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All lending institutions do not view environmental issues the same way - by Chuck Merritt

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Since the environmental consulting industry is now in its third decade (as far as lending institutions requiring them), many properties have had at least one Environmental Site Assessment (ESA) conducted. As many of the commercial loans available last less than 10 years, some of these properties have been evaluated multiple times. With a prior report (in which the loan closed) comes the question, "the last bank was fine with the environmental report." Generically referred to as the phase one report, that question is usually asked when a new phase one report presents an Area of Concern (AOC) or Recognized Environmental Condition (REC) not previously identified.

There are several reasons that this can occur. First, the American Society of Testing Materials (ASTM) E-1527 standard is the preferred report that banks require and has evolved. The standard must be reauthorized every five years so new sections are constantly added or clarified that may not have been part of the last report that a lender relied on. The concept of vapors potentially being present within a building is a prime example of how two reports can be different in a relatively short period of time. Vapors present in buildings can create indoor air quality issues that can be harmful to the occupants. The latest ASTM standard requires the consultant to consider if a vapor pathway exists regarding this potential concern. Current and former dry cleaners using solvents as well as gasoline stations are the sites of most concern when considering vapors; not only at the property being evaluated but also the neighboring sites

Another reason a recently written report may be questioned for pointing out an AOC or REC could fall to internal decisions made by a particular lender. In house environmental risk officers and senior management are tasked with evaluating the potential for an environmental issue to impact the banks collateral. Many times, there can be mitigating factors that go beyond what the environmental report may point out. Instruments such as environmental insurance and personal guarantees may be acceptable with one lender but not with all. In addition, most banks have an environmental policy that is adhered to and can be different from institution to institution. These policies also tend to evolve over time and may be more conservative than in the past. Regulatory input may also have some bearing on today's bank policy regarding issues not considered a risk in the past. More and more I hear from clients that regulators reviewing files are asking why a certain recommendation in the environmental report was not followed.

Finally, the type of report that was previously ordered can have a bearing on new information that is currently being presented. Products such as Transactions Screen Assessments (TSA), database/historical reports and something called a phase one lite or limited phase one (not recognized reports under any governing body) may be the report previously relied upon by a lender. Typically reserved for smaller loan requests or a certain asset class, they can serve a role in providing some insight to the environmentally quality of the property while keeping the cost down. However, because of the lower fee typically charged, many times they lack some of the information such as reviewing multiple historical sources required in a phase one ESA and do not provide the full analysis of the site. Technological advances have made it easier to obtain information on sites that may not have been available previously. This may provide another insight as to why the last report relied upon by a lender can differ from the report recently prepared.

With several different products available to choose from as well as understanding that each lender has a different risk tolerance, it is not uncommon that an environmental concern outlined in a recently prepared phase one report may not have been previously addressed. Understanding the client's needs and risk tolerance is something the consultant should be familiar with and be willing to discuss.

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