**Real Property Acquisitions UPPS No. 08.04.01**

**Issue No. 5**

**Effective Date: 01/02/2019**

**Next Review Date: 11/01/2023 (E4Y)**

**Sr. Reviewer: Real Estate Specialist**

**01. POLICY STATEMENT**

01.01 This policy statement describes the process for acquiring real property.

**02. DEFINITIONS**

02.01 Real Property – the asset of land and any improvement, such as buildings, for which specific Texas Higher Education Coordinating Board (THECB) procedures are prescribed as outlined in [Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapters B and F](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=19&pt=1&ch=17). The Texas State University System (TSUS) Board of Regents established rules for real estate acquisitions as specified in [Chapter III, Section 1.(13)1, TSUS Rules and Regulations](https://gato-docs.its.txstate.edu/jcr:cadb6c26-5fbc-4e8d-87df-da945380ffdd/Rules%20Regs%20May%202017.pdf).

02.02 Acquisition of Real Property – also includes the gifts of real property regardless of the value of the property as specified in [Chapter III Section 1. (12)1 of TSUS Rules and Regulations.](https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf)

02.03 Market Analysis – consists of the study of the value of the real property under consideration for acquisition. Market analysis can include real estate appraisals as prescribed in [Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter F, Section 17.50 and Section 17.51](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=1&ch=17&sch=F&rl=Y). Market analysis can also consist of additional consultant studies or appraisals used to assess the market value of the real property under consideration.

02.04 Business Plan – consists of the study of the operational aspects associated with the acquisition of the real property in which there is a need to consider the impact of both upfront costs and annual operating expenses on the financial posture of Texas State. The plan will also consider the impact of the proposed financing method on the operations associated with the acquisition.

02.05 Feasibility Study – consists of evaluation of and subsequent recommendation from data obtained from a condition report for improved properties generated by Facilities resulting in a written request from the Office of the Vice President for Finance and Support Services (VPFSS), market analysis, and any other relevant study to conduct a thorough analysis of the proposed acquisition. Evaluation will consist of appropriate analysis techniques such as cost or benefit, multiple scenario, need or internal rate of return comparisons to determine the overall value and impact of the proposed acquisition.

**03. IDENTIFICATION OF APPLICABLE LAW AND RELATED BOARD POLICY**

03.01 Under [Texas Education Code, Chapter 61, Section 61.0572](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.61.htm), THECB is required to, “assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments.”

03.02 Under [Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, Rule 17.10(3)](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=1&ch=17&rl=10), “improved real property purchases that the institution intends to include in the E&G buildings and facilities inventory if the purchase price is more than $1,000,000,” shall be submitted for THECB review.

03.03 Under [Texas Education Code, Chapter 95, Section 95.31](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.95.htm), “The board may acquire land, including the improvements thereupon, needed for the proper operation of a system university.”

03.04 Under [Texas Education Code, Chapter 95, Section 95.30](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.95.htm), “the board has the power of eminent domain to acquire for the use of the system universities the lands necessary and proper for carrying out their purposes, in the manner prescribed in Title 4, Chapter 21, of the Property Code.”

03.05 [Texas Education Code, Chapter 51, Section 51.9045](https://statutes.capitol.texas.gov/Docs/ED/htm/ED.51.htm) prohibits an institution of higher education from using eminent domain to acquire land to be used for a lodging facility or for parking or a parking structure intended to be used in connection with the lodging facility. “Lodging facility” is defined to exclude a dormitory or other student housing.

03.06 The [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](https://www.federalregister.gov/documents/2015/07/24/2015-18159/uniform-relocation-and-real-property-acquisition-for-federal-and-federally-assisted-programs-fixed), as amended, provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal or federally-assisted programs. This act also establishes uniform and equitable land acquisition policies for federal and federally-assisted programs.

03.07 Under [TSUS Rules and Regulations Chapter III, Section 1. (13)1](https://gato-docs.its.txstate.edu/jcr:34a3f1a1-48af-4b2b-9abb-42921fb9ae23/Rules%20and%20Regulations%20May%202018.pdf), the TSUS Board of Regents:

1. delegates authority to the president to purchase, exchange, or sell real property valued up to $500,000, provided the vice chancellor and general counsel has approved the operative documents as to legal form;
2. delegates authority to approve a purchase, exchange or sale, or easement on, real property valued up to $3,000,000 to the chancellor, provided the vice chancellor and general counsel has approved the operative documents as to legal form; and
3. retains approval of all real property transactions valued at $3,000,000 and above.

**04. PROCEDURES FOR THE OVERALL COORDINATION OF THE ACQUISITION PROCESS**

04.01 All acquisitions of real property, whether by purchase, lease, or other means, will be coordinated through the Office of the VPFSS. The VPFSS will oversee all phases of the acquisition as outlined in this university policy and procedure statement (UPPS). All material documents regarding any aspect of completed acquisitions will be maintained by the Real Estate specialist (RES); including studies, meeting minutes, and memoranda. If the acquisition is not completed, the prospective property files will be maintained for a period of ten years.

04.02 The president will review each potential acquisition. Pursuant to the rules of the Board of Regents, the president will present for approval to the chancellor and Board of Regents those proposed acquisitions within their authority, and make all analyses, appraisals, business plans, and due diligence studies available to the chancellor and Board of Regents.

04.03 During the acquisition process, Texas State elects that appraisal figures will be held in confidence and not released publicly. The requiring of appraisals in no way obligates the institution to release the figures to property owners during the acquisition process. The VPFSS may authorize release of an appraisal to a property owner if the VPFSS determines that release of the appraisal will facilitate negotiations.

**05. PROCEDURES FOR INITIATING THE ACQUISITION PROCESS**

05.01 Any action taken to acquire real property through a purchase or lease type transaction will be referred to the VPFSS to initiate the acquisition process. The Office of the VPFSS will review the [Campus Master Plan](https://masterplan.fss.txstate.edu/) and determine if the real property under consideration is appropriate for acquisition.

05.02 Master Plan Acquisitions

a. If the property is in the [Campus Master Plan](https://masterplan.fss.txstate.edu/), the RES will develop justification of the acquisition, proposed terms for the transaction, and report the findings for purchase to the associate vice president for Finance and Support Services Planning (AVPFSSP) for presentation to the VPFSS.

b. The VPFSS will determine if funding is available and seek approval from the president to proceed with negotiations with the property owner.

c. If the proposed acquisition exceeds the threshold for independent authorization under TSUS rules, the president will contact the chancellor and will advise of the negotiations and planned offer.

05.03 Non-Master Plan Acquisitions

1. If the property is not in the [Campus Master Plan](https://masterplan.fss.txstate.edu/), strong justification supporting the acquisition will be required from the RES and included in the report delivered to the VPFSS as outlined in Section 05.02 a.

b. The VPFSS will, in conference with the president, determine if the property could be of interest to Texas State. If it is determined that the property is of interest, and funds are available, the VPFSS will present the item with relevant justification and a recommendation for consideration to the president.

1. If the proposed acquisition exceeds the threshold for independent authorization under TSUS rules, the president will contact the chancellor and advise of the planned negotiations and potential offer.

05.04 The Office of the VPFSS will review funding to determine if any federal funds will be used to acquire the property. If federal funds are involved, the VPFSS will facilitate compliance with the federal requirements listed in the [Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970](https://www.federalregister.gov/documents/2015/07/24/2015-18159/uniform-relocation-and-real-property-acquisition-for-federal-and-federally-assisted-programs-fixed).

**06. PROCEDURES FOR CONDUCTING A FEASIBILITY STUDY OF THE PROPOSED ACQUISITION**

06.01 Real property purchases vary significantly in scale from small undeveloped parcels to those involving large acreage and improvements. The scope of due diligence to support the acquisition of any specific property will be determined by the VPFSS based on the scale of the acquisition and issues related to each individual purchase:

1. Methodology A shall apply to those properties; including, but not limited to property acquisitions of any type that do not include complex financial arrangements to support the acquisition; and
2. Methodology B shall apply to those properties; including, but not limited to commercial properties that rely on complex financial arrangements, income generation, or have significant management implications.

06.02 Due Diligence Methodology A

1. Information Gathering – After the proposed acquisition is determined to be of value to Texas State, the RES will, during negotiations and subsequently pursuant to the terms of a feasibility and inspection period defined in a purchase contract, initiate due diligence efforts. These will typically include: title commitment, appraisal, phase I environmental site assessment, and survey. If the property includes improvements, the RES will request a site inspection by a team from Facilities or secure the services of a commercial inspector. If the improvements are intended for use by a specific stakeholder, the RES will consult with the stakeholders on matters related to the use and management of the property by the stakeholders.

b. Presenting Findings – The RES will provide the AVPFSSP a summary of the due diligence information, any studies performed, and an updated justification of the acquisition. The AVPFSSP will advise the VPFSS of the summary, who will review the matter with the president.

c. Presentation and Authorization – Upon approval by the president, the property acquisition will follow Board of Regents rules regarding delegated authority to implement the completion of the proposed acquisition. Proposed acquisitions requiring Board of Regents action will be presented as a motion for approval.

06.03 Due Diligence Methodology B

1. Information Gathering – In addition to due diligence Methodology A, described in Section 06.02 a., additional assessments may be performed, comprised of two primary components: a market analysis and a business plan as outlined in Section 06.03 d., as determined by the VPFSS.

b. Presenting Findings – The RES will provide the AVPFSSP a summary of the due diligence information, studies, and an updated justification of the acquisition. The AVPFSSP will advise the VPFSS of the summary who will review the matter with the president. Upon review and approval by the president, the RES will prepare or secure a market analysis and business plan. The RES will present to the AVPFSSP an executive summary consisting of the primary findings and a recommendation as to the ability of Texas State to successfully implement the acquisition. The executive summary will be reviewed with the VPFSS and the president.

c. Conducting the Market Analysis – Texas State will use the appraisal value to determine the market value of the property. The market analysis can also consist of a consultant report, to be used to compare appraisal values. Consideration of the financing terms of the offer will be considered in the context of the business plan and will be referenced back into the market analysis only insofar as it provides a value for the consideration offered by Texas State in the transaction. The market analysis will be used as the basis for negotiations with the property owner unless a contract has been completed where the market analysis will be used as part of the due diligence analysis under a feasibility or inspection period pursuant to the purchase contract.

d. Writing the Business Plan

1) If warranted, as determined by the VPFSS, the business plan phase of the study will be comprised of a thorough review of all upfront and subsequent costs of an ongoing concern associated with the proposed acquisition. Texas State will retain as its primary objective during this phase, a determination of the most realistic financial impact that the ongoing concern will have on Texas State. It will include references to points at which Texas State will consider a fallback or alternative strategy, as well as methods by which the fallback position can be implemented.

2) The components of the business plan will consist of a review of upfront and subsequent costs, as well as revenue potential associated with the proposed acquisition. Cost and revenue will be identified and will then be reviewed using an appropriate analysis technique. At a minimum, a cost or benefit approach using a worst anticipated and best-case scenario will be used. The assumptions behind each scenario must be clearly stated in the analysis, and predictions of future performance must be supported by documentation from third-party experts. If alternatives to the proposed acquisition can be identified, a comparison of alternatives utilizing a suitable multiple option model is to be used.

3) The business plan will specifically address any conditions which would have an impact on tax status or legal liability. The conditions will also be reflected, as appropriate, in the cost or benefit analysis and the multiple scenario presentation.

4) The business plan will address, if appropriate, the issue of a contracted approach versus a self-operative approach. These conditions will also be reflected in the cost or benefit analysis and the multiple scenario presentation.

**07. PROCEDURES FOR COMPLETING THE PROPOSED ACQUISITION**

07.01 Where applicable, the VPFSS will follow procedures outlined in [Texas Administrative Code, Title 19, Part 1, Chapter 17, Subchapter B, Rule 17.10](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=19&pt=1&ch=17&sch=B&rl=Y) and [Subchapter C, Rule 17.21](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=19&pt=1&ch=17&rl=21), to submit real property acquisitions to THECB. The VPFSS will have one year after the submittal of the acquisition to purchase the approved property. If the acquisition is not completed within one year, the VPFSS will advise the president who will request that the Board of Regents provide guidance on the appropriate steps to take regarding the acquisition.

07.02 It is anticipated that preliminary interaction with the appropriate funding agencies, financial advisors, and bond counsels will need to occur during the development of the business plan. After any applicable endorsement by THECB of the proposed acquisition, the VPFSS will work with the appropriate agencies, financial advisors, and bond counsels, as necessary, to finalize the necessary financing.

**08.      PROCEDURES FOR MONITORING ONGOING FINANCIAL CONCERNS AFTER ACQUISITION where the business plan identified a need for monitoring**

08.01 When recommended and for the duration of financial concerns identified in the business plan, the VPFSS will be responsible for assuring oversight of the operations associated with the acquisition.

a. Quarterly financial statements of the operation will be presented by the RES to the AVPFFSP who will provide them to the VPFSS. An annual report will also be prepared highlighting results of the review and recommendations for future activities of the operation. The report will be forwarded by the AVPFFSP to the VPFSS.

b. The VPFSS will present to the president, at least annually, the status of the operations and will discuss any proposed revisions needed. If revisions are needed, the VPFSS will also be prepared to discuss recommendations to correct the status of the operation. The president will approve the recommendation most deemed appropriate.

**09. REVIEWERS OF THIS UPPS**

09.01 Reviewers of this UPPS include the following:

Position Date

Real Estate Specialist November 1 E4Y

Associate Vice President for November 1 E4Y

Finance and Support Services

Planning

Vice President for Finance and November 1 E4Y

Support Services

**10. CERTIFICATION STATEMENT**

This UPPS has been approved by the following individuals in their official capacities and represents Texas State policy and procedure from the date of this document until superseded.

Real Estate Specialist; senior reviewer of this UPPS

Associate Vice President for Finance and Support Services Planning

Vice President for Finance and Support Services

President