

BEFORE THE  
DISTRICT OF COLUMBIA ZONING COMMISSION

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BOSTON PROPERTIES, INC. *ET AL.*, CONSOLIDATED  
PUD AND RELATED MAP AMENDMENT FOR SQUARE 54

Z.C. No. 06-27

**MOTION TO POSTPONE CASE PENDING  
DCEPA ENVIRONMENTAL REVIEW**

The Foggy Bottom Association (“FBA” or the “Association”), an applicant for party in opposition status in this case, hereby moves the Commission to enter an order deferring consideration of this case requesting approval of a Planned Unit Development (“PUD”) on Square 54 until such time as Boston Properties, Inc., KSI Services, Inc. and The George Washington University (“GWU” or the University”) (collectively the “Applicants”) have satisfied the requirements of the District of Columbia Environmental Policy Act of 1989, D.C. Code § 8-109.01 *et seq.* (“DCEPA” or the “Act”).

Specifically, the Association seeks postponement of this case until after (a) the Applicants have submitted an Environmental Impact Screening Form (“EISF”) or forms addressing this case and (b) the environmental review required under the DCEPA has occurred. In support of this motion, the Association is filing an expert affidavit from Scott D. Heiser, P.E. (“Heiser Aff.”), which attests to the need for environmental review before zoning relief is granted.<sup>1</sup>

In making this motion, the Association acknowledges that the Commission denied similar motions in Case Nos. 06-11 and 06-12, which involved the GWU Campus Plan proposal and PUD. There are several reasons why the Association is making this motion notwithstanding that ruling. First, since the Association’s core argument is that the DCEPA requires environmental

<sup>1</sup> Mr. Heiser’s affidavit was prepared for and filed in a recent court proceeding, in which the case concluded at an early stage without the issues in his affidavit being addressed to the parties or the court.

ZONING COMMISSION  
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EXHIBIT NO. 22

consideration of the pending GWU applications on a consolidated basis, the Association is obliged to preserve its legal position by making this motion in the present case as well as the previous cases. Second, even if the present case were not part of a larger group of applications, the proposed Square 54 project is of sufficient magnitude to trigger DCEPA review on its own. Third, and without conceding the point, even if the Commission should view a campus plan or order as exempt from the DCEPA on the theory that it is not a “license,” “permit,” “entitlement” or “permission to act” that would trigger DCEPA review, the same cannot be said of a PUD application seeking regulatory approval to build an 870,000 square-foot project on Square 54, as is proposed here. For these reasons, the Association submits that DCEPA review is required, regardless of whether this application is considered as part of the current set of GWU applications or as an independent application.

#### Overview.

This case is one of several recently filed cases that could profoundly shape the Foggy Bottom neighborhood over the next 20 years. GWU is here seeking approval of a PUD unit to develop Square 54, on Washington Circle, the former site of the GWU Hospital. Also pending are applications for approval of a Campus Plan for George Washington University for 2006-2025 (Case No. 06-11), an application for approval of a first-stage planned unit development (“PUD”) involving the GWU campus (Case No. 06-12), and an application for approval of a PUD involving the School Without Walls in the 2100 block of F Street, N.W. (Case No. 06- 17).

These projects are all extensive in nature. The Square 54 project itself is sizeable, proposing 870,000 square feet of gross floor area with a resulting Floor Area Ratio (“FAR”) of approximately 7.5. This includes approximately 454,000 square feet of office space, 84,000 square feet of retail space, and 333 dwelling units. Overall Mr. Heiser estimates that GWU proposes to

develop 18 sites within the boundaries of the GWU Campus, leading to an increase of 1,732,590 square feet of gross floor area. Nearly half of this new development is represented by the Square 54 PUD application. In addition, GWU is proposing to add 1027 parking spaces, including Squares 54 and 80 development sites. Heiser Aff. ¶ 8.

There can be no doubt that these projects, individually and certainly collectively, will add significant new development to the Foggy Bottom and West End neighborhoods, as well as additional congestion, traffic, noise and related impacts on a residential neighborhoods. This project, as well as the other proposed developments, will have a negative impact on the Foggy Bottom Association and its members, who live close to the site and will be negatively affected by the proposed development. Heiser Aff. ¶ 17.

Because of the significant environmental impact that this project (and others) can have on Foggy Bottom and the West End neighborhood, a proper consideration of environmental factors is required under the Act. In the present context, this means two things.

First, the Applicants and the District agencies that will consider this application (and others) must comply with DCEPA before the Commission can proceed with any of these cases.

Second, given the magnitude of the changes being proposed and the obvious impact that those changes will have on the environment, a comprehensive environmental review of all projects is required. Allowing these matters to proceed on an individual basis without a consolidated environmental review is the sort of “piecemealing” or “segmentation” that is unlawful under the National Environmental Policy Act (“NEPA”), upon which the DCEPA is based.

Piecemealing a large project into a series of smaller projects is not permitted because it allows an applicant to understate the environmental effects of a large project that may have significant environmental consequences by pretending that one is dealing solely with a series of small projects

that, taken individually, may not do as much damage to the environment. In the alternative, even if one were to disagree that GWU is piecemealing its development plans, a proper review of the Square 54 proposal would be still be required.

Absent favorable action from the Commission, the environmental consequences of the GWU applications, whether taken collectively or individually, will not be considered until the building permit stage, by which point it will be too late to consider action to mitigate any negative environmental effects. Such a result is inconsistent with the text of the DCEPA and the implementing regulations, as we now explain.

#### The DCEPA and Implementing Regulations.

Under D.C. Code § 8-109.03(a), any time that the Mayor, a District agency or a “person proposes or approves a major action that is likely to have substantial negative impact on the environment, if implemented, the Mayor, board, commission, or authority shall prepare or cause to be prepared, and transmit in accordance with subsection (b) of this section, a detailed EIS [Environmental Impact Statement] at least 60 days prior to the implementation of the proposed major action,” unless the functional equivalent of an EIS has been performed. (*See* 20 DCMR § 7202.1). The DCEPA applies to both actions undertaken by the District government itself and to actions undertaken by a private party, as is the situation here. D.C. Code § 8-109.01.

A review of environmental factors is required in order to “promote the health, safety and welfare of District of Columbia (‘District’) residents, to afford the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and private initiated actions be examined before implementation,” and to require District agencies to “substitute or require an applicant to substitute an alternative action or mitigating measures for a proposed action, if the alternative action or mitigating mea-

asures will accomplish the same purposes as the proposed action with minimized or no adverse environmental effects.” D.C. Code § 8-109.01.

It is apparent from the Act that the requisite environmental review is needed on a comprehensive basis, so as to permit consideration of the “cumulative” effects of the proposal under review. Indeed, an EIS is required to consider such factors as the “cumulative impact of the major action when considered in conjunction with other proposed actions,” D.C. Code § 8-109.03(8), as well as any the relationship of the proposed major action to the Comprehensive Plan and Zoning Regulations, the “adverse environmental effect that can be avoided if the proposed major action is implemented,” “[a]lternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives,” any “irreversible and irretrievable commitment of resources involved in the implementation of the proposed major action,” mitigation measures, and the “environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects.” D.C. Code § 8-109.03(a)(2), (3), (4), (5), (6), (9).

Also, if a major action “involves the grant or issuance to an applicant of a lease, permit, license, certificate, or other entitlement by a District agency,” the agency “may require an applicant to prepare an EIS,” and no “lease, permit, license, or other entitlement shall be issued, unless the applicant required to prepare an EIS has completed the EIS” and paid the requisite fee. 8 D.C. Code § 8-109.(c)(3)(B).

The rules implementing the DCEPA (20 DCMR Chapter 72) confirm that environmental review must occur at the start of the regulatory process, not at the end. This is consistent with the federal NEPA and is the only way that government agencies can fulfill the DCEPA’s man-

date to consider environmental factors at a time when decisions have not been made, when alternatives are still open, and when mitigation of negative effects may be considered. Indeed, under 20 DCMR § 7200.1, the law is clear that “[b]efore an agency, board, commission or authority of the District of Columbia government shall approve any major action, or issue any lease, permit, license, certificate, or other entitlement or permission to act for a proposed major action, the environmental impact of an action must be adequately considered and reviewed by the District government, as required in these regulations.”

When an application to a District agency proposes a major action, the DCEPA contemplates various procedural steps that must be undertaken, including consideration of the application under a timetable that permits full consideration of the environmental review documents, as well as a public hearing if requested by citizens living in the affected area. D.C. Code §§ 8-109.03(b). As we now demonstrate, the requirements for environmental review under the DCEPA have been met and must be satisfied here before GWU’s applications may be considered on their merits.

#### Application of the DCEPA and its Regulations Here.

The Square 54 PUD application, no less than GWU’s other pending applications, plainly contemplates a “major action” subject to the requirements of the DCEPA. That Act defines an “action” as “a project or activity that involves the issuance of a lease, permit, license, certificate, other entitlement, or permission to act by an agency of the District government.” D.C. Code § 8-109.02(1)(B). A “major action” is “any action that costs over \$1,000,000 and that may have a significant impact on the environment,” adjusted according to the Consumer Price Index and with an exception not applicable here. D.C. Code § 8-109.02(2).

A PUD order for an 870,000 square-foot project plainly constitutes a “permit, license,

certificate, other entitlement or permission to act.” Simply put, the Square 54 PUD cannot be built unless this Commission issues an order approving the project. The same is true of the other pending GWU cases as well. As Mr. Heiser testifies in his affidavit, the development cost for the campus plan and for the individual sites “will far exceed \$1 million in costs” and “in fact will likely exceed \$100 million.” Heiser Aff. ¶ 8.

The pertinent regulations also state that if “any” of 16 possible environmental effects may be associated with a given project, that fact would indicate that compliance with DCEPA is required. 11 DCMR § 7201.2. Mr. Heiser’s analysis indicated a number of those factors are present, including the possibilities of:

- Significant growth or concentration of population;
- Disruption or division of the physical arrangement of an existing community,
- A violation of an ambient air quality standard, a significant contribution to an existing or projected air quality violation;
- A significant adverse change in the existing level of noise in the vicinity of the action; and
- A cumulative impact caused by a pending action and other “actions proposed concurrently by the applicant.”

11 DCMR § 7200.1(e), (i), (k), (n), (p); Heiser Aff. ¶ 9.

Because the threshold criteria for DCEPA review have been met here (and in the other three cases), the Applicants are obliged to prepare an Environmental Impact Screening Form (“EISF”), which shall be reviewed by pertinent District agencies and which may lead to the preparation of an Environmental Impact Statement (“EIS”) that would assist the Commission in evaluating the environmental consequences of GWU’s proposals, both singly and collectively. 20 DCMR § 7201.1. As Mr. Heiser’s affidavit indicates (at ¶ 10), there are several questions in the EISF form that are relevant to this case individually, as well as GWU’s applications overall:

- Whether more than 50 new parking spaces will be provided;
- Whether there will be shopping and/or commercial facilities having 50,000 or more square feet of gross floor space; and

Whether the project will have entertainment and/or recreational facilities, not limited to theaters, auditoriums, sports stadiums, bowling alleys, etc. that have a capacity to accommodate more than 400 people at a time.

Mr. Heiser adds that an Environmental Assessment prepared in connection with the GWU Hospital Raze Project in May 2003 (directly across the street from Square 54) addressed environmental circumstances, which were found not to be substantial since the project involved moving a hospital across the street to an empty lot. However, the Department of Health noted that EPA has designated this region as a “severe non-attainment area” for ozone and that “28 percent of the volatile organic compounds (VOCs) that form ozone come from mobile sources,” which were identified as coming from “commuting traffic” and “from trips throughout the day, such as business travel or truck deliveries.” Vehicular traffic is thus highly relevant to assessing environmental impacts in the Foggy Bottom neighborhood. Heiser Aff. ¶ 12.<sup>2</sup>

There can thus be no doubt that the environmental consequences of GWU’s applications must be considered by District agencies. The remaining questions are: When is this review to be undertaken? By whom? What is the scope of the review?

#### Timing issues.

The DCEPA and its regulations (quoted above) make it clear that the environmental review must be conducted before *any* major action may be approved by *any* District agency. Because that review has not yet been performed, the Commission should postpone hearing this case and the other three until the review has been done. The need to consider environmental issues

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<sup>2</sup> In 1999 proceedings concerning the building permit for the new hospital, the Department of Health deemed it “most likely” that a new hospital being constructed to replace the old one would “not exceed” applicable air standards, but added that there “is essentially no remaining air resource margin in the 23<sup>rd</sup> Street corridor just south of Washington Circle,” and that area “will experience peak CO concentrations that are just below the applicable health standard.” The Department of Health’s finding to that effect underlay the District of Columbia Court of Appeals decision not to address legal questions about the timing and procedure to be used under the DCEPA. *Foggy Bottom Association v. District of Columbia Board of Zoning Adjustment*, 791 A.2d 64 (D.C. 2002). Those questions are squarely presented here.



sooner rather than later makes perfect sense if the agency is to achieve the overriding statutory goal as “afford[ing] the fullest possible preservation and protection of the environment through a requirement that the environmental impact of proposed District government and private initiated actions be examined *before implementation*,” D.C. Code § 8-109.01 (emphasis added), because consideration “before implementation” permits consideration of alternatives and mitigation. D.C. Code § 8-109.03(a)(2), (3), (4), (5), (6), (9).

Consideration of the environmental consequences sooner rather than later is just common sense. For example, as Mr. Heiser points out, GWU is proposing to add 1027 new parking spaces in a very concentrated area. What are the environmental consequences of that decision? The Commission’s PUD regulations require consideration of the negative impacts of any PUD proposal, and the DCEPA is intended to arm the Commission with data that are necessary for the Commission to do its job.

Questions about the timing of DCEPA review were raised in the GWU Hospital special exception case. The BZA, which granted the special exception there, did not address the arguments made here about how the DCEPA requires the consideration of environmental issues sooner rather than later. Instead, the BZA satisfied itself with the fact that “the necessary environmental review will occur as part of the building review process if the Board grant[s] the [special exception],” *i.e.*, “as part of the permitting process for the construction of the new hospital.” BZA Order No. 16389 at p. 2, ¶ 8.

That ruling is plainly incorrect. It is at odds with the text of the Act, the implementing regulations and logic. The purpose of an environmental review is to inform agency decisionmaking at a time when there is possible for an agency to do something about a problem, to consider alternatives, or to order mitigating action. The building permit stage is the last step

in the regulatory process, however, and not one that is designed to permit consideration of environmental actions or to order revisions to prior agency decisions.

Here, for example, suppose that an EIS at the building permit stage were to show that adding more than 1000 parking spaces and increasing traffic along the line that GWU has proposed may produce an unacceptable level of air pollution to the Foggy Bottom area. The Zoning Commission could do nothing at that point. Would the Department of Consumer and Regulatory Affairs (“DCRA”) be justified at that stage in refusing to grant a building permit on that basis? Could DCRA order an applicant to make changes that had not been approved by the Commission in either a campus plan order, a separate special exception order or a PUD order? Making environmental issues the last thing considered, rather than the first, makes the environmental review process an irrelevant waste of time.

#### The Agency to Perform the Review.

The regulations specifically contemplate that there may be situations where multiple reviews of a project are needed. To address that point, the regulations contemplate the existence of a “lead agency” that shall be “responsible for the coordination of the preparation and review of the EISF, and the EIS if necessary.” 20 DCMR § 7203.1. “For any major action proposed by an applicant that would require any license, permit, certificate of occupancy or other approval from a District Agency prior to implementation, the District agency responsible for the first District government authorization of the project shall be the lead agency.” 20 DCMR § 7203.1(a). Here, that would mean the Zoning Commission.

Who is the lead agency in connection with a zoning case? This issue arose, but was not definitively resolved in the GWU Hospital case. There, the BZA ruled that the Director of DCRA was the “lead agency,” relying on Mayor’s Order 92-151, 39 D.C. Reg. 9525 (18 Decem-

ber 1992). BZA Order No. 16389, *supra*, at p. 2, ¶ 8. The BZA erred in several respects, however. First, DCRA was not the “first” agency to issue an “authorization” in that case; the BZA was. Second, the Mayor’s Order did not do what the BZA claimed. Instead, it delegated to the Director of DCRA the “authority vested in the Mayor” under the Act to do various things, including the authority to issue regulations, to require an applicant to prepare an EIS, and to “[d]esignate a lead agency to prepare, or cause to be prepared, an EIS or supplemental EIS, pursuant to section 8(a) of the Act.” Mayor’s Order 92-151, paragraph (d). The Mayor’s Order thus gave DCRA the power to *name* a lead agency, which is not the same as *naming* DCRA as lead agency, yet the BZA conflated the two. Third (and less significantly), at the time that the *GWU Hospital* case was decided, Mayor’s Order 92-151 had been superseded by Mayor’s Order 98-86, 45 D.C. Reg. 3980 (19 June 1998), which “delegated all authority vested in the Mayor to implement the Act” to the Director of the Department of Health (“DOH”). Thus, the Department of Health holds the Mayor’s delegated power to name a lead agency in a given case.

There is, however, a tension in the regulations themselves, as the Court of Appeals noted in the *Hospital* case, but did not resolve. 791 A.2d at 74 n.22. Under 20 DCMR § 7299.1, a “lead agency” is defined as “the District government agency designated by the mayor to have primary responsibility for coordinating the preparation of an Environmental Impact Statement.” That has prompted the argument that the Department of Health (succeeding DCRA) is the “lead agency” in all instances, even if it is not the “first” agency to issue an “authorization.”

There are thus potentially two “lead agencies” here. There is strong textual support for a conclusion that the Commission, as the “first” agency to issue an “authorization” is the lead agency here. That is the most logical reading of section 7203, which begins the environmental review process where it belongs, at the beginning of a project. Moreover, section 7203 expressly

contemplates that the “first” agency to consider a matter may not have technical background in environmental issues, so the regulations require a “first” agency other than DCRA (now presumably DOH) to “submit any EISF send [sic] EIS to the [DOH], as review agency, and shall consider the recommendations of [DOH] in determining whether to request additional information on environmental issues” and “in decisions concerning the major action.” 20 DCMR § 7203.2. DOH shall submit its recommendations about the need for an EIS to the “first” agency within 14 days of receipt of the EISF and submit any recommendations about any EIS to the lead agency by the end of the comment period on the EIS. 20 DCMR § 7203.3. The “first” agency, as “lead agency” is authorized to request additional information necessary to evaluate the proposed action and shall deny approval of the project if the requested information is not forthcoming within 90 days. 20 DCMR § 7203.4.

If this reading is correct, then the Zoning Commission is the “lead agency” in this case (and the three other GWU cases as well.) Accordingly, the Association asks the Commission to carry out the obligations imposed on lead agencies in such situations and to direct compliance with the DCEPA and implementing regulations, which means directing GWU to file an EISF and coordinating and undertaking the necessary review that will follow such a filing. Moreover, to the extent that the Zoning Commission should conclude that it is the “lead agency,” we also ask the Commission to hold a “public hearing” that must be called in 25 property owners in an affected single-member district in the pertinent Advisory Neighborhood Commission petition for such a hearing. D.C. Code § 8-109.03(b). The petition from 25 homeowners is attached as Exhibit A to this motion.

Alternatively, should the regulations be construed to hold that the Zoning Commission is not the “lead agency” and that DOH has that role, the Commission remains under an obligation

to defer any action on the GWU applications until such time as GWU has complied with the EISF filing requirements, the Department of Health has conducted the requisite environmental review, and the Commission is in a position to utilize the resulting analysis to inform itself about the environmental consequences of GWU's proposals.

Regardless of whether the Commission or the Department of Health is the "lead agency" in this case, one thing is clear. As a matter of law, this case should not proceed until the environmental analysis contemplated by the DCEPA has been completed. Accordingly, the Foggy Bottom Association asks the Commission to postpone the present hearing until such time as the environmental review process has run its course, and the Commission can proceed with consideration of the merits, including a consideration of the environmental factors presented by GWU's proposed developments.

A final comment is warranted on the issue of piecemealing. The Association argued in the earlier cases that the environmental impacts of the pending GWU applications must be considered collectively, rather than on a piecemeal basis, given the requirement in the DCEPA that an agency must consider the "cumulative impact of the major action when considered in conjunction with other proposed actions." D.C. Code § 8-109.03(8). We summarize that argument in the margin and will not repeat the discussion here.<sup>3</sup> While the Association adheres to that po-

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<sup>3</sup> Courts construing the federal NEPA have rejected attempts at "piecemealing," which consists of "dividing an overall plan into component parts, each involving action with less significant effects." *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 298 (D.C. Cir. 1987). This "rule against segmentation was developed to insure that interrelated projects the overall effect of which is environmentally significant not be fractionalized into smaller, less significant actions." *Id.*, citing *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5<sup>th</sup> Cir. 1981).

A good example is offered in *Sierra Club v. Marsh*, 769 F.2d 868 (1<sup>st</sup> Cir. 1985), which involved a proposal to build a causeway, a cargo terminal and an industrial park on an island. The agency "piecemealed" the project by focusing on the causeway and cargo terminal, without considering questions of industrial development. The court, in an opinion by then-Judge Breyer, rejected this segmentation as an effort to create a loophole that did not exist in the law.

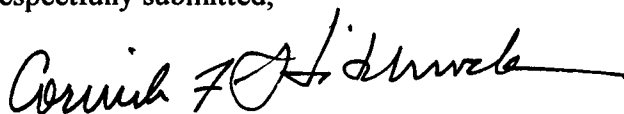
So too here, the applicants' divide-and-conquer strategy would unlawfully fragment any consideration of the environmental consequences presented by its proposals. Regardless of whe-

sition, we submit, in the alternative, that even if one should conclude that there is no piecemealing here, a review of this individual PUD application would be required under the DCEPA for the reasons set forth above.

Conclusion.

For the foregoing reasons, the Foggy Bottom Association respectfully requests that the Commission defer its consideration of this case and resolution of the other pending GWU cases pending completion of the environmental review required by the DCEPA. In the alternative, the Association requests that the Commission defer consideration of this case pending completion of the requisite review under the DCEPA.

Respectfully submitted,

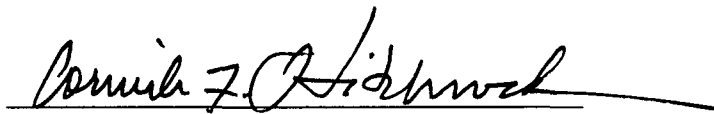


Cornish F. Hitchcock  
5301 Wisconsin Avenue, N.W., Suite 350  
Washington, D.C. 20015  
(202) 364-1050  
Attorney for Foggy Bottom Association

6 November 2006

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion was served by e-mail this 6<sup>th</sup> day of November, 2006 upon Phil T. Feola, Pillsbury Winthrop Shaw Pittman, 2300 N Street, N.W., Washington, D.C. 20037 and upon ANC 2A.



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ther the Commission or the Department of Health should have responsibility as the lead agency for environmental issues, action on this application (and the others) should be deferred until a comprehensive environmental review of *all* GWU's applications has been completed and presented to the Commission for consideration.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

FOGGY BOTTOM ASSOCIATION, )

Plaintiff, )

vs. )

DISTRICT OF COLUMBIA OFFICE OF )  
PLANNING, *et al.*, )

Defendants. )

Court No. 06 Civ. 0746 (RJL)

**AFFIDAVIT OF SCOTT D. HEISER, P.E.**

I, Scott D. Heiser, declare as follows:

1. I have been retained by the Foggy Bottom Association ("FBA") through EFI Global, Inc. to present my expert views concerning the environmental impact of the George Washington University's ("GW") February 16, 2006 "Application to the District of Columbia Zoning Commission for First-Stage Review and Approval of A Planned Unit Development and Zoning Map Amendment for the Foggy Bottom Campus" and the "Foggy Bottom Campus Plan: 2006-2025." (hereinafter referred to as "GW Application and GW Campus Plan"). This material has been designated by the District of Columbia Zoning Commission ("Zoning Commission") as case number 060-11 and 060-12, respectively.

2. My qualifications are as follows: I received a B.S. in Mechanical Engineering from Virginia Polytechnic Institute & State University in 1991 and an M.S. in Engineering Management with a concentration in Environmental Studies from the University Maryland University College in 1998. I am a licensed Professional Engineer in the District of Columbia. I have been an environmental consultant since 1991. Attached as Exhibit A is my resume and summary of project related experience.

3. My professional opinion is based upon my review of documents provided to me by plaintiff's counsel, Bode & Grenier, LLP, and my knowledge of environmental science. The following documents were provided for my review:

- a) The George Washington University Foggy Bottom Campus Plan: 2006 – 2025, dated February 16, 2006;
- b) The George Washington University Application to the District of Columbia Zoning Commission for First Stage Review and Approval of a PUD and Zoning Map Amendment for the Foggy Bottom Campus, dated February 16, 2006;
- c) Environmental Assessment, George Washington University Hospital Raze Project, District of Columbia Department of Health, dated May 2003.

4. The District of Columbia Environmental Policy Act of 1989, D.C. LAW § 8-36, *et seq.* and subsequently promulgated in Title 20 DCMR Chapter 72, requires that "Before an agency, board, commission, or authority of the District of Columbia government shall approve any major action, or issue any lease, permit, license, certificate, or other entitlement.....the environmental impact of the action must be adequately considered and reviewed by the District government, as provided in these regulations." § 7200.1. Furthermore, "Agencies, Boards, and commissions under the mayor's authority shall integrate...the Environmental Impact Statement (EIS) process with other planning processes at the earliest stages of their planning for major actions they intend to propose, when the widest range of feasible alternatives is open for consideration, and before there has been any irretrievable commitment of resources, in order to ensure that planning and decisions reflect environmental values, ...." § 7200.2.

5. WHERE AS, an "action" is defined as a "project or activity that involves the issuance of a lease, permit, license, certificate, or other entitlement, or permission to act by an agency of the District government" and a "major action" is defined as "any action that costs over 1 million dollars and that under §7201.2 may have a significant impact on the environment".



6. WHERE AS, a "major action" requires the submission of an Environmental Impact Screening Form (EISF) in accordance with §7204 to determine if the "action is likely to have substantial negative impact on the environment, and whether an Environmental Impact Statement (EIS) is required." §7205.1

7. WHERE AS, if determined to be required, the EIS shall, in part, analyze the following pursuant to §7206.2:

- d) Alternatives to the proposed major action, including alternative locations and the adverse and beneficial effects of the alternatives;
- f) Mitigation measures proposed to minimize any adverse environmental impact;
- h) The cumulative impact of the major action when considered in conjunction with other proposed actions;
- i) The environmental effect of future expansion or action, if expansion or action is a reasonably foreseeable consequence of the initial major action and the future expansion or action will likely change the scope or nature of the initial major action or its environmental effects;

8. Based on my review of the GW's Campus Plan, GW proposes to develop 18 sites within the boundaries of the GW Campus, leading to an increase of 1,732,590 square feet of Gross Floor Area (excluding Square 54 and Square 80 planned developments), and 1,027 additional parking spaces (including of Square 54 and 80 development sites). This development will far exceed \$1 million in costs; and in fact will likely exceed \$100 million.

9. An action costing more than \$1 million and meeting any of the conditions listed in §7201.2 is classified as a major action. Based on my experience and training as an environmental consultant, the following conditions listed in §7201.2 are relevant to GW's

Application and Campus Plan:

- (e) The action might induce significant growth or concentration of population;
- (i) The action might disrupt or divide the physical arrangement of existing community;
- (k) The action might violate any ambient air quality standard, contribute significantly to an existing or projected air quality violation, or expose sensitive receptors to significant pollution concentration;

- (n) The action might cause significant adverse change in the existing level of noise in the vicinity of the action; and
- (p) The action, together with other actions proposed concurrently by the applicant, might have a cumulative impact that would be significant under the criteria described in Sections 7201.2(a) – (o).

In conclusion, it is my professional opinion that GW's Application constitutes a major action, as defined by Title 20 DCMR Chapter 72, and thus is subject to the environmental review process, or more specifically, requires the submission of an EISF.

10. Furthermore, the EISF evaluates each major action by a series of questions and criteria. Specifically, if an applicant answers any one of the Questions #10 through #15 in Section III in the affirmative, the applicant is required to prepare and submit an air quality analysis of emissions for carbon monoxide, volatile organic compounds, and nitrogen oxide resulting from mobile sources associated with the proposed project in accordance with the District of Columbia Department of Health's guidance. The following EISF questions are relevant to GW's Application and Campus Plan:

- EISF Q#10 Will the proposed project provide 50 or more new parking spaces?
- EISF Q#11 Will the proposed project consist of shopping and/or commercial facilities having 50,000 or more square feet of gross floor space?
- EISF Q#12 Will the proposed project consist of entertainment and/or recreational facilities, including but not limited to theaters, auditorium, sports stadiums, bowling alleys, etc. having a capacity to accommodate more than 400 persons at one time?

11. As a starting point, I note that in an Environmental Assessment prepared for the GW Hospital Raze Project in May 2003, the Department of Health addressed environmental conditions in the Foggy Bottom area in conjunction with an agency proceeding relating to the new GW Hospital. A copy of this report is attached as Exhibit B to this affidavit.

12. Primarily because the new GW Hospital replaced an existing hospital, the Department of Health determined that an EIS was not required. However, in its report, the Department of

health found that, "The EPA has designated the region as a "severe non-attainment area" for ozone." The Department of Health further found that in the Washington area, "28 percent of the volatile organic compounds (VOCs) that form ozone come from mobile sources." The Department of Health concluded that approximately one-third of the "mobile source" pollution "is attributed to commuting traffic and the rest comes from the trips throughout the day, such as business travel or truck deliveries." (Report, at 11). The Department of Health thus identified vehicular traffic as a factor of particular relevance to assessing the environmental impact of future development in the Foggy Bottom area.

13. Based on my review of GW's Application for First Stage Review and Approval of a Planned Unit Development (PUD) and Zoning Map Amendment, GW is seeking approval and adoption by the District's Zoning Commission for GW's PUD, along with concessions regarding zoning changes and increases in allowable Floor to Area Ratios.

14. Approval or adoption of GW's Application or Campus Plan prior to completing the environmental review process, is contrary to §7200.1. Additionally, §7200.2 requires the DC government's agencies, Boards, and commissions to integrate the environmental review process at the earliest stages of planning so that all feasible alternatives may be considered. By approving GW's Applications at this time, no other alternatives or mitigating measures will be considered.

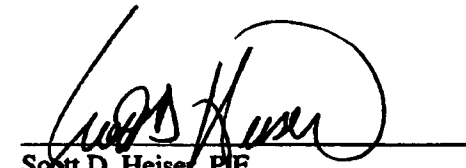
15. Consequently, it is my opinion that the District of Columbia must require that the environmental review process commence and be completed prior to considering GW's Applications for a PUD and new Campus Plan. This includes the preparation and submission of an EISF by GW, and the preparation of an EIS by the D.C. Department of Health.

16. In my opinion, the environmental impact of GW's Application and Campus Plan must take into account the cumulative environmental impact of all developments currently planned by GW in the Foggy Bottom campus, including those introduced by GW's new Hospital, the mixed use town center proposed to be developed on Square 54, the I Street retail corridor, and the cancer center and other developments on Square 80.

17. In sum, I can declare with a high degree of confidence that the duration, extent, and magnitude of GW's expansion and development plans, as set forth in its Application and Campus Plan, has the potential for causing a significant negative impact on the environment of the District of Columbia in general, and Foggy Bottom, in particular. The expansion and development by GW could result in significantly increased air and noise pollution.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 24, 2006



\_\_\_\_\_  
Scott D. Heiser, P.E.  
EFI Global, Inc.  
8100 Professional Place  
Suite 113  
Landover, MD 20785

## SCOTT D. HEISER, P.E., PMP

*Senior Consultant*

### YEARS OF EXPERIENCE: 14

#### EDUCATION

Master of Science, Engineering Management, University Maryland University College, 1998

Bachelor of Science, Mechanical Engineering, Virginia Tech, 1991

#### REGISTRATIONS

Professional Engineer:  
Virginia, #0402 028855  
Maryland, #26184  
District of Columbia, #PE900320

#### LICENSES AND CERTIFICATIONS

Project Management Professional,  
Project Management Institute, #505428

Certified Risk Assessor, District of Columbia

40-HR HAZWOPER

#### AFFILIATIONS

American Society for Mechanical Engineers

Project Management Institute

#### PROFESSIONAL EXPERIENCE

EFI Global, Inc., Senior Consultant, 2005 – Present

EMCOR Facilities Services, Inc., Senior Consultant, 1998 – 2005

Larox, Inc., Project Engineer, 1997 – 1998

BDM International, Inc., Staff Engineer, 1994 – 1997

Environmental Elements Corporation, Field Engineer, 1991 - 1994

#### PROFESSIONAL SUMMARY

Mr. Heiser has more than fourteen years of experience as a project manager and engineering/environmental consultant for multi-disciplinary and complex projects. While his primary duties include successful management and execution of various environmental contracts, Mr. Heiser specializes in contract management and administration. Projects include hazardous materials surveys and assessments, due diligence, remedial work plans and specifications, hazardous waste management, and environmental compliance planning.

#### RELEVANT PROJECT EXPERIENCE

##### U.S. General Services Administration, Drum Remediation Project – Lorton, VA

Mr. Heiser was the project manager for the remediation of a drum burial site for the U.S. General Services Administration Property Disposal Division. The drums were encountered on a parcel of property conveyed from federal ownership to local government. Over 1,000 drums were excavated and characterization for off-site disposal as a mixture of petroleum based products. The drums were buried as a result of vehicle maintenance facility dating back into the 1960's. Approximately 3,500 tons of residually impacted soils were disposed off-site. The clean-up standards were for unrestricted residential use.

##### Confidential Client, Luxury High Rise Forensic Engineering Project – Washington DC

Mr. Heiser acted as the client's primary project manager and point of contact for a multi-tasked engineering project at a luxury residential high rise. The scope of work includes four basic tasks including forensic piping inspection, evaluation, and repair, forensic roofing inspection, evaluation, and repair, a common element engineering study, and a unit element engineering study. The forensic investigations were of faulty piping mechanical systems and roofing membrane structures and flashing details. Mr. Heiser coordinated and managed the progress for each of the technical teams performing on the four tasks. The project's objectives were to perform a comprehensive evaluation of the building systems, make recommendations, and oversee the repairs necessary to restore the building systems. The consulting services rendered are valued at approximately \$2 million.

**RELEVANT PROJECT EXPERIENCE (continued)**

**Heery International, Inc./U.S GSA/DC Department of Corrections, Lorton Correctional Complex – Lorton, VA**

Mr. Heiser performed as the Project Director for the Lorton Environmental Remediation Project, responsible for all phases of contract management. The project involves the preparation of a Phase I and Phase II Environmental Site Assessment for the 3,000 acre property, developing a cost estimate for remediation, conducting a comprehensive site investigation into areas of concern identified as requiring remediation, developing Remedial Designs, and executing the successful remediation of the areas of concern. The areas of concern include several outdoor firing ranges (20,000 tons lead contaminated soil requiring on-site macro-encapsulation and stabilization), a non-permitted landfill (150,000 tons of lead and petroleum contaminated soils), and a large diesel petroleum spill site (50,000 tons of petroleum contaminated soils). Additionally, Mr. Heiser managed a contract to perform an unexploded ordnance (UXO) survey and sweep in several locations where crowd control training was conducted. Mr. Heiser was responsible for managing from 6 to 12 full-time, on-site professional staff charged with oversight, documenting, and supervising the remediation efforts, to make sure the objectives of the Remedial Design were met. The remedial efforts managed on behalf of the General Services Administration are valued at approximately \$18 million dollars.

In addition to the remedial activities, the project requires the development and implementation of a comprehensive hazardous waste management program and a complete underground and aboveground storage tank management program for the prison's industrial operations network. The hazardous waste program includes training the correction's employees. The hazardous waste and storage tank programs were brought into full compliance within 18 months and involved extensive training of personnel, contract management for disposal of hazardous waste, 28 tank removals and closures, 14 petroleum site characterizations, and the preparation and execution of two Corrective Action Plans. Contracts managed on behalf of the District Department of Corrections are valued at approximately \$750 thousand dollars.

The professional consulting and project management services rendered under Mr. Heiser's guidance and supervision for the Lorton Project is valued at approximately \$4 million over 4 years.

**Confidential Client, Former Recycling & Scrap Facility – Wilmington, NC**

Mr. Heiser provided contract management and consulting services for the remediation of an industrial site in North Carolina that was used as a ship scrap and recycling yard. The Site was remediated pursuant to an approved Corrective Action Plan by the state. Bioremediation of petroleum soils with off-site disposal of asbestos and lead contaminated soils was considered by performing a treatability study, which indicated unfavorable conditions for this method. The method employed was excavation and off-site disposal of impacted soils. Contaminants of concern are petroleum, lead, and asbestos. Tasks included contract management, evaluating treatability studies, and preparing proposal specifications. The value of the remediation contract is approximately \$1.8 million; and required the removal of 28,000 tons of impacted soils.

**Heery International, Inc./Court Services Offender Supervision Agency, Indoor Air Quality Surveys – Washington DC**

Mr. Heiser provided environmental consulting services for performing indoor air quality surveys of multiple facilities occupied by the Court Services Offender Supervision Agency. Industry standard protocols were followed for measuring carbon dioxide, carbon monoxide, internal space temperature, and humidity using direct read instruments and comparing the results to established comfort zones. Respirable dust and bioaerosol sampling was also performed to determine the general condition of indoor air quality and potential adverse impacts on occupants.

**Potomac Electric Power Company, Indoor Air Quality Surveys/Demolition Contract Administration – Maryland & Washington DC**

Mr. Heiser provides ongoing environmental and engineering consulting services to the project management and contracting division of the PEPCO. Mr. Heiser has performed indoor air quality surveys at three major PEPCO facilities: Forestville, Benning, and Rockville sites. Mr. Heiser also provides consulting services for the preparation of specifications, environmental planning, cost estimating and construction administration for demolition of facility buildings.

**U.S. Department of State, Spill Prevention Planning – Various Locations**

Mr. Heiser has prepared, reviewed, and approved Spill Prevention, Control and Countermeasures (SPCC) plans in accordance with the newly updated regulations for six facilities in the District of Columbia and southeastern states.

**Hensel Phelps Construction Company, Environmental Consulting – Various Locations**

Mr. Heiser has provided environmental consulting services for several of Hensel Phelps major renovation projects. For the Social Security Administration building in Baltimore, Maryland, Mr. Heiser has provided consulting on asbestos abatement design, surveys, and oversight, lead based paint surveys, air quality monitoring, and PCB electrical equipment assessments. For the U. S. Patent Office in the District of Columbia, Mr. Heiser provided disposal and profiling assistance for arsenic and lead contaminated soils. For the Masonic Temple located in Providence, Rhode Island, Mr. Heiser developed a lead in soil abatement specification. Mr. Heiser developed a corporate wide Hazardous Materials and Waste Management Program to be implemented at all construction sites nationwide.

**Confidential Mission Critical Facility, Indoor Air Quality Assessment – Hayward, CA**

Mr. Heiser conducted a multi-disciplined analysis of a building's systems and their contribution to adverse air quality. The building was a mixed production and disaster recovery mission critical data center. The factors that were evaluated as potential contributors to poor air quality were release of fibrous building materials, the mechanical air distribution systems, and decay of structural building systems, e.g. concrete and plaster. The analysis included recommendations for enhancing best practices and security for the building, while considering environmental, mechanical, electrical, fire protection, and structural engineering property condition assessment elements.

**Vornado-Smith, Discharge Permit & Monitoring – Bethesda, MD**

Mr. Heiser evaluated and prepared applications for environmental cooling water discharge permits in the State of Maryland for a cluster of six individual properties. Subsequent to the approval of the discharge permits, Mr. Heiser was responsible for managing the monthly sampling events, evaluation of the data, and preparing quarterly reports to the state regulatory agency.

**Urban Opportunity Fund, Due Diligence Environmental Site Assessments – Washington DC**

Mr. Heiser provides due diligence environmental assessment services to the Urban Opportunity Fund, LLC in its ongoing efforts to acquire and redevelop target properties in the District of Columbia. Mr. Heiser has performed environmental site assessment due diligence for over 10 properties, implementing a remediation action plan and conducting a Risk Based Closure for a leaking underground storage tank at one of the acquired properties.

## EXHIBIT A

We are members of the Foggy Bottom Association and "registered voters in an affected single member district" under the meaning of DC ST. § 8-109.03(b). We hereby demand a public hearing on the requisite environmental impact statement relating to the George Washington University's February 16, 2006 rezoning application and new campus plan.

Signature:

Printed Name:

- |    |                              |                              |
|----|------------------------------|------------------------------|
| 1. | <u>Joy Howell</u>            | <u>JOY HOWELL</u>            |
| 2. | <u>Elizabeth B. Elliott</u>  | <u>Elizabeth B. Elliott</u>  |
| 3. | <u>Michael Thomas</u>        | <u>Michael Thomas</u>        |
| 4. | <u>Donald W. Kreuzer DMD</u> | <u>DONALD W. KREUZER DMD</u> |
| 5. | <u>Sarah Shapiro</u>         | <u>Sarah Shapiro</u>         |
| 6. | <u>Edward B. Gable, Jr.</u>  | <u>EDWARD B. GABLE, JR</u>   |
| 7. | <u>Russell S. Conrad</u>     | <u>Russell S. Conrad</u>     |
| 8. | <u>Thalia W. Johnson</u>     | <u>Thalia W. Johnson</u>     |



9. Dag E. Hinson

Daglas E. Hinson

10. Dorothy Miller

Dorothy Miller

11. Eleanor M. Becker

ELEANOR M. BECKER

12. Maria Vonets

MARIA VONETES

13. Rita F. Aid

RITA F. AID

14. Harry Aid

HARRY AID

15. Norrene Vogt

NORRENE VOGT

16. Sandra Vonets

SANDRA VONETES

17. Ronald Cocomé

RONALD COCOME

18. Abby L. Gilbert

Abby L. Gilbert

19. R. Virginia Rogers

R. Virginia Rogers

20. Marvin H. Segel

Marvin H. Segel

21. Marilyn J. Rubin

MARILYN J. RUBIN

22. Henrietta H. O'Shea

HENRIETTA H. O'SHEA

23. Joycelyn C. Vigor

JOYCELYN C. VIGOR

24. Jessie Mackenzie

JESSIE MACKENZIE

25. Marija Hughes

MARIJA HUGHES

26. Robert Vost

ROBERT VOST

27. Jacqueline G. Lemire

JACQUELINE G. LEMIRE

28. Joseph Chaplick

Joseph Chaplick

29. Barbara Spillinger

Barbara Spillinger

30. \_\_\_\_\_

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31. \_\_\_\_\_

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