

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 environmental site assessment (ESA) prior to acquisition of any real property asset, except as specifically provided in this policy. Federal and State statutes impose certain liabilities on owners of real property, including public institutions of higher education, 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. Hazardous and other regulated substances include not only the most dangerous or toxic substances, but also a wide array of chemicals and compounds, many of which are components of household trash or are found in raw materials and wastes. Environmental hazards may also include the presence of molds in or on improvements. Liabilities related to hazardous and other regulated substances may include costs associated with removal of these substances from the property, including overhead and enforcement expenses. The presence of endangered species or wetlands may limit future land use of the property. If environmental hazards 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. If no risks are identified, the U. T. System or any of its institutions may, under certain circumstances, and if all appropriate inquiry has been made, be able to assert a defense to liability if contamination that was unknown at the time of acquisition is later discovered.

Sec. 3 Environmental Site Assessment – General. At a minimum, prior to acquisition of any real property asset, the benefited institution, with respect to purchases of land or leaseholds to be used for campus purposes, or U. T. System Administration’s Real Estate Office with respect to all other real property assets, will conduct an initial ESA using the then-current American Society for Testing and Materials (ASTM) transaction screen process E1528 standard, or successor standard, in effect when the transaction closes. In addition,

the ESA shall include an assessment of other environmental risks that may be appropriate under the circumstances such as mold, lead, biological agents, or radioactive material contamination; and the presence of endangered species or wetlands. The ESA can be conducted by a qualified University employee or a qualified outside professional retained by the institution. All ESAs 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.

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 Environmental Site Assessment – Estates and Trusts. Notwithstanding the provisions of Section 3 above, with respect to the acquisition of real property from an estate or trust, an 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 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 conduct an ESA.
- 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, II, or III ESA.
- Sec. 9 Phase I ESA Requirements. If the Responsible Officer requests a Phase I ESA, a qualified outside professional will perform the ESA unless the institution or the U. T. System has a qualified employee to complete the review. 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 Administration’s 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, or (iii) require additional investigation in the form of a Phase II or III ESA.
- Sec. 10 Phase II ESA Requirements. A qualified outside professional must conduct any Phase II ESA, unless the institution receives express

written permission from the Executive Director of Real Estate 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, or (iii) require additional investigation in the form of a supplemental Phase II or a Phase III ESA.

Sec. 11 Phase III ESA Requirements. A qualified outside professional must conduct any Phase III ESA. The ESA should include extensive physical sampling of the site, testing of all samples, estimates of the extent of contamination, and estimates of the total cost to clean up the site.

- 11.1 Contract Form. All contracts for Phase III ESAs must be in a form acceptable to the Office of General Counsel.
- 11.2 Review of Report. The U. T. System Office of Risk Management, Office of General Counsel, Responsible Officer, and the benefited institution's EHS Director will review the Phase III ESA report.
- 11.3 Rejection of Real Property. If the Phase III ESA identifies unacceptable contamination or cleanup estimates, the real property asset will be rejected and will not be acquired.

Sec. 12 Recommended Review by Property Type. The level of screening will vary according to type of real property asset, history, and location.

- 12.1 Residential.
 - (a) Have a qualified in-house individual or qualified outside professional 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 in a remote or formerly industrial/commercial area, the site visit indicates distressed vegetation, or there is other evidence of contamination), then a review of historic land use dating back as far as possible or an ESA described in Section 3 above may be warranted.

12.2 Vacant/Unoccupied Lands.

- (a) Follow steps described in Sections 12.1(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.

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

- (a) Follow steps described above in Sections 12.1(a) and (b) above. 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.

- 12.4 Industrial Sites (including vacant sites formerly used for industrial activities). 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.

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 (42 U.S.C. Section [9601](#))

Texas Civil Statutes, Probate Code, [Section 37A](#) and [Section 128A](#)

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