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— DESIGN, CONSTRUCTION, ENVIRONMENT —

Arvada ordinances ensure a property's environmental integrity

The Environmental Site Assessment Ordinance approved in October of 1993 goes beyond the city of Arvada's need for environmental due-diligence prior to property acquisition. The ordinance includes the possible imposition of environmental assessment requirements, including remediation, on property to be annexed and developed within the city.

The city's deals

Three categories of property transactions are considered.

The first category is property acquired for the purpose of right-of-way or easement. The requirement for a Phase I Environmental Site Assessment (Phase I ESA) may be waived. The city will require a Phase I ESA if there is documentation of an existing environmental hazard, or if the city's Water Quality/Environmental Services Section determines that a Phase I ESA is necessary. The decision of the section is based on a review of environmental records and of the Property Site Prior Uses Screening Questionnaire.

On the basis of the Phase I ESA findings, the city may elect to require a Phase II ESA (environmental testing). The city would pay the cost of both assessments. If a Phase III ESA (environmental remediation) is recommended by the Phase II ESA, then the city can terminate the acquisition or exercise one of two options. First, the city could decide to require the completion of the Phase III ESA at the property owner's expense or at the city's expense. The second option is for the city to acquire the property after taking into account the condition of environmental contamination identified in the Phase II ESA.

The second category is the acquisition of property for any other public purpose. Typically, a Phase I ESA will be prepared at the city's expense and be available at closing. If a Phase III ESA is recommended in the Phase II ESA, then the city has the same options as described in the previous category of property acquisition. However,

the city, as a condition of sale, may require a warranty and/or indemnification as to any condition of environmental contamination associated with the property.

The third category is the

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property included in annexation initiated by the city. A Phase I ESA will be prepared at city expense prior to the adoption of any resolution initiating annexation which includes the property. If a Phase III ESA is recommended, then the city has the options described above with some additions. Annexation of the property is not to be interpreted as a representation or warranty by the city as to the environmental condition of the property. The city may require a Phase III ESA to be performed as a condition of approval by the city for final development and may require all or some of the property owners in the newly annexed area to pay for the remediation effort.

Other transactions

The city's acquisition of property through the initiative of others will require a Phase I ESA on the property. If concern exists about the environmental condition, then the city can require the preparation of Phase II and, possibly, Phase III ESAs that will be funded by the owner. The city may elect to acquire the property with a known environmental condition and may require a warranty and/or indemnification from the owner. If the property is to be conveyed from a public entity to the city, the city may fund any or all of the required assessment efforts.

When private property owners petition the city for annexation, a Phase I ESA must be submitted. The city may deny a petition if the Phase I ESA was not submitted or if an

environmental condition is associated with the property. Property remediation may be required by the city for newly annexed property prior to preliminary plat or final development approval. The property owners are required to pay for the necessary environmental assessment efforts and may be requested to provide a warranty and/or indemnification to the city.

In situations where the owner-initiated annexation is at the authorized request of the city, the environmental assessment requirements will be imposed as if such annexation was initiated by the city.

ESA Standards

The standards include a screening questionnaire about prior uses and a description of the minimum steps needed to prepare a Phase I ESA. The latter is based on the ASTM-issued guidelines.

There are three other requirements concerning the preparation of a Phase I ESA. First, the effort is to be performed by qualified and trained personnel. Second, the preparer is required to have Errors and Omissions Insurance (\$1 million per occurrence). Third, for a prior Phase I ESA to be acceptable to the city, the report must be prepared on information and records reviewed within the previous six months.

Comments

The "Environmental Site Assessment Ordinance" clearly reflects the city's intent to perform necessary environmental due-diligence prior to owning property.

The extension of the ordinance's reach into the city's review processes for annexation, preliminary plat and development plan approvals reflects a second intent to use the various phases of environmental assessment as part of the city's environmental risk management process. This goes beyond the traditional use of a Phase I ESA to establish a potential "innocent land owner" defense for a purchaser of real estate should contamination be discovered after purchase. ▲