
5.22 OTHER ISSUES RELATING TO CEMETERY ACQUISITION

As submitted by the City of Chicago, the proposed Airport Layout Plan (ALP) for the O'Hare Modernization Program (OMP) called for the use of two cemeteries, St. Johannes and Rest Haven. At the time of this submission, the City intended to use its land acquisition authority to obtain title to these properties and to relocate the bodies of those buried in the cemeteries to another nearby existing cemetery if the FAA approved the OMP. These acquisitions would be necessary to construct Runway 10C/28C and establish an international air cargo facility in the southwestern quadrant of O'Hare.

This aspect of the OMP has been particularly controversial, and presents serious issues in addition to those normally addressed in an EIS. The FAA respects the sincerity of the views expressed to it on this matter. Any proposal to relocate a cemetery can provoke intense concerns, requiring sensitivity and understanding. To the living relatives of the deceased who are slated for reinterment if the Preferred Alternative is approved as proposed, it matters little that cemetery relocation has become a fact of modern life. It may be a small consolation to note that in Chicago, the City relocated some 20,000 graves in the mid-19th century, and what was then City Cemetery is now Lincoln Park.¹ To accomplish its statutory mission of providing reliable electricity for millions who otherwise might have lacked this convenience, the Tennessee Valley Authority relocated thousands of graves prior to creating the lakes that are an essential component of its hydropower facilities.² More recently, the Elmbank Cemetery which opened in 1833 and served Catholic families northeast of Toronto was relocated to accommodate a new runway and associated taxiway at Toronto's Pierson International Airport.³ This relocation to other consecrated ground took place in 2001 with the assistance of the Archdiocese of Toronto. It was the FAA's hope that this aspect of the OMP could proceed in a manner similar to that experienced at Canada's busiest airport. However, through correspondence, meetings, other presentations and litigation, the FAA clearly understands that there is strong opposition to any relocation of graves from St. Johannes and Rest Haven Cemeteries.

Those who oppose the relocation of graves from St. Johannes and Rest Haven Cemeteries have asserted that the FAA's approval of any proposal that would require relocation of these cemeteries would violate their First Amendment right to free exercise of religion as well as the Religious Freedom Restoration Act (RFRA).⁴ In this portion of the EIS, the FAA identifies the concerns and legal issues raised by those who oppose the cemetery acquisition and relocation. This section also contains the FAA's analysis of these issues and the agency's proposed resolution. The Agency expects to make its final decision on these matters when it issues a Record of Decision (ROD) on this EIS.

¹ http://www.gapersblock.com/airbags/archives/who_is_buried_in_couchs_tomb/

² <http://www.tva.gov/river/landandshore/culturalresources/cemeteries.htm>

³ <http://www.archtoronto.org/elmbank/old>

⁴ United States Constitution, Amendment I, and 42 U.S.C. § 2000bb *et seq.*, respectively.

5.22.1 St. Johannes Cemetery

St. Johannes Cemetery occupies five acres in the southwest corner of the Airport. The cemetery is specifically located south of the approach end of existing Runway 9R within a secured area of the Airport; however, controlled access is provided to the public by way of Division Street, which is located off Irving Park Road, through a property managed by the City of Chicago Department of Streets and Sanitation, Bureau of Forestry. The history of St. Johannes is traced back to a traveling evangelical minister who arrived in 1837, Reverend Christian Friedrich Ludwig Cachand Ervendberg. St. Johannes cemetery was formally laid out in 1850, although research indicates that the first burial was in 1849. This cemetery is currently owned and maintained by the St. John United Church of Christ in Bensenville. A church structure was built in this area in the winter of 1849-50. The church building was moved, as the property was acquired to provide for the development of the original Orchard Field Airport in 1942. The cemetery remains intact, and burial services are still occasionally held at the cemetery.

5.22.2 Rest Haven Cemetery

Rest Haven Cemetery is a small cemetery located approximately one-quarter mile south of the St. Johannes Cemetery. It is also accessible to the public through the Bureau of Forestry site from Division Street. Rest Haven Cemetery is a religious cemetery in continuous use since at least 1864 for the burials of member of two churches, the United Methodist Church of Itasca and the United Methodist Church of Bensenville (First Evangelical Church) and their predecessor institutions.

5.22.3 Proposed OMP Development at Cemetery Sites

Table 3-10 in Chapter 3, Alternatives, shows that of the alternatives carried through secondary screening for detailed analysis, only Alternative A, the No Action Alternative, would not require any land acquisition. To implement Alternative C, D, or G, the City would acquire between 413 and 440 acres of residential, commercial and other land. As shown in **Exhibits 3-3, 3-4, and 3-5, in Chapter 3, Alternatives**, each of the Build Alternatives calls for the acquisition of St. Johannes and Rest Haven Cemeteries. St. Johannes lies directly in the path of new Runway 10C/28C, which is proposed to be 10,800 feet in length and 200 feet in width. St. Johannes is also directly in the path of three taxiways that would serve that area of the reconfigured airport. Because of its proposed length and width, Runway 10C/28C would be capable of handling arrivals and departures of all sizes and types of aircraft anticipated to use the airport. This runway is proposed for use in virtually every operating condition at the Airport. Rest Haven, located south of St. Johannes, would be situated almost in the middle of a proposed parking and taxiing area for cargo aircraft as contemplated by Alternatives C and D. The cemetery would be directly in the path of Runway 12/30 were the FAA to adopt Alternative G as the Preferred Alternative. For Alternatives C and D, the proposed cargo apron would serve the several cargo facilities that need to be relocated to the southwest corner of the airport because of runway construction and related development at their present locations.

5.22.4 First Amendment Issues Relating to the Cemeteries

The St. John's United Church of Christ, the Rest Haven Cemetery Association, and several individuals have presented the FAA on a number of occasions with their objections to the proposed OMP. In one such communication, the "religious objectors," as they identified themselves, stated:

the proposed destruction and demolition of St. Johannes Cemetery and Rest Haven Cemetery constitutes a serious, permanent, and substantial injury and burden to the rights of these religious institutions and individual worshippers under the Free Exercise Clause of the First Amendment. Specifically, the proposed OMP will destroy graves which the religious organizations, and their members who own and maintain the cemeteries, believe to be sacred and inviolate as part of their fundamental religious faith. The sanctity of these cemeteries from invasion and destruction is an essential element of the Salvation and Judgment Day beliefs of these religious organizations and their members.⁵

These views have been expressed as well in litigation that these parties have filed against the FAA and the City of Chicago, and as noted earlier, in numerous other communications.⁶ In general, the religious objectors assert that the Free Exercise Clause of the First Amendment prohibits the FAA from approving any ALP that would involve the destruction of either cemetery, absent a showing by the FAA that there is a compelling need to acquire and destroy these sites, and a demonstration by the agency that no alternative other than destruction exists. The FAA has carefully reviewed these assertions, including the declarations of several individuals who have identified specific impacts upon their practice of their religion if the FAA were to approve an ALP that would result in the destruction of these cemeteries and the resultant need to relocate the bodies of those who are buried there. The FAA accepts these declarations as genuine expressions of sincere religious beliefs.

5.22.5 Religious Freedom Restoration Act Issues Relating to the Cemeteries

The religious objectors also make a related but separate claim involving the RFRA. This law provides that the government shall not substantially burden a person's free exercise of religion except when it can show that the application of that burden is in furtherance of a compelling governmental interest and that the government has selected the least restrictive means of furthering that compelling interest. Here, it is alleged that FAA approval of any ALP that would result in destruction of the cemeteries and removal of the graves will substantially burden the free exercise of religion as practiced by the religious objectors. In specific, the FAA has been informed that current members of St. John's Church desire to be buried at St. Johannes, and that they frequently visit the cemetery to care for graves of the deceased. In addition, the following claim is made:

The Church and its Members believe that because God ordained the specific ground in Saint Johannes as the final resting place for their Members and relatives, the remains of the deceased should not be disturbed until God calls their bodies to rise again on the Day of Resurrection. They believe that the ultimate salvation of the souls of the deceased Members who rest in the graves at

⁵ Letter of January 16, 2004 to Barry Cooper and Philip Smithmeyer, FAA, from Joseph Karaganis, counsel for the Religious Objectors.

⁶ St. John's United Church of Christ, et al., v. The City of Chicago, et al, No. 03 C 3726 (N.D. Ill.).

Saint Johannes would be impaired by the removal of their remains from the consecrated ground of Saint Johannes Cemetery.⁷

An almost identical claim is made with respect to Rest Haven Cemetery on behalf of the members of the Cemetery Association and relatives of those buried at that site.⁸ As stated earlier with regard to the First Amendment claims, the FAA accepts these declarations as genuine expressions of sincere religious beliefs.

5.22.6 Analysis of First Amendment Free Exercise Claims

As described earlier in **Section 5.22.3, Proposed OMP Development at Cemetery Sites**, FAA approval of any of the Build Alternatives that were retained for secondary screening is likely to result in the acquisition of between 413-440 acres of land by the City of Chicago for O'Hare improvements. Only a small percentage of this overall acreage involves the two cemeteries. In that sense, the complained-of government conduct (land acquisition by the City of Chicago) is not directed at the cemeteries, or at those whose religious beliefs involve preservation of those properties. Instead, the FAA's proposed approval of the Preferred Alternative and the City's subsequent land acquisition and relocation activities are governmental actions that are neutral in applicability. Despite the religious objectors' claims to the contrary, the cemeteries are proposed for acquisition and relocation not because of what they are, but because of where they are. For this reason, the actions contemplated by the FAA and the City are determinations that are neutral on their face and of general applicability. As such, the FAA proposes to find that there is no violation of the Free Exercise Clause of the First Amendment because there is a legitimate governmental interest in proceeding with this proposed action as described in **Chapter 2, Purpose and Need**, of this EIS. A final determination on this issue will be made in the FAA's ROD.

5.22.7 Analysis of Religious Freedom Restoration Act Claims

Before turning to the FAA's analysis of the RFRA claims presented in this matter, the FAA notes that it is by no means clear that the provisions of RFRA have any applicability in this circumstance. In other portions of this EIS, the agency examines and reviews the application by the City of Chicago for an amended ALP that would implement the City's OMP. The FAA did not design the OMP, nor can it compel the City to implement some or all of it. Instead, the FAA's review is bounded by several environmental statutes, its obligations under the aviation statutes, and years of well established jurisprudence that recognize the airport operator as the entity ultimately responsible for the scope and nature of operations at its facility. Consistent with its responsibilities under these various statutes, the FAA's duties include evaluation and assessment of reasonable alternatives, findings of feasibility and prudence, and assurances that the preferred alternative complies with a host of safety and operational criteria. However, the ultimate responsibility for the operation of O'Hare rests with the City of Chicago. Unlike situations involving the Bureau of Prisons where federal officials have direct control over the

⁷ St. John's Church of Christ, et al., v. The City of Chicago, et al., amended complaint, p. 21.

⁸ St. Johns' Church of Christ, et al., v. The City of Chicago, et al., amended complaint, p. 22.

nature and extent of inmates' permitted religious practices, the FAA's permitting and grant-making activities only indirectly impact the religious concerns and practices of those who have invoked RFRA. To the FAA, it is not at all clear that the claims presented to it by the religious objectors are cognizable under RFRA.

However, in light of the significance to the Chicago region and to the National Airspace System of reducing delays at O'Hare, the FAA has concluded that it would not be in the public interest to jeopardize such a vital project by exposing it to the uncertainties of litigation involving the applicability of RFRA. Unlike the vast trove of jurisprudence that surrounds First Amendment Free Exercise issues, there is limited, directly applicable guidance from the federal courts concerning the scope and nature of the type of RFRA claims presented to the FAA. Although there is considerable guidance on how to apply the provisions of this Act, there remains substantial uncertainty regarding the scope or applicability of this measure in a licensing, permitting or funding context. As a result, in sections below, the FAA assumes without deciding, or agreeing, that RFRA is applicable to this situation. The FAA's application of RFRA to the claims asserted by the religious objectors to the OMP and the FAA's proposed decisions on this matter should not be viewed as creating a precedent to guide future agency actions regarding the scope or nature of this law as applied to any of its other undertakings.

5.22.7.1 Questions of "Substantial Burden" under RFRA

The FAA has identified three related but separate assertions of "substantial burden" to the free exercise of religion as practices by the religious objectors. They are: (1) a desire by relatives or friends of those buried at St. Johannes or Rest Haven to have the opportunity to also be buried at that site when they die; (2) a desire to visit St. Johannes or Rest Haven cemeteries to care for graves and for reflection and mediation; and (3) an insistence that these cemeteries not be destroyed and bodies relocated to another cemetery.

In examining these claims, the FAA is mindful that Congress has declared that the term "religious exercise" includes any exercise of religion, whether or not compelled by, or central to, a system of religious belief.⁹ This is a broad and sweeping definition. Clearly, Congress intended that RFRA, when applicable, should protect conduct that, while not necessarily compulsory or central to a larger system of religious beliefs, nevertheless reflects some tenet, practice, or custom of religious tradition. At the same time, it would appear that a practice must be more than a matter of purely personal preference regarding religious exercise in order to come within the coverage of the act. If this were not so, the definition of the term "exercise of religion" would have little meaning in the act, for it could not be differentiated from a "sincerely held religious belief" which is broader than the coverage of this statute. Thus, to be covered, the practice must have some basis in a larger system of religious beliefs.

In applying that test to these claims, the FAA proposes to find that approval of the Preferred Alternative does not substantially burden the religious objectors with respect to two of their three claims. The FAA finds no credible basis for concluding that the free exercise of religion

⁹ 42 U.S.C. § 2000cc-5(7)(A).

compels the burial of any of the religious objectors at either St. Johannes or Rest Haven Cemeteries when they die. Although the desire to be buried with family and relatives is a legitimate and understanding interest, the availability of consecrated ground at other religious cemeteries reduces this claim from one involving a system of religious beliefs to a matter of personal preference. Accordingly, it is outside the scope of RFRA. Similarly, the statements by religious objectors relating to their desires to continue to visit either of these sites, to tend to graves and to engage in meditation and reflection, denote equally genuine, compelling personal preferences that do not rise to the level of exercising religious practices that have a basis in a larger system of religious beliefs.

In contrast, the religious objectors appear to have provided ample documentation for the religious grounds underlying their opposition to the relocation of those buried at the two cemeteries. The statements from religious objectors examined by the FAA are replete with references to Scripture, Church creeds, and other recognized religious beliefs. As stated earlier, the FAA accepts these statements as genuine expressions of individuals. Applying the test described above, the agency intends to find that their religious practices are likely to be substantially burdened if these cemeteries are relocated to another site. Accordingly, the FAA turns to the remainder of the statutory criteria.

5.22.7.2 Questions of “Compelling Governmental Interest” Under RFRA

Because the FAA is presuming that approval in a ROD of the Preferred Alternative is likely to substantially burden the exercise of religion because of cemetery relocation, the agency addresses the next aspect of RFRA, namely whether such an action is justified by a showing of advancing a compelling governmental interest. In response to this question, the FAA turns to **Chapter 2, Purpose and Need**, of this EIS addressing the Purpose and Need for the O'Hare improvements, and to **Chapter 3, Alternatives**, and its discussion of Alternatives to the Proposed Action. In essence, the FAA proposes to find that there is a compelling governmental interest in the adoption of the Preferred Alternative, see **Section 3.7, Preferred Alternative** in **Chapter 3**, because the FAA has identified it as best meeting the purpose and need of the proposed action.

In **Chapter 2** and **Chapter 3**, the FAA has demonstrated the need for significant delay reduction measures at O'Hare, now and in the future, and has shown how delay will adversely impact O'Hare, the Chicago Region, and the National Airspace System. In both primary and secondary screening, the FAA examined options that included different runway configurations, and varying numbers of runways. The FAA has also demonstrated that the so-called non-build alternatives, including the use of other airports and various air traffic techniques, are inadequate to satisfy the purpose and need for this project. Overall, it has become clear through the selection of the Preferred Alternative, that the goals of this project could not be achieved without Runway 10C/28C. It is an integral component of the OMP and of the proposed Preferred Alternative. Elimination of this runway from the proposed ALP dramatically reduces the ability of the airport to handle present and future traffic in a timely and efficient manner. Similarly, all of the retained alternatives considered in secondary screening would require the relocation of existing air cargo facilities, to make way for reconfigured runways and related

development. Air cargo is an important and vital component of the services provided at this international airport. The FAA recognizes and agrees that the southwest corner of the airport, near Rest Haven, is the logical place for those structures and facilities. Any other possible location would require additional land acquisition, and ultimately would prove impractical as there are considerable benefits to centralizing all cargo operations in a particular portion of the airport. Accordingly, the FAA proposes to find that the EIS contains ample grounds for concluding that the relocation of these cemeteries would advance compelling governmental interests.

5.22.7.3 Issues Involving the Least Restrictive Means as Applied to St. Johannes

Because the FAA intends to conclude, at this time, that construction of Runway 10C/28C is in furtherance of the compelling governmental interests identified in **Chapter 2, Purpose and Need**, it examines next whether its proposed approval of the Preferred Alternative is the least intrusive means of furthering that interest. **Chapter 3, Alternatives**, along with **Appendix E, Alternatives**, contains detailed discussion of both non-build alternatives and various runway configuration alternatives. These alternatives were given the "hard look" required by the National Environmental Policy Act, studied under related criteria under the Clean Water Act, examined for feasibility and prudence under Section 4(f) of the Department of Transportation Act and Section 6(f) of the Land and Water Conservation Act, and measured under the test contained in 49 U.S.C. § 47106. In addition, the Final Section 4(f)/6(f) Statement contains an examination of additional variants on proposals considered by the FAA that were submitted to the agency by the religious objectors as part of the Section 4(f)/6(f) process.

To conduct the RFRA analysis of determining whether approval of the Preferred Alternative is the "least restrictive" alternative available, the FAA has reexamined its earlier study of alternatives with this specific RFRA criterion in mind. In doing so, the FAA proposes to find that the two alternatives retained for secondary screening, but not adopted as the Preferred Alternative, would fare no better under a RFRA analysis that they did in the secondary screening described in **Chapter 3** of the EIS. In part, Alternative D was not selected because it provided considerably less delay reduction than Alternative C. RFRA impacts would be about the same as Alternative C. In part, Alternative G, because it places Runway 12/30 directly over Rest Haven Cemetery, is even more intrusive than Alternative C.

Beyond that, the FAA on its own has identified and examined additional derivatives that might hold the prospect of meeting the purpose and need of the proposed action while avoiding or modifying impacts to these two cemeteries.

First, the FAA examined the proposed Preferred Alternative without Runway 10C/28C (Derivative C1). This runway would be utilized as a full time runway in all primary operating conditions. It appears that the absence of this 10,800 foot runway would require an extension to proposed Runway 10R/28L of at least 1,000 feet to accommodate a majority of the forecast fleet mix. Because of existing Runway 4R/22L, such an extension of Runway 10R/28L could only be accomplished on the west side of the airport, requiring additional land acquisition in the Bensenville area. In the absence of such an extension, the airfield would become "imbalanced"

with more traffic using the runways located north of the terminals because of the greater lengths those runways provide. This imbalance would reduce the effectiveness of the proposed layout and means the airport will not achieve the delay reduction expected by the proposed action. Also, the removal of Runway 10C/28C would deprive the airport of one of two runways that are both wide enough and long enough for use by New Large Aircraft (NLA). Because of the separation distances required for taxiway clearances and other restrictions, it is not feasible to widen to 200 feet any other proposed runway that is long enough to handle NLA. The FAA also proposes to find that the absence of this runway would remove the ability to conduct quadruple simultaneous landings in VFR weather, and would restrict departures to two independent runways in IFR conditions. We propose to find that Derivative C1 is not a less restrictive alternative that is capable of performing as well as Alternative C.

Second, the FAA studied another configuration (Derivative C2) that would call for Runway 10C/28C to be shortened to 7,500 feet. The FAA proposes to find that this configuration would present safety issues and is therefore unacceptable because of the significant inefficiencies in operation that would be required to insure safety. This configuration also would impose significant operational constraints on the airfield. In its shortened layout, Runway 10C/28C would be an arrival runway in east flow conditions while Runway 10L/28R would operate as a departure runway. Because the threshold of shortened Runway 10C would be relocated some 3,200 feet east of the threshold of Runway 10L, traffic landing on Runway 10C would be exposed to the wake turbulence of aircraft that had begun their takeoff roll much further west on Runway 10L. Similarly, heavy jet and B-757 arrivals on 10C could produce wake turbulence issues for Runway 10L departures. Therefore, departures on Runway 10L would need to be sequenced with arrivals on Runway 10C, severely compromising the efficiencies of the two runways. In addition, the restrictions required by Precision Object Free Zone and Runway Protection Zone standards would negate planned efficiencies in taxi time and taxi routes for aircraft departing on 10R. Also, reduction in length to 7,500 removes this runway as appropriate for use by NLA, as described above. Accordingly, the FAA also proposes to find that Derivative C2 is not a less restrictive alternative that is capable of performing as well as Alternative C.

Third, the FAA studied a configuration (Derivative C3) in which Runway 10C/28C was shortened to only 6,900 feet. This configuration would produce the same impediments to delay reduction that are associated with a 7,500 foot runway, and it would exacerbate the safety-efficiency problem related to wake turbulence beyond that expected from a 7,500 foot runway. The FAA proposes to find Derivative C3 unacceptable for safety reasons, and it is not a less restrictive alternative that is capable of performing as well as Alternative C.

Fourth, the FAA studied a configuration (Derivative C4) in which Runway 10C/28C is shifted some 350 feet south and shortened by 500 feet from its present proposed length of 10,800 feet. The runway relocation to the south would be to avoid St. Johannes Cemetery; the shortening of runway length would be to preserve the existing airport geometry, specifically the relationship between Runway 10C/28C and Runway 4R/22L. Even in this modified form, however, wake turbulence issues would appear because during west flow operations, aircraft departing Runway 22L are farther into takeoff roll when crossing the extended intersection with arrival

Runway 28C. The greater the distance to the southwest that the Runway 28R flight path crosses Runway 22L, the greater the possibility for wake turbulence issues. Again, there would be a loss of runway capacity to insure that Runway 22L departures do not cause wake turbulence for Runway 22C arrivals. Those concerns would not occur in the proposed configuration for Alternative C. Moreover, moving Runway 10C/28C to the south would require reducing the size of the south storm water detention facility that now abuts taxiways serving Runway 10C/28C, as well as modification to cargo areas. Should future technology allow for quadruple approach procedures in IFR weather, the lesser distance between 10C/28C and 10R/28L means the less likely such procedures could be authorized. Even without quadruple approaches, however, the requirement of the FAA's Terminal Instrument Procedures regarding Category II/III Instrument Landing System Approach surfaces could impact proposed minimum landing conditions on Runways 10C and 10R, thereby hampering the operational efficiencies of these runways during poor weather conditions. Accordingly, the FAA proposes to reject Derivative C4 for safety reasons, and proposes to find that this configuration is not a less restrictive alternative that is capable of performing as well as Alternative C.

Fifth, the FAA studied relocating Runway 10C/28C some 450 feet south of its proposed location and shortening it to 10,300 to preserve the airfield's proposed geometry (Derivative C5). Here, safety and efficiency issues relating to wake turbulence identified immediately above would be increased, since the point where the flight path to 28C crosses Runway 22L is even farther to the southwest by some 550 feet. The south airfield stormwater detention facility would be compromised to an even greater degree, and the opportunity for quadruple approaches in poor weather conditions is virtually eliminated. The FAA proposes to find that for safety and operational reasons, Derivative C5 is not a less restrictive alternative that is capable of performing as well as Alternative C.

Other proposals that could spare the two cemeteries were presented to the FAA in preliminary comments on the agency's Draft Section 4(f) and Section 6(f) Evaluation. Those proposals were assessed in that draft document. The FAA has reviewed the comments submitted criticizing the proposed disposition of those proposals. It has prepared a final response to those comments in the Final Section 4(f) and Section 6(f) Evaluation. At present, and subject to a final decision in the ROD, the FAA has seen nothing in the comments submitted to it that would cause it to revise the proposed conclusions contained in that evaluation when assessed under RFRA's "less restrictive alternative" criterion with regard to whether those proposals are viable candidates as less restrictive alternatives to the Preferred Alternative.

With respect to St. Johannes, the FAA proposes to conclude that there are no less restrictive means of furthering this important and compelling governmental interest than the proposed approval of the Preferred Alternative. As indicated earlier in our review of the proposals by the religious objectors and our own self-proposed modifications to existing alternatives, runway configuration and location are absolutely critical to meeting the Purpose and Need of the proposed action. The FAA intends to find that Runway 10C/28C is an essential component in that configuration, and could not be eliminated or moved without inflicting substantial damage on the ability of the proposed Preferred Alternative to achieve the goals of this project. Thus, the FAA proposes to find in the ROD that, should the Preferred Alternative be selected, there

are no less restrictive alternatives available to the FAA, and that the graves in St. Johannes Cemetery must be relocated by the City if it proceeds to implement the approval that could be issued in the ROD.

5.22.7.4 Least Restrictive Means as Applied to Rest Haven Cemetery

As to Rest Haven Cemetery, the FAA proposes to conclude that, presuming the Preferred Alternative is approved, there may be a less restrictive means of satisfying this compelling governmental interest. Although the space necessary to reposition cargo facilities and the cargo apron is extremely limited, adjustments could be made in that far corner of the airfield to allow for construction of the new cargo facilities and still leave Rest Haven Cemetery undisturbed. The visual experience at the cemetery may be somewhat altered because it would be surrounded by the bustling 24-hour a day activity of an international air cargo hubbing facility. In that sense, it would be somewhat like the situation at St. Johannes today. Thus, approval of the Preferred Alternative, if adopted in the ROD as envisioned in this analysis, would not present a need for the City to relocate the graves found there.

With respect to continued access to Rest Haven, the FAA believes it should be possible for the City to accommodate the interests of those who may wish to visit the cemetery. For reasons of physical safety, however, access may be limited during certain periods of construction.