

HOW TO BUY ENVIRONMENTAL CONSULTING LIKE A PRO: THE PHASE 1 ESA

WHAT DO I NEED TO KNOW TO BE AN INFORMED BUYER OF A PHASE 1 ESA?

▶ **Who Pays For The Phase 1 ESA?**

Like most real estate deals, it is negotiable. However, usually the party borrowing money is required by the bank to purchase the Phase 1 ESA as part of their due diligence. A seller can commission their own Phase 1 ESA and provide it as part of their marketing materials to help speed a sale, but it is up to the buyer to make sure they have done their due diligence in order to qualify for liability protection under the innocent landowner defense.

▶ **How Long Is A Phase 1 ESA Good For?**

The Phase 1 ESA has a shelf life of six months (180 days). After six months, the Phase 1 ESA should be updated or a new one commissioned. The original consultant should complete the updated report and it should be less expensive than purchasing a new one. A buyer can rely upon a seller's Phase 1 ESA, but they will not qualify for liability protection unless issued a reliance letter from the consultant who performed it. Costs for a reliance letter vary and are dependent upon the consultant.

▶ **How Much Should A Phase 1 ESA Cost?**

Different types of properties have different levels of complexity, which will be reflected in the price. An industrial property in an urban setting will be more difficult than a hotel built on a former cornfield. A simple Phase 1 ESA should start at less than \$2,000.

▶ **How Long Will A Phase 1 ESA Take To Complete?**

The goal at A3 Environmental is to complete the Phase I ESA in two weeks. Other consultants typically take three to four weeks to complete a Phase 1 ESA. Properly done, a Phase 1 ESA will include an environmental database search, a historical records review, interviews, FOIA requests to appropriate entities, a site inspection, and a report that needs to be written by an environmental professional. Scheduling the site visit to coordinate with the on-site contact's schedule and getting responses from FOIA requests are two things that can significantly prolong the process.

▶ **Does The Bank Pick The Environmental Consultant?**

Banks often pick the environmental consultant but pass the costs on to you. They do this for two reasons: convenience and familiarity. The problem with this arrangement is that the consultant isn't accountable to the buyer; their client is the bank. Borrowers who shop for prices can often save themselves hundreds, if not thousands of dollars. Most banks have their own 'approved' consultants and are commissioned before the buyer even knows it. It's important that your consultant be accountable to you, the buyer, because the risk you are taking and their associated costs are primarily yours. A3 Environmental is owned by Alisa Allen; a Licensed Professional Geologist, certified by the State of Illinois Office of Professional Regulation. A sample of our work can be provided upon request to any bank.

▶ **What's The Most Important Thing To Be On The Lookout For? Where Are You The Most Vulnerable?**

To buy environmental consulting like a pro, there are two places to be on the lookout to guard against vulnerability. The first is to protect yourself against shoddy science. Make sure your consultant is familiar with the local area, is insured for errors and omissions, and has a track record of providing quality work product. The second, and possibly most important thing to guard against is the recommendation of further investigation, also known as a Phase 2 ESA. When getting ready to spend large sums of money the lender and buyer are both in vulnerable positions. Some consultants take advantage of this vulnerability and recommend a Phase 2 ESA when it may not be completely necessary. It's difficult for banks and buyers to say no.

If a Phase 2 ESA is recommended, you can protect yourself by going back to the seller and renegotiating for them to pay some, or all, of the bill. Another way to protect yourself is to bid out any Phase 2 ESA work to your current consultant and other consultants in order to keep your consultant honest. You can also get a second opinion from a different consultant, for a few hours of consulting time. The time and money you save can be well worth it. A3 Environmental would be happy to review a Phase 1 ESA report from consultants recommending a Phase 2 ESA. We offer a half hour of consulting time for free per project.

▶ **What's The Best Way To Save Money When Buying Environmental Consulting?**

There are three ways to save money when buying environmental consulting services: (1) negotiate for the seller to pay for any possible investigation *before* you have a contract on the property; (2) don't accept the bank's environmental consultant; shop for pricing; (3) if further investigation is necessary, obtain several consulting proposals.

▶ **What's Your Best Advice?**

Our best advice is to build a good relationship with one environmental consultant after you have done your initial research and a project or two. True, it's important to hire a competitively priced consultant; however, having a solid relationship with a consultant you can call and have meaningful conversations, often at no charge, can be very valuable. If a consultant knows you are a reliable repeat buyer of environmental services they will work extra hard to be a trusted resource to help you save money, frustration and time.