

# City Council

## Agenda Cover Memorandum

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Meeting Date: November 15, 2010

Item Title: O'Hare Airport Commission Recommendations regarding  
Taber Law Group memorandum

Action Requested:

- Approval  
 For discussion  
 Feedback requested  
 For your information

Staff Contact: Jim Hock, City Manager  
Phone Number: 847/318-5205  
Email Address: [jhock@parkridge.us](mailto:jhock@parkridge.us)

Background:

Steven Taber of the Taber Law Group in Irvine, California, drafted a memorandum regarding options for Park Ridge regarding noise and air quality issues created by the expansion of O'Hare International Airport. He presented this to the City Council on August 16, 2010. The City Council requested the O'Hare Airport Commission (OAC) review this memorandum and make its recommendations to the City Council.

Attached are the OAC recommendations. This item has been placed on the November 15, 2010 City Council meeting agenda for discussion. A representative from the OAC will attend this meeting.

Recommendation:

Review and provide direction to staff.

Budget Implications:

Does Action Require an Expenditure of Funds:  Yes  No  
If Yes, Total Cost: \$8,987.50+  
If yes, is this a Budgeted Item:  Yes  No

Attachments:

- OAC recommendations to City Council regarding Taber Law Group Memorandum dated August 9, 2010
- Taber proposed budget
- Supplemental EIS case facts, revised September 2010

**Park Ridge O'Hare Airport Commission  
Recommendations to City Council  
Re: Taber Law Group Memorandum dated August 9, 2010**

The Park Ridge O'Hare Airport Commission, in pursuing a supplemental EIS for O'Hare, recommends that the Park Ridge City Council retain Mr. Steven M. Taber, Taber Law Group, Irvine, CA to advise and consult on all issues related to the following courses of action. Mr. Taber is a recognized expert in the field of aviation law and is a former FAA attorney, Great Lakes Region. His knowledge and expertise in the creation of the Environmental Impact Study for O'Hare is considered by the Commission to be of extreme importance in assisting the City of Park Ridge in its efforts and mission to obtain relief from the effects on ongoing expansion at O'Hare.

The Commission asks the Council to support the following recommendations relative to a course of action to be implemented in requesting a supplemental EIS. The Commission believes that this course of action is essential to the process of obtaining a supplemental EIS, and acknowledges that other courses of action may be implemented and should be pursued, concurrent with this essential course of action.

1. Request for a supplemental EIS to be conducted for O'Hare.
  - a. Request Mr. Taber edit the draft case argument presentation (attached) for a supplemental EIS and write and submit a strongly worded letter with this presentation to the FAA outlining why FAA should conduct a supplemental EIS based on its inherent authority granted it in the NEPA regulations. This is considered a first step only, with a need to complete the following steps in sequence, as it is likely the FAA will deny this initial request.
2. Begin air quality and noise impacts study in Park Ridge with the support of Mr. Taber's consultants and experts in the fields of noise and emission. Mr. Taber would select these experts based on his substantial experience with EIS law and science and Mr. Taber's firm would also outline the scope of work.
  - a. This will bolster Park Ridge's case that it is being severely impacted by increasing noise and emissions from increased over flights. Mr. Taber will research whether grants or AIP funds can be used to support this step.
3. Upon completion of the air quality and noise studies, request Mr. Taber submit another letter to the FAA, again requesting a supplemental EIS based on "significant" new information."
  - a. If the FAA denies that request, the Commission would like to leave the option open for the City to consider further action.

Respectfully submitted,

Park Ridge O'Hare Airport Commission

November 9, 2010

## Park Ridge, Illinois, Supplemental EIS Request Proposed Budget

Case	Park Ridge, Illinois/Supplemental EIS
Location	Park Ridge, Illinois
Issue	Drafting letters to the FAA requesting a Supplemental EIS and overseeing air quality and noise analysis
Client Contact	Sue Parschke
Rate	\$275.00 per hour

Phase	Task	Hours	Fee	Cost
<i>First Request for Supplemental EIS</i>	Edit the Commission's outlined case argument for a supplemental EIS	2.0	\$550.00	
	Draft and submit strongly worded letter with presentation to the FAA regarding Supplemental EIS (based on FAA's inherent authority)	5.0	\$1,375.00	
	FOIA Request	0.5	\$137.50	\$350.00
<i>Air Quality and Noise Impacts Study</i>	Assist in the selection of air quality and noise experts	2.0	\$550.00	
	Outline scope of work for air quality and noise experts	3.0	\$825.00	
	Research whether grants or AIP funds can be used to support this step	2.0	\$550.00	
<i>Second Request for Supplemental EIS</i>	Draft second request for Supplemental EIS based on "significant new information" discovered during the air quality and noise impacts study.	16.0	\$4,400.00	
<b>TOTAL</b>			<b>\$8,387.50</b>	<b>\$250.00</b>

***NEPA requires federal agencies produce a supplemental EIS when substantial changes in the proposed action are made to a project or when significant new circumstances or new information regarding environmental concerns is presented relative to that project.***

Information contained within the following Chicago Department of Aviation (CDA) reports is cause for concern and must be considered within this request for a supplemental EIS.

1. CDA Average Day Aircraft Noise Events for January 2010 – June 2010 – report date: August 2010. CDA Average Day Aircraft Noise Events for December 2008 – report date: March 2009. These reports show the number of daily average noise events, by monitor location at 85dB or greater and at 65dB or greater.
  - i. Looking at noise levels on centrally located Park Ridge monitor #26, there has been a 225% increase in daily noise events above 85 decibels since December 2008. In the first half of 2010, there were 18 average daily noise events above 85 decibels and 116 average daily noise events above 65 decibels. In December 2008, there were 8 average daily noise events above 85 decibels and 87 average daily noise events above 65 decibels. This shows noise is becoming increasingly louder in this residential neighborhood with an average, daily, of 7 noise events each hour louder than 65 decibels – or roughly one every 8 minutes daily, based on a 16 hour day.
2. Existing Remote Monitoring Terminal (RMT) Locations – OMP Final EIS, Appendix F, Build-Out – Exhibit 19. Aircraft Noise Report, May 2010, Aircraft DNL by monitor location. Aircraft Noise Report, December 2008, Aircraft DNL by monitor location.
  - i. The EIS projects noise will increase, by greater than 3.0 decibels, along the landing paths of the parallel landing runways over Park Ridge. Noise multiplies approximately 10 times for each decibel. Since December 2008, noise has been getting louder, and today is at levels that are approaching or exceeding levels projected upon completion while flight levels today are less than ¼ of the volume projected upon completion. This suggests that the current noise contour, as indicated in the EIS will be invalid upon completion. With the reconfiguration of the airfield, the 3 northern runways will account for over 65% of daily flight operations, post OMP completion. (See CDA –Estimated Runway Utilization at OMP Build Out – FAA, OMP FEIS, Appendix F, Table F-39.
3. ANMS Portable Noise Monitoring Summary Report, Site 1968 – Maine South High School – February 6, 2010 – February 21, 2010 – report delivered April 7, 2010.
  - i. A 2 week noise monitor test at Maine South High School recorded 50-60 decibels and higher during school hours with many noise events above 85 decibels. The FAA sets the threshold for noise at 60 decibels for schools. An average of 154 flights a day from all runways impacted the monitor during the test period. Upon completion of OMP, the school will experience an average of 350 flights a day from one runway. Aircraft over the school are 2 miles out from the edge of 9L/27R and 400 to 600 feet above the athletic field.
  - ii. Recent monitoring at Carpenter School in Park Ridge was conducted with 3 noise monitors to test outdoor, indoor with windows closed and indoor with windows open. Those tests looked for Leq 45dBA as the threshold for noise. The school scored 46 dB Leq. The World Health Organization recommends Leq 35dBA for the learning environment - and research indicates repetitive exposure to high level single event noise is harmful to physical health. Maine South should be retested utilizing the standards applied to Carpenter School.

***If it serves or furthers the intent of NEPA, a federal agency may conduct a supplemental EIS. The FAA decides when the purposes of NEPA will be furthered.***

The intent of NEPA was to provide for the best environmental results relative to the creation of an EIS and also limit litigation that is both costly and damaging to growth and development projects.

Section 4331 of title 42 of the U.S. Code outlines what the purposes of NEPA are:

“It is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.”

Much emerging research exists indicating that current standards associated with the modeled science executed for a current day EIS are outdated and that these standards are not accounting for the associated health risks relative to airport growth and development projects. Here are some links to organizations leading this research.

1. FAA sponsored programs, led by Massachusetts Institute of Technology:  
<http://web.mit.edu/aeroastro/partner/reports/index.html>  
<http://web.mit.edu/aeroastro/partner/reports/proj19/proj19-healtheffectnoise.pdf>  
<http://www.fican.org/>
2. Effects of Noise: from the Oxford Journals:  
<http://bmb.oxfordjournals.org/cgi/content/full/68/1/243>
3. Noise: A Health Problem – U.S. EPA Report  
<http://www.nonoise.org/library/epahlth/epahlth.htm>
4. Noise Pollution: A Modern Plague – Southern Medical Journal  
<http://www.nonoise.org/library/smj/smj.htm>
5. Noise Quest: Effects of Noise on Life  
<http://www.noisequest.psu.edu/pmwiki.php?n=Main.HomePage>

Many other airports around the country are experiencing noise and emissions concerns similar to O’Hare’s and have undertaken community based relief efforts. In Seattle, where significant and controversial noise concerns have existed for more than 20 years, there is a new Part 150 Noise Study being conducted for SEA/TAC, in part, to update the 2002 EIS and provide a more accurate accounting of airport noise. (See: <http://www.airportsites.net/SEA-Part150/default.htm>. Also see the Seattle Tacoma Regional Commission on Airport Affairs report on adverse health effects from noise: <http://www.rcaanews.org/health.htm#heatop>)

***FAA has the power to order a supplemental or interim EIS if it feels this will allay the concerns of the community that noise and air quality levels are not beyond what was anticipated in the current EIS. This is a discretionary action on the part of the FAA.***

There is current information, as presented in this report and in past reports indicating that noise and air quality levels are well beyond levels reported in the current EIS.

The City of Park Ridge has had significant concerns with regard to air quality and the effects of emissions on the community going back to the year 2000. These concerns resulted from a study of air toxics conducted by Mostardi/Platt and Environ Corporation for Park Ridge. FAA dismissed this study, for being "preliminary" and for not following its AEROMOD protocols. (*OMP – Final EIS page I-38-39.*) AEROMOD was not adopted for use by FAA until September 2001, a year following the presentation of the Park Ridge study. (See: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/aep/models/history/media/2003-06\\_Integration\\_of\\_AERMOD\\_into\\_EDMS.pdf](http://www.faa.gov/about/office_org/headquarters_offices/aep/models/history/media/2003-06_Integration_of_AERMOD_into_EDMS.pdf))

The Park Ridge study's Executive Summary concludes the following: *"While public health assessment and potential control measures need to be carefully evaluated and debated one thing is clear. Given the massive and widespread impact of O'Hare's toxic emissions on the health risk of hundreds of thousands of residents in almost 100 metro Chicago communities, O'Hare should not be expanded."*

The study also noted the following:

The important lesson for the lay person reading this technical and legal jargon is that federal government recognizes that there are situations where the application of even the best pollution control technology may not be sufficient to protect against violation of an environmental standard or against creation of an unacceptable health risk. Under those circumstances, Congress has dictated that more stringent requirements must be imposed.

These more stringent requirements can involve tougher "end-of-the-pipe" technology limits. Alternatively, these more stringent requirements can reflect a recognition that certain uses (or certain levels of activity of those uses) cannot be operated in a particularly sensitive setting – e.g., a sensitive environmental receiving stream or, in the case of air toxics, a densely populated residential environment but could be conducted in a less sensitive or less densely populated setting.

Finally, the study concluded that had other dispersion modeling data been used, the "geographic extent of the health risk and the degree of the health risk could have been higher."

Criteria pollutants required for study in an EIS also need to be changed. For example, jet aircraft carbon dioxide emissions are not regulated to date and are not required for inclusion in an EIS. Pending before the EPA is the following petition to regulate jet aircraft carbon dioxide emissions (See:

[http://www.biologicaldiversity.org/programs/climate\\_law\\_institute/transportation\\_and\\_global\\_warming/airplane\\_emissions/pdfs/Aircraft-GHG-Petition-12-05-2007.pdf](http://www.biologicaldiversity.org/programs/climate_law_institute/transportation_and_global_warming/airplane_emissions/pdfs/Aircraft-GHG-Petition-12-05-2007.pdf))

***Clean Air Act (CAA) requires compliance with USEPA standards.***

Some studies of emissions and conclusions contained within the EIS for O'Hare were not, or currently are not, in compliance with EPA standards, yet no new or supplemental EIS is required until completion of OMP in roughly 2014. The EIS for OMP was begun in 2002; the Record of Decision (ROD) implemented in 2005. From start of the EIS to end of OMP represents a 12 year time frame during which new EPA standards have been determined and implemented, but without requirement for this EIS to comply with those new standards until the project is complete. This is seemingly at odds with what Congress intended in the creation of the Clean Air Act when it specified a rigorous review and application, by the scientific community, industry, public interest groups and the general public, every 5 years, of the latest scientific information and standards.

In the EIS for O'Hare, FAA determined with IEPA and USEPA that VOC and NOx emissions (precursors to ozone) associated with the OMP conform to the State Implementation Plan (SIP) at a 1 hour ozone level attainment. This is from an IEPA letter dated July 13, 2005. (*Final EIS – page J-345 - OMP ROD, page 59.*) As of June 15, 2005, the Chicagoland area was no longer subject to a 1 hour ozone attainment level. At that time the area was designed "Severe -17". (See <http://www.epa.gov/oar/oaqps/greenbk/oindex.html>) The Chicagoland area is now at an 8 hour ozone attainment level standard. The ROD for OMP was approved in September, 2005. Conformity determination is not specified within the CAA, but, by practice, is usually undertaken upon commencement of a project.

Actual measurements recorded on PM2.5 (particulate matter) emissions in O'Hare's EIS now greatly exceed current day EPA standards, due to changes implemented by EPA in 2006. PM2.5 emissions "have been associated with increased respiratory diseases such as asthma, bronchitis, and emphysema; cardiopulmonary disease (heart attack); and cancer." (*EIS – OMP – Environmental Consequences - 5.6.6*) EPA has these standards currently under review for another policy change, to be implemented in 2010/2011. To date then, two policy standard changes will have been implemented on this one measurement alone.

At the time of the ROD on OMP, PM2.5 emissions were expected to increase, not decrease. The EIS, while measuring these levels, is not required to account for the associated health risks.

O'Hare's EIS measured PM2.5, particulate matter of 2.5 micrometers or less, at 49 – 64 micrograms per cubic meter over a 5 year period, from 2000-2004. (Table 5.6.6, page 5.6-17 Environmental Consequences FEIS July 05.) At the time of the ROD in 2005, this level was below 1997 USEPA standards of 65 micrograms per cubic meter. By today's EPA standards, set in 2006, O'Hare's PM2.5 is well above acceptable levels of 35 micrograms per cubic meter. Another policy change is set to take effect in 2010/2011, lowering the level to 30 -35 micrograms per cubic meter.

O'Hare's EIS specifically looks at risks to children and states the following: *"In regard to potential children's health impacts, the FAA has undertaken an air quality analysis of project-related particulate matter emissions of 2.5 microns per cubic meter or less (PM2.5) which is presented in Section 5.6 of the Final EIS. This analysis indicates that Alternative C will increase PM2.5 emissions. The increased emissions will not result in violations of or delay attainment of the NAAQS. The NAAQS for PM2.5, as promulgated by the USEPA, are healthbased standards designed to address concerns associated with sensitive populations, including children, the elderly, and those with asthma. As the NAAQS are health-based standards, Alternative C is not expected to cause adverse health effects on residents in Cook and DuPage Counties, including children. Additionally, since the science and methodology for completing a valid project level analysis of health impacts is lacking, it would be speculative to extrapolate environmental health and safety risks for children from the hazardous air pollutant (HAPS) emissions data. For a discussion of project-related hazardous air pollutants and potential health effect, see Section 5.6 and Appendix I of the Final EIS. " (Source: O'Hare International Airport Record of Decision – p-70 September 2005)*

DRAFT

The current air quality for the Chicagoland region is worse than for much of the rest of the nation. See current air quality chart below and also at [www.epa.gov/air/ozonepollution](http://www.epa.gov/air/ozonepollution)

