

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In The Matter Of:

Mauston-New Lisbon Union Airport,  
Mauston-New Lisbon Union  
Airport Commission  
Mauston, Juneau County, Wisconsin,  
  
Respondent.

Docket No. CWA-05-2011-0007

Consent Agreement  
and  
Final Order  
Pursuant to  
Section 309(g) of the Clean Water Act,  
33 U.S.C. § 1319(g).

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

WHEREAS, the parties to this administrative action have agreed to simultaneously commence and conclude the above-captioned action before the filing of a complaint via the filing of this Consent Agreement and Final Order ("CAFO") pursuant to Section 309(g) of the Clean Water Act, (the "Act" or "CWA"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

WHEREAS, the Complainant is, by lawful delegation of the Administrator and the Regional Administrator, the Director of the Water Division, Region 5, United States Environmental Protection Agency ("EPA").

WHEREAS, the Respondent in this proceeding is the Mauston-New Lisbon Union Airport Commission ('Respondent' or 'Commission'), a publicly created corporation doing business in the State of Wisconsin.

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WHEREAS, the Respondent admits that the Administrator of EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. § 22.38, and pursuant to 40 C.F.R. § 22.18(b)(2).

WHEREAS, the Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

WHEREAS, the Respondent neither admits nor denies the specific factual allegations and legal conclusions in this CAFO.

WHEREAS, the Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

WHEREAS settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in the public interest.

#### STATUTORY AND REGULATORY BACKGROUND

1. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits any person from discharging any pollutant from any point source into navigable waters except, among other things, in accordance with the terms of a valid permit issued by the U.S. Army Corps of Engineers (“ACOE”) under Section 404 of the CWA, 33 U.S.C. § 1344.
2. The term “person” is defined as, among other things, a “... corporation...”, 33 U.S.C. § 1362(5).
3. A “pollutant” is defined as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).



4. The term “discharge of pollutants” is defined as “any addition of any pollutant to navigable waters from any point source....” 33 U.S.C. § 1362(12).
5. A “point source” is defined as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
6. The term “navigable waters” is defined as all “...waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
7. The term “waters of the United States” is defined at 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2, to include the following: (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all other waters, such as, among others, rivers, streams or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; and (iii) tributaries of such waters.
8. The regulation at 40 C.F.R. § 230.3(t) defines “Wetlands” as “those area that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

9. At all times relevant to this CAFO, the Respondent (a legal entity created by the September 27, 2005, City of Mauston and City of New Lisbon, Wisconsin, Ordinance No. 10.100-10.106, and doing business in Wisconsin.) either owned, leased or otherwise controlled a parcel of property (“Airport property”) situated at the southeast quarter,



Section 28, Township 16 North, Range 3 East, Town of Lisbon, W7493 Ferdon Road, Juneau County, Wisconsin, consisting of approximately 7 acres, situated adjacent to the principal runway. (See Attachments A, B).

10. The affected Airport property consists of forested and scrub/shrub wetlands property, as defined above in Paragraph 8, situated adjacent to the principal runway of the Respondent Airport Commission's air strip and abutting a relatively permanent water (RPW), unnamed tributary number 1. (See Attachment B).
11. Unnamed tributary number 1, prior to Respondent Airport Commission's contractor's filling activities, exhibited seasonal characteristics of water flow during the winter thaw, spring and summer rain or thunder storms, and thus is a RPW and a water of the United States, as defined at 40 C.F.R. § 230.3(s), and also "navigable waters" as defined at section 502(7) of the CWA, 33 U.S.C. § 1362(7). Unnamed tributary 1 flows into the Lemonweir River, a historically Traditional Navigable Water and a tributary to the Wisconsin River, an interstate water body.
12. The Lemonweir and Wisconsin Rivers, as described in Paragraph 11, are also "waters of the United States" and "navigable waters", as defined in Paragraphs 6, 7, and 11.
13. Parts of a forested and scrub/shrub wetland, as defined in Paragraph 8, bordered unnamed tributary number 1 as it flows through the affected Airport property.
14. Beginning in approximately February 2008 and continuing intermittently into March 2009, Respondent Airport Commission arranged for or otherwise allowed or directed the discharge of dredged and fill material and organic debris from excavators and bulldozers into approximately seven (7) acres of forested and scrub/shrub wetland which abuts unnamed tributary number 1 located on the Airport property as described in





Paragraphs 10-13. An outline of the discharge areas is included on Attachment B, which is incorporated herein.

15. At no time did Respondent Airport Commission have a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, to discharge dredged and fill material and organic debris into forested wetland bordering unnamed tributary number 1 on the Airport property as referenced in Paragraphs 9-10.
16. Because the Respondent is a Commission, it is a "person" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
17. Because the dredged and fill material and organic debris was discharged into the forested wetland which abuts unnamed tributary number 1 on the Airport property, it constitutes "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
18. Because excavators and bulldozers are discernible, confined and discrete conveyances, specifically rolling stock, they constitute "point sources" as defined in Paragraph 5.
19. Because dredged and fill material and organic debris from excavators and bulldozers, or earth moving equipment, was discharged into waters of the United States, this action constituted a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
20. Therefore, Respondent Airport Commission is a person who discharged pollutants from a point source into waters of the United States without a permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1344.
21. Each day the material discharged by the Respondent Airport Commission remains in navigable waters without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA,



33 U.S.C. § 1311.

22. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted the Wisconsin Department of Natural Resources regarding the assessment of this civil penalty.
23. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Administrator may assess a Class II civil penalty of \$10,000 per day for each day during which the violation continues, up to a total of \$125,000, for violations of, among other things, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or any limit or condition in a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, provides for the increase of penalty amounts to account for inflation. The rule increasing the civil monetary penalty amount for a Class II civil penalty to \$16,000 per day of violation, up to a total of \$177,500, took effect on January 12, 2009, 73 Fed. Reg. 75340-6 (Dec. 11, 2008).

#### PENALTY

24. Based upon the facts alleged in this CAFO; upon the nature, circumstances, extent and gravity of the violations alleged; after consideration of the Respondent Airport Commission's ability to pay, prior history of such violations, degree of culpability and economic benefit resulting from the violation; the Respondent Airport Commission's good faith and cooperation in resolving this matter; and such other matters as justice may require; EPA hereby proposes to issue a Final Order assessing civil penalties to Respondent Airport Commission in the amount of \$15,000.



25. Based upon proper representations of Respondent Airport Commission of its annual financial budgeting structure, and pursuant to EPA Region 5 Procedure (the February 25, 2009 'Installment Payments in CAFOs' at nos. 2-4), and the EPA March 1, 1995 Interim Clean Water Act Settlement Penalty Policy (p. 21), EPA hereby agrees to an installment payment plan with required 1% simple interest on the principal for Respondent Airport Commission covering 24 months (2 years) from the effective date of this CAFO. The installment plan shall require the following of Respondent Airport Commission:

- a) Respondent Airport Commission shall pay EPA a total (principal amount) of \$15,000, plus interest at 1% on any unpaid portion of the principal amount that is not paid within 30 days of the effective date of the CAFO.
- b) Respondent Airport Commission shall make one (1) payment of \$7,500 within 30 days of the effective date of the CAFO.
- c) Thereafter, Respondent Airport Commission shall have 2 years from the effective date of the CAFO to make a second payment of the remaining \$7,500 due, plus the interest (1% simple interest) on the remainder multiplied by the length of time it is unpaid. Respondent Airport Commission may pay USEPA through one of the following payment options:
  - i) 2 payments of \$3,806.34 each, due at intervals of one (1) year after the effective date of the CAFO, and at two (2) years after the effective date of the CAFO; or,
  - ii) 1 payment of \$7,650 at two (2) years after the effective date of the CAFO.

Alternatively, Respondent Airport Commission may complete full payment to EPA sooner than the previously mentioned 2-year period, and thus pay a proportionately lower amount of interest.

26. Respondent Airport Commission shall pay the initial civil penalty payment of \$7,500 within 30 days of the effective date of this CAFO by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the CAFO, to:



U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

27. The check must be annotated with the docket number and with the name of the case.

Copies of the transmittal letter and the check shall simultaneously be sent to these recipients:

Greg Carlson (WW-16J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

and

Tom Turner  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590

28. Any and all subsequent payments of the remaining civil penalty shall be paid by

Respondent Airport Commission pursuant to the procedure described in Paragraphs 26 and 27.

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent Airport Commission fails to timely pay the civil penalty, the Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and EPA's enforcement expenses for the collection action.

31. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent Airport Commission must pay a





\$15.00 handling charge each month that any portion of the penalty due is more than 30 days past due. The Complainant will assess a six percent per year penalty on any principal amount not paid timely pursuant to this CAFO.

#### GENERAL PROVISIONS

32. This CAFO constitutes a complete and full settlement of, and resolves Respondent Airport Commission's liability with prejudice for, the violations alleged in this CAFO.
33. This CAFO does not affect the right of the Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
34. This CAFO does not affect the Respondent Airport Commission's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.
35. The terms of this CAFO bind EPA and the Respondent Airport Commission and their successors and assigns.
36. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.
37. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.
38. This CAFO constitutes the entire agreement between the parties.
39. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto and no oral modification of this CAFO shall be effective.
40. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

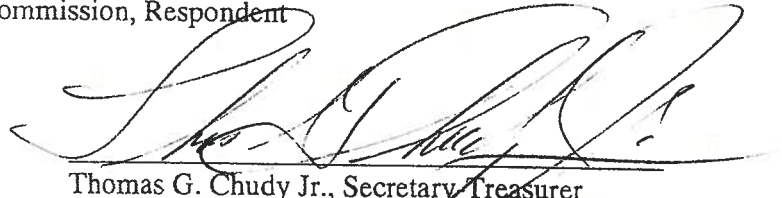


In the Matter of Mauston-New Lisbon Union Airport  
Docket No. **CWA-05-2011-0007**

Mauston-New Lisbon Union Airport Commission, Respondent

Date:

*15 July 2011*



Thomas G. Chudy Jr., Secretary/Treasurer  
Mauston-New Lisbon Union Airport Commission  
W7493 Ferdon Road  
Mauston, Wisconsin

*The Mauston New Lisbon Union  
Airport Commission agrees and accepts  
the terms & conditions of the settlement  
proposal as set forth herein.*

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COUNSEL**

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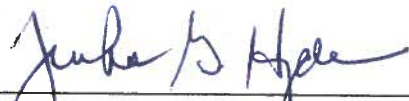
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In the Matter of Mauston-New Lisbon Union Airport  
Docket No. **CWA-05-2011-0007**

United States Environmental Protection Agency, Region 5, Complainant

Date: 7/21/11

  
\_\_\_\_\_  
Tinka G. Hyde, Director  
Water Division  
United States Environmental Protection  
Agency, Region 5

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In the Matter of Mauston-New Lisbon Union Airport  
Docket No **CWA-05-2011-0007**

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
Susan Hedman  
Regional Administrator  
United States Environmental Protection  
Agency, Region 5





**CHAPTER 10: MAUSTON-NEW LISBON UNION AIRPORT  
ORDINANCE**

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**10.100 TITLE**

This Chapter shall be known, cited and referred to as the MAUSTON – NEW LISBON UNION AIRPORT ORDINANCE except as referred to herein, where it shall be known as “this Chapter”.

**10.101 AUTHORITY**

This Chapter is enacted pursuant to the authority granted by the State of Wisconsin Statutes. (See generally, Chapter 114 Wis. Stats.) Specific statutory references are provided within the body of this Chapter solely as a means of assisting the reader. Such references are not to be considered as all inclusive and shall in no manner be construed to limit the application or interpretation of this Chapter.

**10.102 UNION AIRPORT ESTABLISHED**

It is hereby deemed to be in the best interests of the City that the City of Mauston join with the City of New Lisbon for the purpose of establishing a union airport facility for the convenience of their citizens and to further the economic growth of the area. In furtherance of that purpose and pursuant to the provisions of 114.151 Wis. Stats., the City of Mauston, in cooperation with the City of New Lisbon, hereby establishes a joint airport to be known as the “Mauston – New Lisbon Union Airport.”

**10.103 UNION AIRPORT COMMISSION**

- (1) **ESTABLISHMENT:** Pursuant to section 114.14(1) Wis. Stats., there is hereby established a Union Airport Commission which shall be vested with jurisdiction over the construction, improvement, equipment, maintenance and operation of the Airport.
- (2) **APPOINTMENT OF COMMISSIONERS:** The Commission shall consist of 5 residents of Juneau County, Wisconsin. Pursuant to 114.14(2)(a), they shall be persons especially interested in aeronautics. Their terms shall be for 4 years, commencing on June 1 of the year of appointment. Two (2) Commissioners shall be appointed by the Mayor of Mauston, and two Commissioners shall be appointed by the Mayor of New Lisbon. Mauston shall appoint one Commissioner each even-numbered year, and New Lisbon shall appoint one Commissioner each odd-numbered year. The fifth Commissioner shall be jointly appointed by the Mayors of Mauston and New Lisbon, and if the mayors can not agree upon a joint appointment, then this position shall remain vacant until agreement can be reached.
- (3) **OFFICERS:** The Commission shall annually elect one member as chairperson, and another as secretary. The chairperson shall conduct the meetings and establish the agendas therefore. The secretary shall keep an accurate record of all Commission proceedings and transactions and report the same to the Cities.
- (4) **DEPOSIT OF MONEYS:** Pursuant to section 114.14(2)(f)&(g), all moneys appropriated for the Airport by the Cities, and all moneys earned by the Airport, and all other moneys received by or for the Airport in any manner or for any reason whatsoever, shall be deposited with the treasurer of the City of Mauston, where it shall be kept in a special fund and paid out only on order of the Airport Commission, drawn and signed by the secretary and countersigned by the chairperson.
- (5) **POWERS AND DUTIES:** Pursuant to sections 114.14(2)(e) and 114.14(3) Wis. Stats., the Commission shall have complete and exclusive management and control over the Airport, subject to the limitations imposed by Chapter 114 and this Chapter, including (but not limited to) the following:



- 10.103 (5) (a) **Employees:** The Commission may employ an Airport manager and/or other Airport employees, who may be members of the Commission. The duties and salary of each such person may be fixed by the Commission. No Commissioner shall vote on the question of his/her own selection as an employee, nor on the question of his/her own compensation.
- (b) **Contracts:** The Commission may make contracts with private persons, the United States or any agency for the construction, improvement, equipment, maintenance or operation of the Airport, provided that contracts with private parties may not exceed a term of 10 years.
- (c) **Rules and Regulations:** The Commission may adopt rules and regulations for the use of the Airport, subject to the approval of both Cities before they take effect.
- (d) **Fees and Charges:** The Commission may adopt fees and charges for the use of the Airport, subject to the approval of both Cities before they take effect.
- (e) **Annual Report:** The Commission shall prepare and submit an annual report in detail to each City. Such reports shall include information on traffic and use of the Airport, Airport expenditures and revenues, and other information which the Commission may deem pertinent to properly evaluate the operation of said facility.
- (f) **Budgets:** The Commission shall submit to each City an annual budget setting forth anticipated expenditures and revenues, including capital improvements, and the amount recommended to be raised by taxation for Airport facilities. The budget shall be submitted each year on or before October 1.
- (g) **Leases:** The Commission shall prepare and adopt standard leases and agreements for the various types of Airport activities and land uses authorized under this chapter, subject to the approval of both Cities before they take effect.
- (h) **Buildings:** The Commission shall manage, control and encourage the development of the Airport through private investment. ~~For example, to encourage private persons to build private hangars and to incur substantial building costs, the Commission may approve long term leases which provide for the reexamination and readjustment of rates and charges at specified periods of time during the terms of the lease.~~ The Commission shall also oversee all construction on the Airport. Buildings shall be of metal or masonry construction, and all building plans shall be approved by the Commission prior to construction.
- (6) **LIMITATIONS OF AUTHORITY:** In addition to any other limitations imposed by Chapter 114 or this Chapter, the authority of the Commission shall be limited as follows:
- (a) **Public Access:** In no case shall the public be deprived of equal and uniform use of the Airport.
- (b) **Non-Binding on Cities:** No act, contract, lease or other activity of the Commission shall be or become a binding contract on either City unless expressly authorized by the City, and then only to the extent so expressly authorized.



- 10.103 (6) (c) **Private Enterprise Preference:** The Commission shall refrain from using public employees or public funds for the purpose of engaging in any activity or providing any service (excluding Airport maintenance) that can be conducted or provided satisfactorily by private parties through proper lease arrangements. The Commission shall refrain from erecting buildings with public funds which are to be used and occupied by private parties (excluding utility buildings, storage facilities and similar buildings needed solely for the maintenance and operation of the Airport).

10.104 **UNION AIRPORT BUDGET**

Pursuant to section 114.15 Wis. Stats., the City is authorized to appropriate money in each year for the purpose of aiding and assisting in the maintenance, operation, management and improvement of the Union Airport. Upon receipt of an Airport Budget from the Airport Commission, representatives from Mauston and New Lisbon shall meet to consider the Airport Budget prior to each City's respective budget meetings. The Cities, with input from the Commission, shall finalize an Airport Budget, which shall be submitted to each City for final approval. Upon approval by both Cities, the Airport Budget and each City's share thereof shall become binding upon both Cities and shall be divided equally between the Cities, added to the tax roll of each City, and collected by each City in the same manner as other revenues raised in connection with the general fund.

10.105 **TERMINATION**

Either City may withdraw from joint operation and control of the Airport, and may relinquish its interest in the Airport. Such action shall be taken by repeal of this Chapter, upon 60 days notice to the other City.

10.106 **EFFECTIVE DATE**

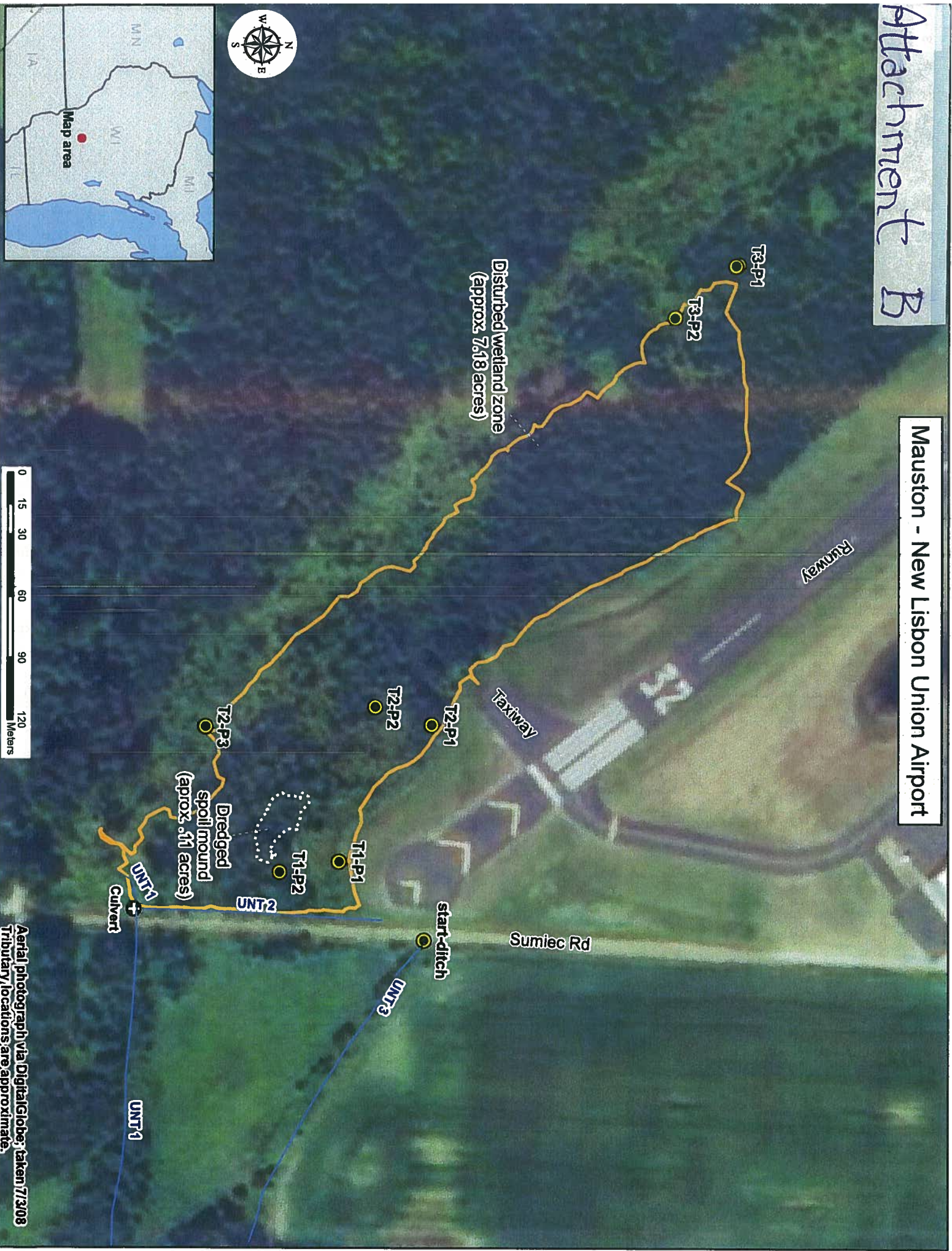
This Chapter shall become effective upon the passage and posting of this Ordinance by both Mauston and New Lisbon.





# Attachment B

## Mauston - New Lisbon Union Airport



Aerial photograph via DigitalGlobe; taken 7/3/08  
Tributary locations are approximate.

