

CERCLA Liability Protections for Local Governments

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EPA/OSRE Role

- Protect human health and the environment through prompt site cleanup and maximum liable party participation in ways that promote fairness
- EPA understands local governments' desire to acquire and redevelop contaminated property and wishes to work with not against local governments in that endeavor

Local Government Role in Cleanup and Redevelopment of Contaminated Property

- EPA recognizes that local governments play an important role in getting abandoned, idle sites back into productive use.
- Local governments acquiring contaminated property want to protect their communities and ensure they are not liable as owners under CERCLA. EPA wants to work with, not against, local governments in that endeavor.
- Local government cleanup and ownership can help ensure protective remedies by providing post-closure care and long-term stewardship at sites.

EPA Involvement is Unlikely

- The vast majority of contaminated properties are lower-risk brownfield sites addressed by State brownfield and voluntary cleanup programs.
- EPA does not get involved in the vast majority of brownfield site cleanups and transactions. EPA does have the lead at many heavily contaminated properties, including all Superfund sites.

Local Government Concerns About Liability

- The fear of perceived liability and potential EPA enforcement action may be impacting local governments' decisions to acquire contaminated properties.
- EPA does not seek out opportunities to hold local governments liable as mere owners of contaminated property and if they have not otherwise caused or contributed to the contamination.
- EPA also is not looking for opportunities to bring enforcement actions against local governments when they have not otherwise caused or contributed to the contamination.
- However, in the context of brownfield grants and loans, the statutory criteria are clear that a recipient cannot be liable under CERCLA § 107, and so we need to base our eligibility determinations on our best assessment of whether a recipient is potentially liable.

Liability Under CERCLA

- Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § § 9601 to 9675) (CERCLA) (a.k.a. Superfund)
- CERCLA is a strict liability statute
- Liability under CERCLA is joint and several
- Under CERCLA § 107, a current owner of contaminated property can be liable for cleanup costs

Exclusion and Defenses to CERCLA Liability for Local Governments

- EPA believes the existing CERCLA liability protections address many of the concerns of local governments regarding potential liability.
- CERCLA protects local governments from liability when:
 - It obtains property involuntarily (§ 101(20)(D))
 - the contamination has been caused by a third party (§ 107(b)(3) and § 101(35)(A)(ii))
 - It qualifies as a bona fide prospective purchaser (BFPP) (§ 107(r))
 - It is conducting a cleanup of a brownfield pursuant to a state cleanup program (§ 128(b))
 - It takes action in response to an emergency from a facility it does not own (§ 107(d)(2))

Involuntary Acquisition CERCLA § 101(20)(D)

- This provision provides an exemption from CERCLA owner or operator liability.
- Statutory language: “The term “owner or operator” does not include a unit of state or local government which acquired ownership or control of property involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. . . .”
- The exclusion does not apply to state or local governments that have caused or contributed to the release or threatened release of a hazardous substance.

Land Banks

- Land banks are governmental or non-governmental entities created to assemble, temporarily manage and develop vacant, abandoned and tax-delinquent properties in order to convert them into a productive use.
- Local governments can minimize potential liability from land bank acquisitions by conducting All Appropriate Inquiry (CERCLA § 101(35)(B)) and understanding the extent and nature of contamination, public health and environmental risks prior to acquisition.
- Case-specific facts and state law will help determine whether a property acquired through a land bank qualifies as “involuntary” under § 101(20)(D).

Third Party Defense

CERCLA § 107(b)(3) and § 101(35)(A)(ii)

- EPA often refers to this defense as the innocent landowner defense.
- Requirements for defense:
 - The contamination occurred before the government entity acquired the property;
 - The government entity exercised due care with respect to the contamination; and
 - The government entity took precautions against certain acts of the party that caused the contamination.

Eminent Domain and Third Party Defense

- Third party defense applies to government entities that acquire facility through eminent domain.
- Case law -- State law relevant in determining whether transaction qualifies as eminent domain.
- Emeryville v. Elementis Pigments, Inc., 2001 WL 964230 at *7-9 (N.D. Cal. 2001). Court found that acquisition qualified as eminent domain under state law and therefore the city was protected under CERCLA 101(35)(A)(ii).
- City of Toledo v. Beazer Materials & Services, Inc., 923 F. Supp. 1013, 1020-21 (N.D. Ohio 1996). In a CERCLA contribution action, the City argued that acquisition by eminent domain occurred when property ultimately was purchased in a negotiated sale. The court held the acquisition did not qualify as "eminent domain" under state law and therefore the City was not protected under 101(35)(A)(ii).

Eminent Domain and Involuntary Acquisition

- CERCLA 101(20)(D) does not explicitly address eminent domain acquisitions.
- Case law -- not clear whether obtaining property through eminent domain considered "involuntary" per § 101(20)(D).
- City of Wichita v. Aero Holdings, Inc., 177 F. Supp. 2d 1153, 1168 (D. Kan. 2000). City argued it acquired a property involuntarily through a purchase "in lieu of condemnation" as stated in the purchase agreement. City argued that if sale had not occurred, it would have condemned the property pursuant to its eminent domain power. Court rejected this argument stating that the City voluntarily purchased the property.

Eminent Domain and Involuntary Acquisition

(Case law continued)

- U.S. v. Occidental Chemical Corp., 965 F. Supp. 408, 413-14 (W.D.N.Y. 1997). A city argued that its purchase of property to build roads and a park was an involuntary purchase because these are the functions that a sovereign must perform. Court found that City's definition of "involuntary" inconsistent with CERCLA since "all municipal purchases are made for the benefit of citizens, the City's construction of the word involuntary would cause the exception to swallow the rule".

EPA Regulations and Policy Guidance

- Regulations – Lender Liability Rule Preamble (1992) and 40 CFR 1105 (1997)
- CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily (1995)
- Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions By Government Entities (1997)

Bona Fide Prospective Purchaser (BFPP) CERCLA § 107(r)

- EPA encourages local governments to take necessary steps to achieve BFPP status, even when a property is acquired through donation or abandonment.
- BFPP provision enacted in part to address CERCLA liability concerns where the only reason for holding a party liable is due to “current ownership” status.
- Not only does the BFPP provision protect against liability but it provides local governments with the opportunity to assess the extent of contamination on the property and to consider the long-term obligations necessary to protect public health and the environment.
- We have not found any published case law challenging BFPP status (so it’s a strong defense).

BFPP Requirements

- BFPP status is available for sites acquired after January 11, 2002 – the date of the Brownfields Amendments to CERCLA
- BFPPs must meet the following threshold criteria:
 - Perform “all appropriate inquiry” (AAI) prior to purchase of property
 - Demonstrate “no affiliation” with a liable party
- BFPPs must also satisfy the following ongoing obligations:
 - Comply with land use restrictions and not impede the effectiveness of institutional controls
 - Take “reasonable steps” to prevent release of hazardous substances
 - Provide cooperation, assistance and access
 - Comply with information requests and administrative subpoenas
 - Provide legally required notices

Windfall Lien

CERCLA § 107(r)(2)

- Local governments that achieve BFPP status may be subject to a windfall lien.
- A windfall lien can only arise on properties where the United States spends money cleaning up the property.
- At the vast majority of Brownfields sites, there is no windfall lien.

Enforcement Bar CERCLA § 128(b))

- EPA may not take an enforcement action against a person conducting cleanup of a brownfield site pursuant to a State cleanup program (CERCLA § 128(b))
- EPA has entered into a Memoranda of Agreement with over 20 States that:
 - Recognizes the capabilities of the state brownfield programs
 - Clarifies EPA enforcement intentions under CERCLA at sites addressed by the state program

Emergency Response Protection CERCLA § 107(d)(2))

- State and local governments are protected from CERCLA liability if they take an emergency action to address a release or threatened release of hazardous substances.
- Does not apply to state or local government actions to address releases of hazardous substances:
 - it generated, or
 - from a facility it owns
- There must be an absence of gross negligence or intentional misconduct by the state or local government.

Tools Available to Facilitate Reuse at Superfund Sites

- Comfort/Status Letters
- Ready for Reuse Determinations
- BFPP Doing Work Agreements
- Lien Settlements
- Discussions
- Site Reuse Fact Sheets
- Partial NPL Deletions

Summary

- EPA's mission is to protect human health and the environment
- We intend to work towards this mission while always taking fairness and equity concerns into our enforcement analysis and products.

Helpful EPA/OSRE Websites

- EPA's Cleanup Enforcement website:
<http://www.epa.gov/compliance/cleanup/index.html>
- EPA's Landowner Liability Protections website:
<http://www.epa.gov/compliance/cleanup/revitalization/landowner.html>
- EPA's State and Local Government Acquisitions website:
<http://www.epa.gov/compliance/cleanup/revitalization/local-acquis.html>
- EPA's State Voluntary Cleanup Programs website:
<http://www.epa.gov/compliance/cleanup/revitalization/state.html>
- EPA's Revitalization Handbook website:
<http://www.epa.gov/compliance/resources/publications/cleanup/brownfields/handbook/index.html>

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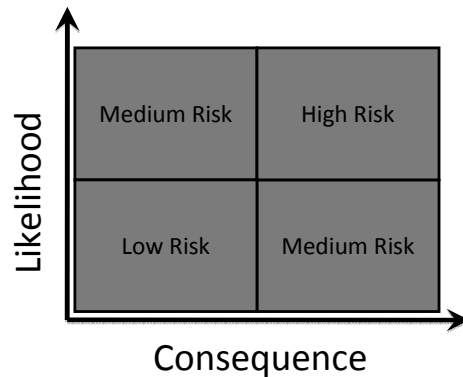
A Risk Evaluation Workbook for Communities

What is the Risk Management Workbook?

- Target local governments
- Outline a risk management framework
 - assess options and prepare proactive strategies to facilitate cleanup and revitalization of underutilized and abandoned properties
- Address a broad range of sites
 - Large and small
 - Federal and state regulatory programs

Why do communities need it?

- Managing Project Risk
 - Environmental liability
 - Common law liability
 - Financial risk
 - Political risk



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Every govt entity has a risk sensitivity

This slide addresses evaluating the level of risk

Risk is an art not a science, and difficult to measure

Tolerance depends on type of risk being taken on and the individual's understanding of the topic

We have found this a way Federal and State Cleanup Statutes

Common Law Liability

Financial Risk

Why do communities need it?

- Working knowledge of the process, issues, and options that affect redevelopment
- Understanding and comfort with potential liability and other complications associated with a site's environmental condition
 - Integrate environmental risk management into redevelopment process
 - Place environmental risk in context with other risks
- Background to support oversight and interaction with technical advisors
- Worksheets to document and support the process

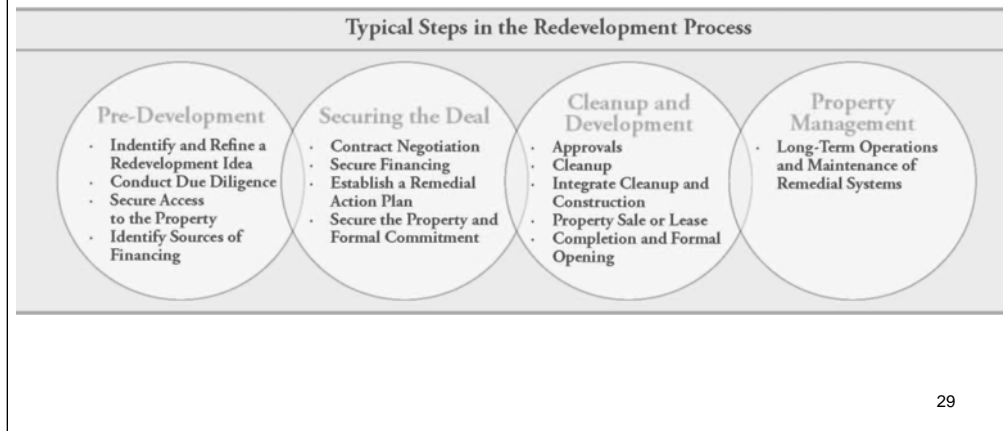


How does the Guide work?

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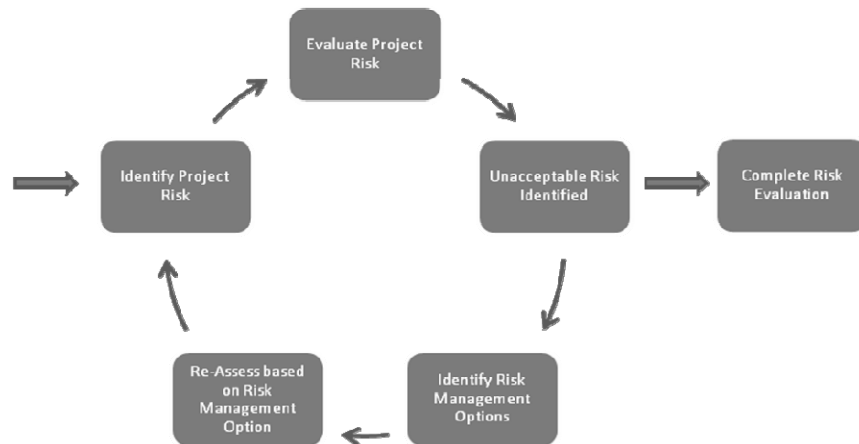
Overview of the Redevelopment Process

Risk Evaluation is integrated into the Redevelopment Process



Briefly highlight each step

Overview of Risk Management Process



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Balance costs, risks, and benefits

Requires fundamental understanding of:

- potential for risk

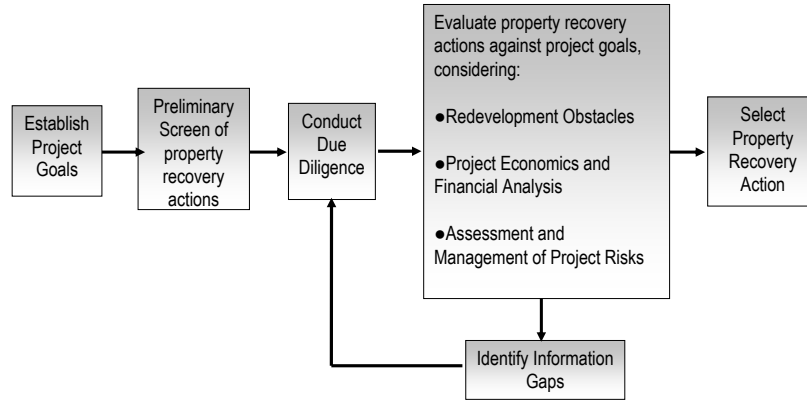
- likelihood of occurrence

- potential consequences

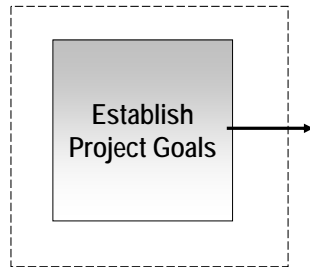
Identify and minimize the risks with greatest potential for harm

Bracketing risk within *acceptable* limits.

Evaluation Process



Evaluation Process



Worksheets # 1 & 2

Key Parameters

Worksheet #1

- Desired outcome of the redevelopment
- Importance of the redevelopment
- Time critical issues for the redevelopment

Preliminary Reuse Assessment

(Preliminary analysis of constraints and market conditions)

Worksheet # 2

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Worksheet #1: Establishing Project Goals

Project Name/Identifier: []

General Property Description

Number of Parcels: []

Tax Map Parcel Number(s) []

Address(es): []

Parcel Size (Acres): []

Current Zoning: []

Existing Structures on Parcels (Please list): []

Current Appraised Value: []

Brief Description of Past Use (e.g., service station, manufacturing facility, etc.): []

Other: []

Establishing Property Reuse Goals

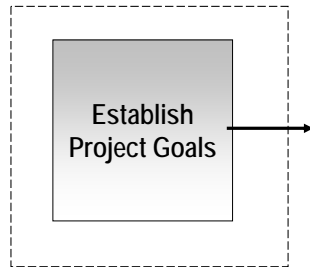
Key Questions (see Section 4.2):

- What is the desired outcome? []
- How necessary is the redevelopment? []
- How time critical is the redevelopment? []

Other Project Parameters (See Sections 4.3 and 4.4):

- Are there known budgetary or other constraints? Describe. []
- Is this property linked to or part of a larger redevelopment effort? If so, how does that affect the property-specific goals (e.g., timing, budget, necessity, general coordination, etc.)? Describe. []
- Would the future uses be restricted to current zoning? Describe. []
- Are there other factors that describe property reuse goals? Describe []

Evaluation Process



Worksheets # 1 & 2

Key Parameters

Worksheet #1

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- Importance of the redevelopment
- Time critical issues for the redevelopment

Preliminary Reuse Assessment

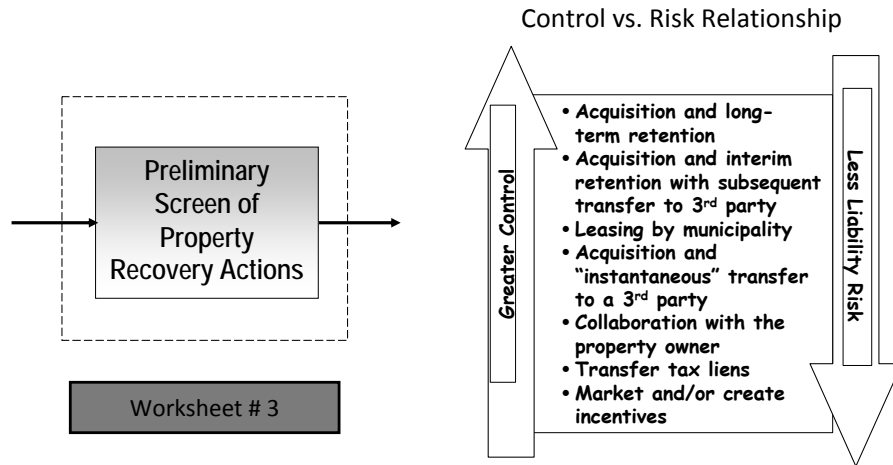
(Preliminary analysis of constraints and market conditions)

Worksheet # 2

Worksheet #2: Reuse Assessment

- What are the potential reuses being considered for the property? Describe. []
- Has a community needs assessment, opportunities and constraints analysis, marketing study, or other study been conducted that support the intended uses? Summarize key findings []
- Are these uses consistent with the existing municipal master plan, zoning, and other planning documents? Describe. []
- Has an evaluation of the property's suitability for the intended use been done? Are there physical features of the property that would limit future uses (e.g., parcel size, topography, road access, etc.)? Summarize these results []
- Are there infrastructure issues that need to be addressed (e.g., access roads, utilities)? Describe. []
- Has a preliminary financial feasibility analysis of intended future reuses been performed to determine whether those uses are realistic? Summarize these results. []
- Is there general support for these uses from municipal officials? The community? Other key stakeholders? Describe. []
- Are there interested buyers/developers for the property? What partnering role might they play in assessing, cleaning up or redeveloping the property? Describe. []
- Are there other known or anticipated complicating factors or other considerations relating to the redevelopment? Describe. []
- Are there significant data gaps that should be prioritized as part of future information gathering efforts? Describe. []
- Is there any other relevant information? Describe. []

Evaluation Process

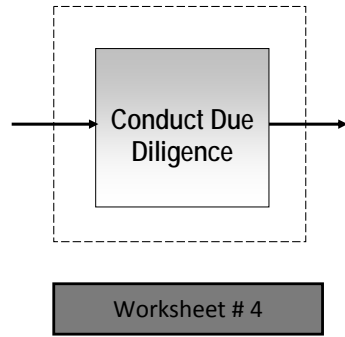


Worksheet #3: Preliminary Screening of Property Recovery Actions

- Will the property likely be cleaned up and redeveloped in a manner consistent with the municipality's goals without municipal involvement? If yes, is there still a role for the municipality? Describe. []
- Do options that involve taking title to the property help the municipality reach its goals? Y/N
- If yes, which options that involve taking title to the property could help reach the municipality's goals?
 - Y/N - Acquisition and long-term retention [Comments]
 - Y/N - Acquisition and interim retention with subsequent transfer to a third party [Comments]
 - Y/N - Acquisition and "instantaneous" transfer to a third party [Comments]
- If acquisition has not been ruled out, are there options for the municipality to gain control or access of the property for assessment, remedial action, or redevelopment?
 - Y/N - Would the property owner be likely to provide site access? [Comments]
 - Y/N - Could the municipality use acquisition authority to gain control of the property? [Comments]
 - Y/N - Does the municipality have authority to gain control of the property through eminent domain? [Comments]
 - Y/N - Does the municipality have or could create a redevelopment authority that could gain control of the property? [Comments]
- Do options that do not involve taking title to the property help the municipality reach its goals? Y/N [Comments]
 - If yes, which options that do not involve taking title to the property could help reach those goals?
 - Y/N - Leasing by the municipality [Comments]
 - Y/N - Collaboration with the property owner [Comments]
 - Y/N - Transfer of tax liens [Comments]
 - Y/N - Marketing incentives such as zoning or use assistance [Comments]
 - Y/N - Creation of local incentives such as tax increment financing
 - Y/N - Assist with building infrastructure
 - Y/N - Assist developers in the assembly of neighboring parcels
 - Other? Describe. []
- Are there other options for reaching the municipality's goals not listed above? Describe. []

- Are there "stopper issues" that would potentially rule out specific property recovery actions? Describe. []
- Are there limitations on the intended use of the property identified in the Preliminary Reuse Assessment? Describe. []

Evaluation Process



- Phase I, II site assessments
- Property issues (e.g., history, status, appraisal, ownership access)
- Environmental condition
- Remedial action
- Regulatory status of the property
- Environmental restrictions
- All appropriate inquiry

Worksheet #4: Due Diligence

**Note – The questions in this worksheet are meant to identify an initial list of risks typically found when conducting proper due diligence. If an answer to a question requires further discussion and strategizing to mitigate (e.g., property or buildings have historical significance), flag and list as a barrier on Worksheet #5.*

All Appropriate Inquiry [Section 6.7.1]

- Have all the requirements for All Appropriate Inquiry been met? Y/N
[Comments]
 - If not, what areas still need to be addressed? Describe []

Property History [Section 6.7.2]

- What are the prior land uses and activities?
 - []
 - []
- Who were the prior owners and tenants of the property?
 1. []
 2. []
- Are previous development plans for the property available? Y/N
Describe []
- Are there other relevant factors relating to property history?
Describe []

Current Property Status [Section 6.7.3]

- What is the ownership status (e.g., private, abandoned, publically owned, etc.)?
Describe []
- Is there clear title to the property? Y/N [Comments]
- Are there liens on the property? Y/N – EPA, State, Mortgage holders, Contractors, Property tax, etc. [amounts]
- Can clear title be obtained? Y/N [Comments]
- What is the current land use of the property? Describe []
- What is the current zoning and relationship of the property to local master plans and other planning studies? Describe []
- Are buildings, structures or areas of the property of historical importance? Y/N
Describe [] *Note – It is important to identify any state or federal historic preservation statutes that may be triggered with redevelopment []
- Are there other relevant factors relating to property status? Describe []

Property Appraisal [Section 6.7.4]

- What is the appraised value of the property? []
- Are there other relevant factors relating to property appraisal? Y/N Describe []

Regulatory Status [Section 6.7.5]

- What federal and state cleanup statutes are likely to apply to the property?
 1. []

2. ☐]
- Have federal- or state-mandated cleanup actions already been or are likely to be conducted at the property? Y/N Describe ☐]
- Have "potentially responsible parties" been identified for the property? This includes municipalities that already are or are likely to be PRPs. Y/N
 1. ☐]
 2. ☐]
- Is the municipality a PRP
- Are there other relevant factors relating to regulatory status? Y/N
Describe ☐]

Environmental Conditions [Section 6.7.6]

- Is there a known or suspected environmental condition (e.g., Recognized Environmental Condition) on the property? Y/N
 1. ☐]
 2. ☐]
- Are there data gaps either identified or indicated in the Environmental Assessments? Y/N
 1. ☐]
 2. ☐]
- What regulatory oversight has occurred or is occurring for environmental investigations/studies and cleanup? ☐]
- Has the validity of data and other information or conclusions in previous environmental investigations/studies been evaluated? Y/N
- Do existing environmental investigations/studies and cleanups address off-site sources of contamination? Y/N
- Have hazardous substances associated with activities on the property been identified on adjacent properties or are hazardous substances expected to migrate beyond the property boundaries? Y/N
Describe ☐]
- Do existing environmental investigations/studies and cleanups address asbestos, lead-paint and other hazardous materials that were used in the construction of buildings and other structures? Y/N
Describe ☐]
- Do existing environmental investigations/studies and cleanup address all areas of the property? Y/N
- Are there known or believed to be serious, immediate threats to human health and the environment associated with the environmental condition identified on the property? Y/N
Describe ☐]

- For properties where cleanup has occurred, are the existing activity and land use assumptions and cleanup goals consistent with the planned or intended uses of the property? Y/N
- Are there health studies that suggest a possible link between releases from the property and adverse health impacts on humans? Y/N
Describe []
- Are long-term cleanup-related treatment systems or other engineering controls in place or planned? Y/N
Describe []
- Are there other relevant factors relating to environmental conditions status? Y/N
Describe []

Environmental Restrictions [Section 6.7.7]

- Are there environmental restrictions implemented or identified for the property? Y/N
Describe []
- Are there other relevant factors relating to environmental restrictions? Y/N
Describe []

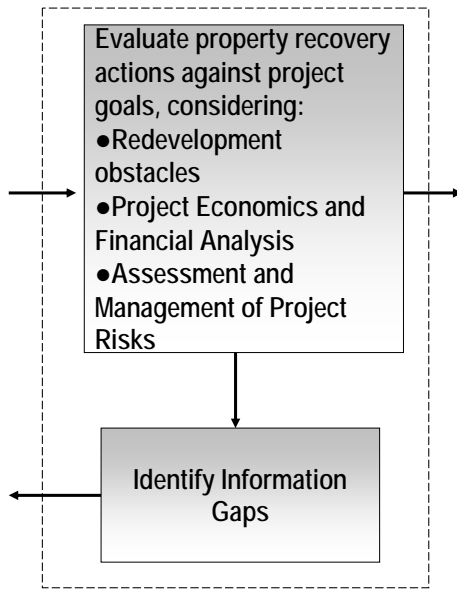
Remedial Action

- Has a remedial action plan been developed for the property? Y/N
Describe []
 - If so, is the proposed remedial action consistent with the potential future use? Y/N
- Are there other relevant factors relating to remedial action? Y/N
Describe []

Other Information

- List any other relevant information regarding the property that has been identified through due diligence?
 1. []
 2. []
 3. []
 4. []

Evaluation Process



Note: These steps are iterative and done in conjunction with the due diligence process

- Identify redevelopment obstacles **Worksheet # 5**
- Evaluate project economics and conduct financial analysis
Pro Forma & Sources and Use
- Assess project risks
Worksheet # 6
- Evaluate risk management tools
Worksheet # 7

Worksheet #5: Identifying and Prioritizing Redevelopment Barriers

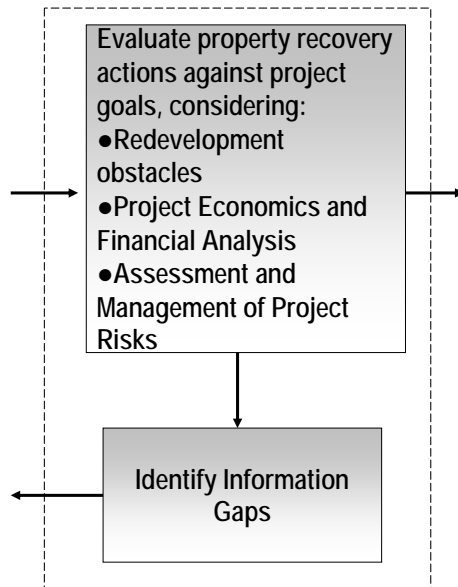
Property Recovery Action: Acquisition with Interim Retention

<i>Identify the redevelopment barriers or other considerations identified as a result of the due diligence.</i>	<i>Priority</i>	<i>Identify additional information important to the understanding of the redevelopment barrier</i>
Lack of clear title	High	Owner still exists, but property taxes in arrears for \$540,000
Environmental conditions are not fully known	High	Phase I ESA conducted, but site access not allowed.
		Asbestos is expected to be present in boiler plant and on heating pipes throughout facility.
		No releases or outstanding environmental compliance issues reported to EPA or State DEP.
Environmental status is not fully known	High	A 10,000 gallon tank containing heating oil may be in use. Other above ground and underground tanks used for lubricating oil and gasoline were closed in accordance with regulatory requirements in 2005.
		Notified as a RCRA small quantity generator (primarily solvents, waste oils, cleaning solutions, paints). Last state inspection was November 2004. Paperwork violations noted and resolved.
		Facility subject to RCRA hazardous waste requirements as a small quantity generator
Access road to the property is in serious disrepair and may require resurfacing	Medium	Subject to UST regulations.
		Building demolition would be subject to asbestos NESHAPs
		Phase I ESA was incomplete and did not include a visual site inspection to identify other potential regulatory issues.
Buildings are seriously deteriorated	Medium	DPW estimate of \$200,000 for road upgrade.
		Unlikely to be acceptable for renovation. Status of fire protection systems is not known. Potential for fire, or release of asbestos if collapse occurs. Need access to evaluate building condition.

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Evaluation Process



Note: These steps are iterative and done in conjunction with the due diligence process

- Identify redevelopment obstacles **Worksheet # 5**
- Evaluate project economics and conduct financial analysis **Pro Forma & Sources and Use**
- Assess project risks **Worksheet # 6**
- Evaluate risk management tools **Worksheet # 7**

Sample Real Estate Pro Forma for Redevelopment Project

PROJECT COSTS		Purchase Price			\$0.00	A-1	Acquisition Price may be based on appraised value minus remediation
Remediation Costs For Project		Soil Excavation Area 1			\$0.00	A-2	Cost of soil removal
		Soil Excavation Area 2			\$0.00	A-3	Cost of soil removal
		Demolition			\$0.00	A-4	Demolition cost
		Total For Remediation			\$0.00	A-5	Total Remediation Cost: (B1)-(B2)-(B3)-(B4)
Hard Costs							
Development Area 1							
New Construction		Retail	Square Feet	Cost	\$0.00	C1	Construction cost per sq ft of retail
		Industrial	Square Feet	Cost	\$0.00	C2	Construction cost per sq ft of industrial
		Office	Square Feet	Cost	\$0.00	C3	Construction cost per sq ft of office
		Residential	Square Feet	Cost	\$0.00	C4	Construction cost per sq ft of residential
		Parking	Surface Area	Cost	\$1,000	C5	Construction cost for parking per space
		Total Hard Costs (Development Area 1)				B1-C5	Total Construction Cost Area 1: (C1)+(C2)+(C3)+(C4)+(C5)
Development Area 2							
Existing Building		Autoclave Removal	Volume of materials to be filled	Cost	\$0.00	D1	Cost of autoclave removal
		Excavation	Volume of material	Cost	\$0.00	D2	Excavation cost per cu yd
Renovation Costs		Retail	Volume of material	Cost	\$0.00	D3	Renovation cost per cu yd of retail
		Industrial	Volume of material	Cost	\$0.00	D4	Renovation cost per cu yd of industrial
		Office	Volume of material	Cost	\$0.00	D5	Renovation cost per cu yd of office
		Residential	Volume of material	Cost	\$0.00	D6	Renovation cost per cu yd of residential
New Construction		Retail	Volume of material	Cost	\$0.00	D7	Construction cost per cu yd of retail
		Industrial	Volume of material	Cost	\$0.00	D8	Construction cost per cu yd of industrial
		Office	Volume of material	Cost	\$0.00	D9	Construction cost per cu yd of office
		Residential	Volume of material	Cost	\$0.00	D10	Construction cost per cu yd of residential
		Parking	Surface Area	Cost	\$1,000	D11	Construction cost for parking per space
		Total Hard Costs (Development Area 2)				B1-D11	Total Hard Costs and Construction Cost Area 2: (D1)+(D2)+(D3)+(D4)+(D5)+(D6)+(D7)+(D8)+(D9)+(D10)+(D11)
Total Hard Costs for Development Areas 1 and 2						B1-D11	Total Construction Costs Areas 1 + 2: (B1)+(B2)+(B3)+(B4)+(B5)+(B6)+(B7)+(B8)+(B9)+(B10)+(B11)+(B12)+(B13)+(B14)+(B15)+(B16)+(B17)+(B18)+(B19)+(B20)+(B21)+(B22)+(B23)+(B24)+(B25)+(B26)+(B27)+(B28)+(B29)+(B30)+(B31)+(B32)+(B33)+(B34)+(B35)+(B36)+(B37)+(B38)+(B39)+(B40)+(B41)+(B42)+(B43)+(B44)+(B45)+(B46)+(B47)+(B48)+(B49)+(B50)+(B51)+(B52)+(B53)+(B54)+(B55)+(B56)+(B57)+(B58)+(B59)+(B60)+(B61)+(B62)+(B63)+(B64)+(B65)+(B66)+(B67)+(B68)+(B69)+(B70)+(B71)+(B72)+(B73)+(B74)+(B75)+(B76)+(B77)+(B78)+(B79)+(B80)+(B81)+(B82)+(B83)+(B84)+(B85)+(B86)+(B87)+(B88)+(B89)+(B90)+(B91)+(B92)+(B93)+(B94)+(B95)+(B96)+(B97)+(B98)+(B99)+(B100)
Soft Costs		% of hard costs and remediation costs			20%	B1-F1	Soft costs 20% of construction costs (20% of B1)
CARRY COSTS		Purchase Price			\$0.00	G1	Interest costs on land acquisition for two years
		Months			24	G2	(24 x % per year x 2 years)
		Rate			8.00%	G3	
		Sub - Hard Costs + Remediation			\$0.00	G4	Interest Costs on construction, rehab and remediation
		Months			24	G5	(24 x % x % per month x # of months)
		Rate			8.00%	G6	
TOTAL DEVELOPMENT COSTS						B1-G6	Total of all development costs (A1)-(A4)-(E1)-(F1)-(G1)-(G2)-(G3)-(G4)-(G5)-(G6)
PROJECT VALUE							
Net Operating Income		Industrial Sub Let		\$0.00	\$0.00	J1	Total industrial of 4 estimated net lease rate per year
		Office Sub Let		\$0.00	\$0.00	J2	Total office of 4 estimated net lease rate per year
		Residential Sub Let		\$0.00	\$0.00	J3	Total residential of 4 estimated net lease rate per year
		Residential per 2000 sq ft		\$0.00	\$0.00	J4	Total residential of 4 estimated net lease rate per year
		Net Operating Income			\$0.00	J5	Total of annual net lease income (J1)+(J2)+(J3)+(J4)
		Less: Long Term Remediation Operating Expenses			\$0.00	J6	
		Less: Environmental Insurance			\$0.00	J7	
		Adjusted Net Operating Income			\$0.00	J8	Net Operating Income minus interest %
		Capitalization Rate			8.00%	J9	Net cost of capitalization - interest cost of environmental insurance
PROJECT VALUE COMPLETED AND OCCUPIED						B1-J9	Adjusted NOI divided by capitalization rate reflecting profit and risk
PROFIT						B1-J9	Project completed value minus total of all development costs (B1) - (B10)
Profit as % of Total Development Cost						B1-J9	Profit as % of Total Development Cost

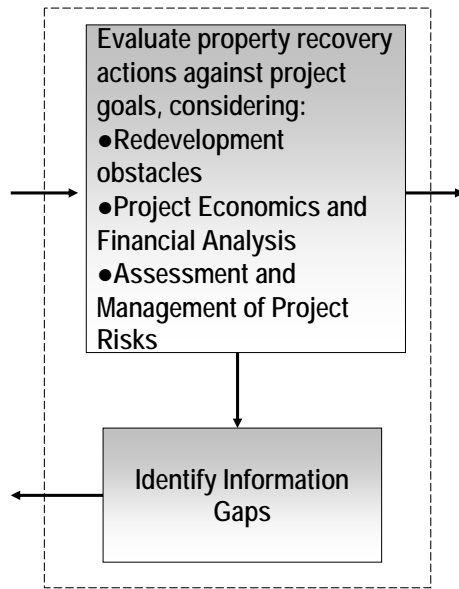
**SAMPLE
SOURCES AND USES OF FUNDS**

USES OF FUNDS		SOURCES OF FUNDS	
Acquisition	\$250,000	Construction Sources of Funds	
Transaction Costs	\$35,000	1st Construction Loan	\$720,000
Total Acquisition Costs	\$285,000	2nd Construction Loan	\$0
Hard Costs		Developer Equity	\$125,000
Construction	\$1,300,000	Equity from Federal Tax Credits	\$230,000
General Conditions	\$150,000	Equity from State Tax Credits	\$75,000
Profit and Overhead	\$40,000	Grant Source #1	\$15,000
Demolition/Site Improvement	\$50,000	Grant Source #2	\$0
Remediation	\$250,000	Other	\$1,165,000
Hard Cost Contingency	10% \$215,000	Deferred Developer Fee	\$35,000
Total Building Loan Hard Cost	\$2,365,000	TOTAL CONSTRUCTION SOURCES	\$2,365,000
Project's Soft Costs		Permanent Sources of Funds	
Borrower's A/E Fee	\$285,000	1st Permanent Mortgage	\$2,700,000
Bank Engineer	\$20,000	2nd Permanent Mortgage	\$465,000
Developer Owner's Representative	\$65,000	Developer Equity	\$125,000
Bank Legal	\$50,000	Equity from Federal Tax Credits	\$230,000
Developer Legal	\$65,000	Equity from State Tax Credits	\$75,000
Accounting	\$35,000	Grant Source #1	\$15,000
Environmental Phase I	\$8,000	Grant Source #2	\$147,700
Environmental Phase II and III	\$60,000	Other	\$3,757,700
Other Environmental Professional Fees	\$30,000	Deferred Developer Fee	\$0
Survey	\$10,000	TOTAL PERMANENT SOURCES	\$3,757,700
Title Insurance	\$7,000		
Appraisal	\$9,000		
Bank Commitment Fee	\$20,000		
Construction Interest	\$86,000		
Insurance	\$30,000		
Real Estate Taxes	\$24,000		
Building Permits	\$20,000		
Other	\$15,000		
Letter of Credit/Bond Fee	\$18,000		
Soft Cost Contingency	10% \$85,700		
Other	\$5,000		
Total Building Loan Soft Costs	\$947,700		
Developer Fee	\$100,000		
Operating and Lease-up Reserve	\$60,000		
TOTAL USES OF FUNDS	\$3,757,700		

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Evaluation Process



Note: These steps are iterative and done in conjunction with the due diligence process

- Identify redevelopment obstacles **Worksheet # 5**
- Evaluate project economics and conduct financial analysis **Pro Forma & Sources and Use**
- Assess project risks **Worksheet # 6**
- Evaluate risk management tools **Worksheet # 7**

Worksheet #6: Identifying Potential Risks Associated with Redevelopment Barriers and Actions to Resolve Information Gaps

Property Recovery Action: Acquisition with Interim Retention

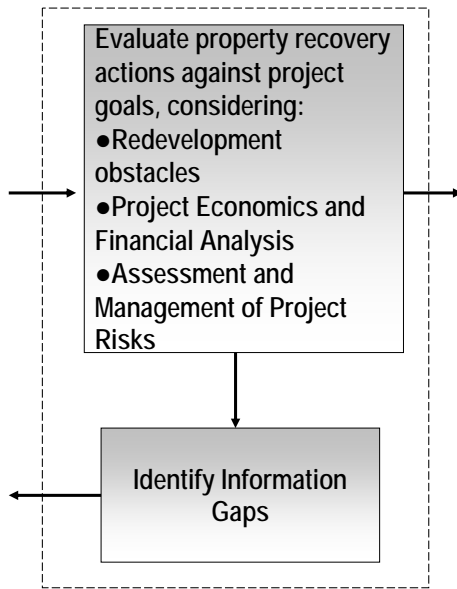
<i>List the redevelopment barriers (from Worksheet # 5) in order by priority.</i>	<i>Priority</i>	<i>Identify project risks associated with redevelopment barrier.</i>	<i>Are additional actions needed or planned to obtain additional information to support a decision on the barrier?</i>	<i>Identify potential actions needed to obtain additional information to support a decision on the barrier</i>	<i>Identify potential risk management tools & approaches needed to implement actions</i>	<i>Comments</i>
Lack of clear title	High	Disincentive for developers due to potential delays to resolve tax lien and to clear title	No	N/A	N/A	
Environmental conditions are not fully known	High	(1) Unable to estimate cleanup costs or impact on redevelopment. (2) Potential for unexpected costs and project delays due. (3) Higher insurance premiums (increased financial risk) (4) More difficult to get financing (increased financial risk and ability to attract investors)	Yes	Contact owner again about on-site access for completion of Phase I ESA and potential Phase II ESA. Have fire marshal conduct inspection of buildings and tanks. Contact EPA/State DEP about conducting RCRA inspections, and State DEP/Fire Marshall about UST inspections.	Access agreement Regulatory authority to access property for inspections or compel owner to allow access. Regulatory authority to access property for inspections or compel owner to allow access.	Develop a case (with city incentives?) on how this can be in the owner's best interests? Seek voluntary cooperation first (Could potentially alienate the property owner if the City requests regulatory inspections).

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Environmental regulatory status is not fully known	High	Town could potentially take on liability for cleanup.	Yes	Contact EPA and state DEP about possible liability and obligations under UST, RCRA, hazardous waste program, state property transfer laws, and CERCLA based on known environmental conditions. Improve understanding of environmental conditions (see above)	None (see above)	To be evaluated after completion of Phase I ESA.
Access road to the property is in serious disrepair and may require resurfacing	Medium	Potential disincentive for developers. Cost of resurfacing public access road adds to financial risk for the city.	No	N/A	N/A	
Buildings are seriously deteriorated	Medium	(1) Demolition costs add to financial risk for city or developer. (2) Potential legal liability and political risk if City allows buildings to deteriorate and catch fire and release asbestos? (3) Potential for environmental and civil liability due to release of asbestos during demolition and on-site staging of construction debris.	Yes	Prepare cost estimate for demolition and off-site disposal assuming: (1) the foundation floor is removed and (2) the floor is left in place (a potential option for limiting the release of any underlying contaminants and potentially reducing liability risk. Evaluate potential legal liability and political risks (See items 2 & 3 in column #1)	None	Assume presence of asbestos and lead-based paint unless confirmed otherwise.

Evaluation Process



Note: These steps are iterative and done in conjunction with the due diligence process

- Identify redevelopment obstacles **Worksheet # 5**
- Evaluate project economics and conduct financial analysis **Pro Forma & Sources and Use**
- Assess project risks **Worksheet # 6**
- Evaluate risk management tools **Worksheet # 7**

Worksheet #7: Identifying Risk Management Tools

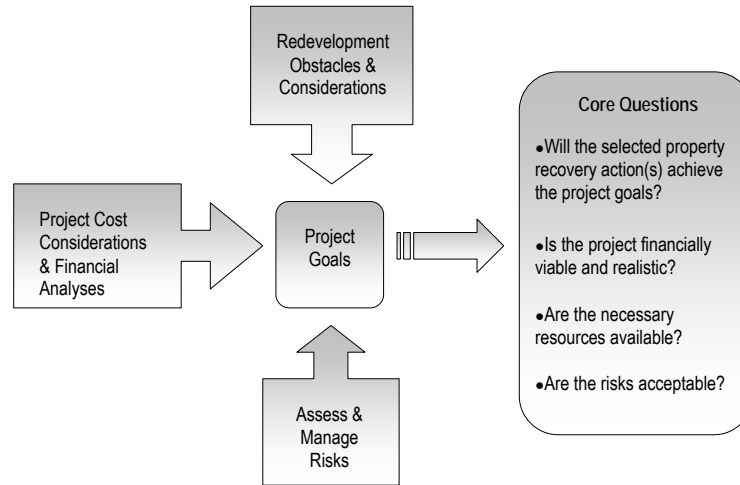
Property Recovery Action: Acquisition with Interim Retention

List redevelopment barriers for which no further action is planned to better understand risk (Indicated by a "no" response in column 4 of Worksheet 6)	Priority	Identify potential risks associated with redevelopment barrier (from column 3 of Worksheet #6)	Identify potential risk management tools or actions to address potential risks	Is Risk Acceptable?	Comments
Lack of clear title	Medium	Disincentive for developers due to potential delays to resolve tax lien and to clear title	None	Yes	Title would be cleared through acquisition by municipality.
Access road to the property is in serious disrepair and may require resurfacing.	Medium	Potential disincentive for developers. Cost of resurfacing public access road adds to financial risk for the city.	None	Yes	

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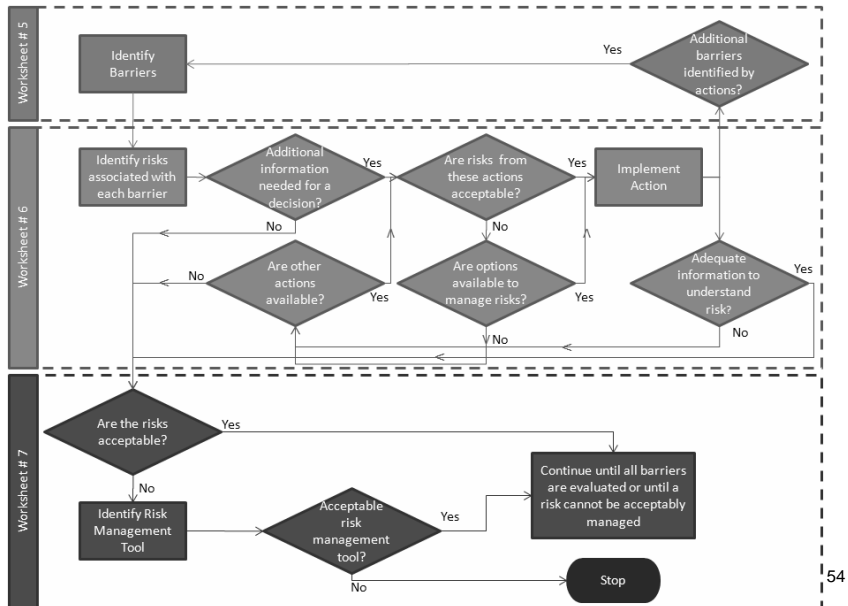
Selecting Property Recovery Actions



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The evaluation process intertwined with an evaluation of potential municipal intervention options. This process serves as the foundation for the step-by-step approach that is taken by the workbook

Evaluating Property Recovery Actions



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You Are Invited!

Tuesday, November 17, 10:30am-12:00pm, Room 225

Is your community considering ownership of brownfields?
Concerned about risks associated with brownfields?

Then this workshop is for you.

Come find out about a new tool to help
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Introducing



EPA's

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Help test drive this exciting new tool. Your input and feedback will be important. As part of the workshop, a brief case study will be examined to illustrate how this new tool can be applied.

Please RSVP to: vitanuovalle@gmail.com

For questions concerning this workshop or the document,
please call John Podgurski, USEPA at 671-918-1296.

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Thank You

After viewing the links to additional resources,
please complete our online feedback form.



Thank You

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