

CHANGE REQUEST COVER SHEET

Change Request Number: 11-59B

Date Received: 10/31/2011

Title: Conveyance Policy

Name: Colleen Gutrick

Phone: 202-493-5605

Policy OR Guidance: Policy

Section/Text Location Affected: Real Estate Policy, 4.2.3.3.2.8 and Real Estate Policy New Section 4.2.3.15

Summary of Change: This revision to AMS policy states the requirements for environmental due diligence per FAA Order 1050.19B in instances of conveyance.

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.

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: No

ASAG Responsibilities: Review and Comment

Potential Links within FAST for the Change: None.

Links for New/Modified Forms (or) Documents (LINK 1) [null](#)

Links for New/Modified Forms (or) Documents (LINK 2) [null](#)

Links for New/Modified Forms (or) Documents (LINK 3) [null](#)

SECTIONS ADDED:

Acquisition Management Policy:

Section 4.2.3.15 : Conveyance [\[New Content\]](#)

SECTIONS EDITED:

Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

[\[Old Content\]](#) [\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS ADDED:

Acquisition Management Policy:

Section 4.2.3.15 : Conveyance

Conveyance by transfer agreement of FAA real property may be practical in situations where transfer of ownership is in the best interests of the government, such as to facilitate airport improvements or to satisfy contract obligations. Conveyance is a real estate transaction subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions. Buildings and structures being considered for conveyance must be also screened by the appropriate FAA environmental and safety professionals for any environmental or safety issues that may require mitigation prior to transfer.

SECTIONS EDITED:

Section 4.2.3.3.2.8 : Environmental Considerations

Old Content: Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental Considerations

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. The EDDA process must be completed prior to executing contracts for the acquisition or disposal of real property.

Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) in accordance with FAA Order 1050.1E, Change 1 for property acquisitions, as applicable. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The three levels of environmental review include a Categorical Exclusion (CATEX), Environmental Assessment (EA) or Environmental Impacts Statement (EIS). In the absence of Extraordinary Circumstances, most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance. If there are extraordinary circumstances and the action cannot be categorically excluded from further environmental

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review and the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI). If impacts are found to be significant and cannot be mitigated to below significance then an EIS must be initiated. The EIS process ends in a Record of Decision. The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the actual CATEX, EA, FONSI, EIS or Record of Decision.

New Content: Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

The FAA supports, to the extent financially feasible and allowable by its mission, all environmental, energy savings and sustainability laws, regulations, and orders applicable to environmental/energy/sustainable areas. The RECO must follow the directives as outlined below and in the corresponding provisions in the Real Estate Guidance. For further information, please review the real estate guidance for land and space.

A. Environmental Directives.

1. Environmental Due Diligence Audits (EDDA): FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. The EDDA process must be completed prior to executing contracts for the acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA buildings and structures.
2. National Environmental Policy Act (NEPA): Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or to expand existing sites), the FAA must comply with all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts for property acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file.

B. Energy Directives.

1. Energy Star requirement of the Energy Independence and Security Act of 2007 (EISA) for Lease Acquisition: Section 435 prohibits Federal agencies from leasing buildings that

have not earned an Energy Star label after December 19, 2010 unless the space requirement comes within the specific exemptions provided in the EISA statute. For the list of exemptions see the land guidance.

In order to ensure compliance and consistency with EISA Section 435, when a RECO leases space greater than or equal to 10,000 gross square feet, the building must have earned an Energy Star label in the most recent year, or the ownership must commit to earn the Energy Star label within one year following the lease execution. The RECO can determine that the acquisition shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the rental market. If the cost of a conforming building is not financially feasible, the RECO shall maintain documentation to support their determination in the real estate file.

2. Utilities: When acquiring Utility contracts, the RECO shall determine the availability of: 1) "green" power credits, 2) sustainable sources and/or 3) renewable energy. The RECO should acquire any one of the previously mentioned credits if the rate for the sustainable utility is no more than 10% above the standard rate of a power utility in the same locality. If the cost of energy from a conforming source is not feasible, the RECO shall maintain documentation to support that determination in the real estate file. The RECO may exceed 10% of the standard rate if the requesting LOB desires to acquire the sustainable source, agrees to the costs thereof, and provides certification of the funding availability. In that case, the RECO shall maintain the signed decision of the requesting LOB in the contract file. It should be noted that an increase in rent for an energy efficient building may generate energy savings by decreasing utility costs.

C. Sustainability Requirements.

Executive Order (EO) 13423, *Strengthening Federal Environmental, Energy, and Transportation Management*, dated January 24, 2007, and EO 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*, dated October 5, 2009, require federal agencies to comply with the *Guiding Principles for High Performance and Sustainable Buildings* (Guiding Principles). The Guiding Principles establish building standards for: integrated design, energy performance, water conservation, indoor environmental quality, and building materials. The Interagency Sustainability Working Group (ISWG), established by EO 13423, issued the current version of the Guiding Principles on December 1, 2008, including building construction and major renovation standards, as well as operation and maintenance standards. In order to comply with the EOs, the RECO must lease space in a building that meets all the Guiding Principles, and the Lessor must provide some form of relevant certification to that effect (e.g., Certification of a building at LEED Silver or better).

Set forth below is the list of all relevant DOT/FAA policies/orders pertaining to sustainability:

- The DOT and FAA Administrator's Policy Statements on Sustainability
- The DOT and FAA Sustainability Strategic Performance Plans
- The DOT and FAA High Performance Sustainable Buildings Implementation Plans

D. ISO 14001 Environmental Management System (EMS).

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In accordance with EO 13423, and EO 13514, FAA shall implement environmental management systems (EMS) at all appropriate organizational levels, to (i) ensure use of EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, including environmental aspects of energy and transportation functions, (ii) establish agency objectives and targets to implement legal and other requirements, and (iii) monitor, analyze, and report on performance targets. In short, EMS is FAA's centralized location to set targets and measure progress in meeting environmental goals. As such, EMS helps FAA manage its environmental risks through commitments to compliance, prevention of pollution, and continual improvement.

RECOs must follow the Logistics Service Area (LSA) Environmental Management Programs (EMPs). EMPs summarize ARC EMS elements for each identified significant environmental aspect, including: objectives, targets, performance indicators, legal and other requirements, roles and responsibilities, training, reporting and documentation requirements. Current LSA EMPs with significant environmental aspects are shown in Table 1.

Table 1: LSA EMPs and Their Significant Environmental Aspects

ARC EMS - LSA EMP	Significant Environmental Aspects
Environmental Due Diligence Audit	Environmental risks associated with real property transactions
Facility - Energy and Water	<ol style="list-style-type: none"> 1. Energy consumption 2. Water consumption 3. Wastewater generation
Material Conservation & Waste Reduction	<ol style="list-style-type: none"> 1. Material use/consumption 2. Solid and hazardous waste generation

The ARC EMS requires the RECO to follow and use the appropriate environmental clauses for land and space acquisition to implement operating procedures, comply with environmental requirements, and maintain documentation as applicable.

The ARC EMS also requires annual internal EMS audits and management reviews to ensure that the identified significant environmental aspects are managed in accordance with applicable procedures. The cyclical process enables management to make informed decisions regarding adapting to changing circumstances, actual performance compared with the original performance targets, and with respect to the continual improvement of the EMS.

Relevant EMS FAA policies/orders include the following:

- EMS Order 1050.21, Environmental Management System
- FAA Environmental Policy

- Knowledge Services Network (KSN)

Red Line Content: Acquisition Management Policy:

Section 4.2.3.3.2.8 : Environmental / Sustainability / Energy Considerations

The FAA supports, to the extent financially feasible and allowable by its mission, all environmental, energy savings and sustainability laws, regulations, and orders applicable to environmental/energy/sustainable areas. The RECO must follow the directives as outlined below and in the corresponding provisions in the Real Estate Guidance. For further information, please review the real estate guidance for land and space.

A. Environmental Directives.

1. **Environmental Due Diligence Audits (EDDA):** FAA real property transactions are subject to the requirements of ~~FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA)-~~ in the Conduct of ~~FAA Real Property Transactions~~, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. The ~~EDDA~~ process must be completed prior to executing contracts for the acquisition or disposal of real property, including the conveyance, sale or transfer of any FAA buildings and structures.
2. **National Environmental Policy Act (NEPA):** Before acquiring (by lease, purchase, or otherwise) any additional land (new sites or ~~expanding to~~ expand existing sites), the FAA must comply with ~~the~~ all applicable requirements of the National Environmental Policy Act (NEPA) in accordance with ~~FAA Order 1050.1E, Change 1,~~ Policies and Procedures for ~~property~~ Considering acquisitions, Environmental as Impacts applicable for property acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist. The ~~three~~ RECO must ~~levels~~ obtain written notification from the program office that all applicable NEPA requirements have been met prior to proceeding with the land acquisition. The written notification must be placed in the real estate file.

B. Energy Directives.

1. **Energy Star requirement** of ~~environmental review include a Categorical~~ the Energy Independence and Security Exclusion Act of 2007 (EISA) for Lease Acquisition: Section 435 prohibits Federal agencies from leasing buildings that have not earned an Energy Star label after December 19, Environmental Assessment 2010 unless (EA) the or Environmental Impacts Statements space requirement comes within (EIS) the specific exemptions provided in the EISA statute. - In For the absence list of Extraordinary exemptions see the land guidance. In order to ensure compliance and consistency with EISA Section Circumstances 435, when a RECO leases space greater than or equal to 10,000 gross square feet, the building must have earned an Energy Star label in the most real recent property year, acquisition transactions can be categorically excluded by or the ownership must commit to earn the program Energy office from further environmental Star label within one

~~review year following the lease execution.~~ ~~Chapter 3~~ The RECO can determine that the acquisition shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the rental market. ~~FAA Order If 1050~~ If the cost of a conforming building is not financially feasible, the RECO shall maintain documentation to support their determination in the real estate file. ~~4E~~

2. Utilities: When acquiring Utility contracts, the RECO shall determine the availability of: 1) provides "green" information power on credits, 2) sustainable sources and/or 3) renewable energy. ~~CATEXs and~~ The RECO should acquire any one of the previously mentioned credits if the rate for the sustainable utility is no more than 10% above the application standard rate of extraordinary circumstances power utility in the same locality. ~~Specifically~~ If the cost of energy from a conforming source is not feasible, paragraph 310 the RECO provides shall maintain documentation to support that determination in the list real estate file. The RECO may exceed 10% of categorical exclusions for the standard rate FAA if the requesting LOB actions desires involving to acquire the facility siting sustainable source, construction agrees to the costs thereof, and maintenance provides certification of the funding availability. If there are case, extraordinary circumstances the RECO and shall maintain the signed decision of the action requesting LOB in the contract file. It cannot should be categorically noted excluded from further environmental that an increase in review rent for an energy efficient building may generate energy savings by decreasing utility costs.

C. Sustainability Requirements.

Executive Order (EO) 13423, Strengthening Federal Environmental, Energy, and Transportation Management, dated January 24, 2007, and EO 13514, Federal Leadership in Environmental, Energy, and Economic Performance, dated October 5, 2009, require federal agencies to comply with the EA Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The Guiding Principles establish building standards for: integrated design, energy performance, water conservation, indoor environmental quality, and building materials. must be The Interagency Sustainability Working Group (ISWG), initiated established by EO 13423, issued the Environmental current Specialist version of the Guiding Principles on December 1, 2008, including building construction and major renovation standards, as well as operation and maintenance standards. If the impacts are not In order to comply with significant the EOs, the environmental review will end with RECO must lease space in a Finding building that meets all the Guiding Principles, and the Lessor must provide some form of No relevant Significant certification to that Impact effect (FONSI e.g., Certification of a building at LEED Silver or better).

Set forth below is the list of all relevant DOT/FAA policies/orders pertaining to sustainability:

- The DOT and FAA Administrator's Policy Statements on Sustainability
- The DOT and FAA Sustainability Strategic Performance Plans
- The DOT and FAA High Performance Sustainable Buildings Implementation Plans

D. ISO 14001 Environmental Management System (EMS).

In accordance with EO 13423, and EO 13514, FAA shall implement environmental management systems (EMS) at all appropriate organizational levels, to be (i) significant ensure use of EMS as the primary management approach for addressing environmental aspects of internal agency operations and activities, including environmental aspects of energy and cannot transportation be functions, (ii) establish agency mitigated objectives and targets to below significance then implement legal and an EIS other must requirements, be and (iii) initiated monitor, analyze, and report on performance targets. The In EIS short, process ends EMS is in FAA's a Record centralized location of to set targets and measure Decision progress in meeting environmental goals. The As such, EMS helps FAA manage its environmental review process must risks through commitments be to compliance, prevention of pollution, and continual complete improvement.

RECOs before negotiating must follow the acquisition Logistics of any Service Area new (LSA) and additional land Environmental Management Programs interests (EMPs). The RECO must obtain written notification from the program office EMPs summarize ARC EMS elements for each identified significant environmental that aspect, all including: applicable objectives, NEPA targets, requirements performance have indicators, been met prior legal and other to requirements, proceeding with roles and the responsibilities, land training, acquisition reporting and documentation requirements. The written notification must be placed in the real estate Current LSA EMPs with significant environmental aspects are shown in file Table 1.

Table 1: LSA EMPs and Their Significant Environmental Aspects

<u>ARC Once the RECO EMS - LSA receives EMP</u>	<u>Significant the Environmental written Aspects</u>
<u>Environmental notification Due the Diligence Audit</u>	<u>RECO can proceed Environmental risks associated with the real property transaction transactions</u>
<u>Facility for any new Energy and of Water</u>	<ol style="list-style-type: none"> <u>1. Energy additional consumption</u> <u>2. Water land consumption</u> <u>3. Wastewater acquisition generation</u>
<u>Material Conservation & Waste Reduction</u>	<ol style="list-style-type: none"> <u>1. Material use/consumption</u> <u>2. Solid and hazardous waste generation</u>

The office ARC requesting EMS requires the RECO to follow and use the appropriate environmental clauses for land and space acquisition is responsible to implement for operating procedures, keeping comply the with environmental official requirements, and maintain documentation for as applicable.

The ARC EMS also requires annual internal EMS audits and management reviews to ensure that the NEPA identified review significant environmental aspects are managed in accordance with applicable procedures. It is not necessary for the The cyclical process enables management to RECO make informed decisions regarding adapting to obtain changing eopies circumstances, of actual performance compared with the actual original CATEX, performance EA targets, FONSI, and with EIS or respect to Record the continual improvement of Decision the EMS.-

Relevant EMS FAA policies/orders include the following:

- *EMS Order 1050.21, Environmental Management System*
 - *FAA Environmental Policy*
 - *Knowledge Services Network (KSN)*
-