

January 7, 2019

Mr. Charles A. Zelle
Commissioner of Transportation
Minnesota Department of Transportation
395 John Ireland Boulevard
Mailstop 100
St. Paul, MN 55155-1899

**RE: PROPOSED FINAL FLYING CLOUD AIRPORT ZONING ORDINANCE
RESPONSE TO INTERIM COMMISSIONER'S ORDER**

Dear Commissioner Zelle:

In compliance with Minn. Stat. §360.065, subd. 2 and in response to the Interim Commissioner's Order dated January 03, 2019, the Flying Cloud Airport (FCM) Joint Airport Zoning Board (JAZB) hereby conveys the proposed final FCM Zoning Ordinance.

On April 13, 2018, the FCM JAZB made its first submittal of the Draft FCM Zoning Ordinance for MnDOT review. **Attachment A** shows the area encompassed by the proposed JAZB Safety Zones A and B per the first submittal.

On September 21, 2018, the FCM JAZB made its second submittal of the Draft FCM Zoning Ordinance for MnDOT review. **Attachment B** shows the area encompassed by the proposed JAZB Safety Zones A and B for per the second submittal.

On December 21, 2018, the Metropolitan Airports Commission, on behalf of the FCM JAZB, submitted supplemental social and economic cost factor information for MnDOT's consideration. This supplemental information is provided in **Attachment C**.


On January 03, 2019, you issued an Interim Commissioner's Order (**Attachment D**) stating that the Draft FCM Zoning Ordinance is approved subject to further JAZB action listed below:

- Amend the Draft FCM Zoning Ordinance to meet state standards on Parcels "X" and "Y" (as defined in the supplemental social and economic cost factor information provided in **Attachment C**).

In response to the Interim Order, the FCM JAZB met on January 07, 2019, reviewed the Interim Order, and approved this revision to the Draft FCM Zoning Ordinance. **Attachment E** shows the area encompassed by the proposed JAZB Safety Zones A and B as revised in response to the Interim Order.

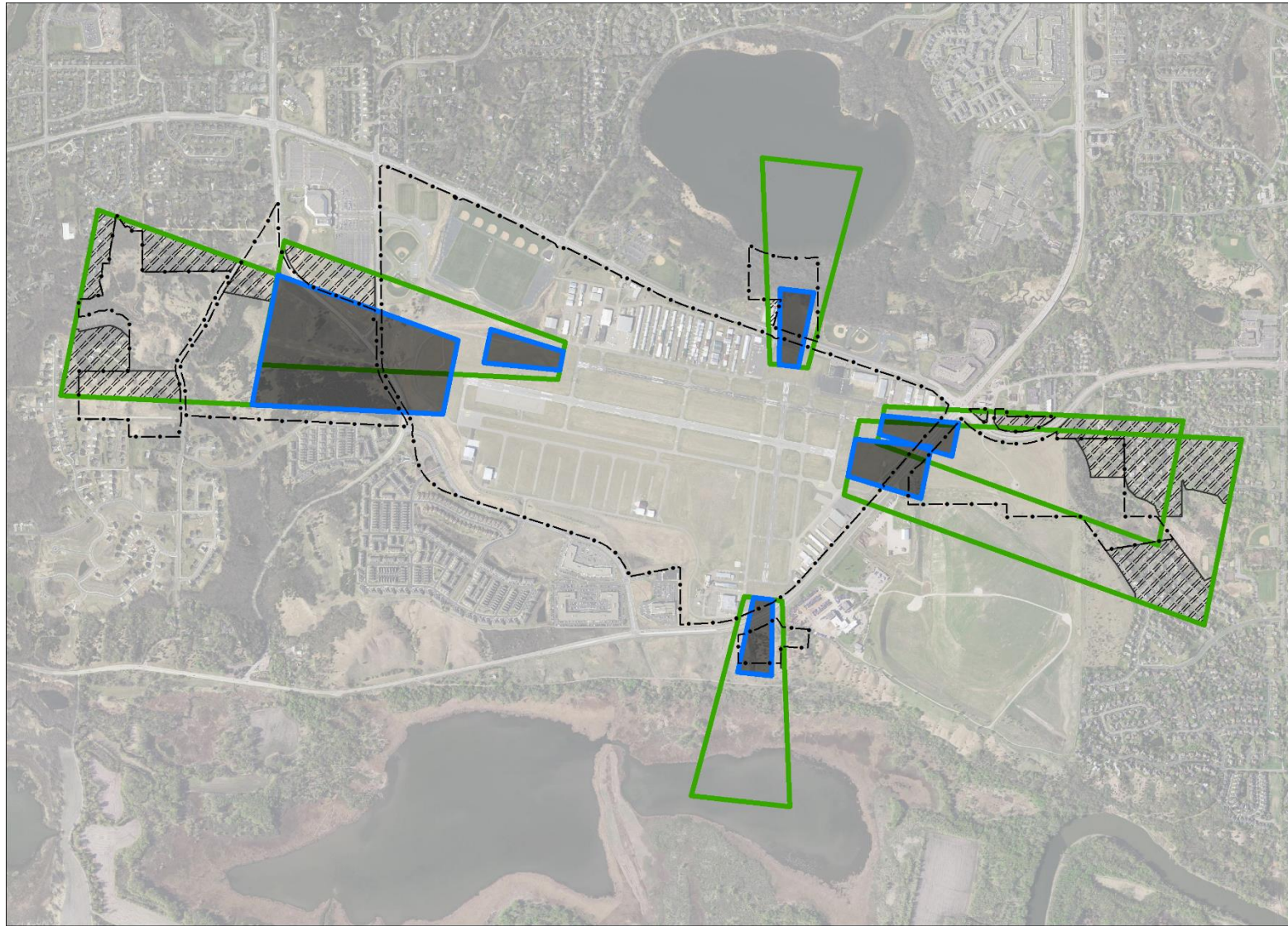
On behalf of the Metropolitan Airports Commission and the cities of Eden Prairie, Chanhassen, Shakopee, I submit this proposed final FCM Zoning Ordinance to you, and respectfully ask for your final approval as required by Minnesota Statutes § 360.065 and your Interim Order.

Sincerely,

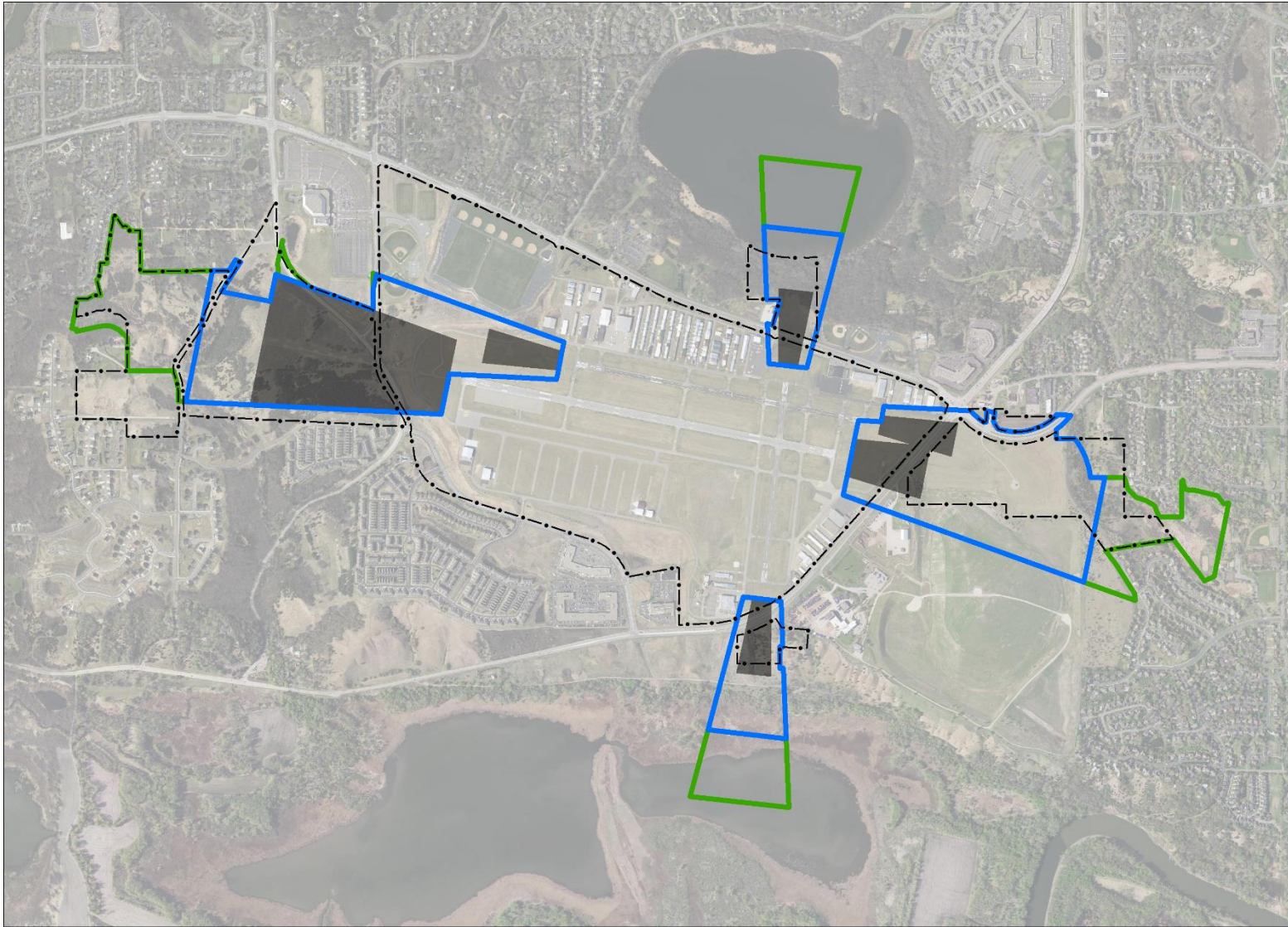


Brad Aho
Chairman
Flying Cloud Airport Joint Airport Zoning Board

Attachment A
First Submittal JAZB Safety Zones A and B



Attachment B
Second Submittal JAZB Safety Zones A and B



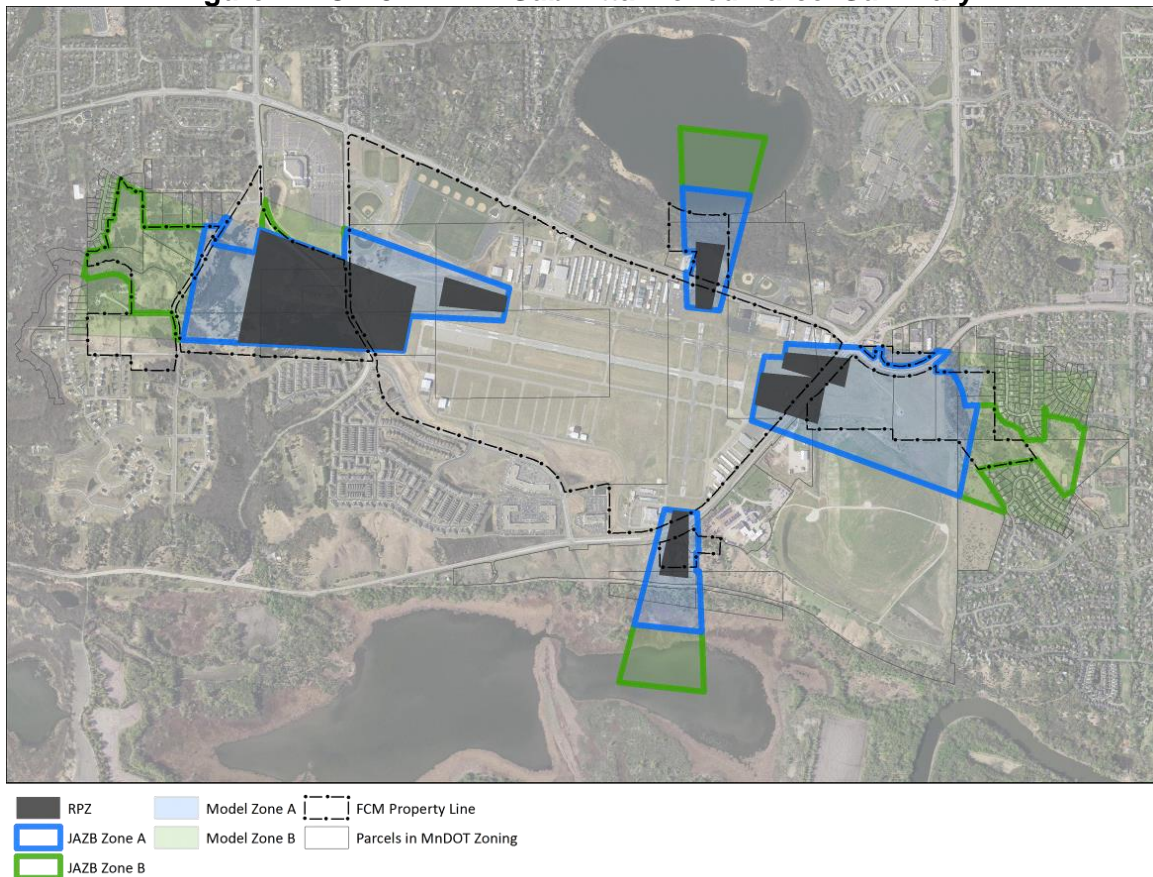
FCM Property Line Runway Protection Zones (RPZ) Zone A Zone B

0 750 1,500 3,000
Feet

Flying Cloud Airport (FCM) Draft Airport Zoning Ordinance Social and Economic Cost Supplemental Factors and Rationale

In determining what minimum airport zoning regulations to adopt, Minnesota State Statutes guide both the MnDOT Commissioner and the local airport zoning authority (JAZB) to consider the social and economic costs of restricting land uses versus the benefits derived from a strict application of the standards of the commissioner (the State's Model Zoning Ordinance). In its 2nd submittal of the Draft FCM Airport Zoning Ordinance, the JAZB modified Safety Zones A and B to include land within MnDOT's Model Zones A and B, excluding designated Occupant Areas (land that is or could likely be developed to accommodate congregations of people in designated safety zones). These changes are described in the JAZB's 2nd submittal, dated September 21, 2018. Parcels within MnDOT Model Zones A and B are shown in **Figure 1**.

Figure 1: FCM JAZB 2nd Submittal Zoned Parcel Summary



The purpose of this supplemental briefing is to document the rationale for excluding the Occupant Area parcels from JAZB Safety Zones A and B.

Summary of Safety/Risk Study

The 2017 Safety/Risk Study confirmed that the accident probability in existing or planned Occupant Areas (shown in Figure 1 of the Supplemental Safety/Risk Analysis) was less than one aircraft accident per 10,000,000 flight operations, or once every 185 years. This showed that a strict application of MnDOT's Model Standards to the Occupant Areas exceeds what is necessary to provide a reasonable level of safety at FCM.

The purpose of the Supplemental Safety/Risk Analysis was to test the technical conclusions supporting the First Submittal Draft FCM Zoning Ordinance in a manner that considered MnDOT's input.

The methodology employed in the Supplemental Safety/Risk Analysis includes consideration of generalized accident location data to avoid an implication of precision, normalized accident location data to account for runway use patterns and the number of data points off each runway end to ensure each location is considered equally, calculation of accident probabilities using geo-spatial analysis, calculation of average accident probabilities in the Occupant Areas and in areas adjacent to Occupant Areas that are located just outside MnDOT's Model Zones A and B ("Occupant Areas Buffer"), application of statistical factors to develop a 95% confidence interval probability range, and comparison of the accident probability range (at 95% confident level intervals) for the Occupant Areas versus the accident probability range for the Occupant Areas Buffer.

The Occupant Areas were compared to the Occupant Areas Buffer because MnDOT's Model Standards do not prescribe site population and building density limitations in the Occupant Areas Buffer or in other areas outside of MnDOT's Model Safety Zones A and B. In other words, MnDOT's Model Standards do not prevent the uses in the Occupant Areas Buffer that are existing or planned in the Occupant Areas.

The Supplemental Safety/Risk Analysis found no evidence that the probability of an aircraft accident within the Occupant Areas is greater than in the Occupant Areas Buffer. Therefore, the FCM JAZB found that there is no safety benefit to restrict land uses within the Occupant Areas when compared to adjacent parcels in the Occupant Areas Buffer.

Summary of Social and Economic Impact

The FCM JAZB also reviewed its consideration of "the uses to which the property to be zoned are planned and adaptable, and the social and economic costs of restricting land uses versus the benefits derived from a strict application of the standards of the Commissioner" as required by Minn. Stat. § 360.066, subd. 1.

The 2017 Economic Impact Analysis shows that implementation of MnDOT's Model Standards versus the FCM JAZB's Second Submittal Draft FCM Zoning Ordinance would result in an estimated loss of 13.4 acres and \$38,000,000 to \$58,000,000 in commercial development, 2.7 acres and \$6,000,000 to \$15,000,000 in residential development, and \$139,000 to \$257,000 in annual property taxes. The combined total development and 20-year aggregated property tax impact of implementing MnDOT's Model Standards versus the FCM JAZB's Second Submittal Draft FCM Zoning Ordinance is approximately \$56,000,000 to \$69,000,000. The 2017 Economic Impact Analysis shows that implementation of MnDOT's Model Standards would result in a loss of employment generation potential of approximately 600 to 1,000 jobs. Implementation of MnDOT's Model Standards could also result in substantial financial costs related to takings claims.

The City of Eden Prairie has included an Economic Competitiveness Plan as part of its Aspire Eden Prairie 2040 Comprehensive Plan. Goals within this plan include:

- Maintain and grow Eden Prairie's diverse economy by retaining and attracting businesses
- Maintain and increase Eden Prairie's competitive advantage in the region
- Promote a sense of community
- Maintain high-quality, healthy living and working environments in all residential and commercial areas of the City

In 2017, the top two industry categories and economic drivers in Eden Prairie were retail and wholesale trade, and professional and business services – representing 50% of all businesses. Allowing viable real estate in the vicinity of Flying Cloud Airport to develop as the market dictates, in lieu of restricting land uses where there is no empirical evidence of an aviation safety benefit, will help to support the City's economic competitiveness goals by providing additional market development opportunities, which will lead to an increased tax base and employment potential.

The Statutory Test

Minnesota law provides that if the MnDOT Commissioner objects to the JAZB's proposed airport zoning regulations on the ground that the proposed regulations do not conform to the standards prescribed by the Commissioner, a JAZB must make the necessary amendments to meet the objections unless the JAZB "demonstrates that the social and economic costs of restricting land uses in accordance with the standards outweigh the benefits of a strict application of the standards." Minn. Stat. § 360.065, subd. 2.

The Second Submittal Draft FCM Zoning Ordinance does not conform to MnDOT's Model Standards by excluding the Occupant Areas.

The social and economic costs of restricting land uses in accordance with MnDOT's Model Standards in the Occupant Areas exceed \$56,000,000 in combined total development and 20-year aggregated property tax impact and a reduction in employment generation potential of 600 jobs, while a strict application of MnDOT's Model Standards in the Occupant Areas provides no safety benefit as shown in the Supplemental Safety/Risk Analysis.

Therefore, the social and economic costs of restricting land uses in accordance with MnDOT's Model Standards outweighs the benefits of a strict application of MnDOT's Model Standards.

Supplemental Factors and Rationale

While the JAZB believes that its findings above are sufficient to pass the statutory test, it offers the following supplemental rationale for excluding Occupant Area parcels from Safety Zones A and B.

Land Area Zoned to MnDOT Model Standard

The table below illustrates that the JAZB proposes to apply MnDOT Model Standards to nearly 95% of MnDOT Model Safety Zone A (the highest priority from a safety perspective), and over half of MnDOT Model Safety Zone B (lesser safety priority allowing low-density development). This results in a combined application of MnDOT Model Standards to nearly 80% of both Model Safety Zones.

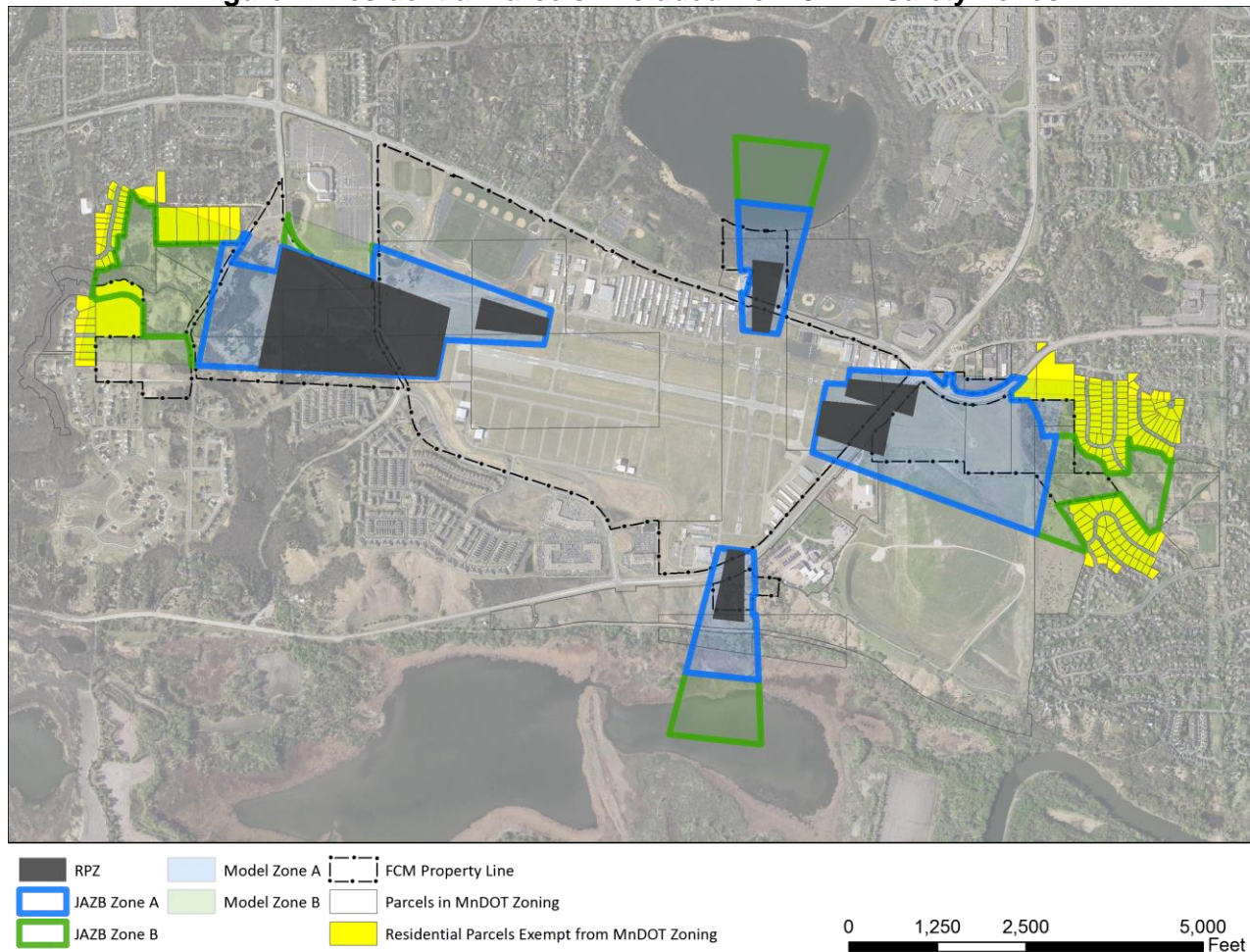
Of MAC-owned property within the MnDOT Model Safety Zones, approximately 92% will comply with the Model Standards.

| Total Safety Zones A & B | Acres |
|-------------------------------------|--------------|
| Model Zone A | 341 |
| Model Zone B | 240 |
| Model Zone A+B | 581 |
| JAZB Zone A | 322 |
| JAZB Zone B | 131 |
| JAZB Zone A+B | 453 |
| Total Zoned Zone A | 94% |
| Total Zoned Zone B | 55% |
| Total Zoned Zone A+B | 78% |

Established Residential Areas

The JAZB proposes to exclude established residential areas from Safety Zones A and B. These established residential areas are shown in **Figure 2**.

Figure 2: Residential Parcels Excluded from JAZB Safety Zones



These established residential areas have the following characteristics:

- 168 developed residential parcels encompassing approximately 72 acres within the MnDOT Model Safety Zones.
- Residential homes on these parcels were constructed between 1954 and 2014, with an average construction date of 1992. Only three homes have been constructed since 2010.
- Six undeveloped residential parcels encompassing approximately 7 acres within the MnDOT Model Safety Zones.
- The underlying city zoning for these parcels is single-family residential in nature, with a combination of R1-22, R1-13.5, and R1-9.5.

The rationale for excluding these established residential areas from JAZB Safety Zones A and B is as follows:

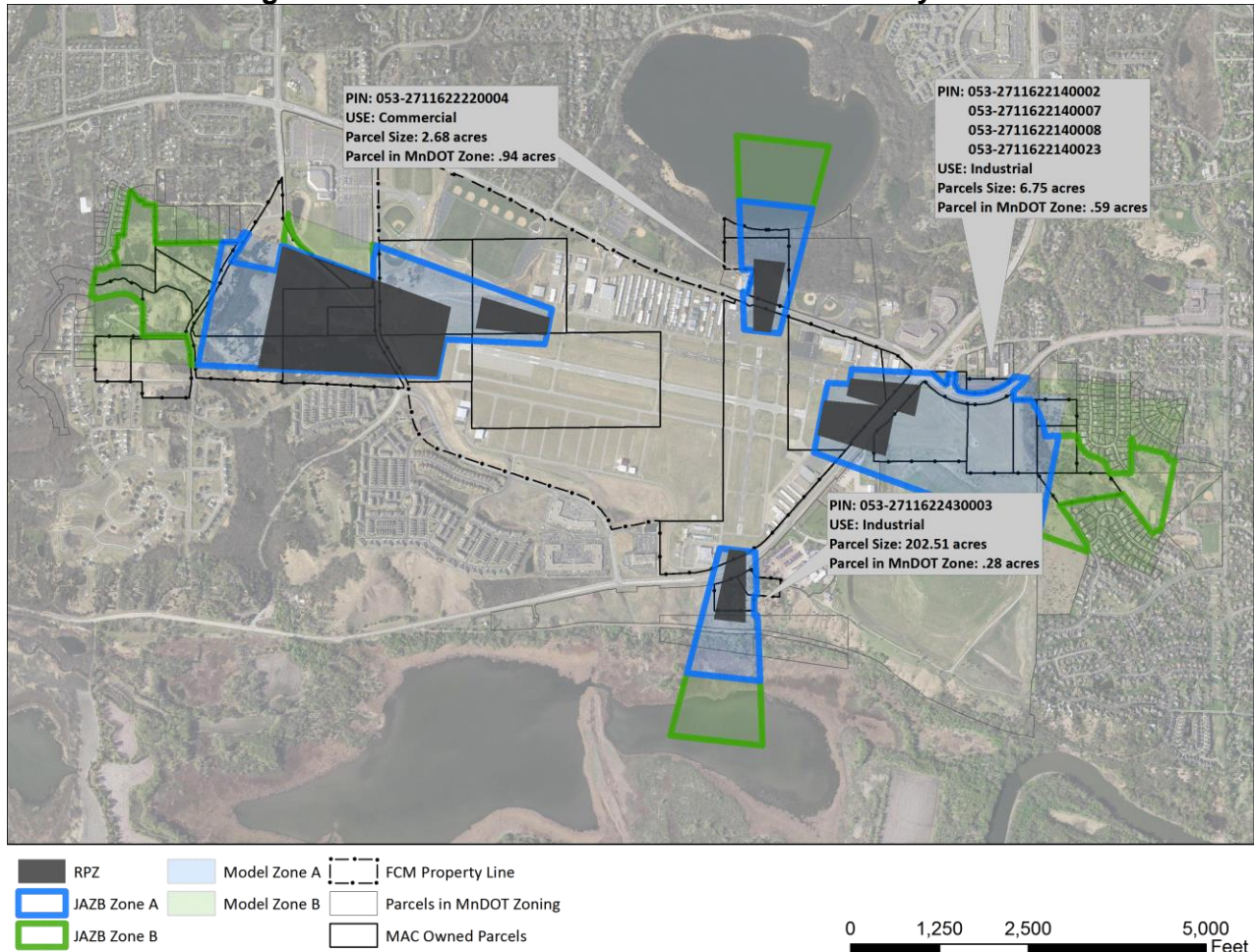
- The residential areas are comprised of established neighborhoods with single lots in an area zoned for single family residences with the predominant land use the same type of residence. The land use pattern in these areas is fixed and unlikely to change (non-adaptable).
- The residential areas are primarily built-out, with only limited opportunity for additional infill development of like lot sizes and housing stock.

- The residential areas are located towards the periphery of the MnDOT Safety Zones, away from the runway centerlines where aircraft accident probability is the greatest.
- MAC holds aviation easements on six residential parcels along the south side of Valley Road that prohibits property subdivision, improvements that increase the footprint of the dwelling or principal structure, and general interference with air navigation.
- Due to these factors, applying the land use restrictions prescribed by MnDOT’s model zoning ordinance would not result in a material or measurable safety benefit to these established residential areas. The land use restrictions would, however, represent a new burden to homeowners in the form of variance requirements for even simple property alterations or improvements. There is also the potential for takings claims from homeowners.
- When residential parcels with established, non-adaptable land are removed from consideration, nearly 90% of the remaining parcels in the MnDOT Model State Safety Zones are proposed to be zoned to the state standard.

Other Excluded Parcels

Three additional parcel areas are proposed to be excluded from the JAZB Safety Zones, as shown on Figure 3.

Figure 3: Other Parcels Excluded from JAZB Safety Zones



The parcel located in the Runway 18 MnDOT Safety Zone is a 2.7 acre privately-owned parcel with an existing commercial use (Green Acres Event Center). This use features the oldest standing barn remaining in the City of Eden Prairie. This parcel is excluded from the JAZB zoning ordinance for several reasons: 1] only 0.94 acres are within MnDOT Model Safety Zone A for Runway 18; 2] the use of the parcel is established and therefore not adaptable; 3] the use is located at the periphery of the

12/21/2018

MnDOT Safety Zone, and 4] the structure is only occupied during scheduled events. Due to these factors, applying the land use restrictions prescribed by MnDOT's model zoning ordinance would not result in a material or measurable safety benefit to this established commercial use as demonstrated in the Supplemental Safety/Risk Analysis. The land use restrictions would, however, have the following social and economic costs: 1] the restrictions would place a new burden on the land which could have a negative economic impact on the land owner and business if property alterations are required; and 2] the restrictions could have a significant social cost by impacting a historic structure in the City of Eden Prairie.

The parcel in the Runway 36 MnDOT Safety Zone is a 202.5 acre parcel owned by the Minnesota Pollution Control Agency and is part of a closed landfill. This parcel is excluded from the JAZB zoning ordinance for several reasons: 1] only 0.28 acres are within MnDOT Model Safety Zone A for Runway 36; 2] the use is located at the periphery of the MnDOT Safety Zone; and 3] use of the parcel will be strictly guided by the City's Closed Landfill Use Plan that identifies reuse options for the property that are largely passive uses with an emphasis on long-term ecological benefits. Due to these factors, applying the land use restrictions prescribed by MnDOT's model zoning ordinance would not result in a material or measurable safety benefit to this established commercial use as demonstrated in the Supplemental Safety/Risk Analysis. The land use restrictions would, however, have social and economic costs by placing a new burden on the land owner.

The parcels in the Runway 28R MnDOT Safety Zone are a 6.75 acre privately-owned group of sub-parcels with existing commercial uses that are immediately adjacent to MAC owned-property on the north side of Pioneer Trail (CSAH 1) that is proposed to be used for non-aeronautical development (Parcel 7, see next section). This parcel is excluded from the JAZB zoning ordinance for several reasons: 1] only 0.59 acres are within MnDOT Model Safety Zone A; 2] the use of the parcel is established and therefore not adaptable; 3] the use is located at the periphery of the MnDOT Safety Zone; and 4] Pioneer Trail (CSAH 1) functions as a natural barrier to the adjoining airport property. Due to these factors, applying the land use restrictions prescribed by MnDOT's model zoning ordinance would not result in a material or measurable safety benefit to this established commercial use as demonstrated in the Supplemental Safety/Risk Analysis. The land use restrictions would, however, have social and economic costs by placing a new burden on the land and business owner if property alternations are required.

MAC Non-Aeronautical Development Parcels

The JAZB proposes to exclude four MAC-owned parcels identified to support non-aeronautical development from Safety Zones A and B. These non-aeronautical development parcels are shown in **Figures 4 and 5**.

The Twin Cities economy has been strong for 2018 and commercial real estate development has followed this trend. MAC's real estate developer believes that demand in Eden Prairie will increase as options for available land decreases and companies/developers look to expand or modernize office/industrial/manufacturing space. Areas adjacent to the Flying Cloud Airport are no exception with the proximity to I-494, Hwy 212, and amenities within Eden Prairie. The close proximity to the airport make these parcels very unique and a positive driver to many businesses. In addition to the airport, the current reconstruction of County Road 61 / Flying Cloud Drive will allow for improved safety and drive times for employees south and west to Chanhassen, Shakopee and beyond. The parcels would be of interest to developers to create a variety of product types for potential users. The proximity to the future Southwest light rail transit (LRT) will also be attractive.

In March 2014, MAC requested from the Federal Aviation Administration (FAA) a release from maintenance obligations for these parcels so that they can be developed as commercial, office, and/or retail use on a long-term lease basis. MAC wishes to lease these parcels on a long term basis to create annual revenue to help fund the on-going operations and maintenance of the airports in addition to capital improvement projects. In MAC's effort to comply with Federal requirements to make this airport and all of the MAC-owned reliever airports more self-sufficient, these parcels offer a great

opportunity for long-term, high revenue, generation. MAC has discussed these development parcels with the City of Eden Prairie. MAC has agreed to bring any development plans to the City for their concurrence.

Beneficial considerations of the proposed use of these parcels to generate non-aeronautical revenues include:

- Use of these parcels for revenue-generating development or sale in no way impacts the use or operation of the airport;
- Airport users benefit from having commercial and retail development nearby for their use and convenience;
- MAC retains ownership of the property, or will retain easements to protect the airspace of the airport. Any parcels sold will be for the fair market value with appropriate easements in place.
- MAC has approval authority over the development as part of the lease process;
- Development creates a long term revenue stream for the Flying Cloud Airport and other MAC-owned Reliever Airports;
- Airport users benefit from the increased revenue stream for the airport;
- The distance of the parcels from the airfield eliminates opportunities for aeronautical use;
- Recent pressure to make the Reliever Airports as self-sufficient as possible, places a strong emphasis on developing revenue generating opportunities. These revenues will provide a funding source for projects that maintain the condition and quality of the airport, including airfield pavements, lighting systems, security and wildlife management.

MAC indicates that parcels of this type, if sold, could produce revenues in the \$5.00 to \$10.00 per square foot range. Leasing the property will assure that MAC maintains control over the property as well as what type of development occurs. Also, annual rental amounts should exceed the sale cost in 10 – 20 years for each of the parcels. Over a typical 50-year lease term, MAC estimates that these parcels could generate nearly \$27,000,000 in lease revenue under the proposed JAZB zoning scenario. Under the State Model zoning scenario, the 50-year lease revenue potential would drop to approximately \$4,000,000, a difference of an estimated \$23,000,000. This lease revenue will be very important to MAC as part of its strategy to improve self-sufficiency and sustainability of both Flying Cloud Airport and the entire Reliever system.

Figure 4: MAC Non-Aeronautical Development Parcels (Runway 10 End)

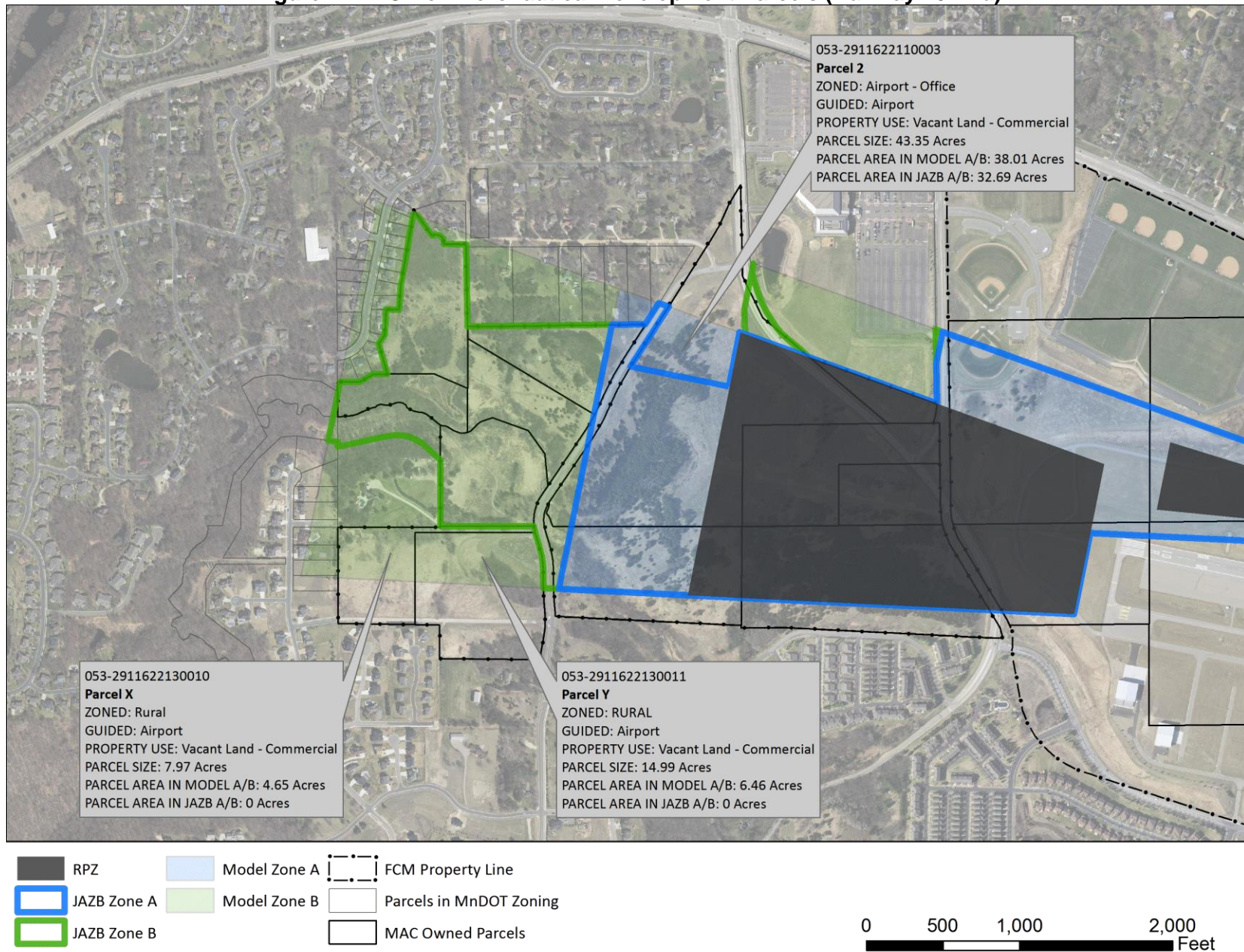
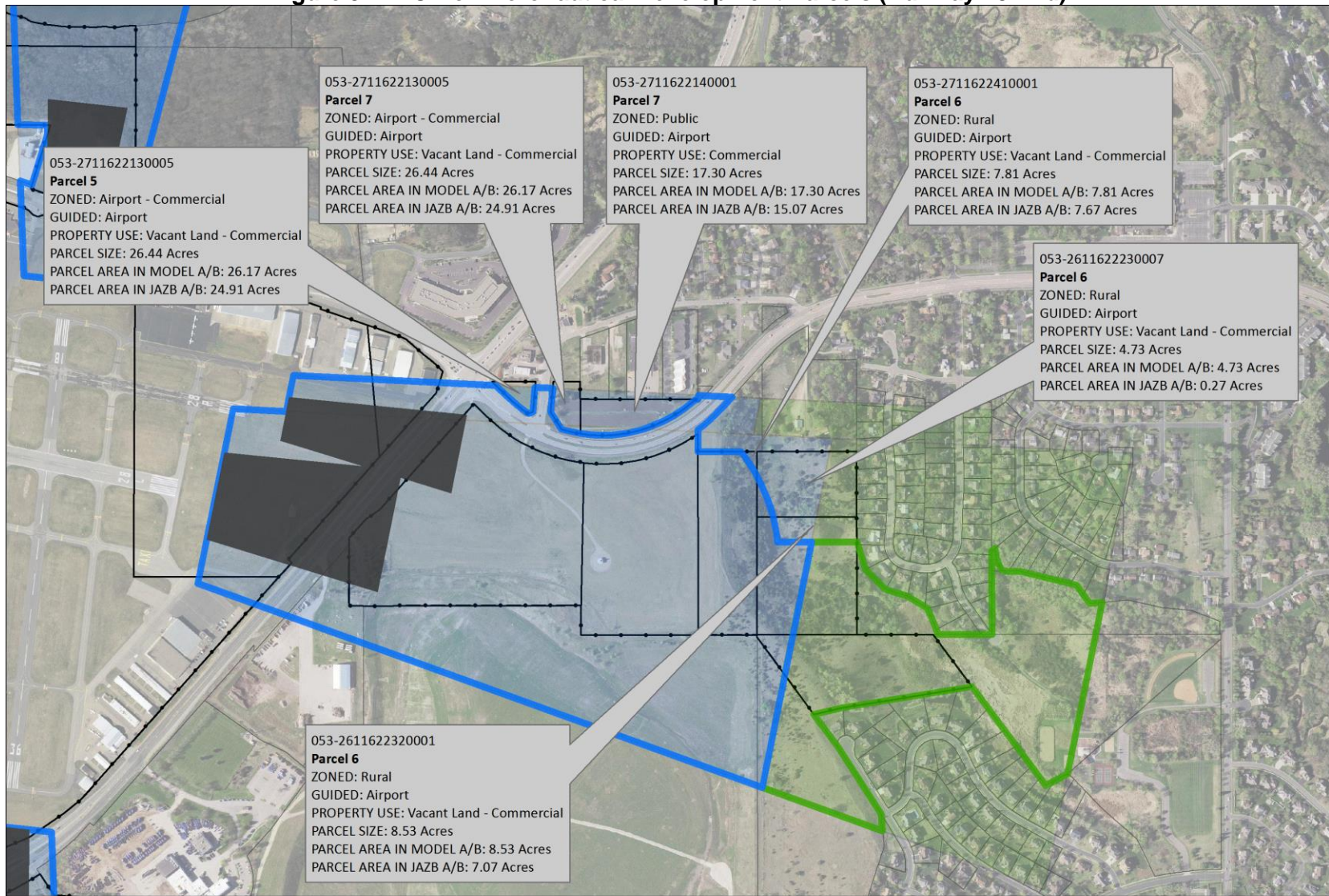
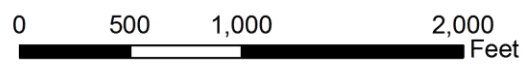


Figure 5: MAC Non-Aeronautical Development Parcels (Runway 28 End)



- RPZ
- JAZB Zone A
- JAZB Zone B
- Model Zone A
- Model Zone B
- FCM Property Line
- Parcels in MnDOT Zoning
- MAC Owned Parcels



Additional information about each non-aeronautical development parcel is provided on the following pages.

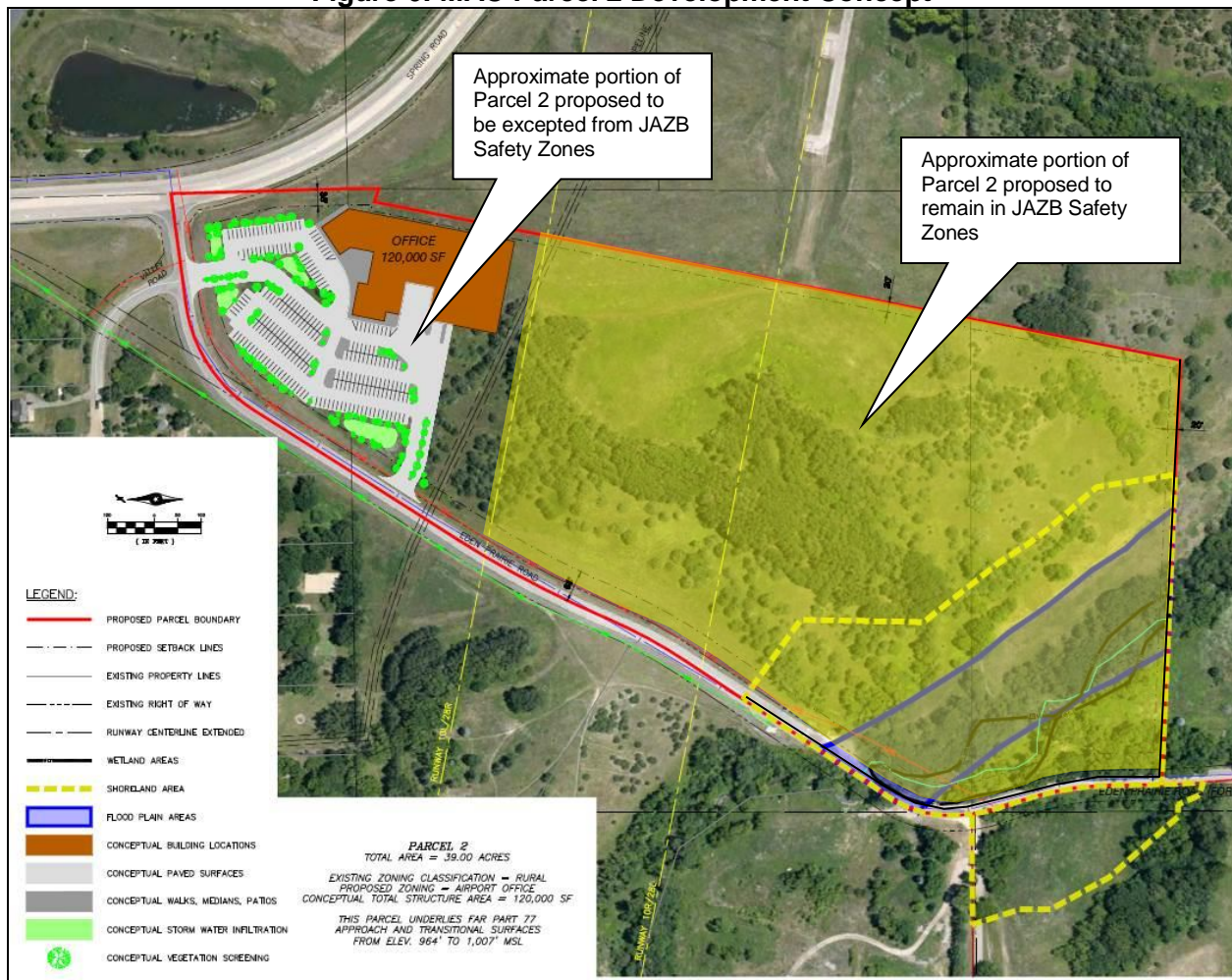
Parcel 2 - 38.98 acres east of Eden Prairie Road

This parcel was acquired by MAC in 2002. MAC funds were used for the acquisition; no federal funds were used. The primary purpose for acquisition was to protect runway approach areas. A conceptual layout for Parcel 2 is shown in **Figure 6**.

The parcel has been vacant land in the past. It has a wetland area and flood plain area on the southern portion that will not be disturbed. This parcel is also characterized by steep slopes that make much of the parcel undesirable for development. The likely use for this land would be an office building located in the northern third of the parcel. Office development is generally more compatible with an airport environment than some other uses, such as residential, due to the installation of fire suppression systems, use of more robust building materials leading to increased sound attenuation, and occupancy patterns. The conceptual layout of the development shown below is subject to change.

MAC has completed an environmental study for this parcel, including wetland delineation, a survey for threatened or endangered plants, and a phase 1 environmental review. While MAC has requested a concurrent use for the entire parcel, an easement will be identified and recorded over the portion of the parcel which contains wetlands.

Figure 6: MAC Parcel 2 Development Concept



From a zoning perspective, only 5.3 acres of this parcel have been identified as a developable Occupant Area to be excluded from the JAZB Safety Zones due to the factors noted above. Part of the

parcel is outside of the MnDOT Safety Zones, while other portions are proposed for inclusion in JAZB Zones A and B. The excluded portion of the parcel is adjacent to the edge of Safety Zone A, away from the Runway 10R/28L centerline where aircraft accident probability is the greatest.

This parcel has been zoned as Airport-Office by the City of Eden Prairie. Hennepin County lists the use of the parcel as "Vacant Land – Commercial". The adjacent land uses include low-density single-family residential parcels (R1-22 zoning) to the north and west, and the Grace Church campus to the east.

Development of this parcel will in no way impact the use or operation of the airport; the distance from the airfield eliminates opportunities for aeronautical use; and MAC will retain sufficient control and rights to the property to protect airspace.

Parcel 5 - 0.45 acres east corner of the intersection Pioneer Trail and Flying Cloud Drive

This parcel was acquired by MAC in 1960. It was acquired through the use of federal funds (FAAP 9-21-059-6108 8/1960) as part of a larger 28-acre parcel. This sub-parcel was isolated from the adjoining property when the County rebuilt the adjacent intersection of Flying Cloud Drive and Pioneer Trail (CSAH 1). Pioneer Trail (CSAH 1) functions as a natural barrier to the adjoining airport property.

It is located in the south quadrant of the Pioneer Trail – Flying Cloud Drive intersection. The land was farm land before Pioneer Trail was constructed. The size of this parcel limits the development. Possible development or sale could include convenience store parking or storm water infiltration. As part of the concurrent use or sale of this parcel an easement will be established to protect the airspace of the airport.

From a zoning perspective, the entire parcel is identified as a developable Occupant Area. The parcel is adjacent to the edge of Safety Zone A, away from the Runway 10L/28R centerline where aircraft accident probability is the greatest.

This parcel has been zoned as Airport-Commercial by the City of Eden Prairie. Hennepin County lists the use of the parcel as "Vacant Land – Commercial". The adjacent land use to the north is commercial in nature and is occupied by a convenience store.

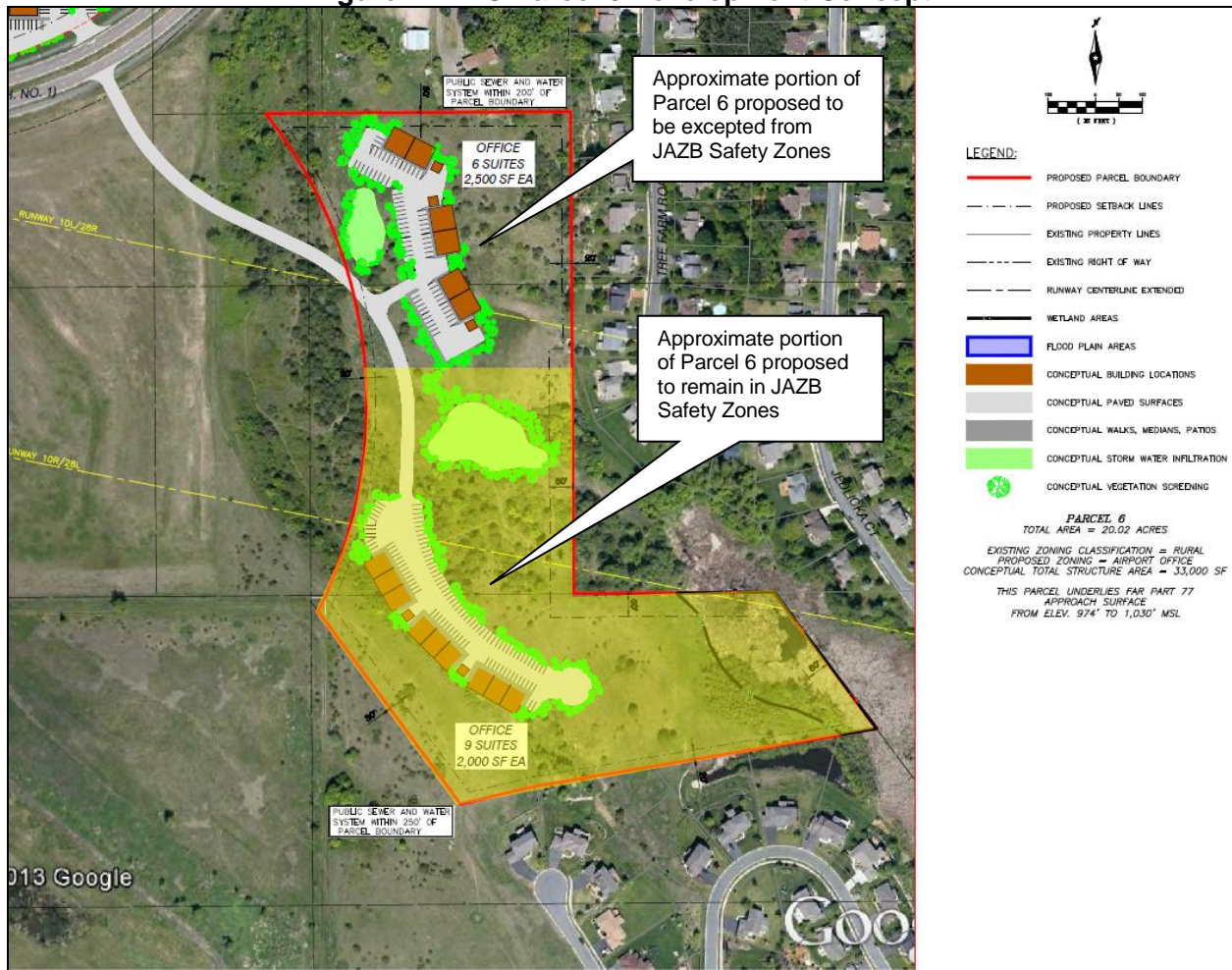
Development of this parcel will in no way impact the use or operation of the airport; the distance from the airfield eliminates opportunities for aeronautical use; and MAC will retain sufficient control and rights to the property to protect airspace.

Parcel 6 - 20.02 acres south of Pioneer Trail and east of the VOR site

This parcel was acquired by MAC in 1978. MAC funds were used for the acquisition; no federal funds were used. A conceptual layout for Parcel 6 is shown in **Figure 7**. However, please note that only the northern portion of the site is proposed to be excluded from airport zoning as it appears that development on the southern portion would be compatible with Model Zone B land use restrictions prescribed by MnDOT.

The parcel has been vacant land in the past. There is a small wetland area in the southeast corner and the parcel has steep slopes. The only vehicle access to the site is from Pioneer Trail which is approximately 200 feet away. Likely development on this site would be low density office space that would be compatible with the adjacent residential area. MAC has completed an environmental study for this parcel, including wetland delineation, a survey for threatened or endangered plants, and a phase 1 environmental review. While MAC has requested a concurrent use for the entire parcel, an easement will be identified and recorded over the portion of the parcel which contains wetlands.

Figure 7: MAC Parcel 6 Development Concept



From a zoning perspective, only 6.1 acres of this parcel have been identified as a developable Occupant Area due to the factors noted above. The remainder of the parcel is proposed for inclusion in JAZB Zones A and B.

This parcel has been zoned as Rural by the City of Eden Prairie. Hennepin County lists the use of the parcel as “Vacant Land – Commercial”. The adjacent land use is single-family residential (R1-13.5) to the east.

Development of this parcel will in no way impact the use or operation of the airport; the distance from the airfield eliminates opportunities for aeronautical use; and MAC will retain sufficient control and rights to the property to protect airspace.

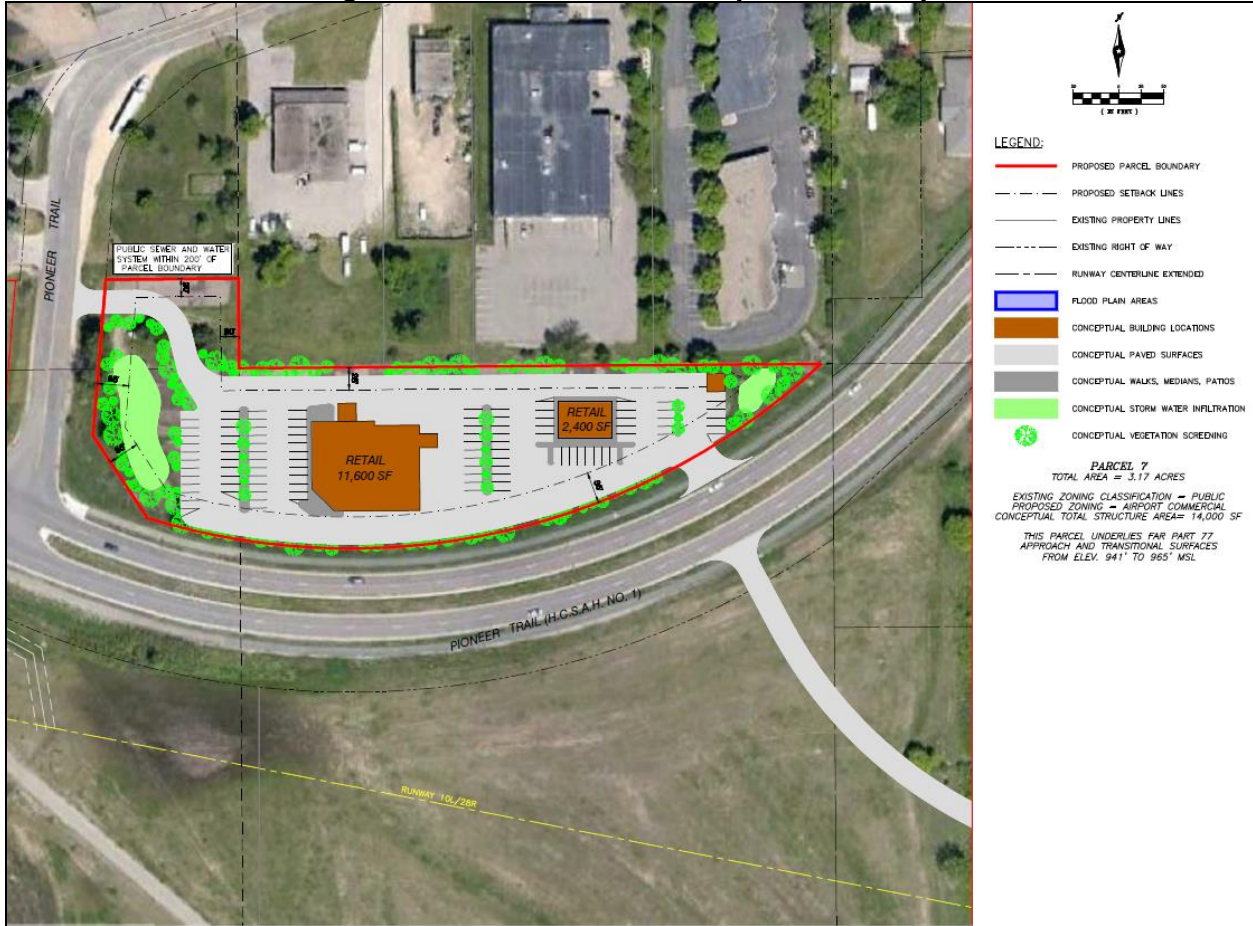
Parcel 7 - 1.10 acres north of Pioneer Trail and just east of Parcel 5

This parcel was acquired by MAC in 1960. It was acquired through the use of federal funds (FAAP 9-21-059-6108 8/1960) as part of two larger parcels (28 acres and 20 acres, respectively). This sub-parcel was isolated from the adjoining properties when the County rebuilt the adjacent intersection of Flying Cloud Drive and Pioneer Trail (CSAH 1). Pioneer Trail (CSAH 1) functions as a natural barrier to the adjoining airport property.

The parcel was farmland before the construction of Pioneer Trail. Parcel 7 is an excellent location for development. It is located along Pioneer Trail and has access from the road just to the west. This parcel could support retail and/or commercial development. As part of the concurrent use or sale of this parcel an easement will be established to protect the airspace of the airport.

A conceptual layout for Parcel 7 is shown in Figure 8.

Figure 8: MAC Parcel 7 Development Concept



From a zoning perspective, the entire parcel is identified as a developable Occupant Area. The parcel is adjacent to the edge of Safety Zone A, away from the Runway 10L/28R centerline where aircraft accident probability is the greatest.

A portion of this parcel has been zoned as Airport-Commercial by the City of Eden Prairie, with the remaining portion zoned as “Public”. Hennepin County lists the use of the parcel as “Vacant Land – Commercial” and “Commercial”. The adjacent land use to the north is commercial and industrial in nature.

Development of this parcel will in no way impact the use or operation of the airport; the distance from the airfield eliminates opportunities for aeronautical use; and MAC will retain sufficient control and rights to the property to protect airspace.

Parcels X and Y

These parcels were acquired by MAC in 2000 and 2001. MAC funds were used for the acquisition; no federal funds were used. The primary purpose for acquisition was to protect runway approach areas. These parcels encompass 11.1 acres on the west side of FCM with an “undefined” land use as their ultimate disposition are unknown at this time. It is included in the Draft Zoning Ordinance as an Occupant Area, and evaluated in the Economic Impact Analysis in two separate cases – one for a Residential development scenario, and another as a Commercial/Office development scenario.

These parcels have been zoned as Rural by the City of Eden Prairie. Hennepin County lists the use of the parcel as “Vacant Land – Commercial”. The adjacent land uses are residential in nature. MAC

would prefer to retain flexibility in developing these parcels to their highest and best use in the future. However, these parcels reflect a lower development priority for MAC than Parcels 2, 5, 6, and 7 and MAC has not prepared conceptual development layouts. Near-term development of these parcels is unlikely.

Development of these parcels will in no way impact the use or operation of the airport; the distance from the airfield eliminates opportunities for aeronautical use; and MAC will retain sufficient control and rights to the property to protect airspace.

Summary

The FCM JAZB followed the statutory requirements in determining what airport zoning regulations to adopt by considering, among other things, “the character of flying operations expected to be conducted at the airport, the location of the airport, the nature of the terrain within the airport hazard area, the existing land uses and character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable, and the social and economic costs of restricting land uses versus the benefits derived from a strict application of the standards of the commissioner.” See Minn. Stat. § 360.066, subd. 1.

The Second Submittal Draft FCM Zoning Ordinance achieves a reasonable level of safety in accordance with the Airport Zoning Statute.

The FCM JAZB has demonstrated that the social and economic costs of restricting land uses in accordance with MnDOT’s Model Standards outweigh the benefits of a strict application of MnDOT’s Model Standards, as required by Minn. Stat. § 360.065, subd. 2.

**STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION**

IN THE MATTER OF:

**Docket No. 190
Order No. 622**

The approval of zoning regulations for
the Flying Cloud Airport

**FINDINGS, CONCLUSIONS AND
INTERIM ORDER**

INTRODUCTION

Pursuant to Minnesota Statutes section 360.061 et seq., this matter is before the Commissioner of Transportation (“Commissioner”) on the application of the Flying Cloud Joint Airport Zoning Board (“JAZB”) for approval of its Flying Cloud Airport Zoning Ordinance.

Based on a review of the entire file and of all submissions, the Commissioner hereby Finds, Concludes, and Orders as follows:

FINDINGS OF FACT

1. The JAZB is a duly organized legal body operating pursuant to Minn. Stat. § 360.063. It represents the Metropolitan Airports Commission and the communities with interest in zoning the Flying Cloud Airport.
2. Pursuant to Minn. Stat. § 360.065, the JAZB submitted the proposed Flying Cloud Airport Zoning Ordinance dated September 13, 2018, to the Commissioner.
3. The JAZB provided information showing that it held a public hearing for the proposed Flying Cloud Airport Zoning Ordinance on February 27, 2018, at which parties in interest and citizens had an opportunity to be heard. Notice of this hearing was provided as required by Minn. Stat. § 360.065, subd. 1.
4. Notice of the hearing was sent by mail to each political subdivision in which property affected by the regulations is located.
5. Notice of the hearing was sent by mail at least 15 days before the hearing to persons owning land proposed to be included in Safety Zone A or B as provided in the rules of the Department of Transportation and to persons or municipalities that had previously requested such notice.
6. A copy of the notice and a list of the owners and addresses to which the notice was sent was attested to by the responsible person and made a part of the records of the proceedings.

7. The proposed Flying Cloud Airport Zoning Ordinance was made available for public comment from February 12, 2018, to March 14, 2018.
8. On June 11, 2018, the Commissioner notified the JAZB that he objected to the proposed airport zoning ordinance because it departed from the Commissioner's Standards in the following ways:
 - a. "Safety Zone A is reduced in size from the state standard."
 - b. "Safety Zone B does not restrict the density of populations or the ratio of site area to building plot areas described in state standards."
 - c. "Areas identified as "Permitted Residential Areas" in the ordinance are exempted from Zone A and B restrictions. This is a departure from standards. The analogous term within state standards is an 'established residential neighborhood' that must have existed on January 1, 1978."
9. The Commissioner informed the JAZB that it could either revise and resubmit the ordinance in response to the objection, or pursuant to Minn. Stat. § 360.065, Subd. 2, provide information to demonstrate that the social and economic costs of restricting land uses in accordance with the standards outweigh the benefits of a strict application of the standards.
10. The JAZB has provided an amended ordinance for approval that meets 78% of the Commissioner's Standards for Zones A and B for all runways. The ordinance meets 94% by area of the Commissioner's Standards for Zone A for all runways and 55% by area of the Commissioner's Standards for Zone B.
11. Much of the area within Standard Safety Zones A and B omitted from the proposed ordinance is land that is fully developed into residential or commercial development. This land is not further "guidable" by zoning and the additional safety benefit of zoning these areas to Commissioner's Standards is minimal. When these areas are added to those meeting Standards, the area not zoned to Standards is approximately 15% of Zones A and B for all runways.
12. Minnesota Statutes direct the Commissioner, when evaluating the reasonableness of a proposed ordinance, to consider, among other things, "the existing land uses and the character of the neighborhood around the airport, the uses to which the property to be zoned are planned and adaptable, and the social and economic costs of restricting land uses versus the benefits derived from a strict application of the standards of the commissioner."
13. A portion of the land comprising the 15% Standards deficit includes a number of MAC owned parcels identified below:
 - a. Parcel 2: is a parcel in Standard Zone A identified by the MAC as planned and adaptable to office space for revenue generation to help sustain the airport. This use includes additional safety mitigation when compared with other uses such as

residential due to the use of fire suppression systems and more robust construction materials.

- b. Parcel 5: is less than a half acre. It is separated from the rest of Zone A by Pioneer drive and is more similar to the adjacent commercial uses. It is most likely to be used as additional parking for the existing gas station (parking is expressly allowed by statute in Zone A) or storm water infiltration.
 - c. Parcel 6: is east of the airport and identified to be planned and adaptable to low density office space. Only a portion of this parcel is to be omitted from standards.
 - d. Parcel 7: is approximately an acre in size, located at the periphery of Zone A across Pioneer Drive. Pioneer Drive acts as a natural barrier making this parcel more adaptable to the adjacent commercial land uses than to Zone A.
 - e. Parcels X and Y: encompass just over 11 acres to the west of the airport. There are no current plans to develop these parcels. They could be commercial or residential in nature.
14. MnDOT does not generally support developing parcels that have been acquired and dedicated to aeronautical use located in Zones A and B.

CONCLUSIONS

1. Adoption of the proposed Flying Cloud Airport Zoning Ordinance is necessary for the future operations of the airport. The JAZB demonstrated it made a bona fide effort to comply with the procedural requirements of Minn. Stat. § 360.065, subd. 1, prior to the submittal of the proposed Flying Cloud Airport Zoning Ordinance.
2. There exists no specific and definitive statutory or rule direction on the method by which to quantitatively analyze the balancing of “social and economic costs” and strict application of the prescribed standards, thus the Commissioner must consider each non-standard proposed zoning ordinance on a case-by-case basis.
3. Absent such direction, the Commissioner and the Department sought to exercise reasonable and prudent judgment on the matter, considering the prescribed standards and requiring the JAZB to demonstrate that the social and economic costs of restricting land uses outweigh the benefits of strict application of the standards.
4. When considering the character of the neighborhood surrounding the airport, the uses to which the property to be zoned are planned and adaptable, and the benefits derived by strict application of the Standards of the Commissioner, a departure from strict application of the standards is reasonable for this airport.
5. Based on these findings, I conclude that the Flying Cloud Joint Airport Zoning Board has demonstrated that the social and economic costs of restricting land use in accordance with the standards outweigh the benefits of a strict application of the standards for non-MAC owned parcels and for MAC-owned Parcels 2, 5, 6, and 7.
6. The JAZB failed to demonstrate that the social and economic costs of restricting land use in

accordance with the standards outweigh the benefits of a strict application of the standards for Parcels X and Y. It is most expedient for the JAZB to amend the proposal to meet state standards on these parcels.

Based upon the foregoing Findings and Conclusions, the evidence contained in the record, and the applicable law, the Commissioner of the Department of Transportation issues the following:

INTERIM ORDER

The proposed Flying Cloud Airport Zoning Ordinance is hereby approved subject to further JAZB action as indicated in Conclusion Number 6 above. Once this action is taken, this order will be finalized. This interim order is valid for 90 days.

**BY ORDER OF THE COMMISSIONER
OF TRANSPORTATION**

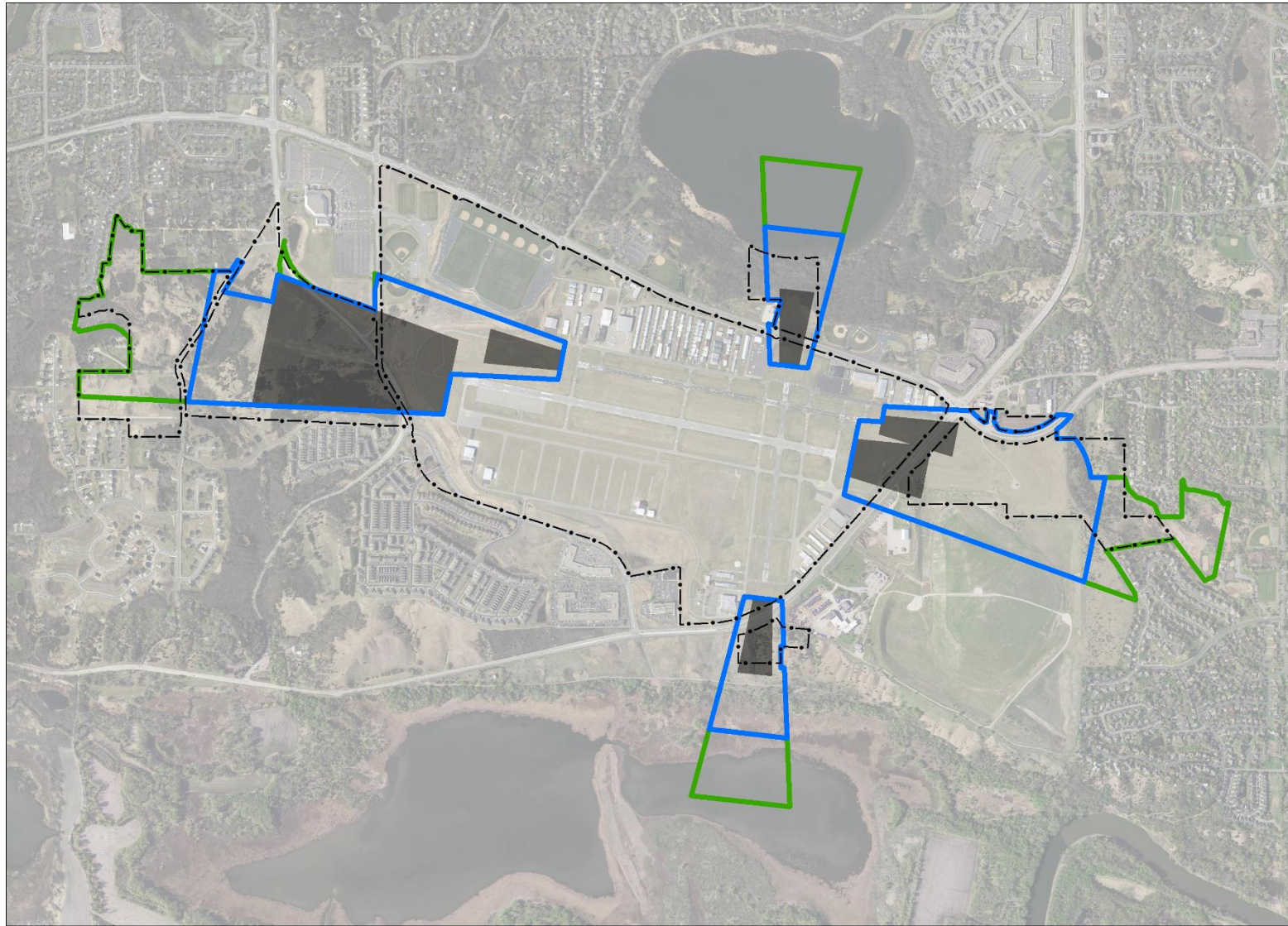


Charles A. Zelle
Commissioner
Minnesota Department of Transportation

DATE:

1-3-19

Attachment E
Proposed Final JAZB Safety Zones A and B in Response to Interim Commissioner's Order



FCM Property Line Runway Protection Zones (RPZ) Zone A Zone B

0 750 1,500 3,000
Feet