Changes in Due Diligence in Light of Changing Regulations

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PBS

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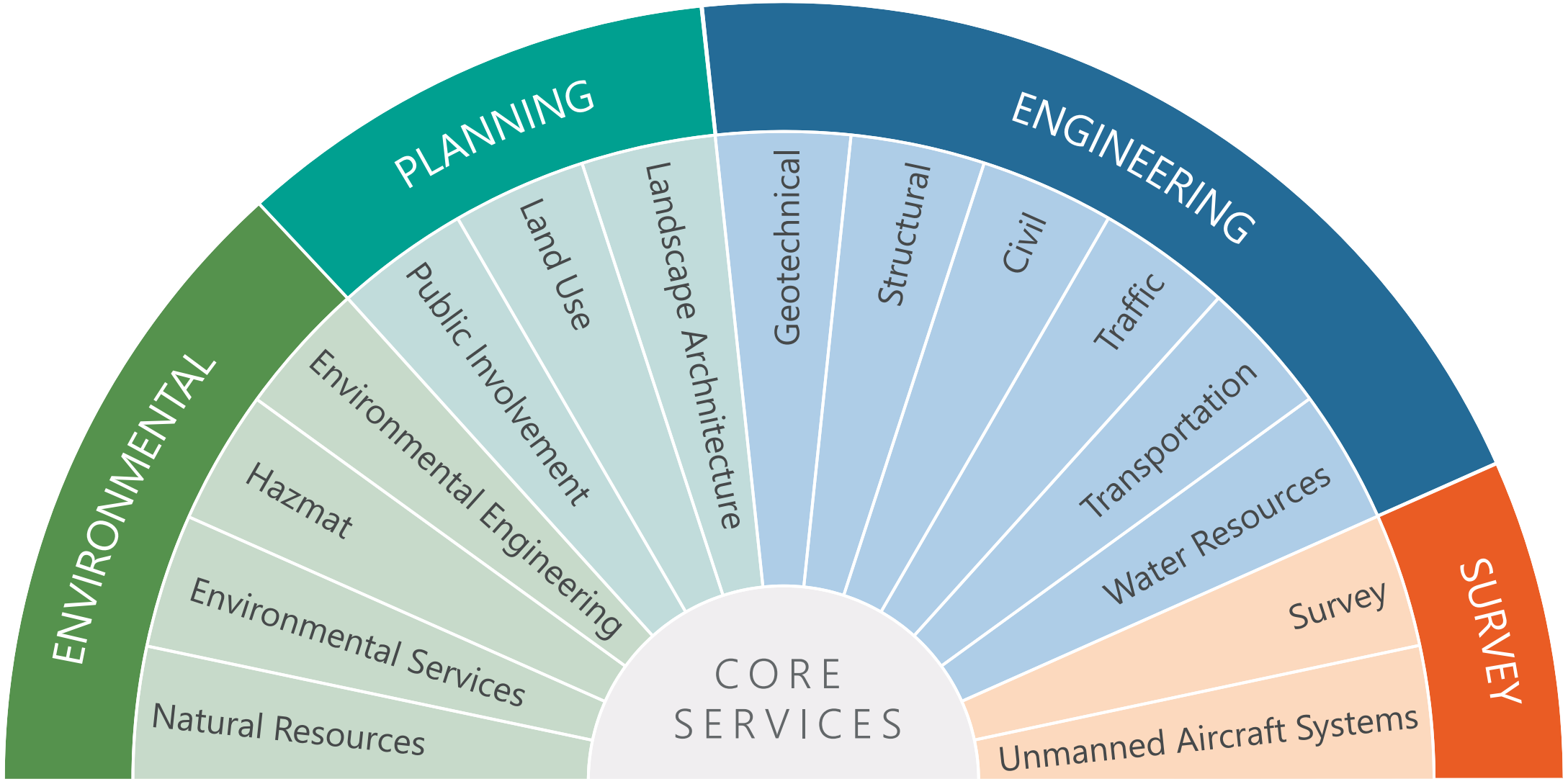

DEQ VI Guidance Update Will Affect Phase I ESA Conclusions

New DEQ guidance includes some important changes.

- RBCs for screening soil for volatilization to outdoor air/vapor intrusion are not in use.
- RBCs for screening groundwater for some compounds, TCE being of note, are more conservative.
- New compounds.

Changes in Science Can Result in Due Diligence Changes

This has happened before:

- Similar challenges were encountered when regulators identified soil gas as a potential pathway in the early 2000s. A prior Phase I ESA that did not identify any issue for an adjoining TCE-contaminated property would then have a potential REC after this pathway was evaluated.
- Emerging contaminants such as 1,4-dioxane and PFAS have resulted in regulation changes.

WHAT'S DIFFERENT:

TCE can pose an acute risk to receptors. This may affect how a client or property owner responds to an assessment.

Scenario #1

A site previously received unrestricted regulatory closure as soil, groundwater, and soil gas detections of TCE were below applicable regulatory criteria. This was previously identified as an HREC.

With new guidance, prior groundwater and sub-slab vapor values exceed new RBCs. The prior HREC is now a REC.

LIKELY CONCLUSION AND RECOMMENDATION:

PBS will likely determine the contamination at the site was previously an HREC and is now a REC. A recommendation to reevaluate sub-slab soil vapor concentrations will be provided. If sub-slab soil gas concentrations exceed applicable RBCs, indoor air sampling will be recommended. Depending on the known prior extent, soil gas sampling outside of structures may also be recommended.

Scenario #2

An adjacent upgradient property with known TCE contamination obtained regulatory closure. A prior Phase I ESA concluded that the property did not pose a risk to the subject property as RBCs protective for volatilization to indoor air from groundwater were not exceeded and the adjacent property was identified as an HREC.

PBS will evaluate concentrations to current RBCs to determine if potential risk is present.

LIKELY CONCLUSION AND RECOMMENDATION:

If potential risk is identified, PBS will conclude that the neighboring property contamination poses a potential risk to the subject property and is a REC. Groundwater and soil gas sampling may be recommended.

Scenario #3

A prior environmental assessment at the property identified TCE in soil samples, but at concentrations below the RBC for volatilization to indoor air for soil. The results were not presented to DEQ. While the presence of contamination would have been identified as a REC, additional assessment would not have been recommended at the time, as there did not appear to be a potentially complete exposure.

LIKELY CONCLUSION AND RECOMMENDATION:

PBS will conclude that screening for risks using the selected RBC is no longer acceptable and soil gas assessment is warranted.

Considerations

Consultants performing Phase I ESAs may interpret how a REC is defined in a different manner. Some consultants may conclude that a closed site is an HREC, regardless of changes to RBCs.

Concentrations of TCE or other compounds identified during due diligence sampling may prompt notification to DEQ and/or other steps if potential acute risk is identified. This possibility should be discussed with the client ahead of time.

THANK YOU