



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Office of Airport Compliance  
and Management Analysis

800 Independence Ave., SW.  
Washington, DC 20591

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July 17, 2023

## **PART 16 DOCKETS**

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Re: *Horry County, South Carolina v. City of Myrtle Beach, South Carolina*  
FAA Docket No. 16-21-07

Dear Messrs. Pilsk, Bannard, Hall, Carroll, Caldwell, Atwood, Hoefler and Humphrey:

Enclosed is a copy of the Director's Determination in the above-captioned formal complaint filed under 14 CFR Part 16.

We find that the City of Myrtle Beach (City) is required to use the proceeds of the proposed sale of the Seascape Properties for airport purposes in accordance with its Surplus Property Act (SPA) obligations and the conditions of the 1953 Release instrument. Further we find the City is not required to provide the funds to Horry County, but may provide an alternative proposal to the Federal Aviation Administration (FAA) for consideration. The FAA will evaluate the proposal based on its relative benefits to civil aviation in accordance with the SPA. Finally, the Director finds that the property must be sold for fair market value in accordance with Federal law and FAA policy.

The FAA directs the City to submit a corrective action plan for FAA approval within 60 days that will demonstrate how the City intends to ensure that the proceeds of the sale of the Seascape properties will be used for airport purposes and to benefit civil aviation. Further it will demonstrate how the City intends to comply with Federal law and FAA policy governing the disposal of surplus property.

The FAA reserves the right to pursue any civil enforcement actions available, if the City fails to submit an acceptable corrective action plan as specified in the Order.

The Director's Determination does not constitute a Final Agency Decision and order subject to judicial review [14 CFR § 16.247(b)(2)]. A party adversely affected by the Director's Determination once issued may appeal the initial determination to the FAA Associate Administrator.

Sincerely,

KEVIN  
WILLIS

Digitally signed by KEVIN  
WILLIS  
Date: 2023.07.17  
06:21:43 -04'00'

Kevin C. Willis  
Director, Office of Airport Compliance  
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

RECEIVED

JUL 17 2023

PART 16 DOCKETS

**HORRY COUNTY, SOUTH CAROLINA**

**COMPLAINANT,**

**v.**

**CITY of MYRTLE BEACH, SOUTH  
CAROLINA**

**RESPONDENT.**



**FAA Docket No. 16-21-07**

**DIRECTOR'S DETERMINATION**

**I. INTRODUCTION**

This matter is before the Federal Aviation Administration (FAA) on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16 or Part 16) by Horry County, South Carolina (Complainant or County) against the City of Myrtle Beach, South Carolina (Respondent or City). The County is the sponsor of the Myrtle Beach International Airport and three (3) other airports serving the Myrtle Beach area. The City is the owner of the federally conveyed Seascape Properties (FAA Exhibit 1, Item 1, Exhibit 8).

The County alleges the City is obligated to provide the proceeds from the proposed sale of the Seascape Properties to the County to be used for airport purposes. It states "[t]he County brings this Complaint because the City refuses to abide by its obligations under the Surplus Property Act (SPA) of 1944, as amended, 49 U.S.C. §§ 47151-47153 (the "Surplus Property Act" [or SPA]) to transfer the proceeds from the sale of certain property known as the Seascape Properties to the County for airport purposes." (FAA Exhibit 1, Item 1, p. 2). Further, it claims that the proposed purchase price is not fair market value (FMV), and the City is obligated to sell the property for FMV in accordance with the SPA and FAA guidance (FAA Exhibit 1, Item 1, p. 3).

In response, the City claims that it is not obligated to provide the proceeds from the sale of the property to Horry County and the proceeds generated from the Seascape Properties do not need to be used for airport purposes. Specifically, the City states "the restrictions arising under a deed and agreements between the United States of America and the City were long ago satisfied or released and, in any event, conferred no right, title, interest, or benefit upon the County with respect to the Seascape Properties." (FAA Exhibit 1, Item 12, p. 2). Further it claims that it is not required to receive FMV for the property (FAA Exhibit 1, Item 12, p. 17).

With respect to the allegations presented in this Complaint, under the specific circumstances as discussed below and based on the Administrative Record in this proceeding, the Director finds the City is obligated to ensure the proceeds of the sale of the Seascope Properties are used for the benefit of civil aviation in accordance with the SPA. Further the Director finds that although Horry County is the logical recipient of the funds as the sponsor of the four (4) public use airports serving the Myrtle Beach area and the past beneficiary of a portion of lease proceeds, the FAA would consider and evaluate the merits of an alternative proposal offered by the City if a significant benefit to civil aviation can be demonstrated. Finally, the City must follow the FAA process for determining FMV for the sale price in accordance with FAA guidance.

The FAA's decision in this matter is based on applicable Federal law, FAA policy, and review of the pleadings and supporting documentation submitted by the parties, which comprise the Administrative Record reflected in the attached FAA Exhibit 1.

## II. PARTIES

### A. Complainant

Horry County is a political subdivision of the State of South Carolina. It is the sponsor of four (4) airports serving the Myrtle Beach area including Myrtle Beach International Airport. The County is the successor<sup>1</sup> to the South Carolina (SC) Aeronautics Commission. It has received a portion of the proceeds from the leasing of the Seascope Properties (owned by the City from a conveyance by the United States) since 2004 under an Intergovernmental Agreement (IGA) (FAA Exhibit 1, Item 1 Exhibit 22). It also had received funds from the proceeds from the City's Airport Trust Fund prior to the 2004 IGA<sup>2</sup>.

Horry County has accepted grant funding from the FAA under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. § 47107, *et seq.*). The County has received over \$222 million dollars in Federal grants to fund airport improvements since 1982 (FAA Exhibit 1, Item 17). The Myrtle Beach International Airport is a small hub primary airport that supported over 173,000 operations in 2021. It has 54 based aircraft and had over 545,000 annual enplanements in 2021 (FAA Exhibit 1, Items 18 & 19).

### B. Respondent

The City of Myrtle Beach is a municipal subdivision of South Carolina and is the owner of the Seascope Properties.<sup>3</sup> The properties were conveyed to the City (the Town of Myrtle Beach at that time) by the United States in 1948 in accordance with the SPA. The Seascope Properties were conveyed along with another ~20 acre parcel and the larger parcel that would come to be known as the Myrtle Beach Municipal Airport (now Myrtle Beach International Airport) for use

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<sup>1</sup> The SC Aeronautics Commission still exists, but is no longer the sponsor of Crescent Beach Airport. Horry County is the successor to SC only in its role as an airport sponsor.

<sup>2</sup> City has transferred nearly \$40 million in lease proceeds from the Seascope Properties to the County since 1975. (FAA Exhibit 1, Item 7, p. 6).

<sup>3</sup> An approximately 143 acre parcel conveyed to the City by the United States that has been leased and is being used as a campground.

as a civil aviation airport. In 1953, the Civil Aeronautics Administration (CAA) released the Seascope Properties and the other ~20 acre parcel from its obligations under the 1948 Deed on the condition that proceeds from the lease or disposition of the properties would be used for public airport purposes. The City has leased the property since 1982. The City provided a portion of the proceeds to Horry County for airport purposes between 1995 and 2004 (FAA Exhibit 1, Item 1, p.12). In 2004, the County and City entered into an Intergovernmental Agreement to split the proceeds between the two parties with the County receiving 75 percent and the City 25 percent (FAA Exhibit 1, Item 1, p. 16). The City has passed a resolution to sell the Seascope Properties (FAA Exhibit 1, Item 1, Exhibits 3c and 3d).

### III. PROCEDURAL HISTORY

April 15, 2021	Horry County filed a Complaint to Enforce the Obligation of the City of Myrtle Beach, South Carolina under the Surplus Property Act (FAA Exhibit 1, Item 1).
April 15, 2021	Horry County filed a Motion to Require the City of Myrtle Beach, South Carolina to Provide Advance Notice of Conveyance of the Seascope Properties (FAA Exhibit 1, Item 2).
April 30, 2021	FAA docketed the Complaint as 16-21-07 (FAA Exhibit 1, Item 3).
April 30, 2021	City filed its Answer in Opposition to Horry's County Motion to Require Advanced Notice of Conveyance of the Seascope Properties (FAA Exhibit 1, Item 4).
May 5, 2021	Horry County filed a Reply in Support of its Motion to Require the City of Myrtle Beach, South Carolina, to Provide Advance Notice of Conveyance of the Seascope Properties (FAA Exhibit 1, Item 5).
May 17, 2021	The City of Myrtle Beach filed an Answer to Horry County's Motion for Leave to File Reply (FAA Exhibit 1, Item 6).
May 25, 2021	The City of Myrtle Beach filed a Combined Motion to Dismiss with Prejudice and Supporting Memorandum and Motion for Summary Judgment (FAA Exhibit 1, Item 7).
May 27, 2021	Horry County filed an Unopposed Motion to File Reply to City's Combined Motion for Dismissal or Summary Judgment (FAA Exhibit 1 Item 8).
June 11, 2021	Horry County filed an Opposition to the City of Myrtle Beach's Combined Motion to Dismiss and For Summary Judgment (FAA Exhibit 1 Item 9).
June 21, 2021	City of Myrtle Beach filed a Motion for Leave to File its Reply in Support of its Combined Motion to Dismiss or for Summary Judgment (FAA Exhibit 1, Item 10).

June 22, 2021	City of Myrtle Beach filed a Reply in Support of Combined Motion to Dismiss with Prejudice and for Summary Judgment (FAA Exhibit 1, Item 11).
August 2, 2021	City of Myrtle Beach filed an Answer to Horry County's Complaint to Enforce the Obligations of the City of Myrtle Beach, South Carolina, Under the Surplus Property Act (FAA Exhibit 1, Item 12).
August 6, 2021	Horry County filed an Unopposed Motion for Extension of Time to File a Response to the City of Myrtle Beach's Answer (FAA Exhibit 1, Item 13).
August 26, 2021	Horry County filed a Reply in Support of its Complaint (FAA Exhibit 1, Item 14).
September 8, 2021	City of Myrtle Beach filed a Motion for Extension of Time to File Rebuttal (FAA Exhibit 1, Item 15).
September 21, 2021	City Of Myrtle Beach filed a Rebuttal to Horry County's Reply In Support Of Its Complaint (FAA Exhibit 1, Item 16).
January 28, 2022	Horry County and the City of Myrtle Beach entered into Alternative Dispute Resolution (ADR) proceedings to attempt to resolve the issues.
August 16, 2022	The ADR proceedings were unsuccessful and were terminated.
October 31, 2022	Horry County filed its Motion to Expedite Investigation and Issue Director's Determination (FAA Exhibit 1, Item 20).
November 10, 2022	City issued its Answer to Horry County's Motion to Expedite Investigation and Issue Director's Determination (FAA Exhibit 1, Item 21).

All other proceedings are found in the Administrative Record (FAA Exhibit 1).

#### **IV. FACTUAL BACKGROUND**

The undisputed facts in this matter are as follows:

1. On October 22, 1948, the United States conveyed several parcels of land to the Town of Myrtle Beach to be used for civil aviation purposes. The property became known as the Myrtle Beach Municipal Airport. This conveyance included the 143 acre parcel that later became known as the Seascape Properties and another ~20 acre parcel. The property was conveyed by a quitclaim deed (the 1948 Deed) to the Town of Myrtle Beach [now the City of Myrtle Beach] in accordance with the SPA (FAA Exhibit 1, Item 1, Exhibit 8).

2. On February 6, 1953 the Town of Myrtle Beach passed a resolution committing to use the proceeds from the lease or disposition of the 143 acre parcel (later known as Seascope Properties) and another ~20 acre parcel for airport purposes at Myrtle Beach Municipal Airport or for the improvement, maintenance or operation of another public use airport in consideration of releasing the property from its obligations under the 1948 Deed (FAA Exhibit 1, Item 1, Exhibit 9).
3. On February 24, 1953, upon the request of the Town of Myrtle Beach, the CAA, predecessor to the FAA, released the Town of Myrtle Beach from all obligations<sup>4</sup> in the 1948 Deed associated with the two tracts of land stated in the 1953 Resolution (the 143 acre parcel later known Seascope Properties and another ~20 acre parcel), except for the deed provision reserving the United States right and title to fissionable materials. The Release was conditioned on the Town of Myrtle Beach's resolution committing the Town to the funding dedication for civil operations at Myrtle Beach Municipal Airport or for the development, improvement, operation or maintenance of another public airport (FAA Exhibit 1, Item 1, Exhibit 10).
4. On April 21, 1958, the City of Myrtle Beach, the SC Aeronautics Commission, and the United States acting through the United States Corps of Engineers entered into an agreement to develop the Crescent Beach Airport to support civil commercial air service to replace the Myrtle Beach Municipal Airport, and to document the parties' intent to convey the airport property to the United States to develop the Myrtle Beach Air Force Base (FAA Exhibit 1 Item 1, Exhibit 11).
5. On October 7, 1958, the CAA entered into an agreement with the City of Myrtle Beach, and the SC Aeronautics Commission to release the City of its obligations at Myrtle Beach Municipal Airport and to assign the obligations to the Commission at Crescent Beach Airport. The City also conveyed the Myrtle Beach Municipal Airport property to the United States as part of this agreement (FAA Exhibit 1, Item 1, Exhibit 12).
6. On February 26, 1974, the SC State Legislature enacted legislation (No. 1426) to transfer the property and operation of the Crescent Beach Airport to the Horry County Airport Commission (FAA Exhibit 1, Item 1, Exhibit 13).
7. Since 1982 the City has leased the Seascope Properties to the same two tenants (FAA Exhibit 1, Item 1, p. 12).
8. On June 10, 1982, the United States filed a disclaimer in response to a lawsuit brought in the United States District Court by the County naming both the City and United States as defendants. The United States disclaimed "all interests in the real property

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<sup>4</sup> The Release required the Town to maintain the obligation to provide fissionable materials rights for the United States. It also included two deed restrictions that run with the land to maintain the right to fly over the land and limiting the construction of any hazards to air navigation.

described in the Compliant adverse to the plaintiffs.” The District Court dismissed the Complaint (FAA Exhibit 1, Item 7, Exhibit 4).

9. On May 14, 1985, the SC Court of Appeals upheld the lower court ruling that plaintiff business owners Johnston and Cook did not have standing to bring their lawsuit against the City and its tenants. The lawsuit had claimed that the City was not leasing the property for FMV, which adversely affected the funding of public airports of the area and plaintiffs’ businesses involved with the tourist trade (FAA Exhibit 1, Item 1, Exhibit 18).
10. On April 7, 1986, the SC Court of Appeals reversed a prior decision in a lawsuit brought by Horry County against the City and its tenants claiming the City did not follow its ordinances when entering into the lease agreements (FAA Exhibit 1, Item 1, Exhibit 19). The Appeals Court found that the City did not follow procedures and the ordinances were invalid.
11. On October 15, 1990, the City entered into two new separate leases with Perry Issue Company and Ponderosa to lease the Seascape Properties for use as campgrounds (FAA Exhibit 1, Item 1, Exhibits 14a and 14b).
12. On February 28, 1995, the City passed a resolution that specifically named the trust where proceeds from the leasing of the properties had been maintained, the “Airport Trust Fund,” and stated that interest income from the fund would be used for capital expenditures at an airport serving the Myrtle Beach area and the direct lease proceeds could be used for “one-time operational requirements or promotional projects related to development, operation, maintenance, or improvement of a qualifying airport or airport services” at the discretion of the City Council (FAA Exhibit 1, Item 1, Exhibit 15).
13. On June 6, 2001, the FAA Airports District Office sent a letter to Horry County that affirmed the City’s obligation to use the proceeds from the Seascape Properties for airport purposes. The letter also referenced a release of 20.19 acres that was conveyed in 1960 to another party and was not subject to the obligation anymore (FAA Exhibit 1, Item 1, Exhibit 20).
14. On July 24, 2002, the FAA Airports District Office sent a letter to the City of Myrtle Beach in response to a letter from Horry County requesting that the City transfer over \$6 million from the proceeds of the Seascape Properties to Horry County and advance to the County all funds from the Airport Trust Fund to the County on a quarterly basis (FAA Exhibit 1, Item 1, Exhibit 21).
15. On May 5, 2004, the City and County entered into an Inter-governmental Agreement (2004 IGA) that identified the use of future lease proceeds from the Seascape Properties providing 75 percent to the County and 25 percent to the City (FAA Exhibit 1, Item 1, Exhibit 22).



16. On March 14, 2009, the City amended the leases with Perry Issue Company and Ponderosa for the Seascope Properties that adjusted the rental fees (FAA Exhibit 1, Item 1, Exhibits 14c and 14d).
17. In early November 2020, the County learned the City proposed to sell the Seascope Properties (FAA Exhibit 1, Item 1, p. 5).
18. On November 6, 2020, the County sent a letter to the City objecting to the sale of the Seascope Properties and requested the City comply with its obligations under the SPA and provide the proceeds to the County (FAA Exhibit 1, Item 1, Exhibit 1).
19. On November 10, 2020, the City had the first reading of Ordinances 20-48 and 20-49 which authorized the City to sell the Seascope Properties (FAA Exhibit 1, Item 1, Exhibit 3c).
20. On November 25, 2020, the City sent a letter responding to the County stating that they had no obligation to provide the proceeds of the sale of the properties to Horry County to be used for airport purposes and that the lease proceeds that it had provided in the past were voluntary (FAA Exhibit 1, Item 1, Exhibit 2).
21. On December 4, 2020, the County requested a release of 0.29 acre parcel of surplus property land from the Myrtle Beach International Airport to support a road expansion project (FAA Exhibit 1, Item 7, p 13).
22. On December 10, 2020, the County filed a lawsuit in the SC Court of Pleas “seeking to enjoin the proposed sale and obtain a Judgment requiring that any sales proceeds be paid to the County to be used for airport purposes.” (FAA Exhibit 1, Item 1, p. 6).
23. On December 22, 2020, the SC State Court granted an ex-parte temporary restraining order to the County to block the sale of the properties (FAA Exhibit 1, Item 1, p. 6).
24. On January 25, 2021, the SC State Court Judge denied the County’s request for injunction (filed by the County on January 5, 2021) (FAA Exhibit 1, Item 1, Exhibit 4).
25. On March 5, 2021, the City filed a Motion to Dismiss the SC State Court action (FAA Exhibit 1, Item 1, Exhibit 5) and on March 17, 2021, the Motion was denied. On April 15, 2021 the SC State Court dismissed the lawsuit based on the County’s motion for voluntary dismissal (FAA Exhibit 1, Item 7, Exhibit 17).
26. On March 17, 2021, the FAA Airports District Office sent a letter to the City stating the FAA’s position that the City is still obligated to provide the proceeds from the sale of the properties to the County for airport purposes (FAA Exhibit 1, Item 1, Exhibit 6).

27. On March 23, 2021, the City responded to the FAA Airport District Office letter disputing its obligation and stating it was entitled to all the proceeds from the sale of the property (FAA Exhibit 1, Item 7, Exhibit 16).
28. On September 28, 2022, the City sent a letter to the County stating that it would terminate the 2004 IGA on October 14, 2022. The City suspended payments from the lease proceeds to the County. The 75 percent County share was put in escrow pending the outcome of the Part 16 proceedings (FAA Exhibit 1, Item 20, Exhibit 2)
29. On October 10, 2022, the County sent a letter to the City objecting to the termination of the 2004 IGA. (FAA Exhibit 1, Item 20, Exhibit 3).

## V. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following three issues require analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

**Issue 1 - Whether the City is obligated to provide the proceeds from the sale of the Seascape Properties for airport purposes in accordance with the Surplus Property Act.**

**Issue 2 - Whether the City is obligated to provide the proceeds of the sale of the Seascape Properties to Horry County for airport purposes.**

**Issue 3 - Whether the City is obligated to sell the property for fair market value in accordance with the Surplus Property Act and FAA guidance.**

## VI. APPLICABLE FEDERAL LAW AND POLICY

### A. Surplus Property Act Obligations

Surplus property instruments of disposal are issued under the SPA of 1944, as amended. The SPA authorizes conveyance of property surplus to the needs of the United States. The FAA (or its predecessor, the CAA) recommends to the General Services Administration (GSA) which property should be transferred for airport purposes to public agencies. Such deeds are issued by the GSA that has jurisdiction over the disposition of properties that are declared to be surplus to the needs of the Federal Government. Prior to the establishment of the GSA in 1949, instruments of disposal were issued by the War Assets Administration (WAA).

Public Law 80-289, approved July 30, 1947, amended Section 13 of the Surplus Property Act of 1944. This authorized the Administrator of WAA (now GSA) to convey to any state, political subdivision, municipality or tax-supported institution, surplus real and personal property for airport purposes without monetary consideration to the United States. These conveyances are subject to the terms, conditions, reservations and restrictions prescribed therein. Surplus property instruments of transfer are one of the means by which the Federal Government provides airport development assistance to public airport sponsors. The conveyance of surplus Federal land to

public agencies for airport purposes is administered by the FAA, in conjunction with the United States Department of Defense (DOD) and the GSA and pursuant to 49 U.S.C. §§ 47151, 47152, and 47153.

Public Law 81-311 specifically imposes upon the FAA the sole responsibility for determining and enforcing compliance with the terms and conditions of all instruments of transfer by which surplus airport property is or has been conveyed to non-Federal public agencies pursuant to the SPA (codified in 49 U.S.C. § 47151(b)). Section 3 of Public Law 81-311 states

The Administrator of the Civil Aeronautics shall have the sole responsibility for determining and enforcing compliance with the terms, conditions, reservations and restrictions contained in any instrument of disposal by which surplus property is or had been transferred to States and their political subdivisions, municipalities and tax-supported institutions pursuant to the Surplus Property Act of 1944, for use in the development, improvement, operation, or maintenance of a public airport or to provide sources of revenue for nonaviation businesses at a public airport . . .

Furthermore, pursuant to 49 U.S.C. § 47122, the FAA has a statutory mandate to ensure that airport owners comply with their Federal obligations.

All surplus airport property instruments of disposal, except those conveying only personal property, provide that the covenants assumed by the grantee regarding the use, operation and maintenance of the airport and the property transferred shall be deemed to be covenants running with the land. Accordingly, such covenants continue in full force and effect until released under Public Law 81-311 or other applicable Federal law. In addition, the law permits the FAA to provide additional conditions, reservations, or restrictions on any release that it deems necessary to support civil aviation.<sup>5</sup> Additional terms and conditions may be imposed in the form of personal covenants or obligations of the public agency that would only apply to the existing owner, or they may be imposed as deed restrictions that would run with the land.<sup>6</sup>

Section 4 of Public Law 81-311 states

[t]hat any such release, conveyance or quitclaim may be granted or made subject to, such terms and conditions as the Administrator of Civil Aeronautics deems necessary to protect or advance the interests of the United States in civil aviation: and provided further, [t]hat no release conveyance or quitclaim shall be executed by the Administrator pursuant to this section except upon the condition that in the event the property to which such release, conveyance or quitclaim relates shall be sold to any third party within five years after the date of enactment of this ACT, the

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<sup>5</sup> S. REP. NO. 81-690, at 4 (1949), *reprinted* in 1949 U.S.C.C.A.N. 1965, 1968 [Senate Report for PL 81-311 states “Therefore, section 4 also provides that the Administrator may release a grantee of surplus airport property from such of the terms, conditions, reservations, or restrictions as may be necessary to enable the grantee to use the property for the benefit of the airport, provided it is determined by the Administrator of Civil Aeronautics to grant such releases subject to such additional terms and conditions as he deems necessary to assure that the property will best serve the interests of the United States in civil aviation.”

<sup>6</sup> 14 CFR § 155.7(d).

proceeds of such sale shall be devoted exclusively to the development, improvement, operation or maintenance of a public airport.

This statute provision gave the CAA Administrator discretion to identify the terms of the release for the benefit of civil aviation. It also made it a requirement that proceeds be applied to civil aviation if sold within 5 years of the Act. At the time of the 1953 Release, the release of surplus property was governed by agency policies and procedures; these were promulgated into regulations without substantive change at 14 USC Part 565 in July 1954.<sup>7</sup>

Currently, the release of surplus property obligations are at the discretion of the FAA and are governed by 14 CFR Part 155.<sup>8</sup> Specifically, sub-sections b and d of § 155.7 state:

(b) The Administrator does not issue a release under this part if it would allow the sale of the property concerned to a third party, unless the public agency concerned has obligated itself to use the proceeds from the sale exclusively for developing, improving, operating, or maintaining a public airport.

(d) The Administrator may issue a release from the terms, conditions, reservations, or restrictions of an instrument of disposal subject to any other terms or conditions that he considers necessary to protect or advance the interests of the United States in civil aviation. Such a term or condition, including one regarding the use of proceeds from the sale of property, is imposed as a personal covenant or obligation of the public agency concerned rather than as a term or condition to the release or as a covenant running with the land, unless the Administrator determines that the purpose of the term or condition would be better achieved as a condition or covenant running with the land.

Further the property may not be released unless it meets the following criteria defined in 14 CFR § 155.3(a)(1) and (2) that state

(1) The property to which the release relates no longer serves the purpose for which it was made subject to the terms, conditions, reservations, or restrictions concerned;  
or

(2) The release will not prevent accomplishing the purpose for which the property was made subject to the terms, conditions, reservations, or restrictions, and is necessary to protect or advance the interests of the United States in civil aviation.

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<sup>7</sup> Chapter II—Civil Aeronautics Administration, Department of Commerce, Part 565—Release of Airport Property from Restrictions of Surplus Airport Property Instruments of Disposal, 19 Fed. Reg. 4603 (July 27, 1954) [“The purpose of adopting the regulations of this part is to codify and publish the policies and procedures of the Administrator of Civil Aeronautics with respect to the application for and granting of releases of airport property from the terms, conditions, reservations and restrictions of surplus property instruments of disposal, pursuant to section 4 of Public Law 311, 81st Congress (63 Stat. 700; 50 U.S.C. 1622(c). [*sic.*] The policies and procedures set forth herein do not represent or reflect any substantial change in existing policies and procedures but are consistent with the position heretofore taken by the Administrator with respect to applications for such releases.”].

<sup>8</sup> 14 USC Part 155 is the successor to 14 CFR Part 565.

FAA Order 5190.6B Change 2, Chapter 22 provides guidance on FAA policy for releases from Federal obligations for public airports. Section 22.17(a) of this Order states:

In no case shall a release be granted unless the FAA determines that the land involved can be disposed of without adversely affecting the development, improvement, operation, or maintenance of the airport where the land is located. Any approved disposal must not be in excess of the present and foreseeable needs of the airport. Such a release has the effect of authorizing the conversion of a real property asset into another form of asset (cash or physical improvements) that better serves the purpose for which the real property was initially conveyed. This objective is not met unless an amount equal to the current fair market value FMV of the property is realized as a consequence of the release and such amount is committed to airport purposes.<sup>9</sup>

## **B. City of Myrtle Beach Instruments and Agreements Pertaining to SPA**

In this case, the property conveyed by the 1948 Deed was determined to be no longer needed by the United States and was conveyed to the Town of Myrtle Beach for airport purposes to serve civil aviation in the Myrtle Beach area. Under the October 22, 1948 Deed (FAA Exhibit 1, Item 1, Exhibit 8) executed under the provisions of the SPA, the City (Town at that time) assumed certain obligations, reservations and restrictions. These occurred in the form of restrictive covenants in the 1948 Deed and included the following: 1) to protect the aerial approaches to the airport; 2) to permit nonexclusive use by the landing area by the Federal Government without charge; 3) during times of National Emergency permit the Federal Government nonexclusive or exclusive use and control of the landing area without charge; 4) prohibit the granting of an exclusive right; 5) any future conveyance of this property transfers these conditions to the new owner; 6) no change in use or disposition of this land for other than airport purposes is allowed without the written consent of the CAA (now the FAA); and 7) release the Federal Government of any liability associated with any lease of the property by the Federal Government (FAA Exhibit 1, Item 1, Exhibit 8, pages 8-11). The 1948 Deed also did not convey the rights to fissionable materials on the property, but maintained this right for the United States.

On February 6, 1953, the Council of the Town of Myrtle Beach adopted a resolution (1953 Resolution) to formalize and ratify its request to the United States to release obligations of the 1948 Deed concerning the Seascape Properties parcel and a separate parcel (FAA Exhibit 1, Item 1, Exhibit 9).<sup>10</sup> The 1953 Resolution sought the release of the United States right, title and interest in the two tracts of land in order to obtain marketable fee title to the properties such that the Town could use, lease, or dispose of the properties and thereby obtain funds to defray the cost of operating the Myrtle Beach Municipal Airport or to develop and operate another civil airport.<sup>11</sup> The 1953 Resolution stated that such funds could be used for “the development and operation of another civil airport in the event the Town is deprived of its right to conduct civil

<sup>9</sup> FAA Order 5190.6B Change 2, Airport Compliance Manual, § 22.17(a), pages 22-11 to 22-12 (Dec. 9, 2022).

<sup>10</sup> Town of Myrtle Beach, Resolution Constituting Agreement with the United States Regarding the Use of Proceeds from Lease or Sale of Certain Lands Conveyed to Town of Myrtle Beach Under Section 13G of the Surplus Property Act of 1944 (done and ratified, Feb. 6, 1953).

<sup>11</sup> *Id.* [2nd and 3rd Whereas recitals].

aviation operations on the said Myrtle Beach Municipal Airport, because of military operations on said Airport . . .”<sup>12</sup> The 1953 Resolution stated

[I]t is the intention of the Town of Myrtle Beach to covenant and agree with the United States to utilize any revenue derived from the use, lease or disposition of the said two tracts of land for public airport purposes as a further consideration of the release of the said two tracts of land from the terms, conditions, reservations and restrictions of the said quitclaim deed.<sup>13</sup>

The 1953 Resolution also stated that the covenants to use proceeds (funds, revenue) realized from the use, lease, or disposition of the properties would become effective and binding upon the Town’s acceptance of a deed of release or other instrument releasing the properties from the obligations of the 1948 Deed.<sup>14</sup>

The Release dated February 24, 1953 (1953 Release, or Release) released the Town of its obligations with respect to the 143 acre parcel (later known as the Seascape Properties) and an additional ~20 acre parcel under the 1948 Deed. The seven restrictions identified above were released; however the 1953 Release reserved the United States right to any fissionable materials within the boundaries of the property.<sup>15</sup> The 1953 Release was granted on the condition of the City’s commitment to utilize any proceeds from the use or disposition of the land for public airport purposes as promised by the Town in its Resolution adopted February 6, 1953. This condition to use the funds from the use, lease, or disposition of the parcels is considered an obligation of the public agency, rather than a personal covenant.<sup>16</sup> The 1953 Release added two conditions/restrictions for the two parcels concerning the right for public flight over the property and to not permit any construction or alteration that would create a hazard to aviation for the airport. These two conditions are for the City and for its successor or assigns and thus run with the land (FAA Exhibit 1, Item 1, Exhibit 10).

An Agreement (April 1958 Agreement) between the United States, the City, and the SC Aeronautics Commission was signed on April 21, 1958 associated with the United States project to develop the Myrtle Beach Air Force Base. The April 1958 Agreement identified the actions that the Commission, the City, and the United States would take to prepare Crescent Beach Airport for commercial service and to relocate the civil commercial service from the Myrtle Beach Municipal Airport to the Crescent Beach Airport. It identified the financial responsibility of the United States as well as the City’s, stating “The City shall contribute to the Commission all funds presently available and which may become available in the Airport Fund representing proceeds received by the City from the property which was transferred to the City for Public Airport purposes under Public Law 289 and which said funds shall be used for the operation,

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* [4th Whereas recital].

<sup>14</sup> *Id.*, page 3.

<sup>15</sup> The 1948 Deed reserved the right of the United States to fissionable materials on the property and this right was maintained under the 1953 Release. (FAA Exhibit 1, Item 1, Exhibit 8, pp 7-8) and (FAA Exhibit 1, Item 1, Exhibit 10, p.2). In 1958, the Government released its rights to fissionable materials. *See* Pub. L. 85-681, § 3, 72 Stat. 632 (Aug. 19, 1958), codified at 42 U.S.C. § 2098(b).

<sup>16</sup> *See* 14 CFR § 155.7(d)

maintenance and development of the Myrtle Beach Airport at Crescent Beach.”<sup>17</sup> (FAA Exhibit 1, Item 1, Exhibit 11). The CAA concurred with the April 1958 Agreement, but the United States Government representative that signed the agreement was the United States Army Corps of Engineers.

Another agreement was signed on October 7, 1958 (October 1958 Agreement) between the United States, the City and the SC Aeronautics Commission that released the City of its obligations at Myrtle Beach Municipal Airport and approved the conveyance of the Airport to the United States Air Force. The October 1958 Agreement also assigned the obligations to the SC Commission in relation to Crescent Beach Airport. This agreement included a condition that the “[t]he City agrees to pay to the Commission, upon the request of the CAA, all airport funds which the City is now and may hereafter become accountable, derived from airport property transferred by the aforesaid deeds dated October 22, 1948, June 17, 1949, March 22, 1950...”<sup>18</sup> (FAA Exhibit 1, Item 1, Exhibit 12). This agreement referenced the April 1958 Agreement and constituted the CAA’s formal release of the City’s Federal obligations in relation to the Myrtle Beach Municipal Airport.

The October 1958 Agreement (FAA Exhibit 1, Item 1, Exhibit 12) between the United States, the City and the SC Aeronautics Commission released the City of all obligations associated with the 1948 Deed stating “the Government hereby releases the City from any and all obligations created by and under the aforesaid deeds dated October 22, 1948...”<sup>19</sup> (FAA Exhibit 1, Item 1, Exhibit 12, p. 3). The obligations were assumed by the SC Aeronautics Commission as identified in Article III of the October 1958 Agreement. The 1958 Agreements did not reference the 1953 Release instrument.

### **C. FAA Enforcement Responsibilities**

Pursuant to 49 U.S.C. § 47151, the FAA has the statutory authority to ensure that airport owners comply with their Federal obligations contained in surplus property deeds and instruments of conveyance.

### **D. The Complaint and Investigative Process**

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties’ pleadings supply “a reasonable basis for further investigation,” the FAA should investigate “the subject matter of the complaint.” 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), “a party adversely affected by the Director’s Determination may file an appeal with the Associate Administrator for Airports within 30 days

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<sup>17</sup> April 1958 Agreement, Art. 1, Sec. (f).

<sup>18</sup> October 1958 Agreement, Art. II, Sec. B.

<sup>19</sup> *Id.*, Art. I, Sec. B.

after the date of service of the initial determination.” If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

## **VII. ANALYSIS**

### **Preliminary Issue A - City’s claim that the County has no standing, and the FAA therefore lacks jurisdiction.**

#### **County’s Position**

The County claims that the surplus property obligations outlined in the 1958 Agreements transfer to the County as the successor of the SC Aeronautics Commission and states that “By transferring the ‘property and operation,’ the Legislature transferred to the County all aspects of the Commission’s operation [of Crescent Beach Airport].” (FAA Exhibit 1, Item 9, p. 13). Further, the County states “As the current operator of the airports for whose benefit the proceeds from the Seascope Properties were dedicated, the County clearly has standing to pursue that claim.” (FAA Exhibit 1, Item 9, p. 14).

#### **City’s Position**

The City claims the “County has no interest in the Seascope Properties and no right to any proceeds of their sale as a matter of law.” It claims the County has no standing to bring the Part 16 complaint and the FAA therefore lacks jurisdiction to adjudicate the complaint<sup>20</sup> (FAA Exhibit 1, Item 7, p. 18).

#### **Director’s Analysis**

The Director agrees with the County that it may file a complaint under Part 16, since it would be substantially impacted by the sale of the properties and finds that the County has standing to bring this complaint. First, § 16.1(a)(8) specifically includes applicability to the “obligations contained in property deeds for property transferred under the Surplus Property Act (49 U.S.C. 47151-47153).” Second, § 16.23(a) states “A person directly and substantially affected by any alleged noncompliance or a person qualified under 49 CFR 26.105(c) may file a complaint under this part.” Third, the County is the successor to the SC Aeronautics Commission<sup>21</sup> and is the operator of four (4) public use airports serving the Myrtle Beach area. The County has received proceeds from the lease of the Seascope Properties.<sup>22</sup> Selling the properties would cut off this revenue. Finally, and unequivocally, the City, although not currently an airport sponsor, accepted and maintains ownership of the Seascope Properties that were conveyed by the United States under the SPA.

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<sup>20</sup>The City’s Motion for Summary Judgment and Motion to Dismiss was not acted upon by the FAA. However it is considered in the DD, as the City’s answer stated “As explained in the City’s Combined Motion to Dismiss with Prejudice and Supporting Memorandum and Motion for Summary Judgment filed on May 25, 2021, and the City’s Reply in Support in Combined Motion to Dismiss with Prejudice and for Summary Judgment filed on June 21, 2021, both of which the City incorporates by reference herein in answer to the Complaint...” (FAA Exhibit 1, Item 12 pp. 1-2).

<sup>21</sup> ADO letter from September 27, 1976 (FAA Exhibit 1, Item 1, Exhibit 16) stated FAA’s position that the County was the successor to the SC Aeronautics Commission.

<sup>22</sup> Under the IGA the County received 75% of the proceeds from the Seascope leases.



The FAA is the designated agency as the successor to the CAA to oversee compliance with the SPA. The City recognized this stating “The Secretary of Transportation, through the Administrator of the FAA, is statutorily charged with enforcing compliance with Surplus Property Act obligations;” (FAA Exhibit 1, Item 11, p. 19). The Director finds that the FAA has jurisdiction to determine if the City is in compliance with its obligations associated with the federally conveyed Seascope Properties. Further the Director investigates this complaint because the City has claimed that previous FAA correspondence and positions (e.g., the letters from the FAA Airports District Office stating that it is obligated are only opinion and not the headquarters-level review or final agency decision) were not binding.<sup>23</sup> While the Airports District Office is authorized to make decisions regarding the application of the Surplus Property Act and compliance with FAA Grant Assurances, the Director may review these decisions under the Part 16 formal complaint process. Indeed, this type of “headquarters-level review”<sup>24</sup> is what the City indicates has been lacking. The Director finds that investigation of this complaint and a determination are appropriate.

**Preliminary Issue B - City’s claim that the United States disclaimed all rights to the Seascope Properties in a United States District Court filing.**

**County’s Position**

In an action to quiet title filed by the County, the United States filed a disclaimer stating that the United States disclaims all interest to the Seascope Properties adverse to the plaintiffs. In its *Opposition to the City’s Combined Motion to Dismiss and for Summary Judgment*, the County notes that “[t]he disclaimer itself does not even mention the Surplus Property Act . . . [and] [t]he United States simply disclaimed an *ownership interest* in the property *adverse to the County*.” (FAA Exhibit 1, Item 9, p. 4, emphasis in original). The County adds that, with regards to the obligation to use the proceeds for airport purposes, “[t]hat is not a property right of the United States, but it is a legal obligation of the City, enforceable by the FAA based on a complaint by the County.” (FAA Exhibit 1, Item 9, p. 5).

**City’s Position**

The City claims that the United States disclaimed all interests to the property and states that “[t]he Federal government nevertheless declined to get involved and disclaimed all interest in the Seascope Properties adverse to the County.” (FAA Exhibit 1, Item 16, p. 14). The City adds that “[t]his demonstrates either that the Federal government correctly understood no such obligations existed at that point, or the parties were free to determine their obligations themselves; it could not have disclaimed all independent Federal interest if it believed the Seascope Properties were still subject to the Surplus Property Act and the parties could not compromise on their own.” (FAA Exhibit 1, Item 16, p. 14).

**Director’s Analysis**

In response to the quiet title action, the United States referenced 28 U.S.C. section 2409a - Real Property Quiet Title Actions in his Disclaimer. Sub-section (e) of that section states:

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<sup>23</sup> City cites various court cases to support its claims that the letters from the ADO managers are employee opinions and not the agency’s position. They also claim that the letters have been in response to the County’s requests (FAA Exhibit 1, Item 16, p. 15).

<sup>24</sup> (FAA Exhibit 1, Item 11, p. 5).

If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, the jurisdiction of the district court shall cease unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

The Court dismissed the Complaint based on the disclaimer filed by the United States. The Court, however, did not rule on the disposition of the proceeds (FAA Exhibit 1, Item 7, Exhibit 5). The United States released its right, title and interest in the land<sup>25</sup> in the 1953 Release. The Release was granted based on the Town's commitment in the 1953 Resolution that the proceeds from the use, lease, or sale of the property would be used for the benefit of the civil aviation in the Myrtle Beach area. This was not addressed in the disclaimer. The United States simply disclaimed all interest in the real property adverse to the plaintiff. Section 155.7(d) of Part 155 states "such a term or condition, including one regarding the use of proceeds from the sale of property, is imposed as a personal covenant or obligation of the public agency concerned rather than as a term or condition to the release or as a covenant running with the land unless the Administrator determines that the purpose of the term or condition would be better achieved as a condition or covenant running with the land." As a public agency, the Town's commitment to use proceeds to benefit civil aviation is considered an obligation of the public agency. The FAA Airports District Office characterized the role of the United States in regard to the Seascapes Properties in a letter dated July 24, 2002 that stated "For the past 49 years, the primary role of the U.S. Government has been to request the transfer of the funds under the aforementioned agreements. The U.S. Government claims no current interest in the funds contained in the Airport Fund – only an interest in the proper execution of the terms of the underlying agreement to which it was a party." (FAA Exhibit 1, Item 1, Exhibit 21).

The disclaimer did not release the City from this obligation. Therefore, the Director finds that the court filing does not undermine the FAA's authority to ensure compliance with the SPA or the obligation of the Town (City) under the 1953 Release.

**Issue 1 - Whether the City is obligated to provide the proceeds from the sale of the Seascapes Properties to be used for airport purposes in accordance with the Surplus Property Act.**

**County's Position**

The County references the 1948 Deed (FAA Exhibit 1, Item 1, Exhibit 8), the 1953 Release (FAA Exhibit 1, Item 1, Exhibit 10), the 1958 Agreements (FAA Exhibit 1, Item 1, Exhibits 11 and 12), and several state court rulings<sup>26</sup> as well as several letters from the FAA Airports District Office to support its claim that the City is still obligated under the SPA to provide the proceeds from the disposition of the properties for airport purposes. It states, "The County brings this

<sup>25</sup> The Release, however included two deed restrictions that run with the land to maintain the right to fly over the land and limiting the construction of any hazards to air navigation. The Government maintained its fissionable material rights to the property as they were never granted to the City in the 1948 Deed. Later in 1958, the Government released its rights to fissionable materials. *See* Pub. L. 85-681, § 3, 72 Stat. 632 (Aug. 19, 1958), codified at 42 U.S.C. § 2098(b).

<sup>26</sup> *Johnston v. City of Myrtle Beach*, 330 SE 2d 321 (1985 S.C. Ct. App.) (FAA Exhibit 1, Item 1, Exhibit 18) and *Horry County v. City of Myrtle Beach*, 343 SE 2d 36 (1986 S.C. Ct. App.) (FAA Exhibit 1, Item 1, Exhibit 19).

Complaint because the City refuses to abide by its obligations under the Surplus Property Act of 1944, as amended, 49 U.S.C. §§ 47151 - 47153 (the "Surplus Property Act") to transfer the proceeds from the sale of certain property known as the Seascope Properties to the County for airport purposes." (FAA Exhibit 1, Item 1, p. 1).

### **City's Position**

The City raises several arguments to attempt to demonstrate that it is not obligated to provide the proceeds of the sale for airport purposes. These include claims that the April and October 1958 Agreements released the City from all obligations associated with the property; that the October 1958 Agreement requirement to provide funds to the Commission expired after 20 years; that the FAA's failure to act in the past to enforce the SPA suggests that the FAA lacks jurisdiction; that the 2004 IGA was contradictory to the SPA obligations and the County knowingly accepted the terms; that the City's past payments were strictly voluntary; and that the 1949 amendment to the SPA only required proceeds from the sale of surplus property to a third party to be used for airport purposes if the property was sold within five years from the date of enactment.

### **Director's Analysis**

Determining whether the City is obligated to provide the proceeds from the sale of the Seascope Properties to be used for airport purposes in accordance with the SPA requires a detailed review of the terms of the 1948 Deed, the 1953 Release and the 1958 Agreements. Other agreements between the City and the County, previous court rulings, and past actions or inactions by the FAA are not dispositive on this issue. The Director, therefore, concentrates this analysis on the legal agreements between the City and the United States.

The **1948 Deed** conveyed the Seascope Properties to the Town of Myrtle Beach along with other parcels and imposed certain terms, conditions, reservations and restrictions on the Town<sup>27</sup> (FAA Exhibit 1, Item 1, Exhibit 8, p. 1). The 1948 Deed establishes that the Seascope Properties were conveyed to the Town under the authority of the SPA (FAA Exhibit 1, Item 1, Exhibit 8, pp. 1, 8, and 9).

The SPA designates the CAA, predecessor agency to the FAA, as the responsible entity for ensuring compliance with the Act.<sup>28</sup> It also authorizes the FAA to release the property from the obligations of the conveyance deed and permits the FAA to add conditions to the release document<sup>29</sup> (FAA Exhibit 1, Item 11, Exhibits 2 and 3). The SPA authorizes the approval of a release when the property no longer serves the purpose for which it was conveyed or the release

<sup>27</sup> The 1948 Deed maintained the Government's right to fissionable materials on the property. The City recognized the government's right to fissionable materials by including it in its leases with the tenants of the Seascope Properties as Exhibit B (FAA Exhibit 1, Item 1, Exhibits 14a to 14d).

<sup>28</sup> Pub. L. No. 81-311, § 3, 63 Stat. 700 (Oct. 1, 1949). This provision is now codified without substantive change at 49 U.S.C. § 47151(b) The PL states " The Administrator of the Civil Aeronautics shall have the sole responsibility for determining and enforcing compliance with the terms, conditions and reservation or restrictions in any instrument of disposal by which surplus property is of has been transferred."

<sup>29</sup> *Id.*, § 4, 63 Stat. 700-701 (Oct. 1, 1949). This provision is now codified without substantive change at 49 U.S.C. § 47153 [Section 47153 uses the term "waiver" and the implementing regulations in 14 CFR Part 155 use the term "release."]. The City claims that PL 311-81 states that the requirements to provide the funds from the sale for airport purposes only applies if it is sold within five years of the Act. This is a requirement in the Act; however, the Act also allows FAA to add any condition necessary to benefit civil aviation, which it did as an obligation of the public agency in the 1953 Release.

will not prevent carrying out the purposes for which the conveyance was made and is necessary to advance the civil aviation interests of the United States.<sup>30</sup> Further, the release shall be made on terms that are considered “necessary to protect or advance the civil aviation interests of the United States.”<sup>31</sup>

The **1953 Release** instrument stated “the Grantor [CAA] does hereby quitclaim, convey and release unto the Grantee [Town] all right, title, and interest of the Grantor in and to the following described tracts of land ...including all reservations, restrictions, conditions, exceptions, rights and possibilities of reverter retained by and/or reserved in the Grantor by said quitclaim deed dated October 22, 1948. . .” (FAA Exhibit 1, Item 1, Exhibit 10, pp. 2-3). The Release added two conditions, the right to fly over the properties and to prohibit the creation of hazards to air navigation.<sup>32</sup> Further it maintained the United States right to fissionable materials.<sup>33</sup> The 1953 Release was conditioned on the City “obligating itself to utilize any revenue derived from the use, lease, or disposition of the said two tracts of land in connection with the civil use of Myrtle Beach Municipal Airport, or for the development, improvement, operation or maintenance of another public airport” (FAA Exhibit 1, Item 1, Exhibit 10, p. 1).

The 1953 Release expressly referenced the 1953 Resolution of the Town of Myrtle Beach to document the Town’s obligation to use the property revenues for public airport purposes. The CAA required an applicant to submit such resolution or ordinance of the governing body with a request to release surplus airport property to allow its sale.<sup>34</sup> As stated in the 1953 Resolution, “it is the intention of the Town of Myrtle Beach to covenant and agree with the United States to utilize any revenues derived from the use, lease or disposition of the said two tracts of land for public airport purposes as a further consideration of the releases ...” The 1953 Resolution further provides that such proceeds are “to defray costs of conducting civilian aviation operations at the Myrtle Beach Municipal Airport until such time as the Town is prevented from conducting such operations on the said Municipal Airport, and in that event, to use such revenues for the development, operation, maintenance or improvement of another public airport serving the Myrtle Beach area.” Finally, it states “The covenants set forth hereinabove shall become effective and be binding upon the Town of Myrtle Beach, upon the acceptance of the deed of

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<sup>30</sup> *Id.*, codified without substantive change at 49 U.S.C. § 47153(a)(1)(A),(B).

<sup>31</sup> *Id.*, codified without substantive change at 49 U.S.C. §47153(a)(2).

<sup>32</sup> The Release specifically states “(1) it will dedicate and reserve for the use and benefit of the public a right-of-flight in the and through the airspace, over and across said lands which will permit aerial approach and take-off of aircraft to and from the Myrtle Beach Municipal Airport, and (2) the land will not be used in any manner (including the construction, reception, alteration, or growth of any structure or other object thereon which would create a hazard to the landing, taking off, or maneuvering of aircraft at the Myrtle Beach Municipal Airport or could limit the usefulness of the said airport.” (FAA Exhibit 1, Item 1, Exhibit 10, p. 4).

<sup>33</sup> The Release specifically reserves the right to fissionable materials stating “...except however, the right to and title reserved in the grantor by said instrument in and to fissionable materials...” (FAA Exhibit 1, Item 1, Exhibit 10, p. 3).

<sup>34</sup> Part 565 publication in Federal Register, *supra* note 6, at 4605. Section 565.6 describes the procedures for requesting releases, and paragraph (a)(11) provides “If the requested release would permit sale of the property or any part thereof, a certified copy of a resolution or ordinance of the governing body of the airport owner obligating itself to devote the proceeds derived from the sale of the property exclusively to the development, improvement, operation or maintenance of a public airport.” The Part 565 regulations did not represent any substantial change from existing CAA policies and procedures. Part 565 publication in Federal Register, *supra*, note 6. The requirement is continued in current regulation 14 CFR § 155.11(c)(10).

release or other instrument releasing said two tracts of lands from terms, conditions, reservations and restrictions of the said quitclaim deed of October 22, 1948, as hereinabove provided.” (FAA Exhibit 1, Item 1, Exhibit 9).

The 1953 Resolution, which is expressly referenced by the 1953 Release, clearly obligated the Town to use the proceeds for public airport purposes serving the Myrtle Beach area. The Town [now the City] became bound to this when it accepted the 1953 Deed of Release.

The 1953 Release was granted by the CAA on the condition that the proceeds from the disposition of the property would be used to benefit civil aviation in accordance with the SPA and the understanding that the Town had obligated itself to this condition. The City recognized this in its 1995 Resolution that states “in 1953 the United States Government released the conditions contained in the 1948 quitclaim deed upon the adoption by the City of a resolution which provided in relevant part that the City would use the income from the properties for the development, operation, maintenance or improvement of a public airport serving the Myrtle Beach area.” (FAA Exhibit 1, Item 1, Exhibit 15). Further, the sole reason for the CAA to release the property was to make it more marketable to offset the costs of maintaining the Myrtle Beach Municipal Airport or another public airport.<sup>35</sup> The City’s argument that the reference to the 1953 Resolution is “in its recitals only” (FAA Exhibit 1, Item 12, p. 8) to attempt to downplay this obligation is not persuasive. The CAA would not have released the property unless there was a commitment to benefit civil aviation in accordance with SPA. Under its policies and procedures, the CAA required such commitment to be demonstrated by a resolution or ordinance of the governing body in order to allow sale of the property.<sup>36</sup> It is clear that the 1953 Release that expressly referenced the 1953 Resolution obligated the Town [now the City] to use the proceeds from the lease or disposition of the Seascape Properties for airport purposes.

In summary, the 1953 Release established the following relevant to the Determination:

- 1) It released the two tracts of land from the conditions of the 1948 Deed, thereby extinguishing any obligations from the 1948 Deed for the two tracts.
- 2) It established new conditions for the tracts outlined above that run with the land (right of flight and prohibition on hazards).
- 3) It maintained the rights of the United States to fissionable materials on the tracts.
- 4) It established the Town’s (City’s) obligation to provide the proceeds from the land to support the Myrtle Beach Municipal Airport or another public airport<sup>37</sup> providing a benefit to civil aviation.

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<sup>35</sup> The 1953 Release states “in order that a marketable fee title to said tracts may be vested in the Town of Myrtle Beach” and “. . . [the Town] passed a resolution obligating itself to utilize any revenue derived from the use, lease or disposition of the said two tracts of land in connection with the civil use of Myrtle Beach Municipal Airport or for . . . another public airport.” (FAA Exhibit 1, Item 1, Exhibit 10). Further, the City admits this in its Answer. (FAA Exhibit 1, Item 12, p. 7).

<sup>36</sup> See *supra* note 33.

<sup>37</sup> The City calls this a “personal covenant” in the Rebuttal. (FAA Exhibit 1, Item 16, p. 2).

The **April 1958 Agreement** outlined the actions the SC Commission, the City and the United States would take to relocate civil aviation operations to Crescent Beach Airport. The CAA is not a signatory to the April 1958 Agreement (only CAA concurrence is indicated on signature page) The April 1958 Agreement established 3 things relative to this determination.

- 1) It outlined the City's intent to convey the property in the Exhibit A called the "civil aviation activities area" (did not include the Seascape Properties) to the Federal Government for use by the United States Air Force.
- 2) It outlined the City's obligation to deposit the proceeds from all the land transferred under the 1948 Deed to the Airport Trust Fund for use at the Myrtle Beach Airport at Crescent Beach.
- 3) It stated that the establishment of new civil airport facilities at Crescent Beach Airport to enable the relocation of the City's civil aviation operations constituted full, just and complete compensation for the United States acquisition of the City's rights and property in Exhibit A.<sup>38</sup>

The **October 1958 Agreement** included the formal release of the City from its obligations at Myrtle Beach Municipal Airport that were assumed by the SC Commission at Crescent Beach Airport. The October 1958 Agreement established 3 things:

- 1) It released the City from "any and all obligations created by and under" the 1948 Deed.
- 2) The City released all its interest in the Myrtle Beach Municipal Airport (did not include the Seascape Properties) and conveyed it back to the United States, thereby giving up its sponsorship of the Myrtle Beach Municipal Airport.
- 3) It provided that the City, at the direction of the CAA, would pay all airport funds derived from airport property transferred by the 1948 Deed to the SC Commission. Note this language is different from the April 1958 Agreement. However, because the CAA is signatory to the October 1958 Agreement, and because this document releases the City from its obligations at the Myrtle Beach Municipal Airport, the Director finds this language is applicable to the analysis of the surplus property obligations.

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<sup>38</sup> The City takes the position that "[t]he limitation of the City's funding obligation from the Seascape Properties [to 20 years] therefore served as consideration for the City to give up the City-owned land underneath the [Myrtle Beach Municipal] airport." Further, it states "In conjunction with this specific benefit to the City via the development of the Crescent Beach Airport, the City's funding obligation from the Seascape Properties was limited to providing money (a) only to the State Commission and (b) only 'for the operation, maintenance and development of the Myrtle Beach airport at Crescent Beach.'" (FAA Exhibit 1, Item 7, p. 5). However, the April 1958 Agreement clearly states that the Government's monetary contribution is considered full, just, and complete compensation for giving up the Myrtle Beach Municipal Airport, and it did not set a limit on the obligation to use the proceeds of the Seascape Properties for airport purposes as compensation for conveying the Myrtle Beach Municipal Airport property back to the government. (FAA Exhibit 1, Item 1, Exhibit 11).

Neither the April 1958 Agreement nor the October 1958 Agreement, however, reference the 1953 Release. Therefore, nothing in the 1958 Agreements changes or supersedes the 1953 Release. The County points this out stating “The FAA has never subsequently released the City from the City’s obligations acknowledged in the 1953 Release.” (FAA Exhibit 1, Item 1, p. 10). The City erroneously claims “the April 1958 Agreement thus ‘constitute[d] a complete release of the City from its obligations with respect to the Myrtle Beach Airport’ under any prior deed or grant” and further claims that the proceeds from the Seascope properties were “necessarily limited to the Crescent Beach Airport under the April 1958 Agreement.” (FAA Exhibit 1, Item 7, p. 5). The October 1958 Agreement only references the 1948, 1949, and 1950 deeds and the two grants that were issued for the Myrtle Beach Municipal Airport. The October 1958 Agreement does not contain broader language to encompass any prior instrument of release (1953 Release) and any new conditions included in such an instrument.

The October 1958 Agreement does not release the obligation of the City established by the 1953 Release to use revenue derived from the Seascope Properties for public airport purposes. Although the October 1958 Agreement released the City from any and all obligations “created by or under” the 1948 Deed, the City’s obligations under the 1948 Deed for the Seascope Properties had already been released by the 1953 Release instrument and were no longer governed by the 1948 Deed. The October 1958 Agreement did direct the use of the airport funds, referring to the funds derived from airport property transferred by the 1948 Deed and other deeds, but it does not alter the City’s obligation in the 1953 Release to use the proceeds of the lease or disposition of the Seascope Properties for the Myrtle Beach Airport or another public use airport. The October 1958 Agreement just directed the funds “at the request of the CAA” to the Commission; it did not release the City from its obligation in the 1953 Release.

There have been no other agreements between the City and the United States that have altered the 1953 Release conditions. The City remains bound by the obligation to use the proceeds from the Seascope Properties for airport purposes at Myrtle Beach Airport or another public use airport. The City’s claim that it was released from its obligations by the 1958 Agreements is not substantiated because the 1958 Agreements did not release any obligation associated with the 1953 Release instrument that is currently governing the Seascope Properties. Further the City’s claim that its obligation ran out in 1978 after a 20-year term of the 1958 agreement is not substantiated for the same reason. The City’s claim that the 2004 IGA agreement somehow undermines the 1953 Release obligation is inapposite because the FAA was not a party to that agreement and the City’s obligation is to the United States. The City’s claim that the SPA only requires the proceeds of the sale of the property to be used for airport purposes if the property is sold within five years, thus limiting its obligation under the 1953 Release, is unfounded. The SPA allows the FAA to require any conditions necessary to advance civil aviation, which it did by obligating the Town to use the proceeds for the benefit of civil aviation.<sup>39</sup>

Finally, the City’s claim that the FAA has not acted on the noncompliance of the City in regard to its obligation in the 1953 Release does not in any way relieve the City from this responsibility. The FAA has always maintained that the City is obligated to provide funds from the proceeds of the Seascope Properties for airport purposes through numerous letters. The FAA has never altered its position. The FAA has directed the City to provide these funds to Horry County for

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<sup>39</sup> See *supra* note 28 and accompanying text.

airport purposes and the City to a large extent has complied. In any case, the FAA's inaction in the past does not change the fact that the City is still obligated under the 1953 Release.

The Director finds that the City is obligated to provide the funds from the proceeds of the sale of the Seascope Properties for airport purposes to benefit civil aviation. If the City does not provide these funds, it would be a violation of the City's obligations under the SPA in accordance with the 1953 Release instrument.

## **Issue 2 - Whether the City is obligated to provide the proceeds of the sale of the Seascope Properties to Horry County for airport purposes.**

### **County's Position**

The County states that it is the successor to the SC Aeronautics Commission and is the owner and sponsor for the Myrtle Beach International Airport as well as the three (3) other airports serving Myrtle Beach, including Crescent Beach Airport (now Grand Strand). The County also notes that the City does not have any plans or proposals to develop an additional airport and the City's argument that it could build a new airport with the funds is not supported (FAA Exhibit 1, Item 9, p. 3). The County claims that the proceeds of the sale of the Seascope Properties should go to the County for the use at its airports.

### **City's Position**

The City claims that even if it is found to be obligated to provide the proceeds for airport purposes it is not required to provide the funds to Horry County. The City contends that Horry County was not part of the 1958 Agreements and has no claim to the proceeds and that the obligation to provide funds for Crescent Beach Airport ended. It states "[t]he County only claims an interest in sale proceeds as a successor to the State Commission." (FAA Exhibit 1, Item 16, p. 2). The City argues that personal covenants, such as the proceeds use restriction in the 1953 Release, cannot be enforced by a successor-in-interest. *Id.* Furthermore, the City takes the position that the County's interest as a successor is limited to the Crescent Beach Airport, but that "there is no obligation specific to Crescent Beach which remains." *Id.* The City "therefore has discretion to determine which projects to fund." *Id.* The City also asserts that, even if it is obligated to provide the sales proceeds for airport purposes, the proceeds may go towards future airport projects owned by the City that benefit Myrtle Beach, such as an air cargo hub or off-site transit systems.<sup>40</sup> (FAA Exhibit 1, Item 16, p. 12).

### **Director's Analysis**

As established in Issue 1, the 1953 Release is the governing instrument for the Seascope Properties. The language in the 1953 Release references the 1953 Resolution of the Town of Myrtle Beach that obligates it "to utilize any revenue derived from the use, lease or disposition of the said two tracts of land in connection with the civil use of the Myrtle Beach Municipal Airport or for the development, improvement, operation or maintenance of another public airport." (FAA Exhibit 1, Item 1, Exhibit 9). The Director agrees with the City that the obligation

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<sup>40</sup>The City claims it has "[a] right to undertake aviation-related projects contemplated by the Surplus Property Act if it so chose—including, *e.g.*, a new passenger airport or cargo hub and distribution facility, airport highway access improvements, or off-site transit systems." (FAA Exhibit 1, Item 16, p. 12).



in the 1953 Release is between the City and the United States and does not specify that the proceeds should go to Horry County.

The October 1958 Agreement directed that certain proceeds go to the SC Commission, upon request by the CAA.<sup>41</sup> Horry County claims as the successor to the SC Commission and the operator of Myrtle Beach International and Grand Strand Airport (formerly Crescent Beach Airport) that it is entitled to the proceeds from the sale. However, the October 1958 Agreement does not dictate that the funds should continue to the successor of the SC Commission. Further, as established above the 1953 Release is the governing instrument of the Seascope Properties, and the 1953 Release does not specify Horry County or the SC Commission as the recipient of revenue derived from the disposition of the Seascope Properties.

The FAA has the authority under the SPA to ensure the proceeds of the funds of the sale are benefitting civil aviation.<sup>42</sup> In 1953, it released the City from its obligation to use the Seascope Properties for airport purposes on the condition that it would use the proceeds from the use, lease, or sale of the property for airport purposes. The 1953 Release did not restrict the use of the funds to a specific airport; instead, it authorized use of the funds for “the Myrtle Beach Municipal Airport, or . . . another public airport . . .” (FAA Exhibit 1, Item 1, Exhibit 10). In 1958, the CAA directed the use of the proceeds to the SC Commission because the Commission committed to develop and operate Crescent Beach Airport to accommodate the relocation of commercial service for the City. This reaffirmed the FAA’s ability to direct the proceeds from the disposition of surplus properties as it saw fit for the benefit of civil aviation.

In the past, the FAA has supported Horry County’s claim to proceeds from the lease of the Seascope Properties and proposed sale as the successor of the SC Aeronautics Commission and as the sponsor of four (4) public use airports serving Myrtle Beach. Although Horry County is the logical choice to receive the funds, the funds are not required to be given to Horry County if a viable alternative that would have an equal or increased benefit to civil aviation can be demonstrated. The City claims that, even if they are still obligated to provide the funds for public airport purposes, it can choose what projects should be funded with the proceeds. However, the SPA authorizes the FAA, as the stewards of the Act, to determine and enforce compliance with the SPA and to ensure any release contains terms and conditions necessary to “protect or advance the interests of the United States in civil aviation.”<sup>43</sup> (FAA Exhibit 1, Item 11, Exhibit 3).

The FAA will evaluate the benefits to civil aviation of any other proposal presented by the City as an alternative to providing the funds to Horry County. As part of the Corrective Action Plan (CAP), the City should include any proposed uses for the proceeds and demonstrate to the FAA

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<sup>41</sup> October 1958 Agreement, Art. II, Sec. B.

<sup>42</sup> See 49 U.S.C. § 47153(a)(2) [authorizing the Secretary to add terms necessary to protect or advance the civil aviation interests of the U.S.]; 14 CFR § 155.3(2) [stating the SPA authorizes the FAA Administrator to grant releases subject to terms and conditions determined necessary to protect or advance the interests of the U.S. in civil aviation]. See also 14 CFR § 155.7(b) [release of surplus property for sale to third party is only allowed if public agency obligates itself to use the proceeds exclusively for public airport purposes].

<sup>43</sup> *Id.* and 49 U.S.C. § 47151(b) [authorizing the Secretary of Transportation as the sole entity to ensure compliance with an instrument conveying an interest in surplus property under this subchapter].

the benefits to public airports serving the Myrtle Beach area. The FAA will evaluate the proposal on its merits as part of the CAP review and approval.

**Issue 3 - Whether the City is obligated to sell the property for fair market value in accordance with the Surplus Property Act and FAA policy.**

**County's Position**

The County claims that the City is obligated to sell the property for FMV in accordance with the SPA and FAA guidance. It states “[t]he FAA has made clear that it cannot assure that a release of Surplus Property Act obligations to allow a sale will not adversely affect an airport ‘unless an amount equal to the current fair market value (FMV) of the property is realized as a consequence of the release and such amount is committed to airport purposes.’ Compliance Manual at ¶22.17(a).” (FAA Exhibit 1, Item 1, p. 30).

The County suggests that FAA’s reference to the conveyance of the ~ 20 acre parcel is only in passing and indicates that there is no documentation to show that the FAA approved the transfer of this parcel (FAA Exhibit 1, Item 9, p. 2). Further, the County disputes the City’s position that it may choose to reimburse the United States for its pro-rated share instead of obtaining FMV and claims that the City erroneously cites a statute that concerns sponsors obligated by Federal grants and not SPA obligations (FAA Exhibit 1, Item 9, p. 9). The County asserts that an appraised value of \$76,200,000 represents full market value of the Seascape Properties (FAA Exhibit 1, Item 1, pp. 30-31).

**City's Position**

The City maintains that it is not obligated to provide the proceeds and therefore is not obligated to sell the property for FMV. Further, it claims that a parcel (~20 acres) that was part of the original conveyance to the City was not sold for FMV in 1960 and the FAA did not act on this (FAA Exhibit 1, Item 7, pp.5-6). The City claims that this suggests the FAA does not believe that the City is required to receive FMV for the Seascape Properties because it wasn’t required to do so in the past. (*Id.*, p. 6.)

The City also asserts that it need only reimburse the United States for the Government’s cost in acquiring the property, rather than the FMV of the property, and cites 49 U.S.C. § 47107(c)(2)(B)(i) (FAA Exhibit 1, Item 7, p. 14). In support of its argument, the City provides a Federal Register Notice from the FAA for the County’s proposed release of 0.29 acres of surplus property at Myrtle Beach International Airport that references this statute (FAA Exhibit 1, Item 7, Exhibit 14). The City states that “the County can either “dispose of the land at fair market value” and “reinvest [the proceeds] in another project at the airport” **or** “make available to the Secretary [of Transportation] an amount equal to the Government’s proportional share of the fair market value.” See 49 U.S.C.A. §47107(c)(2)(B)(i), cited with approval in City Motion Ex. 14 (discussing 49 U.S.C.A. §47107(c)(2)(B)(i) and (iii) as providing options when restrictions are released under the Surplus Property Act, 49 U.S.C.A. §47151(d)). This “proportional share” is “the Government’s share of the cost of acquiring the land.” See 49 U.S.C.A. §47107(c)(2)(B)(iii).” (FAA Exhibit 1, Item 7, p. 14 [footnote omitted, emphasis in original]).

The City thus argues that it is not required to receive FMV but can choose to reimburse the government for the pro-rated share. In addition, the City asserts that a negotiated sales price of \$60,000,000 represents full market value of the Seascope Properties (FAA Exhibit 1, Item 11, p. 24).

### **Director's Analysis**

Although the FAA did reference the conveyance of the parcel in a letter dated June 6, 2001 (more than 40 years after the transfer in 1960), the Director agrees with the County that the FAA only referenced the parcel. The FAA did not make an assessment as to whether the conveyance conformed with the SPA land transfer requirements. The specifics of the previous conveyance are not detailed in the pleadings, and it is unknown how the conveyance was allowed to occur, presumably without following FAA requirements. The record is also silent on what related actions the City may have taken regarding this previous conveyance by the City. There is nothing in the record that shows FAA approved the transfer. The City cannot infer, however, that FAA's alleged failure to take action concerning the City's conveyance of the subject parcel dictate a change to its policy or position or prevents the FAA from taking a position on the present complaint with regards to the applicable statutes and policies. Nevertheless, it has been and continues to be the FAA's policy to require FMV for the sale of surplus property for the benefit of civil aviation.<sup>44</sup>

The Director disagrees with the City's argument that the City can "choose to reimburse the Federal government a prorated share of the proceeds based on its initial investment." (FAA Exhibit 1, Item 7, p. 14). There was no "federal share" in this instance. Further the Director agrees with the County that the City's statute citation refers specifically to assurances associated with accepting a federal grant and not obligations under the SPA. The title of 49 U.S.C. § 47107 is *Project grant application approval conditioned on assurances about airport operations*. There is no mention of the SPA in this section. The City was released from its obligations associated with receiving federal grants under the October 1958 Agreement. In contrast, the County (the subject of the Federal Register notice) is obligated under FAA Grant Agreements related to accepting federal grants.<sup>45</sup> The Director finds the City is obligated to follow FAA's guidance for the full release and sale of the Seascope Properties outlined in the *Airport Compliance Manual* Order 5190.6B, change 2, which requires the sale of surplus property for fair market value.<sup>46</sup> The Director makes no other finding on the FMV amount for the Seascope Properties.

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<sup>44</sup> FAA Order 5190.6B change 2 provides guidance on requiring FMV for the full release and disposal of surplus property.

<sup>45</sup> The City cites a Federal Register Notice (FAA Exhibit 1, Item 7, Exhibit 14) regarding a land release requested by Horry County for a small portion of land from MYR to suggest that the 49 U.S.C.A §47107(c)(2)(B)(i) applies to the City similar to the County. The County is obligated under the grant assurances and that is why this applies to the County, while the City is not obligated under any grant assurance, only the Surplus Property Act.

<sup>46</sup> Compliance Guidance Letter 2018-3, *Appraisal Standards for the Sale and Disposal of Federally Obligated Airport Property* and FAA Order 5190.6B Change 2, provides guidance on how to determine Fair Market Value for the disposal of airport property. The Order states "[a] sale and disposal of airport property for less than its fair market value is inconsistent with the intent of the statute and shall not be authorized. The value to be placed on land for which a release has been requested shall be based on the present appraised value (for its highest and best use) of the land itself and any federal improvements initially conveyed with the property." (FAA Order 5190.6B Change 2 pp. 22-12-22-13.)

The Director has determined that the City is obligated to use the proceeds from the sale of the property for airport purposes under the SPA and the 1953 Release instrument. The FAA is the agency authorized to ensure compliance with the SPA, and FAA's policy on disposal of surplus property is described in its guidance. The guidance prescribes procedures for ensuring the property is sold for fair market value. The Director finds that the City must follow FAA procedures for determining FMV and must sell the property in accordance with these procedures.

## VIII. CONCLUSION AND FINDINGS

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office of Airport Compliance and Management Analysis finds and concludes:

- 1) The City of Myrtle Beach is obligated under the Surplus Property Act and specific conditions associated with the 1953 Release requiring that the proceeds of the disposition of the properties go to support civil aviation. Further the conditions associated with the right to fly over the property and the prohibition on creating a hazard run with the land and must be included as a deed restriction as part of the sale of the property.<sup>47</sup>
- 2) The FAA has the authority to determine if the proposed use of proceeds from the sale of the Seascope Properties will have a benefit to civil aviation. The FAA's position has been in support of providing the proceeds to Horry County as the sponsor of four (4) airports serving the Myrtle Beach area and the successor to the SC Aeronautics Commission. However the Director will consider alternative proposals by the City and will evaluate based on its relative benefit to civil aviation.
- 3) The City must follow the Federal law and FAA policy on the disposal of surplus property including obtaining FMV.

## ORDER

ACCORDINGLY, it is ordered that:

1. If it is the City's intent to continue with the sale of the Seascope Properties it will submit a Corrective Action Plan (CAP) that will identify its proposal for how to use the proceeds to benefit civil aviation. Further the City will follow Federal law and FAA policy on the sale of the property including obtaining fair market value. The FAA will evaluate the CAP and its relative benefit to aviation. The FAA reserves its right to take further action if the sales price for the Seascope Properties is less than FMV. The CAP should specify that the deed restrictions described above will be included in any sales agreements and future deeds. The CAP should be submitted within 60 days of this Determination.

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<sup>47</sup> FAA's March 17, 2021 letter to the City refers to these as aviation easements that must continue with any future deeds. These conditions are provided in the 1953 Release and include the right to fly over the land and to prohibit the creation of structures that would be a hazard to aviation.

2. If the City decides not to sell the Seascope Properties, it will submit a Corrective Action Plan to the FAA to demonstrate how it will continue to use the proceeds from the leases (reflecting FMV) for airport purposes to the benefit of civil aviation within 60 days of the date of this Determination.

The FAA reserves the right to pursue any available remedies, including but not limited to, seeking a compliance order or commencing civil action, in the event the City fails to submit an acceptable corrective action plan as specified in the Order above.

All Motions not expressly granted in this Determination are denied.

### RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-21-07 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

The Complainant, if adversely affected by the Director's Determination, may appeal the initial determination to the FAA Associate Administrator for Airports, pursuant to 14 CFR § 16.33(c) within thirty (30) days after service of the Director's Determination.

This Director's Determination is an initial agency determination and does not constitute a final agency action subject to judicial review under 49 U.S.C. § 46110. [See 14 CFR § 16.247(b)(2).]

**KEVIN WILLIS**  
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 WILLIS  
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Kevin C. Willis  
 Director, Office of Airport Compliance  
 and Management Analysis  
 Federal Aviation Administration

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Date

***Horry County, South Carolina,***  
**Complainant**

v.

***City of Myrtle Beach, South Carolina,***  
**Respondent**

Docket No. 16-21-07

**INDEX OF ADMINISTRATIVE RECORD**

The following items constitute the administrative record in this proceeding:

**FAA Exhibit 1**

**Item 1 - Horry County's Complaint to Enforce The Obligation of the City of Myrtle Beach, South Carolina under the Surplus Property Act, dated April 15, 2021**

Exhibit 1 - Letter from Peter S. Gosnell, PE, County Administrator to John Pedersen, City Manager, City of Myrtle Beach, dated November 6, 2020

Exhibit 2 - Letter from William A. Bryant, City Attorney to Jr. to Peter S. Gosnell, PE, County Administrator, dated November 25, 2020

Exhibit 3a - Sale of Lakewood Campground Property including proposed deed of sale, and exhibit A property map and exhibit b escrow agreement

Exhibit 3b- Sale of Pirate Land Campground Property including proposed deed of sale, exhibit A property map and exhibit b escrow agreement

Exhibit 3c - City Council Meeting Minutes on Sale, dated November 10, 2020

Exhibit 3d - City council Meeting Minutes on Sale, dated December 8, 2020

Exhibit 4 - Order Denying Preliminary Injunction and Dissolving TRO, dated January 25, 2021

Exhibit 5 - City of Myrtle Beach Notice of Motion, Motion and Memorandum of Motion to Dismiss before Court of Common Pleas, dated March 5, 2021 including Exhibit 1 -City Resolution to Adopt a Policy Governing the Airport Trust Funds

Exhibit 6 - Letter from Larry Clark, Manager of Atlanta ADO to Myrtle Beach Mayor Bethune, dated March 17, 2021

Exhibit 7 - Subdivision Plat of Seascape Properties, dated October 13, 2020

Exhibit 8 - Quit Claim Deed, dated October 22, 1948

Exhibit 9 - 1953 Resolution

Exhibit 10 - 1953 Release

Exhibit 11 - April 1958 Agreement

Exhibit 12 - October 1958 Agreement

Exhibit 13 - CRE to Horry County, Act 1426, dated 1974

Exhibit 14a - Lease Agreement between City of Myrtle Beach and Perry Issue Company, dated October 15, 1990

Exhibit 14b - Lease Agreement between the City of Myrtle Beach and Ponderosa, Inc., dated October 15, 1990

Exhibit 14c - Lease Amendment between City of Myrtle Beach and Ponderosa, Inc. dated March 17, 2009

Exhibit 14d- Lease Amendment between City of Myrtle Beach and Perry Issue Company, dated March 17, 2009

Exhibit 15 - 1995 Resolution, dated February 28, 1995

Exhibit 16 - Letter from Harold Little, FAA Airport District Office to City of Myrtle Beach Mayor Hirsch, dated September 23, 1976

Exhibit 17 - Letter from Harold Little, FAA Airports District Office to Crescent Beach Airport Manager Pasqualicchio, dated March 2, 1977

Exhibit 18 - Johnston and Cook v. City of Myrtle Beach Decision, dated May 14, 1985

Exhibit 19 - Horry County v. City of Myrtle Beach Court of Appeals Decision, dated April 7, 1986

Exhibit 20 - Letter from Scott Seritt, Manager FAA ADO to Robert Kemp, Airport Manager Horry County Airport Commission, dated June 6, 2001

Exhibit 21- Letter from Scott Seritt, Manager of FAA ADO to City of Myrtle Beach Mayor Mark McBride, dated July 24, 2002

Exhibit 22 - Ordinance to Approve an Intergovernmental Agreement on the use of the proceeds from the Seascape Properties and Intergovernmental Agreement, dated May 5, 2004

Exhibit 23 - Proposed Sale of Seascape Properties

**Item 2 - Motion of Horry County, South Carolina to Require The City of Myrtle Beach, South Carolina to Provide Advance Notice of Conveyance of the Seascape Properties, dated April 15, 2021**

**Item 3 - FAA Notice of Docketing, dated April 30, 2021**

**Item 4 - City of Myrtle Beach's Answer in Opposition to Horry's County Motion to Require Advanced Notice of Conveyance of the Seascape Properties, dated April 30, 2021**

**Item 5 - Motion of Horry County, South Carolina, To File a Reply In Support Of Its Motion to Require the City of Myrtle Beach, South Carolina, To Provide Advance Notice of Conveyance of the Seascape Properties, dated May 5, 2021**

**Item 6 - City of Myrtle Beach's Answer to Horry County's Motion for Leave to File Reply, dated May 17, 2021**

**Item 7 - City of Myrtle Beach's Combined Motion to Dismiss with Prejudice and Supporting Memorandum and Motion for Summary Judgment, dated May 25, 2021.**

Exhibit 1 - Horry County v. Myrtle Beach Complaint filed in Court of Pleas regarding the leasing of the parcels, dated February 24, 1982.

Exhibit 2 - Court of Pleas Order Denying Injunction.

Exhibit 3 - Horry County Complaint against City of Myrtle Beach, Leases and United States filed in US District Court, dated May 13, 1982.

Exhibit 4 - Disclaimer from US Attorney - Civil Action 82-1125-0, and submittal letter dated June 10, 1982.

Exhibit 5 - US District Court Order of Dismissal for Civil Action 82-1125-0, dated June 22, 1982.

Exhibit 6 - Letter from Thomas Ellenburg, City Attorney to Lyle Fjermedal, FAA responding to Horry County's Request for Investigation, dated December 5, 2002.

Exhibit 7 - Request by Horry County for Investigation, dated November 19, 2002.

Exhibit 8 - Letter from Thomas Ellenburg, City Attorney to Scott Seritt, Manager Atlanta ADO, dated January 16, 2002.



Exhibit 9 - Letter from Thomas Ellenburg, City Attorney to Scott Seritt, Manager Atlanta ADO, dated August 23, 2002.

Exhibit 10 - Affidavit of Judith Olmstead, dated January 12, 2021.

Exhibit 10a - Horry County Ordinance to Approve the Intergovernmental Agreement with the City of Myrtle Beach and Intergovernmental Agreement, dated May 5, 2004

Exhibit 10b - Summary of Payments from Seascope Properties from 1/31/05 to 3/23/20

Exhibit 10c - FAA Grant Assurances

Exhibit 11 - Official Statement Relating to Horry County, South Carolina, Airport Revenue Bond Series 2010A and Taxable Revenue Bonds Series 2010B, undated

Exhibit 12 - Horry County Ordinance 77-10

Exhibit 13 - Horry County Online Tax payment receipts

Exhibit 14 - Federal Register Notice - FAA Notice of Intent to Rule on Release of Surplus Property at Myrtle Beach International Airport, Myrtle Beach, SC, dated April 16, 2021

Exhibit 15 -South Carolina Court of Pleas Judgment in Civil Case 2020CP2607070, March 17, 2021

Exhibit 16 - Letter from William Bryan, City Attorney to Larry Clark, Manager of the Atlanta ADO, dated March 23, 2021

Exhibit 17 - Notice of Voluntary Dismissal South Carolina Court of Pleas Judgment in Civil Case 2020CP2607070, dated April 15, 2021

Exhibit 18 - 5190.2R

**Item 8 - Unopposed Motion of Horry County to File Reply to City's Combined Motion for Dismissal or Summary Judgment, dated May 27, 2021**

**Item 9 - Opposition of Horry County, South Carolina to the City of Myrtle Beach's Combined Motion to Dismiss and For Summary Judgment, dated June 11, 2021**

Exhibit 1 - Zoning Map

**Item 10- Motion by City of Myrtle Beach for Leave to File Its Reply in Support of its Combined Motion to Dismiss or For Summary Judgment, dated June 21, 2021**

**Item 11 - City of Myrtle Beach's Reply in Support of Combined Motion to Dismiss with Prejudice and for Summary Judgment, dated June 22, 2021**

Exhibit 1 - Notice on Horry County's website stating FAA will investigate the City's sale of the Seascape Properties, dated April 15, 2021

Exhibit 2 - Surplus Property Act, 1944 as amended

Exhibit 3 - Surplus Property Act of 1944 as amended Chapter 589

Exhibit 4 - Senate Report No. 8 1-690, and House Report 81409, dated July 15, 1949 and April 7, 1949, respectively

Exhibit 5 - Article from the Grand Strand Daily entitled New Airport Master Plan Process Highlights County Staff Bungling, dated April 11, 2021

Exhibit 6 - Article on myhorrynews.com entitled Myrtle Beach International eyeing expansion plan with eye on recovery, dated April 2, 2021

Exhibit 7 - Article entitled Myrtle Beach airport has eyes on significant expansion; facing obstacles with rezoning, dated March 18, 2021

Exhibit 8 - Complaint filed by Horry County in the Court of Pleas against the City of Myrtle Beach, dated December 10, 2020

Exhibit 9 - Transcript from Motion Hearing before Honorable Ben Culbertson, dated January 5, 2021

Exhibit 10 - Horry County's Motion to Alter or Amend Order, dated January 29, 2021

Exhibit 11a - Horry County v City of Myrtle Beach, Lis Pen dens, dated November 20, 2020

Exhibit 11b - Horry County v City of Myrtle Beach, Lis Pen dens, dated January 27, 2020.

Exhibit 11c - Motion of the City of Myrtle Beach for Leave to File a Reply in Support of its Combined Motion to Dismiss or for Summary Judgment and submittal email, dated June 21, 2021

**Item 12- City of Myrtle Beach's Answer to Horry County's Complaint to Enforce the Obligations of the City of Myrtle Beach Under the Surplus Property Act, dated August 2, 2021**

Exhibit 1 - Letter from the City of Myrtle Beach Attorneys to the Managers of the FAA Atlanta Airports District Office including:

A. Letter from William A Bryan, City Attorney to Larry Clark, Manager of the FAA Atlanta Airports District Office, dated March 23, 2021

B. Letter from Thomas Ellenburg, City Attorney to Scott Seritt, Manager of the FAA Atlanta Airports District Office, dated January 16, 2002

C. Letter from Thomas Ellenburg, City Attorney to Scott Seritt, Manager of the FAA Atlanta Airports District Office, dated, August 23, 2002

D. Letter from Thomas Ellenburg, City Attorney to Lyle Fjermedal, Associate Administrator for Airports Compliance Division, dated December 5, 2002

E. City of Myrtle Beach Fund Expenditures and Transfers Out, FY1975 to FY2021

Exhibit 2 - Letter from Thomas Ellenburg, City Attorney to Scot Seritt, Manager of FAA Atlanta Airports District Office, dated January 16, 2002

Exhibit 3 - Letter from Thomas Ellensburg, City Attorney to Scott Seritt, Manager of the FAA Atlanta Airports District Office, dated, August 23, 2002

Exhibit 4 - Request by Horry County for Notice of Investigation, dated November 19, 2002

Exhibit 5 - Letter from Thomas Ellenburg, City Attorney to Lyle Fjermedal, Associate Administrator for Airports Compliance Division, dated December 5, 2002

Exhibit 6 - City of Myrtle Beach Fund Expenditures and Transfers Out, FY1975 to FY2021

**Item 13 - Unopposed Motion by Horry County, South Carolina for Extension to Time to File a Response to The City of Myrtle Beach's Answer, Dated August 6, 2021**

**Item 14- Horry County's Reply in Support of Its Complaint, dated August 26, 2021**

Exhibit 1 - Declaration of Pablo O Nuesch in Support of Reply of Horry County

**Item 15 - City of Myrtle Beach Motion for Extension of Time to File Rebuttal, dated September 8, 2021**

**Item 16 -City Of Myrtle Beach's Rebuttal to Horry County's Reply In Support Of Its Complaint, dated September 21, 2021**

Exhibit 1 - Horry County v. Myrtle Beach Complaint filed in Court of Please regarding the leasing of the parcels, dated February 24, 1982

Exhibit 2 -Horry County Complaint against City of Myrtle Beach, Leases and United States filed in US District Court, dated May 13, 1982

Exhibit 3 - Amended Complaint, not dated

Exhibit 4 - City of Myrtle Beach Amended Answer to the Amended Complaint filed in US District Court, dated October 13, 1983

Exhibit 5 - Affidavit of Judith Olmstead, dated January 12, 2021 with below exhibits

Exhibit A - 2004 Intergovernmental Agreement, dated May 5, 2004

Exhibit B - Summary of Payments from Seascope Properties as of 1/21/21

Exhibit C - Assurances to FAA, dated February 2020

Exhibit 6 - Disclaimer from US Attorney - Civil Action 82-1125-0 and cover letter and Letter from Plaintiff's Attorney submitting documents, dated June 10, 1982

Exhibit 7 - Horry County v. City of Myrtle Beach Summons in the South Carolina Court of Pleas, dated December 10, 2020

Exhibit 8 - Horry County v. City of Myrtle Beach Transcript of Record, dated January 5, 2021

**Item 17 – Myrtle Beach International Airport Grant History 1982-2022**

**Item 18 - FAA Myrtle Beach International 5010 Form**

**Item 19 - FAA 2022 Primary Entitlements**

**Item 20 - Horry County's Motion to Expedite Investigation and Issue Director's Determination, dated October 31, 2022**

Exhibit 1 - 2022-41 – 2<sup>nd</sup> Reading to Terminate the Intergovernmental Agreement Pursuant to Ordinance No. 2004-33

Exhibit 2 - Letter of Termination of IGA, dated September 28, 2022

Exhibit 3 - Letter from Kevin Hall, counsel for the County to John M. S. Hoefer regarding Letter of Termination, dated October, 10, 2022

**Item 21 - City of Myrtle Beach's Answer to Horry County's Motion to Expedite Investigation and Issue Director's Determination, dated November 8, 2022**

Exhibit A – 2004 Intergovernmental Agreement, dated May 5, 2004

Exhibit B – SC Court Order Denying Motion For Preliminary Injunction and Dissolving Temporary Restraining Order, dated, January 25, 2021

Exhibit C - Horry County Financial Plan, Fiscal Year 2023, July1, 2022 to June 30, 2023

Exhibit D - Horry County Annual Comprehensive Financial Report, 2021

Exhibit E – Official Statement Relating to Horry County, South Carolina Revenue Bonds, dated January 29, 2021

**Item 22 – FAA Notice of Extension of Time, dated February 15, 2023**

**Item 23 – FAA Notice of Extension of Time, dated May 15, 2023**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 17, 2023, I caused to be emailed and/or to be placed in the Federal Express a true copy of this Director's Determination for FAA Docket No. 16-21-07 addressed to:

**For the Complainant**

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**Copy to:**

FAA Part 16 Airport Proceedings Docket (AGC-600)  
FAA Office of Airport Compliance and Management Analysis (ACO-100)  
FAA Office of Airports Southern Region (ASO-600)  
FAA Atlanta Airports District Office



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Natalie Curtis  
Office of Airport Compliance  
and Management Analysis

## Walenga, Pat (FAA)

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**From:** 9-ARP-Part16-Complaints (FAA)  
**Sent:** Monday, July 17, 2023 3:53 PM  
**To:** epilsk@kaplankirsch.com; David Y. Bannard; kevin.hall@wbd-us.com; todd.carroll@wbd-us.com; bryant.caldwell@wbd-us.com; Mark W. Atwood; jhoefer@willoughbyhoefer.com; whumphrey@willoughbyhoefer.com  
**Cc:** 9-AWA-AGC-Part-16 (FAA)  
**Subject:** Director's Determination - FAA Docket No. 16-21-07  
**Attachments:** P16\_Docket 16\_21\_07\_ Horry County v. Myrtle Beach \_DD\_Final\_2023 07 06 Signed.pdf

**Follow Up Flag:** Follow up  
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Please see the attached Director's Determination for FAA Docket No. 16-21-07.

Best Regards,

Natalie Curtis  
Administrative Support to  
Airport Compliance and Management Analysis  
202-267-3085