

## 1300 - Airport Land Acquisition

Land acquisition necessary for Airport Improvement Program- (AIP-) assisted airport development or noise must be accomplished in accordance with Title 49, Code of Federal Regulations (CFR), Part 24, *Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs*. This 49 CFR Part 24 represents the implementing regulation for the Uniform Relocation Assistance and Real Property Acquisition Policies Act, also known as the Uniform Act.

### Uniform Act

The Uniform Act is the Federal law that provides minimum real property acquisition policies and requires the uniform and equitable treatment of persons displaced as a result of a Federally assisted project. These rules provide uniform policy and procedures for the acquisition of real property by all Federal, State, and local government agencies (and certain private sponsors) that receive financial assistance for any program or project from the United States Government.

The acquisition itself does not need to be federally funded for the rules to apply. If Federal funds are used in any phase of the project, the rules of the Uniform Act apply. An AIP-assisted airport project cannot proceed or receive FAA approval until the airport sponsor provides assurance of conformance to the Uniform Act.

### FAA Advisory Circular 150/5100-17

FAA Advisory Circular Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects (AC 150/5100-17) provides procedural guidance to airport sponsors to help them carry out their acquisition and relocation programs in conformance to the Uniform Act and the implementing regulations (49 CFR part 24). This Advisory Circular provides detailed information and guidance on regulatory requirements that pertain to each phase of a land acquisition process.

### Acquisition Process Timeframe

The time required to complete a property acquisition can significantly vary per parcel. The acquisition process begins with thorough planning for the project. The process continues with obtaining an environmental site assessment and appraisals; acquiring the property through negotiations or through condemnation if negotiations fail; and providing relocation assistance to displaced occupants and businesses.

It is important that airport sponsors maintain an awareness of the time necessary to accomplish the land acquisition activities. For AIP eligible land acquisitions, a grant offer will not be made until a purchase agreement is executed or a court award is given.

### Land Acquisition Checklist

Step	Description
1	Develop Exhibit A Property Map that clearly delineates the land to be required
2	Consult with the FAA Project Manager to verify that proposed parcels are identified on an approved Airport Layout Plan (ALP)
3	Verify environmental requirements of the National Environmental Policy Act (NEPA) are met
4	Prepare surveys and plats for proposed property acquisition.
5	Order preliminary title search to confirm ownership and encumbrances on property title

<b>Step</b>	<b>Description</b>
6	Select and negotiate contract for qualified appraiser and review appraiser
7	Select and negotiate contract for Environmental Site Assessment (ESA) consultant (if not completed in project planning phase)
8	Select and negotiate contract for qualified land acquisition and relocation consultant, if required
9	Conduct a due diligence environmental audit to determine if hazardous material or contamination are present on the subject property.
10	Prepare relocation plan if there are any persons to be displaced
11	Perform appraisals and appraisal review, and approve appraised fair market value. The property owner shall be given the opportunity to accompany the appraiser on the inspection of the property.
12	Submit appraisal and review appraisal reports to the FAA for review and acceptance
13	Make written offer of just compensation. At initiation of negotiations, provide general notice of the property owner's rights and entitlements on the acquisition of their property and an explanation of the relocation assistance and payment entitlements. Provide notice of relocation eligibility to displaced persons.
14	Negotiate purchase agreement. If reasonable attempts to negotiate an agreement or acceptable settlement are unsuccessful, the acquisition may be referred to the sponsor's attorney for condemnation under the airport's eminent domain authority.
15	Closing/court award, title conveyance, and schedule possession of acquired property. (Sponsor's attorney / title company /escrow agent.)
16	Complete relocation assistance for displaced persons. Assure a comparable replacement dwelling has been made available for all persons displaced from their residence, (as applicable).
17	Clear property for project use.

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## RESOURCES

### Advisory Circulars

- [AC 150/5100-17](#): Land Acquisition and Relocation Assistance for Airport Improvement Program

### Regulations/Policy

- [49 CFR Part 24](#): Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

### Forms & Templates

- [Land Acquisition and Relocation Assistance Forms](#)
- Certificate of Title: [MS Word](#) | [PDF](#)
- Environmental Site Assessment Certification: [MS Word](#) | [PDF](#)
- Land Acquisition Cost Breakdown Spreadsheet: [MS Excel](#)
- Sponsor Certification for Real Property Acquisition: [MS Word](#) | [PDF](#)
- Subordination Agreement Sample: [PDF](#)
- Title Opinion - Sample: [PDF](#)

### Guidance

- [Airport Land Acquisition Under the Airport Improvement Program](#) – FAA Website
- Brochure Entitled "Land Acquisition for Public Airports": [MS Word](#)
- Lessons Learned – Land Acquisition and Relocation Assistance: [PDF](#)

### Non-FAA Sites

- [ARC: Acquisition, Relocation, Certification](#) -An instructional application of real property acquisition and relocation assistance requirements for FAA-assisted airport projects
- [Federal Highway Administration \(FHWA\) - Planning, Environment, and Realty](#) - Lead Federal agency for the Uniform Act Regulations (49 CFR Part 24). The FHWA Office of Real Estate Services offers guidance materials, training opportunities, and assistance for the application of the Uniform Act on Federally assisted land acquisition programs.
- [International Right of Way Association \(IRWA\)](#) - The FAA Airports organization has an ongoing partnering agreement with IRWA to promote a learning environment for Airport land acquisition programs and staffs. The IRWA offers training courses and national conferences to provide state-of-the-art training and professional development opportunities to public real estate professionals.

## **1310 - Environmental Site Assessment Land Acquisition**

This regional policy provides supplemental guidance on when and how Environmental Site Assessments (ESA) are administered for AIP land acquisition projects within the FAA Central Region. Airport Sponsors should utilize this guidance when initiating acquisition of land for their airport.

### **CERCLA**

ESA's are a direct response to the liability provisions of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). Liability requirements under CERCLA means that clean up costs may be recovered from a responsible party regardless of the level of negligence, and that any one of the responsible parties may be considered liable for the entire clean up cost regardless of their degree of involvement.

CERCLA further states that owners of property or those who acquire property may be held accountable for contamination located on their property whether they created it or not. Therefore, any entity that buys, sells, or leases real estate needs to pay particular attention to the condition of the property before a real estate transfer occurs.

The ESA process offers a reasonable assurance that no hazardous wastes, other wastes, or unacceptable hazards exist, or that existing hazardous wastes are manageable. Of equal importance, the ESA process constitutes appropriate inquiry into previous ownership and uses of the property thus satisfying the main requirement to qualify for the "innocent landowner defense" to CERCLA liability.

### **LAND ACQUISITION UNDER THE AIP**

The Airport Improvement Program (AIP) funds acquisition of land around airports for aeronautical use. Many acquisitions are sizable in acreage and costs, and are usually adjacent to existing airport property. For some locations this may be unimproved agricultural acreage, a residential area, or an old industrial site.

The FAA does not become a co-owner of this property, as the property remains titled to the Sponsor. However, if an acquired site was found to be contaminated by hazardous material the desired aeronautical use of the site could be significantly compromised.

To protect FAA's investment in airport property reimbursed under the AIP, the FAA Central Region Airports Division strongly encourages sponsors to conduct an ESA prior to acquisition of property intended for reimbursement under the AIP. For acquisition involving residential areas, it may be acceptable for the sponsor to make a qualified determination that an area has such low risk factors that an ESA is determined unnecessary. In all cases, the sponsor must consult with the FAA Project Manager to discuss to what extent the ESA should be performed as well as what standards should be applied.

### **WHAT PROCESS SHOULD THE SPONSOR USE?**

Federal Regulation 40 CFR Part 312, Standards and Practices for All Appropriate Inquiries (AAI) Final Rule was published in the Federal Register and as of November 1, 2006, ASTM E-1528 was revised

We recommend using an environmental professional and the Phase I ESA process on all AIP land acquisition projects to meet the requirements set forth in the revised ASTM

## THE ESA PROCESSES:

### Phase I Environmental Site Assessment:

The final rule requires that a written report be prepared and signed by an “environmental professional”. The report must include:

1. Interviews with past and present owners, operators and occupants
2. Searches for environmental cleanup liens
3. Federal, tribal, State and local government records reviews
4. Visual inspection of the subject property and in some cases adjoining property
5. A declaration by the “environmental professional” regarding any “data gaps” (missing information) that could affect the discovery of hazardous conditions or contamination on a site.

### Phase II Environmental Oversight

This practice is intended to confirm whether property under consideration for acquisition/disposal, or construction is contaminated as indicated by the Phase One ESA. This phase shall **only be performed by an environmental specialist**, and includes but is not limited to soil sampling, ground water sampling, indoor air quality testing, drums and waste materials testing, asbestos testing, underground tank testing.

The Phase Two ESA has the following elements:

- Sample and Analysis Plan Review
- Field Sampling and Analytical Results Review
- Phase Two Report review.

Here again the final result should include results of the investigation, a cost benefit analysis, if further investigation is needed; and recommendations for future actions.

Not intended to find the extent of contamination.

### Phase III ESA Oversight

This portion of the process is intended to quantify and characterize the extent of contamination at the site and shall consist of a full site/remedial investigation and selection of an appropriate/feasibility remedy.

It should be noted that the conduct of an ESA as an environmental practice is complex and may lead to significant penalties for noncompliance. The work described above should be carried out by persons with the requisite specialized training and experience to provide for the safety of the investigators conducting the audit and to properly meet all the requirements established by both Federal and state statute. Sponsors should consult with a specialist in this area prior to beginning any environmental auditing.

## WHAT TO SUBMIT TO THE FAA

The Central Region Airports Division requires the sponsor to submit a completed *Certification of Environmental Site Assessment* for each parcel of land acquired. The ESA should be completed prior to the sponsor initiating the negotiation process. If at any time during the process the individual that is performing the ESA has an indication of a finding, the information must be immediately passed along to the sponsor and the appraiser/review appraiser. The ESA document need not be submitted to the FAA unless requested by the FAA project manager.

If any proposed acquisition requires a Phase II or Phase III ESA, it **MUST** be coordinated with the FAA prior to initiating the next phase in the ESA process, and more importantly, prior to initiating the negotiation process. Contact your FAA Project Manager for guidance for any Phase II/III ESA acquisitions.

## REFERENCES

Please note that the guidance provided within is derived from one or more of the following documents listed below. Unless otherwise directed, in the event of a conflict between this handout and the listed references, the information provided in the reference documents shall supersede that given in this guidance handout. The references listed below are not exhaustive. Other Industry-recognized methodologies may be used in conjunction with FAA consultation.

1. "Comprehensive Environmental Response, Compensation, and Liability Act" (CERCLA), as amended by the "Superfund Amendments and Reauthorization Act of 1986" (SARA)
2. ASTM E 1527 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process"
3. ASTM E 1528, "Standard Practice for Environmental Site Assessments: Transaction Screen Process"
4. \*DOT/FAA Order 1050.19, "Environmental Due Diligence Audits in the Conduct of Real Property Transactions" dated 8/22/94.

\*The FAA EDDA process is intended mostly for in-house (titled directly to the FAA) leasing and acquisition activities.

## OBTAINING PUBLICATIONS

DOT/FAA Order 1050.19 can be ordered from:

U.S. Government Printing Office  
710 North Capitol St., NW  
Washington, D.C. 20401  
(202) 512-0132  
Fax (202) 512-1355

The ASTM Practice E 1527-98 and E 1528-98 can be ordered from:

American Society for Testing and Materials  
100 Barr Harbor Dr.  
West Conshohocken, PA 19428

or contact them through their website at: <http://www.astm.org/>

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## RESOURCES

### Forms

- **Environmental Site Assessment Certification:** [MS Word](#) | [PDF](#)

### Standards

- [ASTM Organization](#)

## **1311 - Frequently Asked Questions Environmental Site Assessment**

### **1. Why do we need to perform ESA's?**

The intent of the ESA program is to minimize and manage the sponsors environmental liabilities associated with the acquisition, disposal, or other transfers/disturbances of real property as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). It provides the sponsor with a screening tool to avoid costly litigation and cleanup responsibilities associated with the acquisition of property and/or construction on property that has been contaminated by hazardous wastes. The program also provides evidence to support possible future use of the innocent landowner defense for cost recovery against the airport and the FAA.

### **2. What statutory authority established these requirements?**

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) provides a means for the federal government through the Environmental Protection Act (EPA) to respond to the threat of hazardous waste. It also forms the basis for imposing costs and responsibility on those who create such environmental threats. In turn, FAA Order 1050.19, Environmental Due Diligence Audit (EDDA) and American Society for Testing and Materials (ASTM) 1528 provides a sponsor with a comprehensive format for conducting an environmental site assessment within the scope of CERCLA, a satisfactory "innocent landowner defense" to CERCLA liability, and a means of minimizing the potential liability for remediating contaminated property.

### **3. How do these regulations apply to my project and me?**

Under CERCLA, current owners and operators are those who own or operate a facility when a response action or an action for cleanup under CERCLA Sections 106 or 107 is filed. Past owners are only liable if hazardous substances were disposed of or leaking occurred during the period of ownership (joint and several liability). Intermediate owners, who owned the site after disposal stopped, and who sold the site before any response costs were incurred or enforcement actions were undertaken, are not liable. (Lessees who exercise control over waste disposal operations also fall into this ownership category.)

Joint and several liability means that each party is responsible for the entire cost of cleanup, but may seek contribution from other potentially responsible parties (PRPs). Only in situations where the release was caused by an act of God or war or an act of omission by a third party is liability avoided. The defense based on actions by third parties is called the "Innocent Landowner Defense," as previously referred to.

CERCLA provides a defense against cost recovery actions for innocent landowners who have not contributed to the contamination at the site and have conducted all "appropriate inquiry" into the previous ownership and uses of the property consistent with good commercial or customary practices. In most cases, this defense is very difficult to prove. The ASTM provides a concise format for conducting an appropriate inquiry

### **4. What does "all appropriate inquiry" mean?**

There is no statutory definition for the term "appropriate inquiry." To compensate for this fact, prudent and thorough investigations must be conducted. The ASTM Standard 1528 provides a standard for conducting an appropriate inquiry that will provide for the "innocent landowner defense."

**5. Where can I find these requirements?**

The ASTM Standards 1527/1528 which are published by the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. They also have a web site at <http://www.astm.org>.

**6. Do I need to worry about any State requirements?**

Yes. Sponsors should be aware that federal, state, and local laws may impose environmental assessment obligations that are beyond the scope of this program. The sponsor should be contacting their State Departments, Environmental Protection Agency, and local governments regarding these matters.

**7. Do ESA's replace the Environmental Assessments (EA's) and Environmental Impact Statements (EIS's) we perform under FAA Order 5050.4A?**

No, they are two completely separate actions. The ESA evaluates and proposes mitigation efforts for existing conditions at a specific site. The EA/EIS process evaluates the potential impact of a proposed project on a specific site and, when needed, proposes mitigation efforts to minimize that potential impact.

**8. What can happen if I don't perform an ESA?**

The sponsor may find they have purchased real estate that is contaminated within the scope of CERCLA and find they are liable for the clean-up costs and possible fines with no recourse. (These clean-up costs and fines may not be eligible for AIP funding and may prohibit AIP participation in an airport project.)

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**RESOURCES****Forms**

- Environmental Site Assessment Certification: [MS Word](#) | [PDF](#)

**Standards**

- [ASTM Organization](#)



## 1320 - Satisfactory Evidence of Good Title Land Acquisition

### Satisfactory Evidence of Good Title

Federal statute requires that sponsors of airport development projects hold "good title, satisfactory to the Secretary" (of Transportation) to the airport being developed. To meet these requirements, a sponsor's title must be free and clear of any reversionary interest, lien, easement, lease, or other encumbrance that would create undue risk that might deprive the sponsor of control or possession, interfere with its use for public airport purposes, or make it impossible for the sponsor to carry out the obligations and covenants in the grant agreement.

Under FAA procedures, satisfactory evidence of good title includes an attorney's title opinion that is properly tied to an Exhibit "A" Airport Property Map.

Regional information and guidance relative to title opinions and the treatment of encumbrances is available to assist sponsors and attorneys in the preparation of title evidence that speaks to the above requirements (see Sections 1321 and 1322).

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### RESOURCES

#### Advisory Circulars

- [AC 150/5100-17](#): Land Acquisition and Relocation Assistance for Airport Improvement Program

#### Regulations/Policy

- [49 CFR Part 24](#): Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

#### Forms & Templates

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- Subordination Agreement Sample: [PDF](#)
- Title Opinion - Sample: [PDF](#)

## 1321 - Title Opinion Land Acquisition

### GENERAL

By accepting an AIP grant offer, a Sponsor is assuring the FAA that they hold good title, satisfactory to the Secretary of Transportation, to the landing area of the airport (Ref. Grant Assurance C.4).

The Sponsor's Title must be free and clear of any reversionary interest, lien, easement, lease or other encumbrance that would interfere with the Sponsor's ability to carry out the obligations and covenants of the grant agreement.

A critical element of the evidence of good title is a current title opinion.

- For land to be acquired, the Sponsor shall investigate the title obtained and prepare a title evidence package and certificate of title for submission to the FAA.
- For existing airport property, the Sponsor may submit only a certificate of title that is based on a current title opinion. We strongly encourage Sponsors to obtain a title opinion for the entire airport every 6-8 years or whenever previous property transactions have occurred.

### TITLE EVIDENCE PACKAGE

The Sponsor's attorney shall prepare title evidence consisting of the following:

1. Written Title Opinion
  - a. Basis for the Opinion – e.g. Title search
  - b. Legal description
  - c. Statement of quality of title held
  - d. Statement concerning defects and encumbrances
2. Copies of:
  - a. Grant deed for fee owned land
  - b. Easement deed for less than fee title interest
  - c. Lease for a long term interest
  - d. Final order or court decree when land obtained by condemnation
  - e. Subordination agreements if applicable
3. Property Inspection by Sponsor's attorney

### CERTIFICATE OF TITLE

Within the Central Region, Sponsors shall submit a Certificate of Title form in lieu of the specific title opinion prepared by the sponsor's attorney. Acceptance of the Certificate of Title does not relieve the Sponsor of the requirement to obtain necessary title evidence documents. Acceptance of the certification may be rescinded if FAA determines the Sponsor has not complied with the requirements of the certification. The FAA may ask for a copy of the most current title opinion to provide proper documentation of land acquired with AIP funds.

The Certificate of Title must address the following:

- Identify AIP project number
- Identify if certification is for new property acquisition or for existing property
- List all parcels and the quality of interest that is held
- Date of current title opinion for which Certification is based upon
- Name of Sponsor's attorney who conducted the current title opinion
- Date and project number of corresponding Exhibit A Property Map
- Name and signature of Sponsor Authorized official.
- Date of Certification

### **SAMPLE TITLE OPINION**

We have prepared a sample Title Opinion to assist the Sponsor with obtaining a current title opinion. This sample should be furnished to the attorney who will prepare the title opinion that is required in connection with every federally funded airport improvement project.

Although we are aware that a competent attorney can prepare a title opinion without this sample, we have found that variations in state and local procedures can result in a title opinion for airport property that does not adequately address the requirements that must be satisfied for AIP participation.

### **ENCUMBRANCES**

When encumbrances on airport property exist, they must be set forth in the title opinion. Some encumbrances have no significant impact on the airport (i.e. a drainage easement in a non-critical area). Other encumbrances have the potential for serious adverse impact.

Corrective action is not required when it is determined that a particular encumbrance will have no adverse effect. However, if the exercise of rights granted in an encumbrance could adversely affect the airport, the encumbrance must be extinguished, modified, or subordinated to airport use.

For example, a utility easement granting the right to install power lines in an approach area could result in a hazardous obstruction. In such cases, the easement would have to be:

1. Extinguished, or;
2. Modified so that the height and location of the power line is restricted to the extent necessary for safety (perhaps the line would be buried), or;
3. Generally subordinated to airport use and development.

A sample subordination agreement has been prepared for the Sponsor's use. We strongly encourage a Sponsor to coordinate in advance with the FAA prior to executing a subordination agreement. The presence of any executed subordination agreement must be noted on the Certificate of Title and a copy attached.

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## **RESOURCES**

### **Advisory Circulars**

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### **Regulations/Policy**

- [49 CFR Part 24](#): Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

### **Forms & Templates**

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- Title Opinion - Sample: [PDF](#)
- Subordination Agreement Sample: [PDF](#)

## 1322 - Exhibit A Property Map Land Acquisition

### General

The Exhibit "A" property map must be submitted as part of the project application for land acquisitions projects and development projects. An Exhibit "A" property map is not required for equipment project and planning projects.

The primary intent of this document is to identify all land, which is designated as airport property. It also serves as an inventory of all parcels that make up the airport.

The airport property map must show the property interests held or to be acquired in all lands to be developed or used in connection with the airport. The map shall also indicate how various tracts of land within the airport boundaries were acquired (e.g., Federal funds, surplus property, local funds only, etc.).

### Minimum Requirements

The airport property map, accompanying the project application, must identify the AIP project number and as a minimum, include the following information:

1. Be drawn to scale (preferably the same scale as the ALP) and show the perimeter of the airport property boundary, avigation easements, and any offsite areas used for airport purposes. A Size "D" drawing is preferred. Size "B" drawings may be used for small airports.
2. Each parcel/tract/area making up the entire airport must be shown and numbered. In addition, tracts that were once airport property but that have been released, must also be shown.
3. List parcels/tracts in data table to show pertinent information applicable to property acquisitions.
  - Parcel/tract number
  - Type of Interest Held (Fee Simple, Easement, and etc)
  - Year acquired
  - Acreage of parcel/tract
  - Reference to appropriate Public Land Records
  - FAA aid project number if parcel/tract was reimbursed under a Federal Grant program. Include surplus property transfers.
4. Delineate the existing and future airport features (i.e. runways, taxiways, aprons, terminal buildings, hangars, runway protection zones, building restriction lines, and NAVAIDs) that would indicate aeronautical need for airport property. Show numerical designation for each runway.
5. Show the location of any easements or other encumbrances that would affect title to the land with a brief descriptive note alongside, i.e. power line or pipeline easement, etc.
6. If the Exhibit A is being submitted as part of a land acquisition project, the parcels being acquired or reimbursed under the AIP project must be clearly shown.
7. The Exhibit A must be dated and amended whenever there is a change to any airport property.

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## RESOURCES

### Advisory Circulars

- [AC 150/5100-17](#): Land Acquisition and Relocation Assistance for Airport Improvement Program

### Regulations/Policy

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