



BEYOND THE BLUEPRINT: STRATEGIES TO LIMIT ENVIRONMENTAL RISKS DURING PROPERTY CONVERSIONS

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Agenda



Real estate market trends



Development and property conversion risk review



Traditional risk management strategies



Pollution legal liability (PLL) and excess of indemnity



Contractor's pollution liability (CPL)



Case studies

Real estate market trends



Overview:

- Ongoing after-effect from the pandemic
- High interest rate environment
- Focused investment strategy of higher-performing sectors
- Outlook of transaction volume in latter half of 2024 driven by economic outlook
- Long-term investment and management considerations forming around sustainability and technology integration



Segment performance:

Multifamily: higher performance based on ongoing demand for rental housing

Industrial: positive performance driven by e-commerce growth

Retail: trending in positive direction based on adaptation to consumer behaviors

Commercial: continued challenges in the wake of persisting work-from-home trends, office vacancy, and corporate re-evaluation of their space needs

Real estate development trends

Sustainability and green building

Mixed use developments

Technology integration

Remote work adaptations

Urban revitalization

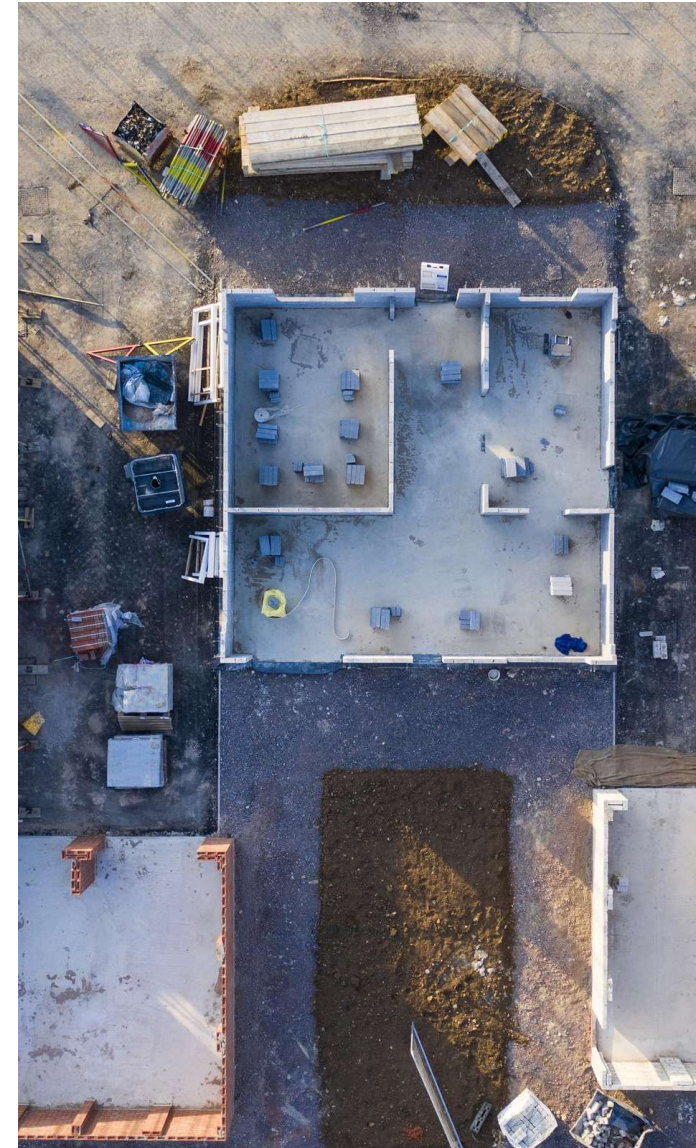
Health and wellness focus

Logistics and industrial growth

Affordable housing initiatives

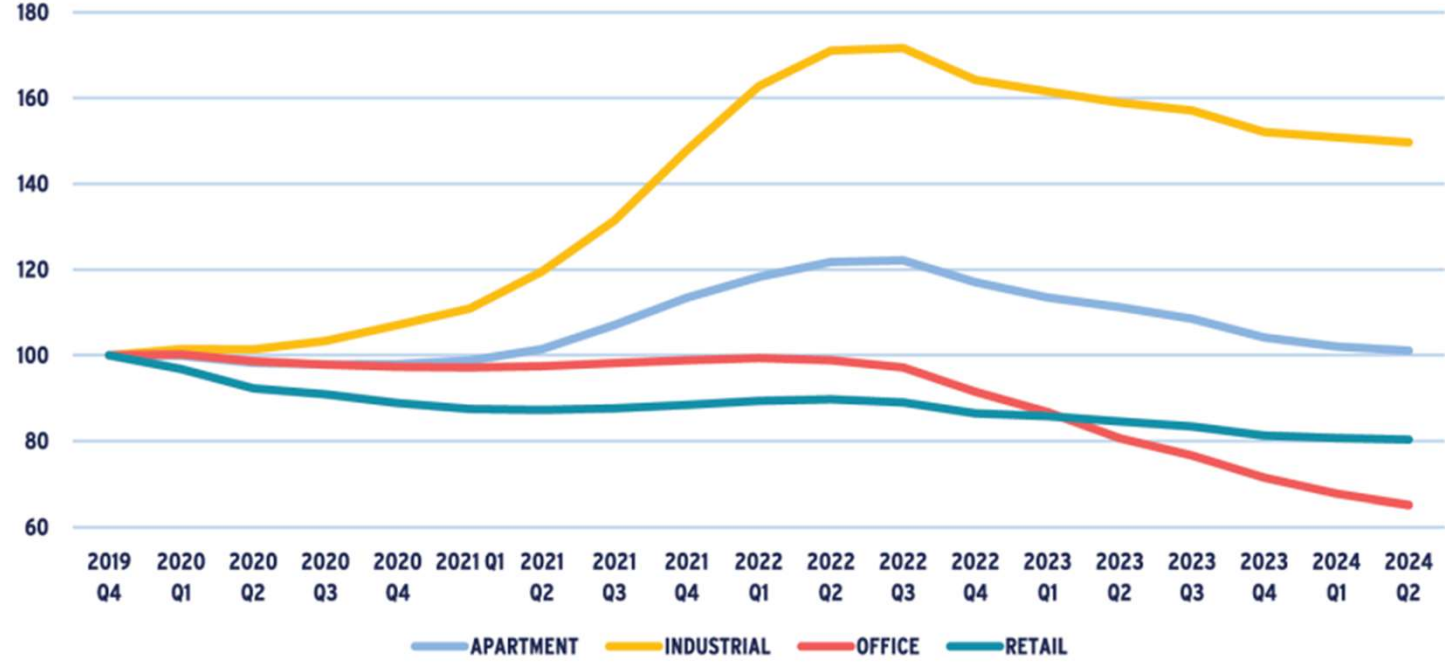
Resilience and climate adaptation

Investment in suburban areas



Real estate segment trends

FIGURE 7: NPI CAPITAL VALUE BY PROPERTY TYPE, INDEX = 100 IN 2019 Q4

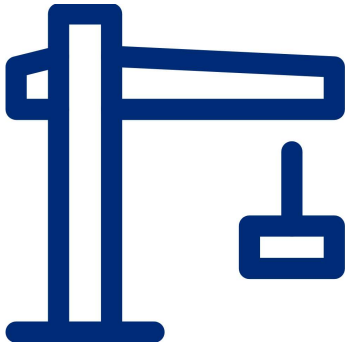


As of 2024 Q2
 Source: NCREIF

Development and conversion risk review



**Managing existing
contamination**



**Construction and
renovation exposures**



**Addressing
operational risks**

Traditional risk management strategies



Conduct thorough environmental due diligence

1. Identify both known and potential hazards.
2. Consider how evolving regulations may lead to future cleanup requirements.
3. Implement lead, asbestos and mold management protocols.



Incorporate clear indemnification language in agreements

1. Expressly address known and potential hazards through contracts.
2. Establish contractual provisions that clearly allocate responsibilities.
3. Work with legal counsel to maximize indemnification provisions.



Utilize federal and state brownfield program liability protections

1. Conduct All Appropriate Inquiry (AAI)
2. Understand how innocent landowner (ILO), bona fide prospective purchaser (BFPP) and contiguous property owner (CPO) protections apply to you under CERCLA
3. Many state Brownfield programs offer liability protections to developers and owners who engage in cleanup of sites.

Pollution legal liability (PLL) and excess of indemnity

Overview

- Most common tool to mitigate environmental risk in a transaction
- Often utilized to replace indemnities, escrows and holdbacks for environmental conditions
- Insures against risk of unknown environmental contamination
- Covers change in law and regulator reopener
- Can insure a single site or portfolio of sites
- Can be secured out to a 10-year policy term
- Available on a domestic or global basis
- Can provide a backstop to environmental indemnities, sitting excess of indemnities and responding for failure of the indemnitor to perform contractual obligations

Core Coverages

- Remediation of historical conditions and new pollution conditions
- Third party claims for bodily injury and property damage
- Legal defense expenses
- Natural resource damage assessments and biodiversity loss
- Transportation and non-owned disposal sites
- Fines and penalties where insurable by law
- Mold and legionella
- Business interruption arising from a covered remediation
- Asbestos & lead based paint for third party bodily injury and remediation of soil and groundwater/ surface water

Contractors pollution liability (CPL)

Overview

- Construction, renovation, demolition and expansion projects.
- Operations and Activities that:
 - Result in a new pollution incident (release of new contaminants).
 - Exacerbate a current known condition (spread a current contaminant).
- Can be carried by GC/ Contractor's or Project Owner.
- Limits can be linked to PLL.

Core Coverages

- Remediation costs and monitoring costs.
- Third party claims for bodily injury and property damage, including natural resource damages.
- Legal defense expenses.
- Transportation and non-owned disposal sites.
- Statute of repose & completed operations.

Redevelopment case study

BACKGROUND	ENVIRONMENTAL CONDITIONS
<ul style="list-style-type: none"> • Joint Venture: Real Estate Investor & Developer • Acquired 300 acres of land with former industrial use. • Redevelop into a 2 million square foot logistics center • Expected to become a major distribution hub 	<ul style="list-style-type: none"> • Property’s former operations: coal fired power plant <ul style="list-style-type: none"> • Historic fill across 50% site • 102 Areas of Concern; 8 requiring remediation • Remediation to continue through sale • Neighboring property: operational chemical manufacturer undergoing remediation for VOCs, SVOC, PCBs and PFOA.
SOLUTION	OUTCOME
<ul style="list-style-type: none"> • 10-year PLL program insuring both buyer and seller • Onsite remediation for unknown conditions covered: only the pollutants associated with the regulatory action excluded. • Offsite remediation costs for known and unknown pollution covered. • PFAS/PFOA was not excluded. • 3rd party bodily injury and property damage claims onsite and offsite for known and unknown issues 	<ul style="list-style-type: none"> • The PLL program narrowly carved out the expected business/project costs associated with the onsite contamination • Unknown / future liability exposures were transferred into the insurance market • Deal closed successfully

Property rehabilitation case study

BACKGROUND	ENVIRONMENTAL CONDITIONS
<ul style="list-style-type: none"> • City housing authority partnered with company to serve as their developer, general contractor (GC) and property manager (PM). • \$500 million in comprehensive repairs and renovations to 2,000 affordable units housing 4,000 residents. • Significant 3rd party exposure as work to be performed in stages with only the units being worked on evacuated. 	<ul style="list-style-type: none"> • Mold, asbestos, lead and other contamination requiring remediation. • Active and closed underground storage tanks • Exposure to pollution and indoor air quality contaminants both during and post rehabilitation.
SOLUTION	OUTCOME
<ul style="list-style-type: none"> • Combined PLL and CPL policy was placed On insuring the developer/GC/PM, and all-tier contractors. • Insures both pre-existing and new pollution • Protects against liability stemming from contracting, development and property management operations. 	<ul style="list-style-type: none"> • Fulfilled contractual insurance requirement established by City housing authority. • Facilitated the execution of the contract. • Provides the Housing Authority and their project partner with balance sheet protection against 3rd and 1st party pollution claims.

Questions

To submit a question, please use the Q&A panel.



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