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Mr. Alberto P. Bastida, AICP
Zoning Commission
District of Columbia Office of Zoning
441 4th Street, N.W. - Suite 210-S
Washington, D.C. 20001

Re: Supplemental Statement of Justification for WASA Application for Special Exception Approval of Exterior Modifications to Main and "O" Street Pumping Stations Zoning Commission Case # ZC-04-07

Dear Mr. Bastida:

Linowes and Blocher LLP, on behalf of the District of Columbia Water and Sewer Authority ("WASA"), submits the enclosed Supplemental Statement of Justification to be included in the review of WASA's special exception application (# ZC-04-07). During the past few months, WASA has met with staff of the D.C. Office of Planning and ANC 6D, among other agencies, to address the nature of the improvements and use of the Main and "O" Street Pumping Station site. This supplemental statement addresses some of the specific issues which have been brought to WASA's attention since the filing of the special exception application.

Twenty (20) copies of the enclosed statement and this cover letter are included for your distribution.

Please contact me if you have any questions.

Sincerely,

**LINOWES AND BLOCHER LLP**

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Enclosures

cc: Mr. Michael S. Marcotte, PE
Mr. Bruce B. Beall
Mr. Marshall Purnell
Kenneth P. Barnhart, Esquire

ZONING COMMISSION
District of Columbia
CASE NO. 04-07
EXHIBIT NO. 17

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ZONING COMMISSION
District of Columbia
CASE NO.04-07
EXHIBIT NO.17

**BEFORE THE ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**
**CASE NO. 04-07: APPLICATION OF THE D.C. WATER AND SEWER AUTHORITY**

Supplemental Statement of Justification for Approval of Exterior Modifications to Existing Public Utility Pumping Stations Pursuant to the Proposed Capital Gateway Overlay Zone (CG/W-2 District)

## I. INTRODUCTION

In response to specific inquiries by the D.C. Office of Planning and review with other referral agencies regarding the subject application, the D.C. Water and Sewer Authority, by its attorney, Linowes and Blocher LLP, hereby submits this supplemental statement of justification for the approval of modifications to the exterior of two buildings, (the "Main Building" and "O Street Building"), located on property owned by the D.C. Water and Sewer Authority ("WASA"). The catalyst for WASA's submission of the special exception application is the mandate by the United States District Court for the District of Columbia ordering WASA to restore sanitary sewer pumping capacity to 240 million gallons per day ("mgd") for the Main Pumping Station and 45 mgd for the "O" Street Pumping Station. To accomplish this mandate, WASA must replace existing temporary storage bins, now located on the east side of the Main Building, with a fixed "load-out facility" which receives solid, screened sewage processed within the Main Building. WASA also plans to upgrade the O Street Building, which if left unchecked could jeopardize its pumping capacity. (Anacostia Watershed Society, et al. v. D.C. Water and Sewer Authority, CA 1:00CV00183 (TFH), October 10, 2003). The Main and "O" Street facilities are the principal sewage pumping operations for the District. The control station for all sewer-pumping operations in the District is located in the Main Building.

Section 1603.1 of the D.C. Zoning Regulations (published as Proposed Rulemaking in the August 2, 2002 D.C. Register), proposes to subject all uses, including WASA's Main Building and O Street Building to review under the proposed Capitol Gateway Overlay Zone (CG/W-2 District). This section specifically provides, "All proposed uses, buildings, and structures in the CG/W-2 District, or any proposed exterior renovation to any existing buildings or structures in the CG/W-2 District that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission." (Emphasis added).

Pursuant to Section 1603.1, the placement of the "load-out facility" on the Main Building and the replacement of the façade and structural supports of the O Street Building subject this site to review by the Zoning Commission.

## II. THE PROPERTY AND SURROUNDING AREA

The subject site is referenced as Square 744S, Lots 800, 805 and Reservation 248. The total site consists of 11.91 acres and is improved with several buildings, a parking lot and a storage yard to support the sanitary sewer pumping operation that has existed essentially unchanged at the site for the past one hundred years. (Exhibit A). As stated above, the requested special exception

only involves improvements to two (2) buildings identified as the Main Building and the O Street Building.

The Main Building is located at 1331 2nd Street, S.E. The building is constructed with brick and stone. It is three (3) stories with an attic and sublevels. The Main Building is over 100 years old and the calculated building area is approximately 40,310 square feet.

The O Street Building is located at 125 "O" Street, S.E. The O Street Building is a 40-year old, 2-story brick building with approximately 13,185 square feet. In addition to operational upgrades that are listed in the statement of existing and intended use of the building, the O Street Building is proposed for reconstruction. In particular, the façade is in a serious state of disrepair and will be replaced.

The Main and O Street Buildings are located in Ward 6 in the middle of the Southeast Federal Center Development area. Specific projects and uses which are existing or are being developed in the area include the Government Printing Office (GSA) located in the northwest quadrant of N. Place and Canal Street, The Department of Transportation ("DOT") Headquarters in the Southeast Federal Center currently under construction north of Tingey Street, the U.S. Navy Yard development to the east, and to the west, the Florida Rock PUD located at 100 Potomac Street, S.E.

The project generates no additional required parking pursuant to 11 DCMR 2100.6 and 2100.7, which allows up to a 25% increase in gross floor area before additional parking is required. The proposed load-out facility being added to the Main Building is only 930 square feet, less than 25% of the gross floor area.

The proposed parking improvements are to upgrade the existing parking lot by repaving and striping. Existing perimeter fencing is provided for the security of WASA heavy equipment and trucks and to protect the health and safety of the general public.

## III. STATUS OF WASA SITE OWNERSHIP

WASA maintains that the best available evidence indicates that the Property has been in the District of Columbia government ownership for many years. The Main Building is located on a parcel of land bounded on the west by other District of Columbia property and Canal Street, S.E.; on the north by Tingey Street, S.E.; on the east by Second Street, S.E.; and on the south by the Anacostia River. It is adjacent to property formerly used by the District as a property yard. Prior to 1870, the area that is now the Main Building property was part of the Washington Canal.

The 1877 volume of Hopkins, Surveys & Plats, shows that filling of the Canal had only reached the foot of New Jersey Avenue, S.E. and that the Subject Property was still submerged. (Plate 37, South-East; see also Real Estate Plat Book, Vol. 2, Plate 18 (1973)). By 1903, however, Bailes Real Estate Atlas shows that the (unimproved) Property was completely filled. (Vol. 2, Plate 18 (1903)).

The 1915 edition of Bailes shows the Property in substantially the same condition as it is today, improved with the Main Building and complete with the barge slip. (Vol. 2, Plate 18 (1915)).

The progression of the filling of the Canal is important because a 1914 statute assigns jurisdiction to the National Park Service over "... all public spaces resulting from the filling of canals in the original city of Washington ... except spaces assigned by law to the District of Columbia for use as a property yard and the location of a sewage pumping station." (40 U.S.C. Section 8125 (emphasis added)). Canal Street was closed from N. Place to the Anacostia River pursuant to subdivision book 148, plat numbers 85 and 77. N. Street was closed west of Canal Street pursuant to subdivision book 119, plat numbers 195 and 196. Second Street S.E. has not been available for public access since the construction of WASA's security gates over 20 years ago. Reservation 248 was transferred to the District of Columbia for municipal purposes by Public Law 425 of the 69th Congress, dated June 25, 1926. All of the available evidence points to the entire 11.91-acre site as part of the space assigned to the District of Columbia.

Based on the information available to WASA, the Federal government has not taken any action consistent with ownership of the subject Property since it turned over the Main Building in the early 1900's. Indeed, D.C. property tax records show the property, Square W of 771, Lot 800, as owned by the District.

## IV. LOCATION OF "LOAD-OUT FACILITY": EAST SIDE OF MAIN BUILDING

The proposed load-out facility on the Main Building has been placed so as to afford WASA efficient and logistical access to existing infrastructure within the Main Building (Exhibit B). The screening and load-out equipment used to supply the proposed load-out facility is located on the same side (East) of the Main Building (Exhibit C). Moving the load-out facility to the west side of the Main Pumping Station would result in expensive, hard to maintain and onerous belts carrying screened but hazardous sewage material through the building. The west side location would also result in the need to punch holes in the building walls in order to access the exterior of the building, compared to the current location which avoids this necessity by using existing openings in the building walls. Also, an alternate west side location would block any future traffic on Canal Street (Exhibit D). Just as important, a west side location would negate any potential future use of the main floor area for public access because of the routing of screened sewage through the building and exposure to the support equipment.

The load-out facility will have little, if any, effect on truck traffic at the site. By far, the vast majority of trucks accessing the WASA facility will have no relationship to the load-out facility. The load-out facility would typically involve one or two trucks per week while the predominant truck traffic will, as is currently the case, still access parts of the facility from First Street, S.E. Regardless, WASA drivers could easily be instructed to follow selected routes to the station thus avoiding any perceived problem regarding truck traffic around the WASA site.

## V. ANACOSTIA WATERFRONT INITIATIVE IMPACT

WASA is a signator to the Anacostia Waterfront Initiative ("AWI") Memorandum of Understanding. The AWI envisions a substantial investment by WASA to employ an adaptive

re-use of the Main and "O" Street facility site for more public access to the site as well as the Anacostia River through a network of piers and riverwalks. The AWI also envisions WASA's need to rehabilitate the sewage pumping stations and to introduce odor control measures. (Exhibit E). While WASA is able to proceed with the latter improvements, no funding yet exists for any element of the envisioned AWI investment needed for the adaptive reuse of the WASA site for more public access. The present application is limited in scope and is intended only to seek Zoning Commission approval of the exterior components to the Main and O Street Buildings. The United States District Court for the District of Columbia is requiring strict adherence to an established schedule for construction under the threat of severe economic penalties to WASA. WASA has no other option with regard to compliance with this mandate but to proceed forward with at least an initial Zoning Commission Review at this time. It is clear from the AWI that a more extensive planning analysis regarding any proposed adaptive reuse of any of the WASA property would again require a formal submission to the Zoning Commission. WASA officials have been meeting and will continue to work with their neighbors and City officials regarding the implementation of the AWI.

## VI. COMPLIANCE WITH SPECIAL EXCEPTION CRITERIA

Section 1603.1 of the Capitol Gateway Overlay District (published as Proposed Rulemaking in the August 2, 2002 D.C. Register), proposes to subject all uses within the CG/W-2 District, including WASA's Main and O Street Building, to special exception review. This section provides that "all proposed uses, buildings and structures in the CG/W-2 District, or any proposed exterior renovation to any existing buildings or structures in the CG/W-2 District that would result in an alteration of the exterior design, shall be subject to review and approval by the Zoning Commission."

***Compliance with Subsection 3104.1.*** Pursuant to the Regulations generally and proposed Section 1603.2 the Applicant must meet the requirements and specific conditions of Section 3104.1 which authorizes the Zoning Commission to "grant special exceptions where, in the judgment of the Commission, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Maps, subject in each case to the special conditions specified in Section 3104."

*1. How will the proposed special exception be consistent with the general intent and purpose of the Zoning Regulations and Map?*

One of the purposes of the Capitol Gateway Overlay District is to allow for the continuation of existing industrial uses, which are important economic assets to the City during the very extended period projected for redevelopment of the Capitol Gateway/Buzzard Point area. This area is quite large, has a large number of potential building sites, and utilities and industrial uses will continue to exist alongside newer commercial and residential development for many years.

The pumping stations involved in this application are fixed in place by very substantial amounts of expensive machinery as well as a unique and essential location in the District's sewerage

disposal and treatment system. It is important that such a critical facility be renovated and upgraded mechanically for optimal functioning.

The *Comprehensive Plan* reinforces the importance of maintaining the viability and modernity of this facility. In the Environmental Element in Chapter 4, the first cited policy objective in Section 402.2 states:

> *(a) Provide for adequate treatment of sewage through continuing efforts and substantial capital investments needed to ensure an adequate level of sewage treatment and to provide sufficient treatment capacity to serve future development needs and consumption patterns.*

The approval of the requested special exception will permit WASA to upgrade and rehabilitate the Main and O Street Building sanitary sewer pumping stations. Both facilities are key sewer management infrastructures and are essential in maintaining the health and quality of life of District residents that rely on the continued and safe operation of these pumping stations.

*2. Will the proposed use adversely affect the use of neighboring property?*

The subject Property has been the site of a publicly operated pumping station operation for over one hundred years. The proposed upgrades to the Main and O Street Buildings are designed to improve the functioning of the Main Station and the external appearance of the O Street Building. There will be virtually no increase in density on the site. The existing floor area ratio on the Property is extremely low at 0.268 FAR and will only increase to 0.270 by construction of the load-out facility on the Main Building. Except for the required temporary construction activity on the Property, no new traffic, noise or lighting will result from the upgrades to the stations. The appearance of the parking area will be improved by paving and striping.

The Office of Planning has raised with the Applicant the important issue of whether the proposed load-out on the east side of the Main Building will adversely affect the proposed apartment building on the adjacent Southeast Federal Center property. The existing layout of several floors of mechanical equipment inside the Main Building, and the existing openings on the east side of the building strongly support the proposed location. However, as described in Section IV above, WASA understands the issue and accordingly has studied the general feasibility of relocating the load-out to the west side. WASA determined this was not a feasible option because of the substantial costs of relocating fixed infrastructure, maintaining the architectural integrity of the exterior of the building, allowing for future flexibility in property use, and other practical considerations.

To lessen any potential adverse impact on the adjacent property, WASA would propose a visual buffer or screen on its property or on the adjacent property. As to effects on neighbors, it should be emphasized that the proposed load-out facility includes odor suppression measures that have not previously been present and should improve the current situation. Also, the volume and frequency of truck traffic to the facility will not be increased. Following the completion of the

exterior modifications and the construction of the load-out facility, WASA projects only one to two trucks per week will make trips to pick up the screened sewage from the load-out facility.

***Compliance with Specific Criteria in Section 1603***

Section 1603 of the proposed Capitol Gateway Overlay District sets forth the specific conditions listed and discussed below.

Proposed Section 1603.2 provides that the Applicant must demonstrate that the proposed use, building or structures in the proposed CG/W-2 District:

> *(a) Will help achieve the desired mixture of uses in the proposed CG Overlay District as set forth in Sections 1600.2(a) and (b) with the identified preferred uses specifically being residential, hotel or inn, cultural, entertainment, retail or service uses.*

Although support facilities and public utilities are not listed in Paragraph (a) above, the purposes of the CG Overlay District acknowledge the importance of such uses. Section 1600.2(c) states, "Allow for the continuation of existing industrial uses, which are economic assets to the city, during the extended period projected for redevelopment." This purpose is further supported by a specific provision – Section 1605 – providing that existing CM (industrial) uses shall be conforming uses rather than nonconforming. Conforming status means that structural alterations as well as ordinary repairs and maintenance are allowed as a matter of right. This policy encourages long-term viability of these uses in the area. Moreover, the pumping stations are critical to the citywide operation of the wastewater treatment system.

Section 1600.2(a) lists as additional purposes, the "development of the area with a mixture of residential and commercial uses, and a suitable height, bulk and design of buildings, as generally required by the Comprehensive Plan and planning studies of the area." Section 1600.2(b) states another purpose as "encourag[ing] a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses." Approval of the special exception for the existing pumping stations with the proposed minor modifications, will advance both of the goals stated above by providing an essential public utility infrastructure which will be necessary for any significant development within the proposed CG/W-2 district. All of the desired uses above will be reliant on access to sanitary sewer services. Further, the existing buildings are suitable in height, bulk and design with the vision for the area, and the Main Building is considered a major historic building even though it is not formally designated as a landmark.

1603.2(b) requires that suitably designed public open space be provided along the waterfront, as specified in greater detail in Section 1603.3. Section 1603.3 (a) of the proposed regulations requires that buildings or structures on lots facing the Anacostia River be set back no less than seventy-five (75) feet, unless this causes undue economic hardship, but in no case no less the fifty (50) feet from the bulkhead.

The O Street Building, which will undergo the most reconstructive work, is approximately fifty (50) feet from the bulkhead. The Main Building has been in its current location for over one hundred years and is more than 150 feet from a portion of the bulkheads with the exception of an old coal barge slip that is no longer in use. It is essential for the proper functioning and operation of a pumping station that the facility remain in its current location. Further, because these buildings are existing facilities, it would create an extreme and undue economic hardship if they had to be relocated, as specifically allowed by § 1603.3(a). Clearly, the future riverwalk will necessarily have to narrow to a degree at this point. The Applicant notes that one of the two high-rise office buildings in Buzzard Point a few blocks to the west is situated even closer to the water's edge.

Section 1603.3(b) requires a plan for suitable open space treatment of the setback area for walkways, bikeways and recreational uses, and provisions for assuring private maintenance of these areas with permanent public access and suitable connections to adjacent public spaces along the waterfront. As mentioned above, WASA is seeking this Special Exception review solely to undertake the required upgrades to the Main and O Street buildings to comply with the Consent Decree. WASA is not intending to take any actions at this time which will impede future plans to implement the plans envisioned by the AWI.

Section 1603.4 states that "the building or structure shall be designed with a height, bulk and siting so as to provide for openness of views and vistas to and from the waterfront, and where practical, maintain views of federal monumental buildings."

The modifications to the Main and O Street Buildings will not increase the density of the existing buildings and as a result will not have an impact on the existing openness of views and vistas to existing federal monumental buildings as set forth in Section 1603.4. Moreover, no additional bonus density or accompanying building height is being requested from the Zoning Commission. Because they will be maintained at a low scale, these buildings will contribute to the views to and from the waterfront that the overlay zone encourages and requires. See especially Section 1600.2(d) of the Purpose clause: "Provide for a reduced height and bulk of buildings along the Anacostia riverfront in the interest of ensuring views over and around waterfront buildings, . . ." The extremely low density of buildings on the site (0.270 FAR) and the very low lot occupancy of 15 percent contribute substantially to the desired sense of openness along the river. This will be in contrast to more densely developed areas to the east and west.

Section 1603.5 allows for the Zoning Commission to grant bonus density under certain circumstances related to setback from the waterfront. Sections 1603.6 through 1603.8 are essentially not applicable to this application.