

MEMORANDUM OF UNDERSTANDING
CONCERNING COOPERATIVE SOLUTIONS TO
INFRASTRUCTURE, RIGHT-OF-WAY/EASEMENT AND PARK NEEDS
BETWEEN THE CITY OF EDEN PRAIRIE AND THE METROPOLITAN AIRPORTS
COMMISSION REGARDING FLYING CLOUD AIRPORT

This Memorandum of Understanding ("MOU") is entered into between the City of Eden Prairie ("Eden Prairie" or "City") and the Metropolitan Airports Commission ("MAC") regarding cooperative solutions to outstanding infrastructure, assessment, right-of-way/easement and parkland issues relating to the Flying Cloud Airport. The undersigned parties believe that the elements of this MOU will establish a cooperative relationship between Eden Prairie and MAC for the compatible implementation of infrastructure improvements and private property development. In exchange for all the commitments in this MOU the parties agree as follows:

1. Easements for Charlson Area Improvements.

A. MAC RESPONSIBILITIES AND COMMITMENTS:

- (1) MAC shall convey right-of-way and/or easements (subject to FAA approval) in general conformance to the drawing attached as Exhibit A.
 - (a) The areas in *yellow* (approximately 4 acres) shall be conveyed to Eden Prairie at no additional consideration or compensation. The undersigned recognize that this right-of-way was the subject of an agreement dated November 10, 1997 between Grace Church and Lynn L. Charlson (and successors and assigns), wherein the property owner covenanted to dedicate right-of-way for the realignment of County Road 4 at no monetary compensation.
 - (b) The area generally highlighted in *purple* minus the area highlighted in *red* (that will be vacated), approximately 4.1 acres net, shall be conveyed to Eden Prairie.
 - (c) MAC shall provide temporary construction easements for construction of the improvements as shown on Exhibit A at no additional compensation. The parties acknowledge that not all of the easement areas have been "final designed" but recognize that they are temporary in nature and will vary in accordance with construction needs. Conveyance of easements is subject to final design approval by MAC.

B. EDEN PRAIRIE RESPONSIBILITIES AND COMMITMENTS

- (1) Eden Prairie shall reimburse MAC in accordance with the following:
 - (a) Pending special assessments for parcels labeled MAC 2 and MAC 3 (see Exhibit A) will not be levied by City. The estimated amount of these special assessments is \$332,304. Trunk assessments against these two parcels will be absorbed by the City and pending local assessments from the Charlson Area Feasibility Study will be reassigned to non-MAC property as right-of-way acquisition costs.

- (b) Except for provisions to collect trunk sewer and water assessments for current and proposed buildings on the airport property (see Paragraph 6) and in consideration and approval of all the elements of this MOU, Eden Prairie will not levy any additional trunk sewer and water assessments to MAC-owned land as assembled for development and protection of the Flying Cloud Airport.
- (c) City will grant MAC a "curb cut" on Charlson Road in a manner to permit access from the Southwest corner of the south hangar area to Charlson Road in a location to be mutually agreed upon between MAC and the City.

C. GENERAL

- (1) The final design details of the CSAH 4 (Eden Prairie Road/Spring Road) alignment are subject to approval by Hennepin County and MAC. It is expected that the area of *purple* may be enlarged or reduced and that a corresponding enlargement or reduction in the area shown in *red* to be vacated may occur, but that the net acreage is expected to remain at approximately 4.1 acres.
- (2) Grading of the Charlson property and construction of Charlson Road including utility stub locations shall be subject to MAC approval and will be granted if the grading plans are designed to be compatible with the MAC grading plans so as not to compromise the integrity of MAC's present and known future development plans, except as provided for in that certain Settlement Agreement dated July 16, 2002 between MAC, Lynn Charlson, PenTom and the City of Eden Prairie ("Settlement Agreement").

2. TH 212 and Pioneer Trail Utilities.

A. MAC RESPONSIBILITIES AND COMMITMENTS

- (1) MAC shall loop the watermain through airport property from the South Hangar area to Pioneer Trail to meet fire flow/safety requirements (established by the Fire Marshall as 2000 gallons per minute to office/industrial areas and 3000 gallons per minute to hangar areas). MAC will dedicate necessary easements for ownership, maintenance and repairs by the City.

B. EDEN PRAIRIE RESPONSIBILITIES AND COMMITMENTS

- (1) City shall construct and finance from its Trunk Utility Fund the 16-inch watermain connection under Pioneer Trail and TH 212.
- (2) Eden Prairie shall reimburse MAC for expenses MAC incurs in extending watermain along TH 212/Flying Cloud Drive from the point that the waterline is necessary to serve the building area in the vicinity of the control tower to the westerly MAC property line (estimated to be approximately 300 to 500 feet).

- (3) The Feasibility Study shall indicate the cost of an 8-inch watermain along Flying Cloud Drive to be assessed to adjacent properties with the City paying the cost to oversize to a 12-inch watermain.
- (4) Upon execution Eden Prairie shall finalize the Pioneer Trail/Flying Cloud Drive Area Feasibility Study, conduct the public hearing and let the contract for the portion to be constructed by Eden Prairie.

C. GENERAL

- (1) Each party shall be responsible for one half of the full cost to install an 8-inch watermain along Pioneer Trail (from Staring Lake Parkway to TH212), with Eden Prairie reimbursing MAC for the cost to oversize the watermain from an 8-inch to 12-inch diameter trunk line.
- (2) MAC and Eden Prairie shall cooperate in the construction of the utilities as follows:
 - (a) Eden Prairie shall hold public hearings and be responsible for managing the public process in accordance with Minnesota Statutes Chapter 429 regarding special assessment procedures.
 - (b) Eden Prairie shall design, let and administer the phase of the construction project generally north of Pioneer Trail and including the crossing of Pioneer Trail of the proposed sanitary sewer and all of the 16-inch watermain.
 - (c) MAC shall design, let and administer all remaining portions of the project for which Eden Prairie will reimburse MAC for costs beyond MAC's share of the project as defined in the Feasibility Study.
 - (d) MAC shall follow all applicable public procurement and bidding requirements to meet the requirements of special assessment statutes, i.e., public bids, advertising, plan approval, change order approvals and documentation.
 - (e) Upon completion of the MAC portion of the utilities, the City shall become owner of the trunk sanitary sewers and trunk watermain installed along Pioneer Trail and Flying Cloud Drive, including the airport loop watermain identified in Paragraph 2 A(1) above. MAC will dedicate necessary easements for maintenance and repairs by the City at City's sole cost.
 - (f) Eden Prairie will assemble the final costs as incurred by MAC and Eden Prairie and develop the final allocation of costs in accordance with the Feasibility Study and levy applicable special assessments.

3. **SAC/WAC Fees.** Eden Prairie will charge non-commercial tenants (storage facilities) at the prevailing City Residential SAC/WAC rate at time of plumbing permit issuance. MCES SAC, water meters and inspection fees will also be collected at time of permit issuance at prevailing rates. Buildings utilized for commercial uses would pay at prevailing commercial SAC/WAC rates.

4. **Airport Drainage and Water Quality Facilities.** In accordance with the Settlement Agreement, the City will pursue design of the "North Pond" to be a dry pond facility subject to approval of applicable regulatory agencies. However, if the resultant facility is a pond containing a permanent water pool, the design will be developed in accordance with FAA Advisory Circular 150/500-33 (5-1-97) Section C 3-7. The parties acknowledge that the City does not have (nor contemplates) any special maintenance provisions that would limit waterfowl utilization of the pond. The Settlement Agreement contemplated that the North Pond will be a joint use facility and will be maintained by the City of Eden Prairie at no cost to MAC, with no special waterfowl maintenance requirement. Upon application to City, MAC shall be granted such permits as are reasonably necessary for MAC to perform waterfowl maintenance and control.

5. **Future Right-of-Way for CSAH 1.** Subject to the conditions set forth in the second sentence of this paragraph MAC shall cooperate with Hennepin County at a future date to provide right-of-way at no monetary compensation for the anticipated expansion of CSAH 1 (Pioneer Trail) provided that the improvements do not compromise the use of the property by MAC or its tenants as determined by MAC. The conditions to MAC's cooperation are that there will be (i) no out of pocket cost or assessments to MAC, (ii) accommodation of MAC storm water, (iii) no net loss in parking spaces, (iv) fencing that may be required for relocation will be removed and replaced to provide continuous and ongoing security for the airport facility, (v) complete restoration of the airport grounds to be equal or better than existing, and (vi) final design approval by MAC. Further the parties agree that if an opportunity for a three-party cooperative agreement between MAC, Eden Prairie and Hennepin County exists for acquiring a parcel generally known as the "Sjostrand Property" as a solution for right-of-way needs in conjunction with the CSAH 1 improvements, that a mutually acceptable acquisition be pursued.

6. **Trunk Assessments.** Eden Prairie shall collect trunk sewer and water assessments for existing airport property (in the hangar and building area) based on the following:
 - A. Assessments would be collected on a "fee basis" at the same time as SAC/WAC fees at time of issuance of plumbing permits.
 - B. The amount of the assessment shall be based on dividing the gross square footage of the building by 20% and multiplying by the prevailing acreage trunk assessment rate as established on an annual basis by Eden Prairie City Council on a community-wide basis.
 - C. All existing and proposed future buildings on the airport that will utilize sewer and water service in the future will be connected to the municipal utility system on a reasonable time schedule as established by MAC Policy for Sanitary Sewer and Water Installation at the Reliever Airports, amended as of October 16, 2000, and are subject to these fees.

7. **Hustad Property/Atkins Property/Special Assessments.**
 - A. **MAC RESPONSIBILITIES AND COMMITMENTS**
 - (1) Subject to FAA approval for compliance with land release and revenue diversion, MAC shall provide a permanent license in favor of Eden Prairie for park and open space purposes over land acquired by MAC from "Hustad" (approximately 32 acres) and "Atkins" (approximately 10 acres). MAC shall seek such approval from the FAA immediately after receiving from Eden Prairie the utilization plan identified below in 7.B.(2).

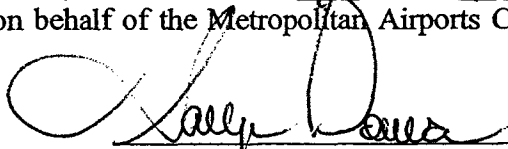
B. EDEN PRAIRIE RESPONSIBILITIES AND COMMITMENTS

- (1) Subject to receipt of FAA approval as provided for in 7.A.(1) above, Eden Prairie will not levy pending assessments estimated at \$1,140,685 as proposed by the Charlson Area Feasibility Study against property acquired by MAC generally known as the "Hustad Property", which was the subject of a certain special assessment agreement filed as Document Number 6777956 (filed in Abstract) and Document Number 2839728 (filed in Torrens). Eden Prairie shall not reassign or assess these costs to any other MAC or non-MAC property.
 - (2) Eden Prairie shall prepare a utilization plan of the park and open space area for review and approval by MAC for conformance to FAA and State Zone A and B requirements. It is understood that Eden Prairie desires to create a neighborhood park and parking lot on a portion of this site. Eden Prairie's use of the property for park and open space use shall be subject to restrictive covenants prohibiting uses other than in the approved utilization plan, which restrictive covenants shall be specifically enforceable by MAC and shall be filed against the property.
 - (3) The permanent pond shown along the east side of Eden Prairie Road as generally depicted on Exhibit A (labeled Pond 2) will be relocated to the west side of Eden Prairie Road onto the park and open space property. The City will pursue design of the pond to be a dry pond facility subject to approval of applicable regulatory agencies. However, if the resultant facility is a pond containing a permanent water pool, the design will be developed in accordance with FAA Advisory Circular 150/500-33 (5-1-97) Section C 3-7. The parties acknowledge that the City does not have (nor contemplates) any special maintenance provisions that would limit waterfowl utilization of the pond. The pond will be maintained by the City of Eden Prairie at no cost to the MAC, with no special waterfowl maintenance requirement. Upon application to City, MAC shall be granted such permits as are reasonably necessary for MAC to perform waterfowl maintenance and/or control.
 - (4) All existing and future MAC land utilized by Eden Prairie for park and open space purposes will not be subject to cash park fees or storm water utility fee billings to MAC.
8. **Storm Water Utility Fees.** For purposes of computation of storm water utility fees 50.32 acres of property at Flying Cloud Airport shall be included (of which 44.32 acres are "undeveloped" and 6 acres are "developed"). The current quarterly fee for the Airport at its current level of development is \$114.28. Eden Prairie shall apply the rates to the applicable acreage retroactively to the date of origination of the fee structure without penalty or interest and upon payment by MAC of the corrected amount, Eden Prairie shall direct that County Tax Records be expunged of the delinquencies currently listed. Future fees will vary as modified by City Council from time to time so long as such fees are modified on a community-wide basis or as additional Airport Property is developed except as noted in Paragraph 7. B.(4) above.
9. **City Outside Storage Facility.** Eden Prairie shall provide MAC preliminary development plans for the City-owned outside storage facility along the east side of TH 212 (old theatre site) prior to implementation of improvements for advice and counsel regarding minimization of adverse impacts to airport operations prior to submission to FAA for its Airspace (Form 7460) review.

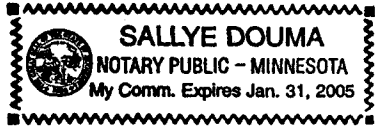
10. **Flying Cloud Ball Field Expansion.** Eden Prairie desires to expand its utilization of MAC-owned property westerly from the existing Flying Cloud Ball Field area to existing Spring Road. This would increase the acreage currently being utilized for Flying Cloud Ball Fields from approximately 31 acres to approximately 56 acres. The parties agree as follows:
- A. The existing Flying Cloud Ball Field Open Space and Park Area shall be converted from a year-to-year lease to a 3 year renewable lease with mutually agreeable language designed to provide a long term utilization of the MAC property for compatible recreational purposes, provided the property shall be subject to recapture by MAC upon one (1) year written notice to City with no monetary compensation to City.
 - B. The 25-acre \pm expansion area to be provided to Eden Prairie for recreational purposes shall be incorporated in the lease arrangement as noted in a) above.
 - C. It is understood that Eden Prairie will use the expansion area solely for soccer and ball fields and associated ancillary uses.
 - D. Final design by Eden Prairie for the expansion area shall be subject to review and approval by MAC for conformance with FAA and state rules and regulations and compatibility with airport operational requirements.
 - E. The cost to the City of Eden Prairie to lease these properties shall be subject to negotiation, but shall be: (i) in the same order of magnitude as the current lease payments so long as the federal revenue diversion policy remains the same and (ii) consistent with any change made in the future to federal revenue diversion policy.
11. **Right-of-Entry.** The parties agree that upon execution of this MOU, MAC shall execute a right-of-entry document, which will allow Eden Prairie to construct the improvements identified generally in the Charlson Area Feasibility Study in the location of easements contemplated in Paragraph 1 of this MOU.
12. **Agreements.** The parties agree to enter into such further agreements necessary to carry out the intent of this MOU
13. **Dispute Resolution.**
- A. **Notice of Default.** At no time shall Eden Prairie or MAC be deemed to be in default under, or breach of, this MOU unless and until the other party has provided written notice to the other specifying such alleged breach or default ("Notice of Default") and such alleged breach or default has not been cured as provided in Paragraph 13.B.
 - B. **Right to Cure Default.** The party who has received a Notice of Default shall have thirty (30) days in which to cure the alleged breach or default and provide notice to the other party that such alleged breach or default has been cured.
 - C. **Informal Dispute Resolution.** Immediately after receipt of a Notice of Default, the Executive Director of MAC and the City Manager of Eden Prairie shall meet and attempt to resolve the matter.

- D. **Formal Mediation.** If the parties fail to resolve the matter informally under Paragraph 13.C within thirty (30) days, the parties shall submit their dispute to a mediator. The parties shall have ten (10) days to select a mediator. If the parties are unable to agree upon a mediator, the Chief Judge of the 4th Judicial District, Hennepin County, Minnesota, shall select a mediator. The mediator shall be provided a copy of the report(s) specified in Paragraph 13.C. The mediation shall be conducted pursuant to the rules generally used by the mediator in the mediator's practice, provided that the entire mediation process be concluded within 30 days of appointment of the mediator, or within such other time as the parties may agree in writing. If the mediation process fails to resolve the matter, both informal and formal dispute resolution shall be deemed to be complete.
- E. **Costs of Alternative Dispute Resolution.** Each party shall bear its own costs of the informal dispute resolution process and formal mediation process described above. The parties shall share equally the fees and expenses of the mediator.
- F. **Dispute Resolution Process Mandatory.** No action shall be commenced in any court to enforce or otherwise apply, interpret, or seek cure for a breach of, this Agreement, excluding an action requesting preliminary or temporary relief, before the completion of the informal and formal dispute resolution process set forth in this Paragraph 13. Neither party shall assert, plead, raise, allege, or rely upon the applicable statute of limitations, laches, timeliness, delay, or any other defense based on the passage of time during the dispute resolution process in any subsequent judicial or administrative proceeding. The dispute resolution provisions set forth in this Paragraph 13 shall apply only to MAC and Eden Prairie, and shall not apply to any successor in interest to either Party.
- G. **Confidentiality.** The alternative dispute resolution process described in this Paragraph 13 constitutes compromise negotiation for purposes of applicable rules of evidence. Information prepared for or disclosed during the alternative dispute resolution process shall be inadmissible in evidence pursuant to Rule 408 of the Federal Rules of Evidence or Rule 408 of the Minnesota Rules of Evidence, and shall be withheld from disclosure to the maximum extent permissible under the Minnesota Data Practices Act and other applicable laws.
- H. **Waiver of Rights.** The failure of either party to object to, or to take affirmative action with respect to, any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of such violation or breach, or of any future violation, breach or wrongful conduct. Subsequent acceptance of performance under this Agreement by Eden Prairie or MAC shall not be deemed to be a waiver of any preceding breach by the other Party of the terms of this Agreement, regardless of Eden Prairie's or MAC's knowledge of such preceding breach at the time of acceptance of performance. No waiver or relinquishment of a right or power under this Agreement shall be deemed a waiver of such right or power at any other time, nor shall any failure of either party to require or exact full and complete compliance with any of the covenants or conditions of this Agreement be construed as changing in any manner the terms hereof or preventing either party from enforcing the full provisions hereof.

The foregoing instrument was acknowledged before me this 7 day of December 2002, by Jeff Hamiel, Executive Director, on behalf of the Metropolitan Airports Commission, a public corporation of the state of Minnesota.



Notary Public



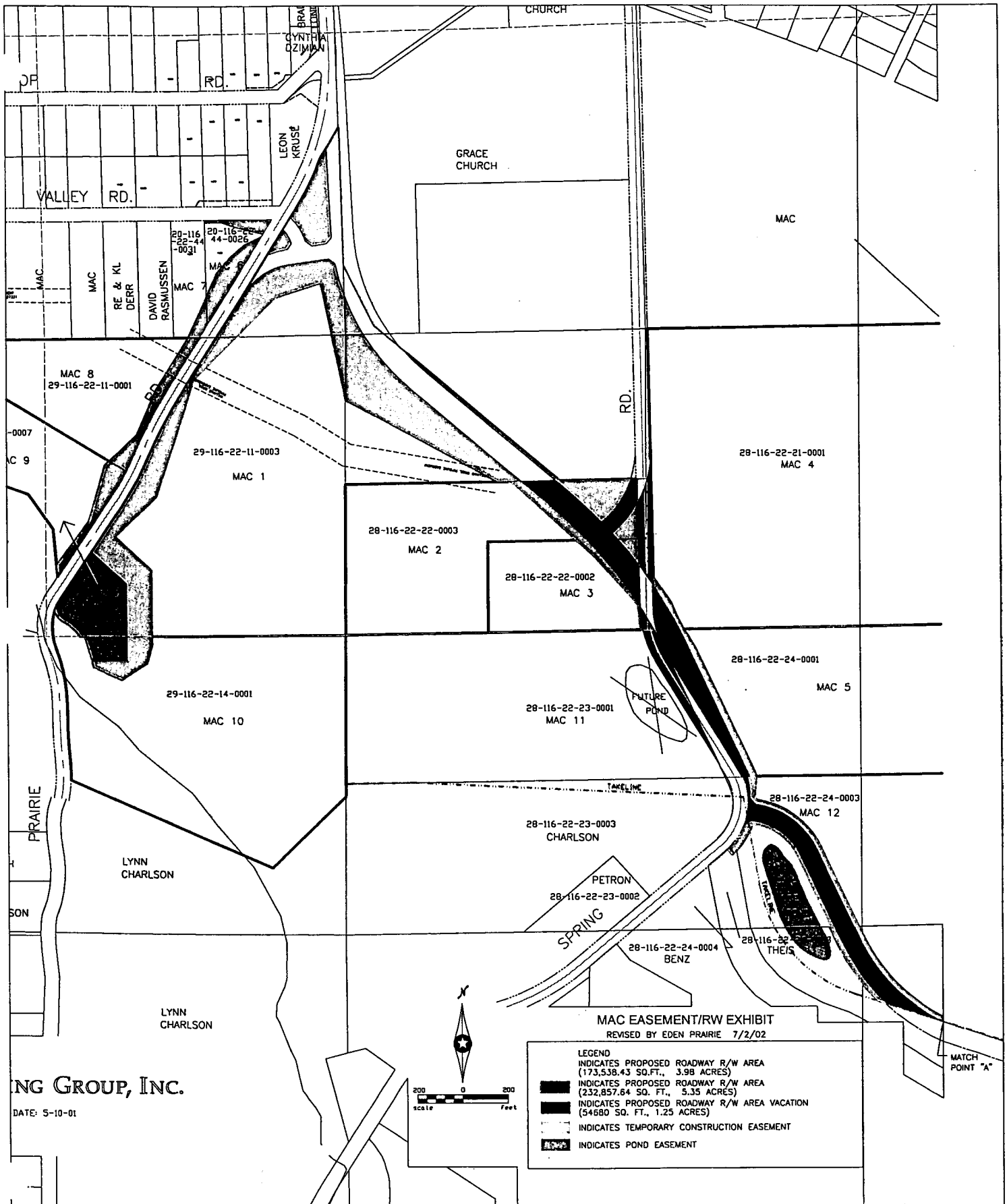


EXHIBIT A

12/9/02