



CALIFORNIA LAND RECYCLING CONFERENCE

Imagine | Innovate | Implement
September 29 – October 1, 2026 | Foster City

MORE THAN A CHECKLIST: HOW ADVANCED DUE DILIGENCE ACCELERATES SITE REDEVELOPMENT



OFFICE OF BROWNFIELDS
Department of Toxic Substances Control - Cleanup in Vulnerable Communities Initiative



CENTER FOR CREATIVE
LAND RECYCLING
RECLAIM. CONNECT. TRANSFORM.

SPEAKERS



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Agenda

- 1 **Introductions**
- 2 **Why “Going Beyond” Can Be Critical**
- 3 **Bridging the Gap**
Enhancing diligence, environmental cost and fair value
- 4 **Insurance and Deal Terms**
Environmental policies, indemnities and deal certainty
- 5 **The Regulatory View**
Voluntary agreements, orders and commingled plumes
- 6 **Bringing It All Together**
- 7 **Take Home Message**
- 8 **Q & A**
20 minutes

Why Going Beyond Can Be Critical



ASTM E1527 is a Minimum Standard



KEY POINT

**ASTM E1527
defines a
minimum standard
of inquiry**

- **Records review:** databases and historical sources back to 1940
- **Site reconnaissance:** property and adjoining properties (Google Earth or a site walk)
- **Interviews:** owners, occupants, operators, officials
- **Environmental Professional:** qualified, with signed opinion and declaration
- **User responsibilities:** lien search, specialized knowledge,
- **Findings and opinion:** conditions classified, data gaps disclosed
- **Shelf life:** 180 days for key components, one year overall
- **Non-scope items:** asbestos, lead paint, radon, mold, wetlands

ASTM E1527 Findings: REC or Not?



De minimis

- Minor surface stains, no soil impact.



Historical RECs

- Past release cleaned up.
- No use restrictions remain.



Non-scope items

- Asbestos, lead paint, mold, radon.
- Deal issues, not RECs.



Additional findings

- Permits or uses with no release.
- Well-managed chemical storage.



No release indicators

- Sound tanks, drums, and transformers.

KEY DISTINCTION

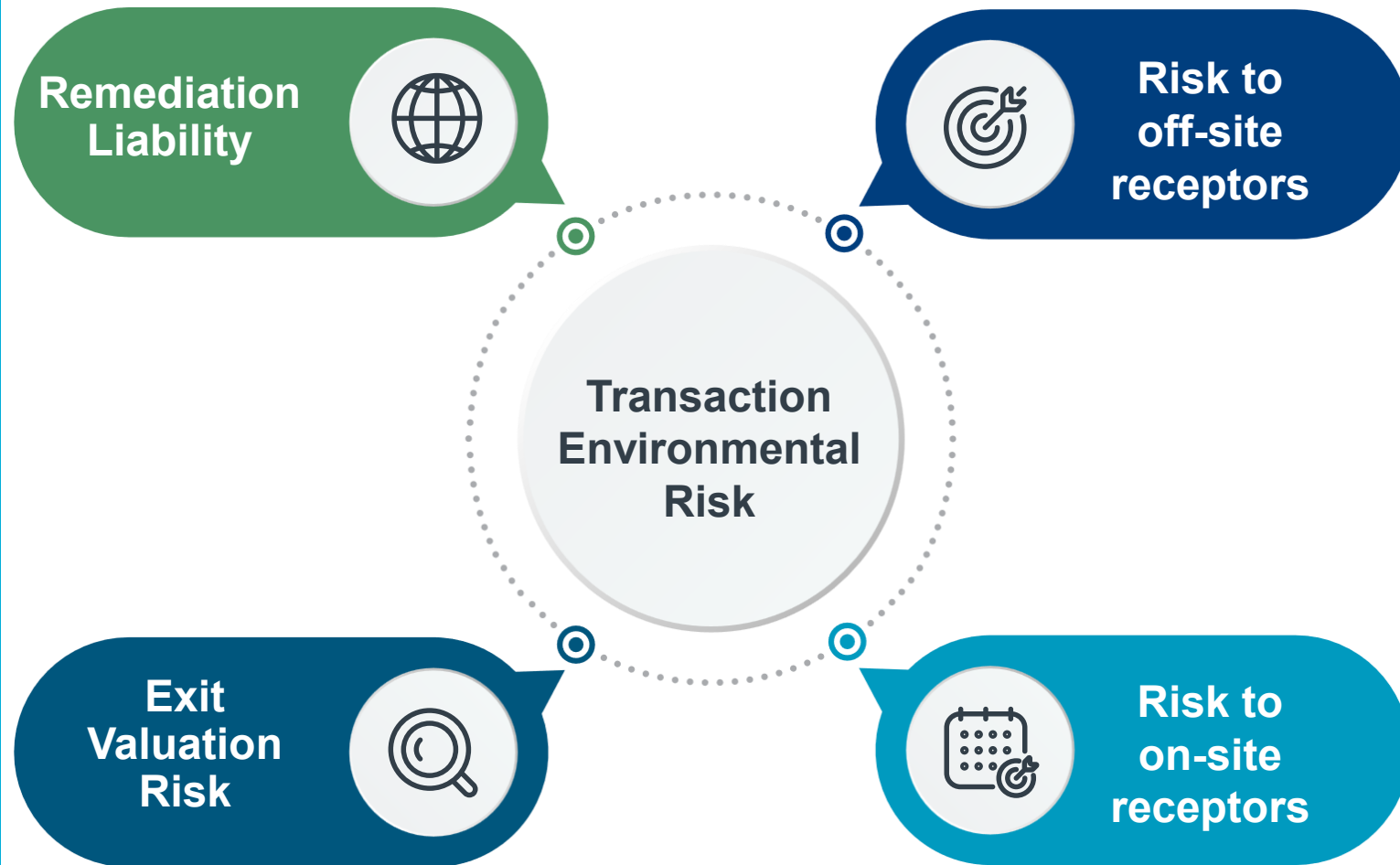
A REC means contamination is present, likely present, or a material threat of release.

Not every finding is a REC

HREC means unrestricted closure

BERs may still affect value

Four Dimensions of Transaction Risk



Why Going Beyond ASTM Can Be Critical



Phase I ESA
identify **only RECs**



On/off site sources are
poorly understood early
in the transactions



VI Sites may require a
deeper assessment and
evaluation of **potential
hidden costs and liability**



Estimates of investigation,
remediation/mitigation, and
oversight costs can **change
feasibility** if not evaluated
before acquisition



Regulatory
uncertainty,
inconsistent
application of
standards for
closure conditions
can **alter the
redevelopment
path!!**

Bridging the Gap: Approaches to Enhance Due Diligence



KEY POINT

Modeling and targeted sampling reveal hidden risk and cost before the transaction closes

Screening the Exposure Picture

- Assess VI risk from onsite and off-site sources

No Existing Buildings on Site

- Few early samples can reveal a lot!
- Modeling is the primary human-health screening tool

Off-Site Sources and Liability

- Assess off-site plume migration and third-party liability exposure
- Plumes may migrate beneath the property, creating future risk

Bridging the Gap – Estimating Project Environmental Cost to Assess Project Feasibility



KEY POINT

Provide cost ranges early enough to provide fair value

- **Regulatory Oversight** can be as much **20-30%** of the project cost
- **Construction Impacts** (design changes, schedule delays and pre-occupancy constraints)
- **Mitigation Design** (SSD, passive barriers, aerated floors, building pressure control)
- **Long-term O and M** (sampling, inspections, reporting, contingency response)



More Than a Checklist: Insurance and Deal Terms

Due diligence failures — and the coverage that
answers them

Brian Moskal, Partner | Greenberg Glusker LLP

The Bargain That Wasn't

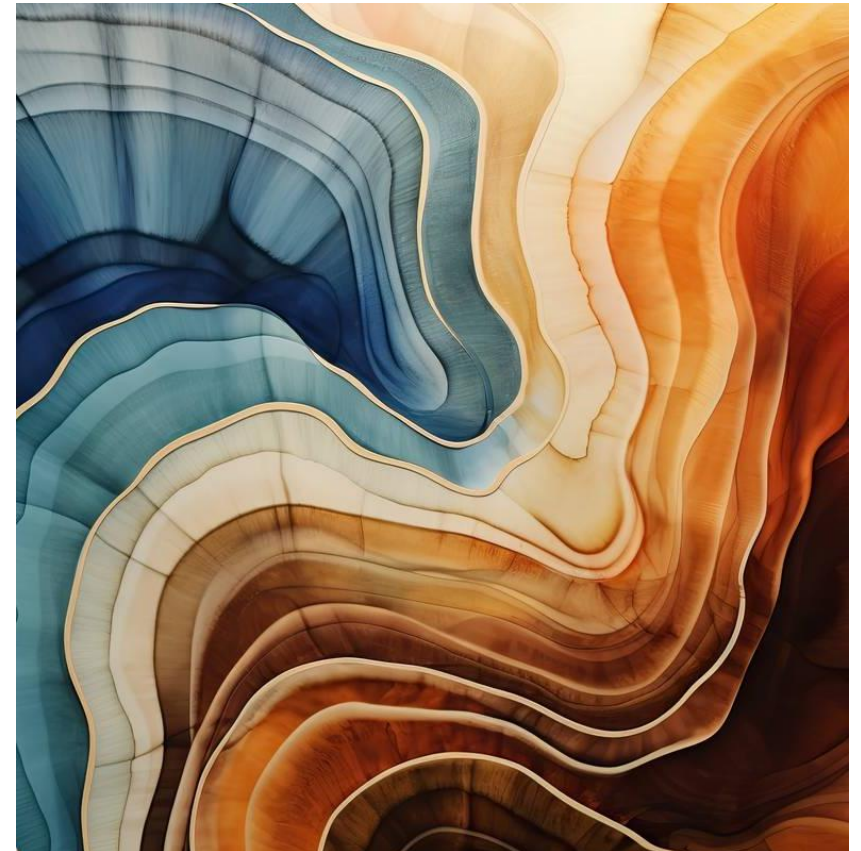
- A client bought a commercial property in Northridge out of bankruptcy, at what looked like a steep discount. He did no environmental due diligence at all — no Phase I, let alone anything beyond one.
 - **What the record held.** Three successive printed circuit board manufacturers, all heavy TCE users. The second operator's principal served jail time for hazardous waste disposal at the facility. An agency provided oversight, and then the trail went cold.
 - **Years after the closing.** All three corporate operators defunct. The convicted principal dead. No solvent party left who had caused any of it.
 - **What he actually bought.** CERCLA and California state law liability as current owner — and no bona fide prospective purchaser defense, because that defense requires the inquiry he never made.
 - **The point.** All of it sat in the public record. This was not a failure of enhanced due diligence. It was the absence of the floor.

The Policies Someone Already Owns

- Every defunct operator in that chain likely once bought liability insurance. Pre-1986 CGL policies were occurrence-based, so damage that began before or during the policy period can trigger coverage decades after the company is gone.
 - **Continuous trigger.** Every policy on the risk from first damage through discovery with all-sums stacking and vertical exhaustion.
 - **Dissolution is not a dead end.** A dissolved corporation still exists to defend actions (Corp. Code § 2010), and a judgment creditor may sue its insurer directly (Ins. Code § 11580(b)(2)).
 - **The buyer can hold the rights.** Insurance Code § 520 bars consent-to-assignment clauses after the loss.
 - **Mind the exclusion era.** None before 1972; “sudden and accidental” from 1973-1986; absolute after 1986. Whether “sudden” reaches gradual releases is now before the California Supreme Court.

Where Pollution Legal Liability Coverage Fills the Gap

- **Free due diligence** — insurers will conduct due diligence.
- **Unknown pre-existing conditions** — the core coverage, and the answer to the Northridge situation if it is bound before closing.
- **Third-party claims** for bodily injury, property damage and off-site migration, including a neighbor's plume.
- **The terms decide the value**: named insureds, retention, defense sublimits, and the known-conditions carve-out.

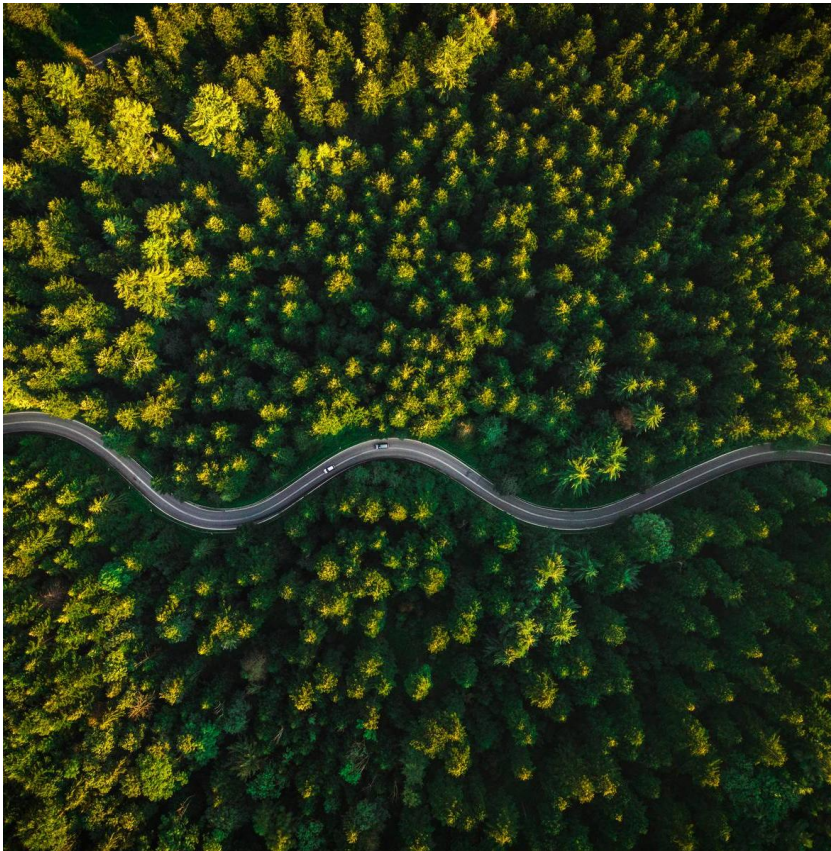


Two Tools, Different Jobs

	Legacy CGL	Pollution Legal Liability
What it reaches	Historical releases by prior operators	Conditions at the site, known and unknown, past and future
Trigger	Occurrence — when the damage happened	Claims-made — when the claim is made and reported
Who can invoke it	The insured, an assignee, or a judgment creditor	Named insureds negotiated at closing
What defeats it	Pollution exclusion; no proof of policy	Known-conditions carve-out; expiration of term

Illustrative only. Coverage in any matter turns on the specific policy wording.

What This Means for Your Deal



- Ask for the seller's historical insurance policies in the first document request.
- Take an assignment of legacy policy in the purchase agreement.
- Start PLL underwriting before you finish negotiating the purchase agreement indemnity.
- Do not let insurance substitute for information — uncertainty costs more.



The Regulatory View

Ben Standphil, Division Chief |
California DTSC

What the Agency View Means for Your Diligence



KEY POINT

Regulatory posture is a diligence item – it drives schedule, scope, and who ends up named

Check the Regulatory Posture, Not Just the File

- Confirm whether an agreement or order exists, who is named, and whether deliverables are current
- A stalled voluntary case is an early signal of an order to come

Look Past the Property Line

- Adjacent open cases and regional plumes may matter more than the site's own history

Ask whether your parcel already sits in a neighbor's monitoring network

Engage Agencies Early

- Pre-acquisition conversations shape scope, schedule, and closure expectations
- Early engagement is the cheapest way to shorten the regulatory timeline



The Regulatory View – When a Voluntary Agreement Becomes an Order



KEY POINT

A VCA is voluntary only while the work keeps moving – diligence should test whether it will

- **Voluntary Cleanup Agreements** are consensual: the party requests DTSC oversight, funds it, and sets a schedule for the work
- **Voluntary status can end** when work stalls, milestones slip, or a release presents a substantial threat the agreement no longer covers
- **DTSC can convert oversight** to an enforceable order under HSC 25187 or 25355.5, making schedules and scope mandatory rather than negotiated
- **An order runs with the site**, binds successors, and may impact future property sales



Commingled Plumes – One Order, Multiple Properties



KEY POINT

Where plumes commingle, an order can reach every property above the footprint – not just the source

- Plumes do not respect parcel lines **in dense industrial and urban corridors**, releases from several operations may overlap into a single body of impacted groundwater
- Allocation is rarely clean: **shared solvents, decades of operators**, and limited data make any single-source story hard to defend
- DTSC can name multiple parties **on one order where sources commingle**, and liability is joint and several rather than proportional
- A clean site history may not be a defense: **an owner with no on-site release** can still be pulled in



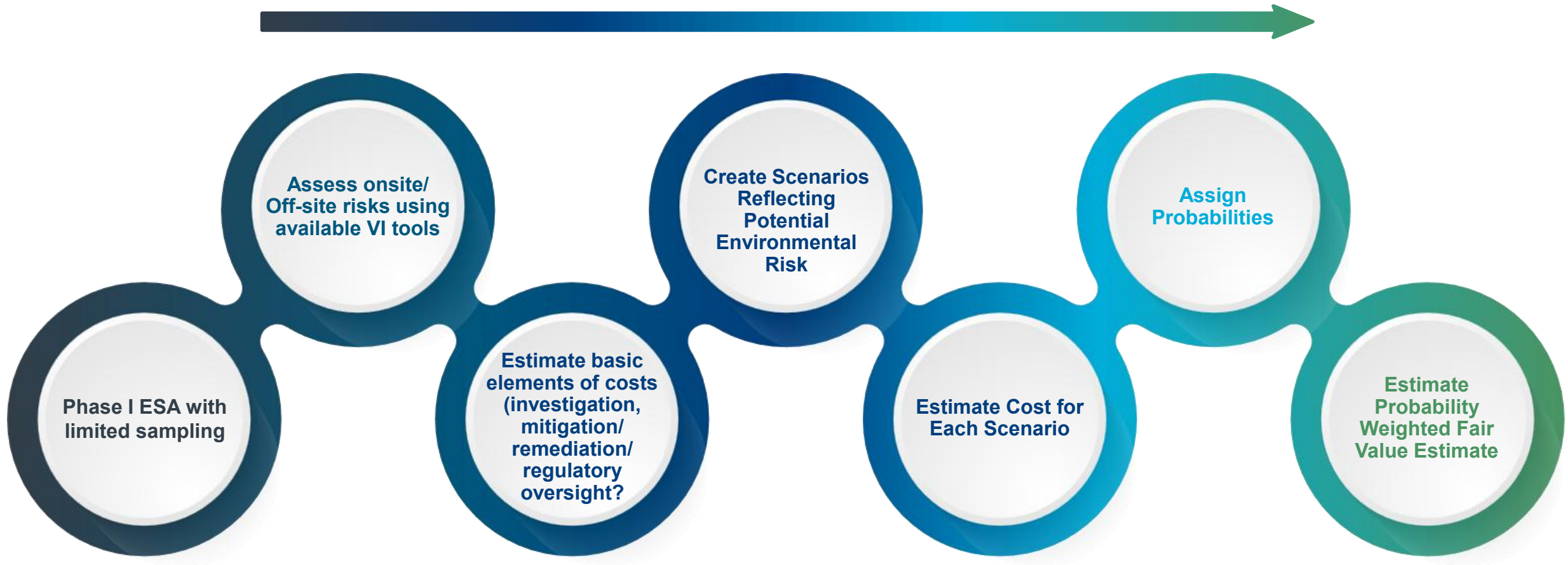
Fair Value Estimate – Before Finalizing Transactions

LOWER RISK

HIGHER RISK



Bringing It All Together



Take Home Message



Allows **Buyers** to Negotiate Fair Price



Lenders to Evaluate Financial Exposure



Insurers to Evaluate Coverage Limits and Premiums



Developers to Estimate Project Feasibility



Helps **ALL** stakeholders in property valuation, transaction negotiations, financing decisions, and redevelopment planning

THANK YOU!

Questions?





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THANK YOU!

IMAGINE, INNOVATE,
IMPLEMENT
THE FUTURE OF LAND RECYCLING



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Join the conversation, use #CALRC2026 to share
your photos, insights and highlights!



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