DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF FINAL RULEMAKING

As required by D.C. Official Code § 8-411(a), the Director of the District Department of the Environment ("DDOE") is publishing this notice of final rulemaking after providing a public hearing on September 9, 2008, pursuant to D.C. Official Code § 8-411(a), and a public comment period of not less than thirty (30) days from the date of publication of the proposed rules notice in the *D.C. Register* (55 D.C. REG. 6216 on May 30, 2008). The public hearing and the thirty (30) day public comment period have passed and one comment was received. DDOE has considered that comment, but has concluded that the comment did not require any changes to the rule as it was proposed. Accordingly, no changes were made to the rule. The comment and DDOE's response to the comment are available to the public for inspection, upon request, by contacting Mr. Robert Hamilton, Associate Director for Toxic Substances, at (202) 535-2280. The comment and response are located in the DDOE's Pesticide Rulemaking Docket. DDOE hereby submits these regulations for publication as final rules, which shall be effective immediately upon publication in the D.C. Register.

The Director of the District Department of the Environment ("DDOE"), pursuant to the authority set forth in section 12(a) and (c) of the Pesticide Operations Act of 1977, effective April 18, 1978 (D.C. Law 2-70; D.C. Official Code § 8-411(a) and (c) (2001)); section 103(b)(l)(B)(ii)(II) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.03(b)(1)(B)(ii)(II) (2007 Supp.)); and Mayor's Order 98-47, as amended by Part III.20 of Mayor's Order 2006-61, dated July 14, 2006, hereby gives notice of the amendment to Chapter 22 (Control of Pesticides) of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) to require notification and posting by pesticide operators of basic contact information, notice of pesticide application, and pesticide risk information to better inform the public.

This action is necessary to protect the public further from potential pesticide hazards, as required by the Loretta Carter Hanes Pesticide Consumer Notification Amendment Act of 2008 ("Act"), signed by the Mayor on April 14, 2008 (D.C. Act 17-342; 55 DCR 18). Section 2 of the Act requires DDOE to: (1) establish a uniform statement and format for the sign that is to be posted at the time of an exterior pesticide application (e.g., lawn spraying); and (2) promulgate a list of reduced-risk pesticides and methods of pest control that will be made publicly available and referenced in a mandatory public notification. The posting and notification requirements became effective as D.C. Law on June 5, 2008 (D.C. Law 17-168; 55 DCR 26) and require pesticide operators to implement these requirements.

The Act requires that pesticide applicators inform customers whether they are applying a pesticide that DDOE has determined poses a reduced risk because: (1) the pesticide itself, when applied in accordance with U.S. Environmental Protection Agency ("'U.S. EPA")-or DDOE-approved label instructions, poses a reduced risk; or (2) the method of application of a pesticide poses a reduced risk because it is applied in a manner that renders the pesticide inaccessible to children and pets. While the Act is intended to encourage the uses of reduced-risk pesticides and/or methods of pesticide application, DDOE notes that, at present, there may not be a

reduced-risk pesticide, or reduced-risk method of application, for every situation. For example, there is presently no reduced-risk substance or method that is known to be effective for treating bedbugs.

DDOE also notes that the science of pest control is continually evolving, and that additional reduced-risk pesticides may come onto the market that are not available today. Accordingly, DDOE is today promulgating a list of reduced-risk pesticides or classes of pesticides that it intends to be a living list. Thus, DDOE has determined that products which the U.S. EPA may later classify as exempt from regulation under section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act, approved October 21, 1972 (86 Stat. 997; 7 U.S.C. § 136w(b)), as well as biopesticide active ingredients and components of plant incorporated protectants that U.S. EPA may later register, will also constitute reduced-risk pesticides warranting inclusion in the list DDOE is promulgating today.

Chapter 22 of Title 20 DCMR is amended as follows:

A new section 2209 is added to read as follows:

2209 Reduced Risk Pesticides and Methods of Pest Control

2209.1 The following pesticides are identified by the Department of the Environment as reduced-risk:

(a) Products classified by the United States Environmental Protection Agency ("U.S. EPA") as exempt from regulation under section 25(b) of the Federal Insecticide, Fungicide and Rodenticide Act, approved October 21, 1972 (86 Stat. 997; 7 U.S.C. § 136w(b)), when used according to District-approved label instructions, because the products meet all of the criteria set forth in 40 C.F.R. § 152.25, contain only the active ingredients listed in 40 C.F.R. § 152.25(f)(l) (2008, or as amended), and include only the inert ingredients described in 40 C.F.R. § 152.25(f)(2) and listed in the most current List 4A (4A Inerts List), which may be found at http://www.epa.gov/opprd001/inerts/inerts-list4Acas.pdf;

(b) Biopesticide active ingredients in products registered by U.S. EPA, which ingredients are set forth at http://www.epa.gov/oppbppd1/biopesticides/ingredients/index.htm, including registered components of plant-incorporated protectants ("PIPs"), which components are set forth at http://www.epa.gov/oppbpp1/biopesticides/pips/pip-list-htm, when used according to U.S.EPA-approved label directions;

(c) The following compounds, when used according to U.S. EPA label directions: boric acid, disodium octaborate tetrahydrate, silica gels, or diatomaceous earth; and

(d) Non-volatile pesticides in tamper resistant containers.

2209.2 The following methods for applying pesticides, when the pesticides are used according to U.S. EPA-approved label directions, are identified by the Department of the Environment as reduced-risk:

(a) Pesticides used for the purpose of rodent control that are placed directly into rodent burrows or placed in areas inaccessible to children or pets; and

(b) Pesticides in the form of a non-liquid gel used for the purpose of insect control that are placed in areas inaccessible to children or pets.

A new section 2214 is added to read as follows:

2214 Posting

2214.1 Any person required to have a license under D.C. Official Code § 8-403 who is applying a pesticide to a lawn or to exterior landscape plants shall post, at the time of application, a sign that conforms to the requirements of this section. This section applies only to those persons required to be certified in pest control pursuant to 20 DCMR § 2301.1(a)(l) and (2).

2214.2 The sign required by § 2214.1 shall meet the following requirements:

(a) Be no smaller than four (4) inches in height x five (5) inches in width;

(b) Be constructed of a sturdy, weather resistant material;

(c) Be rigid, as opposed to a flag;

(d) Be on a flexible stake, preferably not wire;

(e) Have yellow background with black, bold-faced lettering; and

(f) Be posted so that the bottom of the sign shall be at least twelve (12) inches but not more than sixteen (16) inches above the surface of the soil.

2214.3 The information contained on the sign shall meet the following requirements:

(a) Information contained on the front of the sign shall be the same words and symbols and in the sizes specified in Figure A shown at the end of this chapter; and

(b) Information contained on the back of the sign shall be at least eighteen (18) point type (5/32 inch) in size and indicate the following:
i. Date applied;

ii. Name of applicator; and
iii. Telephone number of applicator.

2214.4 The person applying the pesticide shall place the sign at each primary access to the property treated, with the front of the sign facing the access. If only a spot pesticide application is made, or only a small area of a large area receives a pesticide application, the sign may be posted at the location where the pesticide application was made, with the front of the sign facing the probable path of access to the area.

2214.5 The sign shall remain in place for forty-eight (48) hours following the pesticide application, after which time the property owner is responsible for removal of the sign.

2214.6 Subject to the penalties provided in D.C. Official Code § 8-418, no person, acting alone or in concert with others, may remove, alter, or deface the sign within forty-eight (48) hours of its posting.

Subsection 2299.1 is amended by adding two new definitions to read as follows:

Biopesticide - a chemical derived from plants, fungi, bacteria, or other non-man-made synthesis that is effective in controlling target pests or certain microorganisms including bacteria, fungi, viruses, and protozoa that are effective in controlling target pests. These agents usually do not have toxic effects on animals and people and do not leave toxic or persistent chemical residues in the environment.

Plant incorporated protectant - pesticidal substances that are intended to be produced and used in a living plant or in the produce thereof, and the genetic material necessary for production of such a pesticidal substance. Plant incorporated protectant also includes any inert ingredient contained in the plant, or produce thereof.

Figure A

SIZE OF LETTERING
CAUTION
72 point 11/16"
PESTICIDE APPLICATION
30 point 9/32"
SIZE OF SYMBOL
2"
KEEP
OFF
30 point 9/32"
CUSTOMER: PLEASE REMOVE AFTER 48 HOURS.
11 point 3/32"

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The District members of the Board of Directors ("the Board") of the District of Columbia Water and Sewer Authority ("the Authority"), pursuant to the authority set forth in section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3), (11) and 34-2202.16), at its regular meeting on September 4, 2008 took final action to adopt the following amendments to Chapter 1 of the Water and Sanitation Regulations (21 DCMR). The rules adopt new Right of Way Occupancy Fee Pass Through Charge/ Pilot Fee.

The Authority's proposed rulemaking was oringally published in the May 9, 2008 edition of the *D.C. Register* (55 DCR 5485). Two public hearings were held on June 11, 2008 and June 23, 2008. The Board of Directors voted after consideration of all comments received and the report of the Retail Rates Committee to Right of Way Occupancy Fee Pass Through Charge/ Pilot Fee to increase the fee from Forty-Seven Cents ($ 0.47) per One Hundred Cubic Feet of water used to Fifty-Two Cents ($ 0.52) per One Hundred Cubic Feet of water used, effective October 1, 2008. A technical correction was made to the proposed rulemaking to renumber the section from 112.5 to 112.8. The noted change is not a substantive change to the proposed regulations and does not impose additional requirments on the public.

This final rulemaking will be effective when published in the *D.C. Register* and the new rates will be effective on the stated date.

Title 21 DCMR, Chapter 1 WATER SUPPLY, Section 112 FEES, subsection 112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE is amended to read as follows:

112.8 RIGHT OF WAY OCCUPANCY FEE PASS THROUGH CHARGE / PILOT FEE - The Right of Way Occupancy Fee Pass Through Charge / Pilot Fee, assessed to recover the cost of fees charged by the District of Columbia to the Water and Sewer Authority for use of District of Columbia public space and rights of ways, shall be as follows:

Effective October 1, 2008 the Right of Way Occupancy Fee Pass Through Charge / Pilot Fee of Forty-Seven Cents ($.47) for each One Hundred Cubic Feet ($100ft^3$) of water used shall be increased to Fifty-Two Cents ($.52) for each One Hundred Cubic Feet ($100ft^3$) of water used, divided as follows:

i. Payment in Lieu of Taxes, $0.39 per Ccf
ii. District of Columbia Right of Way Fee $0.13 per Ccf.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The District members of the Board of Directors ("the Board") of the District of Columbia Water and Sewer Authority ("the Authority"), pursuant to the authority set forth in section 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3), (11) and 34-2202.16), at its regular meeting on September 4, 2008 took final action to adopt the following amendments to Chapter 41 of the Water and Sanitation Regulations. The rules adopt new Retail Water and Sewer rates.

The Authority's proposed rulemaking was oringally published in the May 9, 2008 edition of the *D.C. Register* (55 DCR 5487). Two public hearings were held on June 11, 2008 and June 23, 2008. The Board of Directors voted after consideration of all comments received and the report of the Retail Rates Committee to revise retail water and sewer rates to increase the rates for water service from $ 2.14 per One Hundred Cubic Feet of water used to $ 2.30 per One Hundred Cubic Feet of water used and to increase the sewer service rate from $ 3.23 per One Hundred Cubic Feet of water used to $ 3.47 per One Hundred Cubic Feet of water used, effective October 1, 2008.

This final rulemaking will be effective when published in the *D.C. Register* and the new rates will be effective on the stated date.

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4100 RATES FOR WATER SERVICE, Subsection 4100.3 is amended to read as follows:

CHAPTER 41 RETAIL WATER AND SEWER RATES

4100 RATES FOR WATER SERVICE

4100.3 The retail rate for metered water service of Two Dollars and Fourteen Cents ($2.14) for each One Hundred Cubic Feet ($100ft^3$) of water used shall be:

a) Effective October 1, 2008, increased from Two Dollars and Fourteen Cents ($2.14) for each One Hundred Cubic Feet ($100ft^3$) of water used to Two Dollars and Thirty Cents ($2.30) for each One Hundred Cubic Feet ($100ft^3$) of water used;

Title 21 DCMR, Chapter 41 RETAIL WATER AND SEWER RATES, Section 4101 RATES FOR SEWER SERVICE, Subsection 4101.1 is amended to read as follows:

4101 RATES FOR SEWER SERVICE

4101.1 The retail rate for sanitary sewer service of Three Dollars and Twenty Three Cents ($3.23) for each One Hundred Cubic Feet ($100ft^3$) of water used shall be:

a) Effective October 1, 2008, increased from Three Dollars and Twenty Three Cents ($3.23) for each One Hundred Cubic Feet ($100ft^3$) of water used, to Three Dollars and Forty-Seven Cents ($3.47) for each One Hundred Cubic Feet ($100ft^3$) of water used.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FINAL RULEMAKING
AND
ZONING COMMISSION ORDER NO. 07-30
Z.C. Case No. 07-30
(Map Amendment – 11 DCMR)
(Marshall Heights rezoning from R-5-A to the R-2 or R-3 Zone Districts)
July 14, 2008

The Zoning Commission for the District of Columbia (the "Commission"), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01); having held a public hearing and referred the proposed amendments to the National Capital Planning Commission for a 30-day period of review pursuant to § 492 of the District Charter, hereby gives notice of the adoption of the following amendment to the Zoning Map of the District of Columbia (11 DCMR).

The Zoning Map of the District of Columbia is amended to rezone the following lots presently zoned R-5-A to the following Zone Districts:

Square:	Lots:	Zone District
5341 (all)	Lots 9-14, 29-34, 36-39, 42-45, 805-807, and 810-813.	R-2
5341 E (all)	Lots 1-40 and 802.	R-2
5342 (all)	Lots 1-11, 14-19, and parcel 193/0065.	R-2
5342 E (all)	Lots 3-14, 801, and 802.	R-2
5350 (part)	Lots 2-8, 11, 12, 17-24, 38, 39, 64-67, 72, 102-108, 111, 113, 114, 117-120, 125, 126, 850, 852, 855, 857, 861, and 862.	R-2
5351 (part)	Lots 64, 74, 75, 85, 90, and 866.	R-2
5352 (part)	Lots 31, 41, and 42.	R-2
5359 (part)	Lots 309-318.	R-2
5362 (part)	Lots 61-63, 175-190, 198-205, 816, and 817.	R-2
5287 (all)	Lots 801, 803, and 805.	R-3
5293 (part)	20-33, 47, 48, 803, 805, and 807.	R-3
5294 (all)	Lots 9-11, 13, 23-31, 39-44, 807, 809, and 2001-2036.	R-3
5295 (all)	Lots 1, 2, 20, 21, 39, 812, and 813.	R-3
5296 (all)	Lots 1-4, 20-22, 803, 805, 807, 809, and 810.	R-3
5297 (all)	Lots 801, 803, 805, and 807.	R-3
5298 (all)	Lots 3, 13-17, 31, 32, 801, 803, and 805.	R-3
5299 (all)	Lots 3, 4, 7-13, 16-18, and 28-38.	R-3
5300 (all)	Lots 1–8, 12-23, and 25–31.	R-3
5301 (all)	Lots 13-15, 25-27, 31-35, 803, 807, and 809.	R-3
5302 (part)	Lots 10, 25, and 29-32.	R-3

Square:	Lots:	Zone District
5303 (part)	Lots 4, 5, 13, 16-19, 28, 35-39, and 809.	R-3
5304 (part)	Lots 22 and 31-34.	R-3
5308 (part)	Lots 35-37.	R-3
5309 (part)	Lots 1, 7-9, 13, 20, 28, 39-43, and 800-803.	R-3
5310 (part)	Lots 1-5, 11, 18-21, 25-30, and 35-39.	R-3
5311 (all)	Lots 1-7, 12-18, 22-27, 31-33, 800, and 801.	R-3
5312 (all)	Lots 2, 7-14, 16, 17, 22-27, and 31-36.	R-3
5313 (all)	Lots 1-6, 8, 11-18, 26, 31, and 33-49.	R-3
5314 (all)	Lots 3-8, 11-17, 21-25, 27, 28, 31-33, 800-802, 805, and 806.	R-3
5315 (all)	Lots 3, 6, 8-10, 18-21, 24, 25, 30-33, and 35-39.	R-3
5316 (all)	Lots 1, 2, 5, 6, 11-14, 22, 25, 26, 32-35, 805, 807-810, and 2001-2024.	R-3
5317 (all)	Lots 1, 6, 8, 9, 13, 31-35, 801, 835, and 837.	R-3
5321 (all)	Lots 9, 10, 15, 23-30, 32, 33, 35, and 2001-2054.	R-3
5322 (all)	Lots 6, 7, 22-24, 29, 30, 32-37, and 2001-2024.	R-3
5323 (all)	Lots 5, 6, 9-15, 27-34, 800, and 2001-2032.	R-3
5324 (all)	Lots 6, 16, 20-24, 31-37, 39, 801, and 802.	R-3
5325 (all)	Lots 1, 10-13, 16-19, 24-26, 31, 33, 34, and 802-805.	R-3
5326 (all)	Lots 3-9 and 16-32.	R-3
5327 (all)	Lots 1-5, 8-15, 18, 25, 26, 31, 32, 35-38, and 800.	R-3
5328 (part)	Lots 21-27, 31, and 32.	R-3
5330 (part)	Lots 24, part of 31, and 32.	R-3
5331 (all)	Lots 2, 8-10, 18-23, 32, 33, 800, 801, 803, 804, and 2001-2073.	R-3
5332 (all)	Lots 1-11, 20, 23-26, 30, 33-35, 801, and 802.	R-3
5333 (all)	Lots 1, 2, 18-21, 31-33, 36, and 802.	R-3
5334 (all)	Lots 801 and 802.	R-3
5336 (all)	Lots 36-44.	R-3
5337 (all)	Lots 1-4, 7, 10-14, 17, 18, 800, and 801.	R-3
5338 (all)	Lots 2-7 and 800	R-3

Hereafter, these properties shall be referred to as the "Subject Properties." They are located in the Marshall Heights Neighborhood, generally south of East Capitol Street and Central Avenue, S.E.; west of Southern Avenue, S.E.; and on or east of Benning Road, S.E. in Ward 7.

The purpose of this rezoning is to adopt a zoning designation for the Subject Properties that is not inconsistent with the District Elements of the Comprehensive Plan for the National Capital ("Comprehensive Plan") and more consistent with prevailing neighborhood character.

A Notice of Proposed Rulemaking was published in the *D.C. Register* ("*DCR*") on May 16, 2008, at 55 *DCR* 5791. The Commission took final action to adopt the amendments at a public meeting on July 14, 2008. This final rulemaking is effective upon publication in the *D.C. Register*.

Setdown Proceeding

The Office of Planning ("OP") initiated this rulemaking by filing a report dated November 9, 2007 with the Commission. The OP report recommended that, consistent with the 2006 Comprehensive Plan, certain properties in the Marshall Heights Neighborhood of Ward 7 be rezoned from R-5-A to R-2 or R-3, to better ensure that any new development is more consistent in form and character with the surrounding neighborhood.

At its regularly scheduled public meeting on November 19, 2007, the Commission considered the petition, and set the case down for a public hearing as a rulemaking case.

Public Hearing

The Commission held a properly noticed public hearing on March 3, 2008 to consider the case.

OP testified in support of the map amendments, noting that the current R-5-A zoning could result in development that is inconsistent with Comprehensive Plan policies and different from the prevailing character of the surrounding neighborhoods. The current R-5-A zoning permits, with Board of Zoning Adjustment approval, multiple dwellings. Infill development sites in the Marshall Heights area have recently been targeted for multiple dwellings within areas that are currently predominantly developed with detached, semi-detached, and row dwellings.

At the public hearing, the Vice-Chair of Advisory Neighborhood Commission ("ANC") 7E testified that the ANC had passed a resolution recommending that the Commission approve this application to rezone properties within their ANC boundaries from R-5-A to R-2 or R-3, noting that the changes are necessary to reduce the number of apartment structures in areas where they are not compatible with the low density character that typifies most of the community.

Relationship to the Comprehensive Plan

The 2006 Comprehensive Plan for the District of Columbia includes specific references to changing the R-5-A zoning in Wards 7 and 8, including Marshall Heights, where that zone would permit new development that is inconsistent with prevailing development patterns. The Future Land-Use Map of the Comprehensive Plan designates the subject lots as low-to-moderate density residential, and the proposed map amendments from R-5-A to R-2 or R-3 would not be inconsistent with those designations.

Great Weight to the ANC

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) to give great weight to the affected ANC's written recommendation. No written recommendation was received into the record.

Proposed Action

Immediately following the public hearing on March 3, 2008, the Commission unanimously took proposed action to approve the map amendment.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 16, 2008, at 55 *DCR* 5791 for a 30-day notice and comment period. No comments were received.

The proposed rulemaking also was referred to the National Capital Planning Commission ("NCPC") under the terms of § 492 of the District of Columbia Charter. NCPC, by report dated February 28, 2008, commented that the proposed text amendment would not adversely affect the identified federal interests.

The Office of the Attorney General has determined that this rulemaking meets its standards of legal sufficiency.

Final Action

At it regularly scheduled public meeting of July 14, 2008, the Commission took final action to approve this amendment to the Zoning Map.

Based on the above, the Commission finds that the proposed amendment to the Zoning Map is in the best interests of the District of Columbia, consistent with the intent and purpose of the Zoning Act and Zoning Regulations, and not inconsistent with the Comprehensive Plan.

Vote of the Zoning Commission taken at the conclusion of the public hearing on March 3, 2008 to **APPROVE** the proposed rulemaking: **5-0-0** (Gregory N. Jeffries, Michael G. Turnbull, Anthony J. Hood, Curtis L. Etherly, Jr., and Peter G. May to approve.)

Vote of the Zoning Commission taken at a regularly scheduled public meeting on July 14, 2008 to **ADOPT** the final rulemaking: **5-0-0** (Anthony J. Hood, Curtis L. Etherly, Jr., Gregory N. Jeffries, and Michael G. Turnbull to adopt; Peter G. May to adopt by absentee ballot).

In accordance with the provisions of 11 DCMR § 3028.9, this Order shall become effective upon publication in the D.C. Register, on September 19, 2008.