

## INFORMATION ABOUT THE AMENDMENT TO THE 2007 CONSENT DECREE

### The Facts according to the City of Eagan:

- All of the homes forecasted to be added to the noise contours are in the City of Minneapolis. There are no homes in Eagan that are forecasted to be added to the contours.
- The communities (Minneapolis, Eagan and Richfield) have worked in partnership with the MAC to amend the 2007 Consent Decree to provide noise mitigation to those homes that are added to the 60DNL+ contours for a period of three consecutive years (based on actual noise contours from the previous years).
- The amendment to the consent decree proposes that future noise mitigation provided to homes be consistent with the mitigation provided under the 2007 Decree.

The amendment has been approved by the Cities of Eagan, Minneapolis, and Richfield. As noted above, this was an effort in partnership with the MAC to ensure that any additional homes added to the contours as a result of the 2020 plan will receive the same level of mitigation as those that were included under the 2007 consent decree. By adopting the amendment, the MAC will be permitted to use airport revenue to fund the proposed noise mitigation program. Once approved by all parties, the amendment will be forwarded to the FAA for confirmation, and the parties will submit the amended consent decree to the Court for its approval. As a City Council agenda item, this item was noticed per legal posting requirements.

### THE FACTS, PER JOHN QUINCY's News Letter:

MAC staff proposed an amendment to the Consent Decree through back-channels to the municipal plaintiffs' city attorneys. Minneapolis City Attorney Corey Conover negotiated with MAC General Counsel Tom Anderson. Meetings were held with Richfield and Eagan legal advisors; no public records of these meetings or the legal advice sought or given is considered public information because it is considered a *litigation matter*, not a *policy decision*.

1. The plaintext of the amendment is that the settlement agreement is modified to require, among other things: Residential units in any noise impacted block would be mitigated if the "actual" noise contour lines touched the unmitigated block *in three consecutive years*;
2. The Court will be *asked* to extend the Consent Decree and the mitigation program.
3. The FAA *could* agree that the mitigation program funding conditions that existed in 2007 when the agreement was made will continue because of the Court Order extension.
4. The new agreement would extended the settlement as amended from 2014 to a date in the amendment (2024?).

## **ADDITIONAL FACTS:**

- The Metropolitan Airports Commission (MAC) is implementing the Minneapolis St.-Paul International Airport (MSP) 2020 Improvements Project to accommodate the expected future demand at the airport.
- As a result of the increased operations anticipated (forecasted) at the airport by 2020, additional homes will likely be added to the future 60+ Day-Night Level (DNL) noise contours.
- The City of Minneapolis would only allow new construction of homes near the airport in city *compatible use zones* if construction demonstrated an attenuation of outside ambient noise by at least 20 dbA. The compatible use zones include many blocks currently mapped by the MAC as under 65 DNL.
- MAC claims that *Federal preemption* requires that *the MAC define near-airport compatible use zones though DNL maps*.
- The AIP/PFC funding is not firm even if FAA agrees that an under 65 DNL noise mitigation grant application can be accepted and considered under Federal law because of the Consent Decree.

## **SMAAC Comment:**

The continuation of mitigation as ***the airport noise remedy*** rather than noise **abatement** is less desirable for MSP neighbors. An appeal of the EA, or investigating the need and cost of operations that introduced considerable event noise in neighborhoods has more potential benefit to the public.

The MAC's cost and Federal Government's cost per flight is increased by high runway use rates. Staffing and facilities must support the busiest few hours each day. Costs are higher for a connecting hub, and the dominant airline controls the total number of departing passengers using MSP and therefore *the supply of local seats*. Annual local passengers or passenger capacity was the basis for the new runway at MSP and various supporting features. The Cities and the MAC lack the statutory authority to agree to a different 2020 economic forecast or decision paradigm.

The noise exposure produced per flight is proportional to each flight's speed and altitude and to the number of persons over-flown. Speed and altitude noise factors are increased by turns for the same amount of thrust, or by increased thrust.

FAA Order 1095.1E and 40 CFR 1502.14(a) require consideration of a reasonable alternatives that accomplish the same operational safety goals at less cost and equal or less environmental impact.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

STATE OF MINNESOTA BY THE  
CITY OF MINNEAPOLIS, et al.

Plaintiffs,

v.

METROPOLITAN AIRPORTS COMMISSION,

Defendant, and

NORTHWEST AIRLINES,

Defendant- Intervener.

DISTRICT COURT  
FOURTH JUDICIAL DISTRICT

**COPY  
OF  
SIGNED MOTION**

Case No. 27-CV-OS-S474

**FIRST AMENDMENT TO CONSENT DECREE**

WHEREAS, the City of Minneapolis, City of Richfield, City of Eagan, Minneapolis Public Housing Authority (collectively, the "Cities"), and the Metropolitan Airports Commission (the "MAC") are parties to a Consent Decree entered by this Court on October 19, 2007 (the "Consent Decree");

WHEREAS, the MAC will complete all noise mitigation requirements established in the October 2007 Consent Decree no later than September 1, 2014;

WHEREAS, the MAC intends to implement the proposed Minneapolis St.-Paul International Airport (MSP) 2020 Improvements Project to accommodate the expected demand such that the level of service is acceptable throughout MSP's facilities under both existing and 2020 conditions, and (such) that regional roadways provide an acceptable level of service under both existing and 2030 conditions;

WHEREAS, the Cities allege that the Metropolitan Council has formally adopted 60 DNL as a local noise mitigation standard for MSP, whether or not the interior noise level in a residence is below 45 DNL;

WHEREAS, the Cities allege that the final MSP 2020 Improvements Project Environmental Assessment/Environmental Assessment Worksheet is inadequate under the National Environmental Policy Act (NEPA) , 42 U.S.C. §§ 4321-4370h, and the Minnesota Environmental Policy Act (MEPA), Minn. Stat. §§ 116D.01-116D.10;

WHEREAS, the Cities allege that failure to provide noise mitigation for existing homes that are newly within the 60 DNL for exterior noise surrounding MSP, whether or not the interior noise level in a residence is at or below 45 DNL, violates the Minnesota Environmental Rights Act (MERA), Minn. Stat. §§ 116B.01-116B. 13

WHEREAS, the MAC contends that the MSP 2020 Improvements Environmental Assessment/Environmental Assessment Worksheet is adequate under NEP A and MEP A;

WHEREAS, the MAC contests the Cities' allegations under NEPA, MEPA, and MERA and does not admit any liability to the Cities arising out of the allegations;

WHEREAS, the Cities allege that they have adopted ordinances requiring new residential construction to include specified noise attenuation within the 2007 60 DNL Contour for exterior noise surrounding MSP, whether or not the interior noise level in a residence is at or below 45 DNL;

WHEREAS, the MAC and the Cities desire to resolve the issues arising out of the MSP 2020 Improvements Environmental Assessment/Environmental Assessment Worksheet and the issues an allegations; and

WHEREAS, Section 8.1G) and Section 8.7 of the Consent Decree allow the Cities and the MAC to modify the Consent Decree by mutual agreement and in writing; and

WHEREAS, this Amendment will be submitted to the Federal Aviation Administration Office of Legal Counsel for a legal determination regarding its consistency with federal requirements regarding the use of airport revenue;

NOW THEREFORE, upon (a) receipt of a written legal determination by the Federal Aviation Administration Office of Legal Counsel that use of airport revenue to fund the programs contemplated by this Amendment is permitted and (b) approval of this Amendment by the Court, the Consent Decree shall be amended as follows:

1. The Consent Decree is hereby modified to insert the following language after Section 8. 1

**IX. NOISE MITIGATION PROGRAM TO BE IMPLEMENTED FOLLOWING FAA APPROVAL OF THE MSP 2020 IMPROVEMENTS ENVIRONMENTAL ASSESSMENT / ENVIRONMENTAL ASSESSMENT WORKSHEET**

**9.1 Goal of the Program.** The MAC's goal in adopting the noise mitigation program in Section IX of this Consent Decree is to minimize the environmental impacts on residents in communities adjacent to MSP, consistent with the unique noise characteristics associated with air carrier aircraft operations.

**9.2 Duration of the Program.** The noise mitigation program in Section IX of this Consent Decree will commence immediately and terminate on December 31, 2024.

**9.3 Noise Contours and Program Eligibility Assessment.** The MAC will determine eligibility for the program based upon actual noise contours that MAC develops under Section 8. 1d) of this Consent Decree. The MAC will assess eligibility for noise mitigation under the program annually based upon the Section 8.I(d) actual noise contours prepared for the previous calendar year.



**9.4 Eligibility Criteria.** The owners of Single-Family homes and Multi-Family homes, as those terms are defined in Section 4. 27 and Section 4. 16 of this Consent Decree, shall be eligible for the noise mitigation program in Section IX of this Consent Decree. There is no requirement that the interior noise level in any Single-Family or Multi-Family home receiving mitigation under Section IX of this consent Decree be above 45 DNL. The owner of a Single-Family or Multi-Family home will be considered eligible for mitigation under the noise mitigation program in Section IX of this Consent Decree if the following criteria are met: (a) the community in which the home is located has adopted local land use controls and building performance standards applicable to the home for which mitigation is sought that prohibit new residential construction, unless the construction materials and practices are consistent with the local land use controls and heightened building performance standards for homes within the 60 DNL Contour within the community in which the home is located, and (b) the home is located, for a period of three consecutive years, with the first of the three years beginning no later than calendar year 2020 (i) in the actual 60- 64DNL noise contour prepared by the MAC under Section 8. 1d) of this Consent Decree and (ii) within a higher noise impact mitigation area when compared to the Single-Family home's status under the noise mitigation programs for Single-Family homes provided in Sections 5. 1 through 5. 3 of this Consent Decree or when compared to the Multi-Family home's status under the noise mitigation programs for Multi-Family homes provided in Section 5. 4 of this Consent Decree. The noise contour boundary will be based on the block intersect methodology. The MAC will offer noise mitigation under Section IX of this Consent Decree to owners of eligible Single-Family homes and Multi-Family homes in the year following the MAC's determination that a Single-Family or Multi-Family home is eligible for noise mitigation under this Section.

**9.5 Single-Family Home Mitigation Package,**

- a) If a Single-Family home is in the 63 or higher DNL annual noise contour prepared by



the MAC under Section 8.1(d) of this Consent Decree for three consecutive years and meets the Eligibility Criteria in Section 9.4 the Single-Family home will be eligible for the Five-Decibel Reduction Package, as that term is defined in Section 4.11 of this Consent Decree. The Five-Decibel Reduction Package shall be designed to achieve a program average Noise Level Reduction, as that term is defined in Section 4.19 of this Consent Decree, of five decibels and shall be achieved by an application of some or all of the mitigation measures set forth in Section 4.11 of this Consent Decree, depending solely upon the characteristics of each home.

b) If a Single-Family home is in the 60- 62DNL annual noise contour prepared by the MAC under Section 8.1(d) of this Consent Decree for three consecutive years and meets the Eligibility Criteria of Section 9.4 the Single-Family home will be eligible for one of two mitigation options, to be selected by the owner of the home. The two mitigation options are: (1) if no central air conditioning exists in the home as of April 1, 2013, the MAC will install central air conditioning and provide a total not to exceed \$4,000 (in 2007 dollars) of noise mitigation products and services from the Mitigation Menu, as that term is defined in Section 4.14 of this Consent Decree, including reasonable and customary installation costs; or (2) if central air conditioning exists in the home as of April 1, 2013, or if central air conditioning does not exist in the home as of April 1, 2013, but the homeowner chooses not to receive central air conditioning, the MAC will provide a total not to exceed \$14,000 (in 2007 dollars) of noise products and services from the Mitigation Menu, including reasonable and customary installation costs. In providing any reimbursements or mitigation Improvements or a particular Home under this Section 95(b), the MAC shall reduce the reimbursement or mitigation improvements by the amount of reimbursement (if any) actually paid for that particular home under Section 5.3(e) of this Consent Decree ..



9.6 Multi-Family Home Mitigation Package. Multi-Family homes in the 60-64 DNL annual noise contours prepared by the MAC under Section 8. 1d) of this Consent Decree that meet the Eligibility Criteria of Section 9. 4 will be eligible for the Multi-Family Home Mitigation Package as defined in Section 4.17 of this Consent Decree.

9.7 Opt-Out Eligibility, Single-Family and Multi-Family homes that previously opted out of mitigation under this Consent Decree are not eligible to participate in the mitigation program provided under this Section.

9.8 Releases from Homeowners. The MAC may require owners of Single-Family and Multi-Family homes receiving noise mitigation under Section IX of this Consent Decree to sign a release in the form substantially similar to the release used previously by the MAC in its Part 1 noise mitigation program.

9.9 Release and Waiver. The Cities and any other communities participating in the mitigation program under Section IX of this Consent Decree hereby waive any and all past, present, and future claims regarding the M S P 2020 Improvements Environmental Assessment Environmental Assessment Worksheet or in any way making a challenge to the adequacy or nature of the environmental review for the MSP 2020 Improvements projects, including but not limited to claims based in whole or in part on the National Environmental Policy Act, and the Minnesota Environmental Policy Act. The Cities and any other communities participating in the noise mitigation program under Section IX of this Consent Decree hereby waive any claims relating to aircraft noise from MSP under the Minnesota Environmental Rights Act (MERA) or any other legal theory, subject to the exceptions stated in Section 8. 1 of this Consent Decree. By adopting the noise mitigation program under Section IX of this Consent Decree, the MAC is not conceding that it has created an environmental quality standard, limitation, rule, order, license, stipulation agreement or permit.

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