

Caveats

- Private brownfield developer perspective
 - Third party, not a responsible party, buying and redeveloping a contaminated property
 - Bringing private capital to help resolve environmental issues and redevelop a challenged site
- One view of Acquisition & Development process
 - Other approaches are possible
 - Stages are really a continuum, with few hard and fast boundaries
- This list is undoubtedly incomplete!



KEY ELEMENTS



Key element – real estate

- End Use
 - ✓ Highest & Best Use
 - ✓ Market Study – Demand, absorption, vacancy rates
 - ✓ Environmental Constraints
- Valuation
 - ✓ Function of end use
 - ✓ Appraisals
- Site Planning & Entitlements
 - ✓ Zoning – Is planned use by-right?
 - ✓ Coverage, height, density
 - ✓ Infrastructure
 - ✓ Environmental Constraints



Key element – environmental

- Regulatory
 - ✓ Lead Agency
 - ✓ Regulatory Program
 - ✓ Cleanup Standards – Risk based?
 - ✓ Path to Closure
 - ✓ Need for Institutional Controls
 - ✓ Agreements
 - ✓ Oversight Costs
 - ✓ Public Participation Requirements
- Technical
 - ✓ Site Characterization – Adequate?
 - ✓ Contaminants of Concern – Nature and extent
 - ✓ Remedial Options – Feasibility Analysis
 - ✓ Timing and Cost of Cleanup



Key element – finance

- Financial Performance
 - ✓ Expenses and Revenue – Magnitude, timing
 - ✓ Pro Forma Analysis
 - ✓ Return Expectations & Basis – IRR, ROE, Multiple?
- Financing
 - ✓ Type(s) of Capital – Debt, Equity, Grants, etc.
 - ✓ Source(s) of Capital
 - ✓ Cost of Capital
 - ✓ Return Requirements



Key element – legal

- Deal Structure
 - ✓ Purchasing Entity
 - ✓ Partnerships / JVs
- Contracts
 - ✓ Letter of Intent (LOI)
 - ✓ Purchase & Sale Agreement (PSA)
 - ✓ Formation Documents
 - ✓ Financing Agreements
 - ✓ Insurance Policies
- Title & Survey
 - ✓ Title Report & Review
 - ✓ Purchase & Sale Agreement (PSA)



Key element – risk management

- Deal Structure
- Due Diligence
- Contractual Terms
 - ✓ Indemnifications & Releases
 - ✓ Limitations of Liability being Assumed – Time, amount, nature of liability assumption
- Environmental Insurance
 - ✓ Coverages, Term, SIR, Insured Parties, Premium
 - ✓ Liability Insurance (“PLL”)
 - ✓ Cost Cap or Stop Loss (generally no longer available)
 - ✓ Manuscripting – Understand exclusions
- Cleanup, Regulatory Closure & Redevelopment



KEY STAGES



Key stages – site identification

- Location, Location, Location
 - ✓ Geographic
 - ✓ Economy
- Property Size
- Contaminants of Concern
 - ✓ Environmental deal killers?
- Likely Capital Requirements (est.)
- Deal Driver(s)
- “Ready, willing and able” Seller
 - ✓ Realistic View of Environmental Issues
 - ✓ Realistic View of Property Value
- End Point → Letter of Intent



Key stages – screening

- Real Estate
 - ✓ Land Constrained Market?
 - ✓ Surrounding Uses – “Donut Hole” concept
 - ✓ Demand by Product Type (Market Study)
 - ✓ Estimate of Value by Product Type (Brokers)
 - ✓ Zoning & Entitlements
 - ✓ Interested / Supportive Municipality
 - ✓ Demo and Abatement estimates
- Environmental
 - ✓ Contaminants of Concern
 - ✓ Lead Agency / Regulatory Program
 - ✓ Amount of Existing Site Characterization Data



Key stages – screening

- Finance
 - ✓ “Back of the Envelope”
 - ✓ Static, rough guesses / estimates of expenses & revenue
- Legal
 - ✓ Preliminary Title Report
 - ✓ Preliminary Survey
- Risk Management
 - ✓ Liability Relief Available
 - ✓ Insurability
 - ✓ Identification of Significant Carve-outs
- End Point → Purchase & Sale Agreement



Key stages – due diligence

- Confirm Assumptions in Screening Stage
- Meet with Regulatory Agency, City Staff, Public Officials, Key Stakeholders
- Finalize Site Plan
- Finalize Cleanup Plan
- Draft All Subcontractor Contracts
- Finalize Project Budget & Schedule
- Finalize Financing Source and Agreements
- Ensure All Conditions to Closing are met



Key stages – due diligence

- Real Estate
 - ✓ Obtain appraisal
 - ✓ Prepare entitlement documents
 - ✓ Finalize site plan, schedule & costs
 - ✓ Engage brokers
 - ✓ Early marketing to identify end users
- Environmental
 - ✓ Obtain Phase I ESA
 - ✓ Fill site characterization data gaps, if any
 - ✓ Reach agreement with regulators re. cleanup standards and remedial approach
 - ✓ Select remedy
 - ✓ Prepare underwriting documents
 - ✓ Participate in community outreach



Key stages – due diligence

- Legal
 - ✓ Form Purchasing Entity
 - ✓ Open Escrow
 - ✓ Title Insurance – Resolve exclusions and obtain commitment
 - ✓ ALTA Survey
 - ✓ Finalize all contracts
- Risk Management
 - ✓ Identify Markets
 - ✓ Obtain Indications of Insurance
 - ✓ Draft Regulatory Agreements
- End Point → Earnest Money / Deposit Goes Hard




Key stages – closing

- Legal
 - ✓ All contracts and agreements signed and placed in escrow
- Risk Management
 - ✓ Binding Quotes on Insurance
 - ✓ Bind Order issued at or immediately following closing
- End Point → Purchase of Property




CHALLENGES




Regulatory Issues

- Complex body of environmental regulations
- Regulatory process adds a layer of complexity in an area unfamiliar to most developers
- Extra compliance requirements before and during site development; typical permit compliance (e.g. grading, stormwater) may be complicated by other environmental factors
- Potential for 3rd parties to bring challenges to development projects based on environmental review statutes (NEPA, CEQA, etc.)



Project Impacts

- Site Development Constraints
 - e.g., site planning, feasibility of land uses
- Construction Impacts
 - materials management, engineering controls
- Cost Overruns
- Schedule Uncertainties



Financing

- Limited sources of private financing for real estate deals with environmental issues
- Higher risk demands higher investment returns
- Not uncommon for environmental factors to turn projects "upside down"



Stakeholder Engagement

- Environmental issues are a "hot button" topic for many stakeholders
- Need to communicate technical, often complicated, subject matter to a lay audience
- Jargon and scientific terminology makes communication challenging – avoid it!
"You may think you heard what I said, but I don't think you understood what I meant" -- technical consultant at a public meeting
- Environmental objections to a project can be a proxy for other underlying issues



OPPORTUNITIES



Be a Good Public Partner

- Be as transparent as possible and minimize uncertainty in the City's entitlement process – *time is money!*
- Be an advocate for the project whenever necessary – in public meetings, by providing support with regulatory agencies, etc.
- Lay groundwork with the community via a coherent planning process
- Be accessible and communicate



Money Talks

- Early due diligence dollars carry the most risk to private developers
 - Use public / city funds to resolve unknowns and provide common due diligence information
- Identify public finance tools, tax incentives or other sources of public financing for a given project area
- Public finance tools can be key to making these deals viable



Stakeholder Engagement

- Establish links with the community and create a forum for engagement
- Be a conduit for education; help deliver unbiased, fact-based information to the community
 - Technical Assistance to Brownfields Communities (TAB) grants and other programs through EPA
 - Oregon DEQ and local/state partners can also help
- Address underlying issues, such as environmental justice, gentrification, density, economic development, NIMBY, etc.

