



July 18, 2024

To: Statewide Real Estate Services and Mega Programs

From: Kevin Workman, Real Estate Services Program Administrator *JKW*

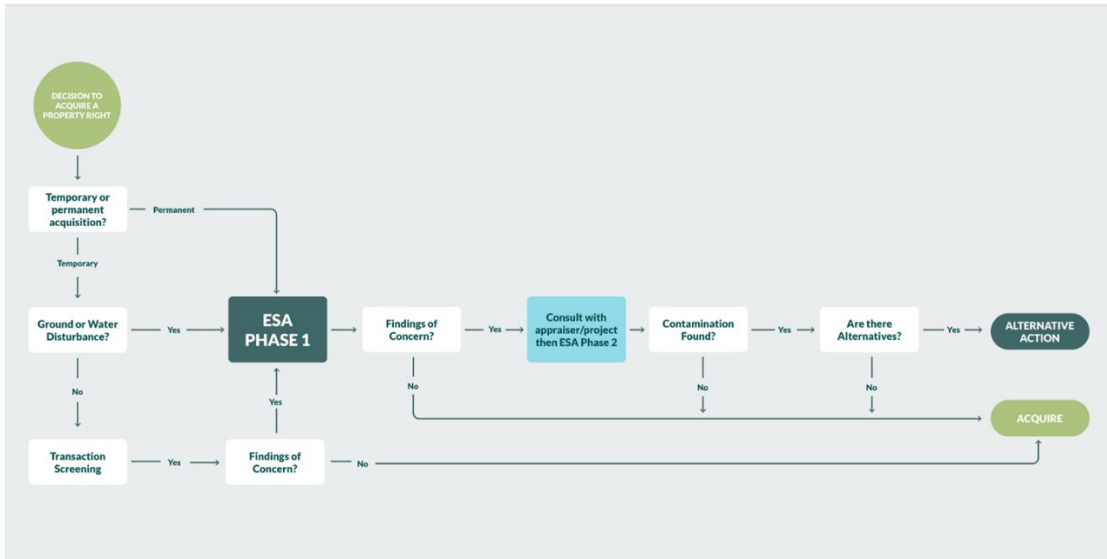
Subject: Environmental Due Diligence and Valuing Contaminated Properties

Purpose:

- (1) establish a level of consistency in the assessment of environmental contamination on properties being acquired for WSDOT transportation projects;
- (2) establish valuation norms for valuing contaminated properties;
- (3) minimize potential liability for WSDOT;
- (4) identify any contaminants that are safety hazards.

Background: Experience has shown that the presence of a contaminated site can be a significant risk during property acquisition and during construction. Acquiring permanent or temporary rights on contaminated property can subject WSDOT to significant liability, even if WSDOT is not the cause of the contamination. Performing appropriate environmental due diligence may provide WSDOT with certain protections under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) when acquiring property rights. In order to qualify for these protections, assessments must be performed in accordance with the requirements in 40 CFR 312,

Whether or not a project is provided a detailed risk analysis, specific attention to the possibility of hazardous waste contamination is needed to ensure an appropriate acquisition and avoid delays. In addition, 49 CFR 24.102(d) and RCW 8.26.180(3) require WSDOT to pay property owners just compensation for property rights acquired, and as a result it is necessary to determine the environmental condition of the property to comply with this requirement. To achieve this outcome, projects benefit from having access to the correct information, reliable and consistent procedures, and engaging the right subject matter experts early in the acquisition process. This policy change is consistent with the environmental due diligence policy change found in the updated Design Manual as well as processes found in the Environmental Manual.



Purpose 1: Property site assessments (also called Environmental Site Assessments, or ESA) are required in advance of property acquisition as part of property acquisition due diligence. Such assessments are performed in accordance with all appropriate inquiries needed to fulfill requirements in 40 CFR 312.20 and RCW 70A.305.040.

Environmental site assessments are required in advance of property acquisition. The project design team initiates the process by determining whether it is likely that the project will permanently or temporarily acquire all or a portion of a parcel. ESAs occur in different scales and levels of detail based on this determination:

- **Transaction Screening:** Lowest level of detail, used in the case of a temporary acquisition where there is no ground or water disturbance anticipated as a result of project related actions.
- **Phase I Environmental Site Assessment:** Used in the case of a permanent acquisition to determine whether there will be a finding of concern, or used if a Transaction Screening results in a finding of concern.
- **Phase II Environmental Site Assessment:** Highest level of detail, used if a Phase I assessment results in a finding of concern.

The assessments are described in more detail in the WSDOT Environmental Manual. These assessments include an inquiry by an Environmental Professional as defined at 40 CFR 312.10, the collection of information pursuant to 40 CFR 312.22, and searches for recorded environmental cleanup liens.

The sequence and timing of these assessments are related to the type of acquisition and project activities envisioned, and state of progress in design. At a minimum, a project footprint or defined area needs to be established to estimate the scope of acquisitions that

are involved. An evaluation may proceed at an earlier stage as part of a formal or otherwise well-reasoned risk analysis process.

As soon as the project team determines that it is likely there will be a need for the project to acquire a permanent interest in a property, or a temporary interest in the case where ground or water disturbance is anticipated as a result of project related actions, a Phase I Environmental Site Assessment is performed. The purpose of the Phase I Environmental Site Assessment is to determine whether there will be a finding of concern. In the case of a temporary acquisition where there is no ground or water disturbance anticipated, a transaction screening is performed instead.

If an assessment does not result in a finding of concern, then the project may proceed to acquisition. If any assessment results in a finding of concern, then perform the next level of Environmental Site Assessment (either Phase I or Phase II). When a Phase II Environmental Site Assessment is performed, and one of the results is that contamination is found, then consultation with the appropriate subject matter experts in Headquarters RES is necessary and may include the Attorney General's Office depending on the circumstances. After consultation with Headquarters RES, any decision to acquire after contamination is found is made by the Assistant Region Administrator.

If the environmental investigations do not indicate the presence of contaminants, but the agent or the appraiser discovers evidence of possible contamination during a site visit, the agent or appraiser shall notify the Region RES Manager. The Region RES Manager shall consult with the Environmental Service Office (ESO) and the project to address the concern which may include further investigations.

Purpose 2: Valuing and purchasing contaminated properties can be complicated and any possible remaining liability to the property owner is often nuanced. The Region RES Manager is responsible for ensuring that the results of any environmental due diligence are considered as part of the appraisal before an offer is made to a property owner. Except in rare circumstances, the known presence of environmental contamination shall be factored into the fair market value determination of the property.

The Region RES Manager must also adequately consult with the project, the Environmental Services office, and the Headquarters RES office whenever contamination is indicated to ensure appropriate measures are taken to protect WSDOT and treat the property owner fairly. There is no "one size fits all" approach to dealing with contaminated properties and it may also require consultation with the Attorney General's Office depending on the circumstances.

Purpose 3: Acquiring permanent or temporary rights on contaminated property can subject WSDOT to significant liability, potentially millions of dollars. The size, duration, or value of the acquisition does not necessarily correlate with the potential liability. Appropriate due diligence and industry standard best practices minimize WSDOT's liability and ensures good stewardship of the taxpayer's dollars.

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Purpose 4: The presence of contaminants on property where construction is going to take place poses a risk to workers. It is important to identify any contaminants on property being acquired for projects to ensure workers take the appropriate precautions when working on these properties.

HQ is in the process of updating the appropriate chapters of the ROW manual to reflect these policy changes. Please distribute this memorandum to all appropriate staff and call if you have any questions.

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cc: Mark Gaines