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01/18/2019

BY HAND

Hon. Thomas M. Roach, Mayor, and  
Members of the Common Council  
City of White Plains  
255 Main Street  
White Plains, New York 10601

Re: 52 North Broadway, White Plains, New York (the "Premises" or the "Site")

Dear Mayor Roach and Members of the Common Council:

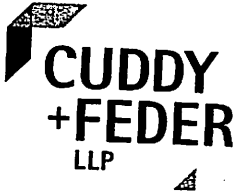
On behalf of WP Development NB LLC (the "Applicant"), we respectfully submit this letter given upon the completion of the City's independent investigation of the landfill area on the Site by VHB, which conducted a "Phase II Environmental Site Assessment" (the "Phase II Site Assessment").

As you know the report issued by VHB in connection with the Phase II Site Assessment confirms that the Applicant's specified soil analytics for the fill and cap cover at the Site were accurate. In addition, the Phase II Site Assessment confirmed that the information detailed in the Draft Environmental Impact Statement ("DEIS") and other documents submitted with this Application were consistent with the samples obtained by VHB. To further assist with your review of the Phase II Site Assessment, we respectfully enclose a January 18, 2019 Memorandum prepared by AKRF, Inc.

The laboratory analysis in VHB's Phase II Site Assessment indicates that a geomembrane liner with soil cover is an appropriate remedial program for the landfill area of the Site. Importantly, we respectfully submit that the proposed development with the parking garage situated within the landfill area would provide a more robust and improved remedial program, given that foundations and paved surfaces would be constructed to cap and cover a large part of the fill material.

As the Common Council previously was advised, the Applicant and New York State Department of Environmental Conservation ("DEC") have signed an Order on Consent setting forth a protocol and timetable to remedy certain conditions on the landfill portion of the Site. The Phase II Site Assessment confirms that the information on which that protocol was based was accurate.

Accordingly, we respectfully submit that the Public Hearing held in connection with the DEIS should be closed on February 4, 2019 and a reasonable period for public comment be established to complete the DEIS process, so that the Final Environmental Impact Statement may be



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prepared for your review. We look forward to continuing to work with the City to review this important project.

Thank you for your consideration in this matter.

Respectfully yours,

A handwritten signature in black ink, appearing to read "William S. Null", is written over a horizontal line.

William S. Null

WSN:yp; Enclosures

Cc: John G. Callahan, Esq., Chief-of-Staff and Corporation Counsel; Damon Amadio, Commissioner of Building; Christopher Gomez, Commissioner of Planning; Peter S. Duncan, Karl Mittermayr and Justin Winiarz; Anthony F. Veneziano, Jr., Esq. and Mark P. Miller, Esq.; Carl Ordemann & Michael Berger; Nina Peek, Amy Crader and Peter Feroe; Robert Aiello; Geoffrey Thompson; and Clifford L. Davis, Esq.



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## Memorandum

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**From:** AKRF, Inc.  
**Date:** January 18, 2019  
**Re:** Phase II Environmental Site Assessment of 52 North Broadway

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On behalf of the Property owner, AKRF, Inc. reviewed the Phase II Environmental Site Assessment of 52 North Broadway entitled, "Good Counsel: Open Space Fill Area" that was prepared by VHB and dated January 8, 2019. Below is a summary of our review of that Phase II.

### **SUMMARY OF CONCLUSIONS**

#### *Contents of Fill*

VHB's Phase II report presents data that is consistent with the results of all previous investigations. There were no conditions discovered that would indicate that the NYSDEC-approved, and previously implemented, remediation measures (e.g., installing the geomembrane cap and covering with appropriate soil) are insufficient to be protective of public health and safety.

#### *Contents of Soil Cap*

The laboratory analysis indicates that the soil cap area meets DEC's standards and is not considered a threat to human health or the environment based on its approved use.

#### *Proposed Site Remediation*

The Proposed Project would include improvements to the engineered Site cap that consist of the installation of a concrete foundation slab for the building footprint, installation of a new geomembrane liner outside of the building footprint, asphalt paving for roadways and parking areas, and, two feet of clean soil in landscaped areas. This NYSDEC-approved remediation method has been shown to be very effective in preventing exposure to and migration of background compounds associated with C&D fill material and is consistent with the approach allowed by NYSDEC for similar sites.

VHB's conclusion that fill "may" need to be removed from underneath the building footprint is due to the comparison to NYSDEC's soil cleanup standards for unrestricted use, which are not currently applicable to the Site. The report fails to mention the currently applicable criteria or other remediation methods (other than soil removal) that would be considered for Sites like 52 North Broadway. In situations like 52 North Broadway where there is fill material and no known contaminant migration, the NYSDEC mandated feasibility studies often confirm that the best alternative is to keep the fill material in place and prevent exposure.

## CHARACTERIZATION OF MATERIAL ON-SITE

### Fill Material

- VHB's Phase II report presents data that is consistent with the results of all previous investigations including:
  - The 2004 NYSDEC-mandated investigation of the first 30,000 cubic yards of fill brought into the Site<sup>1</sup>;
  - The 2006 NYSDEC-mandated investigation of the second 30,000 cubic yards of fill that was permitted to be brought on to the Site<sup>2</sup>; and,
  - The 2012 investigation by the Site's previous owner;<sup>3</sup>
- No petroleum spills or areas of contamination<sup>4</sup> were documented during the investigation;
- There were no conditions discovered that would indicate that the NYSDEC-approved, and previously implemented, remediation measures (e.g., installing the geomembrane cap and covering with appropriate soil) are insufficient to be protective of public health and safety.

### Soil Cap

- VHB's Phase II report documents that contamination, as defined by NYSDEC, was not present in the soil cap samples, and detections were below the applicable NYSDEC soil criteria for the fill area [NYSDEC's Restricted Residential Soil Cleanup Objectives (RRSCOs) and Groundwater Soil Cleanup Objectives (GWSCOs)] (see Table 1). Therefore, the laboratory analysis indicates that the soil cap area meets DEC's standards and is not considered a threat to human health or the environment based on its approved use.
- The fill area was approved by NYSDEC for use as recreational open space. The appropriate standards for soil intended for recreational open space use are NYSDEC's RRSCOs and GWSCOs. VHB's comparison to NYSDEC's Unrestricted Use Soil Cleanup Objectives (UUSCOs) is not appropriate for this Site.
- VHB's use of the term "impaired" is not appropriate, and not recognized by NYSDEC as a way to define the analytical condition of soil.
- Based on laboratory results, the soil cap would not be defined by NYSDEC as containing "contamination," "contaminants," "hazardous waste," or, "hazardous material".

**Table 1: Compounds in Soil Cap**

Compound	UUSCO (Unrestricted) (mg/Kg)	RRSCO (Restricted Residential) (mg/Kg)	GWSCO (Groundwater) (mg/Kg)	SB-1 Soil Cap (mg/Kg)	SB-2 Soil Cap (mg/Kg)	SB-11 Soil Cap (mg/Kg)
4,4'-DDT (Pesticide)	0.0033	7.9	136	0.0046	0.00922	0.0098
Lead	63	400	450	54.7	137.0	228.0
Zinc	109	10,000	2,480	75.9	152.0	162.0
Mercury	0.18	0.81	0.73	0.0692	0.1830	0.0933
Dieldrin* (Pesticide)	0.005	0.2	0.1	0.0059	0.006	0.004

**Notes:** \* Found in AKRF QA/QC sample above UUSCO.  
**Sources:** VHB Phase II Report; Table 2.

<sup>1</sup> As documented in the January 10, 2005 Site Investigation and Remediation Report, which was included in the DEIS.

<sup>2</sup> As documented in the 2007 Final Engineer's Report, which was included in the DEIS.

<sup>3</sup> August 2012 report, submitted by the Sisters to NYSDEC and included in the DEIS.

<sup>4</sup> Contamination is defined by DEC as the presence of hazardous waste or petroleum, neither of which are documented within the fill area.

## PROPOSED REMEDIATION ACTIVITIES

### *Fill Area*

- The remediation methods previously approved by the NYSDEC for this Site included:
  - A use restriction (the restrictive covenant); and,
  - Isolation of the fill material below an engineered cap that consists of a geomembrane liner and one to two feet of soil cover.
- As described in the DEIS (pg. 16-8), the Proposed Project would include improvements to the engineered cap that consist of:
  - The installation of a concrete foundation slab for the building footprint;
  - Installation of a new geomembrane liner outside of the building footprint;
  - Asphalt paving for roadways and parking areas; and,
  - Two feet of clean soil in landscaped areas.
- This NYSDEC-approved remediation method has been shown to be very effective in preventing exposure to and migration of background compounds associated with C&D fill material and is consistent with the approach allowed by NYSDEC for similar sites.
- The redeveloped condition would not only meet the current remediation requirements, it would also be a significant improvement and provide a more effective level of remedial action.
- VHB's conclusion that fill "may" need to be removed from underneath the building footprint is due to the comparison to NYSDEC's UUSCOs, which are not currently applicable to the Site. We do agree, as described below, that if excess material cannot be incorporated below the Site cap, then it would be properly disposed off-Site.
- The report fails to mention the currently applicable criteria or other remediation methods (other than soil removal) that would be considered for Sites like 52 North Broadway.
- NYSDEC-approved alternative methods include use restrictions to allow for less conservative soil standards, and the use of physical means, like a barrier, to prevent exposure to compounds within fill material that is allowed to stay on-Site.
- In situations like 52 North Broadway where there is fill material and no known contaminant migration, the NYSDEC mandated feasibility studies often confirm that the best alternative is to keep the fill material in place and prevent exposure.
- It is also important to note that the NYSDEC has, and will continue to have, jurisdiction over this Site.

### *Fill Material Disposal*

- As detailed in the DEIS, "Excess material that cannot be reused below the Site cap will be properly disposed of off-Site." (DEIS pg. 16-7).
- This is consistent with VHB's recommendation that "Off-Site disposal of surplus soils should be considered due [to] the impairments detected." (VHB pg. 22)

### *Site Cap*

- VHB's report indicates that the existing soil on top of the geomembrane liner is consistent with the criteria for restricted residential use (i.e., RRSCO), which is the standard currently applicable to the Site and correlates to the Applicant's intended future use of the Site.
- The Proposed Project, as detailed in the DEIS, is consistent with the recommendations in the VHB report, which includes a new Site cap consisting of a building foundation, asphalt roadways, and two feet of clean fill over a new geomembrane liner.

*Soil Vapor*

- The Proposed Project, as detailed in the DEIS, would include “vapor mitigation measures for future buildings located [in the Fill Area] to prevent subsurface vapors from entering the overlying building. Approved measures typically consist of a vapor barrier and a network of screened pipes to prevent vapors from intruding into the building.” (DEIS pg. 16-8)
- Testing would be conducted following building construction to determine whether the sub-slab venting system would be completed as an active system (with blower) or a passive system (with wind driven turbine).
- This determination would be made in consultation with the NYSDEC and NYSDOH.
- This is consistent with VHB’s recommendation to include a sub-slab soil vapor barrier and, to be the most conservative, incorporate an active sub-slab depressurization system.