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Brownfields, the Polanco Act, and AB 440

Urban Blight

California's population continues to increase – 34 million in 2000, 38 million in 2012, and projected at 42 million in 2020. These people need places to live, work, play and shop. The pressures on available land in California are increasing correspondingly, and have been exacerbated by the Great Recession, as virtually no new houses were built to accommodate the ever-increasing population between 2006 and 2012.

Our urban areas are squeezed up against the ocean, mountains and deserts, and urban sprawl is eating up valuable agricultural land, open space and recreational areas, and ecological habitat. However, many inner cities are under-utilized or even blighted. In real estate there is a classic rule that dictates land value: location, location, location. However, to date, much of California's urban cores have not conformed to this rule. The location is great; however, land values are low. These areas of urban decay are characterized by the following:

- Laissez-faire development that occurred prior to planning and zoning – areas of mixed land use (e.g. residential interspersed with small industrial activities);
- A legacy of polluting industries that have ceased operations, and whose owners have long since moved away and took their money with them;
- Vacant, orphan or abandoned lots;
- Older buildings, often vacant, vandalized, structurally unsound, and otherwise decaying;
- Limited residential properties;
- Contaminated properties;
- Uncoordinated, slow, poorly-funded single parcel cleanups;
- Receptors impacted by pollution (e.g. contaminated schools, water wells, air quality, etc.);
- Haphazard single parcel redevelopment;
- Complex regulatory schemes for environmental, public works, planning, etc.;
- Poor services (e.g. retail, entertainment, recreation, etc.);
- High unemployment;
- High crime; and
- Thus, low land value.

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Common Contamination Problems

The contamination problems often encountered in older urban cores include the following:

- Building contamination – asbestos, lead-based paint, mold, metal dust, abandoned hazardous waste, old transformers, homeless waste, fire damage, etc.; and
- Subsurface contamination from a variety of industrial operations –
  - A variety of petroleum products from leaking underground storage tanks (USTs), above ground storage tanks (ASTs), hydraulic lifts, waste oil tanks, heating oil tanks, and clarifiers, etc.;
  - Solvents and other volatile organic compounds (VOCs) from dry cleaners, metal finishing shops, machine shops, electronics manufacturing (e.g. printed circuit boards), auto repair facilities, aerospace manufacturing, etc.;
  - Coal tar (VOCs and poly-cyclic aromatic hydrocarbons [PAHs]) and metals (blue billy) at former manufactured gas plants (MGPs);
  - Hexavalent chromium and other metals from utility compressor plants, metal finishing, and other industrial facilities;
  - Pentachlorophenol (PCP), creosote, and chromium copper arsenate from wood treating facilities;
  - Oil, VOCs, methane, hydrogen sulfide, metals, naturally occurring radioactive materials (NORMs), and fracking fluids from active and abandoned oil fields;
  - Fly ash and other coal combustion products (CCPs) from coal-fired power generation plants;
  - Perchlorate and other propellants or explosive from rocket testing, fireworks manufacturing and other facilities;
  - A variety of toxic chemicals and biohazards from drug labs, crack houses, bathhouses, etc.;
  - Fecal coliform and methane from old septic systems;
  - Poly-chlorinated biphenyls (PCBs) from electrical transformers;
  - Pesticides and other agricultural chemicals from past agricultural use; and
  - A variety of contaminants from hazardous waste transfer, storage and disposal facilities (TSDFs), landfills, and other industrial operations.

Should a City, County, or other public agency take title to a contaminated property they may find themselves designated a responsible party (RP), as the term is used in the federal Superfund law - the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. (1980); as amended, 42 U.S.C. 9601 et seq. (1986). The Federal or State environmental oversight agency may request that they participate in paying for cleanup of the property. In fact, if past owner/operators or other RPs cannot be identified or have no

funds, the City/County may have to pay for the entire cleanup, under the strict, joint and several liability provisions within most environmental cleanup statutes. In the past, many cities, community redevelopment agencies (CRAs), school districts, transportation districts, etc. have found themselves in this position. In many cases, they have had to implement the cleanup, and have been unable or unwilling to recover costs from other RPs.

CRAs and Contaminated Properties

Many cities created community redevelopment agencies (CRAs or RDAs) to prevent further urban decay, and even foster urban renewal and growth. However, the CRAs were faced with the problem of addressing many contaminated properties, often referred to as Brownfields. These properties must be cleaned up expeditiously and effectively to allow redevelopment to proceed on schedule. Alas, the normal regulatory oversight structure may not facilitate expediency. In addition, the current property owner may be reluctant to improve the property due to perceived or real environmental liability, have limited responsibility for the contamination, and/or limited funds to adequately address the problem.

The Polanco Act

In 1990, language was added to California's Health and Safety (H&S) Code by State Senator Polanco (Assembly Bill [AB] 3193, Chapter 1113, http://www.calepa.ca.gov/Brownfields/PolancoAct.htm) to address the problems associated with redevelopment of brownfields and provide protection to CRAs (and even subsequent developers). In fact, Senator Polanco introduced the language after the CRA for the City of San Diego was named a RP for contamination from historic service stations in downtown San Diego. Thus, the Community Development and Housing sections of California's H&S Code now includes an Article (§33459, et seq.) pertaining to the cleanup of hazardous substance releases. This Article is commonly referred to as the "Polanco Redevelopment Act" or "**Polanco Act**."

To summarize, the Polanco Act includes measures authorizing CRAs to direct cleanup of contaminated properties within their redevelopment areas and obtain immunity for liability under state law if such cleanups are conducted in a certain manner.

In a typical cleanup project, a RP (e.g. property owners, facility operator, etc.) retains a consultant to investigate the magnitude and extent of contamination, develop and implement a remediation program, and conduct periodic sampling. This work is all performed under the oversight of, and with approval from, a state regulatory agency (e.g. Department of Toxic Substances Control [DTSC] and/or Regional Water Quality Control Boards [RWQCBs]). However, within CRA redevelopment areas, the Polanco Act affords the local agencies substantial discretion and authority in the cleanup process. Under Polanco, the CRA can take the following courses of action whether it intends to acquire the property or not:

1. Request a remedial action plan (RAP) from the RP.
2. Propose a RAP to the RP in the first instance.
3. Implement the plan, if the RP fails to submit a plan or respond to the proposed plan within 60 days. The redevelopment agency can then recover these costs, and any attorney fees, through a cause of action against the RP(s).

State Oversight Agencies

Under the Polanco Act, the CRA must execute an agreement with a State oversight agency (e.g. DTSC) to (1) work cooperatively with State agency as a partner overseeing ongoing investigation and remediation activities at a site, or (2) if desired, act as the sole regulatory oversight agency (essentially stepping into the shoes of the California Environmental Protection Agency [Cal/EPA]), and (3) access the valuable immunities the Polanco Act provides. It should be noted that under the Cal/EPA site designation procedures (Unified Agency Review of Hazardous Materials Release Sites, see H&S §§ 25260 – 25268), the CRA has the ability to select the State agency that it wishes to work with. The DTSC and RWQCBs, and federal EPA, have become more proactive and cooperative with regard to Brownfields activities. The DTSC has developed a number of tools for addressing Brownfields. Prospective Purchaser Agreements (PPAs) allowed the CRAs a significant role in directing the cleanup of sites, and in particular, protects CRAs and subsequent developers through immunities.

The Role of the City/County in the Cleanup Process

Under the Polanco Act, H&S § 33459.1(b)(2), a CRA (or local agency, as defined in AB 440 [see below]) has the discretion to determine the key components of the cleanup (H&S § 33003). First, the cleanup must be consistent with the schedule for redevelopment. This schedule may preclude some types of remediation technologies because the time frame that they require may be inconsistent with project redevelopment schedules.

Second, the local agency plays a significant role in determining appropriate cleanup guidelines by (1) determining future land uses, (2) setting deed restrictions, and (3) reviewing and approving any risk-based remediation endpoints. A project redevelopment that envisions a day care center with grass playing fields mandates different cleanup standards (particularly when supported by risk assessment or risk based corrective action [RBCA]) than one that envisions a paved parking lot. The City/County can also impose deed restrictions on the property that limit its use (e.g. no storage of hazardous waste, no USTs, no excavation below a prescribed depth). While the State oversight agency will need to approve any remediation end points, it is the City/County that controls the land use designation and deed restrictions.

Third, the local agency has the authority to determine whether investigation and remediation programs are consistent with the guidelines contained in the National Contingency Plan (NCP)

(40 Code of Federal Regulations [CFR] Part 300). The NCP was designed to create nationwide standards and predetermined levels of quality assurance and control (QA/QC) for emergency response to oil spills and releases of hazardous waste (the National Response System) and long-term cleanup at Superfund sites (the Superfund Remedial Program). The degree to which any particular remedial effort must be consistent with this plan should depend, at least in part, on the nature of the site; that is, whether it is a Superfund cleanup or the remediation of a leaking heating oil tank.

The Fee Shifting Provision

The primary tool the Polanco Act uses is somewhat similar to the tools used in several federal statutory environmental cleanups, including the Clean Water Act (CWA) (42 U.S.C. 7401 et seq. [1970]), and Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 321 et seq. [1976]). The mechanism starts by the CRA (now City/County, under AB 440) providing written notice to a RP that a contaminant investigation and/or remedial action plan is required. This is supported by a "fee-shifting" provision that allows a CRA (now local agency, as defined in AB 440 [see below]) to recover its consultant and attorney's fees as part of its reimbursable "response costs". The RP must respond to the written notice within 60 days with an investigation and/or remedial action plan. If timely response to is not received, the local agency may itself undertake investigation and cleanup with the approval of an appropriate regulatory oversight agency (e.g. DTSC). Again, similar to the mechanism found in certain federal statutes, if a local agency has to take action on its own and seek recovery through a civil action, a fee shifting provision provides that it may recover consultant and contractor costs, as well as its reasonable attorney's fees and costs (see H&S § 33459.4(a) and § 25403.5).

The Advantages to Local Agency Implemented Cleanups

In many cases, it may be beneficial to the local agency, current property owner, State oversight agency, the community, property developer, and future property owner and tenants for the local agency to undertake the cleanup work.

The current property owner may not have the financial resources to retain legal counsel to pursue other RPs (e.g. past owners and operators, chemical manufacturers, etc.), let alone implement a costly remediation effort. In addition, if the local agency aggressively demands that the current property owner implement the cleanup, they can face bad publicity for picking on a "poor", innocent, local property owner (who may be politically connected!). Should a local agency implement the cleanup and cost recovery effort, they can be perceived as a "white knight" coming to the aid of that same "poor" property owner.

The State oversight agency and the community will likely feel that the local agency will implement a more effective and expeditious cleanup. No corners will be cut to save money (a

motivation for a private RP), as this is not protective of the local agency and future owners/occupants. In addition, such cost cutting would affect project quality assurance (QA), hindering any determination that the work was consistent with the NCP; thus, limiting the local agency's ability to recover its costs. Any concerns the community may have regarding the remediation program, may impact community acceptance of the overall redevelopment. The local agency also wants immunity from the State as much as it wants the closure or no further action (NFA) letter. Therefore, clearly the local agency is motivated to perform the cleanup appropriately.

Implementation of the cleanup by the local agency provides the developer with greater assurance that these efforts will not delay or impact his construction program, and remove or decrease the possibility of construction contractor change orders. It may also give him, and the future property owner and tenants, greater confidence that the work was completed in an effective and ultimately protective manner. It will also improve the likelihood that the State will grant them immunity as the cleanup program was implemented in an appropriate manner.

Community Outreach

Like any large-scale remediation and/or redevelopment project, the key to success lies in the ability of project proponents, particularly the local agency, to create a team from the various stakeholders in the project. The differing objectives, limitations, perspectives and agendas of the various stakeholders must be understood, and where possible, accommodated. Thus, community outreach, education and involvement, and in particular, stakeholder participation and buy-in, are the keys to a successful project. No party has a greater need for community and stakeholder buy-in than the local agency; therefore, their intimate involvement in the cleanup process is essential. Ideally, all stakeholders would concur on the development plan, remediation plan, and acceptable cleanup endpoint. Alas, finding common ground is often a more difficult challenge than the actual cleanup itself!

The Polanco Act Advantage

The Polanco Act provides the following potential advantages:

- Provides a more effective, expeditious cleanup;
- Tackles multi-parcel, multi-party, multi-contaminant issues too large to be addressed by individual property owners;
- Allows cleanup to be conducted in the public arena through increased community outreach, and freedom of access to documentation, information and data;
- Improves the chances that most, if not all, stakeholders will be satisfied with the cleanup;
- Provides economies of scale from concurrent or consecutive multi-parcel remediation;
- Allows for reduced environmental insurance premiums;

- Casts a positive public light on the City/County; that is, they are perceived as being proactive on environmental justice issues as opposed to solely redevelopment focused;
- Improves the chances of cost recovery for investigation/remediation programs from RPs;
- Limits the potential that the City/County will be named a RP;
- Provides immunity from State law (and even federal environmental law, if negotiated up front) for the cleanup to the City/County, developer and future property owners/occupants, and their successors;
- Allows for carve-out of contaminated areas, leaving "clean" land available for immediate redevelopment;
- Allows the redevelopment and cleanup to progress along a common schedule;
- Reduces the effect that actions, or inactions, of a State oversight agency can have on redevelopment;
- Allows for greater cost certainty in the remediation and construction programs;
- Allows cost savings by "co-mingling" remediation and construction activities (e.g. excavation of contaminated soil and construction of subterranean parking);
- Improves the chances of receiving Federal and State Brownfield grants; and
- Improves the chances that the final redevelopment will be acceptable to the community and all stakeholders.

Dissolution of CRAs

In light of the economic difficulties facing California resulting from the Great Recession of 2008 to 2011, the legislature took steps to dissolve CRAs in October 2011 under AB 26 (http://www.dof.ca.gov/redevelopment/). The intent of this action was to direct critical State and local public funds to schools, police and other essential services, rather than toward urban redevelopment. The dissolution faced several legal challenges, but the legislative action was ratified by Court-ruling in February 2012.

AB 440

As the California economy improved in 2012 and 2013, legislators recognized the need for urban redevelopment. They also recognized that contamination posed one of the most significant obstacles to such redevelopment. Therefore, AB 440 was drafted to allow local public entities (i.e. Cities, Counties and their respective agencies, such as Housing Authorities), to use the powers in the Polanco Act. Unlike CRAs which were empowered to use eminent domain powers to take control of blighted areas, under AB 440, local agencies have a "right-of-entry" to such properties. In addition, right-of-entry power extends to all blighted property within the purview of the local agency and is not limited to the former redevelopment areas. The bill was ratified by both houses and signed by Governor Brown on October 5, 2013. The new legislation becomes effective January 1, 2014 and will be codified as H&S Code Section 25403.

The AB 440 Process

The description below attempts to translate the process detailed in AB 440 into non-legal or non-legislative language. However, any local agency considering use of AB 440 should first seek legal advice to ensure compliance with the law.

AB 440 "*authorizes a local agency to take any action similar to that under the Polanco Redevelopment Act that the local agency determines is necessary, consistent with other state and federal laws, to investigate and clean up a release of hazardous materials in a blighted area, as determined by the local agency, within the boundaries of the local agency, pursuant to the procedures specified in the bill.*"

Step One

AB 440 provides the following definitions:

- "Local agency" means (1) A county, a city, or a city and county, or (2) a "housing authority."
- "Blighted area" means "*an area in which the local agency determines there are vacancies, abandonment of property, or a reduction or lack of proper utilization of property, and the presence or perceived presence of a release or releases of hazardous material contributes to the vacancies, abandonment of property, or reduction or lack of proper utilization of property*."
- "Blighted property" means "*property with the presence or perceived presence of a release or releases of hazardous material that contributes to the vacancies, abandonment of property, or reduction or lack of proper utilization of property*."

Therefore, **step one** in the AB 440 process is defining whether a property (or group of properties) is considered a blighted property or is within a blighted area. This designation appears to be at the sole discretion of the local agency; however, such a decision could face legal challenges from property owners or other interested parties.

Step Two

Under AB 440, if the local agency does not own property where investigation and clean-up activities are needed, the local agency has the right-to-enter that property. Prior to entering the property, the local agency must provide the property owner of RP with a "60-day notice" that an investigation and/or clean-up are required. However, as **step two**, the local agency must determine whether the property is currently listed on the National Priority List (NPL) (i.e. subject to US EPA oversight or action) or whether a property or release is subject to oversight of the DTSC or RWQCB under the following:

- Chapter 6.5 (commencing with Section 25100);

- A Cease and Desist Order issued under Section 13301 of the Water Code;
- A Cleanup and Abatement Order issued under Section 13304 of the Water Code;
- An existing voluntary cleanup agreement between the RWQCB or the DTSC and a RP that requires a cleanup by a specified date;
- An order issued by a RWQCB pursuant to Section 13267 of the Water Code, or an agreement entered into by the DTSC pursuant to Sections 25187, 25355.5, or 25358.3, for the investigation or cleanup at a site;
- A remedial action order, an imminent or substantial endangerment order or agreement, a prospective purchase agreement, or an order on consent issued pursuant to Sections 25355.5, 25356.1.3, or 25358.3, as applicable;
- An expedited remediation order issued pursuant to the former Chapter 6.86 (commencing with Section 25396), as that chapter read on January 1, 2012;
- An agreement entered into pursuant to the California Land Reuse and Revitalization Act (Chapter 6.82 [commencing with Section 25395.60]), as specified in Section 25395.92; and/or
- An agreement for the environmental oversight of schools entered into pursuant to Section 17213.1 of the Education Code and in accordance with Sections 17201 and 17210.1 of the Education Code.

If the property or release is currently subject to oversight by DTSC or RWQCB, then the local agency must allow the DTSC and/or RWQCB 30-days to review and comment on the proposed 60-day notice. If the DTSC or RWQCB objects within 30 days to the local agency issuing the notice, the local agency and the DTSC or RWQCB must promptly meet and confer to resolve the DTSC's or RWQCB's concerns. If the DTSC or RWQCB does not object within 30 days, the local agency can issue the 60-day notice. As a practical matter, if the property is listed on the NPL or subject to other US EPA oversight or action, the local agency should consider very carefully whether it wants to implement the AB 440 process for such a property. That is, if it's bad enough to be on the NPL, the local agency should probably keep their distance!

Step Three

If the property is not subject to oversight by the DTSC or RWQCB, or the DTSC or RWQCB do not object to the proposed 60-day notice within 30 days, the local agency can then issue the 60-day notice to the property owner or RP – **step three**. The owner and/or RP then have 60 days to respond to this notice by providing an investigation and/or remedial action plan. Based upon the response to the 60-day notice from the owner or RP, there are likely three possible courses of action:

1. The owner or RP submits an investigation or clean-up plan acceptable to the local agency and DTSC or RWQCB, and implements the program (RP led program);

2. The owner or RP enters into an agreement with the local agency to cooperatively implement the program (cooperative program); or
3. The owner or RP fails to adequately respond to the 60-day notice, and the local agency elects to implement the program (local agency program).

Step Four

With respect to the local agency program above, if there is no RP for the release identified by the local agency, or if the property owner or RP fails to agree to perform the steps noted below (as specified in the notice provided by the local agency), or if the local agency determines that conditions require immediate action due to an imminent threat to human health or the environment, the local agency may implement the following (**step four**):

- Prepare and submit an investigation plan and cost recovery agreement to the RWQCB or DTSC for review and approval, by an independent qualified contractor, if the investigation has not been completed or additional investigation is necessary.
  - The RWQCB or DTSC shall act on the investigation plan within 30 days of receipt of the investigation plan.
- After completion of the investigation plan, have a clean-up plan (i.e. RAP) prepared by an independent qualified contractor.
- Submit a RAP and existing applicable documents required pursuant to the California Environmental Quality Act (CEQA) (Division 13 [commencing with Section 21000] of the Public Resources Code) to the RWQCB or DTSC for approval.
  - The RWQCB or DTSC shall respond to the local agency's request for approval of a RAP within 60 days of the receipt of the plan.

Step Five

In implementing the clean-up program (**step five**), the local agency must notify the DTSC, RWQCB and local health and building departments of any clean-up activity at least 30 days before the commencement of the activity. In addition, if methane or landfill gas is present, the local agency must obtain written approval from the Department of Resources Recycling and Recovery (CalRecycle) prior to taking action. In implementing the clean-up program, the local agency must ccomply with the public participation requirements specified in Section 25403.7. The law expressly states that "*60 days after approval of the RAP by DTSC or RWQCB, immunity for subsequent clean-up action provided by Section 25403.2 shall apply*."

To facilitate remedial planning, the local agency may require that the owner or RP "*provide the local agency with all existing environmental information pertaining to the site, including the results of any Phase I or subsequent environmental assessment, any assessment conducted*

pursuant to an order from, or agreement with, any federal, state, or local agency, and any other environmental assessment information, except that which is determined to be privileged."

Step Six

AB 440 expressly states that "*the RP is liable to the local agency for the costs incurred pursuant to Section 25403.5. An action for recovery of the costs of a clean-up undertaken by a local agency under this section shall be commenced within three years after completion of the cleanup*" (**step six**).

Recommended Course of Action for a City/County

There are a variety of ways to use AB 440 and the Polanco Act in a redevelopment project. The following is one very complete process that could be used for a large area of a City or County (abbreviated processes that still satisfy the requirements of AB 440 and the Polanco Act can also be implemented for defined areas or site-specific cases). Again, before initiating an AB 440 program, a local agency should seek legal advice to ensure compliance with the law and other pertinent statutes, such as the NCP.

1. Conduct a preliminary master environmental assessment (MEA), a modified Phase I, for the entire redevelopment area, City-wide or even County-wide;
2. Identify properties of environmental concern (PECs), and areas of "regional" (non-parcel specific) contamination;
3. Identify properties where redevelopment is proposed;
4. In accordance with AB 440 (step one), define blighted areas and blighted properties;
5. Conduct full Phase I Environmental Site Assessments (ESAs) for multiple or single parcels to determine whether investigation and/or clean-up is required at properties subject to redevelopment (referred to as "contaminated properties");
6. Conduct a search of potential RPs for each contaminated property;
7. Draft a 60-day notice for each contaminated property;
8. Determine which contaminated properties are currently subject to Federal, State or local environmental oversight (AB 440, step two); and
9. Provide the DTSC or RWQCB with 30 days to review the proposed 60-day notice;
10. Issue the 60-day notice to the owner or RP for each contaminated property (AB 440, step three).

If the owner or RP fails to adequately respond to the 60-day notice:

11. Select the State oversight agency through the site designation process;
12. Negotiate with that agency, and others (e.g. federal EPA), to establish an environmental oversight (Polanco) agreement and PPAs;

13. Develop a community outreach and education program, identify stakeholders, and prepare a public participation plan (conduct regular public meetings throughout remediation and redevelopment process);
14. Prepare a preliminary master scoping plan (MSP) that covers all site investigations and likely remediation programs within the redevelopment area;
15. Define operable units (OUs) for single parcels, multiple parcels, or regional contamination;
16. Prepare a quality assurance plan (QAP), sampling and analysis plan (SAP), and health and safety plan (HASP) that cover all site investigations and likely remediation programs within the redevelopment area;
17. Develop a web-accessed Geographic Information System (GIS) for all environmental and redevelopment data, documentation and other information;
18. Develop a single schedule for remediation and redevelopment;
19. Prepare a site-specific remedial investigation plan (RIP) or RAP for each contaminated property;
20. If needed, prepare site-specific addenda to the QAP, SAP and HASP as appendices to the RIP or RAP;
21. Submit the RIP or RAP to the oversight agency for review (30 days for an investigation plan and 60 days for a RAP) (AB 440, step four);
22. Go out for public comment on MSP and site-specific RAPs;
23. If desired, obtain environmental insurance policy for the entire redevelopment area or individual contaminated properties;
24. Implement Phase II environmental site investigations to (1) confirm releases (site investigation or SI), (2) delineate magnitude and extent of contamination (remedial investigation or RI), and (3) assess risk and establish cleanup endpoints (health risk assessment or HRA) (AB 440, step five – part one);
25. Implement Phase III remediation planning, including (1) remediation pilot testing and feasibility study (FS), (2) RAP, and (3) remedial design and permitting (AB 440, step five – part two);
26. Implement Phase IV active remediation programs, including (1) construction and installation, (2) ongoing system performance monitoring and maintenance, and (3) ongoing monitoring of contaminant conditions (AB 440, step five – part three);
27. File cost recovery actions against recalcitrant RPs (this can be linked to eminent domain proceedings) (AB 440, step six);
28. Upon completion of remediation, obtain closure or no further action (NFA) determination from State oversight agency.

The construction development can proceed parallel with, or subsequent to, investigation and remediation. Many of these steps can be moved up or down in sequence, as the project needs dictate.

Conclusion

AB 440 (and associated Polanco powers) is available to Cities, Counties, and their respective agencies (e.g. Housing Authorities) to assist Brownfields development whenever it occurs within the jurisdiction of a City or County. AB 440 allows active participation of the local agency in the environmental clean-up process (even full implementation by taking the lead), and ultimately facilitates more effective and expeditious remediation programs; thus, allowing for enhanced and accelerated redevelopment.

AB 440 can be used whether the local agency is contemplating eminent domain or not. While the "fee shifting provision" may provide an initial appeal, perhaps the most attractive aspect of AB 440 is that successful assessment and remediation can result in immunity for the City/County, developer, and future property owners/occupants, and their successors. Thus, AB 440 is an important tool in the redevelopment of Brownfields.

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