

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Zoning Commission**



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 03-05C**  
**Case No. 03-05C**  
**Consolidated Planned Unit Development and**  
**Zoning Map Amendment for the Department of Transportation ("DOT") Headquarters**  
**in the Southeast Federal Center**

**January 12, 2004**

Pursuant to proper notice, the Zoning Commission for the District of Columbia held a public hearing on September 25, 2003, to consider applications from JBG/SEFC Venture, L.L.C. ("Applicant"), on behalf of the General Services Administration ("GSA"), for consolidated review and one-step approval of a Planned Unit Development and a Zoning Map Amendment (collectively, the "Applications"). The Zoning Commission considered the Applications pursuant to Chapters 24 and 30 of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). A further public hearing to consider limited issues was held on November 24, 2003. The public hearings were conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Zoning Commission hereby approves the Applications.

**PRELIMINARY MATTERS**

As a preliminary matter, the Zoning Commission must determine whether the project constitutes one or two buildings.<sup>1</sup> The project visually presents itself as two buildings that share no above

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<sup>1</sup> The Applicant requested that the Zoning Commission release the legal advice memorandum provided by the Office of the Corporation Counsel ("OCC") on this issue. The Commission refused this request, believing that it was inappropriate to share the written legal advice it receives. Apparently, the Applicant believes that memoranda of this kind have a status independent of the Commission's resolution of this issue, as it is set forth in this Order. This is simply not the case. The Zoning Commission relies upon the Land Use and Public Works Section of OCC for legal advice. In furnishing such advice, the attorneys of that Section act as members of the Commission's staff. As with any other advice provided by staff, the Commission is free to accept or reject the advice given. The written legal advice received is not a formal Opinion by the Corporation Counsel and therefore has no official status. The Zoning Administrator receives legal advice through the General Counsel of the Department of Consumer and Regulatory Affairs. Neither the Zoning Administrator nor DCRA's General Counsel must adhere to the legal interpretations of the Land Use and Public Works Section. Rather, it is the legal interpretations included the written orders of this Commission that establish zoning precedent. Thus, apart from general concerns about maintaining attorney-client confidentiality, the release of such written memoranda would serve no purpose and could create confusion to the extent that there may be differences between the analysis in an OCC memorandum and the analysis of the same issue in a Zoning Commission Order.

ground connection. The Applicant contends that, notwithstanding this appearance, there is but one building. To reach this conclusion, the Applicant relies on § 3202.3 of the Zoning Regulations, which states in part that:

[A] building permit shall not be issued for the proposed erection, construction, or conversion of any principal *structure* ...unless the land for the proposed erection, construction, or conversion has been divided so that each *structure* will be on a separate lot of record .... . Any combination of commercial occupancies separated in their entirety, erected, or maintained in a single ownership shall be considered as one (1) *structure*.

Emphasis added.

This provision does nothing more than require, subject to certain exceptions, that a record lot may include no more than a single structure. The provision also provides a narrow circumstance where occupancies, separated in their entirety, may be nevertheless be considered a single structure. It does not, however, provide that those single structures are also single buildings. That issue is resolved with the definition of “building” which provides that a building is:

[A] *structure* having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals or chattel. When separated from the ground up or from the lowest floor up, each portion shall be deemed a separate building, except as provided elsewhere in this title. The existence of communication between separate portions of a structure below the main floor shall not be construed as making the structure one building.

11 DCMR § 199.1 (emphasis added). Thus, a single structure can include more than one building. But, if the portions of that single structure have no above ground “communication”, the structure cannot be a single building. Thus, even if under § 3202.3 this project were considered a single structure, it could not be considered a single building.

However, the Commission does not believe that this project can even be viewed as constituting a single structure to the extent permitted under § 3202.3.

First, the DOT project is not a "combination of commercial occupancies." It is a single commercial occupancy -- that of the USDOT. Second, reading § 3202.3 as permitting two structures separated from the ground up to be considered one building would be inconsistent with the plain language of § 2517 of the Zoning Regulations. Section 2517 permits two or more principal buildings, as a matter-of-right, to occupy a single lot of record on any property that is not in, or within twenty-five (25) feet of, a residence district. Each building, however, must conform to the applicable requirements for height, bulk, and open space. If § 3202.3 were read to allow multiple non-conforming structures on a single lot of record simply by virtue of their common ownership, § 2517 would be rendered virtually meaningless.

Finally, a review of the history of § 3202.3 shows that its current language was adopted in 1964, and was changed from earlier language in order to permit strip malls to locate on single lots of record. Arguably, the earlier language would have prevented this. It stated: "any combination of commercial structures having division walls from the ground up or from the lowest floor up operated as a single establishment, shall be on a separate and distinct lot of record." (*See*, § 8103.3 of the original 1958 zoning regulations.) A strip mall is a combination of individual commercial occupancies, *i.e.*, stores, each separated by a common division wall. Under the earlier text, each of these commercial occupancies would have been considered a separate building, because they were not "operated as a single establishment." The earlier text would therefore have required each store in a strip mall to have been located on its own separate and distinct lot of record. To avoid this anomalous result, the last sentence of § 3202.3 was changed to read as it does today. It seems apparent that the last sentence of § 3202.3 was intended to facilitate the construction and operation of strip malls, not to subvert the lot control provisions of the Zoning Regulations.

For all of these reasons, the Zoning Commission finds that the PUD project consists of two structures that are two separate and distinct buildings for purposes of the Zoning Regulations.

## **FINDINGS OF FACT**

### **The Applications, Parties and Hearing**

1. On January 23, 2003, JBG/SEFC Venture, L.L.C., the contract purchaser of the property, on behalf of the General Services Administration, the owner of the property, (collectively the "Applicant") filed Applications for the consolidated review and approval of a Planned Unit Development ("PUD") and related Zoning Map amendment. The subject property is located within the Southeast Federal Center on the south side of M Street, S.E., bounded by the proposed extensions of New Jersey Avenue, S.E., and Fourth Street, S.E., on the west and the east respectively, and the proposed dedication of Tingey Street, S.E., to the south. (the "Site").<sup>2</sup> The Site consists of a portion of U.S. Reservation 17-E, a portion of Lot 800 in Square 770, and a portion of Lot 800 in Square 801. Currently, the Site is owned by the United States Government.
2. The Zoning Commission held a public hearing on September 25, 2003. The case was originally scheduled for public hearing on September 18, 2003; however, due to inclement weather, the hearing was postponed. The Zoning Commission was not able to publicly announce the postponement of the public hearing in accordance with § 3005.9 of the Zoning Regulations. Accordingly, the Zoning Commission waived the requirements of that section at the public hearing on September 25, 2003. All other notice was found to be in accordance with the Zoning Regulations.

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<sup>2</sup>Unless otherwise indicated, all references in this Order to Third Street, Fourth Street, Tingey Street, M Street, or New Jersey Avenue signify Third Street, S.E., Fourth Street, S.E., Tingey Street, S.E., M Street, S.E., and New Jersey Avenue, S.E.

3. The parties to the case were the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the Site is located.
4. The Zoning Commission requested that the National Capital Planning Commission ("NCPC") provide comments regarding the Applications prior to the Commission taking proposed action on the Applications. NCPC did not respond in the record to this request. NCPC's concerns, as indicated in its March 26, 2003, letter, have been addressed in Finding Nos. 89 through 97. NCPC did respond to the formal referral required by the District of Columbia Charter, as set forth in Finding No. 7.
5. At its public meeting held on October 20, 2003, the Zoning Commission discussed the Applications and determined that a further public hearing on limited designated issues was required. The Commission notified the parties pursuant to § 3025.2 of Title 11 DCMR. The further public hearing was held on November 24, 2003, and was limited to three issues: (1) the traffic impact of the operation of the project if a portion of the original Third Street L'Enfant right-of-way remains private property that is closed to vehicular traffic; (2) the nature of the \$1.5 million proffer by the Applicant as a contribution to area-wide benefits; and (3) whether the proposed development constitutes a single building.
6. At its public meeting held on December 8, 2003, the Zoning Commission took proposed action by a vote of 4-0-1 to approve with conditions the Applications and plans presented at the public hearings.
7. In accordance with the District of Columbia Charter, the proposed action of the Zoning Commission was officially referred to the NCPC. NCPC, by official action dated January 8, 2004, found that the project would not negatively affect the federal interest, except for two elements: the 50-foot setback along M Street and the restriction of the original Third Street L'Enfant right-of-way to pedestrians and "screened" vehicles.
8. The Zoning Commission took final action by a vote of 4-0-1 to approve the Applications at its public meeting held on January 12, 2004.

#### **The Site and the Surrounding Area**

9. The Site is situated in Ward 6 and consists of approximately eleven (11) acres in the Southeast Federal Center, which includes a total land area of approximately fifty-five (55) acres. The total land area subject to the Applications is 481,338 square feet, which includes 391,342 square feet for the PUD project and 89,996 square feet for the proposed dedication of the streets. The Site is currently fenced and vacant, except for Building 170, and is located across the street from the Navy Yard/M Street Metrorail Station.
10. The Generalized Land Use Map of the Comprehensive Plan designates the Site, and the entire Southeast Federal Center, in the Federal land use category as well as within the Central Employment Area. The Comprehensive Plan designates the area immediately to

the north in the medium-high density commercial land use category and the area to the west as mixed use for medium-high density commercial land use, production and technical employment, and high-density residential.

11. The Site is not a designated historic landmark nor is it within a historic district. Building 170, however, is eligible for designation as a historic landmark.

### **Zoning and Development History**

12. Due to its status as Federal property, the Site is not zoned.
13. The area immediately to the north is zoned C-3-C. Further to the north and to the northeast, the area is zoned R-5-B. A Hope VI project is planned for the area currently occupied by the Arthur Capper/Carrollsborg Projects. The Zoning Commission has approved CR, C-3-C, and R-5-B zoning as part of a planned unit development for that site.
14. The area immediately to the east of the Southeast Federal Center is devoted to the Navy Yard and is not zoned, because it is Federal land. The areas further east are zoned M, C-M-1, and C-M-2 and include the ramps for the 11<sup>th</sup> Street Bridge and the project currently being developed as the Maritime Plaza.
15. The areas to the west are currently zoned M and C-M-2. Those areas are slated to be rezoned to CG/CR and are designated within the Capital Gateway Overlay. The properties zoned C-3-C immediately to the north of the Site will also be designated within the Capital Gateway Overlay but will retain the C-3-C zone designation. The purpose of this overlay is to designate specific areas for mixed-use redevelopment as identified in the District of Columbia Comprehensive Plan for the National Capital. In addition to restrictions on use, FAR, and height, many of the properties included within the Capital Gateway Overlay will be subject to an additional development review process.

### **Southeast Federal Center**

16. The Master Plan for the Southeast Federal Center (July 1992) (the "Master Plan") was approved by the NCPC and the Commission on Fine Arts to outline a "prudent developer" strategy for the long term development of the approximately fifty-five (55) acres of Federally-owned land. The Master Plan sought to maximize the benefits from this significant land asset, present a road and utility infrastructure design that provided for flexible development, and establish a reasonable phasing and build-out sequence. At the same time, the Master Plan sought to develop the area in a manner that would attract Federal agencies and enhance the surrounding community.
17. The Master Plan has not been formally updated or revised since 1992, despite GSA's and the District of Columbia's changing views for the area. As opposed to a Federal enclave, the District and GSA seek to enhance the Anacostia waterfront with mixed-use

development to establish a more welcoming and viable community. The design and strategies for use of the DOT Headquarters are consistent with both the purposes of the Master Plan and the District and GSA's more current goals for the area.

18. The PUD will also implement the goals of the Southeast Federal Center Public Private Partnership Act (Public Law 106-407). This Act permits GSA to enter into an agreement with a private entity to provide for the acquisition, construction, rehabilitation, operation, maintenance or use of the Southeast Federal Center. The goal is to transform the Southeast Federal Center into an exciting mix of land uses consistent with the National Capital Planning Commission's plan entitled "*Extending the Legacy – Planning America's Capital for the 21<sup>st</sup> Century*" (the "Legacy Plan"). The PUD will promote many of the Legacy Plan's key goals by helping to integrate the Anacostia River into the city's public life and by promoting the specific economic development goal of assisting the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively waterfront of offices, restaurants, shops, and marinas. Additionally, the PUD carries out the goals of the Anacostia Waterfront Initiative, provides economic development in the neighborhood through job creation and commercial activities and brings activity to the Southeast Waterfront.

#### **Existing and Proposed Zoning**

19. The Site is currently not zoned. As Federal property devoted to Federal use, the Zoning Regulations and Zoning Map are not applicable. Upon acquisition of the Site by JBG/SEFC Venture, L.L.C., the Site will become subject to zoning.
20. Under the PUD, the zoning of the Site will become C-3-C. The C-3 Districts are designed to accommodate important sub-centers supplementary to the Central Business District. More specifically, the C-3-C District permits medium-high density development, including office, retail, housing, and mixed-use development that is compact in area. The C-3-C District permits a maximum height of ninety (90) feet, with no limit on the number of stories, and a maximum density of 6.5 FAR. Under the PUD guidelines for the C-3-C District, the maximum height may be 130 feet and the maximum density may be 8.0 FAR. Despite the additional density that is permitted for a PUD under the C-3-C District, the Applicant proposes to develop a project with an approximate total density of 3.8 FAR, which is lower than that permitted as a matter-of-right in the C-3-C District.
21. The Office of Planning ("OP") requests that the base zone for the Site be CR to ensure that, if for some reason the project does not proceed, the zoning would be in place for an appropriate alternative development. The purpose of the CR District is to encourage a diversity of compatible land uses that may include a mixture of residential, office, retail, recreational, light industrial and other miscellaneous uses. The CR District permits a maximum height of ninety (90) feet, and a maximum density of 6.0 FAR, of which not more than 3.0 FAR may be used for other than residential purposes as identified in § 631.2 of the Zoning Regulations.

### **The PUD Project**

22. The Applicant proposes the construction of two new office buildings to serve as the headquarters for the DOT, consisting of east and west buildings (the "Office Buildings"). The individual sites of the two Office Buildings, on which are also located the other buildings in the project, are separated only by an area that was once the original Third Street L'Enfant right-of-way. This portion of Third Street was closed and the depiction of the right-of-way was removed from the highway plan. The area is now private property. The Applicant intends to configure the area to resemble a public thoroughfare but will not permit travel by non-emergency vehicles. Later, after the federal use ends, the Applicant or its successors will dedicate the area to the District for street purposes. This project is the first major project of the Southeast Federal Center and will serve as the launching pad for all future development in the Southeast Federal Center.
23. The east building will have a maximum height to the top of the parapet of approximately 109 feet and a maximum height to the top of the atrium of approximately 118 feet. The west building will have a maximum height to the top of the parapet of approximately 121 feet and a maximum height to the top of the atrium of 130 feet.
24. The Office Buildings include approximately 1,454,008 square feet of gross floor area or approximately 3.8 FAR. The Office Buildings will include three interior retail spaces for the exclusive use of DOT employees, comprising approximately 26,360 square feet of gross floor area. First, the largest of these spaces is the cafeteria, which includes approximately 18,500 square feet. The cafeteria will be a commercial food service facility to support building occupants and visitors, with seating for approximately 300 to 400 people. The cafeteria will serve as a large conferencing facility for the DOT during the off-peak hours. Second, the project will include a Federally-mandated Randolph-Shepherd store containing approximately 1,237 square feet. The Randolph-Shepherd Act was enacted by Congress to create a vendors program to assist blind individuals in finding employment. As a result, small convenience stores run by the blind are incorporated into Federal buildings. These stores sell soft drinks, candy bars, snack food, and related items. Third, a small DOT store, comprising 1,823 square feet, will be located within the project. This store will primarily sell DOT merchandise, greeting cards, and snacks.
25. The design of the project has been modified throughout the PUD process as a result of discussions with the Office of Planning, District of Columbia Department of Transportation ("DDOT"), the NCPC, and various community groups in an effort to achieve a design that is appropriate for this important location at the gateway to the Southeast Federal Center.
26. The Office Buildings have been designed to read as two "U" shaped wings. The architects have shaped the buildings' expression along New Jersey Avenue, 4<sup>th</sup> Street, and

Tingey Street to make them read independently, which helps break down the Project's total massing and makes the project appear as if it is comprised of smaller wings.

27. The main entry to the west building on New Jersey Avenue includes a rounded entry portico, which emphasizes the angular New Jersey Avenue façade. The larger scale of the west building's New Jersey Avenue façade reflects the greater width of New Jersey Avenue. Secondary entrances to both the west and east buildings will be located on <sup>Third</sup> and Fourth Streets on an axis with the main west building entrance on New Jersey Avenue.
28. The project also includes on-site retail as follows:
  - (1) Adaptive Re-Use of Building 170. The exterior of building 170, located near the intersection of Third and Tingey Streets, will be renovated and its interior converted into a two- or three-story retail structure with up to two partial floors. The Applicant has committed to providing at least 8,000 square feet of retail space on the ground level, with the potential for an additional 10,500 square feet of retail space on the upper levels. Building 170 will be an excellent location for either an upscale national restaurant chain or an independent café or restaurant. The rest of the lower floor of Building 170 can be utilized for kitchen space or subdivided for use by smaller retail establishments. As envisioned, the current design expressly accommodates a high level of flexibility while respecting the historic character of the structure. It is expected that the interior design of Building 170 will be created in conjunction with the selected tenant or tenants for this space and will be designed at that time.
  - (2) New Jersey Avenue and M Street Pavilion. The Applicant will construct a permanent retail pavilion near the intersection of M Street and New Jersey Avenue that will include approximately 1,755 square feet of gross floor area. The retail structure will be free-standing but detailed to match the Office Buildings' base. The Applicant proposes a façade that is primarily glass with stone and precast accents to match the exterior of the Office Buildings. The retail space is recessed on the west side along New Jersey Avenue to provide cover at the entrance. This covered space could also be used as an outdoor seating area. The pavilion will be well-suited for retail due to its proximity to the Metro Station, its highly visible street-front location, and the employee base of DOT.
  - (3) M and Fourth Streets Retail Kiosk. The Applicant will construct a permanent retail kiosk near the intersection of M and Fourth Streets, which will be octagonal in shape and will include approximately 330 square feet of gross floor area. This retail kiosk can be used by either a single vendor or two smaller vendors, such as a newspaper and magazine stand or small, independent food vendor. The structure's supporting piers will be clad in metal, and the roof will be constructed of steel framing and painted metal standing seam sheets. The color palette will

complement that of the Office Buildings as well as complement the historic Navy Yard turret across Fourth Street.

- (4) Seasonal Retail Kiosk Program on M Street. The Applicant proposes to create a vibrant pedestrian culture along M Street by introducing a wide walkway that can be filled with seasonal, semi-permanent, roofed kiosks. The Applicant anticipates that between five and ten kiosks containing approximately thirty (30) square feet each can be located along M Street and used for a variety of specialty retailers and vendors, such as espresso or ice cream stands, flower carts, or local craft merchants and jewelry makers. Each kiosk would be mounted on castors, so that each is mobile and will not damage the sidewalk. When not displaying merchandise, the kiosks can be locked down at night, anchored to the pavement, and located so that they will not impede the pedestrian flow along the sidewalk. This kiosk strategy will encourage a vibrant, dynamic, and interactive sidewalk experience during the warmer months, when pedestrian traffic is heavier. It will also provide an opportunity for small businesses and entrepreneurs in the near Southeast neighborhoods.
- (5) Southwest Plaza Retail Structure. The Applicant will construct a permanent retail structure in the Southwest Plaza, near the intersection of New Jersey Avenue and Tingey Street. This building will contain approximately 3,800 square feet of gross floor area and its design, massing, and materials will complement both the Office Buildings and Building 170. The Southwest Plaza retail structure has been designed so that it can be easily subdivided for either single or multiple tenants, similar to the kiosk structure along M Street. This retail pavilion could house either retail shops or restaurants, depending on the leasing market at the time.
- (6) Commitment to Provide Ground Floor Retail in Future. The Applicant has committed to provide a minimum of 24,000 square feet of publicly-accessible ground floor retail in the Office Buildings at such time as the project is no longer occupied by the DOT or a subsequent Federal tenant. The proposed location of the ground floor retail can be found in the record at Exhibit 43.

### **Security Issues and Impact on Design**

29. The project has three mandatory security requirements that impact its design: (1) no publicly-accessible retail within the Office Buildings' footprints; (2) a fifty-foot (50-foot) defensible perimeter around each of the Office Buildings; and (3) maintaining the closure of the original Third Street L'Enfant right-of-way to vehicular traffic, with the exception of emergency vehicles. These security requirements, including the rationale for each, are detailed in the letter from Norman Y. Mineta, Secretary of Transportation, in the record at Exhibit 26, and the Memorandum from Lee Privett, Director of Security for the DOT, with exhibits, attached as Exhibit H to Supplemental Prehearing Submission, in the record at Exhibits 33 and 33a.

30. The security requirements proposed for the project have been established based, among other things, on the *Interagency Security Committee, Security Design Criteria for New Federal Office Buildings and Major Modernization Projects*, dated September 30, 1998, as well as other documents that have been identified as "Law Enforcement Sensitive" by Federal Protective Service/Department of Homeland Security. These documents are not available for release to the public.
31. Because the project is designated as a Level IV, or medium risk, Facility, minimum ISC Security Design Criteria require a standoff of fifty (50) feet. Additionally, the standoff distance is in compliance with the Public Buildings Service Commissioner's memorandum of April 26, 2002, directing all new GSA construction or leases to achieve a minimum stand-off distance of fifty (50) feet. This memorandum is included as an exhibit to the memorandum from Lee Privett, attached as Exhibit H to Supplemental Prehearing Submission, in the record at Exhibits 33 and 33a.
32. Within this security perimeter, the DOT security features have been incorporated in such a way as to lessen negative impacts and reduce the perception of a secure perimeter. The Applicant has attempted to achieve this by employing varying elements to blend into the buildings' landscape treatment so that it enriches the streetscape and provides for smaller scale pedestrian amenities. The buildings' security perimeter will be publicly-accessible open space and incorporates a variety of trees, reinforced benches, ornamental bollards, cast iron light posts, and trash cans rather than exclusive use of standard precast or metal bollards to achieve a unique and varied, yet secure two-block streetscape. The Applicant has incorporated extensive above-standard landscaping improvements within this area. These proposed landscape and streetscape enhancements are consistent with the NCPC's recommendations in the Urban Design and Security Plan and should help to define the character of the Southeast Federal Center. The Applicant is also proposing a transportation-themed Site Animation and Activation Program, as indicated in the concept plan attached as Exhibit F to Supplemental Prehearing Submission, in the record at Exhibits 33 and 33a. The concept plan anticipates that at least ten (10), with up to as many as thirty (30); display stations will be permanently and semi-permanently located on-site. These stations will be a variety of shapes and sizes, depending on the information displayed, and will be designed to be pedestrian friendly in both scale and usability.
33. Due to security considerations, unrestricted vehicular access to Third Street by the public would create an unacceptable risk to the project. Security analysis and blast modeling shows that if a device were to detonate on Third Street, multiple blast reflections between the east and west Office Buildings could cause catastrophic damage to both buildings and would result in significant casualties. Therefore, Federal security requirements mandate that the original Third Street L'Enfant right-of-way closure to vehicular traffic be maintained, except for emergency vehicles. Third Street, however, is proposed to be designed as an important pedestrian thoroughfare through the Site Animation and Activation Program, described in Finding No. 32, and will provide pedestrian access from the communities to the north to the Southeast Federal Center and the Anacostia

River waterfront further to the south. Third Street will therefore contribute toward the provision of open space on Site, which is an important community benefit. In addition, the Applicant has committed to construct Third Street to DDOT standards and specifications for future conversion to a public roadway. At such time as the DOT or a subsequent Federal tenant no longer occupies either of the Office Buildings, the Applicant shall dedicate Third Street in fee to the District.

### **Parking**

34. Under the C-3-C District, 629 parking spaces are required for the Office Buildings and the on-site retail, assuming a twenty-five percent (25%) reduction permitted by § 2104 of the Zoning Regulations. The project will include significantly more parking than required, providing a minimum of 936 parking spaces and fifty (50) bicycle parking spaces in a two-level below-grade parking facility. Entry to the underground garage levels will be access-controlled and all cars will be screened by DOT security personnel at the Third Street security checkpoint prior to entering the garage. In response to concerns of the Office of Planning, the entrance to the underground parking garage was moved from the Southwest Plaza area to underneath the west building of the complex. Because the underground parking is connected below Third Street, a single point of entry is possible.
35. Because the parking provided within the Office Building will not be accessible for those non-DOT patrons of the on-site retail, Gorove Slade Associates prepared a Retail Parking Demand Analysis, to analyze the parking demand projected to be generated by the on-site retail. The Retail Parking Demand Analysis is attached to the Supplemental Prehearing Submission as Exhibit B, in the record at Exhibits 33 and 33a. The analysis concluded that due to the nature of the proposed retail use to serve primarily the users of the Office Buildings and their proximity to existing transit, the parking demand associated with the on-site retail is relatively low. Accordingly, Gorove Slade Associates concluded that the on-street parking proposed as part of the street dedication sufficiently provides between approximately fifty-four (54) and ninety (90) on-street parking spaces, which will more than satisfy the parking demand for the on-site retail.
36. The project also incorporates a Transportation Management Plan, the elements of which are set forth in Exhibit D to the Supplemental PUD Submission, in the record at Exhibit 12.

### **Loading**

37. Under the C-3-C District, three thirty-foot (30-foot) loading berths and one twenty-foot (20-foot) service delivery space are required for the project. The project will include three twelve-foot (12-foot) by fifty-five-foot (55-foot) loading berths and three twelve-foot (12-foot) by thirty-foot (30-foot) service/delivery spaces accessed from Fourth Street.

38. The loading dock for the project has been designed to minimize its impact on existing and future streets around the Southeast Federal Center. For security reasons, all deliveries are pre-screened at an off-site screening facility, at which point the delivery vehicle is scheduled for the delivery prior to arriving at the loading dock. This process substantially mitigates the impact of the loading facility on the surrounding area.
39. In an effort to further manage the loading facilities, and in response to DDOT concerns regarding functioning and possible impacts of the loading area location and design, the Applicant proposes a Loading Dock Management Plan, a copy of which is attached to the Supplemental Prehearing Submission as Exhibit C, in the record at Exhibits 33 and 33a. The Loading Dock Management Plan sets forth the normal and special operating procedures for the loading facility.

### **Project Mitigation**

40. At its meeting of October 20, 2003, the Zoning Commission found that the project requires mitigation for aspects of the proposal arising from Federal security requirements.
41. In response, the Applicant has offered a number of initiatives to mitigate the impact of Federal security requirements. While being of benefit to the community in that they lessen the negative impacts of Federal security requirements, they are not considered project amenities:
  - a. The former Third Street right-of-way remaining private property on which regular vehicular traffic is disallowed -- as mitigation, the Applicant had agreed to design the former Third Street right-of-way as a high-quality pedestrian through-way, as detailed in Finding No. 33, to continue to work with DDOT, GSA, the District Water and Sewer Authority ("WASA"), and the OP to finalize the design for the intersection of Tingey and N Streets at the terminus of New Jersey Avenue in order to create an intersection that works operationally as detailed in Finding No. 85, and to participate in a coordination committee to facilitate dialogue among property owners in the M Street corridor to assist DDOT in making a trolley or other "next generation" transit model a reality, as detailed in Finding No. 87.
  - b. The 50-foot setback, significantly larger than that envisioned for other sites in the area -- as mitigation, the Applicant has agreed to incorporate security features into overall landscaping plans to reduce negative impacts and pedestrians' perceptions of a secure perimeter, to attractively design the setback area as publicly-accessible open space, and to incorporate retail spaces and a variety of high-quality landscape materials and features, particularly along M Street, to achieve a unique and varied, yet secure, two-block streetscape, as detailed in Finding No. 32; and
  - c. Lack of publicly-accessible retail on the Site, particularly along M Street -- as mitigation, the Applicant has agreed to the re-use of Building 170 as retail space, the construction of new retail space on M Street at the intersections with New

Jersey Avenue and Fourth Street, the retail kiosk program along M Street, the construction of a new retail structure in the Southwest Plaza, as well as the design of the main floor of both Office Buildings to permit public retail in the future, all as detailed in Finding No. 28.

42. The Zoning Commission views the 50-foot setback as a necessary security measure. However, once neither Office Building is occupied by a Federal tenant, the Commission intends that the facades of both Office Buildings along M Street be moved forward to be consistent with the facades of other nearby buildings fronting on M Street.

### **Public Benefits and Project Amenities**

43. The project incorporates several superior public benefits and project amenities, including the following:
- a. ***Dedication and Improvement of Streets.*** The Applicant has committed to dedicate 89,996 square feet of land area for portions of New Jersey Avenue, Fourth Street, and Tingey Street. The Applicant has also committed to designing and constructing the improvements to these streets, including design and construction of the roadways. The dedication of the land and the opening of these streets accomplish a significant infrastructure upgrade that is required for the development of the remainder of the Southeast Federal Center. In addition, these streets will provide improved public access to the Anacostia River waterfront.
  - b. ***Contribution of \$1.5 Million Toward Area-Wide Benefits.*** The Applicant committed to contributing \$1.5 million toward area-wide benefits, to be spent on a variety of purposes. Subsequent to the initial allocation of these funds and as set forth and discussed at the further public hearing, the Applicant and the Office of Planning agreed that these funds would be applied toward construction and programming of the Anacostia Riverwalk and Trail within ANC 6D.
  - c. ***Contribution to Canal Blocks Park.*** The Applicant has committed to contribute \$2.5 million to the Canal Blocks Park. The redevelopment of these historic parks was deemed by the Office of Planning to be of significant public benefit and a priority in connecting the community with the Southeast Federal Center. A letter confirming this contribution can be found in the record at Exhibit 41.
  - d. ***Comprehensive Signage Program.*** The Applicant will contribute \$75,000 toward the hard and soft costs associated with the development of a comprehensive signage program that will benefit the near Southeast Community by orienting both vehicles and pedestrians towards the Anacostia Waterfront and the developing Southeast Federal Center. The Applicant will work with DDOT and any other appropriate agency to find safe and non-obtrusive locations for this new signage and to develop an appropriate sign design. The proposed signage program would be consistent with the Downtown Business Improvement

District's blue and white way-finding signs seen near many popular tourist destinations and the Mall. Details regarding the signage program can be found in the record at Exhibit 41.

- e. ***Creation of the Southwest Plaza.*** The Applicant has committed to create the Southwest Plaza, which includes approximately 35,000 square feet of publicly-accessible open space. The Southwest Plaza will be a civic plaza across the street from the terminus of New Jersey Avenue where the community can gather just a block from the waterfront. This plaza will likely be used for farmers and produce markets and other scheduled activities and performances that will be open to the community. From time to time, there may be daily activities and performances to encourage visitors to linger along the Anacostia River waterfront to enjoy the outdoors and festive activities on the Southwest Plaza.
- f. ***Enhanced Landscape and Streetscape Materials.*** The project includes enhanced landscape and streetscape materials for approximately 170,000 square feet of open space. This open space will provide significant public gathering opportunities.
- g. ***Environmental Benefits.*** The project includes a number of environmental benefits, including, among others, site erosion and sedimentation control, development on a Brownfield site, bicycle storage, water efficient landscaping, storage and collection of recyclables, and construction waste management. A complete description of the environmental benefits can be found in the record at Exhibit 41.
- h. ***Local Business Opportunities.*** The Applicant has executed a Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve, at a minimum, the goal of thirty-five percent (35%) participation by small, local, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security for the project. This memorandum contributes significantly to the District's goal of ensuring adequate opportunities for small and local businesses to participate in development projects throughout the District. The Applicant has also committed to giving preference in hiring to residents of ANC 6B and ANC 6D.
- i. ***First Source Employment Opportunities.*** The Applicant has also executed a First Source Employment Agreement with the Department of Employment Services ("DOES") in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent (51%) of the jobs created by the PUD project. The Applicant will use DOES as its first source for recruitment, referral and placement of new hires for employees whose jobs are created by the PUD. The Applicant has also committed to giving preference in hiring to residents of ANC 6B and ANC 6D.

**Flexibility and Development Incentives**

44. The Applicant requests the following areas of flexibility from the C-3-C and PUD standards:
- a. Waiver of the requirement that compact car spaces must be in groups of at least five;
  - b. Waiver of the requirement of off-street parking for the retail uses; and
  - c. Waiver of the roof structure setback requirements on the east side of the west Office Building and the west side of the east Office Building, both facing the Third Street pedestrian area.
45. The Applicant requests the following development incentives for the project:
- a. Height of 121 feet to the top of the parapet, with the atrium skylight rising to 130 feet for the west Office Building, as permitted in the C-3-C District and
  - b. Height of 109 feet to the top of the parapet, with the atrium skylight rising to 118 feet for the east Office Building, as permitted in the C-3-C District.

**Compliance with PUD Standards**

46. The Applications comply with the standards for a PUD set forth in Chapter 24 of the Zoning Regulations.
47. The Zoning Commission finds that the project offers a high level of public benefits, including project amenities, as described in Finding No. 43. The Commission also finds that the Applicant requests a relatively small amount of development incentives and flexibility. Thus, the Applications satisfy the balancing test required in § 2403.8 of the Zoning Regulations.
48. The Site contains approximately 400,000 square feet in land area, which exceeds the minimum area requirement of 15,000 square feet for a PUD in the C-3-C District, in accordance with § 2401.1(c) of the Zoning Regulations.
49. The project has been evaluated under the PUD guidelines for the C-3-C District. The C-3-C District permits development of approximately 2,600,000 square feet of commercial space as a matter-of-right on the PUD Site, or 6.5 FAR, while a PUD under the C-3-C District permits development of approximately 3,200,000 square feet of commercial space on the site, or 8.0 FAR. The project proposes development significantly below the permitted matter-of-right density for the C-3-C District and will be constructed to a maximum height of 130 feet, which is within that permitted for a PUD in the C-3-C District.

50. As the first new development in the Southeast Federal Center, the project will become a highly visible symbol and anchor for the area. It will also serve to spur redevelopment of the Southeast Federal Center and the improvements for the Anacostia River waterfront. Potentially negative impacts arising from Federal security requirements have been mitigated to an acceptable degree.
51. The project will provide an economic boost to both Southeast Washington and the District of Columbia, as indicated in the Economic Impact Analysis attached as Exhibit D to the Supplemental Prehearing Submission in the record at Exhibits 33 and 33a.
52. The project will have no unacceptable impact on traffic at the intersections immediately surrounding the Site. As indicated in the Traffic Impact Study, attached as Exhibit C to the Supplemental PUD Submission, in the record at Exhibit 12, all intersections directly adjacent to the Site will operate at acceptable levels of service upon completion of the project. Keeping the original Third Street L'Enfant right-of-way closed to vehicular traffic creates some impacts on mobility in and around the city. DDOT, however, determined that the Applicant's commitment to providing the area comprising the former Third Street as a high-quality pedestrian access and to helping create light rail facilities along M Street, would lead to mitigation of any impact created by not having Third Street available for vehicular traffic. Although two intersections several blocks from the Site currently operate at unacceptable levels of service and will continue to do so upon completion of the project, these intersections are impacted by regional traffic issues and are being reviewed by the District on a regional basis. Finally, the District's existing water and sewer services are adequate to serve this facility.

#### **Consistency with the Comprehensive Plan**

53. The project and the proposed rezoning are consistent with the Generalized Land Use Map of the Comprehensive Plan, which depicts the Site in the Federal land use category as well as within the Central Employment Area.
54. The project is consistent with many of the Comprehensive Plan's major themes, including stabilizing and improving the District's neighborhoods, increasing the quantity and quality of employment opportunities in the District, respecting and improving the physical character of the District, preserving and promoting cultural and natural amenities, and reaffirming and strengthening the District's role as the economic hub of the National Capital Region.
55. The project is consistent with the Economic Development Element, which recognizes that the District is the unchallenged center of Federal government activities, with sixty percent (60%) of all Federal jobs in the region being located in the District as of 1990. The project continues this focus on the District as the center of Federal government activity and promotes the Southeast Federal Center as an important location for Federal government activity.

56. An important goal of the District is to encourage additional development, economic diversification, and job generation in portions of the Central Employment Area outside Downtown. The project's location in the Central Employment Area, but outside of the Downtown area, furthers this goal by providing additional commercial office space, as well as retail space.
57. The Comprehensive Plan also indicates that the District seeks to generate new and productive uses of currently underused commercially- and industrially-zoned lands. Although not zoned, the Site is currently underused and in need of revitalization. Similarly, the project will be the anchor for this area and serve as the catalyst for the revitalization of the entire Southeast Federal Center.
58. The project furthers the Environmental Protection Elements of the Comprehensive Plan, which include protecting the environment of the District, resisting threats to its overall quality, and maintaining and enhancing its positive features. In addition to the environmental clean-up of the Site, the project will help encourage the Anacostia River waterfront initiatives, which will serve to rehabilitate and preserve important natural environs of the District. Moreover, the Applicant will comply with all District and Federal environmental regulations as necessary through the permit process.
59. The basic philosophy of the District's Transportation Element is that by providing for the efficient movement of people and goods within the District and its metropolitan area, the District's transportation network can play a key role in the District's effort to maintain and enhance its function as the economic and cultural hub of the Washington Metropolitan Area. The proximity of the Site to the Navy Yard-M Street Metrorail Station will promote this philosophy and stimulate the use of existing mass transit services because a majority of the project employees and visitors are expected to take Metrorail. Additionally, the project includes a Transportation Management Program.
60. The Urban Design Element states that it is the District's goal to promote the protection, enhancement, and enjoyment of the natural environs and to promote a built environment that serves as a complement to the natural environment, provides visual orientation, enhances the District's aesthetic qualities, emphasizes neighborhood identities, and is functionally efficient. The project has been designed to enhance the physical character of the area, including an architectural design that serves as the entryway to the Southeast Federal Center. The project's massing, articulation, and scale are sensitive to the patterns proposed for development in the area.
61. According to the Land Use Element, the objectives for commercial land are to promote the vitality of the District's commercial areas and to provide for continued growth and vitality of the District's economy and its employment base. The project provides the continued growth and vitality that the District needs for this area and increases the employment base for District residents.

62. The Land Use Element also encourages development that promotes the establishment and growth of mixed use commercial centers at appropriate Metrorail stations to reduce automobile congestion, improve air quality, and reduce reliance on automobiles. The proximity of the project to the Navy Yard-M Street Metrorail Station furthers this objective.
63. According to the Land Use Element, the District's waterfronts and shorelines are great natural assets that must be conserved and protected but that also represent exciting opportunities for the District's future development. The project provides an important opportunity to spur revitalization of the Anacostia River waterfront. Specifically, the project is linked in many ways to the waterfront. The pedestrian and vehicular on-grade connection between M Street and the waterfront is encouraged by the extension of New Jersey Avenue and by the pedestrian thoroughfare along Third Street. These planning strategies help set the stage for future development to the south.
64. The project will fulfill and further the specific objectives for Ward 6, as set forth in the Ward 6 Element of the Comprehensive Plan. Specifically, the Ward 6 Economic Development Element of the Comprehensive Plan states that the ward offers an abundance of economic opportunity within its commercial areas. An objective for Ward 6 is to encourage a range of commercial services through appropriate development of commercial areas, including the M Street corridor from South Capitol Street to north of the 11<sup>th</sup> Street Bridge.
65. According to the Comprehensive Plan, environmental protection is an issue that has become increasingly important for Ward 6. An objective for Ward 6 is to improve and maintain the watercourse for multiple uses, including recreation, an objective that is furthered by this project.
66. The Ward 6 Transportation Element objectives include providing an adequately balanced circulation system for traffic and supporting the optimum use of mass transit. Primary ingress and egress to the project from the Third Street driveway promotes the optimal circulation of traffic as well as provides for safe, convenient movement of people while minimizing pedestrian-vehicle conflicts. Likewise, the project's proximity to the Navy Yard Metrorail Station provides an important opportunity for the optimum use of mass transit. Similarly, the parking and loading facilities for the project are integrated visually into the area and design of the project. This element also recommends providing improved pedestrian and vehicular access to Anacostia Park recreation areas. The project creates pedestrian gateways to encourage movement from Capitol Hill through the DOT Site onwards toward the waterfront.
67. The Ward 6 Urban Design Element encourages a high quality of architecture consistent with the styles and characteristics of buildings in Ward 6. The project not only creates an important visual link to the U.S. Capitol, but also complements the existing and proposed structures for the area and links the community to the north with the Southeast Federal Center and the Anacostia River waterfront. The project provides important streetscape

improvements in accordance with this element, which serve to enhance the environment in Ward 6.

68. The project is also not inconsistent with the goals of the Federal Elements, including encouraging excellence in the design of Federal buildings to reflect the appropriate character and image of the Federal Government and assuring that Federal facilities are compatible with their surroundings and make a positive contribution to their environment. The project also encourages the location of proposed Federal employment concentrations in appropriate areas that are consistent with the needs of Federal agencies and service to the public, are compatible with local planning objectives and are served by Metrorail and other forms of public transit.
69. The Federal Facilities Element states that the principal offices of cabinet level departments should locate in the Central Employment Area and the Southeast Federal Center. The project furthers both of these policies. Moreover, Federal facilities with special security or safety requirements should make special provisions, to the extent practicable, for commercial, cultural, educational, or recreational activities, which are compatible with the operation of the facility. The Southwest Plaza and the proposed programming for the same, as well as the extensive public open spaces within the required security setbacks, further this goal.
70. The Federal Employment Element states that, in selecting locations for Federal employment, special consideration should be given to the impact on Federal employees, economic development and employment opportunities, and proximity to Metrorail stations. The project is located near the Metrorail and in the Southeast Federal Center and will serve as a primary catalyst for the future redevelopment of the Southeast Federal Center.
71. Additional details regarding consistency with the Comprehensive Plan can be found in the report of Steven E. Sher, attached to the Supplemental Prehearing Submission as Exhibit L, in the record at Exhibits 33 and 33a.
72. The project is consistent with many of the Comprehensive Plan's major themes, and the development is not inconsistent with the Comprehensive Plan.

### **Office of Planning**

73. OP submitted four reports regarding the Applications: its Setdown Report, dated April 4, 2003, which recommended that the Applications be set down for a public hearing; its Final Report, dated September 8, 2003 (the "OP Report"), which recommended approval of the establishment of a base zone of CR, as well as approval of the consolidated PUD and related map amendment from CR to C-3-C, subject to satisfaction of a number of requirements, as outlined in Finding No. 74, a Supplemental Report, dated October 29, 2003 (the "OP Supplemental Report"), addressing the three issues designated for further hearing; and a second Supplemental Report, dated November 24, 2003 (the "Second OP

Supplemental Report"), revising its recommendation regarding the use of the \$1.5 million area-wide amenity.

74. By the Final Report and through testimony presented at the public hearing, OP recommended approval of the application to establish a base zone of CR, as well as approval of the consolidated PUD and related map amendment of C-3-C, subject to the following requirements:
- a. Finalization of agreements required to ensure the financial contribution to Canal Blocks Park and to ensure the nature and timing of the contribution;
  - b. Provision of assurance from the Zoning Administrator that both buildings conform to the Height Act of 1910;
  - c. Provision of detailed landscape plans and material palette, indicating a high quality of landscape materials for all public areas and a varied security barrier program;
  - d. Provision of plans, elevations, and material palette for retail buildings and kiosks, plus a more detailed description and program for seasonal M Street kiosks;
  - e. Provision of a concept master plan for the transportation walking museum, including examples of information panels and activity nodes;
  - f. Provision of detailed elevations for underground parking security stations on Third Street;
  - g. Provision of a concept plan for the proposed comprehensive signage program;
  - h. Resolution of transportation-related requirements, as noted in the DDOT report;
  - i. Assurance of the preservation of the Southwest Plaza in perpetuity as publicly-accessible open space;
  - j. Assurance of the provision of retail space within Building 170 and in new retail units at the corner of New Jersey Avenue and M Street, and New Jersey Avenue and Tingey Street;
  - k. Execution of a First Source Employment Agreement and a Memorandum of Understanding for the Use of Local, Small, or Disadvantaged Business Enterprises;
  - l. Provision of additional information regarding measures to maximum environmental benefits, including storm water management; and

- m. Resolution of an outstanding funding commitment to area-wide improvements by the Applicant.
75. The Zoning Commission finds that each of the recommendations set forth in Finding No. 74 has been satisfied or is addressed in this order.
76. OP recommended approval of the Applications with a base zone of CR. OP stated that CR is the appropriate zone designation to ensure that, if for some reason the project does not proceed, the zoning would be in place for an appropriate alternative development. The Zoning Commission concurs with this recommendation. OP supported the C-3-C zoning proposed as part of the PUD.
77. OP testified that the project is generally not inconsistent with Comprehensive Plan Chapter 2 and Chapter 17 (Ward 6) Economic objectives. Specifically, the Site is in the Central Employment Area ("CEA") and would further CEA goals and objectives by encouraging additional development, economic diversification, and job generation in portions of the CEA outside of downtown. OP feels that while the project alone will not provide a mix of land uses that promote increased economic activity in the evenings and weekends as well as during the work day, the PUD supports the creation of a broader mixed-use neighborhood by providing public open space areas and some on-site retail, as well as an influx of workers who will support off-Site retail and entertainment establishments.

Furthermore, although OP had concerns that security requirements will limit the ability of the building to conform to specific objectives set forth in Chapter 7 Urban Design, OP concluded that the proposed Site design measures significantly mitigate these concerns. The Zoning Commission concurs with this finding.

78. The OP Supplemental Report supported the resolution of issues regarding the former Third Street, which had been agreed to by the Applicant and DDOT. The OP Supplemental Report further provided a general structure for use of the Applicant's proffered \$1.5 million amenity for area-wide infrastructure improvements; i.e., the funds would be used off-site and only within the Near Southeast area for tangible capital improvements related to public open space. The OP Supplemental Report further identified ways in which the building could be redesigned in the event that compliance with the Act of 1910 required some modification to the eastern building and recommended that changes to the exterior, if any, be submitted to the Zoning Commission as a minor modification.
79. The Second OP Supplemental Report further defined the \$1.5 million area-wide amenity by specifically proposing that the funds go toward construction and programming of the Anacostia Riverwalk and Trail within the boundaries of ANC 6D. The Commission finds that this final proposal is consistent with the requirements of §2403.13 and, subject to the conditions set forth in the decision section of this Order, is an appropriate and significant amenity to be achieved as part of the PUD.

80. The Zoning Commission finds that the proposed PUD must comply with the limitations on building height set forth in the Act of 1910. The Commission finds that the two office portions of the project comprise separate buildings and that the height of each building must be determined and measured separately.

**District of Columbia Department of Transportation**

81. In its report dated September 8, 2003, ("DDOT Report") and through its testimony at the September 25, 2003, public hearing, the District of Columbia Department of Transportation supported the Applications. DDOT submitted a supplemental report on October 8, 2003, ("Supplemental DDOT Report") reaffirming its support for the project. DDOT also submitted a second Supplemental Statement, dated October 27, 2003 (the "Second DDOT Supplemental Report") and the Director of DDOT testified at the further hearing with respect to the impacts resulting from the original Third Street L'Enfant right-of-way remaining closed to vehicular traffic.
82. In the DDOT Report, DDOT indicated that it originally had concerns regarding the fifty-foot (50-foot) defensible perimeter. However, DDOT noted that its agreement with the Applicant to locate the security perimeter two (2) feet from the curb line resolved these concerns. DDOT also noted that the Applicant would be required to obtain a public space permit for all security elements that are in public space, including those improvements within the rights-of-way to be dedicated. As indicated in the Applicant's Post-Hearing Submission and the Supplemental DDOT Report, the Applicant and DDOT agreed that the Applicant will be required to obtain a public space permit only for those security and landscaping features located within the public space along M Street. With respect to all other security and landscaping features that will be located in public space after the street dedication, the Applicant will be required to obtain appropriate building permits as long as such improvements are made prior to the land dedication. The Applicant will coordinate these building permits with the Public Space Division of DDOT so that no further review is necessary upon dedication of the land.
83. DDOT reviewed the traffic impact study prepared by Gorove Slade Associates for the project with regard to trip generation and levels of service for the project. In the Supplemental DDOT Report, DDOT noted that it concurs with the measures proposed by the Applicant to improve traffic movement in the area, including the installation of traffic signals at the intersection of M Street and New Jersey Avenue and the intersection of M and Fourth Streets. DDOT and the Applicant agreed to coordinate the implementation of this installation.
84. DDOT indicated that it was previously concerned with the location and design of the loading dock. In response to these concerns, the Applicant submitted its Loading Dock Management Plan, discussed in Finding No. 39. Despite this document, DDOT was still concerned with management and operation of the loading dock during peak hours. In the Supplemental DDOT Report, DDOT indicated that the Applicant's proposed condition

for prohibitions during peak hours, set forth herein at Condition No. 5, adequately addresses this concern.

85. DDOT supports the dedication of the streets and requests that the Declaration of Dedication, Covenants, and Easements be required as a condition to the PUD. Condition No. 8 addresses this issue. In the DDOT Report, DDOT requested that the Applicant continue to work with DDOT, GSA, WASA, and OP to finalize the design for the intersection of Tingey and N Streets at the terminus of New Jersey Avenue to create an intersection that works operationally. In its Post-Hearing Submission in the record at Exhibit 55, the Applicant agreed.
86. DDOT indicated in the DDOT Report that it supports on-street parking and loading zones for the project and indicated its willingness to work with the Applicant to finalize the location of these spaces.
87. DDOT noted in the DDOT Report, the Supplemental DDOT Report and the Second Supplemental DDOT Report its concern with the former Third Street L'Enfant right-of-way not being immediately available as a public street opened to vehicular traffic. In the Second Supplemental DDOT Report and through the testimony of the Director of DDOT at the further hearing, DDOT reported that it had reached an agreement whereby the Applicant would work with DDOT to create a corridor-based organization focusing on transit improvements. DDOT noted that the impact of having the original Third Street L'Enfant right-of-way remain private property closed to vehicular traffic would be effectively cancelled out if a five to ten percent reduction in trips is achieved by light rail, and that such a reduction is a reasonable outcome for transit of the type being discussed. The Applicant agreed to participate in a coordination committee to facilitate dialogue among property owners in the M Street corridor to assist DDOT in making a trolley or other "next generation" transit model a reality. The Commission finds that the Applicant's commitment to DDOT addresses any outstanding issues regarding the potential traffic impacts of the closure of the original Third Street L'Enfant right-of-way.

### **NCPC Report**

88. NCPC raised issues regarding the project in its March 26, 2003, letter from Patricia E. Gallagher, Executive Director, to Anthony E. Costa of the General Services Administration, which was filed with the Zoning Commission. The Zoning Commission requested that NCPC informally comment on the Applications prior to proposed action. The NCPC did not file any informal comments in the record.
89. NCPC's first issue of concern is regarding the continuation of the original Third Street L'Enfant right-of-way as private property closed to vehicular traffic. NCPC requested that the project's design not preclude the future opening of Third Street, when the security environment improves.

90. The Applicant has agreed to construct former Third Street to DDOT standards and specifications and has agreed dedicate the area for street purposes in the future, as indicated in Condition No. 10. If the Council of the District of Columbia accepts the dedication and amends the highway plan to once again include the right-of-way, the Mayor would be able to open the street. Accordingly, the Zoning Commission finds that this issue has been resolved.
91. NCPC's second issue of concern is regarding the lack of retail within the Office Buildings, particularly along M Street. NCPC requested that retail be incorporated into the project at the corner of M Street and New Jersey Avenue.
92. The project incorporates a retail pavilion at the intersection of M Street and New Jersey Avenue as well as additional on-site retail as described in Finding No. 28. In addition, as indicated in Condition No. 7, the Applicant has designed the Office Buildings such that publicly-accessible ground floor retail can be incorporated along M Street at the end of the DOT's tenancy or that of a subsequent Federal agency. Accordingly, the Zoning Commission finds that this issue has been resolved.
93. NCPC's third issue of concern is the fifty-foot (50-foot) setback along M Street. NCPC requested that if the fifty-foot (50-foot) setback is retained, the sidewalk be designed as a pedestrian environment, with trees and benches that will provide an amenity and access to ground floor retail at such time as retail can be developed within the building.
94. The project includes an overall landscape plan that incorporates attractive hardscape and landscape to create a pedestrian-oriented area along M Street and through the Third Street pedestrian corridor. In addition, the Applicant proposes a seasonal retail kiosk program along M Street during appropriate times of the year, as described in Finding No. 28(4). Accordingly, the Zoning Commission finds that this issue has been resolved.
95. NCPC's fourth issue of concern is the loading dock. NCPC requested that the Applicant explore the possibility of reducing the loading area to a single bay and curb cut on Fourth Street.
96. The Applicant has worked extensively with DDOT to create an appropriate loading area for the project. As discussed in Finding No. 39, the Applicant proposes a Loading Dock Management Plan to minimize the impact of the loading area on existing and future streets in the Southeast Federal Center, as well as the pedestrian experience along Fourth Street. As part of that plan, the Applicant will pre-screen its deliveries off-site and maintain the doors of the loading area in the down position at all times, except when trucks are entering or exiting the loading area. Furthermore, certain types of loading are prohibited during the commuter rush hour periods, as indicated in Condition No. 5. Accordingly, the Zoning Commission finds that this issue has been resolved.
97. The formal response of NCPC to the referral of the proposed action from the Zoning Commission is noted in Finding No. 7, above.

**ANC 6D Report and Testimony**

98. By letter dated September 10, 2003, ANC 6D indicated that it voted at its September 8, 2003, duly noticed public meeting to support the PUD with conditions.
99. In its letter, ANC 6D commended the Applicant for excellent community outreach through the planning stage and for maintaining an on-going dialogue with the ANC. In particular, the ANC noted that the Applicant's efforts to create a community-friendly environment in the face of security requirements deserved recognition. The ANC concluded that the project meets the standards for community benefits required of a PUD.
100. The ANC supports the list of required clarifications and provisions listed in the OP report dated September 8, 2003, including the desire to see ground-floor retail along M Street in the future. The ANC differs with OP in that it supports the fifty-foot (50-foot) setback, given the Applicant's proposed landscaping and usage.
101. The ANC recommends that the Zoning Commission require/allow the following from the Applicant prior to final approval of the PUD:
  - a. Flexibility in building design and road use in the PUD that would allow for retail and improved public access to the waterfront if conditions change.
  - b. GSA's pending Environmental Impact Study ("EIS") for the Southeast Federal Center be included in this PUD as additional information to allow for traffic and parking issues to be evaluated in a broader context.
102. Ed Johnson appeared at the hearing on behalf of ANC 6D and testified in support of the project. Mr. Johnson testified that, because the EIS requested in the ANC's letter would not be available for several months, the ANC would agree that the inclusion of a draft of this EIS be made part of the record to allow for a review of the cumulative effects of the project.
103. The Zoning Commission finds that the conditions below, including Conditions Nos. 7 and 10, provide sufficient flexibility for the project such that, if conditions change, the project will incorporate ground floor retail along M Street and provide public access to the waterfront via Third Street.
104. The Zoning Commission further finds that the submission of the draft EIS is not necessary. The traffic report by Gorove Slade Associates filed as Exhibit C to the Supplemental PUD Statement, in the record at Exhibit 12, and the Supplemental Third Street Analysis prepared by Gorove Slade filed as Exhibit C to the Prehearing Submission, in the record at Exhibits 14 and 14a, analyze traffic and parking in the larger context and provide more than a sufficient basis on which the Zoning Commission can base its final evaluation of the traffic impact of this project in relation to other proposals.

105. By letter dated November 24, 2003, ANC 6D advised the Zoning Commission that it had been kept abreast of the work by the Applicant, OP, and DDOT to address the Commission's concerns, that the Applicant's responses to those issues fully addressed any possible community concerns and that the project meets and often exceeds the standards for community benefits required of a PUD. In light of the general consensus reached, the Zoning Commission agrees.
106. The Zoning Commission afforded the views of ANC 6D the "great weight" to which they are entitled.

#### **ANC 6B Report**

107. By letter dated August 19, 2003, ANC 6B indicated that it voted at its June 10, 2003, regularly-scheduled meeting to support, with conditions, the Applications. ANC 6B requested party status but did not participate at the hearing.
108. In its letter, the ANC commended the Applicant for its efforts to work with the community on the project. The ANC noted that the community's concerns have been addressed in both the design of the building and the area around the building and in the package of public benefits provided. In the opinion of the ANC, the design of the building mitigates (to the extent possible) the sense of a barrier between the neighborhoods to the north and south of M Street. Landscaping and the use of open space, including on the corner of M Street and New Jersey Avenue, have helped in mitigating this problem. In the ANC's view, the encouragement of street retail along M Street is a key to creating a vibrant community and is a creative way to overcome the security requirements of the project. The ANC noted that it appreciates that the building is designed for future retail at street level if the security requirements change in the future.
109. The ANC recommended the following conditions to the PUD:
  - a. Include a requirement for a mix of retail and impose restrictions on certain types of retail (specifically, fast food) that are similar to those contained in the 8<sup>th</sup> Street Overlay District.
  - b. Subject the private open space along M Street to public space regulations in order to ensure community input into the use of that area.
  - c. Give priority to those people in the immediate area, especially current residents of the Capper/Carrollsborg area, for local employment opportunities.
110. With respect to the requested conditions in Finding No. 109, the Zoning Commission finds as follows:
  - a. The Zoning Commission finds that a limitation on the types of retail for the on-site retail is not appropriate or necessary in this case. There are no similar

limitations that apply to retail uses as part of the proposed Southeast Federal Center Overlay. Furthermore, the base zoning of the 8<sup>th</sup> Street Overlay District is C-2, not C-3-C, and serves a different community of users.

- b. The Zoning Commission does not have jurisdiction to subject private space to public space regulations. Furthermore, the private open space along M Street must be used and constructed in accordance with this Order, which will ensure that the public input thus far will be incorporated into that design.
  - c. The Zoning Commission finds that the Applicant has agreed to this condition, as set forth herein at Conditions Nos. 22 and 23.
111. The Zoning Commission afforded the views of ANC 6B the "great weight" to which they are entitled.

#### **Letters and Testimony in Support**

112. Stephen M. Green, Office of the Deputy Mayor for Planning and Economic Development, appeared at the hearing and testified on behalf of the Mayor in support of the project. His letter can be found in the record at Exhibit 48.
113. Robert Siegel, a major property owner in the area and the Single Member District Representative for ANC 6D07, the Single Member District within which the project is located, testified in support of the project.
114. Alice Patterson, the Community Relations Director for Clark Construction, and Kendrick Evan, an LSDBE participant, testified in support of the project and as to their success in working with the Applicant on LSDBE programs in the past.
115. Diana Dacalu from the Natural Resources Defense Council testified in support of the program and requested that the Zoning Commission consider a requirement for low-impact development and stormwater management.
116. Congresswoman Eleanor Holmes Norton filed a letter in support of the project, in the record at Exhibit 27. Congresswoman Norton noted that she has been a major supporter of the project from its inception and cited the importance of retaining the DOT Headquarters building in the District. In addition to the economic benefits of the project, she commended the many amenities that will be associated with the project, including public open space, the on-site retail and the contribution to the Canal Blocks Park.
117. Councilmember Sharon Ambrose filed a letter in support of the project, in the record at Exhibit 29. Councilmember Ambrose offered her full support for the project and noted the positive and lasting impact that it will have on the near Southeast community. Councilmember Ambrose recognized the importance of this development as a catalyst for the redevelopment of the Southeast Federal Center.

118. Numerous community groups filed letters of support, identifying the Southwest Plaza and the community programming that will take place therein as major reasons for their support. These letters can be found in the record at Exhibit 38.
119. The record includes numerous other letters in support of the project, citing those reasons already identified.

#### **Letters and Testimony in Opposition**

120. No person or party appeared in opposition to the Applications.
121. The record does not include any letter in opposition to the project.

#### **CONCLUSIONS OF LAW**

1. Pursuant to the Zoning Regulations, the PUD process is designed to encourage high-quality development that provides public benefits. 11 DCMR § 2400.1. The overall goal of the PUD process is to permit flexibility of development and other incentives, provided that the PUD project "offers a commendable number or quality of public benefits, and that it protects and advances the public health, safety, welfare, and convenience." 11 DCMR § 2400.2.
2. Under the PUD process of the Zoning Regulations, the Zoning Commission has the authority to consider this application as a consolidated PUD. 11 DCMR § 2402.3. The Commission may impose development conditions, guidelines, and standards that may exceed or be less than the matter-of-right standards identified for height, FAR, lot occupancy, parking, loading, yards, or courts. 11 DCMR § 2400.5. The Zoning Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the BZA. 11 DCMR § 2405.7.
3. The development of this project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage well planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
4. The proposed PUD meets the minimum area requirements of § 2401.1 of the Zoning Regulations and the contiguity requirement of § 2401.3.
5. The PUD is within the applicable height and bulk standards of the Zoning Regulations, and the height and density will not have a significant adverse effect on any nearby properties. The office and retail uses proposed for this project are appropriate on the Site and will serve as a catalyst for the revitalization of the Southeast Federal Center. The impact of the project on the surrounding area and on the operation of city services and facilities is not unacceptable. Accordingly, the Applications should be approved.

6. The Applications can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the PUD will be mitigated.
7. The east and west Office Buildings are two separate buildings and each building has its own measuring point pursuant to the Zoning Regulations and the Height Act of 1910. Therefore, the height of each building must be determined and measured separately.
8. Pursuant to 11 DCMR § 2405.3, the Applications seek flexibility from the requirement that compact car spaces be in groups of at least five, the roof structure setbacks, and the availability and accessibility of parking space for the on-site retail. The Applications seek development incentives for the density and height of the project as permitted in the CR District. The project benefits and amenities, identified in Finding No. 43, are sufficient trade-off for the flexibility and development incentives requested.
9. Approval of the Applications is appropriate because the project is consistent with the proposed future character of the area.
10. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.
11. The Commission is required by D.C. Official Code § 1-309.10(d) (2001) to give “great weight” to the affected ANCs' recommendations. The Commission has carefully considered ANC 6B's report and ANC 6D's report and testimony. The Commission has addressed, through the conditions imposed in this Order, the ANCs' specific issues and concerns.
12. The approval of the Applications will promote the orderly development of the Site in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Zoning Map of the District of Columbia.
13. The rezoning of the Site to C-3-C for the PUD, with a base zone of CR, is consistent with the purposes and objectives of zoning as set forth in the Zoning Enabling Act, D.C. Official Code § 6-641.01 *et seq.* (2001).
14. Notice was provided in accordance with the Zoning Regulations and applicable case law.
15. The Applications are subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

### **DECISION**

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia orders **APPROVAL** of the Applications for

consolidated review of a Planned Unit Development and for a Zoning Map amendment from unzoned to C-3-C for the PUD, with a base zone of CR. This approval is subject to the following guidelines, conditions and standards:

1. The PUD shall be developed substantially in accordance with the plans prepared by DMJM Design and Michael Graves Architect, P.C., dated August 22, 2003, in the record at Exhibits 33 and 33a, as supplemented by the drawings dated September 18, 2003, in the record at Exhibit 43, (collectively, the "Plans") as modified by the guidelines, conditions, and standards herein.
2. The PUD shall be two office buildings, consisting together of approximately 1,454,008 square feet of gross floor area (the "Office Buildings"), with an approximate zoning density of 3.7 FAR. The PUD shall also include on-site retail of at least 13,900 square feet of gross floor area, as described in detail in Condition No. 6. The total project, including the on-Site retail, shall have an approximate density of 3.8 FAR.
3. The west Office Building shall have an approximate height of 121 feet to the top of the parapet and a maximum height of 130 feet to the top of the atrium, as measured in accordance with the Zoning Regulations. The east Office Building shall have an approximate height of 109 feet to the top of the parapet and a maximum height of 118 feet to the top of the atrium, as measured in accordance with the Zoning Regulations. The project may include a roof structure with a height not to exceed eighteen feet, six inches, with setbacks as indicated in the Plans. The project shall comply with the Height Act of 1910. The Applicant shall have the flexibility to modify the atrium to comply with the Height Act of 1910.
4. The project shall include a minimum of 936 parking spaces and fifty (50) bicycle parking spaces in the below-grade parking garage. The Applicant shall have flexibility to arrange compact cars in groups of less than five contiguous spaces with access from the same aisle.
5. The project shall include three twelve-foot by fifty-five-foot loading berths and three twelve-foot by thirty-foot service/delivery spaces as shown on the Plans. Access to the loading facilities for trucks that are larger than thirty feet is prohibited between the hours of 7:00-9:00 AM and 4:30-6:30 PM on weekdays, excluding legal holidays. Access to loading facilities is permitted at all times for trucks that are thirty feet or smaller. This restriction shall not apply to the loading facility until nine months after the issuance of the principal certificate of occupancy for the building, or during such move-in or move-out periods as may be required during building renovations or re-tenanting of the buildings. The Applicant shall implement the Loading Dock Management Plan as referenced in Finding No. 39.

6. The Applicant shall provide retail as follows:
  - a. Adaptive re-use of Building 170 with a minimum of 8,000 square feet of gross floor area at ground level, with the possibility of incorporating approximately an additional 10,500 square feet of gross floor area within Building 170 on the upper levels;
  - b. Construction of the Southwest Plaza retail building containing approximately 3,815 square feet of gross floor area;
  - c. Construction of a retail pavilion at the corner at New Jersey Avenue and M Street as shown on the Plans, containing approximately 1,755 square feet of gross floor area;
  - d. Construction of a retail kiosk at the corner of Fourth and M Streets, as shown on the Plans, containing approximately 330 square feet of gross floor area; and
  - e. The Applicant shall implement a seasonal retail kiosk program in accordance with the concepts identified at Exhibit 41 in the record.
7. The Applicant shall provide a minimum of 24,000 square feet of gross floor area for publicly-accessible ground floor retail along M Street in the Office Buildings at such time as the DOT or any subsequent Federal tenant no longer occupies the Office Buildings. The Applicant may provide additional retail in the Office Buildings at any time.
8. The Applicant shall dedicate in fee to the District of Columbia portions of New Jersey Avenue, Fourth Street and Tingey Street (the "Dedicated Streets"), as indicated in the Street Re-Opening file in the Office of the Surveyor, known as S.O. 03-1420. The Applicant shall record a covenant acceptable to DDOT and the Office of Corporation Counsel evidencing the dedication and grant of easements for the Dedicated Streets. This covenant must be filed prior to the Applicant's receiving a certificate of occupancy for either of the Office Buildings.
9. The Applicant shall design and construct the Dedicated Streets in accordance with the DDOT standards and specifications.
10. The original Third Street L'Enfant right-of-way, between M and Tingey Streets ("Third Street"), is part of the Site and therefore will remain private property. The owner of the property may restrict the use by or disallow vehicles from traveling along this private thoroughfare, but shall permit travel by emergency vehicles. Third Street shall be improved by the Applicant in accordance with the Plans to serve as an open-air pedestrian thoroughfare and to provide access for emergency vehicles. The Applicant shall construct Third Street to DDOT standards and specifications for future conversion to a public roadway. At such time as the DOT or a subsequent Federal tenant no longer occupies the Office Buildings, the Applicant shall dedicate Third Street to the District. The dedication shall include at least the surface of Third Street and such subsurface area

as is needed for the installation of water and sewer lines and other public infrastructure. The Applicant shall improve Third Street for use as a public roadway in accordance with DDOT standards and specifications. In the event that the Council of the District of Columbia does not accept the dedication, the Applicant shall be relieved of the requirement under this Order to dedicate Third Street as a public street.

11. The Applicant shall construct and maintain the Site Animation and Activation Plan in accordance with the concept plan submitted as Exhibit E in the Prehearing Submission, in the record at Exhibits 14 and 14a.
12. The Applicant shall expend \$75,000 towards a Comprehensive Signage Program, as described in the record at Exhibit 41, that will include the Canal Blocks Park and the Hope VI community north of the Site. This program will be implemented in coordination with DDOT.
13. Prior to the issuance of a certificate of occupancy for either of the Office Buildings, the Applicant shall contribute \$2,500,000 to the Canal Park Development Association for the development of Canal Blocks Park.
14. Prior to the issuance of a certificate of occupancy for either of the Office Buildings, the Applicant shall contribute \$1.5 million to the District of Columbia. The payment shall be accompanied by a written statement indicating that the payment is made in compliance with this Order and that the District may not use the money for any purpose other than for construction and programming of the Anacostia Riverwalk and Trail located within ANC 6D. The Applicant shall advise the Commission if the District indicates that it is unwilling or unable to use the money for this purpose.
15. The Project shall include the creation of the Southwest Plaza, including approximately 35,000 square feet of landscaped, publicly-accessible open space. This plaza shall be preserved in perpetuity as publicly-accessible open space, unless this Condition is modified by the Zoning Commission.
16. The Applicant shall include landscaping improvements for the project as indicated in the Plans. The Applicant or its successors shall maintain all landscaping improvements.
17. Landscaping and security improvements in the public space along M Street shall be in accordance with the Plans, as approved by the Public Space Division of DDOT. The Applicant or its successors shall maintain all landscaping improvements in the public space.
18. The Applicant shall implement a Transportation Management Plan as set forth in the Applicant's Traffic Impact Study dated March 14, 2003, attached as Exhibit C to the Supplemental PUD Statement filed with the Commission on March 19, 2003, and found in the record at Exhibit 12.

19. The Applicant shall work with the DDOT to create a corridor-based organization focusing on transit improvements. This organization will support the evaluation and implementation of a means for property owners on the M Street corridor to assist in financing a portion of the capital and operating costs for the "next generation" of transit on the M Street corridor. This model may be consistent with the one used to finance construction of the New York Avenue Metrorail Station. The Applicant shall participate in a coordination committee to facilitate dialogue among property owners along the M Street corridor to assist the DDOT in making a trolley or other "next generation" transit model a reality.
20. The Applicant shall work with the DDOT to install a new traffic signal at the intersection of New Jersey Avenue and M Street and to install a new traffic signal at the intersection of Fourth and M Streets. The Applicant shall bear the cost of the installation of these two traffic signals.
21. The Applicant shall work with DDOT, GSA, WASA, and OP to finalize the design of the intersection of Tingey and N Streets at the terminus of New Jersey Avenue to create an operational and safe intersection.
22. The Applicant shall abide by the terms of the executed Memorandum of Understanding with the D.C. Local Business Opportunity Commission in order to achieve the target goal of thirty-five percent participation by local, small, and disadvantaged businesses in the contracted development costs in connection with the design, development, construction, maintenance, and security to be created as a result of the PUD project. In addition, the Applicant shall give preference in hiring to residents of ANC 6B and ANC 6D. The Applicant shall provide information regarding available jobs created by the project to ANC 6B and ANC 6D, who will be responsible for disseminating this information to the surrounding communities. After completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the D.C. Local Business Opportunity Commission regarding compliance with this agreement.
23. The Applicant shall abide by the terms of the executed First Source Employment Agreement with the Department of Employment Services in order to achieve the goal of utilizing District of Columbia residents for at least fifty-one percent of the new jobs created by the PUD project. In addition, the Applicant shall give preference in hiring to residents of ANC 6B and ANC 6D. The Applicant shall provide information regarding available jobs created by the project to ANC 6B and ANC 6D, who will be responsible for disseminating this information to the surrounding communities. After completion of construction of the project, the Applicant shall provide a written status report to the Zoning Commission and the Department of Employment Services regarding compliance with this agreement.
24. The Applicant shall have flexibility with the design of the PUD in the following areas:

- a. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atrium, mechanical rooms, elevators, escalators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;
  - b. To make minor modifications to the location and design of the Southwest Plaza retail building, the retail building at the corner of New Jersey Avenue and M Street, and the retail kiosk at the corner of Fourth and M Streets, provided that the structures and their locations are generally consistent with those shown on the Plans;
  - c. To vary the final selection of the exterior materials within the color ranges and material types as proposed, based on availability at the time of construction;
  - d. To make minor refinements to exterior materials, details, and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylights, architectural embellishments and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or any other applicable approvals; and
  - e. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, as long as the number of parking spaces does not decrease below a minimum of 936 spaces.
25. No building permit shall be issued for this PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant, the owners (if other than the Applicant), and the District of Columbia, that is satisfactory to the Office of the Corporation Counsel and the Zoning Division of the Department of Consumer and Regulatory Affairs (DCRA). Such covenant shall bind the Applicant and all successors in title to construct on and use this property in accordance with this Order or amendment thereof by the Zoning Commission.
26. The Office of Zoning shall not release the record of this case to the Zoning Division of DCRA until the Applicant has filed a copy of the covenant in the records of the Zoning Commission.
27. The PUD approved by the Zoning Commission shall be valid for a period of two years from the effective date of this Order. Within such time, an application must be filed for a building permit as specified in 11 DCMR § 2409.1. Construction shall begin within three years of the effective date of this Order.
28. Pursuant to § 267 of the Human Rights Act of 1977, D.C. Official Code § 2-1402.67 (2001), the Applicant is required to comply fully with the provisions of the Act, and this order is conditioned upon full compliance with those provisions. Nothing in this order

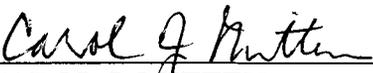
shall be understood to require the Zoning Division of DCRA to approve permits if the Applicant fails to comply with any provision of the Human Rights Act.

29. In the event that the PUD expires because 1) the PUD covenant is not recorded in the land records of the District of Columbia, 2) the time periods set forth in Condition No. 27 are not met, or 3) no extension for the time periods set forth in Condition No. 27 is requested or approved, then the Site shall be zoned CR.

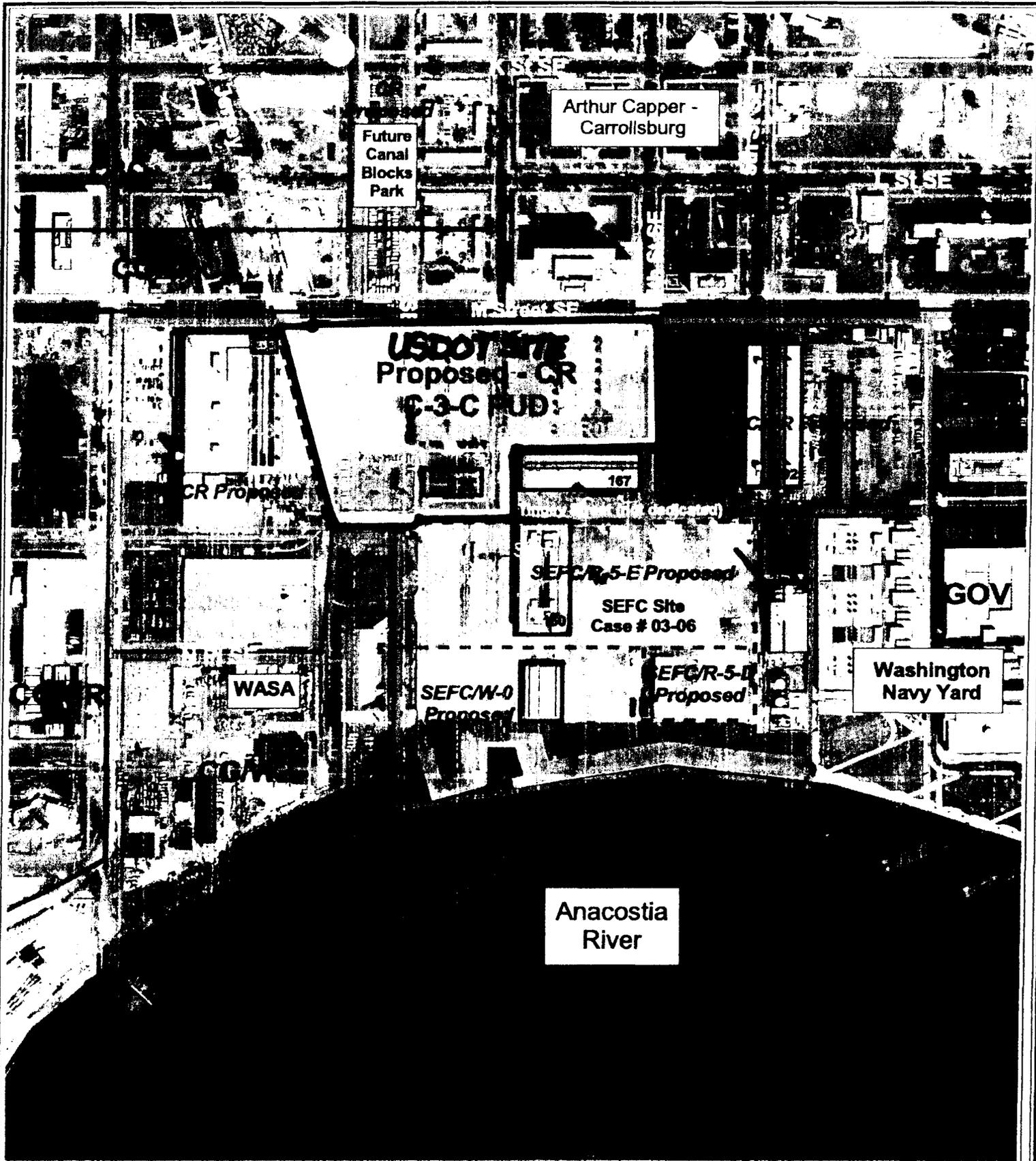
Vote of the Zoning Commission taken at its public meeting held on December 8, 2003: 4-0-1 (Carol J. Mitten, Anthony M. Hood, John G. Parsons, and Peter G. May in favor, James H. Hannaham, not present, not voting)

The order was adopted by the Zoning Commission at its public meeting on January 12, 2004, by a vote of 4-0-1 (Carol J. Mitten, Anthony M. Hood, John G. Parsons, and Peter G. May in favor, James H. Hannaham, not present, not voting).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*; that is on APR 16 2004.

  
\_\_\_\_\_  
CAROL J. MITTEN  
Chairman  
Zoning Commission

  
\_\_\_\_\_  
JERRILY R. KRESS, FAIA  
Director  
Office of Zoning



**Feature Key**

-  Zoning Boundaries
-  SEFC Site
-  Historic Structure

Ortho-Photography was taken in 2002

Zoning Commission  
 Case No. #03-05  
 US DEPARTMENT OF TRANSPORTATION HQ

  
 DC Office of Planning  
 September 8, 2003



Attachment II