

DATE: February 6, 2023

Agenda Item # 10.1

MEMO TO: Paras Parekh, Chair
Planning Committee

FROM: Alex Ty Kovach
Executive Director

RECOMMENDATION: Recommend approval of a Resolution approving a Memorandum of Agreement (MOA) with the Federal Aviation Administration (FAA) and the Waukegan Port District (WPD) regarding the proposed replacement of runway 5/23 at Waukegan National Airport.

STRATEGIC DIRECTIONS SUPPORTED: Public Access and Connections; Leadership.

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

BACKGROUND: The WPD owns and operates Waukegan National Airport. WPD has been working for more than a decade on the proposed replacement of its Runway 5/23 with a new, longer runway that will conform to the FAA safety standards (the “Runway Project”). According to the WPD, the existing 6,000-foot runway is near the end of its usable life, and the FAA now requires 7,000-foot runways to meet all safety laws and regulations.

To indicate to WPD and other relevant agencies its support for the Runway Project, the Lake County Forest Preserve District (the “District”) Board, at its April 11, 2017 meeting, approved a Letter of Intent (LOI) with WPD. The LOI outlined the terms and conditions of a proposed Intergovernmental Agreement (IGA) between the WPD and the District. The original approved LOI provided that, through a future IGA, the District would convey to WPD fee simple ownership of approximately 38.7 acres and grant to WPD perpetual easement rights over an additional approximately 45.45 acres. The LOI provided that the WPD and District would participate in good faith negotiations towards an IGA for a period of not less than 180 days following the LOI’s April 11, 2017 approval and that, thereafter, either party could unilaterally terminate the LOI.

Since the original LOI was approved, WPD has sought changes, which have been reviewed by the Planning Committee as policy direction requests. First, on June 26, 2017, at WPD’s request, the Planning Committee gave policy direction to change the request for approximately 45.45 acres of easement rights to a request for approximately 13.6 acres of fee simple ownership, changing the request of total land rights to 52.3 acres of fee simple ownership and no permanent easements.

On October 12, 2021, the District received a letter from the FAA offering the District an opportunity to serve as a Cooperating Agency with the FAA through the environmental assessment section 4(f) process for the Waukegan National Airport replacement runway 5/23 program. On November 1, 2021, the District’s Planning Committee gave policy direction for the District to participate as a Cooperating Agency. By serving as a Cooperating Agency, the District will be given the opportunity to review and comment on the draft Environmental Assessment (EA) in advance of the draft EA being released for public review. Participation as a Cooperating Agency is non-binding and does not compel the District to enter into any agreement with the WPD regarding the sale of District property.

The proposed Runway Project will require the sale of approximately 52.3 acres of District property (the "District Property") to the WPD (the "Conveyance"). The WPD intends to secure federal funding for a portion of the Runway Project. An initial step in that process is the execution of a non-binding Memorandum of Agreement (MOA), which the FAA requires before submitting the Runway Project for a public hearing. The MOA that would be approved by the attached resolution allows the FAA to advance the Runway Project to a public hearing and outlines several conditions that will assist the parties in their negotiation of a future IGA.

For example, the MOA provides that WPD and the District shall each obtain an appraisal of the District Property, so that both parties, when actively negotiating the IGA, have a reasonable understanding of their respective opinions concerning its fair market value. The MOA provides that, if the District's appraised value exceeds WPD's appraised value, the parties will negotiate in good faith to include in the IGA additional consideration to compensate the District. The MOA also provides that, as part of the IGA and to mitigate the effects of the Runway Project on adjacent District Property, WPD shall construct a portion of the District's planned regional trail from Lyons Woods Forest Preserve to Sedge Meadow Forest Preserve and the Des Plaines River Trail.

Staff recommends approval of the MOA which will allow the Runway Project to advance to a public hearing. If District staff and WPD staff reach a consensus, a future IGA will be presented to the Planning Committee and District Board for review and potential approval of the Conveyance and related conditions.

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

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

**BOARD OF COMMISSIONERS
LAKE COUNTY FOREST PRESERVE DISTRICT
RESCHEDULED REGULAR FEBRUARY MEETING
FEBRUARY 21, 2023**

MISTER PRESIDENT AND MEMBERS OF THE BOARD OF COMMISSIONERS:

Your **PLANNING COMMITTEE** presents herewith “A Resolution Approving a Memorandum of Agreement with the Federal Aviation Administration and the Waukegan Port District regarding Runway Replacement at Waukegan National Airport,” and requests its approval.

PLANNING COMMITTEE:

Date: 2-6-2023 Roll Call Vote: Ayes: 5 Nays: 2

Voice Vote Majority Ayes; Nays: _____

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

**A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT WITH THE
FEDERAL AVIATION ADMINISTRATION AND THE WAUKEGAN PORT DISTRICT
REGARDING RUNWAY REPLACEMENT 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 (the “WPD”) is a political subdivision of the State, a body politic, and a municipal corporation that owns and operates a public airport known as Waukegan National Airport (the “Airport”); and

WHEREAS, the Federal Aviation Administration (the “FAA”) is a United States government transportation agency that regulates all aspects of civil aviation in the country; and

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

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

- The Federal Aviation Administration (“FAA”) has determined that the existing Runway does not meet modern design and safety criteria,
- The Runway is nearing the end of its usable life and will need to be replaced with a new Runway proposed by the Waukegan Port District,
- The FAA concurs that the new Runway proposed by the Waukegan Port District would satisfy the current and forecasted purposes and needs of the Airport and its users, and

WHEREAS, to address these factors, the 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 the Illinois Department of Transportation’s proposed widening of Green Bay Road, which would, to accommodate the new longer 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 convey to WPD fee simple title (the “Conveyance”) to approximately 52.3 acres of District property (the “District Property”); and

WHEREAS, the WPD intends to secure federal funding for a portion of the Project, which requires the execution of a non-binding Memorandum of Agreement among the District, WPD, and the FAA identifying the parties' intent regarding the Project and the Conveyance (the "MOA"); and

WHEREAS, it is in the best interests of the District to approve an MOA in substantially the form attached hereto so that the WPD and FAA may continue planning and conducting the required public process for the Project; and

WHEREAS, the Conveyance will not be approved unless and until (i) the District has reviewed and commented on the draft environmental assessment that is currently being prepared that will assess the environmental impact of the Project and (ii) the District and the WPD have executed a mutually acceptable intergovernmental agreement, pursuant to which the District would approve the Conveyance, and which would include several other rights and obligations of the parties (an "Intergovernmental Agreement"); 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 10 of Article VII of the Illinois Constitution of 1970, units of local government, such as the District and the WPD 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 WPD, 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 MOA. The MOA, in substantially the form attached hereto, is hereby approved. The Executive Director of the District is authorized and directed to execute the MOA 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 MOA, and to undertake other due diligence activities as they deem reasonably necessary related to such negotiations, including without limitation causing to be prepared an appraisal of the fair market value of the District Property.

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 _____, 2023

AYES:

NAYS:

APPROVED this _____ day of _____, 2023

Angelo D. Kyle, President
Lake County Forest Preserve District

ATTEST:

Julie Gragnani, Secretary

Exhibit No. _____

**MEMORANDUM OF AGREEMENT AMONG
THE FEDERAL AVIATION ADMINISTRATION, THE WAUKEGAN PORT DISTRICT
AND THE
LAKE COUNTY FOREST PRESERVE DISTRICT REGARDING A REPLACEMENT
RUNWAY 5/23 AT WAUKEGAN NATIONAL
AIRPORT WAUKEGAN, LAKE COUNTY, ILLINOIS**

WHEREAS the Waukegan Port District ("WPD") proposes to obtain Federal Aviation Administration ("FAA") actions and funding to construct a replacement Runway 5/23 and associated improvements ("Project") at Waukegan National Airport in Waukegan, Lake County, Illinois.

WHEREAS the FAA actions include:

- Issue an environmental finding to allow approval of the Airport Layout Plan (ALP) for the Proposed Action
- Issue an environmental finding to allow for Federal funding under the Airport Improvement Program (AIP)
- Establishment of air traffic control and airspace management procedures designed to affect the safe and efficient movement of air traffic to and from the proposed runway as well as the airspace surrounding the airport
- Establishment of flight procedures and associated modifications
- Certification as to the safety of instrumentation, procedures, and airfield operations
- Installation and/or relocation of navigational aids associated with the new relocated runway
- Final certification that proposed aeronautical development is reasonably necessary for use in air commerce or for national defense (49 U.S.C. 44502(b); 14 CFR Part 169)
- Issue a finding for the DOT Order 5660.1A, Preservation of the Nation's Wetlands which implements Federal Executive Order 11990, Protection of Wetlands
- Issue a finding for DOT Order 5650.2, Floodplain Management and Protection which implements Federal Executive Order 11988, Floodplain Management
- Issue a finding for 49 U.S.C., Section 303c, formerly Section 4(f) of the U.S. Department of Transportation Act of 1966

WHEREAS the proposed Project will require the transfer of approximately 52.3 acres (the "Subject Property") of Lake County Forest Preserve District ("LCFPD") property at Waukegan Savanna Forest Preserve ("Preserve") to the WPD ("Conveyance"), owner of the Waukegan National Airport. The Subject Property is generally depicted on Exhibit A.

WHEREAS the FAA determined that there are no feasible and reasonable alternatives that avoid the use of Section 4(f) resources and that all possible planning to minimize harm shall be incorporated into the Project development.

WHEREAS WPD and LCFPD have stated that any such Conveyance would be agreed to only pursuant to a separate mutually-binding Intergovernmental Agreement approved by the corporate authorities of both WPD and LCFPD setting forth their specific agreements concerning the matters described in this MOU and other matters related to the Project and the Conveyance (the "IGA").

NOW, THEREFORE, the FAA, WPD and LCFPD agree that, upon (i) the execution of this MOA by the parties and (ii) the approval of the IGA, the parties shall ensure that the following stipulations are implemented at the time of any potential implementation of the proposed Project in order to mitigate effect of the Project on public recreational properties.

I. STIPULATIONS

The WPD shall ensure that the following measures are carried out:

A. RECREATIONAL TRAIL CONSTRUCTION

WPD will construct a segment of a paved multi-use regional recreational trail ("Project Trail Segment") to LCFPD standards and requirements, extending from the western right-of-way boundary of Delany Road to just west of Green Bay Road. The proposed trail segment will be constructed of asphalt and will include a tunnel under York House Road, all required boardwalks to span wetland areas, pedestrian crosswalks, along with all required related pedestrian accommodations such as traffic signal modifications, pedestrian push buttons, signage and pavement striping. WPD will be required to secure all local, state and federal permits and approvals required to complete the Project Trail Segment. The expected location and extent of the Project Trail Segment, including its boardwalks, crosswalks, and other components, are generally depicted on Exhibit A.

B. PROPERTY CONVEYANCE

WPD would pay to LCFPD for the Conveyance an amount equal to the fair market value of the Subject Property. The fair market value would be based upon one or more MAI appraisals of the highest and best use of the Subject Property. LCFPD and WPD may agree that, in lieu of WPD paying some or all of the fair market value of the Subject Property, the LCFPD would accept other property in lieu of compensation, such as 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, other than consideration, the Conveyance would be made in accordance with 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 (Federal Conveyance Requirements).

LCFPD represented to WPD that, when LCFPD acquires real property, it values the real property at its highest and best use, without regard to its future status as restricted open space, restricted conservation land, or other similar use. The parties acknowledge that an MAI Appraisal prepared in accordance with the Federal Conveyance Requirements may consider the highest and best use of the Subject Property to be restricted open space, restricted conservation land, or other similar use and, as a result, the fair market value of the Subject Property, as stated in the MAI Appraisal, may be less than the fair market value of the Subject Property, as viewed by LCFPD (such difference referred to herein as the "FMV Gap").

WPD would cause the MAI Appraisal, in compliance with the Uniform Act, to be completed and would deliver the completed MAI Appraisal to LCFPD. LCFPD would have its own appraisal prepared by an appraiser, selected at the LCFPD's sole discretion, to determine the fair market value for the Subject Property. WPD and LCFPD would then negotiate in good faith for:

- a. a sales price for the Subject Property that is consistent with Federal Conveyance Requirements as prescribed by the Uniform Act, and
- b. if there is a FMV Gap (resulting from the negotiated sales price being less than the fair market value determined in the LCFPD's appraisal), additional consideration to may be paid or provided by WPD to compensate LCFPD for the FMV Gap.

If WPD does not commence construction of the Project within 5 years after the effective date of this MOA, or the Subject Property acquired by WPD ever ceases to be used as part of the Airport, then, at the LCFPD's election and subject to FAA approval, any fee simple property rights conveyed to WPD by LCFPD would revert back to LCFPD, so long as no Federal funds or WPD funds deemed to be airport revenue, per FAA's Airport Revenue Policy and Grant Assurance #25, have been expended for acquisition of the Subject Property. In the event of such a termination, LCFPD would not be required to refund or return any consideration to WPD so long as no Federal funds or WPD funds deemed to be airport revenue, per FAA's Airport Revenue Policy and Grant Assurance #25, have been expended for the acquisition of the LCFPD property.

II. DURATION

This MOA will be null and void if its stipulations are not initiated within five (5) years from the date of its execution. In such an event, the WPD shall so notify the parties to this MOA and, if it chooses to continue with the Project, then it shall proceed with a MOA

amendment.

III. AMENDMENTS

This MOA may be amended only when such an amendment is agreed to in writing by all parties. Any such amendment will be effective on the date a copy signed by all of the parties is filed with the FAA.

IV. TERMINATION; NON-BINDING NATURE

If any party to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment. If within thirty days an amendment cannot be reached, any party may terminate the MOA upon written notification to the other parties. This MOA is intended to serve as a guide for the parties' future activities related to the Project, including WPD's and LCFPD's future negotiations of the IGA. LCFD's and WPD's commitments to each other, including without limitation LCFPS's obligation to make the Conveyance, WPD's obligations to accept the conveyance and construction of the Project Trail Segment are not binding unless included in the IGA and then will be subject to the terms of the IGA.

[Signature Pages Follow]

**MEMORANDUM OF AGREEMENT AMONG
THE FEDERAL AVIATION ADMINISTRATION, THE WAUKEGAN PORT DISTRICT
AND THE
LAKE COUNTY FOREST PRESERVE DISTRICT REGARDING A REPLACEMENT
RUNWAY 5/23 AT WAUKEGAN NATIONAL
AIRPORT WAUKEGAN, LAKE COUNTY, ILLINOIS**

(Signatory)

Federal Aviation Administration

By: _____

Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT AMONG
THE FEDERAL AVIATION ADMINISTRATION, THE WAUKEGAN PORT DISTRICT
AND THE
LAKE COUNTY FOREST PRESERVE DISTRICT REGARDING A REPLACEMENT
RUNWAY 5/23 AT WAUKEGAN NATIONAL
AIRPORT WAUKEGAN, LAKE COUNTY, ILLINOIS**

(Signatory)

Lake County Forest Preserve District

By: _____

Title: _____

Date: _____

**MEMORANDUM OF AGREEMENT AMONG
THE FEDERAL AVIATION ADMINISTRATION, THE WAUKEGAN PORT DISTRICT
AND THE
LAKE COUNTY FOREST PRESERVE DISTRICT REGARDING A REPLACEMENT
RUNWAY 5/23 AT WAUKEGAN NATIONAL
AIRPORT WAUKEGAN, LAKE COUNTY, ILLINOIS**

(Signatory)

Waukegan Port District

By: 

Title: CHAIRMAN

Date: 11/8/2023

Exhibit A

Exhibit A





Prepared using information from Nearmap & Lake County Department of Information & Technology: GIS/Mapping Division
 18 North County Street
 Waukegan, Illinois 60085-4357
 847-377-2373

Courtesy Copy Only.
 Property boundaries indicated are provided for general location purposes. Wetland and flood limits shown are approximate and should not be used to determine setbacks for structure or as a basis for purchasing property.

2021 Aerial Photo Prepared 18 July 2022

Lake County Forest Preserve District
 1899 W Winchester Rd
 Libertyville, IL 60048
 847-367-6640
 www.lcfd.org

Legend

-  Lake County Forest Preserve District
-  Subject Property
-  Project Trail Segment
-  Railroad

