



Designation: E2247 – 23

Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property¹

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1. Scope

1.1 *Purpose*—The purpose of this practice is to provide an alternative method to ASTM E1527 for good commercial and customary practices in the United States of America for conducting a *Phase I Environmental Site Assessment*² of *forestland* or *rural property* with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and *petroleum products*. As such, this practice is intended to permit a *user* to satisfy one of the requirements to qualify for the *innocent landowner*, *contiguous property owner*, or bona fide prospective purchaser limitations on CERCLA liability (hereinafter, the “*landowner liability protections*,” or “*LLPs*”): that is, the practice that constitutes “*all appropriate inquiries*” into the previous ownership and uses of a *property* consistent with good commercial and customary standards and practices as defined at 42 U.S.C. §9601(35)(B). (See Appendix X1 for an outline of CERCLA’s liability and defense provisions.) Controlled substances are not included within the scope of this standard. Persons conducting an *environmental site assessment* as part of an EPA Brownfields Assessment and Characterization Grant awarded under CERCLA 42 U.S.C. §9604(k)(2)(B) must include controlled substances as defined in the Controlled Substances Act (21 U.S.C. §802) within the scope of the assessment investigations to the extent directed in the terms and conditions of the specific grant or cooperative agreement. Additionally, an evaluation of *business environmental risk (BER)* associated with a parcel of *commercial real estate* may necessitate investigation beyond that identified in this practice (see 1.4 and Section 13).

1.1.1 *Standard Practice Selection*—The methodology included in this practice is an effective and practical process for

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² All definitions, descriptions of terms, and acronyms are defined in Section 3. Whenever terms defined in 3.2 are used in this practice, they are in *italics*.

achieving the objectives of a *Phase I Environmental Site Assessment* of *forestland* or *rural property* when some of the methodologies of ASTM E1527 are deemed to be impractical or unnecessary due to the size or nature of the *property*. This practice is intended to provide a more practical approach to assess rural and *forestland* properties that are generally uniform in use. A primary consideration in applying this practice instead of E1527 is the nature and extent of the *property* being assessed, as the typical environmental concerns, sources for *interviews* and records, and the methodology used to perform the *site reconnaissance* may differ significantly. The *property* to be assessed using this standard practice need not be contiguous and may contain isolated areas of non-*forestland* and non-*rural property*. *Site reconnaissance* of isolated areas of the *property* that include activities outside the definition of *forestland* or *rural property* should be addressed using methodologies such as those provided in E1527, which may be conducted and reported in conjunction with this practice, as discussed in 4.5.3.

1.1.2 *Recognized Environmental Conditions*—The goal of the processes established by this practice is to identify *recognized environmental conditions*. The term *recognized environmental condition* means (1) the presence of *hazardous substances* or *petroleum products* in, on, or at the *subject property* due to any *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*.

1.1.3 *Related Standard Practices*—This practice is closely related to Standard Practice E1527. Standard Practice E1527 is an *environmental site assessment* for *commercial real estate* (see 4.3).

1.1.4 *Petroleum Products*—*Petroleum products* are included within the scope of this practice because they are of concern with respect to many parcels of *forestland* or *rural property* and current custom and usage is to include an inquiry into the

presence of *petroleum products* when conducting an *environmental site assessment* of *forestland* or *rural property*. Inclusion of *petroleum products* within the scope of this practice is not based upon the applicability, if any, of CERCLA to *petroleum products*.

1.1.5 *CERCLA Requirements Other Than Appropriate Inquiries*—This practice does not address whether requirements in addition to *all appropriate inquiries* have been met in order to qualify for the *LLPs* (for example, the duties specified in 42 U.S.C. §§9607(b)(3)(a) and (b) and cited in [Appendix X1](#) including the continuing obligation not to impede the integrity and effectiveness of *activity and use limitations (AULs)*, or the duty to take reasonable steps to prevent *releases*, or the duty to comply with legally required *release* reporting obligations).

1.1.6 *Other Federal, State, and Local Environmental Laws*—This practice does not address requirements of any state or local laws or of any federal laws other than the *All Appropriate Inquiries* provisions of the *LLPs*. *Users* are cautioned that federal, state, and local laws may impose environmental assessment obligations that are beyond the scope of this practice. *Users* should also be aware that there are likely to be other legal obligations with regard to *hazardous substances* or *petroleum products* discovered in, on, or at the *subject property* that are not addressed in this practice and that may pose risks of civil and/or criminal sanctions for non-compliance.³

1.1.7 *Documentation*—The scope of this practice includes research and reporting requirements that support the *user's* ability to qualify for the *LLPs*. As such, sufficient documentation of all sources, records, and resources utilized in conducting the inquiry required by this practice must be provided in the written *report* (refer to [8.1.9](#) and [12.2](#)).

1.2 *Objectives*—Objectives guiding the development of this practice are (1) to synthesize and put in writing good commercial and customary practices for *environmental site assessments* for *forestland* or *rural property*; (2) to facilitate high quality, standardized *environmental site assessments*; (3) to provide a practical and reasonable *standard practice* for *all appropriate inquiries*; and (4) to clarify an industry standard for *all appropriate inquiries* in an effort to guide legal interpretation of the *LLPs*.

1.3 *Units*—The values stated in inch-pound units are to be regarded as the standard. The values given in parentheses are mathematical conversions to SI units that are provided for information only and are not considered standard.

³ Many states and other jurisdictions have differing definitions for terms used throughout this practice, such as “*release*” and “*hazardous substance*.” If a *Phase I Environmental Site Assessment* is being conducted to satisfy state requirements and to qualify for the state (or other jurisdiction) equivalent of *LLPs*, *users* and *environmental professionals* are cautioned and encouraged to consider any differing jurisdictional requirements and definitions while performing the *Phase I Environmental Site Assessment*. Substances that are outside the scope of this practice (for example, emerging contaminants that are not *hazardous substance* under CERCLA) may be regulated under state law and may be federally regulated in the future. Although the presence or any *release*/threatened *release* of these substances are “non-scope considerations” under this practice, the *user* may nonetheless decide to include such substances in the defined scope of work for which the *environmental professional* conducting the *Phase I Environmental Site Assessment* is engaged. See [13.1.2](#).

1.4 *Considerations Beyond Scope*—The use of this practice is strictly limited to the scope set forth in this section. Section [13](#) of this practice identifies, for informational purposes, certain environmental conditions (for example, threatened and endangered species and non-point source considerations) that may exist on a *forestland* or *rural property* that are beyond the scope of this practice, but may warrant discussion between the *environmental professional* and the *user* about a *forestland* or *rural property* transaction. The need to include an investigation of any such conditions in the *environmental professional's* scope of services should be evaluated based upon, among other factors, the nature of the *subject property* and the reasons for performing the assessment (for example, a more comprehensive evaluation of *business environmental risk*), and should be agreed upon between the *user* and *environmental professional* as additional services beyond the scope of this practice prior to initiation of the *environmental site assessment* process.

1.5 *This practice offers a set of instructions for performing one or more specific operations and should be supplemented by education, experience, and professional judgment. Not all aspects of this practice may be applicable in all circumstances. This ASTM standard practice does not necessarily represent the standard of care by which the adequacy of a given professional service must be judged, nor should this document be applied without consideration of a project's unique aspects. The word “standard” in the title means only that the document has been approved through the ASTM consensus process.*

1.6 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety, health, and environmental practices and determine the applicability of regulatory limitations prior to use.*

1.7 *This international standard was developed in accordance with internationally recognized principles on standardization established in the Decision on Principles for the Development of International Standards, Guides and Recommendations issued by the World Trade Organization Technical Barriers to Trade (TBT) Committee.*

2. Referenced Documents

2.1 ASTM Standards:⁴

- NOTE 1—Referenced ASTM standards imply their current versions.
- [D7297 Practice for Evaluating Residential Indoor Air Quality Concerns](#)
 - [E1465 Practice for Radon Control Options for the Design and Construction of New Low-Rise Residential Buildings \(Withdrawn 2017\)⁵](#)
 - [E1527 Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process](#)
 - [E1903 Practice for Environmental Site Assessments: Phase II Environmental Site Assessment Process](#)

⁴ For referenced ASTM standards, visit the ASTM website, www.astm.org, or contact ASTM Customer Service at service@astm.org. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

⁵ The last approved version of this historical standard is referenced on www.astm.org.

- E2091 Guide for Use of Activity and Use Limitations, Including Institutional and Engineering Controls
- E2121 Practice for Installing Radon Mitigation Systems in Existing Low-Rise Residential Buildings
- E2308 Guide for Limited Asbestos Screens of Buildings (Withdrawn 2014)⁵
- E2356 Practice for Comprehensive Building Asbestos Surveys
- E2418 Guide for Readily Observable Mold and Conditions Conducive to Mold in Commercial Buildings: Baseline Survey Process (Withdrawn 2015)⁵
- E2600 Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions
- E2790 Guide for Identifying and Complying With Continuing Obligations

2.2 Federal Statutes:⁶

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA” or “Superfund”), as amended by Superfund Amendments and Reauthorization Act of 1986 (“SARA”) and Small Business Liability Relief and Brownfields Revitalization Act of 2002 (“Brownfields Amendments”), and the Brownfields Utilization, Investment, and Local Development Act of 2018 (“BUILD”) 42 U.S.C. § 960 *et seq.*

Emergency Planning and Community Right-To-Know Act of 1986 (“EPCRA”), 42 U.S.C. § 11001 *et seq.*

Freedom of Information Act, 5 U.S.C. § 552 as amended by Public Law No. 104-231, 110 Stat. 3048

Resource Conservation and Recovery Act (also referred to as the Solid Waste Disposal Act), as amended (“RCRA”), 42 U.S.C. § 6901 *et seq.*

2.3 USEPA Documents:⁷

“All Appropriate Inquiry” Final Rule (40 C.F.R. Part 312) Chapter 1 EPA, Subchapter J—Superfund, Emergency Planning, and Community Right-To-Know Programs, 40 C.F.R. Parts 300-399

National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300

2.4 Other Federal Agency Documents:⁶

829 C.F.R. § 1910.1200

3. Terminology

3.1 *Scope*—This section provides definitions, descriptions of terms, and a list of acronyms for many of the words used in this practice. The terms are an integral part of this practice and are critical to an understanding of the practice and its use. In determining the meaning of any term used in this practice, unless the context indicates otherwise, words referencing the singular include and apply to multiple examples of the same thing; words referencing the plural include the singular.

3.2 Definitions:

⁶ Available from U.S. Government Publishing Office (GPO), 732 N. Capitol St., NW, Washington, DC 20401, <http://www.gpo.gov>.

⁷ Available from United States Environmental Protection Agency (EPA), William Jefferson Clinton Bldg., 1200 Pennsylvania Ave., NW, Washington, DC 20460, <http://www.epa.gov>.

3.2.1 *abandoned property, n*—property that can be presumed to be deserted, or an intent to relinquish possession or control can be inferred from the general disrepair or lack of activity thereon such that a reasonable person could believe that there was an intent on the part of the current *owner* to surrender rights to the *property*.

3.2.2 *activity and use limitations, n*—legal or physical restrictions or limitations on the use of, or access to, a site or facility: (1) to reduce or eliminate potential exposure to *hazardous substances* or *petroleum products* in the soil, soil vapor, ground water, or surface water on a *property*, or (2) to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the *environment*. These legal or physical restrictions, which may include *institutional* and/or *engineering controls*, are intended to prevent adverse impacts to individuals or populations that may be exposed to *hazardous substances* and *petroleum products* in the soil, soil vapor, ground water, or surface water on a *property*.

3.2.2.1 *Discussion*—The term *activity and use limitation (AUL)* is taken from Guide E2091 to include both legal (that is, institutional) and physical (that is, engineering) controls within its scope. Other agencies, organizations, and jurisdictions may define or utilize these terms differently (for example, EPA and California do not include physical controls within their definitions of “*institutional controls*.” Department of Defense and International County/City Management Association use “Land Use Controls.” The term “land use restrictions” is used but is not defined in the *Brownfields Amendments*).

3.2.3 *actual knowledge, n*—knowledge actually possessed by an individual who is a real person, rather than an entity. *Actual knowledge* is to be distinguished from constructive knowledge; that is, knowledge imputed to an individual or entity.

3.2.4 *adjoining properties, n*—any real *property* or properties the border of which is contiguous or partially contiguous with that of the *subject property*, or that would be contiguous or partially contiguous with that of the *subject property* but for a street, road, or other thoroughfare separating them.

3.2.5 *aerial photographs, n*—The term “*aerial photographs*” means photographs taken from an aerial platform with sufficient resolution to allow identification of development and activities.

3.2.6 *all appropriate inquiries, n*—that inquiry constituting *all appropriate inquiries* into the previous ownership and uses of the *subject property* consistent with good commercial or customary standards and practices as defined in CERCLA, 42 U.S.C. § 9601(35)(B) and 40 C.F.R. Part 312, that will qualify a party to a *forestland* or *rural property* transaction for one of the threshold criteria for satisfying the *LLPs* to CERCLA liability (42 U.S.C. §§ 9601(A) and (B), § 9607(b)(3), § 9607(q), and § 9607(r)), assuming compliance with other elements of the defense. See **Appendix XI**.

3.2.7 *approximate minimum search distance, n*—the area for which records must be obtained and reviewed pursuant to Section 8 subject to the limitations provided in that section. This may include areas outside the *subject property* and shall

be measured from the nearest *subject property* boundary. This term is used in lieu of radius to include irregularly shaped properties.

3.2.8 *area(s) of environmental interest, n*—an area or areas of the *property* with indications of activity that could have resulted in the presence of a *recognized environmental condition*, especially areas where *hazardous substances* or *petroleum products* may be used, handled, managed or stored or may have been used, handled, managed or stored in the past.

3.2.9 *bona fide prospective purchaser [42 U.S.C. § 9607(r)]*, *n*—a person may qualify as a bona fide prospective purchaser if, among other requirements, such person made “*all appropriate inquiries* into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.” Knowledge of contamination resulting from *all appropriate inquiries* would not generally preclude this liability protection. A person must make *all appropriate inquiries* on or before the date of purchase. The facility must have been purchased after January 11, 2002. See [Appendix XI](#) for the other necessary requirements that are beyond the scope of this Practice.

3.2.10 *Brownfields Amendments, n*—amendments to CERCLA pursuant to the Small Business Liability Relief and Brownfields Revitalization Act, Pub. L. No. 107-118 (2002), 42 U.S.C. § 9601 *et seq.*

3.2.11 *building department records, n*—those records of the local government in which a *subject property* is located indicating permission of the local government to construct, alter, or demolish improvements on a *subject property*.

3.2.12 *business environmental risk (BER), n*—a risk that can have a material environmental or environmentally-driven impact on the business associated with the current or planned use of *commercial real estate*, not necessarily related to those environmental issues required to be investigated in this practice. Consideration of *BER* issues may involve addressing one or more non-scope considerations, some of which are identified in Section 13.

3.2.13 *commercial real estate, n*—any real *property* except a *dwelling* or *property* with no more than four *dwelling* units exclusively for residential use (except that a *dwelling* or *property* with no more than four *dwelling* units exclusively for residential use is included in this term when it has a commercial function, as in the construction of such *dwellings* for profit). This term includes, but is not limited to, undeveloped real *property* and real *property* used for industrial, retail, office, agricultural, other commercial, medical, or educational purposes; *property* used for residential purposes that has more than four residential *dwelling* units; and *property* with no more than four *dwelling* units for residential use when it has a commercial function, as in the construction of such *dwellings* for profit.

3.2.14 *commercial real estate transaction, n*—a transfer of title to or possession of real *property* or receipt of a security interest in real *property*, except that it does not include transfer of title to or possession of real *property* or the receipt of a security interest in real *property* with respect to an individual *dwelling* or building containing fewer than five *dwelling* units,

nor does it include the purchase of a lot or lots to construct a *dwelling* for occupancy by a purchaser, but a *commercial real estate transaction* does include real *property* purchased or leased by persons or entities in the business of construction or developing *dwelling* units.

3.2.15 *construction debris, n*—concrete, brick, asphalt, and other such building materials discarded in the construction of a building or other improvement to *property*.

3.2.16 *contaminated public wells, n*—public wells used for drinking water that have been designated by a government entity as contaminated by *hazardous substances* (for example, chlorinated *solvents*), or *petroleum products*, or as having water unsafe to drink without treatment.

3.2.17 *contiguous property owner [42 U.S.C. § 9607(q)]*, *n*—a person may qualify for the *contiguous property owner liability protection* if, among other requirements, such person owns real *property* that is contiguous to, and that is or may be contaminated by *hazardous substances* from other real *property* that is not owned by that person. Furthermore, such person conducted *all appropriate inquiries* at the time of acquisition of the *subject property* and did not know or have reason to know that the *subject property* was or could be contaminated by a *release* or threatened *release* from the contiguous *property*. The *all appropriate inquiries* must not result in knowledge of contamination. If it does, then such person did “know” or “had reason to know” of contamination and would not be eligible for the *contiguous property owner liability protection*. See [Appendix XI](#) for the other necessary requirements that are beyond the scope of this practice.

3.2.18 *controlled recognized environmental condition, n*—a *recognized environmental condition* affecting the *subject property* that has been addressed to the satisfaction of the applicable regulatory authority or authorities with *hazardous substances* or *petroleum products* allowed to remain in place subject to implementation of required controls (for example, *activity and use limitations* or other *property use limitations*). For examples of *controlled recognized environmental conditions*, see [Appendix X4](#).

3.2.18.1 *Discussion*—Identification of a *controlled recognized environmental condition* is a multi-step process that must be reflected in the *report’s* Findings and Opinions sections, as described in 12.5 and 12.7, including the *environmental professional’s* rationale for concluding that a finding is a *controlled recognized environmental condition*:

(1) When determining whether a *recognized environmental condition* has been “addressed to the satisfaction of the applicable regulatory authority or authorities with *hazardous substances* or *petroleum products* allowed to remain in place,” the *environmental professional* shall review *reasonably ascertainable* documentation, such as no further action letters (or similar certifications or approvals) issued by the applicable regulatory authority or authorities, or, in the case of self-directed actions (where allowed), documentation and relevant data that satisfy risk-based criteria established by the applicable regulatory authority.

(2) In determining whether a *recognized environmental condition* is “subject to implementation of controls (for

example, *property use limitations or activity and use limitations*),” the *environmental professional* shall identify the documentation providing the *property use limitation or activity and use limitation* that addresses the *recognized environmental condition* in the *report’s* Findings and Opinions section(s).

(3) When the *environmental professional* determines that a *recognized environmental condition* is “subject to implementation of controls (for example, *property use limitations or activity and use limitations*),” this determination does not imply that the *environmental professional* has evaluated or confirmed the adequacy, implementation, or continued effectiveness of the *property use limitation or activity and use limitation*.

(4) A past *release* that previously qualified as a *controlled recognized environmental condition* may no longer constitute a *controlled recognized environmental condition* at the time of the *Phase I Environmental Site Assessment* if new conditions or information have been identified such as, among other things, a change in regulatory criteria, a change of use at the *subject property*, or a subsequently identified *migration* pathway that was not previously known or evaluated. As noted, the *report’s* Findings and Opinions section(s) shall include the *environmental professional’s* rationale for concluding that a condition at the *subject property* is or is not currently a *recognized environmental condition* or *controlled recognized environmental condition*.

3.2.19 *data failure, n*—a failure to achieve the historical research objectives in 8.3.1 even after reviewing the *standard historical resources* in 8.3.4.1 through 8.3.4.3 that are *reasonably ascertainable* and likely to be useful. *Data failure* is one type of *data gap*. See 8.3.7.

3.2.20 *data gap, n*—a lack of or inability to obtain information required by this practice despite *good faith* efforts by the *environmental professional* to gather such information. *Data gaps* may result from incompleteness in any of the activities required by this practice, including, but not limited to *site reconnaissance* (for example, an inability to conduct the *site visit*), and *interviews* (for example, an inability to interview the *key site manager*, regulatory officials, etc.). See 12.5.1.

3.2.21 *de minimis condition, n*—a condition related to a *release* that generally does not present a threat to human health or the *environment* and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. A condition determined to be a *de minimis conditions* condition is not a *recognized environmental condition* nor a *controlled recognized environmental condition*.

3.2.22 *demolition debris, n*—concrete, brick, asphalt, and other such building materials discarded in the demolition of a building or other improvement to a *property*.

3.2.23 *drum, n*—a container (typically, but not necessarily, holding 55 gal [208 L] of liquid) that may be used to store *hazardous substances* or *petroleum products*.

3.2.24 *dry wells, n*—underground areas where soil has been removed and typically replaced with pea gravel, coarse sand, or large rocks. *Dry wells* are used for drainage, to control storm

runoff, for the collection of spilled liquids (intentional and non-intentional), and *wastewater* disposal (often illegal).

3.2.25 *due diligence, n*—the process of inquiring into the environmental characteristics of a parcel of *forestland* or *rural property* or other conditions, usually in connection with a real estate transaction. The degree and kind of *due diligence* vary for different properties and differing purposes. See **Appendix X1**.

3.2.26 *dwelling, n*—structure or portion thereof used for residential habitation.

3.2.27 *engineering controls, n*—physical modifications to a site or facility (for example, capping, slurry walls, or point of use water treatment) to reduce or eliminate the potential for exposure to *hazardous substances* or *petroleum products* in the soil or groundwater on a *property*. *Engineering controls* are a type of *activity and use limitation (AUL)*.

3.2.28 *environment, n*—*environment* shall have the same meaning as the definition of “*environment*” in CERCLA 42 U.S.C. § 9601(8). For additional background information, see Legal Appendix (Appendix X1.1.1) “Releases or Threatened Releases.”

3.2.29 *environmental compliance audit, n*—the investigative process to determine if the operations of an existing facility are in compliance with applicable environmental laws and regulations. This term should not be used to describe this practice, although an *environmental compliance audit* may include an *environmental site assessment* or, if prior audits are available, may be part of an *environmental site assessment*.

3.2.30 *environmental lien, n*—a charge, security, or encumbrance upon title to a *property* to secure the payment of a cost, damage, debt, obligation, or duty arising out of response actions, cleanup, or other remediation of *hazardous substances* or *petroleum products* upon a *property*, including, but not limited to, liens imposed pursuant to CERCLA 42 U.S.C. §§9607(1) and 9607(r) and similar state or local laws.

3.2.31 *environmental professional, n*—a person meeting the education, training, and experience requirements as set forth in 40 C.F.R. § 312.10(b). For the convenience of the reader, this section is reprinted in **Appendix X2**. The person may be an independent contractor or an employee of the *user*.

3.2.32 *environmental site assessment (ESA), n*—the process by which a person or entity seeks to determine if a *subject property* is subject to *recognized environmental conditions*. At the option of the *user*, an *environmental site assessment* may include more inquiry than that constituting *all appropriate inquiries* or, if the *user* is not concerned about qualifying for the *LLPs*, less inquiry than that constituting *all appropriate inquiries* (see **Appendix X1**).

3.2.33 *ERNS list, n*—EPA’s emergency response notification system list of reported CERCLA *hazardous substance releases* or spills in quantities greater than the reportable quantity, as maintained at the National Response Center. Notification requirements for such *releases* or spills are codified in 40 C.F.R. Parts 302 and 355.

3.2.34 *fill dirt, n*—dirt, soil, sand, or other earth, that is obtained offsite, that is used to fill holes or depressions, create

mounds, or otherwise artificially change the grade or elevation of real *property*. It does not include material that is used in limited quantities for normal landscaping activities.

3.2.35 *fire insurance maps, n*—maps originally produced for fire insurance purposes that indicate uses of properties at specified dates.

3.2.36 *forestland, n*—*property* that is either unmanaged *land* or managed *land* where forest management principles are applied to the regeneration, utilization, productivity, and conservation of forests to meet specific goals. Both managed and unmanaged *forestland* may have roads and limited areas of development.

3.2.37 *good faith, n*—the absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one’s obligations in the conduct or transaction concerned.

3.2.38 *hazardous substance, n*—a substance defined as a *hazardous substance* pursuant to CERCLA 42 U.S.C. § 9601(14), as interpreted by EPA regulations and the courts: “(A) any substance designated pursuant to section 1321(b)(2)(A) of Title 33, (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any *hazardous waste* having the characteristics identified under or listed pursuant to section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, (42 U.S.C. § 6921) (but not including any waste the regulation of which under RCRA (42 U.S.C. § 6901 *et seq.*) has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of Title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act (42 U.S.C. § 7412), and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator (of EPA) has taken action pursuant to section 2606 of Title 15. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a *hazardous substance* under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)” See [Appendix X1](#) and [X6.10](#).

3.2.39 *hazardous waste, n*—any *hazardous waste* having the characteristics identified under or listed pursuant to section 3001 of RCRA, as amended, (42 U.S.C. § 6921) (but not including any waste the regulation of which under RCRA (42 U.S.C. §§ 6901-6992k) has been suspended by Act of Congress). RCRA is sometimes also identified as the Solid Waste Disposal Act. RCRA defines a *hazardous waste*, at 42 U.S.C. § 6903, as: “A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may: (A) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness, or (B) pose a substantial present or potential hazard to human health or the *environment* when improperly treated, stored, transported, or disposed of, or otherwise managed.”

3.2.40 *hazardous waste contaminated sites, n*—sites on which a *release* has occurred, or is suspected to have occurred, of any *hazardous substance*, *hazardous waste*, or *petroleum products*, and that *release* or suspected *release* has been reported to a government entity.

3.2.41 *historical recognized environmental condition, n*—a previous *release* of *hazardous substances* or *petroleum products* affecting the *subject property* that has been addressed to the satisfaction of the applicable regulatory authority or authorities and meeting unrestricted use criteria established by the applicable regulatory authority or authorities without subjecting the *subject property* to any controls (for example, *activity and use limitations* or *other property use limitations*). A *historical recognized environmental condition* is not a *recognized environmental condition*. For examples of *historical recognized environmental conditions*, see [Appendix X4](#).

3.2.41.1 *Discussion*—Identification of a *historical recognized environmental condition* is a multi-step process that must be reflected in the *report’s* Findings and Opinions section(s), as described in [12.5](#) and [12.6](#), including the *environmental professional’s* rationale for concluding that a finding is a *historical recognized environmental condition*:

(1) When determining whether a *recognized environmental condition* has been “addressed to unrestricted use criteria established by a regulatory authority or authorities,” the *environmental professional* shall review *reasonably ascertainable* documentation and relevant data that demonstrate that unrestricted use criteria established by the applicable regulatory authority or authorities was met.

(2) A past *release* that qualified as a *historical recognized environmental condition* may no longer qualify as a historical recognized environmental condition if new conditions or information have been identified such as, among other things, a change in regulatory criteria or a subsequently identified *migration* pathway that was not previously known or evaluated. As noted, the *report’s* Findings and Opinions section(s) shall include the *environmental professional’s* rationale for concluding that a condition at the *subject property* is or is not currently a *recognized environmental condition* or a *historical recognized environmental condition*.

3.2.42 *IC/EC registries, n*—databases of *institutional controls* or *engineering controls* that may be maintained by a federal, state or local environmental agency for purposes of tracking sites that may contain residual contamination and *AULs*. The names for these may vary from program to program and state to state, and include terms such as, but not limited to the following: Declaration of Environmental Use Restriction database (Arizona), Land Use Restriction Sites (California Department of Toxic Substances Control), Sites with Deed Restrictions (California State Water Resources Control Board), Environmental Covenant List (Washington), Sites With Environmental Covenants and Use Restrictions (Colorado), Institutional Control Registry (Indiana), Environmental Site Tracking and Research Tool (Missouri), and the Pennsylvania Activity and Use Limitation (PA *AUL*) Registry.

3.2.43 *innocent landowner* [42 U.S.C. §§ 9601(35) & 9607(b)(3)], *n*—a person may qualify as one of three types of *innocent landowners*: (1) a person who “did not know and had

no reason to know” that contamination existed on the *subject property* at the time the purchaser acquired the *subject property*; (2) a government entity which acquired the *property* by escheat, or through any other involuntary transfer or acquisition, or through the exercise of eminent domain authority by purchase or condemnation; or (3) a person who “acquired the facility by inheritance or bequest.” To qualify for the *innocent landowner defense*, such person must have made *all appropriate inquiries* on or before the date of purchase. Furthermore, the *all appropriate inquiries* must not have resulted in knowledge of the contamination. If it does, then such person did “know” or “had reason to know” of contamination and would not be eligible for the *innocent landowner defense*. See **Appendix X1** for the other necessary requirements that are beyond the scope of this practice.

3.2.44 *institutional controls (IC)*, *n*—a legal or administrative restriction (for example, “deed restrictions”, restrictive covenants, easements, or zoning) on the use of, or access to, a site or facility to (1) reduce or eliminate potential exposure to *hazardous substances* or *petroleum products* in the soil or ground water on the *property*, or (2) to prevent activities that could interfere with the effectiveness of a response action, in order to ensure maintenance of a condition of no significant risk to public health or the *environment*. An institutional control is a type of *activity and use limitation (AUL)*.

3.2.45 *interviews*, *n*—those portions of this practice that are conducted to gather information from an individual or individuals in person, by telephone, in writing, or via other electronic media to meet the objectives of this practice.

3.2.46 *key site manager*, *n*—the person identified by the *owner* of a *subject property* as having good knowledge of the uses and physical characteristics of the *subject property*. See **10.5.1**.

3.2.47 *land title records*, *n*—records that affect the title of real estate, which may include, among other things, deeds, mortgages, leases, land contracts, court orders, easements, and *AULs* recorded within the recording systems or land registration systems created by state statute in every state and ordinarily administered in the local jurisdiction (usually the county) in which the *subject property* is located, and available by performing a title search. Such records are typically held at the county, Tribal or administrative office, or Bureau of Indian Affairs. These records are publicly accessible, though the process of performing a title search to find *land title records* often requires specialized expertise or knowledge of the local system. See **5.4 (AULs and Environmental Liens in Land Title Records)**. Information about the title to the *subject property* that is filed or stored in any place other than where *land title records* are, by law or custom, recorded for the local jurisdiction in which the *subject property* is located, are not considered *land title records*.

3.2.48 *landfill*, *n*—a place, location, tract of land, area, or premises used for the disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *solid waste disposal site* and is also known as a garbage dump, trash dump, or similar term.

3.2.49 *landowner liability protections (LLPs)*, *n*—a defense to CERCLA available to *bona fide prospective purchasers*, *contiguous property owners*, and *innocent landowners*. See 42 U.S.C. §§ 9601(35)(A), 9601(40), 9607(q), and 9607(r).

3.2.50 *local government agencies*, *n*—those agencies of municipal or county government having jurisdiction over the *subject property*. Municipal and county government agencies include, but are not limited to, cities, parishes, townships, and similar entities.

3.2.51 *major occupants*, *n*—those *occupants*, *sub occupants*, or other persons or entities each of which uses at least 40 % of the leasable area of the *subject property*.

3.2.52 *material safety data sheet (MSDS)*, *n*—see *Safety Data Sheet*.

3.2.53 *material threat*, *n*—an *obvious* threat which is likely to lead to a *release* and that, in the opinion of the *environmental professional*, would likely result in impact to public health or the *environment*. An example might include an aboveground storage tank system that contains a *hazardous substance* and which shows evidence of damage. The damage would represent a *material threat* if it is deemed serious enough that it may cause or contribute to tank integrity failure with a *release* of contents to the *environment*.

3.2.54 *migrate/migration*, *n/v*—for the purposes of this practice, “migrate” and “migration” refers to the movement of *hazardous substances* or *petroleum products* in any form, including, for example, solid and liquid at the surface or subsurface, and vapor in the subsurface.

3.2.54.1 *Discussion*—Vapor migration in the subsurface is described in Guide **E2600**; however, nothing in this practice should be construed to require application of Guide **E2600** to achieve compliance with *all appropriate inquiries*.

3.2.55 *National Priorities List (NPL)*, *n*—list compiled by EPA pursuant to CERCLA 42 U.S.C. § 9605(a)(8)(B) of sites with the highest priority for cleanup pursuant to EPA’s Hazard Ranking System. See 40 C.F.R. Part 300.

3.2.56 *Natural Areas Inventory*, *n*—list compiled by various state agencies that shows records of reported observations of threatened and endangered species.

3.2.57 *obvious*, *adj*—that which is plain or evident; a condition or fact that could not be ignored or overlooked by a reasonable observer.

3.2.58 *occupants*, *n*—those tenants, subtenants, or other persons or entities using a *property* or a portion of a *property* and includes, but is not limited to, scattered residential tenancies, agricultural and *silvicultural* tenancies, small-scale commercial/industrial tenancies, and recreational tenancies such as hunting clubs.

3.2.59 *operator*, *n*—the person responsible for the overall operation of a facility.

3.2.60 *other historical resources*, *n*—any resource other than those designated in **8.3.4.1** through **8.3.4.3** that are credible to a reasonable person and identify past uses of *properties*. See **8.3.5**.

3.2.61 *owner, n*—generally the fee *owner* of record of a *property*.

3.2.62 *petroleum exclusion, n*—exclusion from CERCLA liability provided in 42 U.S.C. § 9601(14), as interpreted by the courts and EPA: “The term (*hazardous substance*) does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a *hazardous substance* under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).”

3.2.63 *petroleum products, n*—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 Subparagraphs (A) through (F) of 42 U.S.C. § 9601(14), 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*.⁸

3.2.64 *Phase I Environmental Site Assessment, n*—the process described in this practice.

3.2.65 *physical setting resources, n*—resources that provide information about the geologic, hydrogeologic, hydrologic, or topographic characteristics of the area that includes the *subject property*. See 8.2.1.

3.2.66 *pits, ponds, or lagoons, n*—manmade or natural depressions in a ground surface that are likely to hold liquids or sludge containing *hazardous substances* or *petroleum products*. The likelihood of such liquids or sludge being present is determined by evidence of factors associated with the pit, pond, or lagoon, including, but not limited to, discolored water, distressed vegetation, or the presence of an *obvious wastewater discharge*.

3.2.67 *practically reviewable, adv*—information that is *practically reviewable* means that the information is provided by the source in a manner and in a form that, upon examination, yields information relevant to the *subject property* without the need for extraordinary analysis of irrelevant data. The form of the information shall be such that the *user* can review the records for a limited geographic area. Records that cannot be feasibly retrieved by reference to the location of the *subject property* or a geographic area in which the *subject property* is located are not generally *practically reviewable*. Most databases of public records are *practically reviewable* if they can be obtained from the source agency by the county, city, zip code, or other geographic area of the facilities listed in the record system. Records that are sorted, filed, organized, or maintained by the source agency only chronologically are not generally *practically reviewable*. Listings in *publicly available*

records, which do not have adequate address information to be located geographically, are not generally considered *practically reviewable*. For large databases with numerous records (such as RCRA *hazardous waste* generators and registered underground storage tanks), the records are not *practically reviewable* unless they can be obtained from the source agency in the smaller geographic area of zip codes. Even when information is provided by zip code for some large databases, it is common for an unmanageable number of sites to be identified within a given zip code. In these cases, it is not necessary to review the impact of all of the sites that are likely to be listed in any given zip code because that information would not be *practically reviewable*. In other words, when so much information is generated that it cannot be feasibly reviewed regarding its impact on the *subject property*, it is not *practically reviewable*.

3.2.68 *property, n*—real *property* including buildings and other fixtures, and improvements located on and affixed to the land.

3.2.69 *property use limitation, n*—limitation or restriction on current or future use of a *property* in connection with a response to a *release*, in accordance with the applicable regulatory authority or authorities that allows *hazardous substances* or *petroleum products* to remain in place at concentrations exceeding unrestricted use criteria.

3.2.70 *property tax files, n*—the files kept for *property tax* purposes by the local jurisdiction which may include records of past ownership, appraisals, maps, sketches, photographs, or other information.

3.2.71 *publicly available, adv*—information that is *publicly available* means that the source of the information allows access to the information by anyone upon request.

3.2.72 *RCRA generators, n*—those persons or entities that generate *hazardous wastes*, as defined and regulated by RCRA.

3.2.73 *RCRA TSD facilities, n*—those facilities on which treatment, storage, and/or disposal of *hazardous wastes* takes place, as defined and regulated by RCRA.

3.2.74 *reasonably ascertainable, adv*—information that is (1) *publicly available*, (2) obtainable from its source within reasonable time and cost constraints, and (3) *practically reviewable*.

3.2.75 *recognized environmental condition, n*—(1) the presence of *hazardous substances* or *petroleum products* in, on, or at the *subject property* due to *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*.

3.2.75.1 *Discussion*—For the purposes of this definition, “likely” is that which is neither certain or proved, but can be expected or believed by a reasonable observer based on the logic and/or experience of the *environmental professional* and/or available evidence, as stated in the *report* to support the opinions given therein.

⁸ *Standard Definitions of Petroleum Statistics*, American Petroleum Institute, Fifth Edition, 1995.

3.2.75.2 *Discussion*—A *de minimis condition* is not a recognized environmental condition. See **Appendix X4**: Additional Examination of the Recognized Environmental Condition Definition and Logic.

3.2.76 *records review, n*—that part that is contained in Section 8 of this practice that addresses which records shall or may be reviewed.

3.2.77 *release, n/v*—a release of any hazardous substance or petroleum product shall have the same meaning as the definition of “release” in CERCLA 42 U.S.C. § 9601(22)). There are a number of statutory exclusions from the definition of release that may impact the environmental professional’s opinions and conclusions, such as, the normal application of fertilizer. For additional background information, see Legal Appendix (Appendix X1.1.1) “Releases or Threatened Releases.”

3.2.78 *report, n*—the written record prepared by the environmental professional and constituting part of a “Phase I Environmental Site Assessment,” as required by this practice.

3.2.79 *rural property, n*—property that has a low human population density and is undeveloped or has limited areas of development.

3.2.80 *safety data sheets, n*—written or printed material that is prepared by chemical manufacturers and importers for distributors and employers use, that provides comprehensive information regarding a hazardous substance pursuant to OSHA’s Hazard Communication Standard (HCS), 29 C.F.R. § 1910.1200.

3.2.81 *silvicultural, adj*—following generally accepted forest management principles for tending, harvesting, and reproducing forests and crops.

3.2.82 *site reconnaissance, n*—that part that is contained in Section 9 of this practice and addresses what should be done in connection with the site visit. The site reconnaissance includes, but is not limited to, the site visit done in connection with such a Phase I Environmental Site Assessment.

3.2.83 *site visit, n*—the visit to the subject property during which observations are made as required by the site reconnaissance section of this practice.

3.2.83.1 *Discussion*—The site visit may include several visits to the subject property to ensure the methodology of the site visit is met (for example, large parcels of land).

3.2.84 *solid waste disposal site, n*—a place, location, tract of land, area, or premises used for the disposal of solid wastes as defined by state solid waste regulations. The term is synonymous with the term *landfill* and is also known as a garbage dump, trash dump, or similar term.

3.2.85 *solvent, n*—a chemical compound that is capable of dissolving another substance and may itself be a hazardous substance, used in a number of manufacturing/industrial processes including, but not limited to, the manufacture of paints and coatings for industrial and household purposes, equipment clean-up, and surface degreasing in metal fabricating industries.

3.2.86 *standard government environmental record resources, n*—those records specified in 8.2.2.

3.2.87 *standard historical resources, n*—those resources of information about the history of uses of properties specified in 8.3.4.

3.2.88 *standard physical setting resources, n*—a recent USGS 7.5 Minute Topographic Map (or equivalent) showing contour lines and the area on which the subject property is located. See 8.2.1.

3.2.89 *standard practice, n*—the activities set forth in this practice.

3.2.90 *standard sources, n*—sources of environmental, physical setting, or historical records specified in Section 8 of this practice.

3.2.91 *Streamside Management Zone (SMZ), n*—an area of varying width adjacent to a watercourse in which special management precautions are necessary to protect natural resources.

3.2.92 *subject property, n*—the property that is the subject of the environmental site assessment described in this practice.

3.2.93 *sump, n*—a pit, cistern, cesspool, or similar receptacle where liquids drain, collect, or are stored.

3.2.94 *topographic map, n*—graphic representation delineating natural and manmade features of an area or region in a way that shows their relative positions and elevations.

3.2.95 *TSD facility, n*—treatment, storage, or disposal facility (see 3.2.73).

3.2.96 *underground injection, n*—the emplacement or discharge of fluids into the subsurface by means of a well, improved sinkhole, sewage drain hole, subsurface fluid distribution system or other system, or groundwater point source.

3.2.97 *underground storage tank, UST, n*—any tank, including underground piping connected to the tank, that is or has been used to contain hazardous substances or petroleum products and the volume of which is 10 % or more beneath the surface of the ground.

3.2.98 *user, n*—the party seeking to use E2247 to complete an environmental site assessment of the subject property.

3.2.98.1 *Discussion*—A user may include, without limitation, a potential purchaser of the subject property, a potential tenant of the subject property, an owner of the subject property, a lender, or a property manager. A user seeking to qualify for an LLP to CERCLA liability, or a user that is an EPA Brownfield Assessment and Characterization grantee, has specific responsibilities for completing a successful application of this practice as outlined in Section 6.

3.2.99 *USGS 7.5 Minute Topographic Map, n*—USGS Topographic Map including the current US Topo 7.5-Minute Series or the historical 7.5-Minute Topographic Series, which are available from the United States Geologic Survey and showing the subject property.

3.2.100 *visually and/or physically observed, v*—during a site visit pursuant to this practice, this term means observations made by visual, auditory, or olfactory means while conducting the site reconnaissance.

3.2.100.1 *Discussion*—Due to the remoteness of forestland and rural properties covered by this practice, the term visually

and/or physically observed also includes aerial photography, aerial imagery, and/or aerial flyovers that may be used in conjunction with walking through areas identified as suspect (such as clearings/disturbed soil, mounds, trenches, structures, and so forth) to “ground-truth” the observations.

3.2.101 *wastewater, n*—water that (1) is or has been used in an industrial or manufacturing process, (2) conveys or has conveyed sewage, or (3) is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. *Wastewater* does not include water originating on or passing through or adjacent to a site, such as storm water flows, that has not been used in industrial or manufacturing processes, has not been combined with sewage, or is not directly related to manufacturing, processing, or raw materials storage areas at an industrial plant.

3.2.102 *zoning/land use records, n*—those records of the local government of areas encompassing the *subject property* indicating the uses permitted by the local government in particular zones within its jurisdiction. The records may consist of maps or written records.

3.3 Acronyms and other abbreviations:

- 3.3.1 *AULs*—Activity and Use Limitations
- 3.3.2 *CERCLA*—Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (as amended, 42 U.S.C. § 9601 *et seq.*)
- 3.3.3 *C.F.R.*—Code of Federal Regulations
- 3.3.4 *CREC*—Controlled Recognized Environmental Condition
- 3.3.5 *CWA*—Clean Water Act; see **Appendix X1**
- 3.3.6 *EC*—Engineering Control
- 3.3.7 *EPA*—United States Environmental Protection Agency
- 3.3.8 *EPCRA*—Emergency Planning and Community Right to Know Act ((also known as SARA Title III), 42 U.S.C. § 11001 *et seq.*)
- 3.3.9 *ERNS*—Emergency Response Notification System
- 3.3.10 *ESA*—Environmental Site Assessment (different than an *environmental compliance audit*, 3.2.29)
- 3.3.11 *FR*—Federal Register
- 3.3.12 *HREC*—Historical Recognized Environmental Condition
- 3.3.13 *IC*—Institutional Control
- 3.3.14 *LLPs*—Landowner Liability Protections under the *Brownfields Amendments*
- 3.3.15 *LUST*—Leaking Underground Storage Tank
- 3.3.16 *NCP*—National Contingency Plan
- 3.3.17 *NFRAP*—Sites where no further remedial action is planned under CERCLA
- 3.3.18 *NPDES*—National Pollutant Discharge Elimination System
- 3.3.19 *NPL*—National Priorities List
- 3.3.20 *PCBs*—Polychlorinated biphenyls

3.3.21 *RCRA*—Resource Conservation and Recovery Act (as amended, 42 U.S.C. § 6901 *et seq.*)

3.3.22 *REC*—Recognized Environmental Condition

3.3.23 *SARA*—Superfund Amendments and Reauthorization Act of 1986 (amendment to CERCLA)

3.3.24 *SDS*—Safety Data Sheet

3.3.25 *SMZ*—Streamside Management Zone

3.3.26 *TSDf*—*hazardous waste* treatment, storage or disposal facility

3.3.27 *USC*—United States Code

3.3.28 *USDA* —United States Department of Agriculture

3.3.29 *USGS*—United States Geological Survey

3.3.30 *UST*—Underground storage tank

4. Significance and Use

4.1 *Uses*—This practice is intended for use on a voluntary basis by parties who wish to assess the environmental condition of *forestland* or *rural property* taking into account commonly known and *reasonably ascertainable* information. While use of this practice is intended to constitute *all appropriate inquiries* for purposes of the *LLPs*, it is not intended that its use be limited to that purpose. This practice is intended primarily as an approach to conducting an inquiry designed to identify *recognized environmental conditions* in connection with a *subject property*. No implication is intended that a person shall use this practice in order to be deemed to have conducted inquiry in a commercially prudent or reasonable manner in any particular transaction. Nevertheless, this practice is intended to reflect good commercial and customary practice. (See 1.5.)

4.2 Clarifications on Use:

4.2.1 *Use Not Limited to CERCLA*—This practice is designed to assist the *user* in developing information about the environmental condition of a *subject property* and as such, has utility for a wide range of persons, including those who may have no actual or potential CERCLA liability and/or may not be seeking the *LLPs*.

4.2.2 *Residential Occupants/Lessees/Purchasers and Others*—No implication is intended that it is currently customary practice for residential *occupants/lessees* of multifamily residential buildings, *occupants/lessees* of single-family homes or other residential real estate, or purchasers of *dwellings* for one’s own residential use, to conduct an *environmental site assessment* in connection with these transactions. Thus, these transactions are not included in the term *forestland* or *rural property* transactions, and it is not intended to imply that such persons are obligated to conduct an *environmental site assessment* in connection with these transactions for purposes of *all appropriate inquiries* or for any other purpose.

4.2.3 *Site-specific*—This practice is site-specific in that it relates to the assessment of environmental conditions for a *subject property* comprising *forestland* or *rural property*. Consequently, this practice does not address many additional issues raised in transactions such as purchases of business entities or interests therein, or of their assets, that may well

involve environmental liabilities pertaining to properties previously owned or operated or other off-site environmental liabilities.

4.3 Related Standard Practice—This practice sets forth one procedure for an *environmental site assessment* known as a “Phase I Environmental Site Assessment for Forestland or Rural Property,” “Phase I Environmental Site Assessment,” a “Phase I ESA,” or simply a “Phase I.” This practice is separate from and is applicable to different types of *property* than Practice E1527 as further described in 4.3.1. These practices are each intended to meet the standard of *all appropriate inquiries* necessary to qualify for the *LLPs*. It is essential to consider that these practices, taken together, provide for two alternative practices of *all appropriate inquiries* for *forestland* or *rural property*.

4.3.1 Election to Commence with This Practice—The *user* may commence inquiry to identify *recognized environmental conditions* in connection with a *subject property* by performing this practice when conditions identified in 1.1 are met. A primary consideration in applying this practice instead of E1527 is the nature and extent of the *subject property* being assessed, as the typical environmental concerns, sources for *interviews* and records, and the methodology used to perform the *site reconnaissance* may differ significantly. The *subject property* need not be contiguous and may contain isolated areas of non-forestland and non-rural *property*. This practice is intended to provide a more practical approach to assess *rural property* and *forestland* properties that are generally uniform in use.

4.3.2 Who May Conduct—Whenever a *Phase I Environmental Site Assessment* is conducted, it must be conducted by an *environmental professional*, as defined in Appendix X2 (and 40 C.F.R. 312.10(b)), to the extent specified in 7.5.1. Further, at the *Phase I Environmental Site Assessment* level, no practical standard can be designed to eliminate the role of judgment and the value and need for experience in the party performing the inquiry. The professional judgment of an *environmental professional* is, consequently, vital to conducting *all appropriate inquiries* at the *Phase I Environmental Site Assessment* level.

4.4 Additional Services—As set forth in 12.10, additional services may be contracted for between the *user* and the *environmental professional*. Such additional services may include BER issues not included within the scope of this practice, examples of which are identified in Section 13 under Non-Scope Considerations.

4.5 Principles—The following principles are an integral part of this practice and are intended to be referred to in resolving any ambiguity or exercising such discretion as is accorded the *user* or *environmental professional* in conducting an *environmental site assessment* or in judging whether a *user* or *environmental professional* has conducted all appropriate inquiry or has otherwise conducted an adequate *environmental site assessment*.

4.5.1 Uncertainty Not Eliminated—No *environmental site assessment* can wholly eliminate uncertainty regarding the potential for *recognized environmental conditions* in connection with a *subject property*. Performance of this practice is

intended to reduce, but not eliminate, uncertainty regarding the potential for *recognized environmental conditions* in connection with a *subject property*, and this practice recognizes reasonable limits of time and cost.

4.5.2 Not Exhaustive—*All appropriate inquiries* does not mean an exhaustive assessment of a *property*. There is a point at which the cost of information obtained or the time required to gather it outweighs the usefulness of the information and, in fact, may be a material detriment to the orderly completion of transactions. One of the purposes of this practice is to identify a balance between the competing goals of limiting the costs and time demands inherent in conducting an *environmental site assessment* and the reduction of uncertainty about unknown conditions resulting from additional information.

4.5.3 Level of Inquiry Is Variable—Not every *property* will warrant the same level of assessment. Consistent with good commercial or customary standards and practices as defined at 42 U.S.C. § 9601(35)(B), the appropriate level of *environmental site assessment* will be guided by the type of *property* subject to assessment, the expertise and risk tolerance of the *user*, future intended uses of the *subject property* disclosed to the *environmental professional*, and the information developed in the course of the inquiry. This practice is no less stringent than Practice E1527; however, the means by which this practice intends to satisfy that level of *all appropriate inquiries* within reasonable time and cost constraints are different than under Practice E1527. *Site reconnaissance* of isolated areas of the *property* that include activities outside the definition of *forestland* or *rural property* should be addressed using methodologies such as those provided in E1527. See also section 1.1.1.

4.5.4 Comparison with Subsequent Inquiry—It should not be concluded or assumed that an inquiry was not *all appropriate inquiries* merely because the inquiry did not identify *recognized environmental conditions* in connection with a *subject property*. *Environmental site assessments* must be evaluated based on the reasonableness of judgments made at the time and under the circumstances in which they were made. Subsequent *environmental site assessments* should not be considered valid standards to judge the appropriateness of any prior assessment based on hindsight, new information, use of developing technology or analytical techniques, or other factors.

4.5.5 Point in Time—The *environmental site assessment* is based upon conditions at the time of completion of the individual *environmental site assessment* elements (see 7.2).

4.6 Continued Viability of Environmental Site Assessment:

4.6.1 Presumed Viability—Subject to 4.8 and the *user's* responsibilities set forth in Section 6, an *environmental site assessment* meeting or exceeding this practice is presumed to be viable when it is completed less than 180 days prior to the date of acquisition of the *subject property* (or, for transactions not involving an acquisition, the date of the intended transaction). The completion dates of the components presented in 4.6.2(i), (iii), (iv), and (v) for *interviews*, review of government records, visual inspections, and declaration by *environmental professional*, shall be identified in the *report*. Completion of searches for recorded environmental cleanup liens (4.6.2(ii)) is

a *user* responsibility; however, if the *user* has engaged the *environmental professional* to conduct these searches, then that date shall also be identified in the *report*.

4.6.2 *Updating of Certain Components*—Subject to 4.8 and the *user's* responsibilities set forth in Section 6, an *environmental site assessment* meeting or exceeding this practice, and for which the information was collected within one year prior to the date of acquisition of the *subject property*, may be used provided that the following components of the inquiries were updated within 180 days of the date of purchase or the date of the intended transaction; the 180-day period shall commence from the completion of any of these components, whichever is first:

- (i) interviews with owners, operators, and occupants;
- (ii) searches for recorded environmental cleanup liens (a *user* responsibility, see Section 6);
- (iii) searches of federal, tribal, state, and local government records;
- (iv) visual inspections of the *subject property* and of adjoining properties; and
- (v) the declaration by the *environmental professional* responsible for the assessment or update.

4.6.3 *Compliance with All Appropriate Inquiries*—To qualify for one of the threshold criteria for satisfying the LLPs to CERCLA liability, the *all appropriate inquiries* components listed in 4.6.2 must be conducted or updated within 180 days of and prior to the date of acquisition of the *subject property*, and all other components of *all appropriate inquiries* must be conducted within one year prior to the date of acquisition of the *subject property*. The date of the *report* generally does not represent the date the individual components of *all appropriate inquiries* were completed and should not be used when evaluating compliance with the 180-day or 1-year *all appropriate inquiries* requirements.

4.6.4 *User's Responsibilities*—If, within the period described above, the *environmental site assessment* will be used by a *user* different than the user for whom the *environmental site assessment* was originally prepared, the subsequent *user* must also satisfy the *user's* responsibilities in Section 6.

4.7 *Prior Assessment Usage*—This practice recognizes that *environmental site assessments* conducted in accordance with this practice will include information that subsequent *users* may want to use to avoid undertaking duplicative assessment procedures. Therefore, this practice describes procedures to be followed to assist *users* in determining the appropriateness of using information in *environmental site assessments* performed more than one year prior to the date of acquisition of the *subject property* (or for transactions not involving an acquisition such as a lease or refinance, the date of the intended transaction). The system of prior assessment usage is based on the following principles that should be adhered to in addition to the specific procedures set forth elsewhere in this practice:

4.7.1 *Use of Prior Information*—Subject to the requirements set forth in 4.6, *users* and *environmental professionals* may use information in prior *environmental site assessments* provided such information was generated as a result of procedures that meet or exceed the requirements of this practice. However, such information shall not be used without current investiga-

tion 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 *environmental site assessment* was conducted. Nothing in this practice is intended to convey a right to use or rely upon resources, information, findings, or opinions provided in prior assessments.

4.7.2 *Contractual Issues Regarding Prior Assessment Usage*—The contractual and legal obligations between prior and subsequent *users* of *environmental site assessments* or between *environmental professionals* who conducted prior *environmental site assessments* and those who would like to use such prior *environmental site assessments* are beyond the scope of this practice.

4.8 *Actual Knowledge Exception*—If the *user* or *environmental professional* conducting an *environmental site assessment* has *actual knowledge* that the information being used from a prior *environmental site assessment* is not accurate or if it is *obvious*, based on other information obtained by means of the *environmental site assessment* or known to the person conducting the *environmental site assessment*, that the information being used is not accurate, such information from a prior *environmental site assessment* may not be used.

4.9 *Rules of Engagement*—The contractual and legal obligations between an *environmental professional* and a *user* (and other parties, if any) are outside the scope of this practice. No specific legal relationship between the *environmental professional* and the *user* is necessary for the *user* to meet the requirements of this practice.

4.10 *Organization of This Practice*—This practice has thirteen sections and six appendices. Section 1 is the Scope. Section 2 is Referenced Documents. Section 3, Terminology, has definitions of terms not unique to this practice, descriptions of terms unique to this practice, and acronyms. Section 4 is Significance and Use of this practice. Section 5 provides discussion regarding *activity and use limitations*. Section 6 describes *User's Responsibilities*. Sections 7 – 12 are the main body of the *Phase I Environmental Site Assessment*, including evaluation and *report* preparation. Section 13 provides additional information regarding non-scope considerations (see 1.4). The appendices are included for information and are not part of the procedures prescribed in this practice. Appendix X1 explains the liability and defense provisions of CERCLA that will assist the *user* in understanding the *user's* responsibilities under CERCLA; it also contains other important information regarding CERCLA, the *Brownfields Amendments*, and this practice. Appendix X2 provides the definition of the *environmental professional* responsible for the *Phase I Environmental Site Assessment*, as required in the “*All Appropriate Inquiries*” Final Rule (40 C.F.R. Part 312). Appendix X3 provides an optional *User Questionnaire* to assist the *user* and the *environmental professional* in gathering information from the *user* that may be material to identifying *recognized environmental conditions*. Appendix X4 offers an additional examination of the *recognized environmental condition* definition. Appendix X5 provides a suggested table of contents and *report* format for a

Phase I Environmental Site Assessment. Appendix X6 summarizes non-scope considerations that persons may want to assess.

5. Significance of Activity and Use Limitations

5.1 *Activity and Use Limitations*—AULs are one indication of a past or present release of hazardous substances or petroleum products. AULs are an explicit recognition by a federal, tribal, state, or local regulatory agency that residual levels of hazardous substances or petroleum products may be present on a subject property, and that unrestricted use of the subject property may not be acceptable. AULs are important to both the user and the environmental professional. Specifically, the environmental professional can review agency records and IC/EC registries for the presence of AULs on the subject property to determine if recognized environmental conditions are present on the subject property (see sections 8.2.2, 8.2.4, and 11.5.1.4). The User must either be in compliance or not impede the effectiveness or integrity of AULs, depending on the type of AUL, to maintain the LLPs (see Appendix X1).

5.2 *Different Terms for AULs*—The term AUL is taken from Guide E2091 to include both legal (that is, institutional) and physical (that is, engineering) controls within its scope. Agencies, organizations, and jurisdictions may define or utilize these terms differently (for example, Department of Defense and International City/County Management Association use “Land Use Controls” and the term “land use restrictions” is used but not defined in the *Brownfields Amendments*).

5.3 *Information Provided by the AUL*—The AUL should provide information on the hazardous substance or petroleum product at the subject property, the potential exposure pathway(s) that the AUL is intended to control, the environmental medium that is being controlled, and the expected performance objective(s) of the AUL. AULs may be used to provide access to monitoring wells, sampling locations, or remediation equipment.

5.4 *AULs and Environmental Liens in Land Title Records or Judicial Records*—Environmental liens and AULs are legally distinct instruments and have very different purposes, but both instruments can provide an indication of a past or present release of a hazardous substance or petroleum product. AULs and environmental liens can ordinarily be found in land title records. In some jurisdictions, however, judicial records rather than land title records include environmental lien records. The process of searching and evaluating land title records or judicial records (as applicable) ordinarily requires specialized expertise provided by title insurance companies or title search professionals. As described in 6.2, reviewing land title records for AULs and environmental liens (or judicial records where applicable) is a user responsibility. See Appendix X1.7 (providing additional discussion of Land Title Records, Judicial Records, and the title search process).

5.5 *AULs in State IC/EC Registries*—In some cases, in lieu of or in addition to being filed in the land title records, AULs may be found in separate IC/EC registries. As 8.2 provides, lists of state and tribal institutional control/engineering control sites shall be reviewed by the environmental professional. This

review can be accomplished by reviewing IC/EC registries. However, while some states maintain reasonable ascertainable IC/EC registries, other states do not. The environmental professional should determine whether AULs are considered reasonable ascertainable records in the state in which the subject property is located. Some AULs may only exist in project documentation, which may not be reasonably ascertainable for the environmental professional. This may be the case in states where project files are archived after a period of years and access to the archives is restricted. AULs imposed upon some properties by local agencies with limited environmental oversight may not be recorded in the land title records, particularly where a local agency has been delegated regulatory authority over environmental programs.

6. User’s Responsibilities

6.1 *Scope*—The purpose of this section is to describe tasks to be performed by the user. The “All Appropriate Inquiries” Final Rule (40 C.F.R. Part 312) requires that these tasks be performed by or on behalf of a party seeking to qualify for an LLP to CERCLA liability (see Note 2). These tasks must also be completed by or on behalf of EPA Brownfield Assessment and Characterization grantees. While such information is not required to be provided to the environmental professional, the environmental professional shall request that the user provide the results of these tasks as such information can assist the environmental professional in identifying recognized environmental conditions. Appendix X3 provides an optional User Questionnaire to assist the user and the environmental professional in gathering information from the user that may be material to identifying recognized environmental conditions. If the user does not communicate the information to the environmental professional in connection with 6.1 through 6.6, the environmental professional should consider the significance of the absence of such information pursuant to 12.7.

NOTE 2—Nothing in this section relieves the environmental professional of satisfying the environmental professional responsibilities set forth in the All Appropriate Inquiries Final Rule (40 C.F.R. Part 312).

6.2 *Review Land Title Records and Judicial Records for Environmental Liens and Activity and Use Limitations*—To meet the requirements of 40 C.F.R. 312.20 and 312.25, a search for the existence of environmental liens and AULs that are filed or recorded against the subject property must be conducted. To meet this requirement, users may rely on either of the following two methods:

6.2.1 *Method 1 Transaction-Related Title Insurance Documentation Such as Preliminary Title Reports and Title Commitments*—The user may rely on title insurance documentation, commonly fashioned as preliminary title reports or title commitments, which are prepared in the course of offering title insurance for the subject property transaction to identify environmental liens or AULs filed or recorded against the subject property. Title insurance documentation involves a reliable review of land title records or judicial records (see X1.7.4 discussing title insurance documentation). However, the user (or a title professional engaged by the user) should closely review the title insurance documentation, particularly

the areas of the documentation listing *subject property* encumbrances or “restrictions on record,” for indications of *AULs* or *environmental liens*.

6.2.2 *Method 2 Title Search Information Reports Such as Condition of Title, Title Abstracts, and AUL/Environmental Lien Reports*—Alternatively, *users* may rely on title search information reports to identify *environmental liens* or *AULs* filed or recorded against the *subject property*. Title search information reports, commonly fashioned as Condition of Title, Title Abstract, *AUL/Environmental Lien*, or similarly titled reports, provide the results of *land title record* and/or judicial records research (as applicable) for information purposes only, rather than for the purposes of offering title insurance. *Users* may rely on title search information reports as long as the title search information reports meet the following scope:

6.2.2.1 *Scope of Title Search Information Reports*—Title search information reports shall identify environmental covenants, environmental easements, land use covenant and agreements, declaration of environmental land use restrictions, environmental land use controls, environmental use controls, *environmental liens*, or any other recorded instrument that restricts, affects, or encumbers the title to the *subject property* due to restrictions or encumbrances associated with the presence of *hazardous substances* or *petroleum products*. Title search information reports shall review *land title records* for documents recorded between 1980 and the present. In the case of jurisdictions that rely on the judicial records for filing of *environmental liens*, the judicial records shall also be reviewed for *environmental liens* filed anytime between 1980 and the present. If judicial records are not reviewed, the title search information report shall include a statement providing that the law or custom in the jurisdiction at issue does not require a search for judicial records in order to identify *environmental liens*.

6.2.3 *Role of the Environmental Professional*—The *user's* responsibility to search for *environmental liens* and *AULs* required by this section is in addition to the *environmental professional's* search of institutional control and engineering control registries described in 8.2. Unless this task is expressly added by a change in the scope of work to be performed by the *environmental professional*, the user requirements set forth in 6.2 do not impose on the *environmental professional* the responsibility to undertake a review of *land title records* or judicial records for environmental liens or *AULs*.

6.2.3.1 *User Responsibility to Report Environmental Liens and AULs to the Environmental Professional*—Any *environmental liens* or *AULs* identified under the requirements of 6.2, or otherwise known to the *user*, should be reported to the *environmental professional* conducting the *environmental site assessment*. As provided in 6.1, the *environmental professional* shall request that the *user* provide the results of *user-performed AUL* and *environmental lien* searches performed under 6.2.

6.2.3.2 *Environmental Professional Report Requirements*—*Environmental professionals* shall describe in their report whether they received the results of the *environmental lien* and *AUL* search required by 6.2. The *environmental professional* does not need to review, assess, or otherwise evaluate the *land*

title records or the *user's* conclusions as to whether *AULs* or *environmental liens* were identified. The *environmental professional* only needs to identify whether they received *land title records* from the *user* and whether the *user* identified *AULs* or *environmental liens*.

6.2.4 *Reasonably Ascertainable Title and Judicial Records for Environmental Liens and Activity and Use Limitations*—For this Section 6 (but not 8.2), *environmental liens* and *AULs* that are recorded or filed in any place other than *land title records* or judicial records (as applicable) are not considered to be *reasonably ascertainable* unless applicable federal, tribal, state, or local statutes, or regulations specify a place other than *land title records* or judicial records (as applicable) for recording or filing of *environmental liens* and *AULs*.

6.3 *Specialized Knowledge or Experience of the User*—*Users* must take into account their specialized knowledge to identify conditions indicative of *releases* or threatened *releases*. If the *user* has any specialized knowledge or experience that is material to *recognized environmental conditions* in connection with the *subject property*, the *user* should communicate any information based on such specialized knowledge or experience to the *environmental professional*. The *user* should do so before the *site reconnaissance* is conducted.

6.4 *Actual Knowledge of the User*—If the *user* has *actual knowledge* of any *environmental lien* or *AULs* encumbering the *subject property* or in connection with the *subject property*, the *user* should communicate such information to the *environmental professional*. The *user* should do so before the *site reconnaissance* is conducted.

6.5 *Reason for Significantly Lower Purchase Price*—In a transaction involving the purchase of *forestland* or *rural property*, the *user* shall consider the relationship of the purchase price of the *subject property* to the fair market value of the *subject property* if the *property* was not affected by *hazardous substances* or *petroleum products*. The *user* should try to identify an explanation for a lower price which does not reasonably reflect fair market value if the *subject property* was not contaminated and make a written record of such explanation. Among the factors to consider will be the information that becomes known to the *user* pursuant to the *Phase I Environmental Site Assessment*. This standard does not require that a real estate appraisal be obtained in order to ascertain fair market value of the *subject property*. The *user* should inform the *environmental professional* if the *user* believes that the purchase price of the *subject property* is lower than the fair market value due to contamination. The *user* is not required to disclose the purchase price to the *environmental professional*.

6.6 *Commonly Known or Reasonably Ascertainable Information*—Commonly known or *reasonably ascertainable* information within the local community about the *subject property* must be taken into account by the *user*. If the *user* is aware of any commonly known or reasonable ascertainable information within the local community about the *subject property* that is material to *recognized environmental conditions* in connection with the *subject property*, the *user* should communicate such information to the *environmental professional*. The *user* should do so before the *site reconnaissance* is