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An Introduction to
Due Diligence Reports
for
Development Projects

by

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COURSE DESCRIPTION

This course is an introduction to the research conducted and the submittal required for a Due Diligence Report of a development project. The course will discuss the process for preparing a Due Diligence Report (aka the “Report”) beginning with the initial meeting with the Client and then proceeding to the field investigation, and the regulatory research required to produce the final report. As you will learn, the Due Diligence Reports will vary depending on the needs of the Client and the type of development being evaluated. Similarly, the time requirements to complete the Report will be dependent on the extent and depth of evaluation and the deadline imposed by the Client’s contractual evaluation allowance.

Introduction

According to Merriam-Webster.com, Due Diligence dates back to the mid-fifteenth century referring to a “requisite effort”. In today’s business environment, the term Due Diligence is used to identify “the research a company performs before engaging in a financial transaction.” Because of the ever increasing codes and regulatory complexities involved in development which varies from state to state and from city to city, there is an increasing demand for Due Diligence services. These services are best provided by those engineers and architects that have vast experience in developing the type of projects the Client is proposing. For this course, Due Diligence refers to the research and services performed by a consultant for a client to evaluate a potential commercial building or property for purchase and/or development. These Due Diligence services also carry legal and financial liabilities that must be addressed in the Due Diligence contract... even if you’re only a sub-consultant for a portion of the Report. Keep in mind, one of the primary goals in a Due Diligence Report is to reveal any “Red Flags” (potential issues) that may cause a financial hardship for the Client in having a successful project or that the Client may need to have addressed in the purchase contract.

Tip... One possible side benefit to the consultant may be the opportunity to provide additional services after the acquisition in the form of professional architectural and engineering services. After all, who will have a better understanding of the project’s



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opportunities and constraints than the consultant who just spent weeks or months researching the development project?

Many tend to think every Due Diligence Report is the same but that's like saying every vehicle is the same. The reason there are many types of vehicles is because there are many types of functions that are needed depending on whether you are transporting a person, a few people, a sports team, cargo, tractors, and the list goes on. The same is true for Due Diligence Reports. You need to determine the Client's need and the type of project. A Due Diligence Report is different for a hotel, a resort, a shopping center, a high-rise office building, or a residential development. Additionally, the Client may have specific issues that need research as well... such as response times from law enforcement or hospitals, proximity to schools, shopping, restaurants, airports, train stations, etc. So, before you work up your contract and determine your fee, you need to determine what the Client's specific needs are and what impact these have on your fee, and the time required to prepare a proper and professional Due Diligence Report.

What Due Diligence is NOT. It is not a checklist that you simply fill in the blanks on a form and then mail to a client with an invoice. It is a report of the current conditions and issues of a project site that a Client will use to determine the probability of success... or failure... for a proposed project development to be completed. It does not guarantee that the project will be financially profitable, but rather it will be successfully constructed. However, your research may uncover reasons why it can't be profitable; but, the focus is more on potential issues. You're trying to find out WHY the Client should... or should not... buy the property in question. To do so requires that you determine the Client's specific concerns and then find... and interview... the right people that have those answers. It is then up to the Client to take your report, review its findings, and then make a decision as to whether to purchase the property or to look elsewhere.

Always approach the Due Diligence research as if it were your money at risk in the proposed property purchase. What would be your concerns, your issues, your Red Flags?

So, without any further delay... let's get started...

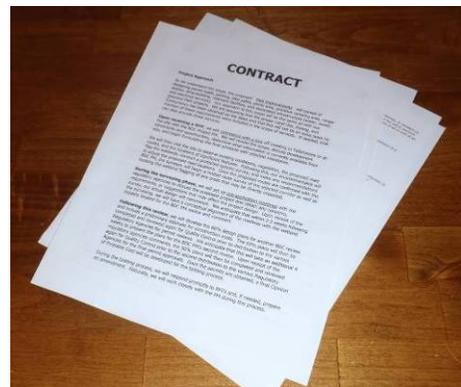


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THE CONTRACT

As with any new project, a consultant should never start a project without a signed contract or written authorization. Secondly, the contract needs to be very specific about what services are being included in the Due Diligence evaluations by the consultant and what services are being provided by the Client. But we'll discuss these services more just a little later.

The contract also needs to be very clear as to the Due Diligence delivery date. Believe me, your interpretation of "...as soon as possible" may be very different from the Client's interpretation. If the Client requests any information prior to the delivery date, always provide it in a PDF format with a "DRAFT" watermark printed across every sheet. You definitely don't want a Client acting on preliminary information provided to him from you as a courtesy.



Keep in mind that most Due Diligence services involve projects costing millions of dollars so the potential financial liability can be devastating for your Client and... for you... since the purchase may have been based on your Report. Remember, "It's not personal, it's just business" is not what you want to be hearing if the project fails because of what's in, or not in, your report. Consequently, this liability must be addressed in the contract as well. You don't want to determine the amount of your liability while standing before a judge simply because you didn't bother to address it in your contract. If you can, try to limit your financial liability to the professional fees you charge for the Due Diligence services. Since that is likely to be unacceptable to the Client, have an experienced attorney assist you with the liability language. Remember, the fees for an attorney with experience in Due Diligence contracts... whatever the amount... will be significantly less than the settlement costs of a lawsuit if there is a problem with the Due Diligence report. So pay the invoice for the attorney with a smile on your face.

Also, limit the Due Diligence Report liability to the Client that is paying for the service. You don't want the report... and your liability... transferred to other parties each time the property is sold. The Due Diligence research should be conducted for a specific

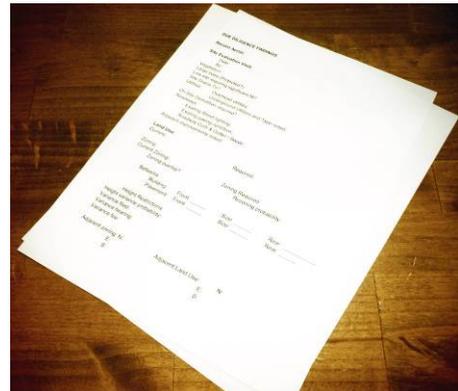


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purpose, for a specific Client, and with a specific project outcome in mind. Consequently, the Report may... or may not... be applicable for a different buyer.

The Due Diligence Checklist

A sample Due Diligence Checklist is attached at the end of this course. It is NOT all inclusive but it can be used during the client interview to develop the Scope of Services being included in the Due Diligence contract. A word of caution... Never start researching a Due Diligence project prior to the Client interview without the Client's permission. There may be non-disclosure restrictions in the contract and you certainly don't want to be in violation of those restrictions before you even interview the Client or get a signed contract.



The Client Interview

As stated above... there should be only one Client that the report is prepared for and that Client should be the one stated in the contract. So get the official name to use in the contract and ensure the person you're interviewing is authorized to represent... and obligate... the Client to the contract.

During the interview, determine the Project Name or "code name"... if there is a non-disclosure agreement... that identifies the project. Also, obtain the Contract Closing Date and the Report Due Date. Obviously, the Client needs time to properly review the report prior to the Closing Date. So, you need to know how much time you can have to complete your research and then prepare the report prior to the delivery deadline.

Then you need to obtain the other obvious pieces of information like the Site Address, the City, County, or Parrish where the project is located, the Parcel Identification Number, and the acreage. You need to know the number of acres the Client *thinks* he is buying so you can verify that you have the correct parcel and that the Client's number is correct.



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Ask if the Client has obtained an “ALTA Survey” or if one is being provided by the seller. The term “ALTA” stands for American Land Title Association and it specifies the information that is required to be shown on the survey. This typically includes the property lines, the location of any improvements on the property, and the location and type of easements such as water, gas, telephone, railways, or other utilities. ALTA surveys are very detailed surveys, expensive, and can take weeks or months to complete. You also need to ask what other items need to be surveyed such as trees, roadways for access, existing trails, topography, waterways, wetlands, soils, etc. We’ll discuss these in more depth a little later.

Does the Client have a recent aerial of the property with the boundary identified? If he doesn’t have an aerial or a boundary survey, ask if he is obtaining one or if he is asking for you to obtain one. Why a recent aerial? Much information can be obtained from an aerial such as existing terrain, vegetation, waterways, roads/trails/paths through the property, etc. It makes a site visit much more efficient when you know what to expect, how to get around, and what you need to pay particular attention to. Older aerials can give you an idea of the historical property usage. Was it a ranch, a pasture, a gas station, a shopping center, or something else? Look closely to see what visible features in the aerials may be cause for concern by the previous uses from an environmental perspective.

The Proposed Development

During the Client interview, determine the type of development that is being envisioned for the project site. Is it a renovation of existing facilities or new construction? Is it a change in the existing land use from agricultural to single-family residential, or single-family residential to multi-family residential, or industrial to a totally different land use?

What type of construction is being proposed? How many buildings, what type of buildings, what size of buildings are expected? If it’s non-residential, how many employees, how many work shifts, how many customers, how many deliveries are anticipated?

And then ask about parking needs. How many vehicles for employees, visitors, and customers are needed? What type of vehicles and how many of each for private vehicles, trucks, trailers, freight, heavy equipment, and loading docks are required?



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Then ask the Client for any other considerations or special concerns that need to be addressed in the Due Diligence Report. And inform the Client that only the items listed in the contract and authorized by the Client in writing will be addressed in the Report. Also, note in the contract that any information known by the Client but withheld from disclosure to the consultant will be at the Client's sole risk.

One final question for the Client is what format and how many copies of the final Due Diligence Report are needed. Will one electronic PDF document meet the Client's needs? Or does the Client want one hard copy of the Report? It is far better to know the Client wants 500 color copies, bound, and delivered to the Client's office before you prepare your fees for the contract than to discover after the contract is executed that you vastly underestimated the delivery costs.

The Due Diligence Fees

As with any contract, be careful to include all expenses required to properly research and prepare a Due Diligence Report. Some of the costs your fees should include are listed below but each Report will have its own unique list.

Staff: This includes staff hours (field and clerical) for Client meetings, staff coordination meetings, field work, regulatory research, report writing, report preparation, report reviews, and printing the final report.

Travel: Be sure to include all travel related costs. If the project is at a distant location, this will likely require multiple trips for multiple staff. So don't forget to include airfare, parking fees (at the airport, at the hotel, and at the different research locations), rental cars, tolls, lodging, and, of course, meals... since all employees expect to eat every day. Also, some projects may require additional travel costs for boats, ATVs, or helicopters.

Research: There will always be costs incurred for making copies of regulatory codes, ordinances, maps, regulatory data, and reports. Some of these may be hard copies or they may be electronic copies on DVDs or USB memory cards.

Sub-consultants: Most Due Diligence research will require the assistance from sub-consultants. The list may include land surveyors, soils engineers,



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environmental scientists, civil engineers, structural engineers, electrical engineers, marine engineers, transportation engineers, railroad engineers, planners, appraisers, attorneys, realtors, as well as aerial surveys. Unfortunately, most of these don't work for free so you need to provide funding for these in your contract as well. And don't forget to obtain non-disclosure agreements from each of them or it could be a very costly omission on your part.

Tip... If the Client agrees, have the sub-consultants prepare their proposals for the Client's signature and not for you. This removes the financial risk from you for their services. If issues arise about payments to the sub-consultants, it won't involve you.

Tip... If the Client agrees, obtain multiple proposals from sub-consultants in each specialty and let the Client select the sub-consultant for the project research. This removes additional risk since you didn't select the sub-consultant and you didn't contract with the sub-consultant. You really don't want a Client saying you selected a bad sub-consultant and it's now your responsibility.

Have one more meeting with the Client to ensure you have included all of the information the Client will need included in the report. Once you have received this assurance and you have obtained all of your expected costs to prepare the Due Diligence Report, you can have the contract approved and executed by the Client. After you have received the executed contract, you can commence getting the sub-consultant contracts executed. Finally... you are now ready to begin your research efforts by using your Due Diligence checklist that was prepared by you and approved by the Client.



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DUE DILIGENCE RESEARCH

As you are conducting the Due Diligence research, always remain alert for *what people are saying...* as well as *what people are not saying...* even if it's about something that's not on your Client's list. Sometimes, it's just a hesitation in the voice, a noticeably slower speech pattern as if one is searching for the "correct" way to say something, or perhaps it's a change in the facial expression. If you notice any irregularity, ask about it after verifying whether someone nearby is listening to the conversation. It's not unusual for a staff member to want to say more but be cautious about what *should or could* be said.

Client Files: Obtain copies of the project files from the Client that he has already collected. Review these files before making your first trip to the site. This is important because it prepares you for the field trip. Will you need a 4-wheel drive to get around the property or is a passenger vehicle adequate for the trip? Approximately how much time will it take to commute to the site and return? What do you need to investigate more closely or what do you need to locate on the site? If you're inspecting a large tract of undeveloped land, how will you navigate while on the property? You certainly don't want to get lost in a forest with no cell phone signal! What footwear and clothing will you need? The best way to be prepared is to be informed.

Project Aerial: Always begin by obtaining an aerial of the proposed project site from the Client or from other sources. If a recent aerial isn't available but is required, you may need to contract a company that provides aerial photography. As stated previously above, aerial photographs... past and present... can provide valuable insight as to how best to efficiently inspect the site, as well as where potential problems may be located, and how to find them on the property.



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Recent aerial of a project site with rolling terrain, wetlands, and forests



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FIELD WORK

Tip: Take lots of photos... of everything... while you're at the project site. You'll find yourself referencing these photos frequently as you prepare the Due Diligence Report. Remember... it doesn't take much time to snap a photo when you're at the site, but it does take a lot of time to get back to the project site to answer a question in the Report when you just can't quite remember what you saw or where.

Site Inspection:

Date: Always make a detailed site inspection and make it one of the first things you do when starting your research. Record the date, time, and weather conditions of the site inspection and who was present. Why the date, time, and weather? Because if a question arises later about a condition that only occurs seasonally, you may have a defense in your notes that the issue in question wasn't present on the date you conducted your inspection... for example wet weather streams, hibernating species, etc. Be truly observant of what you're seeing and what you're not seeing.

Large trees (Protected): Are there large trees that may be protected by regulations? Check for development codes and ordinances if there are significant trees onsite.



Certain species like large Live Oaks are often protected by development codes



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Vegetation: Observe the existing vegetation because that can give you an indication of soil conditions, seasonal water tables, and possible erosion issues. Are there areas of standing water and are there wetland species noted onsite that must be protected or mitigated?



Site with varied types of vegetation and wildlife



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Drainage: Is the site going to require significant fill for development and are there indications of frequent flooding? Is there a stream or river frontage at the project site? Where does the site stormwater naturally drain to?

Utilities: Electrical... How is electrical power provided to the project site? Are there overhead transmission lines? If so, where are the nearest distribution lines for service and are they overhead lines or underground?

Underground... Are Gas, Water, and Sanitary Sewer services available at the site? If so, who are the utility providers? If not, what are the requirements for potable water and septic systems?

Telecom... Are telecom, cable, and wireless services available at the site? If so, who are the utility providers?

On-Site Demolition required? What existing structures must be demolished? Are asbestos or other contaminants involved? What are the requirements for demolition or the development implications of a demolition project?



Site demolition... after an asbestos survey was completed



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Roadways: What are the conditions of the existing roads and how many lanes do they have? Are there traffic signals on any of the roads? Are there any turn lanes existing? Do any of the roads have existing street lighting? Do the roadways have curb & gutter or do they have swale sections?

Adjacent improvements noted: What are the adjacent improvements (commercial, residential, industrial, undeveloped, etc.)? Will there be compatibility issues? Will the adjacent users welcome the proposed project or will they likely fight the project?



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REGULATORY RESEARCH

Remember during your research, you're looking for any issue/s that may cause problems for the proposed development. So, obtain the facts but also ask a lot of "What if..." questions. Then, make sure you understand the answers and their consequences.

Regulatory Development Requirements: Obtain a copy of the development code and determine the development review process, where submittals are made, if public hearings are required, and what review fees will be required. If public hearings are required, determine how many public hearings will be held, how often the hearings occur, and who must attend (the seller, the developer, the project engineer, the architect, etc.). Once again obtain the department name, address, contact person, email address, and phone number for follow up questions.

Planning and Zoning:

For a new development, you can expect that a Land Use change or a Rezoning may be required for the project. When you go to the Planning and Zoning Department to research the feasibility of developing the Client's proposed project, you can get the technical information for the report from the department staff. But to get input on the probability of obtaining all of the approvals required to actually construct the project, you need to speak with the Planning Director or a senior Land Planner. While they can't give you any guarantee for a project approval, they can give you a historical perspective of similar Land Use or Zoning approvals of previous projects and the *likelihood* of receiving a project rezoning for your Client's project. So don't think you're going to get all the answers you need from whoever is sitting at the front desk. Get with the Director or the Senior Planner, explain the proposed development, ask for their opinion on receiving a favorable approval, and then ask if the Director would support the development. If the Director isn't willing to support the project, there may be serious doubt as to whether the project will ever be approved.

Also, ask about the timeframe to receive a favorable rezoning and all of the applicable fees for a Land Use change or a rezoning. You will want to obtain copies of all documents, codes, maps, and applications that are required. So, have plenty of funds to make the necessary payments and/or copies.



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Land Use: What is the current Land Use classification and what is the required Land Use for the proposed project?

Zoning: What is the current Zoning classification and what is the required Zoning for the proposed project? Is there a mandatory Zoning Overlay? What is the probability for a successful rezoning?

Have there been previous attempts for a rezoning? If so, for what, when, by who? This information can be extremely valuable to the Client in negotiating the purchase price or even if to purchase.

Example: A property listed for sale has been up for rezoning multiple times but constantly ran into an unbelievable amount of opposition from the local community who wants the property turned into a public park. A fund has already been established to finance the purchase but the seller wants more money and a quicker sale. The previous prospective buyers walked away after multiple attempts to rezone the property. This is the type of information of which the Client needs to be aware.

Zoning Setbacks: Obtain the zoning setback requirements for any new construction from the road right-of-way to the building or new pavement. There are typically front, side, and rear setbacks for any new construction.

Adjacent Zoning: Obtain the zonings and Land Uses of all of the surrounding properties including across the street from the proposed project. This will be needed to check for incompatible zonings and/or Land Uses that may have an impact on the proposed development.



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Height Restrictions: Also ask about the height restrictions for new construction, if any, and the probability of obtaining a variance for height restrictions. This may not be applicable for your particular project but it never hurts to have the information.

Also ask about any other vertical construction restrictions. Some communities have implemented “shadow restrictions” by new structures that obstruct direct sunlight from reaching adjacent properties. Others may have limits on constructing projects that obstruct the views of adjoining properties... for example, views of beaches, waterfront, mountains, waterfalls, etc.



Tall buildings face more than height issues that must be researched



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Landscaping requirements: Most communities have implemented mandatory landscaping requirements and these are typically enforced by the Planning and Zoning Department. Ask about the landscaping requirements, construction setbacks, tree codes, vegetative species requirements, vegetation coverage requirements, and obtain copies of all of these code requirements for the Report.



Mandatory landscaping at a retail shopping center

Fencing Restrictions: A number of communities are beginning to implement fencing codes that regulate the location of fencing, the height of fences, and the fencing construction materials in non-residential projects. If the



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developer needs high fencing or razor-wire for security issues, this could be a problem.

Garbage Dumpsters: Many non-residential developments are required to have enclosures around the garbage dumpsters serving the facilities. Some specify the allowable locations, construction materials, architectural standards, heights, widths, and access requirements. If your project falls into one the regulated categories, you will need to obtain copies of these requirements as well.



Dumpster with matching architectural styling



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Signage Restrictions: In an effort to control “signage pollution”, many communities have implemented signage codes that regulate the number of signs, size of signs, signage lighting, sign construction materials, and restrictions on signs with electronic message boards. These restrictions may be critically important to commercial retail developers.



Signage with architectural style and size restrictions

Site lighting restrictions: In an effort to control “light pollution”, many communities are now implementing lighting codes that regulate the type of lights used, the lighting intensity, and some are even requiring that site lighting be controlled and not allowed to “spill” onto adjacent properties. Many communities are now requiring area lighting with down-lighting or shielding to prevent “spillage”. In most cases, this won’t impact a developer’s plan unless the development requires high levels of onsite lighting.



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Site lighting with restrictive down lighting to minimize "light spillage"

Enterprise Zones: If available, an Enterprise Zone may offer the developer tax and/or infrastructure incentives or expedited approvals for the proposed development. These incentives can make or break a deal for a developer evaluating a prospective location. The conditions and codes need to be provided as early as possible to the developer because of application deadlines.

Moratorium on Construction: While rare, there are some communities that have implemented moratoriums on new construction to allow new regulations or needed infrastructure improvements to keep pace with development. The questions need to be asked as to if a moratorium exists or if one is currently being considered. If a moratorium does exist, when does it expire? Can you imagine the consequences of not including this information in your Due Diligence Report to your client?

Planned code changes: Proposed codes or code changes are easily missed since the codes haven't taken effect yet. They may have been approved but the



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effective date may be months away and therefore weren't discussed by local staff. This is especially true of proposed code changes that are only being discussed and haven't even been written yet.

Tip: About the only way you may learn of these planned or possible code changes is when the question is posed directly to the Planning Director. Often, the Department staff won't discuss future codes... even if they are approved... until the effective date of the codes because they haven't been trained on the new code requirements.

And the next question is "When could the proposed changes take effect? If the codes are approved but not effective yet, copies need to be obtained and the impact discussed in the Due Diligence Report. If new codes are being discussed but not approved, note these as well. These proposed codes could render the property undevelopable to your client for his intended use.

Concurrency: Not all states require Concurrency approvals but you need to determine if the project is located in a state that does require it. If so, you will need to determine what is required and what the approximate fees are for the specific location and type of development. Addressing the Concurrency may require Traffic Studies, Utility Studies, and Impact Fees for the development. These studies and the regulatory approval process can take weeks or months to complete.

Covenants and Restrictions: Covenants and Restrictions are generally placed on the property by the seller or may already exist in a development area. If these are recorded documents, they are legally enforceable and may be difficult to modify or eliminate. The Covenants and Restrictions need to be provided in the Report but the difficulty in modifying or eliminating them is typically beyond the scope of a Due Diligence Report.



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Historic Preservation: An analysis of historic preservation may require contacting the State's Historic Preservation agency to obtain a copy of archaeological possibilities or known/suspected archaeological sites or cemeteries on a site. If the issue is with a building, you may check the Historic Register. Again, these may require significant time and funds to determine especially if an archaeologist is required to conduct a survey of the area. The results of the Historic Preservation research should be listed in the Report but any decisions to move forward must be left to the Client.



A small historic cemetery dating back to the 1800s



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ENVIRONMENTAL RESEARCH

Environmental: When it comes to the environment, there is no shortage of regulatory agencies and regulations that must be addressed. There are laws, statutes, codes, permits, and reviews from federal, state, county or Parrish, and municipal departments, sections, or divisions. Fortunately, you don't have to obtain any of these approvals or permits for a Due Diligence Report. For the Report, you primarily need to know if there are any "Red Flags" that could present a problem for the type of development being considered. But that also requires you to be familiar with the proposed development intentions, the proposed development site conditions, and the regulatory codes that may become an issue.



Some pristine wetlands are absolutely beautiful



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If you're not familiar with all of the agencies that may have jurisdiction over the project location, start gathering information by setting up a meeting with one agency and then get the names and contacts for as many other agencies as you can. Then meet with the next agency and ask again for additional agencies. With each agency, record the agency name, contact person, phone number, address, and email. During the meeting, record any cautions or concerns the agency may have with the development and present them in the Due Diligence Report. Don't forget to consider wetlands, air pollution, noise pollution, protected or endangered species, and chemical contamination.



Endangered or protected species can be found in every state

If there are environmental concerns, it may be necessary to obtain proposals from environmental firms for the necessary site analysis and provide the proposals to the Client for selection. This includes sub-contracting a firm for a Phase I or Phase II Environmental Study, if needed.

Stormwater Management: Obviously, a stormwater management system isn't going to be designed prior to a Due Diligence Report deadline but there are warning signs that can be uncovered during the research. So, what are you looking for in your Due



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Diligence research on stormwater? First, find out which regulatory agencies will be reviewing the design from the applicable Federal, State, and local levels.

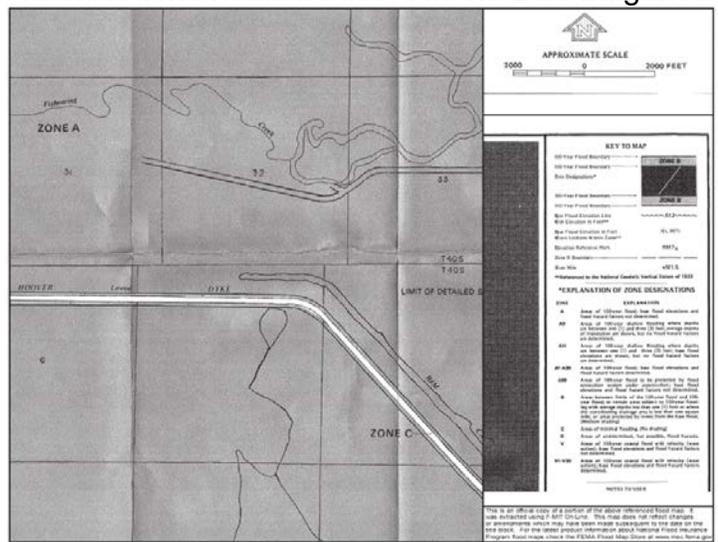
Secondly, during your interviews with the agencies... if allowed by the client... disclose the type of development being proposed and determine if there are any development restrictions concerning stormwater treatment and any discharge limitations. What you're looking for are limitations to the maximum impervious area, limited discharge rates, or discharge water quality requirements. Are you in an area of frequent flooding or even within a flood plain or a floodway? You need to determine if there are any requirements that will limit the Client's proposed development.



A stormwater management system

Flood Zones: The FEMA FIRM (Flood Insurance Rate Map) should be obtained and the panel number, flood zone, and flood elevation should be listed in the Due Diligence Report. You also want to note whether the property is located in a floodway as that may have a significant impact to the development of the property. The FIRM map panel can easily be obtained from FEMA at this website:

<http://msc.fema.gov/portal/> and... good news... the map may be printed in a PDF format which makes it easy to incorporate into your Report.



A FEMA flood map from the fema.gov portal



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Soils Report: The soils report is another key topic for Clients as it may have such a significant impact on development costs that this one issue could kill the project. However, you may need the Client to select a geotechnical firm and provide them the guidance they need to produce a geotechnical report. If the Client has already obtained a geotechnical report, then ask for a copy, review it, and call the firm to discuss the report and specifically ask the soils engineer if there are any existing conditions that could abnormally increase construction costs. Most clients aren't geologists or structural engineers and likely won't understand much of what is in a soils report so you need to provide that analysis and include it in your Report in terms the Client can understand.

Some items to look for in the soils report are: the type of analysis completed, the density of the testing on the site, depths of the testing, water tables, construction limitations, and construction recommendations. And then again, translate this information into language the client can understand and use.

Soil properties may also be obtained from the Web Soil Survey (WSS) which is operated by the USDA Natural Resources Conservation Service. The soil maps and data cover more than 95% of the United States and provide soil quality assessments for conservation and engineering applications. For more information, contact your local USDA Service Center or visit <http://websoilsurvey.nrcs.usda.gov/app/> .

Conservation Easements: One item that often gets overlooked is researching the existence of a Conservation Easement over the property. These easements are frequently permanent easements or easements of a long duration. They are often established to protect wetlands, wildlife habitat, endangered species, or wildlife greenways for migratory species. Imagine your Client's dismay if he purchased the property but later learned during the development review process that much of it was within a Conservation Easement and could not be developed. How would that impact his development's financial outlook? And how would you like to answer the next phone call from his attorney?



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LEGAL RESEARCH

When it comes to researching the legal aspects, remember you're not an attorney and there are serious consequences to incorrect determinations. So, leave all of the legal issues to an attorney. If the Client is asking too much of you, professionally advise him to seek legal guidance. That said, there are a couple of items that may be requested by the Client's attorney and one that the Client will likely ask of you. The attorney will likely ask for a Title Search and an ALTA survey. The Client may ask for you to research the availability of fire protection.

Title Search: Hopefully, the Title Search was previously completed and provided to you by the Client. If not, ask if one has been completed or ordered. Does the Client need you to select a firm and get one ordered? This title search needs to be reviewed by the attorney and by you, included in the Report, and also provided to the land surveyor providing the ALTA Survey.

If an ALTA Survey was previously prepared, request a copy of it and note the date of the survey. It may be out of date per the financing institution's requirements and a new ALTA Survey may need to be ordered. Fortunately, providing the Title Search and a previous ALTA Survey can significantly reduce the costs to have it updated.

The survey should certify the completion date, who the survey is certified to, and the type of survey completed. It should include a boundary survey with easements (type and location), topography, possibly a tree survey, jurisdictional wetland lines, creeks/streams/shorelines, trestles, bridges, existing improvements, and existing roads. Any existing improvements found on the property should also be photographed and included in the Report.



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Fire protection: This is another issue that is easily overlooked but may have dire consequences if it happens. If sufficient water line sizes and flows aren't readily available to provide fire protection, the cost to provide these lines or an alternative fire protection system may be prohibitively expensive... especially if you have to provide land area for a well, elevated water tanks, fire pumps, access, and maintenance costs. You will need to contact the local Fire Marshal to determine the fire station responsible for responding to emergencies at the project site and the NFPA fire flow requirements for the type of development being proposed. Then contact the utility provider to determine service availability, the nearest connection points, and the latest fire flow tests to determine the adequacy of the existing lines. If the lines are undersized, the costs to upgrade the lines could be too much for the project to economically absorb. All of this information will then be documented in the Report for the Client's review.

Also ask if the nearest station is a fully operational Fire Station or if it is a Volunteer Fire Station. Then find out what the distance is from the nearest fire station to the project site. These two answers will factor into the insurance rates for the project site.



Identify the Fire Station closest to the project site



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UTILITIES RESEARCH

Utilities: Since we're talking about utilities, we need to include the other utility providers for not only water, but reclaimed water, sanitary sewer, electric, gas, telecommunications, and data. Besides the construction costs and availability issues, another consideration are the utility connection fees... which can be significant. While the research for these different services is similar, there are also differences. So we will look at these individually.

Potable Water Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point, pipe size, pressure, and connection fees. If no water service is available, a new water plant will be required, but will the nearest utility provider accept ownership and maintenance of the plant after construction? If the development is small or is a residential subdivision, a private well and water system for each lot may be necessary causing the land area for each lot to increase significantly to maintain the required separations from adjacent septic systems and wells. This is an issue that affects the financial aspect of the project.

Reclaimed Water Availability: Is reclaimed water available and is it required? If so, obtain the utility provider name, address, phone number, and contact person. Also, determine the nearest connection point, pipe size, pressure, and connection fees. Again, this is a financial issue because of the lower landscaping maintenance costs for the development.

Sanitary Sewer Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point, pipe size, pressure, and connection fees. If no sanitary sewer service is available, a new sewage treatment plant will be required but... will the utility provider accept ownership and maintenance of the plant after construction?

An alternative to a sanitary sewer provider is a septic system but there are limitations on the size of a septic system, how it is owned, and how it is operated and maintained. If the development is small or is a residential subdivision, an individual septic system for each lot may be necessary but the land area for each lot can increase significantly especially if there is no potable water system



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available and individual wells are installed requiring mandatory separation distances between the wells and the septic systems.

Electric Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point to a *distribution line*, and the connection fees. Remember, you can't connect to a *transmission line* (they really are different from distribution lines) and the cost to get to a distribution line can be quite expensive. Then you need to determine if the electric lines will be placed above ground or underground. Obviously, underground will be significantly more expensive to construct.

Gas Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point, pipe size, and the connection fees.

Telecommunications Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point and the connection fees.

Cable/Data Provider: Obtain the utility provider name, address, phone number, and contact person. Determine the nearest connection point, the type of service they can provide, and the connection fees. It won't matter if you're doing a residential project or a commercial business project... everyone needs a data connection today.



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TRANSPORTATION RESEARCH

Site Access: The access to the project site is a critical issue and varies significantly by the type of development and the location. During your site inspection, ask yourself the following questions and complete your checklist to record all of your findings. Some questions to ask yourself are: Is the access from one road, two, three, or more roads? Are they County roads, City, State, or Federal? Are they 2-lane, 3-lane, 4-lane, or more lanes? Are they divided with a median? Do they have curb and gutter or are they swale-section? Is the road straight or is the access in a curve? Is the curve super-elevated? Is the access from a one-way road or a two-way road? Is the road a dead-end road or a cul-de-sac? Is a professional traffic study at the project site needed or even required by a regulatory agency?



A busy signalized entrance into a retail shopping center

For urban areas... are there sidewalks? Are there pedestrian crossings nearby? Are there bridges nearby? Are there bridges with low overpasses nearby? Are there existing turn lanes? Are there traffic signals? What types of developments are adjacent to or near to the project site? How much traffic is anticipated into and out of the project site?



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What opportunities are there for multiple access points to the site? Are there any proposed improvements to the roads and, if so, when are they anticipated? What are the existing traffic counts and traffic loading during peak hours? What are the existing conditions of the road pavements? And the list goes on....

All of these questions need to be researched and addressed in the Report. Also, provide plenty of photos of the roadways, intersections, driveways, traffic signals, etc. As they say, a picture is worth a thousand words... and memories fail....

City/County/State Roads: Speak with the appropriate agency staff for questions about any proposed improvements for the road and when they're planned for construction. Obtain the agency name, address, phone number, and contact person.

Median Cut: If a median exists, ask about the possibility of constructing another median cut and whether turn lanes for the proposed development may be required.

Sidewalks: During your site visit, note the width and location of all sidewalks and ask the appropriate Engineering Department if sidewalks are required and where.

Rail Access: If the site requires rail access, a spur line will be needed if it doesn't already exist. This will require coordination with the Rail Line servicing the area and a discussion of the feasibility of the spur line. This information needs to be included in the Report with the date of the meeting, the contact person, and the contact information. Also, note that providing rail service typically is a lengthy process and an expensive one.



A new rail spur into a project site



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FAA Review Required? If you're located near an airport, you may need to obtain information from the Federal Aviation Agency (FAA) if your project will involve the construction of tall buildings, structures, or antennae. The same is true for site lighting if your site is located in an approach or departure corridor for the airport. If you need airport access, there are multiple security requirements that must be addressed. Once again, obtain the contact name, address, and phone number. If there are any limitations or restrictions noted during the meeting, be sure to record them in the Report.

MISCELLANEOUS CLIENT REQUESTS

Other Requested Items: These requests are up to the Client or you may have issues that present themselves while conducting your Due Diligence research that are not part of the existing contract. Remember, only the Client can authorize additional services and fees. So discuss these items with the Client and see if these issues are something that the Client wants to include in the Report and... is willing to pay for. Then, before you actually start researching these issues, ensure you get the contract amended... and signed... for the additional services now being included.

Commute Times: If the Client requests this be included in your research, you need to be specific about the Client's requested destinations. Don't assume you know which destinations the Client is interested in... Ask. Is the Client interested in distances and commute times to schools, hospitals, fire stations, subways, shopping centers, employment centers, or something else? You will also need to determine what timeframes during the day and during the week that the Client is interested in and... of course... why? What is the Client's motivation or concern? This may require involving a transportation engineer for counts and traffic studies. Or, it could be as simple as driving from the project site to a particular destination at selected hours of the day.



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ESTIMATES OF DEVELOPMENT COSTS

Preliminary Engineering: While not normally included in a Due Diligence Report, preliminary engineering may be requested by the Client. Again, since the site design hasn't been engineered, the Client may want a preliminary estimate of the stormwater management system size and costs, an estimate of anticipated construction fill needed, and estimates on the costs to provide water, sewer, and electric services to the site. If an estimate is provided, the Report should include the consultant that was used, contact info, and the information provided to the consultant and used to produce the estimate.

Project Budget Requested by Client? While a project development budget isn't normally requested or even discussed for a Due Diligence Report, don't be surprised if you're asked to produce one. However, if you are asked, you need to be very clear with the Client that if a development budget is produced, it will consist of possible costs of only specifically requested items and that the actual budgets may be substantially different from the development budgets. Why is this? Because you don't have a set of design documents... much less, approved design documents. Since it's not approved by any regulatory agency, there will always be something that alters any preliminary concept design. So, what's the value in producing a project budget after a Due Diligence Report? It gives the Client a comparison of his projections for the development costs with the estimated costs prepared by a development consultant based on the Report findings. Then, when construction budgets start to vary from the preliminary project budget... and they will... the Client can analyze the reasons for the variance and determine if any necessary design changes are needed to keep the project on track with expectations or he may need to take steps to secure the additional funds necessary to complete the project, if required. Again, a preliminary project budget, if requested, should be produced after the Due Diligence Report is completed and if the Report finds something that the Client is "uncomfortable" with or concerned about.



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SUMMARY

This course has presented an introduction to the requirements needed to research, prepare, and produce a Due Diligence Report. It has discussed what a Due Diligence Report is and what it is NOT. What it is not is a regulatory checklist with the data filling the blank spaces. The reason the Client has hired you is to provide him with a comfort level as to whether or not the purchase of the property is in his best interest. Again, one of the primary goals in a Due Diligence Report is to reveal any “Red Flags” (issues) that may cause a financial hardship for the Client in having a successful project or that the Client may need to have addressed in the purchase contract.

Also discussed was the fact that no two Due Diligence Reports are the same. The research and the report will vary because of the specific issues that the Client will have for the type of project being proposed. Granted, many of the issues researched will be the same, but there are always those individual issues that apply to the specific site being researched.

Before beginning any Due Diligence research, get a signed contract. This contract must include the Client’s information, the scope of work, any non-disclosure agreements, the Report delivery date, the limits of liability, and the Client’s specific concerns. To develop a proper contract will require interviewing the Client to determine the Client’s vision for the project, the development specifics, the concerns, the schedule, and finally, the consultant’s fees for the specific services being provided... including the costs for sub-consultants.

Once the research is ready to commence, begin with reviewing a recent aerial of the proposed site to become familiar with the property, what to look for, and how to find the specific areas of concern in the field. Then review all of the Client’s files on the property so you will be properly prepared for the trip and the site inspection.

When onsite beginning the field work, record the date and weather, be observant of the vegetation and wildlife, take lots of photos, notice the topography, drainage, utilities, structures, roadways, and adjacent land uses. Keep good notes that you can refer to as you prepare the Report.



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The regulatory research will begin with obtaining the technical information from the Planning and Zoning Department staff for the review process, code requirements, and obtaining copies of the codes. Also ask the staff about Enterprise Zones and any moratoriums on construction. But the real insight will come from a discussion with the Planning Director as to the current development trend, the results of previous similar projects, any planned code changes, and the probabilities of success. And, more importantly, it is necessary to determine whether the Director would be willing to support the Client's type of development.

When it comes to environmental regulations, there is no shortage of agencies that will be involved in the permitting process regardless of whether this is a new development or the redevelopment of an existing project. However, for the Report, you primarily need to know if there are any "Red Flags" that could present a problem for the type of development being considered. Stormwater management, flood zones, and protection of endangered species of wildlife or vegetation are three areas that must be resolved satisfactorily for all projects and must, therefore, be researched in depth.

For the legal research, remember you're not an attorney so don't try to be one. As discussed there are serious consequences to incorrect determinations. So, leave all of the legal issues to an attorney. However, you may be asked to assist in obtaining a Title Search and/or an ALTA survey. Additionally, the Client may ask for you to research the availability of fire protection.

Researching the available utilities may involve multiple utility providers for not only water, but reclaimed water, sanitary sewer, electric, gas, telecommunications, and data providers. But this research should also include any required utility connection fees. While the research for these different services is similar, there are also differences.

Transportation research will vary significantly by the type of development being proposed. There are significant differences between urban and rural development, retail versus residential, industrial versus commercial, vehicular versus rail versus air, etc. As such, it is crucial to discuss this with the Client and fully understand the project needs.

It's not unusual to encounter other miscellaneous requests by the Client. Before proceeding with any unusual research requests, ensure you understand specifically



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what the Client wants and what the report will provide. Then be certain the Client... and you... understand what is involved and what it will cost.

While a project development budget isn't normally requested, don't be surprised if you're asked to produce one. Proposed development budgets really shouldn't be discussed until the Due Diligence Report is completed and shouldn't be part of the Due Diligence fees. This is best discussed after the Report has been issued and reviewed by the Client. It might be requested after the Due Diligence is completed because it gives the Client a comparison of his development cost projections and the estimated costs prepared by a development consultant based on the Report findings.

Lastly, as with all of my courses, I welcome any and all suggestions and recommendations on how to improve this course.

Now... ***Go have fun!***



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Due Diligence Checklist for Developments

Client Interview:

Client: Project Name:
Contract Deadline: Report Due:
Site Address:
City / County / Parrish:
Parcel ID#:
Parcel Acreage:
ALTA Survey Provided by Client?
Aerial Provided by Client?

Proposed Development Info

Type of Development:
Buildings:
 No. of Buildings:
 Type of Buildings:
 Approx. SF of Buildings:
No. of Employees:
 No. of Shifts:
Parking:
 Cars (Employees/Visitors/Customers):
 Trucks:
 Trailers:
 Freight:
 Heavy Equipment:
 Loading Dock:

ACTION ITEMS

Due Dil Fees:

Admin: Staff (hours for field work, research, report writing, and final documents), clerical staff, Client meetings



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Travel: Air Fare, Parking, Rental Cars, Tolls, Lodging, Meals, Helicopter, Boat

Research: Copy fees, regulatory data and report fees, photography

Sub-consultants: Land surveyors, aerial surveys, soils engineers, environmental scientists, civil engineers, structural engineers, electrical engineers, marine engineers, transportation engineers, railroad engineers, planners, appraisers, attorneys, realtors, aerial photography



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DUE DILIGENCE FINDINGS

Recent Aerial:

Site Evaluation Visit:

Date:

By:

Vegetation:

Large trees (Protected?):

Low site requiring significant fill?

Site Drains To?

Utilities: Overhead utilities:

Underground Utilities and Type noted:

On-Site Demolition required?

Roadways:

Existing Street lighting:

Existing paving condition:

Roadway Curb & Gutter / Swale:

Adjacent improvements noted:

Land Use:

Current:

Required:

Zoning:

Current Zoning:

Zoning Required:

Zoning overlay?

Rezoning probability:

Setbacks:

Building: Front _____

Side _____

Rear _____

Pavement: Front _____

Side _____

Rear _____

Height Restrictions:

Height variance probability:

Variance filed:

Variance hearing:

Variance fee:

Adjacent zoning: N:

Adjacent Land Use:

N:

E:

E:

S:

S:



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W:

W:

Landscape Buffer requirement:

Front _____ Side _____ Rear _____

Planned changes to codes: Y / N
Effective when?

Dumpster enclosure req.: Y / N
Restrictive Covenants: Y / N
Signage restrictions: Y / N
Fencing Restrictions: Y / N
Site lighting restrictions: Y / N
Enterprise Zones: Y / N
Tax Incentives: Y / N
Construction Materials Y / N

Moratorium Building: Y / N
Zoning: Y / N
Rail Crossings: Y / N

Historic Preservation:

Firm Name:
Applicable:
Results:

Concurrency

Date Filed:
Approved:
Deficiencies:

Impact Fees Required? Y / N
Estimated Amount:

Environmental

Environmental Regulatory Agencies
Agency:



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Contact Person:

Air Pollution/Odor Restrictions Y / N
Noise Restrictions: Y / N

Wetlands:

Environmental Firm:
Wetlands Area:
Impacts Required:
Buffer requirement:
Source:
Jurisdiction:

Protected Species:

Firm Name:
List:
Mitigation Requirements:

Phase I Environmental Study:

Firm Name:
Date Ordered:
Date Received:
Comments:

Phase II Environmental Study:

Recommended?
Date:
Comments:

Stormwater Management Regulatory Agency:

Requirements:
Special Restrictions:
Max Impervious Restrictions?

Flood Zones:



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FEMA map panel:

Flood Zone:

Elevation:

Soils Report:

Geotechnical Firm:

Ordered:

Types:

Source:

Limitations:

Water Table:

Title Search:

Date Ordered:

Date Received:

Provider:

Surveys:

Surveyor:

Ordered:

Date Completed:

Boundary:

Certified to:

Topographic:

Tree:

Wetland:

Creek/Streams/Waterfront:

Trestles/Bridges:

Easements Located by benefit of Title (Use & Width):

Preliminary Engineering:

Stormwater Management System

Estimated Area Size:

Off-Site Fill Req?:

Prelim Horiz Constr. Est. by Eng:

Rail Access:

Y / N



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Rail Provider:
Meeting Date:
Contact Person:

Fire protection:

Contact Person:
Hydrants Available: Y / N
Sprinklers:
Other Requirements:

Utilities & Connection Fees:

Contact Person:
Water Provider:
Service Size:
Connection Fees:
Well Permitted: Y / N

Reclaimed Water Availability? Y / N

Sewer Provider:
Service Size:
Connection Fees:
Septic Permitted? Y / N

Electric Provider:
Contact Person:
Nearest Connection Point:
Connection Fees:

Gas Provider:
Contact Person:
Nearest Connection Point:
Size/Pressure:
Connection Fees:

Tele-Communications Provider:
Contact Person:



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Nearest Connection Point:
Connection Fees:

Data Provider:
Contact Person:
Nearest Connection Point:
Connection Fees:

Site Access

County Road: Lanes:
City Road: Lanes:
State Road: Lanes:
Median Cut Existing: Y / N
Desired: Y / N
Possible: Y / N
Planned Improvements: Y / N

Roadway improvements req: Y / N
Turn lanes required: Y / N

Sidewalks:
Required: Y / N
Existing: Y / N

Traffic Study Required? Y / N

FAA Review Required? Y / N

Prelim analysis completed:
FAA restrictions:
Lighting requirements:

Regulatory Development Requirements

Process:
Submittals To:



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Development Reviews:

Public Hearings:

Fees:

Other Items:

Commute Times or Distances To:

Schools

Hospitals

Shopping

Employment Centers

Subways, train stations

Other

Project Budget Requested by Client?



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Possible Development Costs

Description	Responsibility	Due	Budget
Development Rights			
Rezoning			\$
Variances			\$
Easements			\$
Consultants			
Attorney			\$
Architect			\$
Landscape Architect			\$
Engineers			\$
Geotech			\$
Surveyor			\$
Wetland Delineation			\$
Phase I/II Environmental			\$
FAA Consultant			\$
Regulatory Fees			
Development Reviews/Permits			\$
Transportation Improvements			\$
Water Costs			\$
Sanitary Sewer Costs			\$
City/County Impact Fees			
Roadway			\$
Schools			\$
Utilities			\$
Mitigation Fees			
Wetlands			\$
Protected species			\$
Other			\$