

**GSA: FISCAL YEAR 2000 BUDGET FOR PUBLIC  
BUILDINGS AND THE COURTHOUSE PROGRAM**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
TRANSPORTATION AND INFRASTRUCTURE  
OF THE  
COMMITTEE ON  
ENVIRONMENT AND PUBLIC WORKS  
UNITED STATES SENATE  
ONE HUNDRED SIXTH CONGRESS  
FIRST SESSION

SEPTEMBER 28, 1999

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# **GSA: FISCAL YEAR 2000 BUDGET FOR PUBLIC BUILDINGS AND THE COURTHOUSE PROGRAM**

**TUESDAY, SEPTEMBER 28, 1999**

U.S. SENATE,  
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,  
SUBCOMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:04 a.m. in room 406, Senate Dirksen Building. Hon. George V. Voinovich (chairman of the subcommittee) presiding.

Present: Senators Voinovich, Baucus, and Moynihan.  
Also present: Senator Wyden.

## **OPENING STATEMENT OF HON. GEORGE V. VOINOVICH, U.S. SENATOR FROM THE STATE OF OHIO**

Senator VOINOVICH. The subcommittee will come to order.

I would like to begin with mentioning that Senator Baucus, regrettably, cannot be here. He is tied up and will try to get here. We appreciate Senator Wyden being here this morning.

I would like to thank Robert Peck, Commissioner of the Public Buildings Service of the General Services Administration, for coming here today to discuss GSA's 2000 budget for the Public Buildings Service.

The committee has before it a number of projects that are in need of authorization in order to spend funds that have been recently approved by Congress in fiscal year 2000 by the Treasury/Postal appropriations bill—in other words, the money has been appropriated but the authorization hasn't occurred. These projects include the following:

- Thirteen repair and alteration projects totaling almost \$178 million;
- Thirteen advance design projects totaling almost \$18 million;
- Seven construction projects totaling a little over \$83 million; and??
- Nineteen leases totaling \$127 million.

Of these project authorizations, all but one, the U.S. Mission to the United Nations, require this committee's support in the form of a committee resolution before these funds actually can be spent.

As the Environment and Public Works Committee is going to hold a markup tomorrow, I would hope that the committee would

feel confident in moving forward on all of these resolutions that we have before us.

Mr. Peck, we thank you very much for appearing here today, and we look forward to your testimony.

Senator WYDEN. Mr. Chairman?

Senator VOINOVICH. Yes?

Senator WYDEN. With your indulgence, I have to be on the floor in just a few minutes. Could I make just a very brief comment?

Senator VOINOVICH. Absolutely, Senator Wyden. I appreciate your being here, too.

**OPENING STATEMENT OF HON. RON WYDEN,  
U.S. SENATOR FROM THE STATE OF OREGON**

Senator WYDEN. And I certainly concur with everything that you have said. As you know, I have especially enjoyed working with you on many of the issues before this committee, and I appreciate your thoughtfulness again this morning.

As Mr. Peck knows, there is a great concern in Eugene, Oregon, in my home State, about the situation with respect to siting a new Federal courthouse. Earlier this month, GSA announced that it had picked a site, and there were enormous objections from the business community at home in Eugene. The business committee has felt that it would eliminate hundreds of parking spaces and do enormous damage to businesses in the downtown commercial district.

Suffice it to say, I can't recall a situation where I've heard so much of an uproar from business folks, and very dedicated citizens, folks who are involved in just about every aspect of civic life. We're just anxious to make sure that this doesn't become a sort of "false choice" between either a secure courthouse, which you are in the business of doing and do well, or having a downtown business district in my home State in the city of Eugene.

Because of your comments, even before the hearing, I understand that it will be possible for the city of Eugene to have the additional time to come up with alternative kinds of approaches, to work with all of you for the kind of win-win situation that I know you are committed to, so that you can get about the task of constructing the project, and at the same time we can meet these business concerns.

With your indulgence, Mr. Chairman, I will have a few questions that I would submit in writing. I was very appreciative of Mr. Peck coming up even before the hearing started, because having been before this committee, he knew the questions that he was going to get asked. I think his response is very courteous and very helpful and it is appreciated.

I thank you very much for the chance to take a little time, even before Mr. Peck's testimony.

Senator VOINOVICH. Thank you, Senator.

Mr. PECK. Mr. Chairman, if I might, just to confirm, we think our job in building new courthouses—of which we're building a goodly number; we have about 40 either completed or under way, a fairly large program—we think our job is to build buildings that are a benefit to the community, both because through their architecture they are worthy of the American people, dignified, rep-

resenting the dignity and vigor—Senator Moynihan will remember some of these words—and the enterprise of the American national government.

Obviously, we have security concerns, but our mission is to make buildings that are both secure and lively and inviting to the public. In Eugene there has been some concern about the choice, and we are prepared to work with the city. I think they have asked for a period of 30 days; we will see what it takes to come up with a good solution.

Senator VOINOVICH. Thank you, Mr. Peck.

Senator Moynihan is here with us this morning.

Senator would you like to make a few remarks before Mr. Peck testifies?

**OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN,  
U.S. SENATOR FROM THE STATE OF NEW YORK**

Senator MOYNIHAN. Thank you, Mr. Chairman, just to welcome an old friend of many years who once worked with us here on the committee, doing a superb job as the Director of Public Buildings. I don't think we have ever had so qualified a person, and it shows in the quality of his work.

Senator VOINOVICH. I have had just a little experience with Mr. Peck and his operation, and I share your words of compliment. It is a very professional organization and, I must say thus far, one of the most refreshing experiences I've had since I've been a Senator.

**STATEMENT OF BOB PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY PAUL CHISTOLINI, DEPUTY COMMISSIONER, PUBLIC BUILDINGS SERVICE**

Mr. PECK. I thank both of you for your comments. I am very appreciative of the opportunity to be here in front of the committee.

If I might, Mr. Chairman—I know we want to make this brief—I would indulge you for just a couple moments, because the Public Works Committee in the Senate and the Transportation Committee in the House review, by law, the capital projects which we propose, which are but a small proportion, actually, of the program that we run. I will be quick to get back to the capital program, but I just note, to put this in context, that we are proposing to you for this year some 19 leases which we ask the committee to propose because they are in excess of the legal requirement that you approve leases that will cost more than about \$1.9 million per year in base rent.

Those 19 leases come to approximately \$130 million in obligations in fiscal year 2000. We have some 22,000 leases which house about half of the 1 million Federal employees whom we do house in work space. The total leasing budget for fiscal year 2000 is about \$2.8 billion. When I worked on this committee staff—a very happy period, but nearly 20 years ago—we were alarmed that the leasing budget was approaching \$1 billion a year, and it is now approaching \$3 billion a year.

So we are spending a lot of money and, as I will explain in a moment, we are quite businesslike. We look at things like our net in-

come. For us, one concern for this committee is that the percentage of space that we have in leases, the way our system is set up, really constrains the amount of money that we have available for repairs and alterations and construction. So we are in a little bit of a vicious cycle: the more we lease, the less money we have for other purposes, because we make some net income on the buildings we own.

In any event, to put the program in context, also we do—and I always say I am one of the luckiest people in the Government; everyone says the Government should run pretty much like a business. You can't quite run like a business, but in our agency you actually can get pretty close, because we collect rents from Federal agencies, and we have expenses, which we can track building-by-building. You can't get any closer, really, to running a real estate business than that.

We are one of the largest commercial real estate businesses in the United States, probably the largest if you count office space. We have 330 million square feet in courthouses, laboratories, border stations, warehouses. We are represented in 1,600 different American communities. We have 1,800 Government-owned buildings, and our leases are spread among 6,500 privately owned buildings.

Uniquely, I have to say that were I a Wall Street banker, while I would be happy to have an inventory this large, I would be concerned at having an inventory this old. Over 40 percent of our buildings are more than 50 years old, which means that our repair and alterations, our renovation needs, are really quite amazing. The rule of thumb in most real estate businesses is that you really don't want to hold a building more than 20 years because after this time period the repair bills really begin to come due.

We are doing a good job of maintaining our buildings, but as you will see, we place quite a bit of emphasis on repairing and altering our space.

Finally, if I can follow on to my point about how we do operate like a business, I think we, almost more than any other Government agency with which I am familiar, have taken our concern about performing like a business down to the regional and individual level, to the point where we have created friendly competitions among our 11 regions to be the cheapest, best, and fastest that they can be at doing our business. We have nine performance measures, which have quickly become known as the "Big Nine" in our organization, which help us allocate money across regions. In fact, individual bonuses this year were tied directly to a region's performance on performance measures. The performance measures include such things as the vacancy rate in buildings. Regions were told that if they could hit certain targets in getting their vacancy rate down, or getting their customer satisfaction scores up, or reducing their expenses, or bringing their projects in on time and on budget, they would be given additional funds, which we held back in the national office. The additional funds then allocated out as both individual bonuses and, most notably, as extra money that they could spend to bring their buildings up to our standards.

So this has resulted in the following kinds of improvements in our business.



Our operating costs per square foot in a Government office building are now 11 percent below comparable costs in the private sector. The average rents we pay in private sector buildings in nearly every major market in this country are at or below what private sector tenants pay.

Our customer satisfaction scores, measured in hundreds of our buildings by the Gallup Organization, have increased significantly over the last 2 years, and our regions have a pretty hefty and hearty competition over bringing those rates up. I won't tell you how many beers have been won or lost over whether someone can get their rates up or not.

Our utility costs are already about one-third below private sector comparables. Our energy consumption from 1985 to 1998 was reduced by 17 percent, and will be reduced by an additional 3 percent by fiscal year 2000.

So, as I have said, we think our job is to run as much like a business as we can. Quite honestly, the better we run our business, the more net income we have available to come to you with prospectuses for repair and alterations, and to create a cycle in which we create income that makes our buildings better, that keep our customer satisfaction scores rising, and which give to the American people new border stations, courthouses, and existing buildings. As I like to say, these new buildings need to be worthy of the American people and encourage our Federal work force to be productive. When the public comes to visit them, the buildings should make the public believe that the Federal Government is a professional, well-run organization that cares about them and about their communities.

I will note that usually, when we have a large construction program going—and this is part of the structure of the Federal Buildings Fund, into which we deposit our rents—it is necessary for us to ask for additional appropriations for any program as large as the courts program. We have found it necessary over the past 25 years to ask for additional appropriations.

You will see that as our net income is increasing, we are, in fact, however, finding it possible to do some new construction projects within our Federal Buildings Fund revenues, and we will talk a little bit more about construction in a moment.

Mr. Chairman, you went over our capital program for the year. You are absolutely right. I just want to assure you that in coming up with the repair and alterations projects, which you have before you, we have again applied businesslike measures. A couple years ago we began asking, when our regions came to us with repair needs, for them to do a return on investment analysis that any private sector organization would do, and to show us that over the next 10 to 20 years, if we put "X" million dollars into a building, that it will in fact get us a return, either through increased revenues or the ability—most important to us—to increase the effective use of space in a building. So for example, if we have a building that is 20 percent vacant, someone has moved out, we will allocate funds to it to help reorganize the space, make it more modern, and bring more people in. In net terms over several years, this will increase our revenues.

Obviously, there are some things that you have to pay for no matter what. We don't apply the same kind of mathematical calculation to security or, obviously, to health and safety issues or, quite honestly, in some cases to historic preservation issues. Fully a quarter of our owned inventory is either on the National Register of Historic Places or eligible for it, and there are occasions where we believe that the details that are in those buildings deserve some slight extra expenditure.

Finally, in deciding which projects are proposed in any given fiscal year, when we ask you for funds for design, we obviously believe we can go out and do that right away. We then have to see where our designs are before we actually ask you for construction funds for the projects.

I would note two final things.

Obviously, the Treasury/Postal Service appropriations bill for fiscal year 2000 has emerged from conference. I don't know if the bill has actually been presented to the President, but the funding for most of the projects which we are presenting to you by prospectuses are in fact already provided for in that bill, although I do note that there are some disconnects. Our fiscal year 2000 program did include some projects that were not funded by the Congress. Nonetheless, we are asking you to approve the prospectuses because the prospectus authorizations, once made, do hold over.

Finally, I would note that it is the 50th anniversary of the founding of the General Services Administration. We were an outgrowth of the Hoover Commission in 1949, and we have taken this opportunity to take a look at the Federal Property and Administrative Services Act—under the jurisdiction of a different committee—to suggest some changes, and we are working within the Administration and hope soon to be able to present to you a bill that we think would enable us to operate even more effectively.

That concludes my statement. I will be happy to answer any questions about the projects that we have presented to you.

I hasten to add that on most of your specific questions, I will probably turn almost immediately to Paul Chistolini, our Deputy Commissioner, who lives these projects most every day, more than I do.

Senator VOINOVICH. Perhaps you might, just for the record, explain to the committee the current status of the U.S. Mission to the United Nations. It's something that came up before us; it's not here today, but we handle it separately. If you could just bring us up to date on where we are, for the record?

Mr. PECK. Yes, sir. Well, the Administration proposed the design and construction of a new Mission building on the site of the existing building in New York City. Funding for the design was not included in the appropriations bill, and I will note one change the Administration has made since we submitted the prospectus—although I will ask someone to jump up if I am wrong.

At the request of the State Department, we are no longer requesting the inclusion of a residence in the U.S. Mission building. The Ambassador will continue to be housed at the Waldorf Astoria. The State Department, for various reasons, believes that is the most cost-effective approach. The current Ambassador prefers it, and so we have deleted that.

Mr. CHISTOLINI CORRECTS ME. We have received funding for design of the Mission and have selected an architectural firm. We did not receive the funds necessary to demolish the existing building, and thereby begin construction. So that is still pending.

Senator VOINOVICH. All right. So somebody has picked an architect, and they are going about designing the facility. The fact is that the money for demolishing the building has not been appropriated?

Mr. PECK. Yes, sir. That is correct.

Senator VOINOVICH. Senator Moynihan, do you have some questions you would like to ask?

Senator MOYNIHAN. Yes, sir, a comment, if I may.

I went up to look at the U.S. Mission a couple of months ago. I used to work there. Major Peck—I call him “Major Peck”—his observation that private firms don’t like to keep their buildings more than 20 years, it shows in the building across from the U.N. It’s in pretty bad shape, and not big enough. I did not at all like the idea of putting the Ambassador on top of it, because there are just more things that happen at the United Nations, and that building is the site for American delegations to other activities of all sorts. It’s just not big enough, and there you are.

But I would like to ask, if I may, Mr. Chairman, when Major Peck was on our committee staff, he was one of those active in the movement which John Chafee was very much interested in, and other Senators, that we were leasing too much, and that we ought somehow to have a goal of, perhaps, 70 percent of our employees in Government-owned space. But obviously we are falling back a bit, or we’re not making any movement toward that. I don’t say that 70 percent was agreed on, but it was more than 50 percent.

Have we changed our mind? Or do such circumstances give you no alternative?

Mr. PECK. The percent hasn’t much changed since I worked here 20 years ago. It changed significantly from the late 1960’s to the late 1970’s, from—I don’t recall the exact figures, but we had 60 to 70 percent in Government-owned space, and then—

Senator MOYNIHAN. That’s right. That has dropped, you see.

Mr. PECK.—it got down to about 50 percent, and it has sort of remained there. Obviously you want some people in leased space because there are functions that move, there are things that change; I mean, we’re seeing the IRS reorganizing. So we are actually happy about places where we had them in a lease, which will expire relatively soon, so that we can move things around.

But so many of the functions of the Government are so permanent. The Social Security Administration, as you know, talks in 50- to 75-year chunks; leasing space for them 5 years at a time if it’s a major administrative center is not the right approach. But we are constrained, quite honestly by how much funding we can get in competition with other funds. And quite honestly, in the last 6 or 7 years, most of the construction funds which have been appropriated—and there have been some significant appropriations—have gone to courthouses because of the explosion of litigation, judgeships, and, quite honestly, the age and security concerns about older courthouses.

Senator MOYNIHAN. If you were to make that businesslike decision that you were talking about, would you want more than 50 percent?

Mr. PECK. Yes. I think that actually what we sought in 1979–1980 was sort of a guess of about 75 percent. Most of the time, when you run the numbers for an organization like the Government, as fundamentally stable as the Federal agencies are, that seems to be about the right number. Maybe it's 70 percent, because we're seeing more volatility in Federal agencies than we used to.

But still, we think people would be better off for lots of reasons if we had more in owned space.

Senator MOYNIHAN. Well, Mr. Chairman, I just thought you might want to hear that. There's not much you can do about it this week, but it might not be a bad idea to set some 10- or 20-year goals.

Senator VOINOVICH. Well, when you raised the question I thought back to my years as Governor of Ohio. I can't tell you the percentages on the amount of space that our State leased, but I think it is less than 50 percent, but I wouldn't know what the number is. In fact, I am going to ask that question and get the answer to it.

The Property Act, I would be interested to know—and you don't have to go into detail—I would be interested in getting some information from you on some of the proposals. When would you expect that you would want us to respond to your recommendations?

Mr. PECK. Well, we hope to have some legislation cleared in the next month or so, so it may be late for this session. But certainly, we hope to see it up here early next year.

Senator VOINOVICH. The Federal Protective Service, because of the bombings, we have really increased dramatically the amount of protection. Do you have any figures at all on the additional costs that you have incurred and the impact it has had on your operations?

Mr. PECK. Yes, sir. In essence, we took a look—I won't describe to you the methodology, but we tried to figure out what would we have spent on security following the Oklahoma City bombing, and what have we spent? We just straight-lined where we had been before. We have about doubled spending on security since Oklahoma City. Most notably, between then and now we have spent about \$1.2 billion on security, whereas at the previous rate we would have spent about \$600 million. That's divided about 60 percent/40 percent between personnel and services expenditures, and equipment expenditures. In other words, we have spent—I forget how those numbers work out, but something like two-thirds is more contract guards, more of our own uniformed guards, and about one-third for equipment like new x-rays and magnetometers and closed-circuit TV cameras.

I would note, because this is an issue that may come up to you, that we have taken on an overhaul of the Federal Protective Service. We have, as I say, doubled the number of uniformed officers. I think there were about 350 at the time of the Oklahoma City bombing. There will be more than 700 fairly soon. However, even that number—obviously, when we have 1,800 buildings, and you figure that they can only work so many hours a day—doesn't trans-

late into one officer per building. Nor should we, necessarily. We are changing the way our force behaves. They have been stuck, quite honestly, in the outmoded police pattern of waiting for the 911 call to come in, and responding. But like forward-looking police forces, we are moving to a form of community policing where officers will be more evident in the buildings. We are retraining them so that they are more expert on physical security. We know that they know how to shoot and arrest, but we think they need to learn a little bit more about securing an installation—and, by the way, doing it in a way that is still conducive to the public entering and exiting the buildings and not turning our buildings into armed fortresses.

I will present one concern to you. There is a bill pending in the House of Representatives that would turn the Federal Protective Service—take it out from under the Public Buildings Service and make it an independent agency in the General Services Administration. In many other respects, I have to note, the bill that is pending in the House is quite salutary; it has some reforms in the Federal Protective Service that I personally fully endorse.

Making the Federal Protective Service independent of PBS is, I believe is an effort by some in the force who don't want to get out of their cars and be more aggressive in security measures. To take it out, quite honestly, from under my control is an effort by some to keep the organization from changing. I forcefully oppose that move for that particular reason. Otherwise, I have to say that our Administrator of GSA, who would be their supervisor were this bill to pass, he and I agree totally on how they ought to operate. As long as we're there, it probably wouldn't change much. But I do believe it's a mistake because security needs to be integrated into the way you operate a building. You can't have the building manager going in one direction and the security folks going in another; they need to talk more.

In any event, that's a long way of answering your question, but we are spending a lot of time on security and trying to make it better, while at the same time keeping our buildings open.

Senator VOINOVICH. One of the things—of course, when I am at our Federal Building in Cleveland I hear from the people that are in security, and many of them want to go off and be under a separate jurisdiction.

In terms of expanding security, I am glad to hear that you understand that they need to have further training and change the paradigm that they've had in the past, but what opportunities are you giving the current security force versus privatizing? By that, I mean—we went through this in State government; we had agencies that became independent, and then the issue became whether or not they would use the people who were working for the State of Ohio, or would they go out and contract it out.

What position have you taken toward that?

Mr. PECK. Well, about 20-some years ago the GSA Federal Protective Service was several thousand strong, and most of the officers were performing services of guarding entrances to buildings. In the early 1980's, one of the Reagan Administration reforms was to contract most of that out to building security guards. I have to say, quite honestly, I have no objection to that, if the security

guards are well trained. We are just finishing revision of our standard guard contract to upgrade the training of the security guards. While they are taught how to shoot and how to sit at a door, I don't think they are well trained enough yet to recognize certain kinds of threats when they appear.

Since Oklahoma City we have doubled the size of the contract force, which is about 5,000 contract guards, but we have also doubled the size of the uniformed force. I actually think that's about the right ratio because I want our uniformed officers to be like officers in the military, the people who supervise the work of that contract force. It's very hard to recruit people these days just to sit at a door, and you're always going to have high turnover. We spend a lot of money training our uniformed officers, and we want them to be a lot more skilled in a number of areas—like how security equipment works, how you defend a perimeter. We are giving our officers more training. We are changing the whole way our officers are recruited and paid so that our officers are going to be called "law enforcement security officers." They will be offered grade increases, and we are offering our existing officers the opportunity to apply for those new jobs first. I hope that in 5 or 10 years our entire force will be made up of these officers who are more skilled.

Senator VOINOVICH. I think that probably would go a long way to lessen the demand for them to be under separate jurisdiction, because you're treating them more like law enforcement officers. I think that's part of the problem that many of them feel: "We need out of here because we have these tough jobs and we're not getting the training that we need to do the job that we're supposed to be doing." That's great.

Mr. PECK. I am in a strange position. We have offered higher grades and still have some opposition from some of the officers.

I will say this: at least it's not about the money for them. And the officers, even the ones who oppose me on this issue, I have to say, are dedicated to the job and made a decision to be police officers and are very serious about their careers.

Senator VOINOVICH. One other thing that I have encountered—that's why it's nice to be in a Federal building because you can see firsthand what the problems are, and that is that in order to maintain security, just about everybody has to go through the security operation, and there are some functions in those buildings that might not require that kind of security. The challenge is, how do you separate it and divide it up so that people have access? On the other hand, you make sure that when they're going to some other place in the building, that it is secure.

Would you like to comment on that?

Mr. PECK. Yes, sir. That's a very serious concern; you put your finger on one of the big issues facing us.

For example, we have a small program going called "First Impressions." We're trying to upgrade our lobbies. It's another area in which we've discovered that you can't do that these days. You can't make a Federal building lobby feel like a nice place without dealing with how the security works. I will tell you, for example, walking into this building from the entrance at 1st and Constitution, you immediately encounter a magnetometer before you get in the door. So the queues go out into the foyer. That, in my opinion, is not the

right way to do it, but it costs you some money and thinking to do it differently.

We have a building in downtown Chicago in which we have a food court, and we were able to move the security so that you can't get into the elevator lobby, which goes to the upper floors in the Federal building, without going through security. But the food court manager told us, not surprisingly, that if you make people come through security at lunchtime to try to get to McDonalds, "we won't be in business very long."

Granted, there are concerns on the part of Federal employees and visitors. A worry that someone in this separate part of the building might bring in a bomb or something of that nature, so we still have to be careful.

I will tell you, one reason that I believe this is doable—to cite a strange source, and we're consulting with them—is that there is a lot of security at Disney World, but you don't know it. They have a lot of concerns. So, we are talking to people like that who have figured out how you can make some of these things work. But it's a real issue for us, and we work a lot with our customers to try to alleviate their fears to have a security system that we think makes sense, and still appears to be welcoming to the public.

Senator MOYNIHAN. Mr. Chairman, could I just ask one question?

Senator VOINOVICH. Yes, Senator.

Senator MOYNIHAN. I don't suppose it's in your jurisdiction, but did we have to close Pennsylvania Avenue in front of the White House?

Mr. PECK. Senator, in my job that's one of those "third rail" questions, which I probably shouldn't answer. It's another one of those issues where you can make different calls, based on how you weigh the threat versus the cost of closing off the avenue.

I guess to be fair to those who made that decision, there were probably costs associated with trying to protect the White House without closing Pennsylvania Avenue which perhaps they weren't prepared to make.

Senator MOYNIHAN. Well, I mentioned cost. I wondered—I noticed that almost the first thing they did after they closed off the avenue was to paint a parking lot and give them numbers. Do they lease them? Or are those just the perks of the upper reaches of the Treasury Department?

Mr. PECK. I think you have correctly surmised what happened to the parking spaces on the Treasury end of the avenue. They are, as I understand it, reserved for Treasury employees, I don't know for whom.

Senator MOYNIHAN. Shouldn't they be rented out?

Mr. PECK. If it were under GSA control, we would probably try to rent them, although I think we would have resistance from the agency.

Senator MOYNIHAN. There you are, Mr. Chairman. That's why we have a first-rate fellow here.

[Laughter.]

Senator VOINOVICH. Well, I'd just like to comment. I remember, and I'm sure Senator Moynihan does, visiting the White House in the old days, and it's very difficult for me to see the security. It's kind of a sign of sickness in our country, the way that the road is

closed now. You just do wonder do yourself, is there some other way that you can get the job done without that kind of stark statement that "We have to close the road because this is a dangerous country, and we are fearful"?

It's kind of a sad commentary on where we have arrived.

Mr. PECK. Senator Moynihan, at our design awards ceremony this last March, gave a marvelous speech about the need for us to balance security against our traditions as an open society. And we are trying hard, but I will tell you, often when our managers suggest that there are other ways of providing security, there is sort of a knee-jerk reaction that the best way to prepare for security is to close streets or to do away with all parking around the building, except that reserved for the agency. We find ourselves swimming upstream quite a lot of the time, trying to make the point that we think we can provide security in other ways.

Senator VOINOVICH. All right.

I would like to welcome Senator Baucus.

Senator Major Peck has testified here this morning before us in regard to their projects that they would like to have authorized, and I just wondered, do you have any questions?

**OPENING STATEMENT OF HON. MAX BAUCUS,  
U.S. SENATOR FROM THE STATE OF MONTANA**

Senator BAUCUS. Mr. Chairman, I apologize for being late, but I want to commend Mr. Peck, and also the Regional Deputy, Paul Prouty.

We have some Federal building issues in Montana, and I would like to say for the record for all to hear that Mr. Peck did a tremendous job. We had a somewhat delicate situation, trying to figure out where to place Federal buildings and what to do about rentals, relocation, and so forth. Often, people think that when the Government comes, my gosh, it's going to be bureaucratic and lengthy and not much is going to get done, and so on and so forth, some rancor, and just not a lot of good feelings around. But that was not the case at all here. Mr. Peck and his people looked at difficult situations and with dispatch and with courtesy and with wisdom, made everybody happy. I just want to thank you very, very much.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Thank you Mr. Chairman. I'm pleased that the subcommittee is having this hearing on the GSA public buildings program for fiscal year 2000. It is important that the subcommittee continue its oversight of this program and the timely authorization of worthy projects. There is a lot of money involved, and I'm sure the chairman will agree with me that we need to spend it very wisely.

Let me also welcome Mr. Bob Peck back to the committee. He has been through some tough issues with this committee. Yet he has always been a constructive voice in seeking solutions, even when he had to go out of his way to do it.

As an example, he and I were at a hearing in Helena, Montana almost two years ago to look at options for relocating the Federal building. As a result of his work on that issue, and that of his regional deputy, Paul Prouty, we managed to turn a difficult situation into a win for the city, the state and GSA.

I look forward to his testimony and with that, Mr. Chairman, I am ready to proceed.

Mr. PECK. Two quick things. One, I would like to say first that we had made some mistakes, and I was very proud that one of our best career Regional Directors, Paul Prouty, stated at a hearing,



“We messed up” on at least two of the three issues. I must say, that’s sort of good for the soul and it was good for everyone.

The other thing that I will note is that Senator Baucus chaired a hearing in which—you know, I’ve worked here—he might have taken it in a different direction. Instead, he worked quite hard himself to make it a fair and open hearing, and not a roast.

[Laughter.]

Senator BAUCUS. It all worked out well. Thank you very much. And I share your concerns about the security dilemma. I don’t know what the answer is; I don’t think anybody has the answer to it. Society is changing, and I think a lot of it is caused by tremendous advances in technologies, including communications technologies which allow people to have virtual access to most any information, or to disseminate any information that he or she wishes. To me, it is kind of analogous to the trend that we have a lot of rights in this country, but it seems that we have fewer responsibilities. It’s something that has happened and it’s something that is caused, in my judgment, primarily by advances in technologies. It’s something that just causes societies and cultures to change. It undermines the power of all institutions, wherever they may be. It’s just something that is there and has to be recognized and dealt with in a very common-sense way, not being deceived by what is happening, but also being sensitive to people’s needs.

But I don’t envy you at all, attempting to solve that one.

Senator VOINOVICH. I have one other question that I would like to ask and I would appreciate your commenting on it if you feel comfortable in so doing.

I don’t know whether the members of the committee know this or not, but there is a bill that has been introduced called the Thad Cochran Federal Courts Budget Protection Act, which deals with an ongoing problem that we’ve had with the construction of Federal courthouses in this country, where the Office of Management and Budget does not include the cost of courthouses in their budget and kind of leaves it up in the air, and then leaves the Federal judiciary the task of trying to come directly to Congress to fund courthouses in this country. This legislation, according to my understanding, would bypass the Office of Management and Budget; it would bypass the authorization committees in the Senate and the House and go directly to Appropriations. I would be interested in knowing what your thoughts are in regard to that, if you would care to share them.

Mr. PECK. I am prepared enough to know what I can say.

In this case, the Administration clearly opposes bypassing OMB. And I have to say that, personally, I agree with the Administration position, too.

I think it is also on the record already that I have said that I’m disappointed that for the past several years the Administration has not recommended an appropriation for courthouse projects—or, indeed, asked us to take money out of the Federal Buildings Fund, which I would not be happy about, for these large projects. But I have to say, this is one of those things, as we said in the military, that is “above my pay grade.” The decision about what priorities get funded and which don’t I think is a decision that has to be made by the President. In this year, for example, the President’s

call was that priorities like social security and education outweighed the need for courthouses, among other programs. There were others that were disappointed, as well.

My real concern about bypassing OMB is this. If the courts are able to present their own budget—and I know they present a Constitutional argument for being able to do that, and I will leave it to better Constitutional scholars than me to work that out—it would, in fact, bypass a useful check on just the basic question of what the budget should be for specific courthouse projects. And although the legislation says that GSA would provide an estimate to the courts, I think it's clear that the dynamics would change if the courts basically were presenting their own numbers.

Finally, one thing that I hope is a ray of hope here. The Administration has also objected in the past that some of the courthouses don't utilize space as efficiently as they might; that judges might, for example, share courtrooms. It turns out that would give some savings if it were possible to do; not huge savings, I should note, but some small percent off a courthouse budget.

This year, the courts—and we hope in time for this to be part of the OMB budget deliberations—have commissioned a courtroom utilization study and have committed to taking an honest look at how we might, in fact, squeeze some of the space out of some courthouses.

So I am hoping that this combination will do something.

Finally, I do have to note that it is sort of a shared problem here—OMB didn't recommend, or the Administration didn't recommend, a budget for court projects, but neither did the Appropriations Committees find room in the budget for the courthouse program.

Finally, the other good note in the program, which I hope will not be lost sight of, is that the courts, much to their credit, have a 5-year standing set of priorities in their program. They used to just sort of send projects up here, and you didn't know which ones were most important. We have now all agreed that there are some that are real emergencies—the Brooklyn Courthouse has been the number one priority for a long time. We are working our way down a list, which I think allows you to assure other Members that this is a pretty well thought-out program.

Senator VOINOVICH. Well, my only comment is this, that there is a growing movement. I share the Administration's position that it should go to the Office of Management and Budget. On the other hand, I think that a message ought to be sent—perhaps from some of my colleagues on the other side of the aisle, and maybe from your shop and others—that we do have a Federal responsibility to provide money for courthouses in this country. It is generally a Federal priority, and there are other priorities that we might debate about whether or not this is a Federal responsibility or a State responsibility. My observation is that as Government grows and gets into more and more areas, that from my perspective as a Governor and former Mayor of the city of Cleveland and local government official, that are more properly the responsibility of State and local government, we're squeezing out having the resources to deal with programs and problems that are genuinely within the framework of the Federal Government.

I would hope that in putting the budget together again for this coming year, some consideration would be given to providing some money for courthouses in this country. And indeed, it is a Federal responsibility.

Senator BAUCUS. Mr. Chairman, if I might add, not only do we have responsibility to provide courthouses. I think we have responsibility, as the Senator from New York has been working on, to provide buildings that are appropriate to their function. You want some grandeur and respect and dignity in the construction of a building. I think that, certainly, the Senator from New York has led the way, and we all agree that we don't want just shacks; we want some buildings that are courthouses, because the Judiciary, as one of the three branches of Government, should have the dignity that it deserves.

But I do think we all agree—at least I believe quite strongly—that the construction should be in some orderly process. We don't want palaces, but we want dignified courthouses. I understand the judges wanting to go straight to the President to get their courthouses, but I also understand the taxpayers' concerns, that they want common sense in courthouse construction.

Believe me, as you know, Mr. Chairman, I and many other Senators have worked many years to try to get an orderly process—a fair, balanced, orderly process—in courthouse construction. It is a little disconcerting, I must say, because we thought we had agreement with the judges; and, lo and behold, they tried to end-run this committee, trying to get bills passed, end-running this committee. Frankly, it's not very judicial. It's very surprising that they would take these tactics.

But I hope, as I say, that we will get some orderly process here.

Senator VOINOVICH. I am sure that they have their process. I know I have spent time with representatives of the Federal group, and they have put together a priority list and so forth. It seems to me that it might be interesting to have them come before one of our committees and have them explain just what procedure they are using, so that we can have them share that with us, and then have that also kind of dovetail with what GSA is doing. At least you have a priority list today, and I can tell from my own experience with your agency that you are very fastidious. So I must say that they really put the microscope to projects before they engage in them.

So there is some control, I would think, coming out of GSA today in terms of those projects. But it seems to me that we can accommodate your concerns, but at the same time provide money in the President's budget for courthouse construction in this country so that we don't end up with the situation that we have right now, because frustration is building up and people are looking to try to do an end-run.

Are there any other questions you would like to ask, Mr. Peck?

Mr. PECK. No, sir. I neglected to say that I have a formal statement that I would like to submit for the record.

Senator VOINOVICH. Without objection, it will be included in the record.

Mr. PECK. And I would like to thank you. We will take a transcript of your remarks and pass them on in the Administration.

Senator VOINOVICH. We appreciate it. Well, thank you for coming this morning.

Mr. PECK. Thank you, sir.

Senator VOINOVICH. The committee is adjourned.

[Whereupon, at 10:52 a.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF ROBERT A. PECK, COMMISSIONER, PUBLIC BUILDINGS SERVICE

Mr. Chairman and Members of the committee, my name is Robert Peck and I am the Commissioner of GSA's Public Buildings Service. Thank you for inviting me here today to discuss the Fiscal Year 2000 capital program. Before I discuss this program I would like to give you an overview of our overall responsibilities and to update you on a number of Public Buildings Service initiatives that are changing the way we do business. PBS is one of the largest owner/operators of commercial-style real estate in the United States, managing more than 330 million square feet of space in office buildings, courthouses, laboratories and border stations. About half of the approximately one million federal employees we house are in 1,800 government-owned buildings; the other half-million are in leased space in 6,500 privately-owned buildings. We have a presence in some 1,600 American communities. More than half of the government-owned buildings are older than fifty years; nearly a quarter are historic. We accordingly have a particularly significant need for funds for maintenance and renovation.

Our funding comes principally—in FY 2000 it will come exclusively—from the rents that we charge to the more than 100 federal agencies, including the Congress, to which we provide workspace. Out of these rent revenues, deposited in the Federal Buildings Fund, we operate the government's buildings, pay our rents on privately owned space, provide security and underwrite our administrative costs. More than 90% of our \$5 billion-plus annual spending is spent on contracts with private sector contractors. Since the Oklahoma City bombing, we have doubled our expenditures on building security, doubled the size of our uniformed force, and begun a thorough overhaul of our security organization to upgrade its capabilities and focus it on the violent threats we face.

Our vision is to be recognized as the best public real estate organization in the world. We are managing in a more businesslike way, while continuing to carry out the public buildings program in accord with government contracting procedures and socioeconomic initiatives. We link our budgeting process to performance in tangible ways: regional budget allocations and individual bonuses are dependent on meeting certain improved performance targets. We have encouraged friendly competitions across out 11 regions to be the fastest, best and most cost-effective on nine key business performance measures that have quickly become known as the "Big Nine." These efforts have resulted in:

- Our operating costs per square foot of office space in federal buildings are eleven percent below comparable private sector operating costs and in recent years our costs have continued to decline while private sector costs have risen.
- The average rents we pay in private sector buildings in nearly every major locality are at or below what private sector tenants pay.
- Our customer satisfaction scores, measured in hundreds of buildings by the Gallup organization, have increased significantly.
- Our utility costs are already about one-third below private sector comparables; GSA's energy consumption was reduced by 17% from 1985 to 1998, and will be reduced by an additional 3% by fiscal year 2000.

In addition to bottom-line cost effectiveness, the agency's programs also involve broader goals that improve the benefits that federal buildings bring to the communities in which they are located:

- Our new buildings, whether courthouses or border stations, are outstanding examples of contemporary American architecture, making the buildings visible, positive government investments in their localities; Our First Impressions program is beginning to change the entries and lobbies of Federal building so that the public that we serve will feel welcome and safe in a professional environment. Our Good Neighbor and urban livability programs encourage partnerships with local communities to assure that Federal buildings are lively presences and that, by their siting and operation, support local development plans.

Our Fiscal Year 2000 capital program will occur within the context of these and other overall agency initiatives. As in the past, we will give first priority to using

any Federal Buildings Fund revenues not required for operating and fixed-expense obligations to finance our repairs and alterations and new construction programs. We have many old buildings that have never been modernized, many that have obsolete heating, air-conditioning and electrical systems that cannot support 21st century operations and some that need seismic upgrades if they are to provide optimally safe workplaces for federal employees. If we do not properly maintain and modernize our buildings, the value and functionality of our inventory will decline.

This past March, we submitted to Congress GSA's Fiscal Year 2000 Capital Investment Program and highlights of the program include:

- 7 prospectus-level design and new construction projects estimated at \$92.2 million;
- 13 prospectus-level repair and alteration projects budgeted at \$201 million;
- 13 prospectus-level repair and alteration designs for future projects at \$17.7 million;
- An elevator program to repair existing elevators and escalators in 5 buildings at \$24.2 million; and
- Ongoing chlorofluorocarbon reduction and energy-saving programs, each budgeted at \$20 million.

Our Capital Investment and Leasing Program plays a key role in providing the necessary resources to maintain current real property assets and acquire new or replacement assets. The capital program supports several portfolio objectives:

- Enhancing the value of existing Federally-owned space and adapting it to the needs of today's productive workplace;
- Generating the Federal Buildings Fund income necessary, to support a limited construction program and our major renovation program;
- Minimizing the drain that unproductive assets place on the FBF; and
- Preserving the historical and cultural assets placed in GSA's trust.

We consider three options when evaluating the requirements we receive from our client agencies: (1) repair and alteration of existing facilities, (2) the construction of new facilities, or (3) leasing space from the private sector.

Generally speaking, we consider a number of factors when evaluating and assigning priorities to our capital projects:

- Economic justification in terms of financial return and present value cost;
- Project timing and execution;
- Physical urgency based on building conditions;
- Customer urgency; and
- Historic preservation and community considerations.

With the limited resources of the Federal Buildings Fund and an increasingly aging inventory we use a ranking process and several tools to help us determine resource allocation. For instance, we consider the following criteria when evaluating repair and alteration projects:

- Protecting the safety and health of tenants in owned and leased buildings;
- Altering vacant space in owned buildings to relocate client agencies from leased space into Government-owned space when available; and
- Completing planned phased modernizations (follow-on phases of multi-phased projects).

When evaluating repair and alteration projects, we also closely examine proposed project scopes to ensure that they meet client agency requirements and facility needs. We work to determine if any possible changes in project scope can be made to realize cost savings, without jeopardizing the project's goals. Refining project scopes may free up funding for more projects.

Additional criteria we consider when setting priorities for major repair and alteration needs in the context of our entire national portfolio include:

- Ability to award projects within the fiscal year;
- Urgency of a project's execution, such as imminent system failure and health and safety issues;
- Imminent nature of tenant requirements; and
- Assurance that the leasing of swing space is appropriately timed with project execution to avoid duplication of costs.

The FY 2000 Treasury-Postal Service Conference Report recently approved by Congress provides funding for GSA's prospectus-level repair and alteration projects. We request that you authorize all pending prospectuses so that we can execute our program within the repair and alteration funding made available. That conference report also contains construction funding for the FDA consolidation in Montgomery County, MD, and five border stations. This year marks the 50th anniversary of the Federal Property and Administrative Services Act of 1949 (Property Act) and we have been studying the impact that additional asset management tools would have on the Government's management of real property. We are preparing legislation to

amend the Property Act to help the Federal Government to manage its diverse portfolio of assets more effectively and we look forward to working with you on this initiative.

Mr. Chairman, this concludes my formal statement. I would be glad to answer any questions you may have about our proposed Fiscal Year 2000 Capital Investment Program.

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RESPONSES BY ROBERT PECK TO ADDITIONAL QUESTIONS FROM SENATOR WYDEN

*Question 1.* What happens if none of the sites considered for the Eugene Federal Courthouse is acceptable due to public opposition or costs associated with the sites?

Response. In the unlikely event that none of the sites considered for the Eugene Federal Courthouse prove acceptable, the site selection and environmental study processes would start over. It could then take about 12 to 14 months to select another site. However, GSA does not anticipate that this will occur, because we believe we can satisfactorily resolve the recently expressed concerns of local elected officials and portions of the community.

The Regional Administrator's site selection decision was based upon thorough study, consideration of available facts, and the support of local officials. He could reconsider his decision if there is new material information provided that he did not take into account in the original decision.

We are continuing our discussions with city officials and are currently awaiting additional information from them. At the same time, we have local real estate appraisers working on opinions of value for both the "65th Avenue site" originally selected and the "City Hall site" being proposed by the City.

*Question 2.* If a Federal building sited in a community creates negative impacts such as substantial reduction in available parking, can GSA provide funds to mitigate the impact? If not, why not?

Response. GSA is authorized to provide parking facilities only to the extent required for Federal use.

GSA's Environmental Assessment studied the impact of the loss of parking spaces at the selected site and concluded that there is adequate parking available in the site's area to accommodate both displaced parking and courthouse related demand. However, free parking for the patrons of the 5th Avenue Market and other nearby businesses would no longer be available.

As we have advised City officials and the community of Eugene during many of our discussions, Congress authorized GSA to construct a Federal courthouse in Eugene. The authorization specifically does not include public parking.

*Question 3.* Are there different requirements for purchase (either through negotiations or condemnation) of privately owned and publicly owned land?

Response. The acquisition process is the same but eligibility for additional benefits under the Uniform Relocation Act differ.

GSA pays "just compensation" for the property it acquires. "Just compensation" is the fair market value of the property at the time of the acquisition. We contract with independent appraisers to determine the fair market value of acquired property. This process is followed for private and public landowners, whether acquisition is by negotiation or condemnation.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended in 1987, states that relocation benefits (above and beyond "just compensation") may be paid to a displaced person, business, farm, and nonprofit organization. A "state" or a "political subdivision of a State" is not listed as eligible for relocation benefits.

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The HONORABLE GEORGE W. VOINOVICH, *Chairman*  
*Subcommittee on Transportation and Infrastructure*  
*Committee on Environment and Public Works*  
*U.S. Senate*  
*Hart Senate Office Building,*  
*Washington, DC 20510*

Re: Statement for September 28, 1999, Public Hearing on the FY2000 Budget Request for General Services Administration: Food and Drug Administration Consolidation

DEAR SENATOR VOINOVICH: I am enclosing one copy of my written statement on the above subjects for inclusion in the record of your Subcommittee's September 28,

1999, public hearing on the Fiscal Year 2000 Budget Request for the General Services Administration.

Please make additional copies of this statement and distribute them appropriately. I am presenting this statement as a private individual.

I am attaching to the following page a disc formatted in DOS Word Perfect that contains a copy of my statement.

Thank you.

Sincerely yours,  
Bernard H. Berne, M.D., Ph.D.

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STATEMENT OF BERNARD H. BERNE, M.D., PH.D., ARLINGTON, VIRGINIA

SUMMARY OF STATEMENT

I am a resident of Arlington, Virginia. I serve the Food and Drug Administration (FDA) as a Medical Officer and as a reviewer medical device approval applications. I am submitting this statement as a private individual and not as a representative of FDA or of any other organization.

The General Services Administration's (GSA's) Fiscal Year 2000 Capital Investment Program requested funds to begin construction of an FDA consolidation in Montgomery County, Maryland. Congress has appropriated \$35,000,000 to GSA in the Treasury and General Government Appropriations Act, 2000 (P.L. 104-58, Sept. 29, 1999)(formerly H.R. 2490), that GSA may use to support this wasteful and environmentally unsound project. GSA plans to construct this facility in suburban White Oak, Maryland.

The following points summarize the reasons to oppose the White Oak FDA consolidation. They also provide the reasons for your committee to give immediate and intensive oversight to GSA's activities relating to the FDA's consolidation:

- Congress has not approved a prospectus for any part of the FDA consolidation. GSA intends to use the funds appropriated in P.L. 104-58 for construction purposes without ever submitting a prospectus to Congress.
- GSA's intended actions will violate a provision in P.L. 104-58 that prohibits the use of these funds for construction purposes in the absence of an approved prospectus. These actions will be illegal.
  - FDA does not need to consolidate its facilities.
  - The FDA consolidated facility at White Oak will be a \$500,000,000 white elephant. It will be a country club that will have a golf course adjacent to FDA's offices.
  - The FDA consolidation is nothing more than a pork barrel project for Maryland.
    - Nearly all current FDA buildings are in good condition. Few are unsatisfactory.
    - FDA offices that work together are already close to each other. Few FDA employees need to travel long distances between work sites. There is now no clear need to expend Federal funds to consolidate FDA.
    - Many FDA employees work at home part of the time. Few travel between work sites. An FDA consolidation will not increase FDA's ability to approve new drugs and medical devices in a timely manner.
    - The Government does not save money by building a new Federal facility rather than by leasing. The Federal Government gains income tax revenues from owners of leased buildings. It receives nothing from federally owned buildings.
      - An FDA consolidation at White Oak is environmentally unsound.
      - White Oak is outside of the Beltway and is three miles from the nearest Metro-rail station.
      - Many FDA buildings, including the largest ones, are now near Metro stations. Metro will lose riders if FDA consolidates at White Oak.
      - Public transportation to White Oak is and will be inadequate. Few FDA workers will take buses to White Oak. For economic reasons, buses will be infrequent.
      - Roads and highways near White Oak are already heavily congested. They don't need more traffic and air pollution. Nearly all FDA workers would drive to work at White Oak.
      - Many FDA workers would drive to White Oak on the congested Capital Beltway during rush hour.
      - An FDA consolidation at White Oak would replace over 125 acres of open space with a sprawling campus filled with buildings and large paved parking lots.
      - An FDA consolidation at White Oak will accelerate urban sprawl. If FDA consolidates at White Oak, other Federal agencies will follow. This will eventually fill a 750-acre Federal property.

- GSA's White Oak property is heavily forested. An FDA consolidation at White Oak would begin the destruction of this woodland, which could otherwise be a national, regional, or local park.

- There are a number of federally owned sites near Metro stations that are available for the FDA consolidation. These include the Southeast Federal Center and the west campus of St. Elizabeth's Hospital in D.C. and the Suitland Federal Center in Prince George's County, Maryland. GSA refused to evaluate any of these.

- An FDA consolidation at White Oak would hurt the District of Columbia.

- The Council of the District of Columbia has approved a resolution that objects to GSA's selection of the White Oak site and that asks GSA to work with D.C. officials to identify a suitable site in D.C., consistent with Federal laws and executive orders.

- The White Oak facility is one of two FDA facilities that would consolidate in Maryland. The two facilities would together remove over 900 Federal jobs from D.C.

- D.C. has lost many Federal jobs in recent years. This project will accelerate such losses. Further, it will encourage other Federal agencies to locate outside of D.C.

- Many FDA workers now live in D.C. and take Metro to work. These will leave D.C. if FDA consolidates at White Oak.

- GSA violated Federal laws and policies when it selected the White Oak site.

- Executive Order 12072, which President Clinton has reaffirmed, requires Federal agencies to give preference to cities when locating their facilities in urban areas, such as the Washington Metropolitan Area.

- GSA refused to evaluate any potential sites in any city.

- GSA has refused to consult with District of Columbia officials regarding the availability of suitable sites within the District. This violated Executive Order 12072 and the Federal Buildings Cooperative Use Act, which require such consultation with local city officials.

- Washington, D.C. has a number of suitable vacant federally owned sites, such as the Southeast Federal Center and the campus of St. Elizabeth's Hospital. Unlike White Oak, these are near Metro stations. GSA has refused to evaluate these sites.

- GSA informed D.C. officials that the Southeast Federal Center can not accommodate the FDA consolidation. This is untrue. GSA's plans for The Southeast Federal Center anticipate the construction of nearly twice the amount of occupiable space than FDA needs.

- GSA incorrectly informed the D.C. officials and the public that Congress had mandated FDA to consolidate in Montgomery County. This was a misrepresentation of fact. There is no such mandate.

- Federal laws promote development in economically distressed areas, such as Southeast D.C. However, White Oak is an affluent residential suburb in one of the richest Counties in the Nation. White Oak does not need or deserve Federal assistance to help its economy.

- The Environmental Protection Agency has informed GSA that GSA did not adequately evaluate alternative sites on public and private lands when it prepared its Environmental Impact Statement for FDA consolidation. GSA violated the National Environmental Policy Act (NEPA) when it selected the White Oak site.

- GSA did not attempt to acquire properties in D.C. by donation. The FDA Revitalization Act (P.L. 101-635) requires such attempts, since it is more cost-effective for the government to acquire properties by donation than by using existing Federal property.

In 1995, Congress rescinded all construction funds for FDA's consolidated facility, which the General Services Administration (GSA) was planning to build in Clarksburg, Montgomery County, Maryland. Following this rescission, in 1997, GSA selected the former Naval Surface Warfare Center (NSWC) in White Oak, Montgomery County, Maryland, as its preferred alternative for the major FDA consolidation.

GSA presently has no funds legally available to construct the White Oak facility. P.L. 104-58 appropriated no prospectus-exempt construction funds for the facility.

White Oak is a very poor location for the FDA facility. Metrorail is three miles away. Area roads are highly congested. Public transportation to the NSWC is infrequent. No other major Federal facility is nearby.

GSA and FDA are planning a country club in White Oak's affluent suburbs. FDA's 130-acre campus will have a visitor center and other amenities. Adjacent Federal property will contain an "executive" golf course, a golf club house, and a woodland. Congress must stop this extravaganza.

The Southeast Federal Center in Washington, D.C. is now available for a major Federal headquarters. Adjacent to a Metro station and close to the Capitol, this site appears ideal for FDA's facility. The site has sufficient planned density to accommodate all of FDA's space requirements.



In addition, according to District of Columbia planning officials, the campus of St. Elizabeth's Hospital in the Southeast quadrant of the District of Columbia appears to have more than enough developable space available than the 130 acres that FDA plans to utilize at White Oak. The large St. Elizabeth's Hospital site is publicly owned and is adjacent to a Metro station that will open next year.

Two Executive Orders and the policies of the National Capital Planning Commission (NCPC) require that GSA and FDA give the Southeast Federal Center and the St. Elizabeth's Hospital campus and other sites in the District of Columbia preference over the White Oak site.

However, actions and requests by Conference Committees on Appropriations made a number of years ago have encouraged GSA to only evaluate sites for the consolidation that are located in Montgomery County, Maryland. Perhaps for political reasons, GSA has consistently refused all requests to seriously evaluate any sites for the consolidation that are located in the District. During 1999, the Corporation Counsel and the Council of the Government of the District of Columbia and the Council of the District of Columbia have both made such requests.

In response to these requests, GSA has informed District officials and the public in writing that Congress has "mandated" that FDA consolidate in Maryland. GSA is incorrect.

GSA's actions are improper. No legislation presently exists that requires FDA to consolidate in Montgomery County, Maryland, or in any other specific location.

The legislation authorizing FDA's consolidation (P.L. 101-635) does not specify any location for the consolidated facility. The only legal provisions that have ever required FDA to locate any such facility in Montgomery County were contained in appropriation laws that have now been superseded.

In 1995, Congress rescinded all funds previously appropriated to construct the Montgomery County facility. The rescission therefore removed any legislative requirement that FDA consolidate in that County or in any other specific location. Congress has appropriated no funds to support the construction of FDA's major consolidated facility since the 1995 rescission. No appropriation laws enacted after the 1995 rescission have actually made any funds available to construct any FDA building project.

The President's proposed Fiscal Year 2000 Budget for GSA requested that a total of \$136,365,000 be made available to GSA's Federal Buildings Fund through two appropriations in the Treasury, Postal Services and General Government Appropriations Act, 2000. GSA would have used funds from both appropriations to award contracts to begin construction of an FDA consolidation at White Oak, Montgomery County, Maryland.

The President's budget requested on p. 965 that, of the above total, \$55,915,000 would have been made available to GSA on October 1, 1999. An additional \$80,450,000, discussed on p. 966, would have become available to GSA on October 1, 2000.

The President's budget request did not provide a estimate of the maximum or total cost for the FDA consolidation. Previous FDA and GSA estimates for the total cost have ranged between \$500 million and \$1.2 billion.

The budget proposal would allow GSA to begin one of the most costly and unjustified Federal buildings projects in recent years. Because the project lacks an approved prospectus, its eventual cost might well be astronomical.

The Treasury and General Government Appropriations Act, 2000 (Pub. L. 104-58) provides \$35,000,000 to GSA's Public Buildings Fund for an FDA consolidation in Montgomery County, Maryland. This was \$101,365,000 less than the \$136,365,000 than the amount that the President's budget had requested.

Neither the language of P.L. 104-58, the conference report for H.R. 2490 (H.Rept. 106-319, Sept. 14, 1999) nor the committee reports for original House and Senate versions of the bill (H.R. 2490, accompanied by H.Rept. 106-231, July 13, 1999; S. 1282, accompanied by S. Rept. 106-87, June 24, 1997) discuss the reasons for the \$35,000,000 appropriation, which appears in a list of new GSA construction projects without any explanation.

Further, neither the President's Budget, P.L. 104-58, nor any versions of the bills or committee reports associated with P.L. 104-58, identify White Oak as the location for the Montgomery County consolidation or the project's estimated maximum cost. Many Members of Congress are unaware of the location and GSA's estimated cost for this project.

It is important for your committee to recognize that P.L. 104-58 contains the following provision (H.R. 2490, Enrolled Bill, p. 22):

"Provided further, That funds available to the General Services Administration shall not be available for expenses in connection with any construction, repair, alteration, or acquisition project for which a prospectus, if required by the Public Build-

ings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus.”

GSA has never submitted a prospectus to Congress that describes any part of the FDA consolidation. Your committee has not passed any resolution that has approved any such prospectus. Therefore, the funds appropriated in P.L. 104-58 may only be expended “for required expenses in connection with the development of a proposed prospectus”

Your committee needs to immediately apply its jurisdiction under the Public Buildings Act of 1959 (P.L. 86-249) to this project. You need to enforce Section 7 of the Public Buildings Act, which requires your committee to “insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings”.

To accomplish this goal, your committee must require that a prospectus be approved for the entire FDA consolidation before GSA awards contracts for any construction activities for FDA at White Oak or at any other location. The Washington Metropolitan Area contains a number of localities and jurisdictions (such as the District of Columbia) that have a far greater urgency of need for public buildings than does Montgomery County in general and White Oak in particular.

Your committee must assure that GSA adheres to the limiting provision in P.L. 104-58 that prohibits GSA from constructing or renovating any buildings at White Oak with the funds appropriated in that Act.

Past Treasury, Postal Service, and General Government Appropriations Acts, such as P.L. 102-141 (Oct. 28, 1991) contained provisions which specifically exempted the funds appropriated therein for the FDA consolidation in Montgomery County from the prospectus requirement. In 1995, P.L. 104-19 (July 27, 1995) rescinded all prospectus-exempt construction funds previously appropriated for this project. P.L. 104-58 contains no exemption from the prospectus requirement.

GSA officials and attorneys incorrectly claim that authorizing legislation for this project somehow permits GSA to construct this facility without receiving your committee’s approval of a prospectus.

It is important for your committee to recognize that the FDA consolidation’s authorizing legislation (FDA Revitalization Act, P.L. 101-635, Nov. 28, 1990) contains no provisions that exempt any FDA consolidated facility from the requirements of the Public Buildings Act of 1959.

P.L. 101-635 authorizes the Secretary of Health and Human Services (HHS), in consultation with the GSA Administrator, to award contracts to acquire and construct a single consolidated headquarters facility for FDA. P.L. 101-635 does not authorize the GSA Administrator to do anything in regard to this facility except to consult with the Secretary of HHS.

Because of its specific intent and language, P.L. 101-635 prohibits GSA from awarding contracts to construct any FDA “consolidated” facility under the law’s authorization. The GSA Administrator can only construct the facility under the authority of the Public Buildings Act of 1959. Under the Public Buildings Act, as amended, your committee must approve project prospectuses before Congress can appropriate any construction funds to GSA for projects whose cost exceeds \$1.5 million.

Further, P.L. 101-635 does not authorize the construction of more than one consolidated facility. Despite this, GSA has incorrectly claimed that P.L. 101-635 has authorized it to construct three separate “consolidated” FDA facilities at three different locations.

GSA has constructed one of these facilities in Beltsville, Prince George’s County, Maryland, has begun to construct a second in College Park, Prince George’s County, Maryland, and is planning a third in White Oak, Montgomery County, Maryland. GSA’s multiple FDA “consolidations” have contradicted the intent and authorization of P.L. 101-635 and have made it largely irrelevant.

It is possible that Congress can appropriate funds to the Secretary of HHS to build a consolidated FDA facility in the absence of a prospectus. However, the project clearly requires prospectus approval before Congress can appropriate funds to GSA to begin construction.

On September 26, 1996, the committee on Transportation and Infrastructure of the U.S. House of Representatives directed GSA to submit to Congress a report pursuant to Section 11(b) of the Public Buildings Act of 1959 report that describes the FDA consolidation in Suburban Maryland. Despite this directive, GSA has never submitted any such report.

If GSA ever submits the 11(b) report, your committee will need to treat it as a prospectus. Your committee should allow public witnesses to testify on the 11(b) report or on any prospectus.

Your committee needs to take immediate action to assure that GSA does not use the funds appropriated in P.L. 104-58 to begin construction of the project.

Any such construction would be illegal. Further, it would begin consolidating FDA at a location and cost which might not meet with your committee's approval.

Your committee also needs to assure that no funds are ever again appropriated in a manner that would allow GSA to construct this facility before your committee approves a prospectus.

GSA has already begun construction in 1998 on an administrative and laboratory facility for FDA's Center for Food Safety and Applied Nutrition (CFSAN) in College Park, Prince George's County, Maryland. This construction is illegal.

The CFSAN/CVM facility will not be a component of the major FDA consolidated facility. It is therefore not authorized by the FDA Revitalization Act. Despite this, GSA has stated that this project is fully funded.

GSA is not correct. The FY-1996 Treasury Appropriations Act (P.L. 104-52) appropriated funds for an FDA facility in Prince George's County, Maryland. GSA plans to use these funds for the CFSAN project.

However, P.L. 104-52 contained a provision that limited GSA's use of these funds to the preparation of a proposed prospectus for the project. This provision is identical to the one that P.L. 104-58 contains. Despite this provision, GSA has already used these funds for site acquisition and construction.

GSA has never submitted a prospectus for the Prince George's County CFSAN facility, and your committee has never approved one. This facility, which no legislation authorizes, would relocate about 800 FDA employees from downtown Washington, DC, to a location in suburban Maryland.

Your committee needs to take immediate action to prevent GSA from expending any further funds from P.L. 104-52 to construct this project and to require GSA to submit a prospectus describing the CFSAN facility. GSA is violating the law by use these funds in the absence of an approved prospectus. It is already misusing appropriated funds.

The Committee on Transportation and Infrastructure of the House of Representatives is already concerned about GSA's improper actions regarding the FDA consolidation. On April 15, 1999, Congressman Bob Franks, Chairman of the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation of that committee sent a letter to the Committee on Appropriations of the House of Representatives that objected to GSA's activities regarding the FDA consolidation. Congressman Frank's letter noted that GSA had not complied with committee's 1996 11(b) resolution, which by that time was 2 years overdue (see below).

GSA has submitted a legal opinion to the House Committee on Transportation and Infrastructure that claims that the FDA Revitalization Act authorizes GSA to construct the CFSAN facility without receiving prior approval of a prospectus. As explained above, and further elaborated below, GSA's legal opinion is misleading and incorrect.

I therefore ask the Senate Committee on Environment and Public Works to take the following actions:

1. Please immediately implement your oversight responsibilities under the Public Buildings Act to assure that GSA does not use any of the funds appropriated in P.L. 104-58 for any "expenses in connection with any construction" of the proposed FDA consolidation at White Oak, Montgomery County, Maryland.

2. Please assure that GSA will fully comply with Executive Order No. 12072 (Aug. 16, 1978, 42 Federal Register 36869), Executive Order 13006 (May 24, 1996, 61 F.R. 26071), and NCPC regional policies and recommendations on development and distribution of Federal employment in the National Capital Region, consistent with the National Capital Planning Act of 1992.

All of the above presently require GSA to give preference for the FDA consolidation to a site in the District of Columbia, such as the Southeast Federal Center and the St. Elizabeth Hospital site, rather than to sites in suburban Montgomery and Prince George's Counties, Maryland. The Executive Orders further require GSA and FDA to economize on their space requirements to assure compliance with their provisions. GSA is not presently doing this.

3. Please consider any GSA 11(b) report on the FDA consolidation to be a prospectus, allow public witnesses to testify on the report, and take a vote on a resolution to approve or disapprove a project prospectus.

4. Please conduct a public hearing on the proposed FDA consolidation. As part of this hearing, please consider the desirability of directing GSA to identify and to develop a prospectus for the FDA consolidation at a site that is available and suitable in Washington, D.C., or within 2,500 linear feet of an existing Metro Station in Maryland or in Northern Virginia.

5. Please take appropriate action to prevent GSA from further misusing Federal funds by continuing its construction of FDA's CFSAN building in College Park, Prince George's County, Maryland.

6. Please ask the General Accounting Office to appraise the value of the White Oak site and to estimate the revenues that the Government can gain from a sale of the site.

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EXPLANATION OF REQUESTS

1. Please immediately implement your oversight responsibilities under the Public Buildings Act to assure that GSA does not use any of the funds appropriated in P.L. 104-58 for any "expenses in connection with any construction" of GSA's proposed FDA consolidation at White Oak, Montgomery County, Maryland.

As described above, H.R. 2490 contains a provision that prohibits GSA from utilizing the \$35,000,000 appropriated therein for any expenses relating to construction of this project. GSA can only legally use these funds in connection with the development of a proposed prospectus for an FDA consolidation in Montgomery County.

P.L. 104-58 does not require that GSA expend any funds for the development of a proposed prospectus for any FDA consolidation. The limiting provision specifically states that GSA "may" use these funds for such a purpose.

The Federal Property and Administrative Services Act of 1949 and the Public Buildings Act of 1959, as amended, authorize the Administrator of GSA to acquire property for and to construct public buildings. Section 2 of the Public Buildings Act requires the GSA Administrator to "construct such public building in accordance with this Act".

Section 7 of the Public Buildings Act, as amended, prohibits the appropriation of funds to construct any public building involving an expenditure in excess of \$1,500,000 unless your committee has approved a resolution permitting such an appropriation. Section 7 further states: "For the purposes of securing consideration of such approval, the Administrator shall submit to Congress a prospectus of the proposed facility, including, but not limited to . . . ." The prospectuses must describe the project and its estimated maximum costs.

The GSA Administrator has never submitted a prospectus describing the FDA consolidation. Therefore, GSA cannot construct the FDA consolidation unless appropriations legislation contains a provision that exempts the project the Public Buildings Act. P.L. 104-58 contains no such exemption.

The Committee on Transportation and Infrastructure of the U.S. House of Representatives has repeatedly expressed its concerns regarding GSA'S unauthorized activities regarding the FDA consolidation. In 1996, the Economic Development and Public Buildings Subcommittee of this Committee held a public hearing on the FDA consolidation (H. Hrg. 104-71, May 23, 1996, "Naming Bills and the Consolidation of the Food and Drug Administration Headquarters in Maryland"). Following this hearing, the full committee approved the following resolution on September 27, 1996:

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COMMITTEE RESOLUTION—FOOD AND DRUG ADMINISTRATION CONSOLIDATION—  
SUBURBAN MARYLAND

RESOLVED BY THE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE IN THE U.S. HOUSE OF REPRESENTATIVES, That pursuant to Section 11(b) of the Public Buildings Act of 1959 (40 U.S.C. § 610), the Administrator of General Services shall investigate the feasibility and need to construct or acquire a facility for the consolidation of the Food and Drug Administration in Suburban Maryland, and submit a report to Congress within 120 days."

GSA did not submit this report within 120 days. On April 15, 1999, Congressman Bob Franks, Chairman of the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation (Rick Barnett, Clerk) of the Committee on Transportation and Infrastructure, U.S. House of Representatives, sent a letter to Congressman Jim Kolbe, Chairman, Subcommittee on Treasury, Postal Service, General Government, Committee on Appropriations, U.S. House of Representatives, that stated:

". . . . On September 27, 1996, the Committee on Transportation and Infrastructure approved an 11-b resolution directing the Administrator of General Services to conduct a study on the feasibility and need to construct or acquire a facility for the consolidation of the FDA in suburban Maryland, and submit a report in 120 days. That report is now 2 years late.

I believe that Congress has the right and obligation to completely understand the reasons for FDA's efforts to consolidate. This committee, with jurisdiction over the Public Buildings Act of 1959, has never had the courtesy of receiving any formal document from GSA or the FDA about their plans, yet GSA has provided the bulk of the funding for facilities under construction."

Your committee needs to also exercise its jurisdiction over this project as part of its responsibilities under the Public Buildings Act. The appropriation in P.L. 104-58 for the FDA consolidation originated in the Senate version of the Act (S.1282).

Some members of the Senate recognize that this appropriation is wasteful and unjustified. Senator John McCain placed the appropriation for the FDA consolidation in his list of "objectionable provisions" in S. 1282 that the Senate ordered to be printed in the Congressional Record (Cong. Record, S8046, July 1, 1999). In his accompanying statement to the Senate, Senator McCain stated that the projects in his list were of low priority and were wasteful and unnecessary. He repeated this statement and listing when the Senate debated the Conference Report for H.R. 2490 (Cong. Record S10966-S10977, Sept. 16, 1999).

Provisions in the 1992, 1993 and 1995 Treasury, Postal Service, and General Government Appropriations Acts (P.L. 102-141, P.L. 102-393, and P.L. 103-329) specifically permitted GSA to use the funds made available in those Acts for the FDA consolidation and for certain other projects, even though no prospectuses for these projects had been approved. These provisions released the GSA Administrator from his obligation to comply with the Public Buildings Act of 1959 when constructing these buildings using the funds appropriated in these Acts.

However, the 1995 Rescission Act (P.L. 104-19) rescinded all construction and site acquisition funds for the Montgomery County, Maryland, phase of the FDA consolidation. Further, Congress did not appropriate sufficient funds in the appropriations acts prior to 1995 to allow GSA to complete FDA's CFSAN facility in Prince George's County. Therefore, these provisions no longer affect the FDA consolidated facility that GSA is planning to build in Montgomery County, Maryland, and the CFSAN facility that GSA is presently constructing in College Park, Prince George's County, Maryland.

Members of your committee must assure that such provisions do not appear in any future Appropriations Acts. Such provisions make a mockery of the Public Buildings Act. The Fiscal Year 1996, 1997, 1998, 1999, and 2000 Treasury, Postal Service, and General Government Appropriations Acts (including P.L. 104-52 and Pub.L. 104-208) provided no exemptions to the prospectus requirement. A provision in each of these Acts states that any appropriated funds shall not be available for the construction, repair, alteration, and acquisition of any large public buildings project if a prospectus for the project had not been approved before the Act has become law. The Treasury and General Government Appropriations Act, 2000 (P.L. 104-58) also contains this provision. GSA officials, a GSA attorney, and some Members of Congress contend that specific authorizing legislation exempted the FDA consolidation from the prospectus requirement. This contention is incorrect. The FDA Revitalization Act (P.L. 101-635), which authorized the consolidation, contains no provision which exempts the project from the Federal Buildings Act.

Further, P.L. 101-635 amended the Federal Food, Drug, and Cosmetics Act. Because it was such an amendment, P.L. 101-635 specifically authorized the Secretary of Health and Human Services (HHS), in consultation with the Administrator of GSA, to acquire property for and to construct a consolidated facility for an FDA's headquarters facility and to enter into contracts for such activities.

P.L. 101-635 did not authorize the GSA Administrator to take any action on the project except to consult with the HHS Secretary. The language of the law makes this clear.

The reference and the language of the authorizing legislation is as follows:

Food and Drug Administration Revitalization Act (P.L. 101-635, Nov. 28, 1990) (104 Stat. 4583 et seq.)(21 USC 379b [Consolidated Administrative and Laboratory Facility])

"Title I—Consolidated Administrative and Laboratory Facility"

Sec. 101. Consolidated Administrative and Laboratory Facility. Chapter VII (21 U.S.C. 371 et seq.) is amended by adding at the end thereof the following new section:

"Sec. 710. Consolidated Administrative and Laboratory Facility.

"(a) Authority.—The Secretary, in consultation with the Administrator of the General Services Administration, shall enter into contracts for the design, construction, and operation of a consolidated Food and Drug Administration administrative and laboratory facility.

"(b) Awarding of Contract.—The Secretary shall solicit contract proposals under subsection (a) from interested parties. In awarding contracts under such subsection,

the Secretary shall review such proposals and give priority to those alternatives .

“(c) Donations.—In carrying out this section, the Secretary shall have the power, in connection with real property, buildings, and facilities, to accept on behalf of the Food and Drug Administration gifts or donations of services or property, real or personal, as the Secretary determines to be necessary.

“(d) Authorization of Appropriations.—There are authorized to be appropriated to carry out this section \$100,000,000 for fiscal year 1991, and such sums as may be necessary for each of the subsequent fiscal years, to remain available until expended.”

It is therefore clear that the FDA Revitalization Act authorizes appropriations for the Secretary of HHS to “enter into contracts” and perform other activities relating to “a” consolidated FDA facility. It is clear that P.L. 101-635 does not authorize the GSA Administrator to construct the facility or to take any action on the consolidation except to consult with the HHS Secretary. It is further clear that P.L. 101-635 does not authorize the appropriation of any funds to permit the construction more than one FDA consolidated facility.

Most importantly, the Act does not authorize the appropriation of any funds that GSA may use to support any of its activities, except for consultation with the HHS Secretary. P.L. 101-635 clearly does not authorize any appropriations that GSA can use to acquire property or to award construction contracts.

Despite the language of P.L. 101-635, several Treasury, Postal Services and General Government Appropriations Acts have in the past made funds available to the GSA’s Federal Buildings Fund so that GSA could award contracts to construct an FDA consolidation in Montgomery County, Maryland. It is important to recognize that Congress rescinded these funds in 1995 because, among other reasons, the project lacked an approved prospectus and because GSA was proceeding without proper Congressional authorization or oversight.

It is also important to understand that legislation has already recognized that P.L. 101-635 does not authorize GSA to utilize any appropriated funds to award contracts for the FDA consolidation and does not authorize the appropriation of funds to GSA without the prior approval of a prospectus. GSA officials and attorneys do not acknowledge the existence of this legislation in any of their written or oral communications to your committee or to others.

Soon after Congress enacted P.L. 101-635 in 1990, it enacted the Treasury, Postal Services and General Government Appropriations Act, 1992 (P.L. 102-141, Oct. 28, 1991). This Act made available to GSA’s Federal Buildings Fund: “New Construction: . . . Maryland: Montgomery and Prince George’s Counties, Food and Drug Administration, consolidation, site acquisition, planning and design, construction, \$200,000,000”

P.L. 102-141 contains the following provision:

“Provided further, That none of the funds available to the General Services Administration, except for . . . . the Maryland, Food and Drug consolidation, . . . shall be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus.”

Thus, the first law that appropriated funds to GSA for the FDA consolidation specifically exempted these funds from the provisions of the Public Buildings Act and its prospectus approval requirement. Congress later placed similar exemptions in appropriations to GSA for the FDA consolidation in the Treasury, Postal Services, and General Government Appropriations Acts of 1994 (P.L. 103-123) and 1995 (P.L. 103-329).

Congress would not have included any of these provisions in appropriations legislation if the FDA Revitalization Act had authorized GSA to expend any funds appropriated for the consolidation or had exempted appropriations to GSA’s Federal Buildings Fund from the prospectus approval requirement. It is therefore clear that Congress has already recognized that prior prospectus approval is required before it can make any appropriations to GSA for this project unless the appropriations legislation specifically exempts the project from the prospectus requirement.

The project cannot be exempt from the prospectus requirements of the Public Buildings Act unless Congress appropriates funds to HHS to construct the facility or unless Congress specifically exempts a GSA appropriation from the requirements of the Public Buildings Act.

Members of your committee must oppose the enactment of any bills which appropriate funds for the FDA consolidation or for any other major project if your committee has not yet approved a prospectus for the project. Such bills give GSA blank

checks to construct costly pork barrel projects without adequate oversight by your committee. They defeat the purpose of the Public Buildings Act of 1959. Your committee needs to assure proper planning, site selection, and Congressional oversight of the FDA consolidation as required by the Public Buildings Act of 1959. You need to assure that GSA does not expend any funds to construct any phase of the FDA consolidation until your committee has approved a prospectus that describes all phases of the consolidation.

This prospectus needs to contain plans to consolidate all of FDA's components, including CFSAN, into a single facility at a single location. Such a project will comply with the FDA Revitalization Act (P.L. 101-635).

GSA's present plans are not in compliance with the FDA Revitalization Act. GSA has already used funds appropriated for the FDA "consolidation" to construct an FDA facility (MOD-1) for FDA's Center for Veterinary Medicine in Beltsville, Prince George's County, Maryland. It has also used funds appropriated for the "FDA consolidation" to acquire property for a facility for CFSAN in College Park, Prince George's County, MD.

GSA's fiscal year 2000 Budget Request proposes to construct a third "FDA consolidation" in White Oak, Montgomery County, Maryland. Your committee needs to prevent this and to provide proper oversight of the FDA consolidation process.

GSA's actions have served to contravene the FDA Revitalization Act's authorization for a single "consolidated" facility. The Senate Labor and Human Resources Committee Report (Senate Report No. 101-242, Feb. 1, 1990), that accompanied the bill that became the FDA Revitalization Act (P.L. 101-635) stated: ". . . the FDA needs to be consolidated in a building". The Report did not state that FDA needed to be "consolidated" in a campus or in a number of buildings at three separate locations.

GSA is planning to use the funds appropriated in P.L. 104-58 to construct a massive new campus for FDA at White Oak. However, the present need for this project is questionable. The CFSAN/CVM buildings in Prince George's County will house those FDA Centers that now contain most or all of the FDA offices and laboratories that are reported to be in poor facilities.

Many FDA offices, including my own, are in excellent buildings. Few, if any, of my coworkers complain about their present offices. Nevertheless, we would all relocate to White Oak if Congress funds this project.

My coworkers and I rarely need to visit other FDA centers while reviewing medical device applications. The need to consolidate seems small.

White Oak is three miles from the closest Metrorail station. In contrast, FDA's largest office building is presently only half a mile from a Metro station. FDA will lose many experienced employees if it moves to White Oak.

White Oak is outside of the Capital Beltway, is not in or near any incorporated city, is far from any FDA-related Federal agencies, and is served by highly congested roads and highways. White Oak is a very poor location for a major Federal facility that would house over 6000 employees.

Buses presently travel infrequently to the proposed FDA site. Public transportation is not likely to improve greatly if FDA locates at White Oak, since it would attract few riders. Few FDA employees or visitors will likely choose to travel on buses for over three miles from the nearest Metro Station along heavily congested streets. Nearly everyone would drive, adding traffic congestion and air pollution to the Washington Metropolitan Area. In the spring of 1999, Wayne Curry, County Executive, Prince George's County, Maryland, informed NCPC in a letter of his concerns that the GSA budget had not requested funds for the road and highway improvements required to support the increased automobile traffic that an FDA consolidation at White Oak would bring to his County's roads.

Other regional planning agencies also recognize the infrastructure problems that an FDA consolidation at White Oak would create. A recent Maryland-National Capital Park and Planning Commission document ("Transportation Policy Report", Sept. 7, 1999, p. 27) states that it appears difficult to provide a good transit connection to the proposed FDA facility at White Oak. In April, 1999, the FDA headquarters chapter of the National Treasury Employees Union polled its members to determine their views on the proposed FDA consolidation at White Oak. Most of the 105 respondents asked the Union to oppose the White Oak consolidation. Only 30 percent supported the project.

FDA employees expressed concerns that FDA's White Oak facility would be too far from Metro stations, would require them to travel for long distances through heavy traffic congestion, might lack sufficient parking, and might not be sufficiently decontaminated to prevent risks to their health. Congress needs to address these concerns before deciding to appropriate any construction funds to support the project. The Naval Surface Warfare Center is in an affluent suburban residential

neighborhood. The White Oak area does not require Federal aid to support its development. There is no urgent need for a major FDA consolidation. An FDA consolidation at White Oak would only promote urban sprawl, would encourage further urban decentralization, would discourage FDA employees and FDA-related businesses from residing in the economically troubled District of Columbia, and would draw FDA-related businesses out of the District.

In 1997, GSA issued a final Environmental Impact Statement that supported its choice of the White Oak site. However, the EIS did not compare the White Oak site to any other alternative location. This was a violation of the National Environmental Policy Act of 1969 (P.L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970), which requires Federal agencies to evaluate "to the fullest extent possible" alternatives to proposed Federal actions that may affect the environment.

In January, 1999, the Environmental Protection Agency asked GSA to compare additional alternative sites on public and private lands in a new Environmental Impact Statement. However, GSA has no present plans to prepare any such new Statement.

Further, GSA did not inform District of Columbia officials of its plans and did not ask for their comments at any time during the preparation of its plans for the White Oak consolidation. This apparently violated NEPA, since the District Government has identified alternative sites that may be suitable for the consolidation and will experience adverse effects to its economy and environment if FDA consolidates at White Oak. Congress needs to address a great many issues before it considers funding this project. As the authorizing committee for GSA's public buildings projects, you should not permit this project to go forward at this time.

2. Please assure that GSA will fully comply with Executive Order No. 12072 (Aug. 16, 1978, 42 Federal Register 36869), Executive Order 13006 (May 24, 1996, 61 F.R. 26071), and NCPC regional policies and recommendations on development and distribution of Federal employment in the National Capital Region, consistent with the National Capital Planning Act of 1992.

All of the above presently require GSA to give preference for the FDA consolidation to a site in the District of Columbia, such as the Southeast Federal Center, rather than to sites in suburban Montgomery and Prince George's Counties, Maryland. The Executive Orders further require GSA and FDA to economize on their space requirements to assure compliance with their provisions. GSA is not presently doing this.

It is the responsibility of your committee when reviewing prospectuses to assure that the projects are being conducted in accordance with all applicable Federal laws and policies. To do this, you must assure that GSA does not expend any appropriated funds to construct any large public buildings until you have approved prospectuses that describe the projects and their maximum costs.

I am explaining the specific laws, Executive Orders, regulations and policies that apply to the FDA consolidation below.

3. Please consider any GSA 11(b) report on the FDA consolidation to be a prospectus, allow public witnesses to testify on the report, and take a vote on a resolution to approve or disapprove a project prospectus.

On September 27, 1996, the Committee on Transportation and Infrastructure of the U.S. House of Representatives passed a resolution that directed GSA to provide an 11(b) report to Congress that describes its plans for the FDA consolidation. To the best of my knowledge, GSA has not yet submitted this report, which your committee needs to receive.

The 11(b) report should contain all of the elements required for a prospectus. Your committee needs to treat the 11(b) report as a prospectus. Your committee should invite public witnesses to testify on the issues raised in the report and should vote on a resolution that approves or disapproves GSA's proposal.

As noted above, the purpose of the prospectus is to allow your committee to assure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings. GSA is proposing to relocate over 800 Federal employees out of the District of Columbia at a time that D.C. is losing many Federal employees and Federal agencies. Your committee needs to consider whether these relocations "assure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings" when it receives the 11(b) report. Your committee also needs to assure that adequate public transportation will be available to the site and that the project will comply with all provisions of the Public Buildings Act of 1959, as amended.

4. Please conduct a public hearing on the proposed FDA consolidation. As part of this hearing, please consider the desirability of directing GSA to identify and to develop a prospectus for the FDA consolidation at a site that is available and suitable



in Washington, D.C., or within 2,500 linear feet of an existing Metro Station in Maryland or in Northern Virginia.

Your committee has recently held a number of public hearings on the effects of government actions that have contributed to urban sprawl, air pollution, and traffic congestion. These have alerted Federal officials and the public to the need to comply with Federal regulations regarding the location and development of Federal facilities and transportation modes that encourage "Smart Growth" in the nation's urban areas. On February 17, 1998, your committee held a field hearing on the Federal Building Leasing Process in Helena, Montana (S. Hrg. 105-621, "GSA Jurisdiction in Local Communities"). A number of witnesses and local government officials testified about GSA's violations of Executive Orders 12072 and 13006 in Montana and elsewhere. Witnesses and statements reported at this hearing that GSA's continuing violations of these Executive Orders have encouraged urban sprawl and the decay of Montana's central cities, as well as cities elsewhere in the Nation.

On July 7, 1999, your committee held a field hearing in Las Vegas, Nevada, on Urban Sprawl and Livability Issues (Growth and Livability in the Las Vegas Valley). Your committee heard a number of local and Federal officials describe the traffic congestion and urban sprawl that has resulted from poor urban growth and transportation planning in Southern Nevada.

On July 14, 1999, your committee held a public hearing on "Conformity Under the Clean Air Act" (S. Hrg 106-52). Your committee heard testimony and received statements from a number of Federal and local officials and environmental organizations regarding the need for Smart Growth initiatives and proper urban development and transportation planning to prevent urban sprawl, traffic congestion, and air pollution.

The Washington Metropolitan Area reportedly suffers from traffic congestion that is second only to that of the Greater Los Angeles Area. An FDA consolidation in suburban Maryland would worsen this congestion and its associated air pollution. It is not "Smart Growth".

Your committee therefore needs to hold a public hearing on the FDA consolidation. It needs to study the feasibility of consolidating FDA in Washington, DC, or near a Metro station in suburban Maryland or Northern Virginia. White Oak is outside of any city, already experiences severe traffic congestion, and is three miles from the nearest Metro Station.

Your hearing needs to address all of these issues. "Smart Growth" is important for the Washington Metropolitan Area. Congress should not permit FDA consolidation at White Oak to go forward without fully evaluating the adverse environmental impact that this project would incur. The 1995 rescission removed any requirement that FDA consolidate any of its facilities in Montgomery County, Maryland. It therefore can consolidate in either the District, Maryland, or Virginia without leaving the Washington Metropolitan Area.

On October 8, 1998, the Committee on Transportation and Infrastructure of the House of Representatives approved a resolution following receipt of a prospectus for the site acquisition and design of a Bureau of Alcohol, Tobacco and Firearms (BATF) Headquarters. This resolution limited the facility to locations in Washington, D.C., and within 2,500 linear feet of an existing Metro station in Northern Virginia. This was a wise choice, as it prevented BATF from contributing to urban sprawl and traffic congestion by locating in a suburb such as White Oak that lacks adequate public transportation.

Your committee should assure that any FDA headquarters consolidation is restricted to locations similar to those for BATF's headquarters. Since FDA's headquarters facilities are presently located in Maryland and in parts of Washington, DC, that are near Virginia, your committee should consider a resolution that would direct GSA to locate the FDA consolidation in Washington, DC or near a Metro station in Maryland or Northern Virginia.

A number of sites can accommodate FDA's headquarters in locations in Washington, D.C. and near Metro stations in Maryland and Northern Virginia. As an example, the federally owned Southeast Federal Center is adjacent to the Washington, D.C., Navy Yard. It is next to the Navy Yard Metro Station and is only a mile from the Capitol building.

If the Southeast Federal Center is not suitable for the FDA consolidation, other sites are available near Metro stations that could likely accommodate the FDA consolidation. These include the St. Elizabeth's Hospital campus in Southeast DC and the Suitland Federal Center in Prince George's County, MD. Both of these sites appear to contain more than 150 acres of unused developable publicly owned space, are near Metro stations that are either open now or will open within a year, and are in economically depressed areas that are in urgent need of revitalization.

GSA officials have refused my repeated requests to evaluate the Southeast Federal Center site as an alternative site for the consolidation. It appears that GSA will only consider this site if Congress directs it to consider sites in the District of Columbia.

GSA officials have stated that no suitable sites are available for FDA to consolidate in Washington, D.C. However, they have refused to consult with officials of the District of Columbia regarding this project. D.C. officials have identified the Southeast Federal Center and the St. Elizabeth's Hospital site as being apparently suitable for the FDA consolidation.

According to its EIS, GSA is planning to utilize 2.1 million gross square feet (GSF) for offices, laboratories, and support facilities for 6,000 FDA employees and 500 visitors per day at White Oak. The Southeast Federal Center can easily accommodate this.

The National Capital Planning Commission has approved a GSA Master Plan for the largely vacant 55 acre Southeast Federal Center. This plan anticipates the construction of 5.7 million gross (gsf) of Federal office space for 23,000 Federal employees. This greatly exceeds FDA's requirements.

GSA has informed Congress that FDA requires 125 acres for its consolidated facility. However, neither GSA nor FDA have ever justified this so-called requirement. It appears that FDA desires a campus with buildings that do not exceed six stories and that contains many acres of surface parking.

These are not real "requirements". An FDA facility at the Southeast Federal Center would require fewer parking spaces than would one at White Oak, since many employees and visitors would utilize Metro. Additionally, the construction of multi-level parking structures could greatly reduce the surface space needed for parking.

The Master Plan for the Southeast Federal Center proposes a mix of buildings ranging in height from 20 feet to 110 feet. This mix could accommodate any special requirements that FDA might have for certain specialized facilities, such as laboratories.

FDA does not require a 125-acre campus for its consolidation. Large high-rise buildings can readily house most or all of FDA's offices, laboratories, and ancillary facilities.

Cities throughout the Nation contain many such research and office centers. Over 2000 National Institutes of Health (NIH) research laboratories are located in a single 14-story building that the government constructed in 1981 in Bethesda, Maryland. A single 18-story building in Rockville, Maryland, now houses many of FDA's offices, including the Office of the Commissioner. Congress and the Secretary of Health and Human Services (HHS) can readily oversee FDA's activities if FDA consolidates at the Southeast Federal Center. The Southeast Federal Center is close to both Maryland and Virginia. An FDA consolidation there will enhance the economies of three jurisdictions (D.C., Maryland, and Virginia). In contrast, a consolidation at White Oak would benefit Maryland at the expense of the District and Virginia.

The median annual household income in the White Oak residential neighborhood exceeds affluent Montgomery County's median at \$65,000. Southeast Washington's median household income is much lower. Federally supported economic development is far more critical to Southeast D.C. than to White Oak.

A National Capital Planning Commission (NCPC) plan has designated the Southeast Federal Center as an important site for new offices. NCPC expects this new economic development to "assist the transformation of the Southeast Federal Center and adjacent Navy Yard into a lively urban waterfront of offices, restaurants, shops and marinas" ("Extending the Legacy", Plan for Washington's Monumental Core, NCPC, March 1996).

The goal of NCPC's plan is to preserve and enhance Washington's Monumental Core, which is centered at the U.S. Capitol building. An FDA consolidation at the Southeast Federal Center can revitalize a decaying D.C. neighborhood and help achieve NCPC's goal.

GSA's contention that there is no suitable space available for FDA in Washington, D.C. is incorrect. Even if the Southeast Federal Center is unsuitable for FDA for some reason, the St. Elizabeth Hospital site could easily accommodate a 125 acre FDA facility at a Southeast D.C. site that is near Metro.

GSA has consistently failed to evaluate potential building sites in the District on either Federal, District, or private properties in any serious manner. It has refused to consult with District officials regarding any such sites, even after receiving written requests for such consultations from District officials and from the District's Corporation Counsel.

On December 15, 1999, the Council of the District of Columbia approved a resolution (R12-834, Location of Federal Facilities in the District of Columbia Sense of

the Council Resolution of 1998) that addressed this matter. The Council's resolution asked GSA, FDA, and other Federal agencies to consider sites in the District for the FDA consolidation and for other Federal facilities. The resolution asked Congress and the heads of all Federal agencies to give preference to District sites when locating facilities in the Washington Metropolitan Area, as required by Executive Orders 12072 and 13006.

The Associate Commissioner for GSA's Public Building Service, Mr. Robert Peck, responded to the District's concerns by stating that Congress has mandated that FDA consolidate in Montgomery County, Maryland. This is not correct, since Congress has rescinded the funds for FDA's Montgomery County consolidation.

Soon afterwards, Mr. John Ferren, the District's Corporation received a January, 1999, letter from a GSA attorney that similarly stated that Congress had mandated that FDA could only consolidate in Montgomery and Prince George's Counties, Maryland. This attorney was also incorrect.

During a May 11, 1999, public hearing on GSA's budget request for Fiscal Year 2000, Mr. Paul Chistolini, Deputy Commissioner, Public Buildings Service, GSA, informed the Subcommittee on Economic Development, Public Buildings, Hazardous Pipeline Transportation of the Committee on Transportation and Infrastructure of the House of Representatives that GSA has determined that no suitable sites are available for FDA in the District. Mr. Chistolini is apparently misinformed, since neither he or any other GSA officials have consulted with District officials regarding this matter.

Your committee needs to ask GSA to justify its repeated exclusion of District of Columbia sites for the FDA consolidation and its statements that no suitable sites are available for the FDA consolidation in the District. There is no doubt that GSA attorneys and officials are providing incorrect or incomplete information to Congress, the District, and the public. A redirection of GSA's planning efforts that required it to study sites in the District would place the project in compliance with Executive Orders Nos. 12072 and 13006. It would also be consistent with the purposes of the National Capital Planning Act of 1952 and the policies and recommendations that NCPC has developed to implement it.

Executive Order No. 12072 and its implementing regulations direct the locations of Federal facilities in urban areas, including the National Capital Region. They require Federal agencies to locate and use their space and facilities so that the facilities "shall serve to strengthen the Nation's cities" and "shall conserve existing urban resources, and encourage the development and redevelopment of cities."

President Clinton's Executive Order 13006, May 21, 1996, (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities) reaffirmed and extended Executive Order 12072, by stating:

"Through the Administration's community empowerment initiatives, the Federal Government has undertaken various efforts to revitalize our central cities, which have historically served as the centers for growth and commerce in our metropolitan areas. Accordingly, the Administration hereby reaffirms the commitment set forth in Executive Order No. 12072 to strengthen our nation's cities by encouraging the location of Federal facilities in our central cities."

The Executive Orders require GSA and FDA officials to "economize in their requirements for space". They require Federal agencies in urban areas, such as the Washington Metropolitan Area, to strengthen the nation's cities and to encourage the locations of such agencies in the urban areas' central cities, such as Washington, D.C. The Orders discourage or prohibit the location of Federal facilities in outlying cities such as College Park and in unincorporated areas such as White Oak.

41 CFR 101-17.5 states in paragraph (h), ". . . these policies shall be applied in the National Capital Region in conjunction with regional policies on development and distribution of Federal employment in the National Capital Region established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1952, as amended".

GSA and FDA have long disregarded the Executive Order and NCPC's regional policies and recommendations when planning, leasing and constructing Federal buildings in the National Capital Region. To help resolve D.C.'s financial crisis, Congress needs to correct this.

A long-standing NCPC policy presently encourages government agencies to redistribute Federal jobs in the National Capital Region. This redistribution is long overdue. Congress needs to address this in the Federal buildings appropriations process.

The redistribution would implement NCPC policies and recommendations that NCPC has developed in compliance with National Capital Planning Act. It would reverse recent trends and correct a growing imbalance of Federal employment in the National Capital Region.

In its Federal Capital Improvements Program (FCIP), National Capital Region, Fiscal Years 1997–2001 (April, 1996)(p.9), NCPC reports that the District of Columbia will lose 889 Federal employees as a result of the FDA consolidation project. This would accelerate a continuing transfer of Federal employment from the District to the Maryland and Virginia suburbs.

According to NCPC's FCIP (p. 10), the District's percentage of the total Federal employment in the National Capital Region has declined from 58.0 percent in 1969 to 52.4 percent in 1994. Because of this trend, NCPC's FCIP (p. 12) has a final recommendation that states, "The Commission encourages each agency to adhere to the policy in the Federal Employment element of the Comprehensive Plan adopted in 1983 which specifies that the historic relative distribution of Federal employment of approximately 60 percent in the District of Columbia, and 40 percent elsewhere in the Region should continue during the next two decades. This policy is used by the Commission to ensure the retention of the historic concentration of Federal employment in the District of Columbia, the seat of the national government."

A major FDA facility at the Southeast Federal Center is consistent with Executive Orders 12072 and 13006, their implementing regulations, and with NCPC policies and recommendations. A facility at White Oak is inconsistent with all of these.

FDA now plans to move about 800 Federal employees in its Center for Food and Applied Nutrition (CFSAN) from the District of Columbia to a new facility in College Park, Prince George's County, Maryland. To reverse the accelerating decline of the nation's capital city, Congress must mitigate such relocations by directing the major FDA consolidation to the District of Columbia or to a site in Maryland or Northern Virginia that is near a Metro station.

5. Please take appropriate action to prevent GSA from further misusing Federal funds by continuing its construction of FDA's CFSAN building in College Park, Prince George's County, Maryland.

The Treasury, Postal Service and General Government Appropriations Act, 1996 (P.L. 104–52) provided \$55,000,000 for GSA to develop an FDA facility in Prince Georges County, Maryland. GSA is now using these funds to begin construction of this facility in College Park, Maryland.

However, no legislation has authorized construction of this facility at this time. The CFSAN facility is not a part of the major FDA consolidation authorized by the FDA Revitalization Act (P.L. 101–635).

P.L. 104–52 contains a provision that states:

"Provided further, That funds available to the General Services Administration shall not be available for expenses in connection with any construction, repair, alteration, and acquisition project for which a prospectus, if required by the Public Buildings Act of 1959, as amended, has not been approved, except that necessary funds may be expended for each project for required expenses in connection with the development of a proposed prospectus."

GSA has never submitted a prospectus to Congress that describes this project. Therefore, GSA can only use the appropriated funds to develop a proposed prospectus for the project. It cannot use these funds to construct the facility or to acquire property for it.

GSA has informed NCPC that the College Park project is fully funded in the amount of \$84,000,000. This is incorrect. While some funds may be available from appropriations made prior to 1996 which were exempted by provisions in appropriations legislation from the prospectus requirement, the agency cannot use any of the \$55,000,000 appropriated in P.L. 104–52 for construction purposes.

To support GSA's position, Mr. Chistolini of GSA provided the Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation of the House Committee on Transportation and Infrastructure, U.S. House of Representatives, with a March 9, 1999, memorandum from Samuel J. Morris, III, Associate General Counsel, Real Property Division, GSA. I am attaching a copy of this memorandum.

Mr. Morris' memorandum contends that the \$55,000,000 appropriated in P.L. 104–52 is legally available to GSA for expenditures in connection with the CFSAN project without an approved prospectus. Mr. Morris is clearly incorrect.

Mr. Morris noted that the FDA Consolidation Act (P.L. 101–635) authorized and directed the Secretary of HHS, in consultation with the Administrator of GSA, to enter into contracts for the design, construction, and operation of a consolidated FDA administrative and laboratory facility. However, he did not inform Mr. Chistolini that P.L. 101–635 only authorized a single FDA consolidated facility, and the College Park project is merely a relocation of CFSAN from the three buildings in District to a site in College Park.

The College Park CFSAN facility is not part of any FDA consolidation. It is certainly not part of the FDA consolidation the GSA is proposing for White Oak. It is

certainly not authorized by P.L. 101-635. P.L. 101-635 certainly does not authorize the GSA Administrator to utilize any appropriated funds for any FDA consolidated facility. P.L. 101-635 certainly does not authorize more than one consolidated facility. Mr. Morris is clearly incorrect.

Mr. Morris provided a reference to P.L. 104-52 and then stated that the history of this legislation indicates that it is for the FDA "consolidation" project in Prince George's County, Maryland. However, Mr. Morris is not correct in stating that the CFSAN project is an FDA "consolidation" authorized by the FDA Revitalization Act.

Mr. Morris correctly states that P.L. 104-52 appropriated to GSA \$55,000,000 under the heading "New Construction", "Prince Georges (sic) County, Food and Drug Administration". He does not note, however, that the language of the actual appropriation legislation does not contain the word "consolidation". This is a highly significant omission.

Mr. Morris refers to various committee reports that accompanied this legislation and its original bill, H.R. 2020. However, he does not refer to the fact that the full House of Representatives passed an amendment that deleted an appropriation for an FDA consolidation that the committee print of H.R. 2020 had proposed.

Indeed, and that during the House floor debate, Congressman Steny Hoyer, a major proponent of the project, stated that the most of the funds were not intended to support the FDA consolidation but were instead intended to support a separate, smaller facility for CFSAN and FDA's Center for Veterinary Medicine in Prince George's County. Mr. Morris did not note that much of the floor debate focused on the need for a prospectus for the project, in which Mr. Hoyer concurred. (Congressional Record H7200-H7206, July 19, 1995).

Because the House version of H.R. 2020 included no funding for the FDA consolidation, while the Senate version did propose such funding, a conference committee needed to resolve this issue. Mr. Morris provided a reference to the Conference Report (H.R. Conference Report 104-291, pp. 7,47). However, he did not note that p. 7 stated only that \$55,000,000 had been appropriated for an FDA construction project in Prince Georges (sic) County (without any reference to an FDA consolidation), nor did he note that page 47 of the Conference Report did not mention the Prince George's County Project. However, the Conference Report did state on p. 47: "FDA CONSOLIDATION" "The conferees request GSA study the White Oak, Maryland site for the consolidation of FDA facilities." (Note: This request did not preclude GSA from studying other sites for the consolidation, including sites located in Washington, D.C.) Mr. Morris is clearly incorrect. The history of P.L. 105-52 clearly indicates that the conferees did not intend the \$55,000,000 to be available for the FDA "consolidation" that P.L. 101-635 had authorized. Instead, the conferees asked GSA to study the White Oak site for the consolidation of FDA facilities.

Mr. Morris cited the provision in P.L. 104-52 discussed above which restricts the use of the appropriated funds to the development of a proposed prospectus. However, he concluded that this restriction did not apply to CFSAN project by incorrectly stating that the FDA Revitalization Act specifically authorized the CFSAN project.

In fact, if the FDA Revitalization Act had authorized an FDA consolidation in Prince Georges' County, it could not also have authorized another one in White Oak, Montgomery County. The Act only authorized one consolidated facility.

Mr. Morris contended that GSA was not required to obtain separate authorization for the CFSAN project under the Public Buildings Act of 1959, as amended. In fact, GSA must obtain separate authorization under this Act for any FDA consolidation or for the CFSAN project if it wishes to award any construction contracts, since the FDA Revitalization Act does not authorize GSA to award any such contracts.

Mr. Morris concludes by stating that funds for the CFSAN project were appropriated in GSA's fiscal year 1996 Appropriations Act, the purposes of Section 7 have already been satisfied. This is incorrect, because the restrictive provision in the Act does not make any funds available to GSA except for the development of a proposed prospectus. The appropriated funds are not legally available for construction purposes.

In a footnote on P. 2, Mr. Morris states that a Supreme Court holding in *INS vs. Chadha* may make the restrictive provision an unconstitutional Congressional veto. This is not correct. The restrictive provision does not condition the construction of any projects on the approval of prospectuses after P.L. 104-52 became law. Instead, the language of the provision states that funds are not available for construction purposes for any project for which a prospectus had not been approved before the enactment date of P.L. 104-52.

No prospectus had been approved for the CFSAN project before P.L. 104-52 became law on November 19, 1995. Therefore, no funds appropriated therein are legally available for construction purposes.

GSA is clearly misusing Federal funds to construct the CFSAN project in College Park project. It is now using a faulty legal opinion to justify its illegal actions.

The College Park project would remove about 750 FDA employees from downtown Washington, D.C., without your committee's approval. Since D.C. has recently lost many Federal jobs to suburban Maryland, the project is a violation of the Public Building Act's directive that GSA and your committee insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings. Further, the project will separate CFSAN from the remaining FDA components, since these will consolidate in another location. The College Park project is clearly inconsistent with the FDA Revitalization Act and will clearly decrease FDA's future efficiency.

I therefore ask your committee to immediately stop GSA's continuing misuse of funds to construct the College Park facility. This may be accomplished in by a rescission or by other means.

6. Please ask GSA or the General Accounting Office to appraise the value of the White Oak site and to estimate the revenues that the Government can gain from a sale of the site.

Congress needs to receive an appraisal of the value of the former White Oak Naval Surface Warfare Center (NSWC), which GSA now controls. This could prepare the government for a sale of part or all of NSWC. It could also help Congress evaluate the real cost of an FDA consolidation at White Oak.

A sale would support the original purpose of the base closure. Many taxpayers expect such closures to help to balance the Federal budget rather than to make a base available for a costly new Federal facility.

GSA could contribute the proceeds from such a sale to the Federal Buildings Fund. Such proceeds could help fund other GSA projects or could help support the redevelopment of the Southeast Federal Center for FDA or for another Federal agency. Bernard H. Berne, M.D., Ph.D.

Attachment: GSA Memorandum (March 9, 1999) from Samuel J. Morris, III, Associate General Counsel, Real Property Division, GSA, to Paul Chistolini, Deputy Commissioner, Public Buildings Service, GSA; Subject: FDA CFSAN Laboratory Facility, College Park, Maryland

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#### REFERENCES

1. DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR FDA CONSOLIDATION MONTGOMERY COUNTY (GSA, March 1996): Plan for 130 acre FDA campus at White Oak Naval Surface Warfare Center and golf course on adjacent Federal property.

2. EXECUTIVE ORDER 12072: FEDERAL SPACE MANAGEMENT (President Jimmy Carter, Aug. 16, 1978; 43 F.R. 36869; 40 U.S.C. §490; 3 CFR, 1979 Comp., p. 213): Executive Order stating that the process for meeting Federal space needs in urban areas shall serve to strengthen the Nation's cities, shall give first consideration to a centralized community business area and adjacent areas of similar character, and that the heads of Executive agencies shall economize on their use of space.

3. EXECUTIVE ORDER 13006: LOCATING FEDERAL FACILITIES ON HISTORIC PROPERTIES IN OUR NATION'S CITIES (President William J. Clinton, May 21, 1996; Federal Register, Vol. 61, No. 102, May 24, 1996, pp. 26071-26072): Executive Order reaffirming the Administration's commitment to Executive Order 120072 and encouraging the location of Federal facilities in historic buildings in central cities.

4. THE FOOD AND DRUG ADMINISTRATION REVITALIZATION ACT (P.L. 101-635, Nov. 28, 1990): The authorizing legislation for that authorized the Secretary of Health and Human Services to enter into contracts to design, construct and operate a single consolidated FDA administrative and laboratory facility. The GSA Administrator was only authorized to consult with the Secretary of HHS.

5. PUBLIC BUILDINGS ACT OF 1959 (P.L. 85-249, Sept. 9, 1959): The Public Buildings Act requires the GSA Administrator to transmit a prospectus for large building projects to Congress. Sec. 7 states that approval of the prospectus is required "in order to insure the equitable distribution of public buildings throughout the United States with due regard for the comparative urgency of need for such buildings."

6. "CLINTON PROPOSES PACKAGE TO STIMULATE D.C. ECONOMY" (Washington Post, March 12, 1997, Page 1). Report of President Clinton's statement that, to stimulate D.C.'s economy, he had directed his Cabinet secretaries to help the District of Columbia, beginning with keeping Federal agencies in the city.

7. P.L. 104-19 (RESCISSIONS ACT, 1995). The 1995 Act that rescinded \$228,000,000 of the funds previously appropriated for the Montgomery County, Maryland, FDA consolidation. The Act rescinded all construction funds for the facility.

8. Letter from U.S. Environmental Protection Agency to Mr. Jag Bhargava, General Services Administration, January 5, 1999. Letter informs GSA.—Letter from EPA that formally encourages GSA to compare alternative sites on public as well as non-public lands in the proposed Environmental Impact Statement (EIS) for the FDA Consolidation. The letter states that EPA had already informed GSA that a previous FDA consolidation EIS had not adequately compared the White Oak alternative to alternatives on non-public lands, thus making a comparison of environmental impacts difficult with anything other than the no action alternative.

9. Council of the District of Columbia, Resolution No. R12-834, (Location of Federal Facilities in the District of Columbia Sense of the Council Resolution of 1998; December 15, 1998. D.C. Council Resolution that requests the President, the Vice-President, the GSA Administrator, the GSA Regional Administrator, the FDA Commissioner, the OMB Director, the heads of all other Federal executive agencies, other Federal officials, and Members of Congress, to identify and give preference to District of Columbia sites when meeting Federal space needs in the Washington Metropolitan Area, consistent with Executive Orders 12072 and 13006.

10. GSA Memorandum to Paul Chistolini, Deputy Commissioner, Public Buildings Service, GSA from Samuel J. Morris, III, Associate General Counsel, Real Properties Division, GSA, March 9, 1999; Memorandum from GSA General Counsel Office that incorrectly states that GSA can legally expend funds appropriated to GSA without a prospectus to construct FDA's Center for Food Safety and Applied Nutrition facility in College Park, Maryland.

11. P.L. 104-52 (Treasury, Postal Services, and General Government Appropriations Act, 1996). The 1996 Act that appropriated \$55,000,000 for an FDA facility in Prince George's County, Maryland, restricted to the development of a proposed prospectus for the project in accordance with Public Buildings Act of 1959. The funds cannot be used for construction purposes because of this restriction.

12. House Report No. 104-291, October 25, 1995; Conference Committee Report that accompanied the Treasury, Postal Services, and General Government Appropriations Act, 1996 (P.L. 104-52; 109 Stat. 468). P.L. 104-52 did not appropriate any funds for the FDA consolidation, but appropriated funds for an FDA facility in Prince George's County, Maryland.

In House Report 104-919, the conferees request GSA to study the White Oak site for the consolidation of FDA facilities. The language of the report makes it clear that this a request and not a directive. The conferees did not discuss the appropriation for the Prince Georges County project.

13. P.L. 102-141, October 28, 1991 (Treasury, Postal Services, and General Government Appropriations Act, 1992); P.L. 102-141 appropriated funds to GSA's Federal Buildings Fund. The Act made \$200,000,000 of these funds available for GSA to conduct activities related to new construction for an FDA consolidation(s) in Montgomery and Prince George's Counties, Maryland. A provision in P.L. 102-141 exempted the use of the appropriated funds from the prospectus approval requirement of the Public Buildings Act of 1959.

14. CONGRESSIONAL RECORD, July 19, 1995, pp. H7200-7206: Record of House of Representatives floor debate on funding for FDA consolidation. House removed proposed funding for project. Some of funds were for FDA consolidation in Montgomery County, MD, while others were for FDA Center for Food Safety and Applied Nutrition facility in Prince George's County, MD. Bernard H. Berne, M.D., Ph.D. 4316 North Carlin Springs Road, #26 Arlington, Virginia 22203-2035 October 4, 1999