

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

State of Minnesota by the City of Minneapolis,
Minneapolis Public Housing Authority in and for
the City of Minneapolis, City of Eagan, and City of
Richfield; City of Minneapolis, Minneapolis Public
Housing Authority in and for the City of
Minneapolis, City of Eagan, and City of Richfield,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER FOR PARTIAL
SUMMARY JUDGMENT**

Plaintiffs,

Court File No. 27-CV-05-5474

v.

Metropolitan Airports Commission

Defendant,

and

Northwest Airlines, Inc.,

Defendant-Intervenor.

The above-entitled matter came duly on for hearing before the Honorable Stephen C. Aldrich, Judge of District Court, on December 20, 2006 on the parties' cross-motions for summary judgment.

APPEARANCES:

Corey M. Conover, Esq., John E. Putnam, Esq., Lori Potter, Esq., among others, appeared on behalf of the Plaintiffs. ("Cities").

Thaddeus R. Lightfoot, Esq., and Thomas W. Anderson, Esq., appeared on behalf of Defendant Metropolitan Airport Commission ("MAC").

Thomas Tinkham, Esq., and Andrew Brown, Esq., appeared on behalf of Defendant-Intervenor Northwest Airlines, Inc. ("NWA").

SUMMARY OF THE ARGUMENTS

On April 20, 2005 the cities of Minneapolis, Eagan, and Richfield, and the Minneapolis Public Housing Authority, the Cities, sued in the name of the State of Minnesota under the Minnesota Environmental Rights Act (“MERA”), Minn. Stat. §§ 116B.01, et seq. (2005), and the state mandamus statute, Minn. Stat. §§ 586.01, et seq. (2005), seeking declaratory relief and an injunction against the MAC to require MAC to provide the noise insulation first identified in the 1996 Noise Mitigation Program for homes in the DNL¹ 60 to 64 dB noise contours of Minneapolis/St. Paul Airport (“MSP”). NWA was granted Defendant-Intervenor status on June 22, 2005.

Plaintiffs’ MERA claims assert that residents in their communities experience every day the disproportionate effects of noise from MSP, that the loud flights “destroy the quietude of otherwise quiet neighborhoods,” that “quietude” is identified as a “natural resource” deserving of protection under MERA, and that the MAC is obligated to provide the previously agreed upon sound insulation measures under Minnesota law. Plaintiffs seek:

- a) Count I - Declaration that the MAC has caused and is likely to cause pollution, impairment or destruction of a natural resource in violation of MERA and for associated equitable relief;
- b) Count II - Declaratory judgment that the MAC violated environmental quality standards, limitations, rules, orders, licenses, stipulation agreements or permits as defined by Minn. Laws 116B.03(1) and for associated equitable relief; and/or, in the alternative,
- c) Count III - A writ of mandamus to require the MAC to exercise its duties required by law.

In September 2006, Defendant MAC moved for summary judgment on all counts of the complaint. The MAC asserts:

- a) Plaintiffs’ MERA claims fail because they seek to compel a specific remedy and urge judicial interference with the MAC’s legislative authority. Specifically, the claims involve breach of contract rather than the protection of natural resources.
- b) The MAC is entitled to judgment as a matter of law on Count I because Plaintiffs contend the actionable conduct for their MERA claim is MAC’s operation and control of MSP—which is preempted by federal law. Thus, the only actionable conduct is the MAC’s proposed air-condition program which will not pollute, impair, or destroy the environment.
- c) The MAC is entitled to judgment as a matter of law on Count II because the alleged “environmental quality standard” is not substantive—it was not promulgated by the

¹ “DNL” is a measure of average daily noise levels that incorporates a 10 decibel noise penalty between 10 p.m. and 7 a.m. The record and the parties use DNL 60-64 and DNL 60-65 interchangeably to include areas exposed to greater than DNL 60 decibels and less than DNL 65 decibels.

MAC through the procedures delineated in their enabling statute.

- d) Even if the MAC established an environmental quality standard with regards to Count II it had discretion to change the standard and utilized that discretion.
- e) The Plaintiffs cannot establish the MAC has an unequivocal duty to implement a specific noise mitigation package with regards to Count III.

In November 2006, Defendant NWA moved for summary judgment on all counts. In addition to the arguments identified by the MAC above, NWA asserts:

- a) Plaintiffs' MERA claims fail because the indoor quietude of properties located in the 60-64 DNL contour is not a protected resource under MERA.

In November 2006, the Plaintiffs moved for partial summary judgment regarding Count II of their complaint. Plaintiffs assert:

- a) The MAC unambiguously committed to provide mitigation to the 60-64 DNL contours in the form of the same five decibel reduction package provided in the DNL 65 and greater contours.
- b) The MAC's commitment to provide sound insulation is enforceable as an environmental standard or limitation pursuant to MERA.

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein, this Court makes the following,

FINDINGS OF FACT

THE MAC AND ITS LEGISLATIVE AUTHORITY

1. In 1975 the Minnesota Legislature passed Minn. Stat. §§ 473.601 *et seq.* (2005) recreating the MAC and endowing it with broad powers to oversee all aspects of running MSP.
2. The MAC has specific authority, *inter alia*, to adopt and enforce rules, regulations, and ordinances, prosecute violators, exercise the right of eminent domain, acquire property, build new runways, enter into contracts, issue bonds to fund airport related interests (including noise abatement and natural resource protection measures regardless of location and ownership), and establish and collect rates, fees, charges and rentals for all airport facilities and determine how those funds will be spent. Minn. Stat. § 473.608.
3. The Legislature also charged the MAC with “assur[ing] the residents of the metropolitan area of the minimum environmental impact from air navigation and transportation, and to that end provide for noise abatement...and minimize the public’s exposure to noise and safety hazards around airports.” Minn. Stat. § 473.602 (emphasis added).

NOISE MITIGATION AT MSP

4. The MAC and the City of Minneapolis began to study noise insulation for homes near MSP in 1984. See MAC and City of Minneapolis, Aircraft Noise Research Project at 1 (June 1987), Pls.’ Ex. 3. The joint study found that “[a]ircraft noise is a major problem for residents living near the Airport,” and that “[p]eople experienced problems with aircraft noise while living in noise contours of about 60 to 80 [DNL].” Id. at 1, 28.
5. In 1985, the Federal Aviation Administration (“FAA”) adopted 14 C.F.R Part 150 to provide airports with a framework to analyze and recommend measures to address airport noise. Part 150 provides for “corrective” mitigation measures, such as soundproofing, consistent with a 45 decibel interior noise level goal, and assumes an exterior-to-interior noise level reduction of 20 decibels based upon a home’s existing construction. Hefner Aff., Ex. 4 (Nov. 2004 Part 150 Study Update), App. N, p. 2 of 161.
6. Part 150 then establishes interior noise level reduction goals above existing attenuation levels for the 75, 70 and 65 DNL contour intervals to meet EPA’s interior noise level goal of 45 decibels or less. 14 C.F.R § 150.23; 14 C.F.R. pt. 150, App. A, § A150.101(e)(8) and Table 1, n.1. There are no FAA interior noise level reduction goals in the 60 to 64 DNL contours area. Id.
7. In 1992, the MAC developed a sound insulation program for the airport, which it implemented in 143 homes through MAC’s Residential Sound Insulation Pilot Program. Under the Pilot Program, the MAC established a noise reduction level goal of 10-15 decibels greater than base home noise level reduction for homes in the DNL contours greater than 75, 5-10 decibels of noise level reduction in the DNL 70-74 contours, and 5 decibels in the 65-69 DNL contours. See Part 150 Study Update at 8-10 to 8-11, Pls.’ Ex. 2.
8. After its experience with the pilot program, the MAC expanded and made some adjustments to the sound insulation program. Id. at 8-11, 8-12. MAC eliminated the differential noise level reduction goals for the different noise contours and then established a universal “5-Decibel Reduction Package” for all homes in the DNL 65-75 contours. Id. at 8-12.

THE DUAL TRACK AIRPORT PLANNING PROCESS AND EXPANSION OF MSP

9. In 1989, the Legislature enacted the Metropolitan Airport Planning Act (“MAPA”). See 1989 Minn. Laws ch. 279.
10. The MAPA required the MAC and the Metropolitan Council to A) project aviation demand for a prospective thirty-year period and to B) evaluate two alternative ways to meet aviation demand: (1) continue to develop MSP; or (2) develop a new replacement airport. This was known as the “Dual Track Airport Planning Process.” See Minn. Stat. § 473.618; Dual Track Final Environmental Impact Statement (“FEIS”), p. I-1; March 8, 1996 Nigel Finney memo to MAC re: Dual Track Airport Planning Process Recommendation, pp. 1-2.
11. As part of the process for approving the expansion of MSP, the MAC and the FAA were

required to undergo an environmental review of the proposed projects—the MAC under the Minnesota Environmental Policy Act (“MEPA”) Minn. Stat. § 116D.01, et. seq., and the FAA through the National Environmental Policy Act (“NEPA”) 42 U.S.C. 4321, et. seq.

12. The MAC and FAA agreed to prepare joint Draft and Final Environmental Impact Statements for the Dual Track Process. The Draft EIS was released in December 1995. FEIS at i-ii.
13. The MAC also agreed with the Minnesota Environmental Quality Board (“EQB”) in 1992 to have EQB determine the adequacy of the FEIS for MEPA. FAA was responsible for issuing a Record of Decision for NEPA compliance.
14. In the Draft EIS, the MAC and the FAA evaluated several alternatives, including an expanded MSP and a new airport in Dakota County. The draft concluded that retaining MSP at its current location would expose 7,445 more persons to high levels of noise than moving the airport to a non-urban location. Dual Track Airport Planning Process Draft EIS at iv.
15. The Draft EIS evaluated noise impacts out to the 65 DNL contour, providing counts of homes, residents and noise-sensitive institutions, and proposed to provide sound insulation to all homes within the DNL 65. Id. at vii, V-142. This was a commitment to continue a program that was already providing such insulation to the most noise-impacted homes. Part 150 Study Update at 8-10 – 8-12.
16. The Draft EIS included no provisions for mitigation within the DNL 60-65 contours. The MAC identified the lack of mitigation in the DNL 60-65 contours as one of the categories of “major comments” on the Draft EIS.
17. Local governments such as the cities of Minneapolis, Bloomington, Eagan and Mendota Heights all commented that additional mitigation was necessary to address noise impacts associated with airport operations. FEIS at I-3, I-7, I-87, I-91, I-95, I-111.
18. Minneapolis and Eagan explicitly stated that their support for retaining the MSP location was contingent on providing noise insulation to at least the DNL 60 contour. Minneapolis Resolution 96R-052 (March 1996). See also Eagan Dual Track Airport Planning Position at 1 (Dec. 19, 1995); FEIS at I-91.
19. In March 1996, the MAC and Metropolitan Council reached closure on the MAC’s recommendations and issued a report to the Legislature. The MAC and Metropolitan Council, Dual Track Planning Process Report to the Legislature (March 1996). The MAC recommended expanding MSP at its current location with a new runway and other infrastructure.² Id. at 8-1.

² The expansion of MSP included the following principal features: a new 8,000 foot north-south runway, addition of 14 gates to the Lindberg and HHH terminals, additional air cargo facilities, the capability for additional maintenance facilities, and the construction of remote parking facility. The expansion was to add 25% more

20. The report concluded that “[t]he cost for a new airport, considering construction (including inflation) and financing costs, is \$2.2 billion greater than for expansion of MSP,” but acknowledged that expanding the airport at the current location would cause greater numbers of people to be exposed to high noise levels. *Id.* at xix, 6-20.
21. The report stated that “[t]he MAC is *committed* to providing the appropriate level of mitigation for adverse environmental impacts, *as required by applicable environmental laws and regulations*. This is particularly true for noise impacts, where additional reports to the Legislature are required following the MAC/Metropolitan Council recommendation re future airport development.” *Id.* at 6-18 (emphasis added).
22. It is clear that the MAC and the Metropolitan Council were choosing to increase and relocate noise for citizens near MSP to save money for both the MAC and the airlines.
23. In April 1996, the Legislature passed a bill to end the Dual Track Process, directing the MAC to develop a noise mitigation plan within 180 days of its long-term planning report. Minn. Stat. § 473.661, subd. 4(f).
24. Aware of the disproportional effects of air traffic noise on those living within the contours of MSP, the Legislature further directed the MAC to “examine” mitigation measures below the DNL 65 dB to the DNL 60 dB level. Minn. Stat. § 473.661(4)(f). It is reasonable to infer that the Legislature was aware of MAC’s major comments in the Draft EIS.
25. The MAC was specifically instructed to develop a report and recommendation on mitigation for a 2010 long-term capital plan (“MSP 2010 Plan”) addressing noise mitigation in the DNL 60 dB level in relation to future airport capacity and expansion. *Id.*
26. Finally, prior to the MAC constructing a third parallel runway at MSP, the Legislature directed the MAC to enter into a contract with each “affected city” whose approval was required. Minn. Stat. § 473.608, subd. 29. The Legislature defined an “affected city” as any city that would fall within the DNL 60 dB noise contour as a result of operations using the third parallel runway. *Id.*

THE 1996 NOISE MITIGATION COMMITTEE

27. Responding to legislative direction, in May 1996, the MAC formed the MSP Noise Mitigation Committee, composed of six MAC Commissioners, eight mayors from cities surrounding MSP (including the Cities), and representatives of the Metropolitan Council, Northwest Airlines and the Metropolitan Aircraft Sound Abatement Council (“MASAC”). MSP Noise Mitigation Program at 5 (Nov. 1996).
28. The Committee met eight times from May through October 1996 and evaluated noise insulation, possible operational measures for aircraft using MSP, runway use and community stabilization issues. *Id.* at 6; Appendix A.

operational capacity to MSP. Forecasts predict that aircraft operation will increase from 418,000 in 1992 to 520,000 in 2020. MAC and the Metropolitan Commission, Dual Track Planning Process Report to the Legislature (March 1996) at vii.

29. At the first meeting of the Committee, the MAC presented the details of the existing DNL 65+ noise insulation program near MSP. See Materials Provided at May 16, 1996, MSP Mitigation Comm. Meeting. The materials stated that the “Part 150 Sound Insulation Program is designed to reduce the interior sound level of a home by a goal of 5 decibels.” Id.³
30. At the June 3 and June 26 meetings, the Committee heard presentations from communities regarding their expectations. Statements made by the cities are recorded in the 1996 Noise Mitigation Program. Minneapolis wanted the sound insulation program to be extended to the DNL 60 contour. Eagan and Mendota Heights both maintained that sound insulation was essential. Id. at Ex. 10-A, 10-B, 10-C.
31. The Committee recommended the following to the MAC in October 1996:
- a. The residential sound insulation program for the area encompassed by the 1996 DNL 65 contour be completed on the currently approved schedule;
 - b. *The program* be expanded after completion of the current program to incorporate the area encompassed by the 2005 60 DNL;
 - c. *The program* be funded by a combination of passenger facility charge revenues, airline fees, internally generated funds, and federal aid, with the estimated total and annual costs as summarized below; to the extent that the MAC cannot fund this program in a reasonable period of time, support from the State of Minnesota should be sought. *In no case should unreimbursed financial impacts fall on affected residents or their local governments;*
 - d. That the Commission evaluate the airport noise environment 18 months prior to the estimated completion of the expanded program. If conditions warrant, a *modified* sound insulation package should be offered to eligible dwellings/buildings within the 54 DNL contour which achieves at least a 3-5 dB interior noise level reduction.

Id. at 35-36 (emphases added).

32. In the section entitled “Current Sound Insulation Program” of the Noise Mitigation Program, the residential program is described as being “designed to reduce exterior noise levels by 5 db.” Id. at 26 (emphasis added). Depending on the characteristics of the home, this is achieved by:
- a. Repair/replacement of exterior windows.
 - b. Addition of exterior acoustic storm windows.
 - c. Repair/replacement of existing prime doors.

³ NWA and the MAC claim the interior noise level of 45 db is the program standard. However, nowhere does the Noise Mitigation Program consider and/or adopt the 45dB standard by the MAC. In fact, the MAC’s goal was to exceed the 45db and go beyond what was required by the FAA.

- d. Addition of exterior acoustic storm doors.
- e. Addition of cellulose wall and attic insulation.
- f. Baffling of roof vents and chimney treatment.
- g. Addition of central air conditioning.

Id.

33. The \$37,100 per-home cost estimate for completing the sound insulation package in the DNL 60-64 was essentially the same as the per-home estimate for the package in the DNL 65 and higher per home. Id. at 28-31; see also MSP Mitigation Committee Meeting Summary at 6
34. The Committee's final report noted: "[t]he 1996 Dual Track Legislation requires the MAC to develop a committee to develop a noise mitigation plan." Id. at 5. The MAC staff noted in early 1996 that this plan was "to consider those areas encompassed by the 60 DNL contour for the airport, and should take into consideration proposed runway development at the airport. *This is viewed as a critical element in the continuation of the airport at its current location.*" MAC, Meeting Summary Part 150 Land Use Compatibility Implementation Design Policy Advisory Committee at 2 (May 7, 1996) (emphasis added).
35. On October 28, 1996, the MAC unanimously passed a resolution approving the noise mitigation program recommended by the Committee, with two amendments. First, it deleted the provision regarding a "modified" sound insulation package in the DNL 54-60. MSP Noise Mitigation Program at 2. Second, it added a new Section 9 that provided: "Completion of the sound insulation program is contingent upon the MAC maintaining a bond rating of at least A." Id. No other conditions, including the total program cost, were added.
36. Following the Commission's approval of the Noise Mitigation Program, the MAC forwarded the Program to the Minnesota Advisory Council on Metropolitan Airport Planning, consisting of State legislators. The Advisory Council sent the Program to the Legislature without substantive comment. See Letter from Sen. K. Langseth and Rep. B. Lieder to P. Flahaven, Secretary of the Senate, and E. Burdick, Chief Clerk of the House of Representatives (Feb. 10, 1997). Apparently relying on the noise insulation program, the Legislature took no action.

1998 FINAL ENVIRONMENTAL IMPACT STATEMENT

37. In May 1998, the MAC and the FAA issued a Final Environmental Impact Statement for the Dual Track Process ("1998 FEIS"). 1998 FEIS.
38. In the 1998 FEIS, the MAC expanded consideration of the noise impacts of the alternatives to the 60 DNL contour: "Recognizing that noise concerns can occur beyond DNL 65, DNL 60 contours are also shown and assessed." Id. at V-76.

39. The 1998 FEIS also stated that “[t]he EIS acknowledges that *noise can annoy some people outside the DNL 65*. For this reason, the MAC addresses mitigation for people within the DNL 60” Id. at I-210 (emphasis added).
40. The FEIS’s discussion of alternatives characterized as one of the “adverse impacts” of the MSP Alternative that “7,650 persons residing within the DNL 65+ noise contours, compared to 7,350 for no action.” 1998 FEIS at III-15. Thus, the MAC’s project was anticipated to make conditions worse in the noisier contours. Within the DNL 60-64 contours, the FEIS projected that the MSP would reduce the total number of persons exposed in 2005. However, it projected to do so by shifting some operations off the existing runways and onto the new runways, exposing the southern metro to much greater noise than they would have been exposed to before. See Id. at V-80.
41. The 1998 FEIS incorporated the 1996 MSP Mitigation Program and provided:
- a. The following mitigation measures *will be implemented* if the proposed action (MSP 2010 LTCP) is implemented:
 - i. the residential sound insulation program (SIP) within the 1996 DNL 65+ contour be completed on the approved current schedule (Note: the current program is scheduled for completion in the year 2002)
 - ii. *the SIP* be expanded to incorporate the area within the 2005 DNL 60-65 contour (see Appendix B)
 - iii. the 2005 DNL 60 contour be based on the most accurate projection of traffic levels and use of appropriate ANOMS data
 - iv. *the program* be funded by a combination of Passenger Facility Charge revenues, airline fees, internally generated funds and federal aid; to the extent that MAC cannot fund the expanded program in a reasonable period of time, support from the state of Minnesota will be sought; however, *in no case will unreimbursed financial impacts fall on affected residents or their local governments*
 - v. MAC will fund *the program* on an accelerated basis beyond its current annual level of \$25.5 million
 - vi. completion of *the program* is contingent on MAC maintaining a bond rating of at least A.

1998 FEIS at vii, V-81, B-1 (emphases added).

42. In the FEIS, the MAC also responded to comments on the Draft EIS made by Plaintiffs and others in 1996 regarding the mitigation of noise in the DNL 60-65 contours by referring to the mitigation committed to in the FEIS. Id. at I-3 (General Comment 2), I-7. In comments on the FEIS, the City of Minneapolis stated:

The City is pleased to see that the 1996 Noise Mitigation Plan as adopted by the MAC has been included in the FEIS. The Part 150 sound insulation program must be completed for areas currently in the DNL 65 contour by year 2002, and extended out to DNL 60 immediately after, as described in the 1998 MSP Capital Improvement Plan and the Noise Mitigation Plan.

Comments by the City of Minneapolis on the FEIS for the Minneapolis-St. Paul Dual Track Airport Planning Process at 3 (June 12, 1998).

43. In the Record of Decision on the FEIS, the FAA relied on the MAC's commitments in the 1996 Program document. ROD at 12, 60-61. The FAA concluded that the eligibility of federal funds may be extended to include the DNL 60 contour if there are applicable local standards accepted by the FAA. Id.

ENVIROMENTAL QUALITY BOARD ADEQUACY DETERMINATION OF FEIS

44. In 1992, the MAC had agreed that EQB would make the final determination under MEPA of the adequacy of the 1998 FEIS. MAC's Deputy Executive Director noted that:

This will have the advantage of the State's primary agency making the adequacy determination, avoiding the issue of MAC evaluating its own work, and lending credibility to the final decision as a result of the EQB making the decision on adequacy of the EIS.

Letter from M. Sullivan, Exec. Director of EQB, to N. Finney, Deputy Exec. Director of MAC with attached MAC Planning and Env't Comm. Meeting Minutes at 15 (Aug. 17, 1992) (emphasis added); N. Finney Dep. at 97.

45. After the publication of the 1998 FEIS, the MAC sought the EQB's determination that the EIS was adequate for MEPA purposes.
46. However, the City of Richfield challenged the MAC's proposed finding of adequacy on the ground, *inter alia*, that the MAC had failed to adequately mitigate low-frequency noise from operations using the new Runway 17-35. Memo of Richfield re: Adequacy of the FEIS at 1-3 (October 19, 1998).
47. Prior to EQB meetings on October 26, 1998, and November 23, 1998, the MAC submitted documents to EQB to convince it to make the adequacy determination. For example, prior to the October meeting, the MAC specifically identified one of the reasons it believed that the FEIS was adequate:

The MAC has committed in the Final EIS to provide standard sound insulation to homes within the DNL 60, 65 and 70 noise contours. The noise impacts and committed mitigation disclosed in the Final EIS go beyond that required by the current noise compatibility guidelines and policies of the FAA and Metropolitan Council.

MAC, Report to the Minnesota EQB at 8 (Oct. 1998) (emphasis added).

48. The MAC made similar comments in supplemental submissions to EQB, stating that “*MAC is committed to implementing mitigation to the 60 DNL contour, as part of MAC’s existing sound insulation for MSP.*” MAC’s Supplemental Information Presented to the Minnesota EQB at 4 (Nov. 10, 1998) (emphasis added).
49. On November 23, 1998, the EQB made a determination of adequacy of the FEIS, allowing the MAC to proceed with implementation of the expansion program. See Minnesota Environmental Quality Board Findings of Fact, Conclusions of Law and Order.

COMMUNITY RELIANCE ON THE MAC’S NOISE INSULATION COMMITMENTS

50. In addition to the MEPA and NEPA process, in 1998 the MAC was working with communities to develop contracts relating to the development of a third parallel northwest/southeast runway at MSP.
51. The Legislature directed that the MAC “must enter into a contract with each affected city that provides the corporation may not construct a third parallel runway at the Minneapolis-St. Paul International Airport without the affected city’s approval.” Minn. Stat. § 473.608, subd. 29(a).
52. An “affected city” was defined as “any city that would experience an increase in the area located within the 60 DNL noise contour as a result of operations using the third parallel runway.” Id. at § 473. 608, subd. 29(d).
53. Going beyond the terms of the Legislative requirement, the MAC secured provisions in the Minneapolis and Richfield agreements that they would not bring any legal challenge to the Dual Track EIS generally or the Runway 17/35 specifically. See Minneapolis and MAC, Contract Pertaining to Limits on Construction of a Third Parallel Runway (Nov. 1998); Richfield-MAC Noise Mitigation Agreement (Dec. 1998).
54. After the agreements were signed, no city mounted any judicial challenge to the Runway 17/35 project. The record is also devoid of any political challenges.

1999 AIRLINE LEASE PROVISIONS

55. In early 1999, the MAC negotiated its standard lease through 2010 for terminal facilities with the airlines using MSP. Provisions for sound insulation out to the DNL 60 contour were included. Airline Operating Agreement (Jan. 1, 1999).
56. While the MAC is generally required to secure approval from the airlines for major capital spending projects, the lease contained an exception for the noise mitigation program. Id. at 54. The lease gave the MAC the ability to spend up to \$150 million on noise insulation in the DNL 60-64 without airline approval through 2010 plus a \$50 million contingency fund. Id. at Exhibit I. The \$150 million figure was derived from the number of homes (4,043) then expected to be in the DNL 60-64 contours multiplied by the same cost (\$37,100 per home) for the five-decibel insulation program in the DNL 65+ contours. Id.

THE MAC’S UNDOING OF THE DNL 60-64 NOISE PROGRAM

57. In 1999, the MAC broke ground for runway 17/35 which, along with adding gates and parking expanded MSP's operational capacity by twenty-five percent.⁴
58. In 2000, for the first time, an official statement accompanying a bond offering in 2001 expressed a reservation on the 5db program, while continuing to speak of mitigation in the 60-65 as a commitment. MAC, Official Statement re: the Series 2001 Bonds at 80 (May 17, 2001).
59. In its October 2001 Official Statement, the MAC stated that it would offer "the five decibel reduction package" first to residents within the 64 contour and then in successively lower contours as possible within the \$150 million funding limitation. The MAC estimated the cost of insulating to the 60 contour at \$450 million, with the result that most of the program "will be required to be funded from outside sources, including, but not limited to federal and state funds." MAC, Official Statement re: the Series 14 Bonds at 68-69 (Oct. 10, 2001). The cost increased, in large part, because the number of homes in the DNL 60 to 64 contour increased.⁵ Nigel Finney Memo dated Feb. 27, 2001.
60. On December 17, 2001, the MAC "rescinded its commitment to provide the five decibel reduction package to homes within the 2005 DNL 60 noise contour, and has instead decided to reevaluate the best and most efficient use of the \$150 million for noise mitigation within the 2005 DNL 60 noise contour." MAC, Official Statement re: the Series 15 Bonds at 72 (Jan. 8, 2002). The MAC alleges the rescission was because concerns arose regarding the accuracy of the forecasted 2005 noise contours in light of the impact of the events of September 11, 2001 on air travel.
61. In March 2002, the Metropolitan Council approved the MAC's "significant effects" capital improvement projects for 2002 (2002 CIP), which included the construction of Runway 17/35 and a terminal parking structure. That approval was conditioned on MAC spending the \$150 million previously earmarked for noise insulation in homes in the DNL 60-64 dB.
62. Notwithstanding the condition set by Metropolitan Council and one month later the MAC submitted a revised noise program in its 2002 Part 150 Update⁶ submission to the FAA that was a scaled down version of the 1996 MSP Noise Mitigation Program and provided for a two-tiered insulation process. Under the new plan, homes within the DNL 63-64 dB would receive insulation mitigation pursuant to the existing DNL 65 dB program while homes within the DNL 60-62 dB would receive air conditioning only. The MAC also inserted

⁴ The initial ground breaking for the new runway was in 1999 with an estimated completion date of 2003. In December 2001, some construction work was deferred due to budgetary concerns following the 9/11 terrorist attacks. The new estimated completion date was late 2004. Construction work was delayed again in March 2003 and the new estimated completion date was late 2005.

⁵ In fact, the 2005 60 to 64 DNL contour projected 10,040 homes to be mitigated at an average price of \$45,000 per home for a total of \$451,800,000 compared to the 1999 projection for 2003 through 2010 of 4043 homes at \$37,000 per home.

⁶ Under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter "the Act") and 14 CFR Part 150, airports are required to submit noise compatibility programs for approval or rejection based on FAA criteria as expressed in Part 150 and the Act.

language that appeared to back away from its commitment to spend \$150 million on noise insulation.

63. In May of 2002, the MAC changed course and recommitted to spending the \$150 million after Metropolitan Council adopted a resolution on May 8, 2002 requiring the MAC to remove the offending language from its 2002 Part 150 Update to comply with conditions set in its March approval of the MAC capital improvements program. By letter, dated May 22, 2002, the MAC notified the Metropolitan Council that it had deleted the disputed language (Amendment 6) from its 2002 Part 150 Update and reaffirmed its \$150 million commitment for noise mitigation in compliance with the Metropolitan Council's condition. See letter, dated May 29, 2002, from Lee Sheehy, Metropolitan Council Regional Administrator, to Nigel D. Finney.
64. In 2004, the MAC adopted a \$48 million, air conditioning only, "mechanical package" that is MAC's current intended program for the 60-64 contours. MAC, Official Statement re: the Series 2005 Bonds at 86-87 (May 26, 2005). The MAC submitted this package to the FAA in the Part 150 Plan Update of November, 2004. Contrary to the explicit promise in the 1996 Noise Mitigation Program, homeowners would pay a total of \$20 million of the cost. Part 150 Plan Update at 87. The MAC estimates that almost 40% of the homes already have air conditioning and would receive nothing under its program. Memo from N. Finney, MAC, re: Homeowner Co-Pay Loan Program at 2 (Dec. 30, 2004). In Eagan, that number is 80%. See Letter from Mayor P. Geagan et al., Eagan, to MAC (July 14, 2004).

NOISE CAUSED BY MSP OPERATIONS

65. On October 27, 2005, Runway 17/35 opened at the Minneapolis-St. Paul International Airport. Part of the \$3.1 billion airport expansion program begun in 1998, Runway 17/35 provides approximately twenty-five percent more operational capacity, allowing the airport to accommodate future increases in operations.
66. Each day, the MAC provides the facilities for more than a thousand aircraft to fly over the neighborhoods surrounding the Airport. MAC, Official Statement re: the Series 2005 Bonds at 51; Part 150 Study Update at Table 4.3. As a result, by the MAC's own calculations, approximately 25,000-28,000 people are expected to be subjected to noise of DNL 60-64 decibels on an average day in 2007. Part 150 Study Update at 5-21 and 6-3. By 2020, it is forecasted that more than 1,400 aircraft will operate per day and nearly 520,000 a year. MAC and the Metropolitan Commission, Dual Track Planning Process Report to the Legislature (March 1996) at vii.
67. Further, through continued growth and improvement at the Airport, MAC estimates that the number of persons in the DNL 60-64 contours will increase by around 10,000 people to 37,000 by 2015. MAC and FAA, 2015 Terminal Expansion Project Draft Environmental Assessment at 29. Thus, MSP will be much noisier to many more people than was originally estimated in the 1996 – 2000 process.
68. These aircraft operations create repetitive and intrusive noise that affects the communities surrounding MSP.

69. The Metropolitan Council has discouraged building in the 60 to 64 DNL contours. Metropolitan Council, 2030 Transportation Policy Plan at H-4, H-6 (December 2004). The Transportation Policy Plan within that Guide provides that new development and major redevelopment of existing homes is incompatible in the DNL 60 to 64 dB, *even if acoustical treatment were incorporated in the structure* and outside uses restricted. The Development Guide also says that development “...in [DNL 60 dB zones] can benefit from insulation levels above typical new construction standards in Minnesota, but insulation cannot eliminate outdoor noise problems.” It further asserts that development with interior noise levels could be accepted under some circumstances, but are “strongly discouraged.” Id.
70. Review of Transportation Policies on Metropolitan Council website shows that the 2004 Development Guide, and the Transportation Policy Plan within it, are unchanged from the December 2004 document. Each community in the Metropolitan Area is required to “... jointly prepare a noise program to reduce, prevent or mitigate aircraft noise impacts on land uses that are *incompatible with the guidelines.*”
71. Plaintiffs presented compelling and undisputed evidence that the provision of a five-decibel noise reduction package is a necessary and appropriate means of addressing noise impacts, and the MAC’s proposed air-conditioning-only noise remedy does not minimize noise impacts as required by their enabling statute. Both residents and experts have identified sleep interference and other effects in homes in the DNL 60-65 contours that already have air conditioning. The five-decibel noise reduction package would reduce instances of sleep disturbance by half and reduce levels of community annoyance. P. Schomer Aff. at ¶¶ 13-14.

CONCLUSIONS OF LAW

1. The Cities have asserted enforceable claims under MERA.
2. The proper measure for outdoor quietude in this case is the average quietude in an urban area.
3. The indoor quietude of properties located in the 60 to 64 DNL contour is a protected resource under MERA to provide a haven from airport noise for residents in those areas.
4. The complained-of conduct in this case under MERA is the MAC’s operation and recent expansion of MSP *combined with* MAC’s failure to provide adequate mitigation for the ongoing noise impacts within the DNL 60 to 64 noise contour. The MSP expansion and mitigation of its noise are properly viewed as one project.
5. The complained-of conduct is not preempted by federal law because the relief requested—adequate noise mitigation—does not encroach on aircraft operations.
6. The MAC had the authority to create a standard as part of its incidental powers for operating and extending the airport pursuant to its enabling legislation.

7. The MAC created substantive and enforceable environmental standards when it asked other governmental entities and the public to rely on the mitigation measures discussed in the 1996 Noise Mitigation Program and the 1998 FEIS, which were both approved through an extensive public process.
8. In 1996, based on the MAC's technical research, the Metropolitan Council adopted a DNL 60 to 64 dB standard for its Metropolitan Development Guide. That standard is reaffirmed in the current (2004) 2030 Transportation Policy Plan.
9. The standard the MAC committed to provide was the same five decibel noise reduction package in the 60 to 64 DNL contours that it was already providing to the DNL 65 plus contours.
10. The MAC gave away any discretion it may have originally had to change the standard when it used the five decibel reduction package to obtain approval of its proposed airport expansion and to open the new 17/35 runway.
11. The MAC has reneged on its commitment to install the five decibel reduction package in the 60 to 64 DNL contours. As such, the MAC is in violation of the standard it set in exchange for approval of the airport expansion project in 1996 and 1998.
12. The MAC had a clearly defined duty, pursuant both to statute and standard, to abate noise in the 60 to 64 DNL contours.

AND IT IS ORDERED:

1. The Motions of the MAC and NWA for Summary Judgment are DENIED.
2. The Cities Motion for Partial Summary Judgment is GRANTED.
3. The Mandamus claim is premature at this time; therefore ruling on Count III and other remedies is RESERVED.

4. The following memorandum and appendix A (Timeline) is hereby incorporated as part of this order.

BY THE COURT:

Dated: January 25, 2007

/S/ SCA _____

Stephen C. Aldrich

Judge of District Court

MEMORANDUM OF LAW

The claims presented in the instant case are complex. They involve issues of first impression for Minnesota courts. Whatever this Court does almost certainly will be appealed by whichever party is most disappointed and perhaps by all three. Thus, absent a settlement, this Court's decision will likely be the first word in an extended legal dialogue.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment "shall be rendered" when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. To avoid summary judgment, the non-moving party must present specific facts demonstrating that there is a genuine issue based upon a dispute of material fact that warrants a trial. Minn. R. Civ. P. 56.05; Borom v. City of St. Paul, 184 N.W.2d 595, 597 (1971).

MINNESOTA ENVIRONMENTAL RIGHTS LAW

MERA allows political subdivisions, among others, to maintain a civil action in district court for declaratory or equitable relief in the name of the state of Minnesota against any person "for the protection of the air, water, land, or other natural resources located within the state . . . from pollution, impairment, or destruction." Minn. Stat. § 116B.03, subd. 1. "Pollution, impairment or destruction" is defined as consisting of two types of conduct: 1) "conduct" that violates, or is likely to violate, "any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality, agency, or political subdivision thereof" or 2) "conduct" that "materially adversely affects or is likely to materially adversely affect the environment." Minn. Stat. § 116B.02, subd. 5. To establish a *prima facie* case for either Count I or Count II, Plaintiffs must identify first, the existence of a protectible

natural resource and second, “pollution, impairment or destruction” of that resource. Minn. Stat. § 116B.03, subd. 1.

I. INDOOR QUIETUDE IS A PROTECTIBLE NATURAL RESOURCE UNDER MERA

NWA and the MAC argue Plaintiffs cannot state a MERA claim because “indoor quietude” is not a protected natural resource under the statute.⁷ MERA’s definition of “natural resources” includes “all mineral, animal, botanical, air, water, land, timber, soil, *quietude*, recreational and historical resources.” Minn. Stat. § 116B.02, subd 4 (emphasis added).

Defendants’ argument is unconvincing. “Natural resource” is defined specifically to include “all ... quietude” without specification of “natural quiet.” MERA does not only protect quietude in its natural state—its application is not limited to the remote and pristine parts of Minnesota.⁸ The Minnesota Supreme Court and Court of Appeals have provided a broad reading of this scope in its gun club cases. See Minnesota Pub. Interest Research Group v. White Bear Rod and Gun Club, 257 N.W.2d 762 (Minn. 1977); Citizens for a Safe Grant v. Lone Oak Sportsmen’s Club, 624 N.W.2d 796, 806 (Minn. Ct. App. 2001). In these cases, the courts explicitly considered the effects of noise on the use of property, including the effects on sleep. These courts were not deterred because the areas in issue included human development and thus sounds. The proper measure for quietude in this case is the average quietude in an urban area.

The Legislature intended the practical application of MERA to protect the environmental resources throughout Minnesota. It is unreasonable to think that when outside noise is so pervasive that it penetrates through walls, only the outside quietude would be protected. The

⁷ NWA argues, if MERA claims were extended to include indoor quietude, MERA claims could be asserted against the manufacturers of blenders, hairdryers, and other household appliances. This seems most unlikely. People can choose to turn on their blenders, they get no choice about airplane noise.

⁸ As noted in this Court’s Order Denying Defendants’ Motion to Dismiss: “[P]eople living around MSP have the right to the same quietude as those who live in Blaine, or Eden Prairie, or Woodbury, or other parts of the metropolitan urban area, but not the quietude enjoyed by those who live in remote rural areas such as Blackduck.”

residents living near MSP are entitled to an indoor escape from the noise that they bear for the benefit of all Minnesotans. Indeed, the Legislature directed a mitigation program in 1996 for that reason.

II. INDOOR QUIETUDE IS BEING POLLUTED AND IMPAIRED

A. The MAC Has Engaged In Conduct That Adversely Affects The Environment.

The first count of Plaintiffs' complaint alleges that the MAC engaged in the second type of conduct contemplated under MERA's definition of "pollution, impairment or destruction." In particular, the complaint alleges that "noise pollution from MSP materially adversely affects the environment by impairing the natural resource of quietude." The complaint further alleges that the "MAC's failure and announced intention to continue to fail to implement an adequate noise insulation program in the 60 to 65 DNL will materially adversely affect the environment and fails to minimize the impact of MSP operations on the environment."

Defendants argue they are entitled to judgment as a matter of law on Count I because Plaintiffs cannot show actionable "conduct" that will "materially adversely affect the environment."

1. The MAC has engaged in actionable conduct.

The conduct in question is the *combination* of MSP's expansion, which increases the noise level in the surrounding communities, *and* the MAC's failure to mitigate that noise as they had committed. It is impossible to separate these things when the MAC used the mitigation in order to secure MSP's expansion in its current location.

Defendants maintain this court lacks the jurisdiction to order relief that would affect airport operations, as federal law preempts all state efforts to affect aircraft operations. Minn.

See Alevizos v. Metro. Airports Comm'n of Minneapolis and St. Paul, 216 N.W.2d 651, 663 (Minn. 1974).

Pub. Lobby v. MAC, 520 N.W.2d 388 (Minn. 1994). They assert Minnesota Public Lobby, unequivocally states that the Noise Control Act of 1972 leaves “no room for local curfews and other local controls” that impinge upon aircraft operations. Id. at 390. Congress intended to preempt state law in the aircraft noise area because state regulation would severely limit the flexibility of FAA in controlling air traffic flow. Id. Defendants assert that since federal law preempts all state laws affecting aircraft operations, the only possible MERA conduct in the Cities’ action is the difference between the noise benefits of the five-decibel noise reduction package that the Cities seek and the noise benefits of the proposed MAC air condition only plan. Defendants argue summary judgment is appropriate because the parties agree that the MAC’s air condition only mitigation will not adversely affect indoor quietude. In fact, it will either improve or have no affect on interior quietude and as a result cannot constitute “pollution, impairment or destruction.”

The MERA remedy Plaintiffs seek—implementation of the proposed and promoted five decibel noise mitigation program—does not impinge upon aircraft operations. In Minnesota Public Lobby, the court held that the relief sought by the plaintiffs would bring the airport into compliance with the relevant noise standard only by “*substantially reducing airport operations at MSP, converting the surrounding residential areas to nonresidential uses, or moving the airport.*” Id. (emphasis added). Minnesota Public Lobby drives home the point that the type of claim that will be preempted is one that will “substantially impact[] operations at MSP,” or “impinge on aircraft operations,” or “substantially reduce aircraft operations,” or “purport to control aircraft flight” or “impose a curfew on airplane takeoffs.” Id. Here, without affecting airport operations, Plaintiffs seek to mitigate the effects of the noise caused by the expansion of MSP. This Court is not ordering MSP to cease operating. The MAC is not ordered to stop letting planes fly at certain

times. It is required to follow through with its commitment to insulate homes in the DNL 60 to 64 contour.

Defendants argue MERA does not give this court the authority to require mitigation for the effects of conduct. They argue in comparison that MERA provides a court with the authority to enjoin a gun club from operating because it is impairing quietude but it does not provide a court with the authority to order the gun club owner to provide residential noise mitigation or to pay damages to nearby homeowners. However, the facts in Defendant's hypothetical are notably different than the facts presented here because of the preemption issue. It is impossible to enjoin an airport from operating because such action is preempted from federal law. Airports cause intense noise that harms the environment. MERA has a "broad remedial purpose" and is a flexible tool for the protection of that environment. County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 322 (Minn. 1976). The MAC and the Legislature have already determined it is necessary to provide some relief to those affected by noise so loud that it disturbs their daily lives.

2. The MAC's conduct materially adversely affects the environment.

Noise in the DNL 60 to 64 contours materially adversely affects the environment. The MAC has acknowledged the seriousness of the issue and developed and promoted programs to mitigate the effects of debilitating noise on residents in DNL 60 dB in exchange for expanding MSP in its current location. Specifically, the MAC's enabling statute; the Legislature's directive to the MAC in 1996 to develop a program and submit a recommendation on noise mitigation in the DNL 60 dB; the MAC's 1996 Noise Mitigation Program fulfilling that requirement; the 1998 FEIS—a joint effort between the MAC and the FAA for environmental review by state and federal agencies which adopted the 1996 MSP Noise Mitigation Program; the Metropolitan Council's conditioned approval of the MAC's airport expansion expenditures in 2002 on the

MAC reaffirming its commitment to provide noise mitigation in the DNL 60 to 64; among other things, are proof that noise mitigation in the DNL 60 plus was deemed “significant,” “materially adverse,” and worthy of protective measures.

At the hearing, Defendants argued that the expansion did not increase the noise in the surrounding communities. They point to the 1998 FEIS which evaluated a no action alternative, that is, no new runway, as opposed to the new runway. The FEIS showed that there would be fewer people in the DNL 60 to 64 contours under the expanded airport than there would have been had the runway not been included. This was true for a short time at best.⁹

To the contrary, the MAC added twenty-five percent more capacity to MSP with the expansion; the MAC added parking, new gates and a new runway as well as additional flights. With the new runway, it has the capacity to shift the noise. Some of the flights that may have, at least in the short term, otherwise been on the two parallel runways or the main runways are now going to be heading south. Homes in Richfield, Eagan and Bloomington, not previously exposed to those levels of noise, are now being affected. As a result of the expansion, by the MAC’s own calculations, approximately 25,000-28,000 people are expected to be subjected to noise of DNL 60-64 decibels on an average day in 2007. A twenty-five percent expansion of MSP can mean nothing other than more noise emanating from the airport for more people.

⁹ The FEIS’s comparison of the noise impacts of the MSP Alternative and no action alternatives was conducted only for the year 2005, soon after the planned opening of the new runway. This allowed no consideration of the potential effects that adding 25% more runway capacity would have in later years when the old airport configuration would no longer be able accommodate all demand. See MAC, Official Statement re: the Series 2005 Bonds at 47 (May 26, 2005) (“Runway 17/35 is being constructed in order to meet future growth in passenger and aircraft activity at the Airport...”); MAC, Talking Points on Richfield at MACC00998 (“MSP 2010 plans include construction of a North/South runway which will provide a 25 percent increase in capacity.”). The FEIS assumed that the number of operations in 2005 would be 2.3% lower for the no action scenario than the MSP Alternative “due to increasing capacity constraints.” FEIS at V-74. The FEIS did look at “sensitivity scenarios” for higher levels of operations up to the year 2020, but did not compare MSP Alternative versus no action conditions. FEIS at App. H. In addition, the 2005 assessment assumed use of the new Runway 17/35 at levels that have not materialized in fact, meaning that more operations are going over Minneapolis and Eagan than assumed. P. Dmytrenko Dep. at 63:2-64:14.

3. MERA is properly construed to regulate airport noise.

Airport noise is *sui generis* within the subject matter of environmental regulation because of the overwhelming presence of the FAA's role in promoting aviation and directing interstate commerce. There is no legislative history for MERA and its inclusion of quietude. Thus, it is improbable the authors of MERA anticipated a situation where MERA would be implicated by a negotiated process extending for eleven years, involving three governors, seven legislatures, multiple mayors, city council members, and other interested governmental and non-governmental agencies. Interpretation of MERA must address the circumstances of this unique situation.

MERA establishes that the protection of natural resources is the state's "paramount concern." Drabik v. Martz, 451 N.W.2d 893, 896 (Minn. Ct. App. 1990). "[I]t is the duty of the courts to support the legislative goal of protecting our environmental resources." County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 321 (Minn. 1976). It seems more prudent to read the statute consistently with the policy favoring environmental protection rather than favoring the unlimited power claimed by the Metropolitan Airport Commission to spread and increase noise on its neighbors.

Plaintiffs have established a *prima facie* case by demonstrating that quietude of residents near MSP is a protectible natural resource that is being impaired in the DNL 60 to 64 contours by the MAC's operation and development of MSP combined with its failure to provide adequate mitigation. Trial to the Court on any factual disputes remaining as to Count I will be held the week of February 12, 2007.¹⁰ At that time, other appropriate remedies will be addressed in more detail.

The Motions of the MAC and NWA for summary judgment on Count I are denied.

¹⁰ It is not clear how the disputed facts affect the resolution of Count I but because the Cities did not move for

B. The MAC Has Created and Violated an Enforceable Environmental Quality Standard.

The second count of Plaintiff's complaint alleges that the MAC engaged in the first type of conduct contemplated under MERA's definition of "pollution, impairment or destruction." MERA is violated when plaintiff can show that "the defendant's conduct violates" or is likely to violate an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued by" a state regulatory agency. Minn. Stat. § 116B.02, subd. 5. All parties have moved for summary judgment on Count II.

1. The MAC has engaged in actionable conduct.

As discussed above, the conduct in question is the combination of MSP's expansion together with the MAC's failure to mitigate the noise caused by the airport as they had repeatedly committed to do from 1996 through 2001.

2. The MAC created and violated an environmental quality standard.

The primary dispute is whether there is a "standard" or "limitation" relating to sound insulation in the DNL 60 to 64 contours that would fall under MERA. MERA does not define the term "standard." Thus, this Court is asked to define a term in a statute that the Legislature and case law interpreting that statute have in no way made clear, at least to airport noise.

Plaintiffs contend that the 1996 Noise Mitigation Program and 1998 FEIS that incorporated it by reference unambiguously provided that the mitigation to be provided in the DNL 60 to 64 contours was the same five-decibel noise reduction package that was provided to the homes within the DNL 65 plus contours. They argue the MAC's commitment is the standard and that standard is enforceable because the MAC has a mandatory duty to minimize the impacts of noise pursuant to its own enabling statute, the 1996 Law, as well as both MERA and MEPA.

summary judgment on Count I, the matter will be addressed at the pretrial conference.

At the hearing, Defendants argued what was “committed” to in the 1996 Noise Mitigation Program is not an issue this Court needs to address because the legal question is not what the standard is but whether the 1996 Noise Mitigation Program and the 1998 FEIS created a standard.

Defendants argue the 1996 Noise Mitigation Program and the 1998 FEIS cannot create an “environmental quality standard” because they were not promulgated through the MAC and they do not include substantive and enforceable environmental limitations. Kennedy Bldg. Assocs. v. Viacom, Inc., 375 F.3d 731, 743-44 (8th Cir. 2004). Kennedy Bldg. Assocs. construed MERA’s “environmental quality standard” language in the context of compliance to an alleged violation. See Minn. Stat. § 116B.03, subd. 1. As a defense to an alleged violation of an “environmental quality standard,” MERA allows parties to argue that they are acting “pursuant to any environmental quality standard, limitation, rule, order, license...” that MPCA or three other state agencies issue. Id. In Kennedy Bldg. Assocs. the court determined that an environmental quality standard only refers to substantive and enforceable standards. Defendant argues that the reference to “environmental quality standard” in the MERA compliance defense defined in Kennedy Bldg. Assocs. is identical to the language in MERA’s “pollution, impairment, or destruction” definition. Compare Minn. Stat. §116B.03, subd 1 (environmental quality standard compliance defense) with Minn. Stat. §116B.02, subd. 5 (defining “pollution, impairment, or destruction” or natural resources as violation of an environmental standard). Thus, the term should have the same meaning in both statutory provisions—an “environmental quality standard” must be substantive and affirmatively imposed.

Defendants then argue that the only way for the MAC to create a “substantive” standard is for them to promulgate it through their enabling statute. In particular, the MAC’s enabling

statute establishes express administrative procedures with which the MAC must comply before promulgating any rule, regulation, or ordinance, including specific public notice and public hearing requirements. Minn. Stat. § 473.608, subs. 17 & 18.

The MAC argues it did not promulgate the 1996 Noise Mitigation Program as a binding ordinance, rule or regulation under its enabling statute; it simply adopted the policy recommendations of the Noise Mitigation Committee. The MAC also argues it did not promulgate the 1998 FEIS as a binding ordinance, rule, or regulation, rather, the FAA and the MAC prepared the FEIS under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370f, and the Minnesota Environmental Policy Act (“MEPA”), Minn. Stat. §§ 116D.01-11. According to the MAC, the 1998 FEIS merely incorporated and discussed the 1996 Noise Mitigation Program.

Defendants also argue these documents are not substantive and enforceable because the 1996 Noise Mitigation Program was merely a resolution and the FEIS is only an information gathering document. They assert MEPA does not convert mitigation measures outlined in the 1998 FEIS into independently enforceable substantive obligations. See Nat’l Audubon Soc’y v. MPCA, 569 N.W.2d 211, 217 (Minn. Ct. App. 1997) (mitigation measures need not be substantive standards, but must be more than “mere vague statements of good intentions”). The MAC asserts that the project and the mitigation are separate things—that while the MAC may have had a duty to look at project alternatives it had no such duty to review and choose mitigation measures that minimized harm to quietude. Thus, they argue any alleged commitments found in these documents have no substantive effect.

The MAC’s argument is reductionist and selective. A “standard” is less formal than a rule or ordinance and specific promulgation procedures are not necessary to create a standard. Courts

have recognized the term “standard” as being one that might have to be tailored to the circumstances of a given case. MERA is “couched in general terms, leaving the agencies the duty of determining precisely what standards will fulfill the environmental policy enunciated by the Legislature.” In re Indep. Spent Fuel Storage Installation, 501 N.W.2d 638, 649 (Minn. App. 1993). In Indep. Spent Fuel Storage Installation, the court directed the Minnesota Public Utilities Commission to “determine the standards that are appropriate under the Minnesota Environmental Rights Act and the Minnesota Environmental Protection Act and apply those standards.” Id. Thus, MERA and its case law contemplate that agencies, like the MAC and the Metropolitan Council, will determine or issue the standards that are appropriate to the circumstances.¹¹

Further, MERA does not limit the measures that are enforceable to only those that are promulgated as rules or ordinances. MERA proscribes the violation of “any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit...which was issued prior to the date the alleged violation occurred....” Minn. Stat. § 116B.02, subd. 5. In other sections, MERA speaks in terms of “an environmental quality standard, limitation, rule, order, license, stipulation agreement or permit *promulgated* or *issued*...” Id. at § 116B.03, subd. 5 (effect of MERA judgment in subsequent actions); § 116B.04 (burden of proof). The Legislature’s use of both “promulgated” and “issued” indicates that it intended the two verbs to have independent meanings.

The mitigation measures discussed in the 1996 Noise Mitigation Program and the 1998 FEIS were far more than vague statements of good intentions. They became substantive

¹¹ Plaintiffs properly cited case law from New Jersey and California supporting their assertion that the term “standard” should be broadly construed. See Citizens for a Better Environment v. Deukmejian, 731 F. Supp. 1448, 1454 (N.D.Cal. 1990) (court determined that a standard under the citizen suit provision of the Clean Air Act, need not be reduced to numerical formulas to be deemed a standard); Borough of Kenilworth v. Dep’t of Transp., 376 A.2d 1266, 1273 (N.J. Super. Ct. App. Div. 1977) (the New Jersey Action Plan procedure for reviewing impacts of highway projects, together with the regulations under which the plan was formulated constituted a “standard”

environmental quality standards because: (1) they were implemented through formal action of the MAC that involved extensive opportunities for public comment and involvement; (2) they were intended to induce reliance by other government entities and the public; and (3) they were created in response to statutory obligations to minimize the impact of airport noise.

First, the procedures undertaken to adopt the 1996 Noise Mitigation Program and implement the 1998 FEIS were more stringent than the MAC's express administrative procedures.

The same level of process was undertaken to pass the resolution for the 1996 Noise Mitigation Program and for the 1998 FEIS as is required in the MAC's enabling statute to pass ordinances or regulations, with the exception of the fact that the 1996 resolution was not published in a newspaper as a legal notice and the publication was not reported to the Secretary of State. Minn. Stat. § 473.608, subd. 17. For the FEIS, at least eight public hearings were held, three public comment periods were provided and public notice was given through newspapers, the Federal Register, press releases and press conferences. Except for the word used, "resolution" versus "regulation," it appears that the procedures for the adoption of these programs or standards, were far more elaborate than the minimum required by the enabling statute.

Second, mitigation measures adopted in the 1996 Noise Mitigation Program and the 1998 FEIS were intended to induce reliance by other government entities and the public. Minneapolis and Eagan commented early in the environmental review process that they would not oppose the expansion and retention of MSP in its current location if mitigation were provided in the DNL 60 to 64 contours. The MAC then committed, *inter alia*, to expand the insulation program to the DNL 60 contour in the 1996 Noise Mitigation Program and the 1998 FEIS. The MAC further secured commitments from Minneapolis, Bloomington and Richfield not to challenge the

under New Jersey's Environmental Rights Act).

expansion of the airport. The MAC also secured federal approval from the FAA on that condition that it implement the 1996 Noise Mitigation Program. It also secured EQB's approval of the FEIS by repeatedly stressing the commitment to provide "standard sound insulation" to the 60 DNL contour that would exceed the standards of the FAA and Metropolitan Council.

In addition, in March 2002, the Metropolitan Council approved the MAC's 2002 projects, including the construction of Runway 17-35, contingent on the MAC's reaffirming its \$150 million funding commitment for a full insulation program. The Council's condition specifically referred to the \$150 million commitment identified in the Airline Lease Agreement. The 1999 Airline Lease Agreement explicitly provided the MAC with airline permission to spend \$150 million for sound insulation in the DNL 60-65 contours. The Metropolitan Council has also adopted the 60 to 64 DNL contour standard in their Development Guide for 2004. The Transportation Policy Plan within that Guide provides that new development and major redevelopment of existing homes in the DNL 60 to 64 contours is incompatible, *even if acoustical treatment were incorporated in the structure* and outside uses restricted. In denying the motion to dismiss, this court said, "It should not be easy for public bodies to break commitments on which so many private and public entities have claimed to rely."

Lastly, the mitigation commitment is substantive because the Legislature explicitly directed the MAC to minimize the effects of its operations on nearby residents and to provide sound insulation to affected residents.¹² Minn. Stat. §§ 473.602; 473.655.

It is the purpose of sections 473.601 to 473.69 to:...(2) assure the residents of the metropolitan area of the *minimum environmental impact from air navigation and*

¹² In addition to arguing that MAC's enabling statute requires it to provide mitigation, Plaintiffs also argue MERA and MEPA create substantive standards that are binding on the MAC. The farthest this Court can take the Cities' arguments regarding MERA and MEPA is that the statutes provides some inherent and significant guideline to follow—that direction being toward environmental protection rather than against it.

transportation, and to that end provide for noise abatement, control of airport area land use, and other protective measures; and (3) promote the overall goals of the state's environmental policies and *minimize the public's exposure to noise* and safety hazards around airports.

Minn. Stat. §473.602 (emphasis added).

It is hereby determined and declared that the purposes of sections 473.601 to 473.679 are public and governmental; ... and that the development, extension, maintenance, and operation of the system in such a manner as *to assure the residents of the metropolitan area of the minimum environmental impact* from air navigation and transportation, *with provisions for noise abatement*, control of airport area land use, and other protective measures, *is essential* to the development of air navigation and transportation in and through this state...

Minn. Stat. § 473.655 (emphasis added).

In 1996, as part of the legislation to conclude the Dual Track Process, the Legislature directed the MAC to consider whether to provide insulation to homes in the 60 to 65. Id. § 473.661 subd. 4(f). In the same legislation, the Legislature directed the MAC to undertake the 2010 capital plan, which was subject to the MAC's obligations to minimize and mitigate noise impacts. The requirement to proceed with the capital plan must be read in light of the explicit direction from the Legislature in § 473.602 and § 473.655, which require the MAC to implement noise mitigation in the DNL 60-65 contours if necessary to minimize noise impacts and if feasible. Through the sound insulation commitments in the 1996 Noise Mitigation Program and the 1998 FEIS, the MAC established the minimum standards for meeting these statutory requirements. Had the MAC not been under a statutory duty to provide this insulation in the DNL 60-65, its implementation of the 1996 Noise Program would have been in excess of its authority. The MAC's general authority does not provide it with general authority to insulate residences apart from its obligations to provide necessary mitigation. The noise mitigation program was by definition a legal requirement and not a gratuitous gesture capable of being withdrawn upon

change of mind.¹³

The MAC's position separates from the whole project of airport expansion the mitigation plans that were part of everyone's consistent statement for a period of five (5) years. Only after the MAC broke ground on expansion was any question raised about the mitigation changing. It may be that some other court may choose, as a matter of policy, to resolve the ambiguities left by the Legislature in favor of the MAC. However, this court cannot allow the MAC to receive the benefits of a long fought over public bargain and then abandon its repeated commitments upon which so many people have relied.

Further, the *only* package that was contemplated before 2001 was the five decibel reduction package. The MAC "committed" in the 1996 Noise Mitigation Program that "*the* program be expanded after completion of the current program to incorporate the area encompassed by the 2005 60 DNL." (emphasis added). The MAC's use of the definite article "the" denoted that it contemplated expanding "the residential sound insulation program" for the 65+ contours to the 60 to 64 DNL contours. The only excuse for non-compliance with the mitigation was if the MAC's bond rating slipped below "A".

There is nothing in the 1996 Noise Mitigation Program or in the Committee minutes or materials that identified anything other than a five-decibel reduction package, except in contours below the DNL 60. The Noise Mitigation Program addressed a "modified program" in the 54 plus DNL contour that was deleted from the program's final adoption in 1996. Nowhere is the term "modified program" used except when addressing the 54-decibel program.

The fact that the MAC adopted a \$150 million figure is also persuasive. The cost estimate for completing the sound insulation package in the 60 to 64 was essentially the same as the

¹³ To rule otherwise would approve a massive public 'bait and switch' on the homeowners and the affected cities.

estimate for the package in the 65 and higher. The program characterizes these costs as an estimate of the total cost, not a range of costs based on different packages or a high estimate based on the most expansive package. From everybody's perspective, the 60 to 64 program was supposed to be identical to the 65 dB and up program.

The MAC's commitments to provide the five decibel reduction package fit within MERA's call for adherence to any "environmental standard, limitation, rule, order, license, stipulation agreement, or permit." It created a standard.

3. Now that the MAC has built its project, it cannot rescind the standard.

The MAC contends that, even if it issued a standard, it changed that standard in 2001, 2002, and again in 2004. Minnesota courts expressly recognize the right of an administrative agency such as the MAC to reconsider its decisions. *Turnblad v. Dist. Court*, 107 N.W.2d 307, 312 (Minn. 1960). In August 2001, after receiving extensive public input, the MAC passed a mitigation recommendation for homes in the projected 2005 60 to 64 DNL contours subject to a budget of \$150 million. The MAC passed a different mitigation program again in April 2002, when it recommended a five decibel mitigation package for homes in the projected 2005 64 and 63 DNL contours, as well as testing to determine if a mechanical package was necessary to meet the 45 DNL interior noise level for homes in the projected 2005 60 to 62 DNL contours. Finally, the MAC passed yet another mitigation program in July 2004 when it recommended the mechanical mitigation package for homes in the projected 2007 60 to 64 DNL contours.

In short, Defendants argue even if a sequence of events could constitute an environmental quality "standard" or "limitation" in 1996, the MAC changed that "standard" or "limitation" three times between 2001 and the end of 2004. Each time, the MAC held public Committee and full Commission meetings at which it discussed the technical and financial merits of a variety of

mitigation options in the 60 to 64 DNL contours. After considering the mitigation options set forth, the MAC determined in November 2004 that the proposed mechanical mitigation package would allow homeowners within the 60 to 64 DNL contours to meet the interior noise target of 45 DNL.¹⁴ The public process between 2001 and 2004 was similar to the public process involved in the development of the 1996 Noise Mitigation Program and the consideration of the 1998 FEIS.

In more conventional situations, the MAC has the discretion to set a standard and then the ability to change it. However, allowing the MAC the discretion to revise its environmental commitments after soliciting the other agencies' and the communities' reliance is inconsistent with MERA. The MAC gave up the freedom to reconsider their standard when they asked people to rely on that standard. Now that the MAC has built its project, it cannot rescind the standard. By expanding the airport and spreading the noise to Eagan, Bloomington and Richfield, the MAC gave up its right to reconsider.¹⁵

The MAC has reneged on its commitment to install the five decibel reduction package in the 60 to 64 DNL contours. As such, the MAC is in violation of the standard it set in exchange for approval of the airport expansion project in 1996 and 1998. Plaintiffs' motion for summary judgment on Count II is hereby granted and all other motions regarding Count II are denied.

III. PLAINTIFFS' CLAIMS ARE NOT CONTRACT CLAIMS AND ARE ENFORCEABLE UNDER MERA.

Defendants argue the Cities' causes of action attempt to enforce the MAC's purported promise or "commitments" to implement a five decibel noise reduction package for the residents

¹⁴ Neither the 1998 FEIS nor the 1996 Noise Mitigation Program relied upon the 45db threshold. MAC asserted in these documents that it was going beyond the threshold. Moreover, if the MAC followed the indoor quietude in the 45 DNL there would be no mitigation. If it was MAC's goal to be at 45 decibels than a program in the 60 to 64 range would be unnecessary.

¹⁵ Even without MERA, the cities may have a claim for equitable estoppel. See County School Board of Henrico

in the 60 to 64 DNL contours. Defendants further argue that because MERA does not provide a cause of action for claims that arise from the alleged impaired use of the property, diminution in value, and breach of contract, this Court should grant summary judgment on all Plaintiffs' MERA claims.

Plaintiffs MERA claims are not using MERA to enforce a contract. Plaintiffs MERA claims seek enforcement of (1) the general provisions of MERA protecting against the quietude within the State of Minnesota, and (2) a specific environmental standard that was created in a regulatory context and is enforceable through MERA.

This Court has already found Plaintiffs' claims to be based on MERA in its order denying Defendants' motion to dismiss.

[T]he legislature by MERA has declared quietude to be a protectible resource, and charged MAC with the duty of ensuring that it is a good neighbor as to noise. If no one else can set a standard for noise around the airport, but MAC has done so by its official actions surrounding the DNL 60 dB standard, then it is reasonable to see if MAC, as operator, has met the demand of MAC, as regulator, of airport noise.

The MAC made clear that the "committed" regulation was intended to address the environmental impacts of noise from MSP operations. The MAC could not have gratuitously promised to provide 5dB noise mitigation if it were not based on environmental considerations.

The Cities seek injunctive relief and not damages. The relief sought is that which will prevent or reduce future injury from the MAC's activities rather than compensate the plaintiffs for past injuries or reduction in property value. None of the Cities will receive any money from the MAC, instead they will receive protection from the MAC's impairment of the environment that they live in.

County Virginia v. RT, 433 F. Supp.2d 692, 707-08 (E.D.Va. 2006).

Plaintiffs assert claims that are enforceable under MERA.

IV. THE MAC IS REQUIRED TO IMPLEMENT THE FIVE DECIBEL PACKAGE PURSUANT TO ITS ENABLING STATUTE.

A court may issue a writ of mandamus “to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station.” Minn. Stat. § 586.01. A writ of mandamus may issue only if a statute or regulation imposes a clear and unequivocal duty to act in the precise manner the party seeking the writ requests. State v. Wilson, 632 N.W.2d 225, 227 (Minn. 2001).

The same standards identified with regard to Count II of the Complaint constitute mandatory duties for purposes of the mandamus statute. The MAC’s duties may have been ambiguous before, but with this court’s declarations, its duty is now clear. The MAC must be given a reasonable opportunity to fulfill that duty. Thus, the mandamus claim at this time is premature. The Court reserves ruling on Count III.

CONCLUSION

The issues in the instant case are complex. Many of the arguments have never been addressed by Minnesota case law. A full record is required to insure any appellate courts have a full record for consideration.¹⁶

The MAC’s and NWA’s motions for summary judgment are properly denied.

The Cities’ partial motion for summary judgment is hereby granted.

SCA

¹⁶ Given that the ultimate decision here will involve policy determinations needed to resolve legislative ambiguity, a direct appeal to the Supreme Court may be apt.

APPENDIX A

- 1971 Minnesota Environmental Rights Law (“MERA”) enacted.
- 1974 Minnesota Supreme Court decides Alevivos v. Metro. Airports Comm’n of Minneapolis and St. Paul, 216 N.W2d 651. Alevivos held landowners had a right to inverse condemnation if the noise from the airport caused a decrease in the market value of their homes.
- 1985 Minnesota Supreme Court decides Ario v. Metropolitan Airports Commission, 367 N.W.2d 509, 513. Alevizos is affirmed as to right of inverse condemnation for the taking of a navigational easement. In addition, the Ario Court suggested that there was a class about 27,565 property owners with sufficient commonality. However, individual issues of damages predominated over the common legal questions. The fact that some members of the class prefer to cooperate with government to minimize airport noise instead of seek damages does not defeat typicality requirement because those that wish may opt out. As long as there has to an individual determination of damages for each property’s value, it is more economical for each plaintiff to prove the particular invasion of his property interests. The MAC thus faced the possibility of up to 27,565 lawsuits and/or multiple class actions for possible subclasses.
- June 1987 Aircraft Noise Research Project - The Minneapolis and MAC joint study found that “[a]ircraft noise is a major problem for residents living near the Airport,” and that “[p]eople experienced problems with aircraft noise while living in noise contours of about [DNL] 60 to 80 [dB].”
- 1989 Legislature created MAPA and the Dual Track Planning Process began.
- 1992 MAC enters into agreement with EQB to have the EQB determine adequacy of FEIS for MSP expansion.
- Dec. 1995 City of Eagan Dual Track Planning Position- Eagan supported retaining MSP in its current location as long as mitigation was done in 60 dB plus contours.
- March 1996 City of Minneapolis Resolution - Minneapolis supported retaining MSP in current locations as long as mitigation was done in 60 dB plus contours.
- March 1996 MAC and Metropolitan Council’s report to the legislature - MAC recommended expanding MSP at its current location with a new runway and other infrastructure. The report concluded that “[t]he cost for a new airport, considering construction (including inflation) and financing costs, is \$2.2 billion greater than for expansion of MSP,” but acknowledged that expanding the airport at the current location would cause greater numbers of people to be exposed to high noise levels.
- April 1996 Legislature passed a bill to end the Dual Track Process, directing MAC to develop

a noise mitigation plan within 180 days of its long-term planning report. Minn. Stat. § 473.661, subd. 4(f).

- May 1996 MAC formed the MSP Noise Mitigation Committee.
- Oct. 1996 MAC unanimously passed a resolution approving the noise mitigation program recommended by the Committee that expanded *the program* after completion of the current program to the 2005 60 DNL, with two amendments. First, it deleted the provision regarding a “modified” sound insulation package in the DNL 54-60. Second, it added a new Section 9 that provided: “Completion of the sound insulation program is contingent upon the MAC maintaining a bond rating of at least A.”
- May 1998 FEIS – adopted the Noise Mitigation Program that expanded *the program*. In the 1998 FEIS, the MAC expanded consideration of the noise impacts of the alternatives to the DNL 60 dB contour: “Recognizing that noise concerns can occur beyond DNL 65, DNL 60 contours are also shown and assessed.”
- Sept. 1998 FAA issued Final Record of Decision – that adopted Noise Mitigation Program.
- Oct. 1998 MAC report to MN EQB – MAC said FEIS was adequate because it committed to mitigation that went beyond current FAA guidelines.
- Oct. 1998 – Richfield Memo re: adequacy of FEIS – Challenged MAC’s proposed finding of adequacy alleging the MAC failed to mitigate low frequency noise from 17/35.
- Nov. 1998 MAC supplemental report to EQB – MAC replied that they had committed to provide standard sound insulation to the homes within the 60, 65, and 70 noise contours.
- Nov. 1998 MN EQB Findings of Fact – determined the FEIS was adequate and gave the MAC the go ahead for the MSP expansion project.
- Nov. 1998 Minneapolis Contract pertaining to limits of construction – Minneapolis’ contract with MAC to not oppose the construction of a new runway – in the agreement MAC agrees to expand *the* noise mitigation program.
- Dec. 1998 Richfield- MAC Noise Mitigation Agreement - Richfield’s’ contract with MAC to not oppose the construction of a new runway – in the agreement MAC agrees to expand *the* noise mitigation program.
- Jan. 1999 MAC airline operating agreement - MAC negotiated its standard lease through 2010 for terminal facilities with the airlines using MSP. Provisions for sound insulation out to the DNL 60 contour were included. The lease gave the MAC the ability to spend up to \$150 million on noise insulation in the DNL 60-64 dB without airline approval through 2010 plus a \$50 million contingency fund.

- May 1999 Groundbreaking of new runway 17/35 at MSP.
- May 2001 MAC official Statement re: 2001 Bonds - MAC raised questions about five-decibel package for the DNL 60 dB.
- Oct. 2001 MAC Official Statement re: 14 Bonds - MAC stated that it would offer “the five decibel reduction package” first to residents within the 64 contour and then in successively lower contours as possible within the \$150 million funding limitation. MAC estimated the cost of insulating to the 60 contour at \$450 million. The cost increased, in large part, because the number of homes in the DNL 60 to 64 contour increased. In fact, the 2005 60 to 64 DNL contour projected 10,040 homes to be mitigated at an average price of \$45,000 per home for a total of \$451.800,000 compared to the 1999 projection for 2003 through 2010 of 4043 homes at \$37,000 per home.
- Jan. 2001 MAC Official Statement re: 15 Bonds - MAC “rescinded its commitment to provide the five decibel reduction package to homes within the 2005 DNL 60 noise contour, and has instead decided to reevaluate the best and most efficient use of the \$150 million for noise mitigation within the 2005 DNL 60 noise contour.”
- Sept. 2001 World Trade Center attacked. The MAC soon uses temporarily reduced air traffic and income to justify reducing the 60 dB program.
- March 2002 Metropolitan Council approved the Capital Improvement Program, conditioned upon “the Metropolitan Airports Commission reaffirming its \$150 million commitment, identified in the Airline Lease Agreement, to provide noise mitigation options, as approved by the FAA, to residents within the DNL 64-60.”
- Nov. 2004 Part 150 Update - MAC adopted a \$48 million, air conditioning only, “mechanical package” that is its current intended program for the 60-64 contours. For the first time, homeowners will be required to contribute to the noise mitigation costs (an estimated \$20 million).
- Dec. 2004 Metropolitan Council Development Guide reasserts the DNL 60 dB standard. The Transportation Policy Plan within that Guide provides that new development and major redevelopment of existing homes is incompatible in the DNL 60 to 64 dB, *even if acoustical treatment were incorporated in the structure* and outside uses restricted. The Development Guide also says that development “...in [DNL 60 dB zones] can benefit from insulation levels above typical new construction standards in Minnesota, but insulation cannot eliminate outdoor noise problems.” It further asserts that development with interior noise levels could be accepted under some circumstances, but are “strongly discouraged.”
- Oct. 2005 Runway 17/35 opened at the MSP.
- April 2005 This lawsuit filed.
- Sept. 2005 Wiencke, et al v. MAC, et al class action suit filed. Case file no. 27-CV-0512976.

Jan. 2007 Review of Transportation Polices on Metropolitan Council website shows that the 2004 Development Guide, and the Transportation Policy Plan within it, are unchanged from the 12/15/2004 document. Each community in the Metropolitan Area is required to "... jointly prepare a noise program to reduce, prevent or mitigate aircraft noise impacts on land uses that are *incompatible with the guidelines.*"