

## **Conservation Reserve Enhancement Program (CREP)**

### **Permanent Conservation Easements: Reconciling Conflicting Interests in Land**

#### **Telecommunications and Electric Utility Easements**

- Easements for planned or existing utility structures such as substations, access roads and foundations for high voltage transmission lines should be excluded from the proposed CREP easement area
- Routine utility easements (for local distribution wires and related facilities such as poles and underground conduits) may be included in the CREP easement area. Holders of these easements need not sign the CREP agreement. Under the CREP easement, the landowner is responsible for restoring CREP areas affected by utility work if the utility company fails to do so. See CREP easement document, section 5R.

## **Drainage Districts**

DATCP will check its drainage district records to determine whether any portion of the easement falls within a drainage district. DATCP will notify the county of its findings. All of the following must be documented:

- The county land conservation committee agrees to include the drainage district corridor in the CREP easement and notifies, in writing of the proposed CREP easement.
- The county drainage board does not object to the proposed easement. The drainage board should *not* sign the easement because it *cannot* subordinate its authority to CREP.
- The landowner is *not* required to plant or maintain trees in the district corridor (this may interfere with drainage board operations).
- The following language is added to the CREP easement:

***“ This easement does not limit county drainage board operations within a drainage district corridor, pursuant to ch. 88, Stats., and ch. ATCP 48, Wis. Adm. Code.”***

## **Oil and Gas Pipeline Corridors**

A CREP easement may not include land in a major oil or gas pipeline corridor unless all of the following apply:

- The county LCC agrees to include the pipeline corridor under the CREP easement. The committee should exclude the corridor if it believes the potential for disruption outweighs the conservation benefits.
- CREP does not require the planting or maintenance of trees in the pipeline corridor.
- The county gives the pipeline company written notice of the proposed easement. If the pipeline company objects to the CREP easement, the county land conservation committee may need to exclude the pipeline corridor from the CREP easement area.

This policy does not apply to small consumer distribution lines and related easements. The gas utility does not have to sign the CREP easement. The landowner is responsible for restoring CREP areas affected by gas utility work. See CREP easement, section 5R.

## **Transportation Corridors**

CREP easement areas may not include vehicle transportation corridors or vehicle access easements.

## **Water, Sewage and Septic Easements**

An area covered by an existing sewage, septic or well easement should not be included in a CREP easement area *unless* the holder of the conflicting easement subordinates it by signing the CREP easement agreement. If a title search identifies such an easement, DATCP will ask the county land conservation department to verify, in writing, whether there is an actual overlap with the proposed CREP easement.

## **Priority Watershed Cost-Share Projects**

The county land conservation department should determine whether an overlap exists and whether it may result in conflicting practices. The county land conservation committee may exclude the affected land from the CREP easement if the committee believes that the overlap may result in conflicting practices or “double payment” for similar practices. DATCP may ask the county to report its findings to DATCP.

## Mineral Rights

Mineral extraction in a CREP easement area is clearly incompatible with CREP.

According to s. 706.057, Stats., mineral rights “lapse” if the holder of those rights has not “used” the rights in the preceding 20 years. A mineral rights holder “uses” those rights by doing any of the following:

- Extracting minerals pursuant to those rights.
- Conveying the mineral rights to another person, and recording the conveyance with the Register of Deeds.
- Paying property taxes on the mineral rights.
- Filing, with the Register of Deeds, a “statement of claim” preserving the mineral rights.

If mineral rights exist, and if they have been “used” (see above) within the past 20 years, the land subject to the mineral rights must be excluded from the CREP easement area *unless* the mineral rights holder subordinates those rights by signing the CREP easement agreement.

If existing mineral rights have “lapsed” because they have not been “used” (see above) within the past 20 years, the surface landowner may record a claim with the Register of Deeds to acquire the mineral rights (DATCP has claim forms for recording at the Register of Deeds). The surface landowner must file the claim before the holder of the “lapsed” mineral rights reclaims those rights by “using” them (see above).

## **Managed Forest Lands**

Lands covered by an existing MFL contract may not be included under a CREP permanent easement unless all the following apply:

- The county land conservation committee agrees to include the MFL lands under CREP. The committee may choose to exclude MFL lands from CREP and gives DNR written notice of the proposed easement.
- DNR and the county agree that there is no conflict between the MFL contract (and plan) and the CREP easement terms. Alternatively, DNR and the landowner may revise the MFL contract to make it consistent with the CREP easement.
- The CREP easement does not include any areas designated for clear-cutting under an MFL contract. Such areas may be included under a 15-year CREP agreement, at the discretion of the county land conservation committee, if the clear-cutting is not scheduled to occur during that 15-year period.

## **DNR Fish Management Areas**

A fish management easement typically applies to a narrow strip of land along the stream bank. The easement is not necessarily inconsistent with CREP, except that:

- The fish management easement might allow public access that could be inconsistent with CREP.
- CREP might require trees that could interfere with DNR or public access under the fish management easement.

Lands covered by an existing fish management easement may not be included under a CREP permanent easement unless all the following apply:

- The county land conservation committee agrees to include the lands (the committee is not required to do so).
- The county land conservation committee gives DNR written notice of the proposed CREP easement.
- DNR and the county land conservation committee agree that there is no conflict between the fish management easement provisions and the CREP easement.

DNR has developed a vegetated management permit to deal with instances where CREP overlays existing fish management easements.

## **Flowage Easements**

An existing flooding easement takes priority over a CREP easement. However, a flooding easement is not necessarily inconsistent with CREP, except that:

- Not all conservation practices available under CREP will be able to withstand being subject to flooding for long period of time.
- Access for establishment and maintenance of the CREP conservation practice should be considered and could be hampered flooding.

A complete title search will normally disclose whether proposed CREP lands are covered by an existing flooding easement. Lands covered by an existing flooding easement may not be included under a CREP permanent easement unless all the following apply:

- The county land conservation committee agrees to include the lands (the committee is not required to do so).
- DATCP and the county land conservation committee agree that there is no conflict between the flooding easement provisions and the CREP easement.



## **Snowmobile Trails**

CREP maintains the rights of participating landowners to control public access on their land.

The landowner in CREP is free to negotiate public access with other private groups or public agencies as long as the provisions of any access comply with the CREP agreement or easement. Landowners under CREP agreements and easements have the option of allowing snowmobile clubs and the public on their land.

### **Snowmobile Trails on CRP/CREP - Approval Process**

Farm Service Agency County Committees (COC's) have the authority to make individual decisions about allowing this type of use of CRP/CREP. Technically, this means that whenever a snowmobile trail crosses CRP/CREP acres, the owner of the CRP/CREP should have requested the authority for this activity from the COC.

Current CRP/CREP policy allows the COC to determine and authorize some uses of CRP/CREP as long as the activity does not violate any other provisions of the program. When a COC permits a special use of CRP/CREP, they have the ability to require a farm visit to ensure cover has not been damaged (a fee will be charged for this farm visit) and/or can determine that a payment reduction be assessed to reduce the annual CRP/CREP payment by a certain percentage because of the use of the CRP/CREP that has been authorized.

The following are steps to take:

1. Determine if the land is enrolled in CRP or CREP. The landowner should be able to tell you.

2. If the land is enrolled in CRP or CREP, try to locate the trail on other land not enrolled in the program if at all possible.
3. If no other location is available, and the landowner agrees to allow the trail, the LANDOWNER (not the snowmobile club) must request permission from the COC to use CRP/CREP for such a purpose. This request must be in writing.
4. The COC will consider the request, make a determination, and reply back to the landowner, in writing. They may charge a farm visit fee in the spring to ensure the cover has not been damaged, and may (not likely) charge a payment reduction for such a use of CRP/CREP.
5. Each determination is made on a case-by-case basis and is good for one season at a time. The following year, assuming the trail will again be located on CRP/CREP land, another request from the landowner would have to be submitted to the COC.