

HABITAT MANAGEMENT LAND AND MITIGATION/CONSERVATION BANK

PHASE I ENVIRONMENTAL SITE ASSESSMENT REPORTS

PURPOSE: Phase I Environmental Site Assessment¹ (Phase I) reports provide important pre-acquisition information about the condition of land, as well as liability protection for cleanup of hazardous materials found on the land. CDFW, therefore, usually recommends a Phase I report be prepared and carefully reviewed before it, or a non-profit entity, acquires an interest in land (i.e., when CDFW is granted fee title or a conservation easement or when CDFW is a third-party beneficiary to a conservation easement).

Due Diligence Tool: A Phase I report provides current and historical information about land. It identifies certain environmental issues affecting the property that can help CDFW assess the property's environmental condition and whether it should be acquired or used as mitigation. A Phase I report helps inform CDFW's Certificate of Visual Inspection. A Phase I report may also help determine the value of the property and ensure proposed activities (e.g., grading, planting, etc.) do not release, disturb, or exacerbate any site contamination.

Liability Protection: The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, a.k.a. Superfund) of 1980, as amended (42 U.S.C. § 9601, et seq.) allows the U.S. Environmental Protection Agency to hold "potentially responsible parties" (PRPs) liable for the cost to cleanup releases (or threatened releases) of hazardous substances on land. PRPs include the current owner or operator of the property regardless of whether that party was at fault or negligent, and any PRP may be held liable for the entire cost of the cleanup, regardless of contribution.

Entities that conduct "All Appropriate Inquiry" (AAI) of the previous ownership and uses of the property and had no knowledge of the contamination before acquisition may avoid this potential liability by asserting a defense under CERCLA. AAI includes reviewing a Phase I report prepared for the *benefit and reliance of the potential owner/grantee and dated within 180 days of acquisition* because a current Phase I report helps establish that the land was "clean" or the party acquiring the interest had no reason to suspect contamination when it took possession. If CDFW is being granted a fee title or a conservation easement interest, CDFW may be liable for cleanup costs if a Phase I report is not prepared or if it is older than 180 days at the time of acquisition.

EXPIRATION / UPDATE: A Phase I report expires or goes stale, as follows:

365 Days. Phase I report shelf life (expiration) is one year (ASTM E-1527-21).

180 Days. Phase I report is considered "stale" after 180 days.

A "stale" or "expired" Phase I report may be acceptable to CDFW when the purpose is due diligence and not liability protection (e.g., CDFW will be third-party beneficiary). However, the grantee (e.g., land trust) may require an updated Phase I report for its liability protection.

¹ Phase I Environmental Site Assessments are prepared in accordance with U.S. Environmental Protection Agency, Standards and Practices for All Appropriate Inquiries (AAI), 40 CFR Part 312; and Guidelines established by the American Society for Testing and Materials (ASTM) Standard Practice (currently ASTM E1527-13 and E-1527-21).

Contact Habitat Management Land Agent for support