

# Insights

## **Ten Important Tools to Manage Environmental Risks in Real Estate Transactions [INFOGRAPHIC]**

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Environmental issues can present significant risks and complications in real estate transactions. With the right team in place and with guidance from skilled environmental counsel, however, environmental risks do not need to be viewed as a threat to the project. Rather, environmental challenges can be viewed as an opportunity. I recently hosted a webinar to present on **Environmental Issues in Real Estate Transactions: Ten Critical Concepts and Important Tools to Manage Risk**. If you were unable to attend the webinar, you can listen to the recorded version [HERE](#). Additionally, below is an **infographic** outlining the ten concepts and tools discussed during the webinar.

As a Partner in our **Real Estate & Environmental Practice**, I have the privilege of advising on some of the most complicated, environmentally-challenged Brownfield redevelopment projects. Deals of this nature often require use of all ten tools. Some transactions might only require use of two or three. Regardless of the complexity of your transaction, it is important to have a team in place with practical, working knowledge of these tools so environmental risks are managed, costs are controlled and investments and values are safeguarded. If you have any questions about the [webinar](#), the **infographic** or environmental issues you are experiencing, please do not hesitate to contact me.

# ENVIRONMENTAL ISSUES IN REAL ESTATE TRANSACTION

## TEN CRITICAL CONCEPTS AND IMPORTANT TOOLS TO MANAGE RISK

### 1 Phase I ESA



The Phase I ESA is a foundational document in commercial real estate transactions that allows a purchaser to obtain CERCLA liability protections. Make sure all technical requirements are met to satisfy AAI.

### 2 Phase II Subsurface Investigation



Subsurface data (Phase II) is often necessary to understand the nature and extent of any contamination. This data will inform many other aspects of the project. Sometimes there is sufficient data from an ongoing cleanup to avoid Phase II.

### 3 Vapor Intrusion



Vapor intrusion is now a point of regulatory focus in most environmental cleanups. A developer should anticipate that investigation and, where warranted, mitigation of "VI" issues will be required.

### 4 Soil Management



When development, excavation and/or land disturbance must occur in areas that are contaminated, it is often advisable to have a Soil Management Plan prepared by an environmental consultant.

### 5 ERC



Environmental Restrictive Covenants or "ERCs" are a common remedial tool that restricts future use of land due to residual environmental impacts. The restrictions often impact development.

### 6 Offsite Migration



Offsite migration must be investigated and controlled. Offsite liabilities must be managed. Unexpected offsite liabilities can be very disruptive to the redevelopment and future of a project.

### 7 Contractual Risk Allocation



Buyers/developers must be acutely focused on the risk allocation that is put in place between them and the seller. This is especially important when redevelopment is occurring parallel to remedial activities.

### 8 Strategic Design



Intended future use can dictate the scope of a cleanup, and vice-versa. One important tool is the ability to "design around" particularly problematic conditions.

### 9 Comfort Letters



Indiana's Comfort Letter program is a tremendous tool for buyers of contaminated properties. It allows buyers to further insulate themselves from historical liabilities, but not required to obtain liability protections, and not appropriate for all sites.

### 10 Environmental Insurance



Environmental Insurance such as PLL and CERPLA coverage can be polarizing. Some parties like it, some do not. Regardless, it is a tool to consider and can be effectively deployed in appropriate circumstances.



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