

## Department of the Interior Departmental Manual

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**Effective Date:** 11/12/2024

**Series:** Public Lands

**Part 602:** Land Acquisition, Exchange, and Disposal

**Chapter 2:** Real Property Pre-Acquisition Environmental Site Assessments

**Originating Office:** Office of Environmental Policy and Compliance

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### 602 DM 2

2.1 **Purpose.** This chapter prescribes Departmental policy, responsibilities, and requirements for Bureaus and Offices to evaluate environmental risk prior to acquiring an interest in real property, including the potential to expose the Department of the Interior (Department) to fiscal or legal liabilities and costs of remediation related to the release or threatened release of hazardous substances, oil, or petroleum products, and other environmental or environmentally driven impacts on the conditions of the property to be acquired by the Bureau/Office. In addition, this chapter:

A. Prescribes Departmental policy regarding the use of a Phase I Environmental Site Assessment (Phase I) to satisfy the requirements for conducting all appropriate inquiries (AAI) under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601, et seq., when acquiring real property by the Department for the United States.

B. Prescribes Departmental policy regarding the use of a Limited Environmental Due Diligence Transaction Screen Process (LEDD/TSP) in limited situations when acquiring real property by the Department for the United States.

C. Describes steps to ensure informed decision-making and compliance with applicable laws, regulations, and standards for assessments prior to the acquisition of real property.

### 2.2 **Scope.**

A. The policy in this chapter applies to all proposed discretionary, mandatory, and legislative real property acquisitions by a Departmental Bureau or Office as defined in this chapter, except as specified in paragraph 2.2B below. This includes the following:

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(1) Interests in real property to be acquired by Bureaus/Offices from private parties, states, or other non-federal entities through acts or operation of law, condemnation, escheat, right-of-entry, land exchange, lapses, reversions, purchase, donation, leases, or transfers that will be under the jurisdiction or control of the United States for any period of time, except as specified in paragraph 2.2B.

(2) Withdrawn public domain land being returned or reverted to the Department's jurisdiction—the transaction needs to be treated as a land acquisition because the land might not be in the same condition as it was at the time of withdrawal.

(3) Transfers of administrative jurisdiction from other government agencies (e.g., real property acquired from the General Services Administration (GSA) or Department of Defense/U.S. Army Corps of Engineers, including Base Realignment and Closure properties; National Guard; U.S. Coast Guard; U.S. Department of Energy).

B. The policy in this chapter does not apply to the following:

(1) Indian Affairs real property acquisition. The procedures by which real property acquisitions, including fee-to-trust acquisitions, satisfy the intent and objectives of this chapter are defined by regulation, policies, and guidance adopted by the Bureau of Indian Affairs.

(2) Leases for commercial real estate, GSA Occupancy Agreements, and agreements entered into by the Bureau/Office with non-governmental entities for the use of buildings or structures. This exception does not apply to, and compliance with 602 DM 2 is required for, leases where the Bureau/Office has reason to believe a building or structure has been used to store or handle hazardous substances, oil, or petroleum products, or where there is visible evidence of hazardous substances, oil, petroleum products, or Environmental Issues of Concern (as defined in the Appendix).

(3) Federal lands transferred through the National Park Service's Federal Lands to Parks program or other public benefit transfer programs where the Bureau/Office acquires an interest in real property solely as a pass-through entity.

(4) Easements that do not convey authority or rights to participate in the management of the property (e.g., conservation or other negative easements) or do not otherwise create the potential for federal environmental liability.

(5) Other less-than-fee property interests, such as access easements, water rights, or mineral rights, whose acquisition and reasonably expected future use will not expose the Bureau/Office to associated liabilities or potential remediation costs that would trigger the requirements of this chapter. The applicability of this exemption must be determined on a case-by-case basis in consultation with the Solicitor's Office.

## 2.3 **Authorities.**

A. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. §§ 9601, et seq.

B. Oil Pollution Act (OPA), as amended, 33 U.S.C. §§ 2701, et seq.

C. Innocent Landowners, Standards for Conducting All Appropriate Inquiries (AAI), 40 C.F.R. Part 312.

D. Oil Spill Liability: Standards for Conducting All Appropriate Inquiries Under the Innocent Landowner Defense, 33 C.F.R. Part 137. To the extent Bureaus/Offices are seeking to establish liability protections under OPA, they should follow the requirements of 33 C.F.R. Part 137, but they should not use the standard described in 33 C.F.R. § 137.20 to comply with those requirements. Instead, Bureaus/Offices should use one of the standards described in the current version of 40 C.F.R. § 312.11.

E. ASTM E1527 and E2247. Bureaus/Offices shall use the most current ASTM-E1527 (for commercial real estate) or ASTM-E2247 (for forestland or rural property) standards accepted by the EPA to meet the substantive requirements of 40 C.F.R. Part 312.

F. ASTM E1528. ASTM E1528 offers guidance accepted by the Department for conducting Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP). However, ASTM E1528 does not provide a path for landowner liability protections for Federal land transactions. To the extent Bureaus/Offices use the ASTM standard to perform an LEDD/TSP, they should use the most current version of ASTM E1528.

2.4 **Definitions.** Definitions for terms used in this chapter are provided in the Appendix.

2.5 **Policy.** It is Departmental policy to minimize the exposure of Bureaus/Offices to liabilities and potential remediation costs by avoiding the acquisition of real property that is contaminated, unless otherwise specifically directed by Congress, court mandate, or as determined by the Secretary or the Secretary's authorized representative as described in paragraph 2.14. In order to avoid unreasonable environmental liability for the Department and Bureaus/Offices when acquiring real property, it is the policy of the Department to:

A. Preserve potential defenses to CERCLA and/or OPA liability when prudent and practicable by conducting AAI (see the definition in the Appendix to this chapter), including by performing a Phase I, which is one step in the requirements for AAI. Although 40 C.F.R. Part 312 does not require the use of ASTM standards to meet AAI, it is Departmental policy that when conducting AAI, the Bureau/Office must use the most current ASTM standards accepted by the EPA.

B. Ensure that costs for cleanup of hazardous substances, oil, petroleum products, or any other Environmental Issues of Concern are properly estimated by qualified parties prior to acquisition and that costs of cleanup are disclosed in writing and provided to the responsible decisionmaker along with any appraisal report as part of the bureau/Office's overall evaluation of a proposed real property acquisition.

C. Attempt to limit, to the extent practicable, its fiscal exposure to known or suspected releases of hazardous substances, oil, petroleum products, and other Environmental Issues of Concern by consulting with the Office of the Solicitor concerning site-specific legal protections in deeds and other real property transaction documents prior to acquisition of an interest in real property.

D. Except as precluded by law or congressional action, prior to acquiring real property from another Federal agency, including the Department of Defense or its components, enter into written agreements to document how compliance requirements will be met, and which party will be responsible for compliance requirements. In developing agreements for real property to be acquired from other Federal agencies, provide that future property use is determined by the Departmental Bureau/Office and that the Federal agency transferring real property to the Department agrees to clean up the property to accommodate such future property use prior to Departmental acquisition.

E. Prohibit the use of the Central Hazardous Materials Funds (CHF) to conduct a Phase I or LEDD/TSP, or to fund environmental compliance or cleanup work associated with property acquired after September 30, 1995, where the environmental contamination was, or reasonably could have been, identified prior to acquisition.

## 2.6 Responsibilities.

A. Assistant Secretary – Policy, Management and Budget (AS-PMB). Provides policy oversight for acquisition of real property. Makes decisions on all recommendations to acquire real property that could result in Bureaus/Offices incurring associated liabilities or potential remediation costs exceeding \$500,000.

B. Program Assistant Secretaries. Oversee Bureaus/Offices under their jurisdiction to ensure compliance with this chapter. Under their respective jurisdictions, program Assistant Secretaries must concur with any recommendation to the AS-PMB for approval to acquire real property that could cause a Bureau/Office to incur associated liabilities or potential costs of remediation exceeding \$500,000.

C. Heads of Bureaus/Offices. Oversee Bureau/Office real property acquisition and development of Bureau/Office guidance and instructions to implement the policy requirements of this chapter. The heads of Bureaus/Offices must ensure that a Phase I or LEDD/TSP is performed in accordance with the requirements of this chapter and must exercise due diligence in limiting any associated liabilities and potential costs of remediation to the Bureau/Office. The

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heads of Bureaus/Offices are responsible for approval of remediation expenditures under their jurisdiction and, within their scope of authority, must ensure adequate program support (i.e., resources and budget) to fulfill the requirements of this chapter. If anticipated remediation expenditures total \$500,000 or less, the head of the Bureau/Office is responsible for review and approval of expenditures for acquisition, and subsequent approval by the AS-PMB is not necessary. If anticipated remediation expenditures total \$250,000 or less, the head of the Bureau/Office may redelegate this approval authority in writing to a Regional or State Director.

D. Associate Director(s) for Bureau/Office Realty Program and Environmental and Disposal Liabilities Program. Receive(s) notification of decisions made by the Regional or State Director to not seek landowner liability protection. Provide(s) oversight of Bureau/Office land acquisitions.

E. Director, Office of Environmental Policy and Compliance (OEPC). Reviews all recommendations requiring approval by the AS-PMB. The OEPC also assists Bureaus/Offices in interpreting and implementing the requirements of this chapter. In addition, OEPC may provide and revise additional guidance on land acquisition (e.g., environmental compliance memoranda). The OEPC is also responsible for informing Bureaus/Offices of updates to ASTM standards consistent with the EPA's and U.S. Coast Guard's AAI regulations.

F. Director, Office of Acquisition and Property Management (PAM). Reviews all Phase I and LEDD/TSP reports requiring approval by the AS-PMB for properties that include buildings or structures. The PAM evaluates impacts and lifecycle costs associated with buildings and structures included in a proposed acquisition.

G. Regional/State Director. The Regional or State Director may determine, in consultation with SOL, not to conduct a Phase I that meets AAI requirements, and not to preserve certain liability protection defenses to CERCLA and/or OPA liability or establish a comprehensive assessment of the property's baseline environmental conditions, and instead to proceed with LEDD/TSP. This decision may not be delegated below the Regional or State Director level. The Associate Director(s) or person(s) in equivalent position(s) over the Bureau/Office's realty program and environmental and disposal liabilities (EDL) program must be notified when a decision is made not to seek landowner liability protection.

H. Office of the Solicitor (SOL). Provides legal review and guidance for proposed real property acquisition including, but not limited to, providing advice with respect to potential legal enforcement by third parties and evaluating whether the Department's defenses for liability under CERCLA or OPA should be or have been adequately preserved. SOL provides legal review and guidance to structure the instrument for land acquisition, whether it is a deed, statute, or interagency agreement, to minimize, whenever possible and appropriate, the Department's exposure to associated liabilities and potential costs of remediation. Bureaus/Offices must consult with SOL concerning the applicability of the policy and requirements in this chapter to site-specific acquisitions and language in specific agreements (e.g., easements, environmental covenants, deed restrictions, and other interests), as well as language of specific withdrawal

agreements mentioned in paragraph 2.2A(2) in which liability could arise. For any acquisitions that require AS-PMB approval, the Bureau/Office must coordinate with SOL-Division of Land Resources, Branch of Environmental Compliance and Response.

**2.7 General Requirements.** The responsibilities and functions prescribed in this chapter are intended to ensure that each Bureau/Office, prior to the acquisition of real property, determines the associated liabilities and potential remediation costs that could result from the presence, extent and/or release of hazardous substances, oil, petroleum products, or Environmental Issues of Concern. Such determinations must be considered in any decision to acquire real property and must be taken into account when establishing the total cost of acquisition. The bureaus/Offices must use either a Phase I or LEDD/TSP to identify the presence or potential presence of Recognized Environmental Conditions or Potential Environmental Concerns, as applicable, and Environmental Issues of Concern at a site, as well as the associated liabilities and potential costs to remedy contamination, thereby providing the Bureau/Office with valuable information on the baseline environmental conditions at the time of acquisition, including the liabilities and potential remediation costs and to provide information to evaluate the true costs of a proposed acquisition.

A. Before taking title to real property, except as specified in paragraph 2.2B, and in accordance with applicable regulations and/or guidance, the Bureau/Office must either:

(1) Complete a Phase I in compliance with 40 C.F.R. Part 312 and/or 33 C.F.R. Part 137, as applicable, to preserve certain defenses to CERCLA and/or OPA, as well as to understand baseline environmental conditions that a Phase I would identify; or

(2) Under limited circumstances, complete an LEDD/TSP in accordance with the most recent version of ASTM standard E1528 if, pursuant to paragraph 2.6G, the Bureau/Office decides, in consultation with SOL, to forgo the landowner liability protections available under CERCLA and/or OPA and the additional understanding of baseline environmental conditions that a Phase I would provide. The LEDD/TSP should not be used when a Bureau/Office is seeking to preserve defenses to liability under CERCLA and/or OPA.

B. Contents of Phase I or LEDD/TSP to include non-scope evaluations. Prior to acquisition, Bureaus/Offices shall identify Environmental Issues of Concern, as defined in the Appendix to this chapter, and including non-scope issues as identified in ASTM standards E1527 and E2247 (for Phase I) and E1528 (for LEDD/TSP) that could expose the Department to associated liabilities and potential costs of remediation. The Phase I or LEDD/TSP must also expressly identify any environmental conditions determined to be *de minimis*.

C. Bureaus/Offices may establish, in consultation with SOL, additional real property pre-acquisition assessment procedures to meet their individual needs, including developing criteria for when not to seek landowner liability protection from CERCLA and/or OPA. These procedures could assist in defining the objectives of the Bureau/Office's comprehensive environmental assessment (e.g., evaluate total cost of acquisition inclusive of potential costs of

remediation, determine associated liabilities, identify Recognized Environmental Conditions or Potential Environmental Concerns, and ascertain potentially responsible parties).

D. Bureaus/Offices are responsible for ensuring that the Phase I or LEDD/TSP is complete in terms of technical accuracy and comprehensiveness, whether it is performed by a Bureau/Office employee or by a contractor.

## 2.8 Phase I Requirements.

A. Unless otherwise determined by the Regional or State Office Director to conduct an LEDD/TSP, as set forth in paragraph 2.6G, the Bureau/Office shall complete a Phase I in compliance with the applicable requirements of CERCLA, OPA, the AAI regulations (40 C.F.R. Part 312 and 33 C.F.R. Part 137), and this chapter. The ASTM standards specified in paragraph 2.3.E may be used to satisfy the AAI requirements. See definitions of Phase I and AAI in the Appendix.

B. Review of Contractor Work Product. Any Phase I completed by a contractor on behalf of the Bureau/Office must be completed under the review and oversight of the acquiring Bureau/Office. The Bureau/Office may approve the Phase I only after a qualified individual, as designated by the Bureau/Office, determines that it complies with applicable statutory and regulatory standards and that all data gaps have been identified and that their impact on the environmental professional's ability to identify Recognized Environmental Conditions has been discussed. Note that the Phase I itself must be conducted by an environmental professional as specified in paragraph 2.8F below.

C. Time Requirements. A Phase I must be completed prior to taking title to the subject property. In addition, as required by the AAI regulations (40 C.F.R. § 312.20 and 33 C.F.R. § 137.33), a Phase I must be completed no more than one year prior to the date of acquisition. The date of the report generally does not represent the date the individual components of AAI were completed and should not be used when evaluating compliance with the 180-day or 1-year AAI requirements. For more details on timing requirements, see 40 C.F.R. § 312.20 and 33 C.F.R. § 137.33. The following specific components of the Phase I must be completed or updated no more than 180 days prior to the date of acquisition:

- (1) Interviews with past and present owners, operators, and occupants.
- (2) Searches for recorded environmental cleanup liens.
- (3) Government records reviews.
- (4) Visual inspections of the site and adjoining properties.
- (5) The declaration by an environmental professional that all appropriate inquiries into the previous ownership and uses of the property have been conducted.

D. Visual Inspections. Provided that other requirements in 40 C.F.R. § 312.27 and 33 C.F.R. § 137.65 are met, an exception to on-site visual inspection of a property may be granted in unusual circumstances where an on-site visual inspection of the property cannot be performed because of physical limitations, remote and inaccessible location, or other inability to obtain access to the property after good faith efforts. It should be noted that in 40 C.F.R. § 312.27(c) and 33 C.F.R. § 137.65(c), the EPA and U.S. Coast Guard state that “the mere refusal of a voluntary seller to provide access to the subject property does not constitute an unusual circumstance.” If an on-site visual inspection cannot be conducted, other options include aerial photography, aerial imagery, and/or aerial flyover.

E. Prior Assessments. A prior Phase I may be used if (a) it is reviewed and found to be in compliance with the AAI regulations (40 C.F.R. Part 312 and 33 C.F.R. Part 137), (b) the information accurately reflects the current conditions of the property, and (c) the prior Phase I must be completed no more than 1 year prior to the date of acquisition, and the components of the assessment enumerated in paragraph 2.8C must be completed or updated no more than 180 days prior to acquisition. A prior Phase I may not be used without current investigation of conditions likely to affect Recognized Environmental Conditions in connection with the subject property. Additional tasks may be necessary to document conditions that may have changed materially since the prior ESA was conducted. If all of the Phase I requirements are not met by the prior Phase I, whether it was conducted by the Bureau/Office, an outside party, or a party contracted by the bureau/office, the bureau/office must complete a new Phase I addressing any missing information or data gaps and ensure that all Phase I requirements are met prior to the acquisition. If a Bureau/Office intends to rely on a prior Phase I to satisfy AAI, it must confer with SOL prior to acquisition to ensure that any contractual and legal obligations as the “user” of a prior Phase I are met. Any prior assessment conducted by outside parties (including a Phase I or LEDD/TSP) should be considered as a part of the “User Provided Information” and “Records Review” section of the final Phase I report.

F. Environmental Professional. The AAI regulations (40 C.F.R. Part 312 and 33 C.F.R. Part 137) require that AAI investigations, of which Phase I is a critical component, must be conducted or supervised by an environmental professional that meets specific requirements. See the definition of “environmental professional” in the Appendix to this chapter. Pursuant to 40 C.F.R. § 312.10(b)(5) and 33 C.F.R. § 137.25(a)(4), a person who does not qualify as an environmental professional may assist in conducting a Phase I if such person is under the supervision or responsible charge of an environmental professional when conducting such activities.

G. Certification program. Bureaus/Offices may develop their own certification program for environmental professionals as defined in the Appendix to this chapter. At a minimum, Bureaus/Offices must determine what constitutes “relevant experience” in accordance with 40 C.F.R. § 312.10(b) and 33 C.F.R. § 137.25 and determine whether their personnel are environmental professionals. This may include using a Bureau/Office training program to

facilitate meeting these requirements or relevant courses provided by other agencies or

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Bureaus/Offices.

H. Bureau/Office as “User.” The Bureau/Office must be identified as a “user” of the Phase I.

## 2.9 **LEDD/TSP Requirements.**

A. Bureaus/Offices, upon making the decision as prescribed in paragraph 2.6G, may proceed with an LEDD/TSP in accordance with the most recent version of ASTM standard E1528. Whether the LEDD/TSP is performed by a Bureau/Office employee or by a contractor, Bureaus/Offices are responsible for ensuring that the LEDD/TSP is complete in terms of technical accuracy and comprehensiveness in order to ascertain whether Potential Environmental Concerns or Environmental Issues of Concern exist that could expose the Department to associated liabilities or potential costs of remediation.

B. The LEDD/TSP must be conducted or supervised by a qualified individual, as determined by the Bureau/Office. This person does not need to be classified as an environmental professional, as that term is defined in the AAI regulations and the definition in the Appendix to this chapter.

C. Time requirements. Prior to taking title to the subject property, the LEDD/TSP must be completed, and approval given in accordance with paragraphs 2.10 and 2.14.

D. Prior assessments may be used if the prior assessment is reviewed and found to be in compliance with this policy and there have been no material changes at the subject property since the prior assessment was conducted that could affect potential environmental concerns. If all the requirements of the standards in the most recent version of ASTM E1528 are not met, the Bureau/Office should complete any missing information or data gaps to provide for an informed decision under paragraphs 2.10 and 2.14.

## 2.10 **Finalizing a Phase I or LEDD/TSP.**

A. The Bureau/Office must incorporate the Phase I or LEDD/TSP results and the associated liabilities and potential costs of remediation in its evaluation of the estimated total cost of the acquisition. This information must be provided as part of the acquisition approval process addressed in paragraph 2.14 below.

B. If evidence is found during the initial Phase I or LEDD/TSP that indicates environmental contamination could be present on the land, the Bureau/Office shall ensure that additional analysis is performed to determine the potential cost of remediation (e.g., ASTM standard E1903 for Environmental Site Assessments: Phase II), unless a reasonable cost estimate can be ascertained by other means. Such additional analysis is not intended to fully characterize the nature and extent of contamination or assess the associated risks, (e.g., site characterization as part of an Engineering Evaluation/Cost Analysis or a Remedial Investigation/Feasibility

Study), but only to gather sufficient information to enable the Bureau/Office to reasonably estimate the cost of addressing the conditions identified in the Phase I or LEDD/TSP. The results of the additional analysis must be incorporated into the Phase I or LEDD/TSP prior to acquisition.

C. Evaluation of Potentially Responsible Parties. The Bureau/Office should coordinate with SOL-Division of Land Resources, Environmental Compliance and Response Branch, to identify any information on known potentially responsible parties for the purpose of confirming there is no affiliation between the Bureau/Office and the potentially responsible party for purposes of developing landholder liability protections.

2.11 **Mandatory Acquisitions.** In accordance with this chapter, a Phase I or LEDD/TSP shall be completed prior to any mandatory acquisition, except as provided for in paragraph 2.2B. Heads of Bureaus/Offices shall, to the maximum extent practicable, ensure that reports to Congress, comments on proposed legislation, Congressional testimony, and responses pertaining to acquisition of real property contain pre-acquisition environmental site assessment information from a Phase I or LEDD/TSP and estimates of remediation costs to inform total costs for any congressionally mandated acquisition of contaminated property.

2.12 **Funding.** Bureaus/Offices proposing to acquire property shall ensure the availability of adequate funds to conduct a Phase I or LEDD/TSP, as well as complete any further investigation of contaminated real property proposed to be acquired, including the initial identification and evaluation of cleanup alternatives. Bureaus/ Offices may not obtain funding for a Phase I or LEDD/TSP from the Department's CHF. The CHF also will not be used to fund remediation work associated with property acquired after September 30, 1995, where the environmental contamination was, or reasonably could have been, identified prior to acquisition. The acquiring Bureau/Office, in accordance with the Anti-Deficiency Act, must plan how adequate funds would be available for completion of cleanup or remediation of contamination for real property to be acquired.

2.13 **Acquisition.** Following the preparation of the Phase I or LEDD/TSP report, including the determination of any associated liabilities and potential costs of remediation, the Department or Bureau/Office may acquire the real property, provided one of the following conditions exists:

A. There is no evidence of releases or threatened releases of hazardous substances, oil, or petroleum products, nor is there evidence of Environmental Issues of Concern.

B. The pre-acquisition proposal, which would include the findings of a Phase I or LEDD/TSP, as appropriate, and any calculated liabilities and potential costs of remediation associated with the acquisition, is approved in accordance with paragraph 2.14 below.

2.14 **Acquisition Approvals.** Approval as described in this paragraph is required for all real property acquisitions whenever the Phase I identifies a Recognized Environmental Condition or an LEDD/TSP identifies a Potential Environmental Concern, or the acquisition could otherwise

result in associated liabilities or potential costs of remediation to the Department. Where applicable, a formal estimate of the costs of remediation alternatives, taking into consideration reasonable future-use assumptions, should be included as part of the request for approval.

A. The Bureau/Office may acquire an interest in real property with Recognized Environmental Conditions, Potential Environmental Concerns, or Environmental Issues of Concern upon receipt of the following levels of approval:

(1) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified Environmental Issues of Concern, and associated liabilities and potential costs of remediation are estimated to be \$500,000 or less, the head of the Bureau/Office may approve the acquisition after consulting with SOL. The head of the Bureau/Office may re-delegate this approval authority in writing to the Regional or State Director level for acquisitions for which associated liabilities and potential costs of remediation total less than \$250,000. The Regional or State Director must also consult with SOL prior to approving the acquisition and may not re-delegate this authority.

(2) If there is evidence of a release or threatened release of hazardous substances, oil, or petroleum products, or any identified Environmental Issues of Concern, and associated liabilities and potential costs of remediation are estimated to exceed \$500,000, then the acquisition must be approved by the AS-PMB, through the applicable program Assistant Secretary(s), after the Bureau/Office consults with the SOL-Division of Land Resources, Environmental Compliance and Response Branch and the Department's Office of Environmental Policy and Compliance.

B. Requests for approval pursuant to this section must provide detailed information on the benefits of the acquisition relative to the total cost, including the fair market value of the property; the estimated costs of acquisition, including associated liabilities and potential costs of remediation to address hazardous substances, oil, petroleum products, or Environmental Issues of Concern; and any other known or reasonably estimated monetary costs or damages that are expected to be associated with the acquisition.

C. The AS-PMB or SOL may impose additional limitations on or requirements for acquisitions that are necessary to protect the interests of the Department.

D. If SOL determines it is appropriate, the existence of any Recognized Environmental Conditions, Potential Environmental Concerns, or Environmental Issues of Concern found prior to the transfer, as well as the associated liabilities and potential costs of remediation should be documented during the transfer of property. This documentation should identify whether the party transferring the property, or some other potentially responsible party, will be responsible for addressing the associated liabilities and potential costs of remediation, in whole or in part. The Bureau/Office should work closely with SOL early in the acquisition process to determine if liability protections such as environmental covenants, indemnities, or other environmental cleanup agreements should be negotiated with the seller prior to the United

States taking title to the property, or if the seller can address Recognized Environmental Conditions, Potential Environmental Concerns, or Environmental Issues of Concern prior to the transfer. In the case of a transfer from another Federal agency, the Department should negotiate an agreement with the transferring agency, prior to the transfer of administrative jurisdiction, assigning responsibility for the funding and performance of any activities necessary to address Recognized Environmental Conditions, Potential Environmental Concerns, or Environmental Issues of Concern.

**2.15 Environmental and Disposal Liabilities.** Environmental liabilities are subject to the Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standard (SFFAS) Number 5, Accounting for Liabilities of the Federal Government. If a Bureau/Office acquires real property with associated liabilities and potential future costs of cleanup, the Bureau/Office must coordinate with its environmental office to determine whether the subject property should be listed on the EDL database.

**2.16 Records Retention.** Each Bureau/Office that acquires real property must maintain documentation of the process and the findings of the Phase I or LEDD/TSP. Bureaus/Offices must retain these records as part of the acquisition case file and real property record as long as the Department manages and retains ownership of the real property. After the Department no longer manages or retains the real property, the Bureau/Office must transfer eligible permanent records to the National Archives of the United States for appropriate retention, in accordance with 36 C.F.R. § 1235 and OCIO RMP 2021-05: "Transferring Records Between Organizations."

**2.17 Reprogramming.** Any reprogramming proposal should be submitted according to established Departmental reprogramming procedures.

## **Appendix Definitions and Acronyms**

1. **All Appropriate Inquiries (AAI).** An inquiry constituting all appropriate inquiries into the previous ownership and uses of the subject property consistent with good commercial and customary standards and practices, as defined in sections 101(35)(B)(i) and 101(40)(B) of CERCLA, 40 C.F.R. Part 312, and 33 C.F.R. Part 137 that will qualify the Bureau/Office for one of the threshold criteria for satisfying landowner liability protections pursuant to CERCLA and/or OPA liability, assuming compliance with other elements of the defense.
2. **Bona Fide Prospective Purchaser.** A person (or tenant of a person) who acquires ownership of a facility after January 11, 2002, and establishes by a preponderance of the evidence each of the requirements set forth in CERCLA 101(40) and applicable regulations by conducting AAI on or before the date of purchase. All bona fide prospective purchasers must conduct AAI into previous ownerships and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.
3. **Environmental Issues of Concern.** The broad array of environmental issues, outside of the scope of releases of hazardous substances, oil, or petroleum products, presented by conditions on a property. These could include, but are not limited to:
  - A. Asbestos-containing building materials, radon, nuclear/radiological source materials, lead-based paint, lead in drinking water, unexploded ordnance, regulatory non-compliance, industrial hygiene, health and safety hazards, poor indoor air quality, presence of biological agents, high voltage power lines, mold or microbial growth conditions; polychlorinated biphenyl (PCB)-containing building materials; per- and polyfluoroalkyl substances (PFAS) in drinking water sources, and other Non-Scope Considerations discussed in ASTM standards E1527 and E2247 (for Phase Is) and ASTM standard E1528 (for LEDD/TSPs).
  - B. Bureau- /Office-specific concerns, such as invasive species, radioactive substances, unexploded ordnance, landfills, abandoned vehicles, abandoned subsurface utilities, hazards on abandoned mine sites, debris, underground storage tanks, and storm water collection points that might be Class V injection wells.
  - C. The presence of wetlands, infrastructure, cultural resources including historic properties, ecological resources, endangered species, or other conditions that could affect management costs and considerations.
4. **Environmental Professional.** A person with specific education, training, and experience as set forth in 40 C.F.R. § 312.10(b) and 33 C.F.R. § 137.25.
5. **Hazardous Substance.** A substance as defined in CERCLA 101(14).

6. **Landowner Liability Protections.** A defense to CERCLA and/or OPA liability available for the landowner who qualifies for and meets certain statutory criteria to preserve defenses under CERCLA for “bona fide prospective purchaser” liability protection, contiguous property owner liability protection, or innocent landowner defense under 42 U.S.C. §§ 9601(35)(A), 9601(40), 9607(q), and 9607(r) including, but not limited to, conducting AAIs. For OPA, the liability protections pertain to the operator of a facility who qualifies for and meets certain statutory criteria to preserve defenses for innocent landowner defense to liability under 33 U.S.C. § 2703(d)(4) of OPA.

7. **Limited Environmental Due Diligence: Transaction Screen Process (LEDD/TSP).** An evaluation conducted prior to land acquisition, to identify “Potential Environmental Concerns.” Such analysis determines the potential of, and extent of liability for oil and hazardous substances or other environmental remediation. This includes, but is not limited to, a determination of the absence or presence of oil and hazardous substances or conditions that indicate an existing or past release, or a material threat of a release on the real property, into the air, soil, sediment, groundwater, surface water or any structures located on the real property. The standards can be found in ASTM standard E1528; however, completion of this evaluation will not meet the standards for a Phase I for landowner liability protection from CERCLA or OPA.

8. **Mandatory Acquisition.** An acquisition that occurs as pursuant to a Presidential Proclamation or an Executive, Congressional, or Judicial order directing the Secretary to take title to real property.

9. **Occupancy Agreement (OA).** The formal written agreement between GSA and the Bureau/Office defining the financial terms and conditions for the occupancy of GSA-provided space.

10. **Oil.** As defined in 33 U.S.C. § 2701 (23) of OPA, oil means oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredge spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of CERCLA and which is subject to the provisions of that Act.

11. **Petroleum products.** Those substances included within the meaning of the petroleum exclusion to CERCLA, 42 U.S.C. § 9601(14), as interpreted by the courts and EPA, that is: petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under 42 U.S.C. § 9601(14)(A-F), natural gas, natural gas liquids, liquefied natural gas, and synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). (The word fraction refers to certain distillates of crude oil, including gasoline, kerosene, diesel oil, jet fuels, and fuel oil, pursuant to Standard Definitions of Petroleum Statistics.)

12. **Phase I Environmental Site Assessment (Phase I).** A pre-acquisition evaluation of real property that identifies recognized environmental conditions and other environmental issues of concern. A Phase I is used by the Department or Bureau/Office to assist it in identifying and evaluating associated liabilities; evaluating potential costs of remediation; and evaluating the total cost of acquisition inclusive of environmental issues of concern, associated liabilities, and potential costs of remediation. The Phase I must comply with all AAI requirements set forth in 40 C.F.R. Part 312 and 33 C.F.R. Part 137 and ASTM standards E1527 (for commercial real property) or E2247 (for forestland or rural property).

13. **Potential Environmental Concerns.** As defined in ASTM standard E1528 (LEDD/TSP): The possible presence of any hazardous substances or petroleum products on a property under conditions that indicate the possibility of an existing release, a past release, or a threat of a future release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. (Note that “threat of release” is generally understood to be present when hazardous substances or petroleum products are poorly managed (for example in corroded tanks or damaged containers) but the release of the contaminants has not yet occurred, and there is an opportunity to take response action to prevent a release of the contaminants.)

14. **Real Property.** Land or interests in land, including easements, and any improvements thereon (e.g., roads, buildings, and other structures, including installed permanent features).

15. **Recognized Environmental Conditions.** (1) the presence of hazardous substances or petroleum products in, on, or at the subject property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on, or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products in, on, or at the subject property under conditions that pose a material threat of a future release to the environment. A de minimis condition is not a recognized environmental condition.

16. **Release.** As defined in CERCLA 101(22), any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous substance, oil, petroleum product, or pollutant or contaminant into the environment, including the abandonment or discarding of any barrels, containers, or other closed receptacles containing a hazardous substance, oil, petroleum product, or pollutant or contaminant.

17. **User.** The party seeking to complete a Phase I of the subject property for purposes of conducting AAI to seek to qualify for landowner liability protections to CERCLA or OPA liability.