require an environmental site assessment (ESA) of a property before committing to a purchase. As with any aspect of real estate development, planning is the key to managing this process—understanding the tools and hiring the right people. ESAs are risk-assessment processes used in the planning and feasibility stages of real estate development. Assessments are used to evaluate all types of property—virgin land, recycled land, and renovations—for conditions that are indicative of possible environmental contamination. The presence of actual contamination could trigger liability for the costs of site cleanup and restoration for the owners and users of the impacted property. By identifying the conditions prior to purchase, a buyer can avoid or minimize the exposure to the costs of remediation. Lenders want to limit their exposure to lawsuits and liability for cleanup responsibilities and will demand full disclosure of any known contaminants or conditions. The information in the site-assessment report should identify any recognized environmental conditions that exist and list what further steps might be required. Environmental site assessments are also performed in conjunction with applications for liability protections or release under various brownfield statutes and regulations.

The most common and widely accepted site-assessment protocols are those developed by the American Society for Testing and Materials (ASTM). These are consensus standards developed by practitioners and users of ESAs. The standing ASTM committee meets periodically to consider and occasionally revise the standard guidelines to reflect the state of the practice (see App. B). The ASTM has developed a variety of assessment protocols focused on various assessment activities. A partial list of the assessment standards is provided in Table 2.4.

Why perform a site assessment?

Environmental site assessments have become common practice because of the risk purchasers assume when they take ownership of a property. Under the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA), a landowner is liable for the environmental conditions on a piece of property whether the individual or company had any knowledge or involvement in causing the condition. This liability can include the costs of cleanup as well as damages to third parties.

The law provides buyers with several avenues of defense from this liability. These include “acts of God” and the “innocent-landowner” defense. The innocent-landowner defense is available to parties that can demonstrate that prior to acquiring a property, they had no knowledge of or reason to know of any adverse environmental conditions. They would demonstrate that they undertook an investigation into the historical use and current condition of the property and could find no indication of environmental contamination. This investigation would have to meet a standard of “due diligence” or customary commercial practice. Buyers of commercial property and lenders have learned to minimize their risk by engaging an environmental professional to complete an investigation. The consensus standard has emerged as a means of evaluating this good commercial practice. Site professionals may have an additional interest