

Connecticut Land Trust Service Bureau

Practice Note #10: Environmental Site Assessments

Connecticut enjoys a rich heritage of farming and manufacturing. Both activities employed *toxic or hazardous substances that were often disposed of on or near the property*. With the passage of time, regenerating forest has covered up many former dumping sites. *Some may occur on lands now being set aside for open space, perhaps by land trusts – lands that will be open to public use.*

Under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or “Superfund Act”), **each past and present owner of a site that is contaminated by toxic or hazardous materials may be liable for all costs associated with cleaning up the mess.** This could have serious financial implications for the land trust working with a limited budget, as one Connecticut trust recently learned. It is not yet clear whether easement holders are also liable for clean-up costs, unless they actively manage the property and can thus be considered as the “operator”.

The land trust may be able to escape liability for clean up of hazardous waste that was dumped on a property under previous ownership (i.e., qualify for the “innocent landowner” defense). *That can only happen if, prior to acquisition, the trust carried out a thorough inspection of the property and investigated previous ownership and uses.*

The American Society for Testing and Materials (ASTM) has developed standards for carrying out such inspections, referred to as Phase I and Phase II Assessments. Practices of the “**Phase I Environmental Site Assessment**” are defined under ASTM Standards E1528-96 and E1527-97. This is the minimum level of investigation that a land trust should undertake to determine that no contamination is present. An investigation should be the norm for each and every property that the trust is considering for acquisition, be it through purchase or donation. If the assessment reveals a problem, the land trust should avoid acquiring the property.

Trusts should become familiar with the property first, to determine whether a professionally contracted Phase I assessment is necessary. When professionals are contracted, the cost can range from \$1,500 to \$2,500 and up, depending on the size of the property, its location, past uses, etc. To avoid this cost, some trusts prefer to do their own assessments, or they get the donor or seller to pay for it. Portions of the assessment (e.g., the government records search) can also be contracted out to a professional service, with land trust personnel or volunteers performing the rest.

Though the scope of an assessment should be determined on a case-by-case basis, the key point is this -- *the land trust will not be considered “innocent” if no Phase I investigation is carried out.* It is important to ensure that the assessment is both thorough and professional, and that all work meets the standards set by ASTM. All work and findings should also be documented in a formal written report. The sample content of a Phase I Environmental Site Assessment is presented on the reverse.

In cases where the Phase I assessment reveals a problem, but the trusts decides to move ahead anyway, it should then undertake a **Phase II** investigation. Trusts that are sponsor members of LTA can also refer to **LTANet** for further information on Phase I and Phase II assessments.

Phase I Environmental Site Assessment – Sample Content

- ◆ **Physical Setting:** Collect and study topographic maps, soil maps, descriptions of soil composition, hydrology
- ◆ **Historical Information:** Investigate land use history, i.e., past use of the property (and surrounding properties) and likelihood that it involved hazardous or toxic materials. Sources include aerial photographs, historical topographic maps, city directories, old Plat Books, fire insurance maps, fire department records, historical societies, libraries, highway road plans, property tax files and assessors records, zoning land use records, building department records and permits, local government health department, abstracts and title reports, newspaper clipping files, etc.
- ◆ **Government Records Review:** Check with state environmental agency and/or other sources to see if site is near any federal, state, or municipal list of contaminated sites. Consider contracting this portion of the study to a firm or professional that specializes in searching lists and records. There are many such lists and some may be difficult to access.
- ◆ **Interviews:** Talk with anyone who may have knowledge of the property's prior uses. Look especially for anyone who may know of possible incidences of use and disposal of toxic and hazardous materials. This would include current and previous owners and neighbors, people who may have been employed on the property, local government officials, local "old timers," etc. Interviews should include questions regarding general past uses of the property, groundwater and hydrology, location of wells and septic systems, history of chemical use and storage, location of possible underground or above ground storage tanks, waste disposal, agricultural use, etc.
- ◆ **Site Reconnaissance:** Perform a physical inspection of the property. Map out the inspection plan and keep a record of it for the final report. Walk as much of the property as is possible, following all roads, paths, and streams. Get off of the roads and trails and search in the "bush." Look in all structures and focus on improved areas. Look specifically for: structures, hazardous substances, underground storage tanks, above ground storage tanks, etc.
- ◆ **Environmental Assessment Report:** Document in writing all aspects of the Phase I assessment (include maps, sources consulted and findings of the historical and government records searches, transcripts of the interviews, game plan and findings of the site reconnaissance, etc. A thorough, written report will be essential to protecting the trust legally in the future, if a problem with contamination surfaces.

For each property acquired, documentation on all of the above should be assembled into a binder and kept on file by the land trust for future reference.

Phase II Investigation: If the above reveals a potential environmental problem, detailed subsequent investigation may be necessary to determine the scope of the problem and nature of required clean-up.

Sources: The Nature Conservancy; Land Trust Alliance

This Practice Note is funded in part through a New England Leadership Grant from the Land Trust Alliance (LTA) Northeast Program underwritten by LTA's generous individual and foundation supporters.