

Gifts of Land:

Just Why Do I Need a Phase I ESA and What the Heck Is It, and Other Things to Know

1

Presenters

- Joe Nolte, Executive Director for Development—International Engagement at Iowa State University Foundation
- Steve Charlton, Environmental Advisor, First National Bank of Omaha



2

Why Talk About Land Gifts?

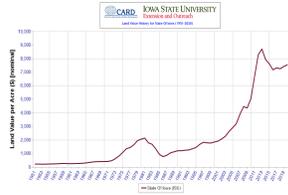
3

We Live in Iowa

Farmland Values Are on the Rise

Iowa and the Midwest farmland market has seen the largest increase since the 2013 peak. In August 2021, the [Federal Reserve Bank of Chicago](#), reported an 18% annual growth in Iowa's "good" farmland values from July 1, 2020 to July 1, 2021, a 6% increase from April to July 1, 2021.

Source:
<https://www.card.iastate.edu/farmland/>



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4

Home Values Are Rising

Home Values in Iowa, while lower than much of the rest of the country, are on the rise. And, the median US household has 68% of its wealth in its home.

	2020	2021	% Change	2020	2021	% Change
Median Sales Price	\$191,000	\$204,750	+ 7.2%	\$177,000	\$195,000	+ 10.2%
Average Sales Price	\$224,083	\$243,879	+ 8.4%	\$207,508	\$230,802	+ 11.2%

Source: https://www.iowarealtors.com/files/images/Docs/Monthly%20Stats%20Report/IowaStats_August2021_HousingReport.pdf

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5

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“Shifting contributions from cash to noncash assets, particularly asset types representing substantial wealth, was strongly associated with contributions growth.”

”

- Dr. Russell James

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6

Land Gift Opportunities

- Outright Gifts**
Could include a related use gift or a gift of land to be sold and proceeds benefit your organization. May include a bargain sale.
- Life Estate Retained**
A gift of a personal residence or agricultural property. The donor retains the right to use the property during their lifetime(s).
- Life Income Gifts**
Donors donate land to a charitable trust (usually a FLIP-CRUT). Land is sold and donor receives income. May also give through a charitable gift annuity.

7

Tax Benefits of Outright Gift



8

Special Considerations

9

Who Owns the Land?

10

Is There Debt on the Land?

11

Who Pays for What?

Donor	Organization	Trust***
--Qualified Appraisal	--Draft Trust Document (if needed)	--Upkeep, taxes, and insurance (if not outright gift)
--Phase I ESA	--Phase II ESA (if needed)	--Cost of sale (if not outright gift)
--Resolution of issues with abstract	--Title opinion	
--Upkeep, taxes, and insurance up to date of gift (and longer with a Life Estate Retained)	--Draft warranty deed	
	--Upkeep, taxes and insurance after date of gift (if not a CRT)	
	--Cost of sale (if not a CRT)	

12

A Word on Qualified Appraisals/Forms
8282 and 8283



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**Determining
the Value of
Donated
Property**

Contents

- Introduction 1
- What Is Fair Market Value (FMV)? 2
- Valuation of Various Kinds of Property 4
- Appraisals 8
- Penalty 11
- How To Get Tax Help 11
- Index 14

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13

Can You Sell It?



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14

Do You Have Gift
Acceptance Policies?

15

Iowa State University Foundation Gift Acceptance Policy

https://www.foundation.iastate.edu/s/1463/jmares/editor_documents/governors/documents_and_policies/gift_acceptance_committee/gift_acceptance_policy_06.11.16.pdf



16

Why Phase I ESAs?

17

Keepers of the Phase I ESA?

- US Environmental Protection Agency (EPA)
Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Superfund)
- American Society of Testing and Materials (ASTM)
ASTM E1527-13 (Environmental Site Assessment: Phase I Environmental Site Assessment Process)
New standard coming in 2021
- Small Business Administration (SBA)
SOP 50.10.6



18



Purpose of a Phase I ESA?

- Assesses current & past uses of a property and surrounding area
 - Provides evidence of *All Appropriate Inquiries (AAI)*
 - Previous ownership and uses of property
- Assesses for
 - contaminants identified in CERCLA (Superfund)
 - petroleum products
- Satisfy requirements for *landowner liability protections (LLPs)*
 - Innocent landowner
 - Contiguous property owner
 - Bona fide prospective purchaser
- Business environmental risks (BERs)
 - Require investigation beyond AAI?

19

Reasons for Completing Phase I ESAs

Legal/Regulatory

- Spurs redevelopment
- LLPs – satisfy AAI
- Establish a baseline
- Identifies permit & compliance requirements
 - Unresolved environmental investigations
 - Expired permits (waste lagoons)




20



Reasons for Completing Phase I ESAs

- Environmental
 - Identifies risks on the subject property
 - Identifies risks on neighboring properties
 - Costs incurred to correct contamination
 - No Further Action ≠ No Contamination (RBCA)
 - Public perception/good land stewardship

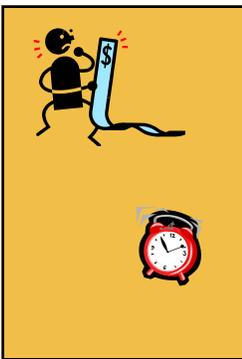
21



Reasons for Completing Phase I ESAs

- Construction
 - Redevelopment challenges
 - Identifying potential contamination
 - Excavating
 - Dewatering
 - Utility restrictions
 - No Further Action ≠ No Contamination
 - Can't dispose of soil or water as clean
 - Change in land use may change risk status (RBCA)

22



Reasons for Completing Phase I ESAs

- Financial
 - Cost of corrective action (if no reimbursement available)
 - Not contaminated enough (excavated soils)
 - No funding mechanism (dry cleaners)
 - Time required
 - Extra time at development
 - Ongoing corrective action & monitoring
 - Allowing access to property (Continuing obligations)

23



Parts of a Phase I ESA & What They Reveal

Four basic parts to identify risks (RECs)

- Records search
 - Regulatory and other records
 - Federal and state records - online & FOIA
 - Historical listing sources
 - City directories
 - Aerial photographs
 - Historic maps
 - Fire insurance maps
 - Site reconnaissance
 - Interior and exterior
 - Observe adjoining properties as possible
 - Look, smell, and/or test for substances, machinery, processes, etc.

24



Parts of a Phase I ESA & What They Reveal

- Four basic parts to identify risks (RECs)
 - Interviews
 - User responsibilities – specialized knowledge and market value
 - Governmental entities – greater explanation of online records
 - Past and present owners, tenants, key site manager
 - Describe historical or day to day operations
 - Identify non-regulated risks
 - Report
 - Compilation of findings, opinions, conclusions and possibly recommendations
 - Identifies RECs, CRECs, HRECs, VECs, BERS, non-scope risks, etc.

25



What is not included?

- Asbestos
- Radon
- Lead-Based Paint
- Lead in Drinking Water
- Wetlands
- Regulatory Compliance
- Cultural & Historic Resources
- Industrial Hygiene
- Health & Safety
- Ecological Resources
- Endangered Species
- Indoor Air Quality
- Biological Agents
- Mold

26

Timing and Viability of Phase I ESAs

- Completed prior to acquisition
- Shelf life of 180 days for LLPs
 - SBA will accept up to 1 year
- Can update within 1 year
 - Only for the same "User"
- Older reports
 - Can still use just for information
 - Will not qualify for LLP
 - Can be used for new reports



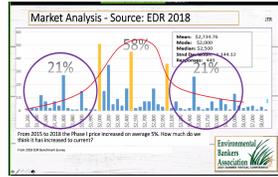
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27

What to expect as the donor?

- Assessment will look at neighbors as well
- Allow for site reconnaissance
- ESA relied to them and charity
- Interview
 - Questionnaire
- Usually takes 2 – 3 weeks
- Non-invasive (no drilling or sampling)

- Engage directly with EP
- Cost



28

Common Risky Land Uses

- Gas Stations
- Dry cleaners
 - Other UST & AST sites
- Other petroleum production facilities
- Auto repair facilities
- Industrial sites
- Junk yards
- Oil & gas exploration
- Coal products manufacturing
- Electrical equipment (transformers – PCBs)
- Pipelines
- Waste management & remediation services
- Golf courses
- Death care services
- Agricultural
 - Fuel storage
 - Private landfills
 - Waste lagoons
- SBA provides a list of Environmentally Sensitive Industries

29

“
recognized environmental conditions—the presence or likely presence of any *hazardous substances or petroleum products* in, on, or at a *property*; (1) due to release to the environment; (2) under conditions indicative of a *release to the environment*; or (3) under conditions that pose a *material threat of a future release to the environment. De minimis conditions* are not *recognized environmental conditions.*”
 ”

- ASTM E1527-13

30

REC's identified, now what?

- Proceed to a Phase II ESA
 - Physically assess Phase I ESA risks
 - Drilling and sampling
 - May result in needing to notify a regulator
- Accept risk and proceed with donation
 - Check with an attorney first
 - Same land use continuing?
- Establish a plan to rectify risk conditions



31

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Thanks!

Any questions?

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32