



FUNDAMENTALS OF REAL ESTATE LAW WORKSHOP

ENVIRONMENTAL ISSUES IN REAL ESTATE TRANSACTIONS

Presented by
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March 7, 2018

Environmental Issues



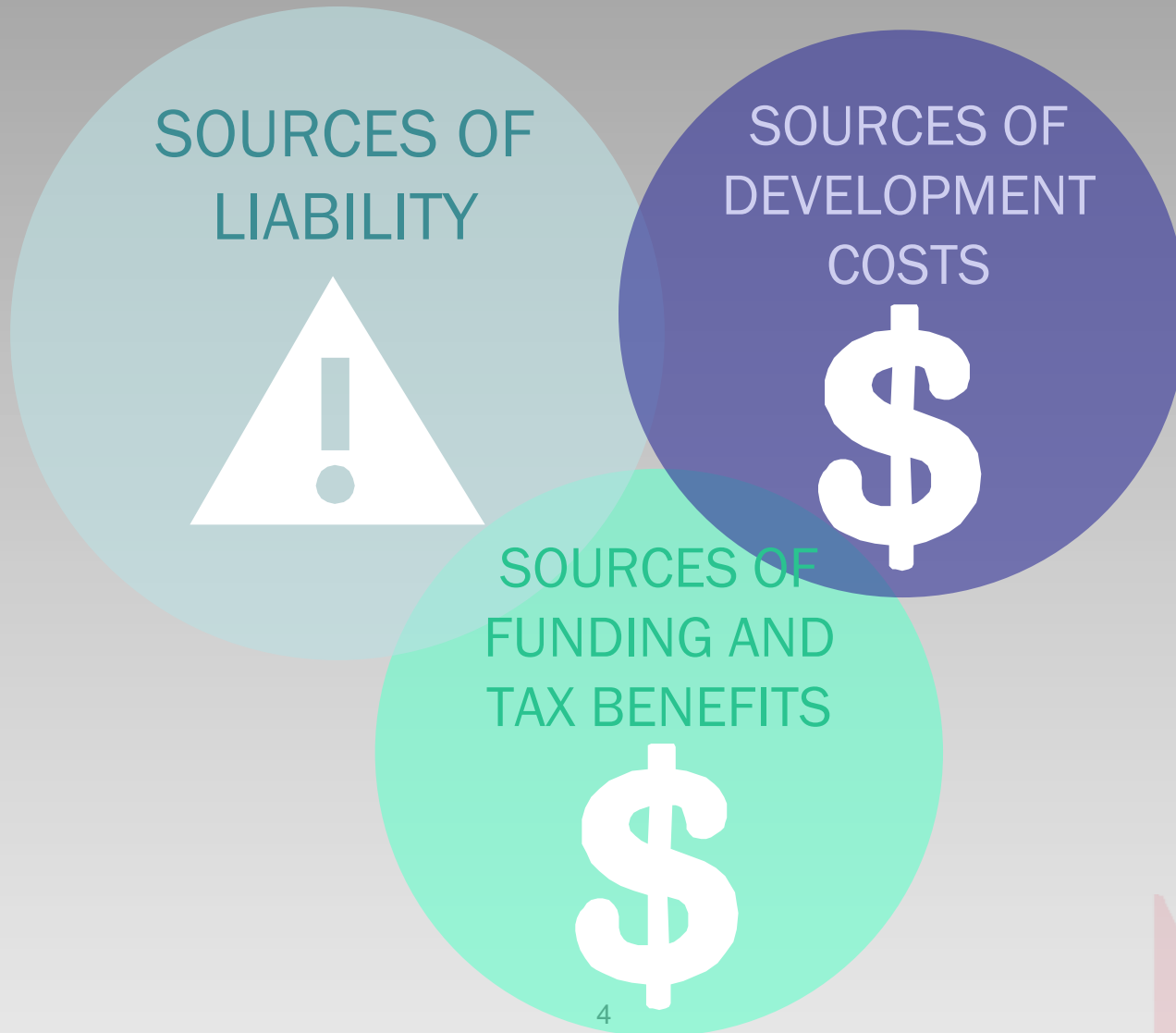
Contamination Poses What Risks?

- Regulatory enforcement
- Cost overruns
- Third party claims
- Natural resource damages
- Off-site disposal liability

BUT there are some incentives too.



Contamination



Contamination



SOURCES OF LIABILITY

CERCLA or “Superfund” and its defenses

- Innocent purchaser
- BFPP
- Contiguous Property
- Voluntary Cleanup

State common law

- Statutes
- Non-disclosure
- Tort claims

Contamination



SOURCES OF LIABILITY AND DEVELOPMENT COSTS

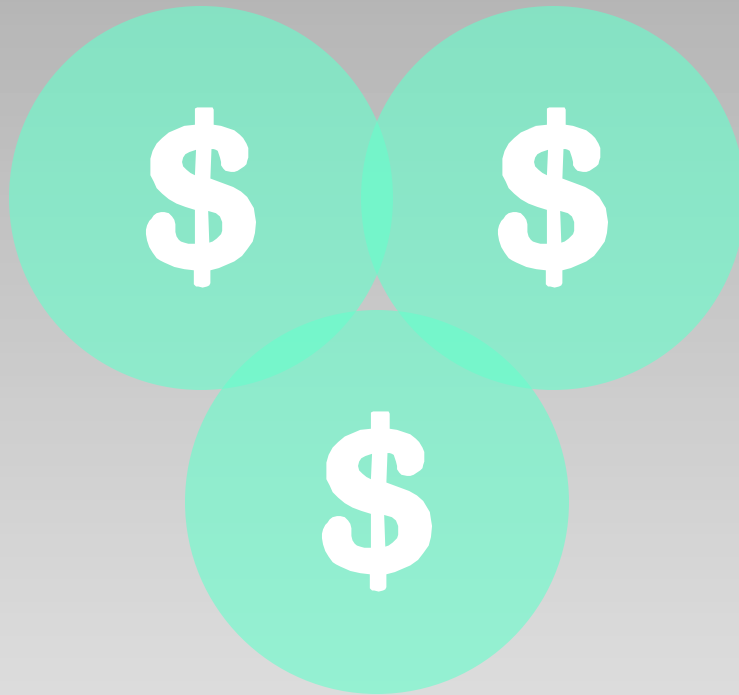
Other federal statutes

- RCRA
- Clean Water Act
- TSCA

State statutes

- Hazardous Waste
- Solid Waste

Contamination



SOURCES OF FUNDING AND TAX BENEFITS

Other federal statutes

- RCRA
- Clean Water Act

State statutes

- Hazardous Waste
- Solid Waste

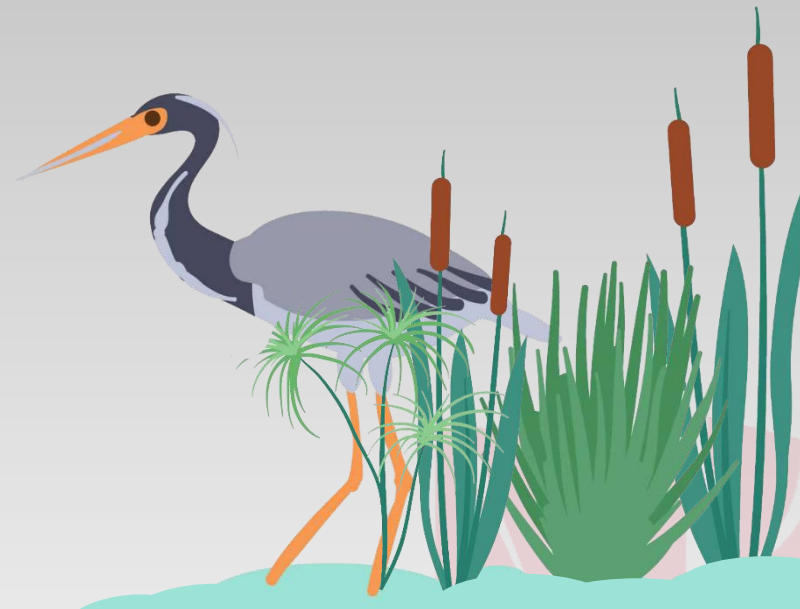
Environmental Resource Laws Affect Real Estate Transactions?

- Development costs
- Operational costs
- Regulatory enforcement



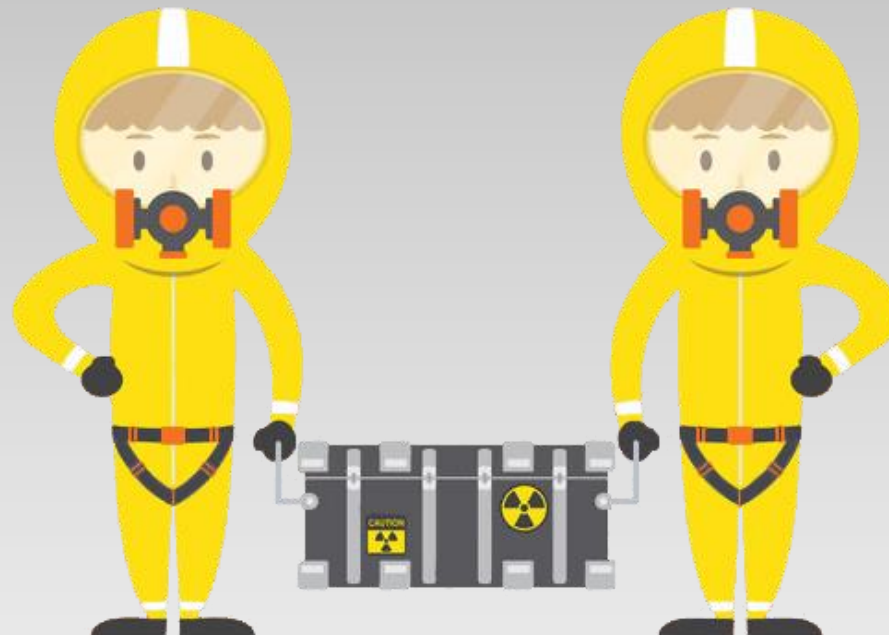
Environmental Requirements

- Wetlands
- Endangered Species
- Migratory Birds
- Floodplains
- Environmental Permits



Building Demolition and Renovation

- Hazardous material disposal
- Asbestos abatement



Management Mechanisms

Contractual

Due
Diligence



Regulatory

Project
Management

Financial

Due Diligence

<u>Due Diligence Checklist</u> <u>Real Estate Transaction</u>			
Task	Person Responsible	Deadline	Notes
Geotechnical and Structural Conditions			
11. Evaluate condition of buildings on the property; personal property.			
12. Evaluate geotechnical condition of property.			

<u>Due Diligence Checklist</u> <u>Real Estate Transaction</u>			
Task	Person Responsible	Deadline	Notes
Development Objectives			
1. Determine use/develop preliminary land plans.			
2. Develop exit strategy and assumptions.			
Title and Survey			
3. Obtain and review title commitment and prepare objection letter.			
4. Obtain and review survey and prepare objection letter.			
5. Determine type of title endorsements required and order same.			
6. Determine availability and cost of other water rights necessary for intended use			
Environmental Resources			
7. Confirm that no wetlands exist on property.			
8. Determine existence of wildlife and wildlife habitat on property (i.e., prairie dogs, migratory birds, and other species).			
9. Determine existence of historic and cultural resources on property.			
10. Determine floodplain status of property.			

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<u>Due Diligence Checklist</u> <u>Real Estate Transaction</u>			
Task	Person Responsible	Deadline	Notes
Insurance			
insurance coverage for the			
the regulatory programs			
to perform cleanup and/or			
further action"			
ons and liability			
e status of buildings and			
dging the presence of lead-			
shesos, and other			
lding materials or uses			
dition or reuse.			
cable zoning for			
cess for any changes			
ntitlement documents			
g., Master Plan,			
Identify any			
and process for			
cies between			
property use and applicable			
planning and zoning documents.			
Infrastructure			
23. Confirm availability of utilities;			
identify utility providers (i.e., water,			
wastewater, etc.) and terms of service			
(e.g., indemnities, covenants, bonding,			
etc.).			
24. Determine necessary infrastructure for			
development of site and cost.			

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<u>Due Diligence Checklist</u> <u>Real Estate Transaction</u>			
Task	Person Responsible	Deadline	Notes
State and Local Requirements and Fees			
25. Review any exactions and impact fees for intended use.			
26. Determine local permit requirements (i.e., land use permits, stormwater quality, water extension, wastewater, sewer connection, etc.) and any transfer requirements			
Financial			
27. Determine private financing options (debt and equity).			
28. Prepare project cost estimates and			

Due Diligence

Due Diligence Checklist Real Estate Transaction			
Task	Person Responsible	Due Date	Completed
Development Objectives			
1. Determine use/develop preliminary land plans.			
2. Develop exit strategy and assumptions.			
Title and Survey			
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9. Determine existence of historic and cultural resources on property.			
10. Determine floodplain status of property.			

Due Diligence Checklist Real Estate Transaction	
Task	Person Responsible
Geotechnical and Structural Conditions	
11. Evaluate condition of buildings on the property; personal property.	
12. Evaluate geotechnical condition of property.	
Environmental Liability	
13. Obtain or perform an ASTM- or regulatory-compliant Phase I report for the property to include:	
a. Review of existing environmental data and reports provided by seller	
b. Review of environmental liens and activity and use restrictions	
c. Status of any ongoing remediation	
d. Identification of any recognized environmental conditions requiring further Phase II investigation (including USTs).	
14. Perform any Phase II testing desired.	
15. Review regulatory status of site (any permits, orders, cleanup plans, settlement agreements, covenants, etc.)	
16. Determine the availability and evaluate the protection afforded under any indemnities or cleanup covenants or agreements from predecessors in title or other responsible parties.	
17. Determine the available limits, term, and premium for environmental	

Environmental Liability

- | | | | |
|---|--|--|--|
| 13. Obtain or perform an ASTM- or regulatory-compliant Phase I report for the property to include: | | | |
| a. Review of existing environmental data and reports provided by seller | | | |
| b. Review of environmental liens and activity and use restrictions | | | |
| c. Status of any ongoing remediation | | | |
| d. Identification of any recognized environmental conditions requiring further Phase II investigation (including USTs). | | | |
| 14. Perform any Phase II testing desired. | | | |
| 15. Review regulatory status of site (any permits, orders, cleanup plans, settlement agreements, covenants, etc.) | | | |
| 16. Determine the availability and evaluate the protection afforded under any indemnities or cleanup covenants or agreements from predecessors in title or other responsible parties. | | | |

Due Diligence

Due Diligence Checklist Real Estate Transaction			
Task	Person Responsible	Deadline	Notes
Geotechnical and Structural Conditions			
11. Evaluate condition of buildings on the property; personal property.			
12. Evaluate geotechnical condition of property.			
Environmental Liability			
13. Obtain an independent Phase I or regulatory-compliant Phase I report for the property to include:			
a. Review of existing environmental data and reports provided by seller			
b. Review of environmental activity and			
c. Status of any			
d. Identification of environmental issues (including further Phase I)			
14. Perform any Phase I			
15. Review regulatory permits, orders, settlement agreements			
16. Determine the protection indemnities or agreements (if any) or other response			
17. Determine the cost and premium			

Environmental Liability

17. Determine the available limits, term, and premium for environmental liability insurance coverage for the property.

18. Determine the regulatory programs available to perform cleanup and/or obtain "no further action" determinations and liability protections.

19. Review of the status of buildings and records regarding the presence of lead-based paint, asbestos, and other hazardous building materials or uses affecting demolition or reuse.

Due Diligence Checklist Real Estate Transaction			
Task	Person Responsible	Deadline	Notes
State and Local Requirements and Fees			
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Due Diligence Checklist
Real Estate Transaction

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Due Diligence

Environmental Resources

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Due Diligence Checklist
Real Estate Transaction

Task	Completed	Notes
Development Objectives		
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23. Confirm availability of utilities; identify utility providers (i.e., water, wastewater, etc.) and terms of service (e.g., indemnities, covenants, bonding, etc.).
24. Determine necessary infrastructure for development of site and cost.

Identify the Management Mechanisms

Regulatory Enforcement – Federal

RISK MANAGEMENT MATRIX

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual terms	Financial Assurance	Project Management	
Regulatory Enforcement–Federal	<ul style="list-style-type: none"> • Comfort Letter • Reasonable Steps Letter • Prospective 	<ul style="list-style-type: none"> • Indemnity/release from current owner • Title stays with current owner 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's 	<ul style="list-style-type: none"> • Maintain BFPP Defense • ASTM Compliant Phase I ESA • Continuing Obligations Plan 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Regulatory Enforcement – Federal	<ul style="list-style-type: none"> • Comfort Letter • Reasonable Steps Letter • Prospective Purchaser Agreement • Administrative Settlement/Order on Consent • State VCUP or order (EPA defers enforcement to State) 	<ul style="list-style-type: none"> • Indemnity/release from current owner • Title stays with current owner • Contractor indemnities 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	<p>Maintain BFPP Defense</p> <ul style="list-style-type: none"> • ASTM Compliant Phase I ESA • Continuing Obligations Plan • Materials Management Plan <p>Implement cleanup/comply with Orders or reasonable steps letter</p>	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding



Regulatory Enforcement – State

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual Terms	Financial Assurances	Project Management	
Regulatory Enforcement – State	<ul style="list-style-type: none"> • State VCUP • State comfort letter • Other State letters • Consent Order • No Further Action/No Action Determination 	<ul style="list-style-type: none"> • Indemnity/release from current owner • Title stays with current owner • Contractor indemnities 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	Implement cleanup/comply with orders or reasonable steps letter	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding

	Consent				
	• State VCUP or order (EPA defers enforcement to State)				• Phased funding
Regulatory Enforcement – State	<ul style="list-style-type: none"> • State VCUP • State comfort letter • Other State letters • Consent Order • No Further Action/No Action Determination 	<ul style="list-style-type: none"> • Indemnity/release from current owner • Title stays with current owner • Contractor indemnities 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	Implement cleanup/comply with orders or reasonable steps letter	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding
Cleanup Cost Overruns – Delay	<ul style="list-style-type: none"> • Approved cleanup plan (State VCUP, Order, Work Plan) • Brownfields funding/tax credits (i.e. more money in budget) 	<ul style="list-style-type: none"> • Seller cost share/ Seller owner pays overruns • Fixed price remediation 	<ul style="list-style-type: none"> • Cost cap/stop loss insurance • Escrowed funds • Letter of credit • Parent and/or personal guarantees 	Careful cost estimates/contingency	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding



Cleanup Cost Overruns – Delay

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
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	<ul style="list-style-type: none"> • State consent letter • Other State letters • Consent Order • No Further Action/No Action Determination 	<ul style="list-style-type: none"> • Title stays with current owner • Contractor indemnities 	<ul style="list-style-type: none"> • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 		<ul style="list-style-type: none"> • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding
Cleanup Cost Overruns – Delay	<ul style="list-style-type: none"> • Approved cleanup plan (State VCUP, Order, Work Plan) • Brownfields funding/tax credits (i.e. more money in budget) 	<ul style="list-style-type: none"> • Seller cost share/ Seller owner pays overruns • Fixed price remediation 	<ul style="list-style-type: none"> • Cost cap/stop loss insurance • Escrowed funds • Letter of credit • Parent and/or personal guarantees 	Careful cost estimates/contingency	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral • Phased funding



Third Party Claims

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual terms	Financial Assurance	Project Management	
Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection)	<ul style="list-style-type: none"> • Indemnity/release from current owner • Contractor indemnity • Environmental covenants 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	<ul style="list-style-type: none"> • Implement cleanup • Materials management plan/best practices to avoid further exposure, ongoing releases • Engineering controls 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Project management covenants/default • Additional collateral
Natural Resource Damages	EPA/State Settlement Agreement/Administrative Order (contribution protection)	Indemnity/release from current owner	Pollution legal liability insurance	Maintain BFPP defense	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual Terms	Financial Assurances	Project Management	
Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection)	<ul style="list-style-type: none"> • Indemnity/release from current owner • Contractor indemnity • Environmental covenants 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	<ul style="list-style-type: none"> • Implement cleanup • Materials management plan/best practices to avoid further exposure, ongoing releases • Engineering controls 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Project management covenants/default • Additional collateral



Natural Resource Damages

Environmental Risks	Project Risk Management Tools					Loan Terms
	Regulatory Agreements	Contractual Terms	Financial Assurances	Project Management		
Natural Resource Damages	EPA/State Settlement Agreement/ Administrative Order (contribution protection)	Indemnity/release from current owner	Pollution legal liability insurance	Maintain BFPP defense	<ul style="list-style-type: none">• Indemnity• Pollution legal liability coverage• Phase I reliance letter• Reps and warranties• Project management covenants/default• Additional collateral	
	Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection) <ul style="list-style-type: none">• Indemnity/release from current owner• Contractor indemnity• Environmental covenants	Pollution legal liability insurance <ul style="list-style-type: none">• Professional and/or contractor's pollution legal liability insurance• Escrowed funds	Implement cleanup <ul style="list-style-type: none">• Materials management plan/best practices to avoid further exposure, ongoing releases• Engineering controls	Indemnity <ul style="list-style-type: none">• Pollution legal liability coverage• Project management covenants/default• Additional collateral	
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	Disposal Liability at Off-Site locations		Pollution legal liability insurance <ul style="list-style-type: none">• Professional and/or contractor's pollution legal liability insurance	Licensed disposal sites	Indemnity <ul style="list-style-type: none">• Pollution legal liability coverage• Project management covenants/default• Additional collateral	



Disposal at Off-Site Locations

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>					<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>		<u>Project Management</u>	
Disposal Liability at Off-Site locations			<ul style="list-style-type: none">• Pollution legal liability insurance• Professional and/or contractor's pollution legal liability insurance		Licensed disposal sites	<ul style="list-style-type: none">• Indemnity• Pollution legal liability coverage• Project management covenants/default• Additional collateral
	Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection)	<ul style="list-style-type: none">• Indemnity/release from current owner• Contractor indemnity• Environmental covenants	<ul style="list-style-type: none">• Pollution legal liability insurance• Professional and/or contractor's pollution legal liability insurance• Escrowed funds	<ul style="list-style-type: none">• Implement cleanup• Materials management plan/best practices to avoid further exposure, ongoing releases• Engineering controls	<ul style="list-style-type: none">• Indemnity• Pollution legal liability coverage• Project management covenants/default• Additional collateral
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Wetlands

RISK MANAGEMENT MATRIX

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual terms	Financial Assurance	Project Management	
Regulatory Enforcement--Federal	<ul style="list-style-type: none"> Comfort Letter Reasonable Steps Letter Prospective Purchaser Agreement Administrative Settlement/Order on Consent State VCUP or order (EPA defers enforcement to State) 	<ul style="list-style-type: none"> Indemnity/release from current owner Title stays with current owner Contractor indemnities 	<ul style="list-style-type: none"> Pollution legal liability insurance Professional and/or contractor's pollution legal liability insurance Escrowed funds 	Maintain BFPP Defense <ul style="list-style-type: none"> ASTM Compliant Phase I ESA Continuing Obligations Plan Materials Management Plan Implement cleanup/comply with Orders or reasonable steps letter	<ul style="list-style-type: none"> Indemnity Pollution legal liability coverage Phase I reliance letter Reps and warranties Project management covenants/default Additional collateral Phased funding
Regulatory Enforcement--State	<ul style="list-style-type: none"> State VCUP State comfort letter 	<ul style="list-style-type: none"> Indemnity/release from current owner 	<ul style="list-style-type: none"> Pollution legal liability insurance 	Implement cleanup/comply with orders or reasonable steps letter	<ul style="list-style-type: none"> Indemnity Pollution legal liability coverage

<u>Environmental Risks</u>	Project Risk Management Tools				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Wetlands	<ul style="list-style-type: none"> Corps of Engineers Letter Jurisdictional Determination 404 Permits 	Purchase Price		Permit compliance	<ul style="list-style-type: none"> Indemnity Compliance with laws



Endangered Species

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Endangered Species	<ul style="list-style-type: none"> • Clearance Letter from U.S. Fish & Wildlife • Safe Harbor Agreement • Habitat Conservation Plan • Candidate Conservation Agreement 	Purchase Price		Hire skilled wildlife biologist to prepare survey	<ul style="list-style-type: none"> • Compliance with Laws • Indemnity

	<ul style="list-style-type: none"> • Settlement/Order on Consent • State VCUP or order (EPA defers enforcement to State) 		<ul style="list-style-type: none"> • Escrowed funds 	Implement cleanup/comply with Orders or reasonable steps letter	<ul style="list-style-type: none"> • Additional collateral • Phased funding
Regulatory Enforcement – State	<ul style="list-style-type: none"> • State VCUP • State comfort letter • Other State letters • Consent Order • No Further Action/No Action Determination 	<ul style="list-style-type: none"> • Indemnity/release from current owner • Title stays with current owner • Contractor indemnities 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	Implement cleanup/comply with orders or reasonable steps letter	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reqs and warranties • Project management covenants/default • Additional collateral • Phased funding
Cleanup Cost Overruns – Delay	<ul style="list-style-type: none"> • Approved cleanup plan (State VCUP, Order, Work Plan) • Brownfields funding/tax credits (i.e. more money in budget) 	<ul style="list-style-type: none"> • Seller cost share/ Seller owner pays overruns • Fixed price remediation 	<ul style="list-style-type: none"> • Cost cap/stop loss insurance • Escrowed funds • Letter of credit • Parent and/or personal guarantees 	Careful cost estimates/contingency	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reqs and warranties • Project management covenants/default • Additional collateral • Phased funding



Migratory Birds

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual Terms	Financial Assurances	Project Management	
Migratory Birds Bald and Golden Eagles	<u>ESA</u> <ul style="list-style-type: none"> Letter from U.S. Fish & Wildlife Safe Harbor Agreement <u>MBTA</u> <ul style="list-style-type: none"> Permit for “take” <u>BGEPA</u> <ul style="list-style-type: none"> Permit for “take” 	Purchase Price		<ul style="list-style-type: none"> U.S. FWS Nationwide Conservation Measures U.S. FWS BMPs for specific industries (wind, utility lines, oil & gas, towers) Colorado Parks and Wildlife Best Management Practices Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors 	<ul style="list-style-type: none"> Compliance with Laws Indemnity

	Action Determination		liability insurance Escrowed funds		covenants/default Additional collateral Phased funding
Cleanup Cost Overruns – Delay	<ul style="list-style-type: none"> Approved cleanup plan (State VCUP, Order, Work Plan) Brownfields funding/tax credits (i.e. more money in budget) 	<ul style="list-style-type: none"> Seller cost share/ Seller owner pays overruns Fixed price remediation 	<ul style="list-style-type: none"> Cost cap/stop loss insurance Escrowed funds Letter of credit Parent and/or personal guarantees 	Careful cost estimates/contingency	<ul style="list-style-type: none"> Indemnity Pollution legal liability coverage Phase I reliance letter Reps and warranties Project management covenants/default Additional collateral Phased funding



Floodplains

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	Regulatory Agreements	Contractual terms	Financial Assurance	Project Management	
Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection)	<ul style="list-style-type: none"> • Indemnity/release from current owner • Contractor indemnity • Environmental covenants 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	<ul style="list-style-type: none"> • Implement cleanup • Materials management plan/best practices to avoid further exposure, ongoing releases • Engineering controls 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Project management covenants/default • Additional collateral
Natural Resource Damages	EPA/State Settlement Agreement/Administrative Order (contribution protection)	Indemnity/release from current owner	Pollution legal liability insurance	Maintain BFPP defense	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management

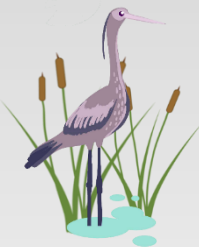
<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Floodplains	<ul style="list-style-type: none"> • CLOMR /LOMR • Local permit 	Purchase Price			<ul style="list-style-type: none"> • Indemnity • Compliance with Laws



Permitting

Environmental Risks	Project Risk Management Tools				Loan Terms
	Regulatory Agreements	Contractual terms	Financial Assurance	Project Management	
Third party claims	EPA Settlement Agreement/Administrative Order (contribution protection)	<ul style="list-style-type: none"> • Indemnity/release from current owner • Contractor indemnity • Environmental covenants 	<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance • Escrowed funds 	<ul style="list-style-type: none"> • Implement cleanup • Materials management plan/best practices to avoid further exposure, ongoing releases • Engineering controls 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Project management covenants/default • Additional collateral
Natural Resource Damages	EPA/State Settlement Agreement/Administrative Order (contribution)	Indemnity/release from current owner	Pollution legal liability insurance	Maintain BFPF defense	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Phase I reliance letter

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Permitting	Application and transfer approvals effective on closing	<ul style="list-style-type: none"> • Representations and warranties regarding all necessary permits for ongoing operations • Cooperation and transition requirements 		Close communication with regulators	<ul style="list-style-type: none"> • Indemnity • Compliance with Laws

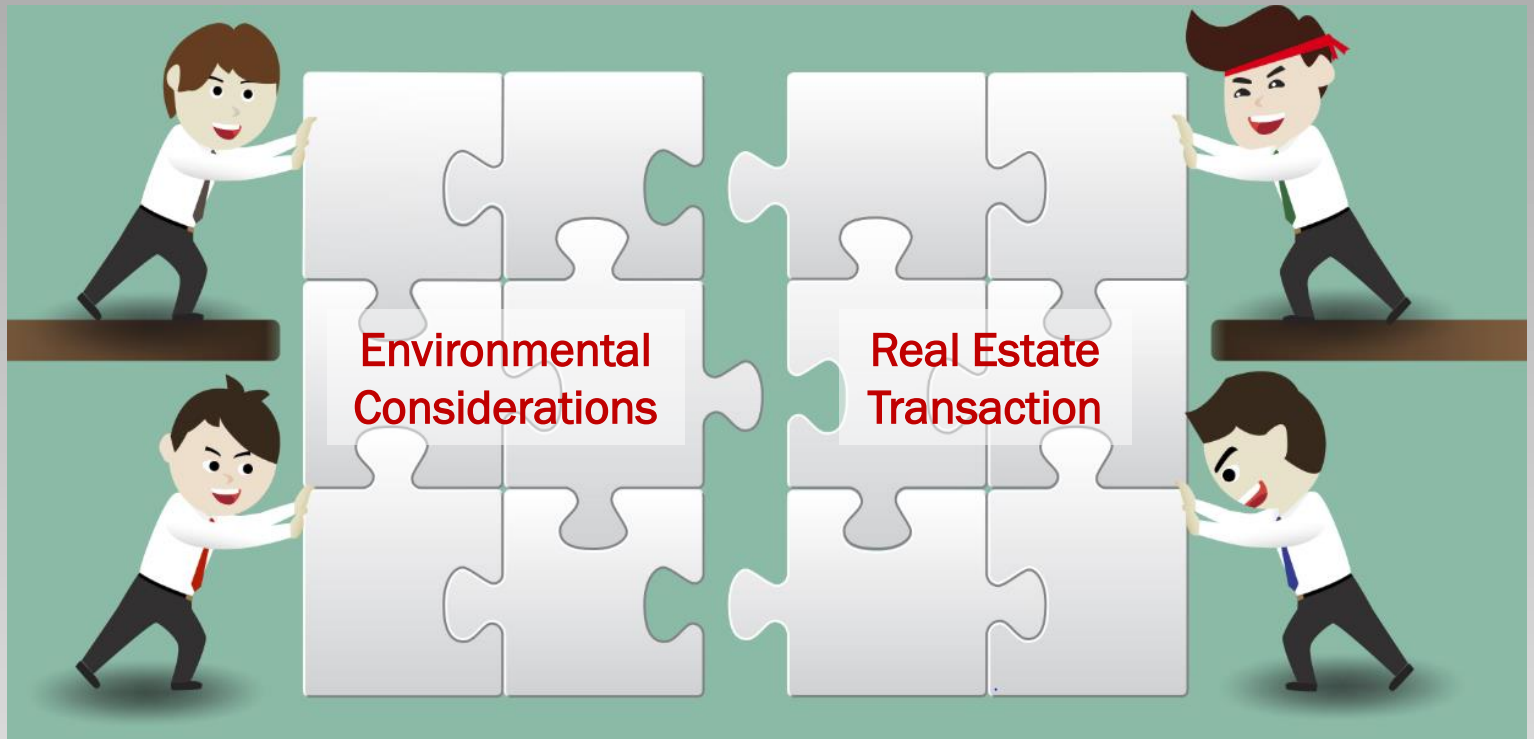


Asbestos Abatement and Hazardous Materials Removal

<u>Environmental Risks</u>	<u>Project Risk Management Tools</u>				<u>Loan Terms</u>
	<u>Regulatory Agreements</u>	<u>Contractual Terms</u>	<u>Financial Assurances</u>	<u>Project Management</u>	
Asbestos abatement and hazardous materials removal	Reg. 8 Permit			<ul style="list-style-type: none"> • Close regulatory coordination • Qualified/insured contractors 	<ul style="list-style-type: none"> • Indemnity • Compliance with Law
	Damages	Agreement/Administrative Order (contribution protection)	current owner	insurance	<ul style="list-style-type: none"> • Pollution legal liability coverage • Phase I reliance letter • Reps and warranties • Project management covenants/default • Additional collateral
	Disposal Liability at Off-Site locations		<ul style="list-style-type: none"> • Pollution legal liability insurance • Professional and/or contractor's pollution legal liability insurance 	<ul style="list-style-type: none"> • Licensed disposal sites 	<ul style="list-style-type: none"> • Indemnity • Pollution legal liability coverage • Project management covenants/default • Additional collateral



Success



Questions

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