



# CAPITOL CROSSING—AIR RIGHTS JOINT DEVELOPMENT

The Capitol Crossing project, formerly the I-395 air rights project, highlights the use of property taxes and air rights as funding techniques for a real-estate development.

## PROJECT OVERVIEW

Capitol Crossing is a \$1.3-billion, 2.2-million-square-foot real-estate development, which is often also referred to as a *community revitalization project*, in downtown Washington, DC, between the U.S. Capitol, Union Station, and the Verizon Center (Figure 1). The project's objective is to reconnect the Capitol Hill and the East End areas that were cut off from each other by the construction of I-395 in the late 1960s. The project is privately funded and is one of the largest ongoing private developments in DC.<sup>1</sup> Once finished, the project is expected to create a first-of-its-kind “ecodistrict” in DC, with all of its five buildings designed to qualify for a Leadership in Energy and Environmental Design platinum rating and to have green roof areas and a water capture and containment system. The project is expected to transform the area by reconnecting the street grid and offering commercial office and ground-floor retail space.

## History of the Project

Capitol Crossing has several decades of history. In the mid-1980s, T. Conrad Monts, owner of Travenca Development Corporation, submitted an unsolicited proposal to the District of Columbia to buy or lease the air rights over I-395. Monts planned to build a \$200-million office and hotel complex. Community activists and DC City Council members pushed back against Monts' proposal, for reasons that included the \$12-million relocation cost for the city's main financial computer facility and the proposal's unsolicited format, but these concerns were not strong enough to halt Monts' proposal.<sup>2</sup>

In 1989, then-DC mayor Marion Barry awarded Monts the air rights over I-395 between D Street and Massachusetts Avenue, and on December 28, 1990, the city and Travenca Development Corporation signed a final lease for the property. With the support of Mayor Barry, Monts submitted plans to the Washington, DC, Zoning Commission. The plans called for three office buildings, a 300-room hotel, and 266 apartments. After the plan was approved, criticism continued from community activists and the DC City Council, with the Georgetown University Law Center also supporting the opposition. New complaints about the project also surfaced, including concerns about the shortcomings of the size, footprint, and design of the project, and that the \$45-million appraisal of air rights was too low; however, city officials continued to back the proposal.<sup>3</sup>

The DC Zoning Commission approved Monts' plan in 1991, but only after requesting modifications that altered the size of the project and minimized certain traffic concerns. By 1995, construction still had not started, and Monts filed a request to extend the order for 2 years, which was approved. By 1999, no progress had been made. The collapse of the real estate market in the early 1990s halted DC developments, financing was difficult to obtain, and objections to the project continued.<sup>4</sup>

<sup>1</sup> Capitol Crossing (@CapitolCrossingDC), “Capitol Crossing Construction Animation,” Video, 2:44, December 14, 2016, <https://www.facebook.com/CapitolCrossingDC/videos/1681934075166129/>.

<sup>2</sup> Wally Mlyniec, “Make No Little Plans; Part III—Early Attempts to Develop the Air Rights,” Medium, February 12, 2018, <https://medium.com/construction-notes/make-no-little-plans-part-iii-early-attempts-to-develop-the-air-rights-a18bf2e51eaf>.

<sup>3</sup> Mlyniec, “Make No Little Plans.”

<sup>4</sup> Mlyniec, “Make No Little Plans.”

In July 2000, the DC City Council sued to evict Monts from the I-395 property and to compel him to pay \$4 million in lost rent. Monts responded with a countersuit seeking \$15 million for spent costs and another \$50 million in compensatory damages. In 2004, a DC Superior Court grand jury awarded Monts \$8.4 million in damages. Both sides appealed to the DC Court of Appeals and continued negotiations.<sup>5</sup> In July 2003, after another year of public hearings and disputes, the Zoning Commission voted unanimously to deny the request for the extension, thereby ending Monts' ability to develop the project.<sup>6</sup>

In 2005, the New York-based Property Group Partners offered to pay a settlement to Monts in exchange for the right to buy the property from the city at fair market value. Property Group Partners paid the sum in 2009, after Monts' death, and acquired the air rights for the project in 2012. Property Group Partners also negotiated an arrangement with the city in which the cost of the building would determine how much they would ultimately pay the city for the property air rights.<sup>7</sup>

In 2011, the environmental assessment for the I-395 Air Rights project commenced. The project was also reviewed under Section 106 of the National Historic Preservation Act, and the environmental assessment included a Section 106 Effects Assessment. A public hearing was organized on November 2, 2011.<sup>8</sup> On March 26, 2012, the Federal Highway Administration (FHWA) approved the environmental assessment with a finding of no significant impact (FONSI).

### Scope and Construction Timeline

The 7.5-acre site spans three city blocks. Four of the five planned buildings are expected to be used for office space, with the remaining building to be used for residential purposes. The five buildings will be connected by public greenspace and an F and G Street bridge replacement.<sup>9</sup> The project will also include an underground, four-level parking garage, with space for 1,146 cars and 440 bicycles.<sup>10</sup>

In May 2015, one year after beginning site work, Property Group Partners broke ground on the project.<sup>11</sup> Construction is expected to continue until 2021. The process began with a site excavation/preparation and utility installation, followed by the construction of a new southbound on-ramp and the relocation of the existing northbound on-ramp on Massachusetts Avenue. The final stages of the project include the completion of the center block. Access to the two parking entrances will be located along Third Street, with the loading dock entrance on E Street.

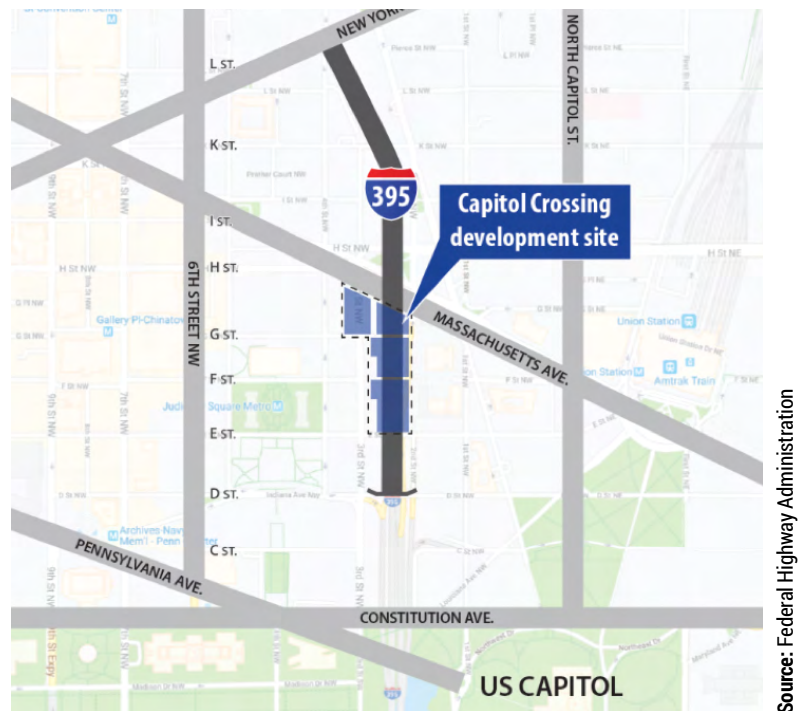


Figure 1. Capitol Crossing Development Site

<sup>5</sup> Douglas A. Willinger, "Previous Center Leg Air Rights Proposals Respected the Freeway Right-of-Way," *A Trip Within the Beltway* (blog), December 13, 2014, <http://www.tripwithinthebeltway.blogspot.com/2014/12/previous-center-leg-air-rights.html>.

<sup>6</sup> Mlyniec, "Make No Little Plans."

<sup>7</sup> Justin Rice, "D.C. Air Rights Project Restores City Traffic Grid," *ENR MidAtlantic*, December 19, 2016, <https://www.enr.com/articles/41120-dc-air-rights-project-restores-city-traffic-grid>.

<sup>8</sup> Federal Highway Administration, District of Columbia Division, Notice of Availability and Public Hearing, "Environmental Assessment for the I-395 Air Rights Project," *Federal Register*, 76 FR 64991, October 19, 2011, <https://www.federalregister.gov/documents/2011/10/19/2011-27033/environmental-assessment-for-the-i-395-air-rights-project>.

<sup>9</sup> Capitol Crossing, "Construction Animation."

<sup>10</sup> Michelle Goldcham, "Capitol Crossing: What to Expect from One of DC's Largest Revitalization projects," *Curbed Washington DC*, April 6, 2016, <https://dc.curbed.com/2016/4/6/11376906/capitol-crossing-washington-dc>.

<sup>11</sup> Michael Neibauer, "Capitol Crossing Returns 'a Whole Section of the City That Was Lost to Us,'" *Washington Business Journal*, May 12, 2015, [https://www.bizjournals.com/washington/breaking\\_ground/2015/05/capitol-crossing-returns-a-whole-section-of-the.html](https://www.bizjournals.com/washington/breaking_ground/2015/05/capitol-crossing-returns-a-whole-section-of-the.html).

## IMPLEMENTATION CONSIDERATIONS

Property Group Partners requested the closure of more than half a mile of I-395 for more than a year to save 18 months of construction time. The request, which the District Department of Transportation forwarded on to FHWA, was opposed by community members. The closure would have had a significant impact, as that stretch of I-395 carries up to 90,000 vehicles daily. In addition, because the closure was not considered as part of the original environmental impact studies, it would have required a FONSI re-evaluation and potentially an environmental assessment and an environmental impact statement. This could have taken up to 36 months.<sup>12</sup> In the end, the closure was not approved, although lanes and ramps were permitted to be closed temporarily, mostly during off-peak hours.<sup>13</sup>

## MARKET CONSIDERATIONS

One of the challenges for a project like Capitol Crossing is to have sufficient land value to justify the platform building cost. Robert Braunohler, regional vice president for Property Group Partners, noted that “there are only two cities where land value is high enough and they are New York and Washington. There aren’t just empty sites just sitting around.”<sup>14</sup> A project like Capitol Crossing may not be easily replicable in other cities or jurisdictions for this reason.<sup>15</sup>

## FUNDING PLAN

Many of the specific financial details of this transaction remain confidential. According to news sources, the \$1.3-billion project is expected to generate roughly \$40 million in property taxes and \$120 million in air rights to the District.<sup>16,17</sup>

## COORDINATION AND PARTNERSHIP

### Political Support for the Project

The city has supported and has been committed to this project since its beginning. Despite decades of delays and controversies, as well as the collapse of the first attempts to construct the project, the idea for the project was never fully abandoned.

### Relationship with Stakeholders

As part of the regulatory processes, the developer engaged local communities, including Georgetown University, the Downtown DC business improvement district, the Federal City Shelter, Holy Rosary Church, the Jewish Historical Society, and the residents in the adjacent buildings. The project required the relocation of DC’s oldest synagogue and the Holy Rosary Church. Both were managed without significant project opposition.

### Relationship with the Federal Government

Federal officials criticized Property Group Partners’ request to close I-395 for a year to speed up construction.<sup>18</sup> The main complaint raised was that officials were not informed about the proposal and found out about it from media outlets. This highlights the importance of clear stakeholder communication.<sup>19</sup>

FHWA has been a major critic of the project because the initial processes, including the right-of-way agreement, were conducted under regulations that are no longer relevant today. After the initial project had been approved, relevant

<sup>12</sup> Goldchain, “Capitol Crossing: What to Expect.”

<sup>13</sup> Luz Lazo, “Study Needed to Decide on Request to Close Part of I-395 in DC, Federal Officials Say,” *The Washington Post*, December 8, 2014, [www.washingtonpost.com/local/trafficandcommuting/study-needed-to-decide-on-request-to-close-part-of-i-395-in-dc-state-officials-say/2014/12/08/30a633ae-7f00-11e4-8882-03cf08410beb\\_story.html?utm\\_term=.f3185403cb84](http://www.washingtonpost.com/local/trafficandcommuting/study-needed-to-decide-on-request-to-close-part-of-i-395-in-dc-state-officials-say/2014/12/08/30a633ae-7f00-11e4-8882-03cf08410beb_story.html?utm_term=.f3185403cb84).

<sup>14</sup> Rice, “D.C. Air Rights Project.”

<sup>15</sup> O’Connell, “Capitol Crossing Is ‘Very Tough to Get,’ but Will Be Worth It.”

<sup>16</sup> Michael Neibauer, “Capitol Crossing on the Verge of Going Vertical,” Video, *Washington Business Journal*, January 13, 2016, [https://www.bizjournals.com/washington/breaking\\_ground/2016/01/capitol-crossing-on-the-verge-of-going-vertical.html](https://www.bizjournals.com/washington/breaking_ground/2016/01/capitol-crossing-on-the-verge-of-going-vertical.html).

<sup>17</sup> Goldchain, “Capitol Crossing: What to Expect.”

<sup>18</sup> Meyer, Eugene L. “A Project Mends a Gash in the Street Grid of Washington,” *New York Times*, October 25, 2016, <https://www.nytimes.com/2016/10/26/realestate/commercial/a-project-mends-a-gash-in-the-street-grid-of-washington.html>.

<sup>19</sup> Michelle Goldchain, “Capitol Crossing Developers Outrage Congress Over I-395,” *DC Curbed*, December 9, 2014, <https://dc.curbed.com/2014/12/9/10014032/capitol-crossing-developers-outrage-congress-over-i395-closing>.

project regulations changed, as did FHWA personnel. Another criticism voiced by FHWA was related to a low-income housing component that was originally part of the project plans but which was moved out of the development and into a less desirable neighborhood. This drew criticism of the project from a social equity perspective.<sup>20</sup>

## PROJECT TAKEAWAYS

**Impacts.** The construction phase for an air rights project has impacts on the existing infrastructure, and these impacts should be clearly communicated to stakeholders. Although the closure of I-395 requested by Property Group Partners was rejected, there would still be numerous closures of lanes and ramps throughout the construction period. Such closures can impact community support for the project if not carefully managed and communicated.

**Platform Cost.** One of the challenges with an air rights project like Capitol Crossing is to have sufficient land value to justify the cost of building the platform. Because of this consideration, a project like this may not be replicable in many cities.

**Change in Regulation.** For a project like Capitol Crossing that experiences numerous starts and stops over a period of decades, changes in regulations and requirements should be carefully managed to ensure that the final project is brought up to date with any changes that may have occurred since the project was initially approved.

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<sup>20</sup> Interviews with District employees, November 29, 2018.

