



LAKE COUNTY FOREST PRESERVES
www.LCFPD.org

Preservation, Restoration, Education and Recreation

DATE: April 3, 2017

MEMO TO: Carol Calabresa, Chair
Planning Committee

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Recommend approval of a Resolution approving a Letter of Intent with the Waukegan Port District (WPD) regarding the proposed expansion of the runway at Waukegan National Airport, and for the potential transfer of fee simple and permanent easement interests in a portion of Waukegan Savanna Forest Preserve.

STRATEGIC DIRECTIONS SUPPORTED: Leadership, Public Access and Connections

FINANCIAL DATA: There is no financial impact at this time.

BACKGROUND: The WPD has been working for more than a decade on the proposed replacement of its Runway 5/23 with a new, longer runway that would allow larger airplanes to utilize the airport, enabling direct flights to Europe without refueling stops (the “Runway Project”). In addition, according to WPD, the existing 6,000-foot runway is near the end of its usable life, and the Federal Aviation Administration now requires 7,000-foot runways to meet safety requirements. WPD and the Illinois Department of Transportation (IDOT) are both seeking to ascertain whether the District is willing to consider the transfer of land rights to accommodate the Runway Project. IDOT’s highway division needs this confirmation because it is planning improvements to Green Bay Road (State Route 131), including the potential lowering of the road under the new, longer runway. IDOT’s Aeronautics Division needs this confirmation because it is primarily responsible for administering federal funds for airport improvements in Illinois and it wants to ascertain whether the airport construction project is feasible; if it is not feasible, then IDOT would allocate its available funds to a different project, which would (according to WPD) effectively “shelve” the Runway Project for the foreseeable future.

To accommodate the Runway Project, WPD has submitted to the District a request for (i) fee simple title to 38.7 acres of Waukegan Savanna and (ii) a permanent avigation easement in an additional portion of Waukegan Savanna, estimated to be 45.45 acres. Because WPD is a governmental agency, the District has the legal authority to grant the easement and fee simple rights requested by WPD.

On February 6, 2017, the Planning Committee reviewed a request for Policy Direction from staff regarding WPD’s request. The Planning Committee authorized staff to prepare a list of terms and conditions to be included in a Letter of Intent (LOI) outlining the elements of any future intergovernmental agreement (IGA) between the District and WPD related to the transfer of land rights. On March 14, 2017, the Board reviewed the list of basic terms to be included in the LOI.

Attached is a copy of the LOI signed by WPD. The LOI is not a contract and, as such, is non-binding. If the District Board approves the LOI, the District and WPD will commence negotiations of an IGA. The IGA would be effective and binding only if and when it is approved by the corporate authorities of both the District and WPD at some future date.

REVIEW BY OTHERS: Chief Operations Officer, Director of Finance, Director of Planning and Land Preservation, Corporate Counsel

**LAKE COUNTY FOREST PRESERVE DISTRICT
LAKE COUNTY, ILLINOIS**

**A RESOLUTION APPROVING A LETTER OF INTENT
WITH THE WAUKEGAN PORT DISTRICT REGARDING RUNWAY EXPANSION
AT WAUKEGAN NATIONAL AIRPORT**

WHEREAS, the Lake County Forest Preserve District (the “District”) owns certain property commonly known as Waukegan Savanna Forest Preserve (the “District Property”); and

WHEREAS, the Waukegan Port District is a political subdivision of the State, body politic, and municipal corporation that owns and operates a public airport known as Waukegan National Airport (the “Airport”); and

WHEREAS, the Illinois Department of Transportation (“IDOT”) (through its aeronautics division) has regulatory jurisdiction with respect to the Airport, including certain federal programs for financing Airport improvements, and (through its highway division) has regulatory jurisdiction with respect to Green Bay Road, which is adjacent to the Airport; and

WHEREAS, at the Airport, Waukegan Port District currently operates two primary runways, one of which is designated Runway 5/23 (the “Runway”); and

WHEREAS, WPD has represented to the District that the long term viability of the Airport is threatened because of a series of factors, including:

- Federal Aviation Administration (“FAA”) safety requirements, which compel a 7,000 foot runway, while the Runway is only approximately 6,000 feet long,
- the inability of the Runway (or the second runway) to accommodate larger planes,
- the age of the Runway, which is nearing the end of its usable life, and
- IDOT plans to widen Green Bay Road, adjacent to the Airport, which would shorten the Runway, unless an alternative design is adopted; and

WHEREAS, to address these factors, the Waukegan Port District proposes to (i) replace the existing Runway with a new 7,000-foot Runway that would meet all FAA safety requirements and (ii) integrate the new Runway into IDOT’s widening of Green Bay Road, which would, to accommodate the longer new Runway, pass under the new Runway (collectively, the “Project”); and

WHEREAS, the District Property is adjacent to the Airport; and

WHEREAS, to accommodate the Project, Waukegan Port District has requested that the District (i) convey to Waukegan Port District fee simple title to approximately 38.7 acres of the District Property (the “Conveyance”) and (ii) grant to Waukegan Port District a permanent easement over a portion of the District Property, estimated to be 45.45 acres (the “Easement Grant”); and

WHEREAS, the Waukegan Port District has executed a non-binding Letter of Intent attached to this Resolution (the “Letter of Intent”), containing the terms and conditions of a potential intergovernmental agreement (an “Intergovernmental Agreement”) between the District and Waukegan Port District related to the Conveyance and Easement Grant ; and

WHEREAS, any future Intergovernmental Agreement would be effective only if and when it is approved by the corporate authorities of both the District and the Waukegan Port District; and

WHEREAS, pursuant to the Local Government Property Transfer Act 50 ILCS 605/0.01 et seq., the District is authorized to transfer its right, title, and interest in its property to any municipal corporation for the making of any public improvement or for any public purpose, upon such terms as may be agreed to by the District and the municipal corporation; and

WHEREAS, pursuant to Section 6 of the Downstate Forest Preserve District Act, 70 ILCS 805/0.001 et seq., the District may grant easements across any of its property for public services, subject to such terms and conditions as may be determined by such District; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District and the Waukegan Port District may contract or otherwise associate among themselves in any manner not prohibited by law or ordinance; and

WHEREAS, pursuant to the Intergovernmental Cooperation Act, 5 ILCS 220/1 et seq., any power, privilege, function, or authority exercised by a public agency, including the District and the Waukegan Port District, may be exercised, combined, transferred, and enjoyed jointly with any other public agency to the extent not prohibited by law;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Lake County Forest Preserve District, Lake County, Illinois THAT:

Section 1. Recitals. The recitals set forth above are incorporated as a part of this Resolution by this reference.

Section 2. Approval of Letter of Intent. The Letter of Intent is hereby approved. The Executive Director of the District is authorized and directed to execute the Letter of Intent in substantially the form attached hereto. The Executive Director, and his designees, are further authorized to engage in negotiations with the Waukegan Port District for the Intergovernmental Agreement, in accordance with the terms of the Letter of Intent.

Section 3. Effective Date. This Resolution shall be in full force and effect from and after its passage and approval in the manner provided by law.

PASSED this ____ day of _____, 2017

AYES:

NAYS:

APPROVED this ____ day of _____, 2017

ATTEST:

Ann B. Maine, President
Lake County Forest Preserve District

Julie A. Gagnani, Secretary
Lake County Forest Preserve District

Exhibit _____



LAKE COUNTY FOREST PRESERVES
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Preservation, Restoration, Education and Recreation

21 March 2017

Grant Farrell, Chairman of the Board
Skip Goss, General Manager
Waukegan National Airport
2601 Plane Rest Drive
Waukegan, Illinois 60087

Re: Letter of Intent

Dear Mr. Farrell and Mr. Goss,

I. Purpose.

The purpose of this Letter of Intent is to outline the terms and conditions of a proposed intergovernmental agreement (“IGA”) between the Waukegan Port District (“WPD”) and the Lake County Forest Preserve District (“LCFPD”), pursuant to which LCFPD would grant and convey certain property rights in land owned by LCFPD (the “Land”) to WPD, so that WPD may install and operate a new, longer runway at Waukegan National Airport (the “Airport”).

The obligations in Section IV of this Letter of Intent (the “Current Obligations”) are binding on the parties, upon their execution of this Letter of Intent. Otherwise, the transaction contemplated by this Letter of Intent (the “Transaction”) is subject to the negotiation, approval and execution of a mutually satisfactory IGA, which may include a separate purchase and sale agreement and/or easement agreements or grants. Until an IGA is approved and executed by both parties, neither party will have any legal duty or obligation to the other, other than the Current Obligations.

II. Background.

A. WPD is a unit of local government, created by State statute. The Waukegan Port District Act (70 ILCS 1865) creates a Special District under Illinois State Law. WPD owns and operates Waukegan National Airport, a full service public airport. Waukegan National Airport currently operates two primary runways. One of these runways designated Runway 5/23 (the “Runway”), is the subject of the proposed IGA.

A series of factors are converging which may negatively impact the long term viability of the Airport. The three main factors are:

- Based upon Federal Aviation Administration (“FAA”) requirements, a 7,000 foot runway is needed at the Airport to meet safety requirements. However, the Runway is only 6,000 feet long.
- The Runway is nearing the end of its usable life and will need to be replaced.

- The Illinois Department of Transportation, Region 1, District 1 Highways (“IDOT-Highways”) plans to widen Green Bay Road, adjacent to the Airport, which would shorten the Runway, unless an alternative design is adopted.

WPD proposes to (i) replace the existing Runway with a new 7,000 foot Runway that would meet all FAA safety requirements and (ii) integrate the new Runway into IDOT-Highway’s widening of Green Bay Road, which would, to accommodate the longer new Runway, pass under the new Runway (collectively, the “Project”).

WPD believes that the Project will help sustain the Airport’s long-term viability as a full service public airport.

The Project will result in certain impacts to wetlands. Under federal, state and County of Lake laws, WPD would be allowed to cause such impacts, only if it mitigates such impacts by creating new wetlands or enhancing other wetlands (“Wetland Mitigation”).

B. LCFPD is a unit of local government, created pursuant to the Downstate Forest Preserve District Act. LCFPD acquired the Land over the course of several years. LCFPD has planned for the construction of a recreational trail within the Land (the “Trail”), that would be a segment of a multi-use regional trail, that extends from Green Bay Road to Delany Road and would include a tunnel under Yorkhouse Road. The proposed regional Trail is generally depicted on Exhibit C.

LCFPD is authorized to (i) grant easements within the property owned by LCFPD, if such easements are used for public services and (ii) convey fee simple interest in property owned by LCFPD to other units of federal, state, and local government, if the other unit of government makes a legislative finding that the LCFPD’s property is necessary for a public use.

To accommodate WPD’s Project, LCFPD is willing to grant and convey certain property rights to WPD.

III. Terms and Conditions of IGA:

The terms and conditions of the IGA will be as follows:

1. LCFPD will (i) convey to WPD fee simple ownership of certain LCFPD property located north of Yorkhouse Road, containing approximately 39.4 acres, and generally depicted as the “Fee Simple Property” on the attached map (the “Conveyance”) and (ii) grant to WPD a perpetual easement in LCFPD property located south of Yorkhouse Road, containing the area of LCFPD property that is subject to FAA regulations limiting height of obstructions to 100 feet or less (this area, assuming for purposes of illustration that it is approximately 45.45 acres in size, is generally depicted as the “Easement Property” on the attached map (the “Easement Grant”).
2. The Conveyance and the Easement Grant would be subject to certain restrictive covenants, enforceable by LCFPD and in forms approved by FAA and Illinois Department of Transportation, Division of Aeronautics (“IDOT-Aero”), limiting WPD’s use of the Fee Simple Property and the Easement Property to public airport and transportation uses, and to no other use (the “Use Covenants”).
3. WPD will pay and provide the following consideration to LCFPD for the Conveyance and the Easement Grant:

- a. An amount equal to the fair market value of the Land (including both the Fee Simple Property and the Easement Property). The fair market value will be based upon one or more MAI appraisals of the fee simple interest in the Land (even if LCFPD is granting only an easement in a portion of the Land, as required by the LCFPD's License and Easement Ordinance). The parties may agree that, in lieu of WPD paying some or all of the fair market value of the Land, the LCFPD will accept fee simple ownership in other real property that is (i) suitable for LCFPD purposes and (ii) of comparable value, as determined by the LCFPD in its sole discretion. With respect to elements of the Conveyance and the Easement Grant, other than consideration, the Conveyance and Easement Grant will be made in accordance with the Federal Public Law 91-646, the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970," (Uniform Act), and FAA Order 5100.38D "Airport Improvement Handbook".
 - b. A fee, as determined pursuant to the LCFPD's License and Easement Ordinance, for the lost value resulting from the removing, cutting, or trimming any trees to accommodate the Project. Tree impacts occurring within the properties north of Yorkhouse Road will be mitigated (i) if practical, by planting new trees in the immediate vicinity of such impacted area or (ii) if not practical, by planting new trees in the surrounding community, including at Waukegan Savanna Forest Preserve, with an agreed period of time during which WPD would guarantee the trees.
 - c. An amount, equal to (i) if LCFPD is able to secure a federal, state, or other grant that would fund the design and construction of the Trail (a "Grant"), LCFPD's local share for the portion of the Grant used to design and construct the Trail or (ii) if LCFPD is unable to secure a Grant, 25% of the overall cost to LCFPD of designing and constructing the Trail.
 - d. At the LCFPD's option, fee simple ownership of any land the WPD elects to acquire for the purposes of Wetland Mitigation (the "Mitigation Land"). WPD shall give the LCFPD an option to acquire any mitigation land, which the LCFPD may accept or refuse in its sole discretion. If the LCFPD exercises the option, then the design of any Wetland Mitigation on Mitigation Land will be subject to LCFPD's approval. WPD represents that that FAA requirements for wetland mitigation require that the Mitigation Land must be 10,000 feet or greater from the Airport.
4. If WPD acquires any property on either side of Bayonne Avenue, WPD will grant an easement or license to the LCFPD, allowing the LCFPD to restore and manage the natural resources on such property. Any restoration or management of natural resources in this area must adhere to FAA requirements regarding hazardous wildlife attractants.
 5. WPD will comply with Section 4(f) of the U.S. Department of Transportation Act as well as the tree impacts identified above.
 6. If (i) WPD does not commence construction of the Project within 8 years after the effective date of the IGA, (ii) WPD breaches the Use Covenants, or (iii) the Land ever ceases to be used as an airport, then, at the LCFPD's election and subject to FAA approval, any fee simple property rights conveyed to WPD by LCFPD will revert back to LCFPD, and all easement rights will be terminated. In the event of such a termination, LCFPD will not be required to refund or return any consideration to WPD.

IV. Current Obligations.

1. WPD will investigate (i) the extent of the wetland, tree, and other environmental, natural resource, and recreational impacts that will result from the Project (“Environmental Impacts”), (ii) the mitigation of Environmental Impacts that will be necessary, (iii) where such mitigation will be constructed, and (iv) the required acreage for any Mitigation Land (the “Environmental Investigation”). WPD will diligently pursue the Environmental Investigation during the term of this Letter of Intent and the parties will negotiate to include in the IGA a process for identifying and implementing appropriate and adequate mitigation for Environmental Impacts. If the Environmental Investigation is not complete when the IGA is approved, the IGA will include a provision allowing termination of the IGA prior to the Conveyance and the Easement Grant (i) by WPD if it determines that, as a result of the Environmental Investigation, Environmental Impacts, or necessary mitigation, that the Project is not feasible and (ii) by LCFPD if it determines that the Environmental Impacts are not acceptable or the proposed mitigation of Environmental Impacts is inadequate.
2. WPD will share with the LCFPD copies of or digital access to (i) any master plan(s) for the Airport, (ii) its plans and schedules for the Project, (iii) any studies, applications, reports, or similar documents submitted to the FAA, IDOT-Highway, IDOT-Aero, or any other regulatory agency with permitting or approval authority over the Project, and (iv) any response to any such study, application, report, or document.
3. WPD will prepare an environmental assessment, as directed by the FAA, to review, study and define any environmental impacts and mitigation actions, for the construction of the Project. In conjunction with the environmental assessment, WPD will conduct a public hearing and a public open house to explain the Project, schedule, the need for the Conveyance and the Easement Grant.
4. Each party will share with the other party, any written public comments that it receives concerning the Project, the Conveyance, the Easement Grant, or the IGA.
5. Within 30 days after the execution of this Letter of Intent, the WPD and LCFPD shall commence good faith negotiations towards an IGA and diligently pursue such negotiations for a period of not less than 180 days. Thereafter, either party may terminate this Letter of Intent if the parties have not approved a mutually acceptable IGA.

Sincerely,

LAKE COUNTY FOREST PRESERVE DISTRICT

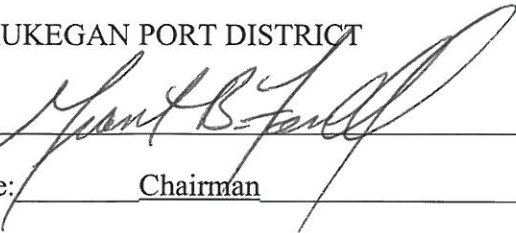
By: _____

Title: _____

Date: _____

Acknowledged and Agreed to:

WAUKEGAN PORT DISTRICT

By:  _____

Title: Chairman _____

Date: 28 March 2017 _____