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10/31/2005 06:34 AM

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Subject: Fw: 2005-10-28 Objectors letter re FAA AIP and LOI
decisions and 2005-10-28 Campbell-Hill Report

History: This message has been forwarded.

FYI

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10/28/2005 04:23 PM

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Subject: 2005-10-28 Objectors letter re FAA AIP and LOI decisions
and 2005-10-28 Campbell-Hill Report

Gentlemen:

Enclosed please find:

1. A letter to you dated October 28, 2005 summarizing the objections of the Religious Objectors, the Villages of Bensenville, Elk Grove Village and Roxanne Mitchell's to FAA's proposed AIP grants and Letter of Intent to Chicago for Phase One of the OMP.
2. A report by the firm of Campbell-Hill Aviation Group, Inc., entitled *The City Of Chicago's Second Attempt To Justify The O'Hare Modernization Program Fails The FAA Benefit-Cost Requirements*, dated October 28, 2005, which we are submitting on behalf of the Objectors in support of their opposition to Chicago's request for a "discretionary" AIP grant and associated Letter Of Intent (LOI) for \$300 million for Phase One of the OMP.



2005-10-28 letter to FAA re AIP grants and LOI.pdf 2005-10-28 Campbell-Hill report.pdf

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October 28, 2005

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Via E-Mail and Mail
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Via E-Mail and Mail
Dennis Roberts
Director, Office of Airport Planning and
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Washington D.C. 20591

Dear Sirs:

**Re: City of Chicago Requests for \$300 million
of AIP Discretionary Grants, additional
entitlement grant, and for a Letter of
Intent for Phase One of OMP**

This letter sets forth the objections of the Religious Objectors, the communities of Bensenville and Elk Grove Village, and Roxanne Mitchell ("Objectors") to the FAA's proposed award "discretionary" AIP grant and associated Letter Of Intent (LOI) for \$300 million for Phase One of the OMP. This letter also addresses the same parties' objection to the FAA's proposed award of a \$63 million "entitlement" grant for Phase One.

A. The Statutory Prohibition Against a Discretionary AIP Grant Unless the Benefits Exceed the Costs.

Under applicable statutes and implementing FAA policies, FAA is prohibited from awarding "discretionary" AIP grants and associated Letters of Intent (LOI) unless the economic benefits of the project outweigh the costs. Enclosed is a report by the Campbell-Hill Aviation Group, Inc., *The City Of Chicago's Second Attempt To Justify The O'Hare Modernization Program Fails The FAA Benefit-Cost Requirements*, dated

October 28, 2005, which we are submitting on behalf of the Objectors in support of their opposition to Chicago's request for a "discretionary" AIP grant and associated Letter Of Intent (LOI) for \$300 million for Phase One of the OMP. The October 28, 2005 Campbell-Hill report demonstrates that the benefits of the Phase One project and the Total OMP Master Plan project are each far outweighed by the cost of these projects.

B. Chicago's First Benefit-Cost Study Was Flawed and Inadequate To Establish That the Benefits of Phase One and the Total OMP Master Plan Exceeded the Costs.

Chicago first submitted in February, 2005 a Benefit-Cost Study to support Chicago's claim that the benefits of both Phase One and the Total OMP Master Plan both exceeded the respective costs of Phase One and the Total OMP Master Plan. On June 6, 2005 and also on July 21, 2005, the Objectors submitted to FAA a report and supporting materials from Campbell-Hill demonstrating that the economic benefits of Phase One were less than one cent for every dollar of cost and that the benefits of the Total OMP Master Plan were 27 cents for every dollar of cost.

Neither FAA nor Chicago has challenged the findings of the Campbell-Hill June 6, 2005 report that the economic benefits asserted for Phase One and the Total OMP Master Plan in the February 2005 Chicago Benefit-Cost Study of Phase One were far less than the costs. Indeed, as the Objectors have just learned, FAA has expressly admitted — in heretofore secret documents we first received on October 26, 2005 — that the February 2005 Chicago Benefit-Cost Study failed to meet the benefit cost requirements:

"The sentence in Section 5.2.5.2...is misleading and inappropriately suggests that previous BCA dated February 2005 provided sufficient evidence to justify the proposed project."

FAA comment in document file "LOI-BCA 17383.pdf" produced by FAA on October 26, 2005 (emphasis added)

"The benefits estimated under the previous approach [the February 2005 BCA] are artificial and would never have been realized"

FAA comment in document file "LOI-BCA 17157.pdf" produced by FAA on October 26, 2005 (emphasis added)

Despite these internal admissions first revealed on October 26, 2005, FAA never revealed to the Religious Objectors or the impacted communities — or the Court of Appeals— that FAA had independently and internally acknowledged that Chicago's February 2005 Benefit-Cost Study failed to demonstrate that benefits exceeded costs; and that consequently FAA could not, under the statutory legal prohibition, award the discretionary grant or the associated LOI based on that February 2005 Benefit-Cost Study.

C. The New Chicago Benefit-Cost Study Revealed After FAA had Reached A Decision to Award the Discretionary Grant and LOI.

On October 7, 2005 the Objectors first received notice from the FAA through a pleading filed by FAA with the United States Court of Appeals that the FAA had issued a notice to Congress that the FAA had made a decision (purportedly made on October 6, 2005) to award Chicago the requested \$300 million AIP discretionary grant and associated LOI. However, the FAA emphasized that the FAA's decision on this discretionary grant and LOI was not "final"; and that therefore the FAA decision on the discretionary grant and LOI could not be challenged in the Court of Appeals. The FAA argued that the Court of Appeals would not have jurisdiction to review the FAA decision on discretionary grant and LOI until the FAA decision was final and indicated that the FAA would finalize the decision in 30 days.

On that same day (October 7, 2005) the Objectors received for the first time a document purportedly authored by Chicago entitled *Supplemental Benefit-Cost Analysis* (September 27, 2005 "FAA Review Draft") which presents an entirely new benefit-cost analysis predicated on an entirely different theory of benefits called "Consumer Surplus". It is this September 27, 2005 Chicago Benefit-Cost Study (first revealed on October 7, 2005) that is the presumed basis for the FAA's apparent conclusion on October 6, 2005 that the benefits of both Phase One and Total OMP Master Plan allegedly exceeded their respective costs and that therefore purportedly provides a legal basis for FAA to award the discretionary grant and associated LOI.

In the very short and abbreviated time since the Objectors have had an opportunity to examine the September 27, 2005 Chicago Benefit-Cost Study, Campbell-Hill has performed a detailed study of the evidence and data submitted by Chicago to support Chicago (and FAA's) new theory of benefit-cost. As shown by the October 28, 2005 Campbell-Hill report (submitted herewith) the economic costs of both Phase One and the full Total OMP-Master Plan far outweigh the economic benefits of either project. Therefore FAA cannot legally award either the requested AIP discretionary grant or the associated Letter of Intent (LOI).

D. The FAA Documents Disclosed October 26, 2005 and the FAA's Improper Role In Writing Chicago's New Benefit-Cost Study.

On October 26, 2005 Objectors received a CD containing several previously undisclosed documents. These documents show that the FAA abandoned any semblance of being a neutral decision-maker as between Chicago and the opponents to the \$300 million grant and associated LOI. Instead these documents show that FAA personnel and consultants secretly wrote whole sections of the new Chicago Benefit-Cost Study for Chicago between July and September 2005.

Having essentially co-authored Chicago's new Benefit-Cost Study (which is the fundamental heart of the application for the \$300 million grant and associated LOI), FAA then proceeded to secretly decide on October 6, 2005 that the new Benefit-Cost Study now somehow satisfies the statutory command that benefits exceed costs. And all of this

secret activity took place without providing the Objectors an opportunity to participate in or comment upon the secret co-authoring of the secret Benefit-Cost Study by FAA and Chicago.

We hereby submit for the administrative record for judicial review the documents contained on the CD which FAA delivered to us on October 26, 2005 and further request that the FAA provide copies to Objectors and submit for the administrative record any and all internal documents (including all communications between the FAA and its consultants and Chicago and/or its consultants) relating to the FAA's conduct regarding the processing of the application for the \$300 million grant and associated LOI.

E. The \$63 Million Entitlement Grant for Phase One.

The Objectors have asked repeatedly for any documents relating to Chicago's request for a \$63 million dollar entitlement grant with respect to Phase One and thus far FAA has refused to provide us with any documents relating to this grant. Given FAA's refusal to provide any documents relating to this grant application, we are severely hampered in providing comment on this application or rebutting any assertions made by Chicago in support of this grant. We do not even know whether this grant has been awarded or not awarded even though we have repeatedly asked FAA for an opportunity to challenge any such grant because the money from the grant will be used to fund Phase One — which in turn will be used to destroy St. Johannes Cemetery and the homes, businesses, and park lands in Bensenville and Elk Grove Village.

Nevertheless, beyond the failure of Chicago's application for a discretionary grant and associated LOI, the entitlement grant suffers from many of the same flaws as the discretionary grant under the general statutory requirements of the FAA AIP statute (see discussion below.)

F. Legal Prohibitions Barring Either the AIP Discretionary Grant or the AIP Entitlement Grant.

As discussed above, the FAA is barred by statute from awarding the \$300 million discretionary grant and associated LOI because the benefits of either Phase One or the Total OMP Master Plan are far outweighed by the costs of these projects.

In addition, 49 U.S.C. §47106(a)(3) prohibits FAA from awarding either AIP discretionary or AIP entitlement grants unless the FAA finds that "enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter".

Chicago does not have sufficient money to pay for Phase One unless the FAA authorizes Chicago to collect and use over \$1 billion dollars in PFC funds. To our knowledge FAA has not made a decision on any PFC request for Phase One and

therefore FAA cannot make the required finding under 49 U.S.C. §47106(a) (3) which is a prerequisite to making any AIP grant¹.

Again, we reiterate our request to examine any and all documents Chicago has submitted to FAA relating to any request by Chicago for PFC authorization for Phase One or any other portion of the OMP.

Further, 49 U.S.C. §47106(a) (5) prohibits the award of AIP grants unless the project sponsor has legal authority to carry out the project as proposed. Further, 49 U.S.C. §47106(b)(1) prohibits the FAA from awarding any AIP grant unless the FAA finds that the sponsor will be able to acquire "good title" to the land that will be required for the Phase One project.

With regard to these last two requirements, FAA should be aware that Chicago's legal authority to acquire and destroy St. Johannes Cemetery is being challenged under the First Amendment Free Exercise Clause, the federal RLUIPA statute, and the federal RFRA statute. Religious Objectors believe and assert that these constitutional and statutory barriers prevent FAA from finding that Chicago has legal authority to carry out Phase One or that Chicago will be able to obtain "good title" to St. Johannes Cemetery — a parcel of land needed for one of the Phase One runways.

At a minimum there is substantial question and doubt — to be resolved by the federal courts — as to whether Chicago has legal authority to carry out Phase One or that Chicago will be able to obtain "good title" to St. Johannes Cemetery — a parcel of land needed for one of the Phase One runways.

G. The Problem of The July 2005 EIS to Accompany the Request For the AIP Discretionary Grant.

The FAA cannot rely on the EIS issued in July of 2005 to support its decisionmaking on the \$300 million AIP discretionary grant and LOI.

1. The July 2005 EIS halts its analysis of impacts and alternatives at 2018. The July 2005 EIS uses this end date as a reason for not examining the fact that even the Total OMP Master Plan will run out of capacity in the 2019-2023 (depending on which TAF is used) time frame. But the decisionmaking on the AIP discretionary

¹ There also remains the outstanding question of the financing and inclusion in Phase One (and the associated AIP discretionary grant application) of the costs of the so-called "Lima Lima" taxiway. It is not clear from the documents provided by FAA that Chicago has committed or obtained commitments of the funds needed to construct the Lima Lima taxiway. Yet the Lima Lima taxiway was an essential element of the physical structure modeled by FAA and Chicago, which modeling served as a central basis of Chicago's proffered Benefit-Cost Study for the discretionary grant. Documents produced by FAA indicated that Lima Lima had been dropped from the Phase One financial plan and budget and there is no substantiation that this project element (which is reported to have a cost of approximately \$200 million) has been reinserted into the financial package that FAA must examine to determine if the requirement of 49 U.S.C. §47106(a)(3) has been met.

grant requires FAA to examine both the Phase One project and the Total OMP Master Plan over a 20-year time frame from the date of the opening of the project for use (2028 in the case of Phase One and 2032 in the case of Total OMP Master Plan). Use of this time frame requires a much different and more thorough examination of impacts and alternatives within this time 2028 or 2032 time horizon required for the AIP discretionary grant funding decision than was undertaken for the 2018 horizon used in the July 2005 EIS. By way of example, using the 2004 TAF (Terminal Area Forecast) as extended out to 2032 per the September 27, 2005 Chicago Benefit-Cost Study, the Total OMP Master Plan airfield and the surrounding communities will be subjected to much high levels of traffic with much different environmental impacts and delay performance of the in the 2020-2032 time period (a period which must be analyzed for the award of a discretionary grant) with much different required alternatives, including required use of blended alternatives, than the impacts and alternatives discussed in the foreshortened 2018 EIS published by the FAA in July 2005.

2. Nor does the July 2005 EIS examine alternatives to the specific "major federal action" which is the subject of the \$300 million discretionary grant application, the Letter of Intent (LOI), the ancillary \$63 million entitlement grant application and the forthcoming \$1 billion dollar PFC application — *i.e.*, Phase One. The "major federal action" which is the subject of the FAA grant decision-making is not the Total OMP Master Plan; it is solely Phase One. If the Total OMP Master Plan is the major federal action being considered, then FAA must undertake the requisite financial assurance analysis and findings required by 49 U.S.C.§47106(a)(3) for the entire cost of the Total OMP Master Plan. If FAA wants to limit its financial examination under 49 U.S.C.§47106(a)(3) to strictly the project for which AIP and PFC funding is being requested — *i.e.*, Phase One — then Phase One is the "major federal action" within the meaning of NEPA as to which FAA must explore alternatives. FAA has cannot have it both ways, glibly switching back and forth for its rhetorical convenience between the ephemeral and unachievable Total OMP Master Plan and Phase One. FAA has not examined nor described alternatives to Phase One in the July 2005 EIS.
3. It appears from available information that in modeling the Base Case for both the July 2005 FEIS and the recent September 27, 2005 Benefit-Cost Study, Chicago and FAA used runway configurations based on conditions in 2003 that resulted from FAA eliminating certain operating procedures, thus restricting the use of certain productive runway configurations. It is apparent from Chicago's submission to the FAA on August 1, 2005 (Docket FAA-2004-16944) that the FAA 2003 restrictions — which significantly raised the modeled Average Annual All Weather (AAAW) delay from the values modeled for 2001 and 2002 and served as the basis for FAA's Base Case modeling used in Chicago's Benefit-Cost

Studies of February 2005 and September 27, 2005 — no longer exist². Further, there is no evidence that the Base Case modeling used by FAA and Chicago incorporated the effects of the FAA's scheduling order of August, 2004 which, according to Chicago and FAA, have significantly reduced delays at O'Hare. Without proper computer modeling of the Base Case to include these factors, the entire FEIS and Chicago Benefit-Cost Study appear to be grounded on a false basis— *i.e.*, a substantial and very serious overstatement of the delays attributable to the Base Case and the "delay savings" attributable to Phase One or the Total OMP Master Plan.

4. The FAA's continued use of a 2002 TAF in a decision which the FAA proposes to make in late 2005 is fundamentally unjustified and is likely to produce errors in both impacts and alternatives analysis as well as benefit-cost computations. As stated by the FAA in the hitherto secret documents released on October 26, 2005:

"The change in the composition of flights in the 2004 TAF may significantly affect the TAAM delay and travel time estimates and may also affect environmental results"

FAA comment in document file "LOI-BCA 17430.pdf" produced by FAA on October 26, 2005 (emphasis added)

Conclusion

For all of the reasons described above, the Religious Objectors, the communities of Elk Grove Village and Bensenville, and Roxanne Mitchell oppose the award of either

² As stated by the City of Chicago in comments filed with FAA on August 1, 2005:

"In light of technological and procedural developments and new flight arrival and departure data, the City believes that the flight limits in the FAA's August 18, 2004 Order as extended by the FAA's March 25, 2005 Order (FAA-2004-16944) ("FAA Order") do not reflect the full capacity available at O'Hare. First, the FAA Order was crafted before the procedural change that allowed increased arrivals and decreased delays for arrival Plan B. [footnote omitted] This change to Plan B was estimated to reduce delays by 24,000 hours annually and save the airlines over \$17M annually. ..."

"Third, the MD-80's recent reclassification and approval for Land and Hold Short Operations ("LASHO") on Runway 22R should increase O'Hare's arrival rate by at least 5 % when Plan W9 is in effect.[footnote omitted] This change also should allow for the implementation of Hybrid Plan B,[footnote omitted] which is estimated to reduce delays by 23,000 hours and save the airlines over \$16 million dollars annually"

According to the FAA's data, during the first eight months that the FAA Order was in effect, arrival delays were reduced by 27%, 7% above the FAA's target of 20%.

City of Chicago comments in FAA. Docket FAA-2004-16944 In the Matter of Operating Limitations at Chicago O'Hare International Airport. August 1, 2004 (emphasis added)

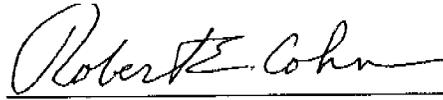
Letter to Messrs. Smithmeyer, Cooper and Roberts
Federal Aviation Administration
October 28, 2005
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the \$300 million discretionary AIP grant or the \$63 million entitlement AIP grant for Phase One of the OMP.

Respectfully submitted,



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³ The Rest Haven Religious Objectors have advised the United States District Court that they will drop their opposition to Phase One if Chicago and the FAA agree to an enforceable federal court order which guarantees permanent protection of the sacred ground of Rest Haven Cemetery and permanent right of access by the families and co-religionists of those buried at Rest Haven Cemetery to the cemetery.