

CHANGE

**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION**

ORDER
1050.19C
CHG 1

Effective Date:
08/02/2023

National Policy

SUBJ: Environmental Due Diligence in the Conduct of FAA Real Property Transactions

- 1. Purpose.** This change modifies the due diligence requirements to eliminate the need for further environmental documentation when the technical and legal reviewer agree that the real estate transaction presents little risk to the Agency.
- 2. Who This Change Affects.** FAA employees and contractors who are involved in FAA real property transactions.
- 3. Disposition of Transmittal Paragraph.** Retain this transmittal sheet until this directive is cancelled by a new directive.

PAGE CHANGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
2-3	5/09/19	2-3	08/02/23

- 4. Administrative Information.** This Order is distributed to all Lines of Business and Staff Offices.

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MARKS**

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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
National Policy

ORDER
1050.19C

Effective Date:
05/09/19

SUBJ: Environmental Due Diligence in the Conduct of FAA Real Property Transactions

1. Consistent with the Federal Aviation Administration's (FAA or Agency) responsibility to be good environmental stewards and maintain environmental compliance, while fostering a safe, secure, and efficient aviation system, is the need for an effective process to identify and evaluate environmental conditions of real property to inform decision-making and minimize potential environmental liabilities associated with real property transactions. This Order provides a comprehensive framework for ensuring that FAA adheres to applicable environmental regulations and best practices associated with property acquisitions and disposals while maintaining the necessary infrastructure to encourage the development of civil aeronautics and safety of air commerce.
2. This Order establishes policy and assigns responsibility for ensuring that environmental due diligence is performed for Agency real property transactions.
3. Each Line of Business and Staff Office must supplement this Order with policies, guidelines, instructions, or procedures specific to its needs in a manner that is consistent with this Order.
4. This Order does not create rights or benefits, substantive or procedural, enforceable at law or in equity, by any person.
5. Recognizing the importance of continuous improvement and that environmental due diligence requirements are evolving and dynamic, FAA personnel are encouraged to offer suggestions to update and improve this Order through the use of FAA Form 1320-19, Directives Feedback Information.


Bailey Edwards
Assistant Administrator
Policy, International Affairs & Environment

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Chapter 1. General Requirements

1. Purpose of This Order. This Order establishes Federal Aviation Administration (FAA or Agency) requirements for performing environmental due diligence in order to inform decision-making and minimize potential environmental liabilities associated with real property transactions.

2. Audience. FAA employees and contractors who are involved in FAA real property transactions.

3. Where Can I Find This Order. You can find an electronic copy of this Order on the Directives Management System (DMS) website: https://employees.faa.gov/tools_resources/orders_notices/.

4. Cancellation. Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, dated October 3, 2007, is canceled.

5. Explanation of Policy Changes.

a. Scope. Clarifies the applicability of environmental due diligence requirements in the conduct of FAA real property transactions.

b. Roles and Responsibilities. Provides updated roles and responsibilities that reflect the current FAA organizational structure and assignment of program responsibilities.

c. Environmental Due Diligence Documentation.

(1) Deletes the memorandum in Appendix B of 1050.19B and the EDDA Waiver Request Form in Appendix C of 1050.19B.

(2) Creates the Environmental Due Diligence Exception Form in Appendix C of this Order.

(3) Creates the Environmental Screening Checklist in Appendix D of this Order.

(4) Requires completion of the Environmental Screening Checklist for many types of real property transactions.

d. Acquisitions and Disposals. Establishes separate requirements for real property acquisitions and real property disposals.

e. Standards and Practices. Delineates revised standards for conducting Phase I Environmental Site Assessments (ESAs) in accordance with ASTM Standard E1527-13 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process) and 40 CFR Part 312. Replaces the FAA-specific terminology of “Environmental Due Diligence Audit (EDDA)” with the industry-standard terminology of “Environmental Site Assessment (ESA).”

6. Scope. This Order applies to FAA acquisition and disposal of real property. Acquisitions are subject to the requirements specified in Chapter 2 of this Order. Disposals are subject to the

requirements specified in Chapter 3 of this Order. There are special provisions for the real property transactions described in the subparagraphs below.

a. Memorandum of Agreement (MOA). The creation and termination of a memorandum of agreement (MOA) for No-Cost Land on Airport, and the addition and removal of facilities from an existing MOA are subject to the requirements of Chapters 2 and 3 of this Order. The relocation of facilities covered by an MOA is not subject to the requirements of this Order; however, any FAA Line of Business or Staff Office may establish environmental due diligence procedures for the relocation of facilities.

b. Condemnation. Environmental due diligence and assessment of potential environmental liability are required for condemnations; however, Phase I and Phase II ESAs may be considered valid beyond the timeframes specified in Section 7 of Chapter 2 of this Order. Refer to FAA's Real Estate Guidance, Section 1.1.19 Condemnation, for more information.

c. Use of FAA Real Property by Non-FAA Entity. This Order does not apply to FAA-issued licenses, permits, leases, sub-leases or other similar type contracts for the use of FAA-owned or controlled property by non-FAA entities.

d. Third Party Agreements. When FAA is entering into or terminating an agreement (e.g., special use permit) with a third party for the use of the third party's real property, the requirements of this Order apply.

7. Introduction to Environmental Liability and Risk Assessment. According to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), an owner or operator of property on which hazardous substances have been released may be held liable for costs associated with its cleanup, even if the release occurred prior to the purchase or start of operations. The owner or operator of the property may also be held liable for personal injury and property damage resulting from the release of hazardous substances.

a. Federal Liability. CERCLA imposes liability for the cleanup where hazardous substances were disposed of or released. CERCLA was enacted in 1980 to provide a federally funded response to problems caused by the release, or threatened release, of hazardous substances into the environment. The federal government may recover expenditures for cleanup actions from "potentially responsible parties" (PRPs), which include the past and present owners or operators of the site. Under CERCLA, liability is joint and several – any responsible party may be held liable for the entire cleanup cost. Moreover, liability is strict, which means any one party can be held responsible for hazardous substances left by other parties at a site or building even without a showing of fault unless a statutory defense can be claimed. CERCLA specifically excludes petroleum from its statutory provisions, including reporting requirements. Other federal statutes, such as the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act, impose liability for environmental contamination resulting from the release of petroleum in certain circumstances. Refer to Appendix E for more information.

b. State Liability. Most states have also enacted statutes dealing with the cleanup of hazardous substances and petroleum. Consequently, FAA may be subject to additional liability for the cleanup

of hazardous substances, as well as for the release of petroleum into the environment. State statutes dealing with the cleanup of hazardous substances and petroleum must be taken into account in all real property transactions.

c. Environmental Due Diligence. Environmental due diligence is the process of identifying and evaluating the environmental conditions of real property to inform decision-making and minimize potential environmental liabilities associated with real property transactions. Conducting environmental due diligence minimizes the risk of acquiring or disposing of contaminated property, which may affect the Agency's environmental compliance, environmental stewardship, and employee health and safety – all of which may result in a financial liability. CERCLA contains important protections from liability to landowners who meet certain statutory criteria. One of the statutory criteria landowners must meet is to perform “all appropriate inquiries” prior to purchasing property. The level of environmental due diligence needed, and the corresponding documentation, varies based on the type of real property transaction, the need to qualify for CERCLA liability protections, and site-specific conditions.

d. Balancing Competing Risks. For lease transactions, if the potential for contractual liability exists as a result of the failure to complete the real property transaction, the potential risks of proceeding prior to the completion of the requirements of this Order need to be weighed against the risks of failing to complete the transaction on schedule. If the Real Estate Contracting Officer (RECO) has not received documentation indicating that the government due diligence actions are complete 30 days prior to the scheduled closing, the RECO must notify the organization requesting the transaction (ORT). The ORT is responsible for consulting with the Office of the Chief Counsel (AGC) and the Office of Finance and Management (AFN) to assess the financial and legal risks of completing the real estate transaction. In these situations, the transaction may proceed prior to completion of the environmental due diligence requirements of the Order if the RECO receives direction to proceed in writing signed by the Head of the ORT, the Chief Counsel, and the Chief Financial Officer or their designee. The appointment of a designee should also be communicated in writing to the RECO. If the decision is made to proceed, the environmental due diligence requirements of this Order must be completed no later than six months of completing the real property transaction.

8. Roles and Responsibilities.

a. Organization Requesting the Transaction (ORT). The ORT is any FAA Line of Business or Staff Office that requests a real property transaction. For each real property transaction, the ORT must:

(1) Ensure that all environmental due diligence actions are performed in accordance with this Order.

(2) Provide resources necessary to ensure compliance with this Order.

(a) Identify and provide a Technical Reviewer (TR) who meets the qualifications specified in Section 9 of this chapter.

(b) Identify and provide a Site Assessor, who meets the qualifications specified in Section 9 of this chapter.

(3) Determine the level of environmental due diligence needed (i.e., Environmental Screening Checklist, Phase I ESA, Phase II ESA). If applicable, populate and sign Part 5 of the Environmental Screening Checklist.

(4) Coordinate review of environmental due diligence documentation with all applicable FAA reviewers and stakeholders, as outlined within this Order.

(5) Maintain a copy of the environmental due diligence documentation.

(6) Provide environmental due diligence documentation electronically to the RECO.

(7) Provide information to the RECO to comply with disclosure and reporting requirements of 40 CFR Part 373 as presented in Chapter 3, Section 6 of this Order.

(8) Complete environmental due diligence actions in advance of the closing date of the real property transaction, unless the decision has been made to proceed in accordance with Section 7.d. of this chapter.

b. Office of Finance and Management (AFN).

(1) Support the RECO in the completion of activities required for real property transactions.

(2) Provide information regarding application of the Hazardous Substance Contamination Clause (HSCC), which limits FAA's liability in the event that hazardous substance contamination is found at a site operated by FAA.

c. Real Estate Contracting Officer (RECO).

(1) Obtain the rights of entry required to meet the requirements of this Order.

(2) Execute contracts for the acquisition or disposal of real property only after the environmental due diligence requirements of this Order have been completed.

(3) Include the liability limitation clause, the HSCC, in real property agreements for on-airport land leases and MOAs, unless precluded or prohibited by state law.

(4) Retain environmental due diligence documentation in the real property file or at a records center in accordance with the FAA records schedule.

(5) Comply with disclosure and reporting requirements of 40 CFR Part 373.

d. Technical Reviewer (TR).

(1) Assess and recommend the level of environmental due diligence needed, as requested by the ORT.

(2) Provide the Site Assessor with technical guidance on the scope of environmental due diligence assessments.

(3) Review environmental due diligence documentation to ensure that it meets the requirements of this Order.

(4) Review and sign Part 3 of the Environmental Due Diligence Exception Form, and Part 3 of the Environmental Screening Checklist.

e. Site Assessor.

(1) Conduct environmental due diligence assessments, complete and sign Environmental Screening Checklists, and create Phase I or Phase II ESA reports.

(2) Provide feedback regarding the scope and result of environmental due diligence assessments, as requested by the TR. Provide recommendations, if warranted, for additional inquiries or mitigation measures.

f. Office of Environment & Energy (AEE).

(1) Maintain this Order and update as needed.

(2) Provide assistance in developing guidelines and procedures for implementation of this Order and interpreting requirements established in this Order.

g. Office of the Chief Counsel (AGC).

(1) Provide legal advice and counsel concerning applicable legal requirements and liability.

(2) Conduct legal sufficiency review for conformity with the substantive and procedural requirements of this Order and the relevant statutes and regulations.

(3) Review and sign Environmental Screening Checklists.

(4) Review proposed changes in the HSCC language.

(5) Review and sign Phase I and Phase II Environmental Site Assessments.

h. FAA Environmental Cleanup (ECU) Program Manager.

(1) Identify, investigate, and remediate environmental contamination at FAA-owned and/or operated properties and where FAA maintains liability due to past site operations or waste disposal activities.

(2) Provide to the ORT documentation (e.g., additional environmental review and/or cleanup activities) of ECU Program site closure, when required as the result of Part 3, Technical Sufficiency Determination, of the Environmental Screening Checklist during real property disposal.

9. Professional Qualifications and Training.

a. Technical Reviewer (TR). TRs must be FAA employees and meet EPA's definition of "environmental professional" as provided in 40 CFR § 312.10 and in Appendix B of this Order.

b. Site Assessor. Site Assessors who complete ESAs and Environmental Screening Checklists for real property acquisitions and disposals must meet EPA's definition of "environmental professional" as provided in 40 CFR § 312.10 and in Appendix B of this Order. Site Assessors who revise and update Environmental Screening Checklists for real property disposals that have exceeded the validity time frame must meet one of the following criteria:

(1) Meet the definition of environmental professional;

(2) Have a baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of one year of relevant experience conducting site assessments for the suspected environmental contamination indicators identified within the Environmental Screening Checklist; or

(3) Have the equivalent of three years of relevant experience conducting site assessments for the suspected environmental contamination indicators identified within the Environmental Screening Checklist.

Chapter 2. Environmental Due Diligence for Real Property Acquisitions

1. Overview. This chapter outlines environmental due diligence requirements for real property acquisitions. The level of environmental due diligence required varies depending on the specifics of each real property acquisition.

2. Exceptions to Environmental Due Diligence. The following real property transactions may be excepted from further assessment (i.e., not subject to more thorough environmental due diligence requirements). These exceptions are documented via the Environmental Due Diligence Exception Form, which is provided in Appendix C of this Order.

a. Real property acquisitions involving leasing of office space. This exception does not apply to the leasing of operating (technical) space where hazardous substances may be used or stored. The applicability of environmental due diligence to the leasing of technical space must be considered on case-by case basis; any FAA Line of Business or Staff Office may establish more stringent environmental due diligence procedures contingent on potential environmental liability.

b. The exercise of options to renew existing leases, enter into succeeding leases, and enter into superseding leases, where there is no change in the description of the property under the lease (e.g., no increase or decrease, or other changes in the area under lease) **and** no indication of changes in adjacent land use or other factors that could be associated with a new potential source of contamination.

c. Termination of no-cost leases for on-airport land where the agreements are superseded by (i.e., replaced by) a No-Cost Land on Airport MOA with no change in the property description.

d. Real property acquisitions involving an easement or right-of-way access where FAA is not performing any operations on the property. For example, zoning rights on adjoining lands to restrict obstructions to FAA equipment are not considered operations.

The Environmental Due Diligence Exception Form must be completed and signed by the RECO and, in the case of the exceptions in paragraphs b., c., and d., also reviewed and signed by the TR.

3. Environmental Screening Checklist for Acquisitions. The Environmental Screening Checklist, which is provided in Appendix D of this Order, must be completed for all real property acquisitions, except purchases of real property which will require a Phase I ESA, or for the scenarios described in Sections 2, 4, and 5 of this chapter. The completed Environmental Screening Checklist assists with the determination of whether there is an indication of environmental contamination. If there is such indication, the ORT must complete a Phase I ESA report before proceeding with the real property acquisition, or the ORT must pursue acquiring an alternative real property parcel.¹

4. Phase I Environmental Site Assessment (ESA). Phase I ESAs are conducted to satisfy the “all appropriate inquiries” requirement of the CERCLA landowner liability protections provided they represent the inquiry of an environmental professional following good commercial and customary

¹ Refer to the Environmental Screening Checklist for an explanation of the roles and responsibilities for completing the checklist.

practice. EPA's currently referenced industry standard for satisfying "the inquiry of the environmental professional" component of CERCLA's "all appropriate inquiries" requirement is ASTM Standard E1527-13 (see 40 CFR §§ 312.11 and 312.20). Unless otherwise indicated, FAA will follow the same current and future standards EPA follows for conducting "all appropriate inquiries." Refer to Appendix E for more information about the CERCLA liability protections and "all appropriate inquiries."

a. Phase I ESA Applicability. A Phase I ESA must be completed for real property acquisitions under the following scenarios.

- (1) When real property is being purchased; or
- (2) When it has been determined that the risk is sufficient to warrant a Phase I ESA. A risk determination should be based on, but not limited to, the following:
 - (a) An evaluation using the Environmental Screening Checklist; or
 - (b) Contamination is suspected on subject property (i.e., the property of interest for the transaction) or in proximity of the subject property (e.g., adjacent parcels) based on publicly-available information or information provided by the current owner.

b. Objective of Phase I ESA. The goal of the Phase I ESA is to identify conditions indicative of releases and threatened releases of hazardous substances, petroleum, and petroleum products on, at, in, or to the subject property. Examples of environmental contamination indicators suspected or confirmed in the Phase I ESA report may include, but are not limited to, the following:

- (1) Hazardous substances are used, stored, or treated on-site, in such a manner that they may have impacted soil or ground water, or caused vapor migration that could cause indoor air contamination.
- (2) The subject property has a history of contamination or indications of a release or suspected release are evident (e.g., stressed vegetation, employee interviews).
- (3) There is evidence or indication of contamination from adjacent properties that may have migrated to the subject property (e.g., stressed vegetation, employee interviews).
- (4) Underground tanks are in place or have been removed without documentation of a "clean closure" issued by the local environmental authorities.
- (5) Evidence of leaking or excessive spillage is present close to aboveground tanks.
- (6) On-site retention ponds are present.
- (7) Pesticides were managed or stored on-site in an inappropriate manner, or unregistered pesticides are observed on-site.

- (8) Polychlorinated biphenyl (PCB)-containing equipment is used on-site or on adjacent property and a leak has occurred, or is suspected (e.g., due to staining around the equipment).

c. Determination of Phase I ESA Scope. The TR will determine the scope of the Phase I ESA and will ensure technical compliance with this Order and ASTM standards. Knowledge of the type of property (e.g., former industrial land, virgin forest, office space) and intended use of the property will allow the TR, with feedback from the Site Assessor, if applicable, to make a professional judgment on the amount of scrutiny or level of inquiry.

d. Conducting a Phase I ESA. The Site Assessor will conduct the Phase I ESA, and document the findings, observations and conclusions in a Phase I ESA report. The Site Assessor will provide the draft Phase I ESA report to the TR for review. The Site Assessor may provide recommendations, if warranted, for additional inquiries or mitigation measures.

e. TR Review of Phase I ESA. The TR will review the content and completeness of the Phase I ESA report against the technical requirements of this Order. If the TR determines the report is technically sufficient and in accordance with this Order, then the TR will complete a technical conformance statement (i.e., Technical Review Letter). A sample technical conformance statement follows: “The (*specify report*) for the Property physically located at (*specify location*) has been reviewed according to the requirements of Order 1050.19C. This letter is provided to document that the (*specify report*) meets all of the technical requirements of Order 1050.19C.”

f. Phase I ESA Submission to ORT. The TR will provide the final Phase I ESA report and the Technical Review Letter to the ORT for review. The TR will provide recommendations regarding whether the real property acquisition should proceed or if mitigation measures are appropriate.

g. ORT Phase I ESA Decision-Making. The ORT will evaluate the findings and conclusions contained in the Phase I ESA report and the recommendations from the TR and will decide how to proceed with a proposed real property transaction.

(1) If the Phase I ESA report findings do not indicate conditions indicative of the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that suggest an existing release, a past release, or a material threat of a release into structures, soil, ground water, or surface water, then the Phase I ESA process is complete and environmental due diligence has been met. The ORT must electronically provide the completed Phase I ESA report and the Technical Review Letter to the RECO.

(2) If the Phase I ESA report findings indicate conditions indicative of the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that suggest an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, ground water, or surface water of the property, then the ORT should evaluate other property options against the importance or strategic value of the subject property. If the ORT chooses to continue pursuing the acquisition of the subject property, a Phase II ESA must be conducted. However, if the TR and AGC are in agreement that the conditions identified in the Phase I are de minimis or otherwise present little risk to the agency, they may recommend that the ORT proceed with the transaction without completing a Phase II ESA.

5. Phase II ESA. During a Phase II ESA, site sampling and laboratory analyses are used to confirm the presence or absence of suspected contamination identified in Phase I. Phase II ESAs must be conducted in accordance with the most recent version of ASTM Standard E1903. ASTM Standard E1903 provides a framework for employing good commercial and customary practices in conducting a Phase II ESA of a parcel of property with respect to the potential presence of a range of contaminants that are within the scope of CERCLA as well as petroleum products.

a. Phase II ESA Applicability. A Phase II ESA must be completed when an Agency requirement exists to acquire a property for which the findings of a Phase I ESA indicate that environmental contamination is suspected or confirmed and further investigation is warranted to inform decision-making.

b. Phase II ESA Scope and Objectives. The ORT, TR, and Site Assessor must collectively define the scope and objectives of the Phase II ESA in light of relevant factors, such as:

- (1) Determination of the substances released or possibly released at the property.
- (2) The nature of the environmental contamination indicators presented by their presence or likely presence.
- (3) The portion of the property to be investigated.
- (4) The information already available.
- (5) The degree of confidence needed or desired in the results.
- (6) The degree of investigatory sampling and chemical testing needed to achieve such confidence.
- (7) Any unusual time and resource constraints.

c. Conducting a Phase II ESA. The Site Assessor will conduct the Phase II ESA, describe sampling activities, and interpret and evaluate data and test results in a Phase II ESA report. Upon completing the Phase II ESA, the Site Assessor will provide the Phase II ESA report to the TR for review.

d. TR Review of Phase II ESA. The TR will review the content and completeness of the Phase II ESA report against the scope and objectives collectively defined by the ORT, TR, and Site Assessor. If the TR determines the Phase II ESA report to be complete and sufficient, then the TR will forward the report to the ORT for review with a summary of the findings and recommendations on how to proceed with the real property acquisition.

e. ORT Phase II ESA Decision-Making. The Phase II ESA report summarizes and expands upon the Phase I ESA investigation and includes the analytical results from sampling. There are two significant outcomes of the Phase II ESA: contamination is not confirmed or contamination is confirmed.

(1) If contamination is not confirmed during a Phase II ESA, the property transaction can proceed. In this scenario, the ORT must provide the completed Phase II ESA report electronically to the RECO.

(2) If the presence of contamination is confirmed, the ORT, TR, and AGC must determine whether the importance of the site outweighs potential liability accompanying acquisition of property rights. If the ORT (in consultation with the TR and AGC) chooses to continue pursuing the acquisition of the subject property, then FAA will inform the property owner and negotiate further investigation and liability limitation options.

6. Environmental Due Diligence Documentation from Other Entities. FAA may accept a Phase I ESA or other review conducted by or for other federal agencies, state and local governments, public entities (e.g., government-chartered airport authorities), and private entities if:

- a. The TR provides a Technical Review Letter accepting the non-FAA due diligence documentation;
- b. The documentation meets the requirements of this Order and of 40 CFR § 312.20;² and
- c. The documentation has been through the FAA review process.

7. Executing Real Property Acquisitions. The ORT must provide environmental due diligence documentation electronically to the RECO. The RECO may execute a contract for the acquisition of real property only after the appropriate and complete environmental due diligence documentation has been provided and the RECO has confirmed that it is still valid. Unless precluded or prohibited by state law, the RECO must include the liability limitation clause, known as the HSCC, in real property agreements for on-airport leases and MOAs.

a. Validity of Environmental Screening Checklist. Upon receiving a completed Environmental Screening Checklist, the RECO may proceed with the real property transaction only if the transaction occurs within 180 days of the date of the site survey and/or the date of the records review (whichever date is earlier). If the transaction does not occur within this time frame, the ORT must ensure that the findings of the Environmental Screening Checklist are still valid, complete, and accurate and in accordance with this Order before the real property transaction is executed. In addition, if the scope of the project or the environmental condition of the property has changed in a way that may affect FAA's environmental liability, the Environmental Screening Checklist must be updated before proceeding with the real property transaction.

b. Validity of Phase I ESA. Upon receiving a completed Phase I ESA, the RECO may proceed with the real property transaction only if the transaction occurs within 180 days of the date of the site survey and/or the date of the records review (whichever date is earlier). If the transaction does not occur within this time frame, the ORT must ensure that the findings of the Phase I ESA are still valid, complete, and accurate and in accordance with this Order and 40 CFR § 312.20 before the real

² Note that 40 CFR § 312.20(d) prescribes the requirements for using written reports that have been prepared by or for other persons.

property transaction is executed. In addition, if the scope of the project or the environmental condition of the property has changed in a way that may affect FAA's environmental liability, the Phase I ESA must be updated and reviewed by the TR before proceeding with the real property transaction.

c. Validity of Phase II ESA. As noted in Section 5 of this chapter, the Phase II ESA report expands upon the Phase I ESA investigation and includes the analytical results from sampling. However, the Phase II ESA report is not required to validate and update all aspects of the Phase I ESA (e.g., site visit, records review). The RECO may proceed with the real property transaction only if the Phase I ESA report meets the requirements of paragraph 7.b. of this section.

8. Records Retention. The ORT must keep a copy of the environmental due diligence documentation and provide a copy of the final documentation electronically to the RECO. The RECO must place copies of environmental due diligence documentation in the real property file.

Chapter 3. Environmental Due Diligence for Real Property Disposals

1. Overview. This chapter outlines environmental due diligence requirements for real property disposals. An environmental review using the Environmental Screening Checklist must be completed prior to all real property disposals including, but not limited to, termination of leases, sale to private parties, and transfers to other federal entities. The results of the Environmental Screening Checklist will determine whether the real property disposal can proceed or whether additional environmental review and/or cleanup of the property by FAA's ECU Program are required prior to disposal. Conducting an environmental review using the Environmental Screening Checklist, as well as subsequent additional environmental review and/or cleanup activities, establishes baseline conditions at the time of disposal, which may be helpful in determining FAA environmental liability in the event that environmental contamination is identified after a property has been conveyed. The review also provides information that FAA may need to disclose to other parties as part of the transaction (e.g., presence of hazardous substances or other issues that could affect the future use of the property).

2. Environmental Screening Checklist for Disposals. The Environmental Screening Checklist, which is provided in Appendix D of this Order, must be completed for all real property disposals. The completed Part 3 of the Environmental Screening Checklist will indicate whether the real property disposal can proceed or whether additional investigation and/or cleanup of the property are required prior to disposal. Refer to Chapter 1, Section 8 of this Order and the Environmental Screening Checklist for an explanation of the roles and responsibilities for completing it. If Part 3 of the Environmental Screening Checklist indicates potential environmental contamination, then the ORT and/or the TR must contact FAA's ECU Program which will conduct additional environmental review (e.g., preliminary assessment, site investigation) and cleanup activities (if applicable). The ORT and/or the TR must notify the RECO that further review is required.

3. FAA Environmental Cleanup (ECU) Program. When the ECU Program receives an Environmental Screening Checklist for a real property disposal that indicates environmental contamination may exist, the ECU Program must conduct additional environmental review (e.g., preliminary assessment, site investigation) and/or cleanup activities. The ECU Program must document its environmental review and/or cleanup activities, and provide the ECU Program site closure decision document electronically to the TR. The ECU Program should consult AGC in cases where contamination exists.

4. Executing Real Property Disposals. The RECO may execute a real property disposal only after the appropriate and complete environmental due diligence documentation has been provided by the ORT or the ECU Program (see below). The documentation may be provided electronically. Appropriate environmental due diligence documentation consists of either:

a. A completed Environmental Screening Checklist indicating no environmental contamination, where the date of the site survey and/or the date of the records review (whichever date is earlier) occurred within 180 days of the transaction. If the transaction does not occur within 180 days of the date of the site survey and/or the date of the records review (whichever date is earlier), the ORT must provide additional documentation to the RECO that the findings of the Environmental Screening Checklist are still valid, complete, and accurate and in accordance with this Order before the real property transaction is executed.

b. Where environmental contamination indicators are identified through the Environmental Screening Checklist, documentation must include the completed checklist, as well as a copy of the ECU Program site closure decision document.

5. Records Retention. The ORT must keep a copy of the environmental due diligence documentation and provide an electronic copy of the final completed Environmental Screening Checklist and the ECU Program site closure decision document, if applicable, to the RECO. The RECO must place copies of the provided documentation in the real property file.

6. Additional Disclosure and Reporting Requirements.

a. Hazardous Substance Activity, 40 CFR Part 373. Whenever FAA enters into any contract for the sale or other transfer of real property which is owned by the United States and at which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the RECO must include in the contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release or disposal took place, to the extent such information available on the basis of a complete search of Agency files.

(1) The notice required for storage of hazardous substances for one year or more is applicable only at sites where the hazardous substance has been stored at quantities greater than or equal to 1,000 kilograms or the amount of the substance's CERCLA reportable quantity (RQ) that is listed in 40 CFR § 302.4, whichever amount is greater, or where the hazardous substance that is also listed in 40 CFR § 261.30 as acutely hazardous waste when stored in quantities greater than or equal to 1 kilogram. The notice required for known releases of hazardous substances applies only when the released quantity meets or exceeds the CERCLA RQ.

(2) The notice must contain the information required by 40 CFR § 373.3.

b. Disclosures Required by U.S. General Services Administration (GSA). When FAA disposes of real property through GSA, certain impacts or conditions must be addressed and/or disclosed. The Environmental Screening Checklist and other environmental due diligence documentation may provide some of the information required by GSA, such as information regarding asbestos-containing materials, lead-based paint, and PCB-containing equipment.

Chapter 4. Administrative Information

1. **Distribution.** This Order is distributed to all Lines of Business and Staff Offices.
2. **Authority to Change This Order.**
 - a. **FAA Administrator.** The Administrator reserves the authority to establish or change policy, delegate authority, or assign responsibility as necessary.
 - b. **Executive Director of the Office of Environment and Energy (AEE-1).** AEE-1 has the authority to add new chapters or appendices or change existing chapters or appendices that are proposed by organizational elements of FAA after appropriate coordination with internal stakeholder organizations.
 - c. **FAA Organizational Elements.** Changes proposed by an organizational element within FAA must be submitted to AEE-1, who will evaluate, or assign a designee to evaluate the changes for incorporation.
3. **Acronyms.** Acronyms are provided in Appendix A.
4. **Definitions.** Definitions are provided in Appendix B.

Appendix A. Acronym List

AEE	Office of Environment and Energy
AFN	Office of Finance and Management
AGC	Office of the Chief Counsel
AIP	Airport Improvement Program
ASTM	ASTM International, originally known as the American Society for Testing and Materials
CERCLA	Comprehensive Environmental Response, Compensation, and Liability Act
CERFA	Community Emergency Response Facilitation Act
CFR	Code of Federal Regulations
DMS	Directives Management System
ECU	Environmental Cleanup
EPA	U.S. Environmental Protection Agency
ESA	Environmental Site Assessment
FAA	Federal Aviation Administration
FAST	FAA Acquisition System Toolset
GSA	U.S. General Services Administration
HSCC	Hazardous Substance Contamination Clause
MOA	Memorandum of Agreement
NARA	National Archives and Records Administration
NAS	National Airspace System
ORT	Organization Requesting the Transaction
PCB	Polychlorinated Biphenyl
PRP	Potentially Responsible Party
RCRA	Resource Conservation and Recovery Act
RECO	Real Estate Contracting Officer
RQ	Reportable Quantity
SARA	Superfund Amendments and Reauthorization Act
TR	Technical Reviewer

Appendix B. Definitions

- 1. Acquisition:** The act of becoming the owner or holder of an interest in certain real property.
- 2. Adjoining Properties:** As defined in 40 CFR § 312.10(b), any real property or properties the border of which is (are) shared in part or in whole with that of the subject property, or that would be shared in part or in whole with that of the subject property but for a street, road, or other public thoroughfare separating the properties.
- 3. Administrative Space:** Administrative space includes assigned work spaces for typical office operations and normal day-to-day business (see FAA Order 4665.4A).
- 4. All Appropriate Inquiries:** Inquiries conducted in accordance with the standards and practices in 40 CFR Part 312 for the purposes of CERCLA § 101(35)(B).
- 5. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended:** A federal statute (Public Law 96-510; 42 United States Code § 9601 *et seq.*) which imposes strict, joint and several liability for environmental contamination on property owners and operators, and provides a limited defense for innocent landowners. The Act also provides EPA with funding and enforcement authority for responding to hazardous substance spills, for cleaning up high-risk, and non-federal hazardous waste sites in the United States.
- 6. Condemnation:** The process by which property of a private owner is taken for public use upon the award and payment of just compensation. FAA may initiate condemnation proceedings to quiet title to a particular parcel of real property when negotiations reach an impasse and FAA has a need for real property or under such other circumstances as authorized by federal law. For the purposes of this Order, the terms “condemnation” and “eminent domain” are synonymous.
- 7. Disposal:** The transfer or relinquishment of ownership and/or other real property rights to another party or parties.
- 8. Easement:** This term generally means the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.
- 9. Environmental Professional:** As defined in 40 CFR § 312.10(b), a person who possesses sufficient specific education, training, and experience necessary to exercise professional judgment to develop opinions and conclusions regarding conditions indicative of releases or threatened releases (see 40 CFR § 312.1(c)) on, at, in, or to a property, sufficient to meet the objectives and performance factors in 40 CFR §§ 312.20(e) and (f).
 - a.** An environmental professional must:

(1) Hold a current Professional Engineer's or Professional Geologist's license or registration from a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) and have the equivalent of three years of full-time relevant experience; or

(2) Be licensed or certified by the federal government, a state, tribe, or U.S. territory (or the Commonwealth of Puerto Rico) to perform environmental inquiries as defined in 40 CFR § 312.21 and have the equivalent of three years of full-time relevant experience; or

(3) Have a Baccalaureate or higher degree from an accredited institution of higher education in a discipline of engineering or science and the equivalent of five years of full-time relevant experience; or

(4) Have the equivalent of ten years of full-time relevant experience.

b. An environmental professional should remain current in his or her field through participation in continuing education or other activities.

c. The definition of environmental professional provided above does not preempt state professional licensing or registration requirements such as those for a professional geologist, engineer, or site remediation professional. Before commencing work, a person should determine the applicability of state professional licensing or registration laws to the activities to be undertaken as part of the inquiry identified in 40 CFR § 312.21(b).

d. A person who does not qualify as an environmental professional under the foregoing definition may assist in the conduct of all appropriate inquiries in accordance with this part if such person is under the supervision or responsible charge of a person meeting the definition of an environmental professional provided above when conducting such activities (40 CFR § 312.10(b)).

10. FAA Environmental Cleanup (ECU) Program: The ECU Program identifies, investigates, and remediates environmental contamination at FAA owned and operated properties and where FAA maintains liability due to past site operations or waste disposal activities.

11. Facility: As defined by CERCLA § 101(9), a facility means any building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise located. It does not include any consumer product in consumer use or any vessel (42 United States Code § 9601(9)).

12. Good Faith: 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 (40 CFR § 312.10(b)).

13. Hazardous Substance:

a. Any material that poses a threat to human health and/or the environment. Typical hazardous substances are toxic, corrosive, ignitable, explosive, or chemically reactive.

b. Any substance designated by EPA to be reported if a designated quantity of the substance is spilled in the waters of the United States or is otherwise released into the environment.

c. The group of substances defined as hazardous under CERCLA § 101(14), and that are listed at 40 CFR § 302.4.

14. Hazardous Substance Contamination Clause (HSCC): The liability limitation clause that requires the lessor to hold the federal government harmless for environmental contamination not caused by FAA. For specific details regarding application of this clause, as well as the most current text to be included in the clause, refer to the FAA Acquisition System Toolset (FAST) / Real Property and Facilities Guidance. An example of HSCC text is: *“The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation and/or maintenance of the (specify type of facility or equipment). The Lessor agrees to remediate or have remediated, at its sole cost, any and all other hazardous substance contamination found on the leased premises. The Lessor also agrees to save and hold the Government harmless for any and all costs, liabilities and/or claims by third parties that arise out of hazardous contamination found on the leased premises which are not directly attributable to the installation, operation and/or maintenance of the (specify type of facility or equipment).”*

15. Hazardous Waste: A discarded material that possesses at least one of four characteristics (i.e., ignitability, corrosivity, reactivity, or toxicity), or appears on special lists indicated by EPA in 40 CFR Part 261, Subpart D. Hazardous wastes can pose a substantial or potential hazard to human health or the environment when improperly managed.

16. Innocent Landowner Defense: In CERCLA, the third-party defense, often called the “innocent landowner” provision, provides a narrow exemption from liability associated with ownership of the land by claiming the landowner made a good faith effort to discover any contamination prior to acquisition. The elements of the defense are found in CERCLA §§ 101(35) and 107(b)(3) [42 United States Code §§ 9601(35) and 9607(b)(3)].

17. Joint and Several Liability: A legal concept, under CERCLA, that relates to the liability of more than one potentially responsible party for site cleanup and related costs. For a site that became contaminated over the years, all current and previous owners, operators, or users could be considered potentially liable for the entire cost of cleaning up the site.

18. Lease Termination: To end the action of renting real property from another party.

19. Liability: The state of being obligated according to law. Environmental liability refers to the state of being obligated to address environmental factors or issues through positive actions. This may include requirements to fund site remediation or compliance with environmental regulations.

20. Memorandum of Agreement (MOA): A formal agreement between two or more entities to delineate the responsibilities or actions of each party and obligating the signatories to faithfully

execute the terms of the agreement. See definition of “No-Cost Land on Airport Memorandum of Agreement.”

21. No-Cost Land on Airport Memorandum of Agreement: This type of MOA must be used for the acquisition of land on an airport only when the airport sponsor is issued an Airport Improvement Program (AIP) Grant (see FAA Acquisition Management System Policy Section 4.2.3.3, Requirements). The AIP Grant requires the airport sponsor to provide land without cost to the federal government for the purpose of any air traffic control or air navigation activity.

22. Office Space: Space that provides an environment suitable for an office operation. This does not include technical space.

23. Operating (Technical) Space: Operating (technical) space is defined as space required to house the installation or operation of air traffic control and/or air navigation equipment, research and development laboratories and other project-related spaces.

24. Organization Requesting the Transaction (ORT): Any FAA Line of Business or Staff Office which requests a real property transaction.

25. Potentially Responsible Party (PRP): Any individual or company—including owners, operators, transporters or generators—potentially responsible for, or contributing to a spill or other contamination. Whenever possible, through administrative and legal actions, EPA requires PRPs to clean up hazardous sites they have contaminated.

26. Real Property: Any interest in land under the control of federal agencies, together with permanently attached buildings, improvements, structures, and fixtures located thereon (including prefabricated movable structures, such as equipment shelters). Excepted are minerals in lands and crops.

27. Real Property Transaction: An act of two or more parties, or the law, by which the title or an interest, benefit, or right to property is conveyed from one person/entity to another. This includes, but is not limited to, acquisition, sale, lease, condemnation, disposal, foreclosure, and the No-Cost Land on Airport Memorandum of Agreement.

28. Records Center: An establishment maintained and operated by the National Archives and Records Administration (NARA) or by another federal agency primarily for the storage, servicing, security, and processing of records which need to be preserved for varying periods of time and need not be retained in office equipment or space. See 36 CFR § 1220.18.

29. Records Schedule: Official policy on the retention and disposition of agency records. The records schedule is documented in any of the following: (1) a Standard Form 115, Request for Records Disposition Authority, that has been approved by NARA to authorize the disposition of federal records; (2) a General Records Schedule issued by NARA; or (3) a published agency manual or directive containing the records descriptions and disposition instructions approved by NARA on one or more Standard Form 115s or issued by NARA in the General Records Schedule.

30. Relevant Experience: As used in the definition of environmental professional, *relevant experience* means: participation in the performance of all appropriate inquiries investigations, environmental site assessments, or other site investigations that may include environmental analyses, investigations, and remediation which involve the understanding of surface and subsurface environmental conditions and the processes used to evaluate these conditions and for which professional judgment was used to develop opinions regarding conditions indicative of releases or threatened releases (see 40 CFR § 312.1(c)) to the subject property (40 CFR § 312.10(b)).

31. Remediation: Actions taken to remove or contain a toxic or hazardous substance release. Activities may include isolating, enclosing, encapsulating, treating or removing site contamination.

32. Reportable Quantity (RQ): Quantity of a hazardous substance that triggers reporting under CERCLA. If a substance exceeds its RQ, the release must be reported to the National Response Center, the State Emergency Response Commission, and community emergency coordinators for areas likely to be affected.

33. Resource Conservation and Recovery Act (RCRA): The federal regulation that provides “cradle-to-grave” control of hazardous waste by imposing management requirements on generators and transporters of hazardous wastes and upon owners and operators of treatment, storage, and disposal facilities.

34. Site Assessor: A qualified FAA employee or contractor who coordinates with the **TR** to determine the scope of the environmental due diligence assessment, conducts the environmental due diligence assessment, and documents the findings.

35. Stakeholder: Any organization, governmental entity, or individual that has an interest (or stake) in or who may be affected by a given approach or issue (such as environmental regulation, pollution prevention, energy conservation).

36. Superfund: The program operated under the legislative authority of CERCLA and SARA that provides for liability, compensation, cleanup and emergency response for hazardous substances released into the environment, and the cleanup of hazardous waste disposal sites.

37. Technical Review Letter: A letter that the TR uses to convey if environmental documentation is technically sufficient. A sample technical conformance statement follows: “The (*specify report*) for the Property physically located at (*specify location*) has been reviewed according to the requirements of Order 1050.19C. This letter is provided to document that the (*specify report*) meets all of the technical requirements of Order 1050.19C.”

38. Technical Reviewer (TR): A qualified FAA employee, meeting the definition of environmental professional, who ensures that the contractors hired to conduct environmental due diligence are qualified, provides the contractors with guidance on FAA requirements, develops and/or approves the scope to be used by the Site Assessor, and coordinates contractor site visits.

39. Technical Space: Technical space refers to non-administrative space that supports the establishment, maintenance and operations of the National Airspace System (NAS). Examples

include environmental workshops, NAS electronic workshops, group personal protective equipment storage areas, etc. (see FAA Order 4665.4A).

Appendix C. Environmental Due Diligence Exception Form
ENVIRONMENTAL DUE DILIGENCE EXCEPTION FORM

This form must be completed for any real property transaction that meets the environmental due diligence exception criteria defined in Section 2 of Chapter 2 of FAA Order 1050.19C. The Real Estate Contracting Officer (RECO) must complete and sign this form if the exception is being made based on the criteria specified in Part 2 or Part 3. The Technical Reviewer (TR) must review, sign, and return this form to the RECO if the exception is being made based on the criteria specified in Part 3. If necessary, additional information may be provided in Part 4 of this form.

Part 1 – Real Property Overview		
Location of Property (Check One)		<input type="checkbox"/> On Airport <input type="checkbox"/> Off Airport
Location Identifier: _____	Facility Type: _____	
Street: _____	City: _____	State: _____
Latitude/Longitude (if available): _____		
Part 2 – Leasing of Office Space		
Environmental due diligence was not conducted because the real property transaction meets the following criterion:		
<input type="checkbox"/> Real property transaction involving leasing of office space. This exception does not apply to the leasing of operating (technical) space where hazardous substances may be used or stored.		
RECO Name: _____	Organization: _____	
RECO Signature: _____	Date: _____	
Part 3 – Other Exceptions		
Environmental due diligence was not conducted because the real property transaction meets one of the following criteria (check one):		
<input type="checkbox"/> Option to renew an existing lease, succeeding lease, or superseding lease with no change in the property description under the lease (e.g., no increase or decrease, or other changes in the area under lease) and no indication of changes in adjacent land use or other factors that could be associated with a new potential source of contamination.		
<input type="checkbox"/> Termination of leases superseded by a No-Cost Land on Airport Memorandum of Agreement (MOA) with no change in the property description.		
<input type="checkbox"/> Easements or right-of-way access agreements where FAA is not performing any operations on the property in these agreements. For example, zoning rights on adjoining lands to restrict obstructions to FAA equipment are not considered operations.		
RECO Name: _____	Organization: _____	
RECO Signature: _____	Date: _____	
TR Name: _____	Organization: _____	
TR Signature: _____	Date: _____	

Part 4 – Comments
<hr data-bbox="219 289 289 294"/>

Appendix D. Environmental Screening Checklist

ENVIRONMENTAL SCREENING CHECKLIST

This checklist must be completed for any real property acquisition that meets the environmental due diligence screening criteria defined in Section 3 of Chapter 2 of FAA Order 1050.19C. It must not be used for purchases of real property, which always require a Phase I Environmental Site Assessment (ESA) prior to purchase. This checklist must also be completed for all real property disposals. This checklist must be completed, reviewed, and signed by the Site Assessor, Technical Reviewer (TR), Office of the Chief Counsel (AGC), and the Office Requesting the Transaction (ORT).

Part 1 – Real Property Transaction Overview

The ORT must complete Part 1 using available real property information, such as leases and real property title documents. The ORT should coordinate with the Real Estate Contracting Officer (RECO) to complete the information in this part. Upon completing Part 1, the ORT must provide this Checklist to the Site Assessor.

Table 1.1 – Real Property Description

Location of Property (Check One)		<input type="checkbox"/> On Airport	<input type="checkbox"/> Off Airport
Location ID: _____	Facility Type: _____	Job Control Number (JCN): _____	
Street: _____	City: _____	State: _____	
Latitude/Longitude: _____	Size/dimensions of the real property: _____		
Township/Range/Section (if known or applicable): _____			
Type of Transaction: Acquisition: <input type="checkbox"/> Lease Acquisition <input type="checkbox"/> Permitted Use <input type="checkbox"/> Other: _____			
Disposal: <input type="checkbox"/> Sale <input type="checkbox"/> Lease Termination/Disposal <input type="checkbox"/> Other: _____			
For leases, include lease number and expiration date: _____			
Age of existing buildings, if applicable: _____			
Is this an initial Environmental Screening for this property? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Is this a follow-up Environmental Screening for this property? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If yes, list dates earlier screenings were completed: _____			

For Real Property Acquisitions:

What is the intended use of the property?

For Real Property Disposals:

(1) Reason for property disposal (e.g., site decommissioned, site being relocated).

(2) If lease termination, what restoration provisions are included in the lease:

A restoration clause is included in the lease? Yes No

A non-restoration clause is included in the lease? Yes No

If yes to either of the above questions, specify the clause number and page: _____

Part 2 – Property Screening by the Site Assessor

The Site Assessor must provide a summary overview of the real property and use Part 2 to document any historical or current environmental contamination indicators that are raised as a result of interviews, records reviews or site observations. Additional relevant documents and photographs may be referenced or submitted with this Checklist. Upon completing and signing Part 2, the Site Assessor must provide this Checklist to the TR.

Part 2.1 – Property Overview

Describe current land use (e.g., runway safety or clearance, public land, commercial, residential, agricultural):

Describe on-site features (e.g., buildings, roads, utilities, topography, streams, ponds, wetlands, terrain, vegetation):

Describe the use of the surrounding property:

- North: _____
- South: _____
- East: _____
- West: _____

Are there any FAA facilities, structures or equipment currently on the subject property? Yes No.
If yes, please explain:

Are there FAA power or FAA communication lines traversing the subject property? Yes No
If yes, please explain:

Were any interviews conducted with past or present owners or occupants of the property? Yes No.
If yes, please explain the scope of the interview, and information about the interviewee and their interest in the property:

Are there any known or suspected environmental contamination indicators on or in proximity of the subject property based on the information collected via the interviews? Yes No. If yes, please explain:

Part 2.2 – Records Review

Have records associated with the subject property been reviewed? Yes No.

If no, explain why not. _____

If yes, list the major records reviewed in Table 21. (Relevant records may include, but are not limited to, site survey reports, asbestos surveys, lead-based paint surveys, tank closure reports, and chemical inventories.)

Table 2.1 – Records Reviewed

Record Date	General Description	Comments
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Table 2.2 – Potentially Environmentally Contaminating Activity

Has a records review associated with the real property identified any of the following?

Activity	Yes	No	Comments
Dumping/disposal			_____
Release of a hazardous substance or petroleum product above a reportable quantity (RQ)			_____
Storage for one year or more of a hazardous substance in quantities of 1000 kilograms or more, or above the RQ			_____
Closed fuel storage tanks			_____
Asbestos/lead/radon abatement			_____

If yes to any activity above, please explain environmental remediation actions, if any.

Part 2.3 – Site Inspection

Provide the date of the site inspection: _____

Table 2.3 – Visual Observations

Does a visual inspection of the site and adjoining properties identify any of the following?

Observation	Yes	No	Comments
Vent pipes, fill pipes, or access ways indicating a fill pipe protruding from the ground			_____
Soil staining			_____
Stressed vegetation not associated with herbicide application			_____
Vapor or fumes			_____
Trash/soil piles/burn areas			_____

Observation	Yes	No	Comments
Sheen on water			_____
Monitoring wells or water supply wells			_____
Exterior paint degradation			_____
Fill dirt from unknown sources			_____
Evidence of any flooring, drains, walls stained by substances other than water			_____
Any asphalted areas with no apparent use			_____
Abandoned, sediment-filled storm water retention ponds			_____

If photographs were taken during this site inspection, provide them as an attachment to this checklist.

Table 2.4 – Potential Environmental Contamination from Equipment and Materials

Has the investigation revealed that any of the following equipment and building materials have ever been present on site?

Equipment/Material	Yes	No	Comments
Fuel storage tanks (specify type/size)			_____
Flammable storage lockers			_____
Batteries (specify type/number)			_____
Drums/drum storage (specify contents)			_____
Engine generators (specify type/size)			_____
Floor drains			_____
Septic systems or other forms of underground injection wells			_____
Oil/water separators			_____
Transformers or other oil filled equipment (specify type)			_____
Polychlorinated biphenyl (PCB)-containing equipment			_____
Regulators			_____
Capacitors			_____
Mercury-containing equipment			_____
Asbestos-containing materials (specify condition & location)			_____
Lead-based paint (specify condition & location)			_____
Other			_____

Part 2.4 – Additional Information

Are additional documents attached or submitted with this Checklist? Yes No
If yes, please summarize or provide references in Table 2.5.

Table 2.5 – Additional Documents

Date	General Document Description or Reference	Comments
_____	_____	_____
_____	_____	_____

Date	General Document Description or Reference	Comments
_____	_____	_____
_____	_____	_____
_____	_____	_____

Additional Comments:

Part 2.5 – Site Assessor Statement and Signature

Site Assessor Statement

I declare that, to the best of my professional knowledge and belief, that I have completed this Environmental Screening Checklist in conformance with the standards set forth in FAA Order 1050.19C.

Certification of Qualifications

Please certify that you meet one of the following criteria:

- I meet the definition of environmental professional as defined in 40 CFR § 312.10 and Appendix B of FAA Order 1050.19C.
- I meet the qualification criteria as defined in in Chapter 1, Section 9.b. of FAA Order 1050.19C for Site Assessors who revise and update an Environmental Screening Checklist for real property disposals that have exceeded the validity time frame.

Site Assessor's Signature: _____ **Date:** _____

Print Name: _____

Title: _____ **Organization:** _____

Telephone: _____ **E-mail Address:** _____

Part 3 – Technical Sufficiency Determination

The TR must complete Part 3 based on a review of the information provided in Parts 1 and 2 of this Checklist, as well as any other associated documents and information provided by the Site Assessor and the ORT.

Check one of the following:

I have reviewed the real property acquisition referred to herein and determined that there is no indication of any environmental contamination, and **no further environmental due diligence documentation is needed.**

I have reviewed the real property acquisition referred to herein and determined that there are indicators of environmental contamination, and **a Phase I ESA report must be completed before proceeding with the property acquisition.** I will inform the ORT to initiate a Phase I ESA for this property. The reason a Phase I ESA is needed is stated below. **A Phase I ESA report must be submitted to the RECO before proceeding with the property acquisition.**

I have reviewed the real property disposal referred to herein and determined that there is no indication of any environmental contamination, and **no further environmental due diligence documentation is needed.**

I have reviewed the real property disposal referred to herein and determined that there are indicators of environmental contamination, and **additional environmental review (e.g., preliminary assessment, site investigation) and/or cleanup activities are required.** I will inform the ORT and contact the Environmental Cleanup (ECU) Program to initiate these activities. The reason for the referral is stated below. **The TR must submit documentation of ECU Program site closure to the RECO before proceeding with the property disposal.**

Certification of Qualifications

I meet the definition of environmental professional as defined in 40 CFR § 312.10 and Appendix B of FAA Order 1050.19C.

TR
Signature: _____ Date: _____

Print Name: _____

Title: _____ Organization: _____

Part 4 – Legal Sufficiency Determination

AGC must review the contents of this checklist and complete and sign Part 4 to indicate legal sufficiency. Legal sufficiency review is conducted for conformity with the substantive and procedural requirements of FAA Order 1050.19C and the relevant statutes and regulations. AGC has not made an independent risk assessment based on the underlying technical analysis for this property.

Check one of the following:

- I have reviewed the contents of this checklist, and I conclude that the environmental review conducted to complete this checklist meets the requirements of FAA Order 1050.19C.
- I have reviewed the contents of this checklist, and I conclude that the environmental review conducted to complete this checklist does not meet the requirements of FAA Order 1050.19C or other concerns exist. Further action or environmental due diligence is required for the reasons stated below.

AGC Signature: _____ **Date:** _____

Print Name: _____

Title: _____ **Organization:** _____

Part 5 – ORT Concurrence

The ORT must receive and sign the Environmental Screening Checklist, maintain a copy, and provide this document electronically to the RECO.

ORT's Signature: _____ **Date:** _____

Print Name: _____

Title: _____ **Organization:** _____

Telephone: _____ **E-mail Address:** _____

Appendix E. Statutory and Regulatory Overview

1. CERCLA Liability Provisions.

a. Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in 1980 to provide funding and enforcement authority for cleaning up the thousands of hazardous waste sites created in the United States in the past and for responding to hazardous substance spills. In 1986, Congress enacted significant revisions to CERCLA through the Superfund Amendments and Reauthorization Act (SARA). In 2002, the Small Business Liability Relief and Brownfields Revitalization Act (i.e., “2002 Brownfields Amendments”) provided important protections from Superfund liability to landowners who meet certain statutory criteria.

b. CERCLA, as amended by SARA, authorizes the U.S. Environmental Protection Agency (EPA) to draw upon two basic types of funding resources: (1) the Superfund – the Federal trust fund and (2) responsible parties. Under CERCLA, an individual or organization may be held strictly liable for cleaning up hazardous substances at properties that they either currently own or operate or owned or operated at the time of disposal. Strict liability in the context of CERCLA means that a potentially responsible party may be liable for environmental contamination based solely on property ownership and without regard to fault or negligence.

c. The 2002 Brownfields Amendments to the Superfund law provide conditional CERCLA liability protection to landowners who qualify as bona fide prospective purchasers, contiguous property owners or innocent landowners. Under the bona fide prospective purchaser provision (CERCLA §§ 107(r) and 101(40)), a person may acquire property knowing, or having reason to know, of contamination on the property if they acquire property after January 11, 2002, meet the threshold criteria and ongoing obligations outlined in EPA guidance, and do not impede the performance of a response action or natural resource restoration. The contiguous property owner provision (CERCLA § 107(q)) applies to landowners who own property that is or may be contaminated, but is not the original source of the hazardous substance contamination. The innocent landowner provision (CERCLA §§ 107(b)(3) and 101(35)(A)) states that if a landowner did not know and had no reason to know of releases or threatened releases to the property at the time the landowner acquired the property, and the landowner has not contributed to the contamination of a property, then the landowner is exempt from CERCLA liability.

2. All Appropriate Inquiries.

a. To qualify as a bona fide prospective purchaser, contiguous property owner or innocent landowner, a person must conduct “all appropriate inquiries” into the previous ownership and uses of the property consistent with good commercial or customary practices.

b. The Small Business Liability Relief and Brownfields Revitalization Act, which amended CERCLA § 101(35)(B), required EPA to develop guidance as to what constitutes “all appropriate inquiries” for purpose of the innocent landowner defense. In 2005, EPA established specific regulatory requirements and standards for conducting all appropriate inquiries, which are codified in 40 CFR Part 312.

c. The standards for “all appropriate inquiries” as specified in 40 CFR § 312.20 include:

- (1) An inquiry by an environmental professional, as provided in 40 CFR § 312.21.
- (2) Additional inquiries (i.e., provide information to the environmental professional) by the person seeking to qualify as a bona fide prospective purchaser, contiguous property owner or innocent landowner (see 40 CFR § 312.22).
- (3) Interviews with past and present owners, operators, and occupants (see 40 CFR § 312.23).
- (4) Reviews of historical sources of information (see 40 CFR § 312.24).
- (5) Searches for recorded environmental cleanup liens (see 40 CFR § 312.25).
- (6) Reviews of federal, state, tribal and local government records (see 40 CFR § 312.26).
- (7) Visual inspections of the facility and of adjoining properties (see 40 CFR § 312.27).
- (8) Specialized knowledge or experience on the person conducting the inquiry (see 40 CFR § 312.28).
- (9) The relationship of the purchase price to the value of the property, if the property was not contaminated (see 40 CFR § 312.29).
- (10) Commonly known or reasonably ascertainable information about the property (see 40 CFR § 312.30).
- (11) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination (see 40 CFR § 312.31).

d. 40 CFR § 312.11 states that the procedures of following industry standards may be used to comply with the requirements set forth in 40 CFR §§ 312.23 through 312.31.

- (1) ASTM International Standard E2247-16 entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.”
- (2) ASTM International Standard E1527–13, entitled “Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.”

3. Notice and Disclosure Requirements.

a. The Community Environmental Response Facilitation Act (CERFA), which amended CERCLA § 120(h), imposed certain notice and covenant requirements on the sale, by federal agencies, of property where a hazardous substance has been stored, released, or disposed. The Act further requires the deed of sale or transfer to stipulate that the federal government will conduct any remediation necessary.

b. In response to CERCLA § 120(h), EPA promulgated regulations for the reporting of hazardous substance activity when selling federal real property (40 CFR Part 373). These regulations require any department, agency, or instrumentality of the United States that wishes to transfer real property owned by the United States, where hazardous substances were stored for one year or more and known to have been released, or disposed of, to include in the contract, notice of the type and quantity of hazardous substance and notice of the time when storage, release, or disposal took place.

c. Leases and easements of federally-owned property are exempt from some federal covenant requirements but may be governed by specific contract terms and state requirements.

4. Individual State Requirements.

a. A number of states impose environmental requirements on the seller of real property, including federally-owned real property, where a hazardous substance has been managed or released. The requirements established by these states roughly fall into four general categories:

- (1) Actual cleanup of hazardous substances prior to sale.
- (2) Notice to the purchaser prior to sale.
- (3) Registration/approval by state or local agency.
- (4) Hazardous waste management facility notices in deed.

b. Because the state laws pertaining to property transfer are still evolving, it will be necessary to contact state agencies routinely to identify changes in their requirements.