

DC Zoning Commission Case No. 13-05
Re: Forest City Washington, DC Water Occupied Sites

CERTIFICATE OF SERVICE

On September 18, 2013, I caused a copy of the foregoing letter from DC Water in support of PUD 13-05, to be delivered by electronic, hand, or by U.S. Mail to the following:

Forest City Washington c/o
Phil T. Feola, Esq
Goulston & Storrs
1999 K Street, NW
Suite 500
Washington DC 20006-1101

Victor Hoskins, Deputy Mayor
Office of the Deputy Mayor for Planning
& Economic Development
1350 Pennsylvania Avenue, NW
Suite 317
Washington, DC 20004

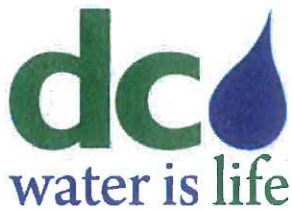
Jennifer Steingasser
Deputy Director
Development Review and
Historic Preservation
D.C. Office of Planning
1100 4th Street, SW
Washington DC 20024

Jamie Henson
Development Review Manager
Policy, Planning and Sustainability
Administration
District Department of Transportation
55 M Street, SE, 5th Floor
Washington, DC 20009

ANC 6D
1101 4th Street, SW
Suite W130
Washington DC 20024



Mark M. Viani
McGuireWoods LLP
1750 Tysons Boulevard, Ste. 1800
Tysons, VA 22102
(202) 857-2492
mviani@mcguirewoods.com



September 17, 2013

Anthony J. Hood, Chairman
District of Columbia Zoning Commission
441 4th Street, NW, Suite 200 S
Washington DC 20001

Re: Party Status in Zoning Commission Case No. 13-05
(Forest City Washington – DC Water Occupied Sites)

Dear Chairman Hood:

The District of Columbia Water and Sewer Authority (“DC Water”) is pleased to offer the following comments in support of Forest City Washington’s (“Forest City”) proposed planned unit development (the “PUD”).

I. DC Water’s Main and O Street Campus

The 12-acre Main and O Street Campus is entirely occupied by five, active, DC Water public service and safety activities. The PUD would displace three of these activities – the Sewer Services operation (field operations and administrative personnel); the Maintenance Services operation and the Fleet Management operation (fleet repair/service). See Annotated Aerial Map, attached as Exhibit “A”.

Approximately seven acres of the Campus is occupied by DC Water’s Sewer Service and Maintenance Service operations, which ensure the continuous operation of the District’s public water and sewer systems. Within these seven acres are located offices for administrative and field staff, workshops, equipment storage, parking for sewer system repair and maintenance vehicles and storage of equipment for the Skimmer Boat operations, which remove trash/debris from the District’s waterways.

Another three acres of the Campus is occupied by the Fleet Maintenance operations, which maintains and repairs DC Water’s fleet of vehicles and specialized equipment. Fleet Maintenance take place primarily within 25,000-square-foot building and also utilizes associated surface parking areas for vehicle storage.

The Main Sewerage and O Street pumping stations constitute the remainder of the Campus and will remain in service with DC Water. The Main Sewerage pumping station was added to the DC Inventory of Historic Sites and the National Register of Historic Places in 2012. The O street pumping station is also the planned location of DC Water’s new administrative headquarters building (“New Administrative Headquarters”). The New Administrative Headquarters, which will be located south of Forest City’s proposed F1 Parcel, is currently being designed and DC Water anticipates filing for development approvals in the First Quarter of 2014.

II. Coordination between the PUD and DC Water Activities

To preserve public service/safety and ensure the successful integration of the PUD with the remaining/future DC Water uses on the adjacent pumping station sites, the Office of the Deputy Mayor for Planning and Economic Development (DMPED), DC Water and Forest City, will need to satisfy the applicable legal and legislative requirements associated with this project and continue to closely coordinate on design, traffic flow, security and protection of public infrastructure.

A. Site Coordination

Throughout the pendency of this PUD application, DC Water has enjoyed a good working relationship with Forest City and appreciates its consistent willingness to work collaboratively to make plan and design revisions where necessary to ensure the successful integration and operation of the PUD with the remaining/future DC Water uses on the adjacent pumping station sites, including the proposed New Administrative Headquarters.

On Friday, August 30, 2013, Forest City filed its supplementary pre-hearing statement, which includes numerous revised plans and exhibits. As a general matter, DC Water notes that most of its technical comments have now been addressed. Most importantly, as requested by DC Water, Forest City has relocated loading activity related to the F1 Parcel from the east side of the proposed building in order to remove truck traffic from the closed portion of Canal Street and avoid damage to aging below-surface sewer infrastructure. DC Water and Forest City have continued to work together to address DC Water's remaining comments, and the parties have agreed to the following design and operational commitments:

- Forest City will maintain notations that show curb cuts and access along N. Place to the former Canal Street right-of-way south of N Place as "pending coordination with DC Water". These factors will finally be established in conjunction with DC Water's plans for its administrative headquarters.
- Forest City will remove references depicting grading on DC Water property along the east side of 1 ½ Street, south of the F1 Parcel and revise to utilize retaining walls as necessary. Forest City will not plan to rely on grading to support the final elevation of 1 ½ Street unless agreed to by DC Water. This portion of the proposed PUD would come back before the Commission for a Stage 2 approval. DC Water acknowledges that given the timing of their proposed New Administrative Headquarters they may need to build the retaining wall if it is sequenced before the new construction of 1 ½ Street south of O Street.
- Forest City will maintain notations that show the loading area for the F1 parcel as "pending coordination with DC Water". Forest City agrees to continue to work with DC Water to coordinate loading, trash collection, and related building services for the F1 Parcel with operations at DC Water's facilities and the design of the New Administrative Headquarters. Pursuant to this commitment, Forest City shall:
 - Refrain from using WB-50 trucks to service the F1 Parcel, if required to accommodate the final design of DC Water's New Administrative Headquarters building
 - Modify the location and orientation of the trash berth, if required to accommodate the final design of DC Water's New Administrative Headquarters building.
 - Coordinate the time for such deliveries and trash service with DC Water.

DC Water requests that the Zoning Commission grant Forest City flexibility to continue to refine the design of the PUD to accommodate these and other coordination issues, which may arise as both the PUD and New Administrative Headquarters projects move forward.

B. Legislative and Legal Requirements

Besides the Zoning Commission's PUD review process, the principal legal and legislative requirements associated with this project are: (1) the project funding requirements set forth by the D.C. Council in the FY2014 budget; and (2) the property disposition certification requirements of the Master Indenture for DC Water's Bond Obligations.

i) FY2014 DMPED Budget Requirements

Through Section 9019 of the FY2014 budget, the D.C. Council approved funding for the relocation of the DC Water public service and safety operations and the transfer of that property to Forest City for development of the PUD, subject to the requirement that the "Mayor shall, by December 31, 2013, submit to the Council a report to include progress related to the following activities:

- (1) Identification of a relocation site;
- (2) Outreach to communities adjacent to a proposed relocation site;
- (3) Environmental remediation of the DC WASA Site and the relocation site
- (4) Estimated costs for the environmental remediation
- (5) Entitlements, permits, and approvals necessary to prepare the DC WASA Site and the relocation site; and
- (6) Surplus designation and land disposition agreements.

The report shall also include a narrative description of the need for additional funding, if any, during fiscal year 2014."

See Section 9019, Bill 20-199 "Fiscal Year 2014 Budget Support Act of 2013", enacted August 29, 2013, an excerpted copy of which is attached as Exhibit "B".

DC Water requests that the Zoning Commission include compliance with the requirements of Section 9019 of the Fiscal Year 2014 Budget Support Act of 2013, as a condition of any First or Second Stage approvals of the PUD.

ii) DC Water Master Indenture Requirements

When the District of Columbia created DC Water in 1996, it granted certain property interests in the District's existing water and sewer infrastructure (and the land supporting that infrastructure) to DC Water and rolled the District's debt associated with this infrastructure into DC Water's bond obligations. DC Water's bond obligations are secured by a Master Indenture intended to protect bond holders by ensuring the collateral value and continued viability of DC Water. The Master Indenture requires that prior to the disposition of any land occupied by DC Water, that an Independent Consulting Engineer

must certify to the bond holders that the proposed disposition will not have a negative impact on the overall viability of DC Water's operations. See Master Indenture excerpt, attached as Exhibit "C".

The displacement of DC Water's public service and safety operations from the Campus involves the disposition of land occupied by DC Water and it is therefore subject to the Master Indenture's Independent Consulting Engineer certification requirement.

DC Water requests that the Zoning Commission include compliance with this requirement as a condition of any First or Second Stage approvals of the PUD.

Thank you for the opportunity to provide commentary on the proposed PUD. Should you have any questions, please feel free to contact me directly at (202) 787-2666 or by email at maureen.mcgowanholman@dcwater.com or DC Water's counsel, Mark Viani at (202) 857-2492 or by email at mviani@mcguirewoods.com. Thank you for your consideration and assistance in this regard.

Sincerely,



Maureen M. Holman
Sustainability Program Manager

DC WATER FACILITIES

H. Main and O Street Campus | Existing Site Conditions



#	Facility/Project
1	Main Pump Station
2	O Street Pump Station
3	Sewer Services Modular Office
4	Fleet Building
5	Sewer Services Buildings
6	Welding Building
7	Building E (To be demolished)
8	Building F
9	Boat Building
10	Radio Shed
11	Trailer
12	Material Bins
13	Clean Rivers Project

EXHIBIT
A

abbies

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To enact and amend provisions of the law necessary to support the fiscal year 2014 budget.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fiscal Year 2014 Budget Support Act of 2013".

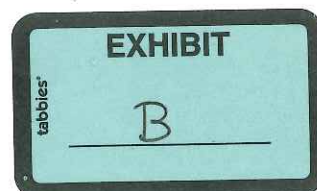
TABLE OF CONTENTS

TITLE I. GOVERNMENT DIRECTION AND SUPPORT

- Subtitle A. Bonus and Special Pay
- Subtitle B. Innovation Fund Establishment
- Subtitle C. Department of General Services Protective Services Division
- Subtitle D. Captive Insurance
- Subtitle E. Technology Services Support
- Subtitle F. Eastern Market Jurisdiction Clarification
- Subtitle G. Community Affairs Grant-Making Authority
- Subtitle H. District of Columbia Government Comprehensive Merit Personnel
- Subtitle I. District of Columbia Uniform Law Commission
- Subtitle J. Grant Administration
- Subtitle K. Discretionary Funds Renaming

TITLE II. ECONOMIC DEVELOPMENT AND REGULATION

- Subtitle A. Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority
- Subtitle B. Workforce Investment Council and Workforce Intermediary Grant-Making Authority
- Subtitle C. Unemployment Compensation Anti-Fraud Federal Conformity
- Subtitle D. Unemployment Compensation Penalty Reduction
- Subtitle E. Unemployment Compensation Benefits Changes Federal Conformity
- Subtitle F. Workers' Compensation Average Weekly Wage Calculation Alignment
- Subtitle G. Wage Theft Prevention
- Subtitle H. Housing Production Trust Fund Revenue Dedication
- Subtitle I. Senior Housing Modernization Grant Fund
- Subtitle J. Local Rent Supplement Sustainment



- ~~"(F) Estimated date of construction completion;~~
- ~~"(G) Number of residents that have been relocated;~~
- ~~"(H) Number of residents that have returned to site;~~
- ~~"(I) Number of units on original site; and~~
- ~~"(J) Income mix by Area Median Income.~~
- ~~"(4) A report on amenities, including:~~
 - ~~"(A) Plans for amenities;~~
 - ~~"(B) Spending on amenities to date;~~
 - ~~"(C) Projected future costs; and~~
 - ~~"(D) Financing sources.~~
- ~~"(5) A report on human capital, including:~~
 - ~~"(A) Number of residents served;~~
 - ~~"(B) Services offered;~~
 - ~~"(C) Spending on human capital to date; and~~
 - ~~"(D) Projected future costs."~~

Sec. 9019. District of Columbia Water and Sewer Authority report.

(a) With respect to the proposed relocation and development of the District-owned property at 125 O Street, S.E., Washington, D.C. 20003 ("DC WASA Site"), the Mayor shall, by December 31, 2013, submit to the Council a report to include progress related to the following activities:

- (1) Identification of a relocation site;
- (2) Outreach to communities adjacent to a proposed relocation site;
- (3) Environmental remediation of the DC WASA Site and the relocation site;
- (4) Estimated costs for environmental remediation;
- (5) Entitlements, permits, and approvals necessary to prepare the DC WASA Site and the relocation site; and
- (6) Surplus designation and land disposition agreements;

(b) The report required by subsection (a) of this section shall also include a narrative description of the need for additional funding, if any, during fiscal year 2014.

HEALTH AND HUMAN SERVICES

~~Sec. 9020. Report on financing options for United Medical Center.~~

~~By October 1, 2013, the Mayor shall prepare a report for public review, in consultation with the Office of the Chief Financial Officer and Huron Healthcare, that analyzes public and private financing options that will generate a minimum of an additional \$60 million for the construction of a new hospital on the grounds of United Medical Center. All financing packages shall be in addition to the \$20 million of existing, proposed District capital funds for planning and site development for the new hospital.~~

MASTER INDENTURE OF TRUST

between

**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

and

**NORWEST BANK MINNESOTA, N.A.
as Trustee**

Dated as of April 1, 1998

**Relating to
District of Columbia Water and Sewer Authority
Public Utility Revenue Bonds**



payment in lieu of cash payments that the Authority deems are in its best interest to accept, provided that such proffers do not cause a violation of the rate covenant set forth in Section 601.

(b) The Authority shall not provide, grant any franchise to provide or give consent for anyone else to provide any services which would compete with the System unless the Authority determines that such franchise or provision of services would provide services that the Authority has determined are not in its best interest to provide and would not materially impair the interests of the holders of Indebtedness.

(c) The Authority shall bill customers for the services of the System no less frequently than quarterly.

(d) If any rates, fees or other charges for the use of or for the services furnished by the System shall not be paid within 60 days after the same shall become due and payable, or within such shorter time as may be determined by the Authority, the Authority shall at the expiration of such period, to the extent permitted by applicable laws and regulations, disconnect the premises from the System or otherwise suspend service to such premises until such delinquent rates, fees or other charges and any interest, penalties or charges for reconnection of service to such delinquent customer shall have been paid in accordance with the policies of the Authority, or a payment plan with respect to such amounts has become effective.

(e) The Authority shall take all such action as may be necessary to perfect liens upon real estate for the amount of any unpaid rates, fees or other charges described in subsection (d) of this Section or any unpaid connection charges or other charges so that such liens will be binding upon subsequent bona fide purchasers for valuable consideration without actual notice thereof.

Section 807. Sale or Encumbrance of System.

(a) Neither the System nor any integral part thereof shall be leased, sold, mortgaged or otherwise disposed of without an Independent Consulting Engineer's certification that such disposition will not have a negative impact on the overall viability of the System unless the proceeds of such disposition, together with any other legally available moneys, are sufficient to pay the principal of, premium, if any, and interest on all Indebtedness then Outstanding and the proceeds are used for such purpose; provided, that the Authority may from time to time sell, exchange or otherwise dispose of any equipment, motor vehicles, machinery, fixtures, apparatus, tools, instruments or other movable property if it determines that such articles are no longer needed or are no longer useful in connection with the System, and the proceeds thereof may be used for any lawful purpose determined by the Authority. The Authority shall not create or suffer to be created any lien or charge upon the System or any part thereof or any lien or charge upon Net Revenues and other moneys pledged herein ranking equally with, prior to, or subordinate to the lien and charge of the Indebtedness, except as provided herein. Notwithstanding anything in this Indenture to the contrary, the Authority may acquire items of personal property constituting part of the System under lease purchase agreements or similar financing arrangements entered into in the ordinary course of business which may be subject to purchase money security interests or other liens in an aggregate amount not to exceed five percent (5%) of the net amount of plant, property and equipment.

(b) Notwithstanding the provisions of subsection (a) of this Section, the Authority may sell, transfer or otherwise dispose of all or substantially all of the System for purposes of consolidating the System with or merging the System into one or more regional water, wastewater or stormwater systems of which the Authority is a participating member jurisdiction if: (1) the successor entity assumes in writing all of the Indebtedness then Outstanding, (2) the successor entity covenants in writing to comply with the Rate Covenant, (3) the Authority obtains an opinion of Bond Counsel, subject to the customary exceptions and qualifications, substantially to the effect that the assumption by the successor entity of all of the Indebtedness then Outstanding shall not have an adverse effect on the tax-exempt status of the interest on any such Indebtedness the interest on which was excludable from gross income for purposes of Federal income taxation when issued, and (4) the ratings on the Indebtedness then Outstanding will not adversely be affected by such assumption.

(c) Notwithstanding the provisions of subsection (a) of this Section, the Authority may lease or sell the Blue Plains Wastewater Treatment Plant if: (1) the lessor or purchaser entity assumes in writing all of the Indebtedness then Outstanding relating to the plant, (2) the successor entity covenants in writing to comply with the Rate Covenant, as applicable, (3) the Authority obtains an opinion of Bond Counsel, subject to the customary exceptions and qualifications, substantially to the effect that the assumption by the lessor or purchaser entity of all of the Indebtedness then Outstanding shall not have an adverse effect on the tax-exempt status of the interest on any such Indebtedness the interest on which was excludable from gross income for purposes of Federal income taxation when issued, and (4) the ratings on such Indebtedness then Outstanding will not adversely be affected by such assumption.

Section 808. Insurance.

The Authority shall continuously maintain insurance with recognized responsible commercial insurance companies against such risks and in such amounts as are customary for public bodies owning and operating similar systems, including (a) insurance against loss or damage to the System, (b) public liability insurance against liability for bodily injury, including death resulting therefrom, and for damage to property, including loss of use thereof, arising out of the ownership or operation of the System, and (c) workers' compensation insurance with respect to the System.

In lieu of insurance written by commercial insurance companies, the Authority may maintain a program of self-insurance or participate in group risk financing programs, including sponsored insurance programs, risk pools, risk retention groups, purchasing groups and captive insurance companies, and in state or Federal insurance programs; provided, however, that the Authority shall obtain and maintain on file a tri-annual favorable written opinion of a Qualified Independent Consultant that such alternative is reasonably acceptable with respect to the coverages under all the circumstances.