

**1. Title**

Environmental Review for Acquisition of Real Property

**2. Policy**

Sec. 1 Policy Statement. It is the policy of The University of Texas System to minimize its potential for exposure to claims made under the applicable laws governing the environment and hazardous substances by investigating the environmental condition of real property assets and making all appropriate inquiry where warranted based on risk.

Sec. 2 Liability. To reduce the risk of liability, the U. T. System or any of its institutions will complete an ASTM-standard Phase I Environmental Site Assessment (ESA) prior to acquisition of any real property asset, except as specifically provided in this policy. The property transaction confers ownership and Federal and State statutes impose certain liabilities and/or limitations on owners of real property when hazardous or other regulated substances have been deposited, stored, or released on the property; or when endangered species or wetlands are present on the property.

Liabilities related to hazardous and other regulated substances, not excluding mold or asbestos containing material in onsite structures, may include costs associated with removal and/or remediation, including regulatory enforcement expenses.

Additionally, the presence of endangered species or wetlands may limit future land use of the property. If environmental hazards or ecological limitations are identified, the U. T. System or any of its institutions should then weigh the risks that may arise with respect to such hazards in determining whether the acquisition is beneficial and appropriate.

A Phase I ESA that meets American Society for Testing and Materials (ASTM) standard E1527 satisfies “all appropriate inquiry” under the innocent landowner defense related to the presence or likely presence of hazardous substances or petroleum products. Under certain circumstances, and if all appropriate inquiry has been made, the U. T. System may be able to assert a defense to liability if contamination that was unknown at the time of acquisition is later discovered.

Sec. 3 Transaction Screen – General. In cases where the risk of environmental contamination or impact of previous property operations is determined to be minimal (i.e., properties where there is no historical commercial or industrial uses within at least a ½ mile radius; and dumping and tanks are not a concern), the

U. T. System Office of Real Estate and Responsible Institutional officers, in conjunction with the U. T. System Office of Risk Management, may determine that a transaction screen meets the requirements of commercially reasonable due diligence. The transaction screen should be conducted using the then-current ASTM transaction screen process E1528 standard, or successor standard, in effect when the transaction closes. The transaction screen can be conducted by personnel in the U.T. System Office of Risk Management, a qualified University employee or a qualified outside professional retained by the institution.

All transaction screens will comply with the appropriate standards established by ASTM, unless otherwise specifically provided for in this policy. The benefited institution and the U. T. System Executive Director of Real Estate, after consulting with the U. T. System Office of Risk Management, will determine the scope of further assessment using a risk-based approach and considering the property's character, location and history, and findings of the transaction screen. If hazardous materials from onsite or off-site sources or ecologically sensitive areas (including wetlands and habitat) are suspected, a Phase I Environmental Site Assessment and additional site investigation may be required to identify risk and evaluate the property to ultimately obtain CERCLA liability protection.

The requirements of this Section 3 may be modified for a specific real property asset on the agreement of the benefited institution, the U. T. System Real Estate Office, and the U. T. System Office of Risk Management.

- Sec. 4 Site Assessment – Estates and Trusts. Unless the acquisition of real property from an estate or a trust meets the provisions of Section 3 above, a Phase I ESA shall be obtained as soon as is reasonably practical after the U. T. System receives notice of the trustee's, executor's, or administrator's intent to transfer legal title to real property to the U. T. System or a benefited institution. If the U. T. System receives notice of the trustee's, executor's, or administrator's intent to transfer legal title to real property to the U. T. System or a benefited institution after the disclaimer period of an estate expires, or if the U. T. System does not receive notice of the existence of real property in an estate prior to the expiration of the statutory period for disclaiming a gift, or if the U. T. System or its benefited institution takes title through termination of a trust, or otherwise without written notice, then the Executive Director of Real Estate, at his or her discretion, based on an analysis of probable risk and, if the Executive Director deems appropriate, after consulting with U. T. System Office of Risk Management, will determine whether to review additional records or conduct a complete Phase I ESA.

- Conducting the Phase I ESA after the transaction can inform future development and controls to protect human health and the environment with respect to environmental risks identified on the property.
- Sec. 5 **Responsible Officer.** The chief business officer of the benefited institution or the chief business officer's delegate, with the concurrence of the Executive Director of Real Estate, will coordinate the review process for purchase of real property assets to be used for campus purposes.
- Sec. 6 **Notification Requirements.** Any office or institution of the U. T. System will notify the U. T. System Office of General Counsel – Real Estate Office immediately upon identification of a real property asset that may be donated or bequeathed to the U. T. System or any of its institutions. The Real Estate Office may require, when appropriate, an investigation of other environmental issues or conditions beyond the scope of the ASTM guidelines, such as mold, lead, biological agents, radioactive material contamination, endangered species, or wetlands.
- Sec. 7 **Acceptance of Donation.** No institution will make a commitment to accept a donation or bequest of a real property asset until the appropriate office has complied with this policy with respect to such asset.
- Sec. 8 **Indication of Concern.** If the initial transaction screen indicates areas of concern, the “Responsible Officer” (Executive Director of Real Estate with respect to gifts or bequests or chief business officer with the benefited institution or his or her delegate, with respect to real property assets to be used for campus purposes) may (i) reject the real property asset, (ii) accept the real property asset with the identified risks with the concurrence of the Executive Director, or (iii) require further investigation in the form of a Phase I or II ESA.
- Sec. 9 **Phase I ESA Requirements.** If the Responsible Officer requests a Phase I ESA, a qualified outside professional, preferably under a U. T. Systemwide contract, will perform the ESA unless the institution or the U. T. System has a qualified employee to complete the site assessment. A Phase I ESA must meet the then-current ASTM E1527 standard, or successor standard, in effect when the transaction closes.
- 9.1 **Contract Form.** All contracts for Phase I ESAs must be in a form acceptable to U. T. System Office of General Counsel.
- 9.2 **Review of Report.** The U. T. System Office of Risk Management, the Responsible Officer, and the benefited institution’s Environmental Health and Safety (EHS) Director shall review the Phase I ESA report.

- 9.3 Areas of Concern. If the Phase I ESA indicates areas of concern, the Responsible Officer may (i) reject the real property asset, (ii) accept the real property asset with the identified risks with the concurrence of the Executive Director of Real Estate and the U. T. System Office of Risk Management, or (iii) require additional investigation in the form of a Phase II ESA.

Sec. 10 Phase II ESA Requirements. A qualified outside professional, preferably under a Systemwide contract must conduct any Phase II ESA, unless the institution receives express written permission from the Executive Director of Real Estate and the U.T. System Office of Risk Management to conduct all or part of the Phase II ESA in-house based on the institution's expertise. The Phase II ESA should include an extensive review of prior uses of the land and records pertaining to those uses, an examination and sampling of the property, and testing of all samples collected.

- 10.1 Contract Form. All contracts for Phase II ESAs must be in a form acceptable to the Office of General Counsel.
- 10.2 Review of Report. The U. T. System Office of Risk Management, the Responsible Officer, and the benefited institution's EHS Director will review the Phase II ESA report.
- 10.3 Areas of Concern. If the Phase II ESA indicates areas of concern, the Responsible Officer may (i) reject the real property asset, (ii) accept the real property asset with identified risks with the concurrence of the Executive Director of Real Estate and the Office of Risk Management, or (iii) require additional investigation until the risk from areas of concern is better understood or acceptable to the Responsible Officer, Executive Director of Real Estate and Office of Risk Management.

Sec. 11 Recommended Review by Property Type. The level of screening will vary according to type of real property asset, history, and location.

11.1 Residential.

- (a) Have a qualified in-house individual or qualified outside professional, preferably under a Systemwide contract, conduct a site inspection.
- (b) Review aerial photos of subject property dating back to before physical improvements were made to the property or for the past 50 years, whichever is greater, if such photos are readily available from libraries or archives. If there is

concern about past land uses (i.e., the property was vacant and/or in a formerly industrial/commercial area, the site visit indicates distressed vegetation, or there is other evidence of contamination), then an ESA described in Section 2 above may be warranted

#### 11.2 Vacant/Unoccupied Lands.

- (a) Follow steps described in Sections 11.1(a) and (b) above. The site visit should include (i) asking neighbors about prior uses such as dumping, and (ii) inspecting along on-site roadways or fence lines where historical dumping would be more likely to have occurred. Historical and present day aerial photos may be particularly useful in evaluating historical dumping on vacant lands.
- (b) In geographical areas where endangered species may be present, a review of U.S. Fish and Wildlife Service maps may be appropriate in determining if further investigation on this issue is warranted.
- (c) Visual inspection of the site for topographical, hydrological, and vegetative indicators of wetlands may also be appropriate, depending on the geographical location of the property.

#### 11.3 Commercial Sites (including vacant sites formerly used for commercial activities).

- (a) Every attempt should be made to obtain from the current or past owners, operators, and/or tenants the nature of the business conducted at the site including a review of copies of any permits, licenses, notices of violation, site closure documents, or consent agreements issued to owners, operators, or tenants of the site.
- (b) For commercial sites of significant size or value as determined by the Responsible Officer in conjunction with the Executive Director of Real Estate, or high-risk commercial sites with known past or present uses of environmental concern, including gas stations, dry cleaners, and other uses commonly associated with environmental hazards, engage a qualified outside professional to conduct a Phase I ESA, to include a review of copies of any permits, licenses, notices of violation, site closure documents, or consent agreements issued to current or past owners, operators, or tenants of the site, per ASTM E1527.

#### 11.4 Industrial Sites (including vacant sites formerly used for industrial activities). Engage a qualified outside professional,

preferably under a U. T. Systemwide contract, to conduct a Phase I ESA, to include a review of copies of any permits, licenses, notices of violation, site closure documents, or consent agreements issued to current or past owners, operators, or tenants of the site, per ASTM E1527.

**3. Definitions**

Benefited Institution - the institution that will use and have control over land acquired by purchase or lease, or that is to benefit from the gift or bequest.

Real Property Asset - any interest in real property except (1) a mineral interest severed from the surface estate, (2) a leasehold in improvements only, (3) a leasehold less than five years in duration that does not contemplate any improvements to be constructed by U. T. System or any of its institutions or other activities that would result in disturbance of the soil, (4) an easement, or (5) real property in a trust or estate of which U. T. System or any of its institutions is a beneficiary, unless and until the trustee, executor, or administrator gives written notice to the benefited institution of the trustee's, executor's, or administrator's intent to transfer and convey legal title to the real property to the benefited institution. The term specifically includes without limitation any acquisition of legal title to real property, any leasehold on which the U. T. System or any of its institutions will construct improvements, and any leasehold where an underground storage tank, water wells, or monitoring wells exist.

**4. Relevant Federal and State Statutes**

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. \_Subchapter I)

<https://www.law.cornell.edu/uscode/text/42/chapter-103/subchapter-I>

ASTM Transaction Screen Process [E1528](#)

ASTM Phase I Standard [E1527](#)

**5. Relevant System Policies, Procedures, and Forms**

None

**6. System Administration Office(s) Responsible for Policy**

U. T. System Office of General Counsel - Real Estate Office

**7. Dates Approved or Amended**

December 10, 2004

November 1, 2006

July 5, 2011

June 19, 2017

**8. Contact Information**

Questions or comments about this policy should be directed to:

- [bor@utsystem.edu](mailto:bor@utsystem.edu)