

MEMORANDUM OF AGREEMENT
AMONG
THE UNITED STATES GENERAL SERVICES ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
THE GOVERNMENT OF THE DISTRICT OF COLUMBIA ACTING BY AND THROUGH THE
OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT,
THE DISTRICT OF COLUMBIA OFFICE OF PLANNING,
THE DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION,
THE DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICE,
THE NATIONAL CAPITAL PLANNING COMMISSION,
AND
THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY,
REGARDING TRANSPORTATION IMPROVEMENTS ALONG A SEGMENT OF
MARTIN LUTHER KING, JR. AVENUE AND CONSTRUCTION OF
THE FEDERAL EMERGENCY MANAGEMENT AGENCY HEADQUARTERS WITHIN
THE FEDERAL USE PARCEL ON THE EAST CAMPUS OF
ST. ELIZABETHS NATIONAL HISTORIC LANDMARK,
WASHINGTON, D.C.

This Memorandum of Agreement ("MOA") is made as of this 19 day of April 2012, by and among the United States General Services Administration ("GSA"), the Advisory Council on Historic Preservation ("ACHP"), the Government of the District of Columbia ("DC Government") acting by and through the Deputy Mayor for Planning and Economic Development ("DMPED"), the District of Columbia Office of Planning ("DCOP"), the District of Columbia Department of Transportation ("DDOT"), the District of Columbia State Historic Preservation Office ("DCSHPO"), the National Capital Planning Commission ("NCPC"), and the United States Department of Homeland Security ("DHS") (all referred to collectively herein as the "Signatories" or individually as a "Signatory" or as the "Parties" or individually as a "Party"), pursuant to Sections 106 and 110 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. §§ 470f and 470h-2(f), the Section 106 implementing regulations at 36 CFR Part 800, and the Programmatic Agreement ("PA") (Exhibit 1) among GSA, ACHP, DCSHPO, FHWA (or "Federal Highway Administration"), NCPC, and DHS regarding the Redevelopment of St. Elizabeths National Historic Landmark ("NHL"), Washington, D.C., dated December 9, 2008, which contemplates a multi-phased Redevelopment Project on the St. Elizabeths campus ("Redevelopment Project") and the execution of one or several separate Memoranda of Agreement ("MOAs") to develop and implement the Redevelopment Project per 36 CFR § 800.6, of which this MOA is the first MOA for Phase II ("Phase II") of the Redevelopment Project; and

WHEREAS, St. Elizabeths ("St. Elizabeths") is located in the Southeast quadrant of Washington, D.C. and consists of the 176-acre West Campus ("West Campus") and the 173-acre East Campus ("East Campus") (Exhibit 2; St. Elizabeths Regional Plan); and

WHEREAS, the Undertaking (hereinafter defined) contemplated by this MOA is part of a larger undertaking for the Redevelopment Project, addressed in the PA, which proposes GSA's redevelopment of the entire West Campus of St. Elizabeths and the approximately 11.8-acre Federal Use Parcel ("Federal Use Parcel") (Exhibit 3) owned in fee by the District of Columbia and located within the North Parcel Study Area ("North Parcel Study Area") (Exhibit 3) on the East Campus for use as a high-security federal campus for the DHS Headquarters, and implementation of transportation improvements to provide ingress and egress to the West Campus and Federal Use Parcel; and

WHEREAS, the larger undertaking is delineated in the PA, *The DHS Headquarters Consolidation at St. Elizabeths Final Master Plan*, Washington, DC, November 10, 2008 ("Master Plan"), *The DHS Consolidation at St. Elizabeths Master Plan Amendment: Federal Use Parcel of the East Campus*, Washington, DC, March 30, 2012 ("Master Plan Amendment") (Exhibit 4), and the *Consolidation at St. Elizabeths Master Plan Amendment – East Campus North Parcel Environmental Impact Statement*, March 2012 ("FEIS") (Exhibit 5), which is anticipated to result in the *Record of Decision Amended Master Plan for the Department of Homeland Security Headquarters Consolidation at St. Elizabeths in Southeast Washington, D.C.*, ("ROD for the Amended Master Plan"). The FEIS was consulted upon in accordance with 36 CFR § 800.8(a)(1), and based on such consultation, GSA anticipates selection of the alternative that minimizes adverse effects to historic properties. The Master Plan Amendment and FEIS also propose improvements which are not part of the Undertaking (hereinafter defined) and have been addressed separately in other MOAs pursuant to the PA; and

WHEREAS, in consultation and coordination with FHWA and DDOT, GSA conducted additional detailed traffic studies, which informed the scope of this Undertaking (hereinafter defined) and are included in the FEIS (Exhibit 5); and

WHEREAS, the purpose of this MOA, for which GSA formally notified ACHP of its continued consultation on March 27, 2012 (Exhibit 6), is to ensure continued compliance with the PA and NHPA, including Sections 106 and 110(f), whereby, respectively, GSA shall carry out consultation for each phase of development while satisfying the programmatic requirements of DHS and, prior to any effort that may directly or adversely affect the Site (hereinafter defined) shall to the maximum extent possible, undertake planning and actions as may be necessary to minimize harm to the NHL, and affording ACHP a reasonable opportunity to comment; and

WHEREAS, pursuant to the PA and respective MOAs, on the West Campus GSA has undertaken development of the new U.S. Coast Guard Headquarters, an adjacent parking garage, rehabilitation and adaptive use of NHL West Campus contributing buildings, and perimeter security improvements, all of which align with the square footage development totals contemplated in Phase I of the Redevelopment Project as detailed in the PA; and

WHEREAS, GSA has entered into ten (10) year preliminary Occupancy Agreements ("OA") for Phase I of the Redevelopment Project on the West Campus and is reviewing additional preliminary OA's for future phases of the Redevelopment Project, including the occupancy of the West Campus together with the Federal Use Parcel of the East Campus of St. Elizabeths, creating a high-security Interagency Security Committee ("ISC") Level 5 facility that meets DHS's program and functional requirements consistent with the Master Plan and the Master Plan Amendment; and

WHEREAS, pursuant to the PA, the implementation of a forthcoming *Memorandum of Agreement among GSA, ACHP, DDOT, DCSHPO, FHWA, NCPC, NPS* (or "National Park Service") and *DHS regarding a portion of an Access Road through Shepherd Parkway and Transportation Improvements surrounding the I-295 Interchanges at South Capitol Street and Malcolm X Avenue which are adjacent to the St. Elizabeths NHL, Washington, D.C.*, ("Off-Site Access Road MOA"), taken together with the Undertaking in this MOA, shall satisfy DHS' program and transportation access requirements consistent with the Master Plan Amendment; and

WHEREAS, FHWA and DDOT are consulting on a separate transportation memorandum of agreement for transportation improvements on the East Campus, tentatively entitled

Memorandum of Agreement Among FHWA, DDOT, DMPED, DCSHPO, and ACHP Regarding Transportation Improvements at St. Elizabeths Hospital East Campus, Within the District of Columbia, which does not include the MLK Avenue Segment (defined below) or Pine Street improvements described below in GSA's Undertaking (defined below); and

WHEREAS, the following activities, collectively referred to as the Undertaking ("Undertaking") will satisfy the program and transportation requirements to support Phase II of the Redevelopment Project, including the DHS National Capital Region Housing Plan. GSA proposes to demolish non-contributing Buildings 120 ("Dix Building"), Building 81 ("Garage/Motor Pool") and 81A ("Veterans Shelter") and associated surface parking; and construct a new 750,000 Gross Square Foot ("GSF") building complex and associated 775 space parking garage to house the approximately 3,100 Federal Emergency Management Agency ("FEMA") headquarters employees of the DHS on the Federal Use Parcel. GSA also proposes, as part of this Undertaking, transportation improvements associated with Pine and Pecan streets and transportation improvements associated with the widening of an approximately one-mile segment of MLK Avenue from Pomeroy Road to Alabama Avenue ("MLK Avenue Segment"), through the Congress Heights Historic District ("Congress Heights Historic District"), which is eligible for the National Register of Historic Places ("National Register" or "NRHP") (together with the Federal Use Parcel the "Site") and to construct a new below grade pedestrian connection between the West Campus and the Federal Use Parcel ("Campus Connection"). Associated with the transportation improvements to the MLK Avenue Segment, GSA also proposes to demolish Contributing Building 97 ("Gatehouse 4") and the Contributing Landscape Feature Iron Boundary Fence ("Iron Boundary Fence") located within the East Campus; and

WHEREAS, also included in the Undertaking and associated with the construction on the Federal Use Parcel, GSA may relocate the Contributing Unnumbered Cottage located east of Gate 3 ("Unnumbered Cottage"). Associated with the transportation improvements included in the Undertaking, GSA may relocate Contributing Landscape Feature Gateposts at Magnolia Street and Gate 4 entrances ("Gateposts") and may alter the Contributing Landscape Feature Redwood Drive Tunnel ("Tunnel"); and

WHEREAS, GSA has determined the Area of Potential Effect ("APE"), revised on April 26, 2011 and March 23, 2012, (Exhibit 7), as defined in 36 CFR § 800.16(d), for the Undertaking includes both physical and visual areas; and

WHEREAS, GSA is the federal agency with jurisdiction over the St. Elizabeths West Campus and is the lead agency for Section 106 purposes for this Undertaking; and

WHEREAS, NCPC will review the Master Plan Amendment and components of the Undertaking pursuant to the National Capital Planning Act of 1952 and has designated GSA lead agency for NCPC's compliance pursuant to 36 CFR § 800.2(a). NCPC will rely upon the PA and this MOA to fulfill its Section 106 obligation for any approval action taken associated with its review; and

WHEREAS, DDOT is the District of Columbia agency with jurisdiction over MLK Avenue and the other public streets and dedicated public space under the jurisdiction of DDOT (the "ROW") in the APE that may be associated with the Undertaking; and

WHEREAS, DMPED is the District of Columbia agency charged with the development (including potential disposal to third parties) of the East Campus pursuant to Mayor's Order

2011-109 and is the District of Columbia agency with jurisdiction over the non-transportation elements of the Federal Use Parcel; and

WHEREAS, GSA's use and occupancy of the Federal Use Parcel for FEMA headquarters is subject to further negotiations between GSA and DMPED and, if the parties reach mutual agreement, will be addressed in a separate legal document, which will include certain DMPED approval rights; and

WHEREAS, the DC Government is finalizing its *Saint Elizabeths East Master Plan & Design Guidelines* ("East Campus Master Plan"), while DDOT and FHWA are completing the Transportation Network Environmental Assessment ("East Campus EA"). GSA has and plans to continue to coordinate extensively with the DCOP, DMPED and DDOT to ensure the goals and objectives of the Master Plan Design (hereinafter defined) are compatible with the East Campus Master Plan; and

WHEREAS, GSA completed the *St. Elizabeths Hospital North Parcel Study Area Landscape Assessment Plan* in July 2010 ("Federal Use Parcel CLA")(Exhibit 8) to identify the character-defining elements and historic contexts of the Federal Use Parcel; and

WHEREAS, GSA presented the *St. Elizabeths Federal Use Parcel Draft Presentation, Design and Development Guidelines, Washington, DC, March 5, 2012* ("Draft Design Guidelines") to the Signatories and Consulting Parties, and has finalized and incorporated them into the Master Plan Amendment; and

WHEREAS, GSA completed the *Martin Luther King, Jr, Avenue Determination of Eligibility* (2010) ("MLK DOE") (Exhibit 9) for MLK Avenue within the St. Elizabeths NHL (from the north boundary of the West Campus to the south boundary of the East Campus). The MLK DOE stated GSA's determination that MLK Avenue, within the St. Elizabeths NHL, was a contributing element of the St. Elizabeths NHL. The DCSHPO concurred with the MLK DOE on April 29, 2010; and

WHEREAS GSA completed archaeological assessments of portions of the Federal Use Parcel and MLK Avenue: (a) *Phase IA Archaeological Assessment of the North Parcel of the St. Elizabeths Hospital East Campus*, Kreisa and McDowell (2010); (b) *Archeological Investigations at St. Elizabeths Hospital: Phase 1B of the East Campus North Parcel and Phase 1A of the MLK Transportation Improvement Alternatives*, Goode, Goode, Seifert, and Ziesing (2011); (c) *Combined Phase I Archaeological Survey, Building/Landscape and Archaeological Assessment Plan, St. Elizabeths Hospital-West Campus*, Burrow, Tvaryanas, Liebeknecht, and Sergejeff (2005); and (d) *Phase I Archaeological Survey of Portions of the St. Elizabeths Hospital West Campus, Washington, D.C.*, Kreisa, McDowell, and Kermes (2008); and (e) *Geophysical Survey, DHS Security & Community Center, St. Elizabeths West Campus* Forrest Environmental Services, Inc. (2009), to which the DCSHPO concurred, as part of a phased approach to the identification and evaluation of archaeological resources, pursuant to 36 CFR § 800.4(b)(2), and to the application of criteria of adverse effect, pursuant to 36 CFR § 800.5(a)(3), as appropriate. Areas in the parcel where archaeological identification survey or identified site NRHP evaluation has not yet occurred shall not be subject to ground-disturbing activities for the proposed Undertaking until such testing and evaluation has occurred and the DCSHPO has concurred with the results as described in the PA Exhibit 14 and Stipulation II.D.2, below; and

WHEREAS, in accordance with the PA, GSA consulted with the DCSHPO to conclude there are no federally recognized tribes in the District of Columbia, Maryland or Virginia, nor are

there any tribes who have relocated to a different area that reasonably have any documented historic ties to the Site. If any federally recognized tribe should come forward to demonstrate historic ties to the Site, and be interested in developing consultation procedures for projects resulting from any undertaking that has not already been approved pursuant to the PA and this MOA that may affect historic properties with which the tribe has historic ties, it may consult with GSA to develop such procedures pursuant to 36 CFR § 800.2 (c)(2)(ii)(E); and

WHEREAS, GSA, in compliance with the PA, informed by the studies and consultation noted above, and in consultation with the DCSHPO, developed an Archaeological Resources Management Plan ("ARMP") which is anticipated to be finalized by spring 2012; and

WHEREAS, GSA delineated the Limit of Disturbance ("LOD") as the footprint associated with this Undertaking and the immediately surrounding areas (Exhibit 3); and

WHEREAS, GSA applied the Criteria of Adverse Effect (36 CFR § 800.5(a)(1)) and determined that the Undertaking shall have an adverse effect on East Campus Contributing Buildings ("Contributing Buildings"): the setting and feeling of Buildings 83 ("Horse Barn") and 82 ("Dry Barn"), and Cottages 8 and 9 ("Cottages 8 and 9"); the views of the West Campus Historic Masonry Wall ("Historic Masonry Wall"); the campus setting and spatial organization of the East Campus and relationship between the East and West Campuses; and East Campus Gatehouse 4 (Exhibit 10, Contributing Buildings Adverse Effects); and

WHEREAS, GSA also determined that the Undertaking may have an adverse effect on the Unnumbered Cottage; and

WHEREAS, GSA applied the Criteria of Adverse Effect (36 CFR § 800.5(a)(1)) and also determined that the Undertaking shall have an adverse effect on Contributing Landscape Features ("Contributing Landscape Features") (Exhibit 11) which is based on information developed for the FEIS and Master Plan Amendment and derived from the Federal Use Parcel CLA; and

WHEREAS, GSA notified DCSHPO and ACHP of its adverse effect determination for this Undertaking, in accordance with the PA, and GSA has continued its ongoing consultation with the Signatories and the Consulting Parties also in accordance with the PA; and

WHEREAS, GSA has consulted on the Master Plan Design ("Master Plan Design") (Exhibits 4 and 5) for the Undertaking to evaluate alternatives or modifications to the Undertaking that would avoid, minimize, or mitigate adverse effects per 36 CFR § 800.6(a). The Master Plan Design reflects proposed massing, height and scale for new building construction of the FEMA headquarters; landscape and storm water management concepts; road widths and alignments associated with the MLK Avenue Segment as well as Pine and Pecan Streets; and

WHEREAS, the Master Plan Design represents a comparable level of detail in the Master Plan Amendment, FEIS and the forthcoming ROD for the Amended Master Plan; and

WHEREAS, GSA also consulted on a process, stipulated herein, for Signatory and Consulting Party (hereinafter defined) review of the ongoing design work contemplated by this MOA ("Design Review Process"), for which the Master Plan Design, informed by the Federal Use Parcel CLA, draft ARMP, and the Secretary of the Interior's Standards ("Secretary's Standards") serves as a baseline for the Preliminary Design ("Preliminary Design") and Final Design ("Final Design"); and

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256 WHEREAS, GSA informed the Signatories and Consulting Parties during consultation
257 that GSA shall comply with the provisions contained in the Energy Policy Act of 2005, P.L. 109-
258 58, 199 STAT. 614, § 109, *Federal Building Performance Standards*, (increasing efficiency to
259 exceed the thirty percent energy savings of ASHRAE 90.1) by using renewable energy sources,
260 lowering energy consumption per square foot by three percent per year, and contributing to
261 increased energy security by expanding Federal supply of energy, and will comply with all energy
262 and sustainability Executive Orders, in coordination with the Governing Documents (hereinafter
263 defined); and
264

265 WHEREAS, GSA informed the Signatories and Consulting Parties during consultation
266 that the Master Plan Design will be reflected in the FEIS and forthcoming ROD for the Amended
267 Master Plan, as well as the Final Master Plan Amendment, which GSA plans to submit to NCP
268 and U.S. Commission of Fine Arts ("CFA") as noted herein; and
269

270 WHEREAS, GSA, in accordance with Section III.C.1.c of the PA, consulted with NCP
271 and CFA, and shall work with both agencies to determine appropriate submittal dates for the
272 Final Master Plan Amendment and the eventual Final Design Submission ("Final Design
273 Submission"); and
274

275 WHEREAS, DDOT shall have final approval of the design, construction reviews,
276 inspection rights, and quality assurance and quality control issues of MLK Avenue and any other
277 public streets or DDOT ROW in the APE that may be associated with the Undertaking, the
278 majority of which will be implemented within DDOT's ROW, and GSA informed the Signatories
279 and Consulting Parties during consultation of DDOT's approval rights; and
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281 WHEREAS, DDOT shall have final approval of the design, construction reviews,
282 inspection rights, and quality assurance and quality control issues of any streets or DDOT ROW
283 that may be transferred to DDOT as public streets or DDOT ROW, and GSA informed the
284 Signatories and Consulting Parties during consultation of DDOT's approval rights; and
285

286 WHEREAS, pursuant to 36 CFR § 800.3(f), GSA identified and consulted with, in addition
287 to the Signatories identified above, the following Consulting Parties: Advisory Neighborhood
288 Commissions 8A, 8B, 8C, 8D, and 8E, American Society of Landscape Architects, Anacostia
289 Historical Society, Brookings Institution, Committee of 100 on the Federal City, Cultural
290 Landscape Foundation, D.C. Preservation League, Department of Navy, FHWA, Friends of St.
291 Elizabeths, Institute for Public Representation at Georgetown University Law Center, National
292 Association of Olmsted Parks, Medical and Professional Society of St. Elizabeths Hospital,
293 National Coalition to Save Our Mall, National Historic Landmark Stewards Association, National
294 Museum of Civil War Medicine, NPS, National Trust for Historic Preservation, Office of
295 Councilmember Marion Barry, Representative Eleanor Holmes Norton, St. Elizabeths Hospital
296 (D.C. Department of Mental Health), CFA, Ward 8 Transportation Task Force, and Washington
297 Metropolitan Area Transit Authority (referred to collectively herein as the "Consulting Parties");
298 and
299

300 WHEREAS, GSA informed the Signatories and Consulting Parties during consultation
301 that GSA shall continue to provide an opportunity for public involvement in the development of
302 future undertakings of the project in accordance with the PA and 36 CFR § 800.2(d) and §
303 800.6(a)(4); and
304

WHEREAS, GSA informed the Signatories and Consulting Parties during consultation that GSA shall continue to make consultation and non-sensitive Undertaking-related documents accessible to the public through a project website. This MOA includes Sensitive-But-Unclassified ("SBU") related elements which are included within specific exhibits of this MOA. Any exhibits considered to be SBU, or marked as such, may not be released to any party who does not have a valid and demonstrated "Need to Know". Nor shall any SBU material be released to a media source or published on any public website that is not accredited to support SBU materials in accordance with SBU guidelines and procedures (Exhibit 12); and

NOW THEREFORE, the Signatories agree that the Undertaking shall be implemented in accordance with the following Stipulations ("Stipulations") in order to take into account the effect of the Undertaking on historic properties inclusive of potential archaeological resources.

STIPULATIONS

GSA shall ensure that the following measures are carried out:

I. GENERAL REQUIREMENTS

A. Reference Documents and Documentation

The Final Design shall be based upon the Master Plan Design (Exhibits 4 and 5). As the Master Plan Design advances through the Review Process toward completion, the Preliminary Design, the Final Design, and the implementation of the Undertaking will be informed by the Federal Use Parcel CLA, the Secretary's Standards, the final Design Guidelines and the final ARMP which shall be finalized by GSA. With the Master Plan Design as a baseline, the Undertaking shall also be carried out in accordance with: the Master Plan and Master Plan Amendment, FEIS and the forthcoming ROD for the Amended Master Plan; as well as prevailing applicable DDOT codes, standards and specifications. Collectively, the documents mentioned in this Stipulation shall be referred to as governing documents ("Governing Documents"); and GSA shall also comply with applicable Building and Life Safety Codes.

B. Qualified Personnel

GSA shall ensure that all historic preservation and archaeological work performed by GSA or on its behalf pursuant to this MOA shall be accomplished by or under the direct supervision of a person or persons who meet(s) or exceed(s) the pertinent qualifications in the Secretary of the Interior's Professional Standards formerly located at 36 CFR Part 61, and now located at http://www.nps.gov/history/local-law/arch_stnds_9.htm.

II. AVOIDANCE, MINIMIZATION AND MITIGATION MEASURES

A. Avoidance Measures

GSA, in coordination with DDOT on any transportation-related activities, shall follow the Construction Staging Plan herein (Stipulation III.B), and also take the following actions to avoid unanticipated adverse effects associated with this Undertaking

1. Prior to construction, develop a monitoring and protection plan, in consultation with the DCSHPO, to measure for movement at the Horse Barn, due to the proposed adjacent new parking structure excavation and/or construction.

2. If GSA determines NRHP-eligible or listed properties may be affected by excavation and/or construction activities associated with the Undertaking, GSA will develop a monitoring and protection plan, in consultation with the DCSHPO and DDOT.
3. Fence the LOD of the Federal Use Parcel during construction to protect historic buildings outside of the Federal Use Parcel not associated with this Undertaking.
4. Complete measures to avoid adverse effects to NRHP-eligible archaeological resources identified under Stipulation II.D.2, below.

B. Minimization Measures

Following the Design Review process herein (Stipulation III.), GSA, in coordination with DDOT on the transportation elements, shall continue efforts to minimize adverse effects associated with the Undertaking. GSA shall also take the following actions to minimize adverse effects associated with this Undertaking:

1. Complete measures to minimize adverse effects to NRHP-eligible archaeological resources identified under Stipulation II.D.2, below.

C. Mitigation Measures

GSA shall take the following actions to mitigate adverse effects associated with this Undertaking:

1. Potential relocation of the Gateposts and the Unnumbered Cottage on the Federal Use Parcel or the East Campus to be determined in consultation with the DCSHPO, DCOP and DMPED.
2. GSA shall conduct Historic American Buildings Survey ("HABS") documentation in accordance with mitigation measures agreed upon with the NPS and DCSHPO and Section III.D.1.a of the PA documentation for Contributing Buildings (Gatehouse 4 and Unnumbered Cottage), Contributing Landscape Features (Iron Boundary Fence and Gateposts) and the Garage/Motor Pool proposed for relocation or demolition.
3. If GSA is unable to avoid adverse effects to the Tunnel, then GSA shall consult with the DCSHPO and DDOT on measures to mitigate adverse effects.
4. Complete measures to mitigate adverse effects to NRHP-eligible archaeological resources identified under Stipulation II.D.2., below.

D. Archaeology

1. ARMP: GSA shall incorporate the results of archeological investigations of the Federal Use Parcel and MLK Avenue Segment into the ARMP.
2. Additional Investigations:
GSA shall conduct field investigations within the four areas identified in the *Archeological Investigations at St. Elizabeths Hospital: Phase 1B of the East Campus North Parcel and Phase 1A of the MLK Transportation Improvement Alternatives* that will be subject to ground-disturbing activities for the proposed Undertaking to determine the presence or absence of National Register-eligible archaeological resources, and NRHP-evaluation investigations of the three archaeological/geophysical anomalies (Kreisa, McDowell, and Powell 2010,

Archaeological Resources Management Plan, Department of Homeland Security Consolidated Campus Headquarters, St. Elizabeths, Washington, D.C.), and intact buried land surface (draft report in preparation, Kreisa, McDowell, and Powell n.d., *Archaeological Phase IB and Monitoring of Construction Phase 1 Areas within the St. Elizabeths West Campus, Washington, D.C.*) adjacent to and within the parking lot east of Buildings 72, 73, 74, and 75 . All investigations are subject to PA Exhibit 14, and shall be conducted in accordance with the *Guidelines for Archaeological Investigations in the District of Columbia* (D.C. Preservation League 1998, as amended) in consultation with the DCSHPO. In coordination with Stipulation II.D.4 herein, GSA is responsible for permanent curation of all archaeological collections, related records, and digital data in accordance with 36 CFR 79.

Upon further design development associated with the MLK Avenue Segment transportation improvements, GSA will consult with the DCSHPO and DDOT to determine if any additional field investigations are warranted.

GSA will continue to consult with DCSHPO on the additional field investigations noted above, the results of the investigations, and the significance of any archaeological resources identified as a result of the testing. If significant resources are identified, GSA will consult with the DCSHPO on measures to avoid the resources or to minimize and mitigate any adverse effects.

3. Unanticipated archaeological discoveries, including sites, features and artifacts, or human remains, discovered during surface or ground-disturbing activities prior to or during construction phases, shall be evaluated by a qualified archaeologist in consultation with the DCSHPO, and in accordance with Exhibit 14 of the PA.
4. Ownership of archaeological artifacts recovered within the Federal Use Parcel and the MLK Avenue Segment shall be based on property ownership. Those artifacts, project records and associated documents, photographic material, electronic artifact inventory databases, and other pertinent documentation from areas remaining under DC Government jurisdiction are owned by DC Government and will be submitted by GSA to the DCSHPO for curation within thirty (30) days of GSA's completion of the final report. Artifacts, project records and associated documents, photographic material, electronic artifact inventory databases, and other pertinent documentation owned by the District of Columbia will be processed in accordance with *Guidelines for Archaeological Investigations in the District of Columbia*, as amended (D.C. Preservation League 1998). Those artifacts recovered from areas under GSA jurisdiction are owned by GSA and, along with all project records and associated documents, photographic material, electronic artifact inventory databases, and other pertinent documentation, shall be curated in compliance with 36 CFR 79.

III. DESIGN REVIEW PROCESS

- A. **Design Review** Components of the Undertaking may be developed at different schedules and may be reviewed individually. The Design Review Process does not preclude these components from advancing individually. The development of the Master Plan Design for the Undertaking shall be advanced by GSA as follows, prior to the commencement of construction:

456 1. Preliminary Design

- 457 a. The Master Plan Design shall be further developed by GSA into a Preliminary
458 Design that shall be consulted upon in accordance with this stipulation and the
459 Governing Documents. Design development will take into account archaeology,
460 the design guidelines set out in the East Campus Master Plan, Contributing
461 Buildings and Contributing Landscape Features and historic contexts and will
462 include materials, color, textures, lighting, landscaping, signalization and
463 signage.
- 464 b. GSA shall present the Preliminary Design to Signatories and Consulting Parties
465 at a Section 106 Consultation meeting and will provide them a ten (10)
466 business-day review and comment period. GSA shall take comments into
467 consideration and shall inform them as to how comments were considered.
- 468 c. GSA shall submit the Preliminary Design to NCPC and CFA for their reviews,
469 along with a summary of comments made through this process.
- 470 d. DDOT shall have final approval of all transportation-related facilities and
471 activities associated with the Undertaking.

472
473 2. Final Design

- 474 a. The Preliminary Design shall be further developed by GSA into a Final Design
475 that shall be consulted upon in accordance with this stipulation and the
476 Governing Documents. Design development will take into account archaeology,
477 the design guidelines set out in the East Campus Master Plan, Contributing
478 Buildings and Contributing Landscape Features and historic contexts and will
479 include materials, color, textures, lighting, landscaping, signalization and
480 signage.
- 481 b. GSA shall incorporate into the Final Design any additional minimization or
482 mitigations identified during Section 106 Consultation and in accordance with
483 this Stipulation III and Stipulation II.
- 484 c. GSA shall present the Final Design to Signatories and Consulting Parties at a
485 Section 106 Consultation meeting and will provide them a ten (10) business-day
486 review and comment period. GSA shall take comments into consideration and
487 shall inform them as to how comments were considered.
- 488 d. GSA shall submit the Final Design to NCPC and CFA for their reviews, along
489 with a summary of comments made through this process.
- 490 e. GSA shall issue one (1) copy of the NCPC Final Design Submission to each of
491 the Signatories for their records.
- 492 f. DDOT shall have final approval of all transportation-related facilities and
493 activities associated with the Undertaking.

494
495 3. DDOT Project Documentation

- 496 a. GSA shall coordinate with DDOT on all documentation, submissions and
497 reviews associated with this Undertaking pertaining to all transportation-related
498 facilities and activities, and such documentation, submissions and reviews shall
499 meet all required American Association of State Highway and Transportation
500 Officials ("AASHTO") and DDOT codes, standards and specifications.

501
502 **B. Construction Staging**

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504 During the period of construction, in coordination with DCOP, DMPED, DCSHPO and/or
505 DDOT, as appropriate, GSA's Qualified Personnel will participate in project meetings
506 deemed necessary by the GSA Regional Historic Preservation Officer, to ensure that

protections are being enacted to minimize adverse effects as determined in the Design Review Process.

As stipulated in the PA, GSA shall ensure that all construction contractors and teams selected to perform work that may result in adverse effects to historic properties inclusive of archaeological resources develop and follow a Construction Staging Plan ("Construction Staging Plan") for the Undertaking, coordinated with the DMPED, DCOP, DCSHPO and DDOT, consulted on with the Signatories and Consulting Parties, and approved by GSA. DMPED shall have approval over the Construction Staging Plan that does not pertain to streets or DDOT ROW if it impacts the District's ability to use, access, and develop the remainder of the East Campus or involves use of portions of the East Campus beyond the bounds of the Federal Use Parcel.

The Construction Staging Plan and LOD (Exhibit 3) for this Undertaking shall be consistent with Governing Documents, Stipulation II.A herein, and construction best practices, and shall identify historic properties inclusive of archaeological resources potentially affected by the Undertaking and associated construction staging activities, and outline measures to protect, avoid and minimize harm to these resources, while providing the necessary access and flexibility to efficiently and effectively complete the Undertaking. The Construction Staging Plan shall address temporary construction trailers to ensure they are located within the LOD for the duration of construction, and upon removal, their sites shall be restored to their condition prior to construction.

C. Alterations to Project Documents

1. In accordance with Section IX.A of the PA, GSA shall carry forth the following practices and procedures regarding Alterations to Project Documents (hereinafter defined) associated with this Undertaking:

If GSA, in coordination with DDOT on the transportation-related activities, anticipates an intensification of adverse effects from proposing any material or substantial additions or deletions from the Final Design Submission, Construction Staging Plan (inclusive of Site Area and LOD), or other documents that have been reviewed and commented on pursuant to this MOA ("Project Documents"), GSA shall furnish the Signatories and the Consulting Parties with a statement of the requested material changes, additions and/or deletions, submitting with such statement appropriate plans, specifications or other documentation showing in detail the nature of the material changes, additions and/or deletions requested. If the changes are found to cause or constitute adverse effects on historic properties inclusive of archaeological resources, GSA shall then consult further regarding these potential effects in accordance with Section III.C.1 of the PA.

2. GSA shall notify the Signatories and the Consulting Parties of substantive modifications to the Undertaking that GSA has determined either do not pose an adverse effect, or that reduce an adverse effect already contemplated herein. GSA shall then consult upon such substantive modifications with the Signatories and the Consulting Parties.

GSA's consultation, and, if applicable, the Signatories' concurrence with GSA's determination, shall be documented via a letter from GSA and received by the Signatories prior to commencement of associated work. Any attachments to this

MOA that are associated with such substantive modifications shall be revised by GSA and distributed to the Signatories for their records, as accompaniment to the above mentioned letter from GSA to the Signatories.

IV. DISPUTE RESOLUTION

A. For Signatories

1. Objection: Should any of the Signatories to this MOA object in writing to GSA regarding any action proposed to be carried out with respect to the Undertaking or implementation of this MOA, GSA shall consult with the objecting Party, and DDOT should the dispute involve transportation improvements, to resolve the objection. If, after initiating such consultation, GSA determines that the objection cannot be resolved through consultation, GSA shall forward all documentation relevant to the dispute to the ACHP, including GSA's proposed response to the objection. Within fourteen (14) calendar days or within an agreed upon timeframe after receipt of all pertinent documentation, the ACHP shall:
 - a. Advise GSA that the ACHP concurs in GSA's proposed response to the objection, whereupon GSA shall respond to the objection accordingly;
 - b. Provide GSA with recommendations. Such recommendations must be considered by GSA, but are not binding. Once GSA takes these recommendations into account and responds, GSA can proceed to make a final decision regarding the dispute; or
 - c. Refer the dispute to ACHP for Council comment pursuant to 36 CFR §800.7(c), and shall notify GSA about such referral. The resulting comment must be considered by GSA, but is not binding. GSA shall take into account, and respond to, the resulting comment in accordance with 36 CFR § 800.7(c) and Section 110(l) of the NHPA, and then proceed to make a final decision regarding the dispute.
2. Failure to Comment: Should the ACHP not exercise one of the above options within fourteen (14) calendar days or within an agreed upon timeframe after receipt of all pertinent documentation, GSA may proceed with its proposed response to the objection.
3. Subject of Dispute: GSA shall take into account any ACHP recommendation or comment provided in accordance with this Stipulation with reference only to the subject of the dispute; GSA's responsibility to carry out all actions under this MOA that are not the subject of the objection shall remain unchanged and in full force and effect.

B. For Consulting Parties

1. Objection: A Consulting Party may object in writing to GSA, with copies to the other Signatories and Consulting Parties regarding any action proposed to be carried out with respect to the Undertaking or implementation of this MOA. GSA shall take such an objection into account and may consult about it with the objecting party, other

Consulting Parties and Signatories as it deems appropriate. GSA shall then respond to the objecting party in writing, with copies to the Signatories. If GSA subsequently determines that the objection cannot be resolved through consultation, GSA shall notify the objecting party, the DCSHPO, and ACHP which of the following options it shall exercise:

- a. Seek the assistance of the ACHP in resolving the objection, pursuant to Stipulation IV.A above; or
- b. Provide a formal written response to the objection within thirty (30) calendar days of notice to the objecting party.

V. AMENDMENTS

Modifications to this MOA shall be carried forth in accordance with consultation processes and procedures outlined in Stipulation III.C.I of the PA. This MOA may be amended when such an amendment is agreed to in writing by all Signatories. The Signatories to this MOA recognize that some modifications may be minor and may not result in adverse effects. GSA shall ensure that the extent and effect of each modification is identified and the appropriate level of review agency involvement is determined. The amendment shall be effective on the date a copy signed by all of the Signatories is filed with the ACHP.

VI. TERMINATION

- A. Proposal to Terminate: If for any reason, a Signatory determines that the terms of this MOA cannot be implemented or that this MOA is not being properly implemented, in accordance with the NHPA, the Signatory may propose that this MOA be terminated.
- B. Notification: The Signatory proposing to terminate this MOA shall so notify all other Signatories, explaining the reasons for the proposed termination and affording them at least thirty (30) calendar days or within an agreed upon timeframe to consult and seek alternatives to termination.
- C. Termination Due to Failure to Agree: If such consultation fails and the Signatories cannot agree on an alternative to termination, any Signatory may terminate this MOA in accordance with this Stipulation VI. and 36 CFR Part 800.6(c)(8). In the event of termination, GSA shall ensure that each action that would otherwise be covered in this MOA is reviewed in accordance with 36 CFR Part 800.
- D. Responsibilities upon Termination: If this MOA is terminated, then the Signatories shall take such actions as are necessary to comply with all requirements of 36 CFR Part 800.

VII. ADMINISTRATION OF AGREEMENT

Cooperation: During the implementation of this MOA, and until the Signatories agree in writing that the terms of this MOA have been fulfilled; each Party agrees to cooperate with the other Parties to facilitate the satisfaction of their respective obligations under this MOA. The Parties agree to work in good faith with the other Parties to meet their respective obligations in a timely manner.

VIII. EFFECTIVE DATE OF AGREEMENT

This MOA shall become effective when executed by the last of the Signatories ("Effective Date").

IX. DURATION OF AGREEMENT

This MOA shall be in effect for ten (10) years from the date of its execution. If its terms have not been carried out within that time, or if the Undertaking is not completed, or in the event that mitigation related to necessary response actions for a new or previously unknown security threat must be applied, GSA shall consult with the other Signatories to amend the MOA in accordance with Stipulation V. herein.

X. MISCELLANEOUS

- A. Monitoring: The ACHP and the DCSHPO may monitor any activities carried out pursuant to the MOA. GSA shall cooperate with the DCSHPO an ACHP in carrying out these monitoring responsibilities.
- B. Anti-Deficiency Act - Federal Parties: This MOA is subject to applicable laws and regulations. As to the Signatories only, fulfillment of this MOA and all of the provisions herein are subject, pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*, to the availability of funds. This MOA is not an obligation of funds in advance of an appropriation of such funds, and it does not constitute authority for the expenditure of funds. If a Signatory does not have sufficient funds available to fulfill the Stipulations of this MOA, such Signatory shall so notify the other Signatories and shall take such actions as are necessary to comply with all requirements of 36 CFR Part 800. Nothing in this MOA shall be deemed to authorize an expenditure of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.* GSA, DHS and ACHP shall make reasonable and good faith efforts to seek funding for implementing this MOA.
- C. Anti-Deficiency Act – District of Columbia: All parties acknowledge and agree that the District of Columbia's obligations to fulfill financial obligations of any kind pursuant to any and all provisions discussed in this MOA or any subsequent agreement entered into by the parties pursuant to this MOA are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349, 1351, (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2001), (iii) D.C. Official Code § 47-105 (2001), and (iv) D.C. Official Code § 1-204.26 (2006 Supp., as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned.
- D. Recitals and Exhibits: The recitals (Whereas clauses) and exhibits are incorporated herein as a substantive part of this MOA.
- E. Definitions: Certain capitalized terms' definitions that are not contained in this MOA may be found in the PA (Exhibit 1).

- 706 F. Authority of Signers: Each Signatory hereto represents that the person or persons
707 executing this MOA on behalf of such Signatory has full authority to do so.
708
- 709 G. Limitations of District Signatories: GSA and DHS acknowledged that DMPED, as the
710 designee of the Mayor, has no authority to bind the District to convey, transfer or enter
711 into an OA with the GSA for its use and occupancy of the Federal Use Parcel absent all
712 required approvals, including, without limitation, to approval of the Council of the District
713 of Columbia under D.C. Official Code § 10-801. Furthermore, DMPED, by executing this
714 MOA, is not committing to seek all required approvals until GSA and DMPED (each in its
715 sole and absolute discretion) agree to all of the terms of the conveyance, transfer or OA
716 for the GSA's use and occupancy of the Federal Use Parcel to their mutual satisfaction.
717 In addition, DMPED, DCOP and DDOT's entering into this MOA shall not be deemed to
718 as an agreement or consent of the District to limit its ability to plan, use or develop the
719 East Campus.
720

721 **XI. COMMUNICATIONS WITH CONSULTING PARTIES**

722

- 723 A. GSA shall provide Consulting Parties with address and contact information for the
724 appropriate office within GSA for the receipt of any comments provided by them under
725 this MOA.
726
- 727 B. GSA shall maintain a list of Consulting Party contacts, presumably by e-mail, which shall
728 be updated by the Consulting Parties with changes should they occur.
729

730 **X. SIGNATURES**

731

732 Execution and implementation of this MOA by the Signatories, and implementation of its
733 terms, shall evidence that GSA has afforded the ACHP and DCSHPO an opportunity to
734 comment on the Undertaking and its effects, and that GSA has taken into account the
735 effects of the Undertaking on historic properties in compliance with 36 CFR Part. 800 and
736 Sections 106 and 110 of the NHPA.
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738 [signatures follow]
739

740 GENERAL SERVICES ADMINISTRATION

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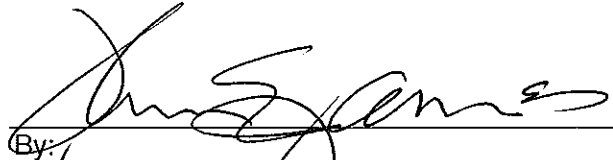

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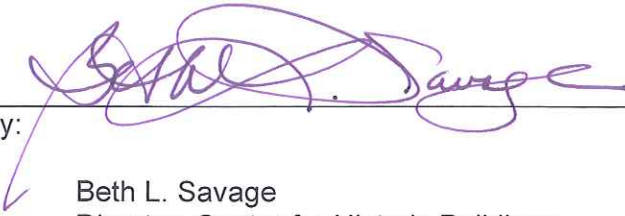
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By: _____ Date: 4/12/12
 Cathleen C. Kronopolus
Regional Commissioner
Public Buildings Service
National Capital Region

751 GENERAL SERVICES ADMINISTRATION
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755

756 By:



4/9/12
757 Date:

758 Beth L. Savage
759 Director, Center for Historic Buildings
760 Federal Preservation Officer
761
762

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Valerie Hauser

4-19-12

By:

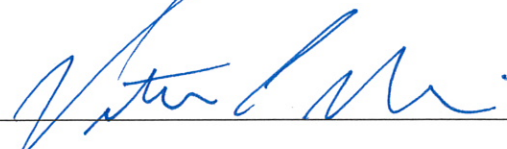
Date:

for

John M. Fowler
Executive Director

GOVERNMENT OF THE DISTRICT OF COLUMBIA ACTING BY AND THROUGH THE OFFICE
OF DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

By:



Victor L. Hoskins

Deputy Mayor for Planning and Economic Development

4/17/2012
Date:

782 DISTRICT OF COLUMBIA OFFICE OF PLANNING

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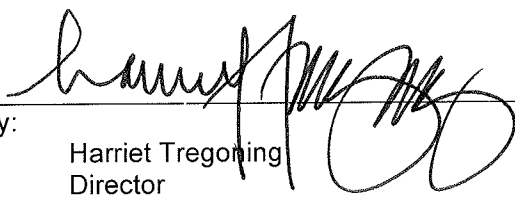
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By: 
Harriet Tregoning
Director

4.13.2012

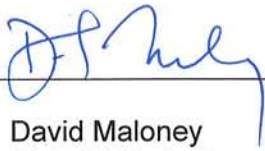
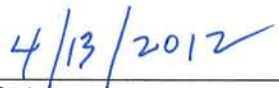
Date:

DISTRICT OF COLUMBIA DEPARTMENT OF TRANSPORTATION

By: 
Terry Bellamy
Director


Date:

DISTRICT OF COLUMBIA STATE HISTORIC PRESERVATION OFFICER

By:  Date: 

David Maloney
State Historic Preservation Officer

814 NATIONAL CAPITAL PLANNING COMMISSION

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4/13/12

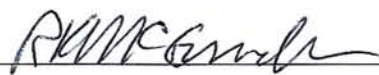
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Date:

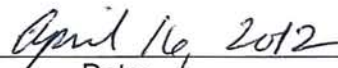
Marcel C. Acosta
Executive Director

DEPARTMENT OF HOMELAND SECURITY

By:



Date:



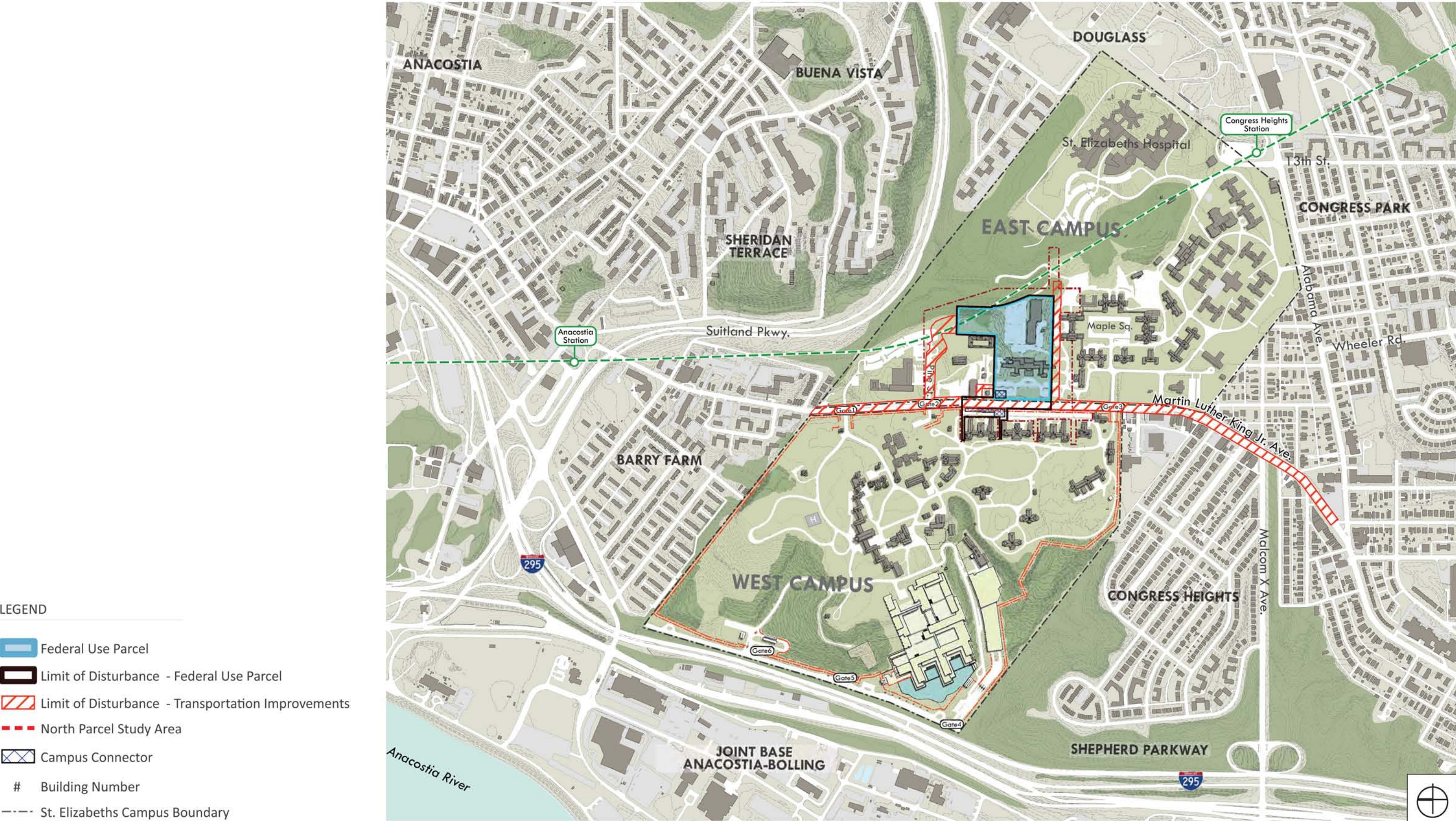
Richard K. McGruder
Director, Headquarters Management & Development

EXHIBIT LIST

Available online at www.stelizabethsdevelopment.com and in hard copy form from the Library and Archives at the U.S. General Services Administration, National Capital Region, Regional Office Building, 7th & D Streets SW, Room 2021, Washington D.C. 20407-000; Phone (202) 358-3086; Fax (202) 708-4925

- Exhibit 1 Programmatic Agreement
(Exhibit can be found on the project website at http://www.stelizabethsdevelopment.com/document_center)
- Exhibit 2 Regional Plan
- Exhibit 3 Site Area and Limits of Disturbance (LOD)
- Exhibit 4 The DHS Consolidation at St. Elizabeths Master Plan Amendment: Federal Use Parcel of the East Campus, Washington, DC, March 30, 2012
(Exhibit can be found on the project website at http://www.stelizabethsdevelopment.com/document_center)
- Exhibit 5 Consolidation at St. Elizabeths Master Plan Amendment – East Campus North Parcel Environmental Impact Statement (March 2012)
(Exhibit can be found on the project website at http://www.stelizabethsdevelopment.com/document_center)
- Exhibit 6 Consultation Letter
- Exhibit 7 Area of Potential Effect (APE)
- Exhibit 8 St. Elizabeths Hospital North Parcel Study Area Landscape Assessment Plan (John Milner Associates, Inc, and Robinson & Associates, Inc., July 2010)
(Exhibit can be found on the project website at http://www.stelizabethsdevelopment.com/document_center)
- Exhibit 9 Martin Luther King, Jr., Avenue Determination of Eligibility (Robinson & Associates, Inc., 2010)
- Exhibit 10 Contributing Buildings Adverse Effects
- Exhibit 11 Contributing Landscape Features Adverse Effects
- Exhibit 12 Sensitive But Unclassified (SBU) Guidelines and Procedures

EXHIBIT 3 - SITE AREA AND LIMIT OF DISTURBANCE (LOD) - ZOOMED-OUT

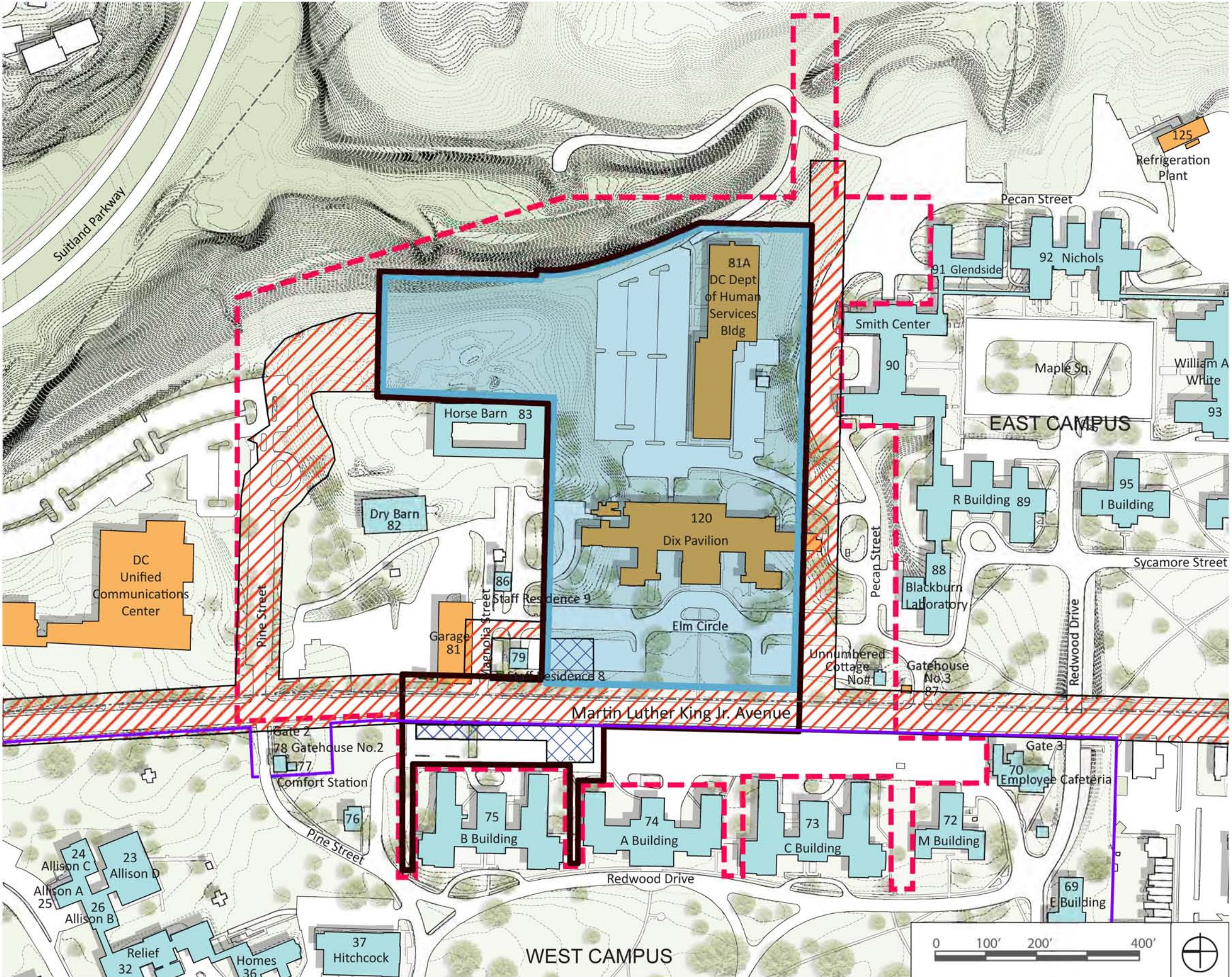


St. Elizabeths National Historic Landmark, Washington, D.C.

EXHIBIT 3 - SITE AREA AND LIMIT OF DISTURBANCE (LOD) - ZOOMED-IN

LEGEND

- Federal Use Parcel
- Limit of Disturbance - Federal Use Parcel
- Limit of Disturbance - Transportation Improvements
- North Parcel Study Area
- Campus Connector
- Contributing Historic Building
- Non-Contributing Building
- Building Number
- Contributing Historic West Campus Wall
- St. Elizabeths Campus Boundary



St. Elizabeths National Historic Landmark, Washington, D.C.