

**U.S. EPA's Response to Comments
Regarding the Proposed Prospective Purchaser Agreement with Flint Commerce Center, LLC**

Comment Period Summary

The U.S. EPA has proposed to enter into a Prospective Purchaser Agreement (PPA) with Flint Commerce Center, LLC (FCC)¹ in order to clarify FCC's environmental liability regarding its proposed redevelopment of roughly 320 vacant acres of the Buick City Site in Flint, Michigan. Before EPA may enter into a PPA it must submit the proposed PPA to a 30-day public comment period and must hold a public meeting in the affected area, if one is requested.

The EPA complied with those requirements. On June 22, 2023, EPA published notice of the 30-day comment period in the Federal Register. See 88 Federal Register 40821 (June 22, 2023). EPA received a request for a public meeting on July 13, 2023. A public meeting was held at the Hasselbring Senior Center in Flint, Michigan on August 29, 2023. The public comment period was reopened and ran from August 28, 2023, to September 13, 2023. See 88 Federal Register 58579 (August 28, 2023).

EPA initially offered the public two options to deliver comments and then expanded that number to four when the public comment period was reopened. No comments were received through Regulations.gov or the mail. EPA received two handwritten comments at the public meeting. People largely chose to email their comments to EPA. In all, EPA received emails from 46 people and one email from a Flint-area advocacy group. Some people sent multiple emails. There were emails from ten people that identified themselves as living somewhere other than Flint, including from outside of Michigan. Most commenters oppose EPA consenting to the PPA. Two people sent emails in support of EPA consenting to the PPA. One person offered their support for the project via handwritten comment. The comments and responses are grouped below around a number of common themes.

EPA has considered all comments and believes the PPA is appropriate, proper, and adequate. Therefore, EPA will not modify or withdraw its consent to the PPA.

Community Engagement/Transparency/Studies

Comment: It is most unfortunate that RACER TRUST has not fully engaged the community nor taken the position of the best options for our economic and environmental development. This is topped with Ashley Capital (FCC)'s questionable acquisition tactics involving favors to governmental officials.

Comment: We need transparency and accountability before any big company tries to mess with Flint.

Comment: These projects cannot go forward without thorough community engagement, proper environmental assessments, and transparency.

¹ FCC is an entity created by Ashley Capital.

Comment: Flint has been a poster child of environmental injustice for years, and this project appears poised to move forward with added pollution for a community whose input has been largely ignored.

Comment: I urge EPA to cease construction and, in the future, operate with community input and health research and data at the forefront of future projects.

Comment: I want representatives to sit in important meetings when decisions are being made that affect our community.

EPA's Response: The past or future level of engagement with citizens, RACER's decision to sell its remaining property to FCC, FCC's plans to construct large commercial/industrial buildings, or a perceived lack of environmental studies are not reasons for EPA to withdraw or modify its consent to the PPA. Pursuant to the Environmental Response Trust Consent Decree and Settlement Agreement (CD)² that came out of General Motors' 2009 bankruptcy, EPA is obligated to work with prospective purchasers to address their liability concerns for the property. If a prospective purchaser determines that certain self-executing protections currently available under the law are not protective enough, EPA shall upon request use one or more of specific legal instruments (PPAs, Bona Fide Prospective Purchaser Work Agreements, or comfort/status letters) to address the liability concerns of the prospective purchaser for existing contamination. FCC requested a PPA and EPA agreed to negotiate a PPA.³

The proposed PPA is not an opportunity for FCC to ignore the requirements of environmental law. The PPA is a liability-clarifying legal instrument that encourages the revitalization of contaminated land by providing the prospective purchaser with a covenant not to sue for existing contamination in exchange for access to the property, cooperation, and the prospective purchaser's due care with respect to the contamination, including compliance with applicable federal, state, and local laws and regulations.⁴ So, FCC's accountability for public health and the environment is built into the PPA. The CD makes clear that a purchaser must still be held responsible for any new contamination or the exacerbation of existing contamination. The PPA reflects these requirements at Sections IV (Settlement Agreement), V (Access/Cooperation), VI (Due Care), VIII (United States' Covenant Not to Sue), and IX (Reservation of Rights).

Regardless of whether EPA withdraws, modifies or gives its consent to the PPA, the community will have additional opportunity to participate. The RCRA Corrective Action⁵ process has in the past provided, and will in the future provide, the public with the opportunity to provide its input on the methods for addressing the contamination at the Buick City Site. For example, in 2010 EPA issued a

² The CD is Appendix 1 of the PPA.

³ EPA has entered into thirteen PPAs at RACER properties.

⁴ The enforcement authorities addressed in the PPA arise from the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 United States Code (U.S.C.) §§ 9601-9675, as amended (CERCLA); and the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992k, as amended (SDWA), more commonly referred to as the Resource Conservation and Recovery Act, or RCRA for short.

⁵ To learn more about RCRA Corrective Action, see <https://www.epa.gov/hw/learn-about-corrective-action>.

Statement of Basis for the Southend portion of the Site. The public had an opportunity to review the documents in the administrative record, to participate in the public meeting, and comment on the proposed remedy. EPA took those comments into consideration before making a final decision on the remedy. Recently, the lead agency role for oversight of RACER's activities at the Site shifted from EPA to the Michigan Department of Environment, Great Lakes, and Energy (EGLE). Under EGLE's oversight, RACER is continuing the corrective action work under a consent order. The agreement between RACER and EGLE is called the Corrective Action Consent Order (CACO). The CACO⁶ requires meaningful public participation. See Sections 8.4.3 and 8.9.

Alleged Bribery

Comment: It is most unfortunate that RACER TRUST has not fully engaged the community nor taken the position of the best options for our economic and environmental development. This is topped with Ashley Capital (FCC)'s questionable acquisition tactics involving favors to governmental officials.

Comment: I object to the apparent corruption in the City of Flint as to Ashley Capital and the current Mayor of the City of Flint (Sheldon Neeley), and certain City of Flint City Council members. Flint City Council and Mayor Sheldon Neeley should have demanded the U.S. government fully cleans up the site, and not approve brownfields tax captures to transfer its wealth to the rich.

Comment: Buick City developer gave gifts to nonprofits recommended by Flint council members.

EPA's Response: The allegations of corruption are connected to decisions by local officials regarding the use of tax dollars for redevelopment of the Site. Those allegations do not pertain to EPA nor directly to the PPA and therefore are not a basis for EPA to withhold or modify its consent to the PPA.

Minority Contracting/Hiring

Comment: This [is a] majority black community [and the PPA] lack[s] contract allocations to black contractors.

Comment: No one (e.g. not Ashley Capital ...nor the City of Flint Officials [i.e. whom have "had their palms greased" with monies for Ashley Capital]) have ever stated that anyone from the actual City of Flint will help build out the alleged Mega-warehouse[s] planned at the Buick City Site.

Comment: This project is allegedly supposed to bring "good paying jobs" to Flint; however, what's the proposed ratio of Flint residents/natives having senior/executive level positions as opposed to solely labor-intensive roles.

⁶ The CACO is available from EGLE's web site: <https://www.michigan.gov/egle/about/organization/materials-management/hazardous-waste/liquid-industrial-byproducts/racer-buick-city>.

EPA's Response: EPA does not have the legal authority to require a prospective buyer to commit to any hiring or contracting practices in its PPAs for RACER properties. Therefore, without this legal basis for hiring, this line of comments is not a basis for EPA to withhold or modify its consent to the PPA.

Lack of Community Benefit

Comment: The residents of Flint have been poisoned and positioned to be disadvantaged. Millions of dollars have flowed in our community since the water crisis, yet the housing stock, roads, schools, and public health systems continue to fail. I oppose the purchase of Buick City and believe our funds, environment, and economy will not benefit from the sale.

EPA's Response: RACER is obligated by Paragraph 29 of the CD to try to sell or transfer the properties that it owns, with the objective that they be put to productive or beneficial use. RACER has had much success getting its properties redeveloped. One positive example can be found at the Delco Chassis Industrial Land I & II Sites in Livonia, Michigan. RACER sold the property to Ashley Capital (a/k/a Livonia West Commerce Center and Livonia West Commerce Center 2) so that Ashley Capital could redevelop those sites. (EPA entered into PPAs with Livonia West Commerce Center and Livonia West Commerce Center 2.) RACER highlights the many economic benefits that have come from redevelopment of those sites on its web site.⁷ The Livonia sites and the Buick City Sites are similar in that corrective action is ongoing. Environmental benefits have been realized at all of those sites because of RACER's work to remediate existing contamination and there are further benefits to be realized as RACER's work continues. As stated already, EPA encourages land reuse by clarifying the prospective purchaser's environmental obligations. Also, EPA will continue to work with EGLE to oversee the corrective action—to ensure environmental benefit—at Buick City.

Lack of Plans

Comment: Ashley Capital does not have a plan for mitigating the contaminants it will encounter as it disturbs and removes the slabs at the Buick City site. Without a plan, the PPA cannot and should not be approved. [Note: EPA received this comment from 23 people.]

Comment: They did not show Flint residents a plan about [contaminants] or removal.

Comment: I think Ashley Capital should not get the PPA because they have not shown the City of Flint a plan.

EPA's Response: Prospective buyers that wish to enter into a PPA for a RACER property are not required to submit to EPA plans for handling or mitigating contaminants. However, Section VI (Due Care) of the PPA requires FCC to handle, excavate, and dispose of any encountered Existing Contamination in accordance with all Federal, State, and local laws and regulations. Additionally, except in an emergency situation, FCC must notify EGLE and EPA prior to taking any action with regard

⁷ https://www.racertrust.org/application/files/3516/5118/0049/RACER_EPAcasestudyDELCOCHASSIS4-28-22.pdf

to Existing Contamination. RACER will also continue to perform corrective action per the CACO and EGLE will continue oversight of RACER's performance, with EPA's assistance. Therefore, the fact that plans for removal or mitigation of contaminants were not submitted to EPA or to the public by FCC is not a sufficient reason for EPA to withhold or modify its consent to the PPA.

Utilization of Public Funds

Comment: We shouldn't have to pay for cleanup after Ashley Capital buys it. We struggle as it is and the cleanup needs to come from not us since we didn't do this.

Comment: I object to my taxpayer money being spent on what I believe amounts to Ashley Capital being paid to remediate the toxic Buick site.

Comment: Flint is a source of pride and not an opportunity to support corporate greed. [Note: EPA received this comment from 10 people.]

Comment: How are taxpayer funds going towards this project when the community has clearly stated what should be a priority?

EPA's Response: Local, county and state officials (and one philanthropic organization) have decided to utilize available funding mechanisms in order to assist FCC with the redevelopment of the Buick City Site. It is not EPA's role to question the wisdom or propriety of these state and local decisions.

Comment: How is it that ARPA dollars were allocated for this project; whereas Flint community members have been asking for transparency with the ARPA funding to support local work and their asks have not been prioritized. For example, it appears that the ARPA investment for this project supersedes the investment in youth programming in Flint (why aren't social services deemed as a high priority)?

Comment: Since ARPA funds were received for this project, what are the specific Justice40 benefits for Black, Latinx, Indigenous and economically disadvantaged Flint community members?

EPA's Response: Questions about the use of ARPA funds would be best directed to the entities that will be contributing ARPA funds for the redevelopment. To the best of EPA's knowledge, those entities are the City of Flint and Genesee County.

Comment: With the remaining funding that is needed to complete the remediation as RACER has shared, where and how will this gap be closed to be sure that innocent taxpayers are not footing the bill for a polluter (GM for example) who was not fully held responsible after their bankruptcy in 2009?

EPA's Response: GM's responsibilities for the 89 RACER properties were resolved by the CD, which provided significant funds to the RACER Trust for cleanup of the properties. If the environmental action funds in the Trust are fully depleted, EPA and the State have the ability to address the remaining contamination under their own authorities.

Environmental Concerns

Comment: Knowing the history of legacy pollution caused by the automobile industry in Flint, what ongoing oversight and accountability measures will be implemented to ensure pollutants aren't being emitted in the air, water, and soil and if pollution is being emitted, what are the specific consequences for the polluter?

EPA's Response: Corrective action at the Buick City Site has been ongoing for many years, first under EPA's direct oversight and now under EGLE's direct oversight. RACER continues to perform corrective action per the CACO with EGLE. FCC's actions are governed by federal, state and local law. FCC enjoys the protections of the Covenant Not to Sue in the PPA, so long as it complies with the PPA and, importantly, Sections V (Access/Cooperation), VI (Due Care) and VII (Certification). The Covenant Not to Sue is limited by the United States' Reservation of Rights, as enumerated in Section IX of the PPA.

Comment: If in fact the site is as contaminated as Ashley says, then what is being done and what will be done to capture the site's fugitive dust during remediation?

EPA's Response: FCC, its contractors, and its subcontractors must use due care when they encounter Existing Contamination under Section VI of the PPA. The proper suppression of dust is one way FCC will meet its due care obligations. Ashley Capital/FCC has submitted to EGLE a "Concrete Razing, Crushing, Reuse, Utility Construction and Soil Cover Plan," sometimes referred to as a materials management plan (MMP). EGLE is reviewing the MMP. The MMP addresses, among other things, how dust will be suppressed so as to prevent harm to residents.

Comment: Will the Flint residents who live in close proximity to the Buick site be evacuated during remediation? If so, then how? If not, then why not?

EPA's Response: EPA has not determined a need to evacuate nearby residents in order to protect their health. Generally speaking, a decision to relocate residents would be made by evaluating the health and ecological hazards present and the possible exposure pathways.

Comment: What level and type of PPE (personal protective equipment) are the Buick City site remediation workers wearing? How often are these workers wearing PPE? Are these workers wearing HAZMAT (hazardous materials) suits? If so, what type? If not, then why not? How often are these workers wearing HAZMAT suits? Are visitors to the site, to include City of Flint officials, wearing PPE? If not, then why not? Are visitors to the site, to include City of Flint officials, wearing HAZMAT suits? If so, what type? If not, then why not?

EPA's Response: The use of protective gear and the level of protective gear depends on what type of exposure to Existing Contamination is expected. Simply walking over the concrete that caps the Buick City Site would require minimal levels of protective gear, such as proper footwear, because there is no exposure to Existing Contamination. Workers that engage in corrective action work will have to wear more protection, such as would be appropriate for the type of contamination that is expected to be encountered and the type of possible exposure.

Miscellaneous

Comment: The "prospective purchase contract" does not contain an "express" statement and agreement between the City of Flint and Ashley Capital ...that disabled persons such as myself will not be retaliated against by the City of Flint/State of Michigan.

Comment: I further object because there literally seems that there is nothing in it for the disabled. For example, does Ashley Capital or the City of Flint plan upon making sure that whatever is ultimately built on the Buick City Site is fully ADA compliant? And disabled "friendly"?

EPA's Response: EPA does not require such commitments of prospective buyers as part of the PPAs for RACER properties. The PPAs are legal instruments for clarifying responsibility under RCRA and CERCLA. The lack of such commitments in the PPA, however, do not absolve a prospective buyer from having to comply with Federal laws such as the Americans with Disabilities Act.

Comment: Soon there may be a "glut" of fulfilment type warehouse space.

EPA's Response: EPA has a very limited role in deciding how the land will be used. When a prospective purchaser asks EPA for a PPA, EPA ensures that the proposed use of the land is not inconsistent with the selected remedy and any Institutional Controls such as zoning laws and Environmental Restrictive Covenants. Therefore, EPA will not withhold or modify its consent to the PPA because of possible future downturns in the market for warehouse spaces.

Comment: What specific steps will RACER Trust and the EPA take to ensure that the community's overwhelming pushback against the development project is taken seriously, given that taxpayer dollars have already been invested in it?

EPA's Response: Respectfully, EPA disagrees that there was overwhelming pushback. At the 2020 census, Flint had a population of 81,252. 48 people, some of whom are not from Flint, and an advocacy group provided written comments. EPA is ensuring that the commenters' concerns are taken seriously in the context of weighing whether it should withdraw or modify its consent to the PPA, while keeping in mind the purpose of the PPA, which is to clarify the purchaser's responsibility under RCRA and CERCLA.

Comment: What restorative resources and support has been or will be provided to Flint residents that have suffered public health issues due to the proximity to the toxic, and formerly abandoned area?

EPA's Response: The funds in the Trust are to be used for specific environmental response purposes, which by their very nature, may provide public health benefits, but are not specifically designated for restorative resources and support for public health. The potential lack of such restorative resources or support are not reasons that could form the basis for EPA to withhold or modify its consent to the PPA.

Comments in Support

Comment: I am writing to support approval of the Racer Trust Buick City PPA. Ashley Capital has a long and successful history of managing remediation and development of brownfields. This project will not only contribute to environment cleanup and remediation of contamination at an abandoned industrial site, it will provide much needed economic development for my City.

Comment: We are in desperate need of revitalization, and the prospect of driving by Buick City and witnessing economic activity, job creation, and the transformation of a poisoned vacant field into a hub of productivity is a vision that resonates deeply with our community. It represents a path forward, a chance to reclaim our city's potential, and I wholeheartedly urge the EPA to support this vital endeavor.

Comment: I am in support of this project.

EPA's Response: The revitalization of contaminated properties is a key part of EPA's cleanup mission. EPA will provide its consent to the PPA.