



Guidelines for:

**Airport Land Release
Concurrent Uses
Non-Aeronautical Agreements**

August 4, 2016

INTRODUCTION

The purpose of this document is to provide guidance to all Michigan airport sponsors (hereinafter referred to as "Sponsor") in the land release process. The Sponsor will be responsible to follow two land release steps to ensure that early communications are established with the Michigan Department of Transportation (MDOT) and the Federal Aviation Administration (FAA). This will ensure a complete understanding of the purpose of the proposed land release request, the required documentation to support the release request, and the review process action steps that must be completed before MDOT and FAA can make a final decision.

The FAA must provide notice in the Federal Register to the public for comments on the proposed land release not less than 30 days before making a modification of the proposed property to be released. This FAA procedure will take at least 90 days for approval.

An Airport Layout Plan (ALP), which is required by statute, depicts the entire property and identifies the present facility and the plans for future development. The FAA encourages the Sponsor to identify all property purchased by the Sponsor that is contiguous to the airport as airport property, by including it on the ALP, thereby dedicating, not obligating, it to the airport. If the original intent of the purchase is to utilize the land as airport property, it is considered dedicated airport land. Once the dedicated airport property is proposed to be used for other than aeronautical purposes, the Sponsor must utilize the land release process.

Any land identified on the Exhibit "A" Property Map may not be disposed of or used for other than those airport purposes without FAA consent. All compliance matters shall be the responsibility of the Sponsor. Questions or comments related to issues of compliance can be directed to the MDOT Office of Aeronautics Compliance Officer at (517) 335-9679.

Environmental impacts need to be considered by the requesting party when preparing a land release. If a land release is approved by FAA, the purchaser must be aware of environmental responsibilities. See [FAA Environmental Program](http://www.faa.gov/airports_airtraffic/airports/environmental/) for more information (http://www.faa.gov/airports_airtraffic/airports/environmental/).

All leases and agreements must comply with FAA Order 5190.6B. Agreements granting access to an airport from an off airport site ("thru the fence" agreements) are highly discouraged by both the FAA and MDOT due to safety and regulatory issues. All leases and agreements must be submitted to MDOT and shall be reviewed by MDOT and FAA prior to approval to ensure compliance with all grant assurances and regulations. Approval can take up to 60 days.

AIRPORT LAND RELEASE GUIDELINES

A request from the airport sponsor to designate airport property as a “**concurrent use**” can be submitted prior to submitting a land release request. A concurrent use is the use of dedicated airport property for a compatible non-aviation activity while at the same time the property serves the primary purpose for which it was acquired. Examples of a concurrent use are road right of way easements, utility easements, and agricultural uses (FAA Order 5190.6B for more information). The preliminary checklist from Part 1 below is required to be completed and if approved and accepted as a concurrent use, the property does not require a full land release. If a land release is required follow all steps listed in this guidance document.

General Requirements for Concurrent Use Requests

1. Cover Letter from Sponsor explaining why the land was originally purchased (such as protection) and that the proposed use will not interfere with the original “use” of the property. Explain the benefits of the proposed concurrent use.
2. Boundary description and copy of Exhibit A showing location of property.
3. Summary appraisal that includes a statement of fair market value. The appraiser may consider in his appraisal any services (fire protection, snow removal, etc.) that may be provided to the Airport that would allow the Sponsor to charge less than fair market value.
4. Draft copy of the lease agreement.
5. Copy of letter approving airspace study.
6. National Environmental Policy Act (NEPA) Clearance (CatEX may be acceptable).

Airports that have received Airport Improvement Program (AIP) funds are considered “obligated” and must adhere to certain terms and conditions in exchange for receiving federal funds. The AIP grant terms and conditions are included with each grant and contain the “Grant Assurances”. There are 39 total Grant Assurances, but land releases typically only deal with 6. In addition to the Grant Assurances, there is also an FAA Order (5190.6B) and a Policy & Procedures Memo (PPM) that provide additional guidance in this area.

Applicable Grant Assurances (Land Releases)

- #4: Good Title
- #5: Preserving Rights and Powers
- #21: Compatible Land Use
- #25: Airport Revenues
- #29: Airport Layout Plan/Exhibit “A”
- #31: Disposal of Land

Any property, when described in a grant or defined by an airport layout plan (ALP) or

listed in the Exhibit “A” property map, is considered to be “dedicated” or obligated property for airport purposes. If any of the dedicated property is not needed for present or future airport purposes, a land release or concurrent use approval from the FAA is required.

A “land release” is defined as the formal, written authorization discharging and relinquishing the FAA’s right to enforce an airport’s contractual obligations. In some cases, the release is limited to releasing the sponsor from a particular assurance or federal obligation (i.e. release from aeronautical use). In other cases, a release may permit disposal (sale) of certain airport property.

The FAA is not required to grant a land release or approve concurrent use. Factors to consider before you request a release:

Is it reasonable and practical?

How will this affect needed aeronautical facilities and future development?

Will this benefit the airport and civil aviation?

Is this compatible with the needs of the airport and civil aviation?

There are two basic types of land releases:

- 1) Release from aeronautical use: Airport retains ownership of land, but land is no longer required to be used for aeronautical purposes.
- 2) Release and removal of dedicated property: Airport sells land and is no longer responsible to maintain it as dedicated airport property.

Any funds received by the airport for a release from aeronautical use must be based on fair market value and are considered airport revenue. Any funds received by the airport for the sale and release of dedicated airport property must be based on fair market value and are considered airport revenue. In some cases, the FAA may require reimbursement if the land was acquired with federal funds. Any funds received by the airport for a concurrent use must be based on fair market rent and are considered airport revenue.

Airports may also request an Interim Use of dedicated airport property. Interim use is limited to 5 years with 3 years being preferred. Interim use represents a temporary arrangement for the use of airport land for non-aeronautical purposes. Therefore, it must be anticipated that the interim use will end and the land will be returned to aeronautical use.

Part 1 -- PRELIMINARY LAND RELEASE CHECKLIST

The following land release process must be followed to ensure that early communications are established with the Michigan Department of Transportation, (MDOT) and the Federal Aviation Administration (FAA) Detroit Airports District Office (DETADO). This will ensure a complete understanding of the purpose of the proposed land release request, the required documentation to support the release request, and the review process action steps that must be completed before MDOT and FAA can make a final decision.

The first step in the land release process is to complete the Preliminary Land Release Request Checklist (copy attached) and send it to MDOT at the following address:

Michigan Department of Transportation
Real Estate Services
P.O. Box 30050
Lansing, Michigan 48909

MDOT will review the Preliminary Land Release Request Checklist and forward their recommendation to the DETADO for their approval. This first step will allow both MDOT and the DETADO to determine the issues associated with the proposed land release request, and determine whether the release is feasible. The most important issue to be resolved in the preliminary review step is whether the proposed release of land will impact the current and future needs of the airport, as depicted on the approved Airport Layout Plan.

If there is a determination that the purpose of the proposed release is feasible, then the second step will be to complete the process using the Land Release Request Guidelines (copy attached). It should be clearly understood that any determination by MDOT and FAA that the release request is feasible does not guarantee final approval. The sole purpose of the preliminary feasibility review is to establish communications and screen out any release proposals that definitely cannot be approved. This will eliminate any unnecessary expenditure of resources by the Sponsor, MDOT, and the FAA.

PRELIMINARY LAND RELEASE CHECKLIST

Airport:	Location:
Sponsor Contact:	Telephone No.:
Purpose of Release:	

Location of Property To Be Released: Attach Airport Layout Plan sheet and highlight property to be released along with legal description. Identify any structures to be constructed on the property and maximum height of facilities.

Indicate affected parcel number(s) and number of acres/s.f. of property to be released:

Check List Item Information Description	Explain briefly to provide an Understanding of response to checklist item.
ALP ISSUES:	
Will proposed use impact future airport development?	
Is proposed use identified on an approved ALP?	
LAND ACQUISITION ISSUES:	
What type of federal process conveyed the property: Federal grant or surplus property disposal?	
Identify federal project number and date property was acquired.	
Was the land to be released purchased without federal funds? Indicate date purchased.	

PRELIMINARY LAND RELEASE CHECKLIST (contd.)

Check List Item Information Description	Explain briefly to provide an Understanding of response to checklist item.
LAND REUSE ISSUES:	
What is the proposed reuse of property?	
Check List Item Information Description	Explain briefly to provide an Understanding of response to checklist item.
Will property be sold or leased?	
What is the estimated fair market value of the property?	
Is there a current proposal for reuse of the land? What is the deadline date needed for a release determination by MDOT/FAA?	
Is there an existing airport fence line?	
Is proposed reuse compatible with airport and environs?	
ENVIRONMENTAL ISSUES:	
Identify any potential environmental impacts that the reuse of property might create and proposed mitigation options. IMPACTS 1. 2. 3. 4. 5.	
COMMENTS:	

Submitted by: _____

Date:

Part 2 -- LAND RELEASE REQUEST GUIDELINES

Airport owners may request release of land from obligations incurred under agreements with the United States. Federal Aviation Administration (FAA) action is required to release an airport owner from its obligations in the event an airport owner desires to sell any airport property.

The current "Policy and Procedures Concerning the Use of Airport Revenue" is set forth in the Federal Register, dated 2/16/99. This policy is applicable to all public agencies that have received a grant for airport development since September 3, 1982. The policy can also be found in Appendix E of FAA Order 5190.6B.

Airport owners should assume that FAA will act consistently with the subject draft policy in any enforcement action for revenue diversion taken before a final policy is published.

For those airport owners that are subject to this policy (received a development grant since 9/3/82) the following shall apply to proceeds from land sales/releases:

- (a) Proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the airport owner. These proceeds are not to be considered airport revenue and shall be dispersed as set forth in FAA Order 5190.6B.
- (b) Proceeds resulting from the sale of real property acquired with general governmental or municipal funds, airport revenues, or by private donations must be dedicated to airport use. This real property shall be sold at fair market value, determined by independent appraisal(s), to ensure that the airport is as self-sustaining as possible. These proceeds are to be considered airport revenue.
- (c) For those airports with existing fence lines, a new fence line should be established with proceeds from the land release sale. The fencing must comply with both federal and state regulations.

NOTE: Airport Owners may in any event recoup their non-reimbursed capital contributions and operating expenses from airport revenues, and they may do so regardless of when the expenses were incurred.

For those airport owners that are not subject to this policy (no development grant since 9/3/82) the proceeds from airport land sales/releases shall be dispersed as set forth in FAA Order 5190.6B.

The required documentation must be submitted to the Michigan Department of Transportation (MDOT), before the FAA will consider such requests.

REQUESTS FOR RELEASE FROM LAND COVENANTS

Land Acquired with Federal Financial Assistance

When an airport owner accepts a Federal airport development grant or a conveyance of federal surplus property for airport purposes, the airport owner incurs specific obligations with respect to the uses of the property. A change in airport land use which is not related to direct and supportive aeronautical activities or a complementary aeronautical activity (i.e. transportation, food, and personal services) and result in converting airport property dedicated for aviation activity, to revenue producing requires the FAA's consent for the land use conversion. FAA approval is also required to release an airport owner from obligations in the event the airport owner desires to sell dedicated airport land.

Any release, modification, reformation or amendment of an airport agreement between the airport owner and the United States must be based on a request made in writing and signed by a duly authorized official of the public agency that owns the airport with full concurrence of the airport owner. Evidence of such authorization must accompany the request.

There is no specific form required for requests of this nature, but comments should be made on the following items for land acquired with Federal financial assistance:

1. What agreement(s) with the United States are involved? List all project numbers.
2. What type of release, modification, reformation or amendment to the foregoing agreement(s) is being requested?
3. What is the reason for the request?
4. What facts and circumstances justify the request? Show how action will benefit airport.
5. List any requirements of state or local law or ordinances which should be provided for in the language of an FAA prepared release document if the request is consented to or granted.
6. What property or facilities are involved? If land, provide drawing accurately depicting tract with legal description.
7. How was the property acquired or obtained by the airport owner?
8. What is the present condition of property or facilities involved and what present use is being made of this property or these facilities?

9. What use or disposition will be made of the property or facilities?
10. What is the appraised fair market value of property or facilities? Land values must be supported by an appraisal(s) conducted in accordance with Advisory Circular 150/5100-37B (Land Acquisition & Relocation Assistance for Airport Projects). If land is to be exchanged, evidence must be provided to show that equivalents are being exchanged. Appraisals are not required if land is purchased without federal aid, or land not acquired as surplus property.
11. What proceeds are expected from the use or disposition of the property and what will be done with any net revenue derived?
12. A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income.
13. A plan identifying the intangible benefits, if any, accruing to the airport, the amount attributed to the intangible benefits and the merit of their application as an offset against the fair market value (FMV) of the property to be released. The plan should also include as a minimum:
 - (a) A statement of the airport's source and application of funds for the preceding three years.
 - (b) A statement of future sources and application of funds needed for the continued operation and maintenance of the airport.
 - (c) A statement of the financial capability and intent to accomplish the airport development included in the current Capital Improvement Program (CIP) or NPIAS (for airports without a CIP), and
 - (d) Must be shown to be in accordance with the ALP.
14. If the release pertains to donated real property, conveyed by the federal government under Public Law 289, a written commitment obligating the airport owner with respect to an amount equal to the net proceeds of a sale of the property at its current fair market value is required.
15. A height restriction setting forth the applicable height limits, above which no structure or growth will be permitted, will be included in the instrument of release. The height restriction data computation, computed according to current effective FAA criteria, as applied to the airport, is required.
16. Include an Environmental Action Choice document in which the environmental, economic, and social impacts of the proposed change in airport land use or release of airport land for the intended purposes are analyzed.
 - (a) Two copies of the report and all exhibits required should be submitted with the request. This includes Exhibit "A" Property Maps, justification to

support the change, photographs, plans, and appraisal reports as appropriate. Five copies of the revised ALP must be furnished for coordination and approval.

- (b) FAA action is required when the land use status is changed from aeronautical to non-aeronautical use or for releases from land covenants. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of FAA Order 1050.1F, Chapter 3. If an assessment is necessary, it shall address the known and immediately foreseeable environmental consequences of the release action and, as with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (i.e. historic and archaeological site considerations, Section 4(f) lands, wetlands and coastal zones, endangered species). In such cases, coordination with the State Historic Preservation Officer is required.
- (c) If an assessment is not required in accordance with FAA Order 1050.1F, an Environmental Action Choice document which verifies that the proposed action does not fall within the categories identified FAA Order 1050.1F, Chapter 3, must be submitted.
- (d) As with all federal actions regarding land, appropriate coordination with federal, state, or local agencies should be completed as described under Chapter 2 for any applicable areas of environmental considerations (i.e. historical and archaeological site considerations, DOT 4(f) lands, wetlands and coastal zones, endangered species, etc.)

Land Not Acquired with Federal Financial Assistance

Where the action involves the deletion of land not acquired with federal financial assistance (i.e. no grant agreement, P.L. 289, Section 16, 23 or 516, involvement, etc.), there is no required disposition of net revenues derived from the sale or disposal. Comments should be made on the following items for land acquired without federal financial assistance.

1. What agreement(s) with the United States are involved? List all project numbers.
2. What type of release, modification, reformation or amendment to the foregoing agreement(s) is being requested?
3. What is the reason for the request?
4. What facts and circumstances justify the request? Show how action will benefit airport.
5. List any requirements of state or local law or ordinances which should be provided for in the language of an FAA prepared release document if the request

- is consented to or granted.
6. What property or facilities are involved? If land, provide drawing accurately depicting tract with legal description.
 7. How was the property acquired or obtained by the airport owner?
 8. What is the present condition of property or facilities involved and what present use is being made of this property or these facilities?
 9. What use or disposition will be made of the property or facilities?
 10. What proceeds are expected from the use or disposition of the property and what will be done with any net revenue derived?
 11. A comparison of the relative advantage or benefit to the airport from sale or other disposition as opposed to retention for rental income.
 12. A height restriction setting forth the applicable height limits, above which no structure or growth will be permitted, will be included in the instrument of release. The height restriction data computation, computed according to the current effective FAA criteria, as applied to the airport, is required.
 13. Include an Environmental Action Choice document in which the environmental, economic, and social impacts of the proposed change in airport land use or release of airport land for the intended purposes are analyzed.
 - (a) Two copies of the report and all exhibits required should be submitted with the request. This includes Exhibit "A" Property Maps, justification to support the change, photographs, and plans as appropriate. Five copies of the revised ALP must be furnished for coordination and approval.
 - (b) FAA action is required when the land use status is changed from aeronautical to non-aeronautical use or for releases from land covenants. This action is normally categorically excluded, but may require an environmental assessment in accordance with the provisions of FAA Order 1050.1F (Chapter 3). If an assessment is necessary, it shall address the known and immediately foreseeable environmental consequences of the release action and, as with other federal actions regarding land, appropriate coordination with federal, state, or local agencies shall be completed for applicable areas of environmental consideration (i.e. historic and archaeological site considerations, Section 4(f) lands, wetlands and coastal zones, endangered species). In such cases, coordination with the State Historic Preservation Officer is required.
 - (c) If an assessment is not required in accordance with Order 1050.1F, an Environmental Action Choice document which verifies that the proposed action does not fall within the categories identified FAA Order 1050.1F, Chapter 3, must be submitted.

- (d) As with all federal actions regarding land, appropriate coordination with federal, state, or local agencies should be completed as described under FAA Order 1050.1F, Chapter 2, for any applicable areas of environmental considerations (i.e., historical and archaeological site considerations, DOT 4(f) lands, wetlands and coastal zones, endangered species, etc.)

Deed Restrictions for Sale of Dedicated Airport Property

1. Include in any deed, or other conveyance of property interest to others, the following restrictions:
 - (a) Grantor shall not construct or permit to stand on said premises any building, structure, poles, trees, or other objects, whether natural or otherwise, of a height to excess of (state elevation above mean sea level or refer to an attached exhibit depicting property with existing or planned (whichever is more restrictive) FAR Part 77 surfaces).
 - (b) Grantor shall file a notice consistent with requirements of FAR Part 77 (FAA Form 7460-1) prior to constructing any facility, structure, or other item on said premises.
 - (c) Grantor shall not hereafter use nor permit nor suffer use of the land first above described in such a manner as to create electrical interference with radio communication between the installation upon the airport and aircraft or as to make it difficult for fliers to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft.
 - (d) There is hereby reserved to the Grantor, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the premises herein conveyed. This public right shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the (official name) Airport.
 - (e) The aforesaid covenants and agreements shall run with the land, as herein above described, for the benefit of the Grantor and its successors and assigns in the ownership and operation of the airport.
 - (f) Grantor shall not hereafter use, nor permit, nor suffer use of the land first above described in such a manner as to create a potential for attracting birds and other wildlife which may pose a hazard to aircraft.
2. Include these additional restrictions in any Deed of Transfer of Public Law 289 land, when the surplus property is not immediately needed for non-aviation use:

- (a) The airport owner agrees to obtain fair market value for any parcel sold. The airport owner must retain documentation that fair market value was received for the property, and the FAA must be provided this documentation upon request.
- (b) The airport owner agrees that funds from the sale of this property will be deposited in an interest-bearing account, and will be used only for airport purposes. Funds will be spent on the following, in priority order:
 - (1) Airport development eligible under the airport grant program and reflected in the airport's Capital Improvement Program.
 - (2) Any aeronautical airport development ineligible under the current airport grant program.
 - (3) Retirement of airport bonds which are secured by pledges of airport revenue.
 - (4) Development of common use facilities, utilities, and other improvements on dedicated revenue production property that clearly enhances the revenue production capabilities of the property.
- (c) The airport owner agrees to maintain records of funds received from the sale of land and records of the funds spent for airport purposes. The FAA must be provided these records upon request.
- (d) The airport owner agrees to incorporate in any Deed of Transfer all reservations or restrictions that are reserved or retained in the Deed of Release. Also, any Deed of Transfer must protect the public's rights and interests in the airport and preserve the airport as a safe and usable airfield.

Information obtained from FAA Policy and Procedures Memorandum No. 5190.6, Appendix 3, dated June 14, 1994.

Land release requests should be mailed to the following address for processing and approval:

Michigan Department of Transportation
Real Estate Services
P.O. Box 30050
Lansing, Michigan 48909

If you have any questions, please telephone 517-325-3093.