

February 2, 2005

Mark Arnold
Acting Chief, Airport Engineering Section
Wisconsin Department of Transportation
Division of Transportation Infrastructure Development
Bureau of Aeronautics
P.O. Box 7914
Madison, Wisconsin 53707-7914

Dear Mark,

We are writing to request clarification on the status of the NEPA/WEPA review process for the proposed West Bend Airport Expansion and to register some procedural concerns “for the record” on this project.

Regarding NEPA/WEPA status:

1. We understand that an updated Environmental Assessment (EA) that incorporates the findings of the supplemental engineering/environmental study and the additional details that were requested in a July 22, 2002 letter from the Environmental Protection Agency (EPA), a June 1, 2004 letter from the Wisconsin Department of Natural Resources (WDNR), and a May 26, 2004 letter from the U.S. Army Corps of Engineers (COE) is being developed. What is the expected completion date for that updated EA?
2. What is the status of the Economic Study referenced on the Economic Development Research Group’s web-site (http://www.edrgroup.com/edr1/consulting/2_7/P088-west-bend-airport.shtml) and when will that document be available for public review? Will this document contain an updated cost-benefit analysis for airport and highway expansion, including mitigation expenses, and an updated summary of the status of the budget authorizations for this project? If not, how can we obtain this information?
3. What is the regulatory distinction between the “Preliminary Environmental Assessment” released in 2002 and the pending updated EA? Given that the updated EA will include extensive supplemental information regarding project purpose and need and environmental impacts (as referenced in an October 29, 2004 letter from Mark Arnold to EPA), what additional opportunities for public comment are legally required prior to making a record of decision regarding the need for an Environmental Impact Statement? Please cite the specific statutory

authority which guides your response to this question and estimate the earliest date you anticipate that comment period may open.

4. What additional opportunities for public participation beyond those legally required (i.e., hearings) do you plan to offer due to the highly controversial nature of the project and the proposed significant impacts to waters of the United States? Please estimate the earliest date you anticipate giving public notice of those opportunities.
5. What is the newspaper of record for this project? If an interested party is not a subscriber to that newspaper of record, is there a process by which interested individuals and organizations can register to receive notification of public comment opportunities and the availability of new information? If not, is there a web-site we can refer to in order to monitor the release of this information?
6. Please clarify which agency(s) must approve the updated EA and final notice of intent or record of decision. Please also provide the names, mailing addresses, phone numbers and e-mail addresses for the coordinating contact for this project for each agency involved in the approval process.

Regarding the pending Notice of Intent or Record of Decision:

We have reviewed a copy of a June 18, 2004 document titled "Final Environmental Document Type Recommendation" produced by Transportation Environmental Management and MSA Professional Services (hereafter referred to as "Consultant's Letter"). We would like to register our objections to the recommendations contained therein and encourage WisDOT to review those recommendations objectively and critically to ensure the conclusions drawn in the thresholds analysis are in keeping with the intent of the guidelines. We believe the consultants have grossly underestimated the number and range of criteria which surpass the "significant" threshold, including but not limited to: cumulative impacts, flood and storm water attenuation, whether or not Section 404 permits will be difficult to obtain, and the level of project controversy. In light of substantial documentation regarding unique and ecologically critical resources to be impacted in the project area, expert opinions that the area provides suitable habitat for two state threatened species (see attached), and the unique and uncertain effects of clear-topping 88 acres of lowland hardwood swamp trees (large portions of this acreage have been designated as primary environmental corridors), we believe the consultant's conclusions are fundamentally flawed.

We urge you to conduct an independent and detailed review of the consultant's recommendations and will be looking for a detailed explanation of how each pertinent threshold determination was informed by statute and regulatory guidance.

Regarding the significance of the controversy and ease of obtaining permit determination, we would like for the record to show that a growing number of additional organizations have expressed their concerns over the proposed airport expansion and are actively monitoring the status of this project on behalf of their respective members. These groups

include, but are not limited to, the Wisconsin Wildlife Federation, Friends of Milwaukee's Rivers, Sierra Club, River Alliance of Wisconsin, 1000 Friends of Wisconsin and the Milwaukee County Conservation Coalition (representing 25 regional organizations).

The delegations to Wisconsin's 2004 Conservation Congress from Milwaukee, Washington, and Ozaukee County also voiced strong concern over whether the need for the proposed expansion warrants the extensive environmental impacts. A resolution calling for further evaluation of the purpose and need for this project through the development of a full Environmental Impact Statement passed overwhelmingly in these three counties (235 votes in favor vs. 51 opposed).

Based on the Consultant's Letter referenced above and a conversation with Jay Waldschmidt in the WisDOT Bureau of Equity and Environmental Services, we are aware that WisDOT/BOA are considering invoking the authority to mitigate wetland loss "below the threshold of significance" in order to arrive at a decision to issue a FONSI. Our understanding of the authority outlined in APP-600 Chapter 5 (47.e) (FAA Order 5054a) is that these mitigation measures "must be included as an integral part of the proposed project." In order to exercise such authority under APP-600, the mere intent to compensate for wetland losses through mitigation is insufficient and instead the full mitigation plan and budget must be incorporated into the updated EA and be available for public review. The guidance clearly shows that these mitigation details must be ironed out in their entirety prior to issuing a notice of intent or record of decision.

Due to the historical cumulative wetland loss in the immediate project area and region, and the sheer magnitude of proposed acreage of impacts for this project, we are keenly interested in reviewing the mitigation plan, particularly with respect to the location of selected mitigation sites, the types of wetlands proposed to be restored or "created" and proposed mitigation ratios. Please confirm that a mitigation plan and budget will be included in the documents provided as part of the supplemental EA. If you believe APP-600 provides otherwise, please identify the relevant code, guidance documents or memoranda of agreement that clarify the allowances to mitigate below a threshold of significance.

Additional concerns regarding gaps in the current Environmental Assessment:

1. A preliminary habitat analysis by a regional expert suggests that the proposed project site provides suitable habitat for two state-threatened species, the Blandings Turtle and the Butler's Garter Snake. Under WEPA, we believe this possibility triggers the need for further habitat evaluation to confirm the presence or absence of these species. We request DOT's attention to this requirement. It is also unclear to us whether a detailed fish and wildlife survey has been conducted. Based on the extent of direct and indirect impacts proposed, we believe that any updated EA would be incomplete without a more thorough evaluation of wildlife impacts or critical species habitat.

2. Given the history of flooding in this region and the significant investment the Milwaukee Metropolitan Sewerage District is making to protect and acquire wetlands for flood attenuation in the Milwaukee River Basin, we believe a hydrological study is needed to assess how the proposed wetland fill will impact peak flows on the adjacent Milwaukee River. If this study has already been conducted, please furnish a copy of the methodology and findings. If a study has not been conducted, please respond with WisDOT's position on this issue.
3. While we recognize the distinction between the proposed direct and indirect impacts for the purpose of obtaining Section 404 permits, we disagree with the distinction project proponents have made between direct and indirect impacts for the purpose of evaluating the environmental impacts of this project. According to CEQ regulations 40 CFR §§ 1508.8 direct and indirect impacts are defined as follows:

Direct impacts are caused by an action and occur at the same time and place as the action. **Indirect impacts** (also referred to as secondary impacts) are caused by the action and are later in time or farther removed in distance, but still reasonably foreseeable. Indirect impacts may include growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air, water, and other natural systems, including ecosystems.

Here, there are already direct impacts to 60 acres of wetlands. In addition, it appears that 88 acres of wetlands will allegedly be "indirectly impacted." We disagree that this is an indirect impact and believe that clear-topping 88 acres of trees will directly and substantially reduce the functional value of this lowland hardwood swamp area by altering the hydrology, plant community and suitable wildlife habitat. Any decision to issue a notice of intent or record of decision should consider these impacts as direct, and the proposed mitigation plan should reflect the increased acreage of direct impacts.

4. A significant number of impacted wetlands have a high functional value. Many are Advanced Identification (ADID) wetlands as well. Under the WDNR and WisDOT compensatory mitigation agreement, ADID wetlands mitigation requires greater compensation than for loss of non-ADID wetlands. Please explain how the project satisfies this requirement and how the updated EA will reflect the same.
5. Replacing wetlands and other natural areas with impervious surfaces will greatly alter the groundwater recharge functions in the project area. We believe that the project will significantly affect the functions and quality of the area's groundwater. Please describe any groundwater surveys or impacts that have been studied and how the updated EA will address this issue.
6. The Purpose and Need for the project identifies the series of SEWRPC Regional Airport Plans that have long-designated West Bend Municipal Airport for expansion. We believe the SEWRPC plans failed to incorporate Wisconsin's

revised environmental regulations promulgated in recent years. Specifically, the SEWRPC plans never evaluated whether the revised regulations affect the recommendations in any fashion.

Please identify how the SEWRPC plans incorporate Wisconsin's revised environmental regulations. If the SEWRPC plans do not address the revised regulations, please identify whether WisDOT still considers the recommendations to be valid. Please explain WisDOT's basis for relying on the SEWRPC plans for the Purpose and Need of the expansion if they do not address the revised regulations. In addition, please explain how the updated EA accounts for the regulations in evaluating the Purpose and Need of the expansion.

Due to the imminent movement on this proposed project, we would appreciate receiving your written response to these questions and concerns no later than February 21, 2005.

Sincerely,

Becky Abel
Executive Director

Erin O'Brien
Water Policy & Conservation Specialist

Cc:

Craig Butler, DOT/BOA
Jay Waldschmidt, DOT/BEES
Todd Ambs, WDNR, Division of Water
Joanne Kline, WDNR
Rebecca Gruber, USCOE/Waukesha
Robert Whiting, USCOE, St. Paul District
Kenneth Westlake, US EPA
Daniel Millenacker, FAA
Lynn Broaddus, Executive Director, Friends of Milwaukee's River
Peter McKeever, Coordinator, Milwaukee County Conservation Coalition
RAW: Denny Cannef, Executive Director, River Alliance of Wisconsin
Steve Hiniker, Executive Director, 1000 Friends of Wisconsin
Brett Hulsey, Senior Midwest Representative, Sierra Club
George Meyer, Executive Director, Wisconsin Wildlife Federation
Marilyn John, Taxpayers Against Airport Growth