



## Engineering

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On June 24, 2025, the Duluth Airport Authority (“DAA”) submitted an appeal with the Duluth Public Utilities Commission requesting that the DPUC reverse the Director of Public Works and Utilities’ (“Director’s”) denial of the DAA’s utility fee adjustment request. This document sets forth the City of Duluth Public Works and Utilities Department (Engineering Division) staff proposed findings of fact, conclusions of law, and recommendation to the DPUC.

For the reasons stated below, staff recommend that the DPUC affirm the Director’s decision and deny the DAA’s appeal.

### FACTUAL AND PROCEDURAL BACKGROUND

#### May 1, 2025, DAA Utility Fee Adjustment Request

1. On May 1, 2025, the DAA submitted a utility fee adjustment request to 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 the DAA alleged “never enters any facility of the City of Duluth stormwater drainage system.” See Attachment 2.
2. The DAA acknowledged stormwater “fees are assessed [to the International and Sky Harbor Airports] in the same manner as other property within the City . . .” Nonetheless, the DAA’s request asserted that stormwater charges relating to these properties are prohibited by federal law, Federal Aviation Administration (FAA) grant assurances, and related guidance that restrict the use of airport revenue to certain permitted expenditures. *Id.*
3. The essence of the DAA’s claims is that DAA only has authority to pay stormwater utility fees that provide some degree of direct or indirect benefit to DAA functions or properties. While the DAA broadly claims that payment of the disputed stormwater fees risks FAA enforcement action to recover fees paid to the City and additional fines/penalties, the DAA does not contend the FAA initiated or threatened any such enforcement action or otherwise raised concerns regarding the City’s stormwater fees. *Id.*
4. On June 11, 2025, the Director denied the DAA’s request for a complete exemption from stormwater fees for the Sky Harbor Airport and certain portions of the International



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Airport, citing the City Council’s findings that “that the city’s stormwater management system benefits and provides a service to *all property in the city*” (emphasis added). Attachment 4.

5. The Director, however, did review the DAA’s submissions and conclude that the DAA demonstrated that certain portions of the International Airport qualify for credits that will reduce its future stormwater rates, and explained that the Sky Harbor Airport would be eligible for a 90% rate reduction credit by installing and conveying stormwater runoff to a structural stormwater Best Management Practice(s) (BMPs). *Id.*
6. Pursuant to D.C.C. 43-66, the City does not assess any fees for a significant volume of impervious surface at Sky Harbor and Duluth International Airport, as any “public rights-of-way and airport runways and taxiways” located on DAA-operated properties are already fully exempt from stormwater fees.
7. The city currently bills Sky Harbor Airport for 89.28 ERUs. As noted in the Director’s response to DAA, upon the DAA taking the appropriate steps to quality City’s 90 percent waterfront credit, the Sky Harbor Airport would only pay fees for 8.93 of these ERUs. See Attachments 2 and 4.
8. When the DAA requested a rate adjustment, the City charges across all three Duluth International Airport accounts were based on a rate of 1,190 ERUs. The first of these accounts—4625 Airport Perimeter Rd (Acc. No. 231515002-001)—includes **85.44** total ERUs and the DAA is currently receiving a 50% rate reduction credit based on the DAA’s installation of an underground detention BMP. The Director’s response to the DAA’s application reduced the ERUs associated with 4647 Radar Rd (Acc. No. 231515001-00) from 29.63 to 23.71, and the ERUs associated with the primary International Airport property (230516700-002) from 692.39 to 629.92. The Director also determined both of these accounts are entitled to a 20% rate reduction credit toward future city stormwater billing, based on a BMP shown on the DAA’s updated delineation maps that meets the definition of a water quality control structure. See *Nonresidential Storm Utility Credit*, available at <https://duluthmn.gov/public-works-utilities/stormwater/nonresidential-storm-utility-credit/>; Attachment 4.



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9. While neither the Director or DPUC have express authority to interpret or apply federal law, the Director emphasized that the DAA's concerns relating to potential FAA enforcement appear to be meritless, citing a federal DC Circuit authority holding 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. Attachment 4; *Air Transport Association of America v. FAA*, No. 18-1157 (D.C. Cir. 2019), enclosed as Attachment 5.

### June 24, 2025, DPUC Appeal Request

The DAA's appeal request to the DPUC continues to seek a complete fee exemption for the Sky Harbor Airport and large portions of the Duluth International Airport's properties, citing the Director's authority to grant a fee adjustment when "[t]he stormwater runoff from the property never enters any facility of the stormwater drainage system." D.C.C. Sec. 43-67(a)(2). In addition to exempting the disputed properties from stormwater fees going forward, the DAA requests that the City repay the previous six years of fees received from the DAA for these properties. See Attachment 6.

10. "DAA does not dispute that the use of ERUs is an overall reasonable methodology for assessing stormwater fees City-wide." See Attachment 6. With respect to non-airport ratepayers, the DAA further acknowledges the above-cited rate adjustment criteria does not require the City to grant a complete fee exemption to properties that do not contribute runoff directly into the City stormwater system. *Id.* ("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").
11. Rather, the airport continues to argue that "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." *Id.*

## APPLICABLE LAW



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12. Minn. Stat. § 444.075 authorizes the City's storm sewer program and provides broad discretion to City officials to determine the appropriate method of allocating stormwater costs among City residents in the form of utility fees.<sup>1</sup>

13. For all property within the Duluth city limits, including the DAA properties at issue in this appeal, the City is required by state and federal law to regulate and control stormwater discharges, ensure appropriate maintenance and installation of BMPs, and maintain an appropriate Stormwater Pollution Prevention Program. See Attachment 11.

14. Under D.C.C. Sec. 43-66, the City stormwater program is required to assess fees to all residential and non-residential property within the City:

"The stormwater utility shall charge utility fees as provided in this Article to recover from property benefitting from the system the capital costs, debt service, operation and maintenance costs of stormwater facilities in the city. Subject to the limitations contained in this Section, this Article shall apply to all property in the city of Duluth."

15. With respect to non-residential properties like the Sky Harbor and Duluth International Airport, D.C.C. Sec. 43-66 requires the City to assess fees under a pre-established and generally applicable methodology:

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<sup>1</sup> Storm sewer charges may be fixed:

(1) by reference to the square footage of the property charged, adjusted for a reasonable calculation of the stormwater runoff; or

(2) by reference to a reasonable classification of the types of premises to which service is furnished; or

(3) by reference to the quantity, pollution qualities, and difficulty of disposal of stormwater runoff produced; or

(4) on any other equitable basis, including any combination of equitable bases referred to in clauses (1) to (3), but specifically excluding use of the basis referred to in subdivision 3a, clause (1); and otherwise without limit.



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“(b) Utility fees shall be based upon the amount of impervious area on the benefitting property and shall be computed as provided in this Article. Each parcel of property within the city shall be categorized as residential, nonresidential, or undisturbed property. The utility fees for each type of property shall be as follows:

...

(2) The utility fee for nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious area for a nonresidential property by one ERU. The minimum utility fee for any nonresidential property shall be equal to one ERU rate.”

16. “Any person liable for the payment of stormwater utility fees on nonresidential property may, subject to the limitations set forth in the Section, apply to the director for a utility fee adjustment if the person believes the utility fee to be incorrect.” D.C.C. Sec. 43-67(a).

17. “Any person denied an adjustment by the director may appeal the denial to the Duluth public utilities commission by filing written notice of appeal with the city clerk within 15 days of receipt of the director’s decision . . . The [ DPUC] shall hear the appeal and affirm, modify or reverse the decision of the director.” On appeal, the DPUC is required to apply the following criteria to determine whether an appellant is entitled to a utility fee adjustment:

- (1) A substantial error was made in the calculation of the impervious area on the nonresidential property;
- (2) The stormwater runoff from the property never enters any facility of the stormwater drainage system.

D.C.C. Sec. 43-67. The DAA’s appeal focuses on criteria number 2, above, and does not allege any error in the calculation of the impervious surface area on the Sky Harbor or International Airport properties.

18. Non-residential properties that do not contribute runoff directly to any facility of the stormwater drainage system are not exempt from stormwater fees, as the D.C.C. only fully exempts properties classified as “undisturbed.” D.C.C. Sec. 43-66. Rather, these



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properties may be entitled to rate-reduction credits that reduce overall stormwater fees, provided the property owner has installed one or more appropriate structural BMPs.

19. Examples of BMPs include Rate Control Structures—which must be “designed, constructed and maintained to collect stormwater runoff, temporarily store it and attenuate the discharge flow rate from the property from which it is collected”—and “Water Quality Control Structures”—which must be “designed, constructed and maintained to constitute BMPs to capture sediment, floatable debris including oil and other chemical, and pollutants to prevent them from being discharged into public waters from served property.”

20. Waterfront properties that meet all the following criteria are entitled to a 90-percent rate-reduction credit:

- (1) The property is non-residential;
- (2) All stormwater runoff is treated by an appropriate water quality control structure before leaving the property; and
- (3) No stormwater from the property enters the city stormwater system.

D.C.C. Sec. 43-67.2

21. All other non-residential properties that maintain appropriate structural BMPs are entitled to rate-reduction credits ranging from 20 to 50 percent, depending on the design and capacity of the water quality control and/or rate control infrastructure on the property. D.C.C. Sec. 43-67.1.

## CONCLUSIONS OF LAW AND RECOMMENDATION

*Application of Federal Law is Beyond the Scope of this Appeal and Does Not Change the Outcome*

22. The DAA’s appeal conceded that the City followed the requirements and methodology set forth in the D.C.C. when assessing stormwater fees to the DAA’s properties. According



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to the DAA, these requirements are “overall reasonable,” but federal law prohibits the City from assessing these generally applicable fees to the Sky Harbor Airport and certain portions of the Duluth International Airport.

23. Staff conclude that DPUC’s review on appeal is limited to the application of the utility fee adjustment criteria under D.C.C. 43-67, which does not authorize the DPUC to interpret or apply federal law. As such, staff recommend that the DPUC reject the DAA’s appeal and adopt the Director’s findings and conclusions, which are summarized in detail below.
24. Even if the DPUC could consider the DAA’s arguments, staff further conclude that the DAA has not presented any evidence that federal authorities agree with the DAA’s conclusions or intend to pursue enforcement action against the DAA or the City relating to the disputed stormwater fees.
25. Staff also find that the DAA has not presented any evidence or examples of federal decisions that indicate the City’s fees are unlawful. In fact, the DC Circuit has concluded 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. *Air Transport Association of America v. FAA*, No. 18-1157 (D.C. Cir. 2019). Staff note—and the DAA itself has acknowledged—that the City has applied such a reasonable and non-discriminatory methodology here.
26. While the DAA attempted to distinguish the *Air Transport Association of America* case by emphasizing the City is an airport sponsor, the DAA failed to explain why the D.C. Circuit’s conclusions are inapplicable here. Contrary to the DAA’s position, staff notes D.C. Circuit did, in fact, indicate that the City of Portland’s off-site stormwater and superfund charges would be permissible if the City was both the sponsor and utility owner because the charges are allocated among all City ratepayers in a “fair and transparent way.” *Id.* at p. 10.



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27. Staff notes the City is legally required to assess stormwater fees to the DAA. While federal laws and regulations may preempt state and local authority that clearly conflicts with federal requirements, Staff concludes that the DAA failed to demonstrate that such a conflict exists here. As such, Staff strongly recommend that the DPUC decline to adopt the DAA's position and apply the requirements of the D.C.C.

### Sky Harbor Airport

28. As to the Sky Harbor Airport, staff recommend that the DPUC adopt the Director's findings and conclusions and affirm the Director's decision to deny the DAA's utility fee adjustment request.

29. Notwithstanding the fact that the Sky Harbor Airport does not directly contribute stormwater runoff into the City stormwater system, staff conclude that the Director appropriately determined:

- (1) The Sky Harbor Airport is a non-residential property that is required to pay stormwater fees according to the methodology set forth under D.C.C. Sec. 43-66(b)(2); and
- (2) The Sky Harbor Airport does not currently qualify for the waterfront property credits established under D.C.C. Sec. 43-67.2 because the DAA has not implemented BMPs, and because the DAA has not yet applied for credits.

30. Staff notes that the City has previously notified the DAA of its option to qualify for a waterfront property credit—which provides a 90-percent rate reduction—for impervious surface areas on this property by installing and conveying stormwater runoff to a structural stormwater Best Management Practice(s) (BMPs). See Attachment X (Email correspondence with DAA regarding waterfront credit availability and requirements, including April 7, 2022, email from Tom Johnson on April 7, 2022; September 16, 2022, email from Jana Kayser, with plans for BMP at Sky Harbor that, to the City's knowledge, have not been installed; November 2, 2023, email from Laura Hoglund; and December 2, 2024 email from Laura Hoglund). Sky Harbor remains eligible for this waterfront credit if a simple water quality structure is installed, such as a ditch check.





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### Duluth International Airport

31. Regarding the Duluth International Airport, staff recommend that the DPUC affirm the Director's decision, adopt the Director's findings and conclusions, and conclude that the Director correctly:

- (1) Denied the DAA's request for a complete fee exemption for certain Duluth International Airport properties, which are appropriately classified as non-residential and required to pay stormwater fees according to the methodology set forth under D.C.C. Sec. 43-66(b)(2);
- (2) Evaluated and adjusted the number of ERUs used to assess stormwater fees based on the updated delineation maps the DAA submitted to the City on May 20, 2025; and
- (3) Found that the two of the DAA's International Airport's stormwater accounts are entitled to 20 percent rate reduction credits for the water quality control structures identified on the DAA's updated delineation maps.