PETITIONER'S DISCRETIONARY REVIEW APPENDIX

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STATE OF MINNESOTA

COUNTY OF HENNEPIN

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DISTRICT COURT

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,

Plaintiffs,

v.

Metropolitan Airports Commission

Defendant,

and

Northwest Airlines, Inc.,

Defendant-Intervenor.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

District Court File No.: MC 05-5474

The above-entitled matter came duly on for hearing before the Honorable Stephen C. Aldrich, Judge of District Court, on July 15, 2005, on Defendant Metropolitan Airport Commission's May 16, 2005 Motion to Dismiss, and John E. Putnam's and Stephen H. Kaplan's April 20, 2005 Motions for Admission Pro Hac Vice to appear as counsel for Plaintiff City of Minneapolis.

APPEARANCES:

Peter W. Ginder, Esq., Corey M. Conover, Esq., John E. Putnam, Esq., and a host of other attorneys, appeared on behalf of the Plaintiffs.

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

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

Based upon the evidence adduced, the argument of counsel, and all of the files, records, and proceedings herein,

THE COURT FINDS:

1. John E. Putnam's and Stephen H. Kaplan's motions for admission pro hac vice should be granted.

2. Plaintiffs object to Defendant MAC's inclusion of an affidavit from Nigel Finney ("Finney Affidavit") and MAC's claim that the Court may review the affidavit without converting the Motion to Dismiss to a motion for summary judgment, as procedurally flawed. This Court agrees.

The Minnesota Supreme Court dealt with this issue in Northern States Power Co. V. Minnesota Metropolitan Council, 684 N.W.2d 485, 491 (Minn. 2004) and found that a district court's consideration of an affidavit attached to the defendants motion to dismiss without converting the motion to one for summary judgment was in error as the affidavit dealt with matters outside the *pleading*. The Court noted, as a threshold matter, that Minn. R. Civ. P. 12.02 provides that a motion to dismiss for failure to state a claim shall be treated as a motion for summary judgment and disposed of as provided in Rule 56 if matters outside the pleadings are submitted to the district court for consideration and not excluded, however, the court may consider documents referenced in a *complaint* without converting the motion to dismiss to one for summary judgment. Id.

The Finney Affidavit deals with matters outside the pleadings and should be excluded from consideration.

3. At the hearing, Counsel were instructed to submit additional memoranda to provide further clarification of the issues. Plaintiff's and Defendant-Intervenor NWA's memoranda were received on July 29, 2005. Defendant MAC's memorandum was received on August 1, 2005.

4. Defendant-Intervenor NWA also submitted a reply brief on August 12, 2005. On August 26, 2005, Plaintiffs filed their objection to the submission with a "motion to strike" asserting NWA's reply brief was procedurally inappropriate and contained new issues. NWA responded on September 1, 2005, and argued that by joining the case after MAC's Motion to Dismiss had been filed, it had a right to file an opening and reply brief but found itself in a situation not contemplated by the Minnesota General Rules of Practice 115.03(c). NWA was unable to file its opening or reply brief within the time limits set by the rules. NWA noted that while it had the right to file and schedule a separate hearing for its own motion to dismiss, it chose not to do so in order to save the court and the parties the time and costs involved in a second hearing dealing with the same set of facts and arguments. In the interest of juridical efficiency and economy, relevant subject matter contained in the additional memoranda will be considered by this Court in making a final determination on Defendant's Motion to Dismiss.

5. On September 14, 2005, Defendant-Intervenor NWA filed for bankruptcy under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York. On September 19, 2005, NWA filed a Notice of Bankruptcy stating that the instant case was "automatically stayed" pursuant to Section 362 of the Bankruptcy Code. After the court's inquiry, on October 3, 2005 counsel submitted respective memoranda concerning the impact of NWA's Notice of Bankruptcy; all agree that the automatic stay does not apply to this action as the instant case falls within the exception to the automatic stay provisions of 11 U.S.C. Sec. 362, specifically Sec. 362(b)(4), which pertains to actions by a government unit.

6. On October 13, 2005, the Court contacted counsel by email letter seeking information on the effects of Defendant-Intervenor NWA's bankruptcy on the 1999 Airline Lease Agreement with Defendant MAC. The Court had previously granted NWA's motion to intervene based on NWA's obligation through the 1999 Airline Lease Agreement to pay up to $150 million of the costs of the additional noise mitigation at issue in this case. Plaintiffs maintain, by letter dated October 16, 2005, that the effect of NWA's bankruptcy on the 1999 Airline Lease has no bearing on the ultimate merits of this case as the obligation to comply with the Minnesota Environmental Rights Act ("MERA") falls upon MAC directly, regardless of its leases with NWA. Defendant MAC's letter, dated October 17, 2005, states that if the 1999 Airline Lease is treated as a "true lease" then NWA will have the right to assume or reject the lease. If the lease is rejected, certain terms would be renegotiated, however, that decision could be years away. In the interim, NWA is obligated to remain current on all of its "post-petition" lease obligations and must turn over all passenger facilities charges to MAC. NWA's letter, dated October 17, 2005, confirmed that while they have the right to reject or affirm the 1999 Airline Lease, they have not yet made a decision.

IT IS ORDERED:

1. John E. Putnam and Stephen H. Kaplan are admitted pro hac vice.

2. The Finney Affidavit is excluded from the Courts consideration of Defendant's Motion to Dismiss.

3. The attached memorandum of law is hereby incorporated by reference, and based thereon...

4. Defendant's motion to dismiss is denied.

BY THE COURT:

Dated: November 30, 2005

Stephen C. Aldrich
Judge of District Court

MEMORANDUM OF LAW

The claims presented in the instant case are complex and involve issues of first impression for Minnesota courts. Absent settlement, the matters in dispute are such that the non-prevailing party will most likely appeal when it/they can and seek final determinations from the appellate courts.

BACKGROUND

In 1975 the Minnesota Legislature passed Minn. Stat. §§ 473.601 et seq. (2005) creating the Metropolitan Airport Commission ("MAC") and endowing it with broad powers to oversee all aspects of running the Minneapolis/St. Paul Airport ("MSP"). 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.

The Legislature also charged 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]. Following the statute's directive concerning noise abatement, in 1992, MAC began implementing a noise insulation program for the area around MSP for homes in the day-night level (DNL) 65 decibel (dB) or higher providing air conditioning, insulated windows, doors, vents, attics and other measures at no cost to the homeowner. Rather than interfere with airport operations, the mitigation program seeks to reduce the perceived sound inside people's homes. The DNL 65 dB program nears completion.

In 1996, after extensive study and review, the Legislature determined that the long-term aviation capacity needs of the metropolitan area would be best served by keeping MSP in its current location as opposed to developing a replacement airport elsewhere. Aware of the disproportional effects of air traffic noise on those living within the contours of MSP, and the fact that the projected expansion of MSP would result in 39 times more people located within the DNL 60-64 dB contours by 2005, the Legislature directed MAC to examine mitigation measures below the DNL 65 dB to the DNL 60 dB level.[1] Minn. Stat. § 473.661(4)(f). 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.[2] Id. Finally, prior to MAC constructing a third parallel runway at MSP, the Legislature directed MAC to enter into a contract with each "affected city" whose approval was required.[3] 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.

MAC convened a noise mitigation committee[4] and on October 28, 1996 MAC approved

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[1] MSP was built and expanded on a small site adjacent to areas that were fully developed before the advent of commercial jet transportation. The decision to keep MSP at its current location was made in part because it provided close proximity for travelers to both downtown Minneapolis and downtown St. Paul but the Legislature was aware that residents living in the DNL 60 dB would be subjected to noise levels 1,000 times greater than the amount of sound energy experienced absent aircraft noise.

[2] The MSP 2010 Plan is also referred to in various documents as the "MSP 2010 Development Plan," the "2010 Long Term Comprehensive Plan," the "2010 LTCP," the "2010 Plan," the "MSP 2010," the "Long Term Comprehensive Plan," the "1996 Dual Track Legislation," the "Dual Track Plan," and the "Dual-Track Process." The construction and operation of the North-South runway, Runway 17/35, which opened on October 27, 2005, was included in the MSP 2010 Plan. The total cost for the MSP 2010 Plan was $2.7 billion. Metropolitan Council Directions Newsletter, available at www.metrocounsel.org/directions/transit/runway.htm (visited on October 25, 2005) (the online newsletter also lists many of the improvements made under the MSP 2010 Plan).

[3] Construction of a third parallel runway was not part of the MSP 2010 Plan but the Legislature gave MAC a deadline of January 1, 1997 for entering into contracts with affected cities that had provisions that MAC could not construct a third parallel runway without that city's approval. The deadline could be extended as long as negotiations were being conducted with the cities in good faith.

[4] The MSP Noise Mitigation Committee was comprised of representatives from MAC, NWA, Metropolitan Aircraft Sound Abatement Council ("MASAC"), and the cities of Minneapolis, Mendota Heights, Eagan, Bloomington, Richfield, Inver Grove Heights, Burnsville and St. Paul. The committee met 8 times between May and October 1996. A public meeting was held on August 29 1996 and was attended by over 800 citizens.

the committee's recommendations and committed to a noise mitigation program for MSP ("1996 MSP Noise Mitigation Program").[5] The 1996 MSP Noise Mitigation Program provided for expanding MAC's DNL 65 dB noise insulation program to affected homes in the DNL 60-64 dB (approximately 7,500 by 2007), at no cost to the homeowners. MAC was to begin implementing the new program following the projected completion of the existing DNL 65 dB program in 2005. The DNL 60 dB contours were found to extend into all, or portions of, Eagan, Mendota Heights, Inver Grove Heights, Minneapolis, Richfield, Bloomington, and Saint Paul. Funding for the new noise insulation program was to come from a combination of Passenger Facility Charge (PFC) revenues, airline fees, internally generated funds, federal aid, and, if necessary, support from the State of Minnesota.[6]

As part of the process for approving the expansion of MSP, both MAC and the Federal Aviation Administration ("FAA") were required to undergo an environmental review of the proposed projects; 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.

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[5] Also referred to in various documents as the "1996 Noise Program," the "MSP Noise Program," and the "Noise Mitigation Program." The construction of Runway 17/35 was included in the MSP 2010 Plan and the committee noted that its construction would change the noise contours and accounted for those changes in its recommendation approved by MAC. The future noise impacts associated with Runway 17/35 were estimated on a 2005 baseline and a "worst-case" scenario because the noise contours for 2005 would be larger than that of 2010 or 2020 (the committee was anticipating the number of noisy "hush-kitted" aircraft to decrease from 29% of the carrier fleet in 2005 to less than 1%).

[6] According to Plaintiffs and Defendants, both the request for federal aid (grants) and the use of PFC revenue for mitigation programs is subject to approval or rejection by the FAA in the Part 150 program. 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.

However, MAC's current submission to the FAA, the 2004 Part 150, discussed infra, appears to indicate that the use of PFC revenue is *not* subject to FAA approval. 2004 Part 150, page 5-6 ("FAA policy limits approval of Part 150 remedial mitigation measures (e.g., soundproofing...) to non-compatible land uses that were in place prior to October 1, 1998...This policy does not affect AIP [Airport Improvement Funds] funding for noise mitigation projects that do not require Part 150 approval, that can be funded with Passenger Facility Charges revenue, or that are included in FAA-approved environmental documents for airport development."). The Court requires clarification on this point.

MAC and the FAA combined efforts to fulfill their environmental review obligations. In May 1998 they issued a Dual Track Airport Planning Process Final Environmental Impact Statement ("1998 DTAPP/EIS")[7] in support of the proposed expansion of MSP as delineated in the MSP 2010 Plan. The centerpiece of the joint statement was the 1996 MSP Noise Mitigation Program that the 1998 DTAPP/EIS incorporated and stated would be implemented if the MSP 2010 Plan were approved.[8] The MSP 2010 Plan for expansion was approved and, as of October 27, 2005, was completed.[9]

As noted above, the Legislature required MAC to enter into a contract with each "affected city" whose approval was required prior to MAC constructing a third parallel runway at MSP. After MAC and the FAA jointly issued their 1998 DTAPP/EIS (which incorporated the 1996 MSP Noise Mitigation Program), MAC negotiated and finalized an agreement with Plaintiff, the City of Minneapolis, in November of 1998. MAC also entered into a "Noise Mitigation Agreement" with Plaintiff, the City of Richfield, in December of 1998. In both cases, the cities agreed to forgo potential legal challenges to the expansion of MSP—specifically the construction of Runway 17/35, which was the cornerstone of the MSP 2010 Plan—in exchange for various assurances. As to Richfield, the bulk of the assurances surrounded noise mitigation within the DNL 60 dB, but both Minneapolis and Richfield referenced the 1998 DTAPP/EIS in their agreements.

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[7] The 1998 DTAPP/EIS is also referred to in different documents as the "DTAPP/EIS," the 1998 Final Environment Impact Statement ("1998 FEIS"), the Final Environmental Impact Statement ("FEIS"), and the Environmental Impact Statement ("EIS").

[8] However, the 1998 DTAPP/EIS did qualify its endorsement by noting that the 1996 MSP Noise Mitigation Program contained measures that might not be eligible for funding based on FAA policy or criteria.

[9] On October 27, 2005, Runway 17/35 opened marking the completion of the $2.7 billion MSP 2010 Plan expansion project which included new gates, new concourses, new terminals, an underground walkway through a new Ground Transportation Center, parking facilities, a Transit Center, tram, air freight and maintenance facilities, and more. See Metropolitan Council Directions Newsletter, available at www.metrocounsel.org/directions/transit/runway.htm (October 25, 2005). Runway 17/35 handles 300 departures and 132 arrivals daily and increases the airports flight capacity by 25%. Airport Opens New Runway, St. Paul Pioneer Press, October 28, 2005, at C1 (quoting MAC).

In early 1999 MAC and the airlines entered into a new operating agreement ("1999 Airline Lease Agreement"), which included a provision that the airlines would fund the DNL 60-64 dB insulation program for MSP at an estimated cost of $150 million. That amount assumed full insulation of the homes pursuant to the DNL 65 dB program. As MSP's hub airline, NWA has the largest fleet and commands the greatest number of gates at MSP and, under the 1999 Airline Lease Agreement, agreed (along with all other airlines operating at MSP who entered into the same lease), to provide up to $150 million to fund the 1996 MSP Noise Mitigation Program through rents, landing fees, and other charges.[10]

In March 2002 the Metropolitan Council ("MC") approved MAC's "significant effects" capital improvement projects for 2002 (2002 CIP), which included the construction of Runway 17/35 and a terminal parking structure,[11] but the approval was conditioned on MAC spending the $150 million previously earmarked for noise insulation in homes in the DNL 60-64 dB (approximately 7,500 homes). Not withstanding the condition set by MC, one month later MAC submitted a revised noise program in its 2002 Part 150 Update[12] 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. MAC also inserted language that appeared to back away from its commitment to spend $150 million on noise insulation. In May of 2002

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[10] The 1999 Airline Lease Agreement was signed by all airlines operating at MSP and provided that the costs of the mitigation plan (which was identified as "Off-Airport Aircraft Noise Costs" on page 7, paragraph 33 of the lease) could be recovered through airline rents, fees, and charges. 1999 Airline Lease Agreement, page 55, 2010 Plan Airfield Programs D.1. MAC estimated the cost of the 1996 MSP Noise Mitigation Program (identified as Home Insulation between 60 and 65 DNL) to be $150 million dollars. Id. at page 6 of Exhibit I.

[11] Runway 17/35 was originally slated under the MSP 2010 Plan to commence construction in 1998 with completion scheduled for 2003. The project was delayed for various reasons.

[12] 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.

MAC changed course and recommitted to spending the $150 million after MC adopted a resolution on May 8, 2002 requiring 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, MAC notified MC 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 MC's condition.[13]

Construction on Runway 17/35 and the new parking structure began. Runway 17/35 opened for use while this matter was under advisement. [14]

Two years later, in November 2004, MAC submitted another proposal, "2004 Part 150,"[15] to the FAA that scaled back provisions of the 1996 MSP Noise Mitigation Program even further. MAC's new proposal called for providing air conditioning only to homes that do not have it in the DNL 60-64 dB, and requiring those homeowners to pay for up to half of the costs. The 2004 Part 150 proposal is currently under review by the FAA.

On April 20, 2005 the cities of Minneapolis, Eagan, and Richfield, and the Minneapolis Public Housing Authority (collectively "Communities") 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 MAC to require MAC to provide the noise insulation first identified in the 1996 MSP Noise Mitigation Program for homes in the DNL 60 to 64 dB noise contours of MSP.

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[13] See letter, dated May 29, 2002, from Lee Sheehy, Metropolitan Council Regional Administrator, to Nigel D. Finney, MAC Deputy Executive Director Planning and Environment, acknowledging receipt of Mr. Finney's May 22, 2002 letter advising the MC of actions taken by MAC to comply with the MC's condition as stated in its May 8, 2002 resolution.

[14] Runway 17/35, the last of the MSP 2010 Plan projects, cost $800 million and opened for use on October 27, 2005. Chao Xiong, A New Runway Opens Enhanced-Noise Season, Minneapolis Star Tribune, October 28, 2005, at B3. The new runway handles 300 daily departures and 134 arrivals.

[15] This proposal is referred to in various documents as the "Part 150 Plan," the "2004 Part 150 Study," the "Part 150

Plaintiffs specifically did not seek an injunction to halt or interfere with flights at MSP, acknowledging that would be preempted by federal law. Plaintiffs also did not seek damages or other relief for past harm. 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 MAC is obligated to provide the previously agreed upon sound insulation measures under Minnesota law. Plaintiffs seek:

1. Count One - 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;
2. Count Two - Declaratory judgment that 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,
3. Count Three - A writ of mandamus to require MAC to exercise its duties required by law.

MAC filed this Motion to Dismiss on May 16, 2005, for lack of subject matter jurisdiction and failure to state claims upon which relief may be granted. Defendant asserts Plaintiff's claim:

1. Is not "ripe" for adjudication and should be dismissed on that basis alone,
2. States a cause of action for damages and economic regulation which is not permitted under MERA,
3. Fails because it doesn't state a claim for enforcement of a state environmental quality standard under MERA, and
4. The request for a writ is improper because the complaint does not establish that MAC has a mandatory duty to implement the relief sought.

NWA was granted Defendant-Intervenor status on June 22, 2005 and joined in MAC's motion to dismiss on July 12, 2005. As previously stated, as MSP's hub airline, NWA has the largest fleet and commands the greatest number of gates at MSP and, under the 1999 Airline Lease Agreement, is obligated to provide much of the $150 million, identified by MAC targeted

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Study," the "Part 150," and the "2004 Part 150 Update."

to fund the 1996 MSP Noise Mitigation Program, through its airline rents, landing fees, and other charges.

STANDARD OF PROOF

A motion to dismiss must be denied if "it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." Elzie v. Commissioner of Public Safety, 298 N.W.2d 29, 32 (Minn. 1980). The facts alleged in the complaint must be taken as true, Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 292 (Minn. 1978), and the complaint must be given a liberal construction in favor of stating a claim. Hutton v. Bosiger, 366 N.W.2d 358, 360 (Minn. Ct. App. 1985).

DOES THE COURT LACK JURISDICATION ON THE BASIS THAT THE ISSUE IS NOT RIPE FOR ADJUDICATION?

A cause of action is subject to dismissal for lack of subject matter jurisdiction under Minn. R. Civ. P. 12.02(a) where the matter is not ripe for adjudication. Izaak Walton League of Am. Endowment, Inc. v. State Dep't of Natural Res., 252 N.W.2d 852, 854 (Minn. 1977). A controversy is ripe, and therefore justiciable, if the plaintiff demonstrates a direct or imminent injury as opposed to a purely hypothetical theory. State v. Colsch, 284 N.W.2d 839, 841-42 (Minn. 1979); Lee v. Delmont, 36 N.W. 2d 530, 537 (Minn. 1949). There must be "a bona fide legal interest which has been, or with respect to [which] the ripening seeds of controversy is about to be affected, in a prejudicial manner." So. Minn. Constr. Co. Inc. v. Minn. Dep't of Transp., 637 N.W. 2d 339, 344 (Minn. Ct. App. 2002) (citation omitted).

Defendants argue the Court lacks subject matter jurisdiction as the Plaintiffs claims are not ripe because MAC's 2004 Part 150 mitigation plan for the DNL 60- 64 dB contours is currently just a proposal made to the FAA and the FAA has yet to approve or reject the proposal.

Plaintiffs counter that the issue is ripe; MSP already generates noise above the DNL 60

dB level and with the opening of Runway 17/35 even more residents are now subjected to, and harmed by, the higher noise levels which have been shown to interfere with speech and sleep. Plaintiffs correctly state that this is a direct and imminent injury and the harm perceived is not purely hypothetical since MAC has unequivocally stated its intent to renege on its previous commitments pursuant to the 1996 Noise Mitigation Program, the 1998 DTAPP/EIS, and the agreements with the cities. MAC's 2004 Part 150 proposal is reasonably cited, at least at this point, as proof of that intent.

Plaintiffs also claim the proposal to the FAA has no relevance in the instant case since MAC's funding of the 1996 MSP Noise Mitigation Program is not dependent on FAA approval. MAC has the ability and authority to raise funds by a variety of other measures including airport fees and charges (some levied on the airlines, such as landing fees, and others not, such as parking revenue) as well as Passenger Facility Charges. MAC also has the power to levy property taxes on the entire Metropolitan Area tax base.[16] Plaintiffs claim that MAC's ability and right to levy these charges is independent of the 1999 Airline Lease and that the costs of complying with state laws are appropriate costs that can be recovered from MSP users and any other available revenues.

MAC responds that use of its own airport revenue, as the Plaintiffs suggest, to implement noise mitigation measures is not a viable option. Under 14 C.F.R. Part 16, a third party could seek a determination from the FAA that the use of those funds constitutes illegal "revenue diversion." MAC points to the possibility of a third party illegal diversion claim as another reason justifying dismissal on the basis that the issues are not ripe for adjudication.

At the hearing hereon, none of the attorneys for Defendants could identify a single instance in which the FAA had found the use of airport funds for noise mitigation measures such

[16] Minn. Stat. §§ 473.672-473.673.

as the ones in the instant case, to be an illegal diversion of revenue.[17] In fact, in 2000, the FAA approved for federal funding[18] all four "Land Use Measures" dealing with noise mitigation in the DNL 60 dB submitted by the Cleveland Hopkins Airport in Cleveland, Ohio. 65 Fed. Reg., 58838, 58838-39 (October 2, 2000). Even earlier, in 1996, the FAA approved for federal grant and PFC funding a California airport noise insulation program at the Burbank-Glendale-Pasadena Airport to the Community Noise Equivalent Level ("CNEL") of 65 (a different measuring system which is the DNL equivalent of 63 dB). 61 Fed. Reg. 31,994, 32,019-20 (June 21, 1996). Finally, under 14 C.F.R. § A150.101(d) the FAA clearly states that, as part of the Part 150 process, it does not preempt states and local authorities from determining that residential areas are incompatible with specific noise levels, so long as the state and local activities do not interfere with flight operations.[19]

The illegal diversion claim appears most improbable, and in all events, is not a basis for dismissing the instant suit.

No one disputes the fact that MSP generates noise in excess of the DNL 60 dB and that thousands of residents currently live within those noise contours (more so now than before with the opening of Runway 17/35). Plaintiff's complaint does not seek to interfere with MSP flight operations but rather, Plaintiffs seek relief in the form of requiring Defendants to follow through with previously stated noise mitigation programs in the DNL 60 dB for residents who are dealing

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[17] See July 15, 2005, Transcript of Proceedings, pgs. 27-31 (for discussion between the undersigned and attorneys regarding the issue of illegal diversion which concluded with the parties agreeing that, to date, there hasn't been a noise mitigation expenditure proposed by an airport commission that's been overturned on the basis of illegal diversion of funds).

[18] Since the passage of the Lott Amendment, the FAA may no longer provide grants under the federal Airport Improvement Program for noise mitigation projects outside of the DNL 65 dB contour until after 2007. Vision 100 – Century of Aviation Reauthorization Act, Pub. L. No. 108-176, § 189, 117 Stat. 2490 (2003). PFC revenue may be used but the parties state that its use must be approved by the FAA.

[19] Plaintiffs also point to a recent ruling in Florida where the U.S. Court of Appeals for the District of Columbia Circuit held that the FAA's decision to withhold federal funding because the City of Naples Airport Authority had banned certain noisy aircraft because of their impact in the DNL 60-65 was unreasonable as the airport had demonstrated that DNL 60 dB was a "significant noise threshold" for the surrounding community. City of Naples Airport Authority v. FAA, ---F.3d---, 2005 WL 1313803 (D.C. Cir. June 3, 2005) at 3.

with the harm generated by these noise levels now.

The issue is ripe.

Furthermore, pending FAA approval or rejection of MAC's 2004 Part 150 proposal provides no basis to dismiss Plaintiffs complaint for lack of "ripeness." MAC's enabling statute specifically provides authority for MAC to 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. MAC's own MSP 1996 Noise Mitigation Program, adopted and incorporated in MAC's joint environmental statement with the FAA, the 1998 DTAPP/EIS, provides that funding for the program is to come from a combination of Passenger Facility Charge (PFC) revenues, airline fees, internally generated funds, federal aid, and, if necessary, support from the State of Minnesota. While the 1998 DTAPP/EIS notes that some measures of the program may be rejected for funding by the FAA, that does not mean that MAC cannot implement and fund the measures on its own.

The issues in the instant case are ripe for adjudication. This Court has jurisdiction.

DOES THE COMPLAINT STATE APPROPRIATE CLAIMS UNDER MERA FOR INJUNCTIVE RELIEF?

A cause of action may be dismissed under Minn. R. Civ. P. 12.02(e) when it fails to state a claim upon which relief may be granted. Elzie v. Comm'n of Pub. Safety, 298 N.W.2d 29, 32 (Minn. 1980).

Through MERA, Minnesota has created a right in each person "to protect the air, water, land and other natural resources" in the state from "pollution, impairment or destruction." Minn. Stat. § 116B.03 (2005); see also Minn. Public Interest Research Group v. White Bear Rod and Gun Club, 257 N.W.2d 762, 781 (Minn. 1977). To establish a prima facie case, a plaintiff must

first identify "the existence of a protectable natural resource." White v. Minnesota Dep't of Natural Resources, 567 N.W.2d 724, 737 (Minn. Ct. App. 1997). Second, plaintiff must show that the defendant's conduct materially adversely affects or is likely to materially adversely affect the environment. Minn. Stat. § 116B.02, subd. 5 (2005); see also Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, 624 N.W.2d 796, 806 (Minn. App. 2001).

Plaintiffs assert that MAC is in violation of MERA due to its material impairment of the natural resource of "quietude"—a general material adverse effect claim that's allowed under MERA. MERA includes "quietude" within its list of "natural resources" worthy of protection. Minn. Stat. 116B.02, subd.4; see also White Bear, 257 N.W.2d at 771, 781 (finding that gunfire in the 65 to 70 decibel range was noise "*far in excess* of that considered permissible to avoid health threats and degradation of the environment" and that quietude is a natural resource protected by MERA) (emphasis added); Lone Oak, 624 N.W.2d at 806 (prima facie showing based on the "degradation of quietude cased by 'impulsive sound'" from gun club); McGuire v. County of Scott, 525 N.W.2d. 583 (Minn. Ct. App. 1994) (holding noise pollution from highways can affect quietude under MERA). Plaintiffs assert that residents within the DNL 60 dB contours of MSP live with sound energy that is 1,000 times greater than that of normal urban living and that the effects of such constant noise have been found to severely impact speech and sleep.

In support of their claim that noise in the DNL 60 dB materially adversely affects the environment, Plaintiffs point to actions taken by the Minnesota State Legislature, MAC, the FAA, the airlines, and MC acknowledging the seriousness of the issue and developing and promoting programs to mitigate the effects of debilitating noise on residents in DNL 60 dB within MSP contours. Specifically Plaintiffs point to MAC's enabling statute, the Legislatures directive to MAC in 1996 to develop a program and submit a recommendation on noise

mitigation in the DNL 60 dB; MAC's 1996 MSP Noise Mitigation Program fulfilling that requirement, the 1998 DTAPP/EIS—a joint effort between MAC and the FAA for environmental review by state and federal agencies which adopted the 1996 MSP Noise Mitigation Program, the 1999 Airline Lease Agreement, and the 2002 Metropolitan Council approval of the MSP 2010 capital program, as proof that noise mitigation in the DNL 60 dB was deemed "significant," "materially adverse," and worthy of protective measures.

MAC counters that airports typically only propose noise mitigation for noise levels of DNL 65 dB or greater because the FAA has determined that aircraft noise exposure is "significant" only at those levels. 14 C.F. R. Part 150, App. § 150.101(d). MAC states that its 2004 Part 150 proposal currently under review by the FAA "goes well beyond typical noise mitigation and the cities' five decibel reduction package request is even further removed from the standard approach to addressing aircraft noise." MAC also asserts that Plaintiff's count one contains a fatal flaw and should be dismissed because "MERA does not provide a cause of action for damages and does not extend to economic regulation." Skeie v. Minnkota Power Cooperative, 281 N.W.2d 372 (Minn. 1979). MERA, according to MAC, only provides for injunctive relief and Plaintiffs claims are really for "impaired use of property and diminution in value" due to aircraft noise which are impermissible under MERA. See Alevizos v. Metro. Airports Comm'n of Minneapolis & St. Paul, 216 N.W.2d 651, 662 (Minn. 1974).[20]

NWA argues that under MERA, the source of the pollution, the "conduct" itself causing the "materially adverse affect" on the environment, is what Plaintiffs must seek to enjoin. NWA asserts that Plaintiffs failure to attempt to regulate air traffic at MSP—the source of the

[20] There was considerable discussion between the parties and the undersigned at the July 15, 2005 hearing concerning the significance of Alevizos to the instant case. The Court believes the correct reading of Alevizos is not as Defendants suggest ("those who live in urban areas cannot expect the same kind of quietude that individuals in rural areas enjoy") but rather, Alevizos stands for the principal that people 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. July 15, 2005

pollution—is fatal to their complaint. But, NWA charges that Plaintiffs failure to attempt to regulate air traffic is not surprising considering that in the gun club cases, White Bear and Lone Oak, while the Courts had authority to enjoin the conduct—the operating of the gun club—that remedy is not available here as federal law preempts any state law seeking to regulate or restrict air traffic to and from MSP. Minnesota Public Lobby v. MAC, 520 N.W.2d 388, 393 (Minn. 1994) (finding that while there is no doubt "aircraft noise generated by MSP is a serious and unpleasant problem which interferes with the enjoyment of life and property for" those living in affected areas, the state is preempted by Congress from "enacting noise regulations which impinge on aircraft operations").[21] NWA claims that the only available remedy to the Court under MERA is to restrict the "source" of the pollution—the airplanes—which Minnesota Public Lobby prohibits. Finally, NWA argues that the Court is only allowed under MERA to issue "declaratory or equitable" relief that prevents the polluting conduct at issue and is prohibited from providing the relief sought by Plaintiffs. NWA cites Minn. Stat. § 116B.03, subd. 1 in support of its claim that remedies under MERA are "particularly narrow."[22]

Plaintiffs counter that MAC's reliance on the FAA's determination that aircraft noise exposure is "significant" only at the DNL 65 dB and higher is without merit because state law trumps federal standards in the instant case. Furthermore, Plaintiffs point out that the FAA clearly states that, as part of the Part 150 process, it does not preempt states and local authorities from determining that residential areas are incompatible with specific noise levels, so long as the

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Transcript of Proceedings at 42-43.

[21] However, Minnesota Public Lobby, also states that "MAC's enabling legislation creates statutory responsibilities which include minimizing the environmental impact of aircraft operation and abating noise. The MAC must act on these responsibilities in balancing the needs of air carriers, travelers, and residents of areas surrounding the airport." 520 N.W.2d. at 393.

[22] The Court notes that NWA bases its argument on the wrong MERA statute. Minn Stat. § 116B.07 outlines the relief a court may grant. In addition to declaratory and equitable relief, the statute provides that the court "may impose such conditions upon a party as are necessary or appropriate to protect the...natural resources located within the state from pollution, impairment, or destruction." Id.

state and local activities do not interfere with flight operations.[23] 14 C.F.R. § A150.101(d). Plaintiffs clearly do not seek to interfere with flight operations and their complaint clearly states their sole goal; appropriate mitigation of the noise pollution generated by MSP flights based on the plan drafted and endorsed by MAC itself in its 1996 MSP Noise Mitigation Program on residents living within the DNL 60 dB contours.

Plaintiffs disagree with Defendants interpretation of MERA. Plaintiffs note that while MAC does not fly the actual planes causing the noise, MAC has total control over the facility in which the conduct takes place; MAC picked the location of the airport, built the airport, designed the runways and selected the direction in which the runways would point and therefore, MAC should be held responsible for the adverse effects of its activities. Plaintiffs argued at the hearing that to accept NWA's argument that since MAC does not actually "fly" the planes it can't be held accountable for them is "tantamount to saying that in the gun club cases that because the gun club owner didn't have his finger on the trigger for every shot, there was no conduct, or because MNDOT didn't drive every one of the cars that goes down one of the highways and creates noise, there's no conduct there." July 15, 2005, Transcript of Proceedings at 78.

Plaintiffs state the relief they seek is appropriate and allowed under MERA as it would prevent or reduce future injury from Defendants' activities rather than compensate the Plaintiffs for past injuries or reductions in property value—the cornerstone of injunctive relief, as opposed to damages. See Minnesota Mining and Manufacturing Co. v. Travelers Indemnity Co., N.W.2d 175, 181 (Minn. 1990) (finding that "damages" are "the estimated reparation in money for detriment or injury sustained: compensation or satisfaction imposed by law for a wrong or injury

[23] Plaintiffs also note that a recent ruling by the U.S. Court of Appeals for the District of Columbia Circuit held that the FAA's decision to withhold federal funding because the City of Naples Airport Authority in Florida had banned certain noisy aircraft because of their impact in the DNL 60-65 was *unreasonable* as the airport had demonstrated that DNL 60 dB was a "significant noise threshold" for the surrounding community. City of Naples Airport Authority v. FAA, ---F.3d---, 2005 WL 1313803 (D.C. Cir. June 3, 2005) at 3 (emphasis added).

caused by violation of a legal right.") (quoting Webster's Third New International Dictionary, 571 (1961)).

Finally, Plaintiffs charge that Defendant NWA's claim that relief available under MERA as limited to granting injunctions only to "stop" materially adverse conduct—i.e. the flying of planes—is incorrect and without merit. Plaintiffs point to MERA's "Relief" provision which plainly provides that if a violation is found to have occurred, a Court "may grant declaratory relief, temporary and permanent equitable relief, *or may impose such conditions upon a party as are necessary or appropriate* to protect the...natural resources located within the state from pollution, impairment, or destruction." Minn. Stat. § 116B.07 (emphasis added). The relief they seek, Plaintiffs assert, is not outside the courts discretion. In fact, federal courts interpreting MERA, have fashioned injunctive relief requiring affirmative action on the part of defendants to remediate past chemical releases if past conduct poses a current threat of continuing contamination. See e.g. Kennedy Building Assoc. v. Viacom, Inc., 375 F.3d 731, 746-747 (8th Cir. 2004); Werlein v. U.S., 746 F. Supp. 887, 898 (D. Minn. 1990), vacated on other grounds, 793 F. Supp. 898 (1992).

In 1974, the Minnesota Supreme Court found that "MAC was created for the express purpose of promoting and developing airports around the metropolitan area" and that "having accomplished this task, it would be incongruous for this court to hold that MAC cannot be held responsible for the adverse effects of its activities." Alevizos, 216 N.W.2d at 663 (holding MAC was properly named as defendant in mandamus action by property owners seeking inverse condemnation for noise and pollution).

Minnesota law is clear; an airport proprietor is responsible for the effects of aircraft noise even if it does not operate the plane.

The complaint alleges that those who live within the shadow of MSP deal with constant

noise levels far beyond those experienced by others within the Twin Cities. A fact made clear by the Minnesota Supreme Court in Alevizos and Minnesota Public Lobby. When the Legislature made the determination in 1996 that the long-term aviation capacity needs of the metropolitan area would be best served by keeping MSP in its current location as opposed to developing a replacement airport elsewhere, it recognized residents would be significantly impacted by the noise generated by airport operations and specifically directed MAC to examine and make recommendations to mitigate noise in the DNL 60 dB. MAC did, and as a result, a 1996 MSP Noise Mitigation Program was established based on a finding that sound insulation in the DNL 60 dB was necessary to ensure that residents experienced minimal impact from airport operations.

Plaintiffs complaint does not seek to interfere with flight operations at MSP, a claim which would be preempted by federal law, but rather, Plaintiffs seek to hold MAC responsible under MERA for the "material impairment" and "adverse effects of" MSP activities on a protected natural resource—"quietude"—and secure an injunction ordering MAC to mitigate the noise pollution generated by MSP flights based on the plan drafted and endorsed by MAC itself in its 1996 MSP Noise Mitigation Program for residents living within the DNL 60 dB contours.

Plaintiffs have stated a cause of action under MERA.

Furthermore, if Plaintiffs ultimately prevail in their MERA claim, the Court is confident that MERA grants a wide range of equitable powers to the Court to fashion an appropriate remedy based on the circumstances of each case. If a determination is made that relief in the instant case is *necessary or appropriate* to protect a natural resource, MERA provides the Court with wide discretion and authority to fashion *such conditions upon a party* as the situation merits including the remedy sought by Plaintiffs. Minn. Stat. § 116B.07 (emphasis added).

Consistent with Minnesota law which provides that a motion to dismiss must be denied if

taking the facts alleged in the complaint as true, giving the complaint a liberal construction in favor of stating a claim, "it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded," the undersigned finds that Plaintiffs claim on Count One sufficiently states a claim upon which relief can be granted and the relief sought by Plaintiffs is not outside the authority of this Court to provide.

Defendant's motion to dismiss on Count One is denied.

DOES COUNT TWO OF THE COMPLAINT STATE A CAUSE OF ACTION FOR THE ENFORCEMENT OF AN ENVIRONMENTAL QUALITY STANDARD, LIMITATION, RULE OR ORDER UNDER MERA?

MERA provides that a violation can be found when plaintiff shows 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. Stat. § 116B.02, subd. 5.

Plaintiffs rest their claim in Count Two on a novel theory under MERA and assert that public policy interests demand that their theory prevail. Plaintiffs claim that a "constellation" of statutes— MERA, the Minnesota Environmental Protection Act ("MEPA"), and MAC's own enabling statute—*require* MAC to mitigate the impacts of its actions to retain the existing location of MSP as the long-term site for the metropolitan area's international airport and to expand its capacity through the new Runway 17/35 and other construction completed under the MSP 2010 Plan. Plaintiffs point to the 1996 MSP Noise Mitigation Program and the 1998 DTAPP/EIS—developed and submitted to environmental agencies for review and approval in support of the MSP 2010 Plan for expansion pursuant to statutory requirements—as creating the "environmental quality standard" they assert is being violated.[24] MAC submitted the 1998

[24] The sequence of events surrounding the Legislatures decision in 1996 and the actions taken by MAC, the FAA and

DTAPP/EIS, which incorporated its 1996 MSP Noise Mitigation Program, to MEPA.

In addition to protections provided under MERA, and in support of their claim that the "constellation" of these three statutes create an affirmative and substantive state agency environmental standard that MAC is obligated to follow, Plaintiffs note that:

> MEPA directs that...
>
> "No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct."

Minn. Stat. 116D.04, subd. 6.

Plaintiffs state this statute covers all state agencies, including MAC, and requires state agencies to create "feasible and prudent alternative[s]" to actions that have an adverse effect on the environment. Plaintiffs claim that this statute clearly obligates MAC to undertake the noise mitigation measures, which MAC committed to in its 1998 DTAPP/EIS statement to MEPA in 1998 in order to gain approval from MEPA, for its expansion plans as delineated in the MSP 2010 Plan.

Finally, Plaintiffs point out that the third statute in their "constellation," MAC's enabling statute, provides, in its very first words under the declaration of purposes, for MAC to...

> "promote the public welfare and national security" and "serve public interest..."

Minn. Stat. 473.602(1).

Plaintiffs state that the second and third sections of MAC's enabling statute are equally illustrative of the Legislatures intent that MAC—first and foremost—protect the public. These

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MC, as a result of that decision, are described in detail in the "Background" section of this memorandum of law.

provisions direct MAC to:

> (2) assure the residents of the metropolitan area of the minimum environmental impact from air navigation and 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.

Id.

Plaintiffs assert that Minnesota case law, in particular the Minnesota Supreme Court in Minnesota Public Lobby, supports their argument by identifying the mandatory nature of MAC's statutory obligation to minimize the impacts of its noise finding that, "The MAC's enabling legislation creates statutory responsibilities which include minimizing the environmental impact of aircraft operation and abating noise. The MAC must act on these responsibilities in balancing the needs of air carriers, travelers, and residents of areas surrounding the airport." 520 N.W.2d at 393.

Defendants assert that Plaintiffs "constellation" theory is without merit. They assert that Plaintiffs have failed to point to any *specific* statute, standard, limitation, rule, or order requiring MAC to provide a 5 DNL insulation program for 60-64 DNL homes and therefore the Count Two claim must fail.

MAC argues that it does not have a "mandatory" or "unequivocal legal duty" to implement the 1996 MSP Noise Mitigation Program nor is there any existing "environmental quality standard" that binds Defendants to providing insulation for homes in the DNL 60-64 dB. MAC asserts that the Legislature only required MAC to "*examine* mitigation measures to the 60 Ldn level"[25] and MAC did that. Contrary to Plaintiffs claims, MAC says there was no requirement to *implement* the mitigation measure and furthermore, MAC reserved the right to alter their mitigation plans if necessary. Finally, MAC points out that government agencies are

[25] See Minn. Stat. § 473.661, subd.4(f).

entitled to change a plan or program depending on its judgment with regard to events. MAC claims that a variety of events, not the least of which was 9/11, caused them to reevaluate the 1996 MSP Noise Mitigation Program and adjust it based on current realities.

NWA also argues that MAC is not a state agency with any duty to protect or monitor the environment, and thus does not have the power to issue an environmental quality standard and therefore, Plaintiffs claim fails to state a cause of action upon which relief can be granted.

Plaintiffs agree that while state agencies generally have discretion to change course so long as the decision is within the realm of their discretion, they claim, in the instant case, MAC did not have that discretion because of their enabling statute and because of the following sequence of events: Minnesota's legislature directing MAC to examine and make recommendations concerning the noise mitigation standards to include the DNL 60-65 dB which MAC did with its 1996 MSP Noise Mitigation Program; MAC and the FAA appearing to solidify their commitment to the 1996 MSP Noise Mitigation Program by adopting it in their joint 1998 DTAPP/EIS statement which MAC submitted to MEPA for approval prior to the Cities entering into any agreements with MAC; MAC's 1999 Airline Lease Agreements with the airlines which gave the appearance of funding the mitigation program; and MC's approval of the final phase of the MSP 2010 Plan on the condition that MAC commit the previously designated funds to implementing the mitigation program.

At the hearing, Plaintiffs claimed that MAC asserted to them that the program would be implemented if the MSP 2010 Plan expansion projects (including Runway 17/35) were approved and Plaintiffs believed them. Plaintiffs say they relied on MAC's assertions to their detriment and entered into contracts with MAC forgoing their right to legal measures concerning construction of Runway 17/35. Plaintiffs stated at the hearing that one of the reasons "the City of Minneapolis did not include the 60 to 65 decibel mitigation in its contract [was] in large part because that had already been agreed to and provided by the standards enforceable under MERA

through the 1998 FEIS and 1996 noise program...[and that] they relied on state law" believing they had "an enforceable provision...and no reason to believe that MAC would renege..." July 15, 2005 Transcript of Proceedings at 45.

Finally, Plaintiffs point out that from 1996 to 2002 steps were taken, environmental reviews were submitted, agreements were entered into, votes were taken, conditions were set, and 2.7 billion dollars was spent implementing every single expansion project contained in the MSP 2010 Plan with the exception of the 1996 MSP Noise Mitigation Program. The approval for, and construction of, Runway 17/35 and the new terminal parking structure occurred *after* the events of 9/11. Plaintiffs argue that MAC's prior actions established noise mitigation as being necessary and feasible and, as a matter of public policy, it is now too late for them to renege on their commitment to the community.

As noted earlier, in 1974 the Minnesota Supreme Court found that "MAC was created for the express purpose of promoting and developing airports around the metropolitan area" and that "having accomplished this task, it would be incongruous for this court to hold that MAC cannot be held responsible for the adverse effects of its activities." Alevizos, 216 N.W.2d at 663 (holding MAC was properly named as defendant in mandamus action by property owners seeking inverse condemnation for noise and pollution). The Court has to admit that the easy, simple answer would be to reject Plaintiffs claim on Count Two as there is no case law to provide direction to the Court on Plaintiffs novel "constellation" theory of statutes creating a set of events in which MAC, as a state agency, on its own can establish an agency environmental standard worthy of protection under MERA. But, this Court is loath to do that for the following reasons:

Plaintiffs make a persuasive argument that *as a matter of public policy* liberal construction should be given to the idea that an environmental standard was established

deserving of state protection under the conditions of this case. Especially when: (1) a state agency is instructed by the state legislature to determine whether environmental impairment exists from its actions, at what level, and what the mitigation of that impairment should be, and (2) the state agency gathers representatives from all the affected areas to ponder the question and provide input, and (3) the state agency then issues a recommendation for a program based on that input that it purports to identify and mitigate environmental impairment found, and (4) the state agency's program is then adopted by the governing federal agency and submitted jointly to environmental review agencies for review and ultimate approval, and (5) the state agency then, on the basis of state and federal environmental approval, the existence of its own program and its joint statement with the federal agency, seeks and enters into contracts with others to forgo legitimate legal challenges to its proposed expansion projects, and (6) the state agency provides public support to those programs for more than 6 years which, it can be safely argued, induces the affected public to forgo legitimate legal challenges, and (7) the state agency, during those critical 6 years, gets approval for, and spends, $2.7 billion to complete desired expansion projects, while assuring the governing body approving the money for the projects that it will continue to commit previously identified and targeted funds to the mitigation measures that were to be part of the expansion project, and (8) the state agency, having secured funding and free of legal challenges from all sources, proceeds with the expansion projects, but (9) as the final project nears completion, the state agency seeks to disavow its previously stated mitigation program and funding commitments for the program. A case could be made that the "sequence" of events orchestrated by a state agency, and the "constellation" of documents and approvals secured by the state agency, *themselves* create an environmental quality standard, limitation, rule or order, worthy of protection under MERA.

The Court is persuaded that Plaintiffs' claim, as outlined, is serious and deserving of a

chance to be developed on a full record in the event of appellate review. It should not be easy for public bodies to break commitments on which so many private and public entities have claimed to rely.

In addition, and perhaps more precisely, MAC asserts that none of the other agencies in the state that are concerned with environmental issues has authority over noise at the airport. That is likely true. By the same token, the legislature by MERA has declared quietude to be a protectable 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.

Defendant's motion to dismiss on Count Two is denied.

DOES THE COMPLAINT STATE APPROPRIATE CLAIMS FOR A WRIT OF MANDAMUS?

Minnesota's mandamus statute, Minn. Stat. §§ 586.01-.02 (2005), requires the plaintiff to prove that the defendant (1) failed to perform an official duty clearly imposed by law; (2) that as a result of this failure, the plaintiff has suffered a public wrong that specifically injured the plaintiff; and (3) that there is no other adequate legal remedy. N. States Power Co. v. Minn. Metro. Counsel, 684 N.W.2d 485, 491 (Minn. 2004). If the plaintiff is unable to meet all three of the requirements, the Court lacks jurisdiction to issue a writ of mandamus. Friends of Animals & Their Env't v. Nichols, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984).

To obtain a writ of mandamus directing a government official to implement a statute or regulation, the statute or regulation must impose 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). A writ of mandamus will issue only where the duty to be performed is ministerial and the

obligation to act is plainly defined. Id. If there is "any degree of discretion with respect to the act in question," a writ of mandamus may not issue. Electronics Unlimited, Inc. v. Village of Burnsville, 182 N.W.2d 679, 682-83 (Minn. 1971).

Defendants assert that Plaintiffs have failed to point to any specific statute, rule, or regulation requiring the MAC to provide a 5 DNL insulation program for 60-64 DNL homes that even Plaintiffs admit that they have discretion as to what type of mitigation program is provided, if any, and therefore the mandamus claim must be dismissed.

In this case, the petition or a writ of mandamus will only be considered if it is determined that MAC has an unequivocal duty. Additionally, it would appear that injunctive relief is similar to a writ of mandamus, and the request for a writ should not be dismissed because, if MERA violations are found, such a writ may be (part of) an appropriate remedy.

Defendant's motion to dismiss on Count Three is denied.

DOES MINNESOTA LAW PERMIT THE SIMULTANEOUS FILING OF MERA AND MANDAMUS CLAIMS?

Minnesota's mandamus statute states, "no pleading or written allegation, other than the writ, answer, and demurrer, shall be allowed." Minn. Stat. § 586.08. NWA argues that the statute requires a mandamus petition must be raised in a stand-alone pleading and therefore, since the Plaintiffs did not comply with this procedural requirement, their claim should be dismissed.

However, the Minnesota Court of Appeals in Nolan and Nolan v. City of Eagan, 673 N.W. 2d 487, 495 (Minn. Ct. App. 2004) dealt with an issue similar to this and noted that the mandamus statute also provides that further proceedings should be conducted "in the same manner as in a civil action" and that Minn. R. Civ. P. 8.05 states that "a party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or both." The Court in Nolan found that "while no case directly addressed this issue, we conclude

that case law indicates that a petitioner can properly pursue mandamus and tort claims simultaneously." Id. The Court also cited judicial efficiency and economy in support of its ruling that a mandamus claim could be pursued simultaneously, and alternatively, with other court claims. Id.

This Court agrees. While the claims in the instant case are different than those in Nolan—plaintiffs are pursuing MERA claims and, in the alternative, a writ of mandamus—the issues are sufficiently complex that to require the plaintiffs to argue their claims in two separate proceedings would be a waste of judicial efficiency, economy and unnecessarily increase the cost of litigation for all parties.

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.

Defendant's Motion to Dismiss is properly denied.

SCA

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

Plaintiffs

vs.

METROPOLITAN AIRPORTS COMMISSION,

Defendant.

Case No.

Case Type: Other Civil

COMPLAINT

INTRODUCTION

1. The City of Minneapolis ("Minneapolis"), the City of Richfield ("Richfield"), the City of Eagan ("Eagan"; collectively the "Cities") and the Minneapolis Public Housing Authority in and for the City of Minneapolis ("MPHA") bring this action against the Metropolitan Airports Commission ("MAC") under the Minnesota Environmental Rights Act ("MERA"), Minn.Stat. §§ 116B.01 et seq., and the Minnesota mandamus statute, Minn. Stat. § 586.01 et seq, seeking, among other relief, an order requiring the MAC to comply with its obligation to fully sound insulate homes within the 60 to 65 decibel ("dB") day-night level ("DNL") noise contours of the Minneapolis-St. Paul International Airport ("MSP") at no cost to the property owner or homeowner. MAC has made clear that it will not provide full sound insulation to homes within the DNL 60-65 dB, contrary to its responsibility pursuant to Minnesota law. Under MERA, MAC is obligated to comply with its past environmental mitigation commitments and to ensure the minimum impact to the protected resource of quietude.

PARTIES

2. The City of Minneapolis ("Minneapolis") is a Minnesota home rule charter city and political subdivision of the State of Minnesota under the laws and constitution of the State of Minnesota.

3. The City of Eagan ("Eagan") is a Minnesota statutory city and political subdivision of the State of Minnesota under the laws and constitution of the State of Minnesota.

4. The City of Richfield ("Richfield") is a Minnesota home rule city and political subdivision of the State of Minnesota under the laws and constitution of the State of Minnesota.

5. The Minneapolis Public Housing Authority in and for the City of Minneapolis ("MPHA") is a municipal corporation and an independent public agency responsible for administering public housing and Section 8 rental assistance programs for eligible individuals and families in the City of Minneapolis.

6. The Metropolitan Airports Commission ("MAC") is a statutorily created special purpose public entity, created pursuant to Minn. Stat. § 473.603, that owns and operates MSP and six reliever airports in the Twin Cities metropolitan area.

7. The MAC's statutory responsibilities include:

> assur[ing] the residents of the metropolitan area of the minimum environmental impact from air navigation and transportation, and to that end provid[ing] for noise abatement, control of airport area land use, and other protective measures; and promot[ing] the overall goals of the state's environmental policies and minimize[ing] the public's exposure to noise and safety hazards around airports.

Minn. Stat. § 473.602.

8. As discussed in greater detail below, MAC is obligated under both state and federal law to provide sound insulation to homes within the 60-65 decibel DNL contour.

JURISDICTION

9. This district court has jurisdiction over a complaint brought under MERA, Minn. Stat. § 116B.03 (1), and the State mandamus statute, Minn. Stat. §§ 586.01, *et seq.*

STATEMENT OF FACTS

A. MSP's Effects on Neighboring Communities

10. MSP is a critical transportation resource for the State of Minnesota and the Minneapolis-St. Paul metropolitan area, contributing significantly to the regional economy.

11. MAC's operation and development of MSP has exposed neighborhoods in the Cities to severe and recurrent aircraft noise events. MSP was built and has been expanded on a small site adjacent to areas that were fully developed before the advent of commercial jet transportation. MAC predicts that more than 10,000 homes in Minneapolis, Eagan, Richfield and other communities will experience noise in excess of DNL 60 dB in 2007. Among those homes are about 15 homes owned by MPHA. More than 7,500 of these homes are in the DNL 60-65 dB contours.

12. In the absence of aircraft noise from MSP, the Minneapolis neighborhoods within the DNL 60-65 dB contour would predominantly experience noise in the DNL 30-40 dB range, almost 1,000 times less sound energy than they currently experience because of MSP operations. The other Cities would also experience considerably less noise in the absence of MSP operations. The low ambient noise levels constitute a unique and important resource in an urbanized area like the Twin Cities.

13. Quietude in neighborhoods in the Cities and on properties owned by MPHA is important for residents' health, welfare, quality of life and property values.

14. Minneapolis's Comprehensive Plan adopted in 2000, the Minneapolis Plan, identifies airport noise as the most significant factor negatively influencing quality of life for many neighborhoods in South Minneapolis.

15. Eagan's Comprehensive Plan, adopted February 20, 2000, acknowledges both the positive and negative effects of the neighboring MSP. Eagan has adopted policies to work cooperatively with MAC to reduce the adverse impacts of aircraft noise, but recognizes the MAC's commitment to expand its sound insulation program to include homes in the DNL 60-65 noise contours.

16. Richfield's Comprehensive Plan addresses the effects of noise on Richfield neighborhoods, recognizing that noise has "substantial and quite significant" effects on the community and that takeoff noise in some locations is the highest of any existing airport facility in the country.

17. Noise levels in excess of DNL 60 db severely affect residents and owners of property in the Cities. Such noise contributes to resident annoyance, interference with the enjoyment of property, interference with the ability to engage in conversations and listen to television, radio and other wanted sounds, and other serious effects.

18. Noise from aircraft using MSP has significantly reduced the value of property in the Cities relative to its value without such noise.

19. Adequate mitigation of MSP-related noise is critical to the future of the Cities' neighborhoods.

20. MAC's actions cause and will cause noise in the DNL 60-65 dB contours that exceeds the levels recognized by the State as consistent with speech, sleep, and hearing conservation.

B. **MAC's Obligation to Minimize the Impacts of MSP Noise**

21. Minnesota Statutes require that MAC minimize the environmental impact of its operations, including the provision of noise insulation. These obligations are central to the MAC's very existence. The legislature's stated purposes for creating the MAC include "assur[ing] the residents of the metropolitan area of the minimum environmental impact from air navigation and transportation, and to that end provid[ing] for noise abatement . . . and other protective measures" and also "minimiz[ing] the public's exposure to noise and safety hazards around airports." Minn. Stat. § 473.602.

22. The MAC's enabling statute expressly recognizes that residents in areas within the 60 DNL dB contour are negatively affected by noise. Minn. Stat. § 473. 608, Subd. 29(d).

23. The MAC enabling statute grants to the MAC general authority to accomplish the objects and duties authorized by the enabling statute, which objects and duties include providing for noise abatement, minimizing the public's exposure to noise, implementing noise mitigation efforts, and adopting and enforcing rules and regulations to those ends. Minn. Stat. §§ 473.602.

24. That statute also grants the MAC direct authority to issue bonds to fund noise abatement and natural resource protection measures, regardless of location and ownership. Minn. Stat. § 473.608, Subd. 12a.

25. Ultimately, the statute recognizes that:

> the development, extension, maintenance and operation of the [metropolitan airports] 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 provision for noise abatement . . . and other protective measures, is essential to the development of air navigation and transportation in and through this state, and is necessary in order to assure the inclusion of this state in national and international systems of air transportation, benefits the people of the state as a whole, renders a general public service, and provides employment, and is of great public economic benefit.

Minn. Stat. § 473.655 (emphasis added).

26. As a result, MAC has implemented a noise insulation program for the area around MSP since 1992.

27. In the MAC noise insulation program implemented to date, MAC has been insulating homes in the DNL 65 decibel and higher contours. MAC's program provides a combination of, among other measures, new or refurbished doors and windows, wall and ceiling

insulation, and vent baffling, which in combination are designed to provide a minimum of a five decibel reduction for each home. Air conditioning, while it does not provide insulation, is provided to allow homeowners to close their windows. The package of insulation measures is provided at no cost to the homeowner.

28. MAC is currently completing the noise insulation program for the DNL 65 and greater noise contours.

29. The noise insulation program has provided significant relief to those homes that have been part of the program to date. Residents experience much less interference with their daily life, sleep patterns and use and enjoyment of their property. Residents have expressed high levels of satisfaction with the program and found that it greatly increases the compatibility of their homes with the nearby airport.

30. However, residents within the DNL 60-65 dB contours – often located within tens of feet of already insulated homes and exposed to indistinguishable levels of noise – have received no relief. This affects the quality of their environment and the quality of neighborhoods in the Cities.

C. **The "Dual-Track Process" for Evaluating Future Airport Capacity**

31. In 1989, the Minnesota Legislature enacted the Metropolitan Airport Planning Act to create a process to determine whether the long-term aviation capacity needs of the metropolitan area could be best met by enhancing capacity at MSP or by developing a replacement airport within the metropolitan area.

32. As a result, MAC, the Metropolitan Council, the Cities and others engaged in an extensive study and planning process to examine the best location for the metropolitan area's primary airport.

33. In March 1996, MAC and the Metropolitan Council prepared a Joint Report to the Legislature with a recommendation to expand MSP and discontinue efforts to develop a replacement airport. Primary bases for the recommendation were findings that MSP could accommodate expected future demand with expansion of its runways and other facilities and that doing so would save over $2.2 billion.

34. At the same time, however, MAC and the Metropolitan Council recognized the environmental costs imposed on nearby communities such as Minneapolis and Eagan and the countervailing need to take more aggressive steps to mitigate noise. MAC and the Metropolitan Council found that expanding MSP would result in 39 times more persons located in the DNL 60-65 dB contours in 2005 than would be in the DNL 60-65 contours of a new airport – a total of more than 22,030 persons.

35. In 1996, after receipt of the report from MAC and the Metropolitan Council, the Minnesota Legislature determined that MSP should be kept in its current location and that the MAC should develop a 2010 long-term capital plan.

36. The legislation that was enacted in 1996 required that the MAC to prepare a report and recommendation on mitigation for the 2010 capital projects and specified that the recommendation shall examine noise mitigation to the 60 dB DNL level. Minn Stat. §473.661(4)(f).

D. MAC Mitigation Plan Commitments within the DNL 60-65 dB Contours

37. As a result of the Legislature's requirement that the MAC develop a report and recommendation regarding mitigation, the MAC convened a noise mitigation committee including representatives of the Cities and other communities surrounding MSP.

38. Based on extensive work by the committee, on October 28, 1996, MAC approved a noise mitigation program for MSP (the "1996 Noise Mitigation Program"). The 1996 Noise Mitigation Program provided that MAC would expand the then-existing noise insulation program for the DNL 65 dB and greater contours to incorporate the residences in the area encompassed by the projected 2005 60 dB DNL contour.

39. The 1996 Noise Mitigation Program provided that MAC would fund it through airport revenues, passenger facilities charges and federal grants and provided explicitly that "[i]n no case should unreimbursed financial impacts fall on affected residents or their local governments."

40. The 1996 Noise Mitigation Program was intended to provide that the "extension" of the noise program would continue to be based on providing the five-decibel noise reduction standard for each home in the DNL 65 dB and above contours.

41. Less insulation than that sufficient to reduce noise by five decibels would be barely perceptible by residents and insufficient to minimize the noise impacts of MSP, as required by law.

42. Indeed, the Mitigation Committee of the MAC recommended that the MAC evaluate insulation beyond the DNL 60 dB contours once the DNL 60-65 dB program was complete and evaluate the possibility for a three-to-five decibel reduction in this area outside of the DNL 60 dB contour.

E. MAC Commitments to DNL 60 dB Mitigation in Environmental Reviews

43. As part of the process for approving the expansion of MSP, MAC was required to undertake environmental review of the proposed projects under the Minnesota Environmental Policy Act ("MEPA"). Minn. Stat. §§ 116D.01, *et seq.*

44. As part of its environmental review process for major federal actions related to the expansion, the Federal Aviation Administration ("FAA") was also required to undertake environmental review through the National Environmental Policy Act ("NEPA"). 42 U.S.C. §§ 4321, *et seq.*

45. FAA and MAC sought to discharge their obligations through joint environmental review documents. Together, they issued a Final Environmental Impact Statement ("FEIS") in May 1998.

46. The FEIS evaluated the environmental impacts of a package of MSP expansion projects, including the construction of a new runway ("Runway 17/35"). While FAA typically considers noise impacts only above DNL 65 dB, MAC and FAA evaluated the effects of MSP out to DNL 60. The FEIS recognized that noise associated with airport operations can impact people outside of the DNL 65 dB contours and therefore considered impacts to the DNL 60 dB contour.

47. In recognition of the Legislature's direction to develop a mitigation plan and the noise impacts associated with MSP in the DNL 60-65 dB contours, the FEIS provided that the 1996 Noise Mitigation Program would be implemented if the MSP expansion projects were undertaken.

48. On November 23, 1998, the Minnesota Environmental Quality Board ("EQB") assessed the adequacy of the Dual-Track FEIS and determined that the document – which included the DNL 60-65 dB mitigation commitments – was adequate for purposes of MEPA.

49. The Cities did not object to the FEIS's adequacy under MEPA in reliance on MAC's noise insulation commitments in the document.

50. MSP has in fact implemented the MSP expansion projects addressed in the FEIS, and is planning to open the new Runway 17/35 in late 2005. Thus, it is obligated to follow through with all committed mitigation in the program.

F. **November 1998 Third Parallel Runway Agreement**

51. In 1998, Minneapolis and the MAC entered into an agreement (the "Third Parallel Runway Agreement") addressing the construction of a potential third parallel runway at MSP and the City's ability to challenge the construction of Runway 17/35. MAC and Richfield entered into a similar agreement in 1998.

52. MAC sought these agreements to avoid any judicial, administrative or other challenges to the Runway 17/35 by the Cities, which was of great value to MAC.

53. Minneapolis and Richfield agreed to avoid any challenges to Runway 17/35 only in reliance on the MAC's commitments to follow through with adequate sound insulation in the DNL 60-65 dB noise contours.

54. Minneapolis and Richfield have each relied to their detriment upon MAC's consistent, repeated and clear commitments to complete sound insulation of all homes within the 60 dB DNL contour when it agreed to forego potential legal challenges to Runway 17/35.

G. **1999 Airline Lease Agreement**

55. In early 1999, the MAC and the airlines entered into a new operating agreement for MSP (the "1999 Airline Lease Agreement") that contained agreements regarding funding for the capital program at MSP through 2010.

56. As part of the 1999 Airline Lease Agreement, airlines agreed to fund the DNL 60-65 dB noise insulation program for MSP, which was then estimated to cost $150 million. The cost estimates assumed full insulation of the homes in the program, not just installation of air conditioning units.

H. **March 12, 2002, Metropolitan Council Action Approving Capital Program and Requiring Mitigation**

57. Minnesota law, Minn. Stat. §§ 473.181, 473.621, requires MAC to secure review and approval by the Metropolitan Council for certain major capital projects at the airport.

58. In March 2002, the Metropolitan Council approved 2002 "significant effect" projects (which included the construction of Runway 17/35 and a terminal parking structure) for implementation.

59. However, the Metropolitan Council conditioned its approval on MAC's reaffirmation of its $150 million commitment, identified in the 1999 Airline Lease Agreement, to provide noise mitigation to residents within the DNL 65-60.

I. **MAC's Recent Retreat from Its DNL 60-65 dB Commitments**

60. Despite its clear commitments to extend the Sound Insulation Program to the DNL 60-65 dB noise contour and its obligations to provide adequate sound insulation, MAC has indicated that it will not fulfill these obligations.

61. In 1999, the MAC began a review of the noise insulation program at MSP.

62. In August 2001, the MAC voted to approve the extension of the Sound Insulation Program – including the full five-decibel insulation package – for the DNL 60-65 dB contours, subject to a $150 million cap.

63. In December 2001, the MAC rescinded its August 2001 decision for further review.

64. In April 2002, the MAC approved a revised program for the DNL 60-65 dB contours. Under this revised program, the MAC would have provided the full five-decibel package for homes in the DNL 63-65 dB contours, but would only provide air conditioning in the DNL 60-62 contour (with additional mitigation, if necessary, to help houses achieve an interior noise level of DNL 45 dB).

65. In May 2002, the MAC committed to spend $150 million for the revised DNL 60-65 dB sound insulation program.

66. However, MAC subsequently backed away from even this commitment. At its November 20, 2004 meeting, the MAC decided that it would only provide air conditioning to those homes that do not have air conditioning.

67. In addition, contrary to its obligations, MAC would now require co-payment of up to fifty percent from homeowners in the DNL 60-65 contours to receive any relief.

68. Together, MAC's retreats from its noise insulation obligations mean that homes in the DNL 60-65 dB contour would receive no actual insulation and would be required to pay MAC even for the incomplete air conditioning plan.

69. For most of the year when residents are likely to have their windows closed due to the weather, MAC's program would provide no benefit. It would also provide no benefit to the many homeowners who already have air conditioning and are affected by MSP noise.

70. MAC's current program will not result in sufficient noise relief for affected homes and will not discharge MAC's mandatory duties under Minnesota and federal law.

71. Property owners within the DNL 60-65 dB contours have relied to their detriment on MAC's noise mitigation commitments in making home investment, location and other choices.

J. Implementation of the Five-Decibel Noise Insulation Package in the DNL 60-65 dB Contour Is Required by Law, Beneficial to Affected Residents and Feasible

72. Provision of the full five-decibel noise insulation package is economically and technically feasible.

73. Provision of the full five-decibel noise insulation package would allow MAC to minimize noise impacts – as required by law – without affecting aircraft operations at MSP.

74. Supplying adequate noise insulation would not interfere with growth in airport operations, affect how aircraft are flown in or out of MSP, or affect the types of aircraft that can be flown.

75. Implementation of the five-decibel noise package in the DNL 60-65 dB would meet the Legislature's clear requirements to reap the economic benefits of MSP's operations at its current location, while reducing serious impacts to affected residents.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
(For Declaratory and Equitable Relief)

FOR A DECLARATION THAT THE MAC HAS CAUSED AND IS LIKELY TO CAUSE POLLUTION, IMPAIRMENT OR DESTRUCTION OF A NATURAL RESOURCE IN VIOLATION OF THE MINNESTOTA ENVIRONMENTAL RIGHTS ACT SECTION 116B.03(1) AND FOR ASSOCIATED EQUITABLE RELIEF

76. The Cities and MPHA incorporate by reference and re-allege Paragraphs 1 through 75 of this Complaint as if restated here in full.

77. The Cities and MPHA are political subdivisions of the state and are entitled to maintain a civil action for declaratory or equitable relief under MERA. Minn. Stat. § 116B.03 (1).

78. The MAC is a public corporation and is a "person" subject to suit by the Cities and MPHA in the name of the State under MERA Section 116B.03(1).

79. The quietude of the neighborhoods within the Cities and properties owned by MPHA that are located in the DNL 60-65 dB contour is a protected "natural resource" under MERA. Minn. Stat. §116B.02(4).

80. Noise pollution from MSP materially adversely affects the environment by impairing the natural resource of quietude.

81. MAC's failure and announced intention to continue to fail to implement an adequate noise insulation program in the 60-65 DNL will materially adversely affect the environment and fails to minimize the impact of MSP operations on the environment.

82. The noise impacts from MSP in the 60-65 DNL dB contour are repeated and aggravated. Aircraft land and take off throughout the day and night and fly at low altitudes in the airspace above the DNL 60-65 dB contours in the Cities and over MPHA properties.

83. The noise from MSP flights causes disruption of sleep; interrupts and prevents normal conversation and communication; interferes with use and enjoyment of telephones, television and radio; and disrupts entertainment and normal peaceful enjoyment and use of property in the 60-65 DNL dB contours.

84. Unless appropriately mitigated, these impacts can be reasonably expected to continue in the future. It is anticipated, as projected by the MAC, that there will be substantial increases in the total number of operations and that these impacts will increase in the future.

85. MAC's truncated noise insulation program does not adequately protect quietude in the DNL 60-65 dB contour.

86. At least one feasible and prudent alternative is apparent: the MAC can implement a complete mitigation program in the 60-65 DNL to preserve the quietude protected by MERA as to interior spaces, without in any way effecting air operations.

87. Plaintiffs do not seek in any manner through this suit to affect the operation of aircraft at MSP. Provision of adequate noise insulation will not affect the numbers of operations at MSP, how aircraft are operated or the aircraft themselves.

SECOND CAUSE OF ACTION
(For Declaratory and Equitable Relief)

FOR DECLARATORY JUDGMENT THAT THE MAC VIOLATED ENVIRONMENTAL QUALITY STANDARDS, LIMITATIONS, RULES, ORDERS, LICENSES, STIPULATION AGREEMENTS OR PERMITS PROMULGATED BY A STATE REGULATORY AGENCY AS DEFINED BY MINNESOTA LAWS SECTION 116B.03(1) AND FOR ASSOCIATED EQUITABLE RELIEF

88. The Plaintiffs incorporate by reference and re-allege Paragraphs 1 through 87 of this Complaint as if restated here in full.

89. The MERA definition of "pollution, impairment or destruction" includes "the violation of "any environmental quality standard, limitation, rule, order, license, stipulation agreement or permit promulgated or issued by a state regulatory agency or any instrumentality, agency, or political subdivision thereof which was issued prior to the date the alleged violation occurred or is likely to occur." Minn. Stat. § 116B.02(5).

90. By failing to implement an effective noise mitigation program in the DNL 60-65 dB contours of MSP, MAC has violated environmental quality standards, limitations, rules, orders, licenses, stipulations, agreements or permits, including but not limited to:

- The 1996 Noise Mitigation Program;
- The mitigation requirements of the 1998 FEIS;
- The statutory obligation to minimize noise from MSP; and
- The 2002 Metropolitan Council approval of the MSP 2010 capital program.

THIRD CAUSE OF ACTION
(For Writ of Mandamus)

FOR A WRIT OF MANDAMUS TO REQUIRE THE MAC TO EXERCISE ITS DUTIES REQUIRED BY LAW

91. The Plaintiffs incorporate by reference and reallege Paragraphs 1 through 90 of this Complaint as if restated here in full.

92. The MAC has failed to exercise its mandatory duty to provide an adequate noise insulation program to homes in the DNL 60-65 dB contours of MSP.

93. The MPHA is specifically injured by the MAC's failure to insulate homes in the 60-65 DNL contour, because it owns about 15 homes within the DNL 60-65 dB contour that will not receive the full noise insulation that MAC is obligated to provide and it would have to make a co-payment.

94. In the event that the court determines that the MPHA has no remedy under the two MERA causes of action alleged above, mandamus is the only adequate legal remedy available to the MPHA to force the MAC to exercise the duties imposed on it by law.

95. MAC's actions in this case demonstrate that pursuing this administrative remedy would be futile. Given the MAC's decision to truncate its promised noise program, in the face of extensive comments and specific objections from the Cities and others, it is evident that any petition for reconsideration would be summarily rejected and would not serve any useful purpose.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief:

1. For an Order requiring the MAC to implement, at a minimum and at no cost to residence owners or the Plaintiffs, a noise insulation program for residences in the 60 to 65 DNL contours that will provide at least a five decibel noise reduction from the existing conditions in all portions of such residences in order to prevent the MAC's ongoing and future pollution, impairment and destruction of the natural resource of quietude in that area, pursuant to Minn. Stat. § 116B.03.

2. a. For an Order enjoining the MAC from violating:

   1. The residential noise insulation requirements in the MAC's 1996 Noise Mitigation Program;
   2. The 1998 EIS requirements to implement the 1996 Noise Program; and
   3. The March 2002 Metropolitan Council's conditions of approval for the 2002 "significant effect" projects.

   b. For an Order to enjoin the MAC from implementing anything less than the noise program provided in the DNL 65 and greater contours for homes in the 60–65 DNL contours and enjoining any attempts to shift the cost of such a program to property owners or any local government in order in order to prevent ongoing and future pollution, impairment and destruction of quietude in that area, pursuant to Minn. Stat. § 116B.03.

3. In the alternative, for a writ of mandamus, requiring the MAC to implement, at its own cost, a noise insulation program for residences in the 60 to 65 DNL contours that will

provide at least a five decibel noise reduction from the uninsulated condition in all portions of such residences.

4. For such other and further relief as the Court may deem just and proper, pursuant to Minn. Stat. § 116B.07.

Dated: April 6, 2005

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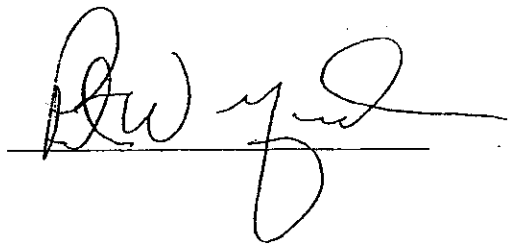
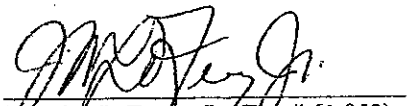
ACKNOWLEDGMENT

The undersigned acknowledges that: I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the Court.





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ACKNOWLEDGMENT

The party above-named represented by the undersigned, hereby acknowledges that sanctions may be imposed pursuant to MINN. STAT. §549.211.

Robert B. Bauer

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota by the City of Minneapolis, et al.

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendant.

Case No. 05-5474

Case Type: Other Civil

MEMORANDUM IN SUPPORT OF DEFENDANT METROPOLITAN AIRPORTS COMMISSION'S MOTION TO DISMISS

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INTRODUCTION

In November 2004, defendant Metropolitan Airports Commission ("MAC") submitted a study for Minneapolis-St. Paul International Airport ("MSP") under 14 C.F.R. Part 150 to the Federal Aviation Administration ("FAA"). As FAA regulations provide, the study proposes a noise compatibility program for areas near MSP affected by aircraft noise. One component of the proposed noise compatibility program is a plan to implement noise mitigation in areas near MSP that will fall within FAA's 60 to 64 decibel ("dB") sound level as measured on a day-night average sound level ("DNL" or "LDN"). Plaintiffs in this action (collectively, the "cities") contend that the MAC proposed mitigation plan for the 60 to 64 DNL areas or "contours" addressed in the pending 2004 Part 150 study is a "retreat" from MAC's earlier noise mitigation "commitments." On April 6, 2005, the cities filed a three count complaint alleging that the MAC proposed mitigation plan for the 60 to 64 DNL contours violates the Minnesota Environmental Rights Act ("MERA") and is subject to a writ of mandamus. The cities seek an order requiring that MAC implement a noise mitigation program in the 60 to 64 DNL contours that will provide at least a five decibel noise reduction from existing residential interior noise levels.

MAC moves this Court to dismiss the cities' complaint for lack of subject matter jurisdiction, because the cities' claims are not ripe for adjudication. The MAC proposed mitigation plan, the subject of the cities' action, is part of a *proposal* that MAC made to FAA, and is currently under FAA review. There is no guarantee that FAA will approve the proposal or make implementation eligible for federal funding in the future. Alternatively, separate from the Part 150 process, third parties have the right to seek an

FAA determination that MAC's use of its own airport revenue to implement noise mitigation constitutes illegal "revenue diversion." MAC also moves to dismiss the three causes of action in the cities' complaint for failure to state a claim. The cities' first claim for relief under MERA actually states a cause of action for damages and economic regulation, which MERA does not permit. The cities' second MERA cause of action fails for the same reasons as the first, and because it does not state a claim for enforcement of a state environmental quality standard under MERA. Finally, the cities' request for a writ of mandamus is improper because the complaint does not establish that MAC has a mandatory duty to implement the relief that the cities seek.

STANDARD FOR DISMISSAL

Rule 12.02 of the Minnesota Rules of Civil Procedure requires dismissal if this Court lacks subject matter jurisdiction, or if the allegations in a complaint fail to state a claim for relief. A cause of action is subject to dismissal for lack of subject matter jurisdiction under Minn. R. Civ. P. 12.02(a) where the matter is not ripe for adjudication. Izaak Walton League of Am. Endowment, Inc. v. State Dep't of Natural Res., 252 N.W.2d 852, 854 (Minn. 1977). Similarly, a cause of action may be dismissed under Minn. R. Civ. P. 12.02(e) when it fails to state a claim upon which relief may be granted. Elzie v. Comm'n of Pub. Safety, 298 N.W.2d 29, 32 (Minn. 1980).

ARGUMENT

I. The Cities' Claims Are Not Ripe For Decision Because The Noise Mitigation Plan To Which They Object Is Merely A Proposal Under FAA Review

The cities' complaint alleges claims under MERA, and in the alternative requests a writ of mandamus, because the cities object to MAC's alleged "retreat" from "noise insulation obligations." See Complaint at ¶ 68. The MAC proposed mitigation plan for

the 60 to 64 DNL contours surrounding MSP—the subject of the cities' action—is part of a *proposal* that MAC made to FAA in November 2004 under the auspices of 14 C.F.R. Part 150. FAA has yet to approve the proposal, and may reject or order changes to the MAC proposed mitigation plan for the 60 to 64 DNL contours. As a result, the cities' claims are not ripe for adjudication.

A. For Claims To Be Ripe For Adjudication, There Must Be A Final Decision And There Must Be Significant Hardship To The Parties In Withholding The Court's Consideration

The ripeness doctrine arises from Article III of the Constitution and excludes cases that do not involve an existing injury, because "[a]llegations of possible future injury do not satisfy the requirements of Art. III." Whitmore v. Arkansas, 495 U.S. 149, 158 (1990). In determining whether a claim is ripe, courts examine the "fitness of issues for judicial decision" and the "hardship to the parties of withholding court consideration." Ohio Forestry Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 733-34 (1998), quoting Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1967). The "fitness for judicial decision" inquiry ensures that hypothetical or speculative disagreements are not subject to judicial review. Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 297 (1979). Any alleged hardship to the parties arising from delayed review must be "significant." Ohio Forestry Ass'n, 523 U.S. at 733-34. A court reviewing a motion to dismiss for lack of subject matter jurisdiction because an action is unripe may rely upon affidavits submitted by the parties and other extra-record material. Ass'n of Am. Medical Colleges v. United States, 217 F.3d 770, 778 (9th Cir. 2000) (construing Fed. R. Civ. P. 12(b)(1), which is identical to Minn. R. 12.02(a)). The cities bear the affirmative burden of establishing subject matter jurisdiction, and may not rely upon presumptions or favorable inferences

drawn from the complaint to satisfy their burden. APWU v. Potter, 343 F.3d 619, 623-24 (2d Cir. 2003) (construing Fed. R. Civ. P. 12(b)(1)).

Minnesota courts apply the same ripeness analysis as the federal courts. See, e.g., Minnesotans for Responsible Recreation v. Dep't of Natural Res., 651 N.W.2d 533, 539 (Minn. App. 2002), citing Ohio Forestry Ass'n, 523 U.S. at 735. The ripeness doctrine ensures that Minnesota courts do not issue advisory opinions. Izaak Walton League, 252 N.W.2d at 854. Issues that "have no existence other than in the realm of future possibility are purely hypothetical and are not justiciable" in Minnesota courts. State v. Colsch, 284 N.W.2d 839, 842 (Minn. 1979).

B. There Has Been No Final Decision, Because The MAC Proposed Mitigation Plan For The 60 To 64 DNL Contours Is Part Of A Pending MAC Proposal That FAA Has Yet To Approve And May Reject

In November 2004, MAC submitted to FAA an updated airport noise compatibility study for MSP under 14 C.F.R. Part 150. Affidavit of Nigel D. Finney ("Finney Aff.") at ¶ 2. Part 150 establishes standards for airport operators to use in documenting aircraft noise exposure and developing noise compatibility programs for areas adjacent to airports that, when approved by FAA, are eligible for FAA grants. See 14 C.F.R. Part 150. The 2004 Part 150 study for MSP includes in its proposed noise compatibility program the 60 to 64 DNL contours mitigation package ("MAC proposed mitigation plan") that is the subject of the cities' complaint. Finney Aff. at ¶¶ 3-5. By providing air conditioning to homeowners in the 60 to 64 DNL contours if a home does not already have air conditioning installed, the MAC proposed mitigation plan allows homeowners to keep their windows closed in the summer months and achieve outside-to-inside sound attenuation that meets interior noise levels established by the United States

Environmental Protection Agency. Id. at ¶ 5. To participate in the plan, homeowners would pay as little as ten percent and as much as fifty percent of the air conditioning installation costs, depending upon the contour in which a home is located. Id. at ¶ 6.

The cities seek a 60 to 64 DNL contour mitigation package that would provide at least a five decibel noise reduction from existing residential interior noise levels ("five decibel reduction package"). See Complaint at 12-13, Prayer for Relief ¶¶ 1 and 3. As discussed below, the cities' claims are unripe because FAA is still considering the MAC proposed mitigation plan. In addition, because both the MAC proposed mitigation plan and the five decibel reduction package that the cities seek go well beyond the standard noise mitigation that FAA approves, adjudicating the cities' claims at this time could present MAC with conflicting federal and state obligations.

1. FAA's Approval Of The MAC Proposed Mitigation Plan Is Required Under The Part 150 Process Or If A Third Party Files A Formal Administrative Complaint With FAA

Under the federal regulations establishing the Part 150 program, FAA must review and approve MAC's proposed Part 150 program for MSP, including the MAC proposed mitigation plan for the 60 to 64 DNL contours, if the Part 150 program for MSP is to be eligible for FAA grants. 14 C.F.R. §§ 150.1, 150.35. FAA is currently reviewing the 2004 Part 150 study, including the noise compatibility program containing the MAC proposed mitigation plan for the 60 to 64 DNL contours, and may approve or reject some or all of the measures proposed in the noise compatibility program. Finney Aff. at ¶ 7-8. FAA has rejected portions of the noise compatibility programs that MAC proposed as part of earlier Part 150 studies for MSP. Id. There is no guarantee that FAA will approve

the 2004 Part 150 study, or that portion of the noise compatibility program addressing the MAC proposed mitigation plan for the 60 to 64 DNL contours surrounding MSP.

FAA consideration of the 2004 Part 150 study is especially significant because, contrary to the cities' assertions, the MAC proposed mitigation plan for the 60 to 64 DNL contours goes well beyond typical noise mitigation, and the cities' five decibel reduction package request is even further removed from the standard approach to addressing aircraft noise. Airports typically propose noise mitigation for noise levels of 65 DNL or greater, because FAA has determined that aircraft noise exposure is "significant" only at the 65 DNL or greater level. 14 C.F.R. Part 150, App. § 150.101(d) ("For purpose of compliance with this part, all land uses are considered to be *compatible* with noise levels *less than* LDN 65dB.") (emphasis added). According to FAA, proposals for noise compatibility projects below the 65 DNL level must be supported by appropriate documentation from the local airport. Id.

The 108th Congress, in the so-called Lott Amendment, recently prohibited FAA approval of Part 150 submissions seeking authorization of FAA grants for *any* noise mitigation measures in all 60 to 64 DNL contours until after 2007. Vision 100 - Century of Aviation Reauthorization Act, Pub. L. No. 108-176, § 189, 117 Stat. 2490 (2003) (codified as 49 U.S.C. § 47504(b)(4)). In a Senate floor colloquy on the amendment with Senator Trent Lott, Chairman of the Aviation Subcommittee and the amendment's author, Senator Norm Coleman observed that FAA "has not normally supported noise mitigation projects below a Day-Night Average Sound Level (DNL) of less than 65." 149 Cong. Rec. S11154 (daily ed. Sept. 5, 2003). The reason for the lack of FAA support, according to Senator Coleman, is that FAA's system for ranking noise mitigation projects

places a priority on reducing noise in areas above the 65 DNL level, and "projects below 65 DNL have not normally ranked high enough to get [federal noise mitigation] funding." Id. Senator Lott stated that he agreed with Senator Coleman's interpretation. Id. FAA policies and the Lott Amendment make FAA approval of the MAC proposed mitigation plan for the 60 to 64 DNL contours far from certain.

In the event FAA were to reject the MAC proposed mitigation plan for the 60 to 64 contours under Part 150, MAC could in theory abandon the Part 150 process and proceed with the MAC proposed mitigation plan using solely local "airport revenue" funding sources with no FAA grants. This alternative course of action also risks FAA disapproval. MAC's use of passenger facility charges or "PFCs," a type of local airport revenue derived from fees that airline passengers pay when they purchase airline tickets, is subject to FAA approval. Finney Aff. at ¶¶ 10-11. Just as there is no guarantee that FAA will approve the MAC proposed mitigation plan for the 60 to 64 DNL contours as part of the 2004 Part 150 study, there is no guarantee that FAA would approve the use of PFCs to implement the MAC proposed mitigation plan outside the Part 150 process.

In addition, the Airport and Airway Improvement Act controls the use not only of federal grants but also use of all "airport revenue." 49 U.S.C. § 47133(b). See also Finney Aff. at ¶¶ 9-11. If MAC were to use local airport revenue to implement the MAC proposed mitigation plan (or any other plan, including the cities' five decibel reduction package) outside the Part 150 process, MAC could be subject to an administrative enforcement complaint alleging illegal use of airport revenue (so-called "revenue diversion") filed with FAA by a third-party under 14 C.F.R. Part 16. Finney Aff. at ¶ 11. See also 14 C.F.R. Part 16 (governing most enforcement proceedings involving federally-

assisted airports, whether initiated by FAA or by third parties filing administrative enforcement complaints with FAA). Although MAC believes it has strong defenses to such allegations, the mere filing of a complaint would subject MAC to a lengthy formal administrative enforcement proceeding. See 14 C.F.R. Part 16. If FAA were to determine in such an administrative complaint proceeding that use of airport revenue for mitigation in MSP's 60 to 64 DNL contours constitutes illegal revenue diversion, MAC could lose its rights to receive existing or future FAA grants, or to impose and use new passenger facility charges, or be subject to civil penalties. Alternatively, MAC's action could be the subject of an FAA challenge in federal court. 49 U.S.C. § 47107(n).

2. The Uncertainty Surrounding FAA Approval Of The MAC Proposed Mitigation Plan Renders The Cities' Claims Unripe

Given the uncertain status of FAA review and approval of the MAC proposed mitigation plan for the 60 to 64 DNL contours, the cities' claims cannot meet the first prong of the ripeness test: the "fitness of the issues for judicial decision." As discussed above, MAC cannot use federal funds to implement the MAC proposed mitigation plan for the 60 to 64 DNL contours until FAA reviews the proposal as part of the 2004 Part 150 study. Finney Aff. at ¶¶ 7, 9-11. The MAC proposed mitigation plan for the 60 to 64 DNL contours in the Part 150 study is unfit for judicial review at this time because FAA is still considering the proposal as part of the 2004 Part 150 study, and may reject it. As a result, there is no final decision. See Ohio Forestry Ass'n, 523 U.S. at 735-36. The MAC proposed mitigation plan for the 60 to 64 DNL contours is simply a proposal that "does not command anyone to do anything or to refrain from doing anything," and should not be subject to judicial review. Id. at 733. Judicial intervention at this stage, therefore, would be tantamount to entangling this Court "in internal agency proceedings which are

far from complete," in direct contravention of the ripeness doctrine's "fitness for judicial decision" test. Contel of Minn., Inc. v. Minn. Pub. Utilities Comm'n, 532 N.W.2d 583, 589 (Minn. App. 1995).

Adjudicating the cities' claims now could also subject MAC to the risk of incurring inconsistent obligations under federal and state law. FAA could determine in its review of the pending Part 150 study that noise mitigation at MSP outside the 65 DNL contour is not justified. In addition, MAC could not use airport revenue to implement *any* 60 to 64 DNL contour mitigation—that is, the MAC proposed mitigation plan or the cities' five decibel reduction package—without the risk of an administrative enforcement complaint at FAA alleging illegal revenue diversion. See Section I.B.1 above. At this point, FAA is still evaluating the 2004 Part 150 study, and has not reached the issue of whether airport revenue to be spent in the 60 to 64 DNL contours is justified under Part 150 standards or, if not, constitutes improper revenue diversion. If before FAA's decisions this Court were to find for the cities and order the five decibel reduction package in the 60 to 64 DNL contours, MAC could face conflicting federal and state obligations. Accordingly, this Court should withhold consideration of the cities' claims at this time, and dismiss the complaint as unripe.

C. There Is No Significant Hardship To The Cities In Withholding The Court's Consideration Of Their Claims At This Time

The cities also cannot meet the "hardship to the parties of withholding court consideration" prong of the ripeness test. To be ripe for judicial review, a plan or proposal must inflict "significant practical harm upon the interests" that a plaintiff advances. Ohio Forestry Ass'n, 523 U.S. at 733-34. At present, the MAC proposed mitigation plan for the 60 to 64 DNL contours inflicts no harm whatsoever on the cities.

As discussed above, FAA is still considering the MAC proposed mitigation plan for the 60 to 64 DNL contours, and MAC could not implement the proposal if FAA determines that the MAC proposed mitigation plan is unjustified. Similarly, as discussed above, MAC cannot use airport revenue to implement the MAC proposed mitigation plan or the cities' five decibel reduction package in the 60 to 64 DNL contours without risking an administrative complaint alleging illegal revenue diversion. After FAA rules on the 2004 Part 150 study or resolves possible revenue diversion complaints, the cities will have ample opportunity to bring an action against MAC or FAA or both, or to seek direct judicial review of any FAA decision. See 49 U.S.C. 46110(a) (providing for review of FAA decisions). Where a plaintiff may bring an action at a later time "when harm is more imminent and more certain," the plaintiff does not satisfy the ripeness doctrine's "significant hardship" requirement. Ohio Forestry Ass'n, 523 U.S. at 733-34.

II. The Complaint Fails To State A Claim Because The Cities' MERA Claims Involve Damages And Economic Regulation Rather Than The Protection Of Natural Resources

The cities style their first cause of action as a MERA claim, alleging that the MAC proposed mitigation plan is inadequate and would therefore cause "pollution, impairment, or destruction" of quietude, a protected natural resource. Complaint at ¶¶ 79-80. Far from stating a MERA claim, the cities' cause of action attempts to enforce purported promises or "commitments" by MAC to implement a five decibel noise reduction package for residents in the 60 to 64 DNL contours surrounding MSP. See, e.g., Complaint at ¶¶ 1, 40, 56. MERA does not provide a cause of action for damages and does not extend to economic regulation. As a result, the cities' complaint fails to state a MERA claim.

MERA does not provide a cause of action for damages. See Minn. Stat. § 116B.03. See also Note, The Minnesota Environmental Rights Act, 56 Minn. L. Rev. 575, 582 (1972) (noting that the Minnesota legislature defeated an attempt to amend the statute to include damages as a remedy). By its terms, the statute allows for injunctive relief only, and provides a cause of action limited to the protection of natural resources. Minnesota courts reject attempts to "convert the statute from an environmental protection law to an economic regulation." Stansell v. City of Northfield, 618 N.W.2d 814, 820 (Minn. App. 2000). See also Skeie v. Minnkota Power Coop., 281 N.W.2d 372, 373 (Minn. 1979) (no MERA cause of action for claim of impaired use of property).

In advancing an ostensible MERA claim, the cities reveal that their true cause of action arises from alleged impaired use of property, diminution in value, and damages for MAC's purported "retreat" from "commitments." The cities acknowledge that MAC is proposing noise mitigation for homes in the 60 to 64 DNL contours, but allege that the MAC proposed mitigation plan constitutes a "retreat" from MAC's "commitment" to implement a five decibel noise reduction package. Complaint at ¶¶ 60-71. In addition, the cities allege that noise from aircraft using MSP has impaired property use and reduced property values. Complaint at ¶¶ 11-20.[1] As a remedy, the cities request that this Court order MAC to implement "a noise insulation program for residences in the 60 to 65 DNL contours that will provide at least a five decibel noise reduction from existing conditions." Complaint at 12, Prayer for Relief ¶ 1.

[1] The Complaint alleges a general diminution in value, but does not specify that property values in the 60 to 64 DNL contours have been "significantly reduced." Complaint at ¶ 18.

By using MERA as the vehicle for disparate claims far removed from the protection of natural resources, the cities are extending the statute "into areas where its use was not clearly intended." Skeie, 281 N.W.2d at 374. Claims for impaired use of property and diminution in value are impermissible under MERA. Id. Where aircraft noise allegedly results in impaired use of property or diminution in value, the appropriate claim arises not under MERA, but in an action for inverse condemnation. Alevizos v. Metro. Airports Comm'n of Minneapolis & St. Paul, 216 N.W.2d 651, 662 (Minn. 1974). Moreover, as Alevizos recognizes, the concept of "quietude"—a MERA protected natural resource—varies depending upon surrounding land uses. In discussing MSP airport noise, the Alevizos court opined that "[e]very landowner must continue to endure that level of inconvenience, discomfort, and loss of peace and quiet which can be reasonably anticipated by any average member of a vibrant and progressive society." Alevizos, 216 N.W.2d at 662. MERA is not intended to allow city residents to secure a level of quietude equivalent to that experienced in less developed areas.

Similarly, MERA cannot support an attempt to obtain specific performance for MAC's alleged "retreat" from earlier noise mitigation "commitments." Here, as a remedy to MAC's alleged "retreat," the cities' seek an order from this Court under MERA requiring MAC to implement a five decibel noise reduction package in the 60 to 64 DNL contours. The cities' expansion of MERA to embrace a contract or quasi-contract theory is simply inconsistent with the statute. Skeie, 281 N.W.2d at 374; Stansell, 618 N.W.2d at 820.

III. The Cities' Complaint Fails To State A Claim For Enforcement Of An Environmental Quality Standard Under MERA

MERA authorizes a cause of action to enjoin any 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." Minn. Stat. § 116B.02, subd. 5; Minn. Stat. § 116B.03, subd. 1. The statute, however, does not create a cause of action for failure to comply with "past environmental mitigation commitments," as the cities allege. See Complaint at ¶ 1. Because count II of the complaint fails to allege that MAC violated any substantive environmental quality standard promulgated by the state or a political subdivision of the state, this Court should dismiss the cities' second claim.

A. MERA Authorizes A Cause Of Action For Violation Of Substantive Environmental Standards Promulgated By State Agencies

MERA distinguishes between an action premised upon an allegation of a general material adverse effect on the environment, and an action alleging a violation of a state environmental quality standard. McGuire v. County of Scott, 525 N.W.2d 583, 584 (Minn. App. 1995). Count I of the cities' complaint alleges a general material adverse effect. Count II alleges that MAC violated state environmental quality standards embodied in: 1) the 1996 noise mitigation program; 2) the mitigation requirements in the 1998 final environmental impact statement ("FEIS") for MSP's Dual Track Airport Planning Process; 3) MAC's statutory obligations to minimize noise from MSP; and 4) the Metropolitan Council's 2002 approval of the MSP 2010 capital improvement program. Complaint at ¶ 90.

When initially introduced in 1971, MERA did not include a cause of action for the violation of state environmental quality standards. McGuire, 525 N.W.2d at 586. After the bill was introduced, the Minnesota Pollution Control Agency ("MPCA") offered a series of amendments that included a private cause of action "to enforce [MPCA's] rules and regulations and a corresponding defense that was limited to showing compliance." Id. The House Judiciary Committee adopted MPCA's amendment creating a private right of action to enforce substantive state environmental quality standards in order "to provide adequate civil remedies for private protection of environmental resources in conjunction or in lieu of government enforcement." Id. See also Note, The Minnesota Environmental Rights Act, 56 Minn. L. Rev. 575, 582 (1972) (discussing the legislative history of the MPCA amendments).

MERA's private right of action addressing environmental quality violations applies only to substantive and enforceable state standards, limitations, rules, orders, licenses, stipulation agreements, or permits. Minn. Stat. § 116B.02, subd. 5. Statutes, rules, orders, licenses, stipulation agreements, or permits—even those that MPCA issues—do not constitute environmental quality standards under MERA unless they include substantive and enforceable environmental limitations. Cf. Kennedy Bldg. Associates v. Viacom, Inc., 375 F.3d 731, 743-44 (8th Cir. 2004); Williams Pipeline Co. v. Soo Line R. Co., 597 N.W.2d 340, 345-46 (Minn. App. 1999).

Kennedy Bldg. Associates and Williams Pipeline construed MERA's "environmental quality standard" language in the context of the compliance defense 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, stipulation agreement, or permit" that MPCA or three other state agencies issue. Id. In Kennedy Bldg. Associates and Williams Pipeline, the defendants argued that plaintiffs could not bring a MERA action because the defendants were acting pursuant to MPCA-issued consent orders. Both courts disallowed the defense, holding that the MPCA consent orders did not preempt the MERA claims because the orders imposed general rather than specific requirements. Kennedy Bldg. Associates, 375 F.3d at 744; Williams Pipeline, 597 N.W.2d at 345-46. According to Kennedy Bldg. Associates, the defense of compliance with an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit applies only to "substantive standards affirmatively imposed by the Minnesota Pollution Control Agency or one of the other agencies named in section 116B.03, subd. 1." 375 F.3d at 744, citing Holte v. State, 467 N.W.2d 346, 349 (Minn. App. 1991).

The reference to "environmental quality standards" in the MERA compliance defense construed in Kennedy Bldg. Associates and Williams Pipeline is identical to the "environmental quality standards" language in MERA's "pollution, impairment, or destruction" definition. Like the compliance defense, MERA defines "pollution, impairment, or destruction" to include the violation of an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit." Compare Minn. Stat. § 116B.03, subd. 1 (environmental quality standard compliance defense) with Minn. Stat. § 116B.02, subd. 5 (defining "pollution, impairment, or destruction"

of natural resources as violation of an environmental quality standard). The cities' second claim for relief alleges a MERA cause of action for violation of an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit." See Complaint at ¶¶ 88-90. This Court should construe the MERA "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" language to include only substantive standards affirmatively imposed. Minn. Stat. § 116B.02, subd. 5. Cf. Kennedy Bldg. Associates, 375 F.3d at 744; Williams Pipeline, 597 N.W.2d at 345-46. As set forth below, the references in count II of the cities' complaint do not meet this definition, and therefore cannot constitute environmental quality standards, limitations, rules, orders, licenses, stipulation agreements, or permits enforceable under MERA. The cities' second cause of action, therefore, fails to state a claim for relief.

B. The 1996 Noise Mitigation Program And The 1998 FEIS For The Dual Track Process Do Not Establish Substantive Environmental Standards

FAA and MAC prepared the 1998 FEIS for the Dual Track airport planning process, which evaluated the expansion of MSP, 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. The 1998 FEIS incorporates and discusses the 1996 noise mitigation program.[2] The cities allege that the 1998 FEIS, and the 1996 noise mitigation program which it references, establish an "environmental quality standard, limitation, rule, order, license, stipulation

[2] MAC has attached copies or relevant portions of the documents referenced in the complaint to the Affidavit of Nigel D. Finney. This Court may consider documents referenced in the complaint without converting MAC's motion to dismiss into one for summary judgment. N. States Power, 684 N.W.2d at 490-91.

agreement, or permit" under MERA. Complaint at ¶ 90. This allegation evidences a fundamental misunderstanding of the FEIS and the process of environmental review.

MEPA's purpose is "to force agencies to make their own impartial *evaluation* of environmental considerations before reaching their decisions" on governmental projects. No Power Line, Inc. v. Minn. Envtl. Quality Council, 262 N.W.2d 312, 327 (Minn. 1977) (emphasis added). Environmental impact statements and other environmental review documents prepared under MEPA do not establish substantive environmental quality standards. Rather, environmental review under MEPA "is a process of information gathering and analysis." Nat'l Audubon Soc'y v. Minn. Pollution Control Agency, 569 N.W.2d 211, 218 (Minn. App. 1997). An environmental impact statement such as the 1998 Dual Track FEIS is an "informational document" that "examines the environmental consequences of an action, explores alternatives, and suggests measures which could be helpful in mitigating any adverse environmental impact caused by the action." Coon Creek Watershed Dist. v. Minn. Envtl. Quality Bd., 315 N.W.2d 604, 60-06 (Minn. App. 1982) (citations omitted). An EIS is not a decision-making document that prohibits a project from proceeding, and does not establish enforceable environmental standards. Id.

As discussed above, statutes, rules, orders, licenses, stipulation agreements, or permits do not constitute environmental quality standards under MERA unless they include substantive and enforceable environmental limitations. Cf. Kennedy Bldg. Associates, 375 F.3d at 743-44; Williams Pipeline Co., 597 N.W.2d at 345-46. MEPA is a procedural statute that requires preparation of an EIS to evaluate

information, not to promulgate substantive environmental quality standards. In preparing the Dual Track FEIS under MEPA, MAC collected the information necessary for the Minnesota Environmental Quality Board to evaluate the environmental effects of the MSP expansion. The FEIS does not establish an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" enforceable under MERA. Minn. Stat. § 116B.02, subd. 5.

C. MAC's Enabling Statute Articulates Policy Goals, Not Substantive Environmental Standards

The cities repeatedly allege that MAC's statutory obligations to minimize noise from MSP constitute an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" for purposes of MERA. See, e.g., Complaint at ¶¶ 7, 21, 25, 90. MAC's enabling statute, however, articulates general purposes and goals rather than specifying enforceable standards. As a result, the statute is not an environmental quality standard or limitation enforceable under MERA.

The cities' complaint cites portions of MAC's enabling statute declaring that MAC's purpose is, among other things, to assure "minimum environmental impact from air navigation and transportation" and to provide for "noise abatement." Complaint at ¶¶ 7, 21, 25, citing Minn. Stat. § 473.602(2) and Minn. Stat. § 473.655. General references to noise abatement in the statute do not create substantive requirements enforceable under MERA. Cf. Kennedy Bldg. Associates, 375 F.3d at 743-44; Williams Pipeline Co., 597 N.W.2d at 345-46. Contrary to the cities' unsubstantiated allegations, the statute does not require implementation of noise mitigation in the 60 to 64 DNL contours, or specify that such mitigation must achieve

a five decibel noise reduction from the existing condition in residences within the 60 to 64 DNL contours.[3] In fact, the provision stating that one of MAC's purposes is to assure "minimum environmental impact from air navigation" also declares that MAC must "promote air navigation and transportation," "develop the full potentialities of the metropolitan area in this state as an aviation center," and "provide for the most economical and effective use of aeronautic facilities and services" in the metropolitan area. Minn. Stat. § 473.602(1). MAC's enabling statute requires a balancing of its goals. Minn. Public Lobby v. Metro. Airports Comm'n, 520 N.W.2d 388, 393 (Minn. 1994). Nothing in the broad policy goals of MAC's enabling statute, however, establishes a substantive environmental quality standard enforceable under MERA. Cf. In re NSP Red Wing Ash Disposal Facility, 421 N.W.2d 398, 405 (Minn. App. 1988) (refusing to imply from the broad statements of purpose in Minnesota Environmental Policy Act a guarantee of a "meaningful hearing").

In addition, the cities allege that MAC's enabling statute "expressly recognizes that residents in areas within the 60 DNL dB contour are negatively affected by noise." Complaint at ¶ 22, citing Minn. Stat. § 473.608, subd. 29(d). In actuality, the statute defines an "affected city" in the context of a hypothetical expansion of MSP to include a third parallel runway.[4] Under the statute, an "affected city" is any city that "would experience an increase in the area located within the 60 Ldn noise contour as a result of operations using the third parallel runway." Minn. Stat. § 473.608, subd.

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[3] The statute requires MAC to "*examine* mitigation measures to the 60 Ldn level." Minn. Stat. § 473.661, subd. 4(f) (emphasis added). See also Complaint at ¶ 36. The cities do not allege that MAC failed to *examine* mitigation measures in 60 to 64 DNL contours. Rather, the cities object to the mitigation measures that MAC proposes to implement in the 60 to 64 DNL contours. See, e.g., Complaint at ¶¶ 60-71.

[4] The new runway under construction at MSP is not a "third parallel runway" under Minn. Stat. § 473.608, subd. 29.

29(d). The statute further requires MAC to enter into a contract with any "affected cities" that states MAC will not build a third parallel runway at MSP without the affected cities' approval. Minn. Stat. § 473.608, subd. 29(a). Nothing in the statute expressly recognizes that residents located in the 60 to 64 DNL contours in the "affected cities" are negatively affected by noise.

D. The Metropolitan Council Authorization For 2002 Does Not Establish A Substantive Environmental Standard

MAC's enabling statute requires that it submit capital projects for MSP totaling more than $5 million to the Metropolitan Council for review. Minn. Stat. § 473.181, subd. 5; Minn. Stat. § 473.621, subd. 6; see also Complaint at ¶ 57. The purpose of this review is to ensure that certain significant MSP projects are consistent with the Metropolitan Council's development guide. Minn. Stat. §§ 473.181, 473.611, 473.621, subd. 6, and 473.655. Contrary to the cities' allegations, the Metropolitan Council's 2002 review of MAC's capital expenditures for implementation of MSP's 2010 comprehensive plan is not an "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" enforceable under MERA. Similarly, the Metropolitan Council's statements regarding MAC's commitment to spend $150 million on noise mitigation in the 2002 approval of the capital improvement plan for MSP do not impose enforceable environmental quality standards. See Finney Aff. at ¶ 17, Ex. F.

Even if the Metropolitan Council's approval of 2002 MSP capital improvement program could impose an enforceable environmental quality standard, the Metropolitan Council has effectively overturned its earlier position. The Metropolitan Council approves MAC's capital improvement program for MSP on an

annual basis. MAC asks this Court to take judicial notice that on February 9, 2005, the Metropolitan Council approved MAC's 2005 capital improvement plan for MSP, including funding for the MAC proposed mitigation plan for the 60 to 64 DNL contours. The approval was unconditional, and made no mention of a MAC commitment to spend $150 million on noise mitigation in the 60 to 64 DNL contours.

The cities also imply, but do not expressly allege, that MAC's ostensible violation of the 1999 Airline Lease Agreement, the third parallel runway agreement with the City of Minneapolis, and the noise mitigation agreement with the City of Richfield support their count II MERA claim. See Complaint at ¶¶ 51-71. Assuming that the cities' allegations regarding MAC's violation of these agreements are true—which MAC denies—the purported violations do not support the cities' second claim for relief. MERA provides a cause of action only for violation of "any environmental . . . stipulation agreement." Minn. Stat. § 116B.02, subd. 5. An environmental "stipulation agreement" is a specific document entered into between a defendant and a state environmental agency, such as MPCA, to settle violations of the state's environmental laws. See, e.g., Minn. Stat. § 116.07, subd. 9(a) (granting MPCA the authority to enter into stipulation agreements to resolve violations of air quality standards); Minn. Stat. § 115.071, subd. 1 (granting MPCA the authority to enter into stipulation agreements to resolve violations of water quality standards).

The 1999 Airline Lease Agreement is an operating agreement that MAC entered into with the airlines serving MSP. See Complaint at ¶ 55. Similarly, the third parallel runway agreement with the City of Minneapolis and the noise mitigation agreement with the City of Richfield are agreements in which, among other things,

the cities pledged not to oppose the new runway currently under construction at MSP. See Complaint at ¶ 51. These agreements are not "stipulation agreements," and MAC's alleged violations of these agreements cannot give rise to a MERA action.

IV. The Cities' Mandamus Cause Of Action Does Not State A Claim For Relief

In count III, the cities seek a writ of mandamus ordering MAC to implement a five decibel noise reduction package in the 60 to 64 DNL contours. See Complaint at ¶¶ 91-95. The cities, as the parties seeking the writ, must meet the requirements of Minnesota's mandamus statute. Minn. Stat. §§ 586.01-.02; N. States Power Co. v. Minn. Metro. Council, 684 N.W.2d 485, 491 (Minn. 2004). The cities must prove that MAC: 1) failed to perform an official duty clearly imposed by law; 2) that as a result of this failure, the cities suffered a public wrong that specifically injured the cities; and 3) that there is no other adequate legal remedy. N. States Power, 684 N.W.2d at 491, citing Minn. Stat. §§ 586.01-.02. If the cities are unable to meet all of the three requirements, this Court lacks jurisdiction to issue a writ of mandamus. Friends of Animals & Their Env't v. Nichols, 350 N.W.2d 489, 491 (Minn. App. 1984). As set forth below, the cities cannot establish a legal duty mandating that MAC implement a five decibel noise reduction package in the 60 to 64 DNL contours. This Court, therefore, should dismiss the cities' mandamus cause of action.

To obtain a writ of mandamus directing a government official to implement a statute or regulation, the statute or regulation must impose 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). A writ of mandamus will issue only where the duty to be performed is ministerial and the obligation to act is plainly defined. Id.

"The law must not only authorize the demanded action, but require it; the duty must be clear and indisputable." United States v. Wilbur, 283 U.S. 414, 420 (1931). If there is "any degree of discretion with respect to the act in question," a writ of mandamus may not issue. Electronics Unlimited, Inc. v. Village of Burnsville, 182 N.W.2d 679, 682-83 (Minn. 1971).

The cities' complaint does not establish that MAC has an unequivocal legal duty to implement a five decibel noise reduction package in the 60 to 64 DNL contours. In fact, the cities do not seek a writ of mandamus requiring MAC to perform a ministerial act. Rather, they seek to overturn MAC's discretionary recommendation to FAA in the 2004 Part 150 study regarding the MAC proposed mitigation plan in the 60 to 64 DNL contours. Couched in terms of mandamus, the cities' third cause of action is actually an attempt to enforce MAC's alleged "commitments" to implement a five decibel noise reduction package or to spend a certain sum for noise mitigation in the 60 to 64 DNL contours. As a matter of law, such a claim cannot form the grounds for a writ of mandamus. Ahlstrom v. Bauman, 260 N.W.2d at 524.

Count III of the complaint does not specify the source of MAC's alleged "mandatory duty" to provide the five decibel noise reduction package that the cities deem "adequate." See Complaint at ¶¶ 91-95. Apparently, the sources of the alleged "mandatory duty" are the same as those listed in count II: the 1996 noise mitigation program; the 1998 FEIS; MAC's enabling statute; and the 2002 Metropolitan Council review of the MSP 2010 capital program. See Complaint at ¶ 90. As discussed above, these documents and statutes do not establish substantive environmental standards enforceable under MERA. See Section IV.B. For the same reasons, none of

these documents or statutes creates the "mandatory duty" that the cities must establish to obtain a writ of mandamus. The cities, therefore, may not seek a writ of mandamus to challenge the MAC proposed mitigation plan in the 2004 Part 150 study. N. States Power, 684 N.W.2d at 491; Electronics Unlimited, 182 N.W.2d at 682-83.

CONCLUSION

For the reasons set forth above, this Court should dismiss the cities' complaint. The claims alleged in the complaint are not ripe. In addition, the Court should dismiss the complaint because the three claims for relief do not state causes of action.

Dated: May 19, 2005

THE ENVIRONMENTAL LAW GROUP, LTD.

By: _____

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Attorneys for Defendant
METROPOLITAN AIRPORTS COMMISSION

Defendant Metropolitan Airports Commission hereby acknowledges through its undersigned counsel that sanctions may be imposed under Minn. Stat. § 549.211 if, after notice and a reasonable opportunity to respond, the Court determines that a party has violated Minn. Stat. § 549.211, subd. 2.

_____
Thaddeus R. Lightfoot

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota by the City of Minneapolis, et al.

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendant.

Case No. 05-5474

Case Type: Other Civil

AFFIDAVIT OF NIGEL D. FINNEY

---

1. I am the Deputy Executive Director for Planning and Environment of the Metropolitan Airports Commission ("MAC"), the operator of Minneapolis-St. Paul International Airport ("MSP"). I have personal knowledge of the noise mitigation program at MSP, and of the procedures of the Federal Aviation Administration ("FAA") in approving and implementing such noise mitigation programs. I also have personal knowledge of FAA rules and policies regarding the use of federal grants and the revenues that airports generate.

2. In November 2004, MAC submitted to FAA the "Minneapolis-St. Paul International Airport 14 CFR Part 150 Update." This study documents the revised noise compatibility program that MAC proposed for MSP. MAC prepared the study in accordance with Part 150 of Title 14 of the Code of Federal Regulations, which governs airport noise compatibility planning. MAC completed its first 14 C.F.R. Part 150 study for MSP in 1987. FAA approved the first updated 14 C.F.R. Part 150 study for MSP in 1994. The 2004 Part 150 Study is an update of the earlier airport noise compatibility studies prepared for MSP.

3. The 2004 Part 150 Study includes noise abatement measures and land use measures. Noise abatement measures seek changes to operational flight procedures to reduce or minimize noise-related land use non-compatibility near an airport. For MSP, such noise abatement measures include changes to runway use, flight track use, and other operational procedures that determine where aircraft fly in the immediate vicinity of MSP. The goal of noise abatement measures is to reduce the noise and non-compatible land uses within certain areas or "contours" near MSP that are affected by noise from aircraft using the airport. Land use measures address areas of non-compatible land use that remain after the implementation of the noise abatement measures. The proposed land use measures in the 2004 Part 150 Study for MSP are intended to address existing non-compatible land uses and prevent future non-compatibilities.

4. The MAC proposed mitigation plan for the 60 to 64 sound level contours as measured on a day-night average sound level ("DNL" or "LDN") is now the subject of litigation by the cities of Minneapolis, Richfield, and Eagan against MAC. The MAC proposed mitigation plan for the 60 to 64 DNL contours is a recommended land use measure in the 2004 Part 150 Study.

5. All of the noise abatement and land use measures proposed in the 2004 Part 150 Study, including the MAC proposed mitigation plan for the 60 to 64 DNL contours, are subject to FAA approval. The MAC proposed mitigation plan for the 60 to 64 DNL contours in the 2004 Part 150 Study will offer homeowners a mechanical (i.e., air-conditioning only) package if the homes do not already have central air-conditioning installed. MAC recommended the proposed mitigation plan for the 60 to 64 DNL contours because homes around MSP typically provide more than thirty decibels of

interior noise level reduction without any modifications, which meets United States Environmental Protection Agency ("EPA") guidelines for an indoor DNL level of 45 decibels. However, existing windows must remain closed for a home to achieve its maximum outside-to-inside sound attenuation. As a result, the MAC proposed mitigation will allow all homeowners in the 60 to 64 DNL contours to keep their windows closed in the summer months, thereby enabling the homes to achieve maximum outside-to-inside sound attenuation.

6. To participate in the MAC proposed mitigation plan, homeowners would pay the following share of the mechanical package costs: a) ten percent within the 64 DNL contour; b) twenty percent within the 63 DNL contour; c) thirty percent within the 62 DNL contour; d) forty percent within the 61 DNL contour; and e) fifty percent within the 60 DNL contour. The program boundary would be based on the block intersect method. In order to assist residents with the proposed co-pay obligation, MAC has directed staff to develop a program with the Center for Energy and Environment to offer low-interest loans to homeowners. MAC included the graduated co-pay in the MAC proposed mitigation plan because homeowners in the 60 to 64 DNL contours would receive benefits from air conditioning that go beyond noise mitigation, including a more comfortable interior climate and increased home value. In addition, the communities surrounding MSP have benefited significantly from MAC's existing residential sound insulation program in the 65 DNL and greater contours through increased property values and the long-term stability of the community.

7. The 2004 Part 150 Study is currently under review by FAA, and MAC's recommendations in the study do not represent the opinions or decisions of FAA. FAA

may reject all or any portion of MAC's recommended noise abatement measures and land use measures.

8. FAA has rejected portions of past noise compatibility programs that MAC proposed for MSP under Part 150. For example, in 1994 FAA disapproved three noise abatement measures that MAC proposed as part of the noise compatibility program for MSP in a 1992 Part 150 Study. The measures included extending a runway at the airport to increase use of a specific runway use system, a proposed instrument departure procedure for an MSP runway, and a freeze and subsequent ban on the operation of certain aircraft operations in the late evening and early morning hours.

9. MAC uses federal funds from FAA to pay for certain construction projects at MSP.

10. In addition, MAC uses so-called "airport revenue," or revenue that the airport generates, to fund MSP's construction projects or operations, or both. There are three types of airport revenue. The first is passenger facility charges or "PFCs," which are fees that airline passengers pay when they purchase airline tickets. MAC's use of PFCs is subject to FAA approval. The second source of airport revenue is airline rates and charges, which are fees that airlines pay for using airports such as MSP. The third source is all other airport revenue, such as fees generated by leasing airport terminal space to businesses providing concessions and other services to airline passengers, and funds raised under MAC's bonding authority.

11. MAC cannot use federal funds to implement the MAC proposed mitigation plan for the 60 to 64 DNL contours until FAA reviews the proposal as part of the 2004 Part 150 study. FAA would also have to approve any MAC use of PFCs to

carry out noise mitigation in the 60 to 64 DNL contours outside the Part 150 process. In addition, if MAC were to attempt to carry out using its own airport revenue any noise mitigation in the 60 to 64 DNL contours outside the Part 150 process, MAC could be subject to an administrative enforcement complaint alleging illegal use of airport revenue that is filed with FAA by a third-party.

12. Exhibit A to this affidavit is a true and correct copy of MAC's 1996 noise mitigation program for MSP (excluding appendices), which is referred to in the complaint in this action.

13. Exhibit B to this affidavit is a true and correct copy of relevant portions of the 1998 final environmental impact statement ("FEIS") for the Dual Track Airport Planning Process, which is referred to in the complaint in this action.

14. Exhibit C to this affidavit is a true and correct copy of the 1998 third parallel runway agreement between the City of Minneapolis and MAC, which is referred to in the complaint in this action.

15. Exhibit D to this affidavit is a true and correct copy of the 1998 noise mitigation agreement between the City of Richfield and MAC, which is referred to in the complaint in this action.

16. Exhibit E to this affidavit is a true and correct copy of relevant portions of the 1999 Airline Lease Agreement, which is referred to in the complaint in this action.

17. Exhibit F to this affidavit is a true and correct copy of the 2002 Metropolitan Council approval of the MSP 2010 Capital Program, which is referred to in the complaint in this action.

NIGEL D. FINNEY

Subscribed and sworn to before me
this 18th of May, 2005.

Notary Public

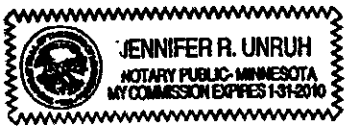


Exhibit A

MSP NOISE MITIGATION PROGRAM

METROPOLITAN AIRPORTS COMMISSION

November 1996

SUMMARY OF RECOMMENDATIONS

On October 28, 1996, the Metropolitan Airports Commission approved the following noise mitigation program for Minneapolis-St. Paul International Airport:

I. INSULATION

1. The residential sound insulation program for the area encompassed by the 1996 DNL 65 contour be completed on the currently approved schedule;

2. The program be expanded after completion of the current program to incorporate the area encompassed by the 2005 60 DNL;

3. The 2005 60 DNL contour be based on the most accurate projection of traffic levels and use of appropriate ANOMS data;

4. MAC and affected communities seek approval from FAA to develop neighborhood and "natural boundaries" that reflect current conditions at the outer edge of the expanded contour to the maximum extent possible;

5. Prioritization of the expanded program should be to initiate single-family homes upon completion of the currently approved schedule, and begin work on the following newly eligible dwellings/buildings, beginning with the highest noise exposure levels, in accordance with a schedule agreed upon with each affected city – multifamily dwellings, nursing homes, churches with regular weekday daycare/nursery school types of operations;

6. The program be funded by a combination of PFC revenues, airline fees, internally generated funds, and federal aid, with estimated total and annual costs as summarized below; to the extent that MAC cannot fund this expanded 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.

7. The Metropolitan Airports Commission commit to funding its community based noise abatement program on an accelerated basis beyond its current level of $25.5 million annually.

8. MAC should develop noise impact models which reflect the impact of ground level noise on residential properties. Mitigation for low frequency noise should be developed after consultation with independent noise mitigation experts.

9. Completion of the sound insulation program is contingent upon the MAC maintaining a bond rating of at least A.

II. COMMUNITY STABILIZATION

The Metropolitan Airports Commission should participate with affected communities to identify and quantify any impacts the airport may have on declining property values and/or other negative consequences on neighborhoods near the airport. To the extent that negative consequences can be quantified, a Working Group should prepare recommendations to MAC for consideration by the Minnesota Legislature. Community stabilization measures considered should include, but not be limited to, the measures described in the Metropolitan Council-MAC Community Protection Report. The measures include purchase and property value guarantees and housing replacement to complement the tax credit and revitalization area legislation adopted in 1996.

A Working Group should be convened including representatives from MAC, Met Council, Northwest Airlines, affected communities and legislative staff. The

Working Group should identify a program design, funding options, administrative responsibilities and eligibility area. The final legislative recommendation should be presented to MAC and other interested parties for endorsement and inclusion in 1997 legislative programs.

III. AIRPORT OPERATIONS

The following be incorporated and evaluated in a Part 150 update:

1. Take action, as required by the 1996 Legislature, to prohibit use of Stage 2 aircraft after December 31, 1999.

2. Modify the night hours to 10:30 p.m. - 6:00 a.m. and limit activity during these hours to Stage 3 aircraft.

3. Develop a departure procedure for Runway 22 to direct aircraft over areas of commercial development and the Minnesota River Valley.

4. Seek cooperation from FAA to implement departure procedures as appropriate at each runway end.

5. Evaluate departure procedures in the Eagan-Mendota Heights corridor.

6. Work within the aviation industry to encourage further reductions in aircraft noise levels.

7. Negotiate the Stage 2 prohibition, noise abatement procedures, and expansion of night hours, incorporating appropriate penalties for non-compliance.

8. The MAC noise monitoring system monitors should be increased in number to provide more coverage of actual impacts in the airport vicinity, in particular, areas affected by the north-south runway. Areas affected by the parallel runways may have additional microphone locations to monitor continued and growing volumes of air traffic as the airport expands. This system should be used to corroborate the accuracy of the modeled contours for noise program eligibility.

IV. RUNWAY USE

1. Completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible. Progress should be measured against this schedule:

   a. commence construction – ~~1998~~ 1998
   b. complete construction, open runway – 2003

2. In the interim, Runway 4/22 should be used for noise mitigation purposes. This requires the following:

   a. Construction of associated taxiways;
   b. Mitigation program at the southwest end of Runway 4-22 in the cities of Bloomington and Richfield as required in the Final Record of Decision (March 28, 1995). The acquisition portion of the mitigation should be initiated as soon as contracts for the associated taxiways are let and should be completed within a period of two years. Funds for the acquisition program should be in addition to those designated for the residential insulation program, consistent with the existing acquisition program. The insulation portion of the mitigation should

be integrated with the current MAC program, starting as soon as contracts for construction of the associated taxiways are let, or the RUS is implemented, whichever occurs first. The insulation program should be implemented at the rate of at least 20% of the total homes ad defined in the Runway 4-22 mitigation program in each year until all of the single family and multiple family units within the 1996 DNL 65 contour are insulated. To the extent practical, MAC should identify funding and program administration options to minimize delay in completion of the current insulation program.

c. If the North-South Runway is completed before insulation of all eligible homes is completed, the insulation program for the area impacted by aircraft using Runway 4-22 may be terminated.

3. Completion of this program is contingent on the MAC maintaining a bond rating of at least A.

1. BACKGROUND AND ASSUMPTIONS

BACKGROUND

A. The Minnesota Legislature has made a decision to continue to develop MSP, and has directed the MAC to implement the 2010 Long term Comprehensive Plan for MSP.

B. With a legislative decision to continue to develop MSP, a noise mitigation plan should be developed for MSP which includes aggressive steps to mitigate aircraft noise and help community stabilization.

ASSUMPTIONS

C. The noise mitigation plan should include both traditional and non-traditional approaches to noise mitigation.

D. Both the benefits and impacts of airport development and operations should be shared equitably among affected communities to the maximum extent feasible.

E. Mitigation/stabilization activities must be directly related to aircraft noise impacts.

F. First priority activities for funding are noise insulation; second priority activities for funding are community stabilization.

G. Implementation of mitigation activities is a shared responsibility of the MAC, the airlines, the State of Minnesota, the FAA, and the communities.

H. A funding program adequate to support implementation of the mitigation program should be prepared.

I. The mitigation plan should be evaluated for effectiveness; revisions should be made as necessary to reflect changes in the noise environment.

2. NOISE ENVIRONMENT

A. Legislative Requirement

The 1996 Dual Track Legislation requires MAC to form a Committee to develop a noise mitigation plan for MSP. This plan is to be based on future airport development and can consider areas out to the DNL 60. The Noise Mitigation Plan is to be submitted to the State Advisory Council on Metropolitan Airport Planning for review and comment to the Legislature. This review and comment is to take place within 60 days after submittal.

In order to develop the Noise Mitigation Plan, the MAC formed the MSP Noise Mitigation Committee. This group was charged with evaluating existing programs, determining future noise exposure levels, and developing recommendations to be considered by MAC. The Committee was chaired by MAC Vice-Chair Steve Cramer and was made up of the following:

Metropolitan Airports Commission	Steve Cramer
	Alton J. Gasper
	John Himle
	Richard Long
	Tommy Merickel
	Louis Miller

City of Minneapolis	Mayor Sharon Sayles Belton
City of Mendota Heights	Mayor Charles Mertensotto
City of Eagan	Mayor Tom Egan
City of Bloomington	Mayor Coral Houle
City of Richfield	Mayor Martin Kirsch
City of Inver Grove Heights	Mayor Joe Atkins
City of Burnsville	Mayor Elizabeth Kautz
City of St. Paul	Chuck Armstrong
Metropolitan Council	Mary Hill Smith Carol Kummer
Northwest Airlines	Jennifer Sayre
MASAC	Bob Johnson

The Noise Mitigation Committee met 8 times between May and October. Copies of the committee agendas are included in Appendix A. A public meeting was held in August.

At the initial meetings of the Mitigation Committee, presentations were made on past, present, and anticipated noise conditions at MSP. This information focused on levels of operations, runway use, and resultant noise contours and impacts. A summary of this information is included in the following sections.

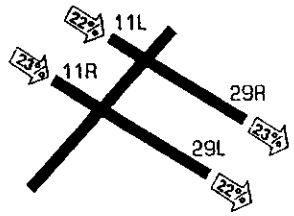
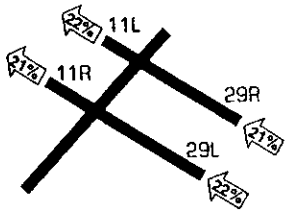
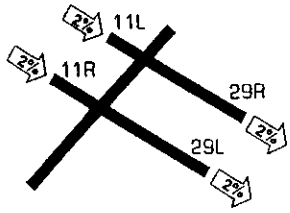
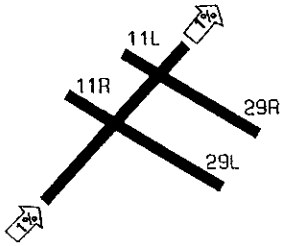
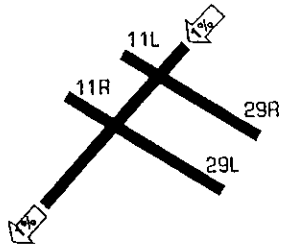
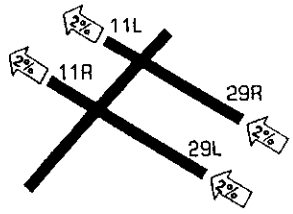
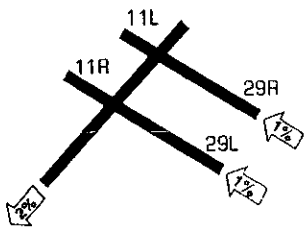
B. Current Conditions

In 1972, a key foundation of the noise abatement program at MSP was established when MAC implemented a preferential runway system (PRS). The PRS entailed concentrating takeoffs and landings over the Eagan-Mendota Heights Corridor, off the east end of the parallel runways, and to and from the southwest on Runway 4-22. This system was intended to minimize noise impacts over heavily populated areas northwest and northeast of MSP. Use of the PRS was limited to hours with less than 60 operations, which in 1972, included all but a few hours each day. Beyond this level, the parallel runways were used because of the need for greater hourly capacity. In 1977, Runway 22 was used by approximately 38 percent of all departures.

As traffic levels increased, use of the PRS decreased, because the capacity of the parallel runways was needed more frequently. In 1990, the PRS was replaced with a new Runway Use System (RUS). The RUS recognized the need for use of the parallel runways most of the time, but emphasized the need to direct operations over the Eagan-Mendota Heights Corridor whenever possible. The RUS also encourages maximum use of both ends of Runway 4-22 whenever possible, and in a balanced manner.

By 1994, MSP was handling nearly 450,000 aircraft operations. Runway activity for this year used in modeling of noise contours was obtained from ANOMS data, wind analysis, and a review of RUS activity to determine the modes of use of the runways and the percentage of time annually these modes were utilized. The data indicated that in 1994, operations were predominately on the parallel runways, utilizing Runway 4-22 approximately 5% of the year. Figures 2-1 and 2-2 depict 1994 runway configuration use and overall annual percentage use of runways. The predominate use of the parallel runways is reflected in the 1994 DNL contours, which are shown in Figure 2-3.

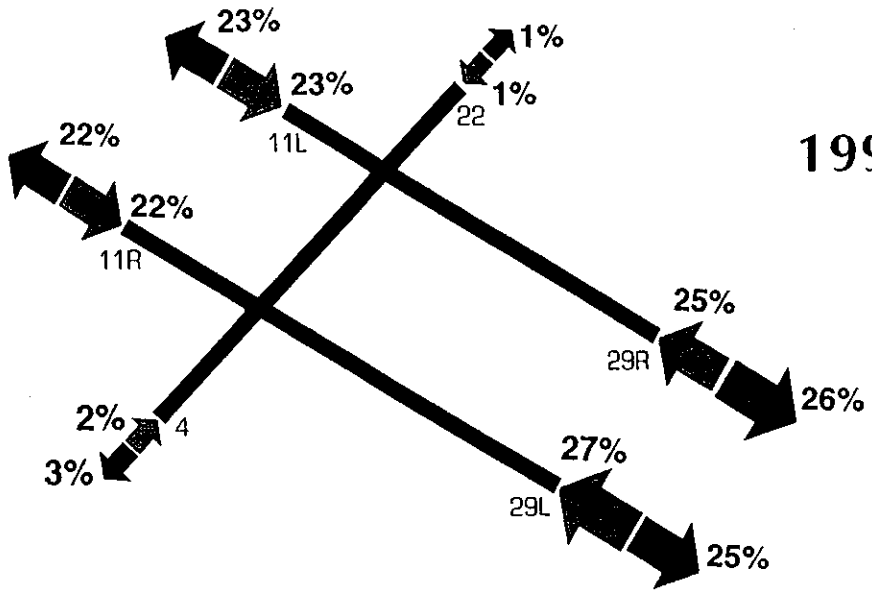
MSP 1994 Runway Configuration Use

VFR (92%)	IFR (8%)
 45%	
 43%	 4%
 1%	
 1%	 4%
 2%	

HNTB

Figure 2-1

MSP Runway Use



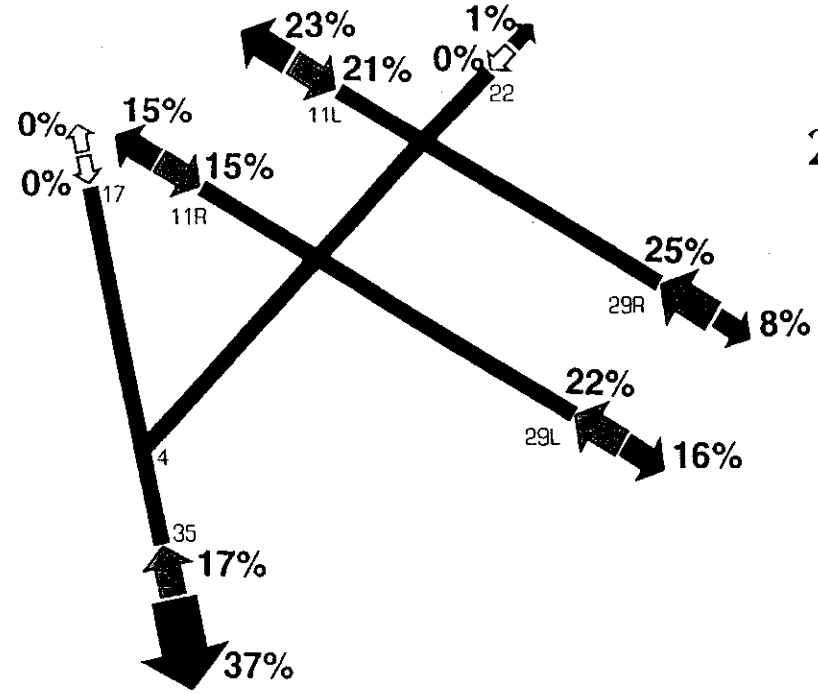


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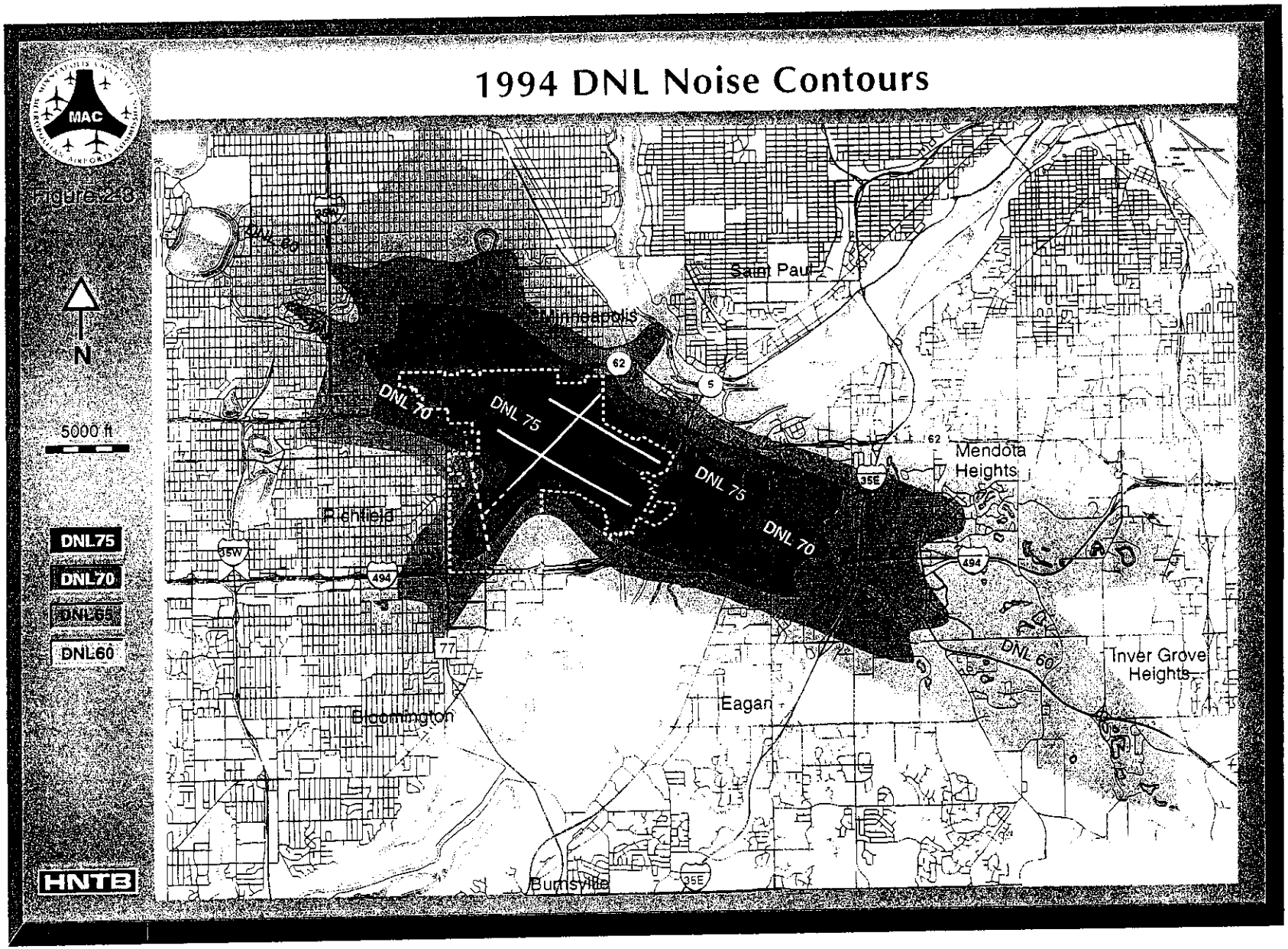
Figure 2-2


1994 DNL Noise Contours
MAC
Figure 2-8
N
5000 ft
DNL75
DNL70
DNL65
DNL60
HNTB
Saint Paul
Minneapolis
Richfield
Bloomington
Eagan
Burnsville
Mendota Heights
Inver Grove Heights
DNL 70
DNL 75
DNL 75
DNL 70
DNL 60
62
5
35W
35E
494
77

An extension of Runway 4-22 was proposed to provide a longer runway (11,000 feet) for long haul international flights and to allow greater use of the runway. With extension of the runway and a change to the RUS, use of Runway 22 was projected to increase to approximately 17% of annual departures. Without the extension and RUS change, the percentage use of Runway 4-22 was projected to be minimal in 1996, approximately 5%. Figure 2-4 depicts projected 1996 runway use with and without the extension of Runway 4-22 and the modified RUS.

During the summer of 1996, the extension to Runway 4-22 was constructed. The RUS was not changed as previously described pending the recommendation of the Mitigation Committee and MAC regarding this matter.

The Part 150 Noise Compatibility Study for MSP, completed in 1992 and revised in 1993, established a 1996 Noise Exposure Map (NEM). The 1996 NEM showed DNL contours out to the 65 DNL, per FAR Part 150 standards, for consideration of potential mitigation actions. This contour has served as the basis for all MAC noise mitigation activities over the past five years. Figure 2-5 depicts the 1996 NEM, including the 60 DNL.

The 1996 NEM was compared to a 1996 No Build contour (taken from the Runway 4-22 EIS) without the extension of Runway 4-22 or change in the runway use system. The 1996 No Build contour is attached for comparison (Figure 2-6). A comparison of population and dwelling counts between the 1996 NEM and the 1996 No Build conditions was completed using 1990 census data. The comparison indicated that,with the extension in place and a change in the RUS (1996 NEM), the population within the 60 DNL is approximately 65,000. Without the modified RUS, the population is approximately 76,000. Table 2-1 compares population and dwelling counts for the two contours based on 1990 census data.

Fleet Mix. Table 2-2 gives an overview of the Stage 2/3 fleet mix of the major domestic airlines serving MSP. The percentage of Stage 3 aircraft operations at MSP continues to increase. An analysis of annual operations by Stage 3 aircraft for 1990 through 1995 found that the use of Stage 3 aircraft had increased from 32% to 45% at MSP. Analysis of the first eight months of operations in 1996 indicates that the utilization of Stage 3 aircraft is, on the average, increasing each month. Average Stage 3 aircraft use at MSP for the first eight months of 1996 is 49%, with utilization at 52% in August.

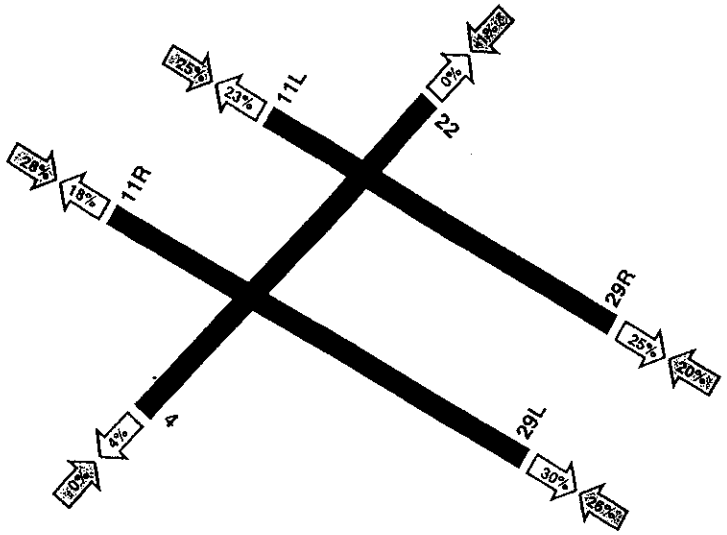
The passage of 14 CFR Part 91 (Phaseout of Stage 2 Airplanes Operating in the Contiguous United States and the District of Columbia) requires that the U.S. DOT report to Congress each year on airplane operators progress in phasing out Stage 2 airplanes and the transition to an all Stage 3 fleet. The 1995 Report to Congress on the transition to Stage 3 aircraft determined that, in total, 71.3% of the U. S. major air carrier fleet was Stage 3 aircraft. The 50% figure for MSP in 1996 is therefore below the national fleet levels. The report also indicated that the Stage 3 use for U.S. air cargo carriers was 59.2% and 59.9% for U.S. national carriers. Table 2-3 summarizes Stage 2/3 aircraft operations at MSP.

Nighttime Operations. Scheduled nighttime operations (11:00 pm to 6:00 am) are a continuing source of concern at MSP. Activity levels were compared at representative times in 1994, 1995 and 1996. The comparison found that scheduled nighttime operations had declined in 1995 but were higher in 1996 than in 1994.

Total 1996 nighttime jet operations averaged around 24 per night with 19 arrivals and 5 departures. Roughly 80 percent of the operations were by Stage 3 aircraft. Table 2-4 summarizes nighttime activity for 1996. Analysis of 1996 actual ANOMS information indicated that 60% of the nighttime operations were performed by scheduled airlines and 40% by charter carriers. The analysis found that the actual nighttime operations by scheduled airlines were 35% higher than those in the nighttime schedule, as a result of flight delays. Stage 2 aircraft made up 23% of all nighttime operations during the time frame analyzed by ANOMS in 1996.

Projected 1996 Annual Runway Use

without Extension of Runway 4-22



with Extension of Runway 4-22

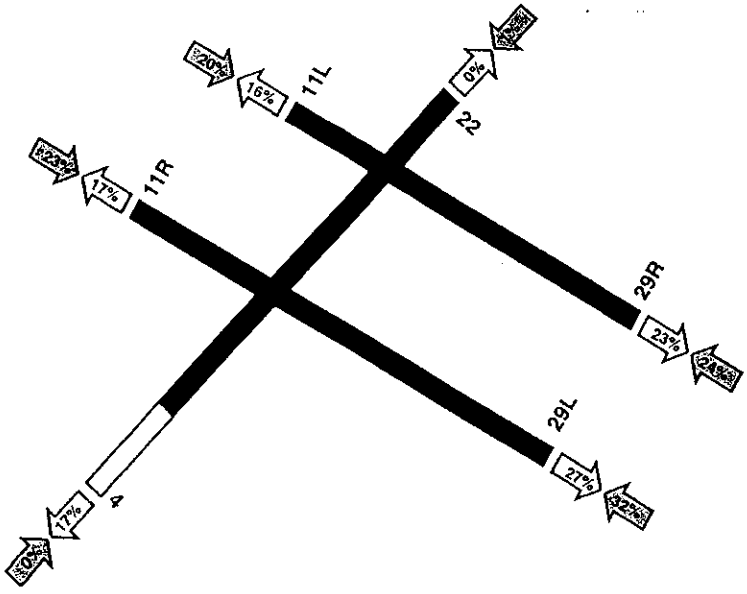


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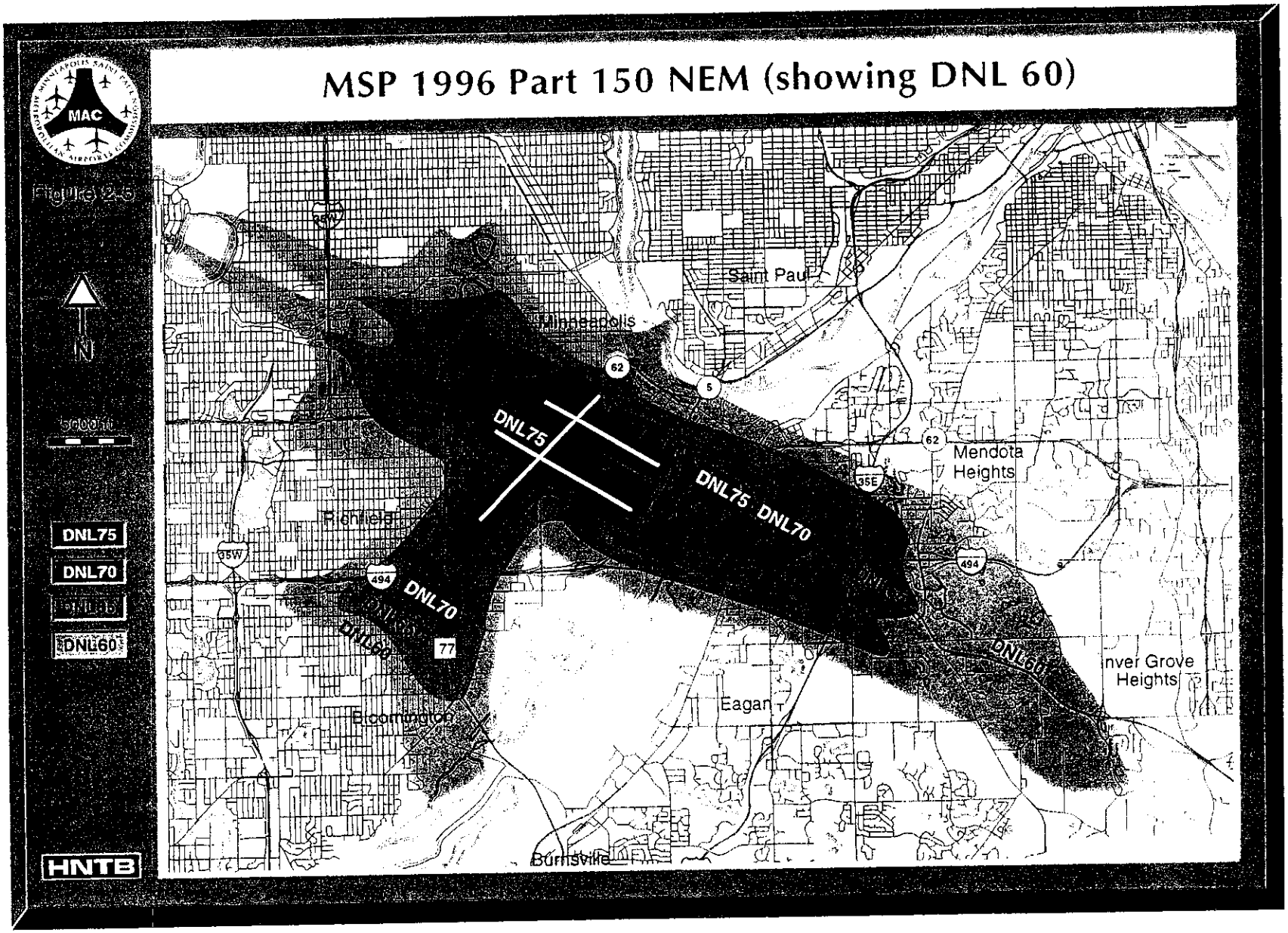
Figure 2-4


MSP 1996 Part 150 NEM (showing DNL 60)
Figure 2-5
MAC
N
DNL75
DNL70
DNL65
DNL60
HNTB
Minneapolis
Saint Paul
Mendota Heights
Richfield
Bloomington
Eagan
Inver Grove Heights
Burnsville
DNL75
DNL75 DNL70
DNL70
DNL60
62
5
35E
494
35W
77

MSP 1996 No Build

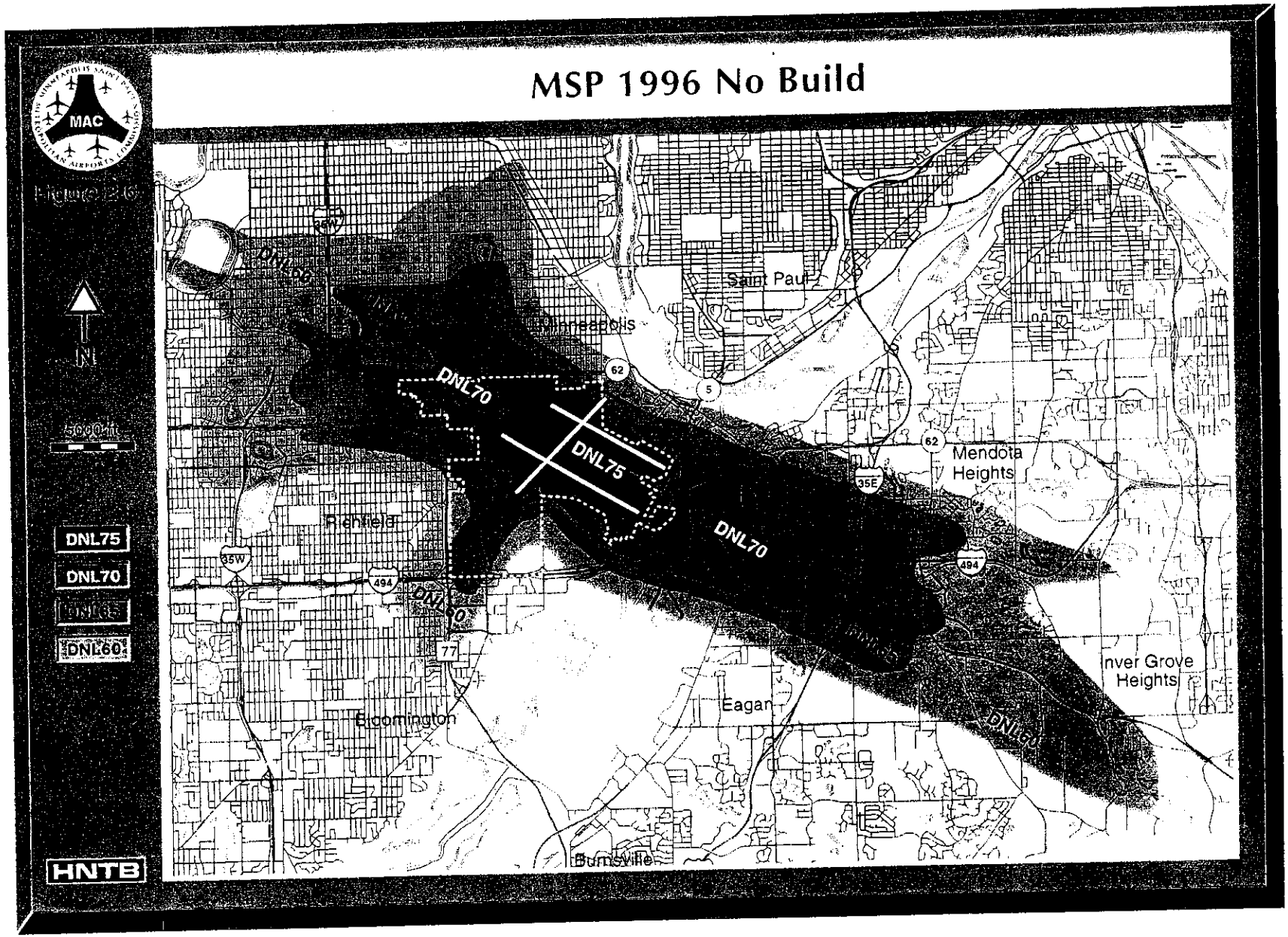


TABLE 2-1

COMPARISON OF POPULATION AND DWELLING COUNTS
RUNWAY 4-22 RUS MODIFICATION

Jurisdiction	1996 No Build DNL Contours				1996 NEM DNL Contours			
	Population		Dwellings		Population		Dwellings	
	DNL 60 - 65	DNL 65+	DNL 60 - 65	DNL 65+	DNL 60 - 65	DNL 65+	DNL 60 - 65	DNL 65+
Minneapolis	36,235	20,675	15,345	9,050	23,360	12,300	10,080	5,220
North Richfield	7,120	2,900	3,510	1,210	5,650	2,350	2,385	960
South Richfield	1,735	55	780	25	1,305	2,100	550	1,020
Fort Snelling						10		
Bloomington	2,105		965		6,240	6,230	2,605	2,940
Inver Grove Heights	1,065		415		1,090		440	
Mendota Heights	1,570	950	510	450	1,405	765	460	450
Burnsville								
St. Paul					40		20	
Eagan	1,145	620	435	220	1,025	475	360	170
Total	**50,975**	**25,200**	**21,960**	**10,955**	**40,115**	**24,230**	**16,900**	**10,760**

Source: HNTB Analysis based on 1990 census data.

TABLE 2-2

Stage 2 and Stage 3 Fleet
Major Carriers
Estimated for June 30, 1996

	Stage 2		Stage 3 (1)		Total
	Number	Percent	Number	Percent	
Alaska	8	10.7%	67	89.3%	75
American	74	11.5%	568	88.5%	642
America West	20	20.4%	78	79.6%	98
Continental	107	33.1%	216	66.9%	323
Delta	185	34.5%	352	65.5%	537
Northwest (2)	184	46.3%	213	53.7%	397
Southwest	50	21.4%	184	78.6%	234
TWA	109	56.2%	85	43.8%	194
United	162	28.1%	414	71.9%	576
USAir	149	36.8%	256	63.2%	405
Total	1,048	30.1%	2,433	69.9%	3,481

Note: (1) Includes Stage 2 aircraft hushkitted/re-engined to meet Stage 3 requirements.
(2) Actual data provided by Air Transport Association

Source: Exxon Turbine-Engined Fleets of the World's Airlines and HNTB Analysis based on fleet as of Dec. 31, 1995 with the exception of NWA.

TABLE 2-3

ANNUAL STAGE 3 ACTIVITY AT MSP

Air Carrier	1990 Stage 3	1991 Stage 3	1992 Stage 3	1993 Stage 3	1994 Stage 3	1995 Stage 3
Northwest	28.5%	30.3%	33.8%	34.5%	35.3%	40.8%
Continental	25.7%	15.2%	28.5%	25.4%	46.5%	82.6%
American Airlines	99.3%	99.7%	98.9%	99.7%	99.6%	99.7%
Delta	20.4%	28.0%	28.1%	39.5%	44.9%	55.2%
United	46.3%	51.7%	43.3%	42.2%	37.7%	26.7%
TWA	14.6%	22.0%	15.3%	3.9%	1.8%	17.2%
US Air	32.4%	41.7%	63.4%	57.3%	76.8%	67.0%
America West	96.0%	98.9%	79.7%	94.2%	99.5%	100.0%
Cargo	49.0%	51.9%	54.5%	64.4%	87.4%	100.0%
Total Stage 3	**32.1%**	**34.4%**	**37.3%**	**38.5%**	**40.4%**	**45.3%**

1996 MONTHLY STAGE 3 PERCENTAGES

Air Carrier	January 1996	February 1996	March 1996	April 1996	May 1996	June 1996	July 1996	August 1996
Northwest	45.0%	44.3%	45.5%	47.2%	48.8%	47.9%	50.2%	52.0%
Continental	59.1%	47.8%	47.8%	48.6%	50.0%	52.9%	50.7%	49.3%
American Airlines	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Delta	40.5%	37.2%	38.3%	35.5%	36.7%	44.0%	43.5%	45.0%
United	30.2%	29.5%	25.6%	23.5%	23.3%	15.0%	14.0%	15.2%
TWA	41.3%	33.7%	34.0%	32.4%	27.8%	22.2%	18.4%	19.2%
US Air	83.3%	70.0%	59.0%	54.8%	48.5%	19.2%	54.5%	54.9%
America West	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cargo	100.0%	100.0%	95.2%	100.0%	100.0%	94.4%	100.0%	100.0%
Total Stage 3	**48.8%**	**47.3%**	**47.5%**	**49.0%**	**50.1%**	**48.3%**	**50.7%**	**52.3%**

Source: MAC ANOMS

Table 2-4

Summary of Actual Nighttime Operations at MSP- Summer 1996

Hour	Arrival or Departure	Average Nightly Stage 2	Average Nightly Stage 3
2300 - 0000	Arrival	2.7	4.4
2300 - 0000	Departure	0.9	1.7
0000 - 0100	Arrival	0.8	3.6
0000 - 0100	Departure	0.2	0.7
0100 - 0200	Arrival	0.3	0.3
0100 - 0200	Departure	0.1	0.2
0200 - 0300	Arrival	0.1	0.3
0200 - 0300	Departure	0.0	0.0
0300 - 0400	Arrival	0.0	0.5
0300 - 0400	Departure	0.0	0.1
0400 - 0500	Arrival	0.1	2.4
0400 - 0500	Departure	0.1	0.5
0500 - 0600	Arrival	0.2	3.1
0500 - 0600	Departure	0.1	1.0
Total 2300-0600	Arrival	4.3	14.5
Total 2300-0600	Departure	1.4	4.2

Source: MAC ANOMS

C. Future Conditions

During the Dual Track Airport Planning Process, activity forecasts were developed for 2020. The forecasts included a baseline level and a range of high and low scenarios. Under the baseline forecast, aircraft activity at MSP is forecast to increase to 485,000 annual operations by 2005 and 520,000 annual operations by 2020. Higher than projected growth rates at MSP over the last several years have resulted in the forecast tracking more closely to one of the high scenario forecasts identified as Combination 1 - Maximum Hub and High Regional Activity. The high scenario forecast projects 576,000 annual operations by 2005 and 618,000 annual operations by 2020. The MSP Mitigation Committee chose to address noise issues for both the baseline and high forecast scenarios.

Noise Environment and Runway Use. The construction and operation of the north-south runway included in the MSP 2010 Development plan will result in new runway use modes, new flight tracks to and from the south, and changes in the noise contours. Runway use for MSP with a north-south runway in place was determined using wind analysis, ATCT coordination and previous ANOMS data, and is based on use of the north-south runway to and from the south, where it can supplement capacity of the parallel runways. Approximately 37% of departures will occur off the south end of the north-south runway in 2005. Use of Runway 4-22 will be limited with the north-south runway in place. Runway 4-22 would only be used for long haul international flights, and when wind and weather do not allow use of the parallel runways. Figure 2-7 presents typical runway configuration use for 2005 with the north-south runway in place. Figure 2-2 compares annual runway use in 2005 with runway use in 1994. For consideration of the high scenario forecast, the same runway use developed for the baseline forecast was utilized.

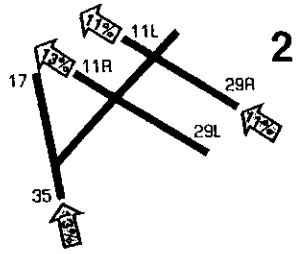
Future noise impacts associated with the north-south runway were estimated based on the 2005 baseline and high scenario forecasts. The year 2005 was considered to be the worst-case situation since it assumed that by the year 2020 the fleet mix will include all new technology Stage 3 aircraft. These would be significantly quieter than the 2005 fleet mix, which includes many hush-kitted aircraft that just meet Stage 3 requirements. The high scenario forecast maintains approximately the same fleet mix percentages as the baseline forecast.

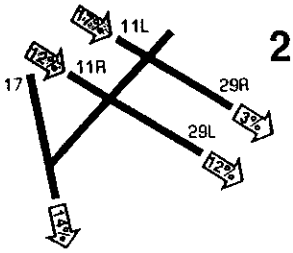
Figure 2-8 compares the DNL60 and 65 contours for the 2005 baseline and high scenario forecast activity levels.

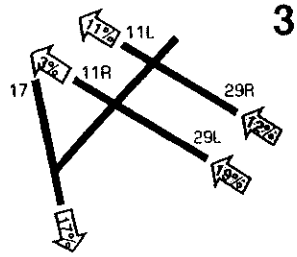
To evaluate the impact that elimination of Stage 2 aircraft will have on noise exposure around MSP, Sound Exposure Level (SEL) contours were developed for single event departures for representative Stage 2 and Stage 3 aircraft types. The SEL metric compares the sound energy dosage of single noise events of varying duration and intensity by compressing or expanding the duration of the noise event to a common one-second period. Figure 2-9 indicates that the typical SEL contours for a new technology Stage 3 aircraft (e.g., B-757 and A320) are considerably smaller than the SEL contours generated by a hush-kitted Stage 3 (e.g., B-727-200 hushed and DC9-30 hushed) or a Stage 2 aircraft (e.g., B-727-200, DC9-30).

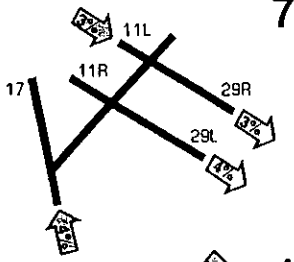
MSP 2005 Runway Configuration Use

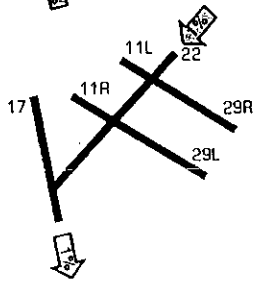
VFR (92%)	IFR (8%)
24%	6%
29%	2%
31%	
7%	
1%	

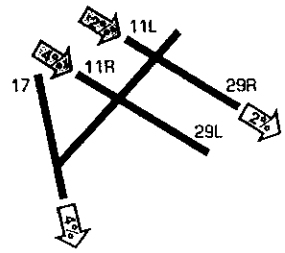


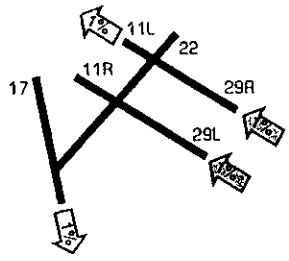










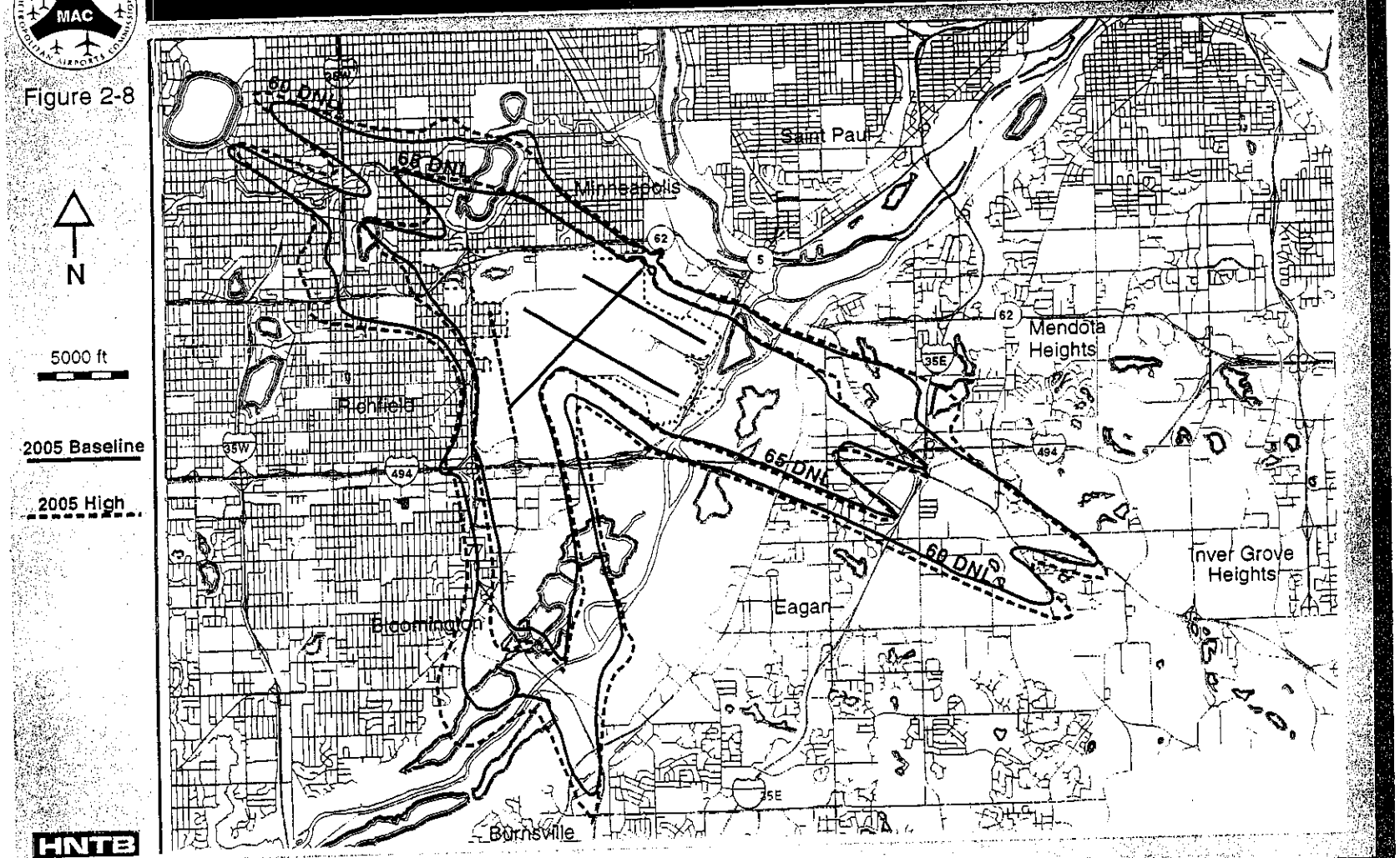


HNTB

Figure 2-7

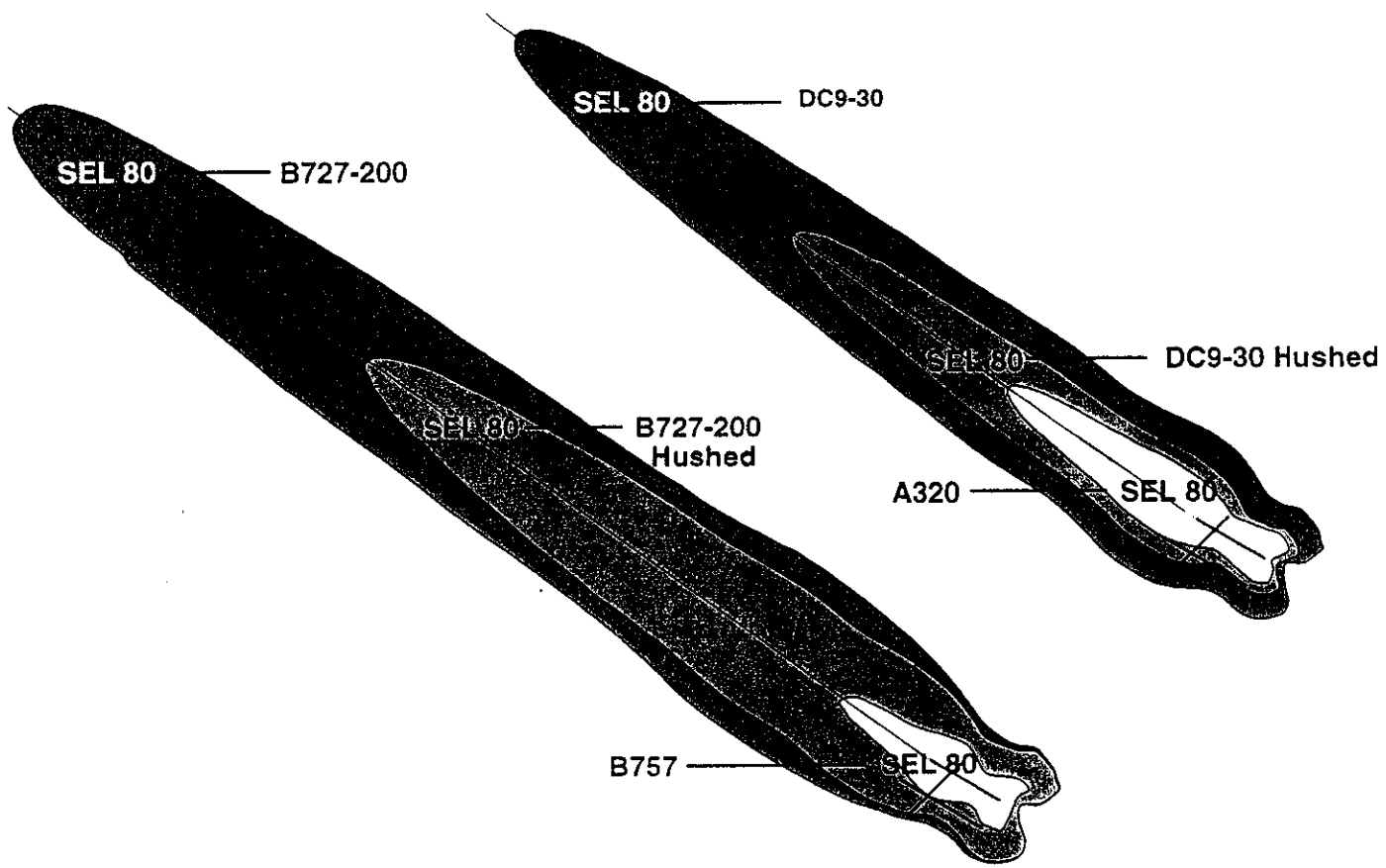
2005 DNL Contours - Baseline and High Forecast Scenarios

Figure 2-8



Single Event Noise Comparisons

Figure 2-9



HNTB

Noise Contours. Population and dwelling counts for the 2005 baseline contours were compared to the 1996 NEM. The population projected within the 2005 DNL 60 contour is approximately 30,000, a considerable reduction from the 1996 NEM counts (approximately 65,000). Figure 2-10 depicts the future 2005 baseline DNL 60 contour in comparison to the 1996 NEM DNL 65 contour. Figure 2-11 presents a comparison of the 1996 NEM and the 2005 High Scenario DNL contours. Updated GIS information from Hennepin and Dakota Counties provided the ability to more accurately tabulate parcels within the baseline and high scenario forecast contours.

An analysis was undertaken to determine how many noise sensitive uses exist in the current 1996 NEM DNL 65, that is the current basis of the Part 150 Insulation Program, and how many would be added, if the 2005 DNL 60's were used. The analysis found that there were 3,943 single family parcels, 586 multi- family parcels, 2 schools, 2 day care facilities and 1 nursing home between the 1996 NEM DNL 65 (used for Part 150 Program) and the 2005 baseline forecast DNL 60 contour. The 2005 high scenario forecast yielded 6,357 single family parcels, 850 multi- family parcels, 9 schools, 6 day care facilities and 2 nursing homes between the existing Part 150 Program contour and the DNL 60 contour. Table 2-5 compares population, dwelling units, and other selected noise sensitive uses for the 1996 NEM, the 2005 baseline DNL contours, and the 2005 High Scenario contours.

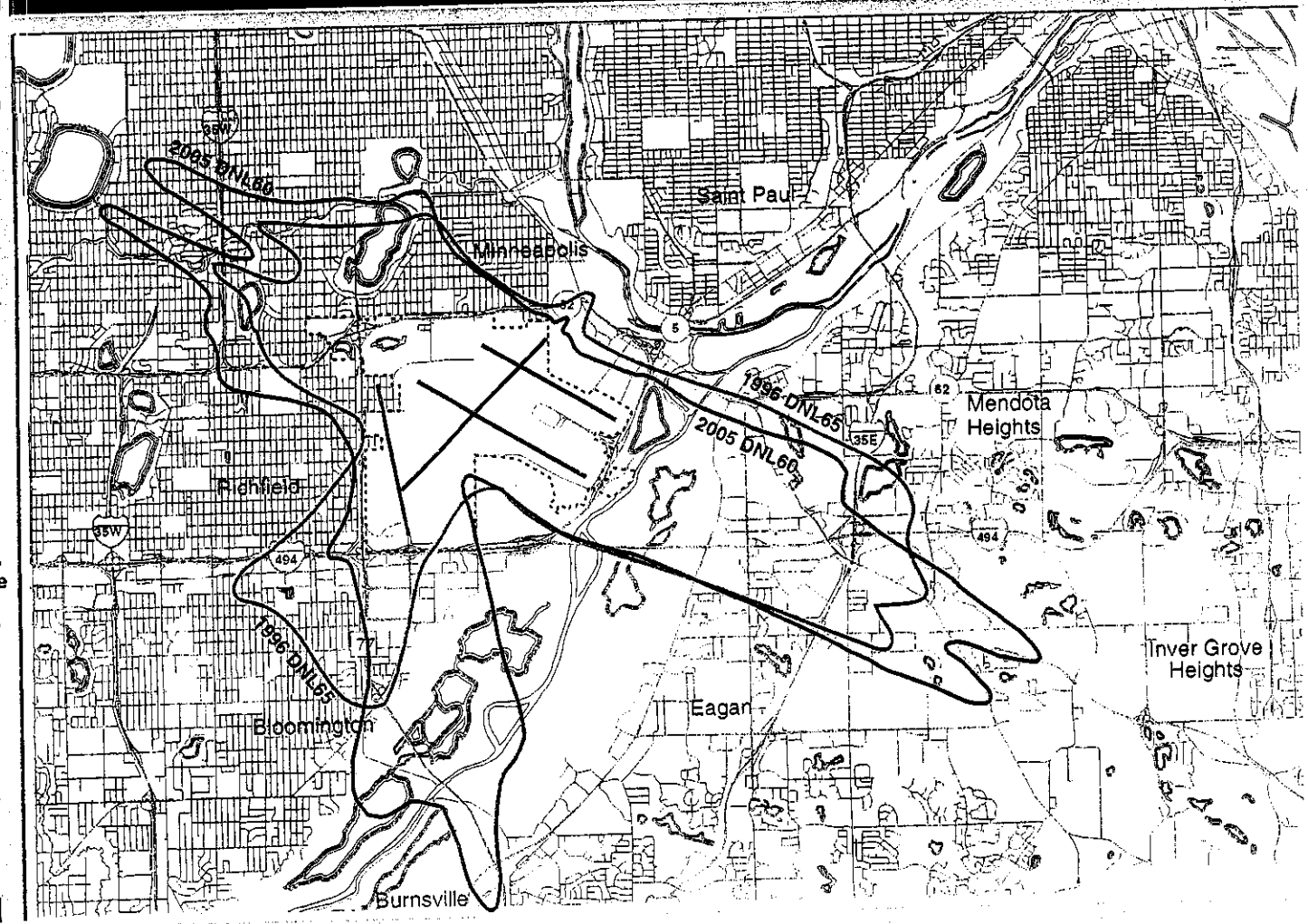
D. Community/Public Input

The communities represented on the MSP Mitigation Committee presented their recommendations for future noise mitigation at MSP. By representation on the mitigation committee and through a public meeting held on August 29, 1996 input was provided in the areas of noise mitigation strategies, runway operational strategies, and community stabilization strategies. Noise mitigation strategies included such proposals as extending the sound insulation program to DNL 60, and including multi-family and other structures in the program. Typical operational strategies suggested included equitable distribution of aircraft operations and restriction of nighttime operations between certain hours. Community stabilization strategies included property value guarantees and tax credits. Appendix B includes the stated positions of the communities, outlining the strategies presented.

A public meeting was held on August 29, 1996, and the public meeting was held to solicit reaction from affected residents and to help formulate recommendations that would be presented to the MAC. The public meeting was attended by over 800 citizens. Sixteen members of the MSP Mitigation Committee attended the meeting, which was chaired by MSP Mitigation Committee Chairman and MAC Vice Chairman Steve Cramer. During the meeting, 37 persons provided recommendations and comments.

1996 DNL 65 vs. Baseline Forecast 2005 DNL 60

Figure 2-10



1996 DNL 65 vs. High Forecast Scenario DNL 60

Figure 2-11

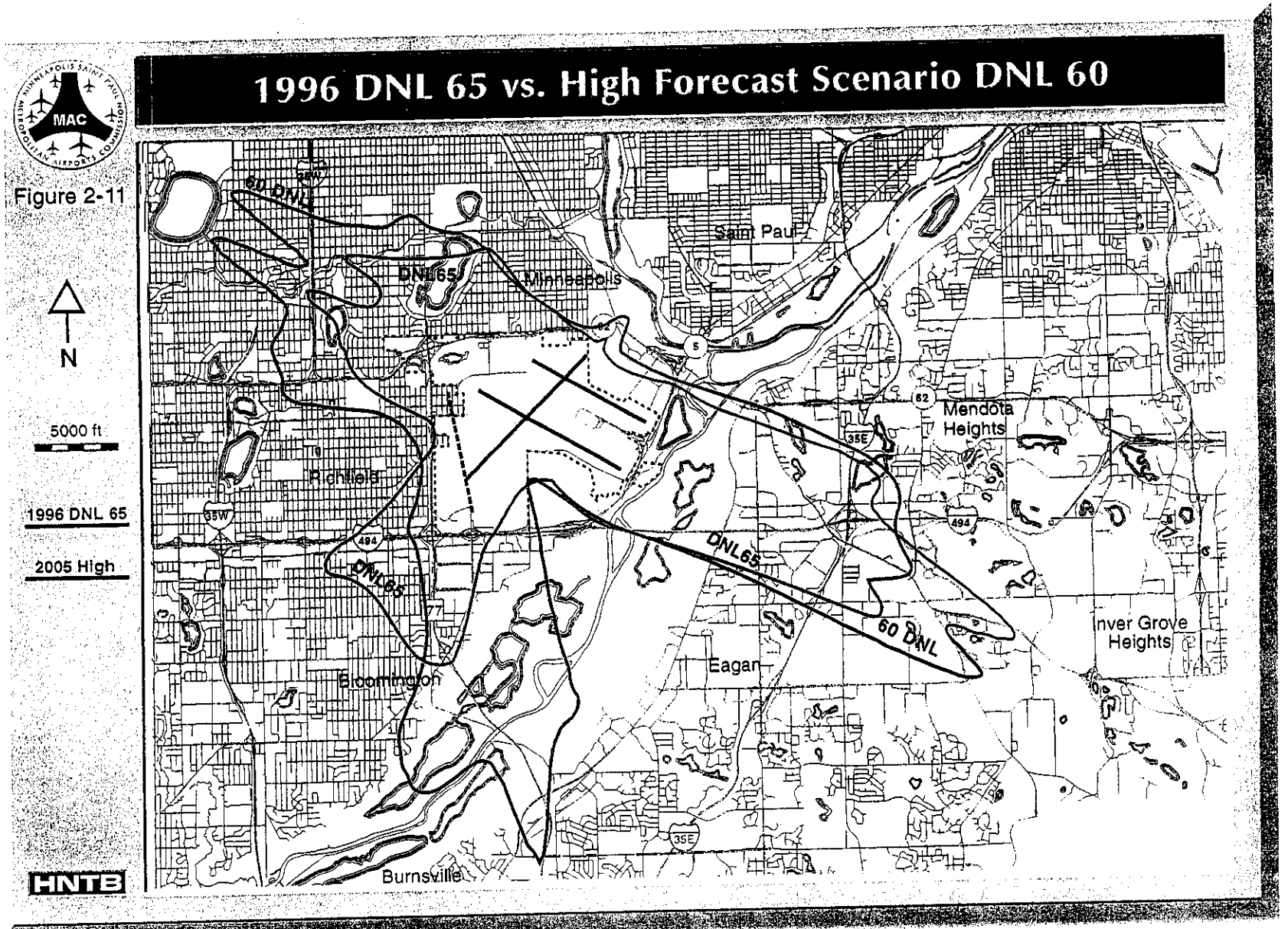


TABLE 2-5

DWELLING UNITS, and OTHER NOISE SENSITIVE USES
1996 NEM vs. 2005 Baseline Forecast DNL

Municipality	Single Family Parcels		Multi-Family Parcels		Schools		Day Care Facilities		Nursing Homes	
	1996 NEM	Add'l in 2,005 DNL 60	1996 NEM	Add'l in 2,005 DNL 60	1996 NEM	Add'l in 2005 DNL 60	1996 NEM	Add'l in 2005 DNL 60	1996 NEM	Add'l in 2005 DNL 60
Bloomington	1,268	168	183	275	1	.0	1	0	1	1
Eagan	256	42	0	0	0	1	0	0	0	0
Mendota Heights	110	0	1	0	2	0	2	0	0	0
Minneapolis	6,125	3,348	404	307	5	1	5	2	0	0
Richfield	1,597	385	97	4	2	0	1	0	1	0
Total	**9,356**	**3,943**	**685**	**586**	**10**	**2**	**9**	**2**	**2**	**1**

DWELLING UNITS, and OTHER NOISE SENSITIVE USES
1996 NEM vs. 205 High Scenario Forecast DNL

Municipality	Single Family Parcels		Multi-Family Parcels		Schools		Day Care Facilities		Nursing Homes	
	1996 NEM	Add'l in 2,005 DNL 60	1996 NEM	Add'l in 2,005 DNL 60	1996 NEM	Add'l in 2005 DNL 60	1996 NEM	Add'l in 2005 DNL 60	1996 NEM	Add'l in 2005 DNL 60
Bloomington	1,268	390	183	277	1	1	1	1	1	2
Eagan	256	208	0	2	0	1	0	0	0	0
Mendota Heights	110	0	1	0	2	0	2	0	0	0
Minneapolis	6,125	5,151	404	556	5	7	5	5	0	0
Richfield	1,597	608	97	15	2	0	1	0	1	0
Total	**9,356**	**6,357**	**685**	**850**	**10**	**9**	**9**	**6**	**2**	**2**

Source: MAC ANSP and HNTB Analysis
School, Day Care and Nursing Home Source: Minnesota State Board of Human Services and community verification

A.106

3. NOISE MITIGATION PROGRAM

The Noise Mitigation Committee developed recommendations for a Noise Mitigation Program that focused on four primary areas: 1) Sound Insulation, 2) Community Stabilization, 3) Operating Procedures, and 4) Runway Use.

A. Current Sound Insulation Program

Since 1992, the MAC has been involved in a residential and school sound insulation program. The area eligible for insulation is based on an FAA-approved noise exposure contour defined by the 1996 DNL 65 contour. This area is shown in Figure 2-5.

A total of 7,191 homes are eligible for sound insulation in the cities of Minneapolis, Bloomington, Richfield, Eagan and Mendota Heights. The number of eligible homes by community is shown in Table 3-1. Table 3-2 shows the schedule for completion of the insulation program, and the annual costs associated with implementation. By the end of 2000, the insulation program for those homes currently eligible will have been completed.

Sound Insulation for 1,047 (as defined in the Runway 4-22 ROD) homes in Richfield and Bloomington has been deferred until use of Runway 4-22 has been resolved. These homes are within the DNL 65 contour only if the MSP Runway Use System is modified to use Runway 22 more frequently for departures. The MAC is required to implement this mitigation program if the Runway Use System is changed to direct more activity onto Runway 4-22.

The residential insulation program is designed to reduce exterior noise levels by 5 db. This is achieved by application of the following, depending upon the characteristics of each home:

1. Repair/replacement of exterior windows.
2. Addition of exterior acoustic storm windows.
3. Repair/replacement of existing prime doors.
4. Addition of exterior acoustic storm doors.
5. Addition of cellulose wall and attic insulation.
6. Baffling of roof vents and chimney treatment.
7. Addition of central air conditioning.

The MAC has also been carrying out a school insulation program. This program was initiated before the residential program with initial experimental efforts as early as 1981. Through 1996 a total of 10 schools had been insulated at a cost of approximately $14.4 million. A summary of the program is shown on Table 3-3. One additional school will be insulated in 1997, to complete those located within the 1996 DNL 65 contour. Typical program measures applied to schools could include the following:

1. Addition of secondary roof system and suspended ceilings.
2. Acoustic window replacement and reduction of existing window areas.
3. Repair of existing doors and construction of new entrance vestibules.
4. Baffling of air intakes and exhaust
5. Addition of air conditioning.

TABLE 3-1

MSP PART 150 RESIDENTIAL SOUND INSULATION PROGRAM
Program Summary

COMMUNITY SUMMARY

Year	Total Homes	Minneapolis	Richfield	Bloomington	Mendota Hts	Eagan
1992	139	75	28	30	0	6
1993	244	147	58	17	15	7
1994	600	378	117	44	22	39
1995	840	500	207	67	10	56
1996	1200	991	110	0	35	64
1997	1200	1140	60	0	0	0
1998	1200	1200	0	0	0	0
1999	1200	1200	0	0	0	0
2000	568	568	0	0	0	0
TOTALS	7191	6199	580	158	82	172

Source: MAC

TABLE 3-2

MSP PART 150 RESIDENTIAL SOUND INSULATION PROGRAM

COMPLETED WORKSCOPE		
1992-93 YEAR	139 HOMES	$ 4.4M
1993-94 YEAR	244 HOMES	$ 5.9M
1994-95 YEAR	600 HOMES	$10.4M
1995-96 YEAR	840 HOMES	$14.5M
TOTAL	1,823 HOMES	$35.2M
WORKSCOPE IN PROGRESS		
1996-97 YEAR	1,200 HOMES	$20.7M
REMAINING WORKSCOPE		
1997-98 YEAR	1,200 HOMES	$20.7M
1998-99 YEAR	1,200 HOMES	$20.7M
1999-00 YEAR	1,200 HOMES	$20.7M
2000-01 YEAR	568 HOMES	$ 9.7M
TOTAL	4,168 HOMES	$71.8M
RUNWAY 4/22 MITIGATION PROGRAM		
SINGLE FAMILY INSULATION	1,047	$11.4M
SINGLE FAMILY ACQUISITION	75	$18.0M
MULTI-FAMILY INSULATION	2,175 (UNITS)	$ 0.5M
		$29.9M

Source: MAC and Runway 4-22 Extension ROD

TABLE 3-3

MSP PART 150 SCHOOL INSULATION PROGRAM
Program Summary

St. Kevins	Minneapolis	1981/87	$215,321
Wenonah	Minneapolis	1988-89	$1,153,525
Richfield Centennial	Richfield	1988-91	$1,809,248
Hale	Minneapolis	1989	$1,585,619
Resurrection	Minneapolis	1989-90	$1,263,284
Windom	Minneapolis	1991-92	$1,705,000
Mt. Calvary	Richfield	1995	$1,030,917
Visitation	Mendota Hts.	1996	$2,786,760
St. Thomas	Mendota Hts.	1996	$2,738,500
Field	Minneapolis	1996	$150,000
Keewaydin	Minneapolis	1997	$1,200,000 (Est.)
TOTAL			**$15,638,174**

Source: MAC

The 1996 Dual Track Airport Legislation requires the MAC to insulate four additional schools in Minneapolis and 2 schools in Richfield located in the 1996 DNL 65-60 area in the 1996-2002 time period.

B. Proposed Sound Insulation Program

The Mitigation Committee evaluated the future noise environment at MSP with the North-South Runway in operation. Data related to use of the proposed runway is presented in Section 2-C, and noise impacts associated with the runway in 2005 are shown on Figure 2-8. The Committee evaluated contours associated with the baseline and high forecast. Based on current trends, the Committee recommended use of contours associated with the high forecast.

The analysis by the Committee indicated that the residential insulation program should be expanded to the 2005 DNL 60 contour. This area, while not presently eligible for AIP funding, is eligible for PFC funding if included in an approved FAR 150 Program. Use of this contour would add 6,357 homes to the existing program. Figure 2-11 shows the areas between the 1996 DNL 65 contour and the 2005 High Forecast DNL 60 contour. Table 3-4 indicates order-of-magnitude costs associated with the sound insulation program proposed. As can be seen the approximate cost of both the existing and expanded Sound Insulation Program, including the deferred Runway 4-22 Mitigation Program, would be $417 million. Prioritization of these homes would be based on DNL contours, from DNL 64 to the DNL 60; this program would begin following completion of the current program (to the DNL 65).

The evaluation of future eligibility is based on the procedure currently approved by FAA whereby a block is included as eligible if the block is touched by the contour. The Mitigation Committee has recommended that MAC work with FAA to gain approval to use neighborhood or "natural boundaries" to define eligibility.

Multifamily residential units would also be eligible for sound insulation. A total of 850 multifamily parcels would be eligible and would be completed following the current single-family residential program.

The Mitigation Committee also reviewed other land uses for application of sound insulation. Continuation of the school insulation program out to the 2005 DNL 60 contour was recommended. Nine additional schools, located in Bloomington, Eagan and Minneapolis, would be eligible under this expanded program. Day-care facilities and nursing homes were also recommended for inclusion. A total of 6 day-care facilities and 2 nursing homes would be eligible for insulation. These insulation projects would be prioritized by noise level, and would be undertaken following completion of the residential program.

The Mitigation Committee has also recommended that the MAC evaluate the potential for continuing the program beyond the DNL 60 contour when that area has been completed. The recommendation is to look at the area out to the DNL 54 contour and evaluate the possibility for a 3-5 db reduction. This contour is shown on Figure 3-1 and a summary of affected population and dwelling units (based on 1990 census data) is shown in Tables 3-5 and 3-6.

TABLE 3-4

EXISTING AND EXPANDED SOUND INSULATION PROGRAM COSTS

Current Program (To be completed by 2000)	$220 Million
Expanded Program (2000-2010) Baseline Forecast High Forecast	 $108 Million $168 Million
Runway 4-22 Mitigation Program	$ 29 Million
Total Program Baseline Forecast High Forecast	 $357 Million $417 Million

Source: MAC Analysis

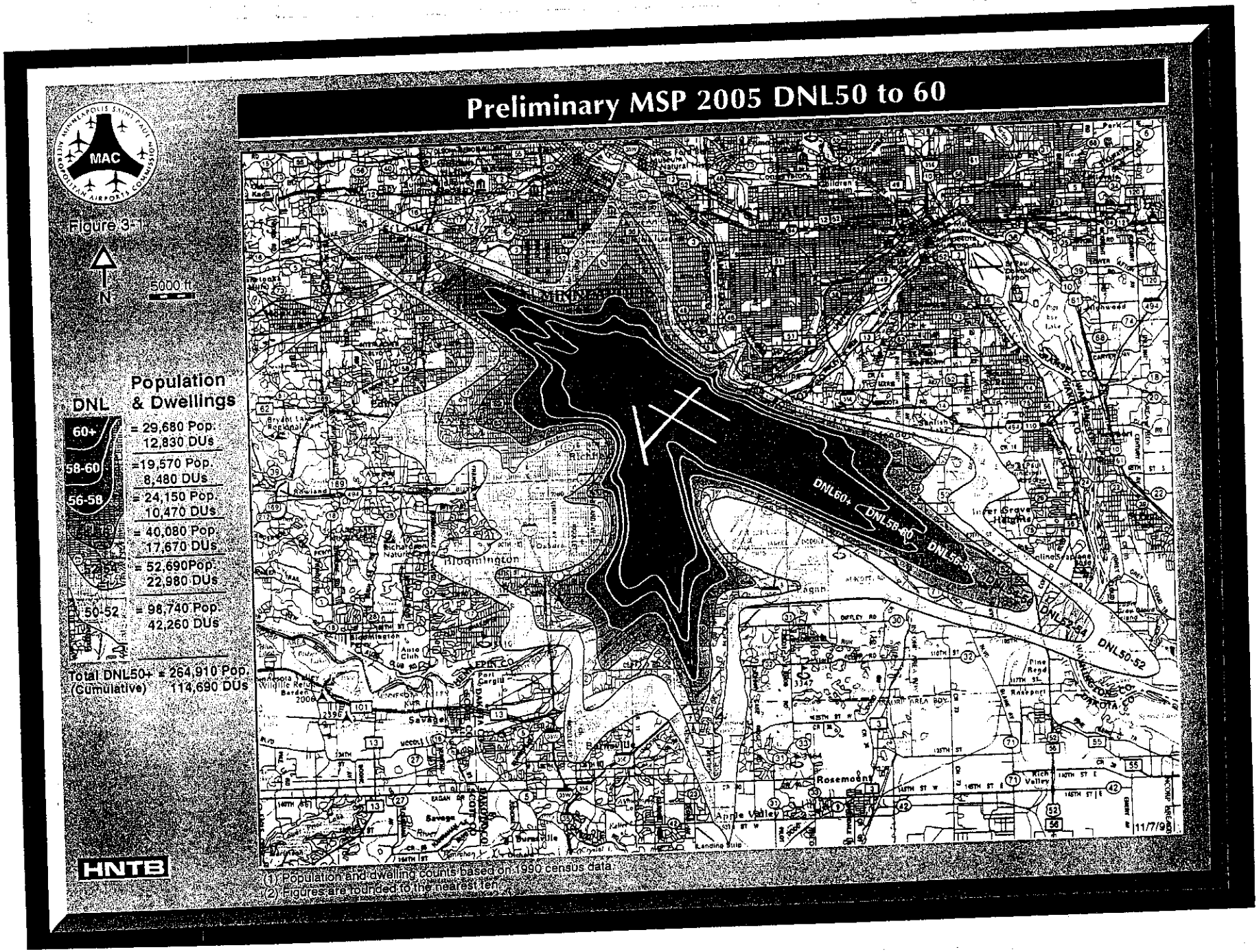

Preliminary MSP 2005 DNL50 to 60
Figure 3-1
N
5000 ft
DNL
Population & Dwellings
60+
= 29,680 Pop.
12,830 DUs
58-60
=19,570 Pop.
8,480 DUs
56-58
= 24,150 Pop.
10,470 DUs
54-56
= 40,080 Pop.
17,670 DUs
52-54
= 52,690Pop.
22,980 DUs
50-52
= 98,740 Pop.
42,260 DUs
Total DNL50+ (Cumulative)
= 264,910 Pop.
114,690 DUs
DNL60+
DNL58-60
DNL56-58
DNL54-56
DNL52-54
DNL50-52
Bloomington
Savage
Burnsville
Apple Valley
Rosemount
Eagan
HNTB
11/7/9
(1) Population and dwelling counts based on 1990 census data.
(2) Figures are rounded to the nearest ten.

TABLE 3-5

JURISDICTION	YEAR 2005 DNL Contours Dwelling Unit Counts by Jurisdiction POPULATION DNL 50-52	DNL 52-54	DNL 54-56	DNL 56-58	DNL 58-60	DNL 60+	Total DNL50-60	Total DNL 50+
Minneapolis	3,192	3,602	6,688	5,371	5,632	9,990	24,485	34,475
North Richfield	1,629	1,910	2,597	1,621	1,128	950	8,885	9,835
South Richfield	4,122	663	393	363	230	320	5,771	6,091
Fort Snelling	1	3	2	1	0	30	7	37
Bloomington	8,836	4,118	2,445	1,506	943	1,240	17,848	19,088
Inver Grove Heights	902	388	295	365	10	0	1,960	1,960
Mendota Heights	165	149	274	262	259	70	1,109	1,179
Burnsville	4,315	1,747	530	48	12	0	6,652	6,652
St. Paul	223	3	0	0	0	0	226	226
Eagan	6,454	2,294	2,458	936	265	230	12,407	12,637
Saint Louis Park	5,135	4,681	1,235	0	0	0	11,051	11,051
Apple Valley	1,098	1,189	50	0	0	0	2,337	2,337
Edina	6,189	2,235	699	0	0	0	9,123	9,123
Total	42,261	22,982	17,666	10,473	8,479	12,830	101,861	114,691

Note: Population and dwelling counts based on 1990 census data.

TABLE 3-6

JURISDICTION	YEAR 2005 DNL Contours Population Counts by Jurisdiction							
	POPULATION							
	DNL 50-52	DNL 52-54	DNL 54-56	DNL 56-58	DNL 58-60	DNL 60+	Total DNL 50-60	Total DNL 50+
Minneapolis	7,354	8,203	15,187	12,586	13,207	23,520	56,537	80,057
North Richfield	3,688	4,450	5,608	2,974	2,458	2,310	19,178	21,488
South Richfield	8,528	1,471	788	788	542	640	12,117	12,757
Fort Snelling	11	46	32	10	0	30	99	129
Bloomington	21,740	9,076	5,690	3,688	2,137	2,330	42,331	44,661
Inver Grove Heights	2,523	1,150	819	913	26	0	5,431	5,431
Mendota Heights	440	440	855	835	446	180	3,016	3,196
Burnsville	9,905	4,234	1,630	145	37	0	15,951	15,951
St. Paul	447	6	0	0	0	0	483	483
Eagan	14,952	6,520	6,027	2,215	718	670	30,432	31,102
Saint Louis Park	11,744	9,399	2,265	0	0	0	23,408	23,408
Apple Valley	3,625	2,856	125	0	0	0	6,606	6,606
Edina	13,748	4,843	1,051	0	0	0	19,642	19,642
Total	98,735	52,694	40,077	24,154	19,571	29,680	235,231	264,911

Note: Population and dwelling counts based on 1990 census data.

C. Property Acquisition

The property acquisition component of the noise mitigation program has been used much less frequently than the insulation program. Limited acquisition has occurred in Bloomington, Richfield, and Mendota Heights. The largest application of the program has been in Richfield in New Ford Town and Rich Acres. A total of 349 single-family residential units, 7 multi-family units, 2 businesses, and one church are involved in the acquisition program at an estimated cost of $55 million. This program is nearing completion. The City of Bloomington has proposed acquisition of approximately 75 homes in the northeast corner of the city. This acquisition is part of the mitigation associated with increased use of Runway 4-22.

Acquisition will continue to be available as part of the mitigation program. It will only be applied when requested by the affected community, and will not be applied to isolated lots or structures.

Committee recommendations related to these components of the noise mitigation program are as follows:

1. That the residential sound insulation program for the area encompassed by the 1996 DNL 65 contour be completed on the currently approved schedule;

2. That the program be expanded after completion of the current program to incorporate the area encompassed by the 2005 60 DNL;

3. That the 2005 60 DNL contour be based on the most accurate projection of traffic levels and use of appropriate ANOMS data;

4. That MAC and affected communities seek approval from FAA to develop neighborhood and "natural boundaries" that reflect current conditions at the outer edge of the expanded contour to the maximum extent possible;

5. The prioritization of the expanded program should be to initiate single-family homes upon completion of the currently approved schedule, and begin work on the following newly eligible dwellings/buildings, beginning with the highest noise exposure levels, in accordance with a schedule agreed upon with each affected city -- multifamily dwellings, nursing homes, churches with regular weekday daycare/nursery school types of operations;

6. That the program be funded by a combination of PFC revenues, airline fees, internally generated funds, and federal aid, with estimated total and annual costs as summarized below; to the extent that MAC cannot fund this expanded 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.

7. That the Metropolitan Airports Commission commit to funding its community based noise abatement program on an accelerated basis beyond its current level of $25.5 million annually;

8. 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;

9. That MAC develop noise impact models which reflect the impact of ground level noise on residential properties. Mitigation for low frequency noise should be developed after consultation with independent noise mitigation experts.

Table 3-7 provides a cost summary of the proposed Sound Insulation Program.

On October 28, 1996, MAC approved the following Sound Insulation program:

1. The residential sound insulation program for the area encompassed by the 1996 DNL 65 contour be completed on the currently approved schedule;

2. The program be expanded after completion of the current program to incorporate the area encompassed by the 2005 60 DNL;

3. The 2005 60 DNL contour be based on the most accurate projection of traffic levels and use of appropriate ANOMS data;

4. MAC and affected communities seek approval from FAA to develop neighborhood and "natural boundaries" that reflect current conditions at the outer edge of the expanded contour to the maximum extent possible;

5. Prioritization of the expanded program should be to initiate single-family homes upon completion of the currently approved schedule, and begin work on the following newly eligible dwellings/buildings, beginning with the highest noise exposure levels, in accordance with a schedule agreed upon with each affected city – multifamily dwellings, nursing homes, churches with regular weekday daycare/nursery school types of operations;

6. The program be funded by a combination of PFC revenues, airline fees, internally generated funds, and federal aid, with estimated total and annual costs as summarized below; to the extent that MAC cannot fund this expanded 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.

7. The Metropolitan Airports Commission commit to funding its community based noise abatement program on an accelerated basis beyond its current level of $25.5 million annually.

8. MAC should develop noise impact models which reflect the impact of ground level noise on residential properties. Mitigation for low frequency noise should be developed after consultation with independent noise mitigation experts.

9. Completion of the sound insulation program is contingent upon the MAC maintaining a bond rating of at least A.

4. COMMUNITY STABILIZATION PROGRAM

The 1996 Legislature enacted two elements related to efforts at community stabilization in the areas around MSP. These programs involve the establishment of areas eligible for a tax credit program and for the establishment of housing replacement districts.

The Mitigation Committee has reviewed information previously developed and provided in a document prepared by MAC, Metropolitan Council, and the communities around MSP. The Committee has recognized the importance of these measures and has forwarded the following recommendations:

TABLE 3-7
NOISE MITIGATION PROGRAM

	TOTAL COST		ANNUAL COST
1992-1996			
Insulation			
Single-family	$56,000,000		
Schools	$17,000,000		
Acquisition	$40,000,000		
TOTAL	$113,000,000		$22,600,000
1997-2000			
Insulation			
Single-family	$72,000,000		
Schools			
Inside 65 DNL	$2,000,000		
Outside 65 DNL	$18,000,000		
Acquisition	$15,000,000		
TOTAL	$107,000,000		$26,750,000
2001-2004/2007			
	Baseline Forecast	High Forecast	
Insulation			
Single-family	$89,000,000	$144,000,000	
Schools	$3,000,000	$5,000,000	
Multi-family	$5,000,000	$6,000,000	
Nursing homes	$5,000,000	$6,000,000	
Day Care Facilities	$6,000,000	$7,000,000	
TOTAL	**$108,000,000**	**$168,000,000**	**$25,500,000**

* Numbers are estimates and will be further refined as additional information is available.

The Mitigation Committee recommends to the Metropolitan Airports Commission that it participate with affected communities in preparing a package of community stabilization measures to be submitted to the Minnesota Legislature. Community stabilization measures considered should include, but not be limited to, the measures described in the Metropolitan Council-MAC Community Protection Report. The measures include purchase and property value guarantees and housing replacement to complement the tax credit and revitalization area legislation adopted in 1996.

A Working Group should be convened including representatives from MAC, Met Council, Northwest Airlines, affected communities and legislative staff. The Working Group should identify a program design, funding options, administrative responsibilities and eligibility area. The final legislative recommendation should be presented to MAC and other interested parties for endorsement and inclusion in 1997 legislative programs.

The sense of the Committee was that funding for these elements of the noise mitigation program should be sought from the Minnesota Legislature.

On October 28, 1996, MAC approved the following Community Stabilization Program:

> The Metropolitan Airports Commission should participate with affected communities to identify and quantify any impacts the airport may have on declining property values and/or other negative consequences on neighborhoods near the airport. To the extent that negative consequences can be quantified, a Working Group should prepare recommendations to MAC for consideration by the Minnesota Legislature. Community stabilization measures considered should include, but not be limited to, the measures described in the Metropolitan Council-MAC Community Protection Report. The measures include purchase and property value guarantees and housing replacement to complement the tax credit and revitalization area legislation adopted in 1996.
>
> A Working Group should be convened including representatives from MAC, Met Council, Northwest Airlines, affected communities and legislative staff. The Working Group should identify a program design, funding options, administrative responsibilities and eligibility area. The final legislative recommendation should be presented to MAC and other interested parties for endorsement and inclusion in 1997 legislative programs.

5. OPERATIONAL MEASURES

In reviewing concerns related to noise associated with aircraft operations at MSP, specifically those raised at the Public Meeting sponsored by the Noise Mitigation Committee on August 29, 1996, the Committee focused its attention on night activity, utilization of Stage 2/3 aircraft, and future noise level reductions.

The MAC currently has a number of measures in place relating to night activity:

1. A voluntary agreement with scheduled airlines not to schedule operations between 11:00 p.m. and 6:00 a.m.

2. A voluntary agreement with air freight operators not to fly during the night hours, and to use Stage 3 aircraft when such flights must occur.

3. A covenant in the MAC loan to Northwest Airlines prohibiting scheduled Stage 2 flights between 11:00 p.m. and 6:00 a.m.

The Committee recommended that the night-time period be expanded from 11:00 p.m. - 6:00 a.m. to 10:30 p.m. - 6:00 a.m. and that activity during this period be limited to Stage 3 aircraft.

Airlines have changed their fleets in accordance with Federal regulations related to the phaseout of Stage 2 aircraft and the introduction of Stage 3 aircraft. By December 31, 1999, all airline aircraft must meet Stage 3 noise levels, either by hushkitting/re-engining/retiring Stage 2 aircraft and/ or introducing Stage 3 aircraft. Federal law includes a waiver provision based on economic hardship that would extend the deadline to 2003. Table 2-2 provides an overview of airline fleet composition as of June 30, 1996. A more relevant comparison is Stage 2/3 aircraft operations at MSP. Table 2-3 shows the percentage of Stage 3 operations by airline at MSP for 1990 through 1995 on an annual basis, and monthly for January through August, 1996.

The 1996 Dual Track Legislation requires the MAC to prohibit use of Stage 2 aircraft at MSP after 1999. The Mitigation Committee reinforced the necessity to take this action, and also urged MAC to participate in industry efforts to further reduce aircraft noise levels.

The recommendations of the Mitigation Committee related to operational issues are as follows:

The Mitigation Committee recommends to the Metropolitan Airports Commission that the following be incorporated and evaluated in a Part 150 update:

1. Take action, as required by the 1996 Legislature, to prohibit use of Stage 2 aircraft after December 31, 1999.

2. Modify the night hours to 10:30 p.m. - 6:00 a.m. and limit activity during these hours to Stage 3 aircraft.

3. Develop a departure procedure for Runway 22 to direct aircraft over areas of commercial development and the Minnesota River Valley.

4. Seek cooperation from FAA to implement departure procedures as appropriate at each runway end.

5. Evaluate departure procedures in the Eagan-Mendota Heights corridor.

6. Work within the aviation industry to encourage further reductions in aircraft noise levels.

7. Negotiate the Stage 2 prohibition, noise abatement procedures, and expansion of night hours as provisions of airline lease renewals, incorporating appropriate penalties for non-compliance.

8. The MAC noise monitoring system monitors should be increased in number to provide more coverage of actual impacts in the airport vicinity. In particular, areas affected by the north-south runway and parallel runways should have additional microphone locations to monitor continued and growing volumes of air traffic as the airport expands. This system should be used to corroborate the accuracy of the modeled contours for noise program eligibility.

On October 28, 1996, MAC approved the following:

The following be incorporated and evaluated in a Part 150 update:

1. Take action, as required by the 1996 Legislature, to prohibit use of Stage 2 aircraft after December 31, 1999.

2. Modify the night hours to 10:30 p.m. - 6:00 a.m. and limit activity during these hours to Stage 3 aircraft.

3. Develop a departure procedure for Runway 22 to direct aircraft over areas of commercial development and the Minnesota River Valley.

4. Seek cooperation from FAA to implement departure procedures as appropriate at each runway end.

5. Evaluate departure procedures in the Eagan-Mendota Heights corridor.

6. Work within the aviation industry to encourage further reductions in aircraft noise levels.

7. Negotiate the Stage 2 prohibition, noise abatement procedures, and expansion of night hours, incorporating appropriate penalties for non-compliance.

8. The MAC noise monitoring system monitors should be increased in number to provide more coverage of actual impacts in the airport vicinity, in particular, areas affected by the north-south runway. Areas affected by the parallel runways may have additional microphone locations to monitor continued and growing volumes of air traffic as the airport expands. This system should be used to corroborate the accuracy of the modeled contours for noise program eligibility.

6. RUNWAY USE

The Long Term Comprehensive Plan for MSP includes development of a North-South Runway (Runway 17-35) to provide additional airfield capacity. This development is expected to be initiated possibly as early as 1998 following completion of the Dual Track Environmental Impact Statement. The construction is currently expected to take 4-5 years, however, MAC is continuing to evaluate the schedule to determine if steps can be taken to expedite the process.

Construction of this runway will significantly change the operating modes for MSP, with landings on Runway 17-35 to the north and takeoffs to the south depending on weather and traffic conditions. Activity will be diverted from the parallel runways and use of Runway 4-22 will be reduced to only those aircraft requiring the 11,000 foot runway length. Figures 2-1 and 2-7 provide a summary of runway operating modes and use both with and without Runway 17-35 in use.

Considerable discussion was also devoted to additional use of Runway 4-22 by modifying the MSP Runway Use System. The modification would increase use of Runway 22 departures, to the southwest over Bloomington and South Richfield. This would provide some periods of noise relief to areas in North Richfield and Minneapolis. Figure 2-4 shows runway use with the current RUS and with increased activity on Runway 22. As has been previously indicated, this operating mode would cease with construction of the North-South Runway.

An Environmental Impact Statement was prepared for the Runway 4-22 Extension. Richfield filed a lawsuit challenging the adequacy of the EIS, however through a mediation process agreement was reached by all affected parties to complete the physical extension and to operate the runway under the current RUS while continuing to discuss the change in runway

use. Agreement was also reached to suspend the litigation during this process. With creation of the Noise Mitigation Committee, it was determined that it would be the appropriate group to continue these discussions since policy makers from all affected parties were involved.

Major issues discussed by the group were the likelihood of prompt construction of Runway 17-35, potential interim use of Runway 4-22 for noise distribution pending completion of the Runway 17-35, the requirement by the FAA in their Record of Decision for the Runway 4-22 EIS that MAC must demonstrate its ability to complete the proposed mitigation program prior to changes in the RUS, and prior action by MAC relating to mitigation for use of Runway 4-22. Recommendations of the Mitigation Committee related to runway use are as follows:

1. Completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible. Progress should be measured against this schedule:

   a. commence construction -- 1998;
   b. complete construction, open runway -- 2003

2. In the interim, Runway 4/22 should be used for noise mitigation purposes. This requires the following:

   a) Construction of associated taxiways;
   b) Mitigation program at the southwest end of Runway 4-22 in the cities of Bloomington and Richfield as required in the Final Record of Decision (March 28, 1995). The acquisition portion of the mitigation should be initiated as soon as contracts for the associated taxiways are let and should be completed within a period of two years. Funds for the acquisition program should be in addition to those designated for the residential insulation program, consistent with the existing acquisition program. The insulation portion of the mitigation should be integrated with the current MAC program, starting as soon as contracts for construction of the associated taxiways are let, or the RUS is implemented, whichever occurs first. The insulation program should be implemented at the rate of at least 20% of the total homes as defined in the Runway 4-22 mitigation program in each year until all of the single family and multiple family units within the 1996 DNL 65 contour are insulated. To the extent practical, MAC should identify funding and program administration options to minimize delay in completion of the current insulation program.
   c) If the North-South Runway is completed before insulation of all eligible homes is completed, the insulation program for the area impacted by aircraft using Runway 4-22 may be terminated.

On October 28, 1996, MAC approved the following related to runway use:

1. Completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible. Progress should be measured against this schedule:

   a. commence construction – ~~1998~~ 1998
   b. complete construction, open runway – 2003

2. In the interim, Runway 4/22 should be used for noise mitigation purposes. This requires the following:

   a. Construction of associated taxiways;
   b. Mitigation program at the southwest end of Runway 4-22 in the cities of Bloomington and Richfield as required in the Final Record of Decision (March 28, 1995). The acquisition portion of the mitigation should be initiated as soon as contracts for the associated taxiways

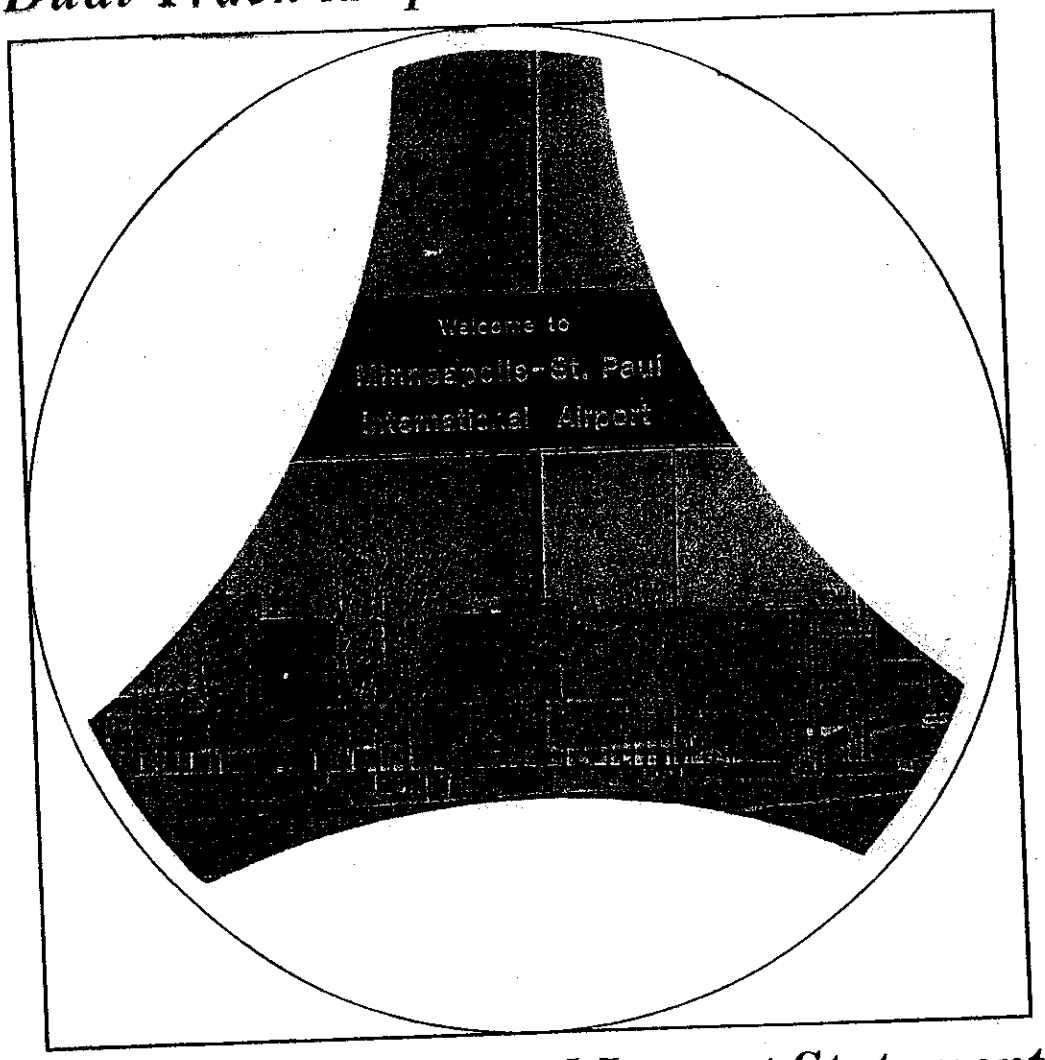
are let and should be completed within a period of two years. Funds for the acquisition program should be in addition to those designated for the residential insulation program, consistent with the existing acquisition program. The insulation portion of the mitigation should be integrated with the current MAC program, starting as soon as contracts for construction of the associated taxiways are let, or the RUS is implemented, whichever occurs first. The insulation program should be implemented at the rate of at least 20% of the total homes ad defined in the Runway 4-22 mitigation program in each year until all of the single family and multiple family units within the 1996 DNL 65 contour are insulated. To the extent practical, MAC should identify funding and program administration options to minimize delay in completion of the current insulation program.

c. If the North-South Runway is completed before insulation of all eligible homes is completed, the insulation program for the area impacted by aircraft using Runway 4-22 may be terminated.

3. Completion of this program is contingent on the MAC maintaining a bond rating of at least A.

Exhibit B

Dual Track Airport Planning Process



Final Environmental Impact Statement

May 1998

Metropolitan Airports Commission

Federal Aviation Administration

A.125

DUAL TRACK AIRPORT PLANNING PROCESS
TWIN CITIES METROPOLITAN AREA, MINNESOTA

FINAL ENVIRONMENTAL IMPACT STATEMENT SECTION 4(f) EVALUATION

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

METROPOLITAN AIRPORTS COMMISSION

COOPERATING AGENCIES
MINNESOTA DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION, U.S. D.O.T.
METROPOLITAN COUNCIL

May 1998

This Final EIS addresses the environmental impacts associated with major airport development to provide the capacity, facilities and highway improvements for Minneapolis-Saint Paul International Airport in Hennepin County, Minnesota. This statement is submitted for review pursuant to the following public law requirements: Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969; 49 U.S.C. section 40114, as amended by P.L. No. 103-305 (August 23, 1994); 49 U.S.C. sections 47101 (a)(6), 47101 (h), and 47106 (b)(2); Section 4(f) of the Department of Transportation Act of 1966 (recodified at 49 U.S.C., Subtitle I, Section 303, dated January 12, 1983), and Minnesota Rules, Chapter 4410. The Metropolitan Airports Commission is the lead agency for the state and the Federal Aviation Administration is the lead agency for the federal government, in the preparation of this joint statement.

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V. ENVIRONMENTAL CONSEQUENCES

Q. Noise

This section describes both aircraft and surface transportation noise associated with the Dual Track Alternatives. Subsection Q1. discusses aircraft noise impacts; Subsection Q2. discusses surface transportation noise impacts.

Q.1 Aircraft Noise

Aircraft noise can affect residents, businesses and certain land uses in the vicinity of an airport. The criteria for determining compatibility with aircraft noise are based on FAA criteria shown in **Table A.3-2** in Appendix A.3. Federal noise impact criteria are based on the Day-Night Sound Level (DNL) metric. State noise impact criteria are based on the L_{10} metric which measures the point at which a specified sound level is exceeded at least 10 percent of a specified time period (e.g., one hour).

Methodology and Assumptions

A summary of the methodology and assumptions used for aircraft noise impact evaluation follows. A detailed discussion is presented in Appendix A.3 of this report.

Population

In order to directly compare noise impacts of the alternatives, a common year of population estimates was required. Selecting an appropriate forecast year involved a number of considerations. Two important dates were identified: 1997, the year the decision to expand MSP or build a new airport would likely be made, and 2005, the year the new airport could open and the year the north-south runway at MSP could be operational. The noise contours also reflect year 2005 activity and fleet mix. Local jurisdictions have approved year 2000 population and household projections readily available at the appropriate zone level needed for noise impact analysis. Forecasts reflecting changing population distributions due to the new airport had not been developed or approved by the appropriate agencies. For these reasons, and because 2000 was, and is, a good "mid-point" forecast between 1997 and 2005, year 2000 demographic data was used for noise impact analysis.

Aircraft Activity and Fleet Mix

The aircraft operations and fleet mix forecasts are based primarily on the *MSP Long-Term Comprehensive Plan (LTCP), Volume 6: Revised Activity Forecasts* (December 1993). The LTCP fleet mix was modified to reflect the August 1994 announcement by Northwest Airlines that it would refurbish its fleet of DC-9-30 aircraft including the installation of "hush kits", rather than acquire new aircraft as previously planned. These hush-kitted aircraft are typically noisier than "true" stage 3 aircraft of the same size. For example, a hush-kitted DC-9-30 produces the equivalent noise of two 737-300 aircraft.

Year 2005 was the year selected for noise impact analysis as a worst-case scenario, because its noise contour was larger than that for 2010 and 2020. Although year 2020 total average daily aircraft operations are forecast to be 7 percent greater than 2005 (1,426 vs. 1,328, respectively), the year 2005 fleet mix is expected to comprise 240 relatively noisy "hush-kitted" aircraft (29 percent of the air carrier fleet). By 2020, the number of hush-kitted aircraft decreases to 8 daily operations (less than 1 percent of the air carrier fleet). **Tables A.3-3** and **A.3-4** in the Appendix A.3 list the average daily arrivals and departures by aircraft type for 2005. The noise impacts of the MSP 2020 Concept Plan and MSP 2010 LTCP are identical since the worst-case year is 2005, and will be referred to as the MSP Alternative.

Under the No Action Alternative, it is assumed that year 2005 operations would be about 2.3 percent lower than the MSP Alternative due to increasing capacity constraints. Most of the decrease would be among

general aviation aircraft. The fleet mix would also change, with fewer hush-kitted aircraft under the No Action Alternative, compared to the MSP Alternative (See Appendix A.3, **Tables A.3-5** and **A.3-6**).

The year 2005 was the earliest that a new airport would likely be open. In addition, the north-south runway in the MSP 2010 LTCP would also likely be operational by this year. Using the same year for all alternatives allowed for a direct comparison of alternatives.

Takeoff and landing profiles (the vertical path aircraft follow when departing from and arriving at an airport) were based on airline operating procedures, aircraft type and aircraft operating weight. Actual profiles obtained from the MAC's ANOMS compared well with the computer-generated profiles used in the analysis.

Runway use is based on weather conditions (both wind and visibility), direction of flight, noise impacts and operational efficiency. Runway use for the two alternatives is shown in **Tables A.3-7** through **A.3-8** in Appendix A.3. For the MSP Alternative, forecast runway use incorporated the new north-south runway, predominantly with departures to the south and arrivals from the south. The optimum operating modes identified by ATC personnel were balanced with environmental considerations. Runway use under the No Action Alternative reflects the extension of Runway 4-22. Separate runway use procedures were developed for nighttime operations. For the MSP Alternative, these consisted of head-to-head operations and use of the north-south runway when necessary.

Flight Tracks

Flight tracks for the MSP and No Action alternatives were based upon data provided by the MAC's Airport Noise and Operations Monitoring System (ANOMS), which details existing flight tracks, in conjunction with wind and weather considerations for the future utilization of the facility. With the utilization of ANOMS data to model flight tracks for the INM runs, all existing abatement procedures (including the voluntary nighttime limits on flights) are accounted for within the modeled tracks. The modeled flight tracks were reviewed by FAA ATCT personnel. For a description of flight tracks and overflights, see the "Overflights" discussion for each alternative. See **Figure Q-2** for the flight tracks modeled for the MSP Alternative and **Figure Q-8** for the No Action Alternative.

The flight tracks were prepared by HNTB in consultation with FAA. While FAA has not approved those flight tracks/procedures, FAA concurs that they should be treated as reasonable for the purpose of assessing impacts in the FEIS.

Aircraft headings are expressed in terms of magnetic compass directions assigned to pilots. Since aircraft are flying through moving air masses, a given heading will result in different aircraft paths over the ground (or "tracks") under different wind conditions. The flight headings used to represent assigned headings in this FEIS are average center-of-gravity tracks.

The FAA and MAC have established procedures for directing aircraft to certain headings and/or over specific geographic points. Specific flight headings are assigned to departing and arriving aircraft by ATC. Although arriving and departing aircraft are directed to fly along these prescribed headings, an infinite number of actual ground tracks are possible due to meteorological conditions, various traffic levels, and pilot technique.

Noise Metrics

The noise analysis conducted for this study comprises several methods to assess impacts.

Analysis of aircraft overflights was undertaken to show the average monthly flights on each takeoff and landing track out to a point where single-event noise levels would usually result in speech interference for two people standing about 3 feet apart, approximately 70 A-weighted decibels (dBA, not 70 DNL).[75] This point is typically 7 or 8 miles from the end of the runway.

[7] Canter, Larry W., Environmental Impact Assessment, McGraw-Hill, 1977, p. 137.

DNL contours were developed to quantify impacts on population, dwellings and other noise sensitive uses within the DNL 65 and greater contours per federal guidelines. The DNL metric is used to describe the cumulative effect of aircraft noise. Recognizing that noise concerns can occur beyond the DNL 65, DNL 60 contours are also shown and assessed.

Peak hour L_{10} 65 contours were developed to show areas exposed to 65 dBA or more for at least 10 percent of the peak one-hour period. The annual percentage of time is depicted to show how often these conditions would be experienced.

Aircraft noise levels were also estimated for selected noise-sensitive uses outside the DNL 65; and their noise levels estimated in DNL, peak sound exposure levels (SEL), and time above (TA) 85 dBA.

Peak noise levels (Lmax) are also provided to illustrate the effect of ground operations, such as taxiing and queuing aircraft on nearby residential areas.

Descriptions of the DNL, L_{10}, SEL, TA 85, A-weighted decibels (dBA), and Lmax noise metrics, as well as discussions of community annoyance, are presented in Appendix A.3.

Q.1.1 MSP Alternative

Q.1.1.1 Affected Environment — MSP Alternative

The APE of aircraft noise is the area within the DNL 60+ contours for this alternative, in accordance with the Metropolitan Council's Land-Use Compatibility Guidelines and the requirement in the April 1996 legislation (Appendix A.14) that mitigation be examined to the DNL 60 level. The DNL contours for operation of MSP in 1994 are shown in **Figure Q-1**. These base year contours represent average annual operations for the calendar year 1994. Approximately 42.3 square miles of land around MSP experienced DNL 60 or greater, with 19.7 square miles in the DNL 65 and greater contour. Approximately 65,130 people and 28,220 dwellings are within the DNL 60 to 65 contour, while 22,090 people reside in 9,570 dwellings in the DNL 65 and greater contour.

The DNL 65 contour extends approximately 4 miles southwest of the airport over Eagan and Mendota Heights. The DNL 60 contour extends an additional 2 to 3.5 miles towards Inver Grove Heights. To the northwest, the DNL 65 contour extends approximately 2 to 2.5 miles from airport property over the City of Minneapolis and Richfield. The DNL 60 contour extends an additional 1.5 to 2.0 miles beyond the DNL 65 contour. The DNL 65 contour includes part of Minneapolis to the northeast and Richfield and Bloomington to the southwest. The DNL 60 contour extends into Richfield and Bloomington to the southwest and slightly into Saint Paul to the northeast.

Q.1.1.2 Noise Impacts — MSP Alternative

Overflights

As shown in **Figure Q-2**, flight tracks radiate at MSP from the ends of the runways. Many overflights occur northwest and southeast of the site, with an increase in overflights immediately south of the airport attributable to the new north-south runway.

Population Impacts - DNL 70, 65 and 60

Figure Q-3 shows the year 2005 DNL contours for the MSP Alternative. The DNL 65 contour encompasses approximately 9.7 square miles. The year 2000 population exposed to DNL 65 or greater is approximately 7,650. There would be 3,370 homes within the contour. An additional 22,030 people and 9,460 dwellings would be within the DNL 60 to 65 contour. **Table Q-1** summarizes population and households contained within the contours.

Table Q-1 - Population and Dwellings Within Year 2005 DNL Contours- MSP Alternative

Jurisdiction	Population					Dwellings				
	DNL 75+	DNL70-DNL75	DNL 65-DNL 70	DNL 60-DNL 65	Total	DNL 75+	DNL70-DNL75	DNL 65-DNL 70	DNL 60-DNL 65	Total
Minneapolis	10	970	5,410	17,130	23,500	0	390	2,380	7,220	9,990
North Richfield (1)	0	70	500	1,740	2,300	0	30	220	700	950
South Richfield (2)	0	0	0	640	640	0	0	0	320	320
Fort Snelling	0	0	0	30	30	0	0	0	30	30
Bloomington	0	40	600	1,690	2,320	0	20	320	900	1,240
Inver Grove Heights	0	0	0	0	0	0	0	0	0	0
Mendota Heights	0	0	10	170	180	0	0	0	70	70
Eagan	0	0	40	630	670	0	0	10	220	230
Total	10	1,080	6,560	22,030	29,680	0	440	2,930	9,460	12,830
New Ford Town	860	50	0	0	910	340	20	0	0	360
Rich Acres	-	40	90	50	190	0	20	30	20	70

(1) Excluding New Ford Town which will be acquired by the MAC.
(2) Excluding Rich Acres which will be acquired by the MAC.
Note: Totals may not add due to rounding.
Source: HNTB analysis based on year 2005 fleet mix.

Noise Sensitive Land Uses in DNL 65+ Contour

In addition to residential dwellings and people there would be 1 school, 1 place of worship, 3 park/recreation areas and 1 environmental education area (Bass Ponds in the Minnesota Valley National Wildlife Refuge) within the DNL 65+ contour. There would be no hospitals, nursing homes, outdoor amphitheaters, or nature exhibits/zoos within the contour. See **Tables Q-2** and **Q-3.**

Table Q-2 - Noise Sensitive Uses within Year 2005 DNL Contours - MSP Alternative

Use Type	DNL 75+	DNL70-75	DNL 65-70	DNL 60-65	Total
Schools/Day Care	0	1	0	4	5
Churches/Synagogues	0	0	0	1	1
Hospitals/Nursing Homes	0	0	0	0	0
Parks/Recreation	0	0	3	1	4
Outdoor Amphitheaters/Music Shells	0	0	0	0	0
Nature Exhibits/Zoos	0	0	0	0	0
Wildlife Refuges/Environmental Education	0	1	0	0	1
Total	0	2	3	6	11

Source: HNTB analysis based on year 2005 fleet mix.

$L_{10}65$ Impacts

Figure Q-4 shows the L_{10} 65 contours for the MSP Alternative. The wider contours are generated by departing aircraft; the spike-shaped contours are generated by arriving aircraft. It is anticipated that approximately 121,000 people would be living within the L_{10} 65 contours. The large departure and arrival contours generated from operations to and from the southeast on the main parallel runways would occur approximately 25 percent and 47 percent of the time, respectively. The departure and arrival contours generated by operations on the main parallels to/from the northwest would occur about 38 percent and 36

percent of the time, respectively. The contours centered over Runway 4-22 would occur very infrequently – about one percent for departures off Runway 22 and near 0 percent for other modes. The proposed north-south runway would result in an L_{10} 65 contour which would occur approximately 36 percent of the time for departures to the south and 17 percent of the time for arrivals from the south. Operations to/from the north would occur very infrequently.

Selected Noise Sensitive Uses Outside DNL 65+ Contours

Noise associated with aircraft operations can annoy people outside the DNL 65+ contours, as shown in **Figure A.3-2** in Appendix A. For this reason 42 noise-sensitive land use points (most of which are outside the DNL 65 contour) were identified to estimate the noise impacts that may result under the MSP Alternative (**Figure Q-5**). **Table Q-3** lists DNL, peak sound exposure levels (SEL) and time above (TA) 85 dBA for the MSP Alternative.

Table Q-3 - Noise Impacts at Select Noise Sensitive Locations Shown in Figure Q-5 - MSP Alternative

Jurisdiction/Location	DNL		Peak SEL		Time Above 85 dBA (minutes per day)	
	1994	2005	1994	2005	1994	2005
Bloomington	59.7	56.7	106.7	95.0	0.3	-
1 Hohag Playlot	64.1	54.4	108.9	97.3	0.6	0.3
2 Smith Park	63.4	53.9	104.4	93.3	0.8	-
3 Cook's Playlot	65.5	58.0	108.8	95.9	0.8	-
4 Wright's Lake Park						
The Synod of Lakes & Prairies	67.4	60.0	109.2	97.8	1.4	0.1
5 Trinity School	54.7	53.8	100.0	98.0	0.1	0.3
6 Children's World Learning Center	55.8	70.6	96.0	104.6	0.2	3.8
7 Long Meadow Lake Bass Ponds						
Eagan	62.6	54.8	97.5	92.2	1.6	-
8 Highview Park	58.4	52.1	95.6	90.8	0.6	-
9 Pilot Knob Elementary	45.2	57.8	82.8	96.2	-	0.1
10 Tesseract School-Day Care	67.1	62.4	106.2	96.2	1.8	0.1
11 Lexington Park	63.5	59.4	97.4	93.0	0.5	-
12 Burr Oaks Park	64.8	61.1	101.4	95.2	0.8	-
13 School						
14 Fort Snelling Veterans Hospital	63.2	53.7	107.3	100.2	1.4	-
Mendota/Mendota Heights	62.1	52.0	95.4	89.7	1.9	-
15 City Park	74.4	66.3	109.5	103.7	13.3	1.1
16 State Park	75.6	64.5	111.2	106.1	15.6	1.1
17 Acacia Park Cemetery	74.2	66.0	109.5	104.2	15.0	0.8
18 Mendota Workcamp 1 (Historic)	67.8	58.5	107.7	100.9	3.0	0.2
19 Roger Lake Park	65.2	56.1	105.8	96.0	1.4	0.1
20 Friendly Hills Park	62.1	53.4	101.2	93.9	1.5	-
21 I-35E and Mendota Road						
Minneapolis	71.3	66.8	108.3	102.1	7.3	1.6
22 George Todd Park	63.3	58.3	107.5	99.2	1.0	0.1
23 Field Public School	62.2	57.2	106.5	97.4	0.8	0.1
24 Angelus Convalescent	76.5	71.6	111.9	106.2	22.0	7.0
25 Wenonah Elementary School	66.6	58.8	98.7	93.1	6.0	-
26 Morris Park Elementary School	71.1	64.5	108.9	103.0	6.5	0.7
27 Hale Public School	64.6	57.8	107.1	99.3	1.7	0.1
28 St. Joseph's Home for Children	62.5	60.1	102.0	93.7	0.3	-
29 Concy's Montessori School/Daycare	60.5	58.2	98.5	93.9	0.2	-
30 Clara Barton Open School	62.1	58.1	106.6	97.1	0.5	-
31 Washburn High School	64.5	59.7	107.9	100.5	1.8	0.3
32 Window Open School	62.2	57.3	106.5	97.4	0.7	0.1
33 Annunciation Catholic Church/School	63.2	59.0	106.0	96.5	0.5	-
34 Minnehaha Parkway & Lyndale Ave.						
Richfield	60.7	53.8	99.7	93.2	1.1	-
35 Richfield Veterans Memorial Park	75.3	67.9	111.7	106.0	15.8	2.5
36 Taft Park	68.2	62.2	103.4	97.4	7.0	0.2
37 Mount Calvary Educational Bldg.	62.5	56.2	96.3	89.3	1.5	-
38 City Park	60.4	49.0	107.6	88.3	0.2	-
39 Roosevelt Park	65.2	57.9	108.3	93.0	1.2	0.2
40 Centennial Elementary School	60.1	53.0	99.2	86.1	0.4	-
41 Richfield Intermediate School						
Saint Paul	59.4	50.0	98.3	90.6	0.1	-
42 St. Therese Parish Center						

Note: hyphen (-) denotes TA value less than 0.1 minutes.

Source: HNTB analysis based on year 2005 fleet mix.

The results should be interpreted with caution for these noise sensitive land use points for several reasons. First, a 1992 evaluation of DNL as a noise measurement tool by the Federal Interagency Committee on Noise (FICON) reported that "aircraft noise predictions below DNL 65 can be less accurate...." Second, the farther aircraft are from an airport, the more variable their location relative to modeled flight tracks. Finally, the quieter the perceived sound from an aircraft, the harder it is to discern it from other existing ambient noise levels. Other sources of noise (such as automobiles, voices, wind, etc.) may actually be louder than the aircraft at the listener's location.

Most selected locations would see a significant decrease in DNL noise levels from the existing conditions. Some locations (along the flight path of the proposed new runway, for example) would however experience a noticeable increase in DNL noise levels.

Noise from Ground Operations—Lmax

Development of Runway 17-35 would bring aircraft taxiing and run-up operations closer to the residential areas of eastern Richfield. A comparative analysis of the noise generated by aircraft taxiing to the existing and proposed runway ends and the associated holding pads for the runways was completed. It should be noted that aircraft taxiing and run-up operations are not predominate noise generating operations on the ground. The start of take-off roll and application of reverse thrust on landing are generally considered the major sources of ground noise during aircraft operations. These phases of aircraft operations are already included in the calculation of the DNL contours within the INM model.

A separate analysis was undertaken to identify noise levels associated with aircraft taxiing to Runways 11R and 17. Although the majority of aircraft would access/egress Runway 17-35 from the east taxiway and holding pad further away from the communities, queuing on the west taxiway was analyzed as a more conservative condition. The potential change in Lmax values (maximum single-event noise level) experienced in the nearby communities of Richfield and south Minneapolis for taxiing operations on the western taxiways of 11R and 17 ranges from +2 dB at the furthest study point (located near Lake Nokomis) to +12 dBA at the closest point studied (a point located near the Evangelical Free Church of America). The increase of +12 dBA near the Evangelical Free Church results in an Lmax value of 73 dBA, which on a single-event basis, is not considered to be a severe noise level. This analysis was based on the 747-200 aircraft being the loudest aircraft to be utilized on Runways 11R and 17. Typical noise levels for quieter Stage 3 aircraft, like the B-757, would be 62.7 dBA at this same point.

The results of this analysis must be interpreted with caution as the INM does not account for ground attenuation, shielding or other noise sources. An example of other noise sources effecting the communities analyzed would be highway noise. Noise analysis for the existing roadways and proposed roadway improvements for the MSP Alternative indicate that TH 77 itself will generate noise levels exceeding 70 dBA during many periods. Potential mitigation of the aircraft ground noise levels through construction of airport facilities and/or noise attenuation barriers are identified in Section QI.1.3. These barriers can significantly reduce ground noise levels experienced in the neighboring communities. Additionally, mitigation will likely be a part of the proposed highway widening design.

Unavoidable Adverse Impacts

The continued operation of MSP, including the use of the new north-south runway will result in unavoidable noise impacts for communities immediately surrounding the airport. Approximately 300 more persons would be within the DNL 65+ contours compared to the No Action Alternative in the year 2005. It should be noted, however, that under the MSP Alternative the number of persons within the DNL 65 noise impact would decrease from 22,090 in 1994 to 7,650 by 2005. The following section describes mitigation proposed to address these impacts.

Q.1.1.3 Mitigation Measures — MSP Alternative

In April 1996 the Minnesota legislature selected the MSP Alternative and directed MAC to develop a noise mitigation program with the assistance of its sound abatement advisory committee, the Metropolitan Aircraft

Sound Abatement Council (see Appendix A.14). MAC subsequently established a MSP Noise Mitigation Committee which prepared a MSP Noise Mitigation Program and report in October 1996. The following mitigation was adopted by the commission on October 28, 1996 (see MSP NOISE MITIGATION PROGRAM, MAC, November 1996). The program contains measures that may or may not be eligible for funding based on FAA policy or criteria, as stated in Appendix B.

Insulation

- 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)*
- the SIP be expanded to incorporate the area within the 2005 DNL 60-65 contour *(see Appendix B)*
- the 2005 DNL 60 contour be based on the most accurate projection of traffic levels and use of appropriate ANOMS data
- MAC and affected communities develop neighborhood and "natural boundaries" that reflect current conditions at the outer edge of the expanded contour to the maximum extent possible
- insulation of dwellings/buildings in the expanded SIP to be performed in the following order of priority:
    1. single family homes after completion of the 1996 DNL 65 SIP on the approved current schedule
    2. multifamily dwellings, nursing homes, and churches with regular weekday daycare/nursery school types of operations — in accordance with a schedule agreed upon by MAC and each affected city
- the program be funded by a combination of Passenger Facility Charge (PFC) 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
- MAC will fund the program on an accelerated basis beyond its current annual level of $25.5 million
- MAC will develop models which reflect the impact of ground level noise on residential properties; mitigation for low frequency noise will be developed after consultation with independent noise mitigation experts
- completion of the program is contingent on MAC maintaining a bond rating of at least A.

Community Stabilization

- The Metropolitan Airports Commission will participate with affected communities to identify and quantify any impacts the airport may have on declining property values and/or other negative consequences on neighborhoods near the airport. To the extent that negative consequences can be quantified, a Working Group should prepare recommendations to MAC for consideration by the Minnesota Legislature. Community stabilization measures considered should include, but not be limited to, the measures described in the Metropolitan Council-MAC Community Protection Report. The measures include purchase and property value guarantees and housing replacement to complement the tax credit and revitalization area legislation adopted in 1996.

  A Working Group will be convened including representatives from MAC, Met Council, Northwest Airlines, affected communities and legislative staff. The Working Group should identify a program design, funding options, administrative responsibilities and eligibility area. The final legislative recommendation should be presented to MAC and other interested parties for endorsement and inclusion in 1997 legislative programs.

In addition to the preceding mitigation, MAC is committed to perform the following study.

Airport Operations

The following will be incorporated and evaluated in a Part 150 update:

- Take action, as required by the 1996 Legislature, to prohibit use of Stage 2 aircraft after December 31, 1999.
- Modify the night hours to 10:30 p.m. - 6:00 a.m. and limit activity during these hours to Stage 3 aircraft.
- Develop a departure procedure for Runway 22 to direct aircraft over areas of commercial development and the Minnesota River Valley.
- Seek cooperation from FAA to implement departure procedures as appropriate at each runway end.
- Evaluate departure procedures in the Eagan-Mendota Heights corridor.
- Work within the aviation industry to encourage further reductions in aircraft noise levels.
- Negotiate the Stage 2 prohibition, noise abatement procedures, and expansion of night hours, incorporating appropriate penalties for non-compliance.
- The MAC noise monitoring system monitors will be increased in number to provide more coverage of actual impacts in the airport vicinity, in particular, areas affected by the north-south runway. Areas affected by the parallel runways, may have additional microphone locations to monitor continued and growing volumes of air traffic as the airport expands. This system should be used to corroborate the accuracy of the modeled contours for noise program eligibility.

Furthermore, on October 28, 1996 MAC also adopted the following mitigation, which is associated with the proposed action.

Runway Use

- Completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible. Progress should be measured against this schedule:
  a) commence construction — 1998
  b) complete construction, open runway — 2003
- In the interim, Runway 4/22 should be used for noise mitigation purposes. This requires the following:
  a) Construction of associated taxiways;
  b) Mitigation program at the southwest end of Runway 4-22 in the cities of Bloomington and Richfield as required in the Final Record of Decision (March 28, 1995). The acquisition portion of the mitigation will be initiated as soon as contracts for the associated taxiways are let and should be completed within a period of two years. Funds for the acquisition program will be in addition to those designated for the residential insulation program, consistent with the existing acquisition program. The insulation portion of the mitigation will be integrated with the current MAC program, starting as soon as contracts for construction of the associated taxiways are let, or the RUS is implemented, whichever occurs first. The insulation program will be implemented at the rate of at least 20% of the total homes as defined in the Runway 4-22 mitigation program in each year until all of the single family and multiple family units within the 1996 DNL 65 contour are insulated. To the extent practical, MAC will identify funding and program administration options to minimize delay in completion of the current insulation program.
  c) If the North-South Runway is completed before insulation of all eligible homes is completed, the insulation program for the area impacted by aircraft using Runway 4-22 may be terminated.
- Completion of this program is contingent on the MAC maintaining a bond rating of at least A.

Q.1.2 No Action Alternative

Q.1.2.1 Affected Environment — No Action Alternative

The APE of aircraft noise is the area within the DNL 60+ contours for this alternative. The DNL contours for operation of MSP in 1994 are shown in **Figure Q-1**. These base year contours represent average annual operations for the calendar year 1994. Approximately 42.3 square miles of land around MSP experienced

DNL 60 or greater, with 19.7 square miles in the DNL 65. Approximately 65,130 people and 28,220 dwellings are within the DNL 60 to 65 contour, while 22,090 people reside in 9,570 dwellings in the DNL 60 to 65 contour.

The DNL 65 contour extends approximately 4 miles southwest of the airport over Eagan and Mendota Heights. The DNL 60 contour extends an additional 2 to 3.5 miles towards Inver Grove Heights. To the northwest, the DNL 65 contour extends approximately 2 to 2.5 miles from airport property over the City of Minneapolis and Richfield. The DNL 60 contour extends an additional 1.5 to 2.0 miles beyond the DNL 65 contour. The DNL 65 contour includes part of Minneapolis to the northeast and Richfield and Bloomington to the southwest. The DNL 60 extends into Richfield and Bloomington to the southwest and slightly into Saint Paul to the northeast.

Q.1.2.2 Noise Impacts - No Action Alternative

Overflights

As shown in **Figure Q-8**, the flight tracks radiate at MSP from the ends of the runways. Many overflights occur northwest and southeast of the site with some overflights immediately south of the airport.

Population Impacts--DNL 70, 65 and 60

Figure Q-9 shows the year 2005 DNL contours for the No Action Alternative. The DNL contour encompasses approximately 9.2 square miles. The population exposed to DNL 65 or greater is approximately 7,350. There would be 3,200 homes within the DNL 65 and greater contour. An additional 27,690 people and 11,810 dwellings would be within the DNL 60 to 65 contour. **Table Q-4** summarizes population and households contained within the contours.

Table Q-4 - Population and Dwellings Within Year 2005 DNL Contours - No Action Alternative

	Population					Dwellings				
Jurisdiction	DNL 75+	DNL 70-DNL 75	DNL 65-DNL 70	DNL 60-DNL 65	Total	DNL 75+	DNL 70-DNL 75	DNL 65-DNL 70	DNL 60-DNL 65	Total
Minneapolis	0	720	5,470	18,170	24,360	0	290	2,410	7,650	10,350
North Richfield (1)	0	0	240	1,870	2,110	0	0	90	770	860
South Richfield (2)	0	0	680	1,560	2,240	0	0	330	740	1,070
Fort Snelling	0	0	0	0	0	0	0	0	0	0
Bloomington	0	0	30	3,970	4,000	0	0	10	1,820	1,830
Inver Grove Heights	0	0	0	10	10	0	0	0	10	10
Mendota Heights	0	0	140	1,050	1,190	0	0	50	460	510
Eagan	0	10	80	1,060	1,150		0	30	370	400
Total	0	720	6,630	27,690	35,040	0	290	2,910	11,810	15,020
New Ford Town &	0	170	650	120	940	0	70	260	50	380
Rich Acres	0	0	0	80	80	0	0	0	30	30

(1) Excluding New Ford Town.
(2) Excluding Rich Acres.
Note: Totals may not add due to rounding.

Noise Sensitive Land Uses in DNL 65+ Contour

In addition to residential dwellings and people there would be 1 school, 1 church/synagogue, and 3 parks/recreation areas within the contour. There would be no hospitals, nursing homes, outdoor amphitheaters, or nature exhibits/zoos within the contour. See **Tables Q-5** and **Q-6**.

Table Q-5 - Noise Sensitive Uses Within Year 2005 DNL Contours - No Action Alternative

Use Type	DNL 75+	DNL70-75	DNL 65-70	DNL 60-65	Total
Schools/Day Care	0	1	0	5	6
Churches/Synagogues	0	0	1	0	1
Hospitals/Nursing Homes	0	0	0	0	0
Parks/Recreation	0	0	3	6	9
Outdoor Amphitheaters/Music Shells	0	0	0	0	0
Nature Exhibits/Zoos	0	0	0	0	0
Wildlife Refuges/Environmental Education	0	0	0	0	0
Total	0	1	4	11	16

Source: HNTB analysis based on year 2005 fleet mix.

L_{10}65 Impacts

Figure Q-10 shows the L_{10} 65 contours for the No Action Alternative. The wider contours are generated by departing aircraft; the spike-shaped contours are generated by arriving aircraft. It is anticipated that approximately 106,000 people would be living within the L_{10} 65 contours. The large departure and arrival contours generated by operations to and from the southeast on the main parallel runways would occur approximately 50 percent and 53 percent of the time, respectively. The departure and arrival contours generated by operations to and from the northwest on the main parallel runways would occur approximately 34 percent and 46 percent of the time, respectively. The departure contour centered over Runway 4-22 would be generated approximately 15 percent of the year. The arrival contours centered over Runway 4-22 would occur very infrequently -- about one percent for arrivals on Runway 22 and near 0 percent for arrivals on Runway 4.

Selected Noise Sensitive Uses Outside DNL 65 Contours

It is recognized that noise impacts associated with aircraft operations can affect people beyond the DNL 65 contour. For this reason 42 noise sensitive land use points outside the contour were identified to estimate the noise impacts that may result under the No Action Alternative (**Figure Q-5**).

Table Q-6 lists the 42 noise-sensitive locations, their estimated ambient DNL level, and DNL, SEL, and TA 85 dBA for the No Action Alternative.

Table Q-6 - Noise Impacts at Select Noise Sensitive Locations Shown in Figure Q-5 - No Action Alternative

Jurisdiction/Location	DNL		Peak SEL		Time Above 85 dBA (minutes per day)	
	1994	2005	1994	2005	1994	2005
Bloomington						
1 Hohag Playlot	59.7	56.3	106.7	97.9	0.3	0.1
2 Smith Park	64.1	61.5	108.9	103.5	0.6	0.8
3 Cook's Playlot	63.4	60.5	104.4	101.2	0.6	0.4
4 Wright's Lake Park	65.5	61.5	108.8	102.4	0.8	0.6
The Synod of Lakes & Prairies	67.4	65.1	109.2	106.1	1.4	1.5
5 Trinity School	54.7	55.1	100.0	96.0	0.1	0.3
6 Children's World Learning Center	55.0	53.5	96.0	94.8	0.2	-
7 Long Meadow Lake Bass Ponds						
Eagan	62.6	56.0	97.5	91.7	1.6	-
8 Highview Park	58.4	53.3	95.6	90.3	0.6	-
9 Pilot Knob Elementary	45.2	42.8	82.8	84.0	-	-
10 Tesseract School-Day Care	67.1	63.5	106.2	96.2	1.8	0.1
11 Lexington Park	63.5	60.5	97.4	93.7	0.5	-
12 Burr Oaks Park						
Trinity Lone Oak Church/Lutheran	64.8	61.6	101.4	95.2	0.8	-
13 School						
Fort Snelling	63.2	54.1	107.3	98.9	1.4	-
14 Veterans Hospital						
Mendota/Mendota Heights	62.1	55.1	95.4	89.7	1.9	-
15 City Park	74.4	67.2	109.5	103.7	13.3	1.7
16 State Park	75.6	68.3	111.2	106.1	15.6	3.0
17 Acacia Park Cemetery	74.2	67.6	109.5	105.2	15.0	1.5
18 Mendota Workcamp 1 (Historic)	67.8	62.4	107.7	100.9	3.0	0.5
19 Roger Lake Park	65.2	59.8	105.8	96.0	1.4	0.2
20 Friendly Hills Park	62.1	57.0	101.2	93.9	1.5	-
21 I-35E and Mendota Road						
Minneapolis	71.3	68.2	108.3	102.1	7.3	2.8
22 George Todd Park	63.3	57.5	107.5	99.2	1.0	0.1
23 Field Public School	62.2	56.4	106.5	97.4	0.8	0.1
24 Angelus Convalescent	76.5	71.1	111.9	106.2	22.0	6.2
25 Wenonah Elementary School	66.6	59.0	98.7	93.1	6.0	-
26 Morris Park Elementary School	71.1	64.0	108.9	103.0	6.5	0.5
27 Hale Public School	64.6	56.8	107.1	99.3	1.7	0.1
28 St. Joseph's Home for Children	62.5	60.2	102.0	93.7	0.3	-
29 Concy's Montessori School/Daycare	60.5	58.1	98.5	93.9	0.2	-
30 Clara Barton Open School	62.1	56.5	106.6	97.1	0.5	-
31 Washburn High School	64.5	59.6	107.9	100.5	1.8	0.3
32 Window Open School	62.2	57.9	106.5	97.4	0.7	0.1
33 Annunciation Catholic Church/School	63.2	60.4	106.0	96.5	0.5	-
34 Minnehaha Parkway & Lyndale Ave.						
Richfield	60.7	54.1	99.7	93.2	1.1	-
35 Richfield Veterans Memorial Park	75.3	67.8	111.7	106.0	15.8	2.6
36 Taft Park	66.2	60.3	103.4	97.4	7.0	0.1
37 Mount Calvary Educational Bldg.	62.5	55.8	96.3	90.0	1.5	-
38 City Park	60.4	55.7	107.6	103.9	0.2	0.1
39 Roosevelt Park	65.2	61.6	108.3	104.2	1.2	0.6
40 Centennial Elementary School	60.1	54.2	99.2	93.6	0.4	-
41 Richfield Intermediate School						
Saint Paul	59.4	51.7	98.3	94.1	0.1	-
42 St. Therese Parish Center						

Note: hyphen (-) denotes TA value less than 0.1 minutes.

Source: HNTB analysis based on year 2005 fleet mix.

The results should be interpreted with caution for these points for several reasons. First, a 1992 evaluation of DNL as a noise measurement tool by FICON reported that "aircraft noise predictions below DNL 65 can be

less accurate...." Second, the farther aircraft are from an airport, the more variable their location relative to modeled flight tracks. Finally, the quieter the perceived sound from an aircraft, the harder it is to discern it from other existing ambient noise levels. Other sources of noise (such as automobiles, voices, wind, etc.) may actually be louder than the aircraft at the listener's location.

Effect of No Action Alternative on Noise Exposure at Saint Paul Downtown Airport

Under the No Action Alternative, a number of general aviation aircraft operations at MSP could move to Saint Paul Downtown Airport (STP) as a result of increased congestion at the former facility. The issue then arises relative to what impact these additional operations would have on noise for communities around STP. The volume of GA jet aircraft operations transferring to STP under the No Action Alternative is anticipated to be less than 10 per day. A preliminary noise analysis at 10 study points in the vicinity of STP found that DNL noise impacts would increase by less than 1.5 dBA for the transfer of over 10 general aviation jet operations. The FAA guidelines for determination of a significant impact. is an increase of DNL 1.5 dBA or greater. Because the increase is less than 1.5 dBA, the potential impact on STP due to the No Action Alternative would not be significant and no further analysis is required.

Unavoidable Adverse Impacts

The continued operation of MSP under the No Action Alternative would result in continued unavoidable noise impacts for communities immediately surrounding the airport. It should be noted, however, that under this alternative the number of persons within the DNL 65+ noise impact area would decrease from 22,090 in 1994 to 7,350 by 2005. These impacts would be addressed through continuation of the MSP noise compatibility program section described in Section Q.1.1.3.

Q.1.3 Cumulative Noise Impacts of Runway 4-22 Extension

The noise impacts of the Runway 4-22 extension for the MSP and No Action Alternatives are summarized in **Table Q-7**; a detailed analysis is presented in the *Environmental Assessment For Extension Of Runway 4-22 To 12,000 Feet, Minneapolis-Saint Paul International Airport*, MAC April 1998. **Table Q-7** shows that significant noise impacts (an increase of DNL 1.5 dBA at levels of DNL 65+) would not occur at any location experiencing an increase in noise due to the proposed extension of Runway 4-22. The largest increase is 0.7 dBA to DNL 54.4 at Receptor 14, the Veterans Hospital, from the MSP Alternative – which is still less than the DNL 56.0 from the No Action Alternative.

Table Q-7 - Cumulative Runway 4-22 Extension 2005 Noise Impacts - MSP and No Action Alternatives

Jurisdiction/Location (See Figure Q-5)	MSP Alternative		No Action Alternative	
	Without 4-22	With 4-22	Without 4-22	With 4-22
Bloomington				
1 Hohag Playlot	56.7	56.7	56.3	56.3
2 Smith Park	54.4	54.7	61.5	61.6
3 Cook's Playlot	53.9	54.0	60.5	60.6
4 Wright's Lake Park	58.0	58.0	61.5	61.5
5 The Synod of Lakes & Prairies Trinity School	60.0	60.0	65.1	65.1
6 Children's World Learning Center	53.8	54.4	55.1	55.5
7 Long Meadow Lake Bass Ponds	69.0	69.0	53.5	53.5
Eagan				
8 Highview Park	54.8	54.8	56.0	56.0
9 Pilot Knob Elementary	52.1	52.1	53.3	53.3
10 Tesseract School-Day Care	57.8	57.8	42.8	42.8
11 Lexington Park	62.4	62.4	63.5	63.5
12 Burr Oaks Park	59.4	59.4	60.5	60.5
13 Trinity Lone Oak Church/Lutheran	61.1	61.1	61.8	61.8

School				
Fort Snelling				
14 Veterans Hospital	53.7	54.4	54.1	54.7
Mendota/Mendota Heights				
15 City Park	52.0	52.0	55.1	55.1
16 State Park	66.3	66.3	67.2	67.2
17 Acacia Park Cemetery	64.5	64.5	68.3	68.3
18 Mendota Workcamp 1 (Historic)	66.0	66.0	67.6	67.6
19 Roger Lake Park	58.5	58.5	62.4	62.4
20 Friendly Hills Park	56.1	56.1	59.8	59.8
21 I-35E and Mendota Road	53.4	53.4	57.0	57.0
Minneapolis				
22 George Todd Park	66.8	66.8	68.2	68.2
23 Field Public School	58.3	58.3	57.5	57.5
24 Angelus Convalescent	57.2	57.2	56.4	56.4
25 Wenonah Elementary School	71.6	71.6	71.1	71.1
26 Morris Park Elementary School	58.8	58.8	59.0	59.0
27 Hale Public School	64.5	64.5	64.0	64.0
28 St. Joseph's Home for Children	57.8	57.8	56.8	56.8
29 Concy's Montessori School/Daycare	60.1	60.1	60.2	60.2
30 Clara Barton Open School	58.2	58.2	58.1	58.1
31 Washburn High School	58.1	58.1	58.5	58.5
32 Window Open School	59.7	59.7	59.6	59.6
33 Annunciation Catholic Church/School	57.3	57.3	57.9	57.9
34 Minnehaha Parkway & Lyndale Ave.	59.0	59.0	60.4	60.4
Richfield				
35 Richfield Veterans Memorial Park	53.8	53.8	54.1	54.1
36 Taft Park	67.9	67.9	67.8	67.8
37 Mount Calvary Educational Bldg.	62.2	62.2	60.3	60.3
38 City Park	56.2	56.2	55.8	55.8
39 Roosevelt Park	49.0	49.4	55.7	55.8
40 Centennial Elementary School	57.9	58.0	61.6	61.6
41 Richfield Intermediate School	53.0	53.0	54.2	54.2
Saint Paul				
42 St. Therese Parish Center	50.0	50.0	51.7	51.7

Source: HNTB analysis

Q.1.4 Summary of Aircraft Noise Impacts

The noise impacts of the MSP 2020 Concept Plan and MSP 2010 LTCP are identical since the worst-case year is 2005, and are referred to as the MSP Alternative. **Table Q-8** compares the noise impacts for the two alternatives. Although the MSP Alternative has slightly more population within the DNL 65 contour, it exposes approximately 5,400 fewer people to noise levels of DNL 60 or greater than the No Action Alternative.

The MSP Alternative impacts two noise-sensitive land uses — the Wenonah Elementary School in Minneapolis and the Bass Ponds environmental education area in the Minnesota Valley National Wildlife Refuge. The No Action Alternative also impacts two noise-sensitive land uses — the Wenonah Elementary School and the Trinity School. Both alternatives would result in unavoidable impacts.

Table Q-8 - Summary Comparison of Noise Impacts - MSP and No Action Alternatives

Criteria	Alternative		
	MSP[1]	No Action[1]	1994
Persons in Year 2005 DNL 65 Noise Contour or Greater	7,650	7,350	33,750
Persons in Year 2005 DNL 60-65 Noise Contours	22,030	27,690	65,150
Persons in Year 2005 DNL 60 Noise Contour or Greater	29,680	35,040	98,900
Number of Noise-Sensitive Land Uses with Noise Exceeding FAA Guidelines	2	2	4

[1] Year 2000 population estimates.

Source: HNTB analysis.

Table Q-9 compares DNL for the MSP Alternative and No Action Alternative. According to the FAA's AC 5050.4A, Airport Environmental Handbook, a 1.5 dBA increase in DNL (at noise sensitive sites located at or above 65 DNL) is considered significant. The table shows 29 of the 42 noise sensitive locations would experience a decrease in noise exposure under the MSP Alternative compared to the No Action Alternative. An additional 10 noise sensitive locations would experience an increase of less than 1.5 dBA. Only three points would experience a significant (1.5 dBA or greater) increase. These three points are Long Meadow Lake Bass Ponds (an increase of 17.1 dBA), Tesseract School-Day Care (an increase of 15.0 dBA), and Mount Calvary Educational Building (an increase of 1.9 dBA). The increased noise levels at Tesseract and Mount Calvary are still within FAA compatibility guidelines for the specific land uses. The impact on Bass Ponds exceeds FAA guidelines and is discussed in Section V.U (Section 4(f) impacts).

Table Q-9 - Noise Impacts at Select Noise Sensitive Locations Shown in Figure Q-5 - Comparison Between MSP and No Action Alternatives

Jurisdiction/Location	FAA Guideline (1)	DNL MSP	DNL No Action	Difference (MSP - No Action)
Bloomington				
1 Hoag Playlot	75.0	56.7	56.3	0.4
2 Smith Park	75.0	54.4	61.5	(7.1)
3 Cook's Playlot	75.0	53.9	60.5	(6.6)
4 Wright's Lake Park	75.0	58.0	61.5	(3.5)
5 Trinity School	65.0 (2)	60.0	65.1	(5.1)
6 Children's World Learning Center	65.0 (3)	53.8	55.1	(1.3)
7 Long Meadow Lake Bass Ponds	65.0	70.6	53.5	17.1
Eagan				
8 Highview Park	75.0	54.8	56.0	(1.2)
9 Pilot Knob Elementary	65.0 (3)	52.1	53.3	(1.2)
10 Tesseract School-Day Care	65.0 (3)	57.8	42.8	15.0
11 Lexington Park	75.0	62.4	63.5	(1.1)
12 Berr Oaks Park	75.0	59.4	60.5	(1.1)
13 Trinity Lone Oak Church/ School	65.0 (3)	61.1	61.6	(0.5)
Fort Snelling				
14 Veterans Hospital	75.0 (2)	53.7	54.1	(0.4)
Mendota/Mendota Heights				
15 City Park	75.0	52.0	55.1	(3.1)
16 State Park	75.0	66.3	67.2	(0.9)
17 Acacia Park Cemetery	--	64.5	68.3	(3.8)
18 Mendota Workcamp 1 (Historic)	--	66.0	67.6	(1.6)
19 Roger Lake Park	75.0	58.5	62.4	(3.9)
20 Friendly Hills Park	75.0	56.1	59.8	(3.7)
21 I-35E and Mendota Road	--	53.4	57.0	(3.6)
Minneapolis				
22 George Todd Park	75.0	66.8	68.2	(1.4)
23 Field Public School	65.0 (3)	58.3	57.5	0.8
24 Angelus Convalescent	75.0 (2)	57.2	56.4	0.8
25 Wenonah Elementary School	65.0 (3)	71.6	71.1	0.5
26 Morris Park Elementary School	65.0 (3)	58.8	59.0	(0.2)
27 Hale Public School	65.0 (3)	64.5	64.0	0.5
28 St. Joseph's Home for Children	65.0 (4)	57.8	56.8	1.0
29 Cancy's Montessori School/Daycare	65.0 (3)	60.1	60.2	(0.1)
30 Clara Barton Open School	65.0 (3)	58.2	58.1	0.1
31 Washburn High School	65.0 (3)	58.1	58.5	(0.4)
32 Window Open School	65.0 (3)	59.7	59.6	0.1
33 Annunciation Catholic Church/School	65.0 (3)	57.3	57.9	(0.6)
34 Minnehaha Parkway & Lyndale Ave.	--	59.0	60.4	(1.4)
Richfield				
35 Richfield Veterans Memorial Park	75.0	53.8	54.1	(0.3)
36 Taft Park	75.0	67.9	67.8	0.1
37 Mount Calvary Educational Bldg. (5)	65.0 (3)	62.2	60.3	1.9
38 City Park	75.0	56.2	55.8	0.4
39 Roosevelt Park	75.0	49.0	55.7	(6.7)
40 Centennial Elementary School	65.0 (3)	57.9	61.6	(3.7)
41 Richfield Intermediate School	65.0 (3)	53.0	54.2	(1.2)
Saint Paul				
42 St. Therese Parish Center (6)	75.0 (2)	50.0	51.7	(1.7)

(1) Maximum Day-Night Level (DNL) recommended by the FAA for this land use.

(2) Noise level reduction sufficient to achieve interior noise levels of DNL 45 or less should be incorporated in design and construction.

(3) When the noise level exceeds DNL 65 and the community determines that the use must be allowed, noise level reduction sufficient to achieve interior noise levels of DNL 45 or less should be incorporated in design and construction.

(4) When the noise level exceeds DNL 65 and the community determines that the use must be allowed, noise level reduction sufficient to achieve interior noise levels of DNL 40 or less should be incorporated in design and construction.

Source: HNTB analysis based on year 2005 fleet mix.

APPENDIX B NOISE MITIGATION PLAN

On October 28, 1996, the Metropolitan Airports Commission approved the following noise mitigation program for Minneapolis-St. Paul International Airport (see attached meeting minutes). The program contains measures that may or may not be eligible for funding based on FAA policy or criteria. See "MSP Noise Mitigation Program", MAC, November 1996, for the complete report.

Insulation

- the residential sound insulation program (SIP) within the 1996 DNL 65+ contour will be completed on the approved current schedule (Note: the current program is scheduled for completion in the year 2002)
- the SIP will be expanded to incorporate the area within the 2005 DNL 60-65 contour
- the 2005 DNL 60 contour will be based on the most accurate projection of traffic levels and use of appropriate ANOMS data
- MAC and affected communities will develop neighborhood and "natural boundaries" that reflect current conditions at the outer edge of the expanded contour to the maximum extent possible
- insulation of dwellings/buildings in the expanded SIP to be performed in the following order of priority:
    1. single family homes after completion of the 1996 DNL 65 SIP on the approved current schedule
    2. multifamily dwellings, nursing homes, and churches with regular weekday daycare/nursery school types of operations — in accordance with a schedule agreed upon by MAC and each affected city
- the program will be funded by a combination of Passenger Facility Charge (PFC) 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
- MAC will fund the program on an accelerated basis beyond its current annual level of $25.5 million
- MAC will develop models which reflect the impact of ground level noise on residential properties; mitigation for low frequency noise will be developed after consultation with independent noise mitigation experts
- completion of the program is contingent on MAC maintaining a bond rating of at least A

Community Stabilization

The Metropolitan Airports Commission will participate with affected communities to identify and quantify any impacts the airport may have on declining property values and/or other negative consequences on neighborhoods near the airport. To the extent that negative consequences can be quantified, a Working Group should prepare recommendations to MAC for consideration by the Minnesota Legislature. Community stabilization measures considered should include, but not be limited to, the measures described in the Metropolitan Council-MAC Community Protection Report. The measures include purchase and property value guarantees and housing replacement to complement the tax credit and revitalization area legislation adopted in 1996.

A Working Group will be convened including representatives from MAC, Met Council, Northwest Airlines, affected communities and legislative staff. The Working Group should identify a program design, funding options, administrative responsibilities and eligibility area. The final legislative recommendation should be presented to MAC and other interested parties for endorsement and inclusion in 1997 legislative programs.

In addition to the preceding mitigation, MAC is committed to perform the following study.

Airport Operations

The following will be incorporated and evaluated in a Part 150 update:

- Take action, as required by the 1996 Legislature, to prohibit use of Stage 2 aircraft after December 31, 1999.
- Modify the night hours to 10:30 p.m. - 6:00 a.m. and limit activity during these hours to Stage 3 aircraft.
- Develop a departure procedure for Runway 22 to direct aircraft over areas of commercial development and the Minnesota River Valley.
- Seek cooperation from FAA to implement departure procedures as appropriate at each runway end.
- Evaluate departure procedures in the Eagan-Mendota Heights corridor.
- Work within the aviation industry to encourage further reductions in aircraft noise levels.
- Negotiate the Stage 2 prohibition, noise abatement procedures, and expansion of night hours, incorporating appropriate penalties for non-compliance.
- The MAC noise monitoring system monitors will be increased in number to provide more coverage of actual impacts in the airport vicinity, in particular, areas affected by the north-south runway. Areas affected by the parallel runways, may have additional microphone locations to monitor continued and growing volumes of air traffic as the airport expands. This system should be used to corroborate the accuracy of the modeled contours for noise program eligibility.

Furthermore, on October 28, 1996 MAC also adopted the following mitigation, which is associated with the proposed action.

Runway Use

- Completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible. Progress should be measured against this schedule:
  a) commence construction — 1998
  b) complete construction, open runway — 2003
- In the interim, Runway 4/22 should be used for noise mitigation purposes. This requires the following:
  a) Construction of associated taxiways;
  b) Mitigation program at the southwest end of Runway 4-22 in the cities of Bloomington and Richfield as required in the Final Record of Decision (March 28, 1995). The acquisition portion of the mitigation will be initiated as soon as contracts for the associated taxiways are let and should be completed within a period of two years. Funds for the acquisition program will be in addition to those designated for the residential insulation program, consistent with the existing acquisition program. The insulation portion of the mitigation will be integrated with the current MAC program, starting as soon as contracts for construction of the associated taxiways are let, or the RUS is implemented, whichever occurs first. The insulation program will be implemented at the rate of at least 20% of the total homes as defined in the Runway 4-22 mitigation program in each year until all of the single family and multiple family units within the 1996 DNL 65 contour are insulated. To the extent practical, MAC will identify funding and program administration options to minimize delay in completion of the current insulation program.
  c) If the North-South Runway is completed before insulation of all eligible homes is completed, the insulation program for the area impacted by aircraft using Runway 4-22 may be terminated.
- Completion of this program is contingent on the MAC maintaining a bond rating of at least A.

Management and Operations Committee - Board File 12242
(See minutes of the October 9, 1996 Committee meeting)

B1 Anoka ATCT Equipment Maintenance Agreement
B2 August Budget Variance
B3 Natural Gas RFP
B4 Bids Received for Gasoline and Diesel Fuel
B5 Request to Purchase Replacement Telephone System
B6 Request to Renegotiate Heating and Cooling Contracts with Honeywell and Landis Gyr
B7 Request to Bid Large Equipment
B8 Consultant Interviews: Airport Land Appraisal Study
B9 1997 Budget Update
B10 Legislative Process
B11 Commission Request for MSP Gate Information
B12 Public Hearing: Ordinance No. 80 - Traffic Provisions
B13 Concessions Plan Implementation
B14 MAC Oversight of Airport Security
B15 Strategic Planning
B16 MOVED TO DISCUSSION - Request for Proposals - Cleaning Contract
B17 Mitigation Committee Update
B18 Rental Car QTA Update
B19 Ground Transportation Issues

The following items were moved from the Consent to the Discussion portion of the agenda:

A9 Preliminary 1997-2003 Capital Improvement Program
B16 Request for Proposals - Cleaning Contract

DISCUSSION ITEMS

OLD BUSINESS

MSP Noise Mitigation Committee Recommendation - Board File 12243

Commissioner Cramer, Chairman of the MSP Noise Mitigation Committee, presented a summary of the recommendations developed by the Committee. He noted that these recommendations are the result of input received from the participating communities as well as comments received at a public hearing which was held as part of the Mitigation Committee process.

Commissioner Cramer referenced the MSP Noise Mitigation Discussion Outline in explaining the background and assumptions upon which the Committee based its recommendations. In compliance with the 1996 Dual Track Legislation, the Commission formed a committee to develop a noise mitigation plan based on the MSP 2010 Development Plan. He stressed that the Committee attempted to share both the benefits and impacts of airport development and operations among communities, and worked toward equitable distribution among the affected communities to the maximum extent feasible. Implementation of mitigation activities is a shared responsibility of the Commission, the airlines, the State of Minnesota, the FAA and the communities.

The Committee organized its recommendations within four categories:

I. **Insulation**
II. **Community Stabilitzation**
III. **Airport Operations**
IV. **Runway Use**.

Following Commissioner Cramer's presentation, Chairman Grieve asked for Commissioner comment/discussion on Items I through III.

I. Insulation

COMMISSIONER REHKAMP MOVED AND COMMISSIONER GASPER SECONDED TO DELETE ITEM NO. 8 FROM SECTION I.

8. ~~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.~~

The motion carried by unanimous vote.

II. Community Stabilization

Commissioner Himle questioned the airport's role in providing community stabilization. He stated that he had previously requested further information quantifying the affects of airport development on communities, particularly real estate values, and that information presented had been contradictory. Commissioner Himle felt that this issue needed to be addressed by the working group. Commissioner Cramer indicated that the limited timetable to develop a recommendation prevented the Mitigation Committee from addressing this question and he suggested that it be the initial charge to the proposed working group.

COMMISSIONER HIMLE MOVED AND COMMISSIONER JOHNSON SECONDED TO MODIFY SECTION II. COMMUNITY STABILIZATION AS FOLLOWS:

~~THE MITIGATION COMMITTEE RECOMMENDS TO THE METROPOLITAN AIRPORTS COMMISSION THAT IT PARTICIPATE WITH AFFECTED COMMUNITIES IN PREPARING A PACKAGE OF COMMUNITY STABILIZATION MEASURES TO BE SUBMITTED TO THE MINNESOTA LEGISLATURE.~~ THE METROPOLITAN AIRPORTS COMMISSION SHOULD PARTICIPATE WITH AFFECTED COMMUNITIES TO IDENTIFY AND QUANTIFY ANY IMPACTS THE AIRPORT MAY HAVE ON DECLINING PROPERTY VALUES AND/OR OTHER NEGATIVE CONSEQUENCES ON NEIGHBORHOODS NEAR THE AIRPORT. TO THE EXTENT THAT NEGATIVE CONSEQUENCES CAN BE QUANTIFIED, A WORKING GROUP SHOULD PREPARE RECOMMENDATIONS TO MAC FOR CONSIDERATION BY THE MINNESOTA LEGISLATURE. COMMUNITY STABILIZATION MEASURES CONSIDERED SHOULD INCLUDE, BUT NOT BE LIMITED TO, THE MEASURES DESCRIBED IN THE METROPOLITAN COUNCIL-MAC COMMUNITY PROTECTION REPORT. THE MEASURES INCLUDE PURCHASE AND PROPERTY VALUE GUARANTEES AND HOUSING REPLACEMENT TO COMPLEMENT THE TAX CREDIT AND REVITALIZATION AREA LEGISLATION ADOPTED IN 1996.

The motion carried by unanimous vote.

Concerns were also expressed with regard to raising public expectations regarding community stabilization efforts. Commissioner Cramer responded that the issues raised during this discussion are valid and will be considered by the working group.

III. Airport Operations

Commissioner Kahler questioned whether the nighttime hour restrictions would prohibit emergency and unanticipated operations. Mr. Finney responded that this stipulation would include exception for certain factors such as mechanical delays, weather conditions, and air traffic delays. Several Commissioners did not support Item No. 7 under Airport Operations which would incorporate noise abatement procedures as part of the airline lease negotiations. Mr. Finney indicated that several Mitigation Committee members expressed concern about tying noise abatement procedures to the lease agreements as it may be difficult to modify noise restrictions in the future. Other Mitigation Committee members felt that leases were the most effective tool for enforcement. Commission members agreed that Item No. 8 should be modified to indicate that additional microphone locations may be located in areas affected by the parallel runways.

Considerable discussion followed with regard to the airport's future financial standing and its impact on mitigation funding. Commissioner Johnson noted that he supports the recommendations; however, he cautioned the Commission to recognize that if the airport's revenue stream is diminished, there may be insufficient funding to meet all needs as defined by the Commission. He stated that MAC has a responsibility to construct an

airport facility which will meet the needs of the region. Mr. Finney indicated that the Capital Improvement Program is modified on a yearly basis subject to the types of projects and funding available.

COMMISSIONER REHKAMP MOVED AND COMMISSIONER GASPER SECONDED TO MODIFY SECTION III AS FOLLOWS:

7. **NEGOTIATE THE STAGE 2 PROHIBITION, NOISE ABATEMENT PROCEDURES, AND EXPANSION OF NIGHT HOURS AS ~~PROVISIONS OF AIRLINE LEASE RENEWALS~~ INCORPORATING APPROPRIATE PENALTIES FOR NON-COMPLIANCE.**

8. **THE MAC NOISE MONITORING SYSTEM MONITORS SHOULD BE INCREASED IN NUMBER TO PROVIDE MORE COVERAGE OF ACTUAL IMPACTS IN THE AIRPORT VICINITY, IN PARTICULAR, AREAS AFFECTED BY THE NORTH-SOUTH RUNWAY. ~~AND~~ AREAS AFFECTED BY THE PARALLEL RUNWAYS ~~SHOULD~~ MAY HAVE ADDITIONAL MICROPHONE LOCATIONS TO MONITOR CONTINUED AND GROWING VOLUMES OF AIR TRAFFIC AS THE AIRPORT EXPANDS. THIS SYSTEM SHOULD BE USED TO CORROBORATE THE ACCURACY OF THE MODELLED CONTOURS FOR NOISE PROGRAM ELIGIBILITY. The motion carried by unanimous vote.**

IV. Runway Use

Mayor Houle, Bloomington and Mayor Kirsch, Richfield, addressed the Commission in opposition to implementation of the Runway 4/22 Runway Use System (RUS). Mayor Houle stated that the RUS provides marginal relief to Minneapolis residents and results in a substantial increase in the number of flights and number of residents exposed to noise in Eagan, Richfield and Bloomington. Mayor Houle urged the Commission to reject the RUS for 4/22 and focus on an expedited schedule of the North-South Runway. Mayor Kirsch requested a study which evaluates the impact of ground level noise on residential properties.

Commissioner Cramer stated the Committee committed a substantial amount of time in an effort to develop a recommendation which would equitably balance the noise impact and he urged Commission support of the Runway Use Recommendation.

Commissioner Himle urged the Commission to delete Item No. 2 of Runway Use which supports the operation of Runway 4/22 for noise mitigation purposes during the interim before construction of the North-South Runway. He felt that this is a costly proposal which provides very little incremental benefit and suggested the Commission explore other alternatives to address this issue and avoid litigation.

COMMISSIONER HIMLE MOVED AND COMMISSIONER MERICKEL SECONDED TO DELETE IV. RUNWAY USE - ITEM NO. 2. The motion failed on the following roll call vote:

Ayes, three:	**Commissioners Himle, Johnson and Merickel**
Nays, eleven:	**Commissioners Cramer, D'Aquila, Dowdle, Fiore, Gasper, Kahler, Long, Miller, Rehkamp, Stenerson and Chairman Grieve**
Absent, one:	**Commissioner Hitesman**

COMMISSIONER REHKAMP MOVED AND COMMISSIONER GASPER SECONDED ADOPTION OF THE MSP NOISE MITIGATION COMMITTEE RECOMMENDATIONS AS FOLLOWS AS AMENDED:

I. INSULATION

THE MITIGATION COMMITTEE RECOMMENDS TO THE METROPOLITAN AIRPORTS COMMISSION:

1. THAT THE RESIDENTIAL SOUND INSULATION PROGRAM FOR THE AREA ENCOMPASSED BY THE 1996 DNL 65 CONTOUR BE COMPLETED ON THE CURRENTLY APPROVED SCHEDULE;

2. THAT THE PROGRAM BE EXPANDED AFTER COMPLETION OF THE CURRENT PROGRAM TO INCORPORATE THE AREA ENCOMPASSED BY THE 2005 60 DNL;

3. THAT THE 2005 60 DNL CONTOUR BE BASED ON THE MOST ACCURATE PROJECTION OF TRAFFIC LEVELS AND USE OF APPROPRIATE ANOMS DATA;

4. THAT MAC AND AFFECTED COMMUNITIES SEEK APPROVAL FROM FAA TO DEVELOP NEIGHBORHOOD AND "NATURAL BOUNDARIES" THAT REFLECT CURRENT CONDITIONS AT THE OUTER EDGE OF THE EXPANDED CONTOUR TO THE MAXIMUM EXTENT POSSIBLE;

5. THE PRIORITIZATION OF THE EXPANDED PROGRAM SHOULD BE TO INITIATE SINGLE-FAMILY HOMES UPON COMPLETION OF THE CURRENTLY APPROVED SCHEDULE, AND BEGIN WORK ON THE FOLLOWING NEWLY ELIGIBLE DWELLINGS/BUILDINGS, BEGINNING WITH THE HIGHEST NOISE EXPOSURE LEVELS, IN ACCORDANCE WITH A SCHEDULE AGREED UPON WITH EACH AFFECTED CITY -- MULTIFAMILY DWELLINGS, NURSING HOMES, CHURCHES WITH REGULAR WEEKDAY DAYCARE/NURSERY SCHOOL TYPES OF OPERATIONS;

6. THAT THE PROGRAM BE FUNDED BY A COMBINATION OF PFC REVENUES, AIRLINE FEES, INTERNALLY GENERATED FUNDS, AND FEDERAL AID, WITH ESTIMATED TOTAL AND ANNUAL COSTS AS SUMMARIZED BELOW; TO THE EXTENT THAT MAC CANNOT FUND THIS EXPANDED 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.

7. THAT THE METROPOLITAN AIRPORTS COMMISSION COMMIT TO FUNDING ITS COMMUNITY BASED NOISE ABATEMENT PROGRAM ON AN ACCELERATED BASIS BEYOND ITS CURRENT LEVEL OF $25.5 MILLION ANNUALLY;

~~8. 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;~~

~~9.~~ 8. THAT MAC DEVELOP NOISE IMPACT MODELS WHICH REFLECT THE IMPACT OF GROUND LEVEL NOISE ON RESIDENTIAL PROPERTIES. MITIGATION FOR LOW FREQUENCY NOISE SHOULD BE DEVELOPED AFTER CONSULTATION WITH INDEPENDENT NOISE MITIGATION EXPERTS.

9. COMPLETION OF THE SOUND INSULATION PROGRAM IS CONTINGENT UPON THE MAC MAINTAINING A BOND RATING OF AT LEAST A.

II. COMMUNITY STABILIZATION

~~THE MITIGATION COMMITTEE RECOMMENDS TO THE METROPOLITAN AIRPORTS COMMISSION THAT IT PARTICIPATE WITH AFFECTED COMMUNITIES IN PREPARING A PACKAGE OF COMMUNITY STABILIZATION MEASURES TO BE SUBMITTED TO THE MINNESOTA LEGISLATURE.~~ THE METROPOLITAN AIRPORTS COMMISSION SHOULD PARTICIPATE WITH AFFECTED COMMUNITIES TO IDENTIFY AND QUANTIFY ANY IMPACTS THE AIRPORT MAY HAVE ON DECLINING PROPERTY VALUES AND/OR OTHER NEGATIVE CONSEQUENCES ON NEIGHBORHOODS NEAR THE AIRPORT. TO THE EXTENT THAT NEGATIVE CONSEQUENCES CAN BE QUANTIFIED, A WORKING GROUP SHOULD PREPARE RECOMMENDATIONS TO MAC FOR CONSIDERATION BY THE MINNESOTA LEGISLATURE. COMMUNITY STABILIZATION MEASURES CONSIDERED SHOULD INCLUDE, BUT NOT BE LIMITED TO, THE MEASURES DESCRIBED IN THE METROPOLITAN COUNCIL-MAC COMMUNITY PROTECTION REPORT. THE MEASURES INCLUDE PURCHASE AND PROPERTY VALUE GUARANTEES AND HOUSING REPLACEMENT TO COMPLEMENT THE TAX CREDIT AND REVITALIZATION AREA LEGISLATION ADOPTED IN 1996.

A WORKING GROUP SHOULD BE CONVENED INCLUDING REPRESENTATIVES FROM MAC, MET COUNCIL, NORTHWEST AIRLINES, AFFECTED COMMUNITIES AND LEGISLATIVE STAFF. THE WORKING GROUP SHOULD IDENTIFY A PROGRAM DESIGN, FUNDING OPTIONS, ADMINISTRATIVE RESPONSIBILITIES AND ELIGIBILITY AREA. THE FINAL LEGISLATIVE RECOMMENDATION SHOULD BE PRESENTED TO MAC AND OTHER INTERESTED PARTIES FOR ENDORSEMENT AND INCLUSION IN 1997 LEGISLATIVE PROGRAMS.

III. AIRPORT OPERATIONS

THE MITIGATION COMMITTEE RECOMMENDS TO THE METROPOLITAN AIRPORTS COMMISSION THAT THE FOLLOWING BE INCORPORATED AND EVALUATED IN A PART 150 UPDATE:

1. TAKE ACTION, AS REQUIRED BY THE 1996 LEGISLATURE, TO PROHIBIT USE OF STAGE 2 AIRCRAFT AFTER DECEMBER 31, 1999.

2. MODIFY THE NIGHT HOURS TO 10:30 P.M. - 6:00 A.M. AND LIMIT ACTIVITY DURING THESE HOURS TO STAGE 3 AIRCRAFT.

3. DEVELOP A DEPARTURE PROCEDURE FOR RUNWAY 22 TO DIRECT AIRCRAFT OVER AREAS OF COMMERCIAL DEVELOPMENT AND THE MINNESOTA RIVER VALLEY.

4. SEEK COOPERATION FROM FAA TO IMPLEMENT DEPARTURE PROCEDURES AS APPROPRIATE AT EACH RUNWAY END.

5. EVALUATE DEPARTURE PROCEDURES IN THE EAGAN-MENDOTA HEIGHTS CORRIDOR.

6. WORK WITHIN THE AVIATION INDUSTRY TO ENCOURAGE FURTHER REDUCTIONS IN AIRCRAFT NOISE LEVELS.

7. NEGOTIATE THE STAGE 2 PROHIBITION, NOISE ABATEMENT PROCEDURES, AND EXPANSION OF NIGHT HOURS, ~~AS PROVISIONS OF AIRLINE LEASE RENEWALS,~~ INCORPORATING APPROPRIATE PENALTIES FOR NON-COMPLIANCE.

8. THE MAC NOISE MONITORING SYSTEM MONITORS SHOULD BE INCREASED IN NUMBER TO PROVIDE MORE COVERAGE OF ACTUAL IMPACTS IN THE AIRPORT VICINITY, IN PARTICULAR, AREAS AFFECTED BY THE NORTH-SOUTH RUNWAY. ~~AND~~ AREAS AFFECTED BY THE PARALLEL RUNWAYS ~~SHOULD~~ MAY HAVE ADDITIONAL MICROPHONE LOCATIONS TO MONITOR CONTINUED AND GROWING VOLUMES OF AIR TRAFFIC AS THE AIRPORT EXPANDS. THIS

SYSTEM SHOULD BE USED TO CORROBORATE THE ACCURACY OF THE MODELLED CONTOURS FOR NOISE PROGRAM ELIGIBILITY.

IV. RUNWAY USE

THE MITIGATION COMMITTEE RECOMMENDS TO THE MAC THE FOLLOWING:

1. COMPLETION OF THE ENVIRONMENTAL PROCESS AND CONSTRUCTION OF THE NORTH-SOUTH RUNWAY SHOULD BE EXPEDITED AND COMPLETED AS SOON AS POSSIBLE. PROGRESS SHOULD BE MEASURED AGAINST THIS SCHEDULE:

   A. COMMENCE CONSTRUCTION – 1998;
   B. COMPLETE CONSTRUCTION, OPEN RUNWAY – 2003

2. IN THE INTERIM, RUNWAY 4/22 SHOULD BE USED FOR NOISE MITIGATION PURPOSES. THIS REQUIRES THE FOLLOWING:

   A. CONSTRUCTION OF ASSOCIATED TAXIWAYS;
   B. MITIGATION PROGRAM AT THE SOUTHWEST END OF RUNWAY 4-22 IN THE CITIES OF BLOOMINGTON AND RICHFIELD AS REQUIRED IN THE FINAL RECORD OF DECISION (MARCH 28, 1995). THE ACQUISITION PORTION OF THE MITIGATION SHOULD BE INITIATED AS SOON AS CONTRACTS FOR THE ASSOCIATED TAXIWAYS ARE LET AND SHOULD BE COMPLETED WITHIN A PERIOD OF TWO YEARS. FUNDS FOR THE ACQUISITION PROGRAM SHOULD BE IN ADDITION TO THOSE DESIGNATED FOR THE RESIDENTIAL INSULATION PROGRAM, CONSISTENT WITH THE EXISTING ACQUISITION PROGRAM. THE INSULATION PORTION OF THE MITIGATION SHOULD BE INTEGRATED WITH THE CURRENT MAC PROGRAM, STARTING AS SOON AS CONTRACTS FOR CONSTRUCTION OF THE ASSOCIATED TAXIWAYS ARE LET, OR THE RUS IS IMPLEMENTED, WHICHEVER OCCURS FIRST. THE INSULATION PROGRAM SHOULD BE IMPLEMENTED AT THE RATE OF AT LEAST 20% OF THE TOTAL HOMES AS DEFINED IN THE RUNWAY 4-22 MITIGATION PROGRAM IN EACH YEAR UNTIL ALL OF THE SINGLE FAMILY AND MULTIPLE FAMILY UNITS WITHIN THE 1996 DNL 65 CONTOUR ARE INSULATED. TO THE EXTENT PRACTICAL, MAC SHOULD IDENTIFY FUNDING AND PROGRAM ADMINISTRATION OPTIONS TO MINIMIZE DELAY IN COMPLETION OF THE CURRENT INSULATION PROGRAM.
   C. IF THE NORTH-SOUTH RUNWAY IS COMPLETED BEFORE INSULATION OF ALL ELIGIBLE HOMES IS COMPLETED, THE INSULATION PROGRAM FOR THE AREA IMPACTED BY AIRCRAFT USING RUNWAY 4-22 MAY BE TERMINATED.

3. **COMPLETION OF THIS PROGRAM IS CONTINGENT ON THE MAC MAINTAINING A BOND RATING OF AT LEAST A.**

The motion carried on the following roll call vote:

Ayes, fourteen:	**Commissioners Cramer, D'Aquila, Dowdle, Fiore, Gasper, Himle, Johnson, Kahler, Long, Merickel, Miller, Rehkamp, Stenerson, and Chairman Grieve**
Nays, none	
Absent, one:	**Commissioner Hitesman**

COMMISSIONER HIMLE MOVED AND COMMISSIONER LONG SECONDED TO COMMEND COMMISSIONER CRAMER, THE MSP NOISE MITIGATION COMMITTEE AND STAFF FOR ITS WORK IN DEVELOPING THE MITIGATION RECOMMENDATIONS; FURTHER, THAT THE COMMITTEE WAS SUCCESSFUL IN ITS COMMITMENT TO COMPLY WITH THE LEGISLATIVE MANDATE AS WELL AS TO BALANCE THE COMMUNITIES' NEEDS. The motion carried by unanimous vote.

Status Report - Runway 17/35 Land Acquisition and Lease Termination
Board File 12243

Thomas Anderson, General Counsel, reported that as part of the MSP Mitigation Committee Noise Mitigation Plan, the following recommendation was included:

> completion of the environmental process and construction of the North-South Runway should be expedited and completed as soon as possible.

He explained that two of the key components in the runway project will be the acquisition of several parcels located within the Federal Runway Protection Zone, State Safety Zones, and adjacent areas and the termination of several on-airport leases.

Based upon the construction schedule as shown in the 2010 Long Term Comprehensive Plan, several significant airport facilities will be required to be located to the Rich Acres Golf Course premises. Access to portions of this site will be required in 1998 to construct utilities and other infrastructure for the runway project. Under the lease between MAC and the City of Richfield regarding the Rich Acres Golf Course, it is necessary to provide the City eighteen months advance notice prior to actual lease termination (i.e., if notice is given immediately, the lease would not terminate until the spring of 1998).

Staff recommended that the Commission commence the formal public hearing process necessary to acquire property in the approaches to the proposed Runway. One of the

Exhibit C

JUN 12 1998

CONTRACT PERTAINING TO LIMITS ON CONSTRUCTION OF A THIRD PARALLEL RUNWAY

I. RECITALS.

1. The Minnesota Legislature, at its 1996 session, has enacted Laws of Minnesota, Chapter 464, Art. 3, Sec. 10 (hereinafter "the Runway Statute"), which amends Minnesota Statutes 1994, Sec. 473.608 to require the Metropolitan Airports Commission (hereinafter "the Commission" or "MAC") to enter into certain contracts "with each affected city that provides the corporation [MAC] may not construct a third parallel runway at the Minneapolis-St. Paul international airport without the affected city's approval."

2. The Runway Statute defines "affected city" as being any city that would experience an increase in the area located within the 60 Ldn noise contour as a result of operations using a third parallel runway constructed at the Minneapolis-Saint Paul International Airport (hereinafter "the Airport").

3. The Commission has determined that the City of Minneapolis (hereinafter "the City") is an affected city within the meaning of the Runway Statute.

4. The Commission and the City have met and negotiated in good faith concerning the terms and conditions of the contract required by the Runway Statute, and have arrived at an agreement (hereinafter "the Agreement") which both parties desire to set forth in writing. The City and MAC have identified other matters of mutual interest that are also addressed in this contract.

II. DEFINITIONS.

1. The term "third parallel runway" shall mean any runway used for the arrival or departure of air traffic at the Airport constructed to the north of and generally parallel to the existing parallel runways known as 30L/12R and 30R/12L (based on the geographic location of the parallel runways at the time of execution of this Agreement). "Generally parallel", for purposes herein, shall include any runway that is constructed to the north and/or east of the existing parallel runways known as 30L/12R and 30R/12L and that has a centerline within sixty (60) compass degrees of the centerline of the existing parallel runways at their present location.

2. The term "construct" shall mean physical construction and actions preliminary to construction, including land acquisition necessary for construction, inclusion of funds for construction in the capital improvement program budget or solicitation of bids for

performance of physical construction provided that the term shall not include planning activity. The term "construct" shall not include land acquisitions by the Commission so long as the acquisition of any property to the north of and generally parallel to the existing parallel runways includes as a restrictive covenant in the deed of conveyance that the acquired land shall not be used for runway purposes during the period for which this Agreement is effective, provided that such restrictive covenant shall expressly run for the benefit of the "affected property owners" as defined in paragraph 4 below.

3. The term "approval" shall mean a legally binding assent occurring through action by which the City legally binds itself.

4. The term "affected property owner" means any owner (whether a legal owner or an equitable owner) of real property which property is within that part of the City which:

a) would be brought into the 60 Ldn noise contour as a result of operations on the third parallel runway; or

b) is within the 60 Ldn contour as determined without the third parallel runway and which would experience a 1.5 or greater Ldn increase as a result of operations on a third parallel runway.

The Commission and the City agree that a diagram which designates the area meeting this criteria shall be developed by the Commission not later than ninety days subsequent to execution of this Agreement by the City, which diagram will be subject to the City's review and approval.

III. TERMS.

1. The term of the Agreement shall be from October 1, 1998 (the date of this Agreement) to December 31, 2050; provided that, commencing on January 1, 2036, the provisions of this Agreement related to a third parallel runway may be terminated by statutory enactment which contains an express finding by the Minnesota Legislature that, in its judgment, taking into account the welfare of the State of Minnesota, there is no prudent or feasible alternative to construction of a third parallel runway.

2. During the period for which this Agreement is effective, the Commission promises that it shall not, without approval of the City, construct a third parallel runway. The Commission promises that prior to December 31, 2035, it shall not affirmatively advocate construction of a third parallel runway, provided that nothing in this Agreement shall prevent the Commission from responding to requests for information and advice made by the legislative or executive branches of state government, or their constituent parts or designees.

3. During the period for which this Agreement is effective, the affected property owners shall have third party beneficiary rights to enforce the provisions of this

Agreement related to the prohibition on construction of a third parallel runway in the event that a state law changes, supersedes or invalidates this Agreement or if a state law authorizes or enables the Commission to construct a third parallel runway without approval of the City. It is further agreed that this right of enforcement shall include the right to seek specific enforcement and injunctive relief. Said third party beneficiary rights shall cease upon the expiration of this agreement or its termination pursuant to the terms of this Agreement.

4. During the period for which this Agreement is effective, the City promises that it shall take no action to oppose the planning and construction of a North South Runway (Runway 17/35), as such runway is described in the Airport's 2010 Long-term Comprehensive Plan and the Dual Track Airport Planning Process Final Environmental Impact Statement, May, 1998 ("DTAPP/EIS"), the implementation of which is directed by Laws of Minnesota 1996, Ch. 464, Art. 3, Subd. 24. Without limiting the generality of the foregoing, the City agrees:

a) its approval of this Agreement constitutes a declaration of the City endorsing the construction of the above-described North South Runway; and

b) it shall not institute, be a party to, financially contribute to or in any other manner support any legislation or legal proceedings (whether judicial, administrative or other) which has as a goal or intended effect the delay or prevention of construction of the above-described North South runway, including without limitation, proceedings asserting rights under environmental laws or regulations.

5. The Final Record of Decision, Minneapolis-St. Paul International Airport, Dual Track Airport Planning Process, New Runway 17/35 and Airport Layout Plan Approval (September 1998) includes the following language on page 56:

> Consistent with FAA commitments made to the City of Minneapolis,[34] MSP control tower personnel will utilize Runway 17/35 in accordance with the conditions set forth in the Dual Track Airport Planning Process FEIS, Appendix A, page A.3-17. Therefore, tower personnel will utilize Runway 17/35 so that the runway is not used for departures to the north and arrivals to the south, except under the following limited circumstances, described on page A.3-17 of the FEIS: (1) safety reasons; (2) weather conditions; or (3) temporary runway closures due to snow removal, due to construction, or due to other activities at the airport.
>
> [[34]Letter from Jane F. Garvey, FAA Administrator, to Minneapolis Mayor Sharon Sayles Belton, dated July 15, 1998.]

As noted, the FAA has addressed this matter directly in a letter to Mayor Sharon Sayles Belton dated July 15, 1998, a copy of which is attached hereto as Exhibit A. In his letter, the FAA states that if a Record of Decision is issued approving the proposed Runway 17/35, the above-referenced language would be included in that decision and in the applicable tower order. This language is taken from the text and table on page A.3-17 (Appendix A) of the Dual Track Airport Planning Process, Final Environmental Impact Statement, May, 1998 (DTAPP/EIS). Table A.3-7 of the DTAPP/EIS, "Runway Use for MSP Alternative - Average Annual Use" indicates that less than 0.05 percent of arrivals would be from the north, and less than 0.05 percent of the departures would be to the north on Runway 17/35 and that the projected use of Runway 17/35 is consistent with MAC's goals and intent.

Subject to the above operational requirements, the Commission agrees that Runway 17/35, the North South Runway, should be operated in a manner designed to maximize the airfield capacity of the Airport, while reducing noise in the City of Minneapolis and equitably distributing noise throughout the community. Further, in support of this commitment, the Commission agrees during the term of this Agreement not to seek to permanently close down one or both of the existing parallel runways without the approval of the City, including a commitment not to spend Commission funds, or seek or spend federal funds, PFC revenue or other funds for such a purpose and not to request a change in the runway use system in place at the Airport which would be inconsistent with this Section.

6. During the period for which this Agreement is effective, the Commission agrees that it shall not acquire for use as part of the air operations area land within the boundaries of the City located north of State Highway 62 (commonly known as "the Crosstown Highway") without approval of the City except for the purposes of runway approach protection, as part of a mutually agreed upon part of the Part 150 program or to locate navigational aids.

7. The Commission agrees to immediately expand the Noise Monitoring System in the area affected by the existing parallel runways.

8. The Commission hereby affirms its overall commitment to a fairer distribution of air traffic, specifically, its commitment prior to completion of the North South Runway to use Runway 4/22 to distribute traffic to other parts of the Metropolitan area.

9. Possible Acquisition of BOM Land and Lease/Acquisition of VA Land - Limitation on Uses

A. The Commission is considering acquisition of property from the United States of America, Department of the Interior, known as the Bureau of Mines land ("BOM land"), located north and east of the Airport between the Mississippi River and State Highway 55, and currently within the Mississippi National River and Recreation Area.

B. MAC acknowledges that:

- the BOM land lies substantially within a runway protection zone of the Airport and is subject to use restrictions under MAC's zoning requirements, federal regulatory and statutory provisions, and under Minnesota State law;
- should it acquire the BOM land, it would do so to assure compatible land uses within this area which requires that the BOM land be undeveloped.

C. The City and MAC acknowledge that the BOM land, which is included within the Mississippi National River and Recreation Area established by Congress, possesses natural, scenic, open space, educational and recreational values of great importance to the residents of the City and of the State of Minnesota. In addition, the BOM land is situated among numerous sites of historic significance and open space parks, including Fort Snelling State Park, the Camp Coldwater Historic Site, and the Minnehaha Regional Park, and provides scenic open space, access to historic sites, and access to scenic vistas of the Mississippi River. The BOM land is also located adjacent to a scenic trail suitable for biking, hiking, and other forms of light outdoor recreation.

D. The City has identified several goals for the use of the BOM land, should it be acquired by MAC. These goals include but are not limited to the following: 1) the BOM land should be used as open space and for light recreation; 2) the BOM land should be accessible to the general public, including but not limited to a bike trail linking Minnehaha Regional Park and with Fort Snelling State Park; 3) the historic sites resources of the BOM land should be preserved and made available to the community and the region; and 4) the BOM land should not be used for a third parallel runway, nor for any supporting use for a third parallel runway.

E. MAC agrees that should it acquire the BOM land, with the sole exception of limited, non-public/airport employee parking and non-public automobile storage described below, the Property shall be limited in its use to open space, wildlife habitat, and light outdoor recreation purposes only. Only these uses will be permitted. Prohibited uses include but are not limited to use of the BOM land for construction of airport runways, taxiways, aprons, hangars, terminals, commercial rental car activity, commercial parking operations, Park and Ride sites, and all other commercial operations, except those uses expressly provided in this section.

F. Demolition of buildings. MAC agrees that should it acquire the BOM land, all buildings presently on the BOM land shall be demolished within sixty (60) months of the date of this Agreement, and the land returned to a natural vegetative state consistent with the use of the BOM land for scenic open space and light outdoor recreation purposes. Such demolition shall begin within twenty-four (24) months of the date of this Agreement.

G. MAC agrees that if it acquires the BOM land, it will use its best efforts to enter into an agreement with an appropriate public entity for the operation and maintenance of the Property consistent with the restrictions and goals detailed herein, and consistent with the restrictions on the use of the property imposed by applicable statutes ordinances and regulations within one year from the date of this Agreement. This obligation shall extend to the year 2050. Further if such entity believes that the goals herein can be accomplished without demolition of one or more of the buildings currently on the BOM land, such entity shall present to MAC and the City a comprehensive plan for the use of the BOM land and any such building, and such plan must be approved by the City and by MAC within two years of the effective date hereof, or MAC will begin the demolition of the buildings as described above. MAC further agrees that it, and the entity with whom it contracts hereunder, will work with the State Historic Preservation Office and others to assure that historic sites on the BOM land are protected and made accessible to the public.

H. The only exceptions to the limitation on permitted uses is for the purpose of providing nonpublic/airport employee parking and/or for nonpublic automobile storage. MAC agrees that the parking lots permitted hereunder shall be located in the area described in Exhibit 2 of the Conservation Easement attached hereto as Exhibit B, shall encompass no more than seven (7) acres in the aggregate, shall be landscaped to make the appearance of the parking lots consistent with the overall open space goals described herein, shall be surface lots only, and shall provide space for no more than eight hundred fifty (850) automobiles in the aggregate.

I. MAC agrees that, if it acquires the BOM land, it shall notify the City sixty (60) days before undertaking any construction activities on the BOM land, and shall require any public entity operating and maintaining the BOM land or any part thereof to notify the City before it undertakes any construction activities on the BOM land.

J. MAC agrees that, if it acquires the BOM land, it will not erect, construct or place, nor permit the erection, construction or placement of, any building on the BOM land, except for non-commercial structures not to exceed ten feet in height and only for uses incidental to permitted uses of the property.

K. MAC agrees that, if it acquires the BLM land, it shall grant the conservation easement attached hereto as Exhibit B to the National Park Service through the year 2050. The Commission shall also grant a third-party right to enforce this conservation easement to the City. The Commission also agrees that it shall work with other agencies in strengthening the link between Minnehaha Regional Park and Fort Snelling State Park, including making land available or accessible for a trail connection of at least fifty feet in width for the length of the trail connection.

L. If the Commission enters into a lease regarding the Veterans' Administration property located adjacent to, and immediately west of, the Bureau of Mines property, and currently within MNRAA ("the VA property") or acquires some other property interest

other than full ownership in fee simple, the lease or other agreement shall restrict the use of the property to open space and light recreational use in a manner consistent with the restrictions on the usage of the BOM land as set forth herein and in Exhibit B. If for any reason the Commission is unable to incorporate such restrictions into the lease or other agreement pertaining to the VA property, the Commission shall restrict the use of the property by some other mechanism acceptable to the City. If the Commission acquires the VA property in fee simple, it agrees that it shall restrict the use of the VA in a manner consistent with the restrictions herein imposed upon the BOM land and that it shall grant a conservation easement to the National Park Service, including a third-party right to enforce the conservation easement by the City, for the VA property. Such conservation easement shall restrict the use of the property to open space and light recreation uses, and shall in form and content be similar to Exhibit B.

10. This Agreement constitutes the entire understanding of the parties hereto and shall not be subject to any alteration, supplement or repeal except as agreed to in writing. This Agreement shall be binding upon the parties and their successors and assigns.

METROPOLITAN AIRPORTS COMMISSION

By: _____

Dated: 11-13-98

CITY OF MINNEAPOLIS

By: _____
MAYOR

Dated: 11-16-98

Approved as to form:

By: _____
City Attorney's Office

Attest: _____
~~Assistant~~ City Clerk

Countersigned: _____
Finance Officer

LIST OF EXHIBITS AND ATTACHMENTS

Exhibit A Letter dated July 15, 1998 to Mayor Sharon Sayles Belton from the FAA

Exhibit B Deed of Conservation Easement

LIST OF EXHIBITS AND ATTACHMENTS

Exhibit A Letter dated July 15, 1998 to Mayor Sharon Sayles Belton from the FAA

Exhibit B Deed of Conservation Easement

U.S. Department of Transportation
Federal Aviation Administration

Office of the Administrator

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL 15 1998

The Honorable Sharon Sayles Belton
Mayor of City of Minneapolis
340 South 5th Street
Minneapolis, Minnesota 55415

Dear Mayor Sayles Belton:

Secretary Slater has asked me to respond to your later discussions with the Secretary and myself following my December 19, 1997, letter to you. This letter is to provide further clarification of the Federal Aviation Administration's (FAA) position on the matters that we have discussed.

The City of Minneapolis has raised understandable concerns about the possible use of the new runway (Runway 17/35) for departures to the north and arrivals to the south. We recognize that limited use of the north/south runway to and from the north was a principal consideration underlying the City Council approval of a resolution expressing support for a new runway.

Our goal is to increase capacity at Minneapolis Saint Paul (MSP) Airport in a safe, efficient, environmentally-sound way, and the extent of use to and from the north forecast for the new runway is based upon this very need. The needed and expected increases in the MSP Airport's capacity are facilitated by minimizing use of the proposed new runway for departures to the north and arrivals to the south. Although the FAA cannot prejudge the outcome of the ongoing environmental review for the new runway, it nonetheless bears repeating that runway projected use is based upon operational, efficiency, and safety concerns. Moreover, the noise modeling and other information under development for the environmental impact statement are based upon the proposed runway being used in this manner.

The Metropolitan Airports Commission (MAC), as owner and operator of MSP, may ask the FAA to consider changes in runway use and flight paths for noise reasons. If the FAA

decides to approve the proposed new Runway 17/35, it is the FAA's understanding that, pursuant to an agreement that may be executed between MAC and the City, MAC would not ask the FAA to make any changes in runway use at MSP that would be inconsistent with the descriptions and assumptions regarding use of the new Runway 17/35 which are in the Dual Track Airport Planning Process Environmental Impact Statement and include no routine use of the runway to or from the north.

Consistent with its ordinary policy, the FAA otherwise would only consider changes in runway use to assure the highest standards of safety and efficiency in use of the navigable airspace. If the proposed runway is approved, barring unforeseen circumstances that derogate from safety and efficiency, the FAA intends to manage and regulate the operation and use of the new proposed north/south runway in the manner described in the FAA's earlier letter dated December 19, 1997, and clarified herein.

Specifically, if a Record of Decision is issued approving the proposed Runway 17/35, the FAA will include the following language in that decision and in the applicable tower order:

> "Tower personnel will utilize Runway 17/35 in accordance with the conditions set forth in the Dual Track Airport Planning Process Final Environmental Impact Statement (DTAPP/EIS). Therefore, tower personnel will utilize Runway 17/35 so that the runway is not used for departures to the north and arrivals to the south, except under the following limited circumstances that are described in the DTAPP/EIS: (1) safety reasons, (2) weather conditions, or (3) temporary runway closures due to snow removal, due to construction or due to other activities at the airport."

So long as the parallel runways remain in operation as principal MSP air carrier runways, we foresee no conditions that would cause the FAA to manage and regulate the use of the proposed new north/south runway in a manner inconsistent with the EIS and the tower order language referenced above. In this context, the FAA agrees that it is reasonable for the City of Minneapolis to rely on this assumption concerning operation of the north/south runway in its land use planning, its regional planning, and in its

determination to forgo litigation challenging the FAA's approval of the new runway.

In managing and regulating the MSP runways and surrounding navigable airspace, I assure you and the residents of Minneapolis that the FAA intends to do so in a manner completely consistent with the commitments made above and in my letter to you of December 19, 1997.

Sincerely,

Jane Garvey

Jane F. Garvey
Administrator

cc: Mr. Jeff Hamiel
Executive Director, Metropolitan Airports Commission

Mayor I know all of our staffs worked very hard on this — glad we reached a good put comi'

Jane

DEED OF CONSERVATION EASEMENT

This grant Deed of Conservation Easement (this "Deed") is made this ___ day of _____, 199_, by the Metropolitan Airports Commission, a political subdivision of the State of Minnesota ("Grantor"), in favor of the National Park Service, an agency of the government of the United States of America ("Grantee").

WITNESSETH:

Whereas, the Grantor is sole owner in fee simple of certain real property in Hennepin County, Minnesota, more particularly described in Exhibit 1 attached hereto and incorporated by reference (the "Property"); and

Whereas, the Property lies substantially within a runway protection zone of the Minneapolis-St. Paul International Airport and is subject to use restrictions under local zoning requirements, federal regulatory and statutory restrictions, and Minnesota state law; and

Whereas, the Property was acquired by the Grantor to assure compatible land uses within this area which requires that this property be undeveloped; and

Whereas, the use of the Property as open space will bring tangible benefit to the condition and security of the Property as a runway protection zone and airport buffer zone; and

Whereas, the Property possesses natural, scenic, open space, educational, and recreational values (collectively, "Conservation Values") of great importance to Grantor, the people of the City of Minneapolis, and the people of the State of Minnesota; and

Whereas, in particular, the Property is situated among numerous sites of historic significance and open space parks, including Fort Snelling State Park, the Camp Coldwater State Historic Site, and the Minnehaha Regional Park, and provides scenic open space, access to historic sites, and access to scenic vistas of the Mississippi River, and is also located adjacent to a scenic trail suitable for biking, hiking, and other forms of light outdoor recreation; and

Whereas, the specific Conservation Values of the Property are further documented in an inventory of relevant features of the Property ("Baseline Documentation"), to be completed within thirty days of the date of this Deed and kept on file at the Minneapolis offices of Grantee and the City of Minneapolis, which consists of reports, maps, photographs, and other documentation that the parties agree to provide, collectively, an accurate representation of the Property at the time of this grant, and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and

Whereas, the United States Congress, in recognition of the special area that includes the Property and surrounding areas, has established the Mississippi National River and Recreation Area ("MNRRA"), within which the Property is completely included, this deed is granted in furtherance of the Congressional purposes of the goals of MNRAA, and in furtherance of

cooperation between the federal and local levels of government in preserving and protecting such Conservation Values; and

Whereas, Grantor intends to use the Property for runway protection and airport buffer zones, and intends also to preserve and maintain the Property as open space; and

Whereas, Grantor intends that the Conservation Values of the Property, and public access to the Property, be preserved and maintained; and

Whereas, Grantor and Grantee intend to convey to the City of Minneapolis the right to enforce appropriately the protection of the Conservation Values of the Property.

GRANT

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, and pursuant to the laws of the State of Minnesota where not hostile to applicable federal statute and the federal purposes in establishing the MNRRA, and in particular pursuant to Minnesota Statute 84C.01 et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement through December 31, 2049 over the Property of the nature and character and to the extent hereinafter set forth (the "Conservation Easement").

1. Purpose.

It is the purpose of the Conservation Easement to assure that the Property will be retained in its scenic, historical, forested, and open space condition, and to assure the protection of the open space and light outdoor recreational uses of the Property. Grantor and Grantee intend that the Conservation Easement will confine the use of the Property to such activities that enhance or are consistent with the Conservation Values of the Property and the purposes of the Conservation Easement.

2. Holder.

In furtherance of the Congressional purposes in establishing the MNRRA, and to protect the Conservation Values of the Property, the Conservation Easement shall be held and administered on behalf of the United States by the Grantee. Grantee accepts donation of this Conservation Easement by authority of Pub. L. No. 100-696, § 705(c)(1), 102 Stat. 4599, 4605 (1988). The Grantee, being the agency within the Department of Interior with primary coordinating responsibility for the MNRRA, shall be the holder of the Conservation Easement as defined in Minnesota Statute 84C.01. The Conservation Easement, however, shall be granted, held, and enforced, whether MNRAA continues to exist under federal statute. The Grantee shall have authority to enforce the terms of this Conservation Easement, as described below. By affixing its signature below, the lawful representative of the Grantee signifies its status as the holder of the Conservation Easement pursuant to Minnesota Statute § 84C.02(b). The terms of

the Conservation Easement shall become effective and enforceable upon recordation of this Deed in accordance with Minnesota state law. Grantor, its successors and assigns, shall be responsible for maintaining the condition of the Property in a manner consistent with the purpose of the Conservation Easement.

3. Enforcement; Third Party Enforcement by the City of Minneapolis.

Grantee shall have the obligation to enforce the terms of this Deed, and shall be primarily responsible for enforcing the Deed. The City of Minneapolis shall have the right, but not the obligation, to ensure independent and co-equal enforcement of the Deed, pursuant to Minnesota Statute § 84C.01(3). This third-party right of enforcement is granted to the City of Minneapolis in recognition of the importance of the Conservation Values of the Property to the people of the City of Minneapolis, and in furtherance of the Congressional aim of local government participation in the protection of the MNRRA. Grantee, or the City of Minneapolis, may:

(a) Take such actions as are necessary to preserve and protect the Conservation Values of the Property; and

(b) Enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of the Conservation Easement; and

(c) Take legal action to prevent any activity or use of the Property that is inconsistent with the purposes of the Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies as set forth below.

4. Prohibited Uses.

4.1 Uses. With the sole exception of the limited non-public/airport employee parking and non-public automobile storage described in paragraph 4.2, below, the Property shall be used and maintained for open space, wildlife habitat, and light outdoor recreation purposes only. Only uses of the Property which enhance or are consistent with the Conservation Values of the Property shall be permitted. Without limiting the breadth of this requirement, prohibited uses shall include use of the Property for construction of airport runways, taxiways, aprons, hangars, terminals, rental car lots or operations, commercial parking operations, Park and Ride, and all other commercial operations.

4.2 Airport Employee Parking and Non-Public Automobile Storage. Limited, non-public/airport employee parking and non-public automobile storage may be established only within an area as described in Exhibit 2, attached, for the solely and exclusively for these purposes. Design of any parking lot in the area described in Exhibit 2 shall incorporate appropriate landscaping to make the appearance of the parking lot consistent with the Conservation Values of the Property. Such parking lots/storage lots shall be surface lots only, and shall provide spaces for no more than eight hundred fifty (850) automobiles in the aggregate.

4.3 Buildings. All buildings presently on the property shall be demolished within 60 months of the date of this Deed, and the land returned to a natural vegetative state consistent with the use of the Property for scenic open space and light outdoor recreation purposes. Such demolition shall begin within 24 months of the date of this Deed. No buildings shall be erected in future, except for non-commercial structures no more than ten feet in height, for uses only incidental to permitted uses of the Property. It is recognized that if an entity with whom the Grantor has an agreement to operate and maintain the Property proposes a comprehensive plan to use one or more of the buildings currently on the Property for the purpose of enhancing the Conservation Values, and such plan has received the approval of the City of Minneapolis within two years from the granting of this Conservation Easement, the Grantor will not be required to demolish said building(s). At such time thereafter as such building(s) are no longer needed, they shall be demolished by the Grantor. MAC further agrees that it, and any entity with whom it may contract to operate and maintain the Property, will work to assure that historic sites on the Property are protected and made accessible to the public.

5. Notice and Approval.

5.1 Notice of Intention to Undertake Certain Permitted Activities. The purpose of requiring Grantor to notify Grantee and the City of Minneapolis prior to undertaking certain permitted activities, as provided in paragraph 5.3, is to afford Grantee or the City of Minneapolis an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is consistent with the purpose of the Conservation Easement. Whenever notice is required Grantor shall notify Grantee and the City of Minneapolis in writing not less than 60 days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee and the City of Minneapolis to make an informed judgment as to its consistency with the purpose of the Conservation Easement.

5.2 Activities Requiring Notice. Written notice shall be provided to the Grantee and the City of Minneapolis, before the Grantee or any entity with whom it has a contract undertakes any construction activities on the Property, including but not limited to any parking or automobile storage lot as described in paragraph 4.2 above. Written notice shall also be provided to the Grantee and the City of Minneapolis of the demolition of the buildings on the Property as required by paragraph 4.3, above, and for the design and landscaping of any parking lot in the limited area permitted under paragraph 4.2, above.

5.3 Notices. Any written notice required by this Section 5, and all other written communication related to this Deed, shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor :	General Counsel Metropolitan Airports Commission 6040 28th Avenue South Minneapolis, MN 55450
To Grantee:	Superintendent Mississippi National River and Recreation Area 175 East Fifth Street, Suite 418, Box 41 St. Paul, MN 55101-2901
To the City of Minneapolis:	City Attorney City of Minneapolis 300 Metropolitan Centre 333 South Seventh Street Minneapolis, MN 55402-2453

6. Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee or the City of Minneapolis determine that a violation of the terms of the Conservation Easement has occurred or is threatened, Grantee or the City of Minneapolis shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purposes of the Conservation Easement, Grantee or the City of Minneapolis shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of the Conservation Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee or the City of Minneapolis.

6.2 Injunctive Relief. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee or the City of Minneapolis, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the 30 day period, or fails to continue diligently to cure such violation until finally cured, Grantee or the City of Minneapolis may obtain compliance with this Conservation Easement by bringing an action at law or in equity in a court of competent jurisdiction to enforce the terms of the Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction or through other remedies, and to require the restoration of the Property to the condition that existed prior to injury.

6.3 Emergency Enforcement. If either Grantee or the City of Minneapolis, in their sole discretion, determine that circumstances require immediate action to prevent or

mitigate significant damage to the Conservation Values of the Property, either entity may pursue its remedies under this section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire.

6.4 Scope of Relief. The rights of Grantee and the City of Minneapolis under this section apply equally in the event of either actual or threatened violations of the terms of the Conservation Easement. Grantor agrees that the remedies at law of Grantee and the City of Minneapolis for any violation of the terms of the Conservation Easement are inadequate and that Grantee or the City of Minneapolis shall be entitled to the injunctive relief described herein, both prohibitive and mandatory, in addition to such other relief to which Grantee or the City of Minneapolis may be entitled, including specific performance of the terms of the Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity..

7. Access.

In recognition of the value to the public of the Conservation Values of the Property, the general public shall have access to the Property, subject to reasonable health and safety regulations by the government entity with jurisdiction to establish or enforce such regulations. Grantor shall have responsibility to ensure reasonable public access to the Property. The Grantor and Grantee acknowledge that the Grantor intends to enter into an agreement with a public entity such as the Minneapolis Park and Recreation Board, the Suburban Hennepin County Regional Park Board or the Minnesota Department of Natural Resources for the operation and maintenance of the Property, consistent with the Conservation Values and restrictions set forth in this Deed.

8. Costs, Legal Requirements, and Liabilities.

Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage and the maintenance of reasonable public access to the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by the Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

9. Subsequent Transfers.

Grantor agrees to incorporate the terms of the Conservation Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and the City of Minneapolis of the transfer of any interest at least thirty

(30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

10. Recordation.

Grantee shall record this instrument in a timely fashion in the official records of Hennepin County, Minnesota, and may re-record it at any time as may be required to preserve its rights in this Conservation Easement.

11. General Provisions.

11.1 Controlling Law. The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Minnesota.

11.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed in favor of the grant to effect the purpose of this Deed and the policy and purpose of Minnesota Statute § 84C.01 et seq.

11.3 Severability. If any provision of this Deed, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

11.4 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussion, negotiations, understandings, drafts, or agreements relating to the Conservation Easement, all of which are merged herein.

11.5 Successors. The covenants, terms, conditions, and restrictions of this Deed shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its personal representatives, successors, and assigns, and the above named Grantee and its successors and assigns.

11.6 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

METROPOLITAN AIRPORTS COMMISSION

Date:_____

_____
Grantor

NATIONAL PARK SERVICE

Date:_____

_____
Grantee (acknowledging acceptance by NPS)

Attachments: Exhibit 1 (Map of Property, with Legal Description of Property to be included within thirty days of the date of this Deed.)

Exhibit 2 (Map of Non-public Parking/Automobile Storage Area, with Legal Description to be included within thirty days of the date of this Deed.)

TOWNSHIP 28 NORTH, RANGE 23 WEST, OF THE FOURTH P

DEPENDENT RESURVEY AND SURVEY

U.S. BUREAU OF MINES, TWIN CITIES RESEARCH CENTER, WITHIN THE FOR

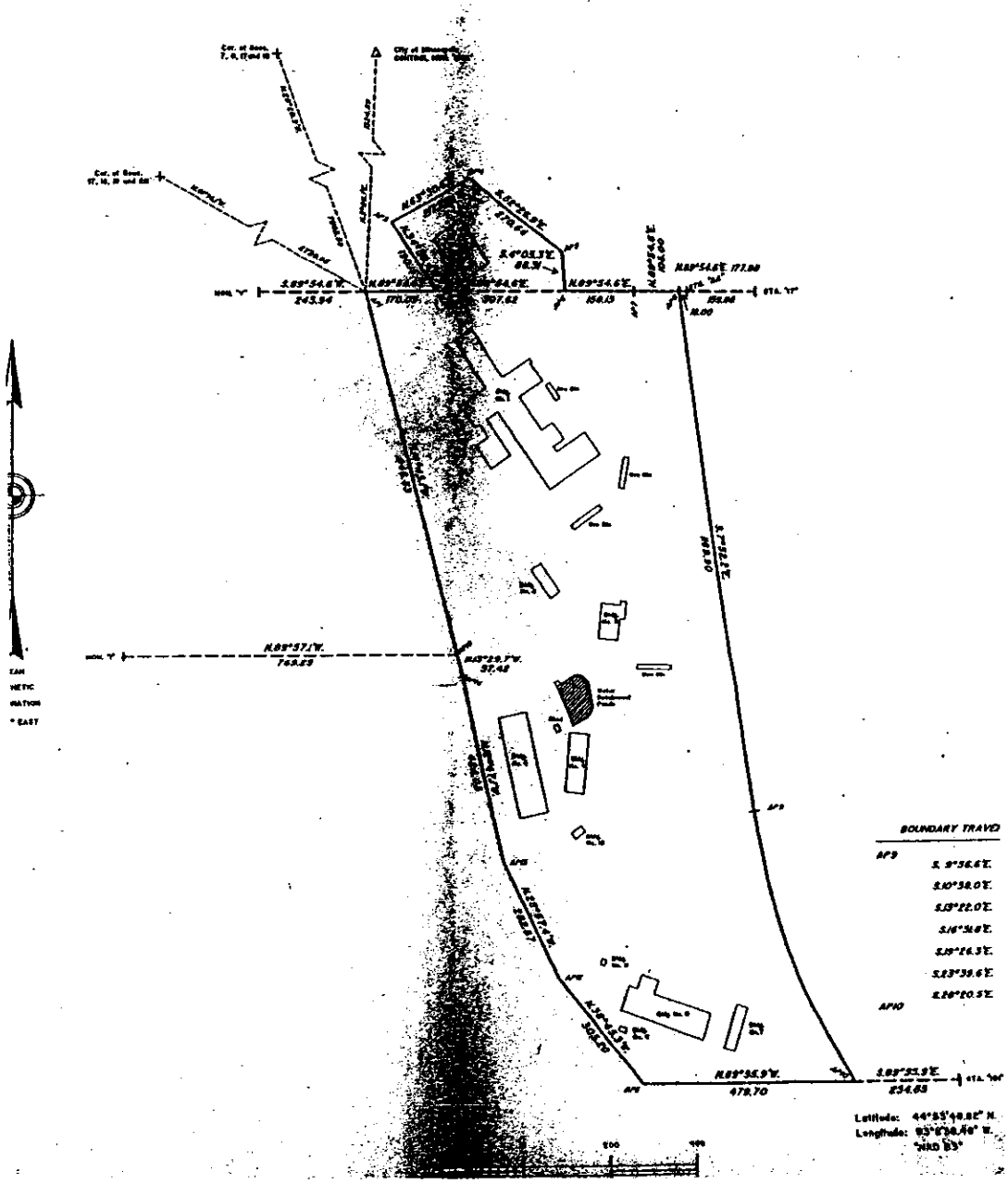
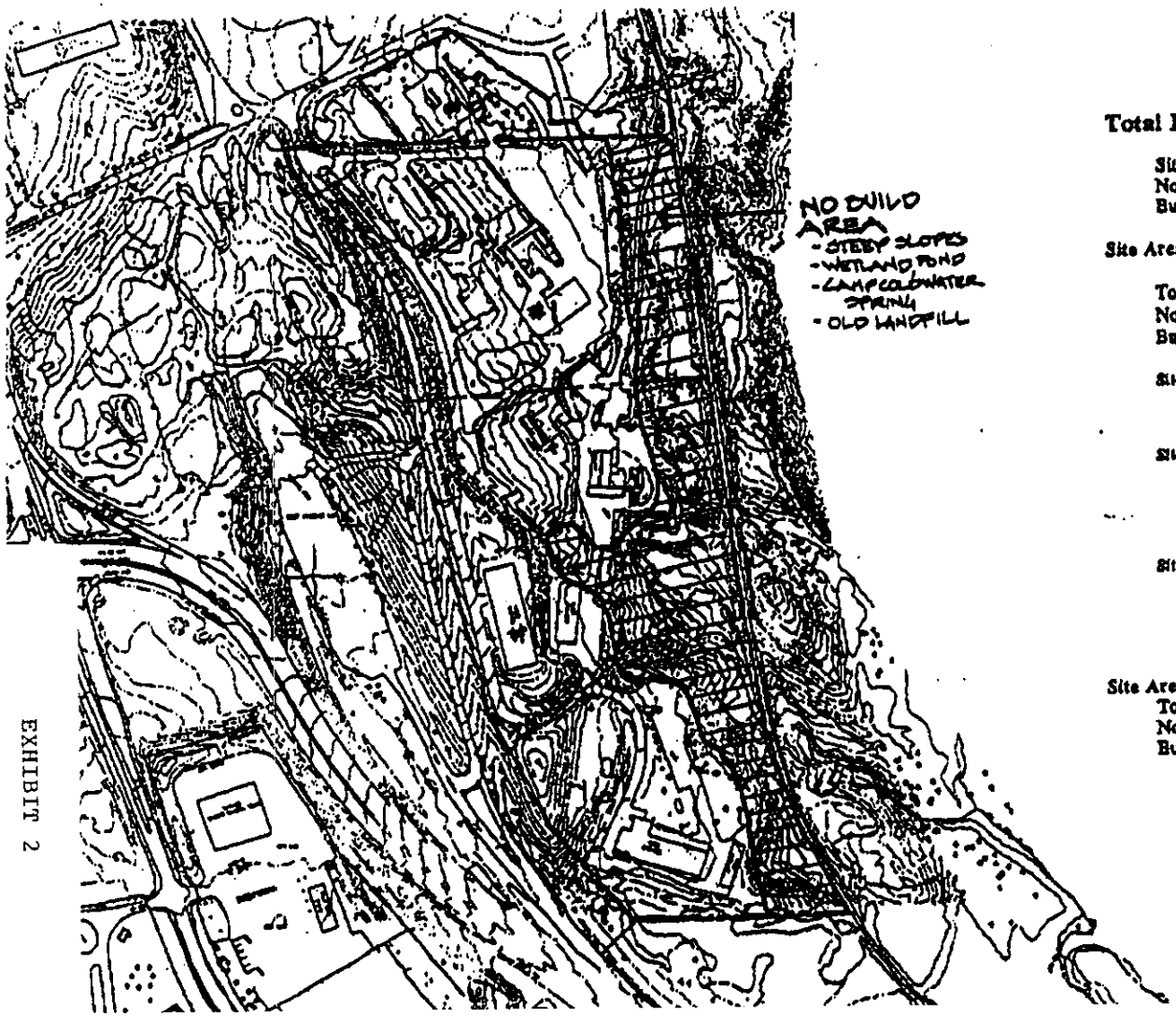


EXHIBIT 1



Total Bureau of Mines Site

Site	27.32 AC
Non-Buildable	7.4 AC
Buildable	19.92 AC

Site Area Within Zone B

Total Site	19.9 AC
Non-Buildable	4.8 AC
Buildable	15.1 AC

Site - Building #9

Total Site	1.6 AC (All Buildable)
Building	9,800 SQ.FT. Gross

Site - Building # 1

Total Site	8.9 AC
Non Buildable	1.7 AC
Buildable	7.2 AC
Building	94,979 SQ.FT. Gross

Site - Site Building #11

Total Site	9.4 AC
Non-Buildable	3.1 AC
Buildable	6.3 AC
Building	14,000 SQ.FT. Gross

Site Area Outside Zone B (Southern Portion of the Site)

Total Site	7.4 AC
Non-Buildable	2.6 AC
Buildable	4.8 AC

EXISTING CONDITIONS
FIGURE 1

EXHIBIT 2

Exhibit D

Richfield-MAC Noise Mitigation Agreement

A. Environmental

1. MAC agrees to develop and implement an air quality monitoring and reporting plan in accordance with the provisions of the EIS and through consultation with the MPCA.
2. MAC agrees to evaluate surface and groundwater flows and implement mitigation measures to ensure no off-airport impacts in accordance with the provisions of the EIS and through consultation with the MPCA.
3. MAC agrees to integrate berms and landscaping, in consultation with Richfield, with development along the west side of MSP airport.
4. MAC agrees to develop lighting in the west side building area in such a manner as to minimize impacts on Richfield.
5. MAC accepts the findings of the Minnesota Environmental Quality Board (Exhibit A, 28 through 37) adopted on November 18, 1998 regarding low frequency noise.

B. Mitigation

1. MAC agrees to expedite an update of the Part 150 Program in order to re-evaluate and revise the airport DNL contours, including those impacting the city of Richfield.
2. MAC agrees to flexible use, at Richfield's discretion and consistent with the revised Part 150 Program, of funds associated with proposed soundproofing within the DNL 60 in Richfield.
3. MAC agrees to pursue amending the Runway 4/22 Record of Decision (ROD) to permit flexibility in the use of funds identified for mitigation of Runway 4/22 Runway Use System impacts in Richfield by Richfield at their discretion and subject to FAA approval at a point in time when MAC is assured that there will be no delays caused by Richfield in constructing the North/South Runway.
4. Richfield agrees to be responsible for the use of all Part 150 funds reallocated to the city by the MAC through the provisions of this agreement.
5. MAC and Richfield agree to jointly petition the FAA for a resolution that ensures Richfield will maintain ownership of the properties acquired through this mitigation process. The MAC does not intend or desire to retain ownership of properties in Richfield west of Trunk Hwy 77.
6. MAC agrees to immediately address the issue of low frequency noise and vibration. To this end, MAC agrees to expedite an evaluation of low frequency noise and aircraft noise induced vibration and mitigation, using the process described in Exhibit B (attached) within 100 days of the date of the agreement.
7. MAC agrees to incorporate the recommendations of the Low Frequency Noise Policy Committee or the mediation process (identified in Exhibit B) in MAC's Part 150 Program unless it determines that those recommendations are not prudent and feasible. MAC's decision regarding implementation of the Policy Committee's recommendations shall be deemed to be a final order of the Commission, subject to judicial review as provided by law. This paragraph is not intended to change the standard of review ordinarily applicable to orders of the Commission.
8. MAC agrees to vigorously pursue, advocate and support all prudent and feasible possibilities for funding of the low frequency noise implementation program as determined in Item B7, including but not limited to state and federal legislation and FAA funding.

C. Commercial Redevelopment

1. MAC agrees, in consultation with Richfield, to assist in encouraging airport and other businesses that must be relocated due to airport expansion to relocate to the Cedar Avenue redevelopment area.
2. MAC and Richfield, with the Metropolitan Council in the lead and hopefully in collaboration with the cities of Minneapolis and Bloomington, agree to propose establishment of an Airport Impact Tax Increment Finance district (TIF), qualified by the unique characteristics of communities closest to large-scale airport operations, to the 1999 session of the Minnesota Legislature.
3. MAC and Richfield agree that a potential use of the funds described above could be used as seed money for the TIF, and MAC agrees to seek FAA approval for this proposal.

D. Transportation Improvements

1. Metropolitan Council agrees to communicate Richfield's needs to MN/DOT in an effort to ensure that the redesign of the TH 77 interchange with 66th Street does not conflict with Richfield's redevelopment plans. The interchange construction should be completed before the new cargo area and North/South Runway become operational.

E. Recreational Assets

1. MAC and Richfield agree to enter into a lease agreement for MAC properties in the northwest quadrant of the TH 62 and TH 77 interchange, and south of TH 62 adjacent to 28th Avenue. The lease would be guaranteed for an agreed-to number of years, after which the lease would be year to year subject to MAC. The agreement is subject to a review of community impacts and study as to whether ballfields, community gardens, an archery range and other facilities can be built in this location near the runway safety zones.
2. MAC agrees to enter into a long-term lease, or consider transfer of ownership, of Taft Park to Richfield.
3. MAC agrees to continue discussing options to redevelop the upper bluff area into an 18-hole golf course and recreation area with the Airport Recreation Coordinating Group.
4. MAC agrees to pay Richfield $460,000 for neighborhood parks affected by the acquisition of New Ford Town and Rich Acres. Richfield may decide to accept this offer or proceed to condemnation.

F. Social Impacts

1. MAC agrees to work with communities to develop a legislative proposal for state funding that addresses the community and social impacts related to the 1996 MSP airport expansion mandate by the Minnesota Legislature. This agreement is consistent with the 1996 Mitigation Committee Report.
2. MAC agrees to assist affected communities to develop a legislative proposal for state funding to address the loss of school and city revenues due to MSP airport expansion.

G. Good Faith

1. MAC agrees to use its best efforts to secure approval of this agreement from the FAA and other decisionmakers with authority or an interest in these matters.
2. Richfield agrees to withdraw current objections to the project, including but not limited to, MPCA, Metropolitan Council, and the Minnesota Legislature. Richfield further agrees not to pursue litigation or other measures in the future that would delay or have the effect of delaying the North/South Runway or any other part of the MSP airport expansion plan in the ROD totaling $1.7 billion. However, nothing prohibits either party from pursuing litigation to enforce the terms of this agreement.
3. The provisions of the agreement are subject to Federal law regarding revenue diversion.
4. MAC and Richfield commit to implement this agreement in a cooperative and collaborative manner.

Richfield-MAC Noise Mitigation Record of Agreement

This agreement, made and entered into as of the dates indicated, by the City of Richfield and the Metropolitan Airports Commission, and witnessed by the Metropolitan Council

CITY OF RICHFIELD

By - _____ 12/18/98
Date

By - _____ 12/18/98
Date

Approved as to form:

_____ 12/18/98
Date

METROPOLITAN AIRPORTS COMMISSION

By - _____ 17 Dec 98
Pierson M. Grieve
Chair
Date

METROPOLITAN COUNCIL

By - _____ 12-23-98
Curt Johnson
Chair
Date

EXHIBIT A

RICHFIELD-MAC Noise Mitigation Record of Agreement
MEQB Findings

Low Frequency Noise

28. The City of Richfield has expressed the concern that the EIS does not address the impacts of low frequency noise on the city and its residents, particularly those residents on the east side of the city nearest the airport and the proposed new north-south runway. The issue of the impact of noise which will be generated by aircraft on the ground during takesoffs and landings and mitigation measures to reduce ground noise impacts was identified during the scoping process and was recognized as an issue in the FEIS, and in responses to comments in the FEIS.
29. Low frequency noise is sound energy with frequencies less than about 100 to 200 Hz (cycles per second). Human hearing is less sensitive to low frequency sound than it is to higher frequency sound. Low frequency sound is the energy that can cause buildings to vibrate; it more readily penetrates through structures than does high frequency sound.
30. Aircraft operations generate sounds of low frequency as well as sounds throughout the frequency spectrum. The low frequency energy is radiated more strongly to the rear and side of the aircraft and can propagate over considerable distances without being reduced as much as is higher frequency sound energy. Aircraft on the runway during takeoffs and landings generate significantly more low frequency noise, or low rumbling sounds, than do aircraft in flight. Noise will be generated on the ground by aircraft using Runway 17-35, the north-south runway, particularly during acceleration for takeoff and while using reverse thrusters for deceleration on landing.
31. The sound energy of runway noise, particularly low frequency noise, causes vibration, rattling of windows, walls, floors, pictures, and other objects in buildings which are exposed to levels of low frequency noise.
32. Higher frequency sounds that are most noticeable to human hearing are generally measured using what is called an A-weighted scale. Low frequency energy is not accurately reflected by the A-weighted scale. A C-weighted scale can more accurately measure these low frequency sounds. The FAA and MAC used the A-weighted scale in the FEIS to analyze noise impacts of the north-south runway.
33. There are no standards in either federal or state law for low frequency sounds. The lack of such standards does not mean that the EIS does not have to address the environmental impacts associated with low frequency noise.
34. Sufficient scientific data and information exist to analyze and describe the impact of low frequency noise, which will result from the operation of the north-south runway. Due to its production of noise, including low frequency noise, the operation of the north-south runway has the potential for significant adverse effects on the people living in Richfield.
35. The City of Richfield has developed a mitigation plan for reducing the impacts of low frequency noise on city residents. The FAA has undertaken efforts to reduce low frequency noise impacts near Baltimore Washington International Airport.

36. The MEQB has no authority to require mitigation of low frequency noise.
37. The MEQB rules recognize that an "EIS shall identify and briefly discuss any major differences of opinion concerning significant impacts of the proposed project on the environment." Minn. Rules part 4410.2300, item H. The record in this case discusses at length the differences between MAC and the City of Richfield over the low frequency noise issue.

EXHIBIT B

STUDY TO BE UNDERTAKEN

1. Not later than twenty (20) days following the date of this Agreement, MAC will establish a Low Frequency Noise Policy Committee to conduct a comprehensive study of low frequency aircraft noise.

2. The Low Frequency Noise Policy Committee shall consist of the following members: Richfield, Metropolitan Airports Commission, Bloomington, and Minneapolis, with members appointed by the body they represent. The Federal Aviation Administration, Minnesota Pollution Control Agency and Metropolitan Council will provide technical assistance to the Policy Committee.

3. The Low Frequency Noise Policy Committee will be charged with the following tasks:

   a. Review all existing information pertaining to SFO, BOS, BWI and LAX and any other published studies of the audibility and impact of low frequency noise, not excluding impacts outside of residential settings.

   b. Conduct such studies as, in the opinion of the Low Frequency Noise Policy Committee, are necessary to address issues related to low frequency noise.

   c. Convene an Expert Panel consisting of Sanford Fidell, Andrew Harris, and a third member to be named by these two, to provide technical input and information to the Policy Committee for consideration.

   d. Present recommendations regarding the appropriate noise metric, compatibility standards, and recommended mitigation programs, measures or techniques.

   e. Prepare a report or reports documenting the Policy Committee's deliberations and conclusions.

4. The work of the panel shall be completed within 100 days from the date of this Agreement, unless a majority of the Policy Committee deem it necessary to extend the time period in order to complete the tasks outlined above. In the event the Low Frequency Noise Policy Committee is unable to reach meaningful recommendations, the issues will be submitted to mediation, to be conducted by a certified mediator.

MAC Resource Commitments

Environmental

- Staff and design consultant time
- Equipment costs

Mitigation

- Staff and consultant time and services
- Lobbying of FAA for approval of mitigation program and modification of Runway 4-22 Record of Decision
- Support of Low Frequency Noise Policy Committee
- Funding for noise mitigation efforts
- Reallocation of funding from Runway 4-22 to area west of Trunk Highway 77

Commercial Redevelopment

- Resources at Legislature regarding TIF establishment
- Staff resources with Richfield regarding encouraging Trunk Highway 77 development

Transportation Improvements

- Lobbying resources for 66th Street Interchange and 77th Street tunnel

Recreational Assets

- Use of MAC property for recreational purposes
- Payment for New Ford Town and Rich Acres neighborhood parks
- Staff resources relative to Fort Snelling Upper Bluff recreational development

Social Impacts

- Assistance at Legislature for program approval and implementation

Exhibit E

AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE
MINNEAPOLIS-ST. PAUL INTERNATIONAL AIRPORT

BETWEEN

METROPOLITAN AIRPORTS COMMISSION

AND

AIRLINE NAME

EFFECTIVE JANUARY 1, 1999

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AIRLINE OPERATING AGREEMENT AND TERMINAL BUILDING LEASE

MINNEAPOLIS-ST. PAUL INTERNATIONAL AIRPORT

THIS AGREEMENT (hereinafter referred to as "Agreement" or "Airline Operating Agreement and Terminal Building Lease"), effective as of January 1, 1999, by and between the Metropolitan Airports Commission, a public corporation under the laws of the State of Minnesota (hereinafter referred to as "MAC" or "Commission"), and Airline Name a corporation organized and existing under the laws of the State of State of Incorporation and authorized to do business in the State of Minnesota (hereinafter referred to as "AIRLINE").

WHEREAS, MAC owns and operates the Airport (as hereinafter defined) and has the power to grant rights and privileges thereto; and

WHEREAS, AIRLINE operates an Air Transportation Business (as hereinafter defined) and desires to use or lease from MAC certain premises and facilities and to acquire from MAC certain rights and privileges in connection with its use of the Airport;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, MAC and AIRLINE agree as follows:

I. DEFINITIONS

A. DEFINITIONS

1. "Affiliated Airline" means an Airline other than AIRLINE that (a) operates aircraft of 72 passenger seats or less at the Airport and is party to a code share agreement with AIRLINE applicable to such Airline's flights to and from the Airport, (b) has signed an Airline Operating Agreement and Terminal Building Lease similar to the form of this Agreement, and (c) has been designated in writing by AIRLINE as an "affiliate" of AIRLINE.

2. "Air Operations Area" and "AOA" shall be interchangeable terms and both terms shall mean any area of the Airport used or intended to be used for landing, taking off, or surface maneuvering of aircraft, including the tug drive and all other areas shown on Exhibit A or as amended by the Executive Director, within that portion of the Airport which is enclosed by fencing, walls, or other barriers and to which access is controlled through designated entry points, but excluding all exclusive leasehold areas.

3. "Air Transportation Business" means the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail by aircraft in commerce, and activities directly related thereto.

4. "AIRLINE" means the entity that has executed this Agreement.

5. "Airline" means an entity (including AIRLINE) that operates an Air Transportation Business at the Airport.

6. "Airport" means Minneapolis-St. Paul International Airport located in Hennepin County, Minnesota, including but not limited to those contiguous and non-contiguous areas shown on Exhibit A attached hereto and incorporated herein, together with any additions thereto, or improvements or enlargements thereof, hereafter made, whether contiguous or not.

7. "Airport Cost Centers" means areas of the Airport and the Airport System to be used in accounting for airport revenues and expenses and for calculating and adjusting certain rents, fees, and charges described herein, as shown in Exhibits B, C, D, E, F and G as such areas now exist or may hereafter be modified or extended, and as more particularly described below. Such Exhibits B, C, D, E, F and G shall be updated periodically to reflect changes to Airport Cost Centers.

   a. "Airfield" means the runways, taxiways, approach and clear zones, safety areas, infield areas, landing and navigational aids, and other facilities and land areas which are not leased to any entity and are required by or related to aircraft operations (landings, takeoffs, and taxiing) at the Airport and other facilities as generally shown on Exhibit B including, but not limited to, the control tower, roads, tunnels, and collection and processing facilities for deicing agents and shall include on-Airport noise costs and Off-Airport Aircraft Noise Costs, but excluding any areas under lease at any time.

   b. "Terminal Building" means the passenger terminal buildings known as the Lindbergh Terminal, the Regional Terminal, the Southwest Addition, Red Concourse, Blue Concourse, and Green Concourse as shown on Exhibit C, including the Temporary Regional Terminal and related facilities at the Airport including, but not limited to, underground parking beneath the Lindbergh Terminal, a portion of the auto rental/parking/terminal people mover, the Ground Transportation Center (the "GTC"), skyways, and the Energy Management Center, together with additions and/or changes thereto (but excluding the Gold Concourse, but including the IAF).

   c. "Terminal Apron" and "Terminal Ramp" shall be interchangeable terms and both terms shall mean the aircraft parking apron serving both the Terminal Complex and the commuter airlines, which latter area is known as the Regional Ramp, as shown on Exhibit D, together with any additions and/or changes thereto.

   d. "Gold Concourse" means the original Loading Pier A which consists of gates 1-9, the Loading Pier A Extension which consists of the balance of the gates (gates 10 through the end of the concourse), and the Gold World Club, all as more specifically depicted on Exhibit E.

e. "Humphrey Terminal" means the Hubert H. Humphrey Terminal building located on 34th Avenue South at the Airport or any replacement facility.

f. "International Arrivals Facility" or "IAF" shall be interchangeable terms and both terms shall mean the space in the Terminal Complex utilized for the arrival and departure of international flights, all as more specifically depicted on Exhibit C.

g. "Reliever Airports" means the general aviation airports owned and operated by Commission, including but not limited to St. Paul Downtown Airport, Flying Cloud Airport, Crystal Airport, Anoka County-Blaine Airport, Lake Elmo Airport, and Airlake Airport.

h. "Landside Area" means the upper and lower level terminal roadways, the inbound and outbound terminal roads, the commercial lane, rental car service and storage areas, a portion of the auto rental/parking/terminal people mover, rental car ready/return areas, skyways, and the automobile parking areas (except the underground parking beneath the Lindbergh Terminal) at the Airport as shown on Exhibit F.

i. "Equipment Buildings" means the building and ground areas at the Airport provided for the storage of equipment owned and/or rented/leased by MAC including, but not limited to, shops, storage facilities, and vehicle parking areas.

j. "ARFF" means the building and ground areas at the Airport provided for aircraft rescue and fire fighting functions.

k. "Police" means the building and ground areas at the Airport provided for police functions.

l. "Administration" means the building and ground areas at the Airport provided for MAC administration activities including, but not limited to, the general office building and the Terminal Building.

m. "Other Areas" means all other direct cost building and ground areas at the Airport provided for general aviation, cargo, aircraft maintenance, and other aviation- and nonaviation-related activities as shown on Exhibit G.

8. "Airport Bonds" means general airport revenue bonds, general obligation bonds, commercial paper, and other forms of indebtedness incurred or assumed by the Commission in connection with the ownership or operation of the Airport System and payable from MAC revenues.

9. "Airport Grants" means those moneys contributed to the Commission by the United States or any agency thereof, or by the State of Minnesota, or any political subdivision or agency thereof, to pay for all or a portion of the cost of a Capital Project.

10. "Airport System" means the Airport and the Reliever Airports.

11. "Capital Cost" (or a phrase of similar import) means the sum of (a) project costs, which includes any expenditures to acquire, construct, or equip a Capital Project, together with related costs such as planning fees, architectural and engineering fees, program management fees, construction management fees, fees for environmental studies, testing fees, inspection fees, impact fees, other direct and allocable fees, and interest during construction, and (b) financing costs, if any, such as capitalized interest, costs of issuance, and funding of mandatory reserves with bond proceeds. In the case of estimates, Capital Costs also include an allowance for contingencies.

12. "Capital Project" means (a) the acquisition of land or easements; (b) the purchase of machinery, equipment, or rolling stock; (c) the planning, engineering, design, and construction of new facilities; (d) the remediation of environmental contamination, including noise mitigation, or expenditures to prevent or protect against such contamination; or (e) the performance of any extraordinary, non-recurring major maintenance of existing facilities that may be acquired, purchased, or constructed by Commission to improve, maintain, or develop the Airport; provided, however, that any single item of the foregoing has a Capital Cost of $100,000 or more and a useful life in excess of three years.

13. "Capital Outlay" means any item that fails to meet the cost threshold and useful life criterion necessary to qualify as a Capital Project.

14. "Commission" and "MAC" shall be interchangeable terms and both terms shall mean the Metropolitan Airports Commission, a public corporation organized and operating pursuant to Chapter 500, Laws of Minnesota 1943 and amendments thereto.

15. "Common Use Formula" means a formula that prorates the cost of a service or space, excluding the Regional Ramp, among those Airlines actually using the service or space as follows: 20 percent of the cost equally among each such Airline and 80 percent of the cost on the basis of that proportion which the number of each such Airline's Enplaned Passengers at the Airport bears to the total number of Enplaned Passengers of all such Airlines at the Airport; provided, however, that Airlines that only operated aircraft with 40 seats or less during the relevant period will be excluded from the proration of the 20 percent of costs, but included in the proration of 80% of costs.

16. "Current Cost Estimate" means as of the date of the estimate, the total project costs in then current dollars, for one or more or all of the 2010 Plan Airfield Programs, as the context shall determine, as estimated by MAC. The Current Cost Estimate shall reflect actual costs for completed projects, bid amounts when available, and change orders accepted by MAC (including contingencies).

17. "Coverage Account" means the Coverage Account established and maintained pursuant to the terms of the Trust Indenture.

18. "Date of Beneficial Occupancy" or "DBO" means the earlier of (a) the date on which the Commission certifies that Premises or Capital Project are available for beneficial use or (b) the date on which beneficial use is first made of Premises or Capital Project; provided, however, that with respect to land and other non-depreciable assets, the date on which beneficial occupancy occurs is the date of closing.

19. "Deplaned Passenger" means all terminating passengers and online or interline transfer passengers deplaned at the Airport, but excluding Through Passengers and Non-Revenue Passengers.

20. "Executive Director" means Commission's Executive Director or such other person designated by the Executive Director to exercise functions with respect to the rights and obligations of Commission under this Agreement.

21. "Enplaned Passengers" means all Originating Passengers and connecting passengers boarded at the Airport, including passengers traveling on frequent flyer coupons, but excluding Through Passengers and Non-Revenue Passengers.

22. "Environmentally Regulated Substances" means any elements, compounds, pollutants, contaminants, or toxic or Hazardous Substances, material or wastes, or any mixture thereof, regulated pursuant to any Environmental Law, including but not limited to products that might otherwise be considered of commercial value, such as asbestos, polychlorinated biphenyls, petroleum products and byproducts, glycol and other materials used in de-icing operations.

23. "Environmental Law (or Laws)" means any case law, statute, rule, regulation, law, ordinance or code, whether local, state or federal, that regulates, creates standards for or imposes liability or standards of conduct concerning any element, compound, pollutant, contaminant, or toxic or Hazardous Substance, material or waste, or any mixture thereof, including but not limited to products that might otherwise be considered of commercial value, such as asbestos, polychlorinated biphenyls and petroleum products and byproducts. Such laws shall include, but not be limited to, the National Environmental Policy Act ("NEPA") 42 U.S.C. Section 4321 et seq., the Comprehensive Environmental Response,

Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. Section 1251 et seq. the Federal Clean Air Act ("FCAA"), 42 U.S.C. Section 7401 et seq., the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq., the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq., and any amendments thereto, as are now or at any time hereafter may be in effect, as well as their state and local counterparts, including but not limited to the Minnesota Environmental Response and Liability Act ("MERLA"), Minn. Stat. Section 115B, the Minnesota Petroleum Tank Release Clean Up Act ("MPTRCA"), Minn. Stat. Section 115C, and the Minnesota Environmental Rights Act ("MERA"), Minn. Stat. Section 116B.

24. "FAA" means the Federal Aviation Administration of the U.S. Government or any federal agencies succeeding to its jurisdiction.

25. "Fiscal Year" refers to Commission's fiscal year and means the twelve-month period commencing on January 1 and ending December 31.

26. "Facilities Construction Credit" and "Facilities Construction Credits" shall mean the amounts resulting from an arrangement embodied in a written agreement of the MAC and an Airline pursuant to which the MAC permits such Airline to make a payment or payments to the MAC which is reduced by the amount owed by the MAC to such Airline as a result of such Airline upfronting and paying for the cost of construction of MAC improvements under such agreement, resulting in a net payment to the MAC by such Airline. The "Facilities Construction Credit" shall be deemed to be the amount owed by the MAC under such agreement which is "netted" against the payment of such Airline to the MAC.

27. "Ground Handling" means providing airside services to an aircraft, including, but not limited to, wing walkers, marshalling, lavatory services, aircraft cleaning and maintenance, luggage transfer and providing catering supplies, but not including fueling or any services provided directly to passengers in the Terminal Complex other than baggage handling.

28. "Hazardous Substances" shall be interpreted in the broadest sense to include any and all substances, materials, wastes, pollutants, oils or governmental regulated substances or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, including but not limited to asbestos and asbestos containing materials, petroleum products including crude oil or any fraction thereof, gasoline, aviation fuel, jet fuel, diesel fuel, lubricating oils and solvents, urea formaldehyde, flammable explosives, PCBs, radioactive materials or waste, or any other substance that, because of its quantity, concentration, physical, chemical, or infectious characteristics may cause or threaten a present or potential hazard to human health or the environment when improperly generated,

used, stored, handled, treated, discharged, distributed, disposed, or released. Hazardous Substances shall also mean any hazardous materials, hazardous wastes, toxic substances, or regulated substances under any Environmental Laws.

29. "International Regularly Scheduled Airline Service" means a status of international service as determined by MAC according to Exhibit H.

30. "Maximum Certificated Gross Landing Weight" means the maximum gross landing weight in thousand-pound units based on the current FAA Type Certificate Data Sheet applicable to the particular type, design, and model of aircraft.

31. "Majority-In-Interest" ("MII") means the Signatory Airlines who (a) represent no less than 50 percent in number of the Signatory Airlines operating at the time of the voting action and (b) paid no less than 40 percent of landing fees incurred by Signatory Airlines during the preceding Fiscal Year. No Airline shall be deemed a Signatory Airline for the purpose of determining a Majority-In-Interest so long as the Commission has given written notice of an event of default to such Airline and the event of default is continuing at the time of the voting action.

32. "Non-Revenue Passengers" means passengers from whom the AIRLINE receives no remuneration or only token remuneration, including employees of an airline and others, but excluding passengers traveling on frequent flyer coupons.

33. "Off-Airport Aircraft Noise Costs" means the capital and operating costs (including legal and administrative costs), net of any amounts for off-airport aircraft noise costs received from nonsignatory airlines and/or federal and state grants, connected to the acquiring of land or interests in land within the 2005 DNL 60 contours of the Airport, soundproofing of existing public and private schools and day care facilities, public hospitals, nursing homes, private single- and multi-family residences, and other categories of land use, and implementing other programs to prevent, reduce or mitigate non-compatible land uses within the 2005 DNL 60 contours of the Airport resulting from aircraft noise emissions from turbojet aircraft. Such costs shall also include but not be limited to liabilities or responsibilities imposed upon MAC for noise in connection with the operation or use of the Airport, or from flights to or from the Airport, or from aircraft thereon, or from takings or any other causes of action related to aircraft noise or for settlement of claims based on such causes of action.

34. "Operation and Maintenance Expenses" (or a phrase of similar import) means, for any Fiscal Year, the costs incurred by the Commission to operate, maintain, and administer the Airport System, including but not limited to items a through j listed below, but excluding operation and maintenance reserves and an optional Coverage Account associated with the planned bond issues after January 1, 1999 in connection with the financing of the 2010 Plan as shown on Exhibit I.

a. Personnel costs, including salaries and wages of Commission employees and temporary workers (including overtime pay), together with payments or costs incurred for associated payroll expenses such as life, health, accident, and unemployment insurance premiums; contributions to pension funds, retirement funds, union funds, and unemployment compensation funds; vacation and holiday pay; post-retirement benefits; and other fringe benefits;

b. Costs of materials, supplies, machinery and equipment, and other similar expenses, which are not capitalized under generally accepted accounting principles as evidenced by a written opinion of MAC's independent auditors;

c. Costs of maintenance, landscaping, decorating, repairs, renewals, and alterations, which are not reimbursed by insurance and which are not capitalized under generally accepted accounting principles as evidenced by a written opinion of MAC's independent auditors;

d. Costs of water, electricity, natural gas, fuel oil, telephone service, and all other utilities and services whether furnished by the Commission or furnished by independent contractors and purchased by the Commission;

e. Cost of operating services, including services for stormwater, airport shuttle bus, service agreements, and other cost of operating services;

f. Costs of premiums for insurance covering the Airport System and its operations maintained by MAC pursuant to this Agreement;

g. Costs incurred in collecting and attempting to collect any sums for the Commission in connection with the operation of the Airport System and the write-off of bad debts;

h. Except to the extent capitalized the compensation paid or credited to persons or firms engaged by the Commission to render advice and perform architectural, engineering, program management, construction management, financial, legal, accounting, testing, or other professional services in connection with the operation of the Airport System;

i. Except to the extent capitalized, the fees of trustees and paying agents, and all other fees and expenses incurred in order to comply with the provisions of a master or supplemental trust indenture; and

j. All other expenses, which arise out of the operation of the Airport System and which are properly regarded as operating expenses under generally accepted accounting principles, provided,

however, that Operation and Maintenance Expenses shall not include any allowance for depreciation, payments in lieu of taxes, the costs of improvements, extensions, enlargements or betterments, or any charges for the accumulation of reserves for capital replacements.

35. "Original Cost Estimate" means for one or more or all of the 2010 Plan Airfield Programs, as the context shall determine, that were approved by a Majority-In-Interest of the Signatory Airlines, the amount of estimated project costs as specified in Exhibit I. The Original Cost Estimate includes contingencies, but excludes financing costs, interest on bonds or on any interim financing obtained by MAC to finance the 2010 Plan, and other deposits and reserves.

36. "Originating Passengers" means Airline passengers for whom the Airport is the point of origin in their air travel itinerary.

37. "Passenger Facility Charges" or "PFCs" means those charges on AIRLINE's passengers using the Airport authorized under Section 111 3(e) of the Federal Aviation Act of 1958, as amended by Section 9110 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, 49 U.S.C. App. Section 1513), or any successor program authorized by federal law, and the rules and regulations promulgated thereunder (14 C.F.R. Part 158, hereafter the "PFC Regulations").

38. "Premises" means the areas at the Airport leased by AIRLINE pursuant to this Agreement, as set forth in Exhibit J.

39. "Rentable Space" means the space in the Terminal Building available for lease to Airlines, concessionaires, and other rent-paying tenants and for public automobile parking. Rentable Airline space is separated into the following categories:

    a. "Exclusive Use Space" means space leased by an Airline for its exclusive use and occupancy.

    b. "Preferential Use Space" means space leased by an Airline on a preferential basis.

    c. "Common Use Space" means space used by an Airline in common with all other Airlines using the space.

40. "Rules and Regulations and Ordinances" means rules, regulations, and ordinances adopted by the Commission pursuant to Minn. Stat. 473.608 et seq. and rules pursuant to such rules, regulations, and ordinances.

41. "Security Area" means the Security Identification Display Area, the Air Operations Area, and any other area defined by the FAA or MAC as an area of restricted access requiring display of appropriate MAC-issued or MAC-approved security identification for unescorted access rights.

42. "Security Identification Display Area" or "SIDA" (or a phrase of similar import) means that area defined as such in the Master Security Program adopted by MAC, approved by the FAA, and amended from time to time.

43. "Signatory Airlines" means Airlines that have executed agreements with the Commission substantially the same as this Agreement.

44. "Stage 2 Operation" means a landing-and-takeoff cycle conducted using a Stage 2 aircraft. A Stage 2 aircraft is determined in accordance with Section 36.1(f), Title 14, Code of Federal Regulations, and Federal Aviation Administration Advisory Circular 36-3G, Estimated Airplane Noise Levels in A-Weighted Decibels, or successor documents.

45. "Stage 3 Operation" means a landing-and-takeoff cycle conducted using a Stage 3 aircraft. A Stage 3 aircraft is determined in accordance with Section 36.1(f), Title 14, Code of Federal Regulations, and Federal Aviation Administration Advisory Circular 36-3G, Estimated Airplane Noise Levels in A-Weighted Decibels, or successor documents.

46. "Terminal Complex" means the passenger terminal facilities consisting of the Terminal Building, the Gold Concourse, and the International Arrivals Facility.

47. "Through Passengers" means Airline passengers for whom the Airport is an intermediate stop in their itinerary between their point of origin and their point of destination, which intermediate stop does not involve a change of plane.

48. "Total Landed Weight" means the sum of the Maximum Certificated Gross Landing Weight for all aircraft arrivals over a stated period of time. Said sum shall be rounded to the nearest thousand pounds for all landing fees.

49. "Trust Indenture" means the Master Trust Indenture between the Commission and Norwest Bank, Minnesota, N.A., as Trustee, dated as of June 1, 1998 (for purposes of this Agreement, without giving effect to any amendments thereto).

50. "2010 Plan" means the construction, acquisitions, and improvements to the Airport System, as described in Exhibit I, as such may be revised from time to time.

51. "2010 Plan Airfield Programs" means the programs in the 2010 Plan that are subject to and have been approved by a Majority-In-Interest of the Signatory Airlines, as described in Exhibit I.

52. "VIP Club" means an area or areas designated by the Commission which AIRLINE has made available primarily for seating of a select group of members and their guests, as well as members (and their guests) of VIP Clubs of other Airlines under reciprocal agreements with such other

Airlines, for which there is a daily or annual membership fee paid by the users in an amount consistent with industry standards.

B. HEADINGS AND CROSS REFERENCES

References in the text of this Agreement to articles, sections, or exhibits of this Agreement, unless otherwise specified, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Agreement.

II. TERM

The term of this Agreement shall begin as of the effective date of this Agreement and end December 31, 2010, except as expressly provided herein (hereinafter referred to as the "Term"), and the rents, fees, and charges established in this Agreement shall apply to said Term.

Cost Center whose gross project costs exceed one million dollars ($1,000,000) without the prior approval of a Majority-in-Interest of Signatory Airlines.

1. Each Capital Project, which is subject to this Section B, shall be deemed to be "Approved by a Majority-In-Interest of Signatory Airlines" unless MAC receives, within forty-five (45) days of mailing the report specified in Section A of this Article, either: (a) written responses from a Majority-In-Interest of Signatory Airlines and such responses signify that a Majority-In-Interest of Signatory Airlines disapprove such Capital Project or (b) a certificate from the chair of the MSP Airport Affairs Committee, with supporting documentation establishing that a Majority-In-Interest of Signatory Airlines disapprove such Capital Project.

2. MAC may proceed with any Capital Project that was disapproved by a Majority-In-Interest of Signatory Airlines; provided, however, that MAC may not recover through airline rents, fees, or charges the Capital Costs, including the Off-Airport Aircraft Noise Costs, of any disapproved Capital Project.

3. Notwithstanding the foregoing and subject to the limitations described below, the 2010 Plan Airfield Programs shall be deemed to be Approved by a Majority-in-Interest of Signatory Airlines.

C. CAPITAL PROJECTS NOT SUBJECT TO MII REVIEW

Without the prior approval of a Majority-In-Interest of Signatory Airlines, MAC may incur costs to plan, design, and construct at such time or times as it deems appropriate, and may recover through airline rents, fees, and charges the costs of the following Capital Projects:

1. Any Capital Project that is not in the Airfield Cost Center except as set forth in D. below.

   MAC plans to undertake a program of improvements to the Airport System known as the 2010 Plan. The 2010 Plan, which is described in Exhibit I, includes Capital Projects that are not in the Airfield Cost Center as well as the 2010 Plan Airfield Programs. Such Capital Projects are so identified in Exhibit I.

2. Any Capital Project in the Airfield Cost Center that is necessary to comply with a rule, regulation, or order of any governmental agency, other than an ordinance of MAC, that has jurisdiction over the operation of the Airport.

3. Any Capital Project in the Airfield Cost Center that is necessary to satisfy a final judgment against MAC rendered by a court of competent jurisdiction.

4. Any Capital Project in the Airfield Cost Center that is necessary to repair casualty damage, the cost of which exceeds the proceeds of applicable

insurance; provided that the MAC may recover the Capital Cost of such repair only to the extent that the cost of reconstruction or replacement exceeds the insurance proceeds available for such purposes.

D. 2010 PLAN AIRFIELD PROGRAMS

1. Subject to the limitations described below, MAC has the right to incur costs to plan, design, and construct at such time or times as it deems appropriate and to recover through airline rents, fees, and charges the costs of the 2010 Plan Airfield Programs, which are identified in Exhibit I.

2. MAC may add, delete, or otherwise modify components of the 2010 Plan Airfield Programs; provided, however, that no such modifications may materially change the scope of any of the 2010 Plan Airfield Programs without the prior approval of a Majority-In-Interest of Signatory Airlines. MAC shall provide Signatory Airlines with annual updates on the progress of the 2010 Airfield Programs including modifications to the 2010 Plan Airfield Program in reasonable detail.

3. MAC will use its best efforts to obtain a letter of intent for AIP discretionary grants to fund eligible costs of the Runway 17/35 Program.

4. The Original Cost Estimate (stated in 1998 dollars) of each 2010 Plan Airfield Program is presented in Exhibit I. MAC may not exceed the Original Cost Estimate of any 2010 Plan Airfield Program except as set forth in this Section.

5. MAC may revise the Original Cost Estimate of a 2010 Plan Airfield Program as follows:

   a. From time to time to reflect material scope changes approved by MAC and by a Majority-In-Interest of the Signatory Airlines; and

   b. Annually in accordance with changes in inflation. Such revision shall be calculated by adjusting the Original Cost Estimate (as revised to reflect material scope changes) by changes in the *Engineering News Record* Construction Cost Index for Minneapolis.

   c. To reflect increases in the cost of the Noise Mitigation Program caused by increases in the size of the approved 65 DNL noise contour, as documented in the FAR Part 150 Program.

6. MAC shall develop and maintain Current Cost Estimates for each of the 2010 Plan Airfield Programs.

7. In the event the Current Cost Estimate of any of the 2010 Plan Airfield Programs exceeds the Original Cost Estimate, as revised, for such Program, then the MAC at its sole discretion shall do one or more of the following:

a. After consultation with Airlines, modify or defer until after 2010 a sufficient number of projects contained in such Program so that the Current Cost Estimate does not exceed the Original Cost Estimate, as revised in accordance with Paragraph D.5. of this Section; or

b. Fund the amount of the excess and exclude depreciation and interest on such amount from the calculation of rents, fees, and charges; or

c. Obtain approval for additional costs from a Majority-In-Interest of Signatory Airlines. The Majority-In-Interest approval is required only on the portion of the Current Cost Estimate that exceeds the Original Cost Estimate, as revised in accordance with Paragraph D.5. of this Section.

2010 Plan Estimated Project Costs
Metropolitan Airports Commission
(1998 dollars in thousands)

Program	Airfield	Ramp	Terminal	Other	Total
Runway Deicing/Holding Pad Program	$49,500	$2,776	$77	$5,697	$58,050
Runway 17/35 Program	454,550			108,850	563,400
Runway 4/22 Development Program	27,000				27,000
Noise Mitigation Program	330,800			80,000	410,800
Taxiway W Construction Program	18,200				18,200
Taxiway C/D Complex Construction Program	16,500				16,500
Airfield Rehabilitation and Repair Program	57,540				57,540
Runway Rehabilitation Program	62,000				62,000
Environmental Remediation Program	6,000		500	1,000	7,500
Public Parking/Auto Rental Expansion Program		880	10,375	177,595	188,850
Green Concourse Extension Program	6,064	21,742	180,682	17,812	226,300
Concourse Expansion & Rehabilitation Program			6,500		6,500
Lindbergh Terminal Rehab & Development Program	1,064		41,824	3,822	46,710
Humphrey Terminal Development Program				77,000	77,000
Sun Country Hangar Program				5,150	5,150
Landside Rehabilitation & Repair Program			37,882	18,240	56,122
Light Rail Transit Program			12,500	57,500	70,000
Reliever Airport Program				132,400	132,400
Reliever Airports Utility Extension Program				11,200	11,200
Miscellaneous Field & Runway	10,500			650	11,150
Miscellaneous Landside Program	23,400	7,510	14,835	87,455	133,200
Total of All Programs	**$1,063,118**	**$32,908**	**$305,175**	**$784,371**	**$2,185,572**

PROJECTS COMPRISING THE 2010 PLAN
METROPOLITAN AIRPORTS COMMISSION

RUNWAY DEICING/HOLDING PAD PROGRAM

Program Scope

This program consists of projects to construct deicing/holding pads adjoining the ends of Runways 12L, 12R, 30L, and 30R.

Projects which are required for the construction of the Runway 12L pad, include the following:

- Demolition of Hangars 1 and 2
- Snow Removal Equipment Storage Building Addition
- Maintenance Fueling System
- Deicing Operations Center

Projects which are required for the construction of the Runway 12R pad, include the following:

- Building Demolition
- Taxiway B Construction

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Runway 12L Pad	1998	1998	$ 11,500,000	$11,500,000			
Hangars 1 & 2 Demolition	1997	1998	700,000	700,000			
Snow Removal Equipment Storage Bldg Addn.	1997	1998	4,750,000	2,375,000	$1,710,000	$47,500	$617,500
Maintenance Fueling Facility	1998	1998	700,000	350,000	252,000	7,000	91,000
Maintenance Campus Site Work	1998	1998	1,850,000	925,000	666,000	18,500	240,500
Deicing Operations Center	1998	1998	4,550,000				4,550,000
Subtotal			**$24,050,000**	**$15,850,000**	**$2,628,000**	**$73,000**	**$5,499,000**
Runway 12R Pad	2001	2002	$15,900,000	15,900,000			
Buildings Demolition	2001	2001	1,000,000	1,000,000			
Taxiway B	2001	2001	2,100,000	2,100,000			
Subtotal			**$19,000,000**	**$19,000,000**			
Runway 30R Pad	2001	2001	**$9,000,000**	**$9,000,000**			
Runway 30L Pad – Temporary	1999	1999	**$3,500,000**	**$3,500,000**			
Subtotal			**$55,550,000**	**$47,350,000**	**$2,628,000**	**$73,000**	**$5,499,000**
Contingency			$2,500,000	$2,150,000	$148,000	$4,000	$198,000
Program Total			**$58,050,000**	**$49,500,000**	**$2,776,000**	**$77,000**	**$5,697,000**

RUNWAY 17/35 CONSTRUCTION PROGRAM

Program Scope
This program consists of projects required to construct a new 8,000-foot by 150 foot concrete runway and associated roadways, taxiways, and appurtenances as shown on the attached graphic and summarized as follows:

- Site Preparation and Utility Installation – Based on preliminary graphics and discussions with HNTB, this project is split 50% Field and Runway and 50% Other. Other includes both MAC and Tenant facilities.
- Demolition On and Off Airport – 100% Field and Runway
- Runway, Taxiways, Taxilanes and Connectors – Based on graphics from HNTB and discussions with Airport Development the split is as follows;
  - West Side Taxiway – Common Use charged to all west side tenants proportionately (2A)
  - West Side Connectors – Common Use charged to all west side tenants proportionately (2B0
  - Runway – 100% Field and Runway (2C)
  - East Side Taxiway – 100% Field and Runway (2D)
  - East Side Connectors – 100% Field and Runway (2D)
  - Deicing Pad – 100% Field and Runway (2E)
  - Taxiway and Connectors through Midfield – 2/3 Midfield allocated proportionately to tenants and 1/3 Field and Runway (2F)
- Infield Roadways and Service Roads – 2/3 allocated proportionately to tenants and 1/3 Field and Runway
- Aircraft Apron Areas – allocated to the specific tenant
- Airside Service Roads and ARFF Roads – 100% Field and Runway
- Landside Roadways and 24th Ave. Bridge – allocated 1/2 Field and Runway and 1/2 MAC Roads
- Runway 17/35 and 4/22 Roadway Tunnels – Based on 9/23 letter from HNTB, $3,100,000 would be charged to Midfield Tenants which is the cost of an at-grade roadway to their facilities. The remaining $61,200,000 is proposed to be Field and Runway
- Taxiways Z and Y Bridges – 100% Field and Runway
- 66th Street/TH 77 Interchange – 100% Other (MAC Roads)
- Fueling Facilities – a portion (less than 50%) will be Field and Runway with the balance to be charged to Other Tenants
- NAVAIDS including ILS, RTR,VORTAC, and ALS – 100% Field and Runway
- Tenant Lease Extinguishment – 100% Field and Runway
- Deicing Agent Processing Facility – 100% Field and Runway
- Airfield Electric Distribution Center – 100% Field and Runway
- Airfield Materials and Equipment Storage Facilities – allocated based on the percentages identified in the new Airline Agreement (50% Field and Runway, 36% Ramp, 2% Parking, 2% Public Roads, 4% Cargo Area, 4% Other Public Roads, 1% Terminal and 1% HHH Terminal

- Property Acquisition – 100% Field and Runway

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the project elements listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Site Preparation and Utility Installation	1998	2004	$58,000,000	$29,000,000			$29,000,000
Demolition On and Off Airport	1999	2004	18,200,000	18,200,000			
Runways, Taxiways, Taxilanes, and Connectors	1999	2004	41,000,000	19,500,000			21,500,000
Infield Roads and Service Roads	1999	2004	4,800,000	1,600,000			3,200,000
Aircraft Apron Areas	1999	2004	21,000,000				21,000,000
Airside Service Roads and ARFF Roads	1999	2004	3,700,000	3,700,000			
Landside Roadways and 24th Ave. Bridge	1999	2004	12,900,000	6,450,000			6,450,000
Runways 17/35 and 4/22 Roadway Tunnels	1999	2004	69,900,000	66,500,000			3,400,000
Taxiways Z and Y Bridges	1999	2004	26,800,000	26,800,000			
66th Street/TH 77 Interchange	1999	2004	10,500,000				10,500,000
Fueling Facilities	1999	2004	3,800,000				3,800,000
NAVAIDS including ILS, RTR, VORTAC, ALS	1999	2004	2,700,000	2,700,000			
Tenant Lease Extinguishment	1999	2004	35,000,000	35,000,000			
Deicing Agent Processing Facility	1999	2004	4,300,000	4,300,000			
Airfield Electric Distribution Center	1999	2004	5,400,000	5,400,000			
Airfield Material & Equipment Storage Facilities	1999	2004	5,400,000	5,400,000			
Property Acquisition	1998	2004	190,000,000	190,000,000			
Subtotal			**$513,400,000**	**$414,550,000**			**$98,850,000**
Contingency			$50,000,000	$40,000,000			$10,000,000
Program Total			**$563,400,000**	**$454,550,000**			**$108,850,000**

RUNWAY 4/22 DEVELOPMENT PROGRAM

Program Scope

This program consists of projects required for the reconstruction of the northeast 2000 feet of Runway 22 and the construction of a 1,000-foot extension to Runway 4/22 and includes the following projects:

- Runway 12R/30L Temporary Extension
- Runway 4/22 Reconstruction
- Runway 4/22 Road Relocation
- Runway 4/22 Extension
- North Side Storm Sewer
- Property Acquisition
-

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Runway 12R/30L Temporary Extension	1999	2000	$3,500,000	$3,500,000			
Runway 4/22 Reconstruction	2001	2001	8,500,000	8,500,000			
Runway 22 Road Relocation	2001	2001	1,000,000	1,000,000			
Runway 4/22 Extension	2001	2001	5,000,000	5,000,000			
North Side Storm Sewer	2001	2001	2,500,000	2,500,000			
Property Acquisition			5,000,000	5,000,0000			
Subtotal			**$25,500,000**	**$25,500,000**			
Contingency			$1,500,000	$1,500,000			
Program Total			**$27,000,000**	**$27,000,000**			

NOISE MITIGATION PROGRAM

Program Scope
This program consists of projects to insulate houses and schools within the DNL 65 and 1996 DNL 60 contours, to acquire property in New Ford Town and Rich Acres subdivisions in Richfield, and to remediate problems associated with indoor air quality in homes which were previously insulated. Projects in this program include the following:

- Home Insulation
- New Ford Town/Rich Acres Acquisition
- School Noise Abatement
- Runway 4/22 Noise Mitigation
- Remediation of Past Homes
- Remote Monitoring Unit Installations

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Costs, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost 1998$	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Home Insulation (Inside 65 DNL) *	1998	2003	$129,100,000	$129,100,000			
Home Insulation (Between 60 and 65 DNL) **	2003	2010	150,000,000	70,000,000			80,000,000
New Ford Town Rich Acres Acquisition	1998	1998	3,500,000	3,500,000			
School Noise Abatement	1998	2002	33,000,000	33,000,000			
Runway 4/22 Noise Mitigation	2000	2005	38,000,000	38,000,000			
Remediation of Past Homes	1998	2002	6,300,000	6,300,000			
Remote Monitoring Unit Installations	1999	2001	900,000	900,000			
Subtotal			**$360,800,000**	**$280,800,000**			80,000,000
Contingency			$50,000,000	$50,000,000			
Program Total			**$410,800,000**	**$330,800,000**			80,000,000

* For 1998, assumes 910 homes @ $28,000 per home
For 1999 through 2003, assumes 2,795 homes @ $37,100 per home

** For 2003 through 2010, assumes 4043 homes @ $37,100 per home

TAXIWAY W CONSTRUCTION PROGRAM

Program Scope
This program consists of the construction of an approximately 9,050-feet long parallel taxiway for Runway 12R/30L in three phases.

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Center for the projects described above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Taxiway W Segment 1	1998	1998	$5,200,000	$5,200,000			
Taxiway W Segment 2	1998	1998	5,500,000	5,500,000			
Taxiway W Segment 3	1999	1999	7,500,000	7,500,000			
Subtotal			**$18,200,000**	**$18,200,000**			
Contingency			$0	$0			
Program Total			**$18,200,000**	**$18,200,000**			

TAXIWAY C/D COMPLEX CONSTRUCTION PROGRAM

Program Scope
This program consists of the realignment and reconstruction of Taxiways Charlie and Delta in phases to allow unrestricted two-way taxiing of Group V aircraft on both taxiways.

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Center for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
C/D Complex-Phase 1	2004	2005	$8,000,000	$8,000,000			
C/D Complex-Phase 2	2004	2005	8,000,000	8,000,000			
Subtotal			**$16,000,000**	**$16,000,000**			
Contingency			$500,000	$500,000			
Program Total			**$16,500,000**	**$16,500,000**			

AIRFIELD REHABILITATION AND REPAIR PROGRAM

Program Scope
This program consists of projects undertaken on a yearly basis to repair and maintain the facilities on the airfield. These projects include the following:

- Airside Bituminous Rehabilitation - $475,000 per year
- Pavement Rehabilitation – Aprons/Taxiways - $2,850,000 per year
- Pavement Joint Sealing - $475,000 per year
- Miscellaneous projects within the airside - $380,000 per year
- Taxiway A/H Reconstruction

Estimated Project Schedules/Costs
Summarized in the table below are the total Estimated Costs to be incurred for the projects listed above as well as their Cost Centers.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Airside Bituminous	1998	2010	$6,175,000	$6,175,000			
Pavement Joint Sealing	1998	2010	6,175,000	6,175,000			
Pavement Rehabilitation-Aprons/Taxi-way	1998	2010	37,050,000	37,050,000			
Miscellaneous	1998	2010	4,940,000	4,940,000			
Taxiway A/H Reconstruction	2001	2001	3,200,000	3,200,000			
Subtotal			**$57,540,000**	**$57,540,000**			
Contingency			$0	$0			
Program Total			**$57,540,000**	**$57,540,000**			

RUNWAY REHABILITATION PROGRAM

Program Scope

This program consists of projects to rehabilitate/reconstruct Runways 12R/30L and 12L/30R. Projects to be completed under this program include the following:

- Reconstruct Runway 12R/30L – Segment 1
- Reconstruct Runway 12R/30L – Segment 3
- Rehabilitate Runway 12R/30L – Segment 2
- Reconstruct Runway 12R/30L – Segment 2
- Rehabilitate Runway 12L/30R – Segment 2
- Reconstruct Runway 12L/30R – Segment 2
- Runway 30L Safety Area Improvements

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Reconstruct Runway 12R/30L-Segment 1	1998	1998	$15,000,000	$15,000,000			
Reconstruct Runway 12R/30L-Segment 3	1999	1999	16,000,000	16,000,000			
Rehabilitate Runway 12R/30L-Segment 2	2001	2001	1,300,000	1,300,000			
Reconstruct Runway 12R/30L-Segment 2	2004	2004	10,200,000	10,200,000			
Rehabilitate Runway 12L/30R-Segment 2	2001	2001	800,000	800,000			
Reconstruct Runway 12L/30R-Segment 2	2005	2005	14,000,000	14,000,000			
Runway 30L Safety Area Improvements	1999	1999	3,700,000	3,700,000			
Subtotal			**$61,000,000**	**$61,000,000**			
Contingency			$1,000,000	$1,000,000			
Program Total			**$62,000,000**	**$62,000,000**			

ENVIRONMENTAL REMEDIATION PROGRAM

Program Scope
This program consists of projects to remove/upgrade MAC owned underground storage tanks and to provide storm water detention facilities of adequate size to handle the drainage from new pavement areas.

Estimated Project Schedules/Costs
Summarized in the tables below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
UST Removals/Upgrades	1998	2010	$2,000,000	$500,000		$500,000	$1,000,000
Storm Water Detention Ponds	1999	2000	5,500,000	5,500,000			
Subtotal			**$7,500,000**	**$6,000,000**		**$500,000**	**$1,000,000**
Contingency			$0	$0		$0	$0
Program Total			**$7,500,000**	**$6,000,000**		**$500,000**	**$1,000,000**

PUBLIC PARKING/AUTO RENTAL EXPANSION PROGRAM

Program Scope

This project consists of the construction of two nine level parking structures and two new entrance and two new exit helicies and a quick turn-around (QTA) facility on the ground level for the auto rental companies. Other projects, which are required for the operation of the parking structure includes the following:

- Automated People Mover
- Parking Management Building
- Roadway relocations related to ingress and egress from the new parking facilities
- Revenue Control System
- NWA Replacement Parking for those spaces lost to the exit plaza
- Northwest Drive Improvements
- Temporary Auto Rental Service Site Development
- Temporary Regional Apron
- Miscellaneous Projects including a security system, helix enclosures, snowmelters, maintenance gates at the helices, a maintenance building and directional signage.

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Parking/Auto Rental Structure	1998	2000	$95,900,000				$95,900,000
Automated People Mover	1998	2000	26,000,000			$8,580,000	17,420,000
Parking Management Building	1998	1999	3,500,000				3,500,000
Roadway Relocations	1999	2001	27,000,000				27,000,000
Revenue Control System	1998	1999	6,600,000				6,600,000
NWA Replacement Parking	1998	1999	9,000,000				9,000,000
Northwest Drive Improvements	1999	1999	3,500,000				3,500,000
Temp. Auto Rental Service Site Development	1998	1998	1,000,000				1,000,000
Temporary Regional Apron	1998	1998	850,000		$850,000		
Miscellaneous Projects	1998	2001	6,000,000				6,000,000
Transit Center	1999	2001	2,000,000			1,000,000	1,000,000
Subtotal			**$181,350,000**		**$850,000**	**$9,580,000**	**$170,920,000**
Contingency			$7,500,000		$30,000	$795,000	$6,675,000
Program Total			**$188,850,000**		**$880,000**	**$10,375,000**	**$177,595,000**

GREEN CONCOURSE EXTENSION PROGRAM

Program Scope

This project consists of the extension of the Green Concourse by the construction of 12 new gates and a new Regional Terminal Facility with 30 parking positions. The relocation of the inbound roadway required by the alignment of the Green Concourse extension is also part of this project. Other projects which are required for the extension of the Green Concourse include the following:

- Post Office Relocation
- Green/Gold Connector Bag Belt
- Green/Gold Connector Ticket Counter/Bag Check
- Green Concourse Apron Expansion
- Green Concourse Temporary Regional Apron
- Green/Gold Connector
- Green Concourse APM
- Fuel Hydrant Loop Extension
-

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Green Concourse Expansion-Phase 1	1999	2000	$40,500,000			$40,500,000	
Green Concourse Expansion-Phase 2	2000	2002	71,000,000			71,000,000	
Post Office Relocation	1999	2000	17,000,000	$6,000,000			$11,000,000
Green/Gold Connector Bag Belt	1999	2000	5,000,000			5,000,000	
Green/Gold Connector Ticket Ctr/Bag Check	1999	2000	2,000,000			2,000,000	
Green Concourse Apron Expansion	1999	2001	16,000,000		$16,000,000		
Green Concourse Temporary Regional Apron	1999	2000	5,000,000		5,000,000		
Green/Gold Connector	1999	2000	20,000,000			20,000,000	
Green Concourse APM	1999	2001	36,000,000			36,000,000	
Fuel Hydrant Loop Extension	1998	2004	6,300,000				6,300,000
Subtotal			**$218,800,000**	**$6,000,000**	**$21,000,000**	**$174,500,000**	**$17,300,000**
Contingency			$7,500,000	$64,000	$742,000	$6,182,000	$512,000
Program Total			**$226,300,000**	**$6,064,000**	**$21,742,000**	**$180,682,000**	**$17,812,000**

CONCOURSE EXPANSION AND REHABILITATION PROGRAM

Program Scope
This program consists of projects to in fill areas on the Blue and Red Concourses as follows:

Blue Concourse 10,240 square feet

Red Concourse 13,000 square feet

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Blue Concourse Infill Phase-1	2001	2002	$2,500,000			$2,500,000	
Red Concourse Infill Phase-1	2000	2001	3,000,000			3,000,000	
Subtotal			**$5,500,000**			**$5,500,000**	
Contingency			$1,000,000			$1,000,000	
Program Total			**$6,500,000**			**$6,500,000**	

LINDBERGH TERMINAL REHABILITATION AND DEVELOPMENT PROGRAM

Program Scope

This program consists of projects to upgrade and expand the Lindbergh Terminal complex and includes the following projects:

- Terminal Carpet Replacement
- Terminal Curtainwall Security Enhancements
- Terminal Elevator Addition/Modifications
- Energy Management Center Boiler Replacements
- Commercial Roadway Bag Belt/Sortation Facility
- Informational/Directional Signage
- International Arrivals Facility Upgrade
- Lindbergh Terminal Bag Make-up Addition
- Loading Dock Relocation
- Rubber Flooring Replacement
- Terminal Toilet Additions
- P. A. System Replacement
- Police Department Modifications

Computer Lab Expansion
West Mezzanine Finishes
North Terminal Addition
Tug Drive Door Replacement
Tug Drive Floor Replacement
Chiller Addition
Cooling Towers Installation
Security Camera Installation
Conference Center
Business Service Center Development
Jetway Door Reconstruction

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Terminal Carpet Replacement	1998	1998	$1,730,000			$1,730,000	
Terminal Curtainwall Security Enhancements	2000	2000	550,000			550,000	
Terminal Elevator/Escalator Modifications	1999	2000	600,000			600,000	
Energy Management Center Boiler Replacements	2001	2001	4,500,000			4,500,000	
Commercial Roadway Bag Belt /Sortation Facility	2000	2000	1,000,000			1,000,000	
Informational/Directional Signage	1999	2001	1,250,000			1,250,000	
International Arrivals Facility Upgrade	1999	1999	2,500,000				$2,500,000
Lindbergh Terminal Bag Make-up Addition	2001	2001	2,000,000			2,000,000	
Loading Dock Relocation	2001	2001	1,000,000			1,000,000	
Rubber Flooring Replacement	1999	2001	750,000			750,000	
Terminal Toilet Additions	1999	1999	1,100,000			1,100,000	
PA System Replacement	1999	2000	4,000,000			4,000,000	
Police Department Modifications	1999	1999	160,000	$32,000		17,000	111,000
Computer Lab Expansion	1999	1999	160,000	32,000		17,000	111,000
West Mezzanine Finishes	2000	2000	1,000,000			1,000,000	
North Terminal Addition	2001	2002	12,000,000			12,000,000	
Tug Drive Door Replacement	1999	1999	60,000			60,000	
Tug Drive Floor Replacement	1999	1999	700,000			700,000	
Chiller Addition	1998	1999	4,450,000			4,450,000	
Cooling Towers Installation	1998	1999	5,000,000			5,000,000	
Security Camera Installation	1998	2000	1,000,000	1,000,000			
Conference Center	1998	1999	850,000				850,000
Business Service Centers Development	1998	1999	250,000				250,000
Jetway Door Reconstruction	1999	1999	100,000			100,000	
Subtotal			**$46,710,000**	**$1,064,000**		**$41,824,000**	**$3,822,000**
Contingency			$0	$0		$0	$0
Program Total			**$46,710,000**	**$1,064,000**		**$41,824,000**	**$3,822,000**

HUMPHREY TERMINAL DEVELOPMENT PROGRAM

Program Scope
This project consists of the construction of a replacement terminal for the existing Humphrey Terminal to provide gates for 8 narrow body/4 wide body aircraft. Projects to be constructed which are incidental to this project include the following:

- Construction of two 250,000 gallon above ground storage tanks and trickle fill line.
- Ground Service Equipment storage/maintenance facility.
- Parking Facility
- Hydrant Fueling System
- Ground Power
- Airline Lease Space Shell
- Concessions Shell

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Terminal Development	1999	2001	$53,000,000				$53,000,000
Fuel Storage Tanks and Pipeline	1998	1998	9,000,000				9,000,000
GSE Storage/Maintenance Facility	1999	2001	3,700,000				3,700,000
Short Term Parking Facility	1999	2001	2,100,000				2,100,000
Hydrant Fueling System	1999	2001	600,000				600,000
Ground Power	1999	2001	600,000				600,000
Airline Lease Space	1999	2001	600,000				600,000
Concessions Fit-Up	1999	2001	2,400,000				2,400,000
Subtotal			**$72,000,000**				**$72,000,000**
Contingency			$5,000,000				$5,000,000
Program Total			**$77,000,000**				**$77,000,000**

SUN COUNTRY HANGAR DEVELOPMENT PROGRAM

Program Scope
This program consists of the construction of a new hangar and apron for Sun Country Airlines.

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Center for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Hangar	1998	1998	$4,050,000				$4,050,000
Apron	1998	1998	1,000,000				1,000,000
Subtotal			**$5,050,000**				**$5,050,000**
Contingency			$100,000				$100,000
Program Total			**$5,150,000**				**$5,150,000**

LANDSIDE REHABILITATION AND REPAIR PROGRAM

Program Scope

This program consists of yearly projects to repair, maintain and improve the facilities in the terminal and on the landside. These will projects be defined in the year(s) prior to implementation. Project categories include the following:

- Landside Bituminous Construction
- Parking Structure Rehabilitation
- Lindbergh Terminal Interior Rehabilitation
- Terminal Exterior Rehabilitation
- Terminal Complex Sprinkler Modifications
- Terminal Electrical Modifications
- Terminal Mechanical Modifications
- Terminal Miscellaneous Projects
- West Terminal Rehabilitation

Estimated Project Schedules/Costs

Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Landside Bituminous Construction	1998	2010	$4,940,000				$4,940,000
Parking Structure Rehabilitation	1998	2010	11,875,000				11,875,000
Lindbergh Terminal Interior Rehabilitation	1998	2010	19,665,000			$19,665,000	
Terminal Exterior Rehabilitation	1998	2010	6,650,000			6,650,000	
Terminal Complex Sprinkler Modifications	1998	2010	1,330,000			1,330,000	
Terminal Electrical Mods	1998	2010	1,401,000			1,401,000	
Terminal Mechanical Mods	1998	2010	5,748,000			5,748,000	
Terminal Miscellaneous	1998	2010	3,088,000			3,088,000	
West Terminal Rehabilitation	1998	2010	1,425,000				1,425,000
Subtotal			**$56,122,000**			**$37,882,000**	**$18,240,000**
Contingency			$0			$0	$0
Program Total			**$56,122,000**			**$37,882,000**	**$18,240,000**

LIGHT RAIL TRANSIT PROGRAM

Program Scope
This program consists of projects to be implemented at Wold Chamberlain Field. These projects generally consist of the following:

- Lindbergh Terminal Light Rail Transit Station
- Hubert H. Humphrey Light Rail Transit Station
- Other Eligible Program Elements

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Costs for each project.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Lindbergh Terminal LRT Station	1999	2003	$25,000,000			$12,500,000	$12,500,000
Hubert H. Humphrey LRT Station	1999	2003	2,000,000				$2,000,000
Other Eligible Program Elements	1999	2003	43,000,000				$43,000,000
Subtotal			**$70,000,000**				**$57,500,000**
Contingency							
Program Total			**$70,000,000**			$12,500,000	**$57,500,000**

RELIEVER AIRPORTS PROGRAM

Program Scope
This program consists of projects to be implemented at MAC's six reliever airports. These projects generally consist of land acquisition for runway protection, rehabilitation of existing airfield pavements, construction of new runways, taxi-ways, aprons and construction /expansion of areas for the construction of new hangars.

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Costs for each reliever airport from 1998 to 2010.

Project	Estimated Project Schedule		Estimated Project Cost	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
St. Paul-Downtown Airport	1998	2010	$19,000,000				$19,000,000
Flying Cloud Airport	1998	2010	61,000,000				61,000,000
Crystal Airport	1998	2010	3,100,000				3,100,000
Anoka County-Blaine Airport	1998	2010	23,7000,000				23,700,000
Lake Elmo Airport	1998	2010	8,100,000				8,100,000
Airlake Airport	1998	2010	12,500,000				12,500,000
Subtotal			**$127,400,000**				**$127,400,000**
Contingency			$5,000,000				$5,000,000
Program Total			**$132,400,000**				**$132,400,000**

RELIEVER AIRPORTS UTILITY EXTENSION PROGRAM

Program Scope
This program consists of projects to extend municipal utilities consisting of sanitary sewer and water main to its system of reliever airports.

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Centers for the Utility Extension projects at each of the reliever airports.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
St. Paul-Downtown Airport	1998	1998	$300,000				$300,000
Flying Cloud Airport	1999	2000	4,500,000				4,500,000
Crystal Airport	1999	2000	1,200,000				1,200,000
Anoka County-Blaine Airport	1999	2000	1,800,000				1,800,000
Airlake Airport	2000	2000	400,000				400,000
Subtotal			**$8,200,000**				**$8,200,000**
Contingency			$3,000,000				$3,000,000
Program Total			**$11,200,000**				**$11,200,000**

MISCELLANEOUS FIELD AND RUNWAY PROGRAM

Program Scope
This program consists of the construction of miscellaneous projects associated with the airfield. Projects to be constructed include the following:

- Run-up Pad Blast Fence Modifications
- Electrical System Computerization
- Security Fence/Gates Replacement
- Tunnel Structure Rehabilitation
- Apron Lighting Upgrades
- Remote Satellite Antennas Relocation
- Miscellaneous Airside Projects
- Utility Reconstruction

Estimated Project Schedules/Costs
Summarized in the table below are the Estimated Project Schedule, Estimated Project Costs and Cost Center for each of the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
Run-up Pad Blast Fence Modifications	1998	1998	1,500,000	$1,500,000			
Electrical System Computerization	1998	2000	1,000,000	1,000,000			
Security Fence/Gates Replacement	1998	2000	800,000	800,000			
Tunnel Structure Rehabilitation	1999	1999	200,000	200,000			
Apron Lighting Upgrades	2001	2001	2,000,000	2,000,000			
Remote Satellite Antennas Relocation	1999	1999	150,000				$150,000
Miscellaneous Airfield Projects	2000	2010	4,500,000	4,500,000			
Utility Reconstruction	1999	2000	500,000				500,000
Subtotal			**$10,650,000**	**$10,000,000**			**$650,000**
Contingency			$500,000	$500,000			
Program Total			**$11,150,000**	**$10,500,000**			**$650,000**

MISCELLANEOUS LANDSIDE PROGRAM

Program Scope

This program consists of miscellaneous projects located throughout the airport which will enhance customer service, improve operations within the terminal complex and provide for the support of expanded terminal operations. Projects included in this program are as follows:

- East Commercial Roadway Reconstruction
- East Airport Water Main Loop
- General Office Modifications
- Central Alarm Monitoring/Fiber Optic Cable Upgrade
- Emergency Power Addition
- Commercial Vehicle Staging Area
- EconoLot/Employee Parking Structure
- Green/Gold Ramp Lighting Upgrades
- Green/Gold Ramp Security System
- MAC Cargo Hangar

HHH AVI System/Taxi Starter Booth
Lower Level Roadway Lighting Improvements
Maintenance Facility Addition
Materials Storage Building
Navy Relocation
Post Road Taxi Monitors/LED Signs
Fire/Rescue Replacement Facility
D Street Reconstruction
MAC Belly Cargo Building

Estimated Project Schedules/Costs

Summarizing the table below are the Estimated Project Schedules, Estimated Project Costs and Cost Center for the projects listed above.

Project	Estimated Project Schedule		Estimated Project Cost (1998$)	Cost Center			
	Start	Completion		Airfield	Ramp	Terminal	Other
East Commercial Roadway Reconstruction	1998	1998	$600,000				$600,000
East Airport Water Main Loop	1999	2000	1,000,000				1,000,000
General Office Space Modifications	1998	1999	9,000,000				9,000,000
Central Alarm Monitoring/Fiber Optic Cable Upgrade	1999	2002	10,850,000			$10,850,000	
Emergency Power Addition	1999	1999	4,000,000		$2,000,000	2,000,000	
Commercial Vehicle Staging Area	2000	2000	500,000				500,000
EconoLot/Employee Parking Structure	2001	2002	60,000,000				60,000,000
Green/Gold Ramp Lighting Upgrades	1999	2000	1,250,000		1,250,000		
Green/Gold Ramp Security System	2000	2000	1,200,000		1,200,000		
HHH AVI System/Taxi Starter Booth	1999	2000	250,000				250,000
Lower Level Roadway Lighting Improvements	1999	1999	450,000				450,000
Maintenance Facility Addition	2000	2000	3,000,000	$1,500,000	1,080,000	30,000	390,000
Materials Storage Building	1999	1999	5,500,000	2,750,000	1,980,000	55,000	715,000
Navy Relocation	1999	2000	12,500,000	12,500,000			
Post Road Taxi Monitors/LED Signs	1999	1999	200,000				200,000
Fire/Rescue Replacement Facility	2002	2003	9,500,000	6,650,000		1,900,000	950,000
D Street Reconstruction	1999	1999	2,500,000				2,500,000
MAC Belly Cargo Building	2000	2001	4,700,000				4,700,000
MAC Cargo Hangar	2002	2003	6,200,000				6,200,000
Subtotal			**$133,200,000**	**$23,400,000**	**$7,510,000**	**$14,835,000**	**$87,455,000**
Contingency			$0	$0	$0	$0	$0
Program Total			**$133,200,000**	**$23,400,000**	**$7,510,000**	**$14,835,000**	**$87,455,000**

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Exhibit F

CP

Metropolitan Council

Building communities that work

METROPOLITAN COUNCIL MEETING
Wednesday, March 13, 2002
Council Chambers
3:00 P.M.

AGENDA

I. **CALL TO ORDER**

COUNCIL RESOLUTION 2002-8 AND CERTIFICATE OF APPRECIATION IN HONOR OF COUNCIL MEMBER CAROLYN RODRIGUEZ

II. **APPROVAL OF AGENDA**

III. **APPROVAL OF MINUTES** Metropolitan Council Meeting of February 27, 2002

IV. **PUBLIC INVITATION** *Invitation to interested persons to address the Council on matters not on the agenda (each speaker is limited to a five-minute presentation).*

V. **BUSINESS** *Note: The Council always attempts to honor requests by the public to move individual items earlier on the agenda when appropriate. Requests can be made through Sandi Lindstrom, Council Recording Secretary, prior to the meeting at (651) 602-1390.*

A. **Consent List**

Committee Consent List

SW

1. 2002-20 Controlled Access Approval of CSAH 60 and I-35 Interchange Improvements (Ann Braden, 602-1705)
2. 2002-44 MetroGIS 2nd Generation Data Sharing Agreements (Randall Johnson, 602-1638)
3. 2002-71 Minnesota State Retirement System (MSRS) Program Unclassified Retirement Plan, Resolution No. 2002-__ (Dick Brainerd, 602-1398)
4. 2002-74 Livable Communities Fund 2002 Annual Distribution Plan (Wayne Nelson, 602-1406)
5. 2002-82 Authorization to Negotiate and Execute an Engineering Services Contract for Facility Planning, Design and Construction Support for the Rosemount Interceptor Project (Bill Moeller, 602-4504)
6. 2002-83 Approval of Authorized Financial Institutions (Allen Hoppe, 602-1629)

General Consent List - None

B. **Report of the Management Committee** - Consent List Items Only

C. **Regional Growth Policy Committee** - None

D. **Report of Environment Committee** - Consent List Item Only

E. **Report of the Rail Transit Committee** - None

F. **Report of Transportation Committee**

1. 2002-49 Review and Approval of Metropolitan Airports Commission (MAC) Capital Improvement Program (CIP) (Chancy Case, 602-1752)

2. 2002-50 Study of Transit Service Expansion Beyond the Historic Transit Taxing District (David Christianson, 602-1737; Connie Kozlak, 602-1720; Arlene McCarthy, 612.349_7766; Randy Rosvold, 602-1710)

3. 2002-72 Approval to Extend Contract for Diesel Fuel (Chris Gran, 612.349-5060; Jan Homan, 612.349-5000)

4. 2002-80 Contract Amendment with Human Services, Inc. to Operate Route 246 Dial Up Service in the St. Croix Valley Area (Bruce Dreier, 602-1708; David Christianson, 602-1737)

SW 5. 2002-86 FY 2003 Appropriations Request for Hiawatha Light Rail Corridor (Julie Johanson, 612.349-7514)

6. 2002-87 FY 2003 Request for Bus and Bus Capital Appropriations (Mike Setzer, 612.349-7510; Julie Johanson, 612.349-7514)

SW 7. 2002-91 Authorization for Public Hearings on 2002 Service Reduction (Nacho Diaz, 602-1754; David Christianson, 602-1737)

G. **Report of the Livable Communities Committee** - Consent List Items Only

VI. **OTHER BUSINESS**

A. 1. 2002-40 Stillwater Comprehensive Plan Update, Referral 14835-10 (Michael King, 602-1438)

VII. **REPORTS**

Chair

Council Members

Regional Administrator

VIII. **ADJOURNMENT**

SW Action taken by the Council and Committee the Same Week
* Additional materials included for items on published agenda
** Additional business items added following publication of agenda

Action Item:2002-49 REVIEW AND APPROVAL OF METROPOLITAN AIRPORTS COMMISSION (MAC) CAPITAL IMPROVEMENTS PROGRAM (CIP)

That the Metropolitan Council:

1) Approve the following 2002 "significant effect" projects for implementation, subject to the Metropolitan Airports Commission reaffirming its $150 million commitment, identified in the Airline Lease Agreement, to provide noise mitigation options, as approved by FAA, to residents within the DNL 64-60:
   - MSP Runway 17/35 Site Preparation/Paving
   - HHH Terminal Parking Structure (2001 carryover project)
2) Concur with the MAC request to delay development of a TDM plan for MSP until mid-2002
3) Find all other year 2002 projects consistent with the ***Aviation Policy Plan***

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Committee Report

T Transportation Committee

Item: 2002-49

For the Metropolitan Council meeting of March 13, 2002

ADVISORY INFORMATION

Date Prepared: February 26, 2002

Subject: MAC 2002 CIP Review

Summary of Committee Discussion:

Chauncey Case, Transportation Services Senior Planner, presented the MAC 2002-2008 CIP. He indicated that this CIP is somewhat different from past reviews because of significant change in the industry due to the World Trade Center attack of September 11, 2001. The Metropolitan Airport Commission (MAC) has made substantial adjustments to this year's CIP due to severe reductions in revenue. A letter from the Transportation Advisory Board was distributed indicating their approval of the CIP at their February 20th meeting.

Dennis Probst, Director-Landside Development for MAC, gave a power point presentation with up to date information on development at MSP. Mr. Probst covered various areas of construction at MSP including the additional concourses, tunnels, storm drainage, MNDOT and private facilities, tram, light rail, oxygenated water, deicing pads and the HHH Terminal and was available to answer questions on other projects in the 2002-2008 CIP.

Committee discussion centered mainly on the noise mitigation program for MSP. Member Riveness proposed a caveat to the staff recommendation as indicated in item (1) below. Member Steffen suggested forwarding to Council without a recommendation from the Transportation Committee, in order to give MAC a couple days to have representation at the meeting to respond.

Nacho Diaz responded to Members questions on alternatives:

- Deadline is next week for Council's 60-day window to approve.
- Projects meeting CIP review criteria must be approved or disapproved.
- Tabling action or delay would be automatic approval for all other 2002 CIP projects.
- Request an extension from Metropolitan Airport Commission.

Mr. Probst stated the Commission will not be taking this issue up until April, and staff will not be able to make the kind of commitment requested by this coming Wednesday. "There hasn't been an abandonment of a program in the 60-64 DNL area, what is back in discussion, is what the details of that program are." The MAC is still implementing the 1996 DNL65 program and will not be getting to the 60-64DNL homes until 2005. Mr. Probst further indicated that projects remaining in the 2002 CIP are critical; there are significant ramifications in not proceeding. The difficulty with the 17/35 runway intersection project is that it has to be completed this construction season, or the delay in the runway completion is another full year out. The 17/35 runway is for capacity and to also provide relief to residents in south Minneapolis, who are most heavily impacted.

Recommendation:

That the Metropolitan Council:

1) Approve the following 2002 "significant effect" projects for implementation: <u>on condition that MAC maintain their current noise mitigation program between the 64 and 60 DNL [as identified in the FAR Part 150 2005 update].</u>
   - MSP Runway 17/35 Site Preparation/Paving
   - HHH Terminal Parking Structure [2001 carryover project].
2) Concur with the MAC request to delay development of a TDM plan for MSP until mid-2002.
3) Find all other year 2002 projects consistent with the ***Aviation Policy Plan***.

T Transportation Committee

Meeting date: February 25, 2002

ADVISORY INFORMATION	
Date:	February 14, 2002
Subject:	MAC 2002 CIP Review
District(s), Member(s):	All Districts & Members
Policy/Legal Reference:	MS 473.145, 473.165, 473.621 Sd. 6 &7
Staff Prepared/Presented:	Chauncey Case (651) 602-1724
Division/Department:	Transportation; input from Environmental Services

Proposed Action/Motion

That the Metropolitan Council:

1) Approve the following 2002 "significant effect" projects for implementation:
   - MSP Runway 17/35 Site Preparation/Paving
   - HHH Terminal Parking Structure [2001 carryover project].
2) Concur with the MAC request to delay development of a TDM plan for MSP until mid-2002.
3) Find all other year 2002 projects consistent with the ***Aviation Policy Plan***.
4)

Issue(s)

Need to continue discussions with local affected communities on provision of sewer and water service at reliever airports which are not currently serviced.

Overview and Funding

On January 3, 2002, the Metropolitan Airports Commission (MAC) annual capital budget was received for Council review. It consists of the following elements:

I. **2002**---------- Capital Improvement **Projects**
II. **2003**---------- Capital Improvement **Program**
III. **2004 to 2008**--- Capital Improvement **Plan**

The Council takes action only on the 2002 capital improvement projects. State law requires Council approval of projects having a "significant effect"; the only significant project for 2002 is listed above. The Council does not have review authority on MAC bonding or operating budget.

The 2002 CIP includes numerous projects designed to implement developments defined in the 2010 element of the Minneapolis-St. Paul International Airport (MSP) Long-Term Comprehensive Plan (LTCP). Since approval of the 2010 Plan for MSP in 1996, there has been a substantial number of projects that have been put in place or are in the process of construction for the 2002 construction season. About 75% of the total 2010 Plan projects are essentially complete. Most of the major landside projects are near completion and the remaining projects focus primarily on the airside projects, with runway 17/35 being the most critical element.

Cost of the year 2002 development projects is $103,335,000. From 2002 to 2008 total costs are $978,310,000. The MAC has identified $1,517,189,000 funding through the end of 2004. The 2002 numbers reflect carryover projects from 2001 and reductions in the CIP as a result of economic impacts to air transportation resulting from the 9-11 World Trade Center attack and economic downturn.

LINKAGE TO COUNCIL STRATEGIES
☑ **Infrastructure:** Provides for implementation of airport development plans approved by the Council.
☑ **Quality of life:** Enhances air-transportation safety, services and environmental protection.
☑ **Communication/constituency building:** Ensures opportunity for participation.
☑ **Alignment:** Improves economic opportunities and access to national/international markets.

REVIEW of MAC 2002-2008 CAPITAL IMPROVEMENT PROGRAM

At its meeting of December 17, 2001, the MAC approved its 2002 CIP, recommending submittal to the Metropolitan Council for review. The capital improvement plan is submitted as three distinct elements: Projects (2002), Program (2003), and 5-Year Plan (2004-2008).

2002 Capital Improvement	**Project**	$ 76,200,500
(2001 carryover)		$ 27,135,000
(Sub-total)		**$103,335,000**
2003 Capital Improvement	**Program**	**$439,825,000**
2004 – 2008 Capital Improvement	**Plan**	$435,150,100
Total (2002-2008 CIP)		**$978,310,000**

AUTHORITY TO REVIEW

The Metropolitan Council is reviewing the MAC 2002 Capital Improvement Projects and 2002-2008 capital plan for consistency with Council policy, the regional aviation system plan, and local plans under the following authority:

Federal: Projects for which federal funding is being requested are reviewed under MS 473.171, which requires review and comment by the Council on federal grant applications and development projects.

State: Under state statutes the plans of the MAC must be consistent with regional plans and policies including the aviation development guide. In addition, **MS 473.181** requires Council approval of certain projects of more than $5 million at Minneapolis-St. Paul International airport (MSP) or more than $2 million at the reliever airports. Projects meeting these dollar thresholds may not be commenced without the approval of the Council if it is determined to have a significant effect on the orderly and economic development of the metropolitan area. The capital projects defined by the legislation as having a **"significant effect on the orderly and economic development of the metropolitan area"** are:

- The location of a new airport
- a new runway at an existing airport.
- runway extension at an existing airport.
- runway strengthening other than routine maintenance.
- new or expanded passenger handling, or parking facilities, which would permit a 25 percent or greater increase in passenger enplanement levels.
- land acquisition associated with any of the above, or which would cause a relocation of residential or business activities.

In 1998 **MS 473.621 Sd6**, was amended to include a new criteria concerning local review of the CIP, as follows: In addition to any other criteria applied by the metropolitan council in reviewing a proposed project, the council shall not approve a proposed project unless the council finds that the commission has completed a process intended to provide affected municipalities the opportunity for discussion and public participation in the commissions decision-making process. An "**Affected Municipality**" is any municipality that:

(1) is adjacent to a commission airport,
(2) is within the noise zone of a commission airport, as defined in the metropolitan development guide, or
(3) has notified the commission's secretary that it considers itself an "affected municipality".

The council must at a minimum determine that the commission:

(a) provided adequate and timely notice of the proposed project to each affected municipality;
(b) provided to each affected municipality a complete description of the proposed project;
(c) provided to each affected municipality notices, agendas, and meeting minutes, including advisory committee meetings, at which the proposed project was to be discussed or voted on in order to provide the municipalities the opportunity to solicit public comment and participate in the project development on an ongoing basis; and,
(d) considered the comments of each affected municipality,

Sec. 4 [Application]
This act applies in the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Affected Municipalities List
The list in Table 1 was developed by the Council staff based upon the criteria as defined in the amended statute and is included in the 1996 *Aviation Policy Plan Chapter*.

TABLE 1

Commission Owned Airport	Adjacent Municipalities (Boundaries abut airport)	Municipalities in Noise Zone *	City Notification to MAC (Y/N)
MSP International	Minneapolis Mendota Heights Bloomington Richfield	Minneapolis St. Paul Lilydale Mendota Mendota Heights Sunfish Lake Inver Grove Heights Richfield Bloomington Burnsville Eagan Edina	No
St. Paul Downtown	Saint Paul	Saint Paul So. St. Paul	No
Airlake	Lakeville Eureka Twp.	Lakeville Eureka Twp.	No
Anoka Co. – Blaine	Blaine Mounds View	Blaine	No
Crystal	Brooklyn Park Brooklyn Center Crystal	Crystal Brooklyn Park Brooklyn Center	No
Flying Cloud	Eden Prairie	Eden Prairie	No
Lake Elmo	Baytown Twp. West Lakeland Lake Elmo	Baytown Twp. West Lakeland Lake Elmo	No

* Note: Noise contours are periodically updated & list of communities may be revised over time.

PUBLIC PARTICIPATION BY AFFECTED COMMUNITIES

Finding:
It has been determined, based upon the scope of the aviation planning process and requirements of federal, state and local laws, rules/regulations, and agency bylaws, that the Metropolitan Airports Commission has followed a process which provides affected municipalities the opportunity for discussion and public participation in the commission's CIP decision-making process.

This finding is based upon the existing overall aviation planning process for the region, which is defined in state enabling legislation, agency rules and regulations, agency bylaws and adopted practices, including the Bylaws of the Metropolitan Airports Commission. The regional aviation planning process is the overall context within which airport related planning, development and operational issues are reviewed and addressed. The process consists of several inter-linking components:

- Developing and maintaining an Aviation Policy Plan, which includes goals, policies, guidelines, airport system plan, review criteria and implementation. The Council is responsible for coordinating with affected parties.

- Preparing, updating, implementing Individual Airport Long-term Comprehensive Plans (LTCP), which includes identifying airport demand, determining facility requirements, evaluation of environmental effects, establishing airport operational parameters, defining financial feasibility and development schedule. The MAC is responsible for coordinating with affected parties. When the LTCP is submitted for Council review, the coordination with affected parties is the responsibility of the Council.

- Preparation of environmental documentation (EA, EAW, EIS), when needed for project implementation, is the responsibility of the project sponsor which is normally the MAC. Again, the MAC is responsible to coordinate this work effort with the affected parties. If a mitigation program of some type is needed it also is normally the responsibility of the project sponsor.

- Preparation of a Capital Improvement Program is usually the last step before development/construction of the proposed airport projects(s). The MAC CIP is usually accomplished in two major steps; one, is its initial review as an *Environmental CIP*, and another is its review as a *Financial/Planning CIP*.

The *Environmental CIP* is initially prepared for internal review/action by the MAC and then released for additional outside review through the state EQB Rules process; the MAC is responsible to coordinate with affected parties. The Commission also utilizes an advisory body, the Metropolitan Aircraft Sound Abatement Council (MASAC), to review and recommend specifically on noise matters at MSP, including the Environmental CIP. Most of the communities around MSP affected by aircraft noise impacts are represented on MASAC. This group meets monthly and operates under its own bylaws. There are also airport/community advisory groups at the reliever airports operated by the MAC; these groups meet on a periodic basis.

The *Financial/Planning CIP* review is the responsibility of the MAC to coordinate with affected parties, including separate mailings to affected local governmental units, during its adoption phase. In response to MS473.621 Sd.6 requirements the MAC has implemented additional steps in its CIP development/review process as depicted in Exhibit A.

Community Concerns Raised:

Concerns raised by affected communities in the 2002 Environmental CIP Review are summarized as follows:

- Concern over amount being spent on Flying Cloud Airport expansion when capacity appears to be available at St. Cloud and St. Paul Downtown airports.
- City of Minneapolis is concerned with the substantial cut in the home insulation program and an agreement with the MAC concerning "temporary" extension of the south parallel runway to permit rehabilitation and extension of runway 4/22.
- Metro Council voiced concern that the Commission should include environmental criteria among all the other considerations needed for selection of final capital projects for 2002, and that the environmental criteria be used to help set project priorities for implementation of deferred projects.

Responses to these concerns are as follows. Development at Flying Cloud is consistent with the approved LTCP, community MUSA expansion and FEIS. The MAC and City of Eden Prairie are finalizing a Memo of Understanding and update of the comprehensive plan is anticipated for submittal this spring. The MAC will review the home insulation program as the economic situation improves, and intend to complete the runway agreement for timing of construction on runway 4/22. The MAC included environmental projects in the 2002 CIP. It will be more critical to include the environmental criteria for the deferred projects.

CIP EXPENDITURES/FUNDING SUMMARY

Capital Projects A summary description of all the MAC capital projects proposed in the 2002 CIP is found in Exhibit A.

Capital Funding In the past, the MAC has used internally generated funds from operations, federal and state grants, passenger facility charges (PFC's), NWA special construction loan repayments, and general obligation revenue bonds to pay for capital improvements. In 1998 the MAC began using general airport revenue bonds (GARBs) in addition to the sources previously listed. GARBs will continue to be used to fund the CIP. The financing plan does not cover the same period as the CIP due to the uncertainty in projecting actual capital needs in later years. A summary of the financial plan for 2002-2004 is defined in Table 3.

The principal amount of new issue GARBs includes 2 series: Both are estimated to be PFC leveraged issues at $225 million each in 2003 and 2004. At the end of 2004 it is estimated that the MAC will have remaining funds of $47,000,000. This balance consists of bond funds for projects in process at year-end 2003 and projects in the year 2004.

TABLE 3

2001 –2003 Financial Plan

Funding Sources	$ (000's)	Percent of Total Sources
Funds currently on hand.	265,298	17.48
MAC operating fund transfer.	0	0.00
Federal & State Grants:		
Federal – AIP entitlement & discretionary + federal noise funds.	43,500	2.87
State	6,028	0.04
Passenger Facility Charge (PFC) funding.	215,736	14.22
Net Bond Proceeds – 2001	509,853	33.60
Commercial Paper	<34,000>	(2.24)
Principle amount of New Issue GARBS.	450,000	29.66
Federal Letter of Intent (LOI).	42,000	2.77
Interest Income	18,747	1.24
Total	**$1,517,189**	**100.00**

IMPACT OF 9-11

The financial impact resulting from the attack on the N.Y. World Trade Center was felt immediately since aircraft were grounded within a few hours of the incident and airports were essentially closed. The U.S. financial markets were also closed for several days. Figure1 shows the market action of NWA trades over the past several years; this type of trading action is generally representative of the financial stock trading for major American airlines during this period. It indicates that business was expanding up to and generally after the Twin Cities region made its major airport dual-track airport decision. Aviation demand forecasts reflected this expansion trend. However, the cost pressures on airlines and downward trends in yields, along with a deteriorating economy, was well in motion before the 9-11 incident. In the

short term the MAC and most other airports and airlines were forced to make abrupt, immediate changes in operations and plans. As a result of the reduction in revenue and increased costs for security, the MAC reduced the scope of its capital projects and deferred many projects into the 2003 or later time period. Air travel is beginning to return almost to pre-9-11 levels, but the business traveler is still not travelling as before and yield is still low. There are some expectations that full recovery may not be achieved for another 2-4 years.

The 1990's have been generally good for the airline industry. Since introduction of the jet aircraft into service around 1960, however, there has been a number of political and economic "shocks" to the system. These shocks occur as periodic, unscheduled events in an industry that is known for its cyclical growth pattern. Additionally, these shocks and industry cycles occur within the broader flow of world and domestic economic expansion and contraction. The 9-11 shock is considered somewhat different from the earlier examples depicted in Figure 2, for the following reasons:

- Previous terrorist acts against the U.S., and the industry, were generally committed overseas.
- Immediate & strict federal controls were implemented country-wide.
- High-tech, the U.S. growth engine, was already in a downturn, further exacerbating the economy.
- Airline operations and economics, both internationally and domestically, were already in turmoil.
- World economy increasingly dependent on air service.

The overall result is a situation of great uncertainty, both short and long-term. Actions to stabilize the situation have been initiated at the federal, state and local levels. The issue of security is still evolving, but there is no doubt that it affects system efficiency and economics. The MAC has responded by making major adjustments to their operating budget and the 2002-2008 CIP; many projects have been deferred into 2003. How long the current shock will be around and how long the current recession will last is unclear, but appears to be more than just one year. Preliminary traffic numbers for MSP indicate that about 34.2M passengers were handled in 2001, an overall 6.87% less than in 2000. Approximately 501,000 aircraft operations occurred compared to about 523,000 in 2000, a 4.27% reduction overall. The MAC will monitor the traffic and may reinstate CIP projects depending upon how fast the industry recovers.

The Commission has recently refunded some general obligation revenue bonds and passed the savings (13.80% present value) along to NWA. An application has been made for federal AIP funding reimbursement related to new airport security requirements. The Commission is also looking at other measures to provide adequate debt service and maintain bond ratings. In August 2001, $125M in bond anticipation notes were issued for a term of one year to be used as an interim financing mechanism for runway 17/35 and the concourses A-C expansion projects. As a result of 9-11 uncertainties the MAC has decided not to issue any long-term debt in 2002. Current bond funds will be used to retire these interim bond funds already spent and the remainder held in escrow until maturity (July 2002).

Capital Investments 1996 – 2010

Since approval of the 2010 Plan for MSP in 1996 there has been a substantial number of projects that have been put in place or are in the process of construction for the 2002 construction season. About $103M worth of projects has been identified and discussed concerning the 2002 CIP. The remainder of the 2002-2008 CIP projected expenditures are depicted in Figure3. As the chart shows, about 75% of the total 2010 Plan projects are essentially complete. Most of the major landside projects are near completion and the remaining projects focus primarily on the airside projects, runway 17/35 being the most critical element. If the projects are implemented as projected, there would be about $3.4B of improvements in place by 2008.

It is likely that the economic recovery could easily extend the plan implementation to 2010 or somewhat beyond. Determination of investments in reliever airports will need to be examined in light of the new General Aviation forecasts, and major airport investments in the 2010 to 2020 time frame will require an overall update of the MSP aviation forecasts.

YEAR 2002 PROJECTS REQUIRING REVIEW AND APPROVAL:

The Council reviews the 2002 CIP Projects to see if they have a *significant affect on the orderly and economic development of the metropolitan area* as defined under the statutory capital review thresholds and criteria (see Exhibit B). All projects are commented upon for consistency with the Metropolitan Development Guide, including the Aviation Chapter. There is only one 2002 project that meets all review and approval criteria:

Runway 17/35 Intersection site preparation/paving **$18,500,000 - MSP**

This project is a continuation of efforts by the MAC in construction of the new north/south (17/35) runway. Approximately the north one-third of the runway is completed. The 2002 project will complete the south end approximately one-third of the runway including a section of taxiway N (see Figure 4). The remaining one-third of the runway is anticipated to be constructed in 2003 and operational use of the runway programmed for 2004. The project has previously been circulated for local review by the MAC. The project has been bid and a budget of $14,100,000 has been recommended for MAC approval.

Finding The project is a main element of the approved MSP 2010 LTCP. Aviation Policy 1B states that "Public investments in air transportation facilities should respond to forecast needs and to the area's ability to support the investments over time". The project is consistent with regional policy for improving airside capacity at the major airport. Under the adjusted construction program the runway is expected to be operational by 2004 rather than 2003. The project was circulated as part of the 2002 CIP for local review, and is consistent with the *Aviation Policy Plan.*

YEAR 2001 CARRYOVER PROJECT REVIEW

EconoLot/Employee Parking Structure **$160,000,000 - MSP**

2001 CIP Review:

Expansion of the HHH terminal to an eight-gate facility was included in the MSP 2010 plan FEIS. In the MAC 1997 CIP several HHH terminal development alternatives were being considered; these included various options for addressing the associated parking. In 1998 the MAC decided to develop a replacement HHH terminal rather than expand the current facility. In 1999, there was legislative concern that there be more air service competition, and additional expansion options for the HHH terminal were examined. The options had different impacts on the existing EconoLot and employee parking in the vicinity. In addition, development of the Hiawatha LRT project became a consideration since the right-of-way and potential station would also be impacting this general site.

To address these changing needs, the MAC proceeded with Phase I of the new HHH terminal, which opened in May 2001, providing gates for eight narrow-body or four wide-body aircraft. The old HHH Terminal was demolished and a 10,000 space EconoLot parking structure was proposed in the 2010 CIP, with 4,200 spaces to replace parking stalls lost to development and a net gain of 5,800 spaces. The new public spaces (8,200) would serve HHH and Lindbergh passengers and 1,800 spaces would be provided for airport employees. The project also includes new ground access upgrades/construction.

The HHH master site plan for the general area included an LRT station within the EconoLot structure, and surface right-of-way for the LRT route to the Mall of America (see Figure 5). The LRT portion of the project is funded separately from the EconoLot project. The LRT was included in the Hiawatha Corridor FEIS, the *Transportation Policy Plan* (TPP), and approved for funding through the transportation improvement program (TIP). The parking project was included in the MAC 2001 CIP and was circulated for local community and agency review. The project is consistent with policies 1 (focus of transportation investments) and 5 (promote implementation of dedicated transit-ways) in the TPP, and policies 1 and 5 in the *Aviation Policy Plan.*

In its review of the HHH EconoLot project in 2001, the Council recommendation was ***"That the MSP EconoLot/Employee Parking Structure project be approved contingent upon the MAC, in cooperation with airport users the Council and other affected governmental entities, preparing a transportation demand management (TDM) program – and include the results in the 2002 CIP."***

2002 CIP Review:

Construction (Phase I) of the parking structure is well underway, as is construction of the LRT south portal approach. Some work was initiated on TDM in 2001. However, the MAC has requested Council concurrence to defer TDM program development until mid-2002. Since Sept. 11 there has been a dramatic decrease in public parking as well as employee use due to contractions by other major tenants. About $11M of 2001 elements of the parking structure have been carried over for construction in 2002, while Phase II of the Overflow Ramp/Employee Parking Structure ($56M) has been deferred to 2003 or later. Work on this TDM plan during 2002 could be linked to other efforts on TDM in the I-494 corridor being promoted by the Council in 2002.

COMMENTS ON OTHER CIP PROJECTS:

Most of the other projects proposed in the 2002 CIP are for general maintenance, service upgrades, operational improvements, and efforts to meet environmental requirements and safety. Most of the projects are part of an airport LTCP, and potential off-airport impacts are not considered to be significant. Some areas of concern were identified in the 2001 CIP review and are repeated here due to project deferrals:

MSP Noise Mitigation

At the conclusion of the major airport dual-track planning process the Legislature directed that a noise mitigation program be defined for MSP International airport and the affected surrounding communities. A major element of that plan involves the use of FAA approved passenger facility charges (PFC's) to fund the Part-150 home insulation program. Additional evaluation of airport/community stabilization was also required. A Governor's Airport Community Stabilization Funding Task Force was established and completed its report to the Legislature. A part of the Task Force recommendations relates to addressing unfunded noise mitigation activities, including the potential impacts of low-frequency noise. A mitigation plan process has been defined and draft legislation proposed; however, the scope of the unfunded mitigation activities has not been fully defined. Initial estimates are $155 million. Since the Governor's Task Force Report and Low Frequency Noise Study were not completed in time for use in the MAC 2000 CIP it was recommended that the appropriate funding and program information be included in a future CIP as soon as feasible. The MAC has indicated that results of the low-frequency noise study are included in the Part 150 update submitted in October 2001 to the FAA for review.

Finding:

FAA review may take eighteen months or more. Funding levels and mitigation measures are under review and will be addressed in future CIP's as appropriate.

Sanitary Waste Disposal Issues
Policy 12 of the Aviation Chapter of the Metropolitan Development Guide states: *Reliever airports should be connected to the sewer system when service is available near the airport. Whenever this is not practical, the airport owner and the local governmental units must adopt and implement ordinances and administrative procedures that will adequately meet the need for trouble-free on-site sewage disposal in accordance with the Council's guidelines in its Wastewater Treatment and Handling Policy Plan.*

The MAC has completed installation of sanitary sewer and water main utilities at the Anoka County-Blaine airport. Plans and specifications are complete for projects at both Flying Cloud and Airlake airports; these projects are being held up due to issues with the cities of Eden Prairie and Lakeville. These projects will move ahead as soon as the communities give the MAC project approval.

Finding:
Council staff are highly supportive of the need to hookup the reliever airports in the metropolitan urban service area (MUSA) to the metropolitan disposal system (MDS). Implementation of the projects appears to be stalling and additional efforts may be necessary.

Stormwater Management Issues
The primary area of concern at MSP International airport is stormwater management. The CIP contains numerous projects that have the potential to increase impervious surface area at the airport and thus increase the stormwater runoff potential. New runways, taxiways, aprons, roadways, and rooftops will significantly increase the impervious surface. Increased impervious surface will likely increase the volume of stormwater runoff and nonpoint source pollution loadings such as sediments, nutrients, and metals at the site. Increases in suspended solids (from erosion), urea for runway deicing and its degradation products (ammonia and nitrate), airplane deicers, mercury, phenol, pesticides, and phosphorus from airport activities will also occur.

With all of the proposed development at MSP Council staff believes that it is time for the MAC to consider a watershed management plan for this airport. A draft stormwater management plan has been prepared by the MAC and submitted to the Board of Water and Soil Resources for review and comment in February 2000. In addition, the MAC has joined the Lower Minnesota River Watershed District except for the northwest quadrant of the airport that will continue to be part of the Minnehaha Creek Watershed district.

The 2001 CIP included over $12 million for new stormwater collection/ detention ponds related to runway 17/35. In the 2002 CIP a $3M project is included as part of the NPDES discharge to the MCES system during summer months for treatment.

SUMMARY OF FINDINGS

1) Estimated cost of MSP development projects in 2002 is $101.4 million and for the reliever airports $1.9 million, for a 2002 total of $103.3 billion. Total CIP expenditures for 2002 to 2008 is estimated at $ 978 million.

2) The Metropolitan Airports Commission participates in and has in place a public participation process for its annual CIP.

3) In response to concerns raised during this process, development at Flying Cloud airport is consistent with approved plans; additional home insulation funding will be reviewed when revenues improve;

environmental projects are continued in the 2002 CIP; and environmental criteria will be critical in setting priorities for deferred projects.

4) The MAC has identified funding sources to cover the 2002 capital projects. A series of general airport revenue bond (GARBS) issues will be used to fund 2002-2003 projects to implement the MSP 2010 LTCP. The bonds may or may not be issued in 2002.

5) Economic recovery is likely to take more than a year; new aviation forecasts will be needed for determining investments in both the short and long-term.

6) One project in 2002 meets all the capital review criteria to require Council approval: **MSP - Runway 17/35 Intersection site preparation and paving** -The 17/35 (North/South) runway and associated land acquisition for the federal runway protection zone was included in the MSP 2010 long-term comprehensive plan (LTCP) and FEIS. It affects property located off-site in the city of Bloomington, but provides for relocation of displaced businesses within the city. The project was circulated as part of the 2002 CIP for local review, and is consistent with the *Aviation Policy Plan.*

7) One project was approved in 2001 contingent upon preparation of a TDM program at MSP Airport. The **MSP- EconoLot/Employee Parking Structure,** which is part of the HHH terminal area. The HHH Terminal development was included in the MSP LTCP and FEIS, was modified by the MAC to address legislative concern for additional facilities to encourage airline competition. It was included in the 2002 CIP for local review, and is consistent with the *Aviation Policy Plan.* The MAC has requested Council concurrence to delay the TDM program until mid-2002.

8) A number of projects related to MSP noise mitigation, sewer and water service at reliever airports, and stormwater management are of continuing concern. All other projects in the 2002 CIP appear to be consistent with the *Aviation Policy Plan.*

Recommendations:

1) That the following year 2002 projects be approved for implementation by the MAC:

a. MSP Runway 17/35 Intersection project.

b. HHH Terminal Parking Structure [2001 carryover project].

2) That the Council concur with the MAC request to delay development of a TDM plan for MSP until mid-2002.

3) That all other year 2002 projects are found to be consistent with the Metropolitan Development Guide and specifically with *Aviation Policy Plan.*

EXHIBIT A

MAC C.I.P. SUBMITTAL
PROJECT LISTING 2002 - 2008

MAC 2002 CIP - SUMMARY WORKSHEET:REVIEW CRITERIA
EXHIBIT B

2001 Holdover & 2002 CIP Projects	Prior Reviews/Actions	Criteria (A)	(B)	(C)	(D)	(E
AIRPORT/PROJECT	• LTCP Approved • Special Study Conducted • EA-EAW Prepared • EIS Reviewed • NPDES Approved • Legislative Requirement • Regulatory requirement	Project meets the dollar threshold at: MSP =$5M Relievers =$2M	Location of a New Airport	New Runway at an Existing Airport	A Runway Extension at an Existing Airport	Rui Streng Othe rou Maint
MSP INTERNATIONAL AIRPORT	2010 LTCP (Approved 1996)					
- 77th Street/24th Ave. Interchange/I-494 Frontage Road.	2010 FEIS	6.0M				
- Runway 17/35 Site Preparation/Paving	2010 FEIS	18.5M		X		
- Residential Insulation (inside 1996 - 65DNL)	2010 FEIS. FAA approved [1996] FAR Part-150 Program	7.0M				
- Runway 4/22 Property Acquisition	2010 FEIS	3.0M				
- 34th Ave. Reconstruction [Reviewed 2001, at $5.4M]	2010 FEIS	6.5M				
- CAT II/III System Installation [Reviewed 2001]	2010 FEIS	8.0M				
LAKE ELMO AIRPORT	2010 LTCP (Approved 1996)					
		No Projects				
FLYING CLOUD AIRPORT	2010 LTCP (Approved 1996)					
		No Projects				
CRYSTAL AIRPORT	2010 LTCP (ON HOLD)					
		No Projects				
ANOKA CO-BLAINE AIRPORT	2010 LTCP (Approved 1996)					
		No Projects				
LAKE ELMO AIRPORT	2010 LTCP (Approved 1996)					
		No Projects				
AIRLAKE AIRPORT	2010 LTCP (Approved 1997)					
		No Projects				

Commissioners
JWH Probst
TWA Nelson
Fuhrmann

Metropolitan Council
Building communities that work

REGIONAL ADMINISTRATOR
Writer's Direct Dial: (651) 602-1723

May 29, 2002

RECEIVED
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DEPUTY EXEC. DIR.

Nigel D. Finney
Deputy Executive Director
Planning and Environment
Metropolitan Airports Commission
Minneapolis-Saint Paul International Airport
6040-28th Avenue South
Minneapolis, MN 55450-2799

Dear Mr. Finney:

Thank you for your letter of May 22, 2002 regarding the action taken by the Metropolitan Airports Commission on May 20, 2002. By copy of this letter, the members of the Metropolitan Council will be advised that the Commission has voted unanimously to delete Amendment 6 from its Part 150 Update and to reaffirm the $150 million commitment for noise mitigation. As you indicate, it was the language of Amendment 6 that caused concern for the Metropolitan Council.

The action to remove the language of Amendment 6 satisfies the condition described in the Metropolitan Council's resolution adopted May 8, 2002, a copy of which is attached. Moreover, the reaffirmation of the $150 million for noise mitigation is consistent with Commissioner McKasy's commitment made at the May 8, 2002 Council meeting.

As a result of these actions, I am pleased to confirm that the Metropolitan Airports Commission has fulfilled the condition imposed by the Metropolitan Council in March for approval of the MAC capital improvements program.

Very truly yours,

Lee Sheehy
Regional Administrator
Enclosure
cc: Council Members
Chair Mondale
Nils Grossman
Natalio Diaz

M. Smith moved, seconded by Kummer:

"That the Metropolitan Council:

1. finds that, if the language of amendment 6 adopted by the Metropolitan Airports Commission on April 15, 2002, is removed, the Metropolitan Airports Commission then fulfills the condition of approval imposed by the Metropolitan Council in March, 2002; and

2. authorizes and directs its Regional Administrator to notify the Metropolitan Airports Commission accordingly."

Motion carried.

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota by the City of Minneapolis, et al.

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendant.

Case No. 05-5474

Case Type: Other Civil

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Memorandum in Support of Defendant Metropolitan Airports Commission's Motion to Dismiss and Affidavit of Nigel D. Finney (including exhibits) were served by placing the documents in the United States mail, postage prepaid, this 19th day of May, 2005, addressed to the following:

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In addition, I hereby certify that a copy of the Memorandum in Support of Defendant Metropolitan Airports Commission's Motion to Dismiss and Affidavit of Nigel D. Finney (excluding exhibits) were served on Stephen H. Kaplan and John E. Putnam, Kaplan Kirsch & Rockwell, LLP, 1675 Broadway, Suite 2300, Denver, CO, by transmitting the documents this 19th day of May, 2005, via facsimile to (303) 825-7005.

Thaddeus R. Lightfoot

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

STATE OF MINNESOTA BY THE CITY OF MINNEAPOLIS, et al.

Plaintiffs

Case No. 05-5474
(Judge Stephen C. Aldrich)

Case Type: Other Civil

METROPOLITAN AIRPORTS COMMISSION,

Defendant

PLAINTIFFS' MEMORANDUM OF LAW IN RESPONSE TO DEFENDANT METROPOLITAN AIRPORTS COMMISSION'S MOTION TO DISMISS

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INTRODUCTION AND SUMMARY

Plaintiffs City of Minneapolis, City of Eagan, City of Richfield and the Minneapolis Public Housing Authority (collectively, the "Communities") respectfully file this Response to Defendant Metropolitan Airports Commission's ("MAC") Motion to Dismiss. The Communities bring this action under the Minnesota Environmental Rights Act ("MERA"), Minn. Stat. §§116B.01, et seq., and the state mandamus statute, Minn. Stat. §§ 586.01, et seq., to obtain declaratory relief and an injunction against MAC requiring it to provide adequate noise insulation for homes in the 60 to 65 decibel noise contours ("DNL 60-65") of the Minneapolis-St. Paul International Airport ("MSP").

BACKGROUND

Residents of the Communities who live in the DNL 60-65 experience every day the disproportionate effects of noise from MSP, with exposures of to up to 1,000 times more sound energy than would exist in the area without MSP (even with cars, trucks and other urban sources). Complaint at ¶¶ 11-12. Frequent, loud overflights from MSP have destroyed the quietude of otherwise quiet neighborhoods. The Communities seek the implementation of sound insulation measures that MAC is obligated to provide pursuant to state law.

MAC has repeatedly recognized that noise impacts from MSP occur in the DNL 60-65. For example, MAC identified impacts in this area in a 1998 Final Environmental Impact Statement ("1998 FEIS") relating to MAC's expansion of MSP, including a new north-south runway ("Runway 17-35") that MAC plans to open later this year. Moreover, MAC has made enforceable commitments to extend the existing noise insulation program into the DNL 60-65. In the late 1980s and early 1990s, the Legislature directed a planning process for the long-term future of MSP known as the Dual-Track Process. As a result of this process, the Legislature

determined that MSP should remain as the location of the metropolitan area's international airport, but also directed MAC to develop a noise mitigation program to address the heavily impacted areas surrounding the Airport. MAC did so in 1996, and, consistent with its statutory obligations to minimize public exposure to noise around airports, developed and committed to a plan to expand its existing noise insulation program to the DNL 60-65 ("1996 Noise Program"). Subsequently, in the 1998 FEIS, MAC again committed to provide the noise mitigation measures under the 1996 Noise Program to discharge its statutory mandates to minimize the noise impact associated with its activities, including Runway 17-35. In 2002, the Metropolitan Council (which has approval authority over large MAC capital plans) conditioned its approval of MAC's capital spending program on MAC's expenditure of $150 million for noise insulation in the DNL 60-65.

However, even as MAC is on the brink of opening the new Runway 17-35, it has indicated that it has no intention of discharging its noise insulation obligations. To the contrary, MAC has affirmatively stated that it will not provide much of the noise mitigation it is obligated to provide and that it will only provide a portion of the noise mitigation program that was supposed to have been expanded into the DNL 60-65 contours. Further, it will now require homeowners to pay for up to half of even the incomplete mitigation of MAC's impacts.[1]

SUMMARY OF ARGUMENT

Throughout, MAC's Memorandum in Support of Defendant Metropolitan Airports Commission's Motion to Dismiss ("Memorandum") mischaracterizes the Communities' Complaint by developing straw-man arguments it then knocks down. This approach is not sufficient to demonstrate that the Complaint should be dismissed, because on its face the

[1] MAC plans to only provide air conditioning to homes in the DNL 60-65 that do not already have it and not expand the existing program that provides insulated windows, doors, vents, attics and other measures. It also plans to require homeowners to pay for up to half of the costs of mitigating MAC's impacts.

Complaint states claims upon which relief may be granted. These include the Communities' claims that (1) MAC is in violation of MERA due to its material impairment of the resource of quietude without undertaking feasible mitigation (Count 1); (2) MAC is not complying with MERA because it is in violation of environmental quality standards, limitations and other provisions relating to noise insulation (Count 2); and (3) MAC is not discharging its mandatory obligations to provide sound insulation in the DNL 60-65 contours and is therefore subject to mandamus (Count 3).

MAC attempts to recharacterize this case as an administrative appeal of a 2004 funding eligibility proposal (the "Part 150 Plan") it submitted to the Federal Aviation Administration ("FAA") that included a noise mitigation plan in the DNL 60-65. However, FAA's review of the Part 150 Plan is irrelevant to this case. Whether or not the FAA makes MAC eligible for federal funding, the plan itself falls short of affirmative noise obligations required under Minnesota law. The Complaint is clear: the Communities seek a declaration and injunction relating to whether MAC's failure to implement an adequate insulation program is a violation of Minnesota law under MERA and mandamus. The communities complain of MAC's failure to discharge its affirmative obligations under state law, not the review of MAC's federal application. This controversy is live and ripe for adjudication.

Delaying consideration to wait and see if FAA will or will not fund a program that does not even meet the requirements of Minnesota law makes no sense. FAA will not and cannot adjudicate MAC's state law obligations. FAA will not and cannot provide legal or factual findings that would assist Minnesota courts in determining MAC's state-law obligations. Thus, waiting for FAA would not save judicial or party resources. Delaying resolution of the state-law obligations is inappropriate, because residents of the Communities are already suffering from the

impacts of excessive noise. These residents will also experience new impacts associated with the opening of Runway 17-35, which MAC has scheduled for later this year.

MAC would have this Court believe that it can avoid complying with its state-law obligations and mitigation measures for a runway that is about to open merely because it has submitted a request for federal funding eligibility. Accepting MAC's arguments relating to ripeness would allow it to further delay compliance with its state-law obligations. This Court should deny MAC's invitation to abdicate its responsibility to enforce Minnesota law.

MAC's Memorandum also puts aside the actual allegations and claims in the Complaint and characterizes it as a suit for, or based on, a damages and/or inverse condemnation theory. However, this is plainly not what the Communities pled in the Complaint, which seeks only declaratory and injunctive relief under MERA and the mandamus statute.

With regard to the Communities' Second Count, MAC argues that it is not bound by state law – including MERA, the Minnesota Environmental Policy Act ("MEPA") and MAC's own enabling legislation (Minn. Stat. §§ 473.601, et seq.). As discussed in detail below, Minnesota law requires MAC to minimize and mitigate the impacts of its MSP operations to the maximum extent feasible. As part of the process for selecting MSP as the long-term location for the metropolitan area's international airport and for constructing major capital improvements such as the new Runway 17-35, MAC made enforceable mitigation commitments to provide adequate sound insulation, which commitments it now seeks to avoid. Accepting MAC's arguments would allow it to evade its obligation under state law to implement feasible alternatives that reduce the impacts to the environment of the State of Minnesota. MAC must be required to follow through with the mitigation commitments it made to secure approval for, and quicker

construction of, projects like Runway 17-35. Any other approach would undermine MERA and run roughshod over Minnesota's paramount concern with environmental protection.

The Supreme Court of Minnesota made the following statement regarding MAC noise issues in 1974, which is equally applicable today: "MAC was created for the express purpose of promoting and developing airports around the metropolitan area. Having accomplished this task, it would be incongruous for this court to hold that MAC cannot be held responsible for the adverse effects of its activities." Alevizos v. Metropolitan Airports Commission, 216 N.W.2d 651, 663 (Minn. 1974).

STANDARD OF REVIEW

A motion to dismiss must be denied if "it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded." Elzie v. Commissioner of Public Safety, 298 N.W.2d 29, 32 (Minn. 1980). Toward that end, when reviewing a motion to dismiss, the Complaint must be given a liberal construction in favor of stating a claim. Hutton v. Bosiger, 366 N.W.2d 358, 360 (Minn. App. 1985). Also, the facts alleged in the complaint must be taken as true. Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 292 (Minn. 1978).

ARGUMENT

I. THE COMPLAINT PRESENTS A RIPE, JUSTICIABLE CONTROVERSY

A. The Communities' Claims are Fit for Judicial Decision

In Minnesota, a controversy is ripe, and therefore justiciable, if the plaintiff demonstrates a direct or imminent injury as opposed to a purely hypothetical theory. State v. Colsch, 284 N.W. 2d 839, 841-42 (Minn. 1979); Lee v. Delmont, 36 N.W. 2d 530, 537 (Minn. 1949). There must be "a bona fide legal interest which has been, or with respect to [which] the ripening seeds

of a controversy is about to be, affected in a prejudicial manner" [sic]. So. Minn. Constr. Co. Inc. v. Minn. Dep't of Transp., 637 N.W. 2d 339, 344 (Minn. App. 2002) (citation omitted). As the Minnesota Court of Appeals has recently noted, this test is met when "the consequences [of an action] ha[ve] been reduced to more manageable proportions and where the factual components [are] fleshed out, by some concrete action." Minnesotans for Responsible Recreation v. Dep't of Nat. Res., 651 N.W. 2d 533, 539 (Minn. App. 2002), quoting with favor, Ohio Forestry Ass'n v. Sierra Club, 523 U.S. 726, 735 (1998).

1. The Complaint Identifies a Bona Fide Legal Interest

Through MERA, Minnesota has created a right in each person to protect the natural resources in the state from "pollution, impairment or destruction." Minn. Public Interest Research Group v. White Bear Rod and Gun Club, 257 N.W. 2d 762, 781 (Minn. 1977); see also Minn. Stat. § 116B.03. To establish a prima facie case, a plaintiff must identify a protectable natural resource and must show either: (1) 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; or (2) conduct which materially adversely affects or is likely to materially adversely affect the environment. Minn. Stat. §§ 116B.01 & 116B.03 (emphasis added).

The Complaint establishes a prima facie case, because it involves quietude – which is a protectable natural resource – and it demonstrates that the MAC is causing pollution, impairment or destruction of such quietude. More than 10,000 homes in the Communities and in other neighborhoods will experience noise in excess of DNL 60 by 2007, a level that MAC has acknowledged causes adverse impacts. Complaint at ¶ 11. These levels are almost 1,000 times the amount of sound energy than would be experienced absent aircraft noise from MSP.

Complaint at ¶ 12. Noise levels in excess of DNL 60 are inconsistent with speech and sleep, and severely impact residents in the cities. Complaint at ¶¶ 17, 20. Further, MAC committed as part of the Dual-Track Process to extend the noise insulation from the DNL 65 and higher to the DNL 60-65, explicitly recognizing the need and feasibility of this insulation to protect quietude. Complaint at ¶¶ 27, 38, 46-50. The Communities, therefore, have demonstrated a bona fide legal interest under MERA.[2] Similarly, Plaintiff MPHA has alleged a direct injury for mandamus purposes arising from MAC's failure to discharge its mandatory noise insulation requirements, insofar as homes it owns would not receive the required sound insulation.

2. The Complaint Demonstrates Direct and Imminent Injury

The harm identified in the Complaint is not "purely hypothetical." Delmont, 36 N.W. 2d at 537. MSP is already generating injurious levels of noise in the DNL 60-65 noise contours. Further, MAC has indicated that it has no intention of implementing the level of noise insulation required under state law and that it has previously recognized to be feasible and necessary. Complaint at ¶ 63. It has reneged on its mitigation commitments for feasible noise insulation measures in the DNL 60-65 that would have provided real protection to quietude. Complaint at ¶ 64. In addition, it has reneged on its funding commitments by requiring a co-payment for its proposed air conditioning package. Complaint at ¶ 66 – 68. Despite MAC's statutory duty to assure residents of the minimum environmental impacts, MAC would provide no noise insulation (such as improved doors and windows, vent baffles and other measures that actually reduce the transmission of sound) for homeowners who already have air conditioning. Complaint at ¶ 69.

[2] MAC inappropriately tries to dispute these facts in its Memorandum by asserting that its proposed program would meet certain Environmental Protection Agency guidelines. Memorandum at 5. However, this argument regarding the factual merits of the case is clearly inappropriate in a motion to dismiss.

MAC's infliction of injury to quietude does not exist only in "the realm of future possibility." E.g., Delmont, 36 N.W. 2d at 537. The consequences of MAC's actions have been "reduced to more manageable proportions" and "the factual components [have been] fleshed out, by [the MAC's] concrete action[s]." E.g., Responsible Recreation, 651 N.W. 2d at 539. MAC has already taken steps to create levels of noise that impair quietude. Nonetheless, MAC has made it clear that, although a full sound insulation program in the DNL 60-65 is feasible, and although it has a duty to "assure the residents of the metropolitan area of the minimum environmental impact from air navigation and transportation", it will not implement this program. See Minn. Stat. § 473.655. This action involves a live controversy and has direct legal consequences for the Communities.

3. Withholding Court Consideration Will Cause Hardship

Delaying review will serve no purpose. First, the MAC's actions create legally cognizable harms. Cf. Ohio Forestry, 523 U.S. at 733 (finding no hardship where action under review did not "create adverse effects of a strictly legal kind"). MERA clearly creates rights in all Minnesotans to avoid degradation of natural resources, including quietude. MAC's failure to implement an adequate noise insulation program ensures continued, direct, and immediate harm to the natural resource of quietude. See Minn. Stat. § 116B.03, subd. 1 (providing any political subdivision within Minnesota the authority to bring suit to protect natural resources). Cf. Ohio Forestry, 523 U.S. at 733, (finding no hardship where action under review does not inflict harm on the interests advanced by the plaintiff). The Complaint outlines the many types of harm residents suffer in uninsulated homes. Complaint at ¶¶ 11, 12, 13, 17, 18 & 20. Deferral of

judicial review will further delay the mitigation for which the residents of the Communities have already waited almost 10 years.[3]

B. Contrary to MAC's Characterization, This Case Arises under MERA and the Mandamus Statute and Is Not an Administrative Review Case

MAC mischaracterizes the nature of the Complaint by referring to MAC's "proposed mitigation plan" – i.e., the Part 150 Plan submitted to FAA for review – as the subject of the Complaint. Memorandum at 2-10. This is entirely misleading. The Communities seek relief under both MERA and the state mandamus statute, which relief arises out of the MAC's failure to satisfy its state-law obligation to provide adequate noise insulation for homes in the DNL 60-65. Complaint ¶¶ 76-95. Under MERA, the Communities have a cause of action to protect natural resources, including quietude, against "pollution, impairment or destruction." Minn. Stat. § 116B.03, subd. 1; Citizens for a Safe Grant v. Lone Oak Sportsmen's Club, Inc., 624 N.W. 2d 796, 805 (Minn. App. 2001). In the event that no remedy is available under MERA, the Communities would have a right under the state mandamus statute to force MAC to comply with its duties to provide for noise abatement and minimize the public's exposure to noise hazards around airports. Complaint at ¶¶ 91-95.

Minnesota law is clear that a MERA action is separate from the administrative review of agency decisionmaking. E.g., White v. Minn. Dep't of Nat. Resources, 567 N.W.2d 724, 737 (Minn. App. 1997) (a MERA action does not seek review of an agency decision). As a result, the pending FAA review is irrelevant. The Communities have not questioned the extent to which MAC's current plan may merit federal funding, which issue may be resolved by FAA. Rather,

[3] Furthermore, even if one were to assume, arguendo, that delay of review would not cause "hardship," the hardship prong is only prudential, and is irrelevant where the legislature has "declared a preference for immediate review." Eagle-Pitcher Industries v. EPA, 795 F.2d 905, 918 (D.C. Cir. 1985). In this case, the intent of the Minnesota Legislature is manifest: MERA is drafted in "broad and comprehensive language" and is intended to have "broad, all-inclusive application." Freeborn County by Tuveson v. Bryson, 210 N.W.2d 290, 296 (Minn. 1973). Indeed, of critical importance to this issue, the Legislature made the MERA civil remedy available not only when impairment of natural resources is occurring, but also when it is likely. Minn. Stat. § 116B.02, subd. 5.

the Communities assert that the MAC has failed to meet its mandatory obligations under MERA to protect the natural resource of quietude from "pollution, impairment or destruction" and to implement feasible sound insulation around MSP.

The MAC's Part 150 submittal is relevant only as evidence of whether or not MAC is likely to comply with MERA standards. Toward that end, the plan clearly demonstrates that MAC will not implement adequate and feasible sound insulation measures and will therefore continue to cause pollution, impairment and destruction of quietude. The Part 150 Plan is not, however, the subject of this Complaint.

C. FAA Action Is Not a Necessary Predicate for Ripeness in this Case

MAC diverts this Court's attention with an eight-page discussion of various potential uncertainties of the FAA review process for federal funding. This protracted frolic and detour has no bearing on whether or not MAC's failure to implement effective noise insulation in the DNL 60-65 violates state law. The MAC has an independent obligation, arising under state law, to implement adequate sound insulation measures. MAC does not need federal approval to do so. Nor does it need federal funding. As a result, the entire Part 150 argument is a red herring that raises no genuine issue of ripeness.

1. MAC Does Not Require Federal Approval to Comply with State Law

MAC implies that no local noise mitigation measure is final or effective until a Part 150 review by FAA is complete. Memorandum at 2-10. This is untrue. Since Part 150 is a voluntary program,[4] MAC could implement noise compatibility and mitigation measures without any FAA review whatsoever. Thus, FAA review and approval of federal funding is not a necessary prerequisite to a state judicial determination of whether or not the MAC is complying

[4] Under Part 150, airports can, but are not required to, seek federal review of plans for nearby land use to be compatible with airport operations. See 14 C.F.R. Part 150.

with Minnesota law. While there may be good policy reasons why MAC may want to use federal funding mechanisms for some or all of the mitigation, those reasons do not affect the question of whether MAC has a legal duty under Minnesota law to provide sound insulation.

In addition, even if an airport does participate in the Part 150 program, as the MAC has done, the FAA review is only relevant in determining whether local noise mitigation efforts are eligible for federal funding. 14 C.F.R. § 150.33(a) (FAA evaluates each noise compatibility program and either approves or disapproves the program funding). FAA would not and could not opine on MAC's obligations under state law. As a result, although the Part 150 process would determine whether the MAC could use certain federal funding mechanisms[5] to implement sound insulation commitments, it will not generate any factual evidence or make any findings that would contribute to the resolution of the legal dispute in this case. See e.g., N.Y. State Opthalmological Soc. v. Bowen, 854 F.2d 1379, 1386 (D.C. Cir. 1988) ("A controversy is ripe if further administrative process will not aid in the development of facts needed by the court to decide the question it is asked to answer.")

2. FAA Action Will Not Assist this Court

Further, there is no legal need or justification for this Court to defer to any FAA findings in order to determine MAC's compliance with state law. FAA has made clear, as part of the Part 150 process, that it does not preempt states and local authorities from determining that residential areas are incompatible with specific noise levels, so long as the state and local activities do not interfere with flight operations. 14 C.F.R. § A150.101(d). Indeed, in a recent case upholding the City of Naples Airport Authority's ban on certain noisy aircraft due to

[5] As MAC notes in its Memorandum, under current federal law (based on the so-called "Lott Amendment" cited at page 6 of MAC's Memorandum), FAA cannot approve the use of federal grant funds outside of the DNL 65. However, it may approve the use of Passenger Facility Charges collected from passengers using the Airport for mitigation outside the DNL 65. Memorandum at 7. Regardless, FAA's opinions or policy on the subject of when noise insulation is appropriate do not answer the question of what is required under Minnesota law.

impacts in the DNL 60-65, the U.S. Court of Appeals for the District of Columbia Circuit concluded that FAA's decision to withhold federal funding was unreasonable because the airport had demonstrated that DNL 60 was a "significant noise threshold" for the surrounding community. City of Naples Airport Authority v. FAA, --- F.3d ---, 2005 WL 1313803 (D.C. Cir. June 3, 2005) at 3. As a result, FAA has no right to dictate or define the precise noise mitigation measures that will satisfy MAC's state obligations. Cf. City of Rochester v. People's Coop. Power Ass'n, Inc., 483 N.W.2d 477, 480 (Minn. 1992) (deferral to agency is only applicable where enforcement of a claim requires the resolution of issues which have been placed within the special competence of that administrative body).

3. There Is No Risk of Inconsistent Judgments

Contrary to MAC's suggestion (see Memorandum at 9), there is also no meaningful risk of incurring inconsistent obligations under federal and state law. MAC has not demonstrated how a federal determination regarding whether MAC's proposed plan is adequate for federal funding purposes would bear on the independent question of MAC's compliance with state laws (or vice versa). As noted above, federal law provides flexibility for local entities to tailor local noise programs. Indeed, MAC's sudden concern for consistency with federal law is belied by its prior commitments to undertake sound insulation in the DNL 60-65. For example, as outlined in the Complaint, the MAC previously committed to the expansion of the noise insulation program to the DNL 60-65 in the 1996 Noise Program and the 1998 FEIS, and is a party to the 1999 Airline Lease Agreement, which provides for the funding of insulation of homes in the DNL 60-65. Complaint at ¶¶ 37-42 (1996 Noise Program), 43-50 (1998 FEIS), 55-56 (Airline Lease Agreement). Moreover, FAA itself has expressly adopted the DNL 60-65 sound insulation

requirements as mitigation measures in the joint MAC/FAA FEIS.[6] Complaint at ¶¶ 45-46. Were "inconsistent obligations" a legitimate concern, FAA and the MAC would never have made these commitments.

Finally, MAC's convoluted "revenue diversion" theory simply does not make sense. Even the most cursory review of this argument reveals its inherent flaws. Essentially, MAC claims that this Court should defer judgment in this case because a cascade of hypotheticals might occur. To wit, FAA might "reject" (meaning that FAA might not fund) the MAC's mitigation measures, in which event, the MAC might decide use local airport revenue, following which a third-party might file an administrative enforcement complaint, after which the FAA might determine that the use of airport revenue for noise mitigation constituted illegal revenue diversion, in which case the MAC might lose various federal rights and might be subject to civil penalties. Memorandum at 7-8. As noted above, due to the Naples Airport case and MAC's own commitment to a program in the DNL 60-65, such a scenario is remote and speculative.

Further, FAA policy explicitly provides that airport revenue may be used to cover expenses "incurred in order to secure necessary approvals" of airport projects under state law and "acoustical insulation expenses, to the extent that such measures are undertaken as part of a comprehensive and publicly-disclosed" program. FAA, Policy Regarding Airport Rates and Charges, 61 Fed. Reg. 31,994, 32,019-20 (June 21, 1996). This policy contains no limitation regarding whether the noise levels to be mitigated are above or below DNL 65. Thus, contrary to MAC's argument, because the ability to undertake funding is often dependent on state law, it may be necessary for this Court to determine whether mitigation is required as a matter of

[6] FAA and MAC issued a joint FEIS to jointly satisfy their individual state and federal obligations for environmental review. Complaint at ¶ 45.

Minnesota law before FAA could finally resolve MAC's hypothetical revenue diversion question.

Even if MAC's speculative scenario materialized, it would not in any way "reduce [the case] to more manageable proportions" or "flesh out" the "factual components" of the MERA or mandamus claims. See Minnesotans for Responsible Recreation, 651 N.W. 2d at 539. No matter which way FAA may resolve the matter of federal funding eligibility, the legal issues underlying the MERA and mandamus claims would remain the same. See Time Warner Entertainment Co. v. FCC, 93 F.3d 957, 972 (D.C. Cir. 1996) (in challenge to Cable Act provision that permitted, but did not require, franchising authorities to mandate certain programming access, First Amendment claim was ripe, even absent final review by franchising authority, because "any difference in the ways in which franchising authorities might actually implement the requirement does not affect the First Amendment analysis").

Under MAC's revenue diversion theory, almost no state law could be enforced judicially against MAC because of the lurking possibility that some airport user might bring an administrative complaint against the MAC complaining that the use of funds to comply might be inconsistent with FAA policies. This approach is not required by the law and would be exceptionally bad public policy. MAC cannot contract away its state law obligations merely because it has taken money from FAA. Ultimately, therefore, the pending FAA Part 150 review presents no legal or practical reason for delaying the resolution of the outstanding state law issues.

D. This Court Should Exclude the Affidavit Filed By MAC

MAC asks the Court to review its attached affidavit of Nigel Finney ("Finney Affidavit") and claims that the Court may review the affidavit without converting the Motion to Dismiss to a

motion to summary judgment. In doing so, MAC solely cites to cases in federal court interpreting the Federal Rules of Civil Procedure. Memorandum at 3-4.

Because MAC's approach is flawed, the Court should exclude the MAC affidavit. First, MAC's attempt to append the Finney Affidavit is procedurally flawed. Rule 115.03(d) of the General Rules of Practice for the District Courts requires that for summary judgment motions, the memorandum of law must include specific statements and recitals that MAC does not include in its Memorandum, including recitals of uncontested fact. The rule also provides explicitly that "These additional requirements apply also to a motion under Minn. R. Civ.P. 12 if factually based."[7] Rule of General Practice 115.03(d) (emphasis added). MAC's attempt to rely on an affidavit for its ripeness argument clearly indicates that its argument is "factually based." Further, there is no question that its Motion to Dismiss under either a subject matter jurisdiction or failure to state a claim theory arises under Rule 12. Minn.R.Civ.P. 12.02(a) (motion to dismiss on the basis of no subject matter jurisdiction). Because MAC does not comply with Rule 115.03(d), the Court should exclude the Finney Affidavit and deny MAC's ripeness argument based on it.

Second, as discussed above, even assuming the Finney Affidavit stands for the propositions alleged in the Memorandum, MAC has not demonstrated that the Communities' state-law claims are unripe. As a matter of law, the fact that MAC may have submitted the Part 150 request for eligibility for federal funds does not affect the analysis of whether or not the Communities' claims under state law are ripe. See supra at Sections I.A-C. The only facts that might make such claims unripe would be if MAC could somehow show without question that aircraft from MSP are not creating or are unlikely to create noise in the DNL 60-65. However,

[7] Because the Federal Rules of Civil Procedure do not contain this requirement from the General Rules, MAC's citation to federal cases relating to the use of affidavits in a Rule 12 context is inappropriate and unpersuasive. Memorandum at 3-4.

MAC's Memorandum makes no such claim and MAC cannot deny that aircraft using MSP are creating noise in the DNL 60-65. Thus, the Finney Affidavit is irrelevant to this matter and should be excluded.

II. THE COMPLAINT STATES APPROPRIATE CLAIMS UNDER MERA FOR INJUNCTIVE RELIEF

MAC also completely misconstrues the Complaint by arguing that the Communities' MERA claims represent an action based on damages and not claims for an injunction under MERA. As part of its argument, MAC also asserts that the noise-related injuries at issue in this case are not cognizable under MERA, because they are based on economic-related harms and not environmental ones. MAC's theory is inconsistent with the Complaint. Because the MAC fails to show that Communities would be unable to supply facts sufficient to demonstrate an entitlement to relief, MAC's motion must be denied. E.g., Northern States Power v. Franklin, 122 N.W.2d 26, 29 (Minn. 1963).

A. The Complaint Seeks Injunctive Relief, Not Damages

Perhaps the most novel argument from MAC's Memorandum is that the Communities base their action on damages theories and not an injunctive remedy. A cursory review of the Complaint makes abundantly clear that the Communities seek only injunctive relief under MERA. The prayer for relief seeks only declarations regarding MAC's noncompliance with the law and an injunction to have the MAC implement an adequate sound insulation program in the DNL 60-65. See Complaint at pp. 12-13 (prayer "for an order requiring the MAC to implement ...a noise insulation program for residences in the 60 to 65 DNL contours...").

The Complaint in no place seeks damages or other legal relief. The relief sought would prevent or reduce future injury from MAC's activities rather than compensate the plaintiffs for past injuries or reductions in property value – the hallmark of injunctive relief, as opposed to

damages. See Minnesota Mining and Manufacturing Co., v. Travelers Indemnity Co., 457 N.W.2d 175, 181 (Minn. 1990) ("damages" are "the estimated reparation in money for detriment or injury sustained: compensation or satisfaction imposed by law for a wrong or injury caused by violation of a legal right.") (quoting Webster's Third New International Dictionary 571 (1961)); City of Thief River Falls v. United Fire and Cas. Co., 336 N.W.2d 274, 276 (Minn. 1983) (suit for injunction under mandamus theory is a not a suit for damages). If successful in their claims, none of the Communities would receive any money from MAC. At most, the MPHA would benefit from the MAC's direct installation of sound insulation at some homes it owns. However, this would not be in the form of any direct payment or damages.

B. The Complaint's MERA Counts Address Environmental and Not Economic Issues

In an equally curious and unsupportable argument, MAC argues that the Complaint is not really about protection of quietude – as is expressly pled in the Complaint – but instead solely about the use of property. Compare Complaint at ¶ 79 ("The quietude of the neighborhoods within the cities and properties owned by MHPA … is a protected resource under MERA."); ¶ 85 ("MAC's truncated noise insulation program does not adequately protect quietude in the DNL 6-65 dB contour."); ¶ 86 ("MAC can implement a complete mitigation program in the 60-65 DNL to preserve the quietude protected by MERA…"), with Memorandum at 11-12.

1. MERA Expressly Allows a Suit for the Protection of Quietude

MERA expressly identifies "quietude" as one of the "natural resources" protected under the statute. Minn. Stat. § 116B.02, subd. 4. See also, Minnesota Public Interest Research Group v. White Bear Rod and Gun Club, 257 N.W.2d 762, 771 (Minn. 1977) (quietude protected by MERA in case related to gun range); Citizens for a Safe Grant v. Lone Oak Sportsmen's Club,

624 N.W.2d 796, 806 (Minn. App. 2001) (same); McGuire v. County of Scott, 525 N.W.2d 583 (Minn. App. 1994) (noise pollution from highways can affect quietude under MERA).

Further, the Complaint has pled that this quietude has been materially impaired and destroyed by MAC in the DNL 60-65. Complaint at ¶¶ 11-20, 79-85. The Complaint alleges that the areas in the DNL 60-65, which are the focus of this action, are subject to far more noise than average urban residents – up to 1000 times more than they would experience without MSP noise, even with other urban noise sources like cars and trucks.[8] Id. at ¶ 12. Further, the noise levels in these zones would normally be 30-40 decibels (even with other urban sources), a level of "quietude" that courts have found deserving of protection under MERA.[9] Id. Compare White Bear, 257 N.W.2d at 771 (finding of protectable quietude upheld where background noise readings were between 30 and 40 decibels). Indeed, the MAC has acknowledged the detrimental effects of noise in the DNL 60-65 in the 1998 FEIS and elsewhere. Complaint at ¶ 46. Thus, the allegations of the Complaint suffice to support the ability of Communities to make a prima facie showing of impairment of the protected resource of quietude. Id. at ¶ 12.

2. MERA Case Law Allows Consideration of Impacts of Noise to Property Uses

The fact that the Complaint also notes the concrete and detrimental effects to residents and to their enjoyment of their properties arising out of MAC's disruption of quietude in no way

[8] This fact alone distinguishes this case from the language cited by MAC (Memorandum at 12) out of Alevizos v. Metropolitan Airports Commission, 216 N.W.2d 651, 662 (Minn. 1974), that "[e]very landowner must continue to endure that level of inconvenience, discomfort, and loss of peace and quiet which can be reasonably anticipated by any average member of a vibrant and progressive society." The fact is that residents in the DNL 60-65 experience far more noise than the average member of society, including urban residents. And, the remedy sought by the Communities would provide some relief from noise, but would fall far short of "securing a level of quietude equivalent to that experienced in less developed areas." Memorandum at 12. In any case, resolution of these factual issues would be premature at the motion to dismiss stage.

[9] The Communities recognize that it is not feasible to reduce outside noise back to 30-40 decibels and do not seek such relief. The noise insulation the Communities seek would provide five decibels of noise reduction, which is meaningful relief, but hardly a total solution to the impacts of noise. Nonetheless, it represents what MAC itself has determined to be necessary and feasible.

undermines the MERA case. MERA cases addressing the issue of quietude have explicitly considered evidence relating to the effects of noise on the lives of nearby residents and their uses of property as part of the determination of whether quietude had been impaired. See White Bear, 257 N.W.2d at 772-73 (considering evidence of the effects of noise on neighbors' use of property and lives to conclude adequate evidence of disruption of quietude existed); Lone Oak, 624 N.W.2d at 806 (evidence of effects of loud, unpredictable noise on neighbor's lives supported finding of unreasonable disruption of quietude under MERA). And, contrary to the suggestions in MAC's argument, effects on property value are only some of the environmental effects described in the Complaint. See e.g., Complaint at ¶¶ 12, 13, 17 & 20 (pleading impacts to overall noise levels, health, welfare, quality of life, annoyance, ability to conduct conversations and listen to television or telephones, and sleep).

MAC's only cited case support for its arguments is Skeie v. Minnkota Power Cooperative, 281 N.W.2d 372 (Minn. 1979), and Stansell v. City of Northfield, 618 N.W.2d 814 (Minn. App. 2000). In these cases, courts found that plaintiffs had not demonstrated effects on a MERA-protected natural resource. However, these cases are distinguishable, because they related to pure questions of property impairment, economic impacts and land use that were not based on a MERA-protected resource. Skeie, 281 N.W.2d at 374 (fact that use of cultivated fields would be more difficult due to power line did not demonstrate effect on MERA-protected natural resource); Stansell, 618 N.W.2d at 820 (economic activity of city center was not a MERA-protected natural resource). Here, by contrast, the Complaint focuses on the expressly identified resource of quietude. See Complaint at ¶¶ 79, 85-86; Minn. Stat. § 116B.02, subd. 4. See also, White Bear 257 N.W.2d at 780-81.

3. The Availability of Other Possible Causes of Action Does Not Undermine MERA Claims

MAC also claims that the appropriate relief for aircraft noise must be found in an inverse condemnation action. Memorandum at 12. Nonetheless, despite citing authority for the potential for airport inverse condemnation liability from noisy operations, MAC utterly fails to demonstrate that inverse condemnation is the exclusive cause of action.[10] The potential existence of an inverse condemnation claim does not in any way preclude a MERA claim. MERA case law indicates that other causes of action do not affect the ability to bring a MERA claim. For example, in Lone Oak, the court simultaneously upheld findings that noise from a gun club constituted violations of MERA, nuisance and trespass. Lone Oak, 624 N.W.2d at 804-05. See also, People for Envtl. Enlightenment and Responsibility v. Minnesota Envtl. Quality Council, 266 N.W.2d 858, 866 (Minn. 1978) (MERA may be used in conjunction with other environmental statutes). Thus, MAC's theories do not provide any basis for dismissal under Rule 12.

Finally, MAC postulates that the Complaint raises "contract, estoppel or quasi-contract" claims and then goes on to argue that such claims are not cognizable under MERA. Memorandum at 12. However, once again, the MERA claims actually pled in the Complaint do not rely on any contractual or estoppel arguments. See Complaint at pp. 12-13. Thus, this straw-man argument provides no basis for dismissal.

[10] MAC's Memorandum cites Alevizos v. Metropolitan Airports Commission, 216 N.W.2d 651 (Minn. 1974), for the proposition that impacts to the use and diminution of value of property support a cause of action under an inverse condemnation theory. However, Alevizos never holds that inverse condemnation is the exclusive cause of action related to aircraft noise.

III. THE SECOND COUNT OF THE COMPLAINT STATES A CAUSE OF ACTION FOR THE ENFORCEMENT OF AN ENVIRONMENTAL QUALITY STANDARD, LIMITATION, RULE OR ORDER UNDER MERA

MAC misleadingly argues that the Complaint's second MERA count – based on MAC's violation of "any environmental quality standard, limitation, rule, order license, stipulation agreement or permit" – does not state a cause of action. This argument is based on an assertion that the sound insulation commitments identified in the Complaint are not required as a matter of law and are, thus, unenforceable.[11]

As discussed below, MAC's argument misreads both MERA and other statutes binding on MAC that, singly and cumulatively, create an affirmative obligation to provide adequate noise insulation. Accepting MAC's strained argument would erode the broad reach and protection of MERA and the other statutes designed to protect residents near MSP.

A. MERA Provides for an Expansive Approach to Enforceable Environmental Standards and Limitations

The Legislature enacted MERA as a broad remedial statute to protect the environment and natural resources of Minnesota. See White Bear, 257 N.W.2d at 781-82 (MERA is a "far reaching" and "substantive" statute); County of Freeborn by Tuveson v. Bryson, 243 N.W.2d 316, 322 (Minn. 1976) (MERA has a "broad remedial purpose" and has given the "land ethic the force of law"); County of Freeborn by Tuveson v. Bryson, 210 N.W.2d 290, 296 (Minn. 1973) ("Where a statute such as this is drafted in broad and comprehensive language, we are not justified in engrafting exceptions upon it."). MERA creates substantive rights to a clean environment in addition to a cause of action: "each person is entitled by right to the protection, preservation and enhancement of air, water, land and other natural resources..." Minn. Stat.

[11] MAC's argument is addressed only to Count Two of the Complaint. MAC does not and cannot make a similar argument related to Count One, which alleges that MAC is causing a material adverse impact to the natural resource of quietude under MERA.

§116B.01 (emphasis added). The statute establishes that the protection of natural resources is the state's "paramount concern" and that economic considerations do not constitute a defense. Drabik v. Martz, 451 N.W.2d 893, 896 (Minn. App. 1990). "[I]t is the duty of the courts to support the legislative goal of protecting our environmental resources." Tuveson, 243 N.W.2d at 321.

MERA includes a deliberately broad list of environmental quality provisions the violation of which constitutes a basis for an action: "any environmental quality standard, limitation, rule, order license, stipulation agreement or permit." Minn. Stat. § 116B.02, subd. 5 (emphasis added). The all-encompassing term "any," as well as the long and inclusive list of the types of environmental quality provisions included, reflect a clear legislative intent for an inclusive reading of this list of enforceable measures. See Tuveson, 210 N.W.2d at 296 (the use of the word "any" in a statute is "all comprehensive," "sweeping in its reach," and "includes all persons and things referred to indiscriminately"). This far-reaching intent is reinforced by MERA's provisions regarding burden of proof, which provide that, "where the environmental quality standards, limitations, rules, orders, licenses, stipulation agreements, or permits [] are inconsistent, the most stringent shall control." Id. at § 116B.04 (emphasis added).

"It is elementary that remedial statutes must be liberally construed for the purposes of accomplishing their objects." State v. Industrial Tool & Die Works, Inc., 21 N.W.2d 31, 38 (Minn. 1945); Miklas v. Parrott, 684 N.W.2d 458, 461 (Minn. 2004) (same). In particular, Minnesota courts have recognized that the state's "strong environmental policy" should be "liberally construed." In re Greater Morrison Sanitary Landfill, 435 N.W.2d 92, 99 (Minn. App. 1989). As a result, this Court may not embrace the narrow and cramped approach advocated by MAC to limit the types of environmental provisions that trigger MERA.

MAC's primary argument rests on its attempt to misapply two cases that interpret an affirmative defense under MERA that allows a defendant to show that it is taking action "pursuant to an environmental quality standard, limitation, rule, order license, stipulation agreement or permit." Memorandum at 14-16; citing Kennedy Building Assoc. v. Viacom, Inc., 375 F.3d 731 (8th Cir. 2004), and Williams Pipeline Co. v. Soo Line Railroad Co., 597 N.W.2d 340 (Minn. App. 1999). See also, Minn. Stat. § 116B.03, subd. 1 (affirmative defense). In both cases, however, defendants sought to use this defense by arguing that their environmentally destructive acts were conducted pursuant to state environmental permits or other limitations. In both cases, the courts determined that the defendants' behavior at issue was not undertaken "pursuant to" the environmental permits or provisions, because the provisions did not expressly direct the defendants to take the particular action that was the subject of the complaints. Kennedy, 375 F.3d at 744; Williams, 597 N.W.2d at 346. In both cases, the courts expressly based their decisions on an interpretation of the "pursuant to" phrase of the MERA affirmative defense. Id. They did not consider the scope of the "environmental quality standard, limitation, rule, order license, stipulation agreement or permit" phrase, which is the relevant issue when considering the affirmative scope of MERA.

Further, the Kennedy and Williams courts were interpreting an affirmative defense to a remedial statute, and thus, would have been reading the defense strictly and narrowly, as opposed to the broad reading properly afforded to the primary purposes of such a statute. See e.g., United States v. Shell, 841 F.Supp. 962, 970 (C.D. Cal. 1993) ("With CERCLA's basic remedial purposes in mind, the Court narrowly construes the defenses provided under section 107(b)."). See also, State of New York v. Shore Realty Corp., 759 F.2d 1032, 1044 (2d Cir.

1985) ("We will not interpret [a statute] in any way that apparently frustrates the statute's goals, in the absence of a specific congressional intention otherwise.").

As a result, MAC's reliance on these cases is unavailing. Kennedy and Williams have no bearing on the question of whether the environmental standards identified in the Complaint are enforceable under MERA. Instead, this Court must read MERA broadly in order to effectuate its remedial purpose.

B. The 1996 Noise Program and 1998 FEIS Are Enforceable under MERA

MAC's Memorandum unconvincingly attempts to characterize the 1996 Noise Program and the mitigation requirements in the 1998 FEIS as purely gratuitous and unenforceable policy statements. The core of its argument revolves around citations to case law standing for the proposition that an Environmental Impact Statement prepared under MEPA is an informational document. Memorandum at 16-18.

However, as discussed below, while the requirement to prepare an EIS may, by itself and in isolation, not require a public entity to include mitigation, a constellation of other statutory requirements inside and outside of MEPA requires MAC and other public entities to provide such mitigation in order to minimize the effects of operations and projects. These include MERA, MEPA and the MAC's own enabling statute.

These substantive statutes require MAC to mitigate the impacts of its actions, inter alia, to retain the existing location of MSP as the long-term site for the metropolitan area's international airport and to expand its capacity through the new Runway 17-35 and other construction. The 1996 Noise Program and the 1998 FEIS both represent enforceable standards for the mitigation required to meet MAC's substantive statutory obligations applicable to such

decisions. A review of these statutory provisions and history places the MAC's 1996 Noise Program and 1998 FEIS into proper perspective.

1. MAC's Enabling Laws Require MAC to Minimize Noise Impacts and Provide Mitigation

As discussed in the Complaint, the Legislature explicitly directs MAC to minimize the effects of its operations on nearby residents and to provide sound insulation to affected residents. Minn. Stat. §§ 473.602, 473.655

> It is the purpose of sections 473.601 to 473.679 to: (2) assure the residents of the metropolitan area of the minimum environmental impact from air navigation and 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.

> It is hereby determined and declared that the purposes of sections 473.601 to 473.679 are public and governmental; that the development of the metropolitan airports system by the corporation be consistent with the airport chapter of the Metropolitan Council's development guide and promote the public safety and welfare of the state; 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 provision 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, and is necessary in order to assure the inclusion of this state in national and international systems of air transportation, benefits the people of the state as a whole, renders a general public service, and provides employment, and is of great public economic benefit.

Minn. Stat. § 473.655 (emphasis added). Further, in 1996, the Legislature directed MAC specifically to consider whether to provide insulation to homes in the DNL 60-65 as part of the decision to commit to MSP as the long-term site for the metropolitan area's primary commercial

airport and to undertake the 2010 capital plan.[12] Id. at § 473.661, subd. 4(f). The Legislature then directed MAC to undertake the 2010 capital plan, which was subject to MAC's obligation to minimize and mitigate noise impacts. Id. at § 473.608, subd. 25.

2. MERA and MEPA Create Substantive Standards Binding on MAC

MAC's compliance with the specific provisions of its enabling statute must also be viewed in the context of the requirements of MERA and MEPA. MERA creates an affirmative and substantive obligation on MAC and other public entities to avoid causing significant effects on the environment by implementing feasible and prudent alternatives. E.g., PEER, 266 N.W.2d at 867-68 (Minn. 1978). This includes taking potential steps to mitigate the effects of an action. See e.g., White Bear, 257 N.W.2d at 783.

Similarly, as an arm of the State, MAC has an obligation under MEPA to avoid any action "significantly affecting the quality of the environment ... so long as there is a feasible and prudent alternative..." Minn Stat. § 116D.04(6).[13] See also Tuveson, 243 N.W.2d at 321 ("[A]s a political subdivision of the state, the county has a greater duty than does a private individual to see that legislative policy is carried out."); Erickson v. King, 15 N.W.2d 201, 204 (Minn. 1944) (MAC is a governmental instrumentality exercising a sovereign function).

MAC cites cases that indicate that the purpose of preparing an EIS is to develop information, but the cases do not suggest that measures which implement substantive obligations

[12] The Legislature also tied its definition of "affected city" (in the context of possible additional runway construction at MSP) to whether a city would experience an increase in the size of the DNL 60 noise contour in that city. This is a clear Legislative determination of impact associated with living in the DNL 60-65. MAC's argument in its Memorandum that this determination has nothing to do with impacts to persons living within that contour would render the provision of the statute an absurd nullity. See Memorandum at 20-21. The Legislature would not designate cities with increased noise contours as "affected" if there were not effects associated with the increased noise. Similarly, if the test of an "affected" city was related to something other than the effect of noise, the legislature would not have used noise contours as a trigger.

[13] Section 114D.04, subd. 6 applies to any "state actions" significantly affecting the environment. This provision applies to MAC as an arm of the State. MERA Section 116B.10, entitled "Reviewal [sic] of State Actions," applies to acts taken by the State and its subdivisions, indicating an intent for "state actions" to include actions by political subdivisions like MAC.

are not enforceable. Indeed, one of the very cases that MAC cites, Coon Creek Watershed Dist. v. Minn. Envtl. Quality Bd., clarifies that the EIS plays an important role in determining mitigation when agencies are under substantive obligations: "The requirement of an EIS does not preclude the repair [to a ditch at issue] but merely ensures that the environmental effects will be considered and that the repair will be done in the least harmful way." 315 N.W.2d 604, 605 (Minn. 1982) (emphasis added). See also id. at 606 ("In addition, [MEPA] requires that, where possible, other state laws be interpreted and administered in accordance with its provisions.").

3. The 1996 Noise Program and 1998 FEIS Create Enforceable Standards Pursuant to these Statutes

In the 1996 Noise Program, MAC determined that extension of the already-existing noise insulation program to the DNL 60-65 was necessary, appropriate, and feasible to ensure the compatibility of a major international airport located in close proximity to residential areas. Critically, the Noise Program's requirements for homes in the DNL 60-65 are enumerated in mandatory language (and not hortatory language or policy statements) and contain very explicit provisions for excuse of non-compliance (e.g., if MAC's bond rating slips below an "A" level). See Complaint at ¶¶ 37-42; Memorandum at Exhibit A. Had MAC not been under a statutory obligation to provide this insulation, its implementation of the 1996 Noise Program would have been in excess of its authority, because MAC's implementing statute does not provide it with general authority to insulate residences apart from its obligations to provide noise mitigation. Minn. Stat. § 473.601, et seq.

MAC subsequently made the determination in the 1998 FEIS that residents in the DNL 60-65 were adversely affected by noise from MSP and will be increasingly affected by the airport with the new Runway 17-35 in operation. As a result, MAC again provided a mitigation program that was set out in mandatory terms with explicit provisions for an escape from the

requirement (e.g., if MAC's bond rating fell below "A"). Complaint at ¶ 37-42; Memorandum Exhibit A.

The 1996 Noise Program and the 1998 FEIS reflect the existence of and MAC's commitment to the feasible and prudent alternative of providing noise insulation to affected homes in the DNL 60-65. The statutes examined above identify the general, yet binding and substantive, standards for the minimization of harm that bind the MAC. The 1996 Noise Program and 1998 FEIS provide specific standards and limitations to implement these provisions and are, thus, enforceable under MERA. Otherwise, MAC would be allowed to avoid its substantive obligations by simply making promises and commitments when trying to secure approval for a project and then reneging years later – which is exactly what MAC is seeking to do now. MERA was designed to avoid just this type of situation and it must be interpreted to effectuate the legislature's clear intent.

4. MAC Has Failed to Show that the Standards Are Not Enforceable

MAC's defense in the Memorandum is that its requirements to mitigate and minimize the impacts of its noise are nonbinding. Again, it relies on the Kennedy Building and Williams Pipeline cases as its primary authority for the argument that general standards (e.g., minimization of impacts) cannot be enforced under MERA.[14] Memorandum at 18. Again, however, neither of these cases considered the level of specificity for an enforceable environmental provision that would be needed to support an affirmative cause of action under MERA. Instead, they found that particular actions taken by defendants were not taken "pursuant to" an environmental

[14] MAC also cites In re NSP Red Wing Ash Disposal Facility, 421 N.W.2d 398, 405 (Minn. App. 1988). However, Red Wing dealt with the considerably different situation of whether the general substantive provisions of MEPA regarding overall environmental goals (the "right to the protection, preservation, and enhancement of air, water, land and other natural resources located within the state") provide a specific procedural right to a contested hearing in a particular case to the plaintiff. Id. at 405. This differs completely from MERA, which provides a substantive obligation on the part of state subdivisions to choose less harmful alternatives if feasible and prudent.

standard or other provision and, thus, do not qualify for MERA's affirmative defense. Kennedy Building, 375 F.3d at 744; Williams Pipeline, 597 N.W.2d at 346. The cases did not opine on what an "environmental standard" or other provision must be to obtain relief under MERA. Further, it is critical to note that the courts themselves have found that the general, but substantive, standards of MERA and MEPA themselves (i.e., to avoid any action significantly affecting the environment if there is a feasible and prudent alternative) suffice to state a claim under MERA. PEER, 266 N.W.2d at 868.

Finally, while MAC advances the unremarkable proposition that its organic statute calls for it to promote other non-environmental ends, including the promotion of aviation, it makes no demonstration that these other provisions negate the environmental standards or that the environmental and non-environmental requirements cannot be simultaneously met. Indeed, the Legislature itself determined that adequate mitigation was essential to MAC meeting its aviation-related mission. Minn. Stat. § 473.655. Further, the 1996 Noise Program and 1998 FEIS provide content to the general standards applicable to MAC by indicating what noise insulation should be provided, when and under what circumstances they would become infeasible. Because MAC cannot demonstrate that the mitigation is infeasible in a motion to dismiss (and, indeed, has not tried), the court must deny its motion to dismiss the second count of the Complaint. States Power, 122 N.W.2d at 29

C. The MAC's Failure to Comply with Conditions in the Metropolitan Council's 2002 Approval of Its Capital Program Is a Violation of MERA

MAC is also violating the terms of a condition imposed by the Metropolitan Council in the context of approving MAC's capital program in 2002. This condition is also an environmental standard or limitation and is enforceable under MERA.

1. The Metropolitan Council's 2002 Authorization Is an Environmental Quality Standard, Limitation or Order

The Metropolitan Council's condition on its approval of MAC's 2010 Capital Improvement Program is, by its very nature, an "environmental quality standard, limitation, rule, order, license, stipulation agreement or permit of the state or any instrumentality, agency, or political subdivision thereof," the violation of which constitutes "pollution, impairment or destruction" of the environment. See Minn. Stat. § 116B.02(5). The Metropolitan Council is obligated to review the MAC's capital projects and the development of the metropolitan airports system. Minn. Stat §§ 473.181(5) and 473.621(6). In this case, the Metropolitan Council approved MAC's 2002 "significant effect" projects, including the construction of Runway 17-35 and a terminal parking structure, contingent on the MAC's reaffirming its $150 million funding commitment for a full sound insulation program. Complaint at ¶¶ 58-59. As a result, the Metropolitan Council's authorization imposes standards to ensure minimal environmental impacts from the MAC's actions. It also imposes limitations on the MAC's authority to implement its capital plan based on the environmental impacts on noise. Finally, it orders the MAC to install sound insulation as a condition for approval of the 2010 Capital Improvement Plan.

While the MAC would read MERA narrowly, such an approach is clearly contrary to the intent of the statute. As discussed above, the statute is written in sweeping terms, and is "intended to preserve the environment In [sic] its natural state from pollution, impairment or destruction." Skeie v. Minnkota Power Coop., Inc., 281 N.W.2d 372, 373 (Minn. 1979). To exclude protection where a provision is not formally labeled on its face as a "standard, limitation, rule, order, license, stipulation agreement or permit" would fundamentally undermine the broad goals of the statute. E.g., Minn. Stat. § 116.01 (defining the purpose of the statute); Tuveson,

210 N.W.2d at 296. The Metropolitan Council's action constitutes the implementation of a legislatively-mandated duty to protect the environment. The action is a direct response to environmental impacts from noise. Furthermore, it is imposed by an entity with jurisdiction to consider environmental issues. As a result, the Metropolitan Council's order, imposing noise standards and limitations on the MAC, is an environmental quality standard, limitation, rule or order, the violation of which constitutes "pollution, impairment or destruction" of the natural resource of quietude.

2. The Metropolitan Council Did Not Overturn its 2002 Noise Mitigation Standard

MAC's argument that the Metropolitan Council has somehow reversed its 2002 requirement is not only unfounded, but also clearly not a basis upon which to dismiss this action. See Memorandum at 20-21. First, as a matter of course, this court should summarily dismiss this theory because the MAC has not produced any evidence sufficient to support judicial notice on this matter. E.g., State Dep't of Highways v. Halvorson, 181 N.W. 2d 473, 476 (Minn. 1970) (where a court is asked to take judicial notice of an agency regulation, the identity and contexts of which are not disclosed in formal pleadings, counsel should be prepared to include as an exhibit to the court the relevant contents of the regulation).[15]

Second, it is not at all apparent, based on the MAC's own argument, that the Metropolitan Council's 2005 action "overturns" its prior conditional approval. Compare Memorandum at 20. The two approvals govern wholly separate matters. Compare, e.g., Memorandum at 20 (describing the Metropolitan Council's initial approval of the "2002 MSP

[15] The Minnesota Rules of Evidence stipulate that a judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resource to sources whose accuracy cannot reasonably be questioned. Minn. Rules of Evidence, Rule 201(b). Given the dispute over the merits of the Metropolitan Council's 2005 action, the idea that the 2005 action "reversed" the Metropolitan Council's 2002 conditional approval is clearly not a "fact" that is appropriate for judicial notice.

capital improvement program") with id. at 21 (describing the Metropolitan Council's 2005 approval of "MAC's 2005 capital improvement plan"). The MAC's entire argument rests on the fact that the Metropolitan Council's most recent action "made no mention of a MAC commitment to spend $150 million on noise mitigation." See Memorandum at 21. However, especially on a motion to dismiss, this falls far short of a demonstration that the Metropolitan Council retroactively undid its prior conditions on the approval of the 2002 program, even assuming it could do so. It is wholly unjustified, therefore, to impute an entire policy change based solely on the Metropolitan Council's silence.

D. The MAC's Failure to Abide by the Noise Mitigation Terms of Various Other Agreements Is Further Evidence that it Violated MERA

The MAC incorrectly asserts that the Communities characterize the 1999 Airline Lease Agreement, the Third Parallel Runway Agreement, and the Noise Mitigation Agreement with the City of Richfield as environmental quality standards, limitations, rules, or orders. This is incorrect. The Communities cite to these agreements as supplemental evidence for their MERA claims. For example, the 1999 Airline Lease Agreement includes an agreement to fund the insulation of the homes in the DNL 60-65. Complaint at ¶¶ 55-56. MAC's participation in such an agreement demonstrates its recognition that those noise insulation commitments are feasible. Since demonstration that protection measures are not feasible would be an affirmative defense under MERA, these agreements are useful evidence to the Communities' case, even if they do not form part of the prima facie case.

IV. THE COMPLAINT STATES A PROPER CLAIM FOR MANDAMUS

A. The Complaint Seeks to Enforce the Mandatory, Ministerial Duty of the MAC to Provide Adequate Sound Insulation

MAC's allegation that the Communities "cannot establish a legal duty" mandating that MAC implement a five decibel noise reduction package in the DNL 60-65 is unfounded. See Memorandum at 22. As discussed above, MAC has a clearly-defined statutory duty to minimize the environmental impact of its operations, to minimize the public's exposure to noise hazards, and to provide for noise abatement. Complaint at ¶ 21, citing Minn. Stat. § 473.602. Lest there be any question, its enabling act provides 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 provision for noise abatement ... and other protective measures, is essential to the development of air navigation and transportation in and through this state ...

Complaint at ¶ 25, citing Minn. Stat. § 473.655 (emphasis added). Similarly, as discussed above, MERA and MEPA require the selection of the least impacting feasible alternative.

Recognizing that duty, the MAC promulgated two primary standards in which it determined and identified the scope of these statutory duties. First, in the 1996 Noise Program, the MAC committed to expand the then-existing noise insulation program to include residences within the projected 2005 DNL 60-65. Complaint at ¶ 38. It also stipulated that "[i]n no case should unreimbursed financial impacts fall on affected residents or their local governments." Complaint at ¶ 39. Second, in the FEIS, the MAC evaluated the environmental impacts of the MSP expansion project and the construction of a new runway. In that context, the MAC admitted that noise associated with airport operations would impact residents outside of the DNL 65 contour and therefore considered impacts out to the DNL 60. Complaint at ¶ 46. As a result,

the MAC committed to full sound insulation in the DNL 60-65 as a mitigation measure. Complaint at ¶ 48.

Not only does the statute enumerate a clear duty to mitigate noise impacts, these two documents are also evidence of MAC's own conclusion that full sound insulation in the DNL 60-65 at no cost to residents or local governments is both feasible and necessary to satisfy its statutory obligation to assure residents of minimal impacts. These are not mere promises or moral obligations; rather they are documented, concrete actions pursuant to the dictates of the Legislature.[16]

MAC's duty is quintessentially ministerial: it is "absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated fact." Kari v. City of Maplewood, 582 N.W.2d 921, 923 (Minn. 1998). These commitments are not mere policy statements; instead, they are couched in mandatory language. Id. Further, the MAC's obligation is clearly defined, with detailed requirements and exceptions. These specific details evidence the type of clear, present duty that is enforceable under the mandamus statute.

B. The Mandamus Claim Does Not Depend on What Mechanism MAC Uses To Pay for the Program

As a final matter, MAC once again mischaracterizes the Complaint by asserting that the Communities "seek to overturn MAC's discretionary recommendation to FAA." Compare Memorandum at 23. This is not the case. As outlined in Section I above, the Communities seek to enforce the MAC's mandatory duty to provide an adequate noise insulation program in the DNL 60-65. E.g., Complaint at ¶ 92. Toward that end, the Communities have no significant interest in the ultimate funding mechanism. The sole issue before this Court is whether, regardless of the scope of federal funding ultimately authorized for expansion projects, MAC has

[16] Even though MAC is apparently hesitant to admit to its prior commitments, this Court must take the facts alleged in the Complaint as true. Marquette Nat'l Bank v. Norris, 270 N.W.2d 290, 292 (Minn. 1978).

an independent state obligation to mitigate noise impacts. As a result, granting the motion to dismiss would be inappropriate.

CONCLUSION

For the foregoing reasons, the MAC's motion to dismiss should be DENIED.

Dated: June 27, 2005

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ACKNOWLEDGMENT

The undersigned acknowledges that: I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the Court.

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STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT

State of Minnesota by the City of Minneapolis, et al.

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendant.

Case No. 05-5474

Case Type: Other Civil

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT METROPOLITAN AIRPORTS COMMISSION'S MOTION TO DISMISS

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I. Withholding Consideration Of The Cities' Claims Until FAA Makes A Final Decision On MAC's Proposed Mitigation Plan Is Appropriate

The cities' claims are unripe because MAC's proposed mitigation plan for the 60 to 64 DNL contours is still under FAA review. In addition, withholding consideration of the cities' claims would not cause significant hardship. MAC Memo. at 2-10. As set forth below, the cities' response mischaracterizes the complaint's allegations and evidences a fundamental misapprehension of MAC's ripeness argument.

A. The Cities Erroneously Presume That Absent FAA Approval, MAC Will Implement The Proposed Mitigation Plan That Is Currently Under FAA Review

The premise of the cities' MERA claims is that the MAC proposed mitigation plan pending at FAA is insufficient to prevent the pollution, impairment, or destruction of quietude in the 60 to 64 DNL noise contours surrounding MSP. MAC Memo. at 2-10. The cities' response repeatedly asserts that the MAC proposed mitigation plan included in the Part 150 study update is not the subject of the complaint. See, e.g., Cities' Resp. at 9-10. The complaint, however, presumes that MAC will implement the Part 150 proposed mitigation plan, which the complaint describes as "truncated" mitigation and a "recent retreat" from the plan that the cities favor. Compl. at ¶¶ 1, 20, 60-71, 76-87. In short, the cities allege that MAC's "truncated" proposed mitigation plan in the pending Part 150 study will not protect quietude in the 60 to 64 DNL contours, and that only the cities' preferred five decibel noise reduction plan satisfies MERA. Compl. at ¶¶ 85-86.

Without FAA approval, the cities cannot presume MAC will implement the proposed mitigation plan in the Part 150 study currently under review. MAC Memo. at 4-9.[1] As a

[1] The cities do not dispute the facts in the Finney Affidavit and including a long factual recital as the cities suggest, Cities' Resp. at 15, would have unnecessarily increased the size of MAC's initial brief. Similarly, reference to EPA guidelines in the Finney Affidavit merely explains MAC's rationale for its proposed mitigation plan and does not argue the "factual merits of the case." Cities' Resp. at 7, n.2

result, the cities' claims regarding the inadequacy of the MAC proposed mitigation plan are not fit for judicial decision. Id. at 8. FAA's action will assist the Court by "flesh[ing] out" the factual components of this action and reducing the consequences "to more manageable proportions." Minnesotans for Responsible Recreation v. Dep't of Natural Res., 651 N.W.2d 533, 539 (Minn. App. 2002) (citation omitted).

In addition, there is no hardship in waiting until FAA rules on the 2004 Part 150 study or resolves possible revenue diversion complaints. MAC Memo. at 9-10. The cities counter that they have waited "almost 10 years" for MAC to implement an adequate noise mitigation program in the 60 to 64 DNL contours. Cities' Resp. at 8-9. Such a "hardship" argument ignores the long-established timetable for mitigation in the 60 to 64 DNL contours, which MAC's Noise Mitigation Program for MSP states would not occur until MAC completes noise mitigation for the DNL 65 and greater noise contours. Finney Aff., Ex. A, p. 4. As the complaint acknowledges, MAC has yet to complete the 65 DNL and greater noise insulation program. Compl. at ¶ 28.[2]

B. MAC's Ripeness Argument Establishes The Compelling Uncertainties Of The Pending FAA Review, Not Speculative Federal Funding Issues

The cities do not dispute that FAA may reject the MAC proposed mitigation plan, see MAC Memo. at 5, but incorrectly assert that MAC's ripeness argument addresses only federal funding issues, and that MAC's concerns regarding inconsistent federal and state obligations is "remote and speculative." Cities' Resp. at 10-14. In suggesting that MAC's ripeness argument is simply about federal funding, the cities offer the misleading contention that MAC could implement mitigation measures in the 60 to 64 DNL contours "without any

[2] Some federal courts forgo the "hardship" analysis where the issues are fit for review and "*Congress* has *emphatically declared* a preference for immediate review." Eagle-Pitcher Indus. v. EPA, 759 F.2d 905, 918 (D.C. Cir. 1985) (construing CERCLA) (emphasis added). Here, the issues are not fit for review, and there is nothing in MERA that suggests this Court should forge ahead without waiting for FAA to flesh out the case, or requires this Court to waive the hardship analysis.

FAA review whatsoever" outside the voluntary Part 150 program. Id. at 10. Even outside the Part 150 process, FAA must approve the use of airport revenue known as "passenger facility charges" for mitigation. MAC Memo. at 6-8. In addition, FAA could determine that MAC's use of other airport revenue for mitigation in the 60 to 64 DNL contour constitutes illegal "revenue diversion." Id.

Contrary to the cities' assertions, FAA disapproval or an illegal revenue diversion claim against MAC are very real prospects. FAA typically does not consider noise exposure "significant" outside the 65 DNL contour. MAC Memo. at 6.[3] See also City of Naples Airport Auth. v. FAA, 409 F.3d 431, 435 (D.C. Cir. 2005) (FAA guidelines state that levels below 65 DNL are generally compatible with all land use). City of Naples confirms that, as recently as last month, FAA was still actively opposed to airport authorities basing noise mitigation on impacts below the 65 DNL level. Although the court held FAA did not adequately justify the finding that noise levels of 60 to 64 DNL were compatible with all residential land uses surrounding the Naples airport, the court remanded the decision to FAA and a better-supported FAA finding could still lead to the loss of Naples' federal grant eligibility. Despite the cities' assertions, MAC cannot "tailor" a local noise program under FAA's statutory authority, 49 U.S.C. § 47133(b), or FAA's Airport Rates and Charges policy, 61 Fed. Reg. 31,994 (June 21, 1996), if FAA determines the local program is contrary to FAA's statutory authority. Moreover, the cities assert without evidence that MAC's revenue diversion concerns are "speculative and remote." Cities' Resp. at 13. To the contrary, nothing prevents intervenor Northwest Airlines—which is already on record as opposing a five decibel reduction package in the 60 to 64 DNL contours on revenue

[3] Nothing in paragraph 45 of the cities' complaint supports the assertion that FAA has "expressly adopted the DNL 60-65 sound insulation requirements" as mitigation measures. Cities' Resp. at 12-13 & n.6. In actuality, FAA as part of the 1998 FEIS agreed to consider an updated Part 150 study that proposed mitigation in the 60 to 64 DNL contours. That revised Part 150 study is currently under FAA review.

diversion grounds—or anyone else from lodging a revenue diversion complaint if MAC implements noise mitigation in the 60 to 64 DNL contours. Under the circumstances, the prospect of an administrative enforcement complaint against MAC alleging illegal use of airport revenue is far from speculative. See MAC Memo. at 7-8. MAC could certainly face conflicting federal and state obligations if this Court found for the cities before FAA approves the MAC proposed mitigation plan or decides the revenue diversion issue. See MAC Memo. at 9.

II. Count I Seeks To Compel A Specific Remedy To Private Property Rather Than Stating A MERA Claim For Environmental Protection

Rather than stating a MERA claim, the cities' first cause of action attempts to enforce MAC's alleged "commitments" to implement a five decibel noise reduction package. MAC Memo. at 10-12. The cities argue that MERA allows private citizens a cause of action to protect the environment, that they are seeking injunctive relief rather than damages, and that the complaint does not rely on contractual arguments. Cities' Resp. at 6, 8-10, 16-20. The cities, however, are acting not to protect the environment, but as advocates for a particular class of citizens to obtain specific performance of MAC's alleged "commitments" in the form of noise abatement improvements to real property—a five decibel noise reduction package in the 60 to 64 DNL contours. MERA does not provide a cause of action for claims that arise from alleged impaired use of property, diminution in value, and breach of contract. MAC Memo. at 11.

The complaint is replete with factual references to MAC's reported "retreat" from "commitments" to implement a five decibel noise reduction package, as well as allegations of impaired property use and reduced property values. MAC Memo. at 11-12. These allegations do not support a MERA cause of action. Id. Similarly, the cities cannot obtain a MERA remedy in the form of noise abatement improvements simply by terming such improvements "injunctive

relief." Cities' Resp. at 16-17. The hallmark of injunctive relief is to prohibit a defendant from performing some act, such as operating a noisy gun club or building a county road that will increase noise levels. Minn. Public Interest Research Group v. White Bear Rod & Gun Club, 257 N.W.2d 762, 767 (Minn. 1977); Citizens for a Safe Grant v. Lone Oak Sportsmen's Gun Club, 624 N.W.2d 796, 802 (Minn. Ct. App. 2001); McGuire v. County of Scott, 525 N.W.2d 583, 584 (Minn. Ct. App. 1994). The cities seek not to prohibit MAC from operating MSP, the source of aircraft noise in the 60 to 64 DNL contours, but to require that MAC implement a five decibel noise reduction package as a remedy for MAC's purported "retreat" from alleged noise mitigation "commitments." MAC Memo. at 11-12. The cities, therefore, are requesting that this Court enforce MAC's ostensible commitments by invoking the traditional contract remedy of specific performance. No matter how many times the cities refer to "quietude" in the complaint, this Court should reject the invitation to extend MERA into the realm of contract enforcement.

Merely referencing "quietude" in count I is insufficient to state a MERA cause of action. Cities' Resp. at 17-19. The three MERA noise cases upon which the cities rely—White Bear Rod & Gun Club, Lone Oak Sportsmen's Club, and McGuire—do not support the argument that count I states a MERA claim. In the three cases, plaintiffs brought MERA actions to preserve quietude by obtaining injunctions to shut down gun clubs (White Bear and Lone Oak) or to stop construction of a highway (McGuire). In contrast to count I, none of the cases involved a request for noise abatement improvements to private property.[4] Referencing quietude in count I is insufficient to distinguish the cases cited in MAC's initial brief that hold MERA cannot be used as a pretext for claims of impaired use of property or diminution in value, or as a contract remedy. MAC Memo. at 10-11.

[4] There is no factual basis for the cities' assertion that without MSP they would experience noise levels of 30 to 40 decibels even including other urban noise sources. Cities' Resp. at 18 n.8. In White Bear Rod & Gun Club, the court found ordinary background noise levels in *rural areas* are between 30 and 40 decibels. 257 N.W.2d at 771.

III. Count II Of The Complaint Fails To State A MERA Claim For Violation Of Environmental Quality Standards

Because the 1996 noise mitigation program, the 1998 FEIS, MAC's enabling statute, and the 2002 Metropolitan Council approval of the capital improvement program for MSP do not constitute state "environmental quality standards" under MERA, count II of the complaint fails to state a claim. MAC Memo. at 13-22. Relying upon the truism that MERA is a broad remedial statute, Cities' Resp. at 21-24, the cities urge this Court to read MERA so as to convert every statute, document, or decision that mentions the environment into an "environmental quality standard." Construing MERA as the cities suggest ignores the statute's express language, legislative history, and relevant case law.

A. The Cities Incorrectly Interpret References To "Feasible And Prudent Alternatives" In MEPA And MERA

MAC's initial brief establishes that count II of the complaint fails to state a claim. MAC Memo. at 13-22. In response, the cities offer a flawed interpretation of the reference to "feasible and prudent alternatives" in MERA and the Minnesota Environmental Policy Act ("MEPA"). Specifically, the cities incorrectly maintain that the 1998 FEIS and the 1996 noise mitigation program are enforceable under *MERA* because *MEPA* includes a substantive provision prohibiting "state action" that would cause "pollution, impairment, or destruction" of the state's natural resources when there is a "feasible and prudent alternative. Cities' Resp. at 26-28, citing MEPA, Minn. Stat. § 116D.04, subd. 6. The cities also erroneously assert that MERA's "no feasible and prudent alternative" defense imposes affirmative mitigation obligations.

MAC prepared the 1998 FEIS, which incorporates the 1996 noise mitigation program, under MEPA. MAC Memo. 16-18. MEPA's substantive provision, however, is designed to ensure that state actions, such as MPCA permitting decisions, fully consider alternatives that may have fewer adverse environmental effects. In re University of Minnesota, 566 N.W.2d 98,

104 (Minn. Ct. App. 1997). The MEPA provision does not convert mitigation measures outlined in environmental review documents, such as those discussed in the 1998 FEIS, into independently enforceable substantive obligations. See Nat'l Audubon Soc'y v. MPCA, 569 N.W.2d 211, 217 (Minn. App. 1997) (mitigation measures need not be substantive standards, but must be more than "mere vague statements of good intentions"). Indeed, mitigation measures in environmental impact statements *need not be fully developed*, and *do not constitute enforceable standards*. Robertson v. Methow Valley Citizens Council, 490 U.S. 353, 351-52 (1989); Laguna Greenbelt v. Dep't of Transp., 42 F.3d 517, 527-28 (9th Cir. 1994). Moreover, the cities do not allege a MEPA claim against MAC, and the time to challenge the 1998 FEIS under MEPA has long passed. See Minn. Stat. § 116D.04, subd. 10 (providing that challenges to environmental impact statements must be filed within thirty days).

Similarly, MERA does not create an "affirmative" duty to implement feasible and prudent alternatives as the cities contend. Cities' Resp. at 26. MERA references the absence of "feasible and prudent" alternatives in the statute's *affirmative defense* to claims for "pollution, impairment, or destruction" arising from a "material adverse environmental effect"—the claim that forms the basis of count I. Minn. Stat. § 116B.04. The defense, however, is unavailable against MERA claims alleging a violation of environmental standards, such as count II of the complaint. McGuire, 525 N.W.2d at 586. In addition, the "no feasible and prudent alternative" affirmative defense *does not impose any affirmative obligation to undertake alternatives or to implement mitigation*. Archabal v. County of Hennepin, 495 N.W.2d 416, 422-23 (Minn. 1993).

B. The 1998 FEIS, The 1996 Noise Mitigation Program, MAC's Enabling Statute, And Metropolitan Council Action On MAC's Capital Improvement Plan Are Not Environmental Quality Standards Enforceable Under MERA

The 1996 noise mitigation program, the 1998 FEIS, MAC's enabling statute, and the 2002 Metropolitan Council action on the capital improvement program for MSP are not

enforceable state "environmental quality standards" under MERA because they are not substantive standards affirmatively imposed. MAC Memo. at 13-22, citing Kennedy Bldg. Associates v. Viacom, Inc., 375 F.3d 731, 743-44 (8th Cir. 2004); Williams Pipeline Co. v. Soo Line R. Co., 597 N.W.2d 340, 345-46 (Minn. App. 1999). In an utterly unpersuasive attempt to distinguish Kennedy Bldg. Associates and Williams Pipeline, the cities argue that the cases do not address what constitutes an environmental quality standard under MERA, but only evaluate whether defendants acted "pursuant to" environmental quality standards. Cities' Resp. at 23, 28-29. The cities' purported distinction ignores that in determining whether certain actions were taken "pursuant to" environmental quality standards, the courts in Kennedy Bldg. Associates and Williams Pipeline first had to analyze what constitutes an "environmental quality standard" enforceable under MERA. Both courts held that the MERA "environmental quality standards" language refers to substantive and enforceable standards. MAC Memo. at 14-16.

In a further attempt to distinguish Kennedy Bldg. Associates and Williams Pipeline, the cities argue that MERA's "environmental quality standards" term means one thing in the context of a private right of action and another in the context of an affirmative defense. Cities' Resp. at 23.[5] This utterly unpersuasive argument is inconsistent with the canons of statutory construction and MERA's legislative history. MERA employs the identical "environmental quality standards" term in the private right of action and in the affirmative defense, so the term has the same meaning in both statutory provisions. Oregon Dep't of Revenue v. ACF Indus., 510 U.S. 332, 343 (1994). MERA's legislative history confirms this construction. The amendment creating MERA's private right of action for violations of environmental quality standards included "a *corresponding* defense that was limited to showing compliance." McGuire, 525

[5] The legislature also used the identical "environmental quality standards" language in Minn. Stat. § 116B.10, which authorizes civil actions against state agencies to challenge "an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit promulgated or issued" by the state or any instrumentality thereof.

N.W.2d at 586; MAC Memo. at 14 (emphasis added). Kennedy Bldg. Associates and Williams Pipeline construed MERA's "environmental quality standards" language in the affirmative defense to require substantive standards affirmatively imposed. MAC Memo. at 14-16. This Court should construe the *corresponding* MERA private right of action's reference to "environmental quality standards" in the same manner.

As discussed above, the 1998 FEIS and the 1996 noise mitigation program that it incorporates are not substantive environmental quality standards enforceable under MERA. See also MAC Memo. at 16-18. MAC's enabling statute also does not constitute an "environmental quality standard" under MERA. Provisions of MAC's enabling statute that the cities attempt to convert into "environmental standards" include conflicting directives. Id. at 18-20. These conflicting directives indicate that MAC's actions under the statute are policy decisions requiring a balance of competing interests. Id. at 19. Provisions that articulate policy goals, such as those the cities cite in MAC's enabling statute, do not establish substantive and enforceable environmental standards. See Minn. Center for Envt'l Advocacy v. Metro. Council, 587 N.W.2d 838, 843-44 (Minn. 1999) (holding federal statute establishing competing policy goals was "not intended to serve as a prescribed standard").[6]

Similarly, far from constituting an environmental "standard," "order," or "limitation" as the cities assert, Cities' Resp. at 30, the Metropolitan Council's veto authority over certain projects in MAC's capital budget is simply a review to ensure that certain MAC projects are consistent with the Council's development guide. Such a budget review for policy consistency is not an "an environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" promulgated or issued by the state. MAC Memo. at 20. MAC has asked this Court to

[6] MAC complied with the requirement in Minn. Stat. § 473.661, subd. 4(f) to *examine* mitigation measures in the 60 to 64 DNL contours. MAC Memo. at 19 & n.3. Contrary to the cities' assertion, Cities' Resp. at 26 n.12, nothing in the statute constitutes "a clear Legislative determination of impact associated with living in the DNL 60-65."

take judicial notice that the Metropolitan Council effectively overturned earlier statements regarding MAC's commitment to spend $150 million on noise mitigation by approving without condition the 2005 MSP capital improvement plan. Id. at 21. As the cities request, MAC is attaching a copy of the Metropolitan Council's action approving the 2005 capital improvement plan. See Attach. hereto.[7] In summary, the documents and statutes that are the source of the "environmental quality standards" that the cities allege MAC violated in count II are unenforceable under MERA because they lack the indicia of a "standard, limitation, rule, order, license, stipulation agreement or permit." They articulate unenforceable goals intended to guide MAC's decision-making rather than establishing substantive requirements with measurable, objective, and enforceable criteria.

IV. Count III Does Not State A Mandamus Claim

MAC's enabling statute does not provide the unequivocal ministerial directive necessary to invoke mandamus. MAC Memo. at 22-24. Rather, the statute states that MAC must "assure . . . minimum environmental impact," and then leaves the methods of achieving the goal to MAC's discretion. Id. See also Enterprise Leasing Co. v. Metro. Airports Comm'n, 250 F.3d 1215, 1217 (8th Cir. 2001) (MAC "has broad statutory authority and discretion" to manage MSP "in the public's best interest"). In determining whether an action is discretionary or ministerial for mandamus purposes, the focus is upon the statute that establishes a purported duty, not implementation of the duty under the statute. See Silver Bay Citizens Concerned For Quality Educ. v. Superior Sch. Dist. No. 381, 448 N.W.2d 92, 96 (Minn. Ct. App. 1989) (mandamus may

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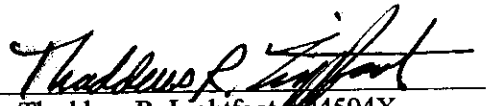
[7] The Third Parallel Runway Agreement and the Noise Mitigation Agreement are not enforceable under MERA. MAC Memo. at 21-22. Implicitly conceding the argument, the cities assert that the agreements are a response to a possible MAC "feasible and prudent" alternative defense. Cities' Resp. at 32. Because the "feasible and prudent alternative" defense does not apply to MERA actions alleging the violation of an environmental quality standard, the Third Parallel Runway Agreement and the Noise Mitigation Agreement are utterly irrelevant to the cities' second claim for relief. McGuire, 525 N.W.2d at 586.

issue only to compel a ministerial act and "is not properly issued when the official has discretion with respect to the act in question"). The cities suggest that the 1998 FEIS, which incorporates the 1996 noise mitigation plan, creates a "ministerial duty" to implement a five decibel noise reduction package in the 60 to 64 DNL contours. Cities' Resp. at 33-34. This argument incorrectly presumes that MAC lacks the ability to modify decisions made in discharging its discretionary duty to manage MSP. In addition, as set forth above and in MAC's initial brief, the mitigation discussed in the 1998 FEIS cannot establish a "ministerial duty" because it does not constitute a substantive enforceable standard. MAC Memo. at 16-18.

The cities also erroneously assert that the discretionary nature of MAC's recommendation to FAA regarding the MAC noise mitigation plan is confined to the plan's "ultimate funding mechanism." Cities' Resp. at 34-35. As established in MAC's initial brief and discussed above, FAA regulates MAC's implementation of *any* mitigation in the 60 to 64 DNL contours, whether that mitigation proceeds under the "voluntary" Part 150 program or outside the Part 150 process with local "airport revenue" funding sources. MAC Memo. at 4-8. In addition, the cities attempt to enforce MAC's alleged "commitments" to a five decibel noise reduction package cannot form the grounds for a writ of mandamus. Id. at 23.

Dated: July 12, 2005

By: 

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Defendant Metropolitan Airports Commission hereby acknowledges through its undersigned counsel that sanctions may be imposed under Minn. Stat. § 549.211 if, after notice and a reasonable opportunity to respond, the Court determines that a party has violated Minn. Stat. § 549.211, subd. 2.

Thaddeus R. Lightfoot

ATTACHMENT TO

REPLY MEMORANDUM IN SUPPORT OF DEFENDANT METROPOLITAN AIRPORTS COMMISSION'S MOTION TO DISMISS

Metropolitan Council

Metropolitan Council Meeting

Wednesday, February 9, 2005

Council Chambers

4:00 P.M.

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Metropolitan Council Meeting
Wednesday, February 9, 2005
Council Chambers
4:00 P.M.

Part I - Narrative

Members present:

Peter Bell, Chair; Roger Scherer, Tony Pistilli, Jules Smith, Mary Hill Smith, Russel Susag, Peggy Leppik, Annette Meeks, Lynette Wittsack, Natalie Haas Steffen, Mary Krinkie, Georgeanne Hilker, Rick Aguilar, Brian McDaniel

Members absent:

Chris Georgacas, Song Lo Fawcett,

Call to Order and Approval of Agenda

A quorum being present, the Chair called the regular meeting of the Metropolitan Council to order at 4:10 p.m. It was moved by M. Smith , seconded by J. Smith to approve the agenda. Motion carried.

Minutes

It was moved by Susag seconded by M. Smith to approve the minutes of the Metropolitan Council Meeting of January 12, 2005. Motion carried.

Public Invitation

No one asked to address the Council regarding matters not on today's agenda.

Part II - Exhibits

Business

2005-03 Resolution Recognizing the Contributions of Ed Hunter

It was moved by M. Smith and seconded by Steffen:

> "That the Metropolitan Council recognizes the valuable contributions of Edward A. Hunter to this organization and to the region, and gives him its best wishes far into the future."

Motion carried.

Committee Consent List

2005-15: City of Blaine Comprehensive Plan Amendment & MUSA Extension (Peterson property), Review File 17055-11

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council allow the City of Blaine to put the proposed comp amendment into effect with no plan modifications."

Motion carried.

2005-20: Authorization to execute a contract with Park Nicollect for Drug and Alcohol Testing Services

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council authorize the Regional Administrator to execute a Contract for Drug and Alcohol Testing with Park Nicollet Occupational Medicine for a period of three years, not to exceed $600,000."

Motion carried.

2005-21: Authorization to Award Contract for Solid Waste Disposal Services at the Metro Wastewater Treatment Plant

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council authorize the Regional Administrator to execute a Contract with Onyx Waste Services not to exceed $600,000 for solid waste disposal services at the Metro Wastewater Treatment Plant for a period of three years."

Motion carried.

2005-22: 2005 Sole Source Procurement of Software and Hardware Services

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: authorize the Regional Administrator to purchase or delegate the authority to purchase software and hardware maintenance and support services on a sole source basis from the vendors on the attached *2005 Information Services Sole Source Vendor List.*"

Motion carried.

2005-23: Approval of City of Andover Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Andover."

Motion carried.

2005-24: Approval of City of Anoka City Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

> "That the Metropolitan Council: approves the Comprehensive Sewer Plan for the City of Anoka."

Motion carried.

2005-25: Approval of City of Brooklyn Park Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

> "That the Metropolitan Council: approves the Comprehensive Sewer Plan for the City of Brooklyn Park."

Motion carried.

2005-26: Approval of City of Hastings Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

> "That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Hastings."

Motion carried.

2005-27: Approval of City of Spring Lake Park Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

> "That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Spring Lake Park.."

Motion carried.

2005-33: Approval of City of Corcoran Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

> "That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Corcoran."

Motion carried.

2005-38: 2004 Right-of- Way Acquisition Loan Fund (RALF) Program Plan Amendment #2

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council amend the 2004 RALF Program Plan to include eligible loan applications to acquire officially mapped right-of-way for the future CSAH 70/I-35 interchange reconstruction project in Lakeville."

Motion carried.

2005-49: Authorization to Enter into a Construction Cooperation Agreement with the City of White Bear Lake to Relocate MCES Interceptors for Construction of the City's New Public Works Facility

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: authorize the Regional Administrator to execute a Construction Cooperation Agreement with the City of White Bear Lake to relocate portions of MCES interceptors MWCC 7122 and 1-WL-417 to permit construction of a new City public works facility."

Motion carried.

2005-51: Approval of City of Brooklyn Center Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Brooklyn Center."

Motion carried.

2005-52: Approval of City of North Oaks Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of North Oaks."

Motion carried.

2005-53: Approval of City of Prior Lake Comprehensive (Tier II) Sewer Plan

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council approves the Comprehensive Sewer Plan for the City of Prior Lakes."

Motion carried.

2005-54: Prior Lake Reconveyance Determinations

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: adopts the following actions Pursuant to Minn. Stat. 473.5111 related to reconveyance for a portion of Interceptor 7120 and Lift Station 58, city of Prior Lake:

:• Per subdivision 2, the Metropolitan Council finds that the portion of Interceptor 7120, from Lift Station 58 at Credit River Road to manhole 70 at Eagle Creek Avenue and 154th Street NW, is not of regional benefit.
:• Per subdivision 3, the portion of Interceptor 7120 from, and including, Lift Station 58 to manhole 70 is of local benefit and the benefiting unit of government is the city of Prior Lake
:• Per subdivision 4, that the portion of the interceptor designated above is in "good operating" condition.
:• Per subdivision 7, the Metropolitan Council authorizes staff to negotiate a Reconveyance Agreement withhe city of Prior Lake."

Motion carried.

2005-55: City of Shakopee Reconveyance Determinations

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: adopts the following actions Pursuant to Minn. State Stat. 473.5111 related to reconveyance of Interceptors MSB 7023, MSB 7024 and Lift Station 16, city of Shakopee:

• Per subdivision 2, the Metropolitan Council finds that Interceptors MSB 7023, MSB 7024 and Lift Station 16 are not of regional benefit.
• Per subdivision 3, Interceptors MSB 7023, MSB 7024 and Lift Station 16 are of local benefit and the benefiting unit of government is the city of Shakopee.
Per subdivision 4, the interceptors are in "good operating" condition
• Per subdivision 7, the Metropolitan Council authorizes staff to negotiate Reconveyance Agreement with thecity of Shakopee."

Motion carried.

2005-56: City of Victoria Reconveyance Determinations

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: adopts the following actions Pursuant to Minn. Stat. 473.5111 related to reconveyance for a portion of Interceptor MSB 7019B, city of Victoria:

• Per subdivision 2, the Metropolitan Council finds that the portion of Interceptor MSB 7019B, from manhole 30 to manhole 33, is not of regional benefit.

• Per subdivision 3, the portion of Interceptor MSB 7019B from manhole 30 to manhole 33 is of local benefit and the benefiting unit of government is the city of Victoria.
• Per subdivision 4, that the portion of the interceptor designated above is in "good operating" condition
• Per subdivision 7, the Metropolitan Council authorizes staff to negotiate a Reconveyance Agreement with the city of Victoria."

Motion carried.

2005-57: Adjustment of SAC Transfer for 2004

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: approve a revised 2004 SAC Transfer in the amount of $26,091,000, an increase of $708,000 over the budgeted amount."

Motion carried.

2005-58: Authorization to Award Contract for Waste Incinerator Ash Disposal Services at the Metro and Seneca Wastewater Treatment Plants

It was moved by Steffen and seconded by Wittsack:

"That the Metropolitan Council: authorize the Regional Administrator to execute a contract with Onyx Waste Services to provide waste incinerator ash disposal services at the Metro and Seneca Wastewater Treatment Plants for the period March 1, 2005 through December 31, 2006."

Motion carried.

Report of the Community Development Committee

2004-406: LCDA Development Grant Recommendations

It was moved by Meeks and seconded by Steffen:

"That the Metropolitan Council award Livable Communities Demonstration Account (LCDA) grants in the amounts set forth in "Alternative D" as presented in the January 24, 2005 staff memorandum (the version initially considered by the committee at its January 3, 2005 meeting)."

Applicant City	Project	Request	Recommendation
Minneapolis	Heritage Park	$1,380,000	$450,000
Ramsey	Town Center East Park	$363,756	$363,756
Apple Valley	Harmony Commons	$3,200,000	$2,356,244
Bloomington	Central Station	$1,000,000	$500,000

Mound	Harbor Renaissance	$2,480,000	$1,150,000
Minneapolis	Midtown Exchange	$1,500,000	$750,000
Brooklyn Park	Village Creek	$2,000,000	$1,180,000
Lino Lakes	Legacy at Woods Edge	$1,000,000	$750,000
Total			**$7,500,000**

Krinkie stated she believes the Bloomington Central Station project, located on land near the Mall of America, will proceed without these recommended funds. She believes it's important to fund projects that will not move ahead without LCDA funds. Therefore she intends to vote against the motion. Chair Bell asked Krinkie, Meeks and Steffen if the Bloomington project could be voted on separately.

M. Hill recognized Mound City Manager Kandis Hanson for her hard work in getting the Harbor Renaissance project to this place. The city has submitted numerous applications, and this is their first award.

It was moved by Meeks and seconded by Steffen to amend the motion as follows:

> "That the Metropolitan Council award Livable Communities Demonstration Account (LCDA) grants in the amounts set forth in "Alternative D" as presented in the January 24, 2005 staff memorandum (the version initially considered by the committee at its January 3, 2005 meeting)."

Applicant City	Project	Request	Recommendation
Minneapolis	Heritage Park	$1,380,000	$450,000
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Minneapolis	Midtown Exchange	$1,500,000	$750,000
Brooklyn Park	Village Creek	$2,000,000	$1,180,000
Lino Lakes	Legacy at Woods Edge	$1,000,000	$750,000
Total			**$7,000,000**

Motion carried unanimously.

It was moved by Meeks and seconded by Susag:

> "That the Metropolitan Council: award a Livable Communities Demonstration Account (LCDA) grant in the amounts set forth in "Alternative D" as presented in the January 24, 2005 staff memorandum (the version initially considered by the committee at its January 3, 2005 meeting)."

Applicant City	Project	Request	Recommendation
Bloomington	Central Station	$1,000,000	$500,000

Motion carried, with Krinkie and Aguilar dissenting.

Chair Bell informed the Council that an LCDA Program Criteria Work Group, chaired by Council member Georgacas, will review the LCDA guidelines and criteria and get clarification on certain issues, including the "but for" language.

Report of the Management Committee Moved to Other Business

Report of the Environment Committee No Report

Report of the Transportation Committee

2005-5: Procurement of Replacement Metro Mobility Vehicles

It was moved by M. Smith and seconded by Steffen:

"That the Metropolitan Council authorize the Regional Administrator to execute purchase agreements for 40 vehicles from Grande American Bus Sales, and 10 vehicles from Hoglund Bus Co. Inc. totaling 50 replacement Metro Mobility buses, at dollar amounts not to exceed:

1. Grande American Bus Sales (433605) for $1,971,740; and
2. Hoglund Bus Co. Inc. (433606) for $498,885."

Motion carried.

2005-35: MAC 2005 Capital Improvement Projects Review

It was moved by M. Smith and seconded by Steffen:

"That the Metropolitan Council

1. Finds the Metropolitan Airports Commission (MAC) has in place an adequate public participation process for development and review of its 2005 Capital Improvement Program (CIP).
2. Approves the following 2005 capital improvement projects:
   - MSP Runway 17/35 Development Program
   - MSP taxiway C/D complex construction

   Anoka-Blaine airport development projects
3. 3) Approves the attached review comments on proposed 2005-2011 CIP projects."

M. Smith introduced MAC Commissioner Vicki Tigwell, who informed the Council she will return at a later date for a formal presentation on the proposed expansion of the Humphrey Terminal.

Motion carried.

2005-42: East Metro Transit Redesign Contract Amendment with Laidlaw Transit Services

It was moved by M. Smith and seconded by Steffen:

> "That the Metropolitan Council: authorizes the Regional Administrator to negotiate and execute a contract amendment for the period April 1, 2005 through June 30, 2005 with Laidlaw Transit Services, Inc. for operation of the East Metro Transit Redesign Service in an additional amount not to exceed $180,215.00."

Motion carried.

2005-43: West Metro Transit Redesign Contract Amendment with Laidlaw Transit Services

It was moved by M. Smith and seconded by Steffen:

> "That the Metropolitan Council authorizes the Regional Administrator to negotiate and execute a contract amendment for the period April 1, 2005 through June 30, 2005 with Laidlaw Transit Services, Inc. for operation of the West Metro Transit Redesign Service in an additional amount not to exceed $291,430.00."

Motion carried.

2005-44: Hopkins Circulator Contract Amendment with Laidlaw Transit Services

It was moved by M. Smith and seconded by Steffen:

> "That the Metropolitan Council: authorizes the Regional Administrator to negotiate and execute a contract amendment for the period April 1, 2005 through June 30, 2005 with Laidlaw Transit Services, Inc. for operation of the Hopkins Circulator Transit Service in an additional amount not to exceed $151,810.00."

Motion carried.

Other Business

2005-32: Appointment of Chair to Land Use Advisory Committee

It was moved by Meeks and seconded by M Smith:

> "That the Metropolitan Council approve the appointment of Council Member Pistilli as a member and as the Chair of the Land Use Advisory Committee for a two-year term."

Motion carried.

2005-37: Metropolitan Council Member Committee Assignments for Council Members

It was moved by Steffen and seconded by Meeks:

"That the Metropolitan Council: approve the following committee assignments recommended by the Chair Pursuant to Council Bylaws, Article III.1."

Transportation	Community Dev.	Environment	Management
M.H. Smith, Chair	*Georgacas, Chair*	*Leppik, Chair*	*Scherer, Chair*
Aguilar	Aguilar	Hilker	Fawcett
Georgacas	Krinkie	Scherer	*Krinkie*
Hilker	Fawcett	Smith (J.)	Pistilli
Leppik	McDaniel	Susag, Vice Chair	Smith (J.), Vice Chair
McDaniel	Meeks, Vice Chair	Wittsack	Smith (MH)
Meeks	Pistilli		Wittsack
Steffen, Vice Chair	Steffen		
Susag			

Motion carried.

2005-78 SW: Appointments to Transportation Advisory Board (TAB)

It was moved by M. Smith and seconded by Steffen:

"That the Metropolitan Council:

1. That the Metropolitan Council approve the following appointments to the Transportation Advisory Board: District E (Council Districts 9 and 10)—**KRIS SANDA**; District F (11/12)—**DONN WISKI**; District G (13/14)—**JILL SMITH**; and District H (15/16)—**KENDELL JOHNSON**; and
2. That **DONN WISKI** be reappointed as TAB chair."

Motion carried.

2005-77: Consideration and Ratification of the Lake Elmo / Metropolitan Council Memorandum of Understanding – Resolution 2005-04

Chair Bell presented a summation of dates and actions the Metropolitan Council has had with Lake Elmo during the past years. He explained the Lake Elmo City Council has endorsed the Memorandum of Understanding. If the Metropolitan Council takes a similar action today, the City will begin work on their comp plan.

It was moved by Susag and seconded by M. Smith:

"That the Metropolitan Council adopt attached Resolution 2005-04 supporting and ratifying the January 27, 2005 Memorandum of Understanding between the City of Lake Elmo and the Metropolitan Council outlining criteria for guiding the City and the Council as the City modifies its comprehensive plan to ensure conformity with metropolitan system plans as required by state law (Attachment A)."

Motion carried.

M. Smith acknowledged Chair Bell for his work in representing the Council by continuing to negotiate a compromise with the City that is acceptable, but does maintain the integrity of the Council's authority on this particular issue.

390 North Robert Update - Beth Widstrom-Anderson

Widstrom-Andersom reported that space planning continues on schedule for the Robert Street facility. Once the asbestos work is complete, a building tour will be scheduled for Council members. Widstrom-Anderson will present a budget update next month.

2004 Metro Resident Survey – Jonathan Vlaming, Research Planning Analyst)

Vlaming presented a summary of the recent survey results, focusing on the Twin Cities area residents' concerns and attitudes regarding the region.

2005-48 SW: Authorization To Enter Into a Labor Agreement Between the Metropolitan Council and International Association of Machinists and Aerospace Workers (IAMAW), District Lodge No. 77, Representing Machinists Employed by MCES

It was moved by Scherer and seconded by Pistilli:

> "That the Metropolitan Council authorize the Regional Administrator to enter into a three-year labor contract for the period of August 1, 2003 through July 31, 2006 with IAMAW District Lodge #77."

Motion carried.

Reports

Chair

Chair Bell reported over 225 attended the recent State of the Region event.

Chair Bell reported he has been testifying before various Legislative committees on Council related issues.

Chair Bell reported the U.S. Department of Housing and Urban Development (HUD) awarded the Metropolitan Council grants totaling more than $3.5 million to help people and families who are homeless in the Twin Cities area. Of the $1.4 billion awarded nationwide, Minnesota received $22.2 million in grants to support local homeless programs across the nation.

Council Members

There were no reports from Council Members

Regional Administrator

Regional Administrator Weaver reported the public hearing on the Water Resources Management Policy Plan. was held on February 8. The record remains open until February 18 and the Plan will be before the Council for approval in April.

The Regional Park Policy Plan outreach meetings are scheduled for March with a public hearing in April.

Regional Administyrator Weaver reported that Jack Leery with JKL Solutions will present finding of their Transit Services audit at the February 16 Committee of the Whole meeting.

Legislative Update – Aviation System bill passed out of Committee, and is on its way to the Senate; the elected Met Council bill moved out of committee; bus shoulder legislation was heard in House. There is a lot of activity right now and Weaver suggested that Council members touch base with legislators whose districts they share. Information packets are available to Council Members visiting legislators. Contact Julie Opsahl at 651-602-1630.

General Counsel

Nils Grossman reported the Metropolitan Council was named as defendant in two new lawsuits. The first is a contract claim for alleged services that were rendered by a subcontractor to a co-defendant for the benefit of Transit Services. Claim is for about $300,000. The Council and the contractor are defending the action.

The second lawsuit is by the ATU against and Council and Chair Bell relating to the operator performance plan that Metro Transit was attempting to implement. The Union's claim is the Council had a duty to negotiate with them before implementing it, as opposed to simply giving them notice and allowing them to comment. They are seeking an injunction to block the program. There is a hearing on Thursday, February 10 in Ramsey County.

Adjournment

Business completed, the meeting adjourned at 5:35 pm.

Part III - Certification

I hereby certify that the foregoing narrative and exhibits constitute a true and accurate record of the Metropolitan Council Meeting of February 9, 2005.

Approved this 23rd day of February 2005.

Respectfully submitted,

Pat Curtiss
Recording Secretary

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendants,

and

Northwest Airlines, Inc.,

Intervenor.

NORTHWEST AIRLINES, INC.'S MEMORANDUM OF LAW IN SUPPORT OF THE MAC'S MOTION TO DISMISS

I. Introduction

Northwest Airlines, Inc. ("NWA") submits this memorandum of law in support of the Metropolitan Airports Commission's ("MAC") motion to dismiss the Plaintiffs' (collectively the "Cities") Complaint under Minn. R. Civ. P. 12. NWA has filed this reply memorandum because it was not a party at the time the MAC filed its opening brief, and it believed judicial efficiency supported filing this reply rather than filing a separate motion.

The Minnesota Supreme Court has held that federal law preempts a claim that noise from MSP-St. Paul Airport ("MSP") violates state environmental laws. See Minnesota Public Lobby v. MAC, 520 N.W.2d 388 (1994). To end run this holding, the Cities have raised a tortured MERA claim. MERA provides a cause of action for a plaintiff who shows defendant's *conduct* has caused "pollution, impairment or destruction" of "protected natural resources". In this case, however, plaintiffs do not seek to enjoin the conduct – airplane noise – that allegedly impacts the "protected natural resource" – the quietude of certain residents in Minneapolis, Richfield and Eagan. In fact, plaintiffs have not even identified aircraft operators as defendants. Plaintiffs' objective is obvious. But the relief they seek cannot be granted under MERA, and NWA requests the MAC's motion to dismiss be granted.

II. Background

Since the early 1990's, the MAC has engaged in a long-term – and costly – program to provide noise insulation for homes near MSP. See Complaint at ¶ 26. The MAC's original program provided insulation for homes exposed to noise in excess of 65 dB DNL ("DNL").[1] Id. at ¶ 28. The program provided these homeowners with home improvements (*e.g.*, new sound proof windows) that improved the homes' already-existing noise insulation effect, thus further decreasing the interior noise caused by outside airplane noise. Id. at ¶ 27. This program was designed to provide these

[1] The term dB DNL is a noise measurement that (put simply) measures the average decibels ("dB") of noise experienced over a given hour. It is equivalent to the "DNL" or "LDN" measurement used in the complaint and in the MAC's Motion to Dismiss. Because decibels are an exponential measurement of sound, minor differences in the statistical measurement will lead to a major difference to the human ear.

homeowners with a 5 DNL noise reduction over and above the homes' existing noise insulation. Id. at ¶ 27.

In 1996, the MAC drafted a plan to codify and expand its noise insulation plans. This program (the "Noise Mitigation Program," attached to the Affidavit of Nigel Finney in Support of MAC's Motion to Dismiss ("Finney Affidavit") at Ex. A[2]) outlined the MAC's noise insulation goals for homes experiencing 65+ DNL noise. It also identified the MAC's new goal of providing some level of noise insulation for homes experiencing 60-64 DNL noise (the "60-64 DNL Homes"). See Finney Affidavit, Ex. A at p. 36. But while the program discussed the MAC's intent to insulate 60-64 DNL Homes generally, it did not indicate how much or what type of insulation would be provided to these homes. Id. Consistent with the Noise Mitigation Program's provisional nature, the MAC reserved the right to modify the program as necessary to deal with changes in the noise environment. Finney Affidavit, Ex. A at p. 5.

As the 65+ DNL insulation program progressed in the late 1990's, the MAC reassessed the specific insulation it would provide to 60-64 DNL Homes. The MAC found that (contrary to its earlier estimates) the cost of a full 5 DNL insulation program for these homes greatly exceeded the limited amounts the MAC budgeted for the program in the Noise Mitigation Program.

With these estimates demonstrating that a full 5 DNL reduction for 60-64 DNL Homes would be impractical, and after the huge decline the airline industry faced

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2 Because the Cities have referred to the Noise Mitigation Program throughout the Complaint, see Complaint at ¶ 38-42, NWA can rely on that document in its motion to dismiss. See In re Hennepin County 1986 Recycling Bond. Litig., 540 N.W.2d 494, 497 (Minn. 1995).

following September 11, 2001, the MAC reevaluated its initial insulation plans. See Complaint at ¶ 61-71. After various restatements of the program, the MAC recently approved an insulation program that allowed the homeowners to receive funding (both in the form of direct grants and loan assistance) to purchase air conditioning. See id. at ¶ 66. With air conditioning, the homeowners may close their windows and doors during summer months, and achieve even lower levels of noise inside their homes. Id. at 68-70. See also Finney Affidavit at ¶ 5-6. The MAC adopted this program, in part, because its studies demonstrated that the average Minnesota home (with closed doors and windows) provides an interior noise level reduction[3] of over 30 dB, which means that the interior noise level of 60-64 DNL Homes is well below the EPA's interior noise level guideline of 45 DNL. See Finney Affidavit at ¶ 5.

The Cities contend MAC's insulation program violates state law. Their Complaint raises three claims.

First, the Cities raise a claim under MERA alleging that noise generated by airplanes flying in and out of MSP constitute the "pollution" of a "protected natural resource" (i.e., quietude within the homes of affected residents). They do not (and as discussed below because of federal law cannot) request that the Court restrict the source of the pollution – the airplanes – themselves. Rather, they request the Court order the MAC to perform the same 5 DNL insulation program for 60-64 DNL Homes as it provided to 65+ DNL Homes.

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[3] The "interior noise level reduction" is the noise insulation provided by a structure. If a structure provides a 30 dB interior noise level reduction, then a 60 dB exterior noise event will create a 30 dB noise event inside the structure.

Second, the Cities raise an alternate MERA claim. They allege that various sources (including the MAC's Noise Mitigation Program) proscribe an environmental standard. They allege that by failing to provide a 5 DNL insulation program, the MAC violated these environmental standards. And, again, rather than requesting the obvious remedy – control over the source of the pollution – they request that the Court control the effects of the pollution through a 5 DNL insulation program.

Third, the Cities raise a claim for mandamus relief. Despite the fact that the amount of any remediation is highly discretionary, plaintiffs claim that the MAC has a clear and unambiguous duty to engage in the 5 DNL insulation program for 60-64 DNL homes. This argument is made despite the fact that no statute, rule, or law gives the MAC any duty to provide insulation to 60-64 DNL Homes.

III. Analysis

A. The Complaint Fails To State A Claim For Relief Under MERA.

1. MERA allows parties to seek an injunction to prevent "pollution, impairment, or destruction" of a natural resource.

MERA allows a private party to raise a claim on behalf of the state to prevent conduct that causes "pollution, impairment, or destruction of the environment". Minn. Stat. § 116B.02 subd. 5 and § 116B.03, subd. 1; National Audubon Society v. Minnesota Pollution Control Agency, 569 N.W.2d 211, 218 (Minn. 1997) (rejecting MERA claim based on action that did not result in environmental pollution). See also Kennedy Building Associates v. Viacom, Inc., 375 F.3d 731, 746 (8th Cir. 2004). In order to state a prima facie claim under MERA, a party must show: (1) the existence of a protectable natural resource (which is not in dispute in this motion); and (2) that defendant's

"conduct" will or is likely to cause pollution, impairment, or destruction of the environment of that resource. See Minn. Stat. § 116B.03, subd. 1; White v. Minnesota Department of Natural Resources, 567 N.W.2d 724, 737 (Minn. 1997). Under MERA, pollution, impairment, or destruction of the environment can be established in either of two ways. First, pollution, impairment, or destruction of the environment can be based on "conduct" that "materially adversely affects" a protected natural resource. See Minn. Stat § 116B.02, subd 5; Soo Line Railroad Co., 797 F.Supp at 1486 (D. Minn. 1992). Second, pollution, impairment, or destruction can be based on "conduct" that violates any "environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit." See Minn. Stat. § 116B.02, subd. 5; National Audubon Society, 569 N.W.2d at 218.

The scope of the remedy under MERA is particularly narrow. MERA only allows a court to issue "declaratory or equitable" relief that prevents the polluting conduct at issue. See Minn. Stat. § 116B.03, subd 1; National Audubon Society, 569 N.W.2d at 218 (noting MERA allows a party to bring a suit for "declaratory or equitable relief"); County of Freeborn v. Bryson, 243 N.W.2d 316, 321 (Minn. 1976) (noting MERA allows a court to enjoin "environmentally destructive conduct"). As a result of this limitation, courts recognize that a MERA injunction must be narrowly tailored and specifically directed at preventing the ongoing polluting conduct. Kennedy Building Associates, 375 F.3d at 747-48; Soo Line Railroad Co. v. B.J. Carney & Co., 797 F.Supp 1472, 1486 (D. Minn. 1992). It does not allow a court to award damages or otherwise require a party to clean up past pollution. Kennedy Building Associates, 375 F.3d at 747-48 (rejecting argument that court could require the clean up of past toxic waste pollution); Werlein v. United

States, 746 F.Supp. 887, 898 (D.Minn.1990), vacated in part on other grounds, 793 F.Supp. 898 (D.Minn.1992) (same). MERA's limited remedy provisions only allow a court to enjoin the ongoing polluting conduct at issue.[4]

2. The Cities' Complaint Fails To Enjoin the Legally Cognizable Conduct That Causes an "Materially Adverse Affect" On The Environment.

In Counts I and II, the Cities allege that the noise from MSP satisfies MERA's definition of pollution of a protected natural resource (i.e., quietude within the residents' homes). But the Complaint does not request that the MAC stop, regulate, or otherwise control the source of the pollution. Instead, it seeks a single remedy designed to mitigate noise only in certain residences: that the 5 DNL insulation program currently provided to 65+ DNL Homes be provided to 60-64 DNL Homes.

The Cities' failure to attempt to regulate MSP air traffic is not surprising. As the Minnesota Supreme Court recognized in Minnesota Public Lobby v. MAC, 520 N.W.2d 388 (1994), federal law preempts any state law seeking to regulate or restrict air traffic to and from MSP. As the Supreme Court made clear in Minnesota Public Lobby, this rule preempts claims seeking to hold the MAC liable for state law environmental violations

[4] As courts and commentators have noted, the Minnesota legislature intentionally created MERA to provide only a limited remedy. See Note, *The Minnesota Environmental Rights Act*, 56 Minn. L. Rev. 575, 617 (1972). The Environmental Response and Liability Act and the Minnesota Environmental Protection Act provide other environmental remedies that supplement MERA. Cf. Soo Line, 797 F.Supp. at 1486 (noting argument that these statutes provide alternative environmental remedies). The Cities do not raise a claim under either of these statutes.

caused by airport noise.[5] Id. at 392 (rejecting argument that state law will provide a remedy for noise violations emanating from MSP).

The Cities recognize that Minnesota Public Lobby will prevent any claim that seeks to affect or regulate MSP traffic. Instead, they attempt to end run Minnesota Public Lobby. The Complaint alleges (in conclusory terms) that the Cities do not seek to directly regulate MSP air traffic. See Complaint at ¶ 87. Instead, Plaintiffs request the Court issue an injunction under MERA ordering the MAC to perform the 5 DNL insulation program for 60-64 DNL homes.

But the Cities' attempt to avoid the controlling effect of Minnesota Public Lobby by indirectly regulating MSP air traffic through the performance of the 5 DNL insulation program fails to state a claim under MERA. As courts have repeatedly made clear, MERA only allows a party to seek an injunction to regulate or prevent ongoing polluting *conduct*. E.g., Minn. Stat. §116B.03, subd. 1; County of Freeborn v. Bryson, 243 N.W.2d 316, 321 (Minn. 1976) (noting MERA allows a court to enjoin "environmentally destructive conduct"); National Audubon Society, 569 N.W.2d at 218 (rejecting MERA claim based on action that did not result in environmental pollution); Werlein v. United States, 746 F.Supp. 887, 898 (D. Minn. 1990), vacated in part on other grounds, 793 F.Supp. 898 (D. Minn. 1992) (recognizing MERA only allows a court to enjoin

[5] Although not specifically raised in this motion, NWA will demonstrate in a future motion, if necessary, that the Cities' state law claims are preempted by federal law because they interfere with the FAA's comprehensive regulation of air traffic and use of air revenue. See e.g., City of Burbank v. Lockheed Air Terminal, Inc., 411 U.S. 624 (1973) (recognizing federal law preempts state law attempts to regulate airport operations).

"conduct"); Soo Lines, 797 F.Supp at 1486 (recognizing MERA only allows a court to enjoin conduct).

As the MAC has argued in support of its motion to dismiss, the nature of the Cities' requested relief further demonstrates their claims cannot fit within MERA. Although MERA only allows a party to seek injunctive or declaratory relief, the Cities seek an order requiring the MAC to perform an expensive insulation program for the 60-64 DNL homes. But this request for injunctive relief is nothing more than a dressed-up request for damages. See J.P.T. Corp. v. City of St. Paul, 2002 WL 1837986, *3 (Minn. Ct. App. Aug. 13, 2002) (rejecting requested injunction that sought the payment of money because it was, "in substance, a claim for damages"); Thompson v. America Tobacco Co., 189 F.R.D. 544, 553 (D. Minn. 1999) (rejecting injunctive claim because it was "nothing more than a disguised attempt for compensatory damages."). MERA does not allow the Court to grant this type of monetary award. The only available remedy under MERA is to restrict the source of the pollution – which, of course, Minnesota Public Lobby prohibits.

In sum, the Cities' have raise a confused and ill-founded MERA claim. Although they allege that MSP noise pollutes the environment, they also recognize that they cannot directly restrict this conduct. Instead, they ask the Court to mitigate the effects of this conduct. MERA simply does not allow the plaintiffs to seek an order regulating anything other than the polluting conduct at issue. Plaintiffs have failed to state a claim on which relief can be granted.

3. The Complaint Fails To Refer To An "Environmental Quality Standard" That The MAC Has Violated.

Count II alleges that the MAC has engaged in "pollution" under MERA by violating various "environmental quality standards". But the Cities cannot point to any specific quality standard that the MAC has violated. Instead, they point to a series of vague policy statements and budget proposals that certainly do not establish a mandatory pollution standard. Thus, in addition to the reasons listed above in Section II(A)(2), Count II therefore fails.

MERA defines "pollution" as (in part) as "any conduct" that violates "any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit" of the state. Minn. Stat. § 116B.02, subd. 5. The Legislature did not declare and clearly did not mean that a MERA claim could be based on the violation of *any* state law or regulation, as the Cities argue. Especially when the statute is read in its entirety, it appears the Legislature intended that only the violation of a standard promulgated or issued by a state agency with primary responsibility for protection of the environment – MPCA, DNR, the Department of Health and the Department of Agriculture – was sufficient to support a MERA claim.. See Minn. Stat. § 116B.02, subd. 5; § 116B.03, subd. 1. Cf. Nemeth Abonmarche Development, Inc., 576 N.W.2d 641 (Mich. 1998) (holding under Michigan's similar environmental protection laws that those statutes whose purpose is to protect natural resources or to prevent pollution and environmental degradation will support a finding of pollution, impairment or destruction). In addition, the courts have held that an environmental quality standard must be a law or regulation that creates a mandatory, specific duty on a party or the public. See Kennedy Building

Associates, 375 F.3d at 747-48 (rejecting argument that order created an environmental quality standard under affirmative defense provision of Minn. Stat § 116B.03 subd. 1 because it did not specifically require the duty at issue); Williams Pipeline Co. v. Soo Linc Railroad Co, 597 N.W.2d 340 (Minn. Ct. App. 1999) (stating action that was not mandatory under decree was not done pursuant to an environmental quality standard under affirmative defense provision of Minn. Stat. § 116B.03, subd. 1).

The Cities present two separate environmental quality standards they believe the MAC has violated. They first argue that the "constellation" of the MAC's enabling statute, the Noise Mitigation Program, and the Final Environmental Impact Statement create an environmental quality standard. But these sources, whether considered singly or in tandem, do not in any way bind the MAC to perform insulation for homes within the 60-64 DNL contour, and therefore cannot be an "environmental quality standard" under MERA.

The Cities recognize that the MAC's enabling statute by itself does not create an "environmental quality standard." This statute only states in general terms that one of the MAC's duties is to minimize the environmental impact of its airport operations. See Cities' Mem. at 25-26. The Cities cannot and do not argue that these statutes themselves create any specific duty to limit noise from MSP below a certain level or require the MAC to perform insulation for 60-64 DNL Homes. Instead, they claim that the Noise Mitigation Program and the 1998 FEIS "create enforceable standards pursuant to these statutes." See Cities' Mem. at 27. But this is simply a creative attempt to manufacture an environmental quality standard when none of the individual sources satisfy the MERA standard.

For its part, the Noise Mitigation Program is merely a statement of its intent to provide some unidentified level of insulation for 60-64 DNL Homes, rather than a mandatory obligation of the MAC. The program does not state (and the Cities do not allege) that the MAC must engage in any level of insulation for 60-64 DNL Homes, let alone the 5 DNL insulation program given to the 65+ DNL Homes. Even if it did, the Cities do not point to any statute, case, or other authority binding the MAC to perform every element of the Noise Mitigation Program. Such a requirement would be inconsistent with the long-standing understanding that (absent any constitutional violations) a government instrumentality has the right to modify or change its decisions. See e.g., Johnson v. City of Minneapolis, 667 N.W.2d 109, 116-117 (Minn. 2003); Turnbladh v. Ramsey County District Court, 107 N.W.2d 307, 312 (Minn. 1960) (noting that a government agency has a "well-established right" to "reopen and redetermine" a matter); Dun & Bradstreet Corp. v. United States Postal Service, 946 F.2d 189, 193 (2nd Cir. 1991) ("It is widely accepted that an agency may, on its own initiative, reconsider its interim or even its final decisions . . . "). Indeed, the Noise Mitigation Program even recognizes the MAC specifically reserves the right to modify its provisions based upon changed circumstances. See Finney Affidavit, Ex. A at p. 5. This program, therefore, is merely a statement of the MAC's intent to provide mitigation for 60-64 DNL Homes, not a binding, enforceable environmental "standard".

Moreover, the Noise Mitigation Program is not an "environmental" rule or regulation on which a MERA claim can be based. The MAC is not a state agency with any duty to protect or monitor the environment, and thus does not have the power to issue an environmental quality standard. And the Noise Mitigation Program itself does not

purport to set any environmental standard – it does not state that noise above a certain level is illegal, a violation, or even that it should be avoided. Rather, the program simply sets out a plan to insulate homes experiencing noise from MSP. Because the Noise Mitigation Program does not set any mandatory standard of conduct with respect to the environment, it cannot be considered a "environmental quality standard".

The FEIS also does not impose a mandatory duty on the MAC. The FEIS is only an informational document that describes and analyzes the environmental impacts associated with certain airport improvements. See Finney Affidavit at Ex. B. It does not create any obligations on its own.[6] See National Audubon Society v. Minnesota Pollution Control Agency, 569 N.W.2d 211, 218 (Minn. 1997) (noting that an environmental impact statement is an informational document that merely analyzes the environmental consequences of an action); Coon Creek Watershed Dist. v. Minn. Envtl. Quality Bd., 315 N.W.2d 604, 606 (Minn. App. 1982) (same). See also Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989) (noting that a Federal FEIS is only an "informational document" than analyzes the effects of an environmental action); Trout Unlimited v. Morton, 509 F.2d 1276 (9th Cir. 1974). Thus, a party cannot seek to enforce the provision of an FEIS. See National Audubon Society, 569 N.W.2d at 218; Coon Creek, 315 N.W.2d at 606; Robertson, 490 U.S. at 349-52. The same result must apply here because the FEIS referred to in the Complaint only analyzes the effect and

---

[6] This conclusion is bolstered by the Minnesota Environmental Quality Board, which states that a FEIS "is not a means to approve or disapprove a project, but is simply a source of information to guide approval decisions" and that "the EIS can only point out problems and solutions, it cannot enforce them." See Environmental Quality Board, "Guide to Minnesota Environmental Review Rules," at 1 (April 1998) (available at http://www.eqb.state.mn.us/pdf/rulguid3.pdf).

extent of noise from MSP. Plaintiffs do not cite to a single case holding that a FEIS creates enforceable environmental standards.

Unable to point to any specific provision of any source or document requiring the MAC to provide the 5 DNL insulation program to 60-64 DNL Homes, the Cities instead argue that a "constellation" of these sources requires the MAC to do so. This argument only reveals the weakness of the Cities' position. Even considered together as a "constellation," these sources simply do not limit the amount of noise coming from MSP or specifically require the MAC to provide 5 DNL of insulation for 60-64 DNL Homes. Absent such a specific duty, Count II of the Cities' Complaint must fail.

As far as the Cities' second argument, the Metropolitan Council's 2002 budget is both irrelevant and moot. It should be apparent that a budget line in a local instrumentality's budget is not an environmental permit or rule. Most importantly, as the MAC has argued, the Met Council has backed away from this prior budget statement, and no longer will require the MAC to implement the insulation program for 60-64 DNL homes. Even if they had not done so, a budget line in an agency budget cannot be stretched to become an environmental permit under MERA. Such a budget line neither sets a mandatory standard of conduct, nor is it "environmental" in nature.

Because the Cities are not seeking to restrict polluting "conduct" under MERA, and because they cannot allege the existence of any environmental standard of conduct that the MAC has violated, both Counts I and II of the Complaint must fail.

C. The Complaint Fails To State A Mandamus Claim.

Finally, the Complaint does not state a viable mandamus claim for three reasons.

First, under Minn. Stat. § 586.01, a party raising a mandamus claim must demonstrate that the duty to be compelled must be one "the law clearly and positively requires." Day v. Wright County, 391 N.W.2d 32, 34 (Minn. Ct. App. 1986), pet. for rev. denied (Minn. Sept. 24, 1996); see also Johnson v. Minn. Dep't Human Services, 565 N.W.2d 453, 460 (Minn. Ct. App. 1997) (holding that the petitioner's legal right to the act demanded must be "so clear and complete as not to admit any reasonable controversy"). The duty cannot be discretionary, or involve the exercise of judgment on the MAC's part. E.g., Friends of Animals & Their Environment (FATE) v. Nichols, 350 N.W.2d 489, 491 (Minn. Ct. App. 1984) (quoting Zion Evangelical Church v. City of Detroit Lakes, 221 Minn. 55, 58, 350 N.W.2d 203, 205); see also, Waters v. Putnam, 289 Minn. 165, 172, 183 N.W.2d 545, 550 (1971). The Cities have failed to point to any specific statute, rule, or regulation requiring the MAC to provide a 5 DNL insulation program for 60-64 DNL Homes.

Second, there must be "no other adequate remedy at law." Minn. Stat. § 586.02 ("shall not issue in any case where there is a plain, speedy, and adequate remedy in the ordinary course of law."); Nolan and Nolan v. City of Eagan, 673 N.W.2d 487, 493-94 (Minn. App. 2003); Zaluckyj v. Rice Creek Watershed Dist., 639 N.W.2d 70, 74 (Minn.App.2002). By raising claims under MERA, the Cities have expressly admitted that there are other adequate remedies at law.

Finally, a mandamus petition must be raised in a stand-alone pleading. See Minn. Stat. § 586.08; Nolan and Nolan v. City of Eagan, 673 N.W.2d 487, 494 (Minn. App. 2003). By filing this claim with their MERA claims, the Cities have not complied with this procedural requirement.

The Cities' mandamus claim is fatally flawed and must be dismissed.

IV. Conclusion

For these reasons, NWA respectfully requests that this Court grant the MAC's motion to dismiss.

Respectfully submitted,

DORSEY & WHITNEY LLP

Dated: July 12, 2005

By _____
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B. Andrew Brown (#0205357)
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Attorneys for Northwest Airlines, Inc.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

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

Plaintiffs,

v.

Metropolitan Airports Commission,

Defendants,

and

Northwest Airlines, Inc.,

Intervenor.

AFFIDAVIT OF ANDREW HOLLY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Andrew J. Holly, being first duly sworn under oath, deposes and states the following:

1. I am an attorney representing Northwest Airlines, Inc. in this matter, and I am licensed to practice law in Minnesota. This affidavit is filed in support of Northwest Airlines' Memorandum of Law In Support of the Metropolitan Airports' Commission's Motion to Dismiss.

2. Attached at Exhibit A is a true and correct copy of the Court's decision in J.P.T. Corp. v. City of St. Paul, 2002 WL 1837986 (Minn. Ct. App. Aug. 13, 2002).

Dated: July 12, 2005

Andrew Holly

Subscribed and sworn to before me

this 12th day of July 2005.

Notary Public

PAULA R. BJORKMAN
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2010

Exhibit A

Westlaw.

Not Reported in N.W.2d

Page 1

2002 WL 1837986 (Minn.App.)

(Cite as: 2002 WL 1837986 (Minn.App.))

H

Only the Westlaw citation is currently available.

NOTICE: THIS OPINION IS DESIGNATED AS UNPUBLISHED AND MAY NOT BE CITED EXCEPT AS PROVIDED BY MINN. ST. SEC. 480A.08(3).

Court of Appeals of Minnesota.
J.P.T. CORPORATION, et al., Appellants,
v.
CITY OF ST. PAUL, Minnesota, Respondent.
No. C4-01-2154.

Aug. 13, 2002.

Ramsey County District Court, File No. CX-01-3269.

Daniel Zeddies, Daniel Zeddies P.A., Minneapolis, MN, for appellants.

Manuel J. Cervantes, St. Paul City Attorney, John H. Stechmann, Assistant City Attorney, St. Paul, MN, for respondent.

Considered and decided by HALBROOKS, Presiding Judge, KLAPHAKE, Judge, and HANSON, Judge.

UNPUBLISHED OPINION

HANSON, Judge.

*1 On appeal from summary judgment dismissing appellant landowner's action to enjoin enforcement of respondent city's order that landowner disconnect its storm-discharge line from the city's sanitary sewer, landowner argues that the district court erred by ruling that (1) the injunction action was time-barred by the limitation period of Minn.Stat. § 541.051 (2000); (2) the injunction was barred by the public-duty doctrine; and (3) the city was immune from liability. We affirm.

FACTS

Appellant J.F.T. Corporation (J.F.T.) [FN1] operates a gas station at the intersection of Hamline and Marshall Avenues in St. Paul. In July 1985, J.F.T. applied to respondent City of St. Paul for approval of its site plan to demolish and rebuild the gas station. At that time, J.F.T. could lawfully use the city's combined storm and sanitary sewer on Marshall Avenue for J.F.T.'s storm discharge.

FN1. The property was originally owned by J.P.T. Properties. Since 1991, the property has been owned by J.F.T. For the purposes of this opinion, we will refer to the property owner as J.F.T. even though earlier events happened when the property was owned by J.P.T.

In February 1986, in response to funding offered by the state, the city adopted the Rainleader Disconnect Program under which sewer overflow into the Mississippi River would be decreased by separating the combined storm and sanitary sewers into two distinct systems. In March 1986, one month after the Rainleader Disconnect Program was adopted, but before it was effective, J.F.T. submitted a first revised site plan to the city. The plan contemplated the reconnection of J.F.T.'s storm discharge line to the combined sewer system on Marshall Avenue. In January 1987, J.F.T. submitted a second revised site plan, contemplating the same connection. The second revised site plan was partially approved by the city that same month.

On April 20, 1987, the Rainleader Disconnect Program became effective under the city's legislative code. In September 1987, the city informed J.F.T. by letter that the city would construct separated sewer systems in the gas

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station's vicinity the following year. But that same month the city finally approved J.F.T.'s second revised site plan, which contemplated connection to the Marshall Avenue combined sewer. J.F.T. began construction and connected its storm-discharge line to the Marshall Avenue combined sewer.

The president of J.F.T. testified that about two weeks after he received the September 1987 letter, he called the city to ensure that the gas station would be in compliance. He testified that he was not told that he needed to do anything further and that he was under the impression that the new facility would be in compliance.

J.F.T. hired Sunde Engineering, Inc., to develop J.F.T.'s sewer specifications. The engineer involved, Paul Swenson, testified that he understood that J.F.T. could only use the Marshall Avenue combined sewer through December 1987, but he believed that the separation of the Marshall Avenue sewer line would allow J.F.T. to reconnect its storm sewer discharge lines to a new Marshall Avenue storm-sewer line, and he designed J.F.T.'s storm-sewer discharge lines accordingly.

One year after the new gas station was built, the city began constructing the separated sewer systems on Hamline and Marshall Avenues. The testimony conflicts with respect to the completion date of the new sewer systems. One witness stated that the construction ended in June 1989, while the other stated that the construction on Hamline Avenue ended in August 1989 and the construction on Marshall Avenue ended sometime in the fall of 1989. When completed, the new storm-sewer system on Marshall Avenue did not reach J.F.T.'s property. As a result, the Hamline storm-sewer line presented the closest connection point. But because J.F.T.'s gas station was constructed with a concrete drive and its storm-sewer discharge line was designed and had been located to connect at Marshall Avenue, J.F.T. alleged that it would now cost more than $32,000 to construct a new line to connect to the Hamline Avenue storm sewer.

*2 Nine and one-half years later, in June 1999, the city notified J.F.T. that its sewer system violated the city's legislative code. J.F.T. filed an administrative appeal and was given an extension to disconnect its storm-sewer discharge from the Marshall Avenue sanitary sewer until November 2001. In November 2000, J.F.T. sued the city for negligence and for violations of the Minnesota and United States Constitutions. As to the negligence of the city, J.F.T. alleged three claims: (1) that the city was negligent in approving J.F.T.'s site plan; [FN2] (2) that the city was negligent in designing the new Marshall Avenue storm sewer to end before reaching J.F.T.'s property; and (3) that the city was negligent in failing to install a stub on the Hamline Avenue storm sewer to allow easier connection by J.F.T. J.F.T. sought damages in excess of $50,000 and injunctive relief enjoining the city from enforcing its disconnection order except on condition that the city reimburse J.F.T. for the cost of constructing a connection to the Hamline Avenue storm sewer.

> FN2. While this claim of negligence has factual elements of a claim for equitable estoppel, J.F.T. did not plead or argue equitable estoppel and we will not consider whether such a claim could have been made. Generally, estoppel is applied sparingly to governmental actions. *See, e.g., Ridgewood Dev. Co. v. State,* 294 N.W.2d 288, 293-94 (Minn.1980); *Dege v. City of Maplewood,* 416 N.W.2d 854, 856 (Minn.App.1987).

The city filed a motion for summary judgment, and J.F.T. voluntarily dismissed its claims for damages in the first and second counts of the complaint, apparently in recognition that damage claims were barred by the statute of limitations. The district court granted summary judgment in favor of the city, dismissing the third count for injunctive relief, based on its determination that the statute of limitations barred injunctive claims as well as claims for damages. The district court also determined that even if the statute of limitations was inapplicable, summary judgment for the city was appropriate under either the public-duty doctrine or the discretionary-immunity doctrine. This appeal followed.

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DECISION

On appeal from summary judgment, a reviewing court asks whether there are any genuine issues of material fact to be determined and whether the district court erred by its application of the law. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn.1996); *see* Minn. R. Civ. P. 56.03 (stating summary judgment is appropriate if the record shows "there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law."). When a motion for summary judgment is properly made and supported, the nonmoving party may not rest upon mere averments or denials, "but must present specific facts showing that there is a genuine issue for trial." Minn. R. Civ. P. 56.05; *see D.L.H., Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn.1997) (stating that nonmovant must do more than create a "metaphysical doubt" as to an issue). The reviewing court views the evidence in a light most favorable to the nonmovant. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn.1993) (citation omitted).

I

J.F.T. argues that the statute of limitations would not bar its claim for damages and, even if it did, it cannot bar its claims for injunctive relief. The city argues that the district court correctly determined that the statute of limitations bars all of J.F .T.'s claims because it applies equally to cases brought in equity and in law.

The Relevant Statute of Limitations

*3 The district court determined that the relevant statute of limitations is Minn.Stat. § 541.051, which provides in subdivision 1 as follows:

> 541.051 Limitation of action for damages based on services or construction to improve real property.
>
> Subdivision 1. (a) Except where fraud is involved, no action by any person in contract, tort, or otherwise to recover damages for any injury to property, real or personal, * * * arising out of the defective and unsafe condition of an improvement to real property, * * * shall be brought against any person performing or furnishing the design, planning, supervision, materials, or observation of construction or construction of the improvement to real property or against the owner of the real property more than two years after discovery of the injury * * * nor, in any event shall such a cause of action accrue more than ten years after substantial completion of the construction. Date of substantial completion shall be determined by the date when construction is sufficiently completed so that the owner or the owner's representative can occupy or use the improvement for the intended purpose.

Minn.Stat. § 541.051, subd. 1(a) (2000).

J.F.T. does not seriously argue that Minn.Stat. § 541.051 is irrelevant to this action. To do so might not benefit J.F.T. because it would invite application of the six-year residual statute of limitations under Minn.Stat. § 541.05, subd. 1(5) (2000), which applies to "any other injury to the * * * rights of another, not arising on contract, and not hereinafter enumerated." In any event, the supreme court has held that Minn.Stat. § 541.051 is relevant to claims of negligent design and construction of a storm sewer. *Capitol Supply Co. v. City of St. Paul*, 316 N.W.2d 554, 555 (Minn.1982). We hold that Minn.Stat. § 541.051 provides the relevant statute of limitations in this case.

An "action * * * to recover damages"

J.F.T. argues that Count III of its complaint is not barred by Minn.Stat. § 541.051 because it seeks an injunction and is not an "action * * * to recover damages." Although Count III requests injunctive relief, J.F.T.'s claims in that count are essentially claims for damages. J.F.T.'s counsel acknowledged at oral argument before this court that J.F.T. does not ask the court to permanently enjoin enforcement of the city's disconnection order, but seeks reimbursement of J.F.T.'s costs to comply with the order. Reimbursement for these costs would be measured in the same way that damages would have been calculated for the damage claims under counts I and II. We construe J.F.T.'s reimbursement request to be an "action * * * to recover damages," within the meaning of Minn.Stat. § 541.051. Because Count III, in substance, is a claim for

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damages resulting from improvements to real property, the district court properly looked to Minn.Stat. § 541.051 for the limitations period applicable to this case.

Genuine issues of material fact

The district court decided that J.F.T.'s action was time-barred under the alternative limitation of Minn.Stat. § 541.051, subd. 1, that provides, "[N]or, in any event shall such a cause of action accrue more than ten years after substantial completion of the construction." J.F.T. commenced its action on November 18, 2000. Although there are some discrepancies in the testimony as to when construction was substantially completed, if we view that testimony in the light most favorable to J.F.T. and choose the latest date supported by the evidence, we would select "the fall of 1989," which is at least 11 years before the action was brought. Thus, there is no genuine issue of material fact under subdivision 1 of the statute.

*4 J.F.T. argues on appeal that even if the action was not commenced within ten years after the completion of construction, the limitation period should be extended under the following repose provisions of subdivision 2:

> Subd. 2. Notwithstanding the provisions of subdivision 1, in the case of an action which accrues during the ninth or tenth year after substantial completion of the construction, an action to recover damages may be brought within two years after the date on which the action accrued, but in no event may an action be brought more than 12 years after substantial completion of the construction.

Minn.Stat. § 541.051, subd. 2 (2000). Because the action was commenced within 12 years after the completion of construction, this subdivision would save J.F.T.'s action if it were applicable.

The city argues against the extension on two grounds. First, it argues that J.F.T. did not preserve this issue because it did not present it to the district court. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.1988) (stating that this court generally will not consider matters that were not argued to and considered by the district court). Although J.F.T. does not counter this argument, we proceed to the city's second ground because it independently defeats the extension of the limitation period.

The city argues that the extension does not apply because any claim of J.F.T. accrued well before the ninth year after substantial completion of construction. The statute states that "a cause of action accrues upon discovery of the injury * * *." Minn.Stat. § 541.051, subd. 1(e) (2000). We conclude that as a matter of law J.F.T. discovered its injury by 1989, upon the completion of the construction by the city of the sewer-separation project.

First, J.F.T. certainly had constructive notice of the city's legislative code, under which the connection of its storm discharge to the Marshall Avenue sanitary sewer became unlawful at least as soon as the construction of the new Marshall Avenue storm sewer was completed, no later than the fall of 1989. *See Snyder v. City of Minneapolis*, 441 N.W.2d 781, 786-87 (Minn.1989) (recognizing that a party can have constructive notice of a zoning ordinance, which bars that party's action to recover damages). More importantly, J.F.T. had actual knowledge at that time that the new storm sewer on Marshall Avenue had not been extended to its property and was not available for connection to its storm-discharge line.

In addition, the knowledge of J.F.T.'s engineer, Swenson, is imputed to J.F.T. Swenson was hired to "get the approval with the city for storm drainage." Swenson testified that he knew of the future need to change the combined sewer into separate sewer systems; that he understood that J.F.T.'s connection to the Marshall Avenue combined sewer was temporary; and that the connection to that sewer would be noncompliant upon completion of the Marshall Avenue storm sewer. *See* Restatement (Second) of Agency § 268 (1958) ("a notification given to an agent is notice to the principal if it is given" to an agent who is actually or apparently authorized to receive it or who is authorized to conduct a transaction in which that type of notice is typically given). Because J.F.T. was aware of the

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injury at the completion of the construction of the new storm sewer, subdivision 2 does not apply in this case.

II

*5 The district court granted summary judgment on the alternative grounds of the public-duty exception, citing *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 806 (Minn.1979). J.F.T. does not challenge the district court's ruling on the public-duty exception. Accordingly, summary judgment is affirmed on that alternative ground. *See Melina v. Chaplin*, 327 N.W.2d 19, 20 (Minn.1982) (stating that issues not raised or briefed on appeal are waived).

Given the propriety of dismissal on either the statute of limitations or the public-duty exception, we need not address the further alternative ground of discretionary immunity.

Affirmed.

END OF DOCUMENT

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AFFIDAVIT OF SERVICE BY U.S. MAIL

State of Minnesota by the City of Minneapolis, et al.
Plaintiffs

v.

Metropolitan Airports Commission
Defendant

Case No. 05-5474

Julianne Hill, being first duly sworn, on oath, deposes and states that on the 12th day of July, 2005, she did send by facsimile and also deposit in the United States mail, envelopes, properly sealed and with postage prepaid thereon, addressed to:

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John E. Putnam
Kaplan Kirsch & Rockwell, LLP
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the last known address of said addressees, in which envelope she had first placed true and correct copies of the following documents:

1. Northwest Airlines, Inc's Memorandum of Law in Support of the MAC's Motion to Dismiss;

2. Affidavit of Andrew Holly with Exhibit A.

Julianne Hill

Subscribed and sworn to before me
this 12th day of July, 2005.

Notary Public

MYRNA MAIKKULA
NOTARY PUBLIC-MINNESOTA
My Commission Expires Jan. 31, 2010