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June 3, 2005

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**Re: City of Chicago Application for Letter of Intent For AIP
Funding For The "O'Hare Modernization Program" ("OMP")**

Dear Mr. Smithmeyer, Mr. Cooper and Mr. Roberts:

The City of Chicago has submitted a request to FAA for a Letter of Intent (LOI) for \$300 million in AIP discretionary grants over 10 years for Phase 1 of the proposed "O'Hare Modernization Program" ("OMP"). The Village of Bensenville and Elk Grove Village (collectively, the "Community Objectors"), St. John's United Church of Christ, Helen Runge, Shirley Steele, Rest Haven Cemetery Association, Robert Placek and Leroy Heinrich (collectively, the "Religious Objectors") and Roxanne Mitchell representing the Homeowner Objectors,¹ previously filed objections to the City's LOI request. See letter dated August 23, 2004 and Comments and Objections submitted April 6, 2005.

The Objectors reiterate their objections to the City's requests for any FAA grants in connection with OMP. In further support of the objections the Objectors hereby submit a comprehensive analysis and critique of the City's Benefit-Cost Analysis (BCA) submitted in support of its application for an LOI. The analysis and critique has been

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

prepared by Campbell-Hill Aviation Group, a leading economic consulting firm with substantial experience in preparation of Benefit Cost Analyses.

The Campbell-Hill Report demonstrates that the City's BCA is fatally flawed, inconsistent with FAA's BCA Guidance and Executive Order 12866 and must be rejected. Federal law prohibits the FAA from approving discretionary AIP funding for projects where the benefits of the project do not exceed the costs. Neither the OMP as a whole, nor Phase I of the OMP, will produce the claimed benefits and both the costs of the full OMP and the costs of Phase I far exceed any benefits from the project.

The following summarizes the key points of the Campbell-Hill Report:

- Chicago's BCA is rife with errors and methodological flaws. In virtually every significant respect the City's BCA is inconsistent with Executive Order 12866, OMB directives on Benefit-Cost Analysis, and FAA's Benefit-Cost Analysis Guidance dated December 15, 1999 and must be rejected.
- None of the City's proposed "build" scenarios for Phase 1 or the full OMP-Master Plan would produce a benefit-cost ratio of 1.0 or higher; indeed, the BCA ratios for most of the proposed scenarios would produce NEGATIVE net benefits, much less a ratio above 1.0.
- The City's BCA used a faulty model design which caps the operations for OMP Phase 1 and full OMP at 974,000 operations, computes the delay savings with the new capacity at that capped level of operations and then applies that delay savings throughout the entire 20 year BCA period. This approach creates unrealistic and fictional delay savings, dishonestly exaggerating delay savings, and is inconsistent with FAA's BCA guidance. Instead of capping the level of operations the BCA should cap the level of delay as the FAA Guidance instructs.
- Chicago's BCA did not perform any alternatives analysis for the BCA, violating a central requirement of FAA's BCA Guidance and making the City's BCA analysis invalid. The FAA's Guidance states "a valid BCA must have at least one alternative identified for each possible course of action." FAA Guidance further states that "at a minimum, the following alternatives should be identified and discussed for any airport infrastructure project: . . . demand management strategies . . ." FAA BCA Guidance § 7.3, Page 18 (emphasis added). Other alternatives that should be assessed in the context of a valid BCA would include a range of non-development and development alternatives including use of the existing airport coupled with congestion management mechanisms at varying levels of "acceptable delay", incremental on-airport runway configurations shifting of some demand to other regional and hub airports, and any combination of the foregoing. These very types of alternatives were

recently adopted by the FAA in its ROD on the LAX Master Plan and were adopted by the City and the FAA with respect to O'Hare in the City's 1980s Master Plan and the FAA's 1984 ROD dealing with O'Hare expansion. Further, demand management is clearly an action that is currently in place at O'Hare and currently being proposed by FAA for O'Hare under its March 25, 2005 NPRM. Contrary to this central requirement the City's BCA states "the City believes that the OMP is the best development option and, therefore, *alternatives are not analyzed as part of this BCA.*" Chicago's BCA at IV-2 (emphasis added). This City's failure to evaluate alternatives to its preferred course of action makes the City's BCA analysis fatally invalid.

- The City's BCA used as the "base case" a "do-nothing", no-action course of action, which is patently inconsistent with FAA's BCA Guidance. FAA BCA Guidance instructs that "the base case represents the best course of action that would be pursued in the absence of a major initiative to obtain the specified objectives" and FAA further directs that "the base case not be defined as a 'do-nothing' course of action where the current airport configuration and management are held static." There is good reason for this requirement because as FAA Guidance states a do-nothing course of action "will typically overstate the deterioration and delay, efficiency, safety, and other benefit measures as traffic grows. In reality, airport managers, airport users, and air traffic managers may make a variety of operational and procedural changes to mitigate delay and related problems as congestion builds beyond certain thresholds."²
- Chicago's BCA Analysis failed to analyze all of the evaluation periods required by the FAA's BCA Guidance. According to the FAA's BCA Guidance, traffic levels and the associated impact of those levels on delay for the proposed project and for alternatives should be analyzed for *at least three time periods*: "Three time periods of concern in determining the evaluation: Requirement life; physical life; and economic life." See FAA BCA Guidance § 8.1, Page 21. FAA BAC Guidance says that at least three traffic levels should be simulated: at the beginning of the

² It is clear from Chicago's May 24, 2005 submission in FAA Docket 2005-20704 relating to the FAA's March 25, 2004 NPRM that the "Base Case" for evaluating the benefits and costs of both OMP Phase I Airfield and the full OMP-Master Plan should also include the operational changes referenced at pp. 7-8 of Chicago's submission. Furthermore, the Base Case should include — at a minimum — the effect of the FAA's August, 2004 scheduling order and its proposed extension by the March 25 NPRM.

project's life, at the middle point of the project's life, and at the end or near the end of the project's life. See, FAA BCA Guidance at Page 37 (emphasis added). The City's BCA has failed to analyze these periods. Furthermore, FAA recommends that the 20 year evaluation period "be augmented by at least 5 years to accommodate the need to evaluate optimal timing of investment alternatives." See § 12.2, Page 75 of FAA BCA Guidance. The City's BCA failed to comply with this requirement as well.

- The City's BCA analysis is flawed because it used the outdated, understated 2002 Terminal Area Forecast (TAF). Relying on the out-of-date 2002 TAF completely undermines the analysis of OMP impacts, including in the current context the BCA analysis. The City had the 2003 TAF in its possession for a year, yet chose to ignore it. The 2003 TAF (or the 2004 TAF) showed much higher levels of traffic and operations than 2002 TAF and if used in the BCA analysis would have produced higher costs and fewer benefits for Phase 1 and OMP Master Plan. This is yet another illustration of the failure of the City's BCA to be in accordance with FAA's BCA Guidance which states: "Use of a forecast made in a prior year that conflicts with the recent traffic data and/or forecast will obviously *undermine the credibility* of a BCA based on it." FAA BCA Guidance, page 13 (emphasis added). Applying the 2003 TAF and the 15.9 delay cap produces a NEGATIVE BCA ratio of -1.87. Applying the 2004 TAF produces a NEGATIVE BCA ratio of -1.59.

The FAA cannot approve the LOI request for a number of reasons which we previously presented to the FAA.

Approval of the AIP funding request to support Phase 1 or full OMP will result in the destruction of two religious cemeteries in violation of the free exercise of religion guarantee of the First Amendment, the Equal Protection guarantees of the Constitution, and the federal Religious Freedom Restoration Act. Federal constitutional provisions and the federal Religious Freedom Restoration Act prohibit the FAA from taking federal action, including approval of the City's LOI request, that would result in the destruction of the religious cemeteries. Therefore, the FAA is prohibited from approving AIP funding for the full OMP or Phase I of the OMP. For the reasons set forth in our earlier correspondence to the FAA (and in the detailed uncontested affidavits accompanying those letters), the proposed destruction of these religious cemeteries would impose a "substantial burden" on the exercise of religion by the Religious Objectors. Approval by the FAA of the AIP funding would result in the destruction of the two religious cemeteries and would illegally discriminate against these religious cemeteries, by stripping them of the religious legal protections afforded all other religious institutions (including religious cemeteries) in the State of Illinois. Such destruction and discrimination would violate the substantive constitutional protections of the First Amendment Free Exercise Clause, the Equal Protection component of the Fifth Amendment and the federal Religious Freedom Restoration Act ("RFRA"). 42 U.S.C. §

2000bb *et seq.* In addition, the liberty and property interests of these Religious Objectors are protected by the procedural and substantive guarantees of the Due Process Clause.

Under the Constitution and the federal RFRA, the FAA must demonstrate:

1) a compelling governmental need to destroy the religious cemeteries, and
2) the absence of an alternative means to accomplish the governmental need without destroying the religious cemeteries before:

As discussed in the Objectors' DEIS Comments and Objections filed on April 6, 2005, the FAA cannot make such determinations because there is no demonstrated compelling governmental need to destroy these religious cemeteries and there are alternatives (which the City and the FAA have either ignored or improperly rejected) to meet any asserted governmental need that would not destroy these religious cemeteries.

Unfortunately, FAA has refused to address this issue with the Religious Objectors and FAA has ignored its constitutional and statutory responsibility as to the religious rights of the Religious Objectors by hiding behind a stone wall of silence.

In addition, the City's application for LOI discretionary grant does not meet statutory requirements for AIP approval and must be denied. The FAA cannot award an LOI discretionary AIP grant for Phase I of the OMP. Section 47110(e) of Title 49 United States Code authorizes the Secretary to issue LOIs with respect to projects that meet the criteria of 49 U.S.C. § 47115(d). Section 49 U.S.C. § 47115(d) lists the criteria for granting AIP discretionary funds:

- i. "the effect the project will have on the overall national air transportation system capacity";
- ii. "the project benefit and cost"; and
- iii. "the financial commitment from non-United States government sources to preserve or enhance airport capacity."

Chicago's March 1, 2004 LOI application for Phase I fails each and every one of these statutory requirements:

1. The Campbell-Hill Report demonstrates that neither Phase 1 nor full OMP will produce benefits that exceed costs. Indeed there will be negative benefits from the projects.
2. Phase 1 will produce delays on opening day that will exceed the high level of historic delays at O'Hare. In fact, Phase I configuration was actually rejected by the City as a viable alternative because it would result in "excessive delays and gridlocks." Thus, the City's own Master Plan states at Section 5.1.4, page V-42: "...Option 1 [which is LOI Phase 1] reaches excessive delays and gridlocks in certain configurations between PAL 1 and PAL 2 demand levels. As a result, Option 1 was eliminated from further consideration." (emphasis added). Clearly Phase I does not meet the statutory requirement that the proposed development "enhance system-wide airport capacity significantly."

3. It is clear from the record that the Phase I Airfield will not “enhance system-wide airport capacity significantly” as required by 49 U.S.C. §47110(e)(2)(C). The “acceptable” level of delay posited by FAA in the January 2005 DEIS — *i.e.*, 15 minutes Average Annual All Weather Delay (AAAW) is far above every formal FAA and DOT discussion of an appropriate delay standard for “acceptable” delay. Indeed, Chicago and the FAA’s own modeling efforts demonstrate that at 14.2 minutes AAW (less than the 15 minute standard suggested in the DEIS), the Phase I airfield will be plagued by average IFR delay under a primary airfield IFR configuration in excess of 95 minutes. Further, O’Hare controllers have advised our aviation experts (including the former Acting Administrator of the FAA, that Phase I would be an operational “catastrophe” and a “disaster” (the words actually used by the controllers) because of the massive delays and interference caused by the proposed use of the new northern runway during IFR conditions.
4. Phase I does not meet the requirements of the First Amendment Free Exercise Clause and federal RFRA as discussed above and in prior submissions.

Nor can the FAA finesse approval of the flawed Phase I Airfield by relying on the so-called “full build” Master Plan-OMP (which includes the World Gateway Terminals). Neither Chicago, the major O’Hare airlines, nor the FAA can provide the necessary funding for the huge costs of the “full build” Master Plan-OMP — the full cost of which (to this day) Chicago and the FAA continue to refuse to disclose. It is clear that the “full build” Master Plan-OMP is nothing more than a “Chimera”.³

The FAA cannot approve AIP funds for the full OMP because the City has not demonstrated and cannot demonstrate there is sufficient funding from non-federal sources for the project. Under the statute the FAA must make an affirmative determination that “enough money is available to pay the project costs that will not be paid by the United States Government under this subchapter.” 49 U.S.C. § 47106. For the reasons discussed in the Objectors’ DEIS comments the FAA cannot make that determination and its bald “assumption” that the project can be financed is not sufficient to meet the statutory requirement. Without a demonstration that there is sufficient funding from non-AIP sources to fund the full OMP, the FAA cannot approve the OMP for either AIP or PFC funds.

Even at the misleading and unreasonably understated \$14.2 billion cost of the “full build” Master Plan-OMP (cited by FAA in the DEIS) there are simply insufficient funding sources to build it. First, the airlines have refused to provide Majority In Interest (MII) approval required for the WGP terminals and are yet to provide MII approval for

³ “Something totally unrealistic or impractical: a figment of the imagination, for example, a wildly unrealistic idea or hope or a completely impractical plan.” (Encarta® World English Dictionary [North American Edition]).

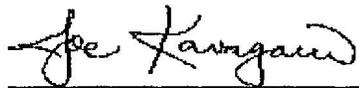
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Terminal 7 (the western terminal) and the other runways of OMP beyond Phase I. Moreover, the two major legacy carriers at O'Hare — United and American — clearly do not have the financial wherewithal to take on the more than \$8 billion General Airport Revenue Bond (GARB) portion of the \$14.2 billion cost. Second, there are insufficient PFC and AIP funds available to pay the huge PFC and AIP portions of the funding required by the understated \$14.2 billion cost. Finally, there are no airlines or third parties willing (or even able) to provide the multi-billion chunk of "special facility financing" needed to pay for Terminals 6 and 7 under the Master Plan — especially in light of United's default on several hundred million dollars of special facility bonds for the existing United terminal.

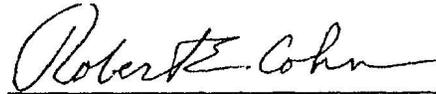
FAA and Chicago are putting forth this "Chimera" called the "full build" Master Plan-OMP — knowing full well that it cannot be funded and built — to hide the fact that (by FAA and Chicago's own admission) all of the lesser "Build" options will require use "demand management", *i.e.*, a use of "blended" alternatives. Once FAA admits to the fact that "blended" alternatives — using various airfield configurations in combination with demand management — are necessary, feasible and inevitable to address the region's aviation needs, a wide variety of blended alternatives become available for consideration, including those that use congestion management and other airports in combination with the use of the existing airfield or less expansive runway alternatives at O'Hare.

For the reasons stated above and in our prior submissions, the FAA should deny Chicago's applications for AIP approval of Phase I.

Respectfully submitted,



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Attachments

cc: Woody Woodward, Andrew Steinberg, Daphne Fuller