

Former Vacuum Oil Facility BCP Project 5 & 15 Flint Street Rochester, New York



Applicant: One Flint Street LLC

Legal & Consulting Team: Knauf Shaw LLP & LaBella Associates, P.C.

March 19, 2010

**BROWNFIELD CLEANUP PROGRAM (BCP) APPLICATION**

ECL ARTICLE 27 / TITLE 14

 DEPARTMENT USE ONLY
 BCP SITE #: _____

07/07

Section I. Requestor InformationNAME **One Flint Street LLC**ADDRESS **620 Park Avenue, Suite 185**CITY/TOWN **Rochester**ZIP CODE **14607**PHONE **585-329-0232**FAX **585-235-0048**E-MAIL **Adam@thepatriotcompanies.com**
Thomas@thepatriotcompanies.comNAME OF REQUESTOR'S REPRESENTATIVE **Alan J. Knauf, Esq.**ADDRESS **1125 Crossroads Building, 2 State Street**CITY/TOWN **Rochester, New York**ZIP CODE **14614**PHONE **585-546-8430**FAX **585-546-4324**E-MAIL **aknauf@nyenvlaw.com**NAME OF REQUESTOR'S CONSULTANT **LaBella Associates, P.C.**ADDRESS **300 State Street**CITY/TOWN **Rochester, New York**ZIP CODE **14614**PHONE **585-454-6110**FAX **585-454-3066**E-MAIL **dnoll@LaBellaPC.com**NAME OF REQUESTOR'S ATTORNEY **Alan J. Knauf, Esq.**ADDRESS **1125 Crossroads Building, 2 State Street**CITY/TOWN **Rochester, New York**ZIP CODE **14614**PHONE **585-546-8434**FAX **585-546-4324**E-MAIL **aknauf@nyenvlaw.com**

THE REQUESTOR MUST CERTIFY THAT HE/SHE IS EITHER A PARTICIPANT OR VOLUNTEER IN ACCORDANCE WITH ECL § 27-1405 (1) BY CHECKING ONE OF THE BOXES BELOW:

☐ **PARTICIPANT**

A requestor who either 1) was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or 2) is otherwise a person responsible for the contamination, unless the liability arises solely as a result of ownership, operation of, or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

☒ **VOLUNTEER**

A requestor other than a participant, including a requestor whose liability arises solely as a result of ownership, operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.

NOTE: By checking this box, the requestor certifies that he/she has exercised appropriate care with respect to the hazardous waste found at the facility by taking reasonable steps to: i) stop any continuing discharge; ii) prevent any threatened future release; and iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous waste.

Requestor Relationship to Property (check one):

☐ Previous Owner☒ Current Owner☐ Potential / Future Purchaser☐ Other _____

If requestor is not the site owner, requestor will have access to the property throughout the BCP project. N/A - Deeds attached in Exhibit G"

☐ Yes☐ No

(Note: proof of site access must be submitted for non-owners)

Section II. Property Information Summary SheetPROPERTY NAME: **5 & 15 Flint Street**ADDRESS/LOCATION **5 & 15 Flint Street**CITY/TOWN **Rochester, New York**ZIP CODE **14608**MUNICIPALITY (IF MORE THAN ONE, LIST ALL):
City of RochesterCOUNTY **Monroe**SITE SIZE (ACRES) **7.224 acres**LATITUDE (degrees/minutes/seconds) **5 Flint 43° 8' 11"**
15 Flint 43° 8' 12"LONGITUDE (degrees/minutes/seconds) **5 Flint 77° 37' 15"**
15 Flint 77° 37' 19"HORIZONTAL COLLECTION METHOD: ☐ SURVEY ☐ GPS
☒ MAP USGS 7.5 Minute Topo Map (See Exhibit "A" USGS Map)HORIZONTAL REFERENCE DATUM:
www.msrmaps.com

FOR EACH PARCEL, FILL OUT THE FOLLOWING TAX MAP INFORMATION (if more than three parcels, attach additional information)

| Parcel Address | Parcel No. | Section No. | Block No. | Lot Nos. | Acreage |
|------------------------|------------|---------------|-----------|-----------|--------------|
| 5 Flint Street | | 121.77 | 1 | 10 | 1.624 |
| 15 Flint Street | | 121.77 | 1 | 11 | 5.6 |
| | | | | | |

1. Do the site boundaries correspond to tax map metes and bounds?

☒ Yes ☐ No

If no, please attach a metes and bounds description of the site.

2. Is the required site map attached to the application? (application will not be processed without map)

☒ Yes ☐ No

3. Is the property part of a designated En-zone pursuant to Tax Law § 21(b)(6)?

☒ Yes ☐ NoFor more information go to: http://www.nylovesbiz.com/BrownField_Redevelopment/default.asp.If yes, identify area (name) **Monroe County Census Tract 006900**☐ 50% ☒ 100% of the site is in the En-zone (check one) **En-Zone Eligible Tract Map attached as Exhibit "L"**

PROPERTY DESCRIPTION NARRATIVE:

See Attachment A, Project Description Item 2

List of Existing Easements (type here or attach information)

| <u>Easement Holder</u> | <u>Description</u> |
|------------------------|--------------------|
|------------------------|--------------------|

5 Flint Street is subject to the following three (3) easements and one (1) right of way:**Granted to the City of Rochester, Liber 546 of Deeds, Page 244, December 8, 1894****Granted to the Genesee Valley Canal Railroad Company, Liber 788 of Deeds, page 304, February 26, 1909****Granted to the City of Rochester, Liber 9821 of Deeds, page 661, July 29, 2003****Right of Way contained in Deed recorded in Liber 1738 of Deeds, page 61, January 14, 1936.****15 Flint Street is subject to the following one (1) easement:****Granted to the City of Rochester, Liber 941 of Deeds, page 127, April 20, 1914****Copies of all the easements and the right-of-way are attached in Exhibit "G"**

List of Permits issued by the NYSDEC or USEPA Relating to the Proposed Site (type here or attach information)

| <u>Type</u> | <u>Issuing Agency</u> | <u>Description</u> |
|-------------|-----------------------|--------------------|
|-------------|-----------------------|--------------------|

No known Permits are issued by NYSDEC or USEPA relating to the Site.Initials of each Requestor: TM

| Section III. Current Site Owner/Operation Information | | |
|---|------------------------------|--|
| OWNER'S NAME (if different from requestor) N/A - Same as Requestor | | |
| ADDRESS | | |
| CITY/TOWN | | ZIP CODE |
| PHONE | FAX | E-MAIL |
| OPERATOR'S NAME (if different from requestor or owner) N/A - Site is vacant | | |
| ADDRESS | | |
| CITY/TOWN | | ZIP CODE |
| PHONE | FAX | E-MAIL |
| Section IV. Requestor Eligibility Information (Please refer to ECL § 27-1407) | | |
| If answering "yes" to any of the following questions, please provide an explanation as an attachment. | | |
| 1. Are any enforcement actions pending against the requestor regarding this site? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the requestor subject to an existing order relating to contamination at the site: | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the requestor subject to an outstanding claim by the Spill Fund for this site? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Has the requestor been determined to have violated any provision of ECL Article 27? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Has the requestor been previously denied entry to the BCP? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 6. Has the requestor been found in a civil proceeding to have committed a negligent or intentionally tortious act involving contaminants? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 7. Has the requestor been convicted of a criminal offense that involves a violent felony, fraud, bribery, perjury, theft, or offense against public administration? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 8. Has the requestor knowingly falsified or concealed material facts or knowingly submitted or made use of a false statement in a matter before the Department? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 9. Is the requestor an individual or entity of the type set forth in ECL 27-1407.8(f) that committed an act or failed to act, and such act or failure to act could be the basis for denial of a BCP application? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Section V. Property Eligibility Information (Please refer to ECL § 27-1405) | | |
| 1. Is the property listed on the National Priorities List? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 2. Is the property listed on the NYS Registry of Inactive Hazardous Waste Disposal Sites? If yes, please provide: Site # _____ Class # _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 3. Is the property subject to a permit under ECL article 27, title 9, other than an Interim Status Facility? If yes, please provide: Permit type: _____ EPA ID Number: _____ Date permit issued: _____ Permit expiration date: _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 4. Is the property subject to a cleanup order under navigation law Article 12 or ECL Article 17 Title 10? If yes, please provide: Order # _____ | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| 5. Is the property subject to a state or federal enforcement action related to hazardous waste or petroleum? If yes, please provide explanation as an attachment. | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Section VI. Project Description | | |
| What stage is the project starting at? <input checked="" type="checkbox"/> investigation <input type="checkbox"/> remediation | | |
| Please attach a description of the project which includes the following components: | | |
| <ul style="list-style-type: none"> • Purpose and scope of the project See Attachment A Item 2 • Estimated project schedule See Attachment A Item 3 | | |

Section VII. Property's Environmental History

To the extent that existing information/studies/reports are available to the requestor, please attach the following:

1. Environmental Reports

A phase I environmental site assessment report prepared in accordance with ASTM E 1527 (American Society for Testing and Materials: Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process), and all environmental reports related to contaminants on or emanating from the site. **See Attachment A Item 4, all reports are annexed in a disc contained in Exhibit "D"**

If a final investigation report is included, indicate whether it meets the requirements of ECL Article 27-1415(2): ☐ Yes ☐ No

2. Sampling Data: Indicate known contaminants and the media which are known to have been affected:

| Contaminant Category | Soil | Groundwater | Surface Water | Sediment | Soil Gas |
|----------------------|------|-------------|---------------|----------|----------|
| Petroleum | ✓ | ✓ | | | |
| Chlorinated Solvents | ✓ | ✓ | | | |
| Other VOC's | ✓ | ✓ | | | |
| SVOC's | ✓ | ✓ | | | |
| Metals | ✓ | ✓ | | | |
| Pesticides | ✓ | | | | |
| PCBs | | | | | |
| Other * | | | | | |

*Please describe: _____

3. Suspected Contaminants: Indicate suspected contaminants and the media which may have been affected:

| Contaminant Category | Soil | Groundwater | Surface Water | Sediment | Soil Gas |
|----------------------|------|-------------|---------------|----------|----------|
| Petroleum | | | | | |
| Chlorinated Solvents | | | | | ✓ |
| Other VOC's | | | | | ✓ |
| SVOC's | | | | | |
| Metals | | | | | |
| Pesticides | | | | | |
| PCBs | | | | | |
| Other * | | | | | |

*Please describe: _____

4. INDICATE KNOWN OR SUSPECTED SOURCES OF CONTAMINANTS:

| | | | |
|---|---|--|---|
| <input checked="" type="checkbox"/> Above Ground Pipeline or Tank | <input type="checkbox"/> Lagoons or Ponds | <input checked="" type="checkbox"/> Underground Pipeline or Tank | <input checked="" type="checkbox"/> Surface Spill or Discharge |
| <input checked="" type="checkbox"/> Routine Industrial Operations | <input checked="" type="checkbox"/> Dumping or Burial of Wastes | <input type="checkbox"/> Septic tank/lateral field | <input checked="" type="checkbox"/> Drums or Storage Containers |
| <input type="checkbox"/> Adjacent Property | <input type="checkbox"/> Seepage Pit or Dry Well | <input type="checkbox"/> Foundry Sand | <input type="checkbox"/> Electroplating |
| <input type="checkbox"/> Coal Gas Manufacture | <input type="checkbox"/> Industrial Accident | <input type="checkbox"/> Unknown | |

Other: _____

5. INDICATE PAST LAND USES:

| | | | | | |
|---|---|---|--------------------------------------|---|--|
| <input type="checkbox"/> Coal Gas Manufacturing | <input checked="" type="checkbox"/> Manufacturing | <input type="checkbox"/> Agricultural Co-op | <input type="checkbox"/> Dry Cleaner | <input type="checkbox"/> Salvage Yard | <input checked="" type="checkbox"/> Bulk Plant |
| <input type="checkbox"/> Pipeline | <input type="checkbox"/> Service Station | <input type="checkbox"/> Landfill | <input type="checkbox"/> Tannery | <input type="checkbox"/> Electroplating | <input type="checkbox"/> Unknown |

Other: Petroleum Refining

6. Owners

A list of previous owners with names, last known addresses and telephone numbers (describe requestor's relationship, if any, to each previous owner listed. If no relationship, put "none"). **See Attachment A Item 5**

7. Operators

A list of previous operators with names, last known addresses and telephone number (describe requestor's relationship, if any, to each previous operator listed. If no relationship, put "none"). **See Attachment A Item 5**

Section VIII. Contact List Information

Please attach, at a minimum, the names and addresses of the following: **SEE ATTACHMENT A ITEM 6 FOR ALL CONTACT LIST INFORMATION & RESPONSES**

1. The chief executive officer and planning board/dept. chair of each county, city, town and village in which the property is located.
2. Residents, owners, and occupants of the property and properties adjacent to the property.
3. Local news media from which the community typically obtains information.
4. The public water supplier which services the area in which the property is located.
5. Any person who has requested to be placed on the property contact list.
6. The administrator of any school or day care facility located on or near the property.
7. The location of a document repository for the project (e.g., local library). In addition, attach a copy of a letter sent to the repository acknowledging that it agrees to act as the document repository for the site.

Section IX. Land Use Factors (Please refer to ECL § 27-1415(3))

Current Use: ☐ Residential ☐ Commercial ☐ Industrial ☒ Vacant ☐ Recreational (check all that apply)

Intended Use: ☐ Unrestricted ☒ Residential ☒ Commercial ☐ Industrial (check all that apply)

Please check the appropriate box and provide an explanation as an attachment if appropriate. Provide a copy of the local zoning classifications, comprehensive zoning plan designations, and/or current land use approvals.

Yes No

| | | |
|--|-------------------------------------|-------------------------------------|
| 1. Do current historical and/or recent development patterns support the proposed use? (See #12 below re: discussion of area land uses) | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 2. Is the proposed use consistent with applicable zoning laws/maps? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 3. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 4. Are there any Environmental Justice Concerns? (See § 27-1415(3)(p)). | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 5. Are there any federal or state land use designations relating to this site? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 6. Do the population growth patterns and projections support the proposed use? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 7. Is the site accessible to existing infrastructure? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 8. Are there important cultural resources, including federal or state historic or heritage sites or Native American religious sites within ½ mile? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 9. Are there important federal, state or local natural resources, including waterways, wildlife refuges, wetlands, or critical habitats of endangered or threatened species within ½ mile? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 10. Are there floodplains within ½ mile? | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| 11. Are there any institutional controls currently applicable to the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 12. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas. SEE ATTACHMENT A ITEM 7 | | |
| 13. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the property, including proximity to wellhead protection and groundwater recharge areas. SEE ATTACHMENT A ITEM 7 | | |
| 14. Describe on attachment the geography and geology of the site. SEE ATTACHMENT A ITEM 7 | | |

Statement of Certification and Signatures

(By requestor who is an individual)

I hereby affirm that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to section 210.45 of the Penal Law.

Date: _____ Signature: _____ Print Name: _____

(By an requestor other than an individual)

I certify that I am Managing Member (title) of One Flint St LLC (entity); that I am authorized by that entity to make this application; that this application was prepared by me or under my supervision and direction; and that information provided on this form and its attachments is true and complete to the best of my knowledge and belief. I am aware that any false statement made herein is punishable as a Class A misdemeanor pursuant to Section 210.45 of the Penal Law.

Date: 3/17/2010 Signature: [Signature] Print Name: Thomas Mascoschi

SUBMITTAL INFORMATION:

Three (3) complete copies are required.

- Two (2) copies, one paper copy with original signatures and one electronic copy in Portable Document Format (PDF) on a CD or diskette, must be sent to:

Chief, Site Control Section
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233-7020
- One (1) paper copy must be sent to the DEC regional contact in the regional office covering the county in which the site is located. Please check our website for the address of our regional offices: <http://www.dec.state.ny.gov/about/776.html>

FOR DEPARTMENT USE ONLY

BCP SITE T&A CODE: _____ LEAD OFFICE: _____

ATTACHMENT A

BROWNFIELD CLEANUP PROGRAM APPLICATION SUPPORT

"BROWNFIELD SITE" DESCRIPTION and ELIGIBILITY

ITEM 1(a): SITE ADDRESSES AND CURRENT/FORMER USES

The "Site" that will be the subject of this application is made up of 7.224 acres located at 5 and 15 Flint Street in the City of Rochester. See Exhibits "A" and "B," Site Map and USGS Map, respectively. The Site is surrounded by residential, municipal, recreational and commercial uses. 5 Flint Street contains one three-story brick block 40,428 sq. ft. building with two housing units and an asphalt parking area. 15 Flint Street contains three buildings – a 1,601 sq. ft. office building, a metal storage shed and a concrete block building. The Site is serviced by electricity, natural gas, public water supply and public sewers.

The Site is located wholly within the approximately 40-acre footprint of the former Vacuum Oil Company refinery site (the "Vacuum Oil Facility"), which operated from 1866 until 1935. The Vacuum Oil Facility consisted of several process and storage buildings, a railyard, tank farms, and pipelines. A historic map of the Vacuum Oil Facility is attached as Exhibit "C." The processing operations involved distilling crude petroleum under pressure to produce a variety of petroleum products, including: lubricating oils, vacuum oil blacking for harness, naptha, refined petroleum and high test kerosene oils, neutral oils, also sperm whale, elephant, lard, neat foot, straits, bank, Labrador, salad, signal and other oils. The Site which comprises this application was used for operations and petroleum storage (15 Flint), and as a barrel prep and storage area (5 Flint). After the Vacuum Oil facility closed, most of the structures were demolished in place and the Site was subsequently used as a scrap metal and automotive salvage yard and resource recovery facility. These former industrial uses have resulted in significant contamination.

Since at least 1989, the Vacuum Oil Facility, and thus the Site, has been the subject of investigation, both of its history and its environmental condition. These investigations, which are attached in Exhibit "D," and summarized in Item 4, have consistently determined that the historic use of the Site for industrial uses, particularly the refining of petroleum and metal and automobile scrap yards, has negatively impacted the environmental condition of the Site and resulted in significant levels of both soil and groundwater contamination above both the NYSDEC Soil Cleanup Objectives (SCOs) and NYSDEC Technical and Operational Guidance Series (TOGS) 1.1.1 Ambient Water Quality Standards (AWQS), which will require remediation, and which have impacted the ability to redevelop the Site.

ITEM 1(b): ELIGIBILITY

A. Court of Appeals Eligibility Determination

A “brownfield site” is defined by statute as “real property, the redevelopment or reuse of which may be complicated by the presence or potential presence of a contaminant.” ECL §27-1405(2). In the recent case of *Lighthouse Pointe Associates, LLC v. NYSDEC*, 2010 WL 546058, 2010 N.Y. Slip Op. 01377A (2010), the Court of Appeals used the plain meaning of these words to broadly interpret the definition for the purpose of determining eligibility. The Court of Appeals reasoned that:

There are two constituents to the definition: the presence or potential presence of a contaminant on the real property; and this presence or potential presence must complicate the property's redevelopment or reuse. The term contaminant is defined in the statute (*see* ECL-1405 [7-a]). The word present is not, but in common English usage means being in one place and not elsewhere: being within reach, sight, or call or within contemplated limits: being in view or at hand: being before, beside, with, or in the same place as someone or something (Webster's Third New International Dictionary, Unabridged [Merriam-Webster, 2002] [<http://unabridged.merriam-webster.com> (7 Feb. 2010)]). Thus, a contaminant is present or potentially present on real property when it does or may exist or be found within the property's limits; the statutory definition does not, on its face, mandate the presence of any particular level or degree of contamination. Finally, the word complicate, also undefined in the statute, in common English usage means to make complex, involved, or difficult (Webster's Third New International Dictionary, Unabridged [Merriam-Webster, 2002] [<http://unabridged.merriam-webster.com> (31 Jan. 2010)]). Accordingly, real property qualifies as a brownfield site for purposes of acceptance into the BCP so long as the presence or potential presence of a contaminant within its boundaries makes redevelopment or reuse more complex, involved, or difficult in some way.

The Court of Appeals, therefore, confirmed that the BCP contains a “low eligibility threshold,” which is consistent with the legislative history, and that “the Legislature intended the definition of the term brownfield site to be interpreted as broadly as its words suggest.”

With regard to the instant Site, there are clearly significant levels of contamination which require remedial measures which will prevent the Requestor from financing and redeveloping the Site until the contamination is addressed. Further, the contamination presents a liability risk to the Requestor.

B. Eligibility Guidance Factors Are Also Met

Even though the use of the March 2005 Eligibility Guidance Document has been called into question by recent court decisions, the factors the Department uses to help evaluate site eligibility are listed below as they appear in subsections 2 and 3 of the Guidance Document, and will be subsequently analyzed.

Contamination Element –

2. In determining whether there is confirmed contamination or a reasonable basis to believe that contamination is likely to be present on the property, the Department will consider the following factors, to the extent such factors are relevant to the proposed site

- (A) the nature and extent of known or suspected contamination;
- (B) whether contaminants are present at levels that exceed standards, criteria or guidance;
- (C) whether contamination on the proposed site is historic fill material or exceeds background levels;
- (D) whether there are or were industrial or commercial operations at the proposed site which may have resulted in environmental contamination; and/or
- (E) whether the proposed site has previously been subject to closure, a removal action, an interim or final remedial action, corrective action or any other cleanup activities performed by or under the oversight of the State or Federal government.

Complication Element –

3. In determining whether there is a reasonable basis to believe that the contamination or potential presence of contamination may be complicating the development, use or re-use of the property, the Department will consider the following factors, to the extent such factors are relevant to the proposed site:

- (A) whether the proposed site is idled, abandoned or underutilized;

- (B) whether the proposed site is unattractive for redevelopment or reuse due to the presence or reasonable perception of contamination;
- (C) whether properties in the immediate vicinity of the proposed site show indicators of economic distress such as high commercial vacancy rates or depressed property values; and/or
- (D) whether the estimated cost of any necessary remedial program is likely to be significant in comparison to the anticipated value of the proposed site as redeveloped or reused.

The following analysis of each Eligibility Guidance factor is provided below confirming the Site is eligible for the BCP:

1. The Contamination Element Eligibility Factors Have Been Met on the Site

(A) The nature and extent of known or suspected contamination – While the nature and extent of known contamination on the Site has not been fully delineated, the sampling performed to date indicates that there is very serious contamination on the Site, including petroleum constituents, volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), metals and pesticides in both soil and groundwater, resulting from the historic industrial operations at the Site. The many environmental reports are summarized below, and attached in the disc at Exhibit “D.” Contamination had been documented above both the relevant SCOs and AWQS. Therefore, while the full nature and extent of contamination has not been fully delineated on the Site, exceedances have been found above applicable state and federal standards.

(B) Whether contaminants are present at levels that exceed standards, criteria or guidance – See (A) above. The numerous environmental reports include the currently known exceedances of the State groundwater and soil cleanup standards.

(C) Whether contamination on the proposed site is historic fill material or exceeds background levels – The contamination on the Site is not contained in historic fill material, but rather, is the result of historic industrial activities on the Site.

(D) Whether there are or were industrial or commercial operations at the proposed site which may have resulted in environmental contamination - The contamination discovered can be directly linked to former industrial operations on the Site.

(E) Whether the proposed site has previously been subject to closure, a removal action, an interim or final remedial action, corrective action or any other cleanup activities performed by or under the

oversight of the State or Federal government – The Site has not been subject to a prior order or enforcement action.

In sum, based on the existing sampling data, and as summarized below and in further detail in Item 5 of this Application, there is significant confirmed contamination and a reasonable basis to believe that more contamination is likely to be present on the Site. Therefore, remediation is required to make the Site safe, financeable and insurable for the Requestor's proposed mixed-use project (the "Project").

2. The Complication Element of the Eligibility Test Has Been Met on the Site

(A) Whether the proposed site is idled, abandoned or underutilized - The Site has been underutilized for some time now as it is vacant.

While the highest and best use of this land is either residential and/or mixed-use commercial/residential, this use is not being realized because of the contamination. Not only does the contamination pose a threat to the health of potential residents and make the property unmarketable, but it makes financing the redevelopment of the Site difficult. Because the highest and best use of this land is not being realized, the Site meets the first brownfield site eligibility factor because it is vacant, abandoned, idle and underutilized.

(B) Whether the proposed site is unattractive for redevelopment or reuse due to the presence or reasonable perception of contamination - Based on the sampling results, the discharge, release and/or disposal of chemicals on the Site from historic industrial operations caused contamination (factor B(1) – perception of contamination). The Site is also currently unattractive for redevelopment due to the presence of significant confirmed VOC, SVOC, metals and pesticide contamination in the Site soil and groundwater (factor B(2) – unattractive for redevelopment). While the Site is located in a mixed use area, the cost of remediation will severely limit the redevelopment of the Site. As a result, any real estate transaction relating to this Site has been, and will continue to be, complicated by the presence of this contamination. All of these conditions have made the Site unattractive for redevelopment.

Therefore, while the Requestor is interested in redevelopment of this Site, it will be unable to proceed due to the cost of investigation and remediation of the Site, or obtain financing without a remedial solution with oversight from the DEC. The Requestor must be given the opportunity to participate in this program to perform the level of cleanup required to secure a Certificate of Completion and Liability Release tied to achievement of the New York State cleanup standards to assure the public and future residents that the Site is safe for reuse.

All of the above have made the Site unattractive for redevelopment, particularly outside the context of this program. Thus, the Site meets the second brownfield site eligibility factor as it is unattractive for redevelopment due to not just the perception of, but also actual contamination.

(C) Whether properties in the immediate vicinity of the proposed site show indicators of economic distress such as high commercial vacancy rates or depressed property values - The Site is located completely within an Environmental Zone which has depressed property values and low income levels, and is a target for redevelopment by the City of Rochester.

(D) Whether the estimated cost of any necessary remedial program is likely to be significant in comparison to the anticipated value of the proposed site as redeveloped or reused - With respect to the fourth cost factor, while final costs are not yet available since Site investigation will continue under the BCP, the cost of remediation will be proportional to the cost of redevelopment. The planned use for the Site is mixed-use commercial/residential which will require extensive Site work, most likely including significant soil removal, and the potential installation of a vapor mitigation systems in future on-Site buildings.

Remediation of groundwater contamination, and the installation of vapor mitigation systems, are expensive, and long-term, solutions for contamination such as exists at the Site. However, until a full investigation is performed, and a remedial alternative chosen and these costs are incurred, the Requestor can only predict that the fourth eligibility factor is satisfied in that the remedial cost will be significant, and many upfront costs that will have to be expended in order to enhance the future value of the Site.

In sum, there is a reasonable basis to believe that the currently known contamination and suspect potential contamination is complicating redevelopment, and as such the complication element of the State's current eligibility test in its Eligibility Guidance document has been met.

PROJECT DESCRIPTION

ITEM 2: PURPOSE AND SCOPE OF THE PROJECT

Because the Site is currently zoned for low-density residential use (*i.e.* single family homes), that is the only allowable re-use permitted without re-zoning from the City of Rochester. As such, single-family homes must be considered. If, however, the City of Rochester was amenable to rezoning the Site, and alternative conceptual plan for this Site includes retail and/or office uses on the ground floor of the rehabilitated buildings, with the upper floors being used as market and/or subsidized housing.

Prior to undertaking any construction activities, the full nature and extent of the contamination on the Site must be determined to assure that the ultimate remediation of the contamination will provide protection for the future residents on the Site. The nature of the remedial action necessary on the Site cannot be determined until such time as a full investigation has been undertaken. Decisions regarding investigation, remediation and construction will be made in coordination with the Department. The various steps involved in the construction process, and associated schedule, are fully set forth in Item 3: Estimated Project Schedule.

ITEM 3: ESTIMATED PROJECT SCHEDULE

The investigation of the Site would begin soon after the Brownfield Cleanup Program Application for the Site is approved, so it could begin in the summer of 2010. Once the remedial investigation is completed, and a remedial action plan is in place, the Requestor would begin the process of applying for any necessary municipal approvals, including site plan approval. This process is estimated to take approximately three to four months. Once all approvals and permits are in place, the Project is expected to take between twelve and eighteen months.

ITEM 4: ENVIRONMENTAL DATA

The Vacuum Oil Facility, including the Site, and surrounding properties which make up the former refinery, have been under investigation for over two decades, and thus, extensive historical and technical data exists for the Site. A brief summary of the main reports which exist for the Site, and surrounding properties, follows. Full copies of each report identified below are annexed in a DVD contained in Exhibit "D."

August 1989 – Oil & Hazardous Material Site Evaluation, Flint-Exchange Site, Rochester, New York, prepared by H&A on behalf of the Rochester City School District

The Executive Summary indicates that this investigation was "a preliminary evaluation of the potential for oil and hazardous material to exist on the subject property, and potential site construction considerations (foundation types and disposal of site materials) so as to assist the Rochester City School District in evaluating the potential liability associated with ownership, financing and development of a school on the property." The scope of work consisted of reviewing public files, interviews, soil vapor sampling (28 sample points), test borings (3 sample points), soil analysis, and general visual observations of environmental conditions.

While the results from the samples, which were only taken in the City owned property which lies between the Site at issue herein, did not indicate the presence of contaminants above the laboratory detection limits, the report concluded that "the potential for hazardous materials to be present in areas not explored during this investigation appears to be high based on past and present site land use."

September 1990 - Detailed Historical Site Assessment of the Vacuum Oil Company's Facilities and Locations, prepared by the City of Rochester

The Executive Summary indicates that this "report describes the property under investigation and traces the history of the Vacuum Oil Corporation. It provides an operations history, explains the company's manufacturing process, establishes the proximity of it to various gas works, and identifies confirmed and suspected pipeline routes between Vacuum Oil and these companies; it summarizes as

well as details histories of deeds, plat books and permits; it documents sewer and water services for the area, and analyzes and provides aerial photos of the site dating from 1926.”

As indicated by the report, Vacuum Oil began its operations at the Site in 1866, and continued through 1936. The operations included distilling crude petroleum under pressure to produce lubricating oils, naphtha, and kerosene. The report outlines several fires that occurred at the Site, and other incidents related to Vacuum Oil’s operations, including a reported “burn pit,” and the potential burying of railroad tank cars in the vicinity of the former railroad tracks.

March 2001 - Site Investigation Report, prepared for NYSDEC

The Executive Summary indicates that “in 1999-2000, the NYSDEC conducted an investigation of a 24-acre portion of the former Vacuum Oil facility. The investigation consisted of a point passive soil gas survey, surface soil samples, subsurface soils samples, and groundwater samples from three monitoring wells. . . . The results of the NYSDEC investigation indicated widespread petroleum-related contamination (SVOCs and BTEX) in the surface soil, subsurface soil, and groundwater at the site. . . . To a lesser extent, chlorinated VOCs, metals, and pesticides were also detected above NYS standards at the site.”

This investigation included the following sample points on, or near, 5 Flint Street: two soil sample locations (SS-1 and SS-2); two groundwater monitoring wells (MW-1 and MW-2); four test pits (TP-1, TP-2, TP-3 and TP-4); and four soil gas sample locations (A-3, B-3, C-3 and D-3). The sample location map from this investigation and results tables from this investigation (for ease of reference) are attached separately as Exhibit “E.”

Analytical results from the soil sampled during this investigation reveal over 150 exceedances of the Track 1 SCOs, and over 40 exceedances of the Track 2 SCOs for commercial use. In addition, several metals, SVOCs and VOCs were detected in groundwater above AWQS.

June 13, 2005 - Historic and Current Site Conditions Report, prepared by AMEC on behalf of Exxon Mobil

This reports indicates that its goal was “to identify the historic operations and conditions at [the former Vacuum Oil site during the time that it was occupied by Vacuum Oil. The object of the research activities was to develop an understanding of the process areas, disposal areas, laboratories, storage areas, tankage and contents, pipelines, types of chemicals used, types of products produced, types of wastes produced, and points and methods of shipping and distribution that were associated with Vacuum Oil and its refinery operations.” The following potential waste materials were identified as resulting from the refinery operations: waxes and asphalts; solids from settling tanks; solids from cooling tanks; coke, ash and cinders; soaps and additives; spills and leaks associated with the transfer of oil, gasoline and products within the facility; coal; spent filter cake; laboratory waste; machine shop oils and wastes; and garbage and household debris.

After reviewing and summarizing the previous environmental reports undertaken with regard to the former Vacuum Oil site, this report concludes:

1. The bulk of the refinery operations took place north of Flint Street, while refinery operations did occur south of Flint Street, these operations included grease manufacturing, storage tanks and support operations (*i.e.* barrel/drum preparation and storage);
2. The presence of the active junkyard will significantly complicate the ability to interpret environmental data from the northern portion of the Site (south of Flint Street) as it will be difficult to distinguish between residuals left from the refinery operations and wastes released by material in the junkyard;
3. The NYSDEC soil gas survey results are at their highest concentrations in the center portion of the Site. There were no known tanks or refinery operations in this area;
4. A variety of SVOCs (primarily PAHs) and metals were found in surface soil, subsurface soil and in groundwater wells that were completed in that area from the site during the NYSDEC investigations, with concentrations being somewhat higher in the areas where the former operations occurred;
5. No visual signs of waste pits, landfills, or obvious areas containing significant amounts of debris were observed (aside from the existing scattered debris that appears to be of more recent origin);
6. The NYSDEC investigation characterized constituents of concern that are associated with the Site, though delineation has not been completed; and
7. There are issues related to the interpretation of the NYSDEC 2000 Site investigation data that were not considered and should be addressed if additional sampling was conducted. The NYSDEC did not consider the impacts the junkyard may be having on the environmental conditions of the Site and did not research that. NYSDEC did not produce any background or reference information in order to understand the relative magnitude of the inorganic compounds.

**May 2006 - BOA Nomination Phase Grant Application,
Vacuum Oil-South Genesee River Corridor, prepared by the City of Rochester**

This application was submitted to the New York State Department of State ("NYSDOS") requesting funding to perform a Nomination Study of an approximate 60 acre area including the former Vacuum Oil Facility and the Site. The application indicates that the Site is located in an area characterized by

an underprivileged minority community located adjacent to historic and vibrant neighborhoods within the City of Rochester, and includes many brownfield sites.

Indeed, the Site at issue in this application is specifically discussed in the application as a problem site. “The key brownfield sites within the [proposed BOA area] include the former Vacuum Oil Site (including the current Atkins Scrap Yard parcel [*i.e.* 15 Flint Street], Sears Warehouse, and Foodlink sites) These critical sites within the [proposed BOA area] are significant hurdles for any redevelopment of this area. Further evaluation and remediation will likely be required prior to redevelopment.”

Further, the application specifically identified, as one of the strategic opportunities of a BOA, “the transitioning [proposed BOA area] properties traditionally used for commerce and industry to a mix of commercial and residential uses attracted by the close proximity to the river and the University of Rochester, the natural setting and the . . . communities to the north, east and south.” As such, the proposed reuse of the Site is directly in line with the strategy of the proposed redevelopment of the BOA area.

**April 2008 - Phase I Environmental Site Assessment, 15 Flint Street,
prepared by Stantec on behalf of the City of Rochester**

The purpose of this Phase I Report was to identify recognized environmental conditions (RECs) related to 15 Flint Street specifically, as opposed to the history, or sampling of, the entire Vacuum Oil Facility.

The Phase I indicates that at the time of the report there were two NYSDEC open Spill Numbers related to 15 Flint Street. The Phase I reports that “[t]he subject property and the remainder of the surrounding former Vacuum Oil facility is the subject of NYSDEC Petroleum Spill File No. 0370583. The spill file, which is currently open, is based on the historic use of the facility as a refinery. A Stipulation Agreement between ExxonMobil Corporation and NYSDEC, effective February 5, 2008, specifies completion of an investigation of potential environmental impacts on former Vacuum Oil parcels to be followed by submission and implementation of a Remedial Action Plan. NYSDEC Spill No. 0750736 was reported on August 21, 2007. The spill was reported by a neighbor concerned over the potential disturbance of contaminated soils on site during the site clearing activities The spill report records that in an interview with NYSDEC and City of Rochester representatives, the owner stated that he was removing old vehicles, vehicle parts and tires from the site in anticipation of making improvements to the property. The spill has not been closed.” Further, the property which is immediately adjacent to 15 Flint, and which was also historically part of Vacuum Oil, is subject to Spill Number 0650813, which, as of the date of the Phase I, had not been closed.

Based on the extensive documentation of on-Site contamination, as well as historic operations and present day operations, the Phase I identified thirteen RECs related to the historic use of the site for

the Vacuum Oil operations, six RECs related to the use of the site for scrap salvage and automobile wrecking and salvage, and five other additional issues and other areas of concern. Based on these significant results, the Phase I offered the following conclusions:

1. Based on the historical uses of the site and adjacent properties over the last 133 years, including petroleum storage and processing, scrap metal salvage and automotive junkyard operations, and waste disposal, it is recommended that an investigation be performed to evaluate the potential for on-site soil and groundwater impacts from the historic on-site operations and conditions on adjacent properties. The recommended investigation includes sampling and analysis of surface and subsurface soil and overburden and bedrock groundwater in the areas of the RECs identified in this report.
2. It is important to recognize that the RECs identified at the subject property that are related to the former Vacuum Oil Refinery represent a potential for on- and off-site contamination not only by petroleum constituents but also by hazardous substances. Contamination by hazardous substances may be subject to different regulatory requirements and considerations than those which apply to or derive from a February 5, 2008 stipulation agreement between NYSDEC and ExxonMobil (*Stipulation Pursuant to Section 17-0303 of the Environmental Conservation Law and Section 176 of the Navigation Law by ExxonMobil, Respondent*) under which ExxonMobil is responsible for environmental investigation and cleanup of the former Vacuum Oil site. Oil storage tank bottoms, still bottoms, condenser tank bottoms, settling tank bottoms, grease manufacturing process wastes, waste acid and caustic material, and acid and caustic sludges are examples of potential sources of contamination by hazardous substances.
3. It is recommended that the drums, containers, junked automobiles and automobile parts, tires, and miscellaneous debris located throughout the property be removed and properly disposed or recycled/reused as appropriate in accordance with applicable regulations.
4. Prior to renovations or demolition, suspect ACBMs in the two buildings where they were observed should be sampled and analyzed for asbestos content. If they are asbestos-containing (greater than one percent asbestos), or if they are assumed to be asbestos-containing, then abatement (repair, enclosure, encapsulation, or removal and disposal) should be supervised by a licensed asbestos contractor in accordance with state and federal regulations.
5. It is recommended that painted surfaces in the office building be kept in good condition. If painted surfaces are abraded or otherwise damaged, they should be repainted to prevent exposure to underlying paint, which may potentially contain

lead. If the building is proposed to be demolished, the demolition contractor should: be apprised of the potential presence of lead-based paint, take the necessary precautions to protect their workers and nearby residents; and properly dispose of the resultant demolition debris in a landfill licensed to accept such waste.

**August 2008 - Phase I Environmental Site Assessment, 5 Flint Street,
prepared by Stantec on behalf of the City of Rochester**

The purpose of this Phase I Report was to identify recognized environmental conditions (RECs) related to 5 Flint Street specifically, as opposed to the history, or sampling of, the entire Vacuum Oil Facility.

The Phase I indicates that at the time of the report there was one NYSDEC open Spill Number related to 5 Flint Street. The Phase I reports that “[t]he subject property and the remainder of the surrounding former Vacuum Oil facility is the subject of NYSDEC Petroleum Spill File No. 0370583. The spill file, which is currently open, is based on the historic use of the facility as a refinery. A Stipulation Agreement between ExxonMobil Corporation and NYSDEC, effective February 5, 2008, specifies completion of an investigation of potential environmental impacts on former Vacuum Oil parcels to be followed by submission and implementation of a Remedial Action Plan.

Based on the extensive documentation of contamination related to Vacuum Oil’s, and other previous operators’, historic operations, the Phase I identified eight RECs related to the historic use of the site for the Vacuum Oil operations, four RECs related to the use of the site for resource recovery, one RECs related to the use of 15 Flint for metal salvaging and as a junk yard, and six other additional issues and other areas of concern. Based on these significant results, the Phase I offered the following conclusions:

1. Given that access was not available for a subject property visit past the property line, it is recommended that access be obtained for a visit to the subject property that would include access to the interior of the building and the entire grounds. Similarly, it is recommended that a knowledgeable owner be interviewed to obtain site-specific information.
2. It is recommended that a subsurface investigation be performed to evaluate the potential for on-site soil and groundwater impacts from historic on-site operations and potential sources of contamination on surrounding properties. This recommendation is based on the historical uses of the subject property and adjacent properties over the last 133 years, including petroleum storage, transfer and shipping; drum washing; paint shop operations; and resource recovery operations on the subject property as well as refinery and salvage yard operations on adjacent properties. It is also based on the results of the 1999 to 2000 investigation by NYSDEC which indicated the presence in soil and groundwater at the

subject property of contamination by petroleum compounds and chlorinated VOCs and elevated metals concentrations and traces of pesticides. The recommended investigation includes sampling and analysis of surface and subsurface soil and overburden and bedrock groundwater in the areas of the RECs identified in this report.

3. It is important to recognize that the RECs identified at the subject property that are related to the former Vacuum Oil Refinery represent a potential on- and off-site contamination not only by petroleum constituents but also by hazardous substances. Contamination by hazardous substances may be subject to different regulatory requirements and considerations than those which apply to or derive from a February 5, 2008 stipulation agreement between NYSDEC and ExxonMobil (*Stipulation Pursuant to Section 17-0303 of the Environmental Conservation Law and Section 176 of the Navigation Law by ExxonMobil, Respondent*) under which ExxonMobil is responsible for environmental investigation and cleanup of the former Vacuum Oil properties. Oil storage tank bottoms and other refinery wastes, paint products and paint residues, and solvents are examples of potential sources of contamination by hazardous substances that may be associated with the RECs identified at the subject property.
4. Prior to renovations or demolition, it is recommended that suspect ACBMs in the subject building be sampled and analyzed for asbestos content. If they are asbestos-containing (greater than one percent asbestos), or if they are assumed to be asbestos-containing, then abatement (repair, enclosure, encapsulation, or removal and disposal) should be supervised by a licensed asbestos contractor in accordance with state and federal regulations.
5. It is recommended that painted surfaces in the subject building be kept in good condition. If painted surfaces are abraded or otherwise damaged, they should be repainted to prevent exposure to underlying paint, which may potentially contain lead. If the building is proposed to be demolished, the demolition contractor should: be apprised of the potential presence of lead-based paint, take the necessary precautions to protect their workers and nearby residents; and properly dispose of the resultant demolition debris in a landfill licensed to accept such waste.

**January 19, 2009 - Subsurface Investigation Summary Report,
prepared by Roux on behalf of ExxonMobil**

This investigation of the Vacuum Oil site provides the most detailed picture, to date, of the contamination on the Site. While ExxonMobil investigated significantly more area than just the Site at issue in this investigation, by identifying the soil boring and other sample points located on the Site it is possible to preliminarily characterize the contamination on Site.

The following sample points were installed on, or in the immediate vicinity of, 15 Flint: 12, 24, 25,

26, 27, 28, 29, 30, 31, 32, 33H, 35, 38, 39, 40, 41C, 42B, 43, 44C, 45C, 58C, 59, 60B, 72, 73 and 74, seven of which were converted to temporary well points. The following sample points were installed on, or in the immediate vicinity of, 5 Flint: 10A, 13, 15A, 16C, 17A, 20, 21, 22, 23, 46B, 50, 51B and 61A, four of which were converted to temporary well points. The sample location map from this investigation, maps depicting the location and concentration¹ of the various contaminants, and results tables from this investigation (for ease of reference) are attached separately as Exhibit "F."

Roux's investigation once again confirmed the presence of significant levels of contamination above the SCOs, including VOCs, SVOCs, metals and some pesticides. Indeed, 365 exceedances of the Track 1 SCOs were identified on the Site, and 80 exceedances of the Track 2 commercial SCOs were identified on the Site. In addition, 94 exceedances of AWQS were detected in on-Site groundwater samples.

ITEM 5: OWNERS AND OPERATORS

Previous Owners and Operators:

The Requestor has owned the Site since 2008. Prior to Requestor's purchase, property records (attached as Exhibit "G") indicate that the following parties either owned and/or operated the Site:

5 Flint Street

The following individuals all owned portions of (and thus are presumed to have operated) 5 Flint Street prior to the acquisition by Vacuum Oil Company (now Exxon Mobil) in the late 1800's, and thus, are presumed deceased:

| | | |
|--------------------|------------------|---------------------------|
| Masterton Ure | Alexander Oswald | Edmund Brucknell Estcourt |
| James S. Wadsworth | Abram Karnes | Isaac Hills |
| Whitney W. Hills | Simeon P. Alcott | Ebenezer Watts |
| Patrick Sexton | William H. Ward | Patrick Kearney |
| Hiram Allen | William Buell | Daniel N. Hoyt |
| Charles S. Buell | Timothy Wheeler | Martha J. Karnes |
| John Gordon | Epaphras Wolcott | Asa Sprague |

¹ The Roux report compares the sample result to TAGM 4046. The exceedances referenced above were determined by comparing the sample results to the appropriate re-use SCOs, not TAGM 4046.

| | | |
|---------------------|-------------------|----------------------|
| Henry S. Redfield | Sarah H. Redfield | George B. Smith |
| Henry B. Smith | Henry C. Roberts | Harvey P. Langworthy |
| Sarah S. Langworthy | Caroline A. Smith | Julia E. Roberts |
| Frances A. Smith | Hiram B. Everest | Mercy E. Everest |

The following other persons or entities have owned all or portions of (and thus are presumed to have operated) 5 Flint Street:

State of New York
The Capitol
Albany, NY 12224-0341

Rochester and Genesee Valley Railroad Company – believed to be the predecessor of:
Livonia, Avon & Lakeville Railroad
P.O. Box 190-B
5769 Sweeteners Blvd.
Lakeville, NY 14480
Phone: (585) 346-2090
Fax: (585) 346-6454

Vacuum Oil Company
Vacuum Oil Company Inc.
Socony Vacuum Oil Company, Inc.
Standard Oil Company of New York
All predecessors of:
Exxon Mobil Corporation
5959 Las Colinas Blvd.
Irving, Texas 75039

Rochester Distillery Company, Inc. (believed dissolved)
Rochester Scrap Baling Corp. (believed dissolved)
Geo. M. Clancy Carting Co. Inc. (dissolved March 24, 1993)
George M. Clancy (deceased)

George M. Clancy, Jr.
332 Carter St
Rochester, NY 14621-4125
(585) 458-4634

Henry D. Roselius (presumed deceased)
Melvin S. Rice (presumed deceased)
Donald E. Diamond (presumed deceased)
Frank J. Goodwin

Dannemiller Coffee Company
2302 Abbey Court
Alpharetta, Georgia, 30004-6028

Raymond J. and Karen R. Kneppar
P. O. Box 3338
Lake City, Florida 32056-3338
(904) 758-9351
raymond.kneppar@med.va.gov

Samuel C. Kneppar
226 Way Cross Way
Arnold, Maryland 21012-2248
(410) 777-5448

Kneppar Resource Recovery, Inc. (dissolved December 28, 1994)
One Flint Street Associates

15 Flint Street

The following individuals all owned portions of (and thus are presumed to have operated) 15 Flint Street prior to the acquisition by Vacuum Oil Company (now Exxon Mobil) in the late 1800's, and thus, are presumed deceased:

| | | |
|------------------|-------------------|---------------------------|
| Masterton Ure | Alexander Oswald | Edmund Brucknell Estcourt |
| William Deegan | Mary Deegan | Hurman Loomis |
| Abram Karnes | Martha J. Karnes | Heman Loomis |
| D. Sophia Riddle | Robert Riddle | Daniel Waters |
| Sarah H. Watters | James Gallagher | Elizabeth Gallagher |
| Martin Williams | Bridgett Williams | James Cotter |
| Ann Cotter | Samuel Ashton | Harriet Ashton |

| | | |
|---------------------|----------------------|---------------------|
| Emmet H. Hollister | Sarah E. Hollister | Bridget O'Brien |
| Rose Rinn | Thomas Healey | Catherine Healey |
| Nellie A. Everest | Hiram B. Everest | Carrie E. Clements |
| Arthur J. Everest | Grace D. Everest | Elijah L. Davis |
| Stephen Charles | Mary E. Charles | George W. Fisher |
| Sarah E. Fisher | Theodore J. Andrews | Ada Mary Andrews |
| Frank G. Stark | Emma J. Stark | Mary J. Blood |
| David Colbert | Josephine A. Colbert | Newell Allen |
| Gertrude A. Allen | Patrick Healey | George A. Bartholic |
| Julia C. Bartholic | Edwin Mahoney | John J. Mahoney |
| Mary Mahoney-Reagan | Jeremiah Reagan | |

The following other persons or entities have owned all or portions of (and thus are presumed to have operated) 15 Flint Street:

Stark Nellis Realty Company (believed dissolved)

City of Rochester
City Hall, Room
30 Church Street
Rochester, New York 14614

Vacuum Oil Company
Vacuum Oil Company Inc.
Socony Vacuum Oil Company, Inc.
Standard Oil Company of New York
All predecessors of:
Exxon Mobil Corporation
5959 Las Colinas Blvd.
Irving, Texas 75039

Rochester Scrap Bailing (believed dissolved)

Clara M. Lucas (believed deceased)
Hyman Lazerson (believed deceased)
Hy Lazerson & Sons, Inc. (believed dissolved)
Central Trust Company, Inc. (believed dissolved)
Sol Atkin (believed dissolved)
Samuel J. Atkin (believed dissolved)
Morris Atkin (believed dissolved)

Louis Atkin
80 Steel St
Rochester, NY 14606
(585) 254-0360

Flint Street Ventures, LLC
2150 William Street
Sloan, New York, 14206

To the extent any corporate records are available, they are attached in Exhibit "H." No additional phone numbers or addresses were available. The Requestor has no relationship with any former owners and/or operators.

Current Operators:

As the Site is currently vacant, there are no current operators.

ITEM 6: CONTACT LIST INFORMATION

1. The Chief Executive Officer:

Robert Duffy
Mayor
City of Rochester
City Hall
30 Church Street
Rochester, New York 14614

2. The City Zoning Bureau:

Bret Garwood
Director of Development Services
City of Rochester
Bureau of Business and Housing Development

City Hall, Room 0050
30 Church Street
Rochester, New York 14614

3. Residents, owners, and occupants of the site and properties adjacent to the site:

There are no residents on the Site. Adjacent residents, owners or occupants of adjacent sites are listed in the BCP Contact List and Neighbors Map contained in Exhibit "I."

4. Local news media from which the community typically obtains information:

City Newspaper
250 North Goodman Street
Rochester, New York 14607
(585) 244-3329

5. The public water supplier that services the area where the site is located:

Water in the area is provided by:

City of Rochester Bureau of Water
10 Felix Street
Rochester, New York 14608

6. Any person who has requested to be placed on the site contact list:

No property owner has requested to be placed on the list at this time.

7. The administrator of any school or day care facility located on or near the site:

Dr. Charles T. Lunsford School No. 19 (Pre-K through Grade 6)
Anne Brown Scott, Principal
465 Seward Street
Rochester, New York 14608
(585) 328-7454

8. The location of a document repository for the project (e.g., local library):

Phillis Wheatley Community Library
Lori Frankunas, Branch Site Manager
33 Dr. Samuel McCree Way
Rochester, NY 14608
(585) 428-8212

The library has accepted status as the repository.
See Exhibit "J," including library letter.

ITEM 7: LAND USE FACTORS

1. Do current historical and/or recent development patterns support the proposed use?

Yes. Current historical and/or recent development patterns in the City of Rochester support mixed-use commercial/residential in this area of the City.

2. Is the proposed use consistent with applicable zoning laws/maps?

Yes, for single-family housing. The Site is currently in the "R-1"- zoning district, which allows for low density residential uses. While the alternative proposal for commercial and multi-family use will require rezoning, as indicated by the City's BOA Application, the City is in support of the redevelopment of this area. Copies of the relevant zoning provisions and Comprehensive Plan are attached as Exhibit "K".

3. Is the proposed use consistent with applicable comprehensive community master plans, local waterfront revitalization plans, designated Brownfield Opportunity Area plans, other adopted land use plans?

Yes. The current zoning of the Site allows for the proposed reuse, and the Project is consistent with the City's Comprehensive Plan (*see Exhibit "K"*). Further, the City of Rochester is in full support of this application, and the proposed reuse. Indeed, the Site is within the proposed Vacuum Oil-South Genesee River Corridor Brownfield Opportunity Area, for which the City of Rochester submitted and BOA Nomination Phase Grant Application in May of 2006 (*see BOA Application in Exhibit "D"*).

4. Are there any Environmental Justice Concerns (See §27-1415(3)(p))?

There are no Environmental Justice Concerns pursuant to ECL §27-1415(3)(p) with the proposed reuse. However, leaving the Site unremediated may present a concern.

5-11. Responses to Questions 5-11 are answered as “yes” or “no” on the application form itself.

12. Describe on attachment the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural, and recreational areas.

The Site is located in an urban setting that is characterized by mixed residential and commercial uses. The following is a tabulation of surrounding property usage:

| DIRECTION | ADJACENT AND SURROUNDING PROPERTIES |
|-----------|-------------------------------------|
| North | Commercial |
| South | Recreational and Residential |
| East | Recreational |
| West | Commercial and Residential |

13. Describe on attachment the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge.

Based on the currently known conditions at the Site, there is the potential for groundwater to migrate from the Site. However, the Site is not in proximity to any known municipal water supply wells or recharge areas since the area is supplied with municipal water. Therefore, there is little potential that groundwater from the Site could affect either municipal water supply wells or recharge areas. The Site is, however, in the immediate vicinity of the Genesee River, which is only 100-200 feet to the east of the Site.

14. Describe on attachment the geography and geology of the site.

Topography: According to the United States Geological Survey (USGS) 7.5 Minute Series topographic map (Rochester Quadrangle, dated 1978), the Site lies at an elevation of approximately 515± ft. above mean sea level (amsl), as determined by the National Geodetic Vertical Datum of 1927.

Soils: According to the Soil Survey of Monroe County (1958), prepared by the United States Department of Agriculture (USDA) Soil Conservation Service (SCS) and accessed on the Natural Resources Conservation Service Web Soil Survey Site, native soil on the Site is identified as approximately 100% Urban land, described as areas that have been so altered or obscured by urban works and structures that identification of soils was not feasible. A soil boring on 5 Flint Street found a topsoil layer of 1.5 to 3 inches thick, underlain by fill up to 8.5 ft below ground surface (bgs), and with native soils consisting of silt with varying amounts of clay and sand. According to the Surficial Geological Map of New York – Finger Lakes Sheet (Cadwell, and others, 1986), overburden soils beneath the Site consist of outwash sand and gravel, abutted by lacustrine silts and clay.

Geology and Groundwater: According to the Geological Map of New York (Niagara Sheet, by Rickard and Fisher, dated 1970) bedrock beneath the Site is identified as dolostone and limestone, part of the Lockport formation. According to bedrock mapping by Young (1980) top-of-rock is at approximately 500 ft. amsl. Based upon topographic gradient and on hydraulic gradient mapping from the Groundwater Flow Map for Monroe County (Young, 1980), groundwater flow in the general vicinity of the Site is anticipated to be to the southeast, toward the Genesee River. However, groundwater contour mapping by the Department based on water levels observed on two occasions in three monitoring wells on 5 Flint Street reportedly showed groundwater flow to be west, away from the Genesee River.

Flooding: According to the Federal Emergency Management Agency (FEMA) Federal Insurance Rate Map (FIRM; Community Panel No. 360431 0020 B), the Site is located within Flood Zone C, which is described as an area of minimal flooding.