

Insurance Solutions for Brownfield Redevelopment Projects

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Profitability

- Knowledgeable developers and property owners can find Brownfield redevelopment opportunities rewarding.



Environmental Risks

- Commercial real estate owners, operators, and developers face environmental risk from a broad range of exposures including:
 1. Historical property use (Chemical storage facility)
 2. Tenant operations (Dry Cleaner using Perc, Gas Station)
 3. Neighboring properties (Migrating GW plumes, Vapor intrusion, etc.)



Purpose of Insurance

- Purchasing Environmental Insurance can help close the deal.
- Policies are available to offer protection by limiting some of the risks in developing contaminated properties
- Parties involved in a real estate transaction that may need the coverage:
 1. Sellers
 2. Buyers
 3. Lenders
 4. Developers



Environmental Concerns

- Seller- Past owners could be potentially liable for environmental issues that are uncovered after the sale.
- Buyer- Could face future business interruption as a result of environmental concerns.
- Lender- Inability of the borrower to pay loan back due to environmental issues
- Contractor/Consultant- Potentially liable while performing due diligence activities that have non-disclosure of environmental issues.

Common Types of Environmental Insurance

- Contractors Pollution Liability
- Professional
- Lender Environmental Protection
- Site Pollution Liability

Environmental Cost-Cap Insurance (aka Stop-Loss)

- This type of policy generally exited the market around 2011. Cost-Cap policies provided protection against the risk of cost overruns.
- At this time if a carrier is willing to offer this coverage it is some form of limited coverage for very select accounts only.

Contractors Pollution Liability (CPL) & Professional Liability

- CPL – provides protection against environmental damage during construction.
- Professional – protection against an actual or alleged act, error or omission in the performance of professional services.

Lender Environmental Protection

- Protection in the event a borrower defaults on the loan and the property is environmentally impaired.
- Policy will pay the lender the outstanding balance of loan or costs of cleaning up property whichever is less.
- Pay for cost of clean-up required of the bank by government authority.

Site Pollution Liability Policy

- Site Pollution Policies are Claims Made Policies.
- To trigger coverage, the claim must be made and reported to the carrier during the policy period.

Common Coverages offered by Site Pollution Liability Policies

- Coverages offered for Pollution Liability are Account and Site Specific and may include:
- On-site and/or Off-site coverage for:
 - Third party bodily injury (BI) and property damage (PD) claims from existing unknown or new pollution events.
 - Cleanup costs from existing unknown pollution or new pollution events including coverage for discovery and restoration costs.

Site Pollution Liability Policy

- Known pollution conditions are not covered except in very limited and controlled cases.
- For example: BI coverage might be offered if NFA has been granted by the governing agency allowing contaminated soil or GW to be managed in place with engineering and institutional controls in place.

Additional Coverages offered by Site Pollution Liability Policies

- Legal defense associated with a covered loss
- Costs associated with business interruption, loss of rental income and/or construction delays.
- Property damage including costs for diminution in property value and third party loss of use.
- Natural resource damage
- Transportation of materials coverage (contamination that occurs if a spill happens while materials are being transported off-site)

Common Coverages offered by Site Pollution Liability Policies

- Crisis Management
- Emergency Response Coordination Services
- Re-opener coverage (for sites after no further action (NFA) or equivalent determination)
- Coverage can include participation in state Brownfield and voluntary cleanup programs.
- Limited Asbestos and Lead in place liability coverage (can cover “inadvertent” disturbance, does not include abatement)

Common Coverage Options

- Policy Period: Policy terms from 1 to 10 years
- Limits: Coverage limits typically range from \$1M to \$25M. Higher limits may be available using multiple carriers.
- Deductibles: Starting at \$25,000

Important Considerations for Use of Environmental Insurance at Brownfield Sites

- Insurance should not be viewed as a way of managing known or anticipated pollution risks at a poorly characterized / minimally investigated site.
- The ability to acquire coverage depends on the underwriter's ability to understand the site's historical use, current site conditions and anticipated future use.
- Each policy is Site-Specific. Offered coverage will vary from site to site.

Important Considerations for Use of Environmental Insurance at Brownfield Sites

- Good site data is necessary for an underwriter to consider offering coverage.
- This typically starts with a recent, quality Phase 1 ESA report and depending on Site conditions typically includes investigation report(s) presenting findings from collection and analysis of soil, GW and/or vapor samples.

Important Considerations for Use of Environmental Insurance at Brownfield Sites

- For a well characterized site, insurance can be an alternative for managing risks associated with unknown conditions that might be encountered during site redevelopment.
- Environmental insurance can be used as an alternative to or in combination with escrow funding, indemnity agreements, and/or sales price reduction to manage actual or perceived environmental risks associated with commercial property transactions.

Summary

- Brownfields can be very profitable redevelopment projects but there are many environmental risks associated that must be considered. However, these risks can be mitigated by an insurance policy with the proper features. Reducing these risks with insurance allows more deals to close.