



Process for Risk Evaluation,
Property Analysis and Reuse Decisions
for Municipalities and Other Government Entities
Addressing Revitalization of Contaminated
Properties





The PREPARED Workbook

- Outlines a risk management framework for evaluating *property recovery actions* to facilitate the cleanup and revitalization of contaminated properties.
- Discusses key considerations of the evaluation process
- Provides general information and references
- Provides *worksheets* to guide the evaluation process.



The PREPARED Workbook

- Supports the systematic collection and analysis of information
- Supports interaction and communication between municipal officials and technical and legal experts
 - Municipal Attorney
 - Environmental Attorney
 - Environmental Consultant
 - Regulatory Agencies
 - Public Finance Consultant
 - Real Estate Professional



The PREPARED Workbook

- Supports the municipal decision process by:
 - Providing a framework for identifying, assessing and managing project risks
 - Establishing a common basis for deliberations between the various municipal departments (e.g., economic development, planning, engineering, legal), chief elected officials, etc.
 - Helping to communicate key issues and trade-offs to all stakeholders, including the decision makers and general public

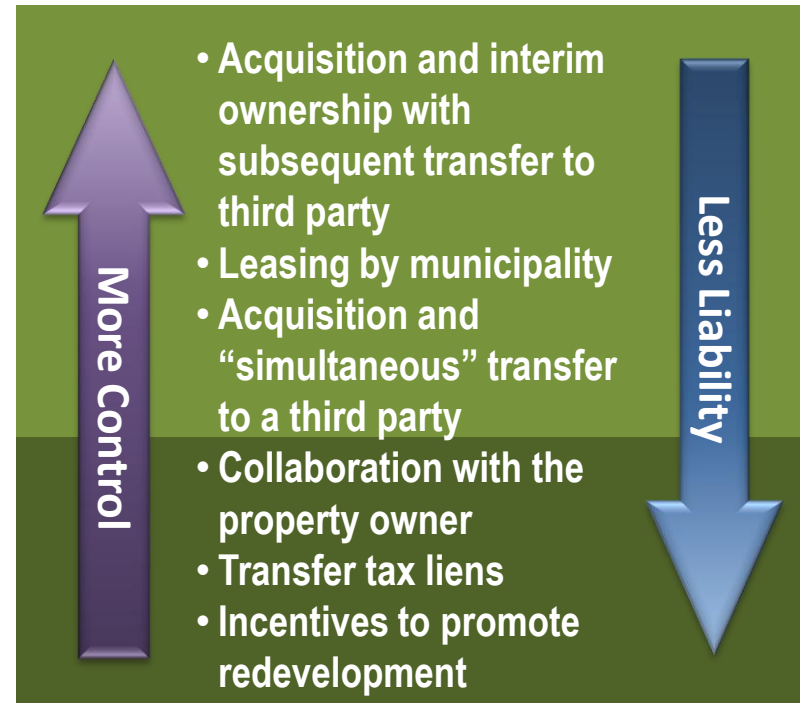




Property Recovery Actions

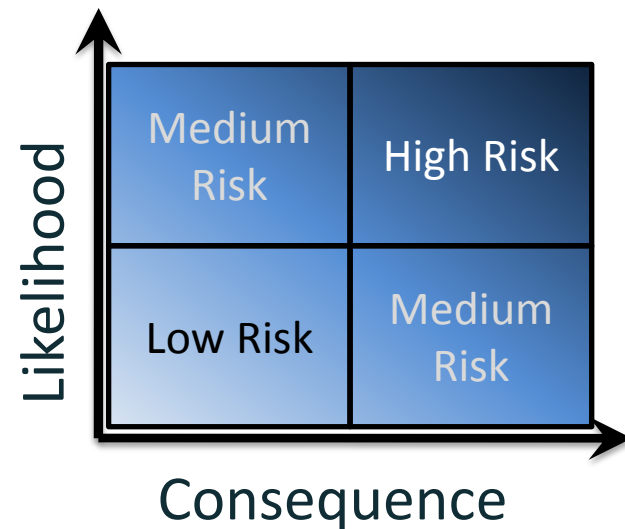
Actions that involve a municipality in the cleanup and redevelopment of a contaminated property

Each action carries its own set of issues that must be understood in order to develop a strategy for managing project risks



Risk Management

- Decision-making requires a balancing of costs, risks, and benefits.
- Risk management is an iterative process
- Risks cannot be entirely eliminated—only managed
- Three categories of project risk considered in the Workbook
 - Legal liability
 - Environmental
 - Common law
 - Financial risk
 - Community issues





THE EVALUATION PROCESS





Property Redevelopment

- Risk management is an integrated component of the property redevelopment process

Pre-Development

- Identify and refine redevelopment idea
- Conduct Due Diligence
- Secure access to the property
- Identify sources of financing

Secure the Deal

- Contract negotiation
- Secure financing
- Establish Remedial Action Plan
- Secure the property and formal commitment

Cleanup and Development

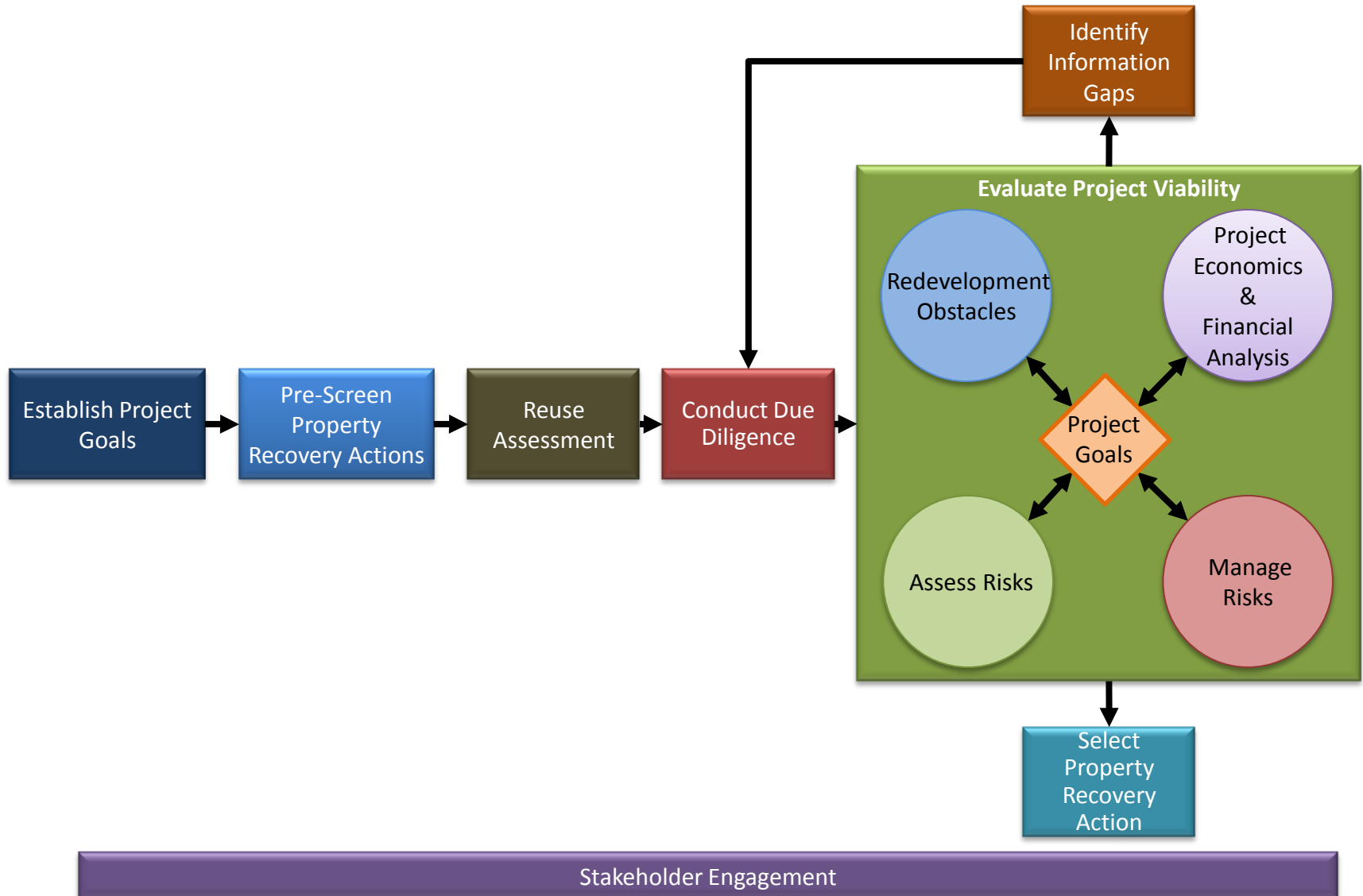
- Approvals
- Integrate cleanup with construction
- Property sale or lease
- Completion and formal opening

Property Management

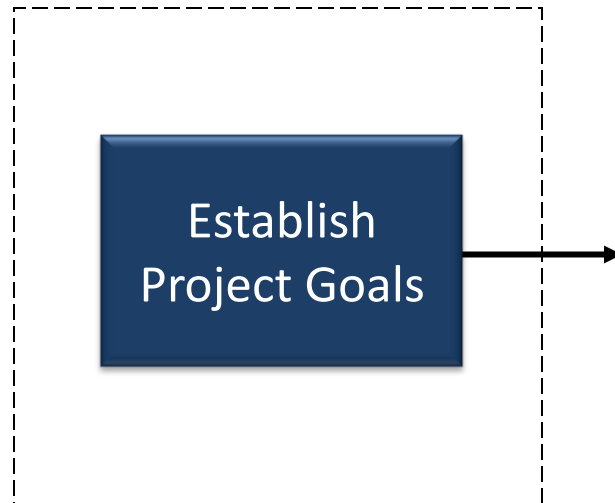
- Long-term operations and maintenance of remedial action systems



The Property Recovery Action Evaluation Process



Project Goals



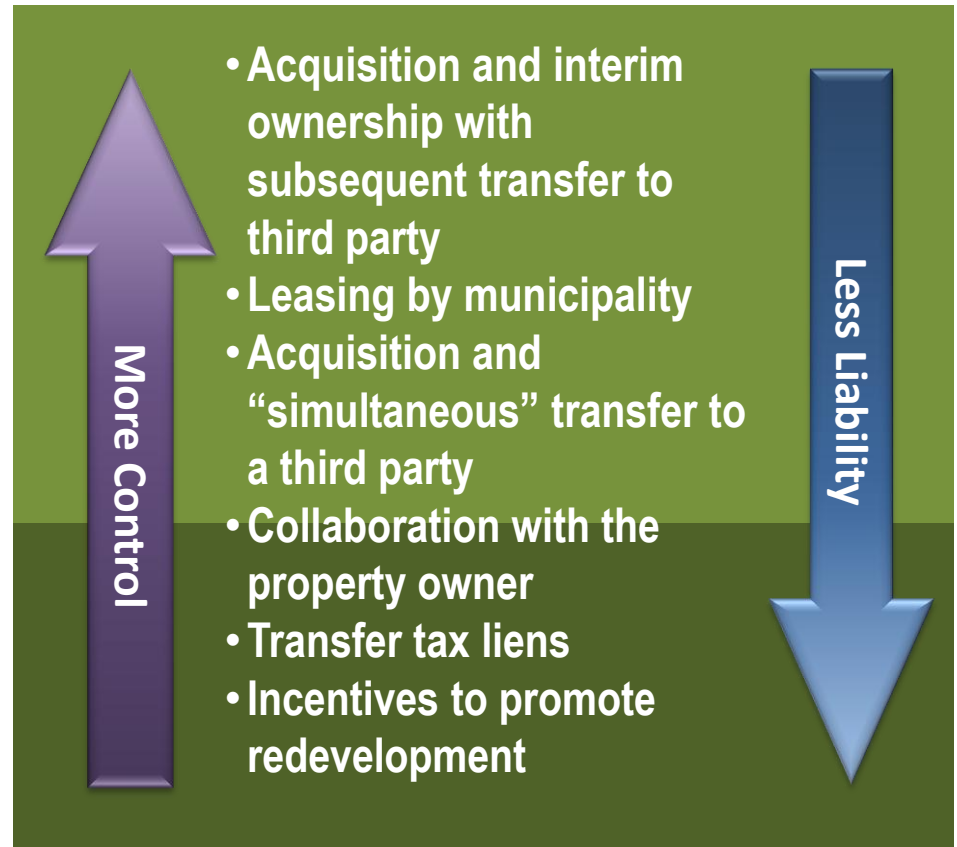
[Worksheet # 1](#)

- Key Considerations
 - What is the desired outcome of the redevelopment?
 - How important is the redevelopment?
 - How time critical is the redevelopment?
- Other Considerations
 - Be prescriptive when constraints are real and known
 - Not all goals and expectations can be quantified
 - Identify pre-existing biases , but allow the evaluation process to play out
 - Identify “deal breakers”

Pre-Screening Property Recovery Actions

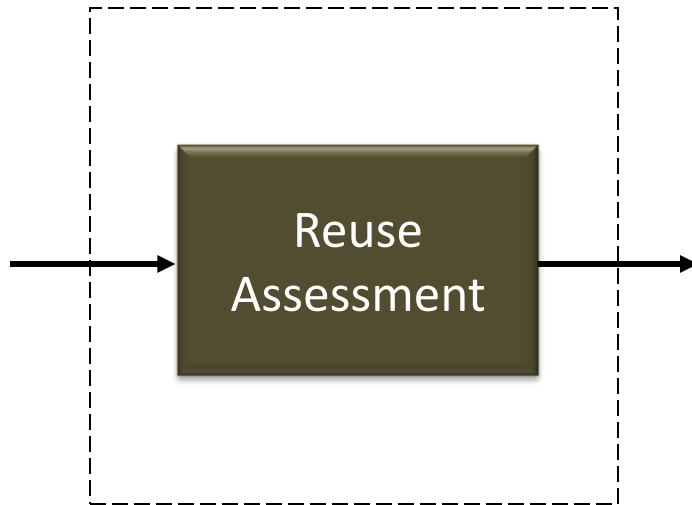


[Worksheet # 3](#)



- Acquisition and interim ownership with subsequent transfer to third party
- Leasing by municipality
- Acquisition and “simultaneous” transfer to a third party
- Collaboration with the property owner
- Transfer tax liens
- Incentives to promote redevelopment

Reuse Assessment

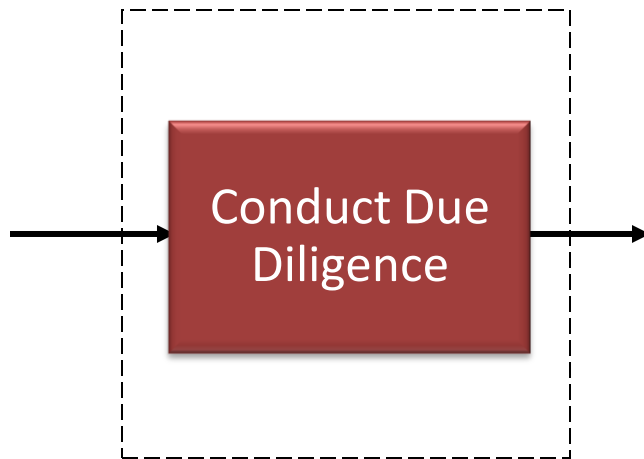


[Worksheet # 2](#)

Reuse Assessment

- Opportunities and constraints analysis
- Environmental conditions impact analysis
- Market analysis and feasibility study
- Community needs assessment
- Reuse planning
- Preliminary financial analysis

Due Diligence



[Worksheet # 4](#)

Due diligence is an essential step in evaluating property recovery actions even if a municipality is not planning to take title to a property

- Helps to identify redevelopment obstacles and potential sources of project risk
- Developers are more likely to consider properties with some level of due diligence completed
- **All appropriate inquiry** is necessary to qualify for certain environmental liability protections under Superfund and other statutes



Due Diligence


Environmental Issues

- **All appropriate Inquiry**
- Hazardous substances and petroleum products on the property
- Regulatory status of the property
- Responsible party issues
- Environmental restrictions

Real Estate Issues

- Property appraisal
- Ownership
- Tax and other debt status
- Suitability for the planned use (e.g., engineering, infrastructure)
- Market trends and property values
- Financing strategies and alternatives

Redevelopment Obstacles



Redevelopment
Obstacles

- Utilizes information obtained through the due diligence process
- Depends on the property recovery action
- Redevelopment obstacles may be common to more than one property recovery action
- Process of identifying is iterative
- Prioritize based on impact on project and goals



Assessing Project Risk

Three categories of project risk are considered:

- Legal liability
- Financial risk
- Community issues





Community Issues

- Community issues play a central role in the risk management process
- Developers are more likely to be attracted to an area with a demonstrated history of constructive municipal and community involvement
- Public support is especially important if the municipality is considering the use of public funds or the taking of other risks to facilitate a project
- Left unaddressed, community concerns erode public support and cause unnecessary delays, additional costs, and other obstacles
- Community engagement is a mechanism for communication among all of the parties
- Some key principles of community engagement are described in the manual
- The roles of area-wide planning and sustainable development are also described -- these are important EPA priorities for which resources are now available



Liability under Federal and State Cleanup Statutes

- Primary focus is on federal environmental cleanup statutes
 - Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) – commonly known as Superfund
 - Resource Conservation and Recovery Act (RCRA)
 - Hazardous waste
 - “Solid” waste
 - Underground storage tanks
 - Toxic Substances Control Act (TSCA) (manual focuses on PCBs only)
 - Clean Air Act (manual focuses on asbestos only)
- General references to state statutes and some common law liabilities
- Appendix D addresses key questions a municipality might have regarding liability under these statutes



Liability under Federal and State Cleanup Statutes

- Which statutes apply to the property?
 - Superfund sites account for a relatively small percentage of contaminated parcels
 - Government agencies exercise discretion in making enforcement decisions
 - Knowing which statute applies helps in coordinating with appropriate federal and state programs
 - Knowing which statute applies helps in selecting technical consultants and legal counsel with proper expertise
- How might a property recovery action affect liability under the cleanup statutes?
 - Method of acquisition affects the availability of certain liability protections (e.g., Superfund)
 - What liability protections are available to owners?
 - What are the threshold requirements and continuing obligations to maintain specific liability protections (e.g., AAI)?



Financial Analysis and Risk

Evaluate project economics and conduct financial analysis

- Evaluation of a property recovery action involves a consideration of:
 - Potential costs to the municipality
 - Sources of funding
 - An understanding of the financial viability of a desired redevelopment
- Financial risk, not environmental liability is often the driver
- Workbook describes:
 - Some general factors, but is not comprehensive
 - *A Pro Forma* Worksheet to estimate project viability
 - Sources and Uses Chart

Managing Project Risk

- Risk management is the art of assessing:
 - How likely is an adverse event?
 - What could happen if it occurs?
 - What could be done to minimize either or both?
- Uncertainty complicates these determinations
- Often requires multiple layers of protection
- Understanding the limitations of each risk management tools is important



Manage Risk

Risk Management Tools





Property Activities

Understand and Quantify Risk	Control Risk	Transfer Risk
Meeting with EPA and State Regulators	Timing Municipal Involvement	
Due Diligence/All Appropriate Inquiry	Interim Cleanup Action	
Environmental Investigation	Cleanup Action	
Cleanup Action Planning	State Voluntary Cleanup	
Development Impact Assessment	Monitoring and Maintenance of Cleanup	
Reasonable Worst Case Scenario Planning	Institutional Controls	
Engaging Stakeholders	Oversight of the environmental contractors	
Financial Analysis	Following Accepted, Good Commercial Practices	



State and Federal Statutory Protection

Understand and Quantify Risk	Control Risk	Transfer Risk
	Statutory/Regulatory exemptions	
	State Voluntary Corrective Action	
	Prospective Purchaser Agreements	
	No Action/ No Further Action letters	
	Other Determinations of Completion	



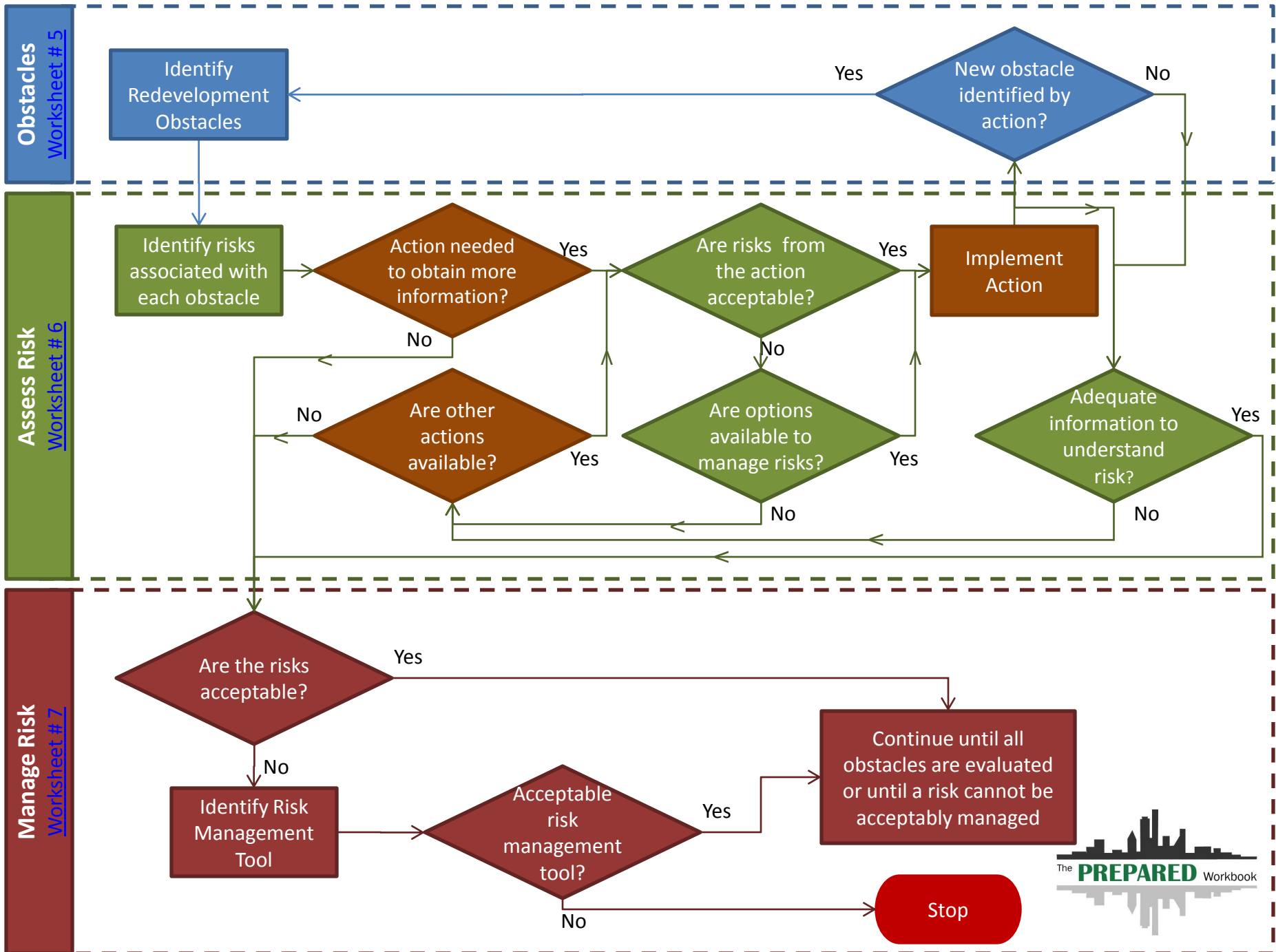
Transactional Activities

Understand and Quantify Risk	Control Risk	Transfer Risk
	Escrow Accounts	Indemnification
	Purchase Price Adjustment	Representations and Warranties
	Grants	“As Is” Provision
	Tax Benefits and Credits	Covenants
	Private Investors	Assumption, Retention, and Release Provisions
	Specialized Loans	Schedule of Included or Excluded Liabilities
	Redevelopment Authorities	Post-Signing and Pre-Closing Conditions
	Land Banks	Fixed Price or Performance-Based Contracts



Insurance

Understand and Quantify Risk	Control Risk	Transfer Risk
		Comprehensive General Liability
		Pollution Liability
		Contractor's Pollution Liability
		Errors and Omissions Insurance
		Secured Lender
		Cost Cap
		Finite Risk
		Institutional Controls and Post Remedial Action Care Insurance





Selecting Property Recovery Actions

Core Questions

- Will the selected property recovery action(s) achieve the project goals?
- Is the project financially viable and realistic?
- Are the necessary resources available?
- Are the risks acceptable?

Project Summary

- The goal of the project
- Property recovery action
- Value of the property
- Cost to the municipality
- Risk issues
- Mitigation
- Project Benefits



The PREPARED Workbook

To download the PREPARED Workbook:

www.epa.gov/region1/brownfields/prepared

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