



LESSONS LEARNED
REAL ESTATE ACQUISITION
OBSERVATIONS AND LESSONS FROM THE SCHOOL OF EXPERIENCE

CHARACTERIZATION OF ENVIRONMENTALLY CONTAMINATED PROPERTIES

Over the years the redevelopment of under utilized urban sites has become more attractive with the introduction of various environmentally focused redevelopment programs on the Federal, State and Local levels. These programs offer various incentives for redevelopment and potential protection from liability as a result of historic environmental impacts. Developers that enter into these deals often times find characterizing the environmental impacts confusing, cumbersome, cost prohibitive and time consuming. Characterizing environmentally contaminated properties with the thought toward redevelopment is the subject of this "Lessons Learned".

The first step in characterizing a potentially impacted site is "doing your historical homework". This is generally completed in the form of a Phase I Environmental Site Assessment (ESA). Most commercial real estate transactions can not be completed without a Phase I ESA (as they are required by most financial institutions) and, with the most recent EPA promulgated All Appropriate Inquiry, are required to claim protection under CERCLA. The Phase I ESA generally does not include sampling or analyses of soils, groundwater, building materials, etc. but does give a very thorough description of the recognized environmental conditions associated with the site developed from historical research, site inspection, interviews and regulatory file review. The Phase I ESA can be used to guide the characterization; however it is not the only tool.

The characterization of the site may proceed in various directions, however as with any project as the study proceeds, the cost generally increases. In order to control the costs associated with environmental characterization of the site and to recognize the maximum value, the developer should compare development/redevelopment goals with characterization goals. Realizing that in most cases during predevelopment due diligence the final development scenario has not been determined; the developer should at least consider the likely development scenario to guide the characterization of the site. In other words "look around" to see what the common development scenarios in the area are. In today's real estate environment most land owners will generally maximize development opportunities on a particular site in a particular jurisdiction. Therefore, your development scenario will likely mimic others in the immediate vicinity due to site and regulatory constraints with regard to topography, subsurface conditions, set backs, below grade areas, and other variables that will control the ultimate disposition of a redeveloped site. The development of a work plan for the characterization of a particular site should parallel the physical aspects of the redevelopment taking into account many of the same constraints.

The site characterization should be performed with as much forethought as possible to reduce or eliminate redundancy as the process proceeds. Consideration should be given to the potential need for handling impacted soil and groundwater during development and their respective disposal regulations. In addition, the state environmental clean up programs should be contacted to determine specific requirements related to their involvement and ultimate sign off (i.e. closure) of the environmental aspects of the project. These state programs are generally voluntary and have been implemented to allow property owners the ability to redevelop sites without the fear of regulatory constraints that in the past have been perceived as detrimental. Each program has different guidelines and requirements that will need to be considered as part of the characterization process. Also, if environmental insurance is being considered for the property the underwriting requirements should be considered during the characterization. Even though these various programs and issues are involved with the characterization process, our experience has shown that there are several items which are consistent among them. These items should be identified and incorporated into the site characterization. By performing one complete characterization versus several different characterizations of the same site, savings are recognized in both time and money.

With a proposed development scenario established, a thorough understanding of the environmental history and current environmental setting (from the Phase I ESA) and an understanding of the regulatory aspects associated with redeveloping a site, the developer can work with a knowledgeable environmental consultant to establish a multi-faceted characterization that will not only outline the environmental issues associated with the site but also have the capability to guide the redevelopment process.

We hope that these "Lessons Learned" will be helpful to you in your next project.

Respectfully,

ECS Corporate Services, LLC