

**Washington Metropolitan Area Transportation Authority  
Board Action/Information Summary**

<input checked="" type="checkbox"/> Action <input type="checkbox"/> Information	MEAD Number:	Resolution: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
------------------------------------------------------------------------------------	--------------	------------------------------------------------------------------------------------

**PURPOSE**

To request Board approval of a resolution related to conditions for approval of the Final Financial Plan for the Dulles Corridor Metrorail Project and affirm the role of WMATA in the Project.

**DESCRIPTION**

The Dulles Corridor Metrorail Project is a 23-mile 11-station extension from the Orange line through Tysons Corner, Reston, Herndon, Dulles Airport with a terminus in Loudoun County. The Federal Transit Administration (FTA) has issued a Record of Decision (ROD) for Phase I of this project which is a 11-mile extension involving four stations in the Tysons Corner area and a station at Wiehle Avenue in Reston (Fairfax County). The Commonwealth of Virginia is the project sponsor. Recently, the Commonwealth has executed an agreement transferring the Dulles Toll Road to the Metropolitan Washington Airports Authority (MWAA) and as part of this agreement, MWAA will also become responsible for undertaking the construction of this rail project. At this time it is anticipated that Phase II of this project will be funded without any federal funds.

This is the first time in WMATA's history that an extension of the rail project is not directly under the control of WMATA. However, upon completion, WMATA will become the owner and operator of this extension. In view of this unique and unprecedented arrangement, the WMATA Board in prior resolutions has specified the conditions that must be met prior to acceptance of this extension.

The project schedule anticipates approval of a financial plan by all project funding partners (MWAA, Fairfax County, Loudoun County, and the Commonwealth) and WMATA in March 2007 so that MWAA can submit a Full Funding Grant Agreement (FFGA) application to FTA in April 2007. WMATA's approval of this financial plan will signify an acknowledgement of future operating subsidy allocations related to this extension including future maintenance responsibility and its capacity to support the existing Capital Improvement Program (CIP) for the 106-mile system.

Towards meeting this schedule, on January 11, 2007, the Board's Budget Committee was briefed on the draft financial plan (based on April 2006 estimates).

At this meeting, there was discussion about the resolution adopted by the Fairfax Board calling for greater involvement by the County and WMATA in project management and significant project-related decisions. The Committee agreed with the provisions in the County's resolution that refer to and support greater involvement of WMATA. In addition, the Committee recommended that prior to approval of further agreements and financial plans for this project, staff must provide a status report to the Board that provides the assurances that all conditions included in prior WMATA Board resolutions have been or will be satisfied by the time WMATA is asked to take over the project for operations and maintenance.

One of the key elements of satisfying these requirements is the execution of appropriate agreements between WMATA and MWAA (and the Commonwealth, if needed) outlining WMATA's role in the final design, construction oversight, testing and acceptance phases of this project.

The Committee referred these recommendations for adoption by the Board on January 25, 2007. The proposed resolution has been drafted to comply with these recommendations.

## **FUNDING IMPACT**

There are no funding impacts at this time. WMATA's involvement in this project to date and during the final design, construction, testing, and acceptance phases of this project will be fully funded through reimbursable agreements with MWAA and the Commonwealth. Staff will brief the Budget Committee and the Board on the updated financial plan, included subsidy allocations, when it is available.

## **RECOMMENDATION**

That the Board adopt the attached resolution consistent with the recommendations of the Budget Committee and staff regarding this project.

**PRESENTED AND ADOPTED:**

**SUBJECT: DULLES CORRIDOR – CONDITIONS FOR APPROVAL OF THE FINAL FINANCIAL PLAN FOR THE DULLES CORRIDOR METRORAIL PROJECT AND AFFIRM THE ROLE OF WMATA IN THE PROJECT**

**2007-\_\_  
PROPOSED RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

WHEREAS, The Virginia Department of Rail and Public Transportation (DRPT) is in the final stages of transferring construction of the Dulles Corridor Metrorail Project to the Metropolitan Washington Airports Authority (MWAA); and

WHEREAS, The Dulles Corridor Metrorail Project is in the final design phases and the participating agencies and jurisdictions are negotiating interagency agreements necessary to obtain Federal Transit Administration (FTA) approval of the extension; and

WHEREAS, The Fairfax County Board of Supervisors passed a Resolution on January 8, 2007, which, in part, (1) affirmed the role of Fairfax County, as an integral financial partner and the Washington Metropolitan Area Transit Authority (WMATA), as the ultimate owner and operator with a significant role in the review and concurrence of project-related decisions and agreements before they are finalized; (2) affirmed the need for transparency and accountability in project decisions, so that Fairfax County and the public are assured that the Dulles Corridor Metrorail Project will be built for the best possible price, value, terms and conditions and that the effects of construction on local communities will be taken into consideration when deciding between the tunnel and aerial options; and (3) and affirmed the need for Fairfax County and WMATA to be active participants in the development, negotiation, and execution of intergovernmental agreements prior to execution of any design-build agreement(s) for the Dulles Corridor Metrorail Project; and

WHEREAS, Because this is the first time in WMATA's history that the construction of an extension of the Adopted Regional System (ARS) is not directly under WMATA's control, the Board of Directors (the Board), in previous resolutions (2006-62 and 2004-15), conditioned acceptance of the Dulles Corridor Metrorail Project into the ARS upon the fulfillment of the following conditions identified as the "ARS Contingencies":

1. Satisfactory completion of the FEIS;
2. Issuance of a Record of Decision by the Federal Transit Administration (FTA);
3. Board approval of a final financial plan for the construction, acquisition and operation of the new facilities;
4. Execution of implementing financial commitments between DRPT and funding sources in the form of local funding agreements and the Federal full funding agreement;
5. WMATA's determination that the Project has been completed in accordance with the Final Environmental Impact Statement (FEIS), approved General Plans and all WMATA system requirements and that the Project, as built and tested, is suitable for acceptance into the ARS;
6. Conveyance to WMATA by DRPT of a property interest in the Project property adequate to assure WMATA's continuing control of the Project property throughout the useful life of the Project;
7. Any indemnification obligation from WMATA to Toll Road Investors Partnership II, the Metropolitan Washington Airports Authority, or any other entity associated with the Project is subject to Board approval and any indemnification obligation provided by DRPT to Toll Road Investors Partnership II, Metropolitan Washington Airports Authority, or any other entity associated with the Project will be subject to a determination by WMATA that such indemnification does not create a liability or potential liability for WMATA; and
8. All land use and permitting approvals from any federal, state, or local regulatory agency shall be complete and final before WMATA's acceptance of the Project in the ARS, to ensure that jurisdictional stakeholders do not impose additional requirements upon transfer of interests to WMATA for operational purposes; and

WHEREAS, During the January 11, 2007 meeting of the Board's Budget Committee, staff briefed the members about the Financial Plan for the Dulles Corridor Metrorail Project; and

WHEREAS, The Board expressed concerns about approving the Financial Plan before significant issues regarding WMATA's responsibility as owner and operator of the Dulles Corridor Metrorail Extension are adequately addressed, including WMATA's role in the final design, construction, inspection, and acceptance of the Project and post-construction issues related to liability, latent defects, and warranties; and

WHEREAS, The Board questioned whether the Financial Plan and other Project decisions to date have fully considered and balanced the higher operational and maintenance costs associated with the aerial structure against the increased capital costs of constructing the tunnel; and

WHEREAS, The Budget Committee directed that the comments and recommendations raised during the meeting be incorporated into a resolution to be approved during the January 25, 2007 meeting; now therefore; be it

*RESOLVED*, That the Board of Directors has determined that Fairfax County and WMATA are integral to the Dulles Corridor Metrorail Project and that their increased involvement in significant decisions relating to the Dulles Corridor Metrorail Project is essential to the ultimate success of the Project; and be it further

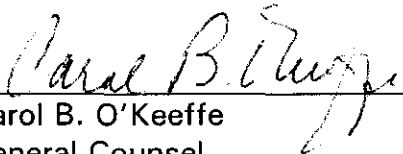
*RESOLVED*, That the Board of Directors hereby adopts as the policy of WMATA that in order to successfully meet the ARS Contingencies, WMATA, as the ultimate owner/operator of the Dulles Corridor Metrorail Project, must have a role in reviewing and concurring in significant project-related decisions and agreements before the agreements are finalized and must be an active participant in the development, negotiation, and execution of intergovernmental agreements, prior to MWAA's execution of the design-build agreement for the Dulles Corridor Metrorail Project; and be it further

*RESOLVED*, That the Board affirms, that as implementation of the Dulles Corridor Metrorail Project proceeds, it is essential to have transparency and accountability so that the WMATA Compact Jurisdictions and their constituents are assured that the Project will be built for the best possible price and value without assuming undue risk and that the effects of construction on local communities and the operating costs of the aerial option will be taken into consideration when deciding between the tunnel and aerial options; and be it further

*RESOLVED*, That Board approval of the Financial Plan and related agreements will occur only after staff provides a status report affirming that (1) all conditions in prior WMATA Board resolutions, including the eight conditions listed above have been or will be satisfied by the time WMATA accepts the Dulles Corridor Metrorail Project into the ARS; (2) WMATA's role in final design, construction, testing, inspection, safety certifications, and acceptance of the Dulles Corridor Metrorail Project has been memorialized in an agreement between MWAA and WMATA; and (3) the post-construction issues related to liability, latent defects, and warranties are addressed in a manner similar to other WMATA extensions; and be it further

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency

  
\_\_\_\_\_  
Carol B. O'Keeffe  
General Counsel

Proposed