood of special assessments for street and infrastructure improvements clarified.

Present and potential transportation systems

Several former Dane County Regional Planning Commission (DCRPC) and attached Metropolitan Planning Organization documents have been completed for this area, including recommendations for streets, pedestrian-ways, bikeways and transit service, and development staging. These plans include a Dane County Land Use and Transportation Plan completed by the former DCRPC in 1997, a Bicycle Transportation Plan (2000) for the Madison Urban Area and Dane County by the Madison Area Metropolitan Planning Organization (MPO – now a separately constituted body), a 2004-2008 Transit Development Program for the Madison urbanized area prepared by the new Madison Area MPO, and subsequently approved by the Madison Common Council on July 20, 2004, and subsequently by the MPO on August 4, 2004.

Other planning documents listed in Section 18 of the Agreement also address transportation indirectly, including adopted neighborhood plans, the City's Pedestrian and Bicycle Plans, as well as the 1999 Town of Burke Comprehensive Plan.

In various sections of the Agreement, such as Section 12, specific streets are enumerated for improvements, and a commitment is stated to interconnect existing subdivisions as new subdivisions are platted and the urban fabric is blocked-in. In addition, many of the developed town areas are already well-connected to existing surface streets.

The Department finds that the Cooperative Plan territory has been jointly planned for and is compatible with adjacent areas with respect to transportation systems.

Sewer, water and storm drainage facilities and other infrastructure

One of the issues causing the 4 parties to reach consensus is the need to assure that orderly development occurs within the Plan area (see Section 4, pp 6-8), by requiring that additional development in the Plan area be approved “ . . . by the respective City or Village to which it will eventually be attached . . .,” in order to assure that “ . . . public sanitary sewer and water service infrastructure is provided throughout the Cooperative Plan Area . . .”

Considering the various ways by which the parties intend to serve the plan area (described previously on pages 5 and 6) and principally in Section 8 of the Agreement, the Department finds that the approaches taken by the parties will assure that the requirement for sewer, water, and storm drainage infrastructure and management policies have been met and that adequate infrastructure will be available to serve the Boundary Adjustment Area.

The various map Exhibits, such as Exhibit 7, Current Land Use, illustrate the very complex and fragmented municipal boundary situation that the four parties are seeking to resolve through this agreement, while respecting landowner wishes balanced against the development pressures being experienced by the entire Boundary Agreement Area (with the exception of the reserved park and open space lands of Token Creek and Cherokee Marsh), and the concomitant need for joint planning and orderly growth. While not necessarily pleasing all residents, the parties made significant effort in a majority of instances to recognize the affinity of existing subdivisions with a particular incorporated community. In order to accommodate certain affected subdivisions included in the Boundary Agreement Area-Madison, this Agreement was extended to 30 years in order to preserve residents' ability to remain in the Town, and the need and likelihood of special assessments for street and infrastructure improvements clarified

Present and potential transportation systems

Several former Dane County Regional Planning Commission (DCRPC) and attached Metropolitan Planning Organization documents have been completed for this area, including recommendations for streets, pedestrian-ways, bikeways and transit service, and development staging. These plans include a Dane County Land Use and Transportation Plan completed by the former DCRPC in 1997, a Bicycle Transportation Plan (2000) for the Madison Urban Area and Dane County by the Madison Area Metropolitan Planning Organization (MPO – now a separately constituted body), a 2004-2008 Transit Development Program for the Madison urbanized area prepared by the new Madison Area MPO, and subsequently approved by the Madison Common Council on July 20, 2004, and subsequently by the MPO on August 4, 2004.

Other planning documents listed in Section 18 of the Agreement also address transportation indirectly, including adopted neighborhood plans, the City's Pedestrian and Bicycle Plans, as well as the 1999 Town of Burke Comprehensive Plan

In various sections of the Agreement, such as Section 12, specific streets are enumerated for improvements, and a commitment is stated to interconnect existing subdivisions as new subdivisions are platted and the urban fabric is blocked-in. In addition, many of the developed town areas are already well-connected to existing surface streets.

The Department finds that the Cooperative Plan territory has been jointly planned for and is compatible with adjacent areas with respect to transportation systems

Sewer, water and storm drainage facilities and other infrastructure

One of the issues causing the 4 parties to reach consensus is the need to assure that orderly development occurs within the Plan area (see Section 4, pp 6-8), by requiring that additional development in the Plan area be approved “... by the respective City or Village to which it will eventually be attached...,” in order to assure that “... public sanitary sewer and water service infrastructure is provided throughout the Cooperative Plan Area ...”

Considering the various ways by which the parties intend to serve the plan area (described previously on pages 5 and 6) and principally in Section 8 of the Agreement, the Department finds that the approaches taken by the parties will assure that the requirement for sewer, water, and storm drainage infrastructure and management policies have been met and that adequate infrastructure will be available to serve the Boundary Adjustment Area.

Fiscal capacity

The following Table 1 provides evidence of financial capacity necessary to provide for infrastructure and related improvements by the four parties. This information is based on values reported by the Wisconsin Department of Revenue and by the municipalities.¹²

It is apparent from Table 1 that significant capacity exists to fund necessary improvements, especially considering that many of the infrastructure improvements will likely be financed through revenue bonds that do not count against the general obligation debt limit ceiling.

Table 1
Available Debt Capacity

	Equalized Value With TID In*	5% Debt Limit Value	Existing GO Debt#	Available Debt Margin	% of Capacity Available
Town of Burke	401,352,400	20,067,620	625,000	19,442,620	96.9%
Village of DeForest	785,397,400	39,269,870	9,273,993	29,995,877	76.4%
City of Madison	21,219,003,600	1,060,950,180	196,475,727	864,474,453	81.5%
City of Sun Prairie	2,296,727,600	114,836,380	49,417,412	65,418,968	57.0%

*Using WI DOR-reported 2006 equalized values
#GO Debt reported by communities as of 12/31/06

In order to minimize the impact of loss of tax revenue to Burke over the 30-year term of the agreement, whenever property is attached to De Forest, Madison, or Sun Prairie, the respective City or Village will remit five years of local-purpose property taxes and also assume responsibility for providing municipal services.¹³

The Department finds that all four parties are capable of financing a full range of services to those areas destined to be served according to provisions contained within the Cooperative Plan, and that effort has been taken to lessen the impact of periodic attachments on the Town of Burke.

Shopping and social customs

Each of the three municipalities is a full-service community in its own right, and although DeForest and Sun Prairie both share proximity to the regional shopping opportunities offered in Madison by East Towne Mall, all three municipalities provide their own unique shopping, employment, recreational programming, school districts, and religious institutions that give each the community character described in Section 7.4 of the Agreement beginning on p. 14.

¹² "2006 Equalized Value Information," Wisconsin Department of Revenue, reported at <http://www.dor.state.wi.us/slf/cotvc/06mdv.pdf>, and by phone and email correspondence with the municipalities on April 19, 2007

¹³ Id., p. 7

De Forest

The Boundary Adjustment Area-DeForest includes the STH-19 and IH-90-94 interchange, as well as the northerly and westerly quadrants of the USH-51 and IH 90-94 interchanges. This Boundary Adjustment Area lies closest to De Forest, approximately 2.5 miles due south from the Village. South of this area within the Boundary Adjustment Area-Madison, lie park and open space lands that serve to separate this area from Madison and give it greater identity with DeForest. The Boundary Adjustment Area-DeForest is largely served by the DeForest School District, and contains numerous churches "... located in and around the Village of De Forest, including the Boundary Adjustment Area-DeForest.

Sun Prairie

The Boundary Adjustment Area-Sun Prairie largely comprises residential subdivisions developed in Burke. The City, in addition to existing small-scale shopping centers in the City, plans to construct additional shopping areas in the Sun Prairie Westside Neighborhood. "Most of the Boundary Adjustment Area-Sun Prairie lies within the DeForest School District..." and the Agreement indicates that school district boundaries are not likely to change.¹⁴ Similar to DeForest, Sun Prairie, including the Boundary Adjustment Area-Sun Prairie, contains a significant number of churches and social organizations that are listed on p. 17 of the Agreement.

Madison

The Boundary Adjustment Area-Madison contains the majority of Town of Burke territory lying south of the designated Boundary Adjustment Area-De Forest and south and west of the Boundary Adjustment Area-Sun Prairie, including a number of residential subdivisions lying east of Reiner Road. The City is a major center of commerce in Dane County and southern Wisconsin. The central business district as well as neighborhood commercial areas provide community-wide gathering places for major events, and meeting spaces for various social organizations, several shopping districts, with various churches and social organizations occurring throughout the City, including the Boundary Adjustment Area-Madison. The City's Comprehensive Plan contains an extensive discussion summarizing economic, commercial, community facilities, religious and other institutions.

For all of the above-mentioned reasons, the Department finds that the standards set forth in s. 66.0307(5)(4), Wis. Stats., have been met.

(5) The shape of any boundary maintained or any boundary change under the cooperative plan is not the result of arbitrariness and reflects due consideration for compactness of area. Considerations relevant to the criteria under this subdivision include quantity of land affected by the boundary maintenance or boundary change and compatibility of the proposed boundary maintenance or boundary change with natural terrain including general topography, major watersheds, soil conditions, and such features as rivers, lakes and major bluffs.

The intent of this complex Plan and Agreement is to provide for the orderly assimilation of the entire territory of the existing Town by the Village of DeForest, City of Madison, and City of

¹⁴ Id., p. 16. Actually school district boundary changes are regulated through a separate statutory process and are largely unaffected by this agreement. However the districts themselves may, at some point, elect to alter their boundaries in order to balance growth in students with a corresponding growth in tax base, and for other considerations.

Sun Prairie. Given the number of jurisdictions seeking to coordinate their land planning, infrastructure development and other planning activities, this Agreement is without doubt one of the most unique and successful multi-party collaborations among all of the cooperative plans and agreements previously reviewed and approved by the Department.

The transfer of territory proposed by the Cooperative Plan will result in a more logical boundary for the three incorporated municipalities than currently exists, as the original 36-square mile Town has been, with the exception of Town territory north of the Dane County Airport and west of USH-51, fragmented and checker-boarded by successive annexations, leaving numerous town islands and town peninsulas within the City of Madison, and a large town island within the City of Sun Prairie (legally viable because this island also includes a small portion of the Town of Sun Prairie). Completion of the attachments and transfers at the end of the 30-year period will result in borders that are co-incident, for Madison, with Town of Westport on the West, Village of DeForest, Town of Windsor, and City of Sun Prairie on the north and Town of Sun Prairie on the east.

Environmental Protection

The entire territory is subject to the Dane County Water Quality Management Plan, and the Dane County Land Use and Transportation Plan, both of which identify environmentally sensitive areas from which development has been or will be excluded by all of the parties. The local plans that will guide development in the respective jurisdictions reflect this coordinated approach to natural resource preservation.¹⁵

As urban-scale development occurs, air quality, ground water, and other environmental impacts are expected to be reduced as a result of development conforming to County, Village or City growth and development, and environmental control ordinances. As additional residential development occurs, Madison intends to extend Madison Metro Transit service, resulting in “...less reliance on low-occupancy motor vehicle use within the area.” Similarly as additional residential development occurs, the respective water utilities will extend services, and fewer residents will need to rely on private wells, minimizing groundwater impacts of well pumping and potential sources of contamination by relying upon municipal wells sited according to local and state regulations¹⁶

“Environmentally sensitive lands will be identified and preserved as part of the development review and approval process”¹⁷ The parties state that as development occurs, neighborhood development plans that include identification of park and open-space lands, wetlands, stormwater drainage corridors, flood plains, navigable streams, natural areas, significant woodlands, and steep slopes, will apply¹⁸

Within the Boundary Adjustment Areas, Cherokee Marsh and Token Creek provide significant environmental resources recognized by the parties, as well as Town of Windsor (lying due north of the Town of Burke). An effort is underway by all of the area communities especially including Town of Windsor, to restore and maintain Token Creek and the associated springs as a premier coldwater trout fishery. The Agreement states that new development will be subject to increasing requirements imposed by the State and County as efforts are made to safeguard and protect this resource, and that “no proposed land uses are expected to have any significant

¹⁵ Id., pp. 35-36

¹⁶ Id., p. 33-34.

¹⁷ Id., p. 35

¹⁸ Id.

impact on Token creek, particularly with the current Dane County stormwater management regulations that are in effect.”¹⁹

On pages 38 and 39, the Agreement discusses environmentally sensitive species identified from Wisconsin Department of Natural Resources information, including one state-listed threatened animal species and four state-listed threatened plant species, along with 8 species of “special concern.” The existing County and local regulatory framework takes these species into account when considering platting, and the siting of transportation and utility infrastructure.

The preceding discussion leads the Department to affirm that the Agreement is not the result of arbitrariness and that the parties have given proper consideration to compactness of the area subject to the Agreement given the stated purpose of the Agreement. Furthermore, the Department finds that the four parties to the Agreement have taken sufficient steps to adequately plan development within the Boundary Adjustment Areas regarding general topography, major watersheds, soil conditions, and other natural features, as evidenced by the substantial number of individual and joint planning documents previously completed for the Boundary Adjustment Area, including the respective City, Village and Town s. 66.1001, Wis. Stats., comprehensive plans, as well as the neighborhood planning policy of the two Cities.

5m) The cooperative plan adequately identifies and addresses the significant adverse environmental consequences to the natural environment that may be caused by the proposed physical development of the territory covered by the plan, the municipalities submitting the plan have adequately identified and considered alternatives to minimize or avoid the significant adverse environmental consequences, the proposals in the plan for compliance with federal environmental laws or regulations and state environmental laws or rules are adequate and the need for safe and affordable housing for a diversity of social and income groups in each community has been met.

Significant Adverse Environmental Consequences

The Department finds through its review of Section 14, Environmental Evaluation of the Cooperative Plan as discussed under the previous heading that the Agreement includes provisions for preserving important environmental resources and minimizing detrimental environmental consequences of existing and future development through the combined implementation of the Agreement with the many other area and locally adopted plans and activities enumerated in this document.

Housing

In Section 15, beginning on page 40, the four parties identify population projections and income statistics for their current jurisdictions, indicating that continued demand for housing for all income levels in the area is very likely. Currently Burke does not have a documented affordable housing objective, in contrast to the Village and two Cities, all of whom have affordable housing goals and programs as explained in considerable detail on pages 41 through 48 of the Agreement.

Implementation of the Plan will positively effect the creation of safe and affordable housing by permitting orderly development of additional residential areas within the Boundary Agreement Area, while preserving and making available existing affordable housing to respective low and moderate income residents, along with essential social support programs. DeForest indicates

¹⁹ Id, p. 37

that in the event a shortage of affordable housing is detected, tools such as vouchers and rent control will be considered. Sun Prairie has over 400 units of federally-assisted housing available, and states that while development of affordable housing in their Boundary Adjustment Area may not be feasible, it will continue to address housing affordability through implementation of City Master Plan goals and objectives. The City of Madison will continue its tradition of providing a “full range of housing types affordable to families and households of all income levels.”²⁰ The City’s provision of sewer and water services in the Agreement Area will provide the opportunity for higher density development than is possible without such services. The City participates in numerous state and federal housing supply- and demand-side housing programs, including supporting numerous groups whose objectives are to expand the supply of affordable housing to lower income groups. The program activities and the supported groups are enumerated in Section 15, pages 45 through 48 of the Agreement.

Historical, Archaeological or Architecturally Significant Resources

The Agreement on pages 39-40 states that 51 significant historic structures are listed on the Wisconsin Architectural and Historical Inventory, with none having national or state landmark status. In addition, the Boundary Adjustment Area contains a number of archaeological sites dating back to 9000 BC. The archaeological sites are currently found on private lands and, unless they contain burial remains, are not subject to state or federal regulation. At least five burial sites, including four Euro-American cemeteries, are subject to protection by s. 157.70, Wis Stats.

Alternatives considered

Because of the fragmented geography of the remaining Town of Burke, maintaining the option of remaining as a Town is very problematic. Consolidation with any one community is not practical due to the multiple school districts, the identity that town residents have with neighboring municipalities, and the inability of any one of the neighboring jurisdictions to physically provide full municipal services to the entire town. If the status quo were to continue, the inability of the Town to challenge annexation for whatever reason due to 2003 Act 317 means that territory and tax base will, absent an agreement, continue to erode.

In forging this Agreement the four parties, by coming together and undertaking joint problem-solving, have taken a very creative approach to addressing the Issues, Problems, and Opportunities identified in Section 4 (pages 6-8) of the Agreement. They have done so in a manner that assured that the broadest range of alternatives and solutions were in fact considered before the respective final Boundary Adjustment Areas were delineated and mutually agreed upon. That the Town of Burke worked collaboratively with three neighboring incorporated jurisdictions has actually increased the number of solutions to be considered, allowing for consideration of municipal and residential preferences, the location of school district boundaries and particular needs (such as the desire to continue to monitor and control the ratio of residential development and tax base affecting the DeForest School District), as well as particular land regulation and utility service policies of the respective cities and village. In addition, the Public Comment Report attached to the Agreement summarizing and responding to the testimony of the joint public hearing gives further evidence that substantial effort was expended attempting to harmonize resident desires consistent with the fragmented geography of the town and the ability of the parties to ultimately provide full urban services to the territory. For the foregoing reasons, the Department affirms that this Agreement more than adequately meets this criterion.

²⁰ Id, p 46

(6) Any proposed planning period exceeding 10 years is consistent with the plan.

The Department believes that the time period of 30 years specified by the parties is consistent with development plans and agreed-upon objectives set forth by the parties, and concurs with the time period specified, following which the Town will be permanently dissolved

Approval

This "Cooperative Plan" meets the statutory criteria of s. 66.0307, Wis. Stats. Pursuant to authority found in s. 66.0307(5), Wis. Stats., the Wisconsin Department of Administration hereby approves the "Final Town of Burke, Village of DeForest, City of Sun Prairie and City of Madison Cooperative Plan."

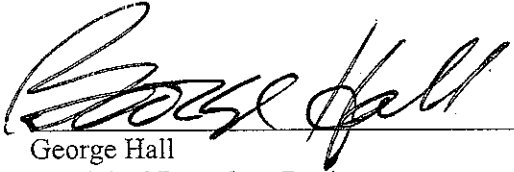
Henceforth, amendments or revisions to the "Cooperative Plan" can only occur with the approval of the four participating parties, and with the concurrence of the Wisconsin Department of Administration or any successor agency granted the authority to administer the provisions of s. 66.0307(8), Wis. Stats. This "Cooperative Plan" is effective from today's date, and remains in effect pursuant to the language and terms contained therein.

Dated this ^{4th} 4 day of May, 2007.

By the Wisconsin Department of Administration:



Laura Arbuckle
Administrator
Division of Intergovernmental Relations
Wisconsin Department of Administration



George Hall
Municipal Boundary Review
Wisconsin Department of Administration



Mark Saunders
Deputy Counsel
Wisconsin Department of Administration