

**REPORT TO THE DULLES CORRIDOR COMMITTEE WORKSHOP**

**ANALYSIS AND RECOMMENDATION  
PHASE 2 DULLES CORRIDOR METRORAIL FOUNDATION STRUCTURE  
FOR AIR RIGHTS DEVELOPMENT OVER THE DULLES AIRPORT ACCESS  
HIGHWAY AND DULLES TOLL ROAD AT RESTON PARKWAY STATION**

**FEBRUARY 2011**

**ACTION REQUESTED**

That the Dulles Corridor Committee concur and recommend that the Board of Directors concur with the staff analysis and recommendation regarding the construction of a structure to support air rights development over the Dulles Airport Access Highway (DAAH) and Dulles Toll Road (DTR) at the Reston Parkway Station.

**BACKGROUND**

The discussion of the development of air rights over the DAAH and (DTR) particularly in the vicinity of the Reston Parkway has been ongoing in the community and Fairfax County for many years. The advancement of the Dulles Metrorail Project construction spurred renewed community interest. In April 2010, the Dulles Corridor Committee authorized staff to investigate the technical feasibility, and the required design changes and costs to accommodate future air rights development at the Reston Parkway Metrorail Station. Included in this effort was an overall review and recommendation regarding air rights development over the DAAH and DTR. Staff has investigated air rights development with regards to three major aspects: the technical aspects of constructing a structure over the operating Metrorail system to support commercial development; legal issues associated with the Metropolitan Washington Airports Authority's (Airports Authority) ability to sponsor such a development and; an economic analysis regarding a development of this type in the vicinity of the Reston Parkway.

**DISCUSSION**

**Technical Feasibility**

The report analyzing the technical feasibility of constructing a deck structure to support air rights development is attached as Appendix A. The report concludes that the support structure needed to support air rights development in the vicinity of the Reston Parkway Station can feasibly be designed and constructed in a manner that will not disrupt the operation of the rail system. It is feasible for a deck support to be constructed either during the Metrorail station construction or in the future after the station is constructed. The

scope of work and cost of the deck support structure would depend upon the timing of the construction. The report identifies two alternative solutions. If construction of foundation and column supports is incorporated into Phase 2, the technical solution would be to add the scope of this work to the design/build contract. An alternative solution provides for construction of foundations to support air rights after the Metrorail system is completed and in operation. This alternative would allow construction of foundations but would avoid disruptions to rail operations.

Construction methods and costs differ for each alternative. If this work is incorporated into the design/build contract, foundations and column supports would be constructed with 60 foot spans at an estimated cost of \$34 million.

If the foundations are built after the Metrorail system becomes operational, it would be necessary to construct column supports with 150 foot spans that could be built outside the Metrorail system right of way. The estimated cost is \$60 million. This alternative would not require an immediate investment but would not hinder the objective of ultimately allow construction of air rights facilities.

### Legal Analysis

As would be anticipated with a development of this type, there is a multitude of complex legal, land use, planning and jurisdictional issues that would require resolution with the stakeholders and local jurisdictions. Apart from these concerns, development of the air rights above the DAAH and the DTR presents a significant legal issue for the Airports Authority that would need to be addressed prior to undertaking any large scale investment in air rights development.

The federal statute that authorizes the lease of the Airports to the Airports Authority provides that the leased property may only be used for "airport purposes." 49 U.S.C. 49104(a) (2) (B): The statute (as well as the lease) defines an "airport purposes" use as a use for (i) "aviation business or activities," (ii) "activities necessary or appropriate to serve passengers or cargo," or (iii) "nonprofit, public use facilities that are not inconsistent with the needs of aviation." 49 U.S.C. 49104(a)(2)(A). Thus, apart from nonprofit, public uses, leased property must be used in a manner which, in some manner, whether directly or indirectly, advances or facilitates the operation of aircraft, the transport of persons or property by air, or the servicing of passengers or cargo.

The DAAH operates on property that is leased from the federal government. Thus, any use of highway property, including the "air" above the property, must be for "airport purposes." Residential, commercial office and retail uses occupying space above the DAAH many miles from Dulles International lack the nexus with the Airport and its operations that is required by the "airport purposes" requirement. The fact that these uses may produce revenue that can be utilized to benefit aviation activities at the Airport does not ne-

gate this conclusion. If it did, the "airport purposes" requirement would largely be meaningless since practically any use of leased property is capable of producing such revenue.

In order for the DAAH (and the air above it) to be occupied by private commercial office or retail uses, the federal statute that authorizes federal property to be leased to the Airports Authority would need to be appropriately amended; thereafter, the lease would need to be amended to reflect the statutory amendment.

### Economic Analysis

Staff analyzed the business case and market economic conditions to determine if a logical pressing argument could be made for the construction of foundations as part of the Phase 2 of the Metrorail construction. (See Appendix B, Reston Air Rights Infrastructure Case Review.) The recommendation resulting from this analysis is that a financial investment in foundations supporting a short-span construction option during Phase 2 of the Metrorail construction is viable only if there is a likelihood of near term development with the certainty of a reasonable rate of return on the deck investment. Assuming that the investment of \$34 million in foundations occurs in the 2014 to 2015 time period, even a marginal positive return on this investment is contingent upon construction of the remainder of the "air rights" structure and buildings between 2016 and 2028 with full utilization realized by 2028. A recent study by the George Mason University Center for Regional Analysis indicates that in the Reston Station vicinity, only 4.4 million square feet of additional non-residential space over and above the existing supply of 14.4 million will be demanded, or absorbed, in the next 20 years. Almost that entire additional demand could be satisfied using land with already approved zoning in that area. The risk of overspeculation and over-supply is very real, and extends beyond Reston Station area property to competition with other stations along the corridor and the anticipated additional development speculation in Tysons Corner, Herndon and Loudoun County. Even assuming that the issues of legality and the complex coordination and agreements with local jurisdictions could be successfully realized, the probability of achieving full utilization by 2028 is extremely low.

### RECOMMENDATION

That the Dulles Corridor Committee concur and recommend that the Board of Directors concur with the staff recommendation to defer the construction of foundations supporting possible air rights development over the Dulles Airport Access Highway and Dulles Toll Road at Reston Parkway Station until the regional economic market and business conditions are more favorable.

Prepared by:  
Office of Engineering  
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