

AIRPORT BACKGROUND

The Ravalli County Airport (Airport Location ID 6S5), serving the City of Hamilton and Ravalli County, is owned and operated by Ravalli County and has existed at its present location since the 1930's. Ravalli County Airport is geographically located in the Bitterroot River Valley of western Montana approximately one mile east of the City of Hamilton. The airport is approximately 50 road miles south of Missoula. Ground access to the airport is provided from Missoula or Darby via US Highway 93 to Hamilton, the Eastside Highway and local roads.

The airport is one of the busiest GA facilities in Montana and currently experiences nearly 23,600 operations (takeoffs or landings) each year and has 78 based aircraft, which include two jets and 7 multi-engine aircraft. It accommodates a variety of activities ranging from access for emergency medical services, disaster relief, aerial firefighting, law enforcement, agricultural services, flight training, charter passenger, recreational flying, and air cargo services.

According to the Airport Layout Plan (ALP), the airport is a B-II facility with non-standard conditions (primarily due to its substandard runway to taxiway separation distance). Existing facilities at Ravalli County Airport include Runway 16/34, a 4,200-foot long x 75-foot wide asphalt runway, and a full length 30-foot wide parallel taxiway with four connecting taxiways to the runway. The airfield has several asphalt apron areas, taxilanes of various widths for hangar access, a lighted wind sock and segmented circle, rotating beacon, and numerous hangars and other airport buildings.

Runway 16/34 is a visual approach runway oriented in a generally north-south direction. The runway has a standard medium intensity runway edge lighting (MIRL) system for aircraft to use during night operations or periods of low visibility. The airport runway does not have any Runway End Identifier Lights (REILs) but each runway end is equipped with Precision Approach Path Indicators (PAPIs). Ravalli County owns the PAPIs and the MIRL system at the airport.

Per FAA Advisory Circular 150/5325-4B, the minimum runway length recommended for the airport is 4,800 feet to accommodate 95% of the "small aircraft fleet." At 4,200 feet, Ravalli County Airport's runway length falls below the FAA's minimum recommended length to accommodate 95% of the "small aircraft fleet." A 5,200-foot-long runway would accommodate 100% of the "small aircraft fleet". The County seeks to provide a 5,200-foot-long runway to accommodate 100% of the "small aircraft fleet" with the appropriate lateral separations for its B-II categorization.

The parallel taxiway has a non-standard width of 30 feet and its centerline is only 200 feet from the runway's centerline. The airport was initially designed for use by small aircraft with shorter wingspans than the types of aircraft currently using the airport. As a result, a parallel taxiway at the facility should be 35-foot wide to comply with the FAA's current design standards for the types of aircraft using and expected to use the facility over the foreseeable future. Additionally, the runway to taxiway lateral separation distance does not meet the FAA's current design standards which require a minimum of 240 feet of separation distance between the runway and full-length parallel taxiway centerlines.

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There are currently 57 hangar buildings used to house private and business aircraft, several businesses including two Fixed Base Operators (FBOs), a cafe, fueling facilities, U.S. Forest Service (USFS) buildings, and vehicle parking areas on the airport. Because of the large number of based aircraft, there are many hangars and there continues to be a strong interest in building hangars at the airport.

The existing apron areas are undersized and present concerns for the safe circulation of aircraft and for parking local and itinerant aircraft. Larger and more efficient apron areas are necessary as the number of aircraft using the airport increases.

The USFS maintains an office and three associated buildings on leased property in the northwest portion of the airport. The USFS facility serves as a headquarters for aerial fire suppression activities in the area.

There are no regularly scheduled commercial passenger flights at the airport although charter flights do occur. Ravalli County Airport lacks cargo facilities at the airport; however, companies such as UPS and USPS occasionally use the facility if other airports are unavailable.

PREVIOUS PLANNING

Planning for the proposed facility improvements has been a long and expensive process. It has been a long process because there was, and continues to be, a group of people organized as *Informing Citizens Against Airport Runway Expansion* (ICAARE), that oppose expansion of the airport – especially lengthening the airport’s only runway. There have been several different County Commissioners throughout the more than 20-year process, and up until recent years, they have not had a majority of commissioners in favor of the project as presented in the planning recommendations. Listed below are planning efforts related to bringing the Ravalli County Airport to B-II standards:

1996 Airport Master Plan

In 1996, Ravalli County retained an airport engineer to prepare a Master Plan to examine aviation activity level, identify deficiencies, recommend needed facility modifications, and develop an Airport Layout Plan (ALP). The work completed for the 1996 Master Plan effort identified the appropriate design aircraft category for the Ravalli County Airport (ARC B-II) and developed numerous facility improvement concepts, including lengthening and relocating the runway, to accommodate use by such aircraft. However, the Master Plan and ALP were never completed. In August 2001, Ravalli County and the FAA mutually agreed to terminate the planning effort due to a lack of progress. The 1996 Airport Master Plan effort was conducted under AIP Grant 3-30-0037-003 issued in 1996 and refers to planning activities completed for the airport between 1996 and 2000.

2002 Airport Layout Plan Update

A 2002 effort to update the ALP revisited the recommended improvement concept from the 1996 Master Plan effort but dropped the concept in favor of new design configurations. Notably, two improvement concepts were identified that would provide a new 5,200-foot-long runway with either 240 feet or 400 feet of lateral separation distance between the runway and parallel taxiway. This planning effort resulted in an ALP that indicated a future 5,200-foot-long runway shifted 400 feet east and 600 feet north of existing Runway 16/34. The ALP was accepted by Ravalli County and approved by

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the FAA in June 2003 on the condition that relocating and extending Runway 16/34 could not be done without environmental review and approval.

2003 Environmental Assessment

In July 2003, Ravalli County began work on a National Environmental Policy Act (NEPA) Environmental Assessment (EA) to evaluate the potential environmental effects associated with improvements to primarily meet FAA design standards for runway to taxiway separation, comply with FAA guidance for recommended runway length, and address obstructions to Part 77 airspace and runway approaches. Several versions of the Draft EA for the airport were prepared between 2003 and 2008. In November 2008, a Final Draft EA was released for public review. This document was never finalized. In August 2009, Ravalli County determined additional analysis of the 2008 Draft EA was needed. The County requested: an update to the aviation forecasts; an evaluation of additional alternatives identified in the 1996 Master Plan and 2002 ALP planning effort; a review of potential relocation options; and a study of two additional development alternatives.

2010 Environmental Assessment

In June 2010, a revised Final Draft EA was released. A public hearing was held on August 31, 2010. Responses to comments received were incorporated into a Final EA dated November 2010. The Final EA was accepted by Ravalli County on November 17, 2010 and submitted to the FAA for a final environmental determination. In March 2011, the FAA prepared a draft Finding of No Significant Impact and Record of Decision (FONSI/ROD) for relocating Runway 16/34 and the decision document was made available for public review beginning on April 6, 2011. This project included relocating the runway 93-feet to the east, laterally from the existing runway. It also included shifting the runway north, longitudinally 1,000-feet. This alternative maintained the same runway length of 4,200-feet and required the acquisition of approximately 58-acres of land.

Some members of the newly elected County Commission held different opinions about the proposed airport development project and meetings were subsequently held in early 2011 to receive additional public comments and consider the implications of moving forward. On May 5, 2011, the Commission requested the FAA take no further action regarding the environmental determination because a majority of the commissioners did not believe the Proposed Action in the Final EA adequately addressed the future needs of the airport— primarily in the areas of runway length, apron space and hangar development space.

2012 Forecast Report

As a result, Ravalli County chose to undertake additional airport planning in 2011 to review current aviation activity at the airport, develop forecasts of future aviation activity, and elaborate on facility needs based on FAA design standards, policies, and guidance. Another major task of the planning effort was to revisit alternatives from the 2010 EA and determine if there are any new alternatives that merit consideration. The findings of this recent planning effort were presented in the 2012 Forecasting Report

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2017 Environmental Assessment

Along with the new airport planning work, Ravalli County initially intended to revise the EA prepared in 2010 and incorporate newly identified alternatives and update aviation forecasts and environmental information. However, through consultation with the FAA, the scope of work for the EA was expanded and a decision was made to prepare a new EA document incorporating relevant information from the 2010 EA and findings from the 2012 airport planning effort. Several supporting studies (air quality assessment, noise modeling, cultural resources report, and wetland evaluation) were prepared for the new EA. The analysis and findings from the new supporting studies have been incorporated into the new EA document and the FAA used the information as a basis for its environmental determination.

A Finding of No Significant Impact / Record of Decision (FONSI/ROD) determination was issued by the FAA's Northwest Mountain Region Administrator on January 27, 2017 for the *Proposed Action*.

ICAARE filed a lawsuit against the FAA on May 26, 2017 asking for a review of the Federal Aviation Administration's decision to approve the project. Oral arguments took place on December 26, 2018. The 9th U.S. Circuit Court of Appeals rejected the petition.

ICAARE could have appealed to the 9th Circuit Court for a re-hearing through February 1, 2019 and to the U.S. Supreme Court until March 18, 2019. ICAARE did not file an appeal to either Court.

The *Proposed Action* includes several major components:

- Construct a 5,200-foot-long by 75-foot-wide runway on a 17/35 orientation parallel to the existing runway. Shift the threshold of the new runway about 1,550 feet to the north and move it 400 feet east of the existing runway.
- Acquire approximately 126 acres of land for airport development;
- Acquire or rezone up to 113 acres of land for compatible land use (for the 65 DNL boundary outside of the minimum required land acquisition);
- Install wildlife fence around the perimeter of the newly acquired airport property;
- Relocate a portion of Stock Farm Road out of the RPZ;
- Convert existing runway into a "partial parallel taxiway" for the new layout;
- Perform preliminary grading and earthwork necessary to eventually extend the partial parallel taxiway to the end of Runway 17;
- Pave a portion of ultimate parallel taxiway (from the 16 end of the existing runway approximately 800 feet north to the first taxiway connector);
- Construct taxiway connectors from new runway to partial parallel taxiway;
- Install a new MIREL system for Runway 17/35;
- Install new NAVAIDS – windcone, segmented circle, and beacon;
- Relocate or replace the County-owned PAPIs;
- Remove the existing runway lighting system and NAVAIDS as the new runway becomes available for use;
- Install new taxiway edge lighting;

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- Reconstruct, reconfigure, and/or expand aprons and aircraft parking areas to increase capacity, efficiency and provide opportunities for future development;
- Remove trees posing obstructions to runway approaches; and
- Amend the existing instrument approach and departure procedures for the airport.

The second bulleted item, *acquire approximately 126 acres of land for airport development*, is the subject of this *Administrative Settlement* proposal.

Although there have been numerous discussions and correspondence with the landowners throughout the years during the historic planning efforts, formal consideration was not initiated by the County Commissioners until the EA was completed in early 2017.

DESCRIPTION OF PROPERTIES TO BE ACQUIRED

Attachment 1 (Airport Layout Plan's Exhibit 'A') depicts a map of the existing airport site, future runway location, and the proposed acquisitions.

The property to be acquired is currently owned by one landowner, Mildenerger Properties, LLC. All property adjacent to the existing east and north airport boundary, and a portion of the land west of the airport's boundary, are owned by Mildenerger. Mildenerger's property adjacent to the airport, including the property to be acquired, was previously subdivided into parcels ranging between 20 and 49.5 acres. Mildenerger's contiguous property holdings adjacent to the airport in Sections 20 and 29 exceed 600 acres.

All the property adjacent to the airport is currently used for agricultural purposes, primarily cattle grazing and irrigated hay production. Low density residential subdivisions lie further north of the subject property, scattered rural residential to the east of the subject property, and higher density residential south of the existing airport. The City of Hamilton lies approximately ¾ mile west of the airport.

The properties to be acquired can generally be described as follows (See **Attachment 1**):

- A strip of land adjacent to the eastern edge of the existing airport property that averages about 500' in width and is just over 5,300 feet long. This strip contains five separate previously subdivided parcels totaling approximately 156 acres. The portions of these parcels to be acquired in fee includes approximately 60 acres (Parcels 10-C, 11-A-1, 11-A-2, 11-B, and 11-C). There are no uneconomic remnants. Four of these parcels are low-lying properties with high groundwater. The appraiser determined these four parcels have a highest and best use of agricultural as the property has high groundwater and the appraiser felt had an extremely low possibility for development of onsite septic. The appraiser determined that one parcel (Parcel 11-C) had a highest and best use of rural residential with accessory agricultural component, as a portion of the parcel is outside of the high groundwater area. All five of these parcels are historically used for agricultural grazing and there is a stream (Grid Creek) which runs through the northern end of this area.

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- Portions of four parcels of land to be acquired in fee north of the existing airport, centered on the proposed runway centerline. A total of 53 acres of the 60 subdivided acres is to be acquired (Parcels 10-A, 10-B, 10-D, 10-E) There are no uneconomic remnants. Most of this property is on an elevated bench and approximately half of these 53 acres are irrigated grazing land. The remaining portion is agricultural hay production irrigated with a center pivot system. The appraiser determined the highest and best use for the property would be for a rural residential site with an accessory agricultural component.
- An aviation easement on two parcels totaling 13 acres (Parcels 12-A and 12-B) north of the four described above and north of a private access (Stock Farm Road). These parcels protect a portion of the Runway Protection Zone (RPZ). This, in combination with the decision that Stock Farm Road can remain in place as a private road through the RPZ, will allow the Mildenbergers to keep that land in agricultural production if they so choose.

Appraisals to support the necessary land acquisition were initiated in the Fall of 2017. The parcels were appraised in accordance with FAA Advisory Circular 150/5100-17, Change 7 and FAA Order 5100.37B – Land Acquisition and Relocation Assistance for Airport Projects.

CHRONOLOGY

- May 2017 – Landowner submitted a letter to the County Commissioners stating in part, “In an effort to keep the heritage of the historic Stock Farm intact, I have made the final decision not to sell the land necessary for the large expansion of the airport.”
http://ravallirepublic.com/news/local/article_4110cf95-23ce-5477-a56b-1e20e7330b2e.html
- October 2017 - Landowner submitted a proposal for conditions acceptable for them for the expansion of the airport. See **Attachment 2**. Those conditions did not meet the County’s purpose and need.
http://ravallirepublic.com/news/local/article_138e5640-f2f4-5867-8c51-299b377955c3.html
- May 2018 - Appraisals were completed on the proposed acquisition. Review Appraisals were completed by the end of May 2018.
- October 2018 - Initial meeting with landowners. Presented offer of \$803,400 to Mildenberger and \$121,000 to Stock Farm Ranches for a total of \$924,400. Mildenberger informed the negotiator that they were in process of completing a trade with Stock Farms. That trade was completed on December 14, 2018 and recorded on January 8, 2019. With this trade, Mildenberger Properties, LLC owns all the property needed for the proposed airport improvements. The following concerns were expressed at this meeting:
 1. The landowner believes that the project is unwarranted.
 2. The landowner's proposal of October, 2017 was rejected.
 3. The landowner believes the property is worth \$21,000 per acre.
 4. The loss of acreage will impact the ranching operation as to make it no longer profitable.

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5. The avigation easement will create a loss in value to future subdivision development.
- November 2018 - Meeting with Brad Mildenberger, Dave Cotner, landowner's attorney, Jeff Burrows, County Commissioner, and Rick Donaldson, RPA. Numerous issues and potential for settlement were discussed. The landowner believes the property is undervalued and that there is a loss of value to the remainder due to two issues:
 1. Devaluation of the property (devalues subdivision potential) due to the proximity of the airport acquisition and avigation easement.
 2. The loss of acreage results in the ranching operation no longer able to sustain a profit. Mildenberger's are working on a separate land trade to offset the loss of acreage to the ranching operation.
 - January 2019 - Received settlement offer for \$5,410,600 from Mildenberger Properties, LLC. See **Attachment 3** that illustrates how the landowner arrived at this amount.
 - March 2019 – Following further negotiations, the Landowner verbally committed to settle for \$3,000,000 compensation. They then followed up with a written counter-offer on March 4, 2019. See **Attachment 4**.
 - March 2019 – Additional negotiations ensued to clarify “...issues that need to be resolved.” in the Landowner’s counter-offer. The result of that negotiation is the “Right-of-Way Agreement” included as **Attachment 5**. (Items 6. – 12. Address the issues to be resolved from the March 4th counter-offer.) Ravalli County believes the amount in the counter-offer (\$3M) can be easily justified as explained by this *Administrative Settlement* document.
 - The negotiator’s history summary is included as **Attachment 6**.

SETTLEMENT JUSTIFICATION

Mildenberger's are prominent businessmen and ranchers in the Hamilton valley with significant financial resources and knowledge of the value of similar property in Ravalli County, which causes them to believe their land is worth more than the appraised value. They have provided additional market information that support land values of between \$13,800 to \$21,300 per acre compared to the FMV offers that ranged tightly around \$12,000 per acre for the 53 acres of irrigated grazing and hay production land being acquired. This represents an increase of 15% to 77%, an additional \$95,000 to \$493,000 for the 53 acres. The provided information did not include any appraisal information.

Attachment 2 includes an estimate of damages in the amount of \$725,000 the Mildenberger’s claim they would incur to their existing irrigation systems due to the acquisition. The appraiser determined that there were no damages. The area with landowner concerns for irrigation damages was determined to have a highest and best use of rural residential with accessory agricultural component, not agricultural use. Therefore, the appraiser determined that potential agricultural impacts would not be applicable. Also in **Attachment 2** is Mildenberger’s estimated a loss of value of \$1,006,600 for 320 +/- acres adjacent to the

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new airport boundary. **Attachment 3** also states their belief that their property outside of the acquisition limits will be detrimentally impacted and that they should be compensated. As noted, the property had been previously subdivided. The appraiser used a before and after sales comparison approach for each parcel. This approach included an adjustment for influence of the airport for each parcel, as appropriate. Depending on the parcels' location, and highest and best use, the adjustment ranged from 0% to 40%. Also as noted, Mildenberger's own much more property adjacent to the airport and outside of the affected parcels. The appraisal did not consider potential loss in value for property outside of the affected parcels.

These items alone range from \$1,826,600 to \$2,224,600 in potential additional costs.

Mildenbergers have made it clear that their March 2019 settlement offer of \$3,000,000 is their final offer and that if we pursue condemnation, they will use their considerable resources to fight the project on a need and necessity basis and it will be as costly and time consuming as possible. It has been difficult to get responses from the Mildenbergers and to establish the details for negotiations. For these reasons, it can be concluded that they are not a willing seller.

As noted, the FONSI/ROD was legally challenged. Those individuals that challenged the FONSI/ROD would likely be interested in helping the landowner further delay the project.

Conversations with an MDT staff attorney indicated that Condemnation Commissions and juries are typically sympathetic with landowners and the loss in value to the remainder issues typically result in larger awards in condemnation actions. Although they are instructed not to, most condemnation commissions and juries in condemnation actions average the two values and try to hit a medium. This then triggers the attorney fee/costs provisions of the Montana Constitution and MCA §70-30-306 which require that if the landowner receives one dollar more than the final offer the condemnor must pay all the landowner's attorney fees and costs.

Montana is not a "quick take" state for highway projects until three-fourths of the right-of-way for a project has already been obtained. Applying this same principle, a quick take option would probably not apply since this project involves one land owner.

The County's Deputy Attorney provided the discussion as an estimate of attorney fees and other costs:

"I expect the action would require a minimum of 3 years, two at the district court level and one at the MT supreme court. Given who the landowners are and their available resources, prosecuting the case will likely be more time consuming and more expensive than it might otherwise be.

Generally in a case like this, experienced lead counsel would be hired as well as an associate counsel for assistance. Lead counsel would probably charge somewhere around \$300 per hour; associate counsel around \$175 per hour. I would also estimate that lead counsel would bill 10 hours per week

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on average, and associate counsel twice that. That adds up over three years to \$450,000 for lead counsel and \$525,00 for associate counsel, for a total of \$975,000.

I would estimate the cost of defense to be more than that given the caliber of attorneys the landowners would likely hire.

Another significant cost of prosecution would be the cost of expert witnesses, which would likely include real estate appraisers and engineers. The cost of expert witnesses could be in the range of \$50,000 to \$100,000."

Local area condemnation example: An article in the Missoulian by attorney Quentin M. Rhoades on September 25, 2018 summarizes the only condemnation case in the area that right-of-way acquisition experts noted. In regard to the City of Missoula Montana's public taking of a privately-owned water system, "... three years later, the dust has still not settled on the last of the litigation, and costs continue to rise. We paid about \$88 million for the water system, \$4 million for the other side's attorney fees, millions of dollars for bond issuance and other expenses, and \$9 million in our own attorney fees that are continuing to accumulate. All told, the city had to borrow \$140 million to buy a water system Engen (the Mayor) assured us was worth \$50 million." The article is included as **Attachment 7**.

The land acquisition negotiator for Ravalli County, Ron Olson, has had the occasion to negotiate land acquisitions with the Mildenbergers in the past for highway projects. In those negotiations, the Mildenbergers were reasonable but firm in their position. An administrative settlement was reached without condemnation.

Another factor to consider is the substantial increase in construction costs incurred by a delay. MDOT currently uses a 3% per year factor to project delays.

This settlement avoids condemnation and is in the best interest of the FAA, Ravalli County, the landowner and the public. **Attachment 8** contains opinion from the Sponsor's Deputy Attorney on likely condemnation costs.

Below is a summary that illustrates how the Sponsor believes the negotiated \$3,000,000 amount could easily be exceeded during a condemnation process since it does not include any damages or loss of value of adjacent property or landowner attorney fees. It also does not include any compensation for construction easements the Landowner has agreed to for earthwork/grading outside the property limits that may be necessary for airspace clearance in some locations.

Original Valuation	\$924,400
Expected Sponsor Attorney Fees:	\$975,000
Expert Witness and Appraiser Fees:	<u>\$100,000</u>
Total:	\$1,999,400
Construction Cost Escalation ⁽¹⁾	<u>\$1,112,724</u>
	\$3,112,124

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⁽¹⁾ \$12M worth of planned improvements times 3% construction cost escalation factor for three years.



Jeff Burrows
Ravalli County Commission, Chairman

13 June 2019
Date