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VIA IZIS

Zoning Commission for the
District of Columbia
441 4th Street, NW, Suite 210S
Washington, DC 20001

**Re: Z.C. Case No. 16-11
Consolidated PUD and Related Map Amendment @ Square 2890, Part of Lot 849
Applicant's Written Statement for Limited Scope Public Hearing**

Dear Members of the Commission:

On behalf of Park View Community Partners and the District of Columbia (together, the "Applicant"), we hereby submit the following information responding to the specific issues identified by the Zoning Commission (the "Commission") at its July 26, 2021, public meeting wherein it deliberated on the order of the Court of Appeals (*Cummins v. Dist. Of Columbia Zoning Comm'n*, 229 A.3d 768 (2020) (the "Remand Order")), which vacated and remanded Z.C. Order No. 16-11.

Pursuant to Z.C. Order No. 16-11, the Commission granted a consolidated PUD and related Zoning Map amendment for part of Lot 849 in Square 2890 (the "Property"). Following issuance of Z.C. Order No. 16-11, the D.C. Council adopted amendments to the Comprehensive Plan ("Comp Plan"), including policies that were the subject of the Remand Order. The Framework Element of the Comp Plan became effective on August 27, 2020 (D.C. Law 23-0127). In addition, D.C. Law 24-20 (Comprehensive Plan Amendment Act of 2021), which became effective August 21, 2021, included other amendments to the text of the Comp Plan and amendments to the Future Land Use Map ("FLUM") and Generalized Policy Map ("GPM").

At its July 26, 2021 public meeting, the Zoning Commission instructed the parties and the Office of Planning to file written statements analyzing the PUD under the amended Comp Plan, particularly with regard to the issues raised by the Remand Order. The Applicant submits this statement in response to the Commission's instructions.

1. Remand Order Issue No. 1: Take into account that the 90-foot high building protrudes into a Neighborhood Conservation Area.

The Applicant's response to the Remand Order submitted on August 6, 2020 (Exhibit 262) (the "First Remand Response") responded to this question in relation to the then-applicable 2006 Comp Plan, and provided a detailed analysis regarding why it was appropriate to place a portion

of the 90-foot tall multi-family in a Neighborhood Conservation Area (“NCA”) given the context of the surrounding area, the massing and design of the building, and the appropriate method for analyzing designations on the Generalized Policy Map (“GPM”) and Future Land Use Map (“FLUM”).

The Framework Element of the amended Comp Plan revised the description of the “guiding philosophy” for Neighborhood Conservation Areas to add that this specific designation does “*not preclude development, particularly to address city-wide housing needs*” and that “[a]pproaches to managing context-sensitive growth in Neighborhood Conservation Areas may vary based on neighborhood socio-economic and development characteristics. In neighborhoods with access to opportunities, services, and amenities, more levels of housing affordability should be accommodated. Areas facing housing insecurity (see Section 206.4) and displacement should emphasize preserving affordable housing and enhancing neighborhood services, amenities, and access to opportunities.” See 10-A DCMR § 225.5 of the amended Comp Plan (to which all future references refer unless otherwise stated).

Accordingly, in adopting the new Framework Element, the Council specifically emphasized that new development in NCAs is appropriate, particularly when it addresses city-wide housing needs. It also recognized that development in NCAs should accommodate varying socio-economic and development characteristics of the specific neighborhood in which a site is located, and that “more areas of housing affordability should be accommodated” in neighborhoods with access to opportunities, services, and amenities.

In the present case, the PUD was approved to provide 273 new residential units, of which 90 units would be public housing replacement units, 109-113 units would be workforce affordable units, and 70-74 units would be market rate units. The affordable housing would remain affordable for the life of the project, thus providing a significant amount of new housing and affordable housing to address city-wide housing needs. This amount of affordable housing significantly exceeds what would be required under the Inclusionary Zoning (“IZ”) regulations for the Property.

In recent years, the development of affordable housing has become one of the Districts highest priorities given the significant needs throughout the city, and the project is fully consistent with these goals. For example, the project is consistent with the Mayor’s Housing Initiative, issued May 10, 2019, which is a comprehensive policy statement that contemplates equity across all planning areas within the District and specifically identifies housing affordability as “a top policy priority for Washington, DC” and states that “[i]ncreased housing production and preservation is required to address growth and ensure the District lives up to its values of being diverse and inclusive.” The Housing Initiative establishes the specific goal of producing 36,000 new market rate units, including 2,000 new affordable units, by 2025, and requires the District to “plan for a variety of housing types, including units for large and/or multigenerational families [and] seniors.” By delivering a significant number of new market rate and affordable housing units, including public housing replacement units, and by focusing on larger-sized units and an entire building dedicated to affordable senior housing, the project is a model for how new development can contribute to this important initiative and help to ensure that the city is on track to meet or exceed the Mayor’s housing goals.

The project also helps advance the goals set forth in the *Housing Equity Report: Creating Goals for Areas of Our City*, prepared and published by the Department of Housing and Community Development (“DHCD”) in October, 2019. This report encourages “expanded land use incentives and requirements through Inclusionary Zoning (IZ) and Planned Unit Developments (PUDs)” to achieve the production of 12,000 new affordable units by 2025. *See* Housing Equity Report, p. 3. The report also acknowledges that the D.C. Housing Authority is working to address approximately 2,600 public housing units with immediate critical needs and on establishing a longer-term plan to address remaining capital needs within their portfolio of public housing units. By delivering over 109 affordable housing units and 90 replacement public housing units as part of a comprehensive PUD package, the project fully embraces and advances the specific solutions identified by DHCD to address affordable and public housing within the District.

The District’s focus on affordable housing is also evident in several new and pending amendments to the Zoning Regulations, which expand the existing IZ requirements by creating higher set-aside requirements for certain Zoning Map amendment applications (“IZ Plus”) and expanding the regular IZ program to apply to certain exempt zones, projects, and/or construction types (“IZ-XL”). Accordingly, the overall PUD, of which over 70% of the units will be dedicated as public or affordable housing for the life of the project, significantly advances the District's goals to create new affordable housing units, preserve and replace existing affordable units, and create an equitable and livable city in all eight wards.

The project also took into account the socio-economic and development characteristics of the immediately surrounding neighborhood context, which is comprised of a “diverse mosaic of neighborhoods with strong identities and rich historic fabric.” *See* Z.C. Order No. 16-11, Finding of Fact (“FF”) No. 42. The Property is “located adjacent to the dynamic Georgia Avenue corridor, which is one of the most rapidly changing areas of the city, but still includes significant pockets of concentrated poverty where residents lack quality housing, supportive services, and access to quality open space, healthcare, and recreation.” *Id.* “A number of planned and under-construction private developments are leading to the revitalization of the broader neighborhood, and several public investments are being made on the Georgia Avenue corridor.” *Id.* at FF No. 44. Accordingly, the project was specifically designed to provide greater housing affordability in a rapidly changing area that boasts access to opportunities, services, and amenities.

Based on the foregoing, constructing a 90-foot tall building with a portion of the building’s footprint located within a NCA is not inconsistent with the revised definition of and guiding philosophy for NCAs under the amended Comp Plan, particularly given the strong emphasis placed on the provision of affordable housing within appropriate neighborhood contexts.

2. Remand Order Issue No. 2: Take into account that the areas adjacent to the western portion of the PUD are designated moderate-density residential, not medium-density residential.

As described in more detail below, the FLUM designation for the Property was changed from a Local Public Facility to Mixed-Use, Medium Density Residential and Medium Density Commercial, pursuant to D.C. Law 24-20. Therefore, the Zoning Commission must analysis the approved PUD based on the current FLUM designation as Mixed-Use, Medium Density Residential and Medium Density Commercial.

The FLUM is intended to show the general character and distribution of recommended and planned uses across the city, and, along with the GPM, provides generalized guidance on whether areas are designated for conservation, enhancement, or change. 10-A DCMR §§ 200.5 and 224.4. The land use category descriptions on the FLUM describe the general character of development in each area, citing typical Floor Area Ratios as appropriate. However, the granting of density bonuses (for example, through PUDs or IZ) may result in density that exceeds the typical ranges cited. 10-A DCMR § 228.1(c).

The Comp Plan does not require that each block “strictly correspond” with the general description of the associated land use designation on the FLUM. *See* Z.C. Order No. 08-15, Finding of Fact No. 74(a). Rather, similar to the GPM, the “[FLUM] is not a zoning map. Whereas zoning maps are parcel-specific, and establish detailed requirements and development standards for setbacks, height, use, parking, and other attributes, the [FLUM] is intended to be ‘soft-edged,’ does not follow parcel boundaries, and its categories do not specify allowable uses or development standards. By definition, the [FLUM] is to be interpreted broadly and the land use categories identify desired objectives.” 10-A DCMR § 228.1(a). This is particularly relevant for sites with Mixed Use designations. Decisions on requests for rezoning shall be guided by the [FLUM] read in conjunction with the text of the Comp Plan (Citywide and Area Elements) as well as Small Area Plans pertaining to the area proposed for rezoning. *Id.* at § 2504.5

Under the 2006 Comp Plan, the Framework Element stated that “if a change in use occurs on [Local Public Facility] sites in the future (for example, a school becomes surplus or is redeveloped), the new designations should be comparable in density or intensity to those in the vicinity.” 10-A DCMR § 226(h) of the 2006 Comp Plan. The 2006 Comp Plan also identified specific building heights. Accordingly, the Applicant submitted analyses describing how the proposed rezoning of Property was comparable to the Moderate Density Residential designation of the adjacent areas. *See* Ex. 14, 35B, 43, and 233.

However, the amended FLUM changed the designation of the Property from a Local Public Facility to Mixed-Use, Medium Density Residential and Medium Density Commercial. The subject “Mixed Use” designation for the Property is assigned to areas where two or more uses are encouraged, and is generally assigned to established, pedestrian-oriented commercial areas that also include substantial amounts of housing, typically on the upper stories of buildings with ground-floor retail or office uses, among others. 10-A DCMR § 227.20(a). Such is the circumstance in the present case where the Property is located along a major mixed-use corridor with many existing and planned development projects. The definitions for the mixed-use Medium Density Residential and Medium Density Commercial designations are as follows:

Medium Density Residential: This designation is used to define neighborhoods or areas generally, but not exclusively, suited for mid-rise apartment buildings. The Medium Density Residential designation also may apply to taller residential buildings surrounded by large areas of permanent open space. Pockets of low and moderate density housing may exist within these areas. Density typically ranges from 1.8 to 4.0 FAR, although greater density may be possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The RA-3 Zone District is consistent with the Medium Density Residential category, and other zones may also apply. 10-A DCMR § 227.7.

Medium Density Commercial: This designation is used to define shopping and service areas that are somewhat greater in scale and intensity than the Moderate Density Commercial areas. Retail, office, and service businesses are the predominant uses, although residential uses are common. Areas with this designation generally draw from a citywide market area. Buildings are larger and/or taller than those in Moderate Density Commercial areas. Density typically ranges between a FAR of 4.0 and 6.0, with greater density possible when complying with Inclusionary Zoning or when approved through a Planned Unit Development. The MU-8 and MU-10 Zone Districts are consistent with the Medium Density category, and other zones may also apply. 10-A DCMR § 227.12.

With approximately 275,747 square feet of gross floor area (“GFA”), or approximately 3.6 floor area ratio (“FAR”) spread across the entire Property, and with development incorporating “taller residential buildings surrounded by large areas of permanent open space” and taking advantage of “greater density [] when complying with Inclusionary Zoning or when approved through a Planned Unit Development,” the project, including the 90 foot tall building height, fits squarely within the Mixed-Use, Medium Density Residential and Medium Density Commercial designations applicable to the Property. Moreover, the MU-8 and MU-10 zones, which are specifically identified as being consistent with the Medium Density Commercial category, specifically allow for 90 and 110 feet of building height and 7.2 and 8.64 FAR for projects developed as a PUD, whereas the approved PUD is below these maximum development standards (the apartment building has a height of 90 feet and 5.9 FAR, and the senior building has a height of 60 feet and 3.9 FAR). *See* 11-X DCMR § 303.7.

3. Remand Order Issue No. 3: Take into account that the 90-foot high building and the 60-foot high building are not generally consistent with, respectively, the medium-density-commercial and moderate-density-residential designations in the FLUM.¹

The amended FLUM changed the designation of the Property to Mixed-Use, Medium Density Residential and Medium Density Commercial.² As described above, the 60- and 90-foot tall building heights are fully consistent with this new mixed-use designation.

4. Remand Order Issue No. 4: Either identify record support for the statement that the senior building “mimics many other apartment houses that have been built as infill developments in the area” or forgo reliance on that consideration.

As explained in the Applicant’s First Remand Response, there is ample evidence in the record that the senior building mimics other apartment houses that have been built in the vicinity. *See* Ex. 237A1, Sheets G01 – G03, and Ex. 198, p. 5. In this context, the term “mimic” is intended to represent how the height, massing, and articulation of the senior building, and the project as a whole, relate to the adjacent context similar to how other apartment buildings relate to their respective

¹ We assume that when the Court wrote “medium-density-commercial,” it actually meant to refer to “moderate-density-commercial” in relation to the 90-foot apartment building’s consistency with the FLUM.

² The southern portion of the Property, which is the location of the proposed public park, was re-designated to Moderate Density Residential under the amended FLUM. The portion of the Property that is the subject of this discussion (i.e. the portion with vertical development) is fully within the Mixed-Use, Medium Density Residential/Medium Density Commercial designation on the amended FLUM.

contexts. Specifically, there are at least two already-constructed residential buildings in the vicinity of the Property that have a height similar to the proposed 60-foot height of the senior building. Moreover, the senior building and the project as a whole mimic many other projects that have been constructed and/or approved in the vicinity of the Property in the way that they transition to the lower-scale Moderate Density Residential areas adjacent to the western portion of the Property. Indeed, the overall project composition and massing does an excellent job of relating to the scale and architectural character of the surrounding context through the use of multiple buildings, building heights, and building types, which transition down in height as they move towards the lower-density residential neighborhood and are varied in their massing and articulation.

Even if the Commission decides to forgo reliance on the statement that the senior building mimics other apartment houses that have been built in the vicinity, approval of the senior building at 60 feet tall and 3.9 FAR is still fully-consistent with the FLUM's designation of the Property as Mixed-Use, Medium Density Residential and Medium Density Commercial, and with numerous Comp Plan policies that specifically identify the need for more housing generally, including affordable, family-sized, and senior housing, including but not limited to the following policies as more specifically discussed below:

- LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations
- H-1.1.9: Housing for Families
- H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority
- H-1.2.2: Production Targets
- H-1.2.4: Housing Affordability on Publicly Owned Sites
- H-1.2.5: Moderate-Income Housing
- H-1.2.7: Density Bonuses for Affordable Housing
- H-1.2.10: Redevelopment of Existing Subsidized and Naturally Occurring Affordable Housing
- H-1.2.11: Inclusive Mixed-Income Neighborhoods
- H-1.2.H: Priority of Affordable Housing Goals
- H-1.3.1: Housing for Larger Households
- H-1.4.4: Public Housing Renovation
- H-1.4.A: Renovation and Rehabilitation of Public Affordable Housing
- H-1.4.E: Additional Public Housing
- H-2.1.2: Preserving Affordable Rental Housing
- H-2.1.4: Avoiding Displacement
- H-2.1.6: Long-Term Affordability Restrictions
- H-2.1.9: Redevelopment of Affordable Housing
- H-4.3.2: Housing Choice for Older Adults
- H-4.3.3: Neighborhood-Based Housing for Older Adults

5. Remand Order Issue No. 5: Independently analyze and discuss whether the PUD is inconsistent with specific policies, or would have adverse effects, timely identified before the Commission.

In addition to being not inconsistent with the applicable designations on the GPM and FLUM for the Property, the project is also not inconsistent with many specific policies and goals of the amended Comp Plan.

Pursuant to the Home Rule Charter, zoning shall not be inconsistent with the Comp Plan. D.C. Code § 6-641.02. As stated in the Framework Element, “[i]n its decision-making, the [Commission] must make a finding of not inconsistent with the [Comp Plan]. To do so, the [Commission] must consider the many competing, and sometimes conflicting, policies of the [Comp Plan], along with the various uses, development standards and requirements of the zone districts. It is the responsibility of the [Commission] to consider and balance those policies relevant and material to the individual case before it in its decision-making, and clearly explain its decision-making rationale.” 10-A DCMR § 224.8.

As stated above, the Framework Element further states that “the zoning of any given area should be guided by the FLUM, interpreted in conjunction with the text of the Comprehensive Plan, including the citywide elements and the area elements.” 10-A DCMR § 226.1(d). Thus, to approve an application the Commission must evaluate the consistencies and inconsistencies of the requested rezoning with the Comp Plan, GPM, FLUM, and various Citywide and Area Element policies and make an overall determination as to whether the request is “not inconsistent” with the Comp Plan when read as a whole. In the event the zoning request is inconsistent with one or more Comp Plan policies, this does not mean the Commission must disapprove the application. The Comp Plan is a broad policy framework that is intended to be interpreted broadly. Thus, to the extent there are inconsistencies, the Commission simply must acknowledge said inconsistencies and explain how they are outweighed by other Comp Plan policies and/or competing considerations. The D.C. Court of Appeals (the “Court”) has upheld this interpretation of the Comp Plan and the manner in which the Commission shall carry out its review relative to the Comp Plan. The Court has stated:

The Comp Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011). Thus, “[e]ven if a proposal conflicts with one or more individual policies associated with the [Comp Plan], this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the [Comp Plan] as a whole.” *Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comp Plan reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the [Comp Plan] is not binding.” *Id.* at 1167, 1168. Thus, “the Commission may balance competing priorities” in determining whether a proposal would be inconsistent with the Comp Plan as a whole. *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013). “If the Commission approves a [proposal] that is inconsistent with one or

more policies reflected in the [Comp Plan], the Commission must recognize these policies and explain [why] they are outweighed by other, competing considerations.” *Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016).

In addition, a primary focus of the amended Comp Plan is racial equity. The importance of equity to District residents was made abundantly clear when the Office of Planning conducted its D.C. Values survey in Spring 2019. In addition to equity, District residents also expressed the importance of other high-level values such as accessibility, diversity, livability, opportunity, prosperity, resilience, and safety. When choosing equity, residents expressed concerns about rising costs and inequitable access to opportunities for housing, businesses, employment, and other necessities. Overall, livability, equity, and safety were considered the most important values. 10-A DCMR § 107.17 – 107.22.

Equity is conveyed throughout the Comp Plan, particularly in the context of zoning, where certain priorities stand out, including affordable housing, displacement, and access to opportunity. To help guide the Commission in applying a racial equity lens to its decision making, the Implementation Element states that “[a]long with consideration of the defining language on equity and racial equity in the Framework Element, guidance in the Citywide Elements on District-wide equity objectives, and the Area Elements should be used as a tool to help guide equity interests and needs of different areas in the District.” 10-A DCMR § 2501.6.

As stated in the Framework Element, equity is both an outcome and a process. 10-A DCMR § 213.6. Equity exists where all people share equal rights, access, choice, opportunities, and outcomes, regardless of characteristics such as race, class, or gender. It is achieved by targeted actions and investments to meet residents where they are, to create equitable opportunities. An important factor to advancing racial equity is to acknowledge that equity is not the same as equality. “As an outcome, the District achieves racial equity when race no longer determines one’s socioeconomic outcomes; when everyone has what they need to thrive, no matter where they live or their socioeconomic status; and when racial divides no longer exist between people of color and their white counterparts. As a process, we apply a racial equity lens when those most impacted by structural racism are meaningfully involved in the creation and implementation of the institutional policies and practices that impact their lives, particularly people of color.” 10-A DCMR § 213.9. Accordingly, the Commission must apply a racial equity lens when reviewing zoning requests against the relevant standard of review set forth in the Zoning Act and/or Zoning Regulations. In the present case, the Commission must evaluate the requested PUD and Zoning Map amendment through a racial equity lens to make its determination as to whether the requested action is not inconsistent with the Comp Plan as a whole. Specifically, in applying the PUD standard of review the Commission may ask how the proposed project can help eliminate race as a determining factor of socioeconomic outcome, help provide people with what they need to thrive regardless of place of residence or socioeconomic status; and help eliminate racial divides.

Based on the guidance provided in the Comp Plan, the Applicant has thoroughly reviewed the goals and policies of every Comp Plan element and has determined that, individually and as a whole, the proposed PUD and Zoning Map amendment is not inconsistent with the elements of the

Comp Plan. The approved PUD advances racial equity on a number of ways, including the following:

- The provision of housing, affordable, workforce, and public housing replacement units, thus providing housing options for people of various financial means, with 70-74 market rate units, 90 public housing units, and 109-113 affordable housing units for households earning up to 60% of AMI.
- The provision of a variety of housing typologies (senior units, family units, and townhomes) and a mix of unit sizes (1, 2, and 3 bedroom), thus providing housing opportunities for a wider segment of the population.
- The provision of approximately 4,500 square feet of ground-floor retail/community serving space, thus providing space that will be used to serve the diverse needs of the residents and immediate community.
- The inclusion of community/amenity rooms that will provide space for resident meetings, services, and other opportunities for resident and community engagement and social interaction.
- The incorporation of sustainable design and environmentally friendly elements, and the provision of landscaped courtyards and exterior spaces, thus helping to improve the health of people living in the approved housing.
- The execution of a Certified Business Enterprise ("CBE") Agreement with the District Department of Small and Local Business Development ("DSLBD"), which agreement requires that 35% of the construction costs be spent on subcontracting to Small Business Enterprises (SBE) certified by DSLBD, thus improving economic and business development opportunities for underrepresented companies.
- The execution of a First Source Employment Agreement with the District Department of Employment Services, which agreement requires that 51% of all new hires for the project be District residents, thus improving employment opportunities for District residents, including underemployed companies.
- The implementation of the U.S. Department of Housing and Urban Development's Section 3 requirements, thereby providing job training, employment, and contract opportunities for low-income and very-low income district residents and businesses.
- The incorporation of a variety of Transportation Demand Management ("TDM") measures (such as providing residents either a car sharing or bike sharing membership and providing residents SmartTrip cards), thus assisting with making it easier for residents to access goods, services, and employment locations.
- The Applicant has also agreed, in coordination with the impacted ANCs in this case, to provide youth programming and job training opportunities through The Community

Builders' Community Life Division and to provide funding support for neighborhood initiatives to be identified in collaboration with ANC 1A, DMPED, DCHA, and other key stakeholders. These efforts and contributions will help address livability, opportunity, and prosperity for underrepresented District residents.

The following sections of this statement reflect the Applicant's evaluation of the PUD's overall consistency with the Comp Plan. Given the wide range of topics addressed in the Comp Plan, certain Citywide Elements may have little to no applicability to the subject action. Notwithstanding, in conducting its amended Comp Plan evaluation the Applicant has thoroughly reviewed the goals and policies of every Comp Plan element and has determined that, individually and as a whole, the proposed PUD and Zoning Map amendment is not inconsistent with the Comp Plan. For those Citywide Elements that are more directly applicable to the Applicant's request, a brief narrative is provided below explaining the basis for the Applicant's determination that the project is not inconsistent with that particular element.

Finally, in accordance with the guidance provided by the Court, the Applicant's evaluation also includes an assessment of potential Comp Plan inconsistencies. As discussed below, to the extent the project is inconsistent with a small number of individual Comp Plan policies, such inconsistencies are far outweighed by other policies including but not limited to land use, transportation, housing, environmental protection, and economic development.

1. Land Use Element

The Land Use Element is the cornerstone of the Comp Plan. It establishes the basic policies guiding the physical form of the District, and provides direction on a range of development, preservation, and land use compatibility issues. The element describes the range of considerations involved in accommodating an array of land uses within Washington, D.C. 10-A DCMR § 300.1. Through its policies and actions, the Land Use Element addresses the numerous, challenging land use issues that are present in the District, including, among others:

- Providing adequate housing, particularly affordable housing;
- Conserving, creating, and maintaining inclusive neighborhoods, while allowing new growth that fosters equity, including racial equity, and accessibility;
- Enhancing neighborhood commercial districts and centers;
- Balancing competing demands for finite land resources;
- Directing growth and new development to achieve economic vitality and creating jobs while minimizing adverse impacts on residential areas and open spaces; and
- Promoting transit-accessible, sustainable development.

10-A DCMR § 300.2.

More than any other part of the Comp Plan, the Land Use Element lays out the policies through which growth and change occur. The Land Use Element integrates and balances competing policies of all the other District Elements. 10-A DCMR § 300.3. The proposed Implementation Element further recognizes the "overlapping nature" of the Comp Plan elements, stating that "an element may be tempered by one or more of the other elements," and further states

that “because the Land Use Element integrates the policies of all other District Elements, it should be given greater weight than the other elements.” 10-A DCMR § 2504.6.

As related to the PUD, the policies and actions of the Land Use Element all aim to utilize land resources efficiently to achieve the following goals:

- Meet long-term neighborhood, District-wide, and regional needs;
- Protect the health, safety, and welfare of District residents and businesses;
- Address past and current inequalities disproportionately impacting communities of color;
- Sustain, restore, and improve the affordability and equity of all neighborhoods; and
- Provide for additional housing and employment opportunities.

10-A DCMR § 302.1.

For the reasons discussed below, the PUD will help achieve the above-described goals through its consistency with several Land Use Element policies. Upon evaluation of the Land Use Element policies and actions, the Applicant finds that the PUD is not inconsistent with the Land Use Element overall, and specifically with the policies listed below.

For example, the project will facilitate redevelopment of the Property with new residential development, including significant new affordable and senior housing, and is located in close proximity to two Metrorail stations and along the major mixed-use corridor of Georgia Avenue. Consistent with the Land Use Element, the project will be developed along a multi-modal corridor and will respect the character, scale, and integrity of the adjacent neighborhoods through appropriate building designs and transitions. The development will also balance against the District’s broader need for housing by serving a mix of incomes and household types, including families and older adults, and is an excellent example of a development that specifically prioritizes affordable housing production. Moreover, as encouraged by the Land Use Element, the Zoning Map amendment associated with the project will facilitate greater mixed-use development with an emphasis on the production of new housing and affordable housing in a high opportunity area to address more equitable distribution.

In addition, as described in more detail below, the project will also improve the visual quality of the surrounding neighborhood by incorporating new landscaping, street tree planting, park improvements, and public realm enhancements and activations.

The Project advances the following Land Use Element policies:

LU-1.4: Transit-Oriented and Corridor Development

- LU-1.4.1: Station Areas as Neighborhood Centers
- LU-1.4.2: Development Around Metrorail Stations
- LU-1.4.3: Housing Around Metrorail Stations
- LU-1.4.4: Affordable Rental and For-Sale Multi-family Housing Near Metrorail Stations
- LU-1.4.6: Development Along Corridors
- LU-1.4.B: Zoning Around Transit

LU-2.1: A District of Neighborhoods

- LU-2.1.1: Variety of Neighborhood Types
- LU-2.1.2: Neighborhood Revitalization
- LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods

LU-2.2: Maintaining Community Standards

- LU-2.2.4: Neighborhood Beautification

2. Transportation Element

The Transportation Element provides policies and actions that are devoted to maintaining and improving the District's transportation system and enhancing the travel choices available to District residents, visitors, and workers. These transportation-related policies are integrally related to other Comp Plan policies that address land use, urban design, and environmental protection. The close interplay between these policy areas is necessary to improving safety, mobility, and accessibility in the District. 10-A DCMR § 400.1. A well-balanced transportation system is integral to the District's efforts to sustain and enhance resident quality of life. Such a system requires integrating land use and transportation where concerted efforts are made to both provide an efficient, multi-modal transportation system and locate land uses in a way that maximizes the potential of said transportation system.

The overarching goal for transportation in the District is to create a safe, sustainable, equitable, efficient, and multi-modal transportation system that meets the access and mobility needs of District residents, workers, and visitors. 10-A DCMR § 401.1. An important component to achieving this goal is to closely coordinate land use and transportation decisions. The balance between housing and jobs plays a clear role in travel patterns. Generally, when homes and jobs are located close to transit, quality of life is improved and the demands on transportation infrastructure are reduced. The Comp Plan recommends that future efforts take these factors into account to ensure that households with varying incomes and communities of color have equitable access to housing and jobs via safe and efficient transportation options.

The Applicant reviewed the PUD against the Transportation Element policies and actions, which did not reveal any potential inconsistencies. Overall, the proposal will help achieve the District's overarching transportation goals and is not inconsistent with the Transportation Element policies and actions. Consistent with policies within the Transportation Element, the project supports transit-oriented development and enhances equitable transportation access by investing in new mixed-use development along a major bus corridor and in close proximity to two Metrorail stations. The project includes a Transportation Demand Management plan that supports strategies aimed at reducing the number of car trips and miles driven. The project has also been designed to minimize curb cuts and vehicular access points, and includes upgrades to the surrounding pedestrian infrastructure to prioritize pedestrian safety. As a new multi-family residential development, the project has been designed with features such as secure bicycle parking, bicycle racks, and other amenities that accommodate cyclists. Overall, the project advances the District's goal of promoting infill, mixed-use housing, particularly affordable housing, and transit oriented development that connect District residents to local jobs.

The project advances the following Transportation Element policies:

T-1.1: Land Use - Transportation Coordination

- T-1.1.4: Transit-Oriented Development
- T-1.1.7: Equitable Transportation Access
- T-1.1.B: Transportation Improvements
- T-1.2.3: Discouraging Auto-Oriented Uses

T-1.3 Regional Smart Growth Solutions

- T-1.3.A: Regional Jobs/Housing Balance

T-2.3 Bicycle Access, Facilities, and Safety

- T-2.3.B: Bicycle Facilities

T-2.4 Pedestrian Access, Facilities, and Safety

- T-2.4.1: Pedestrian Network
- T-2.4.2: Pedestrian Safety
- T-2.4.B: Sidewalks

T-3.1 Transportation Demand Management

- T-3.1.1: TDM Programs
- T-3.1.A: TDM Strategies

T-3.2 Curbside Management and Parking

- T-3.2.B: Carshare Parking

3. Housing Element

The Housing Element describes the importance of housing to neighborhood quality in the District and the importance of providing housing opportunities for all segments of the population throughout the city. 10-A DCMR § 500.1. The District continues to face significant demand for more housing, and in particular affordable housing, across a range of income levels. Other critical housing issues that the District is facing include furthering fair housing opportunities, especially in high-cost areas; fostering housing production to improve affordability; promoting more housing near transit; restoring or demolishing vacant or underused properties; and maintaining healthy homes for residents. 10-A DCMR § 500.2.

The overarching goal of the Housing Element is to develop and maintain new residential units to achieve a total of 36,000 new units by 2025 that provide a safe, decent, accessible, and affordable supply of housing for all current and future residents of the District. 10-A DCMR § 501.1. To achieve this target, the District must maintain a high rate of housing production at all income levels, with a range of housing types, in all part of the District. While equity is conveyed throughout the Comp Plan, access and availability to quality affordable housing is arguably the most important issue when it comes to racial equity. The Comp Plan recognizes that without increased housing the imbalance between supply and demand will drive up housing prices in a way that creates challenges for many residents, particularly low-income residents. However, the

District’s housing crisis cannot be successfully addressed by solely focusing on housing supply and demand. Rather, issues related equitable distribution of affordable housing and ensuring new affordable housing has equitable access to transit and amenities are other important factors that need consideration.

The PUD is not inconsistent with the policies of the Housing Element, and in particular those listed below. Consistent with the Housing Element, the project helps to promote the District’s goal of producing affordable housing for low- and moderate-income households, and targets such housing in a way that addresses racial income disparities. The project helps to distribute mixed-income housing equitably throughout the District and results in the development of new housing on underutilized land that will help enable the District to meet its long-term housing needs. The project includes affordable housing units that are indistinguishable from and which meet the high-quality architectural standards of the market-rate units, and does so through support from the private sector. The project also prioritizes the development of family-sized housing options in close proximity to transit, employment centers, schools, public facilities, and recreation.

More specifically, the project takes advantage of the Comp Plan’s recommendation to provide zoning incentives, such as through the PUD process, to build affordable housing beyond the underlying requirements. Doing so fulfils the District’s goal of exceeding targets for affordable housing and its conclusion that affordable housing “shall be considered a high priority public benefit for the purposes of granting density bonuses, especially when the proposal expands the inclusiveness of high-cost areas by adding affordable housing.” *See* 11-A DCMR § 504.15. The affordable housing will be provided for the life of the project to minimize displacement and achieve a balance of housing opportunities across the District.

As it relates to public housing, the project is consistent with the District’s belief that public housing is a critical part of meeting the demand for affordable housing and preventing displacement. The project will enable the transformation of the existing Park Morton public housing site by creating an equitable and mixed-income neighborhood at Bruce Monroe. The project also utilizes the District-sponsored New Communities Initiative, which is specifically encouraged in the Housing Element related to the renovation and rehabilitation of public affordable housing, and does so in order to specifically advance racial equity and equitable development.

The Project substantially advances the following Housing Element policies:

H-1.1: Expanding Housing Supply

- H-1.1.1: Private Sector Support
- H-1.1.2: Production Incentives
- H-1.1.3: Balanced Growth
- H-1.1.4: Mixed Use Development
- H-1.1.5: Housing Quality
- H-1.1.8: Production of Housing in High-Cost Areas
- H-1.1.9: Housing for Families

H-1.2: Ensuring Housing Affordability

- H-1.2.1: Low- and Moderate-Income Housing Production as a Civic Priority

- H-1.2.2: Production Targets
- H-1.2.4: Housing Affordability on Publicly Owned Sites
- H-1.2.5: Moderate-Income Housing
- H-1.2.7: Density Bonuses for Affordable Housing
- H-1.2.10: Redevelopment of Existing Subsidized and Naturally Occurring Affordable Housing
- H-1.2.11: Inclusive Mixed-Income Neighborhoods
- H-1.2.H: Priority of Affordable Housing Goals

H-1.3: Diversity of Housing Types

- H-1.3.1: Housing for Larger Households

H-1.4: Housing and Neighborhood Revitalization

- H-1.4.4: Public Housing Renovation
- H-1.4.A: Renovation and Rehabilitation of Public Affordable Housing
- H-1.4.E: Additional Public Housing

H-2.1 Preservation of Affordable Housing

- H-2.1.2: Preserving Affordable Rental Housing
- H-2.1.4: Avoiding Displacement
- H-2.1.6: Long-Term Affordability Restrictions
- H-2.1.9: Redevelopment of Affordable Housing

H-4.3 Meeting the Needs of Specific Groups

- H-4.3.2: Housing Choice for Older Adults
- H-4.3.3: Neighborhood-Based Housing for Older Adults

4. Environmental Protection Element

The Environmental Protection Element addresses the protection, conservation, and management of the District’s land, air, water, energy, and biological resources. It provides policies and actions for addressing important issues such as climate change, drinking water safety, tree canopy restoration, energy conservation, air quality, watershed protection, pollution prevention, waste management, the remediation of contaminated sites, and environmental justice. 10-A DCMR § 600.1. Critical environmental issues facing the District include reducing greenhouse gas emissions and adapting to climate change, restoring the District’s tree canopy and expanding green infrastructure, reducing erosion and stormwater run-off, and encouraging green building techniques, among others. 10-A DCMR § 600.2.

The overarching goal for the Environmental Protection Element is to protect, restore, and enhance the natural and human-made environment in Washington, DC, taking steps to improve environmental quality and resilience, adapt to and mitigate climate change, prevent and reduce pollution, improve human health, increase access to clean and renewable energy, conserve the values and functions of Washington, DC’s natural resources and ecosystems, and educate the public on ways to secure a sustainable future. 10-A DCMR § 601.1.

The PUD is not inconsistent with many policies of the Environmental Protection Element, including those listed below. The project will help to reduce the urban heat island effect through tree planting, landscaping, and expanded green space, and will utilize sustainable landscaping practices to help beautify the District, enhance streets and public spaces, and create a stronger sense of character and identity for the Property and vicinity. The project will utilize best practices to prevent soil erosion, will provide on-site recycling opportunities, and will implement comprehensive stormwater management measures. The project will also promote energy efficiency by utilizing energy efficient systems for heating and cooling throughout the project. Furthermore, development at the site will mitigate impacts on the natural environment generally by anticipating the impacts of climate change and utilizing construction practices that do not degrade national resources without mitigation. Finally, due to the site's location in a highly walkable and transit-rich location, the project overall will allow for residents to access convenient travel without an automobile.

The Project substantially advances the following Environmental Protection Element policies:

E-1.1 Preparing for and Responding to Natural Hazards

- E-1.1.2: Urban Heat Island Mitigation

E-2.1 Conserving and Expanding Washington, DC's Urban Forests

- E-2.1.2: Tree Requirements in New Development
- E-2.1.3: Sustainable Landscaping Practices

E-2.3 Conserving Soil and Reducing Erosion

- E-2.3.1: Preventing Erosion

E-3.2 Conserving Energy and Reducing GHG Emissions

- E-3.2.3: Renewable Energy
- E-3.2.5: Reducing Home Heating and Cooling Costs

E-3.3 Reducing Solid Waste Disposal Needs

- E-3.3.1: Solid Waste Source Reduction and Recycling

E-4.1 Green Infrastructure

- E-4.1.2: Using Landscaping and Green Roofs to Reduce Runoff
- E-4.1.3: GI and Engineering

E-4.4 Reducing the Environmental Impacts of Development

- E-4.4.1: Mitigating Development Impacts

E-5.1 Reducing Air Pollution

- E-5.1.5: Improving Air Quality Through Transportation Efficiency

5. Economic Development Element

The Economic Development Element addresses the future of Washington, DC's economy and the creation of economic opportunity for current and future residents. 10-A DCMR § 700.1. It seeks to address critical economic development issues such as, among others, ensuring prosperity is equitably shared across race and geography, growing and diversifying the District's economy, increasing job opportunities and workforce development, and expanding opportunities for small and local businesses. 10-A DCMR § 700.2.

The Comp Plan's overarching economic development goal is to drive inclusive economic expansion and resilience by growing the economy and reducing employment disparities across race, geography, and educational attainment status. 10-A DCMR § 701.1. The project will help the District achieve its economic development goals by expanding the retail sector, encouraging neighborhood shopping, and supporting local entrepreneurs and a mix of businesses by locating new residential development in a neighborhood with a number of retail and service establishments that directly serve the surrounding community. The residential density proposed for the site will significantly help to promote the vitality and diversity of the surrounding commercial area, thus retaining existing businesses, attracting new businesses, and establishing a strong customer base. Moreover, the project will incorporate both market rate and affordable housing to support the District's thriving workforce.

The Project substantially advances the following Economic Development Element policies:

ED-2.2: The Retail Economy

- ED-2.2.1: Expanding the Retail Sector
- ED-2.2.3: Neighborhood Shopping
- ED-2.2.4: Support Local Entrepreneurs
- ED-2.2.5: Business Mix

ED-3.1: Strengthening Retail Districts

- ED-3.1.1: Neighborhood Commercial Vitality

ED-4.3 Getting to Work

- ED-4.3.C: Housing a Thriving Workforce

6. Urban Design Element

The Urban Design Element addresses the District's physical design and visual qualities. It describes ways in which different aspects of the District's landscape, especially its buildings, streets, and open spaces, work together to define impressions of the city and its neighborhoods. The defining urban design qualities of the District derive from the historic Plan of Washington, and the unique characteristics of the city's many neighborhoods. As the District continues to support growth to address housing and economic development needs, several important urban design challenges must be considered. These include strengthening neighborhood quality of life

while accommodating growth and change, and providing compatible infill development and appropriate transitions between varying uses and densities. 10-A DCMR §§ 900.1 and 900.2.

As demonstrated throughout this Comp Plan evaluation, urban design objectives are interwoven through several proposed Comp Plan Elements. The overarching goal of the Urban Design Element is to enhance the beauty, equity, and livability of Washington, DC by reinforcing its historic design legacy and the identity of its neighborhoods and centers, integrating new construction with existing buildings and the natural environment, and improving the vitality, appearance, and functions of streets and public spaces. 10-A DCMR § 901.1. The project helps to achieve this goal. Overall, the Applicant finds the Project to be not inconsistent with the policies and actions of the proposed Urban Design Element, and in particular those listed below.

The proposed project will support many specific policies within the Urban Design Element designed to improve the District's aesthetic and visual character by implementing context-sensitive landscaping, tree planting, and streetscape design. The project's streetscape has been designed to be comfortable, safe, and interesting to pedestrians, with clear walking paths that accommodate a range of pedestrian users. The project's vertical development will strengthen the visual quality of the surrounding neighborhood by utilizing high quality and high performance architectural designs and materials. The project has been designed to transition between large and small scale development by incorporating context-specific design strategies, taking into account the relationship between taller and shorter buildings both within the Property and adjacent to it. The infill nature of the proposal further responds to and complements the qualities of the surrounding neighborhood and will ensure that it respects and improves the integrity of the surrounding area.

In addition, the project has been designed to provide opportunities and spaces for interaction, with an emphasis on encouraging public activity through active building frontages, adequate lighting, and clear sight lines. The buildings are designed with varied roof heights, façade widths, and expressive massings to enhance the human scale and visual interest, and the ground floor storefront design incorporates architectural details and durable materials to improve the pedestrian experience and respond to the surrounding neighborhood fabric.

The project advances the following policies of the Urban Design Element:

UD-1.4 Enhancing Thoroughfares and Gateways

- UD-1.4.1: Thoroughfares and Urban Form

UD-2.1 Streets For People

- UD-2.1.1: Streetscapes That Prioritize the Human Experience

UD-2.2: Designing for Vibrant Neighborhoods

- UD-2.2.1: Neighborhood Character and Identity
- UD-2.2.3: Neighborhood Mixed-Use Centers
- UD-2.2.4: Transitions in Building Intensity
- UD-2.2.5: Infill Development
- UD-2.2.7: Preservation of Neighborhood Open Space
- UD-2.2.A: Scale Transition Study

UD-3.2 Designing the Active District

- UD-3.2.1: Buildings that Enable Social Interaction
- UD-3.2.5: Safe and Active Public Spaces and Streets

UD-4.2 Designing Architecture for People 98

- UD-4.2.1: Scale and Massing of Large Buildings
- UD-4.2.2: Engaging Ground Floors
- UD-4.2.4: Creating Engaging Facades

7. Mid-City Area Element

The Property is located within the Mid-City Area Element of the Comp Plan. Mid-City is one of the most diverse parts of Washington, DC. Although it is one of the smallest of the 10 planning areas geographically, it is the most populous and most dense. 10-A DCMR § 2000.2. The area is well served by the District's transportation system, including the Metro Green and Yellow Lines, numerous bus lines, several cross-town arterials, and bikeshares. 10-A DCMR § 2000.3.

Mid-City contains approximately 19% of the District's new housing units, and almost 14% of the area's housing units are affordable. Many of these affordable units are at risk of expiring; thus, Mid-City will be a target-rich area for investments by the administrators of the Housing Preservation Trust Fund, which is to be used to preserve affordable housing units when their covenants of affordability are expiring. 10-A DCMR § 2000.6.

Mid-City includes many public and lower cost units that are at risk of conversion to market rate rents or condominiums. The District has also assisted tenants in their efforts to renovate and purchase apartment properties throughout the community, particularly in Columbia Heights. Millions of dollars have been invested to create new affordable housing opportunities for current and future Mid-City residents.

Some Mid-City neighborhoods are still facing challenging economic and social conditions. Despite the real estate boom, buildings continue to lie vacant along commercial corridors such as lower Georgia Avenue NW, Florida Avenue NW, and North Capitol Street NW. The Planning Area also has a severe shortage of parkland. As the densest part of the District, and one with many young children, recreational needs are among the highest in the District. Most of the Planning Area's parks lack the land and amenities to meet these needs. 10-A DCMR § 2000.8.

During community workshops, residents and stakeholders provided feedback on neighborhood-specific issues. Which included the following:

- Housing opportunities should be increased for people at all income levels so that Mid-City can remain a diverse neighborhood. The District-wide rise in housing prices has particularly impacted Mid-City, as costs have soared beyond what many local residents can afford. Moderate-income families and lower-income residents are being priced out of the area, and there are concerns that the community is becoming affordable only to persons with high-incomes. Preserving the existing stock of affordable units is important, either through rehabilitation or replacement of existing units with new affordable units. The type

of new housing being built in the area should be more varied. In particular, more three- and four-bedroom units are needed to attract and retain families. 10-A DCMR § 2007.3.

- New condominiums, apartments, and commercial development should be directed to the areas that are best able to handle increased density, namely areas immediately adjacent to Metrorail stations or along high-volume transit corridors. These areas are generally located... along 7th Street NW and Georgia Avenue NW. 10-A DCMR § 2007.3.
- The community is in need of additional parkland. Mid-City is the densest part of Washington, DC, but the ratio of park acreage per resident is among the lowest in District. The Planning Area has a shortage of active play fields and recreational facilities, especially east of 16th Street NW. New development ... should set aside land for parks, while development along the area's commercial streets and around Metro stations should include pocket parks and plazas. 10-A DCMR § 2007.3.
- Mid-City needs greening. Tree planting is needed to reduce urban runoff, create shade, remove air pollutants, and create beauty in the neighborhoods. Future development should incorporate green roofs and other methods to reduce resource consumption, conserve energy and water, and be more environmentally-friendly. 10-A DCMR § 2007.3.

The project is not inconsistent with the goals and community priorities identified above, and implements a number of the specific policies listed below. For example, the project is located along the Georgia Avenue corridor, which the Mid-City element specifically identifies as a location for “new mixed-income housing developments that provide a greater mix of affordability as a result of a rezoning effort.” *See* 10-A DCMR § 2008.3. The project has been designed to ensure that the infill development is comparable in scale and character with adjacent uses, provides more housing opportunities, and promotes the construction of new affordable units.

The project also includes large courtyards, rooftop terraces, public space enhancements, and ample outdoor green space. Specifically, the project includes new landscaping, street tree planting and maintenance, energy efficient and alternative energy sources, green roofs, methods to reduce stormwater runoff, and green engineering practices. The project has been designed to integrate a host of sustainable features, such that the apartment house and senior building will be certified with a minimum of 57 points under the Enterprise Green Communities (“EGC”) standards, and the townhomes will be certified with a minimum of 50 points under the EGC standards. The project also includes sidewalks along Georgia Avenue, Irving Street, and Columbia Road, which will provide for a better pedestrian experience through the use of street trees, landscaping, and sidewalk connections. Overall, the project will increase the District's tree cover, minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment.

The project helps advance revitalization of the lower Georgia Avenue corridor specifically by incorporating mixed-income housing, well maintained public spaces, and increased density within a well-designed and safe pedestrian-oriented streetscape. It also helps to implement the Great Streets Initiative's recommendations for Georgia Avenue by establishing new housing along the mixed-use and transit-rich corridor. Moreover, the project supports the District's goal of

redeveloping Park Morton as a new community, replacing the existing public housing units with an equivalent number of new public housing units plus market-rate and moderate-income housing, to create a true mixed-income community while avoiding permanent displacement.

Specifically, the project is not inconsistent with the following specific policies within the Mid-City Area Element:

MC-1.1 Guiding Growth and Neighborhood Conservation

- MC-1.1.2: Directing Growth
- MC-1.1.3: Infill and Rehabilitation
- MC-1.1.7: Preservation of Affordable Housing
- MC-1.1.12: Green Development Practices

MC-2.1 Georgia Avenue NW Corridor

- MC-2.1.1: Revitalization of Lower Georgia Avenue NW
- MC-2.1.2: Georgia Avenue NW Design Improvements
- MC-2.1.D: Great Streets Improvements
- MC-2.1.E: Park Morton New Community

8. Analysis of Potential Comprehensive Plan Inconsistencies

The foregoing Comp Plan analysis thoroughly demonstrates the numerous ways in which the project aligns with the policies and goals of the Comp Plan. However, as established by the Court, it is not sufficient to simply identify the policies that would be advanced when evaluating a proposal for consistency with the Comp Plan. Rather, because of the overlap within and between the elements the evaluation must also recognize where there may be potential inconsistencies.

Since first being adopted by the D.C. Council, the Comp Plan has always recognized that there is intentional overlap between its individual components (elements) and that it is intended to be a policy framework that is to be interpreted broadly and provide guidance to all executive and legislative decision making. *See also, e.g. Wisconsin-Newark*, 33 A.3d at 394. For example, the first Comp Plan adopted in 1984 stated “[t]he primary dynamic of the District elements of the Plan are the overlapping of its elements’ goals. This overlapping is intentional.” *See* Section 102, District of Columbia Comprehensive Plan Act of 1984. The current Implementation Element reflects the same language: “[r]ecognize the overlapping nature of the [Comp Plan] elements as they are interpreted and applied. An element may be tempered by one or more of the other elements.” 10-A DCMR § 2504.6.

The Court has also recognized this overlap, and has reiterated that “[e]ven if a proposal conflicts with one or more individual policies associated with the [Comp] Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the [Comp] Plan as a whole.” *Durant*, 65 A.3d at 1168. Indeed, in the event there are inconsistencies with one or more policy, the Commission simply must acknowledge said inconsistencies and explain how they are outweighed by other Comp Plan policies and/or competing considerations. *See Friends of McMillan Park*, 149 A.3d at 1035. Thus, in the event a

zoning request is inconsistent with one or more Comp Plan policies, this does not mean the Commission must disapprove the application.

Consistent with the guidance provided in the Implementation Element, the Applicant conducted a thorough Comp Plan evaluation using a racial equity lens and, as presented herein, finds that the project is not inconsistent with the Comp Plan when read as a whole. In conducting its evaluation, the Applicant reviewed policies where the project may be viewed as inconsistent, but finds overwhelmingly that any potential inconsistencies are outweighed by the proposal's consistency with the FLUM, GPM, and other competing Comp Plan policies relating to land use, housing, transportation, environmental protection, and economic development, among others.

Specifically, the opposition argued that the PUD was inconsistent with the Comp Plan because it would reduce the amount of available park greenspace. In the underlying order, the Commission specifically acknowledged “the many policies within the Comprehensive Plan that encourage the preservation of open space” but still found that the project was “consistent with the goals of preserving open space, even though the PUD Site will be developed with housing and will result in the net reduction of open space.” The Commission made this finding “based on the District’s commitment to develop approximately 44,000 square feet of land adjacent to the PUD Site as a public park, such that the Applicant’s proposal to developing the PUD Site with housing creates a balanced approach to development of Lot 849 that is consistent with the Comprehensive Plan.” *See* Z.C. Order No. 16-11, FF No. 141 and 142.

Thus, because the District will be developing a public park directly adjacent to the PUD, and because affordable housing was such an important priority to the District, the Commission concluded that the PUD would allow for “both the development of housing and the opportunity to provide improved urban park land in perpetuity.” *Id* at FF No. 148. Consistent with prior court rulings, the Commission specifically recognized the overlapping nature of Comp Plan elements, acknowledged that the proposed “net reduction of open space currently on the PUD Site” was potentially inconsistent with certain Comp Plan policies related to the preservation of greenspace, but ultimately determined that these inconsistencies were outweighed by other Comp Plan policies and competing considerations related to the establishment of housing and affordable housing. *See generally, id.* at FF No. 129-151. Accordingly, even if the Commission found that the PUD was inconsistent with certain elements related to parks and open space, it does not mean that the Commission must disapprove the application or find that the PUD would be inconsistent with the Comp Plan as a whole.

The opposition also argued that the PUD was inconsistent with a number of specifically listed Comp Plan policies related to quality of life, jobs and small businesses, public services, affordable housing, and transportation. (Ex. 181.) The Commission followed the Court’s guidance on how potentially inconsistent policies should be evaluated and reviewed. Indeed, the final zoning order included over 11 pages describing the Commission’s specific determinations that, contrary to the opposition’s assertions, the PUD was not inconsistent with the particular policies identified. *See* Z.C. Order No. 16-11, FF No. 194(a)-(cc). Consistent with the standard of review for a PUD and with prior findings of the Court related to balancing competing Comp Plan priorities, the Commission determined the project to be not inconsistent with the Comp Plan as a whole. *See id.* at FF No. 203, stating that the “Commission has balanced the many competing priorities within

the [Comp Plan], and concluded that the overall Project is consistent with the [Comp Plan] as a whole... [T]he Commission has explained why the policies related to land use, housing, and affordable housing are so important to achieving District goals, and that the Project's density, scale, and building heights are necessary to achieve these goals.”

In addition, the Applicant's First Remand Response included a table that (i) summarized the information from the case record regarding specific Comp Plan inconsistencies and potential adverse effects asserted by the opposition; and (ii) referenced exhibits in the case record that address the project's consistency with the Comp Plan generally, as well as those specific policies where the opposition asserts inconsistency. *See Ex. 262, pp. 10-12.*

6. Remand Order Issue No. 6: Determine whether, in light of the Commission's conclusions on these issues, the Commission should grant or deny approval of the PUD, and explain the Commission's reasoning in granting or denying approval.

Based on the foregoing responses, combined with the detailed analysis provided in the Applicant's First Remand Response, the Commission should grant the PUD. As summarized below, the Applicant has met the standard of review necessary to obtain approval of the PUD.

Pursuant to 11-X DCMR § 304.3, in deciding a PUD application the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. In order to approve a PUD the Commission shall find that the proposed development:

- a. Is not inconsistent with the Comp Plan and with other adopted public policies and active programs related to the subject site;
- b. Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
- c. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comp Plan or with other adopted public policies and active programs related to the subject site.

The case record, including this response which provides an update on the project's consistency with the amended Comp Plan, overwhelmingly demonstrates that the project is not inconsistent with the Comp Plan when read as a whole. The project is not inconsistent with the policy guidance provided by the GPM's Comp Plan's amended definition of the GPM Neighborhood Conservation Area designation, and fits squarely within the Mixed-Use, Medium Density Residential and Medium Density Commercial FLUM designation applicable to the Property through the new FLUM. As detailed above, the project is also not inconsistent with the Citywide and Mid-City area elements of the amended Comp Plan.

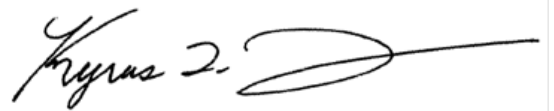
As part of the PUD, the Applicant and the Office of Planning fully evaluated the potential impacts of the project and determined that it would not result in unacceptable impacts. Rather, the potential impacts of the project were found to be favorable, capable of being mitigated, or acceptable

given the quality of benefits and amenities provided. Some of the favorable impacts of the project include, but are not limited to, numerous public housing replacement units, a substantial amount of new affordable housing, circulation improvements, and new permanent open space. Accordingly, the Commission should grant the PUD as being fully consistent with the standards of PUD approval set forth in the Zoning Regulations.

Thank you for your continued consideration of this important project

Respectfully submitted,

Holland & Knight, LLP

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Kyrus L. Freeman

cc: Certificate of Service
Joel Lawson, D.C. Office of Planning (via email)
Stephen Mordfin, D.C. Office of Planning (via email)
Jonathan D. Rogers, DDOT (via email)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2021 a copy of the foregoing letter was served on the following via email:

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Kyrus L. Freeman