

Development Services Department

Property Environmental Due Diligence

Community “Brown Bag” Education

August 30, 2007

“Getting our Customers to Success”

- Sponsored by the City of Sacramento, Development Services Department
- Purpose: To continuously provide our customers with the tools to get them to success!
- When: The last Thursday of every month
12:00pm-1:30pm
- Where: City of Sacramento North Permit Center
2101 Arena Boulevard
Sacramento, CA 95834
(2nd Floor Training Room)

How it Works!

- You bring your brown bag lunch
- We provide the topic, refreshments, and cookies
- Please DO ask questions as they arise
- Please DO NOT feel like you are interrupting
- Interaction is important
- General questions are strongly encouraged. However, if you have specific project questions please hold them for after the meeting!
- Please turn off cell phones or put them on “silent”
- If you need to go to the restroom, please step out quietly as this session is being recorded.

Introduction

- David Zuber, Professional Geologist
18 Years experience, Vice President,
Brown and Caldwell
- Megan Cambridge, Brownfield Expert
22 years Experience, Brown and Caldwell
- Wendy Linck, Professional Geologist
16 years experience, Brown and Caldwell

Environmental Due Diligence






- Standardized approach to assess historic, current and potential future environmental risks of a property before transaction
- Evaluates environmental factors that affect expansion or construction opportunities.
- “A typical due diligence exercise assesses potential risks and possible need for mitigation”



Environmental Due Diligence Agenda

- Why do it?
- Who does it?
- How Environmental Issues Surface.
- The Process.
- Things to look out for.

Why do Due Diligence?

-  Understand what you are buying
-  Minimizes unknown liability risks
-  Identify environmental conditions (wetland and endangered species) that constrain projects.
-  Could result in substantial savings in purchase price or avoid permitting issues
-  Qualify for the innocent landowner defense to CERCLA liability

Controlling Risks

- Potential risk always involved with every property transaction
- Environmental due diligence is typically a condition of any purchase and meets requirement of good commercial and customary practice.



Determine if Site has Sensitive Environments

- Protected or endangered species
- Wetlands
- Vernal pools

Requires database search (CERES) and biologist to determine the designation



Evaluate Project Constraint



- Presence of wetlands, vernal pools or endangered species may adversely impact the ability to expand existing facility or build new ones
- Federal and state laws and policies goal of no overall loss and restoration of these resources, often inhibits development projects



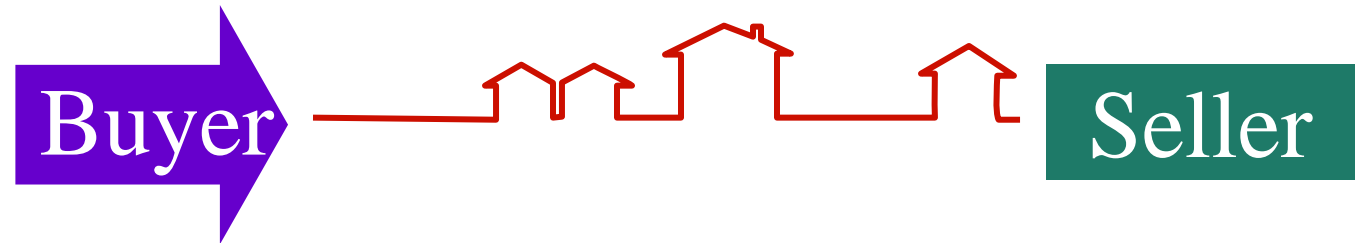
Assess if a property may have Contamination

If potential for contamination is suspected/identified, a qualified professional or an environmental consulting firm should be contracted to review the results and assist with getting more information.

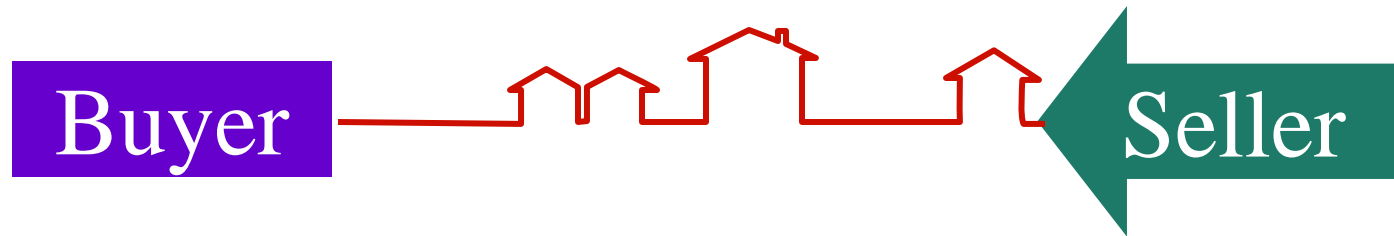


Who does Environmental Due Diligence?

Occurs during property transaction. Due diligence conducted by potential buyer.



Seller evaluation to determine problems and develop optimal selling strategy.



Pre-acquisition Audit “Buyer”

- Provides a review of the past, current or future risks.
- Generates recommendations to eliminate, reduce, manage or transfer risks.
- Helps ensure that the valuation and contractual terms properly reflect the organization’s environmental risks.

Pre-divestment Audit “Seller”

- Review environmental setting and history
- Confirm legal and pollution issues
- Review contractual risks
- Looks at availability and cost of insurance
- Looks at cleanup costs to manage risks provide
- Advise on warranties, indemnities, dowries and reserves
- Report passes on liability to an acquirer under a "sold with information" defense

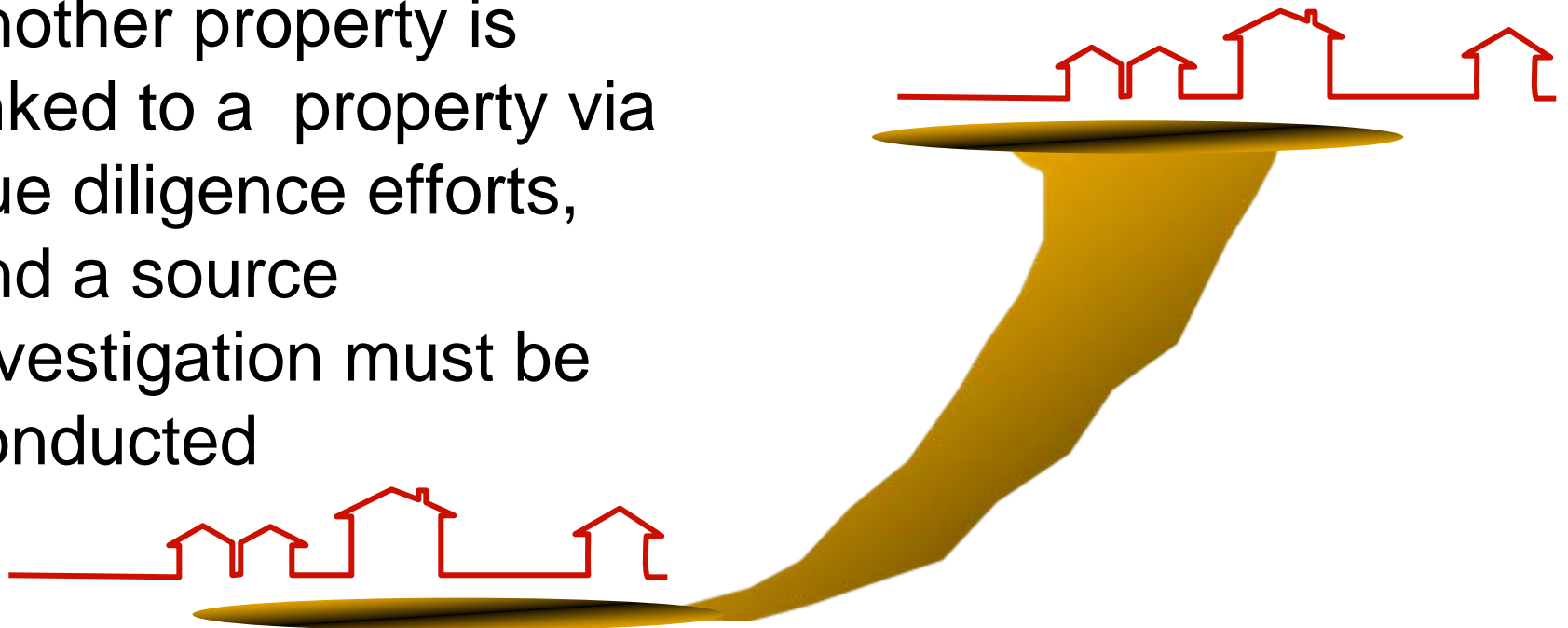
How Environmental Issues Arise

There has
been a spill
and it must be
characterized



How Environmental Issues Arise

Contamination on another property is linked to a property via due diligence efforts, and a source investigation must be conducted



How is Due Diligence Done?

- Standardized approach to ensure consistency
- Phased process - builds information
 - Phase I – environmental site assessment
 - Wetlands and endangered species evaluation
 - Phase II – sampling
- Trained professionals

Standardized Process - AAI

The practices that constitute “All Appropriate Inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice” as defined in 42 USC § 9601 (35) (B).

AAI = Standard by which Due Diligence Assessment is conducted for real estate purchase to provide liability protection



Under AAI, The Qualified Professional must:

- Interview past and present owners & occupants
- Review historical sources of information
- Review federal, state, tribal and local records
- Visually inspect of site and adjoining property
- Obtain/review commonly known information
- Note obviousness of contamination

Under AAI

The Prospective Landowner Must:

- Search for environmental cleanup liens
- Assess/document of specialized knowledge or experience of owner
- Assess relationship of purchase price to fair market value if not impacted
- Document commonly known or reasonable ascertainable information

What it Seems May Not Be



Phased Approach – Phase I Environmental Site Assessment

- Document/Records review
 - Review historical site use and surrounding area
- Site inspection/Interviews
 - Look for signs of suspected potentially hazardous substances or petroleum product contamination.
- Adjacent Sites
 - Look for issues from with adjacent sites and public right-of-ways.

Environmental Site Assessment

- Review aerial photographs
- 50 year chain of title records, fire insurance maps, historical telephone directories, and existing reports.
- Reviews environmental regulatory agency databases and records
 - federal, state and local agencies
 - within a minimum search radius.
- Interviews with property owners and key facility personnel



Initial Decision Point

- Property appears free of impacts - NFA and proceed with acquisition.
- Impacts are identified and not severe – proceed with transaction knowingly.
- Risks not well defined and need more data – Proceed with Phase II.
- Risk Identified and they are severe - Re-evaluate benefits of acquisition or stop if risks outweigh advantages.

PHASE II - Site Characterization:

- Uses ASTM standard and use of a registered geologist
- Sampling of soils, groundwater, and/or building components
- Goal: understand the nature and extent of contamination/issues to determine risk to human health and the environment



Decision Point

- Property appears free of contamination - proceed with acquisition
- Contamination confirmed – more sampling to determine full extent of problem and negotiate cleanup terms
- Extensive contamination poses significant liabilities likely will result in termination of sale

Things to look for: No Two Sites Alike

Investigations not the same and depends on :

- nature/type of property;
- historical use;
- type of transaction;
- proposed use of the property;
- information obtained in the course of the investigation
- No standard cost or schedule (Phase I typically 30 days)

More Things to Look for

- When the site became occupied
 - Impacts previous activities and chemical uses
 - Historical records - 40's and 50's standard practices were much more relaxed
- Provide ENOUGH time to conduct a thorough due diligence don't wait till the last minute
- Document adjacent properties to avoid future finger pointing
- See if site on Regulatory “radar” and why?

Still more things to look for

- Previous deals “failed,” why?
- More unknowns than knowns?
- Site in redevelopment area could be eligible for brownfield incentives and funding.
- Soil impacts easier to resolve than most Groundwater issues - “different kettle of fish.”
- Have your consultant thoroughly review agency files.



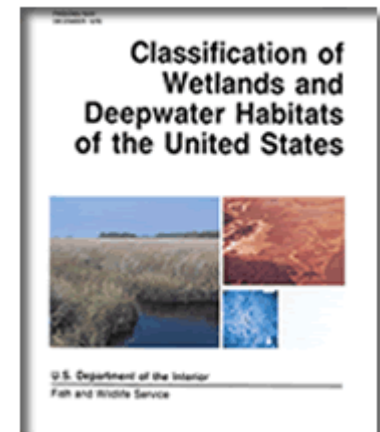
Things to look for: Real Estate Issues

- Understand the current and future uses of the site
- Deadlines
- If you want to redevelop the site quickly- get the regulatory agency on your team
- Be prepared for delays, avoid “pathological optimism”

Things to Look For: Environmental

- Wetlands – delineation maps (CERES)
- Endangered Species
- Vernal pools – seasonal flooded depressions on impermeable soil
- Perform ecological screening and identification early in process

FWS/OBS-79/31 DECEMBER 1979



Due Diligence Summary

- First step to identifying potential environmental problems associated with a property
- A Best Practice
- Completed to a Standard by Qualified People
- A Risk Management Tool



"CAUTION: HAZARDOUS SUBSTANCE AREA;
UNAUTHORIZED PERSONS KEEP OUT. BY
ORDER OF STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY,
DEPARTMENT OF TOXIC SUBSTANCES
CONTROL, REGION 2, (510) 540-3856"

"CUIDADO: AREA DE SUSTANCIAS
PELIGROSAS; PROHIBIDO EL PASO
DE PERSONAS SIN AUTORIZACION.
POR ORDEN DEL ESTADO DE CALIFORNIA -
AGENCIA DE PROTECCION DEL AMBIENTE,
DEPARTAMENTO DE CONTROL DE SUSTANCIAS
TOXICAS, REGION 2, (510) 540-3856"

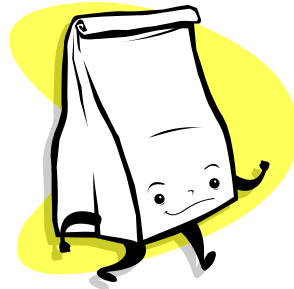
- Development Services website:

<http://www.cityofsacramento.org/dsd/>

- Development Services Helpdesk:

916-808-5656





Thank you for attending!

Please complete the evaluation form!