GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF PUBLIC WORKS

Office of the General Counsel

D.C. OFFICE OF ZONING
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March 7, 2005

D.C. Zoning Commission
c/o Sharon Schellin
One Judiciary Square, Suite 210-S
Washington, D.C. 20001

Advisory Neighborhood Commission 5-A
1322 Irving Street, NE
Washington, DC 20017

RE: Zoning Commission Case No. 03-28 (D.C. Department of Public Works, Fort Totten Solid Waste Transfer Station): **Revisions to Proposed Order**

Ladies and Gentlemen:

On March 2, 2005 I sent to each of you a proposed Order that I prepared on behalf of the D.C. Department of Public Works, the applicant in the subject Zoning Case. I recently learned that my references throughout that order to *Lots* 56 and 57 in *Square* 123 should be changed to *Sections* 56 and 57 in *Parcel* 123, and that the references to *Lots* 174 and 175 in *Square* 124 should be changed to *Sections* 174 and 175 in *Parcel* 124. Enclosed please find a revised proposed order correcting this error. In preparing this revision I corrected several minor mistakes and they are listed below. They are the only changes that I made.

1. Introductory paragraph, p. 1 : Changed the references from
   Findings of Fact, ¶ 10, p. 2 & ¶ 15, p.3 : Lots and Squares to Sections
   Decision, introductory paragraph, p.7 : and Parcels

2. Introductory paragraph, p.1, 4th line: Inserted a space after "("**PUD**")"

3. Findings of Fact, p. 1, ¶ 1, 5th line: Inserted a comma after "124"

4. Findings of Fact, p. 4, ¶ 21, subparagraph a, 6th line: Changed "which" to "that"
   subparagraph b, 5th line: Inserted "be" after "will"

5. Conclusions of Law, p. 6, ¶ 5, 4th line: Changed "According" to "Accordingly"

ZONING COMMISSION
District of Columbia

CASE NO. 03-28
EXHIBIT NO. 38

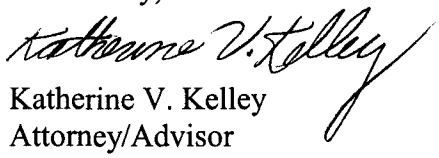
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ZONING COMMISSION
District of Columbia
CASE NO.03-28
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I apologize for the inconvenience that I have caused to each of you.

Thank you for your attention to this matter and please let me know if you have any questions.

Yours truly,



Katherine V. Kelley
Attorney/Advisor
202/671-1576

Enclosures (Certificate of Service and revised proposed Order)

cc via e-mail(with enclosures): Alan Bergstein
Chief, Land Use and Public Works Section
Office of the Attorney General for the District of Columbia

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ORDER NO. 03-28
Z.C. Case No. 03-28
Consolidated Planned Unit Development and Map Amendment
for Property Located at 4900 Bates Road, N.E.
(D.C. Department of Public Works – Fort Totten Solid Waste Transfer Station)
March ___, 2005

Pursuant to notice, the Zoning Commission for the District of Columbia (the "**Commission**") held a public hearing on October 21, 2004, and an additional public hearing on February 3, 2005, to consider an application from the District of Columbia Department of Public Works ("**DPW**" or, the **Applicant**") for consolidated review and approval of a planned unit development ("**PUD**") and a related Zoning Map amendment from R-05-A to Fort Totten Overlay/M (together, the "**Application**"). The Commission considered the Application pursuant to Chapters 24 and 30 of the D.C. Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("**DCMR**"). A public hearing was held in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the Application, subject to the conditions set forth in this order.

FINDINGS OF FACT

The Applications, Party, and Hearings

1. On July 31, 2003, the Office of Zoning received the Application submitted by SCS Engineers on behalf of the DPW Solid Waste Administration requesting approval of a map amendment for Sections 56 and 57 in Parcel 123, from R-5-A to Fort Totten Overlay/M, and an application for a planned unit development ("**PUD**") for Sections 56 and 57 in Parcel 123, and Sections 174 and 175 in Parcel 124 for premises address 4900 Bates Road, N.E (the "**Site**").

2. The Commission held a hearing on the Application on October 21, 2004. However, the public notice for that meeting did not specify that the case was of interest to the Advisory Neighborhood Commission ("**ANC**") representing the area within which the property is located, ANC 5-A, and ANC 5-A had not commented on the Application. In addition, an affidavit of maintenance of posting had not been submitted by the Applicant to the Commission.

3. At the October 21, 2004 meeting, the Commission heard testimony from the Applicant describing the proposed project. At that meeting, the Commission also heard from ANC 5-A Chairperson Ms. Norma Broadnax and ANC 5-A Commissioner Joseph Bowser, each of whom testified that the ANC 5-A had not met with the Applicant and had not had the opportunity to consider its position on the Application.

4. At the October 21, 2004 meeting, the Commission required the Applicant to provide the following additional filings on or before November 15, 2004:

(i) Affidavit of maintenance of posting of notice of the Application and Hearing;
(ii) Site lighting plan;

(iii) Hours of operation for the facility;
(iv) Re-examination of the citizen's drop-off area by-pass lane;
(v) Re-examination of the location of that portion of the fence that will be adjacent to the planned Metropolitan Branch Trail bicycle path (the "Bike Path");
(vi) Traffic Study;
(vii) Landscaping specifications; and
(viii) Report from ANC 5-A.

5. The Applicant did not provide an affidavit of maintenance of posting evidencing that posted notice of the October 21, 2004 meeting had been maintained as required at the Site.

6. After proper notice, the Commission held an additional hearing on the Application on February 3, 2005. The only party to the case was the Applicant. The Commission took proposed action by a vote of 4-0-1 to approve with conditions the applications and plans that were submitted to the record and presented at the February 3, 2005, hearing.

7. ANC 5-A submitted a letter, dated February 1, 2005, in support of the proposed project, but that letter did not state whether the vote in support was unanimous. ANC 5-A submitted a second letter, also dated February 1, 2005, stating that its vote in favor of the project had been unanimous (12 – 0).

8. The proposed action of the Commission was referred to the National Capital Planning Commission ("**NCPC**") under the terms of the District of Columbia Home Rule Act. NCPC, by delegated action of the Executive Director dated _____, 2005, found that the proposed PUD would not affect the federal establishment or other federal interests in the National Capital, nor would it be inconsistent with the Comprehensive Plan for the National Capital.

9. The Zoning Commission took final action to approve the Application on March ___, 2005.

Existing and Proposed Zoning

10. The Site is roughly trapezoidal in shape and contains approximately 261,000 square feet of land area. That portion of the Site comprising Sections 56 and 57 in Parcel 123 is zoned R-5-A, and that portion of the Site comprising Sections 174 and 175 in Parcel 124 is zoned Fort Totten Overlay/M.

11. The surrounding area is characterized by a mixture of industrial, institutional, and Federal uses. To the north is Super Concrete, Inc., a concrete batching operation located within the M District and the Fort Totten Overlay District. To the east are two sets of railroad tracks; one owned by CSX and used for freight and commuter trains, and the other by Metro and operated as the eastern leg of the Red Line. To the southeast is a DPW truck washing and fueling facility within the R-5-A Zone District. To the south, across Bates Road, N.E., are athletic fields on the campus of Catholic University located within the R-5-A Zone District. To the east Fort Totten Park, situated on wooded, unzoned National Park Service land. Within the property is also an unbuilt portion of Brookland Avenue which the Applicant intends to seek to have closed if the Commission gives its final approval to the Application .

12. Expansion of the M Zone District and the Fort Totten Overlay District onto the entire site as the M Zone will include the entire operation of the Fort Totten Solid Waste Transfer Facility and will result in a zone district boundary line that is consistent with the existing street (Bates Road).

13. The expansion of the M Zone and Fort Totten Overlay District onto the entire site will not impede the full utilization of other properly located sites and will allow an existing industrial use to remain and expand, consistent with the intended uses within M Districts and the Fort Totten Overlay District, as described in 11 DCMR §§ 820.1 and 1561.1.

14. Although the area south of Bates Road is zoned R-5-A, it is not used for residential purposes, but instead for athletic fields for an institutional use (Catholic University). Because the application is for the continuance of an existing use within the confines of the PUD application, the expansion of the M District and development of the proposed PUD will not result in industrial uses locating any closer to Catholic University.

15. For the reasons stated above, the Commission finds that the requested PUD-related Zoning Map Amendment of Squares 56 and 57 in Parcel 123 from R-5-A to Fort Totten Overlay/M is appropriate and consistent with the Zoning Act. For reasons discussed below, the Commission further finds that the requested PUD-related Zoning Map Amendment is not inconsistent with the Comprehensive Plan. In doing so, the Commission does not find that the existing underlying zoning is invalid, but that the PUD-related zoning is appropriate given the controls placed on the project through this Order.

The PUD Project

16. The proposed PUD consists of an addition to the existing Fort Totten Solid Waste Transfer Facility. The proposed building addition will be 50 feet in depth, 291 feet in length and 28.8 feet in height measured from the street level (or 57 feet in height measured from the lowest point, which is below street level), with a rear yard setback of 66 feet.

17. The maximum height applicable to a PUD in the M Zone District is 90 feet, as is set out in § 2405.1 of the Zoning Regulations. The height of the proposed addition, 28.8 feet, is less than this maximum limitation.

18. The floor to area ratio ("**FAR**") in an M District is 6.0. There is no special FAR limitation for a PUD project in the M District. The FAR of the proposed project is less than 1.0, and is less than the maximum limitation.

19. The rear yard setback is 66 feet, which exceeds the minimum 12-foot setback required in the M District.

20. The PUD regulations, specifically § 2401.1(c) of the Zoning Regulations, require a site in the M District to contain a minimum of 15,000 square feet of land area. The total land area of the entire Site is approximately 287,000 square feet, and thus exceeds the minimum area requirement for a PUD.

21. The following benefits and amenities will be created as a result of the PUD project:

a. Urban Design, Architecture, Landscaping and Open Space. The addition of landscaping will serve to buffer the use from surrounding properties. In addition, the enclosure of the existing facility and the addition in green metal siding will harmonize with the large trees located behind the building in the adjacent Fort Totten National Park. The planned modifications will move operations from outdoors to indoors, eliminating or reducing noise, odors and dust emissions from the facility that will enhance the experience of people using the adjacent open space (Fort Totten Park).

b. Transportation Features. Traffic flow will be improved in several respects. Traffic flow will be changed to separate the transfer trailers from incoming citizens dropping off household waste. The citizens' drop-off facility will be segregated from other facility operations. Sufficient queuing space is provided to mitigate adverse traffic impacts. No trucks will be required to back up to enter or exit the site. Because of these improvements, off-site roadway queuing will be eliminated. By ensuring that vehicles using the Site will not block traffic on surrounding streets when they enter, use or leave the Site, the Application will benefit the surrounding community.

c. Environmental Benefits. The proposed development provides for improved stormwater management. Specifically, treatment systems will be installed to remove contaminated soil, floating oil, and debris from stormwater runoff.

d. Special value to the neighborhood or the District of Columbia as a whole. The use itself is of special value to the District of Columbia. The handling of solid waste is a necessary and important public function. The proposed development is a necessary public facility for the performance of this function. Other benefits include expansion of the citizen's drop off area for solid waste, recyclables and household hazardous waste, improved traffic flow which will address traffic queuing in the surrounding neighborhood, and the prevention and control of offensive odors and noises beyond the perimeter of the site of the proposed project.

22. The Commission finds that the Applicant's proffered project amenities and public benefits sufficiently offset any potential adverse effects of the Project. The Applicant seeks a waiver from the requirement that (i) a structure may not be located within fifty feet (50 ft.) of any adjacent property used as a public park or for retail, office, or institutional purposes, (ii) neither truck egress nor ingress at the Site may be located within fifty feet (50 ft.) of any adjacent property used as a public park or for retail, office, or institutional purposes, and (iii) the facility be designed to have access to a railway siding or spur, (iv) the perimeter of the Site (except for the eastern perimeter) be enclosed by a 10-foot tall opaque fence, and (v) the activities associated with the citizens' drop-off area (drop-off by District residents of household hazardous waste items, recyclables, and bulk solid waste items) take place within an enclosed facility. The Commission finds that the Applicant's request for a waiver of these requirements is sufficiently offset by the proffered project amenities and public benefits.

Comprehensive Plan

23. The Office of Planning, in the October 12, 2004 report from Andrew Altman, Director, reported that the Applicant's proposal was consistent with the goals of the Comprehensive Plan:

a. Solid Waste Management. A major policy included in the Comprehensive Plan is that "[h]igh priority must be given to the District's solid waste . . . needs. Regardless of which approach is selected, major capital investments are anticipated." 10 DCMR § 600.3. The modernized site represents a solution to the District's solid waste disposal needs. The Comprehensive Plan further states that "The objective for solid waste management is to develop safe and effective methods for reducing, collecting, recycling, and disposing of solid waste . . . ." 10 DCMR § 404.1. The proposed addition to and renovation of the Fort Totten Solid Waste Transfer Facility will permit the applicant to more effectively collect and dispose of the solid waste that comes into the site, and to do so within an enclosed building.

b. Environmental Health and Sanitation. The Comprehensive Plan states that policies established in support of the sanitation objective include the development of "a program to safely collect and dispose of household hazardous wastes, including batteries, paints, household cleaners, and other harmful wastes generated by residential properties. . . ." 10 DCMR § 406.2. The proposed modernization of the Fort Totten Solid Waste Transfer Facility will include an improved citizen drop-off area where District residents will be able to drop off their household hazardous wastes, recyclables and bulk solid waste for proper disposal.

c. Ward 5 Element: The proposed project will include a citizens' drop-off area for a variety of materials, including household hazardous wastes, which is consistent with the recommended action in support of environmental protection for Ward 5, i.e., that convenient collection areas and schedules be provided for disposal of household hazardous wastes.

24. The proposed project is also consistent with the Ward 5 Element in the following ways:

a. The proposed project furthers the Ward 5 Transportation objectives (10 DCMR §§ 1613 and 1615) by improving on-Site traffic patterns to avoid the need for truck queuing on adjacent public streets, and by promoting use of the planned Bike Trail by including an enhanced fence along the portion of the Site that abuts the planned Bike Trail; and

b. The proposed project furthers the Ward 5 Environmental objectives (10 DCMR §§ 1611 and 1612.1) by (i) improving on-Site traffic patterns to avoid the need for truck idling and queuing on adjacent streets, (ii) containing noise, odors, and particulate matter within the enclosed facility, (iii) improving stormwater management at the Site, and (iv) increasing the number of trees planted at the Site.

26. The Commission credits the testimony of the Office of Planning and the contents of the Application in finding that the proposed PUD, including the PUD-related Zoning Map amendment, is not inconsistent with the Comprehensive Plan.

Office of Planning Report

26. By report dated October 12, 2004, and through testimony presented at the public hearing on October 21, 2004 and February 3, 2005, the Office of Planning recommended approval of the PUD application subject to certain conditions. The Office of Planning found that the proposed PUD is not inconsistent with the Comprehensive Plan. The Office of Planning further found that the proposal is consistent with the objects and evaluations standards of a PUD and that the proposed Fort Totten/M Overlay is consistent with the surrounding properties.

Department of Transportation Report

27. By letter dated June 21, 2002, the District Department of Transportation stated that it had no objection to the project as proposed.

National Park Service

28. By its report dated October 12, 2004, the Office of Planning reported that the National Park Service supports the subject application, but it has concerns.

Advisory Neighborhood Commission

29. By resolution dated February 1, 2005, as reported in a letter dated February 1, 2005, ANC 5-A unanimously supported the PUD project and the rezoning of a portion of the site from R-05-A to Fort Totten Overlay/M.

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 Commission has the authority to consider this application as a consolidated PUD. 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. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.

3. The development of the PUD project carries out the purposes of Chapter 24 of the Zoning Regulations to encourage the development of 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.

5. The PUD is within the applicable height, bulk, and density standards of the Zoning Regulations. The project will, in fact, include less height and density on the site than is permitted as a matter-of-right in the M District. The size, scale, design, and use of the building are appropriate for this site. Accordingly, the project should be approved. The impact of the project on the surrounding area is not unacceptable.

6. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

7. The project benefits are reasonable for the development proposed on the site.

8. Approval of this PUD is appropriate, because the proposed development is consistent with the present character of the area.

9. Approval of this PUD and change of zoning is not inconsistent with the Comprehensive Plan.

10. The Commission is required under D.C. Official Code § 1-309.10(d)(d)(A) (2001) to give great weight to the affected ANC's recommendation. The Commission has carefully considered the ANC 5-A's recommendation for approval and concurs in its recommendation.

11. Approval of the Application 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 Map of the District of Columbia.

12. The Applicant is subject to compliance with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, D.C. Official Code § 2-401.1 *et seq.* (2001) (the "**Human Rights Act**").

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this order, and the record of this proceeding, the Zoning Commission for the District of Columbia orders APPROVAL of the Application for consolidated review of a Planned Unit Development for Sections 56 and 57 in Parcel 123, and Sections 174 and 175 in Parcel 124, and for a Zoning Map amendment from R-05-A to Fort Totten Overlay/M for Sections 56 and 57 in Parcel 123. 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 SCS Engineers, dated July 9, 2003, as amended by plans prepared by SCS Engineers dated July, 2004, and Addendum 1, dated October, 2004, Addendum 2, dated October, 2004, and Addendum 3,

dated December, 2004 (the "**Plans**"), as modified by the guidelines, conditions, and standards herein.

2. The PUD shall be a solid waste transfer facility addition to the existing solid waste transfer facility. The footprint of this addition shall be approximately 14,500 square feet. The addition shall contain a maximum of approximately 29,100 square feet of gross floor area. The total project shall not exceed an overall density of 1.0 FAR. The uses in the building shall be limited to solid waste transfer, recycling, and normal incidental and accessory uses.

3. The maximum height of the building, including the roof, shall be 28.8 feet as measured from the street level and shown on the Plans.

4. The Applicant shall include landscaping for the project as shown on the Plans. The Applicant or its successors shall maintain all landscaping.

5. The Applicant shall provide for a total of four lanes of traffic to be available for drop-off or for passing, for use by people using the citizens' drop-off area.

6. The Facility shall be surrounded by a fence that is at least eight feet tall, except that the site shall be bordered on the East by a 12-foot high sound-absorbing noise barrier system. The eastern face of this barrier system shall have a textured graffiti-resistant surface.

7. 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 and mechanical rooms, elevators, and toilet rooms, provided that the variations do not materially change the exterior configuration of the building;

b. 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, without reducing the quality of the materials;

c. To vary the final selection of the landscaping plants within the sizes as proposed, based on availability at the time of landscaping, without reducing the quality of the plants;

d. To vary the final selection of the exterior materials within the color range and material types proposed, based on the availability at the time of construction; and

e. To make minor modifications to the exterior material, details and dimensions, including balcony enclosures, belt courses, sills, bases, cornices, railings 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.

8. 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 that is satisfactory to the Office of the Attorney General 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.

9. 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 with the records of the Zoning Commission.

10. The PUD approved by the Zoning Commission shall be valid for a period of two (2) 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.

11. The Applicant is required to comply fully with the provisions of the Human Rights Act and this Order is conditioned upon full compliance with those provisions. In accordance with the Human Rights Act, the District does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, familial status, family responsibilities, matriculation, political affiliation, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Human Rights Act. In addition, the Human Rights Act also prohibits harassment based on any of the above-protected categories. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action. The failure or refusal of the Applicant to comply shall furnish grounds for the denial or, if issued, revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On February 3, 2005, the Zoning Commission approved the applications by a vote of 4-0-1 (Anthony J. Hood, John G. Parsons, Gregory Jeffries and Kevin Hildebrand to adopt).

This **ORDER** was adopted the Zoning Commission at its public meeting on March ___, 2005, by a vote of _- -_ (_____ to adopt).

In accordance with the provisions of 11 DCMR § 3028.9, this order shall become effective upon publication in the *D.C. Register*; that is, on _____.

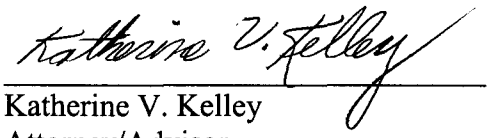
_____	_____
[name]	[name]
[title]	[title]
Zoning Commission	Office of Zoning

CERTIFICATE OF SERVICE

I certify that the foregoing revised proposed Order was mailed, by first-class mail, to the following parties on March 7, 2005:

D.C. Zoning Commission
c/o Sharon Schellin
One Judiciary Square, Suite 210-S
441 4th St., N.W.
Washington, D.C. 20001

Advisory Neighborhood Commission 5-A
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