



By Chuck Merritt: The dawn of new development? Developers and lenders are showing confidence and interest

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Entering the final quarter of 2011 the commercial real estate industry continues to bounce along at a less than robust pace. What will 2012 hold in store for the industry and those that support the environmental needs of their clients? This question continues to be on the minds of consultants across the country. Lenders are still nursing their wounds from the recent economic malaise and qualifying new commercial loans very carefully. The number of lenders for construction loans is also very limited.

The New York City market does have an advantage over many areas of the country from the influx of people both domestically and abroad and their need for housing. There are currently many development sites that were identified and acquired but never built on for many reasons too numerous to outline in this article. Is there starting to be more of an appetite for these re-development sites? Developers appear to be confident that the worst is behind rather than ahead of us. Although gun shy, lenders are more interested in financing these deals albeit in a different fashion than recent memory (not sure how many deals today can secure 103% financing)

The environmental component of these sites has become increasingly important to all parties involved. Since many of these sites consist of former industrial and commercial operations the concern over the potential impact from these historical practices is paramount. The question of what am I buying and how much will it cost to remediate are critical. Sites along the waterfront are very desirable because of the majestic views they offer but are also more vulnerable to sub surface contamination. Waterfront developments must also factor in tidal flows and shallow groundwater depths which can increase clean up costs significantly.

The process of understating these potential impacts and cost to cure typically starts with the phase one Environmental Site Assessment (ESA). The All Appropriate Inquiry (AAI) style offers the most comprehensive study available as there is certain language in the standard such as bona fide purchaser defense and innocent land owner defense protections. The phase one ESA is limited and cannot determine what is below the surface of the property. A good ESA report can serve to identify "red flags" at a property such as buried oil/gasoline tanks, former dry-cleaning operations, etc. The sub surface investigation or phase two, is the stage at which soil and groundwater sampling is conducted. Using the ESA as a guide, this additional investigation is critical as it provides the data required to understand the impact and hopefully provide potential costs for the budgeting process. These steps (phases one and two) should provide the client enough information to make an informed business decision.

Within the five boroughs the New York City Department of Environmental Protection (NYCDEP), has flagged many sites as an E-designated site. These are properties typically in industrial and commercial zones that have been targeted for redevelopment that may have an environmental

impact. The developers must conduct comprehensive investigations on these flagged sites and submit building design plans to the NYCDEP in order to have the E designation satisfied. Most states including New York have a Brownfield Cleanup Program (BCP) that is designed to help developers put these blighted sites back into use with financial and other incentives. Currently New York City has the only nationally approved BCP which is headed up by the Office of Environmental Remediation (OER). This entitles sites under the city jurisdiction to potentially fast track satisfying all environmental requirements. The program also offers incentives when participating in the program. So as 2011 winds down and 2012 starts to take shape, hopefully more of these older industrial sites will be redeveloped into hi-rise residential and office buildings that grace the New York City skyline. Developers should be versed in understanding the environmental component to a re-development site as well as their ability to take advantage of the city and state funded programs.

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