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February 9, 2006

TO: EQB Members

FROM: Michael Sullivan  
Telephone: 651-201-2462

RE: **ANNOTATED AGENDA FOR  
February 16, 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.

***NOTICE: The legislative session will not begin until March 1<sup>st</sup>, but Legislative Committees will be meeting prior to the beginning of the session. The House of Representative staff have indicated that they do not believe that there will be a conflict with the February 16<sup>th</sup> Board meeting, but House policy is that the meeting room scheduled for the EQB may be given to another group up to 24 hours before the scheduled EQB meeting. Accordingly, EQB staff has made arrangements for the EQB to meet in the Pollution Control Agency Board room at 520 Lafayette Road, St. Paul, MN 55155 in the event that the State Office Building location becomes unavailable. EQB staff will contact all Board members and their Technical Representatives should the February 16, 2006 meeting location change.***

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

- I. \*Adoption of Consent Agenda**
  - Adoption of the Proposed Agenda for February 16, 2006 meeting
  - Adoption of the Proposed Minutes for January 19, 2006 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)

Angela Knish, Waseca County Planning/ Zoning Administrator

**Materials enclosed:**

1. Waseca County January 19, 2006 letter
2. Waseca County January board meeting minutes, extract
3. Notice of Intent filed by Waseca County
4. Sample Findings of Fact, Conclusions, and Order
5. 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 a parcel of land is currently designated for agricultural preserve, there is a further requirement to comply with provisions of the state Agricultural Land Preservation Policy.

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 along Highway 14 midway between Claremont and Lake Crystal, where there are existing ethanol plants. The prerequisites of the proposer are satisfied by characteristics of this location. There are 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.

Minnesota Statutes, Chapter 40A.122, concerning eminent domain action on Agricultural Preserve lands provides, in part...

At least 60 days before an action described in subdivision 1, notice of intent must be filed with the Environmental Quality Board containing information and in the manner and form required by the Environmental Quality Board. The notice of intent must contain a report justifying the proposed action, including an evaluation of alternatives that would not affect land within an agricultural preserve.

At the time the EQB received the initial Notice of Intent it was noted that although a description of the selected site was outlined, insufficient detail was present relative to "an evaluation of alternatives that would not affect land within an agricultural preserve". Subsequently, the EQB received a supplementary letter on January 19, 2006, which provided additional necessary information. This letter is included in the board packet. In addition, Angela Knish, Planning/Zoning administrator for Waseca County, will be making a presentation to the board, and is supplying additional materials.

Minnesota Statutes, Chapter 40A.122, also sets the standard for review and describes the course of action for the EQB. Upon review of the Notice of Intent, the statute provides...

**Review and order.** The Environmental Quality Board, in consultation with affected local governments, shall review the proposed action to determine its effect on the preservation and enhancement of agriculture and agricultural uses within the zone and the relationship to local and regional comprehensive plans. If the Environmental Quality Board finds that the proposed action might have an unreasonable effect on a zone, the Environmental Quality Board shall issue an order within the 60-day period under subdivision 2 for the party to refrain from the proposed action for an additional 60 days.

The statute further provides...

**Public hearing.** During the additional 60 days, the Environmental Quality Board shall hold a public hearing concerning the proposed action at a place within the affected zone or easily accessible to the zone. Notice of the hearing must be published in a newspaper having a general circulation within the area of the zone. Individual written notice must be given to the local governments with jurisdiction over the zone, the agency, corporation or government proposing to take the action, the owner of land in the zone, and any public agency having the power of review or approval of the action.

If the Board finds that the action does not have an unreasonable effect on the preservation and

enhancement of agriculture and agricultural uses within the zone, it may conclude that no further review is necessary. If it were to order a hearing, and further find that the effects were unreasonable, the statute provides...

**Suspension of action.** The Environmental Quality Board may suspend an eminent domain action for up to one year if it determines that the action is contrary to the purposes of this chapter and that there are feasible and prudent alternatives that may have a less negative impact on a zone.

Therefore, upon review, the Board should determine whether there are feasible and prudent alternatives with less negative impact to the zone.

### **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**

This item is presented at this time for possible board action. The Notice of Intent was 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. The Notice of Intent has been distributed to the Janesville Township Board, Iosco Township Board, City of Janesville, Waseca Soil and Water Conservation District, and the Department of Agriculture. No adverse comments or objections have been received. Favorable comments were given by the Clerk of Iosco Township Board, and Clerk of Janesville Township Board. If the Board finds that the action does not have an unreasonable effect on the preservation and enhancement of agriculture and agricultural uses within the zone, it may conclude that no further review is necessary.

There are no indications at this time that there is a need for the EQB to intervene by ordering a local hearing on the matter. No feasible and prudent alternatives with less impact are available. The Board has the option to move to resolve that there is no need to take action; or, the Board could choose to allow the 60 day notification period to pass without action.

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

**IMPORTANT NOTE: Board members received the full set of documents for this item in the January Board Packet. Please retain those items as necessary. Only new, supplementary**

**items are included in this packet.**

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

**Materials enclosed:**

1. Comment letter from City of Eden Prairie, January 19, 2006
2. Categorical Exclusion worksheet for Class B Airspace analysis at MSP; by FAA
3. Email letter from Zero Expansion/Transtalk
4. Sample Findings of Fact, Conclusions, and Order
5. 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.

This matter first came before the Board at the regular monthly EQB board meeting on January 19, 2006. Upon a vote of 7-1, the motion to adopt the Findings of Fact concluding that the Flying Cloud EIS is adequate, failed. An affirmative vote of a majority of all board members is required to take an action.

Additional materials for this meeting include a copy of the official comment letter from Eden Prairie that was presented verbally at the January meeting by Scott Kipp, Planner for the City of Eden Prairie. Also included is the Categorical Exclusion worksheet prepared by the FAA that addresses the environmental effect(s) of the change to Class B airspace at MSP, which includes

the area around Flying Cloud Airport. That worksheet concludes that no further environmental review is warranted for the changes in Class B airspace to be implemented. The sample Findings of Fact and sample Resolution included in the Board packet this time reflect these updated materials.

## **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.

If the Board should find the EIS inadequate, Minnesota Rules, Chapter 4410.2800, Subpart 5 provides,

Subp. 5. **Inadequacy.** If the RGU or the EQB determine that the EIS is inadequate, the RGU shall have 60 days in which to prepare an adequate EIS. The revised EIS shall be circulated in accord with part [4410.2700](#), subpart 3.