

Don't just write off environmentally suspect properties

One of the results of our brisk regional growth and hot real estate market is that commercial and industrial land has become scarce and expensive.

Most "greenfield" sites — those that have no environmental problems — are already taken. Business owners looking to establish or expand their operations now must consider properties that may carry environmental baggage.

Some of these available sites may be "brownfields" — defined by the Environmental Protection Agency as abandoned or underutilized sites where redevelopment is complicated by contamination. Others are simply properties that, because of current or previous uses, may have environmental issues for which a new owner could be held accountable.

These "suspect" properties can include mill sites, petro-storage facilities, chemical warehouses, asphalt plants, quarries, gas stations, machine shops, nurseries, even farmland, among many examples.

As in any real estate transaction, the decision to buy (or finance) such a property is based on an assessment of risk and reward. Too often, prospective buyers assume that they can't get financing for a potentially contaminated site because of the risk, so they walk away from what is otherwise a good deal that would create long-term benefit for their business.

In fact, many of these properties probably can be financed if the seller and/or buyer are willing to make the effort to ascertain the actual condition of the property, its current and potential future value, and what will be required to mitigate or manage the buyer's risk/liability exposure.

Understanding these issues typically involves getting a professional environmental analysis of the property, aggressive negotiation with the seller and close communication with the Oregon Department of Environmental Quality. It helps to work with a lawyer who has experience in this area and a banker who knows how to structure these more complicated deals. It's a good idea to bring both of these helpful advisers into the process early.

IS IT WORTH IT?

No matter how complicated the situation, whether or not to proceed with a deal usually boils down to a simple business decision: Will your



**GUEST
COLUMN**

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the effort — at least in dollars and cents.

WHAT'S REALLY INVOLVED?

- The first step is to establish the current state of contamination. Where is it? What is it? How big is the problem? Does it impact adjoining property? With the help of a good environmental consultant, you identify the boundaries of the contamination and the value of the risk a buyer assumes. The consultant will also suggest cleanup options and estimated costs.

- With hard data in hand, you're in a better position to negotiate price with the seller, including a risk premium for your willingness to purchase an environmentally compromised property.

- Your lawyer and environmental consultant will work with DEQ to develop a voluntary plan of action for cleaning up the site or otherwise mitigating the problem. The goal is to obtain a formal agreement with DEQ that in exchange for completing the action plan, you will be protected from future liability.

Joe Hunt, principal geologist at Environmental Management Services, Inc. says the regulatory climate today makes it easier to arrive at an agreement with DEQ. He believes the agency is focused more on managing risk than eliminating it entirely, and is also willing to consider many options for site cleanup.

- Now you can give your banker what he or she needs to consider financing the deal.

THINK LIKE A BANKER

Nothing chills a banker's blood faster than the thought of lending on a contaminated property where the buyer's liability is unlimited and the

return on investment exceed your costs to the degree that you're willing to go ahead with it?

Paying for environmental consultants, lawyers and the hard costs of site remediation is usually not cheap. But if it results in enhanced property value and enhanced business operations that ultimately produce more revenue for your company, then the solid return on investment is clearly worth

amount of required remediation is unknown.

To consider extending credit, your banker will want to see:

- financials that demonstrate how quickly you can make the property produce revenue and how you will cover your loan payments in the interim;

- reliable, professional estimates on the scope of any cleanup work required and the price of that work;

- a complete property appraisal, including post-cleanup;

- a formal agreement with DEQ outlining the extent of cleanup the buyer must undertake, specific terms of the agreement including time frame, and providing a release from the buyer's future liability upon completion of the cleanup; and

- other liability limitations and protections, which may include cost cap insurance or an assessment of the risks of potential liability claims brought by adjoining landowners.

If you are working with a bank that's willing to consider extending credit on environmentally troubled property, sit down with your banker to examine the financial impact of various cleanup strategies.

In some cases, it makes sense for the buyer to commit capital up front to achieve a high level of cleanup quickly.

In other cases, it might be better to put more resources into developing the site for operations and using annual profits to amortize the longer-term environmental cleanup expenditures.

Your banker can help you determine which approach makes financial sense and structure a loan that will accomplish your objectives.

Putting contaminated property to productive use is good for our local economy. It helps create jobs, generates tax revenue to support public services, enhances surrounding property values and reinforces Portland's environmental policy goals and reputation as one of the country's most livable cities. We can't afford to just sit on dirty dirt.

Fortunately, there are ways to make these deals pencil out to everyone's satisfaction.

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