

## 1. PHASE I ENVIRONMENTAL SITE ASSESSMENTS

### A. General Requirements

Fannie Mae requires a Phase I Environmental Site Assessment (a “Phase I ESA”) for each Property securing a Mortgage Loan, except for certain Small Mortgage Loans. The Phase I ESA must:

- assess the entire Property; and
- be prepared by an environmental professional as that term is defined at 40 C.F.R. § 312.10 (an “Environmental Professional”).

The Phase I ESA **must be ordered by the Lender**, and prepared in accordance with:

- the “all appropriate inquiries” rule (“AAI Rule”), promulgated by the EPA (40 C.F.R Part 312), as amended, supplemented, or restated from time to time (“All Appropriate Inquiries”); and
- the American Society of Testing Materials (“ASTM”) Standard E1527, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, version E1527 (“ASTM E1527”), as amended, supplemented, or restated from time to time.

The Phase I ESA must identify both Recognized Environmental Conditions and Business Environmental Risks.

### B. Phase I ESA Viability

To ensure that the Lender and Fannie Mae qualify for the safe harbor protections under the AAI Rule, the following All Appropriate Inquiries components of the Phase I ESA must be conducted or updated within 180 days prior to the Mortgage Loan Origination Date:

- interviews with the Property’s:
  - owner;
  - operators; and
  - occupants;
- searches for recorded environmental cleanup Liens;
- reviews of federal, tribal, state, and local government records;
- visual inspections of the Property and adjoining properties; and
- the declaration by the Environmental Professional responsible for the Phase I ESA or update.

Any other All Appropriate Inquiries components must be conducted within one year prior to Mortgage Loan Origination Date.

### C. Data Requirements

Whenever a Phase I ESA is performed, in addition to the Phase I ESA Report, the Environmental Professional must deliver structured data to the Lender in accordance with the ASTM E1527 standard.

If a Phase I ESA is not required for a Small Mortgage Loan, the Lender must deliver structured data to the Lender in accordance with Exhibit A and the ASTM E1528 standard.

#### **D. Reliance**

The Phase I ESA must be addressed to, and explicitly authorize reliance by, among other Persons, the Lender, Fannie Mae and their respective successors and assigns.

The Borrower:

- may not rely on the Phase I ESA ordered by the Lender; and
- is expected to perform its own pre-transaction diligence, including, as applicable and appropriate, performance of a Phase I Environmental Site Assessment and “all appropriate inquiries” (as defined in CERCLA and at 40 CFR Part 312).

#### **E. Executive Summary**

The Phase I ESA Report must contain a Table of Contents and format as recommended by ASTM 1527, followed by an executive summary that includes, at a minimum, the following conclusions of an Environmental Professional:

- the presence or absence of Recognized Environmental Conditions and Business Environmental Risks and, if present:
  - identify and summarize each identified Recognized Environmental Condition, including any Controlled Recognized Environmental Condition (CREC), and Business Environmental Risk;
  - identify the source, if possible, including whether on the Property or off-site;
  - identify potential risks to the health, safety, and marketability of the Property, and any owner liability for each Recognized Environmental Condition;
  - address possible mitigants to all identified Business Environmental Risks;
  - provide a conclusion as to the potential impact on tenant safety, and the marketability or value of the Property for each identified Recognized Environmental Condition or Business Environmental Risk (e.g., if soil or groundwater contamination is present, whether vapor intrusion is a potential risk to human health or the environment);
  - determine whether a Phase II Environmental Site Assessment or any other assessment, investigation, or further action is required, recommended or has been completed with respect to that Recognized Environmental Condition or Business Environmental Risk; and
  - an estimate of the costs necessary to mitigate any Recognized Environmental Condition (including any Controlled Recognized Environmental Condition (CREC)), and any Business Environmental Risk, including any on-going monitoring required per an O&M Plan (as defined herein);
- whether an Historical Recognized Environmental Condition previously existed at the Property and the current regulatory status, if applicable, or if a Business Environmental Risk that previously existing at the Property was fully remediated;
- the presence of monitoring wells at, or adjacent to, the Property;

- on-going requirements of the Borrower or an Affiliate of the Borrower, including controls and/or Property restrictions;
- the presence or absence of any data gaps and, if present, a summary of such data gaps, and a description of their significance to the ability of the Environmental Professional to identify Recognized Environmental Conditions and Business Environmental Risks on the Property; and
- the regulatory status of the Property (i.e., whether the Property complies with Environmental Laws).

#### **F. Business Environmental Risks**

The Phase I ESA must contain an expanded evaluation of:

- any other appropriate Business Environmental Risks, including all matters identified as a “non-scope consideration” under the ASTM E1527 standards; and
- any testing for radon required per applicable federal, state, and/or local laws and regulations concerning radon testing and mitigation.

#### **G. Additional Requirements**

The Phase I ESA must:

- address all Hazardous Substances;
- identify any Brownfield Grants or other EPA Grants awarded or grant funding potentially available to the Property owner by the EPA under CERCLA 42 U.S.C. § 9604 (k)(2)(B), as amended, supplemented, or restated from time to time;
- include within the scope of its investigation, those other substances designated by the Brownfield or EPA Grant or the cooperative agreements, which may include controlled substances as defined in the Controlled Substances Act (21 U.S.C. § 802);
- identify all evidence of subsurface mining activity and oil/gas wells or pipelines as a Recognized Environmental Condition or a Business Environmental Risk and, if determined to be Business Environmental Risk, whether the mining activity or oil/gas wells or pipelines are:
  - compliant with mandatory setback requirements established by the regulatory authority; or
  - not less than 250 feet below the surface of the Property or within 600 feet from the closest Property boundary line.

The Phase I ESA Report must include a complete copy of any letter or other document from a Federal, state, or local governmental agency regarding the regulatory status of any Recognized Environmental Condition or Business Environmental Risks including, but not limited to, “no further action” or “no further remediation” letters.

If a property adjacent to the Property is owned by any Person owning a Controlling Interest in the Borrower and has been determined to have (i) a Recognized Environmental Condition, or (ii) had a Phase II Environmental Assessments performed, the Lender and the Environmental Professional preparing the Phase I ESA on the Property must review and evaluate all available Environmental Site Assessments performed on such adjacent property.

## 2. PHASE II ENVIRONMENTAL SITE ASSESSMENTS

If recommended by the Environmental Professional based on the results of the Phase I ESA, the lack of data or information concerning the conditions on, at, or adjacent to the Property (e.g., a leaking underground storage tank) or for any other reason, the Lender must obtain and evaluate a Phase II ESA that further identifies and quantifies the scope of any actual or potential Recognized Environmental Conditions or Business Environmental Risks. The Phase II ESA must:

- conform to the ASTM Standard E1903-19, Standard Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process, as that standard may be amended, restated, modified or supplemented from time to time;
- define the scope of work required to comply with all applicable Environmental Laws; and
- provide a reasonable timeline for completion and the cost to perform that scope of work;
- conclude that:
  - no contamination above established thresholds exists and therefore no further action is warranted;
  - additional testing is warranted; or
  - a remediation plan is recommended for the Property; and
- determine whether disclosure of any contamination is required.

The Phase I ESA Report should be updated and revised to incorporate the findings and conclusions from the Phase II ESA. A copy of the Phase II ESA Report must be attached as an Appendix to the Phase I ESA Report and the corresponding structured data must be delivered in accordance with Exhibit A and the ASTM E1903 standard.

## 3. REMEDIATION ACTIONS

### A. Remediation Plan

A Property that fails to meet a particular standard may, in some cases, be corrected through remedial actions. The scope of work and cost for any Remediation Plan must be recommended in writing by the Environmental Professional and, if applicable, must have received the written approval of the governmental agency or agencies having jurisdiction over the Property with regard to the Recognized Environmental Condition or Business Environmental Risk.

The Lender must include the costs of any Remediation Plan recommended by the Environmental Professional on Schedule 6 to the Multifamily Loan Agreement – Required Repairs Schedule.

### B. Operations and Maintenance Plans

The Property may have environmental or building conditions that are acceptable, but must be monitored throughout the life of the Mortgage Loan with appropriate ongoing operations and maintenance actions (an “Operations and Maintenance Plan” or an “O&M Plan”). Unless recommended by the Environmental Professional or required by Environmental Laws to be removed, remediated, or abated, the presence of any of the following requires an O&M Plan.

The following are the minimum O&M requirements. The Environmental Professional may include additional requirements to mitigate risk that might adversely impact human health or the environment.

ANY PROPERTY CONTAINING:	WHEN REQUIRED:
Asbestos-containing materials	If the Improvements were built before 1981 or the Environmental Professional identifies suspect asbestos-containing materials.
Lead-based paint	If the Improvements were built before 1978.
Radon	If recommended by an Environmental Professional or a qualified radon mitigation professional.
Underground Storage Tanks	If recommended by an Environmental Professional.
History of Mold	Required at all times.
Known Problematic Building Materials	If recommended by: <ul style="list-style-type: none"> <li>• Form 4099.G – Known Problematic Building Materials and Property Design Issues; or</li> <li>• the PCA Consultant.</li> </ul>

When an O&M Plan is necessary, the following steps are required.

- An O&M Plan must be developed prior to the Mortgage Loan Origination Date. The O&M Plan must be prepared and submitted by an Environmental Professional (or by a qualified radon mitigation professional in the case of a Radon O&M Plan), and state that the provisions of the O&M Plan, if carried out with diligence, are sufficient to maintain the Property in accordance with applicable Environmental Laws and sound business practice and to protect human health.
- The O&M Plan must be readily accessible at the Property.
- The Borrower must execute and deliver on the Mortgage Loan Origination Date the appropriate Compliance Agreement for an Operations and Maintenance Plan (Form 6420.Series) to which the applicable O&M Plan is attached as Exhibit A.
- The Lender must include on Schedule 6 to the Multifamily Loan Agreement – Required Repairs Schedule:
  - the costs of any follow-up testing required per the O&M Plan; and
  - all potential remediation costs and/or on-going monitoring costs required per the O&M Plan.

#### 4. APPENDIX TO THE ENVIRONMENTAL DUE DILIGENCE REQUIREMENTS

The following appendix is included with these Requirements to assist in the fulfillment of the data requirements, and for inclusion as a supplement to the ESA Report:

- Exhibit A: Environmental Site Assessment Data Supplement (Form 4251.A).