

CHANGE REQUEST COVER SHEET

Change Request Number: 11-59A

Date Received: 10/31/2011

Title: Conveyance Guidance

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Policy OR Guidance: Guidance

Section/Text Location Affected: Real Estate Guidance Section 5.4, Evaluation of Excess Real Property for Disposition and 5.5, Real Property Disposal Actions

Summary of Change: This revision to AMS guidance adds language regarding evaluation of environmental and safety issues prior to conveyance, transfer or sale of FAA buildings and structures.

Reason for Change: This change is in response to incidents in which FAA was found liable for mitigating environmental and/or safety conditions following conveyance, transfer or sale of buildings and structures. the new guidance lays out expanded and more specific guidance regarding conveyance of buildings and structures, as well as steps to ensure that applicable environmental due diligence and safety procedures are followed. This change also promotes national standardization in conveyance and transfer practices regarding lead- based paint, asbestos, and fuel storage tanks.

Development, Review, and/or Concurrence: AJW

Target Audience: ATO Facility Managers, contracting personnel, e.g., RECOs, General and Regional Counsel

Potential Links within FAST for the Change: None.

Briefing Planned: Yes

ASAG Responsibilities: Review and Comment

Potential Links within FAST for the Change: None.

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Real Estate Guidance :

Section 5.4.5 : Conveyance by Transfer Agreement [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 5.4.6 : Abandonment of Leasehold Improvements [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 5.4.8 : Evaluation of Environmental and Safety Issues [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 5.5.2.3 : Permanent Buildings [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 5.5.2.4 : Non-permanent Buildings [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Real Estate Guidance :

Section 5.5.2.5 : Structures [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

Section 5.4.5 : Conveyance by Transfer Agreement

Old Content: Real Estate Guidance :

Section 5.4.5 : Conveyance by Transfer Agreement

The evaluation process may lead to a decision that transfer of ownership for direct or indirect consideration is in the best interests of the government. However, that transfer of ownership does not release the Government from any and all future liability concerns regarding the property; e.g., liability for hazardous material can never be transferred. Conveyance by Transfer Agreement is, however, practical in the following situations:

New Content: Real Estate Guidance :

Section 5.4.5 : Conveyance by Transfer Agreement

The evaluation process may lead to a decision that transfer of ownership for direct or indirect consideration is in the best interests of the government. Conveyance by Transfer Agreement may be practical in the situations outlined in the following subparagraphs. However, the real property assets to be conveyed must be screened for any environmental or safety issues that may require mitigation prior to conveyance (see paragraph 5.4.8).

Red Line Content: Real Estate Guidance :

Section 5.4.5 : Conveyance by Transfer Agreement

The evaluation process may lead to a decision that transfer of ownership for direct or indirect consideration is in the best interests of the government. ~~However, Conveyance that transfer of ownership does not release~~by Transfer Agreement may be practical in the ~~Government from any situations~~ and all future liability outlined in the following ~~concerns subparagraphs.~~ regarding ~~However,~~ the real property; e.g., assets ~~liability for hazardous material can never be~~to be conveyed must be screened for ~~transferred.~~ any Conveyance by

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~~Transfer Agreement~~environmental or safety issues is ~~that~~ however, may practical in the following require mitigation prior to situations: conveyance (see paragraph 5.4.8).

Section 5.4.6 : Abandonment of Leasehold Improvements

Old Content: Real Estate Guidance :

Section 5.4.6 : Abandonment of Leasehold Improvements

FAA-owned improvements to buildings or building space held under lease are frequently made to promote the health, welfare and security of government employees or to enhance NAS operations carried out at the site. Such improvements may be abandoned upon final termination of the lease in accordance with non-restoration language contained therein because removal of the improvements is impractical and abandonment poses no risk to the public. The responsible RECO will advise the Regional real property section of the lease termination and any leasehold improvements that have been recorded in automated property systems will be retired.

New Content: Real Estate Guidance :

Section 5.4.6 : Abandonment of Leasehold Improvements

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Section 5.4.6 : Abandonment of Leasehold Improvements

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However, any improvements being considered for abandonment must be screened for any environmental or safety issues that may require mitigation prior to abandonment (see paragraph 5.4.8).

Section 5.4.8 : Evaluation of Environmental Issues

Old Content: Real Estate Guidance :

Section 5.4.8 : Evaluation of Environmental Issues

FAA real property disposal actions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities.

New Content: Real Estate Guidance :

Section 5.4.8 : Evaluation of Environmental and Safety Issues

FAA real property disposal actions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities. Recognized environmental conditions (e.g., potentially contaminated land or groundwater) will be evaluated to determine whether they need to be corrected or mitigated prior to property disposal. Notice of previous hazardous substance activity on the property will be provided in the contract per the requirements of 40 CFR Part 373.

FAA real property disposal actions are also subject to the requirements of the National Environmental Policy Act (NEPA) in accordance with FAA Order 1050.1E. Certain property disposal actions may be eligible for a categorical exclusion under Chapter 3 of FAA Order 1050.1E provided no extraordinary circumstances exist as described in paragraph 304 of the order.

Any buildings and structures being considered for conveyance, transfer or sale to another entity as part of a real property disposal action must be evaluated by Agency environmental and safety professionals (e.g., ATO Service Center Planning & Requirements Staff) for a determination that environmental and public safety considerations do not preclude transfer.

The following specific environmental and safety requirements apply to buildings and structures being considered for conveyance, transfer or sale:

- Asbestos-containing material in buildings will be abated prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property (i.e., friable asbestos). Buildings with non-friable asbestos may otherwise be transferred provided the presence of non-friable asbestos is disclosed to the new owner.
- Lead-based paint in buildings and structures will be abated prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations,

and standards, or if it poses a threat to human health at the time of transfer of the property (i.e., peeling paint). Lead-based paint will also be abated from any buildings meeting the definition of “target housing” constructed before 1960, as required by 24 CFR Part 35. Buildings and structures with lead paint that is intact and in good condition may otherwise be transferred provided the presence of lead-based paint is disclosed to the new owner.

- Underground storage tanks (USTs) will not be conveyed, transferred or sold to another entity due to liability associated with potential releases of fuel over the life of the tank. USTs must be permanently closed in accordance with federal and state environmental regulations prior to real property disposal.

Aboveground storage tanks (AST) may only be conveyed, transferred, or sold to another entity under the following conditions:

- Prior to conveyance, FAA must perform a tank tightness test and generate an alarm history report through the fuel monitoring system. If the AST system integrity cannot be certified, the AST will not be conveyed.
- If the AST has failed tightness testing or has generated integrity related alarms during the FAA operation period, the FAA may elect to repair the tank and reconsider for conveyance. Tank integrity must be validated after repairs and prior to conveyance.
- The tank operator must provide all tank operations and history data (e.g., LM data, tank tightness test results, and monitor history data) for inclusion in the site environmental due diligence audit report.
- FAA will comply with all applicable federal, state, and local requirements for tank closure (e.g., removing FAA from registration, etc.).
- If the FST is physically removed or relocated from the site, all tank system components and accoutrements (piping, monitor system, external alarms, placarding, etc.) shall be likewise removed in accordance with regulatory requirements.

Red Line Content: Real Estate Guidance :

Section 5.4.8 : Evaluation of Environmental and Safety Issues

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Section 5.5.2.3 : Permanent Buildings

Old Content: Real Estate Guidance :

Section 5.5.2.3 : Permanent Buildings

Permanent buildings are defined as buildings that cannot be removed from a site and transported without destroying their serviceability. Decisions on final disposition of such buildings are a cooperative effort involving property managers, Technical Operations personnel and the responsible RECO. The handling of these buildings may vary. For example

- A permanent building on a leased site may be conveyed by lease modification or other conveying document agreement to a lessor when doing so is more advantageous to the government than demolition and when environmental and safety considerations do not preclude transfer.
- A permanent building on a site owned by the FAA may be reported to GSA for disposal along with the land upon which it is constructed. Excess facilities may be disposed of by public bid or full removal from the site prior to excessing the land either through GSA or in accordance with AMS, leases, MOAs, etc.
- A permanent building on a site owned or leased by the FAA must be screened by the appropriate environmental entities for any environmental or safety issues that may require mitigation prior to transfer or sale.

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- A permanent building on a site owned by the FAA may be reported to GSA for disposal along with the land upon which it is constructed. Excess facilities may be disposed of by public bid or full removal from the site prior to excessing the land either through GSA or in accordance with AMS, leases, MOAs, etc.

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Permanent buildings are defined as buildings that cannot be removed from a site and transported without destroying their serviceability.- Decisions on final disposition of such buildings are a cooperative effort involving property managers, Technical Operations personnel and the

responsible Real Estate Contracting Officer (RECO). The handling of these buildings may vary. For example:

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~~A permanent building on a site owned or leased by the FAA must be screened by the appropriate environmental entities for any environmental or safety issues that may require mitigation prior to transfer or sale.~~

Section 5.5.2.4 : Non-permanent Buildings

Old Content: Real Estate Guidance :

Section 5.5.2.4 : Non-permanent Buildings

Non-permanent buildings are defined as buildings that can be removed from a site and transported without destroying their serviceability. When a facility is totally decommissioned such buildings are eligible for the full range of disposal options. They may be conveyed by transfer agreement, demolished or relocated at the discretion of property managers, Technical Operations personnel and the responsible RECO. Relocation and reutilization is, however, the first option to be considered. A decision to relocate and reutilize a non-permanent building must be mission-based and economically sound; e.g., an immediate need exists, the asset remains serviceable, and relocation costs are less than the cost of new construction.

New Content: Real Estate Guidance :

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Section 5.5.2.5 : Structures

Old Content: Real Estate Guidance :

Section 5.5.2.5 : Structures

Structures are real property assets other than land or buildings and include such items as roads, fences, external power and control systems, parking lots, fuel storage systems, communications towers, etc. Again, decisions on disposition of such assets involve property managers, Technical Operations personnel and the responsible RECO. Reutilization is the first option to be considered. Some structures such as roads, parking areas, underground power or water systems and concrete slabs on grade have more permanence than others and are conveyed by transfer agreement to new ownership either in "as is" condition or after they have been rendered innocuous. Other structures lack real permanence and may be candidates for relocation depending on age, condition, need and relocation costs.

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