



June 24, 2025

City Clerk's Office
Room 318
411 West First Street
Duluth, MN 55802

Dear City Clerk,

This letter is formal notice that the Duluth Airport Authority (DAA) intends to appeal the denial of a utility rate adjustment pursuant to the Duluth City Code, Section 43-67 (C), and requests that the appeal be heard as soon as practicable. By letter dated May 1, 2025, the DAA requested a reduction in its stormwater charges assessed against property that is part of the Duluth International Airport (DLH) and Sky Harbor Airport (DYT). By letter dated June 11, 2025, Mr. Jim Benning denied DAA's request. However, Mr. Benning's analysis does not consider all of the information included with the initial request and misstates applicable law.

DAA does not dispute that the use of ERUs is an overall reasonable methodology for assessing stormwater fees City-wide. DAA also understands that there are impervious surfaces within the City boundaries which are charged ERUs but do not discharge to the City's systems. However, the City Code specifically recognizes and allows for an adjustment when the applicant demonstrates that "[t]he stormwater runoff from the property never enters any facility of the stormwater drainage system." City Code Section 43-67(a)(2) This is precisely the case here, and Mr. Benning should have exercised the authority granted under the Code to adjust DAA's rates accordingly.

An adjustment is particularly appropriate in this case because the application of the City's standard methodology to all Airport property is inconsistent with federal law and the City's grant assurance obligations to the FAA. The Airports are regulated by the FAA, and Airport property must be treated differently than other property within the City. Because the City is imposing charges on impervious surfaces at both Airports which do not discharge into the City's system, the City is essentially requiring DAA to subsidize the overall operation of the system. Acknowledging that this may be a permissible approach for *other* City property and notwithstanding the general statement in the City Code cited by Mr. Benning, there is no demonstrable direct or indirect benefit to either Airport in exchange for these payments. Accordingly, as set forth in DAA's original letter and supporting materials (attached), the assessment of ERUs on property which does not discharge to the City's stormwater system is a violation of federal law and the City's grant assurances.



DULUTH AIRPORT AUTHORITY


The case cited by Mr. Benning as the primary basis for his denial, *Air Transport Association of America v. FAA*, is distinguishable here. In that case, the court found that certain non-airport line item charges included in *third-party* utility bills charged to the sponsoring government were not an impermissible use of airport revenue.¹ In other words, the sponsor in that case had *no control* over those bills and was forced to accept the charges as an operating cost of the airport. Mr. Benning fails to appreciate that although the DAA is a semi-autonomous instrumentality of the City, it is *the City* – and not the DAA – that is the FAA-obligated sponsor of both Airports and thus bound to comply with federal law and the grant assurances. Unlike the non-sponsor billing utility in *Air Transport Association*, the City has a distinctly different responsibility to ensure that *its own billing practices* do not represent a misuse of airport revenue through the assessment of charges against the Airports without benefits. See 49 U.S.C. § 47107(k)(2)(C) (prohibiting the diversion of airport revenue through “assessments that exceed the value of services provided”). As the sponsor, the City’s own charges and interfund transfers must meet a much higher degree of scrutiny than third-party billings.

For these reasons, the DAA requests a reduction in the number of ERUs billed for stormwater purposes at both Airports for property which never enters any City stormwater facility. On that basis, fees at Sky Harbor Airport should be discontinued in full and fees for Duluth International Airport should be discontinued for any property that does not drain into the City system. Under federal law, this reduction should be retroactive for the preceding six years, and the DAA therefore also requests that a repayment method acceptable to the FAA is achieved.

The attached materials were provided to Mr. Benning as part of the initial request. Additional data utilized to generate the watershed boundaries at Duluth International Airport is provided via the link below as well. We are happy to provide any additional information in advance of the hearing to allow the PUC to properly evaluate this request.

Sincerely,

Joelle Bodin, C.M.
Director of Finance & Administration
Duluth Airport Authority

Enclosures: DAA Stormwater Utility Fee Adjustment Request Letter, DAA Stormwater Fee Letter to Administration and Map, SEH Stormwater Memo,  [DLH Drainage Information](#)

¹ The Port of Portland is the operator and sponsor of Portland International Airport. The stormwater charges in question were assessed by the City of Portland, a wholly separate entity.