

Senator Jungbauer introduced--

S.F. No. 79: Referred to the Committee on **Transportation**

1 A bill for an act

2 relating to airports; establishing airport land use  
3 commissions; requiring the development and adoption of  
4 comprehensive airport land use plans; providing duties  
5 and powers; creating a task force; requiring a report;  
6 proposing coding for new law in Minnesota Statutes,  
7 chapter 360.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

9 Section 1. [360.0715] [AIRPORT LAND USE COMMISSION.]

10 Subdivision 1. [ESTABLISHMENT.] By January 15, 2008, every  
11 county in which there is located an airport which is served by a  
12 scheduled airline shall establish an airport land use  
13 commission. Every county in which there is located an airport  
14 which is not served by a scheduled airline, but is operated for  
15 the benefit of the general public, shall establish an airport  
16 land use commission by January 15, 2008, except that the board  
17 of commissioners of a county may, by April 15, 2007, after  
18 consultation with the appropriate airport operators and affected  
19 local entities and after a public hearing, adopt a resolution  
20 finding that there are no noise, public safety, or land use  
21 issues which require the creation of a commission and that  
22 proper airport land use planning can be accomplished by an  
23 appropriately designated body, and declaring the county exempt  
24 from this requirement. The board of commissioners must, after  
25 adopting the resolution, transmit a copy of it to the  
26 commissioner.

1        Subd. 2. [MEMBERSHIP.] (a) Each commission under this  
2 section shall consist of seven members to be selected as follows:

3        (1) two persons representing the cities in the county,  
4 appointed by a city selection committee comprised of the mayors  
5 of all the cities within that county, except that if there are  
6 any cities contiguous or adjacent to the airport, at least one  
7 representative shall be appointed therefrom;

8        (2) two persons representing the county, appointed by the  
9 county board of commissioners;

10       (3) two persons having expertise in aviation, appointed by  
11 a selection committee comprised of the managers of the public  
12 airport located within the county; and

13       (4) one person representing the general public, appointed  
14 by the commissioner.

15       (b) Public officers, whether elected or appointed, may be  
16 appointed and serve as members of the commission during their  
17 terms of public office.

18       (c) A person "having expertise in aviation" means a person  
19 who, by way of education, training, business, experience,  
20 vocation, or avocation has acquired knowledge of and familiarity  
21 with the function, operation, and role of airports, or is an  
22 elected official of a local agency which owns or operates an  
23 airport.

24       Subd. 3. [TERMS; COMPENSATION; OPERATION.] Members of the  
25 commission shall be appointed for a term of four years. The  
26 commission shall select among its members one person to serve as  
27 chair. Compensation of members, if any, shall be determined by  
28 the county board of commissioners. The county board shall  
29 provide necessary staff and administrative support to the  
30 commission. The commission shall not employ any personnel  
31 either as employees or independent contractors without approval  
32 of the county board of commissioners.

33       Subd. 4. [MEETINGS.] The commission shall meet at the call  
34 of the chair or at the request of a majority of commission  
35 members. A majority of the commission members shall constitute  
36 a quorum. No action shall be taken by the commission except by

1 a vote on the record of a majority of the full membership. A  
2 member of the commission may not participate in or vote on a  
3 decision of the commission relating to a matter in which the  
4 member has either a direct or indirect financial interest or a  
5 conflict of interest as described in section 10A.07.

6 Subd. 5. [POWERS AND DUTIES.] (a) The commission has the  
7 following powers and duties:

8 (1) to assist local agencies in ensuring compatible land  
9 uses in the vicinity of all new airports and the vicinity of  
10 existing airports to the extent that the land in the vicinity of  
11 those airports is not already devoted to incompatible uses;

12 (2) to coordinate planning at the state, regional, and  
13 local levels to provide for the orderly development of air  
14 transportation, and protecting the public health, safety, and  
15 welfare;

16 (3) to prepare an airport land use plan under subdivision  
17 6; and

18 (4) to review the plans, regulations, and other actions of  
19 local agencies and airport operators.

20 (b) The powers of the commission under this subdivision  
21 shall in no way be construed to give the commission jurisdiction  
22 over the operation of any airport.

23 Subd. 6. [PLAN.] (a) The commissioner shall develop and  
24 implement a program to provide training and development in, and  
25 establish standards for, airport land use planning. The program  
26 must include:

27 (1) the establishment of a process for the development and  
28 adoption of comprehensive land use plans;

29 (2) the development of criteria for determining airport  
30 land use planning boundaries;

31 (3) the identification of essential elements which should  
32 be included in land use plans, such as height restrictions on  
33 buildings, specification of land use, development density, and  
34 building standards, including soundproofing adjacent to  
35 airports, within the planning area; and

36 (4) appropriate criteria and procedures for reviewing

1 proposed development and determining whether proposed  
2 developments are compatible with the airport use.

3 (b) The commissioner shall provide formal courses or  
4 training programs, sponsor seminars and workshops, and publish  
5 and make available informational materials.

6 (c) Each airport land use commission shall formulate,  
7 adopt, or amend a comprehensive airport land use plan guided by  
8 the information prepared and updated by the commissioner under  
9 this subdivision. A comprehensive airport land use plan must  
10 provide for the orderly growth of the airport and the area  
11 surrounding the airport that will safeguard the public safety,  
12 health, and welfare. The plan must include and be based on a  
13 long-range master plan or an airport layout plan, as determined  
14 by the commissioner, that reflects the anticipated growth of the  
15 airport during at least the next 20 years. A commission must  
16 submit to the commissioner one copy of the plan and each  
17 amendment to the plan.

18 Subd. 7. [REVIEW.] (a) Until a commission adopts a  
19 comprehensive land use plan, a municipality, county, or joint  
20 airport zoning board must submit all actions, regulations, and  
21 permits within the vicinity of a public airport to the  
22 commission for review and approval. Before review or approval,  
23 the commission must give reasonable public notice and  
24 opportunity for a hearing. For purposes of this subdivision,  
25 "vicinity" means land which will be included or reasonably could  
26 be included within the plan.

27 (b) If the commission disapproves an action, regulation, or  
28 permit, the commission shall notify the municipality, county, or  
29 joint airport zoning board. The municipality, county, or joint  
30 zoning board may overrule the commission by a two-thirds vote of  
31 its governing body. If a municipality, county, or joint airport  
32 zoning board overrules the commission, that action shall not  
33 relieve the municipality, county, or joint airport zoning board  
34 from further compliance with this section, after the commission  
35 adopts the comprehensive airport land use plan.

36 Subd. 8. [ALTERNATIVE REQUIREMENTS.] (a) If a county board

1 of commissioners adopts a resolution that a commission is not  
2 formed under subdivision 1, the county board must, subject to  
3 the review and approval of the commissioner:

4 (1) adopt processes for the preparation, adoption, and  
5 amendment of the comprehensive airport land use plan for each  
6 airport within the county;

7 (2) adopt processes for the notification of the general  
8 public, landowners, interested groups, and other public agencies  
9 regarding the preparation, adoption, and amendment of the  
10 comprehensive airport land use plans; and

11 (3) designate the agency that shall be responsible for the  
12 preparation, adoption, and amendment of the comprehensive  
13 airport land use plan.

14 (b) The commissioner shall review the processes adopted  
15 under paragraph (a) and shall approve them if the commissioner  
16 determines that the processes:

17 (1) result in the preparation, adoption, and implementation  
18 of comprehensive airport land use plans in a reasonable period  
19 of time;

20 (2) rely on the height, use, noise, safety, and density  
21 criteria that are compatible with airport operations, as  
22 established by guidelines, rules, or standards prescribed by the  
23 commissioner in subdivision 6, and any applicable federal  
24 aviation regulations; and

25 (3) provide adequate notice to the general public,  
26 landowners, interested groups, and other public agencies to  
27 review and comment on the processes.

28 (c) If the county board of commissioners fails to comply  
29 with the requirements of this subdivision, then the plan and  
30 amendments shall not be considered adopted and a commission  
31 shall be established within 90 days of the determination of  
32 noncompliance by the commissioner.

33 Sec. 2. [TASK FORCE.]

34 (a) A task force is created to study and make  
35 recommendations regarding the implementation of section 1. The  
36 task force shall review Minnesota Statutes and make suggestions

1 for recodifying and renumbering sections, correcting cross  
2 references, repealing obsolete laws, and making other technical  
3 and conforming amendments to Minnesota Statutes, required by the  
4 enactment of this act.

5 (b) The task force is composed of nine members having  
6 expertise in aviation, as defined in section 1, subdivision 2,  
7 to be appointed as follows:

8 (1) the commissioner of transportation or the  
9 commissioner's designee;

10 (2) one member to be appointed by the Metropolitan Council;

11 (3) one member to be appointed by the Metropolitan Airports  
12 Commission;

13 (4) one member to be appointed by the Association of  
14 Minnesota Counties;

15 (5) one member to be appointed by the League of Minnesota  
16 Cities; and

17 (6) four members to be appointed by the governor.

18 The governor shall appoint one member to serve as chair.

19 (c) The task force is encouraged to consult with  
20 landowners, interest groups, and other public agencies. The  
21 task force shall submit a report with its findings and  
22 recommendations to the legislature and governor by February 15,  
23 2007. The task force expires upon the adjournment of the 2007  
24 regular legislative session.

25 Sec. 3. [EFFECTIVE DATE.]

26 This act is effective the day following final enactment.  
27 Counties, as required by this act, must adopt a comprehensive  
28 airport land use plan, as provided in section 1, subdivision 6  
29 or 7, by April 15, 2010.

SENATE  
STATE OF MINNESOTA  
EIGHTY-FOURTH LEGISLATURE

S.F. No. 1193

(SENATE AUTHORS: MURPHY, Jungbauer, Johnson, D.E. and Ourada; Companion to H.F. No. 1843.)

DATE	D-PG	OFFICIAL STATUS
02/24/2005	488	Introduction and first reading
02/24/2005		Referred to Transportation
03/22/2005		Committee report: To pass
03/22/2005		Second reading

1 A bill for an act

2 relating to airports; defining safety zones and land

3 use restrictions for runway 17-35 at the

4 Minneapolis-St. Paul International Airport; amending

5 Minnesota Statutes 2004, section 360.66, by adding a

6 subdivision.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

8 Section 1. Minnesota Statutes 2004, section 360.66, is

9 amended by adding a subdivision to read:

10 Subd. 3. [SAFETY ZONES AND LAND USE.] Notwithstanding any

11 contrary law in this chapter, Minnesota Rules, part 8800.2400,

12 or any administrative order, state safety zone A for the south

13 end of runway 17-35 at the Minneapolis-St. Paul International

14 Airport extends from the end of the primary surface a distance

15 of 500 feet on each side of the extended runway centerline

16 extending outward 4,667 feet. Zone A must not contain

17 buildings, temporary structures, exposed transmission lines, or

18 other similar land use structural hazards, and is restricted to

19 those uses that will not create, attract, or bring together an

20 assembly of persons in zone A. Permitted uses include, but are

21 not limited to, seasonal crops, horticulture, raising of

22 livestock, animal husbandry, wildlife habitat, light outdoor

23 nonspectator recreation, cemeteries, and automobile parking.

24 Existing structures found within safety zone A are deemed to be

25 safety hazards so severe that they must be prohibited and

26 removed. Any parcel of land that is partially in safety zone A

1 and is more than 50 percent outside safety zone A is exempt from  
2 these requirements and subject only to the requirements of  
3 safety zone B, unless the commissioner determines that any  
4 structures on this land constitute airport hazards and must be  
5 removed. State safety zone B for the south end of runway 17-35  
6 at the Minneapolis-St. Paul International Airport is consistent  
7 with the requirements of Minnesota Rules, part 8800.2400, and  
8 includes any land that otherwise would have been in safety zone  
9 A under a strict application of the rule and must, at a minimum,  
10 meet the density requirements and prohibited uses in those rules.



1 A bill for an act

2 relating to aviation; declaring operation and  
3 maintenance of airports to be an essential service;  
4 requiring seller of real property to disclose  
5 existence of airport zoning regulations; denying state  
6 airports fund assistance to municipality with  
7 comprehensive plan incompatible with state aviation  
8 plan; amending Minnesota Statutes 2004, sections  
9 360.013, subdivision 39; 360.017, subdivision 1;  
10 360.065, by adding a subdivision.

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

12 Section 1. Minnesota Statutes 2004, section 360.013,  
13 subdivision 39, is amended to read:

14 Subd. 39. [AIRPORT.] "Airport" means any area of land or  
15 water, except a restricted landing area, which is designed for  
16 the landing and takeoff of aircraft, whether or not facilities  
17 are provided for the shelter, surfacing, or repair of aircraft,  
18 or for receiving or discharging passengers or cargo, and all  
19 appurtenant areas used or suitable for airport buildings or  
20 other airport facilities, including facilities described in  
21 section 116R.02, subdivision 6, and all appurtenant  
22 rights-of-way, whether heretofore or hereafter established. The  
23 operation and maintenance of airports is an essential public  
24 service.

25 Sec. 2. Minnesota Statutes 2004, section 360.017,  
26 subdivision 1, is amended to read:

27 Subdivision 1. [CREATION; AUTHORIZED DISBURSEMENTS.] (a)  
28 There is hereby created a fund to be known as the state airports

1 fund. The fund shall consist of all money appropriated to it,  
2 or directed to be paid into it, by the legislature.

3 (b) The state airports fund shall be paid out on  
4 authorization of the commissioner and shall be used:

5 (1) to acquire, construct, improve, maintain, and operate  
6 airports and other air navigation facilities;

7 (2) to assist municipalities in the acquisition,  
8 construction, improvement, and maintenance of airports and other  
9 air navigation facilities;

10 (3) to assist municipalities to initiate, enhance, and  
11 market scheduled air service at their airports;

12 (4) to promote interest and safety in aeronautics through  
13 education and information; and

14 (5) to pay the salaries and expenses of the Department of  
15 Transportation related to aeronautic planning, administration,  
16 and operation. All allotments of money from the state airports  
17 fund for salaries and expenses shall be approved by the  
18 commissioner of finance.

19 A municipality that adopts a comprehensive plan that the  
20 commissioner finds is incompatible with the state aviation plan  
21 is not eligible for assistance from the state airports fund.

22 Sec. 3. Minnesota Statutes 2004, section 360.065, is  
23 amended by adding a subdivision to read:

24 Subd. 3. [DISCLOSURE OF AIRPORT ZONING  
25 REGULATIONS.] Before accepting consideration or signing an  
26 agreement to sell or transfer real property that is located in  
27 safety zone A, B, or C under zoning regulations adopted by the  
28 governing body, the seller or transferor, whether executing the  
29 agreement in the seller or transferor's own right, or as  
30 executor, administrator, assignee, trustee, or otherwise by  
31 authority of law, must disclose in writing to the buyer or  
32 transferee the existence of airport zoning regulations that  
33 affect the real property.

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# Senate

State of Minnesota

## S.F. No. 79 - Airport Land Use

**Author:** Senator Michael J. Jungbauer

**Prepared by:** Bonnie Berezovsky, Senate Counsel (651/296-9191) *BB*  
Amy Vennewitz, Fiscal Analyst (651/296-7681)

**Date:** February 24, 2005

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**Section 1, Subdivision 1** requires the establishment of airport land use commissions as follows:

- every county with an airport served by a scheduled airline must establish a commission by January 15, 2008; and
- a county with a public airport not served by a scheduled airline must establish a commission by January 15, 2008, unless, by April 15, 2007, the county board, after consultation and hearing, exempts itself from this requirement, because there are no noise, public safety or land use issues. A resolution declaring this conclusion must be filed with the Commissioner of Transportation.

**Subdivision 2** defines the membership of each airport land use commission. The commission has seven members:

- two representatives of cities in the county, appointed by the mayors of all cities in the county;
- two representatives of the county, appointed by the county board;
- two people with aviation expertise, appointed by the managers of the public airport; and
- one person representing the public, appointed by the commissioner.

Public officers may serve on the commission.

**Subdivision 3** defines a commission member's term as four years. One member chairs the commission. The county board determines compensation, if any, and provides administrative support. The commission may not employ or contract with anyone without county board approval.

**Subdivision 4** authorizes the chair or a majority of commission members to call a meeting. A majority of the full commission membership is a quorum. A member may not participate in a decision in which the member has a financial interest.

**Subdivision 5** defines the commission's powers and duties:

- assist local agencies in ensuring compatible land uses around airports, where incompatible uses do not already exist;
- coordinate planning for orderly development of air transportation, and protect public health, safety, and welfare;
- prepare an airport land use plan; and
- review plans and regulations of local agencies and airport operators.

The commission has no jurisdiction over airport operation.

**Subdivision 6** requires the commissioner to develop and implement a training program, offering formal courses, seminars, and informational materials, for airport land use planning, including:

- establishing a process to develop and adopt comprehensive land use plans;
- develop criteria to determine airport land use planning boundaries;
- identify essential elements to include in land use plans; and
- develop criteria and procedures to review proposed development and determine compatibility with airport use.

The commission must use this information in developing a plan to provide for airport growth, while safeguarding safety, health, and welfare. The plan must include a long-range master plan or airport layout plan, reflecting airport growth in the next 20 years. The commission must submit a copy of each plan and amendment to the commissioner.

**Subdivision 7** requires the commission, before adopting a comprehensive land use plan, to review, after public notice and hearing, all proposed actions and permits within the vicinity of a public airport. Disapproval must be communicated to the local authority, which can overrule the commission by a two-thirds vote of its governing body.

**Subdivision 8** provides an alternative procedure for a county that resolves not to form a commission. The county board must

- adopt processes to prepare, adopt, and amend a comprehensive airport land use plan for each airport in the county;

- adopt notice processes to follow when a plan is prepared, adopted, or amended; and
- designate an agency responsible to prepare, adopt, and amend the plan.

The commissioner must review these determinations, and approve them if they result in adoption of a plan in a reasonable time, application of appropriate criteria, and provide adequate public notice, and review and comment opportunities. If the county does not comply with these requirements, a commission must be established within 90 days of the commissioner's finding of noncompliance.

**Section 2** creates a task force to recommend means to implement section 1, including recommendations concerning desirable statutory changes. The nine-member task force is composed of people with aviation expertise:

- Commissioner of Transportation or designee;
- member appointed by Metropolitan Council;
- member appointed by Metropolitan Airports Commission;
- member appointed by Association of Minnesota Counties;
- member appointed by League of Minnesota Cities; and
- four members appointed by the governor.

The governor appoints one member to serve as chair.

The task force is encouraged to consult with the public. It must submit a report to the Legislature and governor by February 15, 2007. The task force expires upon adjournment of the 2007 Legislative Session.

**Section 3** gives immediate effect to the act. A county adopting a plan under section 1, subdivision 6 or 7, must do so by April 15, 2010.

BB/AV:rer

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# Senate

State of Minnesota

## **S.F. No. 1193 - Safety Zones And Land Use Restrictions For Runway 17-35 at Minneapolis-St. Paul International Airport**

**Author:** Senator Steve Murphy

**Prepared by:** Bonnie Berezovsky, Senate Counsel (651/296-9191) *BB*  
Amy Vennewitz, Fiscal Analyst (651/296-7681)

**Date:** February 24, 2005

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**Section 1** defines Safety Zones A and B for the south end of Runway 17-35 at the Minneapolis-St. Paul International Airport.

Safety Zone A is defined and restricted as follows:

- Length: 500 feet on each side of the extended runway center line extending out 4,667 feet;
- Prohibited structures: Buildings, temporary structures, exposed transmission lines, other structural hazards.
- Prohibited use: Any use that will attract an assembly of people.
- Permitted uses: Seasonal crops, horticulture, raising livestock, animal husbandry, wildlife habitat, light outdoor nonspectator recreation, cemeteries, and auto parking.
- Existing structures: Structures entirely in Zone A must be removed. Structures partly in Zone A and mostly in Zone B are subject to Zone B requirements, unless the commissioner declares them hazardous and removes them.

Safety Zone B is consistent with current Rules and includes land that otherwise would be in safety Zone A, and must meet the density requirements and prohibited uses in Rules.

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# Senate

State of Minnesota

## **S.F. No. 80 - Airport Area Zoning Ordinance**

**Author:** Senator Michael J. Jungbauer

**Prepared by:** Bonnie Berezovsky, Senate Counsel (651/296-9191) *BB*  
Amy Vennewitz, Fiscal Analyst (651/296-7681)

**Date:** February 24, 2005

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**Section 1, Paragraph (a)** requires the Commissioner of Transportation to adopt a model zoning ordinance by December 31, 2007, through rulemaking procedures. The model ordinance must conform to the Federal Aviation Administration model zoning ordinance, and it must apply only to new development for which development permits have not yet been issued.

**Paragraph (b)** requires each municipality, county, or joint airport zoning board, by August 1, 2008, to adopt an airport zoning ordinance that regulates height limitations and meets or exceeds the model ordinance standards. The ordinance must be approved by the commissioner. The model ordinance applies in a jurisdiction that does not adopt an ordinance by this deadline.

**Section 2** gives immediate effect to this act.

BB/AV:rer

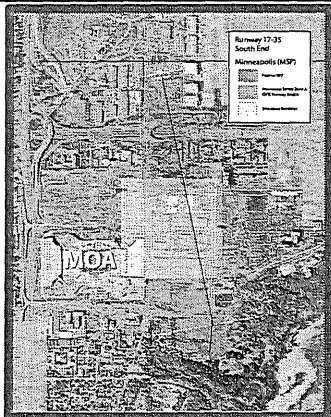
## Minnesota Senate Aviation Subcommittee

March 3, 2005

Lee A. Henderson  
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## AGENDA

- > Information about Interstate
- > The Safety Problem at MSP
- > The Commissioner's Order
- > Why The Order Needs to Be Corrected
- > The Solution - S.F. 1193



## Background Information

### INTERSTATE

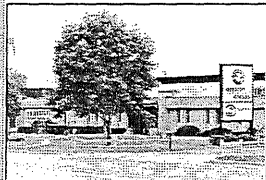
*Interstate Companies, Inc.*

1. Ranked in top 65 of Minnesota's top 100 Privately held companies with over \$300 million in annual revenues.
2. Operates 22 branches in 8 states with over 750 employees.
3. Corporate Headquarters and largest branch are at campus complex at 2601 and 2501 East 80<sup>th</sup> Street.
4. Branch runs 19 hours a day 6 days a week. Buildings cannot be soundproofed as they are open much of the year.
5. Approximately 200 people work or are on campus on daily basis. Campus is site for all vendor meetings and company sponsored training activities.
6. Computer operations for entire company located on campus.
7. Campus is office for top management team, all warranty, accounting, personnel and other centralized operations.
8. Flammable materials are on site including diesel fuel tanks.

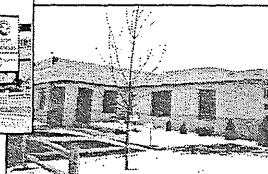
## Interstate's Buildings

### INTERSTATE

*Interstate Companies, Inc.*



2501 East 80<sup>th</sup> Street, Bloomington



2601 East 80<sup>th</sup> Street, Bloomington

## The Problem





## The Problem

Rank	City	Total Takeoffs and Landings	Airport Size in Acres
1	CHICAGO, IL (ORD)	893 247	7,700
2	ATLANTA, GA (ATL)	893 285	3,750
3	DALLAS/FT WORTH AIRPORT, TX (DFW)	806 050	18,078
4	LOS ANGELES, CA (LAX)	649 433	3,425
5	DENVER, CO (DEN)	553 810	34,000
6	PHOENIX, AZ (PHX)	543 573	3,000
7	MINNEAPOLIS-ST. PAUL, MN (MSP)	535 784	3,400
8	PARIS, FR (CDG)	535 332	3,700
9	LAS VEGAS, NV (LAS)	534 703	2,800
10	CINCINNATI, OH (CVG)	520 321	7,000
11	DETROIT, MI (DTW)	514 502	6,700

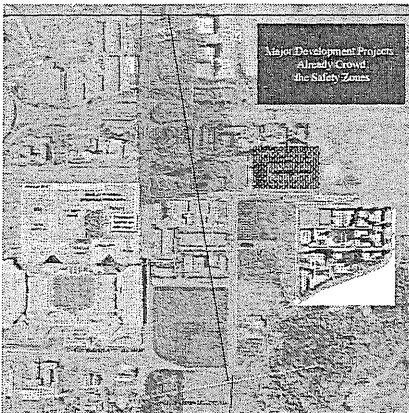
Data for 12 months ending 11/04

Minneapolis has one of the smallest land sizes among the busiest airports.

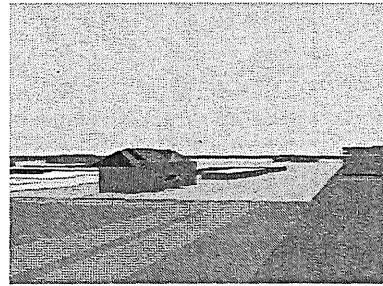
Land size suggested for the Farmington airport was 14,000 acres.

## The Problem

2005 Projections for use of North South Runway		
	General	Weekday
Total Aircraft Operations per Year	575,000	575,000
Total Takeoffs	287,500	287,500
Total Arrivals	287,500	287,500
Percentage Takeoffs on N-S Runway	37%	37%
Percentage Arrivals on N-S Runway	17%	17%
percentage of total flights that occur during weekdays		80%
Number of Total Daily Departures	788	885
Number of Total Daily Arrivals	788	885
Daily Departures on N-S Runway	291	327
Daily Arrivals on N-S Runway	134	150
Total Daily Jet Traffic	425	476
Take-offs/landings per hour over Interstate	27	30
Average time (in minutes) between each takeoff or landing	2.26	2.31



## The Problem

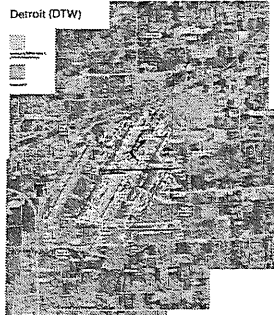


## The Problem

There is no other runway end at a top 10 airport in the United States that has a building with the density of Interstate's at the very edge of the RPZ.

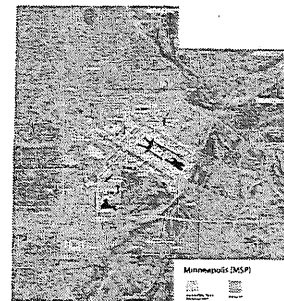
Detroit is a good example.

Examples are available from other airports as well.



## The Problem

Contrary to MAC arguments there is no other runway end at MSP that has a high density building at the edge of the RPZ on the runway center line.



### The Commissioner's Order

- Eliminates safety zone A by making it coextensive with the RPZ
- Allows most any development in the remaining Safety Zone B
- Exceptions include hospitals, schools, churches and nursing homes
  - No rational basis for this distinction
- Campgrounds vs. hotels

### The Commissioner's Order

- Based on HNTB Report that concludes there is no risk that airplanes will crash at MSP outside the RPZ for decades, if ever.
- Dr. Kimberly Thompson testimony will address this issue.



### The Commissioner's Order

- JAZB process was broken because of city concerns over liability questions in departing from state standards.
- MAC solved the problem, not by following the law, but by agreeing to indemnify the cities if they passed an ordinance acceptable to MAC.
- City representatives were witness, judge and jury. JAZB members were all development oriented people from the cities.
- Commissioner approved that outcome over objections of aeronautics experts within the Department of Transportation.
- Question for the legislature is whether
  - (a) this type of short term thinking is the kind of public policy we want in Minnesota; and
  - (b) whether the MAC even has the statutory authority to agree to such indemnification, essentially taking on a contingent future liability without legislative appropriation.

### The Commissioner's Order

#### Public Policy Issue at Stake:

Minnesota public policy has long been to protect health and welfare of its citizens.

MAC policy adopted by the Commissioner is to eliminate protections and just indemnify or pay when something bad happens.

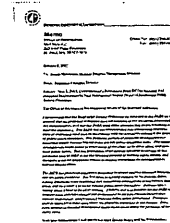
### Do Public Agencies Ever Make Mistakes?



### Do Public Agencies Ever Make Mistakes?

#### Staff Report:

- JAZB recommendation does not meet standards
- Cities want development without public safety limitations
- Provision must be made for clear area along extended runway centerline
- Zoning ordinance should be rejected and sent back



### Why the Commissioner's Order Needs to Be Corrected

- It is based on bad public policy
- Ignores Well Established Safety Standards
- Relies on faulty statistical analysis
- Relies on faulty social economic analysis

### Well Established Safety Standards

This guide identifies a wide variety of possible land use control methods as they relate to compatible land use planning efforts. This guide also recognizes that state and local governments are responsible for land use planning, zoning and regulation, and presents options or tools that can assist in establishing and maintaining compatible land uses around airports.

*Land Use Compatibility and Airports*  
Federal Aviation Administration - 1999

### Well Established Safety Standards

Airports require special planning:

"Compatible land use planning around airports requires special consideration in several areas. These include areas where the height of objects must be restricted, areas with the greatest potential for aircraft accidents, areas where airport-related noise should be mitigated, and areas of regular or frequent overflight (such as the areas under airport approaches and traffic patterns)."

A study of aircraft accident patterns at United States civil airports has shown that most aircraft accidents near airports happen on or near the extended runway centerline. Consideration should be given to limiting the types of land uses and the density of structures in these areas.

*Airport Compatible Land Use Design Handbook- May 1998*  
Denver Regional Council of Governments

### Well Established Safety Standards

The risk of people due to aircraft accidents is small, however, an accident is a high consequence event and the result is often catastrophic. Despite stringent maintenance requirements and countless hours of training, past history makes it clear that accidents are going to occur. The Air Force does not attempt to base its land use recommendations on accident probabilities, but by the fact that an aircraft accident is a significant catastrophic event and poses a higher risk of injury and damage.

DoD analysis has determined that the areas immediately beyond the ends of runways and along the approach and departure flight paths have significant potential for aircraft accidents.

*Air Force AICUZ Program*  
Manager's Guide - March 1, 1999

### Well Established Safety Standards

Minnesota law requires city comprehensive plans to be consistent with the MC's land use compatibility guidelines, and zoning regulations to be consistent with the City's comprehensive plan and Mn/DOT safety rules. Existing and planned land use in the state safety zones south of the proposed new north-south runway are not consistent with these requirements. The City of Bloomington would have to amend its development regulations to assure conformity with Mn/DOT airport zoning standards for safety zones.

*FAA Record of Decision*  
*Approving North-South Runway*  
September 23, 1998

### FAULTY STATISTICAL ANALYSIS

Airplane crashes continue to occur every year in spite of the improvements in safety.

Compared to the year before, 2004 showed an increase again in the number of approach and landing accidents, which is one of the four most pressing safety problems facing the aviation industry according to the Flight Safety Foundation. In 2004 they accounted for 46% of all accidents, compared to 32% in 2003, 54% in 2002 and 38% in 2001.

Source: Aviation Safety Network - 2004



**Testimony**

**Of**

**Harold Van Leeuwen,  
(Manager, Bemidji Regional Airport)  
MINNESOTA COUNCIL OF AIRPORTS  
(Director)**

**March 3, 2005**

**Minnesota Senate  
Transportation Policy and Budget Division  
Subcommittee on Aeronautics**

Chairman Rest and Members of the Senate Aviation Subcommittee, I, as the Bemidji Regional Airport Manager on behalf of the Airport Commission, the individuals that use and depend on the availability of the Airport and service it provides, my capacity as a Director of the Minnesota Council of Airports, thank you for the kind invitation to testify in relation to airport zoning and some related issues. Through the course of this testimony I will relate to experiences the Bemidji Regional Airport has had in this regard. Today, as in the past, you have all heard it said several times and I will repeat it now. "It is imperative we protect the extensive investment of tax dollars and commitment of property made by the residents of Minnesota at the local, state and federal levels in our airports". The primary threat to this investment continues to be encroachment. This not only limits an airport's ability to meet growing demands, but results in serious conflict between the airport sponsors and neighboring communities. The conflicts that arise from this encroachment can be in many forms; however, the most visible are the loss of value and use of private lands, loss of tax base to a community, and noise. Less visible, but having far more serious consequences, is the safety of the operating aircraft during flight and for the people on the ground. It is important that it be established that the primary reason for airport zoning is not the safety of the aircraft but rather the safety and quality of life of the people living and working around and near our airports. In my experience of a lifetime in military and civil aviation I've seen the consequences of not addressing the issue of safety. I use the following as a guide to my priorities. The probability of an accident can be lessened, but in the majority of cases, an accident is catastrophic to the aircraft and its occupants. The goal of zoning is to prevent or mitigate the possibility of an accident being catastrophic to personnel and facilities on the ground, while at the same time ensuring as safe as possible an operating environment for the aircraft. You've all heard the statement "fences make good neighbors" well in the case of airports; distance and boundaries established through comprehensive planning and zoning along with a commitment to use and enforce these are the equivalent of fences for making good neighbors.

Frequently and unfortunately, immediacy tends to become the order of the day when dealing with these issues. Many times the first response is "move the airport", or at least until the real cost of doing so is realized, then the tactics of a delaying option set in with the hope the problem will go away. Finally, the end result is to solve or abate an unhappy constituent's complaint by issuing a variance or no action specific to that case or issue. This frequently is the result of an inflexible and

stagnate "take it or leave it" zoning ordinance being in place as opposed to having a comprehensive dynamic zoning plan designed to take into account and balance these issues. Currently, the State of Minnesota's statute for establishing local airport ordinances tends to result in the more rigid type. This need for a change has been recognized by MnDot Office of Aeronautics and they are very aggressively working to change this. The concept, as I understand it (and I am a member of the working group supporting this effort), is to have the outcome result in an ordinance that takes into account local conditions, an ordinance that I will describe as dynamic. Let me regress slightly and explain why I use the word dynamic. A state wide standard for airport zoning can not be simply a "here it is, comply" ordinance. Rather, it needs to be one that assess the individual requirements of the community, the airport serving that community, the users of the airport, and the surroundings at each airport. For example, it should take into account the types of aircraft, an aggregate look at the proficiencies of the pilots using the airport, the ability of a community to fund a particular solution and the consequences, both long and short term, of the concluding action taken. Hence the word 'dynamic' when describing the desired zoning statutes and resulting ordinances. This project is well along the way to completion and the Office of Aeronautics deserves great credit and support for this very difficult initiative they have undertaken

To further illustrate this let me use my experience and the more than 3 decade old battle to comply at Bemidji Regional Airport. The city of Bemidji adopted the state standard ordinance in 1974. Immediately after, there was a torrent of litigation by local land owners that ultimately led to the inability to enforce the ordinance. Bluntly put, it quickly became a matter of available funds, loss of tax base, the need to create jobs, and a state court ruling that stated the imposition of the zoning ordinance without compensation for loss of use was unconstitutional. The City of Bemidji with nearly 40% of the property within the city limits tax exempt and the County of Beltrami with more than 65% exempt (state office, university, schools, churches, federal facilities, reservations, etc) found itself unable to raise the funds to buy the land, unable to accept the loss of use of the land, and incapable of absorbing the loss of tax revenue. As a result, we now have a Target, Marketplace, Wal-Mart, three small strip malls, three restaurants, one fast food store, a bank, Home Depot, two gas stations, a couple motels, two car dealerships and other commercial business within the zoned areas. A specific example of the cost of delaying actions can be shown by the following; the developers of the Wal-Mart complex which lies partially in the current zone "A"

and zone "B" recently came to the city and stated they wanted to build a 5-8 store mini strip mall. This would have fallen into the zoned areas and was clearly not in compliance with the standards for those airport zones. Because this had been property owned by one of the original litigants the options were limited; allow the development or purchase the land. The developer indicated if approval to build was not granted the expected cost to purchase the property because of loss of use (approximately 1 acre) would be \$400,000. Remember, this is not Metro area property; it is commercial property in Northern Minnesota. Upon assessment of the options, it was determined that the existence of this strip mall would not worsen the already serious non-complying situation. The use of scarce local funding for purchase of the property was not a wise use or a viable option. The mall was allowed, not the answer the airport would have wanted but it was reality based on existing conditions and available funds.

Clearly we can not go back in time and fix or undo existing encroachment issues. We can, and are, taking action. Working with MnDot Office of Aeronautics, the FAA, our County and City, and along with the affected townships, we are making plans to extend runways and redefine the shape of zoning based on local use and configuration to prevent a worsening of the situation and meet acceptable standards. This effort is complicated by the reality of having to deal with multiple entities, each having its own level and desire to zone or not zone. These entities range from a city with comprehensive zoning to a county with lesser zoning to townships with no effective zoning.

Today we have the standard structure for the Airport Zoning Board. In our case, this has been in existence since its establishment with the adoption of the zoning ordinance in 1974, this board is comprised of five members, two city council members, two county commissioners, and a lay person mutually appointed as chairman. In concept, the process to enact and enforce airport zoning should work well at airports such as Bemidji as well as across the State. However, as I've previously mentioned, issues arise as the result of differing economic interests and unique characteristics of airports, their sponsoring jurisdictions, and the communities that surround them. Pressures from jurisdictions located adjacent to airports desiring to enhance the local tax base, can, and do often, threaten the effectiveness of the Zoning Ordinance and inevitably lead to conflict between the Airport and neighboring communities.



Unfortunately, exacerbating this conflict today, are reductions in Local Government Aid and restrictions on what qualifies as essential services. In 2003, a special study by the Office of the state Auditor was completed on Local Government Aid. The result of this study was a designation by the state auditor that airports do not qualify as an essential service. This decision placed airports even further down on the funding priorities list, lumped in with administrative requirements. This is where I opine for a brief moment. In the case of Bemidji Regional Airport, if you asked the 30,000 (thirty thousand) passengers that fly out of the airport annually, and I would hope an equal amount coming in, or the people who receive the nearly ½ million pounds of FedEx or UPS freight annually, or the recipients of the support for fire fighting by the BIA/DNR fire bomber base, or the over 100 annual "Life Flights" that occur, they would state the airport is essential. Unfortunately, because it is an individual at a time, there is frequently not a group or constituency that has the where-with-all to advocate for the airport. I believe the case can be made that airports are as essential to the well being of a community as highways, snow removal, and at times, fire or police, and that this is true at all airports. As such, communities should be allowed to be designate their airports an essential service if they so desire.

Another central issue to this discussion on zoning and the funding to enact and enforce zoning is the repayment of the \$15,000,000 that was reprogrammed from the airport improvement funds within the state to the general fund. There was a promise of repayment, but with no specific schedule. These funds are vital to the health of airports and aviation within the state. These funds were contributed by the users of the state system of airports with the expectation that they would be used to maintain that system's viability and growth. As we deal with the state shortfalls it is critical we not lose sight that the federal government is also cutting funding and realigning responsibilities. This is pertinent to the discussion of zoning, because as the FAA loses funding, they are shifting the funding burden to the local airport and are becoming less willing to support future procurement of easements or land based on zoning for future runway/airport expansion or predicted aircraft changes. The restoration of the \$15,000,000 is vital to the state's ability to fill a small portion of this potential gap created by this shift.

We need a more realistic approach to zoning, an ordinance in place that takes into account local conditions. Communities should given the option to include airports in their definition of essential

service We may find it easier to establish and enforce airport zoning today if the zoning protects the future viability of our airports . It must be pointed out that most airports in the country and certainly within Minnesota are more than a half century old. Though it's hard to contemplate requirements out a decade or more, it is imperative we do just that to ensure the resources are made available to accomplish this.

I don't believe I am singing a unique song. I'm confident you will hear similar, if not the same, from any airport whether it's Minneapolis, St Cloud, Duluth, Willmar, or Bagley. In every case, I believe you would hear; it all comes down to planning and money with statutory and financial support at the local, state and federal levels. The bottom line is airport zoning is a complex issue. We must balance desires for aircraft to operate safely and as environmentally friendly as possible with the economic interests of surrounding jurisdictions, and ultimately the costs to reach this balance.

While we need to be cautious not to apply strict zoning and land-use solutions across the board that may not be appropriate in certain situations, we also need to ensure that added flexibility which takes into account the characteristics of each airport and it's surrounding environment does not leave the door open for future problems. Hence we need the comprehensive "Dynamic" zoning statute MnDot Office of Aeronautics is working to complete. We do not need specific legislative zoning that inadvertently complicates and limits the applicability of the state ordinance by trying to solve a local problem. I suggest that the legislature not mandate restrictions or specific language for individual communities, but rather allow MnDot Office of Aeronautics to complete its project to develop new and updated statutes that will result in the "dynamic" ordinance needed at the local level.

There is something else you can do that would assist resolving and preventing some of the future problems facing land use around airports; that is to institute a statutory requirement that all land descriptions/ abstracts specifically spell out if a property is affected by an airport zone. Currently, only the abstract may reflect this and it does not do so in detail. Spelling it out in detail in the description/ abstract will ensure a buyer is doing so with full knowledge and awareness, thus protecting the airport from recurring litigation and protecting the buyer.

I believe that we all share the responsibility to protect and develop our airport system. Airport managers need to do a better job of effectively communicating the positive impacts their airport brings to the area and encourage neighboring city and county administrators to implement airport zoning overlays into their planning documents. City, county and state officials need to recognize the tremendous economic impact airports bring to each community and region. Whether it's 3M at St Paul or Park Rapids or Digi-Key in Thief River Falls, they exist and employ people because the airports exist there. Efforts such as Mn/Dot's recent implementation of a web-based economic evaluation tool are steps in the right direction. We all need to recognize airports and the air system for what it is: a very valuable investment. We must stand up to developmental pressure that is not compatible with airport zoning, future airport operations, or future airport funding. The key elements to being successful are: A realistic plan (including a robust dynamic state zoning ordinance), a comprehensive MasterPlan at each airport reflective of that airport, its service community and what may be the airport's future requirements, and strong funding support at the state and federal levels with latitude at the local level to include airports as an essential service.

In summary I suggest the following: (1<sup>st</sup>) Support the completion of the revised state airport zoning statute and comprehensive planning for all the state's airports. 2<sup>nd</sup>, insure expeditious repayment of the \$15,000,000 borrowed from the airport fund, and do not target specific airports for funding. Allow the current system within MnDot to function as it has successfully for many years. 3<sup>rd</sup>, take action to institute a full disclosure statement within the abstract/ description to property. 4<sup>th</sup>, do not take airport specific zoning actions at the statutory level such as SF 80 except in extraordinary circumstances, and 5<sup>th</sup>, support communities by allowing for communities to define their airports as an essential service, or possibly even establishing by legislative action recognition that the air system and its airports within the state are essential to the state, it's residents, economy and future.

By the way, you may have caught that what used to be the tongue twister name for our airport; "Bemidji-Beltrami County Airport", is changing to Bemidji Regional Airport. This reflects the growth of Bemidji and the area around it as a regional center. This has placed a special emphasis on my part to make every effort to protect this facility from the pressures of growth around the airport.

On behalf the of Bemidji Regional Airport Commission and myself, the Minnesota Council of Airports, I thank you for this opportunity and I hope that I have provided some level of information that makes this very generous use of your time worthwhile.

I would thoroughly enjoy responding to any and all questions the committee members might have.

Harold Van Leeuwen, Jr (Lt Col. USAF Ret)  
Manager,  
Bemidji Regional Airport  
Director, Minnesota Council of Airport



Not to Scale

PHOTO:

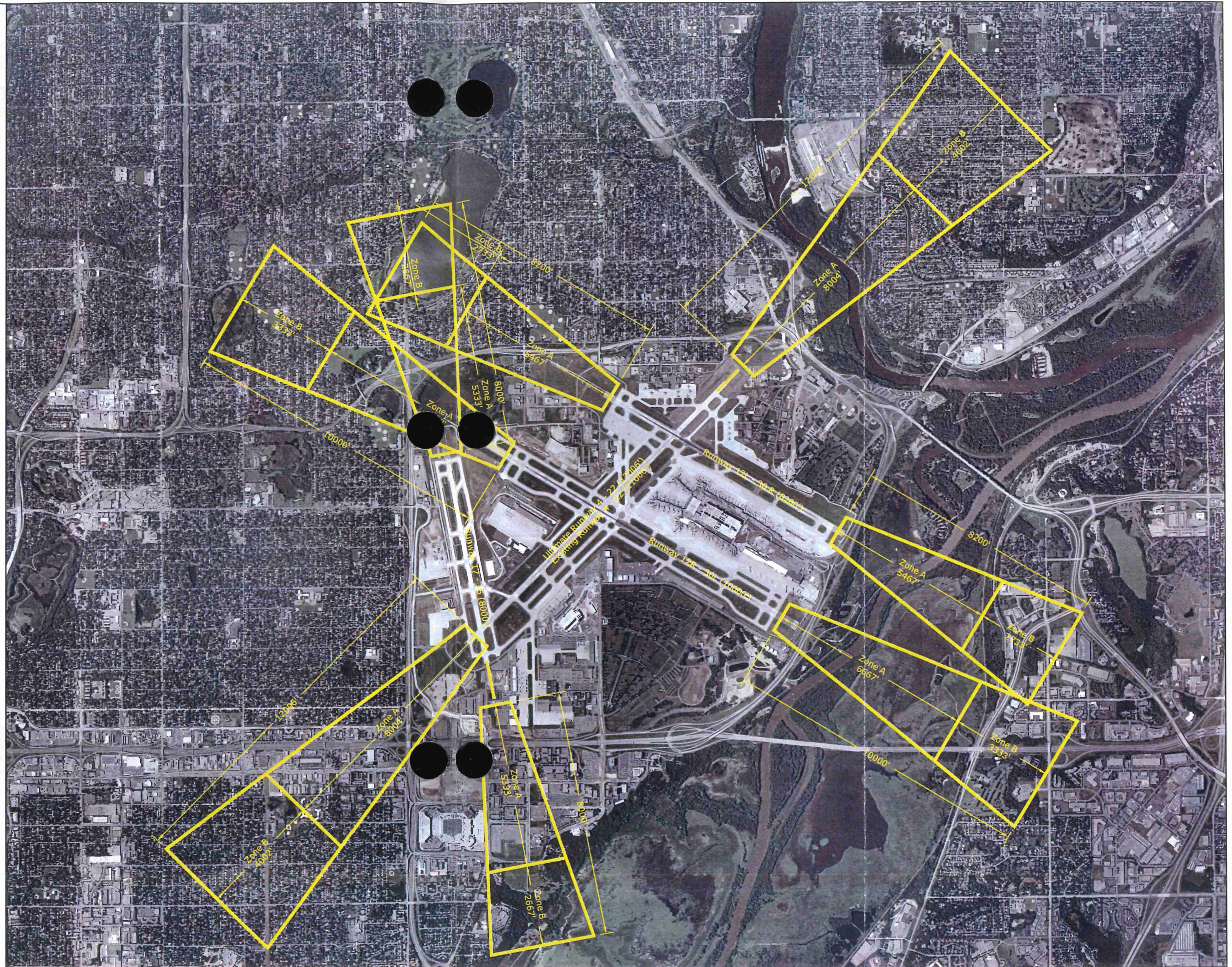
National Agricultural Imagery Program  
(NAIP) Digital Orthorectified Images  
(DOQ), Minnesota, Summer 2003

Minneapolis–St. Paul International Airport  
Minneapolis, MN

Current Model Zoning



3/1/05





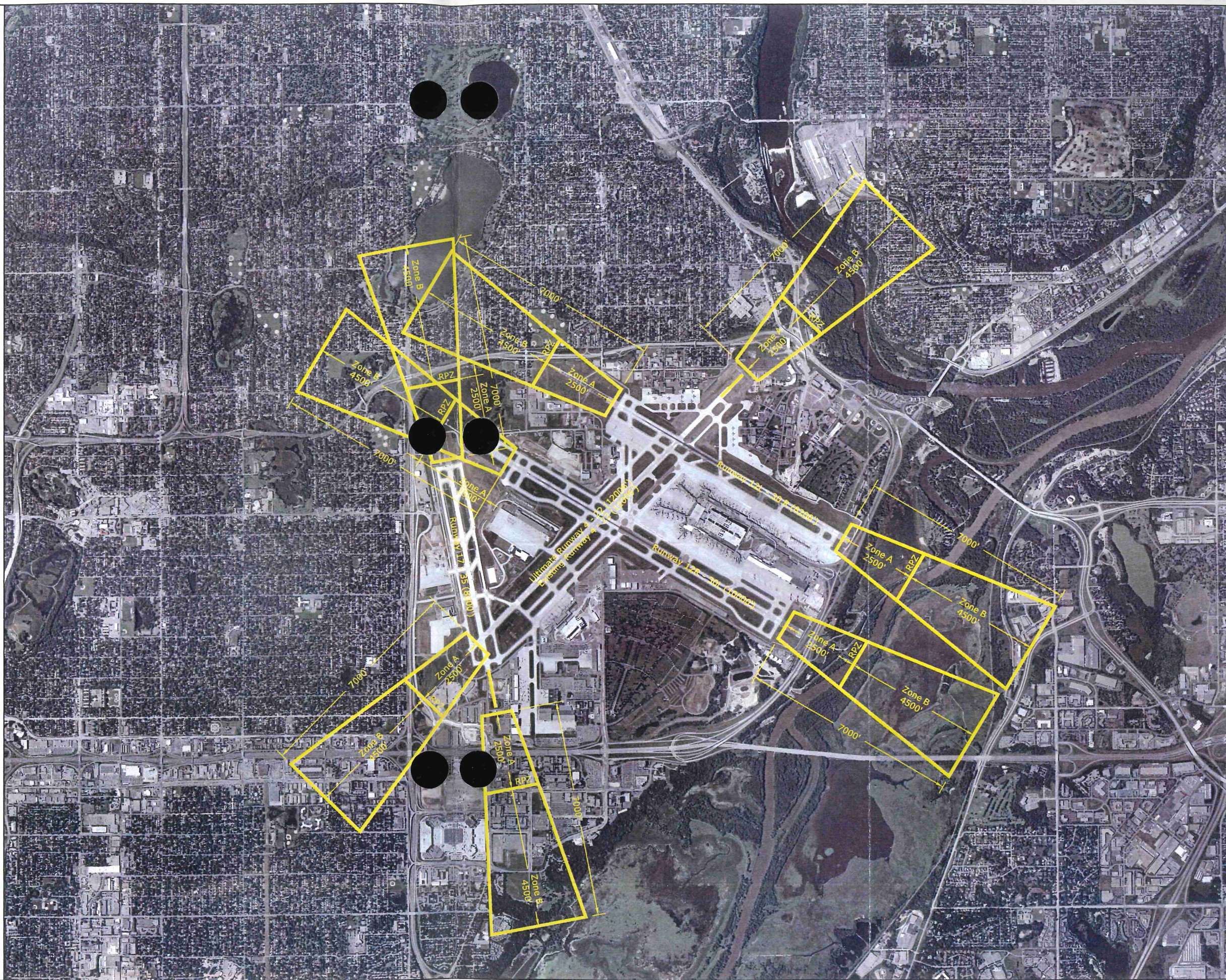
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**PHOTO:**

National Agricultural Imagery Program  
(NAIP) Digital Orthorectified Images  
(DOQ), Minnesota, Summer 2003

Minneapolis-St. Paul International Airport  
Minneapolis, MN

**Adopted Zoning**



3/1/05



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PHOTO:

National Agricultural Imagery Program  
(NAIP) Digital Orthorectified Images  
(DOQ), Minnesota, Summer 2003

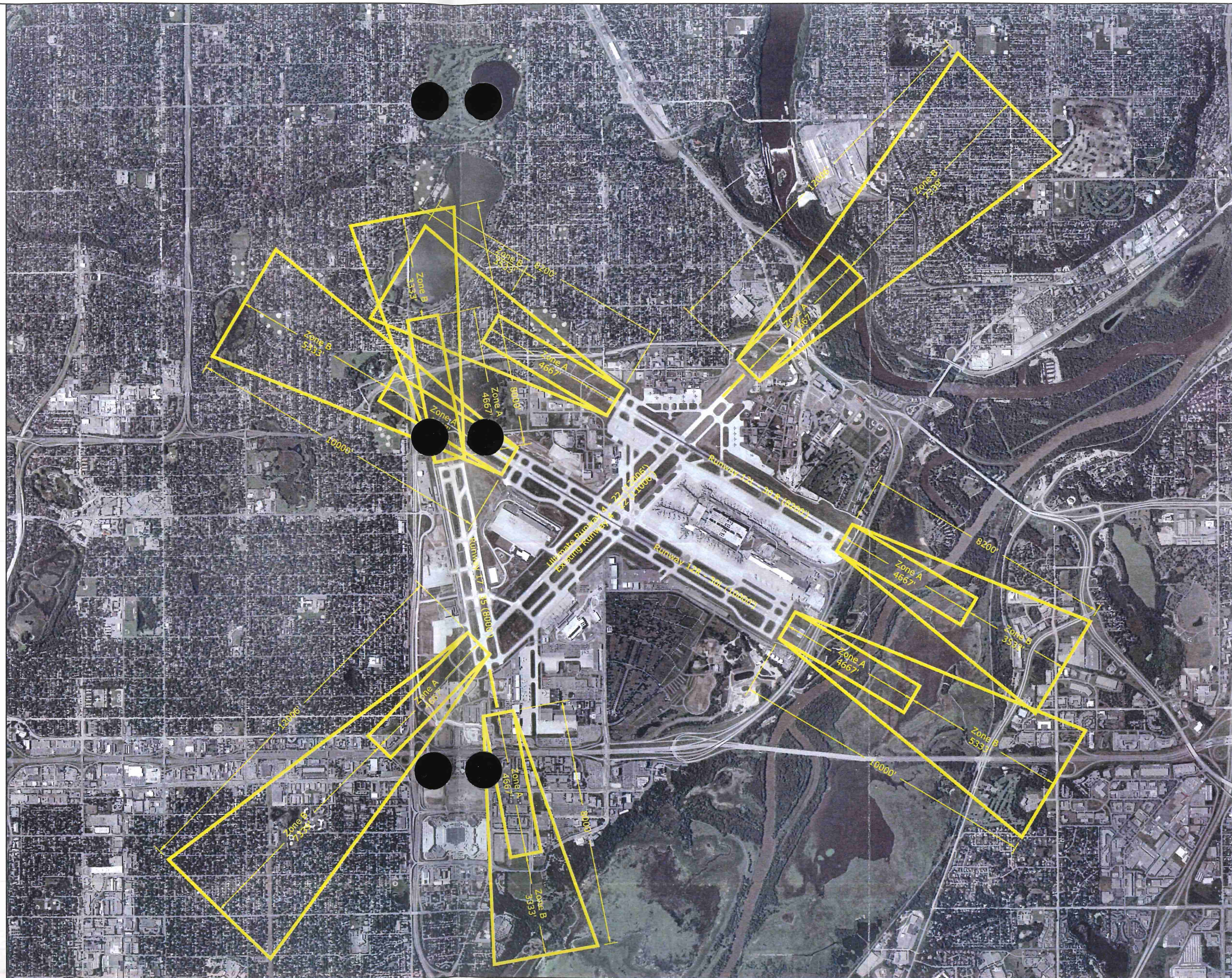
Minneapolis-St. Paul International Airport  
Minneapolis, MN

Proposed Runway 35 Zoning  
(Applied to All Runway Ends)



**HNTB**

3/1/05





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PHOTO:

National Agricultural Imagery Program  
(NAIP) Digital Orthorectified Images  
(DOQ), Minnesota, Summer 2003

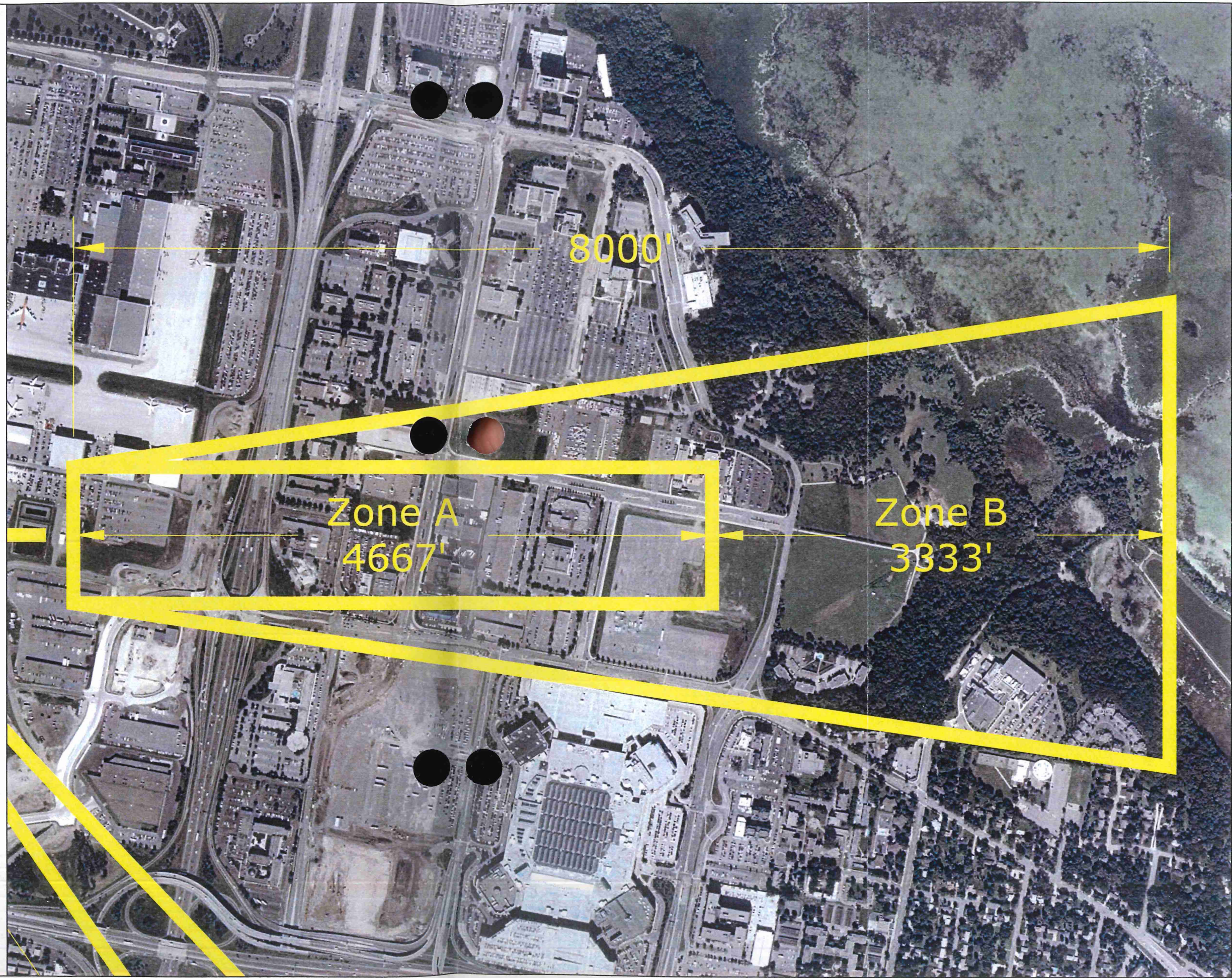
Minneapolis–St. Paul International Airport  
Minneapolis, MN

Proposed Runway 35 Zoning



**HNTB**

3/1/05







AIRPORT ZONING – INTERSTATE COMPANIES, INC.

POLITICAL ISSUES

- MnDOT Commissioner (with support from MAC) is seeking to change 30 years of safety legislation and rules without going through the legislative or rule making process. Recommendations are opposed by MnDOT aviation experts on staff. They proposed compromise that balanced need for safety with desire for development around the MOA. Basis of MAC position is that an airplane crash will never occur in Minnesota, contrary to all unbiased studies and reports. You cannot eliminate human error, weather and mechanical failure. Decision was driven not by infrastructure and safety concerns but by tax ideology (essentially building major highway with no shoulder). Need to distinguish between infrastructure costs and operational expenses. MAC and Commissioner supporting Northwest Airlines and Bloomington's thirst for development and tax dollars over prudent airport planning. FAA will pay 80% of cost of buying out Interstate if cooperative effort is made. MAC so far is unwilling to participate.

HISTORY OF AIRPORT ZONING

- FAA has responsibility only for airport environs and airspace. Balance of land use planning is the responsibility of state and local governments. Approach at the state and local level varies around the U.S. but this issue is a top priority issue for the state aviation officials trade organization. Minnesota established its zoning standards to protect impact of damage to property and people on the ground in 1970s through combination of state statutes and Rules promulgated by the Office of Aeronautics (now part of MnDOT). In 1984 MSP zoned for the first time. MAC and impacted cities agreed with need for zoning. Made a compromise to strict state standards of 7,000 foot uniform safety zones (2/3 Safety Zone A, 1/3 Safety Zone B). Commissioner of Transportation agreed in 1984. In 1984 MSP had approximately 335,500 operations (take-offs and landings) and served 6.3 million people. In 2001 number of operations exceeded 500,000 and passengers served was almost 34 million people. In 2003, operations exceeded 2001 levels although passenger levels remain below 2001.

CURRENT ZONING ISSUES

- Interstate's corporate headquarters location in Bloomington houses approximately 200 people and supports all operations (management, accounting, computer, warranty, etc.) for \$300 million a year business with operations in 8 states (22 buildings) and over 750 employees, half of whom are in Minnesota. Located along center line in Safety Zone A Runway 17-35 will be the busiest runway at the airport handling over 35% of the flight traffic or a take-off or landing every two minutes all day long. Planes will be 185 feet off the ground (less than the distance from home plate to outfield wall in the Metrodome) when landing over Interstate. Interstate buildings cannot be sound proofed as bays are open 8 months of the year. Business affected by safety, noise and vibration issues. For first time, zoning impacts commercial areas with high density business operations. MAC pushed through plan to eliminate Safety Zone A by making it co-extensive with Runway Protection Zone (Federal zone). Made the balance of 7,000 feet all Safety Zone B, but significantly reduced the limitations on development. Bloomington is encouraging high density development south of new Runway 17-35. It wants to infill the area with high density commercial development feeding off the MOA. MSP is one of the smallest of top 10 airports in terms of land size in the U.S – No. 7 in takeoffs and landing with 3,400 acres – compared to Dallas at No. 3 with 18,000 acres and Denver at No. 10 with 34,000 acres. Even O'Hare at No. 1 is 7,700 acres.

CONTACT INFORMATION:

Ted Grindal (612) 963-6336 Grindht@locklaw.com

Allyson Hartle (612) 963 6338 Hartlaj@locklaw.com

Lee A. Henderson (612) 251-8718 lhenderson@hessian.biz



Approximate Runway Center Line

MAC owns or has committed to purchase the areas in purple

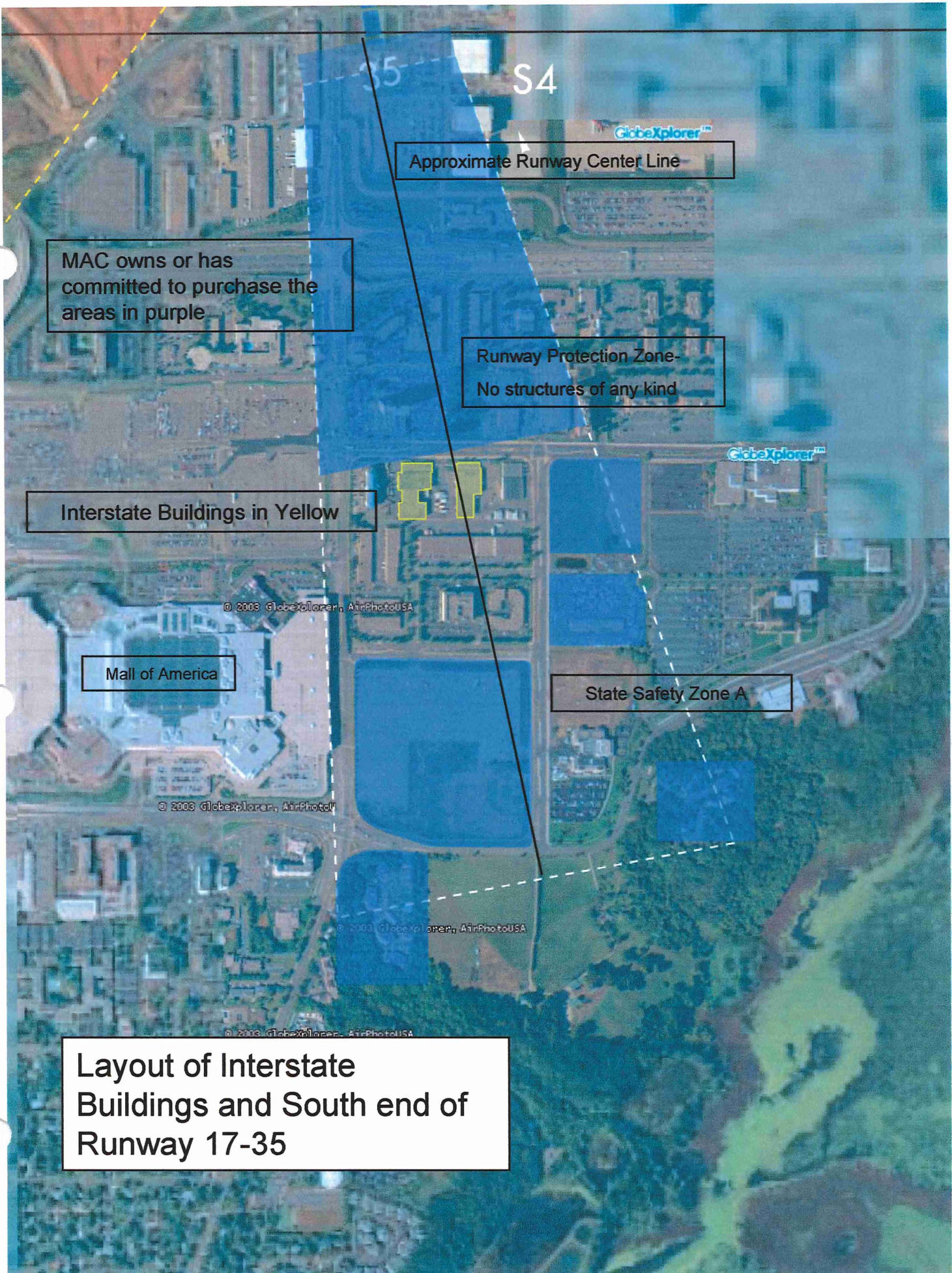
Runway Protection Zone-  
No structures of any kind

Interstate Buildings in Yellow

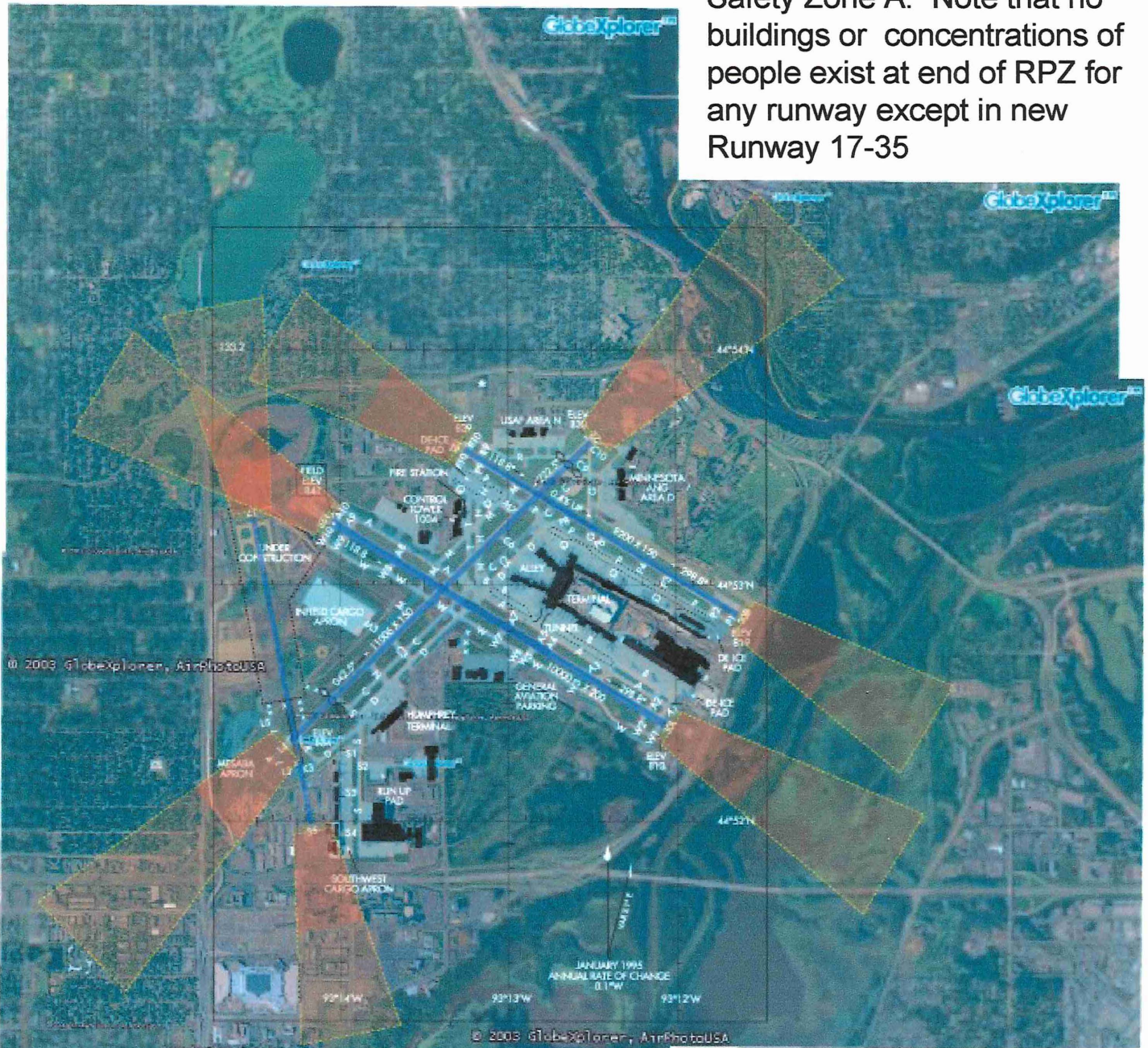
Mall of America

State Safety Zone A

Layout of Interstate Buildings and South end of Runway 17-35



MSP Safety Zones – RPZ and Safety Zone A. Note that no buildings or concentrations of people exist at end of RPZ for any runway except in new Runway 17-35



### Minneapolis (MSP)



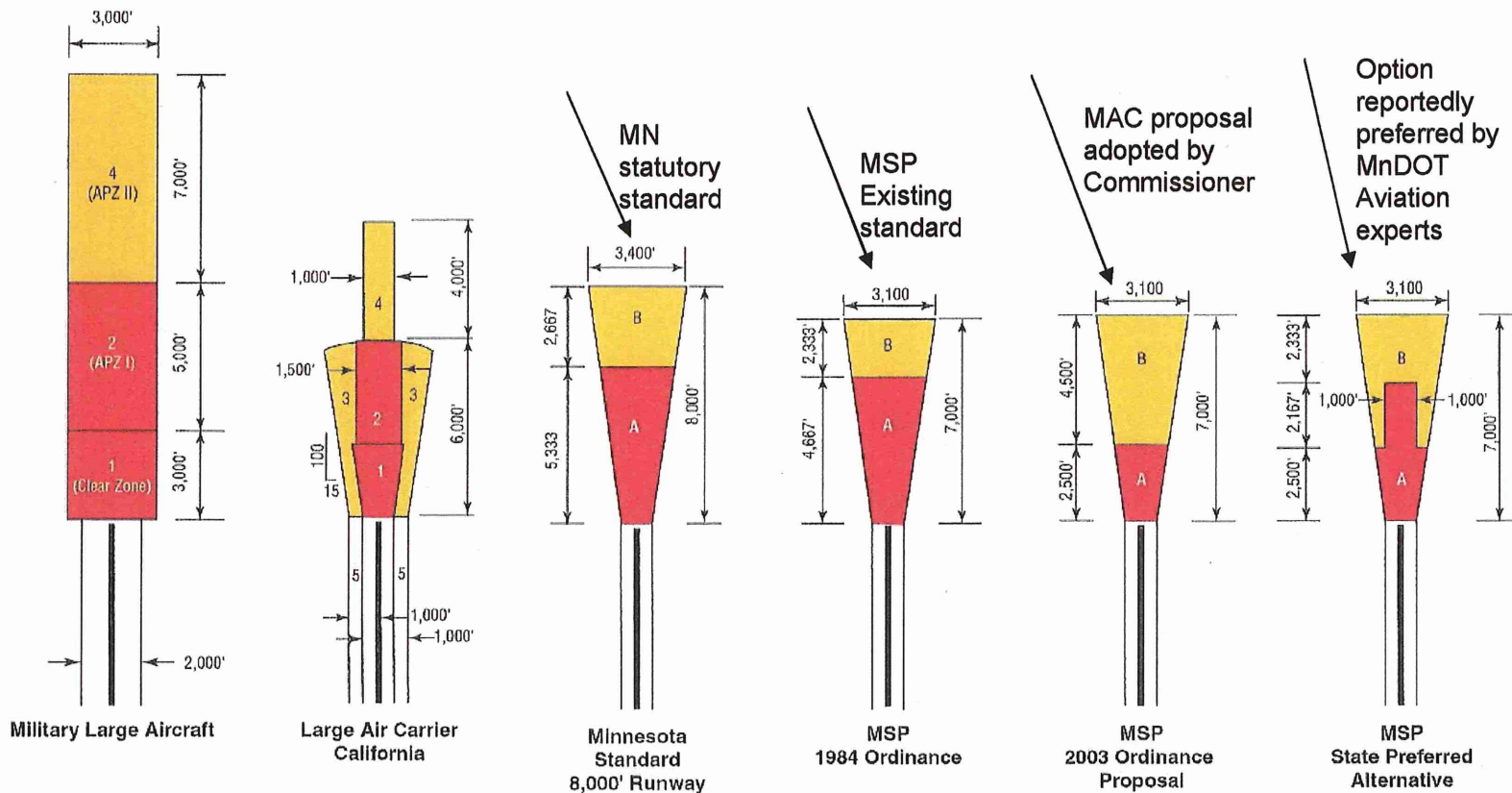
Minnesota Safety Zone A  
(2/3) Runway length



Federal RPZ

**Safety Compatibility Zone Examples**  
 Military, California, Minnesota Standard and MSP Zones

**DRAFT**



A= Safety Zone A significantly limits presence of people and buildings

B= Safety Zone B contains density and land use limitations (except for MAC proposal which only excludes things like hospitals and schools and otherwise has no density or use limitations)

## BACKGROUND FACTS REGARDING ZONING OBLIGATIONS AT MSP

Attached are two letters establishing that the MAC was well aware of its obligations to zone the new runway at MSP as far back as 1990.

The MAC's failure to act in a timely manner has complicated the task significantly and made it more expensive. That does not relieve the MAC from its obligations to protect public safety and comply with Minnesota law.

### TIMELINE

1989	Legislature adopted the Metropolitan Airport Planning Act Minn. Stat. §473.616 <i>et seq.</i> ("Dual Track Study").
October 15, 1990	Memorandum from Tom Anderson, General Counsel of the MAC acknowledging the MAC's obligations to zone for the new runway.
January 2, 1991	Letter from Ray Rought, Office of Aeronautics, confirming the MAC obligation to zone
1995	MAC engages in land swap for the Met Center land with Mall of America because land south of Runway 17-35 was in runway safety zone and could not be developed.
1996	Final decision made to keep airport in current location.
1999	MAC agrees to pay over \$20 million to Fish and Wildlife Service for impact on wildlife in Minnesota River Valley caused by new runway.
Fall 2001	MAC finally convenes zoning board with objective of eliminating airport zoning beyond the federal runway protection zone.

# MEMORANDUM

Legal Department

TO: Chairman Holloran  
FROM: Thomas W. Anderson, General Counsel  
SUBJECT: AIRPORT ZONING STANDARDS  
DATE: October 15, 1990

You have asked whether the provisions of the Airport Zoning Act apply to new runways in the same manner as existing runways.

In reviewing the Zoning Act, Minn. Stat. §360.061 et seq. and Department of Transportation regulations, MCAR §8800.2400, I see no basis for distinguishing between existing runways and newly proposed runways.

1. The creation of land use safety zone A, B, and C, contained in MCAR §8800.2400, subp. 5 are "established with relation to an airport and each runway" without regard to whether the runway is existing or proposed. Consequently, for example, it would be necessary to amend our existing MSP airport zoning requirements in the event new runways are built.
2. None of the land use safety zones apply to any "low density residential structure or isolated low density residential building lots existing on January 1, 1978 in an established residential neighborhood." Minn. Stat. §360.066, subd. 1a. This provision does not distinguish between existing runways and newly proposed runways. Thus for example, pursuant to this statute, the land use safety zones otherwise created by a proposed new runway would not apply to single family residences in South Minneapolis or Richfield.
3. Both as to existing and newly proposed runways, the regulations include criteria for determining when a pre-1978 single family residence in an established residential neighborhood

"constitute[s] an airport hazard so severe that considerations of public safety outweigh the public interest in preventing disruption to that land use."

The regulations provide, for example, that a principal residence within 1,000 feet of the end of the primary zone of a runway is such a "severe" hazard. In such cases, the regulations require that the land use be acquired, altered or removed. See MCAR 8800.2400, subp. 6.



Minnesota Department of Transportation  
Transportation Building, St. Paul, MN 55155

296-8046

January 2, 1991

Mr. Thomas Holloran, Chairman  
Metropolitan Airports Commission  
Post Office Box 11700  
Twin Cities Airport  
Minneapolis, Minnesota 55111

Dear Mr. Holloran:

Subject: Airport Zoning

I have reviewed the memorandum from your general counsel, Mr. Anderson, dated October 15, 1990, regarding the Airport Zoning Act and how it applies to new runways.

We generally concur in Mr. Anderson's opinion that there is no basis in the Airport Zoning Act and in the Mn/DOT Aeronautics Rules for distinguishing between existing runways and newly proposed runways. We offer these additional comments as support to our position:

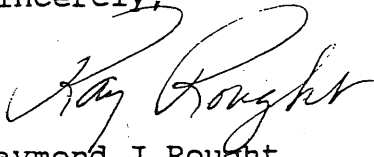
1. State law requires that an airport must zone in accordance with the Airport Zoning Act in order to be eligible for state aid, and it's inherently obvious that state aid monies can and will be used for constructing new runways. The Airport Zoning Act, however, does not establish zoning restrictions. Rather, it sets forth who has what power to create, approve, adopt and enforce zoning restrictions.
2. It is within the discretion of the local airport zoning authority to determine the number of non-conforming uses which will be permitted when a new runway is created provided, however, that the zoning authority has determined that permitted non-conforming uses do not create a severe public safety hazard.



Mr. Halloran  
January 2, 1991  
Page 2

3. The Airport Zoning Act requires that an ordinance must be approved by the Commissioner of Transportation prior to adoption, and such approval shall be based on zoning rules promulgated by the Commissioner. The law that requires airports to zone in order to be eligible for funding does put the Commissioner of Transportation in a position of having a final say on zoning restrictions versus funding.

Sincerely,



Raymond J Rought  
Director, Office of Aeronautics  
Program Management Division  
Room 417

**TESTIMONY OF DR. KIMBERLY THOMPSON  
ASSOCIATE PROFESSOR OF RISK ANALYSIS AND DECISION SCIENCE  
HARVARD SCHOOL OF PUBLIC HEALTH  
BEFORE THE MINNESOTA SENATE TRANSPORTATION COMMITTEE  
AVIATION SUBCOMMITTEE  
MARCH 3, 2005**

Good afternoon Madam Chair and members of the committee. Thank you very much for giving me the opportunity to testify today. I'm very sorry that my schedule did not permit me to appear in person. My name is Dr. Kimberly Thompson. I am currently Associate Professor of Risk Analysis and Decision Science at the Harvard School of Public Health. As an expert in risk analysis I am pleased to provide my perspective about the legislation that you are considering related to the runway safety zones surrounding the Minneapolis-St. Paul airport.

My research and teaching focus on developing and applying quantitative methods for risk assessment, and consideration of the public policy implications associated with managing risks. Risk assessment focuses on answering three questions:

- 1) What can happen (or what are the possibilities)?
- 2) How likely are these things to happen (or what are the probabilities)? and
- 3) If they happen, what are the impacts (or consequences)?

Risk management uses the information from risk assessment, and focuses on the questions:

- 1) What can we do (or what are the options)?
- 2) What are the tradeoffs associated with the options (including the costs and benefits)? and
- 3) What option is the best given what we know and our values?

Making good public policy choices requires that we effectively integrate the technological, social, political, legal, and economic aspects of complex issues. The tools of risk analysis and benefit-cost analysis help to provide decision makers with the best possible integration of all of these types of information, and this is why most regulatory agencies require their use in the support of policy making.

My work spans a wide range of risks. It includes the most rigorous risk analysis study published in the peer-reviewed literature to quantify the risks of death to people on the ground from crashing airplanes, which the Columbia Accident Investigation Board cited in its report as it considered the risks to people on the ground from the crash of a space shuttle orbiter (<http://www.caib.us/news/report/pdf/voll/chapters/chapter10.pdf>). Today I hope to share with you some of the insights from my study of the risks to people on the ground from crashing airplanes and from my review of the HNTB analysis. These relate directly to the choice that you face regarding whether to reduce public safety requirements, as approved by the Commissioner of Transportation for the newest runway at the Twin Cities International Airport - the 7<sup>th</sup> busiest airport in the world. As you discuss the options and decide whether further steps should be taken to control land use around Runway 17-35 to minimize the risk to people on the ground and in the air and property damage, I hope that my remarks will provide you with very useful context.

First, you must all recognize that the risk of an airplane crashing at MSP is not zero. Even if the chances (or probabilities) are small, airplanes do crash, and sometimes those crashes kill people on the

ground. For most people who spend their time far away from airports, the risks of being injured or killed by a crashing airplane while on the ground are very, very small - below the one chance in a million that often serves as a criterion for deciding that a risk is negligible. However, the risk increases dramatically as you approach the border of an airport, not surprisingly because most crashes occur when airplanes are taking off or trying to land. Those people at the end of runways experience the highest risks, well above the one in a million chance of death per year and probably on the order of 100 times higher. I note that if the Minnesota legislature were discussing a potential cancer risk then risks above one in a million per lifetime would be a cause for concern and potential action, and it is remarkable that Minnesota might inconsistently allow an increase for a risk several orders of magnitude higher.

Second, recognizing the risks, Minnesota created Safety Zones to protect its citizens from being in harm's way. 360.062 states that "It is hereby found that an airport hazard endangers the lives and property of users of the airport and of occupants of land in its vicinity, and may reduce the size of the area available for the landing, taking-off, and maneuvering of aircraft, thereby impairing the utility of the airport and the public investment therein." Yet, remarkably at a time when the public generally demands greater safety, your committee is clearly considering a policy that goes the other way - decreasing the safety, and in my opinion doing so without adequate consideration of the increase in the risks or the costs and benefits of this strategy. So, as you consider the Commissioner's actions eliminating Safety Zone A - by reducing it to the same size as the federal runway protection zone - and significantly modifying Safety Zone B in terms of permitted uses and density of population, I believe that you should consider the validity of the HNTB report prepared for the Metropolitan Airports Commission that purports to be a risk assessment of the likelihood of airplane crashes at MSP and appears to serve as a basis for this policy. My review of the circumstances surrounding your choice and my examination of the assumptions and conclusions of the HNTB report lead me to conclude that it fails to provide unbiased and full information, and that its conclusions are based on questionable assumptions. In my opinion, the HNTB report appears to have been written with the conclusion in mind rather than examining the facts and drawing independent conclusions. I ask you to please consider the following 5 observations:

1. No one can make predictions as to when and where an airplane crash will occur, but any report that suggests the probability of zero accidents is clearly flawed. The HNTB report's conclusion that Safety Zones are not needed is based on its assertion that the "probability of an accident in 2010 happening in State Safety Zones A or B would be zero." While the risk may be very small, it is not zero, and the analysis should consider the risks of the entire time period that the runway may be used, not just a single year. We can predict that accidents will continue to occur in the future, and therefore, we need to take appropriate actions to minimize the risk of harm to people and property on the ground so that the tragic consequences of an airplane crash are not multiplied by having the plane crash into highly populated areas. The fact that MSP has been lucky in the past 20 years that no accidents have occurred outside the federal runway protection zones, does not mean zero risk, the same was probably true in Teterboro, New Jersey before February 2, 2005. The HNTB report lacks any sense of considering the risks over time and fails to adequately consider the evidence available from other, similar airports. By using the low probability of an airplane crash at any one point in time (in this case asserting a risk of zero) and then implicitly extrapolating that zero into the foreseeable future (presumably decades), the HNTB analysis is fundamentally flawed and assumes away the problem. The fundamental flaw in this analysis is easily seen from the reality that in one accident the Concorde went from having the best safety record in the industry (no crashes or deaths) to having the worst. The risks are small, but real, and your committee must address them.
2. Safety zoning around runways should not be limited to the Federal runway protection zone - Minnesota has had airport zoning standards in place for a long time which are consistent with the risks present and helped to make MSP a safe airport. Reducing those safety zones to the federal

runway protection zone is not justified based on any proper risk assessment. Tables 1 and 2 in the HNTB report provide important data that suggest that the risks have not changed significantly over time. This suggests that no basis exists for modifying the Minnesota State Safety Zone requirements given the predicted increases in the number of operations annually.

3. Studies performed in the UK, which the HNTB report discussed, demonstrate a substantially higher risk of harm along the extended runway center line than other areas around the airport. The HNTB report fails to address the extended runway risk contours for MSP, which would demonstrate these increased risks. To reduce these risks the existing structures on the extended runway centerline should be cleared and any efforts to increase development near the runway centerline should be avoided. As development pressures crowd the edges of the safety zones, protection of the runway centerline becomes even more critical and it is essential to create a sufficient clear space for planes in trouble.
4. The ordinance that the Commissioner of Transportation approved last April does not meet well-established standards for safety around airports, particularly for what promises to be the busiest runway at one of the busiest airports in the world.
5. As I understand it, the Minnesota legislature made significant economic decisions to maintain the current airport in its urban location, rather than moving the airport to a more rural setting. By making that recommendation, the legislature takes on the burden of ensuring that adequate safety precautions are taken to protect people and property found in that urban setting. The Commissioner's approval of the zoning ordinance essentially eliminating State Safety Zone A does not adequately meet the obligations of government to protect public safety.

**Given these observations, I make the following recommendations:**

1. Maintain the good public policies that have served Minnesota well with respect to Safety Zones and require more protections around Runway 17-35 than the federal runway protection zone by at a minimum protecting the runway centerline all the way to the Minnesota River.
2. If the legislature believes that there is tension between the development demands in this area near the Mall of America and a strict application of the current state statute, then a scientifically based benefit-cost analysis should be done to determine how much development to allow around the edges of the safety zones. Such an analysis should include the development of risk contours and clear statements about the tradeoffs between saving lives and saving money for those who must pay for the safety.

I would be happy to answer any questions from committee members by e-mail or telephone. You are dealing with important questions of public safety. While we have to make judgments on a regular basis about how much risk is acceptable in our lives, protecting space around airports remains critically important. The consequences of an airplane crash are catastrophic in nature and often result in a large loss of human life and property damage. The proposed legislation to provide additional protections along the extended runway centerline of Runway 17-35 is necessary to better protect public safety. This is not the time to cut back on our concerns for air travel safety.

Thank you.

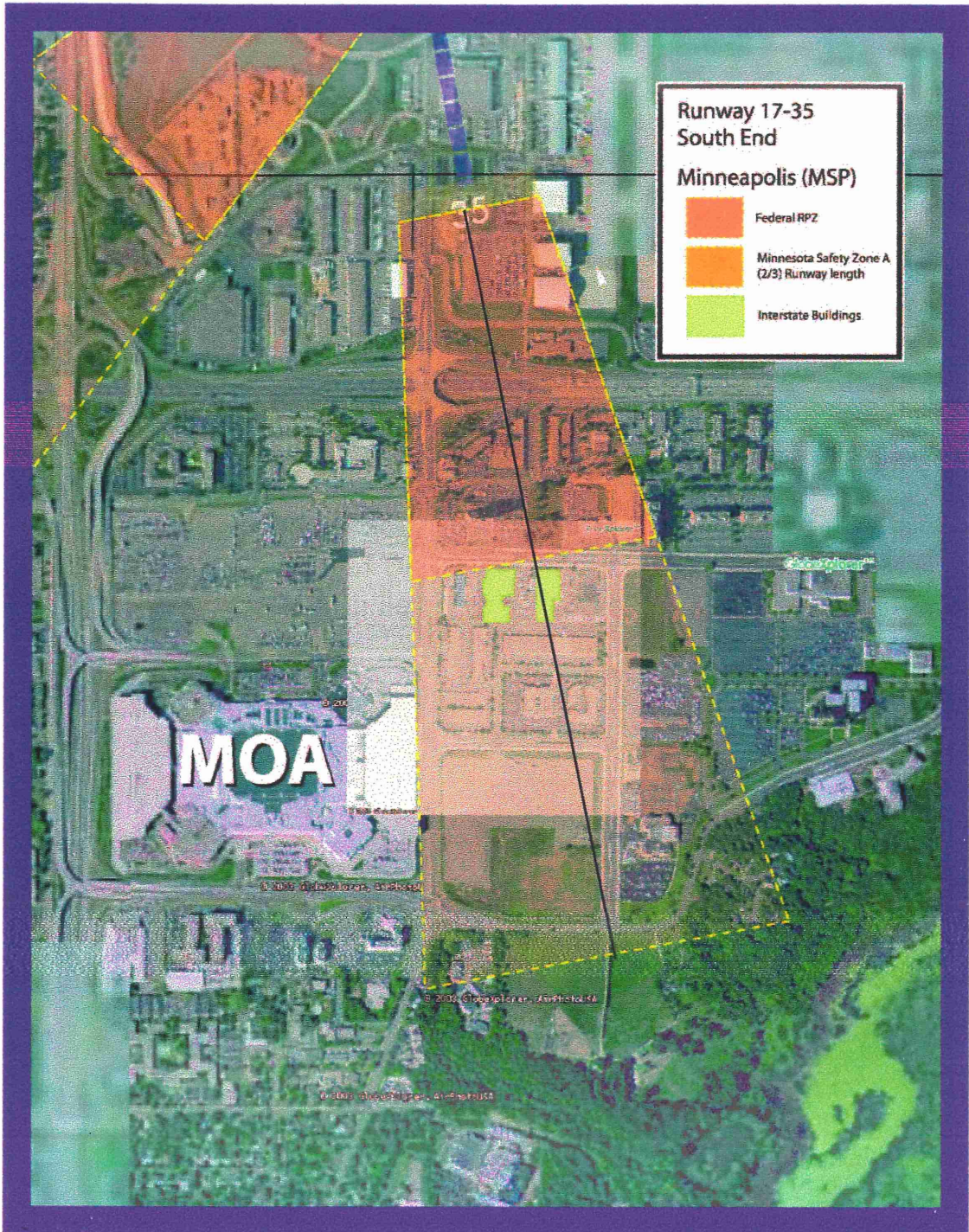
# Minnesota Senate Aviation Subcommittee

March 3, 2005

Lee A. Henderson  
Hessian & McKasy, P.A.  
[lhenderson@hessian.biz](mailto:lhenderson@hessian.biz)  
(612) 746-5750

# AGENDA

- Information about Interstate
- The Safety Problem at MSP
- The Commissioner's Order
- Why The Order Needs to Be Corrected
- The Solution - S.F. 1193



# Background Information

## **INTERSTATE**

### **Interstate Companies, Inc.**

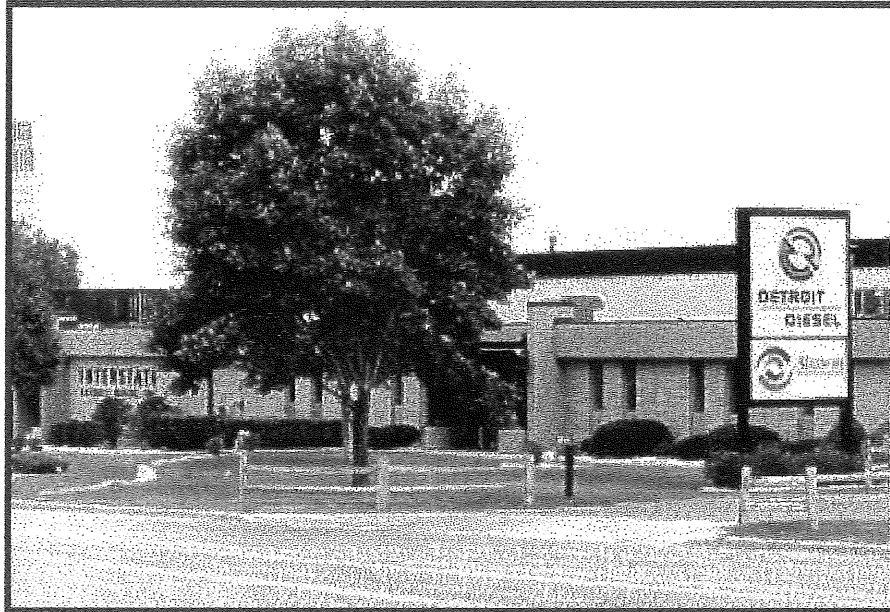
1. Ranked in top 65 of Minnesota's top 100 Privately held companies with over \$300 million in annual revenues.
2. Operates 22 branches in 8 states with over 750 employees.
3. Corporate Headquarters and largest branch are at campus complex at 2601 and 2501 East 80<sup>th</sup> Street.
4. Branch runs 19 hours a day 6 days a week. Buildings cannot be soundproofed as they are open much of the year.
5. Approximately 200 people work or are on campus on daily basis. Campus is site for all vendor meetings and company sponsored training activities.
6. Computer operations for entire company located on campus.
7. Campus is office for top management team, all warranty, accounting, personnel and other centralized operations.
8. Flammable materials are on site including diesel fuel tanks.



# Interstate's Buildings

# INTERSTATE

Interstate Companies, Inc.



2501 East 80<sup>th</sup> Street, Bloomington



2601 East 80<sup>th</sup> Street, Bloomington

# The Problem



# The Problem

Rank	City	Total Takeoff and Landings	Airport Size In Acres
1	CHICAGO, IL (ORD)	993 247	7,700
2	ATLANTA, GA (ATL)	963 285	3,750
3	DALLAS/FT WORTH AIRPORT, TX (DFW)	806 060	18,076
4	LOS ANGELES, CA (LAX)	649 433	3,425
5	DENVER, CO (DEN)	553 810	34,000
6	PHOENIX, AZ (PHX)	543 678	3,000
7	MINNEAPOLIS/ST PAUL, MN (MSP)	535 784	3,400
8	PARIS, FR (CDG)	535 332	3,700
9	LAS VEGAS, NV (LAS)	534 703	2,800
10	CINCINNATI, OH (CVG)	520 321	7,000
11	DETROIT, MI (DTW)	514 502	6,700

Data for 12 months ending 11/04

Minneapolis has one of the smallest land sizes among the busiest airports.

Land size suggested for the Farmington airport was 14,000 acres.

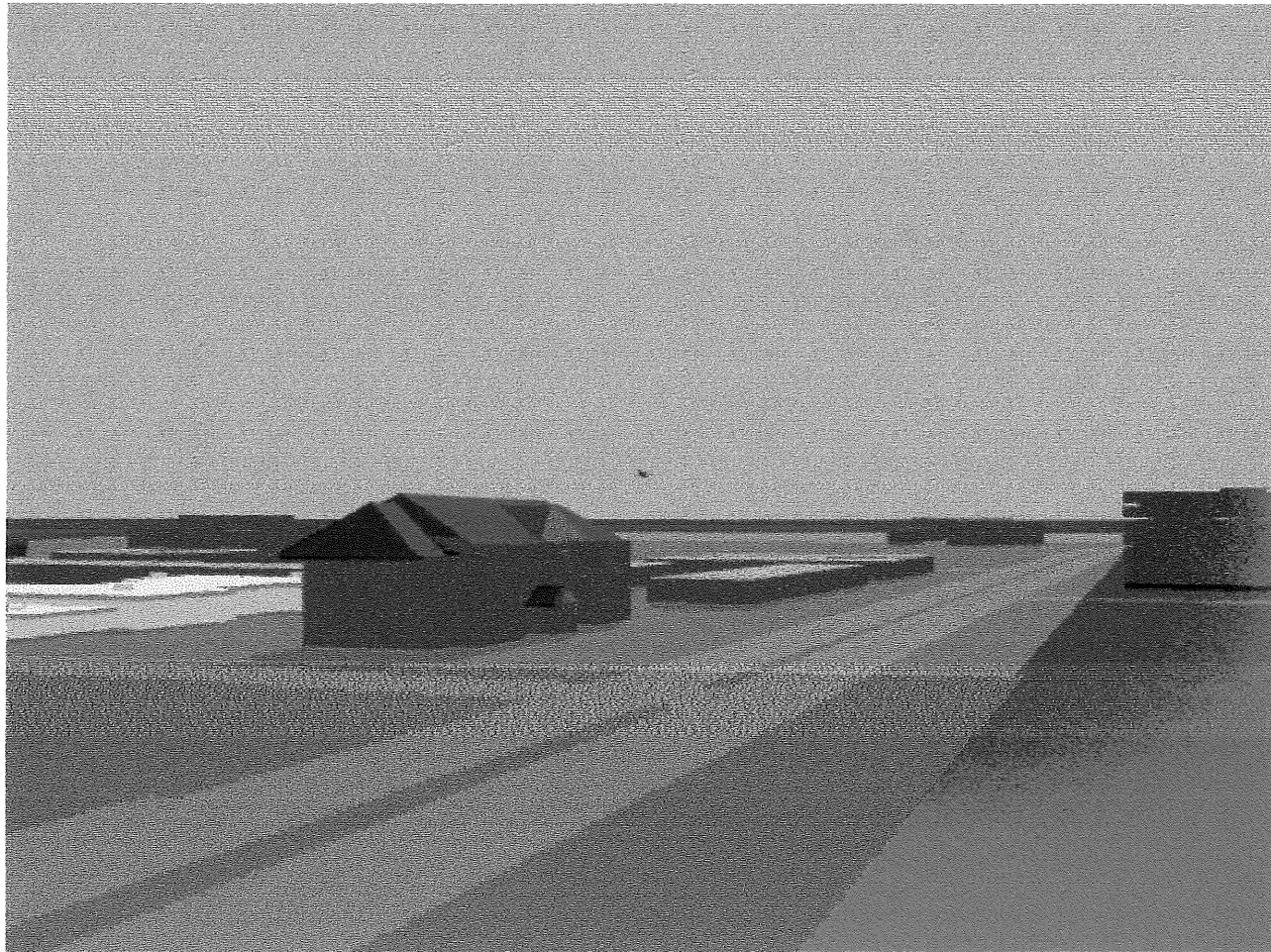
# The Problem

2005 Projections for use of North South Runway		
	General	Weekday
Total Aircraft Operations per Year	575,000	575,000
Total Takeoffs	287,500	287,500
Total Arrivals	287,500	287,500
Percentage Takeoffs on N-S Runway	37%	37%
Percentage Arrivals on N-S Runway	17%	17%
percentage of total flights that occur during weekdays		80%
Number of Total Daily Departures	788	885
Number of Total Daily Arrivals	788	885
Daily Departures on N-S Runway	291	327
Daily Arrivals on N-S Runway	134	150
Total Daily Jet Traffic	425	478
Take-offs/landing per hour over Interstate	27	30
Average time (in minutes) between each takeoff or landing	2.26	2.01

Major Development Projects  
Already Crowd  
the Safety Zones

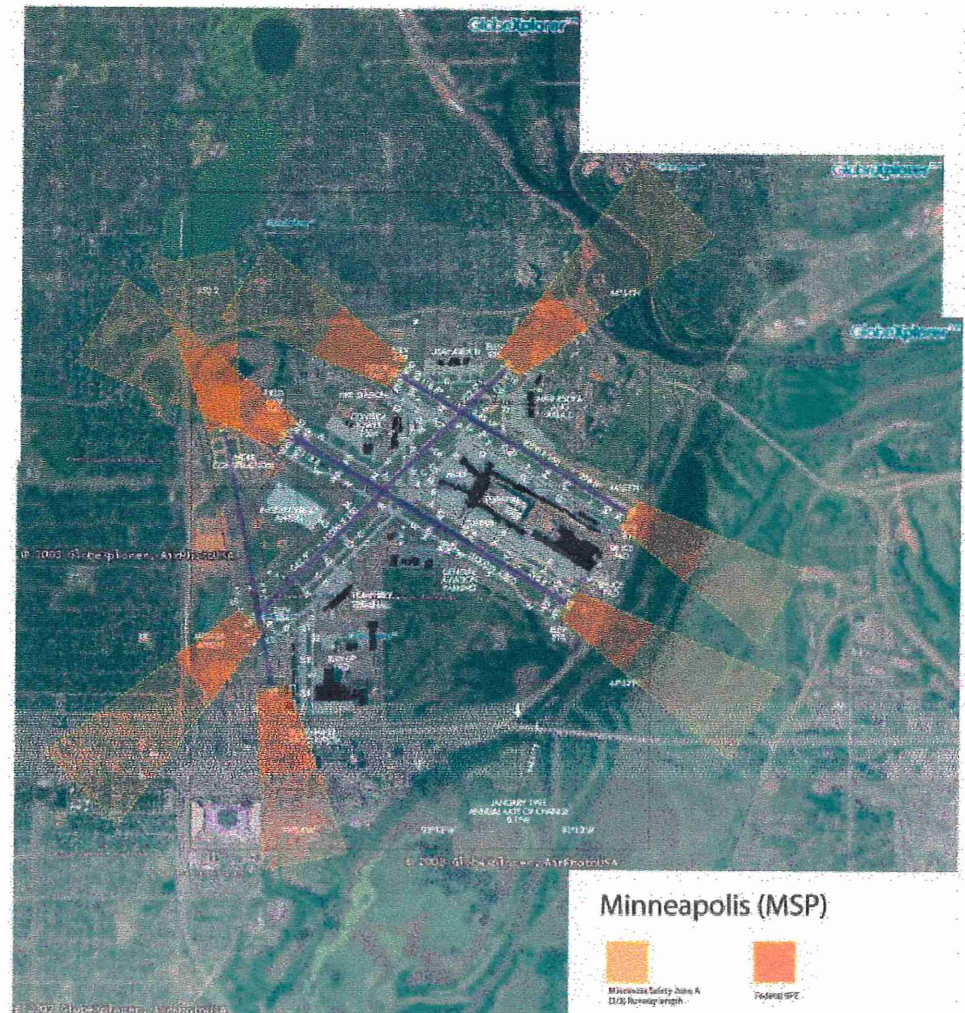


# The Problem



# The Problem

Contrary to MAC arguments there is no other runway end at MSP that has a high density building at the edge of the RPZ on the runway center line.

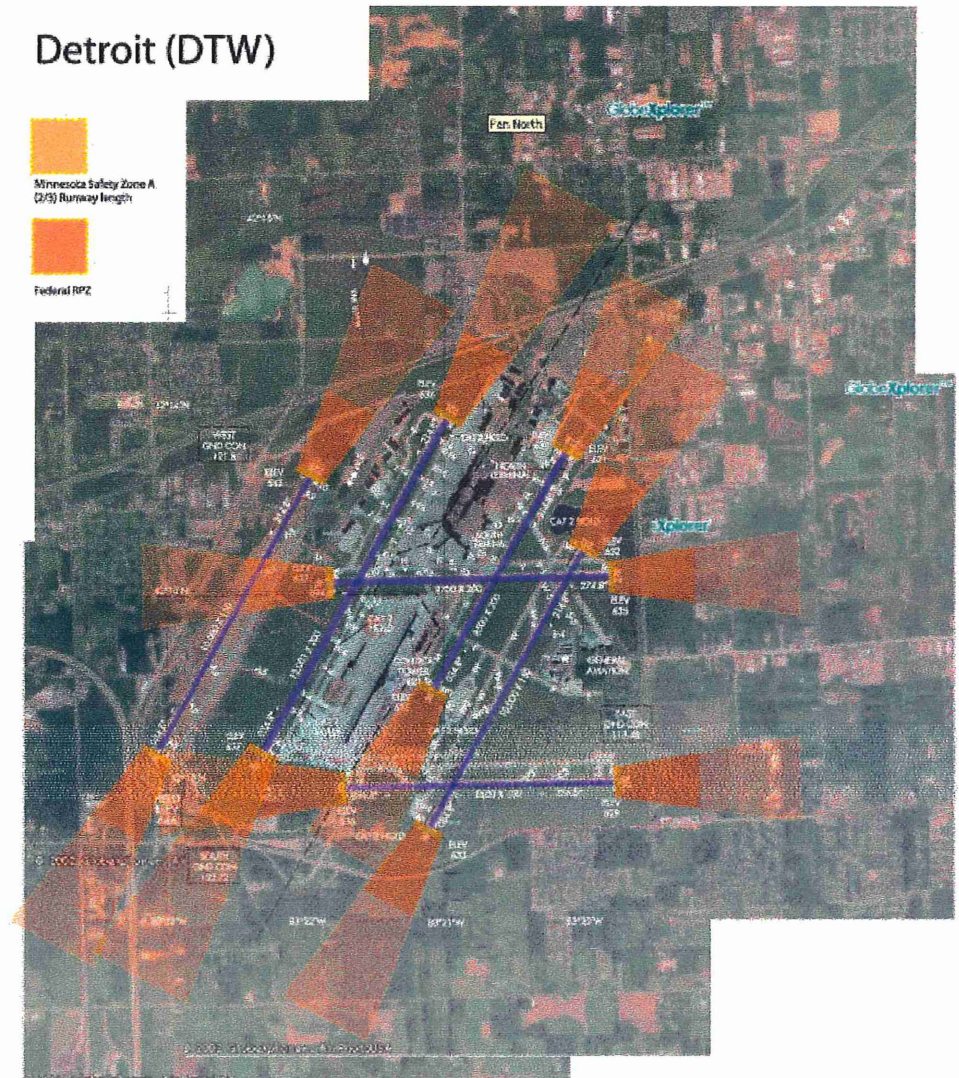


# The Problem

There is no other runway end at a top 10 airport in the United States that has a building with the density of Interstate's at the very edge of the RPZ.

Detroit is a good example.

Examples are available from other airports as well.



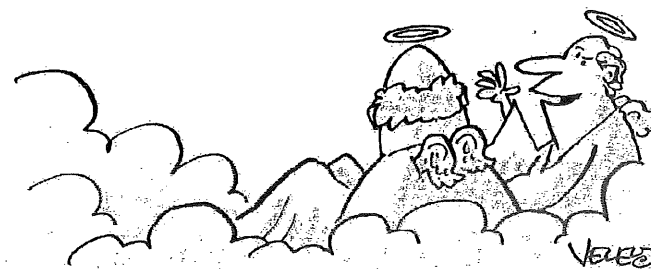
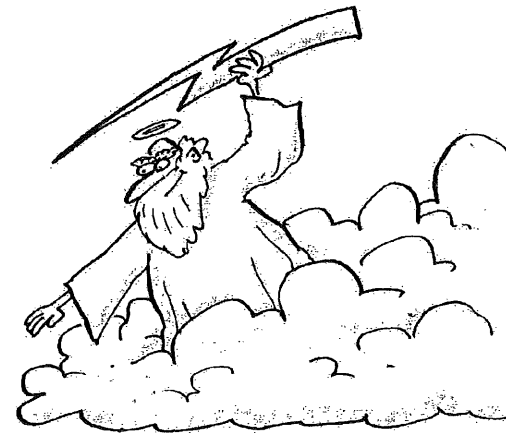


## The Commissioner's Order

- Eliminates safety zone A by making it coextensive with the RPZ
- Allows most any development in the remaining Safety Zone B
- Exceptions include hospitals, schools, churches and nursing homes
  - No rational basis for this distinction
- Campgrounds vs. hotels

# The Commissioner's Order

- Based on HNTB Report that concludes there is no risk that airplanes will crash at MSP outside the RPZ for decades, if ever.
- Dr. Kimberly Thompson testimony will address this issue.



*"Larry just LOVES messing with people in the risk assessment profession!"*

# The Commissioner's Order

- JAZB process was broken because of city concerns over liability questions in departing from state standards.
- MAC solved the problem, not by following the law, but by agreeing to indemnify the cities if they passed an ordinance acceptable to MAC.
- City representatives were witness, judge and jury. JAZB members were all development oriented people from the cities.
- Commissioner approved that outcome over objections of aeronautics experts within the Department of Transportation.
- Question for the legislature is whether
  - (a) this type of short term thinking is the kind of public policy we want in Minnesota; and
  - (b) whether the MAC even has the statutory authority to agree to such indemnification, essentially taking on a contingent future liability without legislative appropriation.

# The Commissioner's Order

## **Public Policy Issue at Stake:**

Minnesota public policy has long been to protect health and welfare of its citizens.

MAC policy adopted by the Commissioner is to eliminate protections and just indemnify or pay when something bad happens.

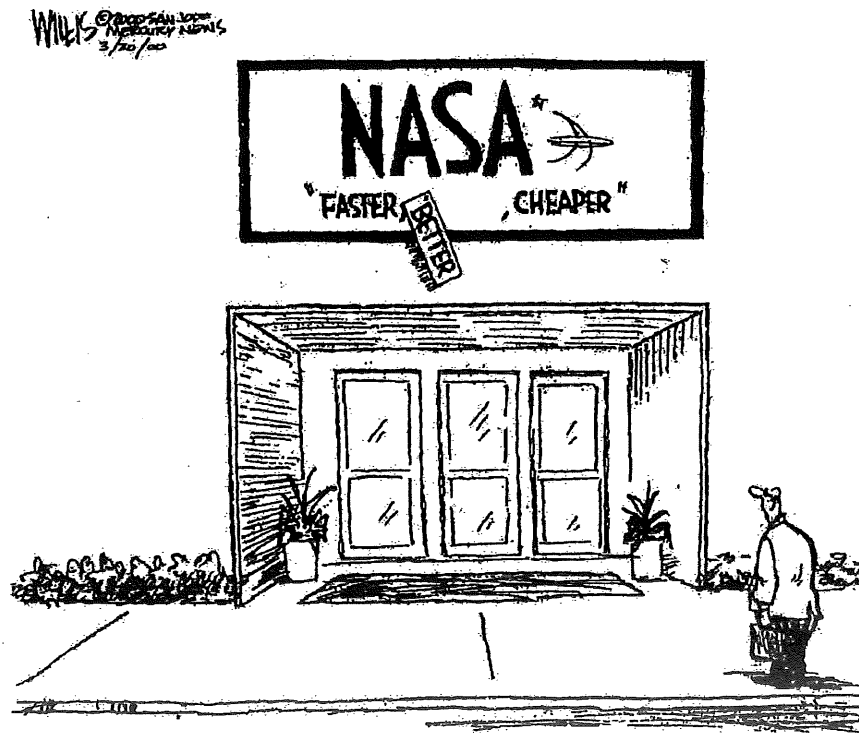
# The Commissioner's Order

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# Do Public Agencies Ever Make Mistakes?



SCOTT WILLIS / Mercury News Editorial Cartoonist

# Do Public Agencies Ever Make Mistakes?

## Staff Report:

- JAZB recommendation does not meet standards
- Cities want development without public safety limitations
- Provision must be made for clear area along extended runway centerline
- Zoning ordinance should be rejected and sent back



Minnesota Department of Transportation

### Memo

Office of Aeronautics  
Mall Stop 410  
222 East Plato Boulevard  
St. Paul, MN 55107-1618

Office Tel: (651) 296-8046  
Fax: (651) 297-5843

October 8, 2003

To: Randy Halvorson, Director Program Management Division

From: Raymond J Rought, Director

Subject: June 5, 2003, Commissioner's Submission Draft Of The Re-stated And Amended Minneapolis-St. Paul International Airport (Wold-Chamberlain Field) Zoning Ordinance

The Office of Aeronautics has completed review of the proposed ordinance.

*I recommend that the Draft MSP Zoning Ordinance be returned to the JAZB on the ground that the proposed ordinance does not conform to the standards prescribed by the commissioner, and that the JAZB shall make amendments as are necessary to meet the objectives. The JAZB has not demonstrated that community financial costs of restricting land uses in accordance with the standards outweigh the benefits of public safety standards. The financial impacts of potential development not occurring within runway hazard areas are not public economic costs. The identified developments could locate in other areas of the cities, or in other cities, and fully meet public needs. The low probability of an aircraft accident occurring in any particular year at MSP is not the intended purpose of runway safety zoning, and therefore is not an acceptable reason to remove restrictions on development in runway hazard areas.*

*The JAZB has presented arguments proposing to almost entirely eliminate Minnesota runway safety standards. The five cities proposing changes to the Runway Safety Zoning Standards want residential and commercial development in the runway hazard areas, and they want it to occur without public safety limitations. Runway safety zoning doesn't have to be all or nothing. I believe that it is possible for the JAZB to propose some carefully thought out development in the new runway hazard area without dramatically compromising required public safety protections. Provision must be made for a clear area along the projected centerline of the runway. Then, some additional selected development could safely occur along the perimeter of the safety zones.*

With your concurrence I will notify the Joint Zoning Board and the Metropolitan Airports Commission.

## Why the Commissioner's Order Needs to Be Corrected

- It is based on bad public policy
- Ignores Well Established Safety Standards
- Relies on faulty statistical analysis
- Relies on faulty social economic analysis



# Well Established Safety Standards

This guide identifies a wide variety of possible land use control methods as they relate to compatible land use planning efforts. This guide also recognizes that **state and local governments are responsible for land use planning, zoning and regulation**, and presents options or tools that can assist in establishing and maintaining compatible land uses around airports.

*Land Use Compatibility and Airports*  
Federal Aviation Administration - 1999

# Well Established Safety Standards

Airports require special planning:

“Compatible land use planning around airports requires special consideration in several areas. These include areas where the height of objects must be restricted, areas with the greatest potential for aircraft accidents, areas where airport-related noise should be mitigated, and areas of regular or frequent overflight (such as the areas under airport approaches and traffic patterns).”

A study of aircraft accident patterns at United States civil airports has shown that **most aircraft accidents near airports happen on or near the extended runway centerline. Consideration should be given to limiting the types of land uses and the density of structures in these areas.**

*Airport Compatible Land Use Design Handbook- May 1998  
Denver Regional Council of Governments*

# Well Established Safety Standards

The risk of people due to aircraft accidents is small, however, an accident is a high consequence event and the result is often catastrophic. Despite stringent maintenance requirements and countless hours of training, past history makes it clear that accidents are going to occur. **The Air Force does not attempt to base its land use recommendations on accident probabilities, but by the fact that an aircraft accident is a significant catastrophic event and poses a higher risk of injury and damage.**

DoD analysis has determined that the areas immediately beyond the ends of runways and along the approach and departure flight paths have significant potential for aircraft accidents.

*Air Force AICUZ Program  
Manager's Guide – March 1, 1999*

# Well Established Safety Standards

Minnesota law requires city comprehensive plans to be consistent with the MC's land use compatibility guidelines, and zoning regulations to be consistent with the City's comprehensive plan and Mn/DOT safety rules. **Existing and planned land use in the state safety zones south of the proposed new north-south runway are not consistent with these requirements.** The City of Bloomington would have to amend its development regulations to assure conformity with Mn/DOT airport zoning standards for safety zones.

*FAA Record of Decision  
Approving North-South Runway  
September 23, 1998*

# FAULTY STATISTICAL ANALYSIS

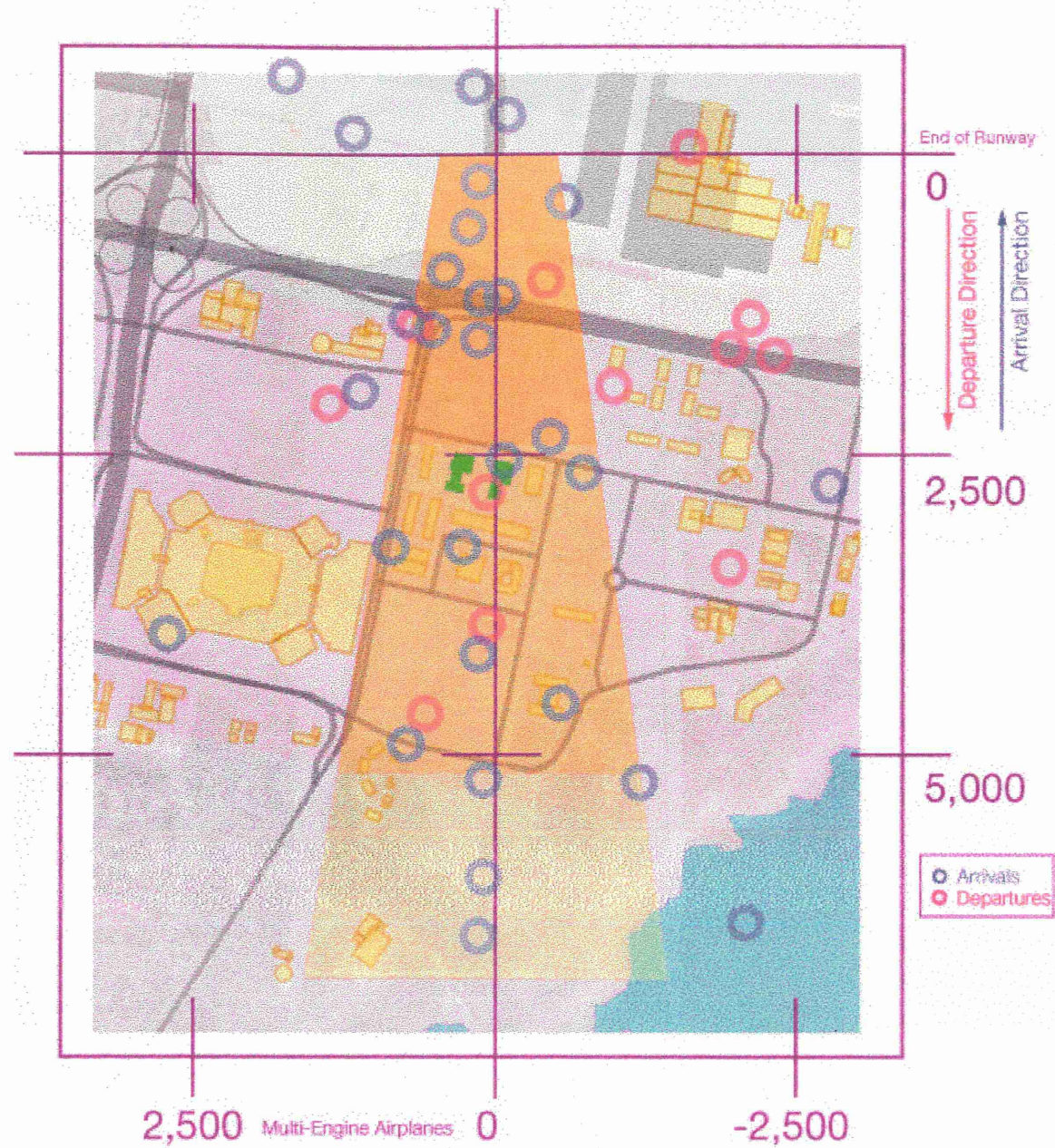
**Airplane crashes continue to occur every year in spite of the improvements in safety.**

Compared to the year before, 2004 showed an increase again in the number of approach and landing accidents, which is one of the four most pressing safety problems facing the aviation industry according to the Flight Safety Foundation. In 2004 they accounted for 46% of all accidents, compared to 32% in 2003, 54% in 2002 and 38% in 2001.

Source: Aviation Safety Network - 2004

# Aircraft Accident Characteristics

## Departure and Arrival Accident Location Patterns



# Faulty Social Economic Analysis

Dual Track Study recognized monetary benefits of Expansion vs. New Airport

- \$8 Billion including transportation infrastructure for new airport
- \$2.8 Billion for upgrades to existing airport

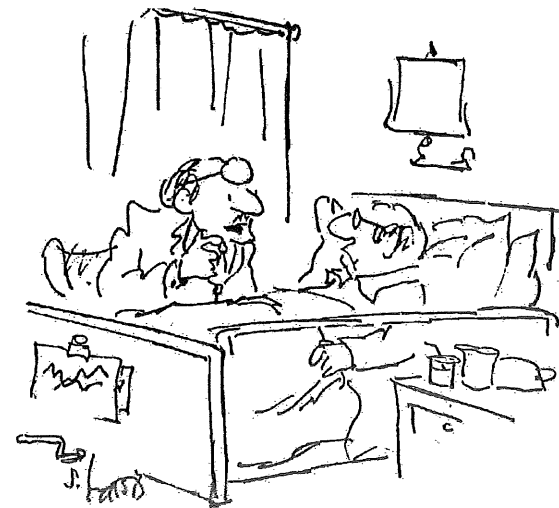
*Dual Track Study  
March 1996*

The legislature already made the social economic decision that keeping the airport in its current location is more economical than building a new airport, almost regardless of its extra costs.

# Faulty Social Economic Analysis

Arguments regarding social economic analysis are not supportable.

- Loss of development - not true in metro wide analysis
- Wasted infrastructure – not true as Bloomington is currently expanding infrastructure in this area to meet the needs of at least two other development projects.
- Cost of land acquisition; pales in comparison to increased liability
- Commissioner has inappropriately tried to value human life; schools, hospitals barred from area; parents of school children would not be.
- No analysis of the health risks – noise, air quality, vibration, and stress



"FEWER THAN ONE IN TEN THOUSAND - SOMETHING LIKE ONE IN FOURTEEN THOUSAND - GETS THESE SIDE EFFECTS. HARDLY ANYBODY GETS THESE SIDE EFFECTS. THEY'RE EXTREMELY RARE. YOU SHOULD BE VERY PROUD."

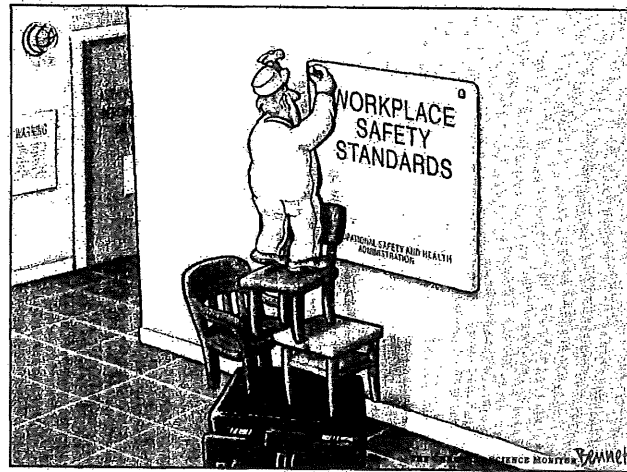


# CONCLUSIONS

- As matter of state public policy, safety zoning outside of the RPZ is required to protect the health and safety of Minnesota citizens
- Safety concerns dictate that there should be no structures in Safety Zone A, particularly along the extended runway centerline
- Appropriate zoning for airport expansion in a metropolitan environment may displace some existing property uses, but is part of the cost of maintaining an urban airport. (It is still less costly than a new airport.)
- Costs mitigated by FAA authority to purchase land 5,000 feet from end of runway.

# THE SOLUTION

The legislature needs to fix the Commissioner's Order so the operation of our largest airport does not rely on a faulty public policy foundation, premised on paying later when something catastrophic happens.

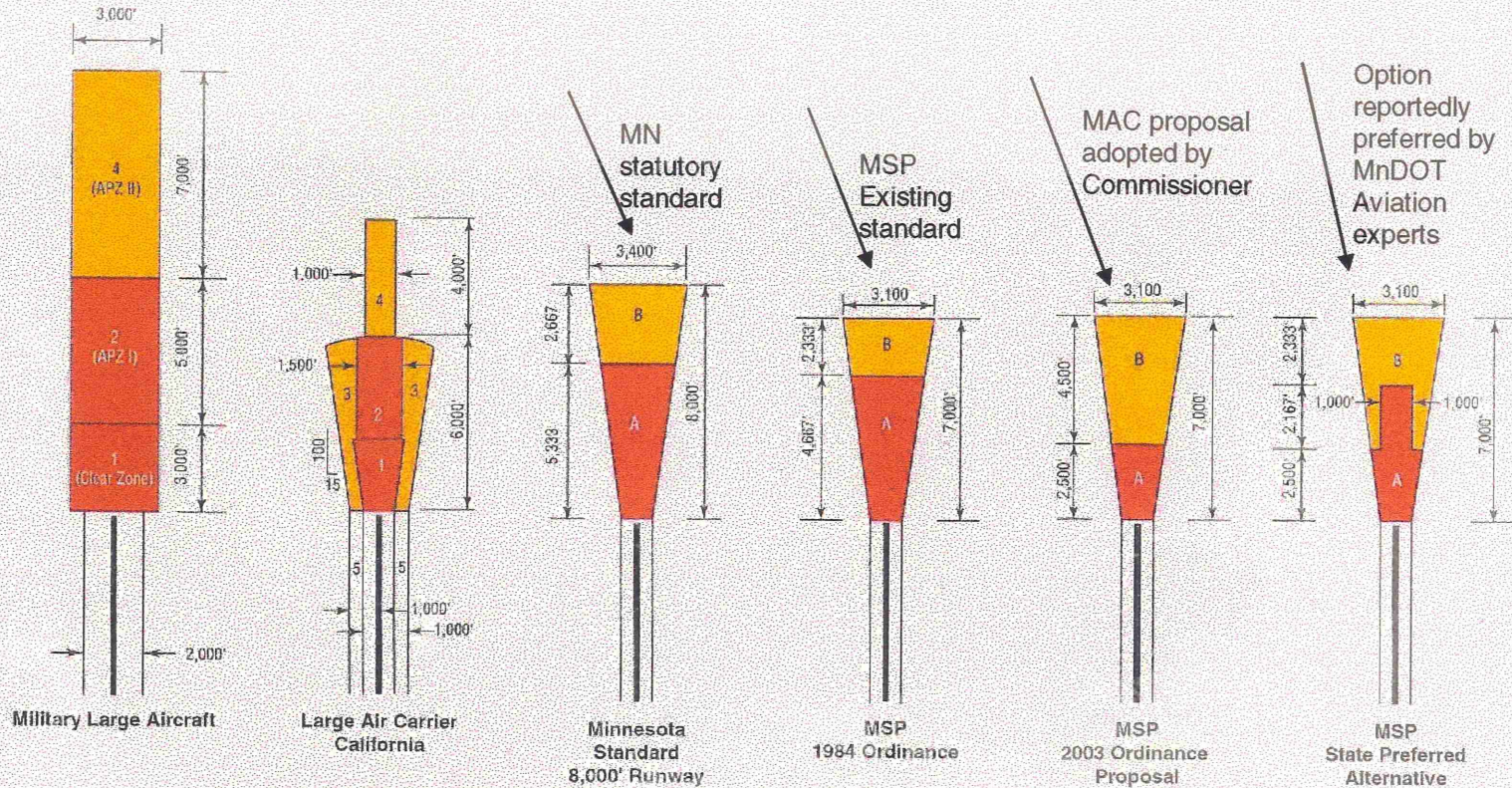


Clay Bennett 1999 © The Christian Science Monitor.

# THE SOLUTION

**DRAFT**

## Safety Compatibility Zone Examples Military, California, Minnesota Standard and MSP Zones



A= Safety Zone A significantly limits presence of people and buildings

B= Safety Zone B contains density and land use limitations (except for Commissioner Order which only excludes things like hospitals and schools and otherwise has no density or use limitations)

