

# STAFF RECOMMENDATION

Revised February 1, 2007

John Mann

NCPC File No. CP19



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## COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL: DISTRICT ELEMENTS— COMPREHENSIVE PLAN AMENDMENTS ACT OF 2006

Submitted by the Council of the District of Columbia

January 25, 2007

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### Abstract

The Council of the District of Columbia has submitted newly enacted District Elements of the Comprehensive Plan for the National Capital. Pursuant to the National Capital Planning Act, the Commission is required to determine the impact of the elements on the interests or functions of the federal establishment in the National Capital. Elements or amendments that the Commission determines to adversely impact federal interests cannot be implemented by the District. The Commission has identified issues that are adverse to the federal interest.

### Commission Action Requested by Applicant

Federal interest review pursuant to 40 U.S.C. § 8721(c).

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### Executive Director's Recommendation

The Commission:

- **Commends** the District on the preparation of a dynamic and functional Comprehensive Plan that will serve the needs of all the District's citizens and stakeholders and ensure that Washington, D.C. remains one of the great cities of the world.
- **Adopts** the attached resolution finding that, with exceptions, the Comprehensive Plan for the National Capital: District Elements—Comprehensive Plan Amendments Act of 2006 (D.C. Act 16-637) will not have a negative impact on the interests or functions of the federal establishment.
- **Notes** that if the District chooses to develop alternative text to address the identified negative impacts to the federal interest, the District of Columbia, the Department of State, and NCPC are encouraged to work together to reach agreement on mutually acceptable

language that fulfills the city's policy objectives without creating a negative impact to the federal interest.

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## PLAN ANALYSIS

### Background

The Comprehensive Plan for the National Capital consists of Federal Elements which are prepared by the Commission, and District of Columbia Elements, which are prepared by the District government. Under the Planning Act (40 U.S.C. § 8721(g)), the Commission and the District government are required to jointly publish the Comprehensive Plan for the National Capital, which consists of both the Federal and District Elements.

The purpose of the District Elements is to provide policy and planning guidance on the physical development and redevelopment of the city. The Plan provides a framework for growth and change occurring in the District of Columbia over the next 20 years.

The District Elements include the following: Introduction; Framework Element; Land Use Element; Transportation Element; Housing Element; Environmental Protection Element; Economic Development Element; Parks, Recreation, and Open Space Element; Urban Design Element; Historic Preservation Element; Community Services and Facilities Element; Educational Facilities Element; Infrastructure Element; Arts and Culture Element; Implementation Element; and ten Area Elements for geographically distinct planning areas of the District. In addition, the Plan includes a Generalized Policy Map to categorize how the District may change over the next twenty years, and a Future Land Use Map to express public policy on future land uses across the city.

The Federal Elements and most of the District Elements were originally adopted during the 1980s and published in a joint two-volume format in 1984. The District government is responsible for updating the District Elements at least once every four years. Amendments are initiated by the Mayor (through the District Office of Planning) and enacted by the City Council (with the Mayor's signature). Between 1985 and 1998, the District Elements were amended four times (1985, 1989, 1994 and 1998). A 1985 amendment added the Land Use Element and Maps. The 1989 and 1994 amendments added Ward Plans to the document, roughly tripling its size. The 1998 amendments included a variety of map and text changes to reflect current conditions. And in August 2004, NCPC approved a new version of the Federal Elements of the Comprehensive Plan, which governs development on federally owned properties in the District.

In 2003, a Citizens' Task Force, appointed by the Mayor and City Council, completed an assessment of the District Elements of the Comprehensive Plan. As a result of the assessment, the District Office of Planning and the Task Force recommended that the Comprehensive Plan be thoroughly revised, not just amended. The Task Force found that the existing plan was outdated, difficult to read and understand, lacked maps and graphics, and did not provide the direction needed to address the issues facing Washington today.

To facilitate NCPC review of the proposed elements, the District Office of Planning has engaged NCPC in formal and informal review and coordination since 2003. The Executive Director participated in the development of an assessment recommending the Plan revision, and NCPC staff participated on the Citizen's Task Force as a technical advisor. NCPC staff has also provided comments on draft elements of the Plan as they were made available.

After the introduction of several amendments to the Mayor's Draft Plan, the Council enacted the current set of elements on December 19, 2006, and the bill was signed by the Mayor on December 28, 2006. The Council submitted the elements to the Commission on January 4, 2007.

The Council is required by law to submit the enacted elements to the Commission for a 60-day review period. Within 60 days the Commission shall certify to the Council whether any Element or amendment has a negative impact on the interests or functions of the federal establishment in the National Capital.

If the Commission takes no action in the 60-day review period, the elements are deemed to have no negative impact and shall be incorporated into the Comprehensive Plan for the National Capital.

If the Commission finds a negative impact, the Council may accept the findings and modify the element or amendment, or reject the findings and prepare a modified element or amendment. Under either scenario, the Council shall submit the modified elements or amendments to the Commission. If the Commission again finds a negative impact to the federal interest, the element or amendment shall not be implemented.

In addition to the Commission's review, the elements are also subject to review by Congress; the Council is arranging for that review independently of the Commission's review.

When new elements affect provisions that appear in both the Federal and District Elements, the Commission typically initiates conforming modifications to the Federal Elements several months after the review of the District Elements.

## EVALUATION

This submission of the District Elements of the Comprehensive Plan is an entirely new version of the Plan. Several changes have been made from the previous version to ensure that the Plan is understandable, functional, and dynamic. While some previous elements have been retained, others have been renamed to reflect their new focus (e.g., "public facilities" has become "community services and facilities"), and others have been added, including educational facilities; parks, recreation, and open space; and arts and culture. The Plan also has an increased focus on implementation, and includes an "action planning" matrix in the Implementation Element. And, unlike the previous text-only Plan, the new Plan uses maps, photos, charts, and tables.

The Plan has several hundred changes that involve a wide variety of issues. Some changes simply update background information, make factual corrections, or refine objectives and policies. Others represent new planning initiatives by the District. Some call for procedural changes in existing regulatory processes related to development. However, most of the changes do not directly affect federal interests. Where changes were expected to affect the federal interest, the District Office of Planning coordinated with NCPC and other federal agencies prior to the Mayor's submission of the Plan to City Council to ensure that potential negative impacts to the federal establishment in the National Capital could be avoided.

### Negative Impact to the Federal Interest

Staff has determined that three policies and one action item in the Plan regarding foreign missions in the District have a negative impact to the federal interest. One policy and the action item are in the Foreign Missions section of the Land Use Element; one policy is in the Housing Conversion and Maintenance section of the Housing Element; and one policy is in the Loss of Housing section of the Near Northwest Area Element.

- Policy LU-3.3.1: Chancery Encroachment in Low Density Areas, page 1-70, Land Use Element: “Encourage foreign missions to locate their chancery facilities in areas where adjacent existing and proposed land uses are compatible (e.g., office, commercial and mixed use) taking special care to protecting the integrity of residential areas. *Discourage the conversion of existing single-family residences into foreign missions, except for use as ambassadors’ residences.*”
- Action LU-3.3-A: Modifications to the Diplomatic Overlay Zone, page 1-70, Land Use Element: “Work with the National Capital Planning Commission and Department of State to develop a new methodology to determine appropriate additional chancery development areas; and revise the mapped diplomatic areas, reflecting additional areas where foreign missions may relocate. *Recognizing the overconcentration of chanceries in Sheridan-Kalorama, every effort should be made to limit any additional chanceries in that neighborhood.*”
- Policy H-2.2.1: Housing Conversion, page 1-126, Housing Element: “Discourage the conversion of viable, quality housing units to non-residential uses such as offices, *chanceries*, and hotels. Ensure that zoning regulations provide sufficient protection to avoid the loss of housing in this manner.”
- Policy NNW-1.1.7: Loss of Housing, page 2-155, Near Northwest Area Element: “Strongly discourage the demolition of viable housing or the conversion of occupied housing units to non-residential uses such as medical offices, hotels, *foreign missions*, and institutions. Maintain zoning regulations that limit the encroachment of nonresidential uses into Near Northwest neighborhoods, particularly around the New Convention Center, along the west side of Connecticut Avenue and in Foggy Bottom.”

Policies and actions that prevent, discourage, or preclude foreign missions from developing new chancery facilities or expanding existing chancery facilities are inconsistent with the Foreign

Missions and International Organizations Element of the Federal Elements of the Comprehensive Plan. The Foreign Missions and International Organizations Element was developed by a Foreign Missions Task Force consisting of federal and city representatives, and the text and maps developed for the Element were coordinated with the U.S. Department of State.

The policies and action also appear to be inconsistent with provisions of the Foreign Missions Act. For example, the final sentence of Policy LU-3.3.1, the use of the word “chanceries” in Policy H-2.2.1, and the use of the term “foreign missions” in Policy NNW-1.1.7 are inconsistent with section 206(b)(3) of the Act, which states that “the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses...” The final sentence of Action LU-3.3-A is inconsistent with section 206(b)(2)(b) of the Act, which states that “a chancery shall also be permitted to locate...in any other area...subject to disapproval by the District of Columbia Board of Zoning Adjustment...”

Finally, the Home Rule Act limits the scope of local planning as follows:

The Mayor of the District of Columbia...shall be the central planning agency for the government of the District of Columbia...The Mayor’s planning responsibility shall not extend to Federal or international projects and development in the District, as determined by the [National Capital Planning] Commission.... D.C. Code §2-1002(a)(2). See also with similar language D.C. Code §1-204.23(a).

If it becomes evident that additional language relating to chanceries should be articulated in the Comprehensive Plan for the National Capital, pursuit of an amendment to the Foreign Missions and International Organizations Element would be the appropriate vehicle for change.

Therefore, staff finds that the inclusion of the above Policies and Action are deemed to have a negative impact to the federal interest. However, there would not be a negative impact to the federal interest if the following modifications were made:

- Remove the final sentence of Policy LU-3.3.1.
- Remove the final sentence of Action LU-3.3-A.
- Delete “chanceries” from Policy H-2.2.1.
- Delete “foreign missions” from Policy NNW-1.1.7.

Staff recommends that, if the District chooses to develop alternative text to address the identified negative impacts to the federal interest, the District of Columbia, the Department of State, and NCPC are encouraged to work together to reach agreement on mutually acceptable language that fulfills the city’s policy objectives without creating a negative impact to the federal interest. This approach might include changing the scope of the policies to discourage all non-residential uses where protecting the integrity of residential neighborhoods is the goal.

#### Beneficial Impact to the Federal Interest

The District Elements of the Comprehensive Plan acknowledges the important role of Washington as the Nation’s Capital; the federal government as the major employer; and the

significance of city planning efforts undertaken by the federal government. Several elements in the Plan recognize the importance of other federal interests. Specifically, the Plan:

- Encourages collaboration and coordination with the federal government on many topics, such as historic preservation, park and open space planning, transportation planning, museum and memorial siting, the transformation of South Capitol Street, and the reuse of the RFK Stadium site.
- Underscores the importance of the federal government to the local economy in terms of procurement and employment and encourages retention of federal employment.
- Supports the Commission's policy to ensure that not less than 60 percent of the region's federal jobs are located in the District.
- Highlights the importance of parks and open space managed or owned by the National Park Service and other federal agencies, with special emphasis on the National Mall and its image of the nation to the world.
- Protects the horizontal character of the city by limiting building heights in accordance with the Height of Buildings Act of 1910.
- Acknowledges the importance of the L'Enfant and McMillan plans.
- Supports the *Legacy Plan*, the *Memorials and Museums Master Plan*, the forthcoming *CapitalSpace Initiative*, and the forthcoming *National Capital Framework Plan*.
- Encourages compliance with the *National Capital Urban Design and Security Plan*.

#### Unknown Impact to the Federal Interest

Many Plan proposals are not fully developed or are part of long-range plans with distant time horizons, and positive Commission action on Plan elements does not necessarily mean approval of all proposals or studies presented in the elements. If the recommendations or ideas are advanced, there could be potential impacts to the federal interest. For example, the Land Use Element identifies 10 large sites outside of the Central Employment Area where significant housing and job growth is expected to occur over the next 20 years: these sites include property in federal ownership, District ownership, and private ownership. The status of each site varies; redevelopment on a few is imminent, but may be over a decade away on others. Some still contain vital, active uses. Others have been dormant for years. At these sites and for other proposals, future Commission review may be required to determine if a specific project or referral has an adverse impact on federal interests. Examples of other projects that may be subject to further review include:

- Proposed changes to the text of the zoning regulations and amendments to zoning maps.
- Changes to the Generalized Land Use Map.
- Changes to the Central Employment Area boundary.
- Proposals for District projects on city-owned property.
- Amendments to the Highway Plan.

#### Amendments that May Be Required to Federal Elements

Following Commission review of the District Elements of the Comprehensive Plan, NCPC staff will determine if changes or amendments are required to any of the Federal Elements of the

Comprehensive Plan. The changes or amendments may be necessary to ensure that the Plans work in tandem as a comprehensive, consistent, and coordinated plan for the National Capital. Examples of potential amendments to the Federal Elements may include:

- Central Employment Area boundary modifications.
- Visitor facility initiatives beyond the monumental core.
- Park and open space improvement goals.

#### District Recommendations that Could Require Further Collaboration

Many District Plan policies are accompanied by action items intended to help implement the Plan. The lead agency responsible for implementation may be local or federal. In many cases, District agencies are paired with federal agencies, including NCPC. Examples of future implementation actions where NCPC and other federal agencies will collaborate with District agencies include:

- Diplomatic Overlay Zone Modifications.
- River and wetland protection plans.
- Parkland classification.
- Trail planning.
- Historic landscape protection.
- Historic neighborhood revitalization.
- RFK Stadium planning.

#### PREVIOUS COMMISSION ACTION

No previous Commission Action has occurred on the District Elements of the Comprehensive Plan—Comprehensive Plan Amendments Act of 2006. As previously mentioned, this submission is an entirely new version of the Plan. Previous Commission actions on the District Elements of the Comprehensive Plan occurred between 1984 and 1998, when the previous District Elements were amended four times.

#### CONFORMANCE

##### Comprehensive Plan

Staff has determined that the District Elements of the Comprehensive Plan are not inconsistent with the Federal Elements of the Comprehensive Plan, with the important exceptions noted above that create a negative impact to the federal interest. As noted above in *Amendments that May Be Required to Federal Elements*, some of the new components in the District Elements of the Comprehensive Plan may require modifications to the Federal Elements of the Comprehensive Plan so that the Plans work in tandem as a comprehensive, consistent, and coordinated plan for the National Capital.

### National Historic Preservation Act

The Commission's review of the Plan is not subject to the National Historic Preservation Act. Although the Plan elements do not constitute projects in themselves, many of them do support or facilitate future actions, such as development activity. Some future actions that could result from this activity potentially have an adverse impact on historic features, including properties listed in, or eligible for, the National Register of Historic Places. The District of Columbia should make every effort, through its normal regulatory processes, to ensure adequate protection of historic resources.

### National Environmental Policy Act

The District of Columbia has provided to the Commission an Environmental Assessment evaluating the impacts of proposed District of Columbia Elements of the Comprehensive Plan. Commission staff has reviewed the environmental assessment and found it useful in evaluating the elements and their potential impact on the federal interest. The Commission is conducting its review of the District elements under the relevant provisions of the National Capital Planning Act, 40 U.S.C. § 8721(b)-(f). This phase of the review is conducted under § 8721(c)(1), (c)(2), and (c)(3)(A); this stage requires the Commission to determine if there is a negative impact on the interests or functions on the federal establishment in the National Capital, and does not require the Commission to undertake National Environmental Policy Act (NEPA) review at this time. If the Commission finds the Plan creates a negative impact, the City Council may accept the findings and modify the element or amendment, or reject the findings and prepare a modified element or amendment. Under either scenario, the City Council shall submit the modified elements or amendments to the Commission. If the Commission again finds a negative impact to the federal interest, the element or amendment shall not be implemented, and the Commission's NEPA obligations are initiated. Should it later be determined that the Commission must comply with NEPA at this stage of the review, the Commission's Environmental and Historic Preservation Policies and Procedures provide a categorical exclusion, absent extraordinary circumstances, of developing an environmental review for Commission review of District of Columbia Elements of the Comprehensive Plan. (See NCPC Environmental and Historic Preservation Policies and Procedures, Section 8.C.9.)

## COORDINATION

### Consultation with Other Federal and District Agencies

NCPC staff has contacted various federal agencies to discuss elements of the Plan that may affect them. In particular, staff has worked closely with the General Services Administration, the National Park Service, the Architect of the Capitol, and the Department of State to identify issues of concern. (See attached January 12, 2007 U.S. Department of State letter.) Through consultation with DCOP, many issues were resolved prior to consideration of the elements by the City Council.

## Community Involvement

This is the District's first Comprehensive Plan prepared during the digital era and as such, a host of new tools were used to reach the community. A project website was used to publicize meetings, display information, provide drafts for comment, and receive feedback through bulletin boards and e-mail. The website received more than 1.3 million "hits" over the course of the project. Television and radio were also used, drawing residents to town meetings, workshops, and public hearings.

The Comprehensive Plan's content was also shaped by a Plan Revision Task Force. The 28-member Task Force represented diverse interests and geographic areas, and advised the Office of Planning on the Comprehensive Plan's content as well as its maps and place-specific recommendations. Similarly, an Interagency Working Group representing more than 20 District and federal agencies was convened throughout the process to provide policy feedback and technical assistance. Small group discussions, attended by stakeholders and others with a particular interest in plan topics, were convened on specific issues such as higher education and environmental quality.

Large community workshops were also essential to the Plan revision. Three rounds of workshops were held, each comprised of four to eight interactive meetings or gatherings. In all, the workshops drew more than 1,500 participants, with virtually every neighborhood of the city taking part. The workshops were supplemented by dozens of meetings with Advisory Neighborhood Commissions, Citizen and Civic Associations, interest groups, and individuals.





United States Department of State

*Office of Foreign Missions  
Washington, D.C. 20520*

January 12, 2007

Mr. John V. Cogbill, III  
Chairman  
National Capital Planning Commission  
401 9<sup>th</sup> Street, NW  
Suite 500  
Washington, DC 20004

Dear Mr. Cogbill:

On December 19, 2006, the Council of the District of Columbia adopted modifications to the District's Element of the Comprehensive Plan for the National Capital. Certain of these modifications address the location, replacement, and expansion of foreign mission chanceries in the District, a subject that is regulated by the Foreign Missions Act.

By this letter, the Department of State wishes to alert the National Capital Planning Commission to its concern that the modifications that have been adopted would have negative implications for the location of chanceries in the District of Columbia, a matter of acute interest to the Department.

The Council's action was taken without any notice to, or consultation with, the Department. As you know, under the leadership of NCPC's Foreign Missions Task Force, the Department has invested years of effort in dialogue with the District's Office of Planning in an effort to resolve the often-contentious issue of chancery land use in the District. This effort had been making slow but steady progress and the Council's unilateral action is inconsistent with both the spirit and substance of our collaborative efforts.

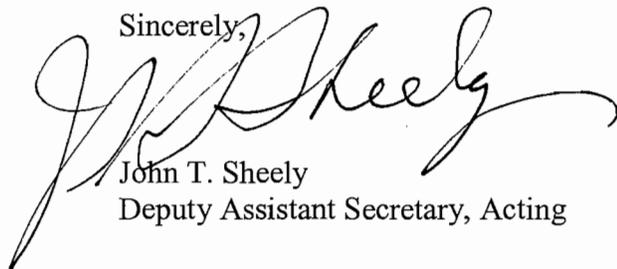
In addition, the Council's action appears at odds with the District's insistence that foreign diplomatic offices (chanceries) locate exclusively within the District of Columbia and not in neighboring jurisdictions. The Department of State's decision favorably to consider such requests from foreign governments was opposed by both the District Office of Planning as well as the Council's representative to NCPC. Indeed, at the District's behest, NCPC expended funds for a study by a noted regional economist, Stephen Fuller. Professor Fuller's findings reported that the presence of foreign chanceries in the District produced a significant contribution to the District's economy. Today, the anti-chancery message conveyed by the recent Comprehensive Plan amendments raises some question as to where the District stands on the issue.

Moreover, in addition to these process and policy concerns, there appears to be an incompatibility between the Comprehensive Plan chancery amendments and the Foreign Missions Act (“the Act”) itself, which authorizes the Mayor, not the City Council, to determine the “municipal interest” in specific chancery zoning cases. As is well understood, the Act confers ultimate decision-making authority over chancery land-use applications to the specially constituted Board of Zoning Adjustment, the “FM-BZA” (Foreign Missions Board of Zoning Adjustment.) One of the six criteria the FMBZA is statutorily required to consider is “the municipal interest” (22 USC §4306(d)(5). The Act requires that the “District interest” in a particular chancery zoning case shall be “as determined by the *Mayor* of the District of Columbia”, *id.* (emphasis supplied), not the City Council. Second, the statute plainly contemplates a case-by-case evaluation of chancery zoning decisions by the Mayor based on their individual merits, as opposed to a sweeping legislative finding on the broad subject of chancery location.

The Comprehensive Plan as modified by the Council, however, would appear to run the risk of binding the Mayor and his Office of Planning from, for example, finding that a particular conversion of a building from a residence to a chancery was harmless to the District interest, even if the objective land-use merits justified that conclusion. Such an outcome would appear to contravene zoning provisions of the Foreign Missions Act in 1982. *See* 22 USC 4306 (j) (provisions of law applicable to chancery location in the District of Columbia shall apply only to extent consistent with Foreign Missions Act).

For the above-stated reasons, I respectfully request that the Commission, pursuant to its authority under the National Capital Planning Act, issue a finding that the District’s recent Comprehensive Plan amendments, as they pertain to foreign diplomatic chanceries, have “a negative impact on the interest or function of the federal establishment in the National Capital.” 40 USC §8721(c)(3).

Sincerely,

A handwritten signature in black ink, appearing to read 'J. T. Sheely', written in a cursive style. The signature is positioned above the typed name and title.

John T. Sheely

Deputy Assistant Secretary, Acting

# STAFF RECOMMENDATION

Revised February 1, 2007

John Mann

**NCPC File No. CP19**



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## **RESOLUTION REGARDING FEDERAL INTEREST IMPACTS FROM THE COMPREHENSIVE PLAN FOR THE NATIONAL CAPITAL: DISTRICT ELEMENTS COMPREHENSIVE PLAN AMENDMENTS ACT OF 2006**

February 1, 2007

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WHEREAS, pursuant to the National Capital Planning Act of 1952, as amended (40 U.S.C. § 8721), (“Planning Act”), the Council of the District of Columbia has adopted D.C. Act 16-637, approved by the Mayor on December 28, 2006, containing District Elements of the Comprehensive Plan for the National Capital, and submitted such elements to the National Capital Planning Commission (“Commission”) for review and comment with regard to the impact of such elements on the interests or functions of the federal establishment in the National Capital, and;

WHEREAS, the District of Columbia has prepared a dynamic and functional Comprehensive Plan that will serve the needs of all the District’s citizens and stakeholders and ensure that Washington, D.C. remains one of the great cities of the world.

BE IT RESOLVED that, pursuant to § 8721(c) of the Planning Act, the Commission finds that D.C. Act 16-637 will not have a negative impact on the interests or functions of the federal establishment in the National Capital with the following exceptions (referenced in detail in the attached Executive Director’s Recommendation of January 27, 2007):

- The final sentence of Policy LU-3.3.1, Chancery Encroachment in Low Density Areas, page 1-70, Land Use Element has a negative impact on the interests or functions of the federal establishment.
- The final sentence of Action LU-3.3-A, Modifications to the Diplomatic Overlay Zone, page 1-70, Land Use Element has a negative impact on the interests or functions of the federal establishment.
- The word “chanceries” in Policy H-2.2.1, Housing Conversion, page 1-126, Housing Element has a negative impact on the interests or functions of the federal establishment.
- The term “foreign missions” in Policy NNW-1.1.7, Loss of Housing, page 2-155, Near Northwest Area Element has a negative impact on the interests or functions of the federal establishment.

FURTHER, if the District chooses to develop alternative text to address the identified negative impacts to the federal interest, the District of Columbia, the Department of State, and NCPC are encouraged to work together to reach agreement on mutually acceptable language that fulfills the city's policy objectives without creating a negative impact to the federal interest.