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Alberto P. Bastida
Secretary to the Zoning Commission
Office of Zoning
Government of the District of Columbia
441 Fourth Street, N.W., Suite 210-S
Washington, DC 20001

D.C. OFFICE OF ZONING
2003 DEC 27 PM 2:38

Re: Proposed Rulemaking, Z.C. Case No. 03-06: Map Amendment and Southeast Federal Center Overlay District

Dear Mr. Bastida:

I would like to express my opposition to the above map amendment, Overlay District, and proposed rulemaking that the Zoning Commission of the District of Columbia and the General Services Administration (GSA) have developed in regard to the Southeast Federal Center (SEFC).

The map amendment and Overlay District are contrary to the following federal statute and National Capital Planning Commission (NCPC) plans:

1. The NCPC vision plan entitled "Extending the Legacy: Planning America's Capital in the 21st Century" (Legacy Plan), which the Commission adopted in November 1997.

2. Federal statute as expressed in Public Law 106-407 (The Southeast Federal Center Redevelopment Act).

3. The NCPC Federal Elements of the Comprehensive Plan for the National Capital (1989).

Please consider my comments during the rulemaking process for this case and at all other appropriate occasions.

Inconsistencies with NCPC Legacy Plan:

The NCPC Legacy Plan identifies the SEFC in its "Plan for Washington's Monumental Core" as location number 4. The Legacy Plan describes this location under the heading "Economic Development" as follows: "(4) Assist the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively urban waterfront of offices, restaurants, shops and marinas."

In contrast, the Zoning Commission's proposal provides for large amounts of residential development and waterfront parkland. It is important to recognize that the Legacy Plan does not provide

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Exhibit 60

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EXHIBIT NO.60

for any residential development or parkland on the SEFC site, just as it does not provide for the development of warehouses, trash transfer stations, or junkyards at the site. The proposal is therefore contrary to the intent and language of the Legacy Plan.

The thrust of the Legacy Plan is to utilize the SEFC site for economic development. Parkland and residential development cannot achieve this goal as well as can office and retail development. Restrictive zoning of developable space to permit commercial uses only is required to meet this NCPC goal.

Inconsistencies with Southeast Federal Center Redevelopment Act (P.L. 106-407)

P.L. 106-407 states in Section 3 (Southeast Federal Center Development Authority): "(f) NATIONAL CAPITAL PLANNING COMMISSION. -- ... (2) VISION PLAN -- An agreement entered into under this section shall ensure that redevelopment of the Southeast Federal Center is consistent, to the extent practicable (as determined by the Administrator, in consultation with the National Capital Planning Commission), with the objectives of the (Legacy Plan)".

Any proposal, such as this one, that would encourage residential development and parkland on much of the SEFC site, does not "ensure to the extent practicable" that the redevelopment of the SEFC will be consistent with the Legacy Plan, whose objective for the SEFC is "Economic Development" through office and retail development. The GSA Administrator therefore violated Section 3(f)(2) of P.L. 106-407 when proposing the zoning and land use plan for the SEFC site.

The Zoning Commission needs to consider this in its proposed rulemaking process. The violation can void any rule that the Zoning Commission may make as a result of this process.

Further, P.L. 106-407 states in Section 3 (Southeast Federal Center Development Authority): "(b) TERMS AND CONDITIONS -- An agreement entered into under this section -- (1) shall have as its primary purpose enhancing the value of the Southeast Federal Center to the United States".

Residential development and parkland would not enhance the value to the federal government to the extent that commercial (office and retail) development would. Commercial property in D.C. and other cities usually has a higher monetary value than does parkland and housing.

It is unlikely that zoning for residential development or mixed residential/commercial development would provide as much value to

the United States than would restrictive zoning for commercial development for several reasons:

1. The area surrounding the SEFC is economically depressed and is reputed to possess a high crime rate. Any residential development in the SEFC would fail to attract many people willing to pay the high rents or to purchase the high-priced condominiums that would most enhance the value of the SEFC's residential development. Such people usually demand better schools and security than are, or foreseeably will be, present in the neighborhood adjacent to the SEFC.

2. Space zoned for office and retail use has a higher monetary value than does comparable space zoned for residential use.

Any area near the waterfront zoned for parkland or public uses should be considerably smaller than that proposed. A waterfront walking or cycling trail continuous with adjacent properties may attract many users.

However, a park would only serve to separate retail and other commercial uses from the waterfront trail and from any other waterfront facilities. The park would therefore diminish the value of such properties, to the detriment of the federal government.

The Zoning Commission's Map Amendment and Overlay District for the SEFC proposes two areas of zoning (SEFC/R-5-D and SEFC/R-5-E) that would permit only residential and minimal (0.5 FAR) retail uses. The portion of this area zoned SEFC/R-5-D can accommodate up to 4.0 FAR.

The SEFC/R-5-D area can clearly accommodate office and retail development at a higher FAR than GSA has proposed. By proposing to develop the SEFC/R-5-D area at a lower density than practicable, and by restricting <u>both</u> the SEFC/R-5-D and the SEFC/R-5-E areas to residential and minimal retail, rather than only commercial (office and retail) uses, the GSA Administrator is proposing to violate Section 2(b) of P.L. 106-407.

Further, the plan and map propose to zone two other areas as SEFC/CR. This zoning district permits 6.0 FAR residential development. Commercial uses, such as office and retail, are limited to 3.0 FAR This zoning is therefore also inconsistent with P.L. 106-407.

The Zoning Commission needs to also consider these additional violations of federal law in its proposed rulemaking process. These violations can also void any rule that the Zoning Commission may make as a result of this process.

Inconsistencies with the NCPC Federal Elements of the Comprehensive Plan for the National Capital (1989)

Federal Employment:

The Federal Elements of the NCPC Comprehensive Plan states in Table 1 on page 106 that the planning range targeted for Year 2000 employment levels at the SEFC is 22,400 employees. By encouraging the residential development of much of the SEFC, GSA's new plan and proposed zoning would effectively prevent the achievement of this NCPC target, to the detriment of both the United States and of the economic development of the District of Columbia.

Further, the Federal Elements of the NCPC Comprehensive Plan states on page 105: "1. The historic relative distribution of Federal employment of approximately 60 percent in the District of Columbia, the established seat of national government, and 40 percent elsewhere in the Region should continue within the next two decades." According to p. 25 of the NCPC Federal Capital Improvement Program, FY 2004-2009, only 52.7% of federal employment in the Region was in D.C. in 1999 (the most recent year for which the Program provides such information).

Many leased federal office facilities in the National Capital Region are outside of the District of Columbia. For example, the U.S. Patent Office is in the process of relocating to a new leased facility in Alexandria, Virginia. In addition, the new Homeland Security Agency is presently searching for a site somewhere in the National Capital Region to consolidate much of its operations.

The SEFC could accommodate many such federal offices in leased facilities at the SEFC if the site is exclusively zoned for commercial uses at the highest possible heights and densities. Such zoning would provide a unique opportunity to significantly increase federal employment in the District of Columbia and to achieve NCPC's target of 22,400 employees for the SEFC site.

Federal Open Space:

The Federal Elements of the NCPC Comprehensive Plan states on page 186 in its section entitled "National Capital Open Space System, Shorelines and Waterfronts":

"2. Within the District of Columbia, the character of publicly owned waterfront areas should reflect great variety, ranging from hard-edged urbanity in Georgetown, the Southwest Urban Renewal Area, and the Southeast Federal Center Area, ...".

In contrast, the proposed plan would zone a wide section of the SEFC near the waterfront area as W-O (Open Space Area).

The proposed plan, which can accommodate a wide grassy park, would not provide a "hard-edged urbanity" to the SEFC area. To be consistent with the Comprehensive Plan, the waterfront open space should be reduced to contain space sufficient only for public access on a 12-foot wide pedestrian/cyclist trail.

A strip not to exceed 150 to 200 feet should abut the waterfront, consistent with item number 5 on page 186 of the Comprehensive Plan. This space should be specifically designated only for the trail and for the development of a marina or other boating facility, to encourage recreational use of the waterfront, consistent with the Legacy Plan and the Comprehensive Plan.

The document that the D.C. Zoning Commission has provided in its "Notice of Proposed Rulemaking" for the SEFC (ZC Case No. 03-06) states on page 3 that the SEFC Overlay District is applied to a portion of the SEFC that is "'designated for .... parks, recreation, and open space' in the Comprehensive Plan for the National Capital". This is incorrect.

I can find no such designation for any part of the SEFC in the Comprehensive Plan, except for a provision for boating under a category of "recreational activities", in Diagram 3 on page 185 in its section entitled "National Capital Open Space System". The Comprehensive Plan contains no specific recommendation for a park or other open space in the SEFC area.

Recommendation No. 6 on page 198 of the Comprehensive Plan states: "Federal agencies should plan the incorporation of small people-intensive plazas, courts and parks oriented to the needs of the daytime working population as well as visitors into appropriate new Federal Office buildings". The proposed plan is inconsistent with this, as it does not propose any such open space except near the waterfront.

Executive Order 12072:

Presidential Executive Order 12072 requires federal agencies in urban areas to locate their facilities in central cities, such as Washington, D.C. GSA and other federal agencies can rapidly fill of the available office space in the SEFC by requiring that all agencies presently located in suburban Maryland and Virginia comply with Executive Order 12072 and with the NCPC Comprehensive Plan by making plans to relocate their offices to leased facilities in the SEFC when the agencies' current leases expire. GSA can thus assure that federal agencies will quickly commit to leasing all available office space in the SEFC.

Therefore, if the SEFC site is zoned primarily for high density commercial use, GSA can not only help restore the historic 60%/40% proportion of federal employment in the National Capital Region, but can also assure the rapid occupancy of most or all of the developable space in the SEFC.

The Zoning Commission's proposal for the SEFC would eliminate this unique opportunity to bring federal offices into leased facilities in the District of Columbia. Many federal agencies in the National Capital Region have found it impossible to comply with Executive Order 12072 because they could find no leased space in the District that could accommodate their needs. High-density commercial zoning of the SEFC can prevent this from recurring and can assure such compliance.

Therefore, in addition to being contrary to federal law, the Zoning Commission's proposal is an unsatisfactory plan for a unique and valuable piece of federal property that can be privately developed and used, **but that also can be privately developed and federally used.**

RECOMMENDATION:

To maximize the office and retail development of the SEFC, to thus enhance the value of the site to the United States government as required by law, and to comply with NCPC's Legacy Plan and Comprehensive Plan, I recommend that the Zoning Commission, in consultation with GSA, revise the Map Amendment and the Overlay District for the SEFC that ZC Case No. 03-06 describes.

I also recommend that the Zoning Commission make no rule, including the proposed new § 1803.13) regarding the SEFC, until it has considered the impact of the points that I have made in this letter regarding the legality and the adverse impacts to the District of the proposed Map Amendment and Overlay District.

I further recommend that GSA and the Government of the District of Columbia develop a new plan for the SEFC that would redevelop the entire SEFC site at the maximum permissible heights and at the maximum commercial densities, with certain exceptions. These exceptions include the Department of Transportation site, small areas of open space located throughout the site and a narrow strip of waterfront space zoned to accommodate boating facilities and a pedestrian/cyclist trail.

Thus, the zoning and the Overlay District for the SEFC should allow only office and retail uses throughout nearly all of the site to a maximum lot occupancy of 100%, a maximum FAR of 8.5 to 10.0 and a maximum height of 100 feet and 130 feet on 110-foot

adjoining streets, such as New Jersey Avenue. The site should contain no other zoning, except in the areas noted above.

A C-4 zoning district, now applicable to the downtown D.C. core, would permit the above development. However, the C-4 district also permits "housing and mixed uses". The SEFC site (with the exceptions identified above) should therefore be designated as a special "Southeast Federal Center Overlay District" with special zoning that is similar to C-4, but that allows only office and retail uses.

The site plan needs to identify the locations of small parcels of open space throughout the entire SEFC area, consistent with Recommendation No. 5 on page 196 in the Comprehensive Plan. It is important that the plan not restrict the SEFC's open space to the waterfront area, as presently proposed. Thank you.

Sincerely yours,

Bernard H. Berne

Attachments:
Extracts from NCPC Legacy Plan
P.L. 106-407

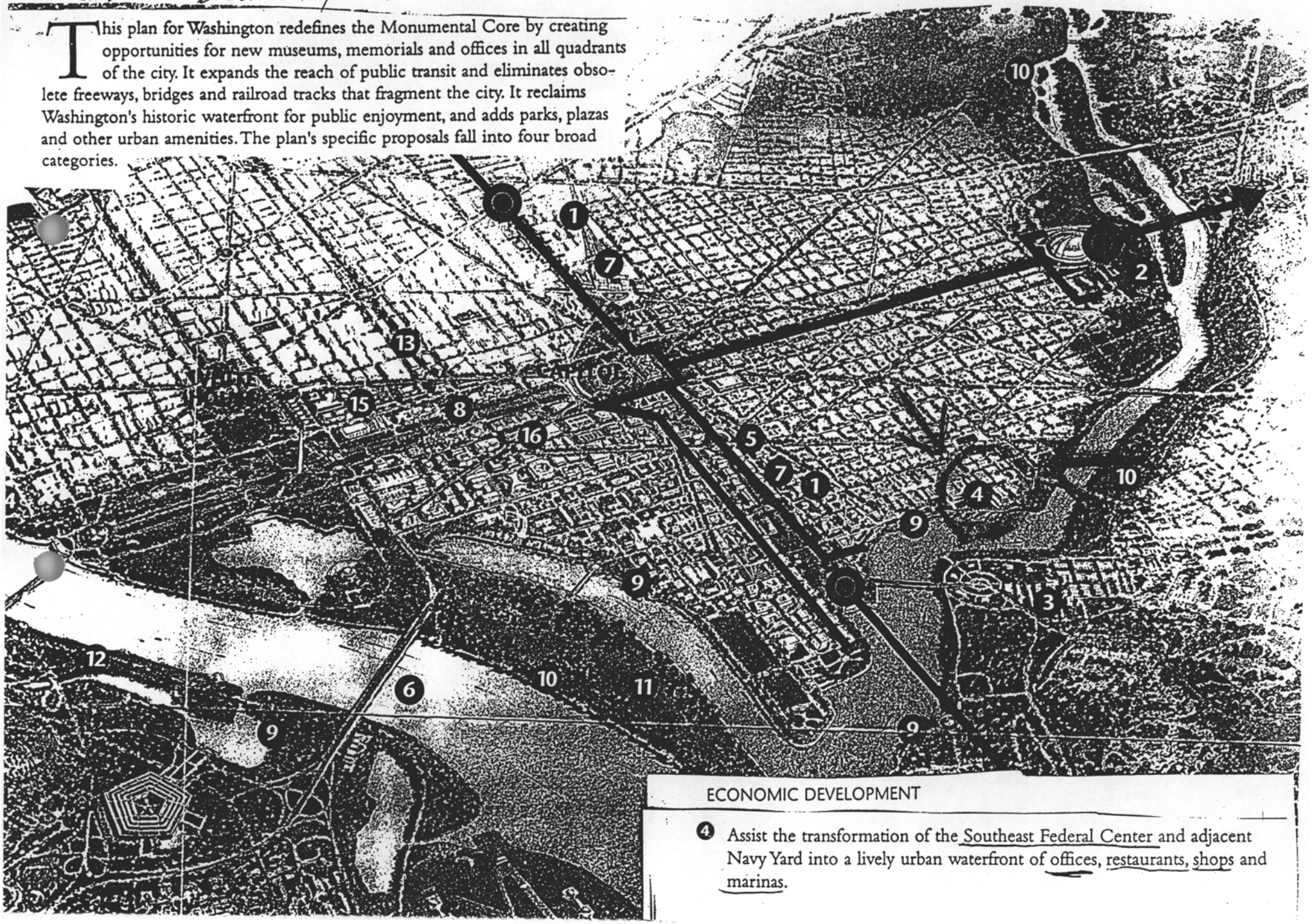
"EXTENDING THE LEGACY" PLAN

PLAN FOR WASHINGTON'S MONUMENTAL CORE - NATIONAL CAPITAL PLANNING COMMISSION

(ADOPTED NOVEMBER 1997)

MARCH, 1996

This plan for Washington redefines the Monumental Core by creating opportunities for new museums, memorials and offices in all quadrants of the city. It expands the reach of public transit and eliminates obsolete freeways, bridges and railroad tracks that fragment the city. It reclaims Washington's historic waterfront for public enjoyment, and adds parks, plazas and other urban amenities. The plan's specific proposals fall into four broad categories.



ECONOMIC DEVELOPMENT

❹ Assist the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively urban waterfront of offices, restaurants, shops and marinas.

Public Law 106–407
106th Congress

An Act

Nov. 1, 2000
[H.R. 3069]

To authorize the Administrator of General Services to provide for redevelopment of the Southeast Federal Center in the District of Columbia.

Southeast Federal Center Public-Private Development Act of 2000.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Southeast Federal Center Public-Private Development Act of 2000".

SEC. 2. SOUTHEAST FEDERAL CENTER DEFINED.

In this Act, the term "Southeast Federal Center" means the site in the southeast quadrant of the District of Columbia that is under the control and jurisdiction of the General Services Administration and extends from Issac Hull Avenue on the east to 1st Street on the west, and from M Street on the north to the Anacostia River on the south, excluding an area on the river at 1st Street owned by the District of Columbia and a building west of Issac Hull Avenue and south of Tingey Street under the control and jurisdiction of the Department of the Navy.

SEC. 3. SOUTHEAST FEDERAL CENTER DEVELOPMENT AUTHORITY.

(a) IN GENERAL.—The Administrator of General Services may enter into agreements (including leases, contracts, cooperative agreements, limited partnerships, joint ventures, trusts, and limited liability company agreements) with a private entity to provide for the acquisition, construction, rehabilitation, operation, maintenance, or use of the Southeast Federal Center, including improvements thereon, or such other activities related to the Southeast Federal Center as the Administrator considers appropriate.

(b) TERMS AND CONDITIONS.—An agreement entered into under this section—

(1) shall have as its primary purpose enhancing the value of the Southeast Federal Center to the United States;

(2) shall be negotiated pursuant to such procedures as the Administrator considers necessary to ensure the integrity of the selection process and to protect the interests of the United States;

(3) may provide a lease option to the United States, to be exercised at the discretion of the Administrator, to occupy any general purpose office space in a facility covered under the agreement;

(4) shall not require, unless specifically determined otherwise by the Administrator, Federal ownership of a facility covered under the agreement after the expiration of any lease of the facility to the United States;

(5) shall describe the consideration, duties, and responsibilities for which the United States and the private entity are responsible;

(6) shall provide—

(A) that the United States will not be liable for any action, debt, or liability of any entity created by the agreement; and

(B) that such entity may not execute any instrument or document creating or evidencing any indebtedness unless such instrument or document specifically disclaims any liability of the United States under the instrument or document; and

(7) shall include such other terms and conditions as the Administrator considers appropriate.

(c) CONSIDERATION.—An agreement entered into under this section shall be for fair consideration, as determined by the Administrator. Consideration under such an agreement may be provided in whole or in part through in-kind consideration. In-kind consideration may include provision of space, goods, or services of benefit to the United States, including construction, repair, remodeling, or other physical improvements of Federal property, maintenance of Federal property, or the provision of office, storage, or other usable space.

(d) AUTHORITY TO CONVEY.—In carrying out an agreement entered into under this section, the Administrator is authorized to convey interests in real property, by lease, sale, or exchange, to a private entity.

(e) OBLIGATIONS TO MAKE PAYMENTS.—Any obligation to make payments by the Administrator for the use of space, goods, or services by the General Services Administration on property that is subject to an agreement under this section may only be made to the extent that necessary funds have been made available, in advance, in an annual appropriations Act, to the Administrator from the Federal Buildings Fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(f) NATIONAL CAPITAL PLANNING COMMISSION.—

(1) STATUTORY CONSTRUCTION.—Nothing in this section may be construed to limit or otherwise affect the authority of the National Capital Planning Commission with respect to the Southeast Federal Center.

(2) VISION PLAN.—An agreement entered into under this section shall ensure that redevelopment of the Southeast Federal Center is consistent, to the extent practicable (as determined by the Administrator, in consultation with the National Capital Planning Commission), with the objectives of the National Capital Planning Commission's vision plan entitled "Extending the Legacy: Planning America's Capital in the 21st Century", adopted by the Commission in November 1997.

(g) RELATIONSHIP TO OTHER LAWS.—

(1) IN GENERAL.—The authority of the Administrator under this section shall not be subject to—

(A) section 321 of the Act of June 30, 1932 (40 U.S.C. 303b);

(B) sections 202 and 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483, 484);

(C) section 7(a) of the Public Buildings Act of 1959 (40 U.S.C. 606(a)); or

(D) any other provision of law (other than Federal laws relating to environmental and historic preservation) inconsistent with this section.

(2) UNUTILIZED OR UNDERUTILIZED PROPERTY.—Any facility covered under an agreement entered into under this section may not be considered to be unutilized or underutilized for purposes of section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411).

SEC. 4. REPORTING REQUIREMENT.

(a) IN GENERAL.—Before entering into an agreement under section 3, the Administrator of General Services shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the proposed agreement.

(b) CONTENTS.—A report transmitted under this section shall include a summary of a cost-benefit analysis of the proposed agreement and a description of the provisions of the proposed agreement.

Effective date.

(c) REVIEW BY CONGRESS.—A proposed agreement under section 3 may not become effective until the end of a 30-day period of continuous session of Congress following the date of the transmittal of a report on the agreement under this section. For purposes of the preceding sentence, continuity of a session of Congress is broken only by an adjournment sine die, and there shall be excluded from the computation of such 30-day period any day during which either House of Congress is not in session during an adjournment of more than 3 days to a day certain.

SEC. 5. USE OF PROCEEDS.

(a) IN GENERAL.—Net proceeds from an agreement entered into under section 3 shall be deposited into, administered, and expended, subject to appropriations Acts, as part of the fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)). In this subsection, the term "net proceeds from an agreement entered into under section 3" means the proceeds from the agreement minus the expenses incurred by the Administrator with respect to the agreement.

(b) RECOVERY OF EXPENSES.—The Administrator may retain from the proceeds of an agreement entered into under section 3 amounts necessary to recover the expenses incurred by the Administrator with respect to the agreement. Such amounts shall

be deposited in the account in the Treasury from which the Administrator incurs expenses related to disposals of real property.

Approved November 1, 2000.

LEGISLATIVE HISTORY—H.R. 3069:

HOUSE REPORTS: No. 106–591 (Comm. on Transportation and Infrastructure).
SENATE REPORTS: No. 106–458 (Comm. on Governmental Affairs).
CONGRESSIONAL RECORD, Vol. 146 (2000):
May 8, considered and passed House.
Oct. 11, considered and passed Senate, amended.
Oct. 17, House concurred in Senate amendments.