



Executive Director's Recommendation

Commission Meeting: December 3, 2015

PROJECT Declaration of Covenant regarding Closing of public streets adjacent to Squares S-603, N-661, 605, 661, 607, 665, and Reservations 243 and 244 Washington, DC	NCPC FILE NUMBER 7571
SUBMITTED BY District of Columbia Department of General Services	NCPC MAP FILE NUMBER 24.40(44.40)43945
REVIEW AUTHORITY Approval of Comments to the Council of District of Columbia on Street and Alley Closings	APPLICANT'S REQUEST Approval of comments to the Council of the District of Columbia
	PROPOSED ACTION Approve comments as requested
	ACTION ITEM TYPE Consent Calendar

PROJECT SUMMARY

On November 6, 2014, the Commission approved comments to the District of Columbia Office of the Surveyor regarding a proposal to close portions of 1st Street, SW; R Street, SW; S Street, SW; and Potomac Avenue, SW. The street closures were initiated by the District of Columbia Department of General Services (DGS) to allow for a consolidated site for a new Major League Soccer stadium for the DC United. On July 31, 2015, the Council of the District of Columbia approved the street closure, and DGS subsequently acquired control of the subject properties. In response to the Commission's recommendation, DGS prepared a draft Declaration of Covenant (Appendix A) for review which would require the street rights-of-way to be re-established in their original locations with full rights-of-way according to the L'Enfant Plan, subject to certain conditions.

KEY INFORMATION

- The Council of the District of Columbia approved street closures within the L'Enfant City for construction of a Major League Soccer stadium on Buzzard Point.
- The District of Columbia has assembled the land required to construct the soccer stadium. The land will be subject to a ground lease, and will include the stadium and ancillary development, to include a hotel and mixed-use buildings.
- In 2014, the Commission requested the District of Columbia agree to a covenant to run with the land requiring that at such time as the proposed site is no longer used as a stadium, all portions of 1st Street, SW; R Street, SW; S Street, SW; and Potomac Avenue, SW, be re-established in their original locations with full rights-of-way according to the L'Enfant Plan, and that the NCPC would record that covenant.

- Per the Commission's recommendation, the District of Columbia has submitted a draft Declaration of Covenant for comment by the Commission.

RECOMMENDATION

The Commission comments to the Council of the District of Columbia that:

- The proposal to close several portions of L'Enfant Streets would result in adverse effects on the L'Enfant Plan and is inconsistent with policies in the Federal Elements of the *Comprehensive Plan for the National Capital*.
- The proposed Declaration of Covenant favorably responds to the Commission's request as approved on November 6, 2014.
- The District of Columbia should agree to the proposed Declaration of Covenant, to run with the land, requiring that all portions of 1st Street, SW; R Street, SW; S Street, SW; and Potomac Avenue, SW, be re-established in their original locations with full rights-of-way according to the L'Enfant Plan at such time as (a) the Ground Lease is terminated; and (b) either (i) the Soccer Stadium is not developed on the Property by September 30, 2021, or (ii) a Soccer Stadium is no longer on the Property.
- The proposal to close portions of the L'Enfant Streets was referred to the Historic Preservation Review Board for recommendation on April 23, 2015, and the District of Columbia should adopt the proposed mitigation as recommended by the Historic Preservation Review Board to address the adverse effects related to the street closings.
- The stadium design should respect and enhance view corridors along the L'Enfant Plan closed streets and provide appropriately designed terminations that reflect the principles of the L'Enfant Plan. Further, the proposed ancillary development should be designed in a manner to permit the re-establishment of L'Enfant Plan streets in the future, should the stadium no longer be located on the property.

PROJECT REVIEW TIMELINE

Previous actions	November 6, 2014 – Approval of Comments to the Council of the District of Columbia
Remaining actions (anticipated)	Review of the proposed Major League Soccer stadium

PROJECT ANALYSIS

Executive Summary

On January 28, 2014, the District of Columbia Office of the Surveyor, pursuant to D.C. Code § 9-202.02, referred the closing of portions of several L'Enfant streets in southwest Washington, DC to the Commission for comment. The purpose of the street closings is to permit the construction of a new soccer stadium for the DC United, the Major League Soccer team located in Washington, DC. Currently, DC United plays at RFK Stadium. D.C. regulations specify that the Mayor of the District of Columbia refer any application to close all or part of a street or alley to the Commission for its recommendation to the Council of the District of Columbia, which has the authority to act on the proposal.

The public streets subject to closure are located in southwest Washington, DC and include the following:

- 1st Street, SW, from R Street to T Street
- R Street, SW, from Half Street to 1st Street
- S Street, SW, from approximately 230 feet west of Half Street to 2nd Street
- Potomac Avenue, SW, from 2nd Street to 1st Street and R Street

The subject streets lie within the original squares of the city of Washington created by the L'Enfant Plan. The detailed public street rights-of-way were created in 1803 by the King Plats of the City of Washington in the District of Columbia, page X. Ownership of the street rights-of-way resides with the United States and administrative jurisdiction resides with the District of Columbia.

Located on Buzzard Point, federal property in the immediate vicinity includes Fort McNair directly to the west of the project area. Other federal property to the south of the project area includes Buzzard Point Marina, a National Park Service property. The Washington Nationals baseball stadium is northeast of the project area.

On November 6, 2014, the Commission approved comments to the District of Columbia Office of the Surveyor regarding the proposed closures, and requested the District of Columbia agree to a covenant to run with the land requiring that, at such time as the proposed site is no longer used as a stadium, all portions of the rights-of-way would be reestablished in their original locations according to the L'Enfant Plan.

On July 31, 2015, the Council of the District of Columbia approved the street closures, and the District has obtained control of all property adjacent to the proposed street closures in order to create one consolidated parcel for a stadium site. This includes the parcels within Squares S-603, N-661, 605, 661, 607, 665, and Reservations 243 and 244. Reservations 243 and 244 were

conveyed from the National Park Service to the District of Columbia under the Federal and District of Columbia Government Real Property Act of 2006.

The District began negotiating a ground lease and development agreement for the stadium project, which will also include ancillary development (hotel and/or mixed-use commercial). The stadium would occupy the western portion of the ground lease area, while the ancillary development would be located along the eastern portion.

In response to the Commission's request, DGS has prepared a draft Declaration of Covenant which would require the street rights-of-way to be re-established in their original locations with full rights-of-way according to the L'Enfant Plan, subject to certain conditions. Staff has reviewed the draft Covenant and finds it suitable to allow for the re-establishment of the rights-of-way, at such time as (a) the Ground Lease is terminated; and (b) either (i) the Soccer Stadium is not developed on the Property by September 30, 2021, or (ii) a Soccer Stadium is no longer on the Property. Staff therefore **recommends the Commission comment favorably on the proposed Declaration of Covenant.**

Analysis

The 1791 L'Enfant Plan and the 1901 McMillan Plan established an urban design framework for the capital city that remains one of the world's great examples of urban planning. Collectively, these plans are known as the Plan of the City of Washington and the planning principles remain intact and continue to influence the design of public spaces in Washington today. One of the Commission's chief responsibilities is to protect and enhance the historic street plan of Washington as exemplified by policies in the *Federal Elements of the Comprehensive Plan for the National Capital*.

The L'Enfant Plan established the basic framework for the city by creating a regular orthogonal grid divided into four quadrants, with the U.S. Capitol occupying the center point. A series of diagonal avenues were superimposed on the orthogonal grid, thereby creating a system of open space and parks where the two intersected. Large open areas were created at the intersection of avenues and smaller open spaces were created when streets and avenues intersected. The open spaces and vistas that were established by this framework are as integral to the design of the City as the street network and configuration. In addition, the width and openness of the streets constitute public space that defines the character of the city. The system of streets provided an ordered framework for the development of the city, the character of the open space in the city, and visual as well as physical connections through the creation of vistas along street rights-of-way. Therefore, **the closure or alteration of L'Enfant Plan streets and rights-of-way would alter these significant characteristics and constitute an adverse effect on the historic plan.** In addition, as detailed below, **the closure of the streets is inconsistent with policies in the Federal Elements of the Comprehensive Plan for the National Capital.**

As noted previously, staff recommends that if the proposed site is no longer being used as a soccer stadium, the L'Enfant Plan streets and rights-of-way should be re-established in their current configurations. In response to the Commission's comments, the District has prepared a draft

Declaration Covenant to address this concern. As such, staff recommends that **the Commission comment that the District of Columbia should agree to the proposed Declaration of Covenant to run with the land requiring that all portions of 1st Street, SW; R Street, SW; S Street, SW; and Potomac Avenue, SW, be re-established in their original locations with full rights-of-way according to the L'Enfant Plan at such time as (a) the Ground Lease is terminated; and (b) either (i) the Soccer Stadium is not developed on the Property by September 30, 2021, or (ii) a Soccer Stadium is no longer on the Property.** Staff has reviewed the draft Covenant and finds it suitable in response to the Commission's previous request.

At this time, only conceptual plans have been developed for the stadium and staff has not actively been engaged in consultation with the District of Columbia on the stadium design. It is important that to the degree it is feasible, the stadium should be sited in such a way to respect and maintain the view-sheds established by the streets of the L'Enfant Plan. Principles of the L'Enfant Plan such as reciprocity of site from prominent vantage points should be carried forward in the design of the stadium and the principles of the L'Enfant Plan should be reflected to the maximum degree possible. Further, the ancillary development should be designed in a manner that respects the L'Enfant Plan streets. As such, staff recommends that **the Commission comment that the stadium design should respect and enhance view corridors along the L'Enfant Plan closed streets and provide appropriately designed terminations that reflect the principles of the L'Enfant Plan. Further, the proposed ancillary development should be designed in a manner to permit the re-establishment of L'Enfant Plan streets in the future, should the stadium no longer be located on the property.**

Finally, staff notes the Commission in its recent action on the Draft Real Property Master Plan for Joint Base Myer-Henderson Hall, encouraged the Department of the Army to coordinate with the District of Columbia Government directly on new public/private developments exterior to the installation, including the potential soccer stadium, to ensure minimal impacts to installation operations including in the areas of impacts to historic resources and transportation as well as installation security.

Previous Commission Actions on L'Enfant Plan Street Closures

Previous Commission actions related to street closures include actions for the construction of the Washington Nationals Baseball stadium, the Washington Convention Center, and the Verizon Center. Staff's recommendation regarding the street closures for the soccer stadium is consistent with past Commission actions on street closures.

In January 2006, the Commission provided comments to the District of Columbia Council on the street closures that were required for the construction of the Washington Nationals Baseball stadium. At that time, the District of Columbia Government and the District of Columbia Sports and Entertainment Commission were working to obtain title to the land that would be required to construct the baseball stadium. The case was similar in that the land needed to construct the stadium had not yet been acquired when the Commission provided comments on the street closures. In its comments, Commission noted that the street closure would be an adverse effect on the L'Enfant Plan; that the street closure should only take effect if the baseball park was to be

located in the adjacent property; that review of the street closure was required by the Historic Preservation Review Board and the District of Columbia should adopt any proposed mitigation; that the stadium design should maintain and enhance ground-level pedestrian views along Potomac Avenue to the Anacostia and provide functional and appropriately designed terminations to the surrounding L'Enfant streets; and that the District of Columbia agree to a covenant that runs with the land that should the site no longer be used as a ballpark all portions of the streets be re-established in their original locations according to the L'Enfant Plan and the Commission would record that covenant.

In October 1995, the Commission approved the preliminary and final site and building plans for the Verizon Center (known as the Washington, D.C. Sports and Entertainment Arena or MCI Center). With its approval, the Commission noted that the Memorandum of Agreement (MOA) that was executed at the conclusion of the Section 106 consultation (for which NCPC was the lead agency), indicated that there were impacts from the closure of the 600 block of G Street that could not be fully mitigated. The Section 106 MOA specified that as mitigation for the adverse effects on the L'Enfant Plan, the District of Columbia would agree to reopen the 600 block of G Street once the useful life of the Arena was over and also that the District of Columbia committed to reopening portions of 10th and Eye Streets, NW, when a new convention center was constructed, and the debt on the existing Convention Center was retired. The reopening of 10th and Eye Streets was required by a covenant that ran with the land.

In September 1997, the Commission approved the preliminary plans for the new Washington Convention Center to be located at 7th, 9th and N Streets, and Mount Vernon Place, NW. With its approval, the Commission noted and incorporated into its action the Memorandum of Agreement that was executed at the conclusion of the Section 106 consultation (for which NCPC was the lead agency). The Commission action noted that there would be adverse effects on the L'Enfant Plan due to the closure of several streets and that these impacts could not be fully mitigated. The Section 106 MOA specified that the streets would be reopened once the new Convention Center had outlived its useful life as a Convention Center; the reversion of title to the rights-of-way to the United States; and that any further use of the rights-of-way be subject to the approval of the NCPC.

The past actions that the Commission has taken on similar projects that require the closure of L'Enfant Plan streets are similar to the current proposal. In all previous cases, NCPC identified an adverse effect on the L'Enfant Plan and that as mitigation should the proposed function no longer be relevant or actively used, the streets should be restored to their original configurations.

CONFORMANCE TO EXISTING PLANS, POLICIES AND RELATED GUIDANCE

Comprehensive Plan for the National Capital

As noted in staff previous analysis, the proposed street closures are inconsistent with policies in the *Federal Elements of the Comprehensive Plan for the National Capital*, in particular those policies contained in the Preservation and Historic Features Element. These policies encourage the

federal government to preserve and protect historic properties while also accommodating new development that is respectful of the guiding principles of the L'Enfant and McMillan Plans.

Policies in the Preservation and Historic Features Element discourage the closure of L'Enfant streets as it disrupts the urban design framework of the city plan and also negatively impacts the transportation network. Recognizing the detrimental impact that street closures can create, policies in the *Federal Elements of the Comprehensive Plan for the National Capital* advocate re-establishing streets and reservations that have been "...inappropriately disrupted or closed to their original right-of-way or configuration". As a result of the street closure, the soccer stadium would be constructed and cause an intrusion into the public space created by the width and openness of the streets. In addition, the design of the stadium is in an early stage of the development process, and while it may be possible to mitigate the some of the impacts through the design development process, the proposed street closures would cause an adverse effect on the historic plan of Washington by disrupting the street network and its associated open space and vistas. Therefore, the street closures are inconsistent with policies in the *Federal Elements of the Comprehensive Plan for the National Capital*.

National Historic Preservation Act

NCPC does not have a responsibility to comply with Section 106 of the National Historic Preservation Act when providing comments on street closures.

Pursuant to D.C. Code § 9-202.02, the Historic Preservation Review Board (HPRB) is required to review proposed street closings within the L'Enfant City. On April 23, 2015, the HPRB provided comment and recommendation of the proposed closing. Therefore, staff recommends **the District of Columbia should adopt proposed mitigation as recommended by HPRB to address the adverse effects related to the street closings.**

National Environmental Policy Act

NCPC does not have a NEPA responsibility when providing comments on street closures.

CONSULTATION

Coordinating Committee

The Coordinating Committee reviewed the proposal at its November 10, 2015 meeting. The Committee forwarded the proposal to the Commission with the statement that it has been coordinated with all participating agencies. The participating agencies were: NCPC; the District of Columbia Office of Planning; the District of Columbia Department of Transportation, the General Services Administration; the National Park Service and the Washington Metropolitan Area Transit Authority.

Additional coordination with federal and local agencies should be undertaken as the plan and design for the soccer stadium is developed. Issues related to security, access, and transportation could be topics of concern to federal installations in close proximity to the stadium site and consultation with appropriate federal and local agencies will help to address these issues. As noted above, Fort Leslie J. McNair is located to the west of the stadium site and in a recent action, the Commission encouraged the Department of the Army to coordinate with the District of Columbia Government on matters related to the soccer stadium.

ONLINE REFERENCE

The following supporting documents for this project are available online:

- District of Columbia Council Action – Street Closure
- Street Closure Plats

Prepared by Matthew
J. Flis 11/24/2015

POWERPOINT (ATTACHED)

APPENDIX A
Draft Declaration of Covenant

DECLARATION OF COVENANT

THIS DECLARATION OF COVENANT (this “**Declaration**”) is made as of the ____ day of December, 2015, by the **DISTRICT OF COLUMBIA**, a municipal corporation, acting by and through its Department of General Services (the “**Grantor**”).

RECITALS:

WHEREAS, the Grantor is the owner in fee simple of the land located in the District of Columbia known as Squares S-603, N-661, 605, 607, 661 and a portion of 665, as more particularly described in Exhibit A attached hereto (the “**Property**”); and

WHEREAS, the Grantor has entered into an amended and restated ground lease of the Property to DC Stadium LLC (“**DC United**”) dated July 2, 2015 (as amended, modified or superseded, the “**Ground Lease**”), as well as an amended and restated development agreement with DC United dated July 2, 2015, pursuant to which DC United will design and construct a new, state-of-the-art, LEED certified, outdoor soccer stadium (the “**Soccer Stadium**”) on a portion of the Property; and

WHEREAS, in order to construct the Soccer Stadium, it is necessary to close a portion of Potomac Avenue, R Street, 1st Street and S Street, SW (the “**Closed Streets**”); and

WHEREAS, pursuant to Section 9-202.01 of the District of Columbia Official Code, an application known as S.O. 13-14605 was filed with the Office of the Surveyor of the District of Columbia to close the Closed Streets; and

WHEREAS, pursuant to Section 9-202.02(3) of the District of Columbia Official Code, the application was referred to the National Capital Planning Commission (“**NCPC**”) which reviewed the application at its November 6, 2014 and December __, 2015 meetings and approved certain comments that were transmitted to the Council of the District of Columbia in connection with the application including that the District of Columbia should agree to a covenant running with the land and requiring that the Closed Streets closed pursuant to S.O. 13-14605 be re-established in their original locations with full rights-of-way at such time as (a) the Ground Lease is terminated; and (b) either (i) the Soccer Stadium is not developed on the Property by September 30, 2021, or (ii) a Soccer Stadium is no longer on the Property; and

WHEREAS, after duly given notice, the Committee of the Whole of the Council of the District of Columbia held a public hearing on June 9, 2015, on the *Closing of Public Streets adjacent to Squares S-603, N-661, 605, 661, 607 and 665, and in U.S. Reservations 243 and 244, S.O. 13-14605, Act of 2015, D.C. Bill 21-0200*; and

WHEREAS, the Council of the District of Columbia found that the Closed Streets were not necessary for public purposes and authorized the closing of the Closed Streets.

NOW, THEREFORE, in consideration of the foregoing recitals, all of which are hereby incorporated in this Declaration by this reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Grantor, and in consideration of the closing of the Closed Streets, the Grantor, for itself and its successors and assigns, agrees as follows:

1. The Grantor hereby covenants that, at such time as (a) the Ground Lease is terminated and (b) either (i) the Soccer Stadium is not developed on the Property by September 30, 2021 or (ii) a Soccer Stadium is no longer on the Property, the Closed Streets closed pursuant to S.O. 13-14605 shall be re-established in their original locations and with full rights-of-way.

2. It is expressly agreed, covenanted and understood that every promise, undertaking, agreement and covenant herein contained, and on the part of the Grantor or its successors or assigns to be carried out and performed, shall be binding upon the Grantor, its successors or assigns, and shall run with the Property and shall be binding upon every person now or hereafter having any right, title or interest in or to the Property.

3. The Grantor, at its sole expense, shall properly record this Declaration with the Recorder of Deeds of the District of Columbia and shall furnish to the Office of the Surveyor a copy of this Declaration certified by said Recorder of Deeds as a true copy of the recorded instrument.

4. This Declaration is entered into for the benefit of the United States (acting through the National Capital Planning Commission).

5. This Declaration is intended to amend and restate in its entirety a Declaration of Covenants made as of _____, 2015 by the District for the benefit of NCPC.

IN WITNESS WHEREOF, the Grantor has caused this Declaration to be executed by its duly authorized representative as of the date first above written.

GRANTOR:

DISTRICT OF COLUMBIA, a municipal corporation, acting by and through its Department of General Services

By: _____
Christopher Weaver
Acting Director

APPROVED FOR LEGAL SUFFICIENCY:

The Office of the General Counsel for the Department of General Services

By: _____
Katherine L. Jough
Senior Assistant General Counsel

DISTRICT OF COLUMBIA, ss:

Before me, the undersigned Notary Public, in and for the District of Columbia, personally appeared Christopher Weaver, who acknowledged himself to be the authorized agent of the District of Columbia, and that being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the District of Columbia.

GIVEN under my hand and seal this ____ day of _____, 2015.

Notary Public

My commission expires:_____

As to the Declaration of Covenant dated as of _____, 2015.

SEEN AND AGREED TO:

DC STADIUM LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

Closing of Public Streets Adjacent to Squares S-603, N-661, 605, 661, 607, 665, and Reservation 243 and 244

Southwest, Washington, DC

Submitted by the District of Columbia Department of General Services

Approval of Comments to the Council of the District of Columbia

Commission meeting date: December 3, 2015

NCPC review authority: Advisory – D.C. Code § 9-202.02

Applicant request: Approval of Comments to the Council of the District of Columbia

Delegated / consent / open / executive session: Consent

NCPC Review Officer: M. Flis

NCPC File number: 7571

Project summary:

The District of Columbia Office of the Surveyor previously submitted an application for the closure of the following streets:

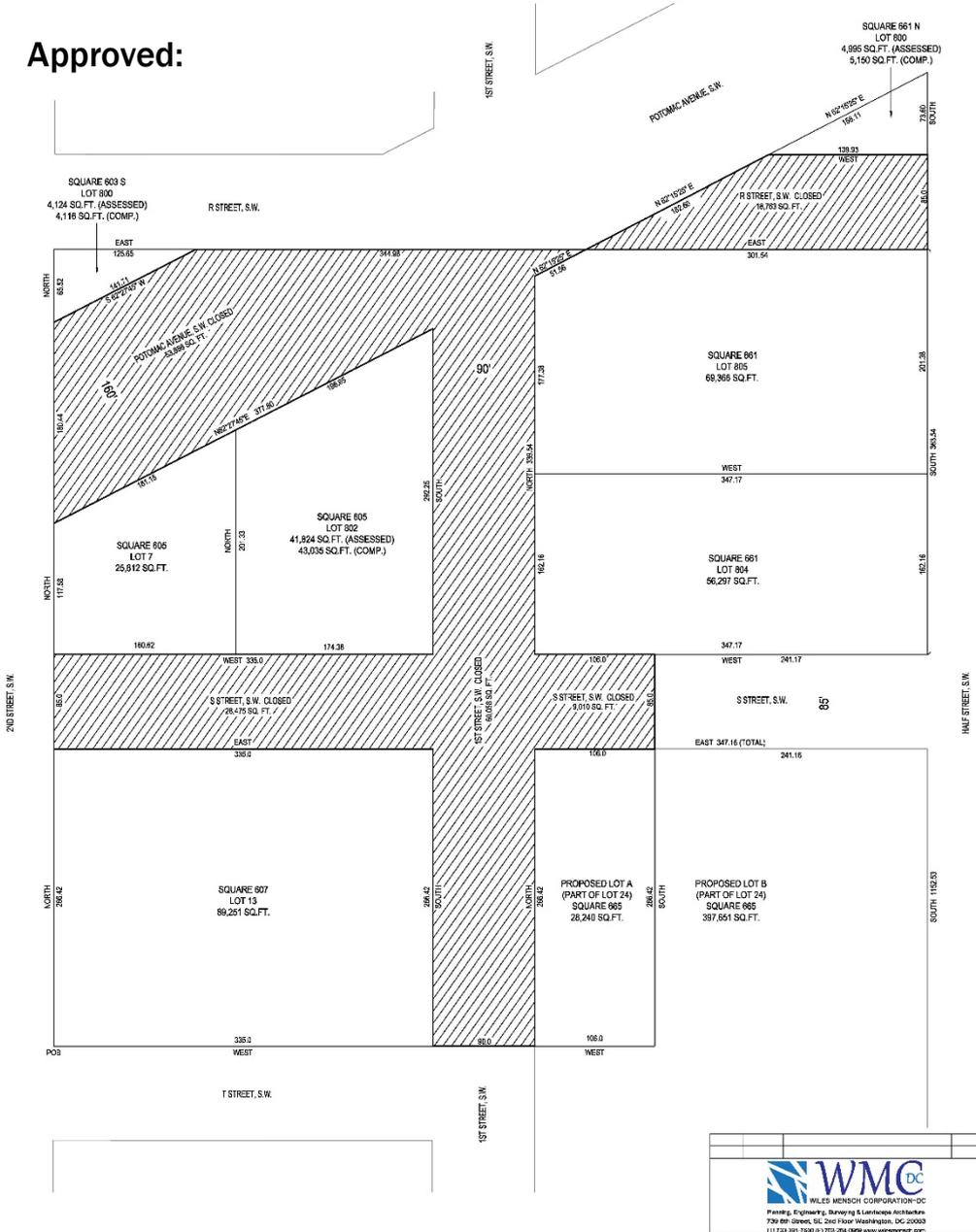
- 1st Street, SW, from R Street to T Street
- R Street, SW, from Half Street to 1st Street
- S Street, SW, from approximately 230 feet west of Half street to 2nd Street
- Potomac Avenue, SW, from 2nd Street to 1st Street and R Street

The Council of the District of Columbia approved the proposed closing of public streets on July 31, 2015, and authorized the Mayor to enter into agreements or covenants necessary to accomplish the street and alley closings. This followed a recommendation by the Historic Preservation Review Board on April 23, 2015.

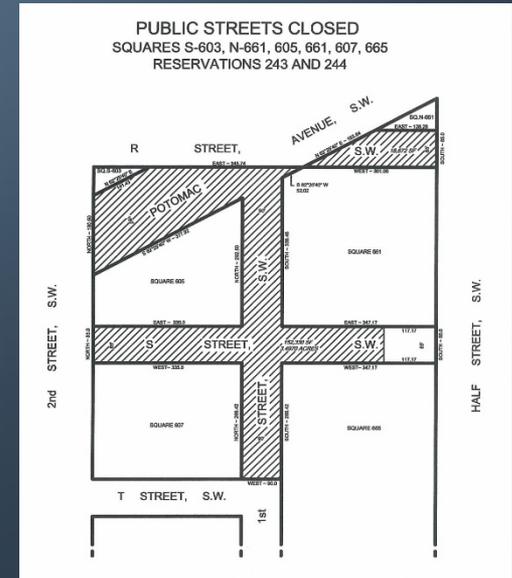
The District of Columbia Department of General Services (DGS) is coordinating the proposed street closings and related covenant. Ultimately, DGS and DC United will develop a Major League Soccer stadium on the property, along with ancillary development in the form of a hotel and/or mixed-use commercial building. A conceptual plan for the proposed stadium was included with the street closing application. The District is requested comment on the proposed declaration of covenant regarding the re-establishment of rights-of-way should the stadium not be developed, or no longer located on the property.



Approved:



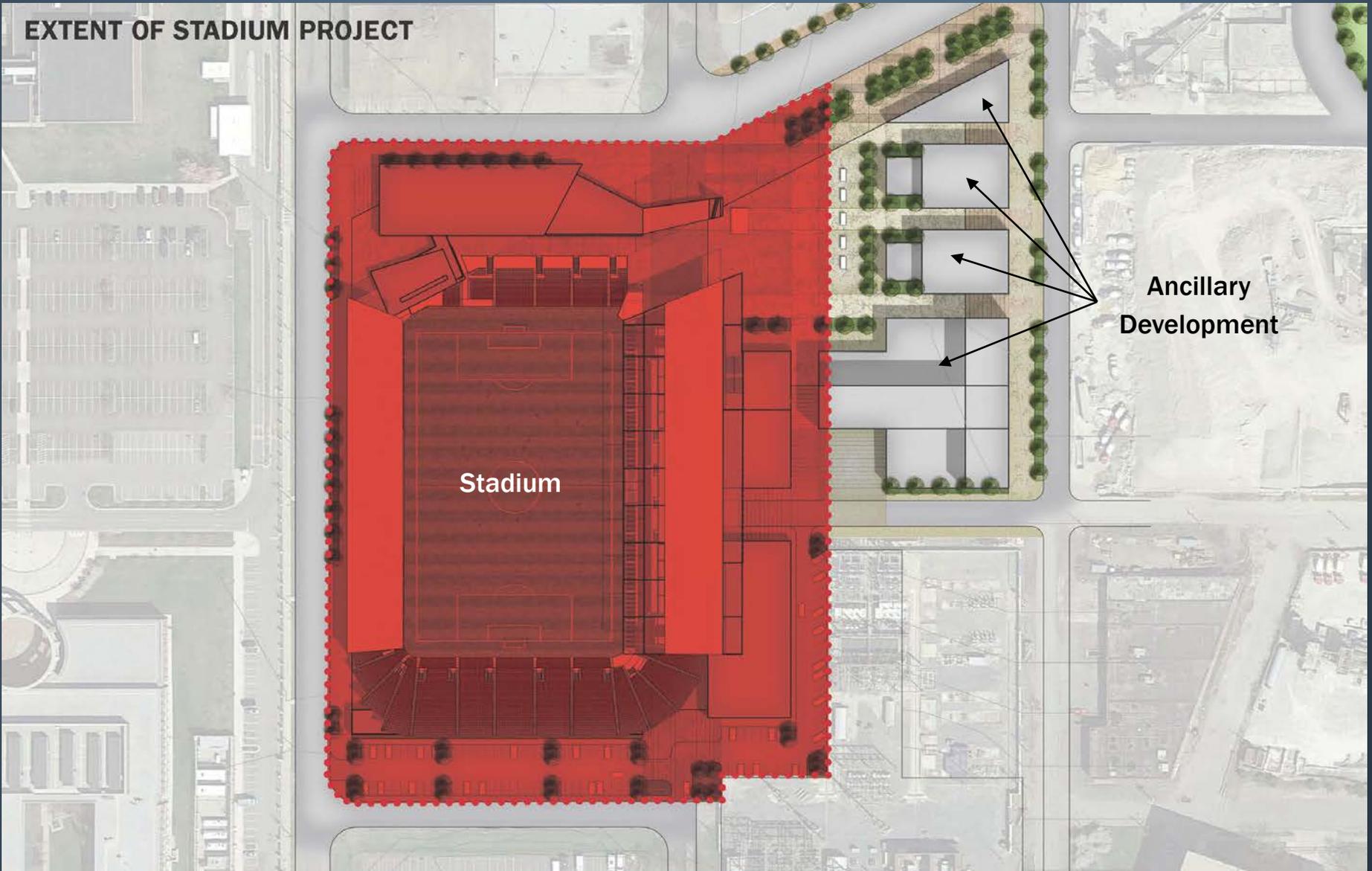
Previous Review:





DC UNITED STADIUM - SOUTHWEST AERIAL

EXTENT OF STADIUM PROJECT



Stadium

Ancillary
Development