

# **ENVIRONMENTAL ISSUES IN REAL ESTATE**

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## **Course Description and Objectives**

This course will address the legal, business, and financial challenges posed by environmental issues in real estate projects. From brownfield transactions and wetlands impacts to Class B/C office buildings and urban redevelopment projects to green building requirements and sustainable corporate campuses, environmental considerations play a key role in today's real estate marketplace.

These topics, for the purposes of course presentation, will be analyzed in three sections: "Environmental Issues in Building Operations and Property Management", "Environmental Issues in Real Estate Transactions" and "Environmental Issues in Real Estate Development". Each course segment will introduce students to a substantive evaluation of the core environmental issues presented and offer insights into the purchase agreements, financial analyses, and deal structures utilized by real estate professionals to manage these matters.

During the course of the semester, students will be given two short, practical writing assignments related to the subject matter (e.g., preparing a submission to a regulatory agency/legislative committee and drafting an advocacy piece relating to project approval). The final assignment will be the preparation of a client memorandum analyzing the environmental issues in a real estate project and making a recommendation on whether to proceed with the project notwithstanding the environmental challenges presented. The final project should be 15 – 20 pages. The instructor will work closely with each student on their work. Grades are based on written work during the semester. There is no final examination.

Completion of the course will position students to identify the environmental issues presented in any given real estate scenario, to evaluate their potential impact on projects, and to manage the challenges presented. Additionally, students should gain an understanding of the impacts of property conditions on human health and natural resources, the response of government regulators and investors to these threats, and the options available to real estate professionals for assessing and managing the environmental conditions affecting their projects.

## **Required Text and Other Materials**

Textbook: Environmental Aspects of Real Estate and Commercial Transactions, (Witkin, ed.), American Bar Association, 2011.

Readings: Additional materials for each class as designated on the syllabus.

## **Assignments**

## I. Early- and Mid-Term Assignments

### *Building Support (or Opposition) for Real Estate Projects through Environmental Issues*

Writing Requirement: The early- and mid-term assignments each will take the form of a five page document designed to be used as advocacy in support of (or opposition to) an environmental issue relating to real estate and a real estate project complicated by environmental conditions.

Description: The first five page document will be an advocacy piece to be submitted as comments on an agency rulemaking or guidance document or as testimony to a legislative committee relating to an environmental policy issue affecting real estate. Students are free to choose any issue. Example include: revisions to technical cleanup requirements, creation of tax and financial incentives, enhancement of wetlands and species habitat protections, the movement of cleanup oversight from one government agency to another, privatization of cleanup oversight, adoption of green building requirements, and restrictions on how formerly contaminated properties can be reused.

The second five page document will be a position paper supporting the approval of a brownfield redevelopment project in face of community opposition. Students are free to choose any issue. Examples include: questions and concerns about the adequacy of the cleanup, the long-term oversight of the reuse of the property, the awarding of tax or financial incentives, fast-tracking permitting and other regulatory approvals, worker and neighborhood safety during the cleanup, gentrification, and continued industrial use amidst the lack of greenspace.

## II. Final Course Assignment

### *Doing the Deal: Successful Management of Environmental Issues in Real Estate Projects*

Writing Requirement: The final course assignment will take the form of a 15-20 page client memorandum analyzing the issues involved in a real estate project complicated by environmental conditions and presenting options for resolving those complications.

Description: The final course assignment will ask each student to identify, evaluate, and manage environmental issues in a real estate project. Students may choose any real estate scenario and environmental matter in which they are interested and are free to draw from actual deals, hypothetical developments, or open policy issues.

In tackling the environmental issue presented, students should consider - at a minimum - the following: What human health concerns/natural resources impacts are presented? What is the relevant body of law or regulations? What governmental bodies will you have to deal with? What is the market impact of the environmental issue? How will the work of the real estate professionals involved in the matter be affected? And finally - Is the deal worth doing in spite of the environmental obstacles?

Each student will prepare a written report and present his/her analysis and conclusions on the last day of class. The written report should at a minimum:

- describe the project, its physical conditions, and general market considerations
- discuss the environmental issues presented at the site
- analyze the potential impact of the issues (see the preceding paragraph)
- evaluate how you would deal with the obstacles presented, including costs, timing, market perception, project feasibility, government regulators, investors, etc., and
- state your course of action and reasons for doing so.

### III. Participation Requirement

#### *Current Environmental Issues - Roundtable Discussion*

Course Requirement: Lead class discussion on a current environmental topic. Participate in discussion prompted by classmates' presentations. No written requirement.

Description: Each class will begin with a roundtable discussion of a current environmental issue affecting the real estate industry. The discussion will be student-led, with one student serving as the discussion coordinator. The coordinator will be responsible for picking the roundtable topic, identifying 1 - 2 relevant articles from the popular press, and presenting a short (no more than 10 minutes) overview of the issues presented. Following the coordinator's presentation, we will open up the discussion for questions, comments, and debate by the rest of the class.

Among other things, the discussion coordinator should seek to address the following in the opening presentation: What is the human health or natural resources concern? What has been the regulatory response? What is the impact on the real estate market? What are the positions of the various interest groups? How does any of this impact real estate professionals, e.g., developers, lenders, brokers, design professionals, lawyers?

Through the roundtable discussion, students should gain a more thorough insight into substantive environmental topics; an understanding of the competing interests involved in environmental matters; and additional perspectives on the formulation of government policies and project approvals.