PUBLIC-PRIVATE PARTNERSHIPS: 
A KEY ELEMENT FOR A SUCCESSFUL BROWNFIELDS PROJECT

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As a practical matter, real estate projects that involve contaminated property, seek to reuse former industrial or transportation sites, or involve development of urban infill sites rarely succeed without a partnership between private and public entities. “Brownfields” projects like these are notable for the differing and often conflicting views of public and private stakeholders. A public-private partnership model is often the most effective approach to accommodate different viewpoints and resolve conflicts among them.

Models of public-private partnerships are widely discussed. The United States Environmental Protection Agency (EPA) addresses principles of such models in its guidance documents. See, e.g., Characteristics of Sustainable Brownfields Projects (EPA 500-R-98-001, July 1998). Guidance for specific Brownfields scenarios describes partnership models and principles that have particular relevance to those scenarios. Examples include: the EPA Brownfields and Land Revitalization Technology Support Center’s “Mine Site Cleanup For Brownfields Redevelopment: A Three Part Primer” (EPA 542-R-05-030, Nov. 2005), and EPA’s “Successful Rail Property Cleanup and Redevelopment: Lessons Learned and Guidance to Get Your Railfields Projects on Track” (EPA-560-F-05-231, Aug. 2005). Information on public-private partnership models is also available in connection with government initiatives such as EPA’s Return To Reuse and the Brownfields Federal Partnership Mine-Scarred Lands Initiative. See, e.g., “Mine-Scarred Lands Revitalization: Models Through Partnerships” (EPA- 560-R-003, Sept./Oct. 2005). In addition, the Urban Land Institute’s “Ten Principles for Successful Public-Private Partnerships” (2005) identifies some characteristics to consider when structuring a model for a particular project.

For any public-private partnership model, it is essential that the project developer start by identifying all of the public and private stakeholders. This group will include all government entities that have permitting or other authority over any aspect of the project. It will also include neighboring property owners. Depending upon the project, it may include community or public interest groups. Anyone who potentially can delay or block the project should be identified as a stakeholder early on.

Once the stakeholders are identified, the foundation for a successful partnership begins with a serious effort by all stakeholders to listen to the other stakeholders. The project developer usually needs to facilitate this effort. The process can start with individual meetings or other communications between the developer and each other stakeholder, but at some point all of the stakeholders need to meet as a group.
Each stakeholder needs to understand and acknowledge the other stakeholders' goals and concerns as well as their abilities and limitations.

This process of stakeholder education is not as difficult as it may first appear. Several goals that typically arise for brownfields projects will be shared by multiple stakeholders. For example, multiple public and private stakeholders will want to ensure that the project is protective of public health and the environment. These stakeholders will, however, differ on the means to achieve the shared goal. Some will seek cleanup to the most stringent levels; others will seek to limit exposure by means of engineered solutions or deed restrictions. Multiple stakeholders will also share the same concerns. For example, the private developer and the government stakeholders will all share a concern about future funding of operation and maintenance of any public feature of the proposed project, but, because of limitations on their abilities, they each have a goal of shifting that obligation to someone else. Similarly, all stakeholders (at least in theory) understand that the private developer needs to complete the project at a reasonable cost and obtain a fair return on its investment. Nonetheless, the other stakeholders may need to be sensitized to the impact of delays and their attendant costs on the developer's ability to achieve those goals. These initial dialogues among stakeholders provide the private developer with an opportunity to educate the other stakeholders regarding such issues.

Once stakeholders' goals, concerns, abilities, and limitations are understood and acknowledged, the next critical step in the partnership process is to reach an agreement on a concept or vision for the project which responds to the most important stakeholder issues in a fair and equitable manner. Having a shared concept or vision is necessary for the stakeholders to collaborate effectively as the project moves forward. Essentially, the stakeholders must build a consensus in support of a specific vision or concept. To do this, they must resolve their competing demands and expectations at the outset rather than continue to argue about them at each stage of the project. Because brownfields projects can take a long time to complete, the shared concept or vision must be more than the whim of current public officials or community leaders. It must represent a concept with broad public support; in other words, a vision that will stand the test of time. And finally, even though circumstances may change over the life of a brownfields project, both public and private stakeholders need to keep the fundamental bargain that they struck at the outset.

Building stakeholder consensus on a specific project vision takes time. However, that time is well spent. Having this consensus will reduce the number and length of delays at other stages of the project because stakeholders no longer can treat each decision point as a time to press their individual points of view.

To reach this shared vision, the private developer may need to change aspects of its ideal project so that the public entities, whether government agencies or community groups, perceive the project as beneficial and protective. And the government agencies and community groups must agree to a project that provides the private developer with a fair profit. This also means, for those projects which contemplate an area of public use, such as a park or open space, that a public entity needs to accept at least some responsibility for ongoing management of that area and funding of its operation and maintenance. In other words, the public entity cannot rely on the private developer to bear the entire cost of that park forever.

In addition to a shared project vision, a realistic and unambiguous process to implement that vision is one of the most important aspects of a successful public-private partnership. After the stakeholders agree upon the shared vision, they next need to agree upon a project road map that identifies the steps required to implement their vision and a timeline for doing so. The best road maps include reasonable schedules for submission of and action on deliverables. It is also important to identify clear measures of performance for the developer and the reviewing agencies. A good road map will also include routes to avoid bottlenecks and mechanisms for dispute resolution.

To ensure that the partnership continues to function well, the stakeholders must commit to frequent and regular communications with one another. This means that at the outset they identify and agree upon the types of project materials to be distributed to all or one or more subsets of stakeholders. One stakeholder needs to assume the responsibility to prepare and maintain a distribution list or lists. Often, the task of distributing materials and maintaining the distribution list falls to the private developer. The stakeholders
must also schedule regular times to share information and discuss the project. These communications can be telephone conferences or, at key stages of the project, site meetings. Frequency of communications may increase at particularly active or controversial phases of the project.

Designation of a leader or decision-maker by each stakeholder can be very valuable. Ideally, the persons selected as leaders will be people of sufficient stature in each group that he/she is able to keep the group together, control or at least influence the group's actions, and speak with authority on behalf of the group. Regular communication and coordination among the leaders helps to build trust, avoid misunderstandings, and keep the project moving forward.

Often, as a brownfields project proceeds, the unexpected happens. Fieldwork may, for example, reveal contamination in an unexpected location or sampling results show that contamination is more severe than expected. Or changes in the scientific assumptions underlying risk assessments may lead to a more stringent cleanup goal. In each instance, this unexpected development could terminate or at least delay the project. Having a public-private partnership in place provides a structure in which the stakeholders can address these unexpected developments. Absent such a partnership, the unexpected development could lead to endless debate as stakeholders try to find fault or avoid criticism, all to the detriment of the project. With a strong public-private partnership, it is easier for the stakeholders to find a solution, thus saving time and resources and possibly the project.