



James J. Benning II, P.E.
Director, Public Works & Utilities

Room 274
411 West First Street
Duluth, Minnesota 55802-1191



Office: 218-730-5200
Direct: 218-730-5105



jbenning@duluthmn.gov

June 11, 2025

Subject: City of Duluth Director of Public Works & Utilities Determination Regarding Duluth Airport Authority Stormwater Utility Fee Adjustments Request

Dear Ms. Bodin,

The City has completed its review of the Duluth Airport Authority's ("DAA's") request to: (1) reduce the number of Equivalent Residential Units (ERUs) used to calculate stormwater fees billed to the Duluth International Airport and Sky Harbor Airport by excluding property that does not directly contribute runoff to the City of Duluth ("City") stormwater drainage system; and (2) repay the difference between the DAA's proposed rate adjustment and the actual rate paid to the City over the previous six years. Below is a detailed summary of your request, the City's response, and a summary of current and potentially available stormwater rate credits associated with the DAA's stormwater utility accounts.

DAA Rate Adjustment Application

On May 1, 2025, the Duluth Airport Authority (DAA) applied for a stormwater utility fee adjustment to the City's Director of Public Works and Utilities pursuant to Section 43-67 of the Duluth City Code ("Code").

The application alleges the "Sky Harbor [Airport] does not receive any stormwater system benefits" and a "significant portion of the Duluth International Airport property does not receive any stormwater system benefits because the surface water from the property does not drain into the City stormwater system." The DAA claims stormwater charges relating to these properties are prohibited by federal law, Federal Aviation Administration (FAA) grant assurances, and related guidance.

In part, the DAA's position relies on FAA grant assurance 25(a), which requires FAA-assisted airports to restrict the use of airport revenue to the following list of expenditures:

... capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.

By not challenging certain portions of the stormwater fees billed to the DAA, the DAA seems to accept that stormwater services are a legitimate operating cost in some circumstances and admits it is permitted to pay operating costs that directly or indirectly benefit DAA airports. Nonetheless, the DAA argues that the City's stormwater charges for certain DAA properties are unlawful because they reflect a "disproportionate allocation of general government costs to the airport." Given the DAA's acknowledgement that the City assesses stormwater fees to DAA properties "in the same manner as other property within the City," the basis for this claim is not entirely clear. At bottom, it appears that the DAA's position is that the City's stormwater utility does not provide any direct or indirect benefit whatsoever to properties that do not discharge stormwater runoff into the City stormwater system.



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Based on the above, the DAA believes federal law requires the City to “reimburse the [DAA] for six prior years of payments of all stormwater fees paid” and cease all future stormwater charges associated with the Sky Harbor Airport and the above-described portions of the Duluth International Airport.

Analysis and Decision

The Duluth City Council’s findings of fact and statement of purpose in Section 43-64 of the Code contradict the DAA’s narrow characterization of the benefits associated with the City stormwater system and underscore the need to distribute the costs of operating and maintaining this system across City properties:

The city council hereby finds that effective management of stormwater runoff through a properly constructed and maintained storm sewer system enhances quality of life within the community and is necessary for public health, safety and general welfare . . . The city council also finds that the city’s stormwater management system benefits and provides a service to all property in the city. Assigning costs and making charges based upon expected stormwater runoff through impervious surface calculations cannot be done with mathematical precision but can only be accomplished within reasonable and practical limits . . .

Notably, the FAA and DC Circuit have considered and rejected the argument that allocating “the general expenses of running a [stormwater] utility” to properties within the utility’s jurisdiction “based on a dollar amount multiplied by the square footage of impervious surface area on each ratepayer’s property” is a violation of federal law. *Air Transport Association of America v. FAA*, No. 18-1157 (D.C. Cir. 2019). Like here, the *Air Transport Association of America* petitioners alleged the City of Portland assessed an “off-site stormwater charge and [a] Superfund charge” that could not be considered lawful “operating costs of the Airport as defined in the statutory scheme because the drainage and cleanup services are provided outside the physical boundaries of the Airport.” *Id.*, at p. 6. The Court disagreed, adopting the FAA’s “commonsense conclusion that the general expenses of a utility are operating costs” and benefit all ratepayers, including the airport, and found the City of Portland’s stormwater fees need not be “substantially and directly related to air transportation of passengers or property” or reflect “the value of services and facilities provided to the airport.” *Id.*, at p. 9.

Instead, the DC Circuit found that cities are only required to use a “reasonable, transparent, and not unjustly discriminatory” methodology for allocating stormwater fees to an airport that does not result in the airport being “unfairly singled out” relative to other ratepayers. *Id.* As noted above, the DAA concedes the City applied the same methodology required under the Code and assessed stormwater fees to Sky Harbor Airport and the Duluth International Airport “in the same manner as other property within the City”, so, as *Air Transport Association of America* makes clear, the DAA’s argument that such fees are unlawful is “a misreading and misinterpretation of the statutory scheme enacted by Congress” and must be rejected. *Id.*

For the above stated reasons, the DAA’s rate adjustment application and refund request are hereby **denied**.



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Current and Potentially Available DAA Rate Credits

Sky Harbor Airport: The City has previously notified the DAA of its option to qualify for a waterfront property credit—which provides a 90% rate reduction—for impervious surface areas on this property by installing and conveying stormwater runoff to a structural stormwater Best Management Practice(s) (BMPs). Sky Harbor is eligible for this waterfront credit if a simple water quality structure is installed, such as a ditch check. If you have questions regarding this credit and how to qualify, I encourage you to contact City stormwater staff.

Duluth International Airport: For Account 231515002-001 associated with address 4625 Airport Perimeter Rd, the City previously applied a 50% credit for the entire impervious surface area (190,351.98 Square Feet) at this property based on the DAA's installation of an underground detention BMP. This credit remains in effect.

Based on the new delineation maps DAA submitted to the city on May 20, 2025, the city will also apply two new credits and adjust the equivalent residential units (ERUs) billed to two DAA accounts at or near the international airport. First, for Account 231515001-001 associated with address 4647 Radar Rd, the City will apply a 20% credit for the entire impervious surface area (66,021.73 Square Feet) conveyed to the northwest Basin BMP shown on the new delineation maps, and the total ERUs relating to this account will be adjusted from 29.63 to 23.71. Second, for Account 230516700-002 associated with DUL INTL ARPRT will now receive 20% credit for 69,5829.32 Square Feet of the 1,542,636.58 Square Feet of impervious surface that is conveyed to the northwest Basin BMP, and the total ERUs relating to this account will be adjusted from 692.39 to 629.92. If you have questions or concerns regarding any of these credits, please follow up with City stormwater program staff.

Right to Appeal this Determination to the Duluth Public Utilities Commission

Per Section 43-67 (C) of the Code:

Any person denied an adjustment by the director may appeal the denial to the Duluth Public Utilities Commission by filling written notice of appeal with the City Clerk within 15 days of receipt of the director's decision and by paying a filing fee in an amount established pursuant to Section 31-8 of this Code. The commission shall hear the appeal and affirm, modify, or reverse the decision of the director, applying the standards for granting adjustments set forth in this Section.

All Duluth Public Utilities Commission meetings are held on the 3rd Tuesday of each month at 5:15 PM except for the month of July. The Duluth Public Utilities Commission will not hold a meeting that month.

Sincerely,

Jim Benning, P.E.

Director

City of Duluth Public Works & Utilities