

**BEFORE THE
FEDERAL AVIATION ADMINISTRATION
CHICAGO AIRPORTS DISTRICT OFFICE**

**In the matter of the)
FINAL ENVIRONMENTAL IMPACT)
STATEMENT FOR THE O'HARE)
MODERNIZATION PROGRAM)
(OMP)**

**COMMENTS ON AND OBJECTIONS TO THE
FINAL ENVIRONMENTAL IMPACT STATEMENT
FOR THE O'HARE MODERNIZATION PROGRAM**

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September 6, 2005

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The Village of Bensenville and Elk Grove Village (the "Community Objectors"), St. John's United Church of Christ, Helen Runge, Shirley Steele, Rest Haven Cemetery Association, Robert Placek and Leroy Heinrich (the "Religious Objectors") and Roxanne Mitchell representing the Homeowner Objectors hereby submit these comments¹ on and objections to the FAA's Final Environmental Impact Statement ("FEIS") for the O'Hare Modernization Program ("OMP").

I. Introduction.

Preliminarily, the Objectors renew their objection to the refusal of the FAA to extend the comment period for the Final EIS ("FEIS") beyond the day after Labor Day, September 6, 2005. On July 28, 2005,

¹ The Community, Religious and Homeowner Objectors are collectively referred herein to as the "Objectors."

the FAA delivered FEIS documents, spanning ten volumes and several thousand of pages, including hundreds of pages of new detailed technical materials and discussion by the FAA not previously presented in the Draft Environmental Impact Statement (“DEIS”) — many of the new FEIS material and documents were cross-referenced to several hundred other technical documents and materials.

Further, the FAA continues to fail to respond fully to our clients’ outstanding FOIA requests by withholding thousands of pages of documents of critical relevance to the issues raised by the interrelated requests by Chicago for FAA approvals and funding for OMP Phase 1, and the full build OMP-Master Plan ALP. As we stated in our letter to Mr. Cooper on August 26, 2005 (enclosed), FAA’s refusal to extend the time period — coupled with FAA’s continued stonewalling by refusing to produce relevant documents — constitute clear cut denials of our clients’ due process rights and impair our clients’ ability to present meaningful and relevant rebuttal comments and evidence in response to the FAA’s FEIS.

Nevertheless, we will continue to analyze the FEIS and FAA’s comments and reserve the right to file supplemental comments after September 6, 2005.

Based on the limited examination we have been able to perform in the unreasonably short time allowed for comments, it is clear that the FAA has manipulated the data (“cooked the books”) to reach a pre-determined result to approve the City’s and FAA’s Preferred Alternative and to reject all other alternatives. The following discusses

the serious errors and flaws in the FEIS that we have identified in the limited time we have had for review of that document.

II. FAA's Cruel Hoax of Environmental and Religious Protection.

FAA has told the public that FAA would carefully consider the need to protect homes, businesses, parklands and the religious cemeteries within the framework of federal environmental laws and religious protection laws. Just the opposite is now clear. The FAA in the FEIS has stated that it intends to give Chicago the green light to bulldoze the homes, businesses and parklands in our communities and St. Johannes Cemetery before the FAA ever reaches a determination of on the inextricably linked OMP funding decisions: i.e., whether the project is economically feasible, whether the City will obtain all of the federal funds the City requires, and whether there are sufficient sources of non-federal funds to finance/build the project.

In a cruel irony, FAA now says that when it gets around to its funding decisions for AIP and PFCs, it will consider harm to homes, business, parks and St. Johannes Cemetery — and alternatives to avoid that harm — at the time FAA makes its funding decisions. However, since the homes, business, parks and St. Johannes Cemetery will have already been destroyed, there will not be anything left to protect!

The FAA's funding decisions for this project are governed by the federal laws at issue here; i.e., NEPA, Section 4(f), Section 106, and by the federal Religious Freedom Restoration Act. The fundamental

objective of these environmental and religious protection statutes is that the destruction of the impacted resources should not take place until and unless the FAA makes its decisions on the merits of the project, including the funding issues which are critical to whether or not OMP can actually proceed. To allow the destruction to occur before the funding decisions are made would make a mockery of the law.

FAA's callous indifference to legal protections afforded to the communities and the religious cemeteries is particularly egregious in light of the complete collapse of the financial house of cards on which the City's financial plan and its funding requests for OMP Master Plan and Phase One are premised (see discussion below).

It would be a travesty of justice and violation of law for FAA to allow the destruction to proceed prior to determining the merits of the critical funding requests, when there is a strong likelihood that the FAA is prohibited by federal law from funding either Phase One or the full build OMP-Master Plan. Allowing the "destruction before decision" will create an unnecessary wasteland for a project that is likely never to materialize.

III. The Evidence in the Record is Overwhelming that the Full Build OMP - Master Plan Cannot be Financed.

As we have stated several times, Chicago cannot assemble the financing for the full build OMP-Master Plan. The likely problems with financing were emphasized in a July 2005 report by the DOT Inspector General. We incorporate by reference into these comments the DOT Inspector General's Report which is attached hereto. The Inspector General stated that FAA had possession of the report since

April of 2005 yet no mention is made in the FEIS of the serious financing concerns raised by the Inspector General.

The Sources of Money FAA Says Will Be Needed

Project Element	FAA-Chicago cost	AIP entitlement	AIP discretionary	PFC pay as go	PFC Bonds	GARBS	Third Party or Special Facility Financing
OMP	\$7,087,000,000	\$70,870,000	\$566,960,000	\$141,740,000	\$1,417,400,000	\$4,181,330,000	\$708,700,000
WGP	\$2,977,000,000					\$2,322,060,000	\$654,940,000
CIP	\$4,128,000,000		\$247,680,000	\$454,080,000	\$1,238,400,000	\$2,229,120,000	
Total	\$14,192,000,000		\$814,640,000	\$595,820,000	\$2,655,800,000	\$8,732,510,000	\$1,363,640,000

Source Tables 15 and 16 FAA D-EIS, Executive Summary- individual cost amounts based on percentages presented in Table 16—amounts do not reconcile due to rounding

When one examines the \$14.2 billion dollar estimate put forward by FAA, it becomes readily apparent — consistent with the concerns raised by the Inspector General — that Chicago cannot assemble the money needed to build the full build OMP-Master Plan:

- A. FAA is prohibited by law from funding the \$800 million AIP discretionary money needed by Chicago because the benefits of the full build OMP-Master Plan do not exceed the costs.
- B. FAA is prohibited from authorizing the more than \$3 billion in PFC money that FAA says Chicago will need for the full build OMP-Master Plan because federal law prohibits FAA from authorizing PFCs unless there is sufficient money from non-PFC sources to pay for the

remaining cost of the project. Without the \$800 million in AIP discretionary, FAA cannot authorize the PFC funds.

- C. There is no assurance from the Majority In Interest (MII) airlines that they will agree to pay the more than \$8 Billion in General Airport Revenue Bonds needed for the full build OMP-Master Plan. The likelihood that the airlines will not agree is increased by the airlines' past refusal to provide MII approval for the terminal components of the project.
- D. Finally, there is no evidence that there is any source of special facility or third party financing available to pay the more than \$1.3 billion component that Chicago and the FAA say must come from those sources.

FAA is silent on these problems, resorting again (as it did in the DEIS) to an unsupported "assumption" that the money will be available. Given the facts stated above, there is simply no basis for "assuming" that \$14.2 billion will be available to build the full build OMP-Master Plan.

IV. The Evidence in This Record Is Overwhelming That There Are Insufficient Funds To Build Phase One.

There are also insufficient funds to build Phase One. FAA fails to address or even acknowledge several problems with Phase One financing that create the high probability that Phase One cannot be funded:

- A. Chicago's \$300 million application for discretionary AIP funding fails because the request fails the statutory benefit-cost test; the record shows that the benefits of the Phase

One project are less than the costs. We hereby incorporate by reference and adopt for this record the June 3, 2005 submission of the Community and Religious Objectors in opposition to the City's AIP/LOI request and the accompanying analysis prepared by Campbell Hill Aviation Group, Inc. entitled "Chicago's O'Hare Modernization Program Fails to Meet The FAA Tests For Benefit-Cost Justification."

- B. Based on available public information the \$2.9 billion dollar financing plan for Phase One does not include the required Lima Lima taxiway and Chicago has not presented a funding source for the Lima Lima component. According to press reports, the cost of Lima Lima exceeds \$250 million.
- C. As noted by the Inspector General, the federal PFC statute and the federal statute governing the issuance of entitlement funds prohibits FAA from authorizing PFC funds or from awarding even entitlement AIP funds unless the FAA has clear evidence that sufficient funding sources are available to pay for the balance of the project. The shortfall in Phase One financing caused by the failure of the discretionary AIP component (\$300 million) or the Lima Lima taxiway component (\$200 plus million) — either individually or in combination — prohibit the FAA from authorizing the more than \$1 billion in PFC funds sought

by Chicago for Phase One or the \$63 million in AIP entitlement funds sought for Phase One.

Given the likely failure of Phase One financing, it is unconscionable for FAA to allow Chicago to proceed with bulldozing the communities and the homes, businesses and park lands and St. Johannes Cemetery before FAA addresses the critical funding issue for Phase One.

V. The Time Period of Analysis is Wrong.

One of the most significant defects of the FEIS is the FAA's arbitrary decision to cut off all analysis of impacts and alternatives after 2018 — using an unreasonably short period of only five years after the project opens to examine the impacts of the Preferred Alternative and all other alternatives. This crabbed and truncated period of analysis (coupled with the inaccurate and improper use of the 2002 TAF (discussed *infra*)) artificially enabled FAA to ignore the impacts of the rapidly rising exponential delay curve which will shortly produce delays for the full build OMP equal to if not greater than historic high levels. Moreover, the rising exponential delays that would be experienced soon after the arbitrary five year cut-off date applied by the FAA would have been even greater if FAA used the more recent 2003 TAF or even the low-ball 2004 TAF.

There is no reasonable basis for applying a five year cut-off for a project of this immense magnitude, especially since application of such a short analytical cut-off time date covers up the delay impacts that FAA's own analysis shows would occur in later years and completely

undermines the FAA's findings and conclusions in support of the Preferred Alternative.

Moreover, application of a five year time period of analysis is wholly inconsistent with FAA's requirements for the Master Plan for the OMP and for AIP grants. Thus, FAA issued an AIP master planning grant to Chicago in 2002 which had a Time Period of Analysis to the year 2030. Moreover as required as a condition for FAA to evaluate and decide on Chicago's AIP grant application for OMP, FAA required Chicago to use a Time Period of Analysis from the opening year of the OMP (2013) to 2032 . This is a standard FAA requirement of a Time Period of Analysis from the year the project opens to 20 years later.

By using only a short 5 year Time Period of Analysis FAA was able to select OMP and discard several other alternatives because only the 5 year Time Period of Analysis gave FAA exactly the right answer it was seeking. Only OMP could meet the "unconstrained demand" until 2018 (and even then only by using the outdated and unreasonably low 2002 TAF). Any alternative that could not meet unconstrained demand was then summarily discarded from further meaningful consideration.

This arbitrarily truncated analytical approach artificially gave the FAA a false basis to categorically reject every other alternative that involved a level of development less than full build OMP-Master Plan on the phony predicate that such alternative would not meet "unconstrained demand" until 2018.

By putting the analytical blinders on impacts after 2018, FAA ignores the undisputed fact that the full build OMP-Master Plan, which even under the 2004 uncorrected TAF runs out of capacity (i.e., exceeds FAA's 15 minute AAW standard) and fails to meet "unconstrained demand" by 2023, and beyond, thus requiring use of the very blended alternative that FAA rejected.

VI. The Use of the 2002 Terminal Area Forecast is Wrong.

The outcome of environmental impacts, delay comparisons, capacity calculations, alternatives analysis, and a host of other important factors is driven by the Demand Forecast. FAA unreasonably persists in using the out-dated and understated 2002 Terminal Area Forecast (TAF). The record demonstrates that results would be dramatically different if FAA had used more frequent forecasts such as 2003 and 2004 TAFs.

FAA claims that it needed to use the 2002 TAF because it requires at least 12 months to perform delay-capacity simulation modeling. That assertion is without merit. First, the FAA had the more recent 2003 TAF for over a year before the DEIS was issued. Second, FAA and its contractors were in fact conducting delay-capacity simulation modeling as to existing O'Hare and full build OMP-Master Plan — using the 2003 TAF — *before* FAA completed the DEIS and even before FAA did several of the TAAMs model runs for the DEIS using the 2002 TAF.

FAA's second excuse for using the outdated 2002 TAF is that the 2004 TAF somehow "validates" the use of the 2003 TAF. However

there are two reasons that FAA's "validation" argument does not hold water.

First, the 2004 TAF — without the necessary correction discussed below— produces dramatically different results than the 2002 TAF. Under the 2004 TAF, full build OMP-Master Plan hits the FAA's 15 minute AAW wall in 2023 and — because of the added taxi penalty due to the further outer runways of OMP which FAA did not consider— loses any time saving advantage by 2019. This means that even under the extreme and unprecedented 15 minute AAW standard used in the FEIS, OMP will have no delay savings by 2019 and will be totally out of capacity by 2023 (and likely sooner) and as a result FAA will be required to employ congestion management with full build OMP-Master Plan under the uncorrected 2004 TAF by 2023, and likely sooner.

Further, if one uses the definitions of practical capacity used by FAA in Denver, Philadelphia, Boston and other airports (*i.e.*, a maximum of 10 minutes AAW delay) full build OMP-Master Plan will be out of capacity by 2019 (even under the 2004 TAF).

Here is what the DOT said about what occurs with 8-10 minute AAW delays, the condition that will exist at the full build OMP-Master Plan in the 2018-2019 time frame using the uncorrected 2004 TAF:

- ***8 to 10 minutes of delay per operation: increasing VFR delays in peak hours with translation to shoulder hours in all but optimum conditions; high delay in IFR with resulting flight cancellations.*** -
- ***Over 10 minutes of delay per operation: VFR operations***

experience increasing delays in peak periods and shoulder hours in all but optimum conditions; very high delays in IFR resulting in extensive flight cancellations.

...[W]hen the AAW delay per operation reaches **6 minutes**, project planning, engineering and design of capacity improvements should be actively pursued. When AAW delay reaches **eight minutes**, implementation of capacity improvements should be underway.

1995 DOT HDR Report, Technical Supplement # 3, page D-2
(emphasis added in bold underscore and italics).

Using the uncorrected 2004 TAF, which will produce delays (exclusive of added taxi time penalty) of 8-10 minutes AAW, O'Hare under the full build OMP-Master Plan will experience unacceptable conditions in the 2017-2019 time frame. In short, OMP does NOT meet the stated purpose and need to meet forecast demand at acceptable levels of delay.

The discussion immediately above is premised on the use of the uncorrected 2004 TAF. But according to Campbell Hill Aviation Group, the economic variables which FAA used in the 2004 TAF should have produced higher enplanements and operations in the 2004 TAF than in the 2003 TAF. In other words, with the corrections that should be made to the 2004 TAF to reflect the use of higher values for the higher economic variables, the corrected 2004 TAF would result in even higher delays far sooner than the uncorrected 2004 TAF and higher delays far sooner than even the 2003 TAF. See, affidavit of Brian Campbell, Chairman of Campbell Hill Aviation Group, attached hereto.

FAA in the FEIS tries to hide behind its self-proclaimed “expertise” as to the mysterious and unexplained major drop in enplanements between the 2003 and 2004 TAFs. But internal FAA documents demonstrate that the 2004 TAF for O’Hare is defective and cannot be used. Thus, after months of FOIA requests, FAA on August 26, 2005, finally produced what FAA said were the working documents for the 2002-2004 TAFs.

These documents confirm that, as our economic experts had demonstrated, the economic variables used for the 2004 TAF showed a *higher rate of growth* than the 2003 TAF. This higher rate of growth should have— using the “industry standard” methodology FAA claims its “experts” followed— produced a higher level of enplanements and a higher level of operations for the 2004 TAF than the 2003 TAF.

Moreover, the limited documents provided by FAA as the purported basis of the 2004 TAF did not contain the data or the calculations by which our trained forecasting experts could replicate or recreate the forecast results for enplanements and operations contained in the 2004 TAF. Put bluntly, the TAF working papers produced at figuratively the eleventh hour on August 26, 2005 cannot support an audit trail that leads from the working papers to the forecast results for enplanements and operations contained in the 2004 TAF.

Had a corrected 2004 TAF (with higher values than the 2003 TAF) been used, it would have resulted in full build OMP-Master Plan being out of capacity (*i.e.*, hitting the FAA’s 15 minute AAW ceiling) well *before 2018* and requiring the FAA to employ after that time a

blended alternative (*i.e.*, demand management plus use of other airports) with full build OMP-Master Plan.

VII. The FEIS Uses the Wrong Base Case.

Using the outdated 2002 TAF demand forecast, the FEIS says the Base Case (so-called “No Action”) will represent a delay level of 17.2 minutes AAW in the year 2018 vs. a delay level of 5.8 minutes AAW for the full build OMP-Master Plan. Yet the modeling for the Base Case was premised on conditions at O’Hare in 2003 and 2004 — before the FAA instituted the current scheduling order of 88 arrivals per hour.

The FAA states in the FEIS that the 17.2 minute projected delay compares with the delay experienced in 2004 and recorded in the FAA’s ASPM database. We strongly contest the correlation and consistency of ASPM values with modeled TAAM values because of the significant differences of key variables between the two methods of delay measurement or prediction — including the wide variation in IFR weather conditions. However, a fundamental defect of the FAA’s analysis is that the TAAM modeling that FAA did for the Base Case No Action scenario did not include the TAAM modeling of the effects of the FAA scheduling order.

Since the existing FAA scheduling order represents the existing condition at O’Hare, FAA should have performed TAAM modeling with the scheduling order in place. Based on the significant reduction in delays experienced under the scheduling order, the 17.2 minute TAAM

modeling delay attributed to the base case significantly overstates the delay that FAA should attribute to the existing airport.²

This failure is significant in and of itself; but when compared and added to the flaws in the delays savings claimed for the full build OMP-Master Plan discussed herein, this failing demonstrates that FAA's claimed delay savings are virtually non-existent.

VIII. FAA Continues to Hide ASV and Other Delay Information for O'Hare and Other OEP Airports Which Objected Have Requested in Long Delayed FOIA Requests.

Despite our repeated requests (see, *e.g.*, our June and August FOIA correspondence attached hereto) FAA continues to hide critical and relevant information on delay and capacity from the Objectors and from the EIS process.

For example, in the FEIS FAA says that the Annual Service Volume (ASV) is irrelevant to the issue of capacity and delay. Yet other FAA publications (see our FOIA correspondence) state that ASV has been (and is) calculated for O'Hare and for the other OEP (Operational Evolution Plan Airports in the country. Further, these same publications state that FAA has calculated ASV (which FAA uses as a capacity standard) for existing O'Hare and for the full build OMP-Master Plan.

² The FAA continues to assert that O'Hare ranks in the top 5 airports in terms of delay as measured by the various FAA and DOT databases. On the contrary, O'Hare ranks well below the top five in all of these databases since the scheduling order took effect. According to the Inspector General in a May 2005 report, O'Hare ranked 14th among the major airports in delays.

The relevance of this hidden information is clear. If, as we know, FAA has performed ASV capacity calculations on O'Hare and other major OEP airports, we believe that the delay value (i.e., minutes of AAW) that FAA has used as an acceptable level of delay with which to calculate practical capacity and Annual Service Volume is far lower than the 15 minute ceiling used in the FEIS. We believe the hidden information demonstrates that the practical capacity of the full build OMP-Master Plan — using these hidden ASV numbers — is far less than claimed by FAA. Further, these hidden ASV values likely also reveal that full build OMP-Master Plan will run out of capacity far sooner than suggested by FAA in the FEIS.

The ASV values are not the only area of critical documents hidden by FAA. Objectors have asked in their FOIA request for the capacity and delay calculations made by the MITRE Corporation for MITRE's 2004 capacity study. That study included several different capacity calculations for existing O'Hare and for full build OMP-Master Plan. Despite the relevance of these calculations by MITRE and despite Objectors request for this information, the material remains hidden and was not available for review in the FEIS process.

Similarly, MITRE performed delay and capacity calculations and modeling for existing O'Hare for the FAA as part of the scheduling order process. That information has also been withheld.

This hidden information also has relevance in another area. FAA makes the unsupported claim in the FEIS that it could not model the

2003 Terminal Area Forecast (TAF) because it would take too long.³ Yet according to MITRE's 2004 capacity study, MITRE was able to model existing O'Hare and the full build OMP-Master Plan with the 2003 TAF several months before FAA conducted its modeling and several months before FAA issued the DEIS.

For FAA to approve — and fund (to the tune of billions of federally authorized taxpayer dollars) — a project using outdated two year old forecast data is indefensible.

IX. The FAA Produces Erroneous Claims of Delay Savings.

A key claim by FAA is that full build OMP-Master Plan produces less delay per flight operation than either the existing O'Hare or any of the blended alternatives. This claim is erroneous for several reasons.

First, as noted above, FAA has failed to model the Base Case with the controls of the FAA scheduling order input into the TAAM model. Inclusion of the scheduling order controls would likely substantially reduce the 17.2 minute delay previously modeled for the existing airport.

Second, as delay goes up with OMP, the delay savings differential (*i.e.*, the difference between existing O'Hare and OMP) goes down. Thus while FAA claims a 5.8 minute AAW for OMP in 2018, use of

³ FAA provides no evidence to support this claim. Once a model is set up on a computer with appropriate parameters, it is difficult to believe that it would take a year simply to run the 2003 or 2004 TAF through the same model. Indeed, our preliminary ongoing inquiry with a leading experienced computer model expert suggests that the 2003 or 2004 TAFs could have been run through the model in a few weeks. See, affidavit of Tung Lee.

the uncorrected 2004 TAF has OMP reaching this value in 2015 and (based on interpolation between the 1.4 million demand in 2023 —13-16 minutes AAW per Appendix R) reaching approximately 8-10 minutes AAW in 2018.

When one adds the added taxi time penalty due to OMP's distant runways (approximately an additional 6.5 minutes per operation), any claimed passenger and airline operation time savings disappear by 2018 and likely sooner given the overstatement of Base Case delay noted above!

X. The FAA's Arbitrary Refusal to Explore Blended Alternatives.

The analysis above demonstrates how FAA has artificially manipulated key elements— 1) the Time Period of Analysis, 2) the Demand Forecast, and 3) the Level of Acceptable Delay — to produce the only answer FAA wanted, *i.e.*, approval and funding of the full build OMP-Master Plan. FAA used this same manipulation to reject consideration of other viable alternatives — several of which would avoid the destruction of homes, businesses, parklands and the destruction of St. Johannes Cemetery.

However, as described above, the use of even the uncorrected 2004 TAF and a Time Period of Analysis extending just 5 years beyond FAA's crabbed analysis demonstrates that FAA will be compelled to employ demand management and other airports as part of a blended alternative.

Moreover, several of these blended alternatives have delay values equal to or better than full build OMP-Master Plan (as posited by FAA without demand management). See Table below.

Alternative	Level of delay per operation
Full build OMP-Master Plan in 2023 at 15 minutes AAAW delay plus 6.5 minutes taxi delay — without demand management	21.5 minutes
Derivative H – No Action with Use of Other Airports and Congestion Management (Average Annual Delay of 9.3 Minutes per Operation)	9.3 minutes
Derivative I – No Action with Use of Other Airports and Congestion Management (Average Annual Delay consistent with NPRM Modeled Delay)	[unknown] FAA has not run TAAMs model on FAA Scheduled Order delays
Derivative J - No Action with Use of Other Airports and Congestion Management (Average Annual Delay 4, 6, 8 Minutes per Operation or other FAA Level)	4, 6, or 8 minutes as selected by FAA

Nor does FAA’s constant refrain that it has no legal power to “directly” “compel” airlines to use other hubs provide cover for FAA’s blind refusal to consider and employ blended alternatives. No one is asking FAA to “order” the airlines to use other airports. But reality shows that FAA under its existing grant and regulatory authority has approved or implemented numerous blended airport alternatives throughout the country. FAA cannot continue to ignore such examples

as: 1) the 1984 decision by Chicago and FAA to use a blended alternative at O'Hare (See 1983 DEIS and 1984 ROD) to accommodate less than all of the "unconstrained demand" at O'Hare while using other airports to carry the excess demand; 2) the existing blended alternative in place now at O'Hare, LaGuardia, and Reagan National, 3) the selection of a physical blended alternative at LAX, and 4) the imposition through grant requirements of demand management (*i.e.*, blended alternative) in conjunction with use of regional airports for Boston Logan. Each of these actions has had or will have the necessary consequence of causing the airlines using O'Hare, LGA, Logan, Reagan National and LAX to shift some of their flights to other airports.

FAA's rejection of various viable alternatives is without merit and unsupported by facts or logic. As noted above, Alternatives H, I, and J use the existing airport and are by definition safe. As to Alternatives M, N, and the C1-C5 Derivatives, a detailed rebuttal of the FAA's alternative analysis is set forth in the affidavit of Kenneth Fleming, a renowned aviation airspace/air traffic expert with Embry Riddle University, attached hereto. Mr. Fleming conclusively demonstrates that FAA's rejection of alternatives, including alternatives that would avoid the destruction of the cemeteries, cannot be sustained.

XI. The FEIS Does Not Comply With Clean Air Act Conformity Requirements.

The Final General Conformity Determination included in FEIS Appendix J, and discussed at subsection 5.6.4, remains inadequate for

the reasons set forth in detail in the Community and Religious Objectors' Comments on and Objections to the Draft General Conformity Determination for the O'Hare Modernization Program, submitted on June 20, 2005, and supplemented on June 24, 2005.

The FAA has yet to demonstrate that construction-related emissions from the project conform to the Illinois Clean Air Act State Implementation Plan ("SIP"). Under the applicable conformity regulations, 40 C.F.R. § 93.158(a)(5)(i)(A), where the SIP does not specifically account for project-related emissions, the Illinois Environmental Protection Agency ("IEPA") must determine and document that those emissions for which there is no SIP accounting—along with all other emissions in the local air quality control region—will not exceed the applicable overall SIP budget for emissions of that pollutant. IEPA has not documented such a determination. Instead, in a letter dated July 13, 2005, IEPA simply states: "Although this SIP did not explicitly include additional VOC and NO_x emissions to account for the O'Hare Modernization Program, sufficient emissions were incorporated into both the Attainment Demonstration modeling and the Rate-of-Progress emissions projection to accommodate the emissions projected to result from the O'Hare Modernization Project." This generic statement—without any documentation—is an incomplete finding of conformity. Without a complete conformity finding, the Clean Air Act bars the FAA from supporting the project.

XII. The FEIS Does Not Take Into Account Indirect Air Quality Impacts of the Proposed Project.

For the reasons discussed in the Community and Religious Objectors' Comments on and Objections to the Draft Environmental Impact Statement for the O'Hare Modernization Program, dated April 6, 2005, the FEIS similarly fails to take into account the indirect air quality impacts of the project. The FEIS does not specifically analyze the impact of indirect emissions—for example, increased off-site power generation—caused by the project. Under FAA Order 1050.1E, Appendix A, § 2.1o, the FAA must analyze the impact of these emissions. Instead, in its response to comments, the FAA simply concludes that IEPA has included projections of future power production in its SIP analyses, that the FAA generally (and in an unspecified way) relies on the generic SIP projections, and that there is therefore no need to specifically analyze indirect emissions impacts. Until the FAA performs the required indirect emissions impact analysis (as it did for the LAX expansion), its NEPA obligations are incomplete.

XIII. FAA fails to perform a quantitative health risk analysis on the health risk of Hazardous Air Pollutants on surrounding communities.

FAA has ignored our request to perform a quantitative health risk assessment of the impact of increased hazardous air pollutants on surrounding communities on the ground of feasibility. Yet such studies have been performed — in some instances at the direction of the courts— in California and in the New England States. Emission

inventories for major airports such as O'Hare have been acknowledged to represent some of the largest— if not the largest sources of toxic and hazardous air pollutants in most states. There is no reason why FAA should exempt O'Hare from such an analysis.

The surrounding communities have a right to know the base-line and incremental toxic health hazards that O'Hare's operation and its proposed expansion impose on our communities.

XIV. FAA's 4(f)/6(f) Evaluation Improperly Dismisses Prudent and Feasible Alternatives.

The Final Section 4(f)/6(f) Evaluation included in Appendix L of the FEIS, and summarized in Section 5.8 is inadequate. For the reasons set forth in detail above and in our earlier comments on Chapter 3, Alternatives, the FAA's conclusion that there are no prudent and feasible alternatives to using the 4(f)/6(f) resources is not supported by the facts as required by 49 U.S.C. § 303(c)(1).

Similarly, the FAA's legal interpretation of Section 4(f) is untenable. The FAA identified no fewer than 15 feasible alternatives in the FEIS that would avoid destruction of 4(f)/6(f) resources, but dismissed some of the most promising of these alternatives because in the FAA's view, the alternative would not perform "as well as Alternative C." See FEIS, Section 5.8.5, and Appendix L, Section L.3.2. This interpretation of "prudent" completely disregards the preservation and conservation benefits of the less destructive alternatives, and is fundamentally inconsistent with the FAA's responsibilities under 49 U.S.C. § 303(c)(1).

XV. Failure to Include All Possible Planning To Minimize Harm to 4(f)/6(f) Resources.

Publication of the Final 4(f)/6(f) Evaluation in the FEIS clearly demonstrates that the FAA has failed to include “all possible planning to minimize harm to . . . historic site[s]” as required by Section 4(f)/6(f). 49 U.S.C. § 303(c)(2). The FAA had not completed the Section 106 process at the time it published the Final 4(f)/6(f) Evaluation in the FEIS. Rather, the FEIS indicates that the FAA will complete the Section 106 process some time after the FEIS publication. One of the core purposes of Section 106 of the National Historic Preservation Act is to establish a planning process specifically designed to minimize harm to historic resources, a subcategory of 4(f)/6(f) resource. The failure to complete this planning process before completing the 4(f)/6(f) evaluation violates 49 U.S.C. § 303(c)(2).

XVI. FAA’s Abject Failure to Meet Its Responsibilities Under the First Amendment and the Federal Religious Freedom Restoration Act.

After waiting three years without answer for a response to our repeated entreaties that FAA protect the religious cemeteries’ religious rights and that FAA not violate the religious cemeteries’ religious rights through ALP approval and funding of Phase One and the full build OMP-Master Plan, FAA finally responded on July 28th by proposing an alternative that will destroy St. Johannes Cemetery and rejecting a host of alternatives that would avoid the destruction of the

cemetery. For the reasons stated in our earlier communications (incorporated herein) we believe that FAA is violating the federal Religious Freedom Restoration Act and is a co-participant (through ALP approval, and FAA AIP and PFC decision-making) with Chicago in violating the cemeteries' First Amendment right to the Free Exercise of Religion. For the reasons set forth previously and above:

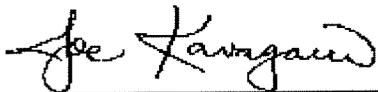
- A. Chicago has singled out these two religious institutions for discriminatory treatment in stripping the protection of the Illinois Religious Freedom Restoration Act from these two religious institutions while preserving the protection of that Act for all other religious institutions in the State of Illinois.
- B. FAA is complicit in Chicago's First Amendment violation by proposing to approve the OMP with the foreseeable and known consequence of which is the destruction of St. Johannes Cemetery.
- C. FAA's proposal to isolate Rest Haven behind blast walls in a sea of concrete in the middle of a high jet traffic cargo area continues to cause unacceptable injury and a substantial burden on the religious beliefs and practices of the Rest Haven Religious Objectors.
- D. FAA has now acknowledged that FAA's and Chicago's actions in destroying St. Johannes Cemetery impose a "substantial burden" on the exercise of the cemetery's religious practices and beliefs within the meaning of the First Amendment and the federal RFRA.

- E. FAA has not made the required factual demonstration to an independent judicial tribunal that there is a compelling governmental need for the full build OMP-Master Plan (or Phase 1) as opposed to an alternative which would avoid the destruction.
- F. FAA has not made the required factual demonstration to an independent judicial tribunal that there are no alternatives available to meet a purported governmental need which would avoid the injury.
- G. Religious Objectors submit that FAA has not been given — or could be given within the mandate of Article III of the Constitution — the judicial authority to make the adjudicative determinations of the application of the First Amendment and RFRA requirements to the contested facts in this matter.
- H. Assuming *arguendo* that federal courts determine that FAA has the judicial authority to make the adjudicative determinations of the application of the First Amendment and RFRA requirements to the contested facts in this matter, the adjudicative procedures used by FAA in this matter have violated basic principles of Due Process and the requirements of the Administrative Procedure Act. FAA has hidden evidence, engaged in improper *ex parte* communication, and used officials and contractors who should have disclosed their past relationships with Chicago and who should have been disqualified from any

participation in any adjudicative decision-making processes by FAA.

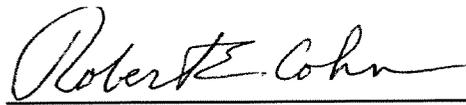
For the foregoing reasons, the FAA's FEIS is legally defective and the FAA may not approve the OMP or permit the OMP project to go forward.

Respectfully submitted,



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