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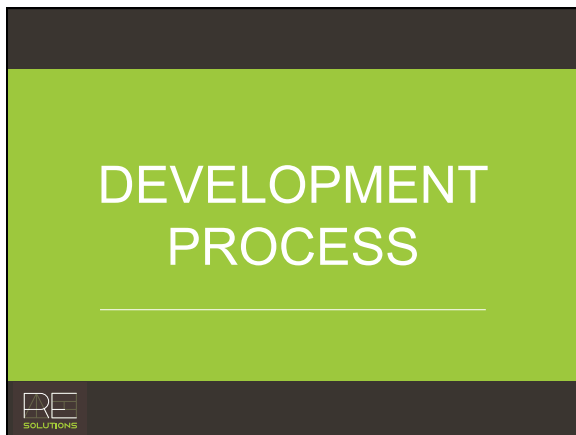
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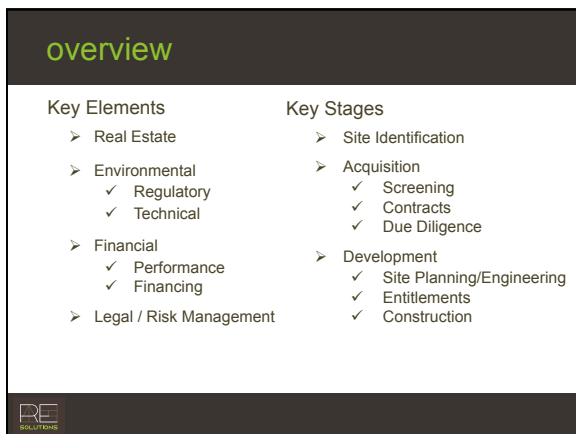
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## Caveats

- 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!




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## KEY ELEMENTS




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## 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




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### 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



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### 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



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### 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)



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### 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



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## KEY STAGES



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### 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



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### 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




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### 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




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### 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




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### 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




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### 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




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### 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




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# CHALLENGES



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## 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.)



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## Project Impacts

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



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## 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"



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## 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



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# OPPORTUNITIES



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### 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



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### 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



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### 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.



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