

Talktrans/Zero Expansion Comments
Concerning the FEIS for Flying Cloud Airport and
the MAC letter of response from Nigel Finney
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Jon Larsen
Minnesota Environmental Quality Board
300 Centennial Office Building
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January 17, 2005

Dear Mr. Larsen,

We are in receipt of the MAC letter of response from Nigel Finney (dated Jan 11, 2006) to our EQB request (dated Jan. 9, 2006) to delay any approval of the Flying Cloud FEIS scheduled for the EQB meeting on January 19, 2006.

Due to the extent of our responses and MAC's response we would like to request some time at the upcoming meeting to request that the EQB delay any activity at all on the Flying Cloud FEIS until the members of the EQB have had a sufficient amount of time to review these documents.

We submit that after reviewing MAC's response, there is no new information provided here by MAC that would conclude that they have resolved their omissions in the FEIS. Neither the new FAA policy related to aircraft weight limits based on runway weight bearing capacity (PBWR) nor the issue of the redesign of Class B Airspace around MSP are fully disclosed in the EIS or FEIS for the expansion of Flying Cloud Airport (FCM).

In regard to Pavement Weight Bearing Restrictions (PBWR), we are aware that MAC and the FAA were in communication while the Agreement between Eden Prairie and MAC was being prepared. Tacit "approval" by the FAA is not official, sanctioned, legal approval by the FAA. As articles and excerpts from articles on the following pages show, the FAA has not allowed PWBR's to remain at any other airport in the nation. As these same articles show, the current and working, FAA nationwide policy is that airports cannot discriminate against heavier aircraft because of the weight bearing capacity of their runways. The Flying Cloud FEIS did not include heavier aircraft and their cumulative environmental impact in the fleet mix for the proposed Flying Cloud runway extension and it should have included heavier aircraft, because the current FAA policy says you cannot exclude them (For example, see Santa Monica article following, at Santa Monica airport if you restrict aircraft, an airport's grant assurances will be removed). Because you cannot exclude heavier aircraft and the FEIS does not include heavier aircraft, the FEIS for Flying Cloud is inadequate and should not be approved.

In regard to Minneapolis Class B Airspace, the Airspace around Flying Cloud and MSP has been marginalized for smaller aircraft. MAC has failed to incorporate those changes in the FEIS for the expansion of FCM. MAC's response to the EQB fails to explain how operators using the Flying Cloud Airport would be impacted. According to the AOPA the Class B airspace redesign represents a significant change in the airspace and General Aviation (GA) must make significant changes to comply with this change. A change in GA traffic would definitely change the traffic in and around Flying Cloud airport, which only serves GA traffic. Those changes are not included in the current FEIS for Flying Cloud. How significant the airspace changes are to Flying Cloud and how much they impact Flying Cloud cannot be known unless they are included in the FEIS for Flying Cloud. Because the FEIS does not include the changes to Minneapolis Class B Airspace, and the effects of the new design are not known or even discussed in the FEIS, the FEIS for Flying Cloud is inadequate and should not be approved.

The following comments and articles are provided to support our positions on these two issues.

The FAA's new policy on Pavement Based Weight Restrictions (PBWR)

On three separate occasions in 2005, our organization sent MAC Data Practices requests related to aircraft weight limitation changes represented in the new FAA policy in question that has impacted other general aviation airports around the country. Despite our many attempts to try to gain information that would help us understand how MAC would be able to uphold their commitment in the Final Agreement with the city of Eden Prairie to a 60,000lb PBWR, we were denied any access to data.

The Department of Administration's Commissioner, Dana, B. Badgerow in an Advisory Opinion filed by the Admin Nov 29, 2005, stated that MAC did not comply with Minnesota Statutes, Chapter 13, with regard to three separate requests for access to data our organization requested related to the FAA policy [Docket No. FAA-2003-15495] Pavement Based Weight Limits at General Aviation airports.

The opinion #05-038 can be found at:

<http://www.ipad.state.mn.us/opinions/2005/05038.html>

The following quoted material demonstrates that this FAA policy allows planes heavier than the allowable pavement based weight to have access which was not included in the FEIS for the expansion of FCM. This new policy makes it impossible for MAC to uphold their commitment to limit the weight bearing capacity to 60,000lbs.

1. FAA Policy states that airports must allow some operations above allowable weights. This is not reflected in the FEIS.

"The FAA cited a case in February 2002 when it issued a preliminary finding that an airport operator could limit access to the facility based upon aircraft weight, but "could and should" permit some operations involving heavier aircraft.

Teterboro Airport has fought to keep out the Boeing Business Jet - which has a maximum ramp weight of 171,500 pounds - based on weight. "

**The Weekly of Business Aviation
July 7, 2003**

The American Association of Airport Executives (AAAE) told FAA in its comments that opening an airport to larger aircraft has implications in areas other than pavement integrity, such as airport design. "The FAA should allow the sponsor to manage the airport in such a manner that allows for a full consideration of the needs of the entire airport, not just the physical design limitations of the pavement," AAAE said.

Airports

Aug 28, 2003

FAA [Docket No. FAA-2003-15495] example of 60,000lb which is the PBWR MAC committed to in the Final Agreement with the city of Eden Prairie. What the policy states is that a certain number of planes over the allowable limit would not be denied access on a first-come, first-served basis. This is the national policy that is now in effect at general aviation airports across the nation.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA-2003-15495]

[Federal Register: July 1, 2003 (Volume 68, Number 126)]

[Notices]

[Page 39176-39178]

Scenario 1

The airport pavement is designed to 60,000 lb. dual-wheel load. Pavement design and soil support conditions are known. Operations up to 60,000 lb. is unrestricted, and the issue is how many flights should be permitted above that weight.

The airport receives frequent operations by several aircraft types at 70,000 lb., and occasional operations at 105,000 lb., but very few operations by other aircraft types in between those weights.

Reference to AC 150/5320-6D shows that on an annual basis up to xxxx operations at 70,000 lb. and xx operations at 105,000 lb. together would have no measurable effect on the life of the pavement, but more operations at either weight would begin to shorten pavement life.

The operator could require prior permission for operations above 60,000 lb. Permission would be granted on a first-come first-served basis, for xx (xxxx/52) operations per week up to 70,000 lb. and for x (xx/52) operations per week up to 110,000 lb.

- 2. In 2003 the FAA stated in the Weekly of Business Aviation that they "created this rule to "attempt to develop a "uniform national policy" on weight-based restrictions, the agency said." (FAA Ponders Airport Access Restrictions Based on Pavement Concerns, By The Weekly of Business Aviation, July 7, 2003)**

This indicates it's a national policy that should have been reflected in the FEIS because it will have an impact on FCM. When the policy is not upheld, as was the case at Santa Monica Airport, formal complaints are filed and the FAA steps in and threatens grant assurances unless the airport stops policies that restrict access by weight.

The implementation to carry out the PBWR policy the FAA uses is revealed in an article from the Santa Monica Lookout News, Oct 13, 2003, (see attachment). Here following are some quotes from the article. Note that Santa Monica airport has one 5,000 ft runway with a 60,000lb weight limit.

“ The dogfight to control aircraft landing rights stems from a dispute in which the Federal Aviation Administration (FAA) insists larger aircraft – above the current 60,000-pound weight limit -- be allowed to touch down on the historic airstrip.

“A Gulf stream G-4 is the largest thing that comes into the airport, anything beyond that is beyond our weight capacity,” explains Airport Manager Robert Trimborn. “We have a 60,000 pound weight capacity and if you’re looking at these new variations of business jets that look like commuter airline carriers or if you bring in another alternative to the Gulf Stream product with a larger wingspan, you’re far in excess of what we allow in the airport.”

According to Trimborn, newer and larger aircraft will fall within the 75,000 - 125,000-pound range. “Our pavement just can’t withstand that. Most of them have an extremely wide wingspan that would be in the 80, 90, 100-foot width,” he said. “It’s quite idiotic to be proposing an exemption from their own (FAA) standards of weight and wingspan, dimensional limitations to an operating surface.”

Airport officials told the FAA of their concerns and pointed to the organization’s own safety guidelines regarding larger aircraft. According to Mathieu, the FAA remained “strangely silent” on the issue. But when local officials began crafting an Aircraft Conformance Program to ensure the continued safety of the surrounding neighborhoods by limiting the size of planes operating out of the airport, the FAA pounced on the proposal.

“They filed a federal complaint against us because what we’re doing might result in fewer aircraft being able to come to our airport and that could be discriminating in general,” said Mathieu. “Those words were actually used in their complaint against us,” he said.”

It is clear that only when an airport denies access does the FAA step in to do what they claim is their purpose of “developing a uniform national policy” related to aircraft weight limits based on runway weight bearing capacity.

MAC states that the FAA has not objected to the Flying Cloud weight limit and that the FAA has not finalized the policy. Let us also point out that the Flying Cloud runway has not been built yet. Precedent set at Santa Monica and other airports attest to the fact that the FAA only gets involved when a move is made to deny access. If we are to believe the FAA’s own published statement, that the policy is intended to develop a “uniform national system” then it will impact all general aviation airports, including Flying Cloud Airport. One airport, Flying Cloud, will not be exempt from FAA national policy.

This is substantiated by cases at other airports around the nation, unless there is the political where-with-all to circumvent the FAA, such as in Teterboro, where access was limited by special legislation approved by President Bush.

The FAA policy in question, despite it not being formerly actuated, is still in effect at general aviation airports around the country including Naples, Florida, Santa Monica, California Teterboro, New Jersey and more. Therefore, at any time when an operator with aircraft above the allowable limit would want to base out of FCM, according to this FAA policy, they would be allowed access up to 110,000lbs and more. Aircraft of that size are not included in the fleet mix prepared for the Flying Cloud FEIS making the FEIS for Flying Cloud inadequate.

MAC had to have known about this new policy, but failed to disclose it in the FEIS. Without the FAA signing off on the Eden Prairie/MAC Agreement, it would seem, there are no assurances that larger jets wanting access would be denied access. MAC states that the FAA has not formally objected, but that's contrary to the FAA's own stated policy which is to try and create a "uniform national policy" and also contrary to the FAA's actions at other general aviation airports around the country, such as the Santa Monica airport.

3. **October 2, 2003 the NBAA files a complaint against Santa Monica Airport for initiating new fees to cover the damage from heavier planes the new FAA policy allows.**

These new fees were in response to the FAA policy in question, which allows some heavier planes to land at small airports whose pavement was not intended to support heavier planes. The NBAA responded by saying that Santa Monica airport was only trying to keep larger planes out as a noise mitigation.

(See attachment, NBAA Complaint.)

Page 5, number 6 of this complaint states:

6. In the recently issued Notice of Proposed Policy on Weight-Based Restrictions at Airports, the FAA stated that if "the limit on airport use appears motivated by interest in mitigating noise without going through processes that exist for such restrictions [i.e., Part 161], an attempt to limit aircraft by weight will be considered unreasonable." 68 Fed. Reg. 39176, 39177 (July 1,2003).

4. **Teterboro airport in New Jersey, another General Aviation airport, initiates heavier aircraft ban in response to new FAA policy in question- Feb 11, 2004**

http://www.avweb.com/bizav/10_07/news/186692-1.html

“Congress' recent action to approve Rep. Rothman's amendment will further erode the FAA's ability to establish national standards for airports and reasonable, rational access to them. These combine with the growing plethora of state and local laws designed regulating aviation operations and aviation security to make business aviation more complicated, more costly and more challenging than ever before. The state and local efforts to regulate aviation also make the

FAA even less relevant than it has become in the aftermath of the Sept. 11, 2001, terrorist attacks. And there's no end in sight. “

http://www.avweb.com/bizav/9_33/news/185495-1.html

How big is too big? For the people who run Teterboro Airport in New Jersey -- by some standards the busiest GA airport in the country -- the limit is 100,000 pounds, regardless of what the FAA says. The Port Authority of New York and New Jersey says it will fight FAA pressure to allow larger aircraft into the airport, which now caters to bizjets, charters and well-to-do pistons. At the same time, landing fees for the smaller aircraft may be disproportionately going through the roof. The Port Authority has maintained the 100,000-pound ban for 30 years; the landing fees may not be a ban, but may also serve a similar function.

In Summary of Pavement Based Weight Restrictions (PBWR):

MAC states that the FAA policy has not been finalized. MAC doesn't tell us that the policy is being challenged by members of Congress and individual airports and that despite the policy not being finalized the FAA policy is currently in effect around the country. Airports have had their grant assurances removed for implementing programs that would deny access to aircraft over the pavement strength limits.

Because this FAA policy is in effect around the nation, weight restrictions at General Aviation airports have been deemed by the FAA, the NBAA, (National Business Aviation Association) the AOPA (Airline Operators and Pilots Association) and other aviation organizations as access discrimination based on aircraft weight. Airports have had their grant assurances revoked for denying access to heavier planes. For this reason, the Flying Cloud FEIS must include heavier aircraft in the proposed fleet mix for Flying Cloud. MAC did not include the heavier aircraft in the FEIS fleet mix for Flying Cloud Airport because they committed to a 60,000lb PBWR. Because of their commitment in the Final Agreement, environmental impacts and the cumulative effects from heavier aircraft, like air and noise pollution, were not included in the FEIS. The MAC has two options: either obtain a written legal agreement from the FAA stating that in the case of Flying Cloud Airport, no aircraft over 60,000lbs can have access to Flying Cloud, or include aircraft and its impacts over the 60,000lbs in the FEIS. MAC cannot "on the FAA's word" exclude vital information that could eventually result in a more profound impact to the community, because national precedence has already taken place at other airports, and heavier aircraft have been admitted to similar airports. Additionally, the Final Agreement also stipulates that if a state or national law should conflict with, or change any commitment, the law takes precedence. What that means is that at any time, whether or not the policy is formerly actuated, the 60,000lb PBWR could be no longer applicable. If the FAA signs a legal commitment to uphold the PBWR, then the 60,000lb will be legally binding. Considering what the ramifications are, any way you look at it, the FEIS does not reflect the current FAA policy in effect nationwide, which makes the current FEIS for Flying Cloud inadequate and the FEIS should be denied approval.

The FAA's new definition of Minneapolis Class B Airspace

On Monday November 28, 2005 the FAA announced Final Rulemaking that redesigned Class B Airspace in the Minneapolis area. Essentially this redesign changed the operations for smaller aircraft in order to accommodate the growing footprint of MSP.

Class B Airports around the busiest US airports is classified as ICAO Class B. This protects the approach and departure paths from aircraft not under air traffic control. All aircraft inside Class B airspace are subject to air traffic control. Traffic operating under VFR must be identified on radar and explicitly cleared into the airspace before they can enter. The inner rings of the Class B Airspace extend from the surface area around the airport to typically 10,000' MSL. Several outer rings surround it with progressively higher floors to allow traffic into nearby airports without entering the primary airport's Class B.

Flying Cloud: Pattern Altitude: 1906' MSL. Frequencies: Tower 118.1 and 125.2, Ground 121.7, ATIS 124.9. Runways 10L-28L, 10R-28R, 18-36. Near the airport and to the North and South, remain well below 3,000' MSL. To the West the floor of the Class B Airspace rises to 4,000' MSL. The floor falls to 2,300' MSL 2NM to the East. Remain well below these altitudes. Continued flight to the East brings you to within 6NM of MSP where operations are prohibited without ATC permission.

- 1. Page 2- MAC says the new airspace modifications were published in public comment on more than three occasions in the past four years including two notices in the Federal Register within the past two years.**

If that is the case, then MAC failed to incorporate the inevitable redesign in airspace for the FEIS and expansion of FCM (Flying Cloud Airport), which changes the way small planes can access airspace around Flying Cloud and MSP.

MAC contends that this new airspace redesign will have no effect on operations at FCM, conversely the Airline Operators and Pilots Association (AOPA), says the airspace redesign will impact the operations of General Aviation.

<http://www.aopa.org/whatsnew/newsitems/2005/051201mn.html>

General aviation VFR pilots must have access to airspace around metropolitan areas — it's not just reserved for the airlines — and AOPA is fighting to make sure Minneapolis-area pilots will be able to continue to fly from point A to point B without the hassle of complex clearances once Minneapolis-St. Paul International's (MSP's) Class B airspace expands in February.

"The Minneapolis Class B airspace currently has no VFR flyways for pilots, but at the request of AOPA, the FAA has promised that it will create them," said Heidi Williams, AOPA director of air traffic services. "We are going to hold the FAA's feet to the fire to make sure they create flyways so that, for example, a pilot can efficiently fly from Flying Cloud on the western side of the airspace to St. Paul-Downtown on the eastern side."

"AOPA is extremely frustrated that despite our objections the FAA decided to raise the ceiling of the airspace, and we are going to make sure the airspace

needs of Minneapolis-area pilots are met," Williams said. "Right now, that means getting VFR flyways implemented."

Has airspace around MSP been marginalized for smaller aircraft that use Flying Cloud Airport? The answer is yes. Has MAC failed to incorporate those changes in the FEIS for the expansion of FCM? The answer is yes. In MAC's response to the EQB they again failed to explain how operators using the Flying Cloud Airport would be impacted. According to the AOPA the Class B airspace redesign represents an impediment to flying directly from point A to point B. Hence operators would have to circumnavigate the airspace and fly within VFR flyways, if the FAA creates flyways.

If we were to compare MSP to LAX Class B Airspace, (see below) it is clear that small planes must utilize flyways or as they're referred to VFR flyways, to keep out of controlled traffic flows. Otherwise they have to submit a flight plan in order to gain access to areas that are subject to Air Traffic Control. That will make it operationally less efficient and more costly for general aviators to operate out of Flying Cloud Airport. That means general aviation operators will be impacted because they will have to circumnavigate the airspace, a costlier and more time consuming operation. This fact is substantiated by the FAA in their Rulemaking Document in the Federal Register; they say the **"rule may impose some circumnavigation costs on individuals operating in the Minneapolis terminal area."**

http://www.aopa.org/whatsnew/air_traffic/lax-vfr.html

LAX Class B Airspace

"The first tool that every pilot flying in the L.A. Basin, or planning a flight through Basin airspace, must have is a current Los Angeles Terminal Area Chart (TAC). Unfold it and take a look at the back. An orderly thatch of blue lines crisscross the Basin — these mark suggested VFR flyways and altitudes. The sentence on the back of the chart says it all: "VFR flyways are designed to help VFR pilots avoid major controlled traffic flows." Further on it says these flyways are intended to provide routings that are alternatives to flight within Class B and Class C airspace. In other words, pilots utilizing flyway routings are not required to obtain ATC clearances for these routings — following the altitudes and flyways keeps pilots clear of airspace that requires a clearance. Of course, establishing contact with ATC for traffic advisories and flight following is always advisable, especially during periods of reduced visibility."

MAC states that the "Class B airspace redesign changes do not require jets to fly in different locations from where they operate today. It merely encompasses their current flight patterns and procedures in more tightly FAA-controlled airspace to enhance safety by separation of aircraft."

We do not refute that safety was the main reason for the airspace change. What we refute is that MAC did not reflect in the FEIS that a significant operational and economic change to General Aviation aircraft users of FCM is evidenced by the airspace redesign. The fact is airspace will be modified so that general aviation operators will be inconvenienced and have a more costly approach in the airspace around Flying Cloud

and MSP, this will be the case for all the relievers. The FAA states it clearly: "Aircraft will have to circumnavigate the Class B Airspace."

<http://www.aopa.org/whatsnew/newsitems/2005/051128mn-rule.pdf>

The FAA rulemaking states that the change in traffic flow at MSP is needed to create three arrival streams rather than the current practice of two arrival streams.

The FAA agrees with the AOPA that chartered VFRs flyways will minimize the impact on aircraft that choose to circumnavigate the MSP Class B Airspace. The FAA goes on to say that because VFR flyways are not addressed in Class B Airspace rulemaking action, the FAA plans to develop and institute VFR flyways for MSP terminal area through a separate, non-rulemaking process.

But according to the Federal Register," this final rule will modify the Minneapolis, MN, Class B airspace area. The final rule will reconfigure the sub-area lateral boundaries, and raise the altitude ceiling in certain segments of the airspace."

The FAA states that the" rule may impose some circumnavigation costs on individuals operating in the Minneapolis terminal area. That means general aviation operators will be impacted because they will have to circumnavigate the airspace which will be costlier."

Significant Ways Class B Airspace Impacts Operators and Communities

- Class B airspace separates your point of departure and destination, so you have three choices - fly around it, over or under it if possible, or through it. The last option may be the most desirable choice to save time and avoid flying high or low over communities. But, you have to have ATC clearance to do that.
- The letter B also reminds pilots that this airspace has big bucks, busy airspace, and jet blast, things that discourage landing at a Class B airports or flying through the airspace. And there's a cost issue. Virtually all Class B airports charge landing and other fees. What this means is that the types of planes that use reliever airports are discouraged from landing or operating out of MSP due to big bucks, busy airspace, and jet blast. This alone invalidates MAC's single rationale for the expansion of FCM: capacity relief for MSP.
- Class B airspace may also be crowded, and to mix large and small aircraft safely requires pilots and air traffic controllers to exercise extra diligence. Wake turbulence is a likely factor, and on the ground, jet blast is a potential hazard. Finally, if you don't meet the pilot certification and aircraft equipment requirements, flying into Class B airspace will put you afoul of the federal aviation regulations. This means some pilots who navigate the airspace now would not be able to do so without more certification.
- Another change to the way pilots must operate the airspace is smaller aircraft operating around the Class B Airspace must follow tower instructions for departure, and then establish and maintain communication with the Class B controller while in the Class B airspace. If the smaller airport is a non-tower

airport, pilots must contact the Class B controller as soon as possible after departure and maintain communication with the Class B controller while in the Class B airspace.

- There is also an equipment requirement to flying in Class B Airspace. Given the necessity that you must receive a clearance, the requirement for a two-way radio is obvious, but FAR 91.131 and also spells out another ABC - an Active transponder Beacon with Mode C (altitude reporting). Class B airspace is simply too busy to routinely allow an aircraft into the mix without a Mode C transponder. This provides a safe separation between planes.
- If you fly IFR in Class B airspace, your aircraft must have an operating VOR or TACAN receiver. VFR aircraft are exempt from this requirement, so if a controller tells you to track to or from a VOR, and you don't have a working VOR receiver, you can reply "unable," and the controller will give you a heading to fly.

Contrary to everything MAC has relayed in their response these changes are significant operational and economic changes that are not reflected in the FEIS for Flying Cloud Airport. It also means at some point, more GA planes will be forced to fly under or around the Minneapolis Class B Airspace since they don't have the ability to fly over that airspace. MAC has not assessed the environmental impacts that will be created by more aircraft flying at these low levels.

For MAC to assert in their response to the EQB that because operations at MSP are down there isn't much of an impact, is an insupportable rationalization for a significant change in the way small planes can operate around Flying Cloud and MSP airspace. The FEIS should be making a rational projection of air traffic in the future. While we agree that air traffic is down and we believe it will continue to diminish – that is not the rationalization MAC has used in the FEIS to justify expanding Flying Cloud Airport. Their FEIS argument claims an expansion of air traffic and for that reason changes in the Minneapolis Class B Airspace should have more impact on the General Aviation activities of Flying Cloud and the other reliever airports. Those impacts are not documented in the current FEIS for Flying Cloud and they should be. The current FEIS for Flying Cloud is inadequate and should be denied approval.

In Summary:

Because MAC has not disclosed in the FEIS the operational changes related to Class B Airspace at Minneapolis and the new FAA policy which changes the Aircraft Weight Limits Based on Runway Weight Bearing Capacity (PBWR) at general aviation airports, we believe that the Environmental Quality Board should determine the FEIS to be an inadequate document. It fails to address two significant operational changes, which would impact users at Flying Cloud Airport as well as create an increased pollution footprint for Eden Prairie and surrounding communities.

We request that the EQB direct MAC to reassess those impacts to both users and the recipients of an expanded Flying Cloud airport with full disclosure of the facts surrounding both the new Class B Airspace and the new FAA policy.

We also request that MAC clarify the FAA policy position which violates MAC's commitment to the 60,000lb PBWR they committed to in the Final Agreement between Eden Prairie and MAC.

Thank you for your consideration,

Sincerely,

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