

City of Las Cruces®

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Council Action and Executive Summary

Item # 5 Ordinance/Resolution# 11-016 Council District:

For Meeting of July 19, 2010
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE COMMUNITY DEVELOPMENT DEPARTMENT TO APPLY TO THE NEW MEXICO ENVIRONMENT DEPARTMENT (NMED) FOR TWO TARGETED BROWNFIELDS ASSESSMENTS (TBA) TO BE CONDUCTED FOR THE EL PASEO CORRIDOR AND FOR THE CITY OFFICE CENTER.

PURPOSE(S) OF ACTION: To obtain a Phase I Brownfields Assessment for the El Paseo Corridor and a Phase II Assessment for the City Office Center property. These assessments would be at no cost to the City.

Name of Drafter: Carol McCall <i>CM</i>		Department: Community Development		Phone: 528-3209	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>DSW</i>	528-3043	Budget	<i>Richard M. ...</i>	541-2300
			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: On May 14th, Community Development staff met with Environmental Protection Agency (EPA) and New Mexico Environment Department (NMED) Brownfields staff to discuss strategies and potential funding availability for the redevelopment of brownfields in Las Cruces. One of the first steps to foster brownfield redevelopment is to determine what, if any, environmental hazards exist.

In order to successfully remediate brownfields sites for redevelopment, a Targeted Brownfields Assessment (TBA) is conducted to identify potential or existing environmental contamination. In light of the scope of the EPA Smart Growth Technical Assistance Grant provided to the City for the "Picturing El Paseo" project, the Brownfields team strongly recommended that the City submit an email request for two Targeted Brownfields Assessments.

The first is a Phase I TBA of the El Paseo Corridor, which would identify potential brownfields properties along the corridor. The primary purpose of the Phase I step is to gather readily available information about a site to identify the presence or likely presence of a hazardous substance. No sampling is involved in this step. The assessment includes a detailed site visit, a comprehensive photographic log, interviews with the owner/manager/user of the property and adjacent properties if possible, a review of records pertaining to the property and surrounding properties, and a comprehensive written report.

In addition, the team suggested that the City request a Phase II TBA of the City Office Center property at 575 S. Alameda Blvd. which would be based on the Reesco Phase I Assessment that has already been completed for the building. The Phase II Assessment includes the physical sampling of the site, using the recommendations of the Phase I report as a minimum guideline, a comprehensive written report detailing the rationale for the sampling that took place, the sampling protocols and procedures employed, an explanation of the analytical results, and, if necessary, a description of the recommended remedial action needed to restore the site to the appropriate condition for its intended use.

These Assessments would be conducted by the NMED/EPA team. The advantages to this process are:

- The environmental information obtained about the property is essential for redevelopment;
- Having a completed recommended remedial action plan for the City Office Center property would make it easier to determine whether clean up is cost effective, thus potentially attracting more buyers for the property;
- Owners of property along the El Paseo Corridor who agree to a Phase I assessment would be eligible for Phase II assistance, which could possibly lead to partial funding for clean-up through the EPA's Revolving Loan Fund; and
- These are the first steps in returning vacant land to productive, tax-generating use as soon as possible.

There is no cost to the City or to private property owners for these assessments. Both the Phase I Assessment of the El Paseo Corridor and the Phase II Assessment of the City Office Center property would be conducted by either NMED or EPA. Both agencies retain consultants for the project and would work closely with City staff. The assessment program is entirely voluntary, and would not commit the City or private owners to redevelop any properties investigated.

To begin this process, the NMED/EPA requires an email letter from the City requesting that these assessments be conducted. Community Development staff is available to assist in this regard.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution
2. Attachment -- Draft letter to New Mexico Environment Department
3. Attachment -- Memo to City Manager regarding Targeted Brownfields Assessments
4. Attachment -- Cover Letter, Reesco Phase I Assessment of the City Office Center

OPTIONS / ALTERNATIVES:

1. Approve the request to the New Mexico Environment Department for Targeted Brownfields Assessments (TBA). If accepted, the request would allow a Phase I Assessment for the El Paseo Corridor and a Phase II Assessment for the City Office Center property to be conducted.
2. Disapprove the request. No letter requesting the TBAs would be submitted, and no Assessments would be conducted.
3. Amend the Resolution and direct staff accordingly
4. Table the Resolution and direct staff accordingly.

(Continued on Page 3)

RESOLUTION NO. 11-016

A RESOLUTION AUTHORIZING THE COMMUNITY DEVELOPMENT DEPARTMENT TO APPLY TO THE NEW MEXICO ENVIRONMENT DEPARTMENT (NMED) FOR TWO TARGETED BROWNFIELDS ASSESSMENTS (TBA) TO BE CONDUCTED FOR THE EL PASEO CORRIDOR AND FOR THE CITY OFFICE CENTER.

The City Council is informed that:

WHEREAS, the New Mexico Environment Department (NMED) and the Environmental Protection Agency (EPA) offers Targeted Brownfields Assessments to local governments at no cost; and

WHEREAS, the environmental information obtained about the property through these Assessments is essential for redevelopment; and

WHEREAS, these Assessments are the first steps in returning vacant land to productive, tax-generating use as soon as possible; and

WHEREAS, in light of the scope of the EPA Smart Growth Technical Assistance Grant provided to the City for the "Picturing El Paseo" project, a Phase I Assessment of the El Paseo Corridor would identify potential brownfields properties along the corridor; and

WHEREAS, a Phase I Assessment of the City Office Center has already been completed and a completed recommended remedial action plan obtained from a Phase II Assessment for the City Office Center would make it easier to determine whether clean up is cost effective, thus potentially attracting more buyers for the property.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the Las Cruces Community Development Department is authorized, on behalf of the City, to submit a request to the New Mexico Environment Department for a Phase I Targeted Brownfield Assessment of the El Paseo Corridor and a Phase II Targeted Brownfield Assessment of the former City Office Center property.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 2010.

APPROVED:

Mayor

(SEAL)

ATTEST:

City Clerk

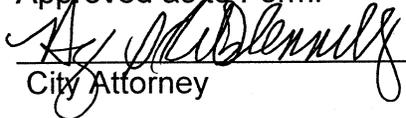
VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Sorg:	_____
Councillor Small:	_____
Councillor Pedroza:	_____
Councillor Thomas:	_____

Moved by: _____

Seconded by: _____

Approved as to Form:



City Attorney

July 20, 2010

Janet E. Brooks
VRP/Brownfields Team Lead
New Mexico Environment Department
1190 St. Francis Dr.
P.O. Box 5469
Santa Fe NM 87502-5469

Dear Ms. Brooks:

On May 14th, Community Development staff met with you and other Environmental Protection Agency (EPA) and New Mexico Environment Department (NMED) Brownfields staff to discuss strategies and potential funding availability for the redevelopment of brownfields in Las Cruces. In light of the scope of the EPA Smart Growth Technical Assistance Grant provided to the City for the "Picturing El Paseo" project, your team strongly recommended that the City submit a request for Targeted Brownfields Assessments of the El Paseo Corridor and the City Office Center property.

With this letter, the City of Las Cruces requests that the Targeted Brownfields Assessments (TBA) be conducted. The first is a Phase I TBA of the El Paseo Corridor, which would identify potential brownfields properties along the corridor. The second is a Phase II TBA of the City Office Center property, located at 575 S. Alameda Blvd. A Phase I Assessment has already been completed for this property (attached). It is our understanding that there would be no cost to the City or to private property owners for these Assessments.

One of the first steps in fostering brownfield redevelopment is to determine what, if any, environmental hazards exist. These Assessments would do much toward returning vacant land to productive, tax-generating use. If there is additional information you require, please contact Carol McCall at (575) 528-3209 or Susan Lowell at (575)3079. We look forward to hearing from you and working with the NMED and EPA team on this important project. Thank you!

Sincerely,

Ken Miyagishima
Mayor

Attachment
CC: David Weir



City of Las Cruces

**Community Development
Memorandum**

Attachment 2
RECEIVED

JUN 14 2010

**CITY OF LAS CRUCES
CITY MANAGER'S OFFICE**

To: Terrence Moore, City Manager

Through: ~~VMB~~ Vincent Banegas, Planning and MPO Administrator
David Weir, Community Development Director *DW*

From: Carol McCall, Planner *CM*

Subject: Technical Assistance for Brownfields Assessments

Date: June 9, 2010

File No.: M-10-129

On May 14th, Community Development staff met with Environmental Protection Agency (EPA) and New Mexico Environment Department (NMED) Brownfields staff to discuss strategies and potential funding availability for the redevelopment of brownfields in Las Cruces.

In order to successfully remediate brownfields sites for redevelopment, Environmental Site Assessments (ESA) are conducted to identify potential or existing environmental contamination. In light of the scope of the EPA Smart Growth Technical Assistance Grant provided to the City for the "Picturing El Paseo" project, the Brownfields team strongly recommended that the City submit an email request for two Targeted Brownfields Assessments.

The first is a Phase I ESA of the El Paseo Corridor, which would identify potential brownfields properties along the corridor. The primary purpose of the Phase I step is to gather readily available information about a site to identify the presence or likely presence of a hazardous substance. No sampling is involved in this step. Phase I elements include:

1. A detailed site visit by a qualified professional, ideally with the owner/manager/user present to answer questions.
2. A comprehensive photographic log.
3. Interviews with the owner/manager/user of all adjacent properties.
4. A thorough review of records pertaining to the property and surrounding properties.
5. A comprehensive written report.

In addition, the team suggested that the City request a Phase II ESA of the City Office Center at 575 S. Alameda Blvd. which would be based on the Reesco Phase I Assessment that has already been completed for the building. The Phase II Assessment would include the following elements:

1. The physical sampling of the site, using the recommendations of the Phase I report as a minimum guideline.
2. A comprehensive written report detailing the rationale for the sampling that took place, the sampling protocols and procedures employed, an explanation of the analytical results, and, if necessary, a description of the recommended remedial action needed to restore the site to the appropriate condition for its intended use.

These Assessments would be conducted by the NMED/EPA team. The advantages to this process are:

- The service is free and includes sampling and analyses, cleanup cost estimates and site cleanup planning;
- The environmental information obtained about the property is essential for redevelopment;
- Local governments are among the entities eligible for Targeted Brownfield Assessment funding which includes grants and Revolving Loans for cleanup;
- Having a completed recommended remedial action plan for the City Office Center would make it easier to determine whether clean up is cost effective, thus potentially attracting more buyers for the property;
- Owners of property along the El Paseo Corridor who agree to a Phase I assessment would be eligible for Phase II assistance and for potential clean up funding.
- These are the first steps in returning vacant land to productive, tax-generating use as soon as possible.

There is no cost to the City or to private property owners for these assessments. Both the Phase I Assessment of the El Paseo Corridor and the Phase II Assessment of the City Office Center would be conducted by either NMED or EPA. Both NMED and EPA retain consultants for the project and would work closely with City staff. The assessment program is entirely voluntary, and neither assessment would commit the City or private owners to redevelop any properties investigated.

It is important to note that regarding the Phase II assessment of the City Office Center, there are pending issues that need to be determined prior to making the request to the NMED/EPA team. The City is awaiting final determination on the State Historic Preservation Office's designation and authority for the City to redevelop the site (i.e. demolish the building). In addition, your upcoming meeting with the Supportive Housing Coalition of New Mexico on June 21st will provide clarification to the Coalition on the availability of the site for the Low Income Housing Tax Credit Project. We would not pursue assistance from EPA/NMED until these tasks have been completed.

To begin this process, the NMED/EPA requires an email letter from the City requesting that these assessments be conducted. The purpose of this memo is to ask for direction in this matter. Pending your approval, Community Development staff will submit a Resolution for the approval of the City Council at the July 6th meeting. The deadline to submit agenda items for this meeting is June 18th. If you have questions or need additional information, please contact me at ext. 3209. Thank you!

cc: Robert Garza
David Dollahon
Christine Logan

TARGETED BROWNFIELDS ASSESSMENTS

BACKGROUND:

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), also known as "Superfund," was established to address abandoned hazardous waste sites. Among other things, CERCLA establishes a liability scheme for determining who can be held accountable for releases of hazardous substances. CERCLA also establishes the authority for EPA's Brownfields Program and sets forth which entities and properties are eligible for brownfields grants. A brownfield is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants, contaminants, controlled substances, petroleum or petroleum products or is mine-scarred land.

The CERCLA statute provides protection from liability for certain parties, provided they comply with specific criteria outlined in the statute. Parties provided protection from CERCLA liability include:

- Innocent landowners (CERCLA §101(35)(A))
- Contiguous property owners (CERCLA §107(q))
- Bona fide prospective purchasers (CERCLA §§101(40) and 107(r))
- Units of state or local government that acquire ownership or control involuntarily through bankruptcy, tax delinquency, or abandonment (CERCLA §101(20)(D)), or by eminent domain (CERCLA §101(35)(A)(ii)).

In order to successfully remediate brownfields sites for redevelopment, Environmental Site Assessments (ESA) are conducted to identify potential or existing environmental contamination. The ESAs must be performed in accordance with a procedure known as "All Appropriate Inquiry" which follows CERCLA criteria for such assessments. It is important that the ESAs be performed properly or the liability is at risk to the property owner and they may not qualify for additional funding. In addition, the property owner could potentially become a responsible party by virtue of the ESAs not being performed in accordance with CERCLA criteria.

In addition, identifying the presence and extent of contamination is essential to determining an appropriate reuse for the property. The analysis typically addresses the underlying land and physical improvements to the property as well as impacts from adjacent and nearby properties. These are usually referred to as Phase I and Phase II assessments, and include the following:

Phase I:

1. A detailed site visit by a qualified professional.
2. A comprehensive photographic log.
3. A thorough review of records pertaining to the property and surrounding properties.
4. A comprehensive written report.

Phase II:

1. The physical sampling of the site, using the recommendations of the Phase I report as a minimum guideline.
2. A comprehensive written report detailing the rationale for the sampling that took place, the sampling protocols and procedures employed, an explanation of the analytical results, and, if necessary, a description of the recommended remedial action needed to restore the site to the appropriate condition for its intended use.



April 21, 2010

SHCNM, Inc.

Attn: Mr. Mark Allison, Executive Director
P.O. Box 27459
Albuquerque, NM 87125

Subject: Phase I Environmental Site Assessment (ESA) for the former City Office Building (vacant), 575 South Alameda Boulevard (Block 3 & part of Block 4, Lohman Schaublin Subdivision), Las Cruces, Dona Ana County, NM 88005

Project No. C02910

Dear Mr. Allison,

REESCO is emailing to your attention electronic-copies of the above-referenced Phase I ESA and of REESCO's Invoice for this Phase I ESA. These are the only deliverables which REESCO is to provide to you regarding this project and I trust the information contained in the report is sufficient to fulfill your current environmental consulting needs. We appreciate the opportunity to work with you and remain available to support you on any future environmental consulting efforts.

REESCO discovered no evidence of a previous release, an existing release, or the material threat of a release of hazardous materials or petroleum products associated with the site and, therefore, this assessment has revealed no evidence of any recognized environmental conditions (REC) in connection with the site. Although this Phase I ESA has revealed no evidence of RECs in connection with the REESCO concludes that the site conforms to the U.S. EPA's definition of a "Brownfield Site" and should be considered as such. REESCO also concludes that additional environmental investigations need to be conducted at the site to determine the total extent of the ACM-contamination associated with the site's building and to effect the abatement of all ACM-contamination which is associated with the site's building.

REESCO recommends that the users of this Phase I ESA evaluate whether further inquiry is required for the subject property based on the user's risk tolerance, fiduciary responsibility, or the applicable laws.

Thank you and please call if you have any questions or if we may be of further service.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John R. Dupuy", is written over a light gray, textured rectangular background.

John R. Dupuy
Senior Environmental Professional

REAL ESTATE ENVIRONMENTAL SERVICES COMPANY

C02910tr
313 Aliso Drive SE
Albuquerque, NM 87108

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(505) 254-0928