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January 12, 2006

TO: EQB Members

FROM: Michael Sullivan  
Telephone: 651-201-2462

RE: **ANNOTATED AGENDA FOR  
January 19, 2006 Board Meeting**

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### **General**

This month's meeting will take place at the State Office Building, Hearing Room 5. The meeting will begin at 9:00 a.m. Staff will be available for briefing and questions at 8:00 a.m.

Attention: \*Denotes an agenda item that may require Board action.

### **I. \*Adoption of Consent Agenda**

- Adoption of the Proposed Agenda for January 19, 2006 meeting
- Adoption of the Proposed Minutes for December 15, 2005 meeting

### **II. Executive Director's Report**

### **III. Legal Counsel Report**

### **IV. \*Notice of Intent to remove land from Agricultural Preserve status in Waseca County**

**Presenter:** Jon Larsen, EQB staff  
(651-201-2477)

### **Materials enclosed:**

1. Notice of Intent filed by Waseca County
2. Extract of Chapter 40A.122
3. Sample Findings of Fact, Conclusions, and Order
4. Sample Resolution

## **Issue before the Board**

Waseca County has filed with the EQB a Notice of Intent to take an Eminent Domain Action on land that is in Agricultural Preserve status.

Waseca County is currently seeking to acquire land in Janesville Township for the construction of a new ethanol plant. Waseca has the authority to take the land through an eminent domain action, condemning it for a public purpose and compensating the owner(s). In this particular case, since some parcels of land are currently designated for agricultural preserve, there is a further requirement to comply with provisions of the state agricultural land preservation policy. This is found at Minn. Statutes Chapter 40A. An extract of Chapter 40A.122 covering the eminent domain action portion of the statute is included in your materials.

When farmland is in Ag Preserve status the owner is given certain benefits in return for limiting the land use to strictly agricultural or ag-related uses. It protects the land from special assessments or restrictive local and state regulation, assures equitable taxes, and provides for orderly means of planned use. The owner must agree to the land remaining in Ag Preserve status for at least 8 years in return for these benefits. He may file a notice initiating termination of Ag Preserve status which then becomes effective 8 years from the filing date.

In this circumstance Waseca County is proposing to approve a new ethanol plant to be constructed on Highway 14 midway between Claremont and Lake Crystal, where there are existing ethanol plants. Many prerequisites of the proposer are satisfied by characteristics of this location. It is projected that 2 other parcels are to be acquired to complete the site. This parcel is the only one that is in Ag Preserve status.

The EQB is given 60 days to review the proposed action in consultation with affected units of government to determine the effect(s) of early termination and its relationship to local and regional comprehensive plans. If the action appears to be unreasonable the Board could take further steps. If it is not deemed unreasonable, no further action is required from the Board.

## **Background**

On six previous occasions this type notice has been submitted to the EQB. In each of those instances the Board took no action, believing that the early termination of Ag Preserve status was not unreasonable.

Waseca County is one of only three non-metropolitan counties in Minnesota to adopt the Ag Preserve program. For this reason, most projects of this type throughout the state do not normally encounter Ag Preserve status considerations. The principal intent of agricultural preservation is to encourage commitment to continue farming in areas where pressure to develop land to more intensive uses is present, e.g. suburban or semi-rural areas bordering current development areas of residential, industrial, commercial, or institutional nature. The farmlands abutting the project, and remaining after the improvements, will remain suitable to that purpose. All remaining parcels in Ag Preserve status will continue to receive the protection of this program until the

owners file for termination.

### **Significant Issues**

The evaluation of environmental effects relative to this eminent domain action is limited to the impact of removing the land from Ag Preserve status by early termination. This is not a review of the potential environmental effects of any proposed subsequent development. The ethanol plant project will be reviewed by an Environmental Assessment Worksheet (EAW) prior to its approval or construction. This action refers only to the change in status from Ag Preserve to some other use. The site has been identified by Waseca as the preferred alternative for this project, Ag Preserve status of this parcel of land notwithstanding.

### **Staff Recommendation**

The item is presented at this time for information only. No action is required from the board at this time. The Notice of Intent is to be filed with the EQB on January 18, 2006. After 60 days Waseca County may start the eminent domain action if the EQB has not intervened by ordering the action be stayed for a further 60 days for the EQB to take additional steps. After circulating the notice of intent to affected units of government the Board may review any comments or objections. If the Board finds that the action is reasonable it may conclude that no further review is necessary under the statute.

There are no indications at this time that there is a need for EQB intervention to assess any potential environmental effect(s) of early termination of the Agricultural Preserve status of these parcels of land. It is the staff recommendation that there is no need for the EQB to take action on this matter at this time.

### **IMPORTANT NOTE**

If the Board should decide that it wants to act on this matter during the 60-day period during which it may call for a local hearing and defer the Eminent Domain action proposed by Waseca County, it would need to take action at this meeting or the February or March board meetings.

### **V. \*Expansion of Flying Cloud Airport Environmental Impact Statement adequacy decision**

**Presenter:** Jon Larsen, EQB staff  
(651-201-2477)  
Bridget Reif, Project Planner, Metropolitan Airports Commission

### **Materials enclosed:**

1. Expansion of Flying Cloud Airport, Final Environmental Impact Statement (Volume I & II)
2. Summary of Comments on Final EIS and Responses, October 2005
3. Resolution materials from 1998 – EQB agrees to decide adequacy of EIS

4. Ordinance 97
5. Email letter from Zero Expansion/Transtalk and attachments
6. Response from Metropolitan Airports Commission
7. Sample Findings of Fact, Conclusions, and Order
8. Sample Resolution

### **Issue before the Board**

Whether or not to find the Final EIS for Flying Cloud Airport Expansion to be adequate.

Minnesota Rules 4410.2800 Subpart 1 item C provides:

Subpart 1. **Who is to determine.** The RGU shall determine the adequacy of the final EIS unless notified by the EQB, on its own initiative or at the request of the RGU, the proposer of the project, or other interested persons, that the EQB will determine the adequacy. The EQB shall notify the RGU no later than 60 days following publication of the preparation notice in the EQB Monitor. The EQB shall intervene only if the EQB determines that:

A. the RGU is or will be unable to provide an objective appraisal of the potential impacts of the project;

B. the project involves complex issues which the RGU lacks the technical ability to assess; or

A. the project has multijurisdictional effects.

The Board has agreed to make this adequacy decision and the matter is now properly before the Board.

### **Background**

The Metropolitan Airports Commission developed an Environmental Impact Statement (EIS) for the extension of the parallel runways at Flying Cloud Airport (FCM). The proposed project is to extend the westernmost runway from 3900 feet to 5000 feet; and extend the other runway from 3600 feet to 3900 feet. There are additional infrastructure and developmental expansion activities associated with this project, including extensions to City of Eden Prairie sewer and water, hangar and tower improvements. The MAC has discussed environmental review issues at periodic meetings with an advisory group consisting of representatives of the City of Eden Prairie, concerned citizen groups, aviation business, state and federal regulators, and MAC consultants. A Scoping Environmental Assessment Worksheet and Draft Scoping Decision document was circulated for public comment and review. The decision to complete an Environmental Impact Statement was noticed in the April 21, 1998 EQB Monitor.

In a discussion process conducted between the MAC and City of Eden Prairie in 1995, the MAC voluntarily agreed to ask the EQB to assume the responsibility for the final decision for finding of adequacy for the Final EIS document. At a January 1998 meeting of the EIS advisory group, the MAC affirmed that they would be asking the EQB to perform that duty. The members of the EIS technical advisory group universally support this decision. A letter of request was received from the MAC on June 18, 1998, requesting that the EQB assume responsibility for making the adequacy decision for the state Final EIS for Flying Cloud Airport runway expansion and improvements. At its regularly scheduled July 16, 1998 meeting, the EQB voted unanimously to accept responsibility for making the adequacy decision.

## **History**

Flying Cloud Airport started as a private 134.5 acre airport that was acquired by MAC in 1947. It has two parallel runways, a crosswind runway, hangars and a control tower.

The scope of the project in this EIS includes the following airfield actions:

- a. acquire sufficient land to protect the airport from incompatible land uses;
- b. provide sufficient hangar spaces to accommodate existing and year 2010 demand;
- c. provide a runway with effective length of 5000 feet for takeoffs and landings to induce appropriate general aviation aircraft to use FCM instead of MSP;
- d. provide associated taxiways and navigational aids, consistent with FAA standards;
- e. provide a parallel, 3900 foot runway, and
- f. revise the 1978 MAC Ordinance 51 to allow maximum utilization of the 5000 foot runway by general aviation aircraft. (Ordinance 51 restricted use of FCM by jet aircraft to 20,000 pounds or less maximum takeoff weight; the 2003 Ordinance 97 allows use of FCM by aircraft with certified maximum gross takeoff weight of less than 60,000 pounds.)

A more complete description of the project elements and noise mitigation measures included within the project is fully described in the EIS.

In the early 1990s MAC made plans to extend one parallel runway to 5000 feet to accommodate modern business and general aviation aircraft, in order to divert some operations from Minneapolis/St. Paul International Airport (MSP) and to serve the needs of the general aviation community into the future. Preparations for the EIS for this project were begun in 1996. Community concerns over extent and types of impact from the changes proposed to Flying Cloud Airport (FCM) prompted the formation of an advisory group. This group consisted of representatives of MAC, the city of Eden Prairie, various individual and group interests neighboring to FCM such as the Zero Expansion Group, the business interests on the airport such as the fixed base operators (FBOs) charter companies, flight training, etc., and local and federal agencies. Discussions focused on noise impacts to neighbors, potential to change impacts to the nearby Minnesota Valley National Wildlife refuge, proximity of other types of development to the airport; and possible impact to land values. A particular

concern of some was that on lengthening the runway to 5000 feet commercial air cargo flights would be allowed at FCM, thereby further increasing operations. (This concern is addressed by MAC as a promise to not seek reclassification of FCM, in the Final Agreement between MAC and Eden Prairie signed in 2002.)

A further result of the many rounds of meetings and negotiations among all the parties was the mutual agreement to seek the adequacy decision from the EQB. From 1996 through 2004 all of the steps of the environmental impact statement review process were taken. Scoping determines the issues, alternatives, information and analysis to be addressed in the EIS. Scoping allows for public comment and input to the process, and ultimately determines the major environmental impacts to be addressed in depth, and minor impacts not requiring as comparable analysis. The following is a summary of the substantive issues and concerns identified in the Scoping decision and subsequently in the preparation of the Draft EIS (DEIS), a Supplement Draft EIS (SDEIS), and the Final EIS (FEIS):

1. The effectiveness of existing MAC Ordinance 51 in controlling jet noise at FCM
2. The unjust discrimination of Ordinance 51 on the use of FCM by aircraft with takeoff weights greater than 20,000 pounds that generate less noise than some aircraft with takeoff weights less than 20,000 pounds
3. the noise impact of the 2010 forecasts on existing and planned residential land uses
4. The accuracy of the forecasts in general and business jet nighttime operations in particular, and the sensitivity of the forecasts on noise level in residential areas
5. The benefits of the proposed project in relation to its direct and indirect costs
6. The impact on water quality on receiving waters
7. Visual effects
8. No increase in existing noise, which means no expansion of the airport that would result in additional aircraft noise
9. The effects of additional flights over the Minnesota Valley National Wildlife Refuge.

These issues were directly addressed in the DEIS, SDEIS, and FEIS; and in responding to substantive comments on these documents. The entire process in this case covered a span of years from 1996 to 2004. Each step requires a public review and comment period, and in some cases a public hearing as well. All requirements were met for public participation. As a further convenience to the public, many of the comment periods were extended beyond the legal minimum requirements.

A discussion of the substantive issues is found in the Findings of Fact.

A major factor in resolving the issues of these impacts was the negotiation and signing of an agreement between MAC and Eden Prairie; a Memorandum of Understanding, a settlement by Final Agreement that includes revision of Ordinance 51. The details of this are found in

Appendix A.4.1 of the FEIS. Ordinance 97 in your packet is the amended Ordinance 51 which is currently in effect at FCM.

Additional materials distributed to you include recent email communication and attachments from an interest group called Zero Expansion/Transtalk, and a response from MAC. References are made to Ordinance 97 (51), which you may note has been effective for three years.

### **Staff Recommendation**

Staff recommends that the Board resolve to find this Final EIS adequate.

The standard for review is found at 4410.2800, Subpart 4.

Subp. 4. **Conditions.** The final EIS shall be determined adequate if it:

A. addresses the potentially significant issues and alternatives raised in scoping so that all significant issues for which information can be reasonably obtained have been analyzed in conformance with part [4410.2300](#), items G and H;

B. provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and

C. was prepared in compliance with the procedures of the act and parts [4410.0200](#) to [4410.6500](#).

The nature of the decision by EQB is to test whether the EIS meets these conditions, and if so, find it adequate. A finding of adequacy speaks to the issue of the completeness and accuracy of the EIS as a whole, and the document was prepared in a manner prescribed by the rules. Staff believes the record of decision as proposed supports an affirmative decision, that MAC and FAA have met all procedural requirements and recommends a finding of adequacy of this EIS.

### **VI. \*Amendment to 2004 Stipulation agreement between EQB and the Hutchinson Utilities Commission**

**Presenter:** Michael Sullivan, EQB Executive Director  
(651-201-2477)

#### **Materials enclosed:**

1. December 7, 2005 letter to Lisa Crum from Gary A. Van Cleve
2. 2004 Stipulation Agreement between MEQB and the City of Hutchinson
3. January 10, 2006 letter from Gary A. Van Cleve to Robert Schroeder
4. January 11, 2006 letter from Dustan J. Cross to Ann Kennedy
5. Draft Amendment to 2004 Stipulation Agreement
6. Sample Resolution

## **Issue before the Board**

The Board has been requested by the City of Hutchinson to amend the 2004 Stipulation Agreement between the MEQB and the City. The sample resolution included in member packets would, if adopted, authorize the Board Chair to sign an amendment to the 2004 Stipulation Agreement to extend the time, until the end of the 2008 growing season, that land owners could seek reimbursement from the soil compaction remediation escrow account established in the 2004 agreement. The existing agreement covers only the 2005 and 2006 growing seasons.

## **Background**

In December of 2002 the EQB issued a Pipeline Routing Permit to the City of Hutchinson (Hutchinson Utilities Commission) for a 90 mile long natural gas pipeline. Soon after the commencement of construction activities the EQB began to receive complaints from landowners regarding the construction practices of the City and its contractors. The EQB and the City engaged in an on going discussion in an effort to resolve the alleged violation of permit conditions. Despite these efforts the Board suspended the Construction Permit in December of 2003. In response to the EQB action to suspend the Construction Permit, the city initiated review of the EQB suspension in the Minnesota Court of Appeals. Having been advised that the City had completed construction of the pipeline in December of 2003 prior to the suspension of the permit, the EQB rescinded the suspension of the Permit in February of 2004. Both parties then entered into a stipulation agreement to dismiss the Appeals Court of Appeals review. After extended negotiations between the EQB and the City, a second stipulation agreement was agreed to in December of 2004. A provision of that agreement established an escrow account of \$150,000 to be available to landowners to cover the costs associated with the mitigation of soil compaction associated with the construction of the pipeline. The 2004 Stipulation Agreement provides at Part 7.B 5 and Part 7.D that land owner eligibility for reimbursement would end at the end of the 2006 growing season and that any unused portion of the \$150,000 escrow account would then become available for supplemental environmental project as provided in Part 7 D of the 2004 Stipulation Agreement.

## **Discussion**

The Staff is recommending that the Board authorize the Chair to approve an amendment to the 2004 Stipulation Agreement that would extend the time that land owners have to seek reimbursement for costs associated with mitigation of soil compaction associated with pipeline construction until the end of the 2008 growing season. The clear intent of the Board in negotiating the 2004 Stipulation Agreement was to provide land owners with reasonable relief from the effects of the construction of the pipeline in keeping with the conditions of the Permit issues by the Board for the construction of the pipeline. The city of Hutchinson in a letter to Lisa Crum dated December 7, 2005 among other things notes that "Part of what we have discovered since entering into this Settlement Agreement is that it may take a longer period of time than anticipated for the effects of compaction to manifest themselves in the soil". I should also be noted that the city of Hutchinson has advised the legal counsel representing unsettled land owners that it has applied to the EQB to have the eligibility period for accessing the escrow funds extended through the end of the 2008 growing season. The issue of whether the EQB or



the Public utilities Commission has jurisdiction in this matter has been discussed between EQB and PUC counsel and it is the common view that the EQB is the proper institution to approve any amendment to the 2004 Stipulation Agreement. The staff of the PUC will be advising the Commission on this matter and it is expected that by the time of the January 19<sup>th</sup> EQB meeting the Commission will have reviewed the jurisdictional question and have advised EQB staff of its view on the question.

**Staff Recommendation**

Staff recommends that the Board adopt the Sample Resolution Authorizing Robert Schroeder, EQB Chair, to approve an amendment to the 2004 Stipulation Agreement that would provide for the extension noted above.