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

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL 13 1994

Mr. and Mrs. Michael E. Coutches
American Aircraft Sales Company
21015 Skywest Drive
Hayward, CA 94541

Ms. Debra S. Margolis
Deputy City Attorney
City of Hayward
25151 Clawiter Road
Hayward, CA 94545-2731

Re: **Michael and Frances Coutches v. City of Hayward
Formal Complaint No. 13-92-8**

Dear Mr. and Mrs. Coutches and Ms. Margolis:

Enclosed is a copy of the final decision of the Federal Aviation Administration (FAA) with respect to the above-referenced formal complaint under Federal Aviation Regulations (FAR) Section 13.5.

Based on the record in this proceeding, we find that the city of Hayward is not in violation of its assurances under the Surplus Property Act of 1944, as amended (50 U.S.C. App. 1622), the Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2210), and the Airport and Airway Development Act of 1970 (49 U.S.C. 1718). We further find that the city of Hayward is not in violation of Section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1349(a)).

Accordingly, the above-referenced formal complaint is dismissed and the docket is closed. The reasons for dismissal of the subject complaint are set forth in the enclosed Record of Decision. This Record of Decision is the FAA's final action with respect to this matter.

Sincerely,

Leonard E. Mudd

Leonard E. Mudd
Director, Office of Airport
Safety and Standards

Enclosure

cc: Ms. Patricia Fox, Esq.

MICHAEL AND FRANCES COUTCHES
v.
CITY OF HAYWARD, CALIFORNIA

FORMAL COMPLAINT NO. 13-92-8

RECORD OF DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) based on the formal complaints filed by Michael and Frances Coutches d/b/a American Aircraft Sales Company (AAS) against the City of Hayward (City or Sponsor), owner of Hayward Air Terminal (Airport), in accordance with our Investigative and Enforcement Procedures, 14 CFR Part 13. The FAA Airports District Office in San Francisco, California (ADO), conducted an informal investigation of the issues raised in the complaints. The ADO, with the concurrence of the FAA Airports Division, Western Pacific Region (Region), determined that the City is in compliance with the terms and conditions of its Federal grant assurances and recommended that the complaint be dismissed. The Region's determinations and recommendations have been referred to this office for review and final FAA decision.

The issues presented for decision are:

* Whether the City, by offering rent and lease terms to Aviation Training Institute different from those offered to American Aircraft Sales Co., is in violation of the provisions regarding economic nondiscrimination set forth in Section 511(a)(1)(B) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the City, by offering rent and lease terms to Aviation Training Institute different from those offered to American Aircraft Sales Co., is in violation of the prohibition against exclusive rights set forth in Section 308(a) of the Federal Aviation Act of 1958, as amended (FAAct), Section 511(a)(2) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the City, by requiring American Aircraft Sales Co. to pay an annual rent of 6 percent of fair market value (FMV) when another commercial aeronautical activity is required to pay 4 percent of FMV, is in violation the provisions regarding economic nondiscrimination set forth in Section 511(a)(1)(B) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the City, by refusing to renegotiate American Aircraft Sales Co.'s lease prior to or following the acceptance of Federal financial airport development assistance, is in violation of the provisions with regard to economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the City, by charging American Aircraft Sales Co. rent on Parcels G-1 and G-2, despite receiving the benefits of property improvements valued in excess of $100,000 provided by American Aircraft Sales Co., is in violation of the provisions with regard to economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the City, by applying for Federal airport assistance during the period from 1983 to the present while during the same period failing, refusing and neglecting to provide lease terms to American Aircraft Sales Co., is in violation of the provisions with regard to economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

* Whether the FAA is required to provide interim relief by enjoining the City's enforcement of its arbitration award against American Aircraft Sales Co. pending completion of the administrative proceeding in this docket.

II. THE AIRPORT

Hayward Air Terminal (Airport) is a public use airport owned and operated by the City of Hayward (City or Sponsor). It is a reliever airport for Metropolitan Oakland International Airport. Joan Casteneda is the airport director; Alice Graff is the former City Attorney; and Debra S. Margolis is the Deputy City Attorney.

The Airport had approximately 450 based aircraft and 161,160 annual operations, including on-demand air taxi and air charter, general aviation and military operations during the 12-month period ending September 22, 1993. [FAA Exhibit 1]

The Airport is located, in part, on property conveyed to the City by the United States under a Regulation 16 Quitclaim Deed dated April 16, 1947, and under a surplus property agreement dated September 8, 1949, pursuant to Section 13 of the Surplus Property Act of 1944, as amended (Public Law 80-289).

The planning and development of the airport has been financed, in part, with funds provided by the FAA and the United States Department of Transportation under the Airport Development Aid Program, authorized by the Airport and Airway Development Act of 1970, and the Airport Improvement Act, authorized by the Airport and Airway Improvement Act of 1982 (AAIA).

From 1982 to the present, the City has received $3,440,188 in Federal grant funds. These funds were used for numerous projects and improvements at the airport. The City most recently received a grant in 1990 in the amount of $457,721 for airport improvements. [FAA Exhibit 2]

American Aircraft Sales Co. (AAS) is a commercial aeronautical activity providing aircraft sales and service, including maintenance, engine overhaul, equipment and supplies, and aircraft tiedowns. AAS is owned and operated by Michael and Frances Coutches. AAS has been a tenant of the Airport since February 4, 1958.

Bendor Company is a commercial aeronautical activity engaged in aircraft sales, maintenance and manufacturing. It has been a tenant of the Airport since March 26, 1957.

Anderson Aviation, formerly Western Engine Service Company, is a commecial aeronautical activity engaged in aircraft sales and maintenance, and providing engine overhaul equipment and supplies. Anderson Aviation has been a tenant of the Airport since February 24, 1959.

Flightcraft/Beechcraft is a commercial aeronautical activity offering aircraft sales, maintenance, and storage, flight instruction and ground school, air taxi, air ambulance and fuel services. Flightcraft has been a tenant of the Airport since June 25, 1963.

Aircraft Modification is a commecial aeronautical activity offering aircraft sales, maintenance and storage services. It also operates flight and ground school and provides air taxi service. It has been a tenant of the Airport since May 1, 1965.

Career Aviation Academy (CAA) is a commecial aeronautical activity providing aircraft sales, maintenance, storage and fuel services. It also operates flight and ground schools and offers air taxi service. CAA has been a tenant of the Airport since June 1, 1965.

Aviation Training Institute (ATI) is a commercial aeronautical activity providing flight instruction and ground school, on-demand air taxi service, aircraft sales, maintenance and storage. ATI has been a tenant of the Airport since September 5, 1975.

Hunt-Myers Inc. is a commecial aeronautical activity offering aircraft sales, maintenance, avionics, storage and fuel services. It also operates a car rental service. Hunt-Myers has been an Airport tenant since August 1, 1977.

III. BACKGROUND

In 1958 and 1959, Michael and Frances Coutches d/b/a American Aircraft Sales Co. (AAS or the Coutches) entered into two lease agreements with the City of Hayward (City) to offer commercial aeronautical services to the public from property located at Hayward Air Terminal (Airport). These lease agreements were amended in 1972 and 1980. [See City response to Complaint dated July 23, 1992 (ADO Attachment 2)]

In 1980, Parcels G-1 and G-2 were added to the 1959 lease which are referred to as Lease Lot 2. The lease amendment provides that the Coutches were to pay $258.83 per month for the two parcels. (See City-AAS Lease Agreement dated December 26, 1980)

In 1989, the City discovered that it had inadvertently neglected to collect from AAS the additional rent for Parcels G-1 and G-2 since the 1980 lease amendment went into effect. When AAS refused to voluntarily pay the amount in dispute, the City filed suit for payment of $11,647.35 in unpaid rent.

The Coutches filed a cross-complaint alleging that AAS was not required to pay the back rent due to an oral agreement entered into in 1980 between the Coutches and either the former City Manager or the Former Airport Director whereby the Coutches were relieved of their obligation to pay rent on parcels G-1 and G-2 in exchange for making property improvements valued at approximately $100,000 in lieu of monetary consideration. (See City response to Complaint dated July 23, 1992)

The Coutches further contended that the City based the annual rent charged for AAS' leaseholds on a different percentage of fair market value (FMV) than it used to calculate the rents charged other commercial aeronautical activities for leaseholds at the Airport. Specifically, the Coutches objected to being charged 6 percent of FMV for AAS' leaseholds as compared to the 4 percent of FMV being charged other commercial aeronautical tenants.

The City subsequently retained Donald H. Ashley & Associates, Inc. (Consultant), to appraise the airport property occupied by AAS in preparation for calculating the scheduled 1990 rent adjustment for the Coutches' leaseholds. On July 14, 1989, the Consultant submitted its report appraising the FMV of the leased premises (real property only) at $4.25 per square foot (SF) making a total appraised value of $506,426 (rounded to $506,000) for the following leaseholds: Hangar Lot 1 (27,115 SF at $4.25/SF = $115,239); Hangar Lot 2 (22,500 SF. at $4.25/SF = $95,625); and Lots G-1 & G-2 (69,544 SF at $4.25/SF = $295,562).

Based on the Consultant's valuation of the Coutches' leaseholds at $506,000, the parties anticipated an increase of AAS' annual rental rate to $0.255/SF (based on the 6 percent of FMV required by its lease or 0.06 x $4.25 = $0.255) or a total of $30,385.55

annual gross rent. With an adjustment of $1,893.38 for 7,425 SF of rent free space due to street realignment, the net annual rent would be $28,492.17 or $0.255/SF.

The City subsequently initiated litigation against the Coutches in the California State Superior Court for Alameda County to recover the unpaid rent. The City then entered a motion to allow contractual arbitration pursuant to the California Code of Civil Procedure Section 1281.6 to address this case. When the Court granted the arbitration motion, the City and the Coutches agreed to have the case heard before Ms. Betty Barry Deal (Arbitrator), the court-appointed arbitrator.

On June 26, 1991, this matter was heard by the Arbitrator. The issues presented for arbitration were: (i) the FMV of the leased premise which was used as the basis for rent adjustment; and (ii) the existence of an oral agreement allegedly made by the city to waive rent from AAS for Parcels G-1 and G-2 added to Lease No. 2 for a ten-year period and the claim of the city that the Coutches owed the City a total of $11,647.35 in unpaid rent under this lease.

On December 31, 1991, the Arbitrator found that the FMV of the Coutches' leasehold (119,159 SF) should be reduced from $4.25/SF to $3.25/SF for a total FMV of $407,524 instead of $506,000 per the Consultant's valuation. This ruling by the arbitrator resulted in the reduction of the rental rate for the Coutches leasehold from $0.255/SF to $0.205/SF. The Arbitrator further found that the Coutches owed the city $11,647.35 in unpaid rent plus interest for Parcels G-1 and G-2. The Arbitrator dismissed the Coutches' claim of an oral agreement by Airport officials to waive the rent. The Arbitrator decided that the Couches owed the City a total of $81,799.67. (See City letter to the Coutches dated July 15, 1993)

The Coutches filed a motion for reconsideration of the Court's order confirming the arbitration award. Along with this motion, the Coutches also filed other motions (to be heard concurrently), including a motion to partially cancel and reform the subject lease, a motion for preliminary injunction to enjoin the City's alleged violation of its 1988 Federal grant assurances, a motion to compel further responses to requests for admissions, a motion establishing admissions, a motion to correct and vacate the clerk's alleged error in entry of judgment, and a motion for judgment on the pleadings. Each of these motions were denied. Thereafter, the remaining motions of the Coutches' cross-complaint, which had not been resolved by arbitration, proceeded to trial.

On July 19, 1993, the date of the trial, the Coutches requested a continuance of the trial so that they could file another motion to attack the court's earlier orders. The motion was denied and the parties were ordered to proceed with the trial. At that time, Mr. Coutches requested that the remaining three motions of

his cross-complaint be dismissed because he was not prepared to proceed to trial. The court entered an order of dismissal without prejudice with respect to those motions. As a result of this court order, the arbitration award was then confirmed as final. As a result, there are no claims currently pending in the Superior Court with respect to the Coutches action. Their petition for writ of mandate filed after the date of trial challenging the court's order confirming the arbitration award and seeking to continue the trial date was denied. The Coutches, however, still have an opportunity to appeal the judgment, if they so desire.

On April 23, 1992, during the pendency of their civil action, Michael and Frances Coutches d/b/a American Aircraft Sales Co. (AAS or the Coutches) filed a formal complaint, in accordance with FAA Investigative and Enforcement Procedures. On November 25, 1992, the Coutches amended their complaint. The complaint was assigned Formal Complaint Docket No. 13-92-8.

The Coutches allege that the City has violated its Federal grant assurances by charging unjustly discriminatory rental fees to airport tenants making the same or similar uses of the airport and, thereby, creating an exclusive right for one of the tenants. Specifically, the Coutches allege that the City refuses to provide parity of lease terms to AAS and Aviation Training Institute (ATI) which are commercial aeronautical activities offering identical services and making allegedly identical use of airport; that, thereby, the City provides ATI an exclusive right to provide unspecified services at airport; and that the City refuses to provide all long-term lessees, i.e those with lease terms exceeding 5 years, with a periodic rate review based on an acceptable index, e.g., the Consumer Price Index.

The complaint also asks the FAA to involve itself in the AAS-City dispute over the payment of unpaid leasehold rent attributable to the City's oral agreement to waive rent for certain airport property in exchange for AAS-provided improvements. It further asks the FAA to direct the City to forego collection of the Arbitrator's award to the City on the grounds that the Arbitrator ignored the Coutches' interpretation of the City's grant assurance obligations.

On July 23, 1992, and February 4, 1993, the City responded to the initial complaint and the amended complaint, respectively, requesting that the Coutches' complaint be dismissed.

The City argues that there has been a thorough and comprehensive arbitration of the FMV and unpaid rent issues, and that, fully aware of the Coutches allegations of Federal grant assurance violations, the court-appointed arbitrator established FMV for AAS' leasehold property and ruled that the City was entitled to collect unpaid rent. The City submits that ATI's more favorable lease terms reflect the conditions which existed at the time each lease was negotiated and the disparity in leaseholds, e.g., AAS'

superior access to taxiways and superior location by virtue of visibility from taxiway. The City maintains that it has not granted any exclusive right or special privilege or monopoly regarding use of airport facilities; that the Coutches are not being denied the opportunity to provide any service at airport, but rather are being subjected to slightly less favorable lease terms than another commercial aeronautical activity. The City further maintains that it has agreed to amend AAS' lease terms to provide for 4 percent FMV-rent, but that the Coutches refuse to agree to a reasonable FMV; and that the City has hired a consultant to analyze current leases and propose a method by which all leasehold rental amounts could be adjusted.

On July 19, 1993, the Coutches filed a reply to the City's answer.

On October 5, 1993, and November 23, 1993, FAA Airports District Office, San Francisco (ADO) staff met with City representatives, i.e., Airport Director Joan Castaneda and Deputy City Attorney Debra S. Margolis, and AAS representatives, i.e., Michael Coutches and Roy E. Stephenson, respectively, to evaluate the Coutches' allegations and the City's responses, to clarify FAA policy with respect to the applicable grant assurances, and to offer assistance in resolving the matter.

The Region's investigation was conducted by the ADO. The ADO evaluated the arguments, information and documentation provided by the parties in their written submissions and during ADO staff interviews with the parties.

On April 11, 1994, the Region completed its investigation of the Coutches' complaint and concluded that the City is not in violation of its Federal obligations. Based on its conclusions, the Region recommended that the complaint be dismissed.

On May 31, 1994, this office received by facsimile transmission from Michael Coutches a copy of a letter dated October 25, 1993, purportedly sent by Mr. Coutches to the ADO. The ADO has no record of receiving this letter. Moreover, the letter attempted to inject new issues into this proceeding. Since the subject letter was filed in a procedurally inappropriate manner and raised issues extraneous to those being addressed in this proceeding, we have not included the letter in the administrative record in this docket and did not consider it in making our decision in this proceeding.

III. APPLICABLE LAW AND POLICY

The Federal Aviation Act of 1958, as amended (FAAct), assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety and, among other things, the promotion, encouragement and development of civil aviation. Under these broad powers, the FAA seeks to achieve safety and

efficiency of the total airspace system through direct regulation of airman, aircraft, and airspace.

The Federal role in promoting civil aviation has been augmented by various legislative actions which authorize programs for providing funds and other assistance to local communities for the development of airport facilities. In each such program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely and efficiently and in accordance with specified conditions. Commitments assumed by airport sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance as well as ensuring the public fair and reasonable access to the airport.

The planning and development of Hayward Air Terminal has been financed, in part, with funds provided by the FAA and the U.S. Department of Transportation under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982 (AAIA). This program provides financial assistance to an airport sponsor for airport development in exchange for binding commitments designed to assure that the public interest will be served. These commitments are set forth in the sponsor's applications for Federal assistance and in the grant agreement as sponsor assurances, i.e. a list of applicable Federal laws, regulations, executive orders, statute-based assurances, and other requirements, binding the sponsor upon acceptance of the Federal assistance.

The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See Sections 308(a), 313, 1002, and 1006 of the FAAct, and Sections 509(b)(1)(E), 511(a), 511(b), and 519 of the AAIA.

The FAA Airport Compliance Program

The FAA discharges its responsibility for ensuring airport sponsor compliance with Federal obligations through its Airport Compliance Program. The FAA's airport compliance efforts are based on the contractual obligations which an airport owner accepts when receiving Federal grant funds or the transfer of Federal property for airport purposes. These obligations are incorporated in grant agreements and instruments of conveyance in order to protect the public's interest in civil aviation and to ensure compliance with Federal laws.

The FAA Airport Compliance Program is designed to ensure the availability of a national system of safe and properly maintained public-use airports operated in a manner consistent with the airport owners' Federal obligations and the public's investment in civil aviation. The Airport Compliance Program does not control or direct the operation of airports; rather, it monitors

the administration of the valuable rights pledged by airport sponsors to the people of the United States in exchange for monetary grants and donations of Federal property to ensure that the public interest is being served.

FAA Order 5190.6A, Airport Compliance Requirements, issued October 2, 1989, (hereinafter Order) sets forth policies and procedures for the FAA Airport Compliance Program. It provides basic guidance for FAA personnel in interpreting and administering the various continuing commitments made to the United States by airport owners as a condition for the grant of Federal funds or the conveyance of Federal property for airport purposes. The Order, inter alia, analyzes the various obligations set forth in the standard airport sponsor assurances, addresses the nature of those assurances, addresses the application of these assurances in the operation of public-use airports, and facilitates interpretation of the assurances by FAA personnel.

The Order covers all aspects of the airport compliance program except enforcement procedures. Enforcement procedures regarding airport compliance matters, absent the filing of a formal complaint under Federal Aviation Regulations (FAR) Part 13 (14 CFR 13.5), continue to be set forth in the predecessor order, FAA Order 5190.6 issued August 24, 1973, and incorporated by reference in FAA Order 5190.6A. See FAA Order 5190.6, Sec. 5-3, and FAA Order 5190.6A, Sec. 6-2.

The Airport Sponsor Assurances

As a condition precedent to providing airport development assistance under the AAIA, the Secretary of Transportation must receive certain assurances from the airport sponsor.

Section 511(a) of the AAIA sets forth assurances to which an airport sponsor receiving Federal financial assistance must agree as a condition precedent to receipt of such assistance. Section 511(b) of the AAIA authorizes the Secretary to prescribe project sponsorship requirements to insure compliance with Section 511(a). These sponsorship requirements are included in every airport improvement grant agreement as set forth in FAA Order 5100.38A, Airport Improvement Program (AIP) Handbook, Ch. 15, Sec. 1, "Sponsor Assurances and Certification."

Use on Fair, Reasonable, and Not Unjustly Discriminatory Terms

Assurance 22, "Economic Nondiscrimination," of the prescribed sponsor assurances satisfies the requirements of Section 511(a)(1) of the AAIA. It provides, in pertinent part, that the sponsor of a federally obligated airport

"...will make its airport available as an airport for public use on fair and reasonable terms, and without unjust

discrimination, to all types, kinds, and classes of aeronautical uses." Assurance 22(a)

"...may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport." Assurance 22(h)

"...may...limit any given type, kind, or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public." Assurance 22(i)

Subsection (h) qualifies subsection (a) and subsection (i) represents an exception to subsection (a) to permit the sponsor to exercise control of the airport sufficient to preclude unsafe and inefficient conditions which would be detrimental to the civil aviation needs of the public.

Assurance 22(c) satisfies the requirements of Section 511(a)(1)(B) of the AAIA. It provides that "each fixed-based operator at any airport owned by the sponsor shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities."

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. See Order, Secs. 4-14(a)(2) and 3-1.

The FAA considers it inappropriate to provide Federal assistance for improvements to airports where the benefits of such improvements will not be fully realized due to inherent restrictions on aeronautical activities. See Order, Sec. 3-8(a).

The owner of any airport developed with Federal grant assistance is required to operate the airport for the use and benefit of the public and to make it available to all types, kinds and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. See Order, Sec. 4-13(a).

Fee and Rental Structure

Assurance 24, "Fee and Rental Structure," of the prescribed sponsor assurances satisfies the requirements of Section 511(a)(9) of the AAIA. It provides, in pertinent part, that the sponsor of a federally obligated airport "agrees that it will maintain a fee and rental structure consistent with Assurance 22 and 23, for the facilities and services being provided the

airport users which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport."

FAA Order 5190.6A describes the responsibilities under Assurance 22 assumed by the owners of public use airports developed with Federal assistance. Among these is the obligation to treat in a uniform manner those users making the same or similar use of the airport and to make all airport facilities and services available on fair and reasonable terms without unjust discrimination. See Order, Secs. 4-14(a)(2) and 3-1.

The obligation of airport management to make an airport available for public use does not preclude the owner from recovering the cost of providing the facility through fair and reasonable fees, rentals or other user charges which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport. See Order, Sec. 4-14(a).

Each commercial aeronautical activity at any airport shall be subject to the same rates, fees, rentals and other charges as are uniformly applied to all other commercial aeronautical activities making the same or similar uses of such airport utilizing the same or similar facilities. See Order, Sec. 4-14(a)(2).

FAA policy provides that variations in commercial aeronautical activities' leasehold locations, leasehold improvements, and the services provided from such leasehold may be the basis for acceptable differences in rental rates, although the rates must be reasonable and equitable. See Order, Sec. 4-14(a)(2)(c).

However, if the FAA determines that commercial aeronautical activities at an airport are making the same uses of identical airport facilities, then leases and contracts entered into by an airport owner subsequent to July 1, 1975, pursuant to the Airport and Airway Development Act of 1970, as amended, shall be subject to the same rates, fees, rentals and other charges. See Order, Sec. 4-14(a)(2)(d).

FAA policy further provides that, all leases with terms exceeding five years, should provide for periodic review and adjustment of the rates and charges based on an acceptable index. This periodic lease review is expected to facilitate parity of rates and charges between new commercial aeronautical tenants and long-standing tenants making the same or similar use of airport facilities and to assist in making the airport as self-sustaining as possible under the circumstances existing at the airport. See Order, Sec. 4-14(a)(2)(f).

The Prohibition Against Exclusive Rights

Section 308(a) of the FAAct provides, in relevant part, that "there shall be no exclusive right for the use of any landing

area or air navigation facility upon which Federal funds have been expended."

Section 511(a)(2) of the AAIA similarly provides, in pertinent part, that "there will be no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public."

Assurance 23, "Exclusive Rights", of the prescribed sponsor assurances requires, in pertinent part, that the sponsor of a federally obligated airport

> "...will permit no exclusive right for the use of the airport by any persons providing, or intending to provide, aeronautical services to the public...and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under the Airport and Airway Improvement Act of 1982."

In FAA Order 5190.1A, Exclusive Rights, the FAA published its exclusive rights policy and broadly identified aeronautical activities as subject to the statutory prohibition against exclusive rights. While public use airports may impose qualifications and minimum standards upon those who engage in aeronautical activities, we have taken the position that the application of any unreasonable requirement or standard that is applied in an unjustly discriminatory manner may constitute a constructive grant of an exclusive right. See FAA Order 5190.1A, Para. 11.c.

FAA Order 5190.6A provides additional guidance on the application of the statutory prohibition against exclusive rights and FAA policy regarding exclusive rights at public-use airports. See Order, Ch. 3.

Statutory Policy Declarations

Section 502(a)(5) of the AAIA, in pertinent part, declares that "all airport and airway programs should be administered in a manner consistent with the provisions of sections 102 and 103 of the Federal Aviation Act of 1958, with due regard for the goals expressed therein of fostering competition, preventing unfair methods of competition in air transportation,...and preventing unjust and discriminatory practices...."

Section 502(a)(6) of the AAIA further declares that "reliever airports make an important contribution to the efficient operation of the airport and airway system, and special emphasis should be given to their development."

IV. ANALYSIS AND DISCUSSION

Disparity of AAS and ATI Lease Terms

The Coutches allege that the City refuses to provide parity of lease terms to AAS and Aviation Training Institute (ATI), commercial aeronautical activities offering identical services and making allegedly identical use of the Airport; and that, thereby, the City provides ATI an exclusive right at airport.

The City submits that ATI's allegedly more favorable lease terms reflect the conditions which existed at the different times during which each lease was negotiated and the disparity in leaseholds, e.g., AAS' superior access to taxiways and superior location by virtue of visibility from taxiway. The City maintains that it has not granted any exclusive right or special privilege or monopoly regarding use of airport facilities; that the Coutches are not being denied the opportunity to provide any service at airport, but rather are being subjected to slightly less favorable lease terms than another commercial aeronautical activity. The City further maintains that it has agreed to amend AAS' lease terms to provide for 4 percent FMV-rent, but that the Coutches refuse to agree to a reasonable FMV, despite the fact that the City hired a consultant to analyze current leases and propose a method by which all leasehold rental amounts could be adjusted.

Based on ADO staff interviews with the parties and the record in this proceeding, we conclude that the City's actions with regard to its leasing arrangements with AAS and ATI were not inconsistent with its Federal obligations.

Our review of the City's leases with AAS and ATI lead us to agree with the Coutches that a disparity exists in the lease terms enjoyed by AAS and ATI; however, we conclude that the rental rates previously incorporated into the Coutches leases via the various amendments were comparable or better than those of ATI.

A comparison of the AAS and ATI leases is demonstrative of the differences in lease terms. [FAA Exhibit 3]

The total area of the ATI leasehold is 50,018 square feet (SF). The term of the lease is for 25 years, i.e., from September 1, 1975 to August 31, 2000, with provision for rent adjustment at five year intervals. For the first five years of the City-ATI lease, the annual rent was $2,500 or $0.05/SF per year. During the second five-year period, the rent was increased to $3,925 per year or $0.08/SF per year. During the third-five year period, the rent was increased to $4,435 per year or $0.09/SF per year. For the current lease period, i.e., from January 1, 1991 to December 31, 1995), ATI's rent is $5,455 per year or $0.11/SF per year.

By comparison, the Coutches' have entered into two leases with the City for property at the Airport.

Lease No. 1 was entered on February 4, 1958 for a plot of land containing 22,500 SF. The term is for 50 years with a provision for rent adjustment at 10-year intervals based on FMV as appraised. The initial rent was $480 per year or $0.021/SF. The lease was first amended on June 2, 1959 and the rent was increased to $1,125 per year or $0.05/SF. The second rental adjustment was scheduled for March 1, 1968; however, the rent adjustment became the subject of dispute between AAS and the City.

As a compromise to litigation on the rent adjustment, a second amendment to Lease No. 1 was executed on August 22, 1972, which increased the size of AAS's leasehold from 22,500 SF to 27,115 SF. The annual rent was increased from $1,125 to $1,220.16 with the length of the lease remaining at 50 years and the periodic rent adjustment to be made every ten years starting on March 1, 1978. Due to the increased extent of the leasehold, AAS' annual rent was decreased from $0.05/SF to $0.045/SF.

A subsequent amendment to Lease No. 1 was agreed upon on December 26, 1980, extending the length of the lease to December 31, 2010, and increasing AAS' annual rent to $1,355.76 or $0.05/SF. The periodic rent adjustment provision remained at ten-year intervals.

Lease No. 2 was entered on June 2, 1959 for a parcel with an area of 22,500 SF. The annual rent was set at $1,125 or $0.05/SF. The length of the lease was 35 years, with a provision for adjustment at ten-year intervals. The first amendment to this lease was made on August 22, 1972, as a compromise to litigation on the rent adjustment. The length of the lease, the size of the leasehold, and the ten-year rent adjustment schedule remained the same. However, the annual rent was reduced to $1,012.44 or $0.0454/SF.

The second amendment to Lease No. 2 was entered on December 26, 1980, increasing the annual rent of the original parcel of land known as Lot 2 containing 22,500 SF to $1,125 or $0.05/SF per year; adding Parcels G-1 and G-2 (22,394 SF and 47,150 SF respectively) for a total leasehold of 69,544 SF and establishing the annual rent of $3,105 or $0.045/SF for this addition; and extending the length of Lease No. 2 until December 31, 2010. The rent adjustment period remained at ten years, using the same adjustment formula incorporated into Lease No. 1. Thus, the scheduled date of the first rent adjustment was January 1, 1990.

Based on the foregoing analysis of the City's agreed-upon lease arrangements with AAS and ATI as set forth in detail in FAA Exhibit 4, we conclude that the Coutches overall rental rates agreed upon at the most recent adjustment, which range from $0.045/SF to $0.05/SF, are more favorable than the $0.08/SF

rental rate charged ATI. We address below the disputed 1990 rent adjustment.

A disparity in lease terms does not in and of itself constitute a violation of the City's Federal obligation to make the Airport available on fair, reasonable and not unjustly discriminatory terms to commercial aeronautical activities, nor does it constitute a violation of the City's assurance that each commercial aeronautical activity will be charged the same rents as are uniformly charged all other such activities making the same or similar use of the airport and utilizing the same or similar facilities.

FAA policy provides that, if a tenant occupies a particularly advantageous location on an airport, such location would be a factor justifiably influencing the rental value of the property and a differential in rental fees and charges could be assessed to reflect this advantage of location.

Review of the location of the commercial aeronautical activity leaseholds on the Airport confirms that each of the sites are different in parcel size and location. It appears that AAS' location is superior to ATI's site in terms of visibility from the taxiway and accessibility from the main access road to the commercial aeronautical activity area on the Airport. While AAS and ATI are making the same or similar use of airport facilities, the differential in AAS' and ATI's leasehold rents at the Airport appears to reflect the disparity in leasehold size, location and FMV. Such disparity in leasehold rents is not inconsistent with the City's Federal obligations.

Exclusive Rights

We conclude that the Coutches' allegation that the disparity in AAS' and ATI's leasehold rents violates the statutory prohibition against the granting of an exclusive right at a federally obligated public-use airport is without merit.

The Coutches' allegations in this regard fail to specify either the aeronautical service(s) for which such alleged exclusive right is being granted or identify the manner in which ATI is the recipient of the alleged exclusive right. Nor have the Coutches specified any unreasonable requirement for access or minimum standard that is being applied to exclude AAS. Furthermore, the Coutches provide no evidence that any entity, including AAS, is being denied the opportunity to provide any aeronautical services.

Moreover, our review of the commercial aeronautical services offered by ATI, AAS, and the other tenants at the Airport indicates that there is no lack of competition in the provision of aircraft sales, maintenance, storage and tiedown, flight instruction and ground schools, air taxi, or fuel services.

Against this background and on the basis of the administrative record in this proceeding, we conclude that the City is not acting inconsistently with the prohibition against the granting of an exclusive right.

Airport Leasehold Rental Structure

The aforementioned disparity in the FMV of leaseholds at the Airport is also relevant to our evaluation of the City's proposed rent increase for AAS' leasehold scheduled for January 1, 1990, which is alleged by the Coutches to be unfair, unreasonable and discriminatory.

We conclude that the City has convincingly supported its contention that the currently proposed adjustment of AAS' rent based on the appraised FMV of the leasehold is consistent with the current rental rates being charged the other commercial aeronautical tenants at the Airport. We are concomitantly unpersuaded that the proposed rent increase for the AAS leasehold is inconsistent with the City's Federal obligations.

FAA Exhibit 3, which sets forth the details of the City's leases with its commercial aeronautical tenants, demonstrates that the City has consistently increased its rental rate structure over time, making it increasingly more uniform.

In 1957, Bendor Company was charged a rental rate of $0.013/SF for its leasehold; during 1958 and 1959, respectively, the City charged a rental rate of $0.05/SF for the Anderson Aviation leasehold and rates ranging from $0.02/SF to $0.05/SF for AAS' leaseholds; during the 1963-1965 period, the City charged $0.03/SF for Flightcraft's, Career Aviation Academy's and Aircraft Modification's leaseholds; in 1975 and 1977, respectively, the City charged a $0.05/SF rate for ATI's and Hunt-Myers' leaseholds. However, during the most recent rent adjustment for each of these tenants, the City substantially increased the rental rates for each leasehold. These rent adjustments were predicated on the FMV of the leaseholds.

Proposed FMV-basis for Leasehold Rent Calculation

The Coutches specifically object to the City's incorporation into its leases the requirement of using 6 percent of the FMV as the basis for the ten-year rent adjustment effective January 1, 1990, arguing that the rents of all other comparable commercial aeronautical tenants are calculated on the basis of 4 percent of the FMV of their leaseholds. The Coutches contend that the disparity in the basis of rent calculations is unfair, unreasonable and unjustly discriminatory.

Our review of the commercial aeronautical tenant leases currently in effect at the Airport indicates that the leasehold rents charged each of the commercial aeronautical tenants, with three exceptions, are based on four percent of FMV. The exceptions are

AAS and Aircraft Modification, for which rent is calculated on the basis of six percent of FMV, and Bendor Company for which no FMV basis for rent calculation appears to be provided.

The Coutches previously agreed to the subject rent adjustment provisions of their leases, which were introduced through the amendments of December 26, 1980. Nevertheless, the City, in view of the Coutches objection, offered to reduce the rent adjustment basis from 6 percent of leasehold FMV to 4 percent of leasehold FMV. (See City's Public Works Director, Dennis Butler memo to Michael Coutches, dated April 1, 1991, Exhibit C of Attachment 2 to City's answer dated July 23, 1992) However, the Coutches refused the City's offer and made a counter-offer which would not use FMV to determine the value of the leasehold and which would result in a rental rate of $0.13/SF. (See Coutches memo to City dated April 2, 1991) The Coutches counter-offer was not acceptable to the City.

Based on the record in this proceeding, it appears that the City acted in good faith by offering to redefine the rent adjustment provisions of its lease arrangements with AAS to address the Coutches' concerns about the apparent inequity. By offering to modify in this manner the terms of its lease arrangements with AAS, regardless of whether the Coutches accepted the offer or the City accepted the Coutches' counter-offer, the City nullified any unjustly discriminatory effect that may have previously arisen from the disparity in rent adjustment terms offered by the City to other commercial aeronautical tenants.

The Coutches further contend that the City's refusal to provide all long-term lessees, i.e., those with lease terms exceeding 5 years, with a periodic rental rate adjustment based on the Consumer Price Index (CPI) is a violation of its Federal obligation to provide reasonable lease terms for its commercial aeronautical tenants.

In making this argument, however, the Coutches misconstrue the nature of the City's Federal obligations and FAA policy in such matters. Neither requires any specific index on which required period rate increases should be based. The CPI is only one acceptable basis on which to calculate periodic leasehold rent adjustments; percentage of FMV is equally acceptable. So long as the airport owner applies the index of its choice in a fair, reasonable and not unjustly discriminatory manner, the FAA does not involve itself in the establishment of airport lease rates, which matters we find are more appropriately left to the discretion of airport owners.

In this particular situation, the City appears to be making good-faith efforts to review leases and establish a uniform method by which all leasehold rents could be periodically adjusted. Recognizing that a prudent airport owner will increase its leasehold rents over time to cover the increased cost of maintenance and airport operations and that FMV is an acceptable

index on which to base leasehold rents, we conclude that the City has been adjusting its leasehold rents in a fair, reasonable and not unjustly discriminatory manner consistent with its obligation to make the Airport as self-sustaining as possible in the particular circumstances existing at the Airport.

Against this background and on the record in this proceeding, we conclude that the City is acting properly to maintain current commercial aeronautical services lease arrangements which are consistent with the City's Federal obligations.

Other Allegations and Assertions

The Coutches allege that the City applied for Federal airport assistance during the period from 1983 to the present without providing lease terms to AAS and that the City refused to renegotiate AAS's lease prior to or following the acceptance of Federal financial airport development assistance in violation of the City's Federal obligations.

No evidence of record exists to support the Coutches' allegations in this regard. To the contrary, the record is replete with indications that the City has been willing to negotiate leasing arrangements with the Coutches. Moreover, our investigation revealed no evidence that the City, through its representatives Ms. Alice Graff and Ms. Joan Castaneda, made any false statements when applying for federal funding from 1983 to present. Rather, we found that the City has made every effort to comply with its grant assurances, especially in its negotiations with the Coutches.

The Coutches' assert that oral agreements were made by certain Airport officials waiving the rent for Parcels G-1 and G-2 because the Coutches made in excess of $100,000 of leasehold improvements to these two parcels. This assertion, however, was denied by the City officials involved in negotiating the relevant amendment of AAS Lease No. 2 on or about December 26, 1980.

In making this assertion, the Coutches also ask the FAA to involve itself in the AAS-City dispute over the payment of unpaid leasehold rent attributable to the City's oral agreement to waive rent for airport property in exchange for AAS-provided improvements. It further asks the FAA to direct the City to forego collection of the Arbitrator's award to the City on the grounds that the Arbitrator ignored the Coutches' interpretation of the City's grant assurance obligations.

The Coutches have submitted no documentary support for their assertion. The City has submitted notarized declarations by the former City officials stating that they never made such oral agreements with the Coutches. (See City's answer dated February 4, 1993, Attachment 2) In addition, California law requires that any agreement relating to the lease of real property must be in writing (Civil Code Section 1624). Furthermore, this oral

agreement allegation was raised by the Coutches in the litigation in California Superior Court, but was dismissed during the arbitration process.

The collection of unpaid rent and the status of oral agreements are matters of contract law controlling the lessor-lessee relationship. Although the contract involves the lease of property at a federally obligated, public-use airport for commercial aeronautical use, the collection of rent pursuant to such contract falls outside the scope of the City's federal obligations. It would be inappropriate for the FAA to intervene in a landlord-tenant dispute which is outside its jurisdiction. Moreover, the FAA has not found the City to be in noncompliance with its Federal obligations. Therefore, Federal law provides no basis for directing the City to foregive unpaid rent as a corrective action.

The Coutches further assert that the FAA is required to provide interim relief by enjoining the City's enforcement of its arbitration award against AAS pending completion of the administrative proceeding in this docket.

The FAA does not have the authority under the FAAct or the AAIA to provide interim relief by enjoining the City's enforcement of the arbitration award against AAS pending completion of an administrative proceeding. In certain situations the Secretary of Transportation has the authority to take emergency action, i.e., under Section 609 of the FAAct; however, a situation involving Section 308(a) of the FAAct is not within the scope of the Secretary's emergency powers. For these reasons, we will not order the interim relief requested by the Coutches.

Against this background and on the basis of the record in this proceeding, we conclude that these assertions and allegations warrant no further FAA action.

V. FINDINGS

We have examined the City's policies and practices with regard to its rental of airport property to commercial aeronautical tenants offering flight support services to the public at the Airport.

The record in this case supports a finding that, with regard to the particular issues raised by the Coutches, the Sponsor is in compliance with the terms and conditions of its Federal obligations. Moreover, upon becoming aware of potential compliance deficiencies, the City has acted to correct the anomaly consistent with the advice and guidance provided by the ADO.

Based on the record in this proceeding, we have no reason to find that the City is acting in any manner other than to make the airport available for public use on fair and reasonable terms, and without unjust discrimination, by commercial aeronautical

activities in a manner consistent with its reponsibility to make the Airport as self-sustaining as possible in the particular circumstances existing at the Airport.

We find that the City has offered different rent and lease terms to various commercial aeronautical tenants, including but not limited to AAS and ATI; however, this disparity is justifiable on the basis of leasehold size, location, value and length of lease. We further find that the City has negotiated, and continues to be willing to negotiate, in good faith with the Coutches with regard to the leasing of property for AAS' commercial aeronautical activities at the Airport. Furthermore, we find that the City has implemented its leasing practices in a manner which takes into account the particular circumstances at the airport and reflects a due regard for the statutory prohibition against exclusive rights. Absent evidence in support of the remaining allegations and assertions by the Coutches, we have no reason to find that they warrant further FAA action.

Therefore, we find that the Coutches's complaint should be dismissed.

ORDER

Under the specific circumstances at Hayward Air Terminal as discussed, and based upon the evidence of record in its entirety, we find that:

(a) the City of Hayward's leasing arrangements with American Aircraft Sales Co. and Aviation Trainining Institute at Hayward Air Terminal do not violate the provisions regarding economic nondiscrimination set forth in Section 511(a)(1)(B) of the AAIA and the City's Federal grant and surplus property agreements.

(b) the City of Hayward's leasing arrangements with American Aircraft Sales Co. and Aviation Trainining Institute at Hayward Air Terminal do not violate the prohibition against exclusive rights set forth in Section 308(a) of the Federal Aviation Act of 1958, as amended (FAAct), Section 511(a)(2) of the AAIA and the City's Federal grant and surplus property agreements.

(c) the City of Hayward, by requiring American Aircraft Sales Co. to pay an annual rent of 6 percent of leasehold fair market value (FMV) when other commercial aeronautical activities are required to pay 4 percent of leasehold FMV, is not in violation the provisions regarding economic nondiscrimination set forth in Section 511(a)(1)(B) of the AAIA and the City's Federal grant and surplus property agreements.

(d) the City of Hayward's has negotiated in good faith American Aircraft Sales Co.'s lease, prior to and following the acceptance of Federal financial airport development assistance,

consistent with the provisions regarding economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

(e) the City of Hayward, by charging American Aircraft Sales Co. rent on Parcels G-1 and G-2, despite allegedly receiving the benefits of property improvements valued in excess of $100,000 provided by American Aircraft Sales Co., is not acting inconsistently with the provisions regarding economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

(f) the City, by applying for Federal airport assistance during the period from 1983 to the present while during the same period providing lease terms to American Aircraft Sales Co., is not in violation of the provisions regarding economic nondiscrimination set forth in Section 511(a)(1) of the AAIA and the City's Federal grant and surplus property agreements.

(g) the FAA is not required to provide interim relief by enjoining the City's enforcement of its arbitration award against American Aircraft Sales Co. pending completion of the administrative proceeding in this docket.

Accordingly, we dismiss the complaint in FAA Docket 13-92-8.

These determinations are made under Sections 307, 308(a), 313(a), and 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. Sec. 1347, 1348, 1354, and 1486, respectively, and Sections 511 and 519 of the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. App. Sections 2210 and 2218, respectively.

RIGHT OF APPEAL

This order constitutes final agency action under Section 1006(a) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. Section 1486. Any party to this proceeding having a substantial interest in this order may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after entry of this order.

Leonard E. Mudd
Director, Office of Airport Safety
and Standards

US Department of Transportation
Federal Aviation Administration

AIRPORT MASTER RECORD

FORM APPROVED OMB [illegible]

FAA EXHIBIT 1

>1 ASSOC CITY: HAYWARD 4 STATE: CA FAA SITE [illegible]01651.A
>2 AIRPORT NAME: HAYWARD AIR TERMINAL 5 COUNTY: ALAMEDA C[illegible]
3 GMT TO AIRPORT(HH): 8 W 6 REG/ADO: AWP/SFO 7 SECT AERO CHT: SAN FRANCISCO

GENERAL

[illegible]NERSHIP: PUBLIC
[illegible]NER: CITY OF HAYWARD
[illegible]DRESS: 25151 CLAWITER ROAD
HAYWARD CA, 94545-2731
>13 PHONE NR: 510-293-5300
>14 MANAGER: JOAN CASTANEDA
>15 ADDRESS: 20301 SKYWEST DR
HAYWARD, CA 94541
>16 PHONE NR: 510-293-5461
>17 ATTENDANCE SCHEDULE:

MONTHS	DAYS	HOURS
ALL	ALL	0800-1700

18 AIRPORT USE: PUBLIC
19 ARPT LAT: 37-39-33.355N ESTIMATED
20 ARPT LONG: 122-07-20.670W
21 ARPT-ELEV: 47 SURVEYED
22 ACREAGE: 543
>23 RIGHT TRAFFIC: 28R 10R
>24 NON-COMM LANDING FEE: NO
25 NASP/FEDERAL AGREEMENT: NGPRY
26 FAR 139 INDEX:

SERVICES

>70 FUEL: 100LL A
>71 AIRFRAME RPRS: MAJOR
>72 PWR PLANT RPRS: MAJOR
>73 BOTTLE OXYGEN: HIGH
>74 BULK OXYGEN: HIGH
75 TSNT STORAGE: TIE
76 OTHER SERVICES: CHTR
RNTL INSTR

BASED AIRCRAFT

90 SINGLE ENG:	430
91 MULTI ENG:	15
92 JET:	5
TOTAL	450
93 HELICOPTERS:	6
94 GLIDERS:	
95 MILITARY:	
96 ULTRA-LIGHT:	

FACILITIES

>30 ARPT BCN: CG
>81 APT LGT SKED: *DUSK-DAWN
>82 UNICOM: 122.950
>83 WIND INDICATOR: YES
84 SEGMENTED CIRCLE: NONE
85 CONTROL TWR: YES
86 FSS: OAKLAND
87 FSS ON ARPT: NO
88 FSS PHONE NR: 510-273-6111
89 TOLL FREE NR: 1-800-WX-BRIEF

OPERATIONS

100 AIR CARRIER:	
101 COMMUTER:	
102 AIR TAXI:	2983
103 G A LOCAL:	79720
104 G A ITNRNT:	78117
105 MILITARY:	342
TOTAL:	161162

OPERATIONS FOR 12 MOS ENDING 22SEP93

RUNWAY DATA

	10L/28R		10R/28L				
>30 RUNWAY IDENT	10L/28R		10R/28L				
>31 LENGTH:	3107	*	5024				
>32 WIDTH:	75		150				
>33 SURF TYPE-COND	ASPH-G		ASPH-G				
>34 SURF TREATMENT							
35 GROSS WT: SW	13	*	30				
36 (IN THSDS) DW			75				
37 DTW							
38 DDTW							

LIGHTING/APCH AIDS

	10L/28R		10R/28L				
>40 EDGE INTENSITY	MED		MED				
[illegible]OW ELEMENT 81							
[illegible]Y MARK TYPE-COND	NPI	/NPI	PIR-G	/PIR	/	/	/
[illegible]SI	N	/N	V4R	/V4L	/	/	/
[illegible]HR CROSSING HGT		/	25	/35	/	/	/
45 VISUAL GLIDE ANGLE		/	3.00	/4.00	/	/	/
>46 CNTRLN-TDZ	N-N	/N-N		/N-N	/	/	/
>47 RVR-RVV	N-N	/N-N		/N-N	/	/	/
>48 RCIL	N	/N	Y	/Y	/	/	/
>49 APCH LIGHTS		/		/	/	/	/

OBSTRUCTION DATA

	10L/28R		10R/28L				
50 FAR 77 CATEGORY	A(V)	/A(V)	B(V)	/C	/	/	/
>51 DISPLACED THR		/	822	/	/	/	/
>52 CTLG OBSTN	TREE	/TREE	TREE	/TREE	/	/	/
>53 OBSTN MARKED/LGTD		/		/	/	/	/
>54 HGT ABOVE RWY END	29	/56	40	/25	/	/	/
>55 DIST FROM RWY END	600	/1600	1000	/1000	/	/	/
>56 CNTRLN OFFSET	125L	/140R	250L	/100L	/	/	/
57 OBSTN CLNC SLOPE	13:1	/25:1	*20:1	/32:1	/	/	/
58 CLOSE-IN OBSTN	N	/N		/N	/	/	/

28:1 LANDING LENGTH

	10L/28R	10R/28L			
60 LANDING RWY-LENGTH	/	/	/	/	/
61 CTLG OBSTACLE	/	/	/	/	/
62 HGT-ABOVE THR	/	/	/	/	/
63 DIST FROM THR	/	/	/	/	/
64 CNTRLN OFFSET	/	/	/	/	/

(>) ARPT MGR PLEASE ADVISE FSS IN ITEM 86 WHEN CHANGES OCCUR TO ITEMS PRECEDED BY >

>110 REMARKS:
A031 RWY 10R/28L IN ADDITION TO PUBLISHED RY LENGTH RY 28L HAS ADDNL 860 X 75 FT OF ASPH PRIOR TO RY 28L THR AVBL FOR TKOF ONLY.
A035 RWY 10R/28L STRENGTH LIMITED BY STRENGTH OF CONNECTING TAXIWAYS.
A057 RWY 10R APCH RATIO 45:1 FM DSPLCD THR.
A081 WHEN ATCT CLSD MIRL RY 10R/28L PRESET LOW INTST; TO INCR INTST ACTVT - CTAF. REIL RYS 10R & 28L UNAVEL.
A110 -01 CITY OF HAYWARD FIRE DEPT-3 TRUCK WITH 4-30 & 2-25 LB DRY CHEMICAL, 500 GAL WATER, 130 GAL FOAM.
[illegible]02 RWY 10R/28L HAS RWY DISTANCE REMAINING SIGNS (LGTD) WEST SIDE OF RWY.
[illegible]03 NOISE ABATEMENT PROCEDURES ENFORCED CTC ARPT DIRECTOR (510) 293-8692.
[illegible]04 WHEN ATCT CLSD RWY 10L/28R CLSD.
A110 -05 MIRL RY 10R/28L NW 1500 FT OTS EXCP LOW INTST.
A110 -06 THIS AIRPORT HAS BEEN SURVEYED BY THE NATIONAL OCEAN SERVICE. FOR INFORMATION ON GEODETIC CONTROL, CONTACT THE NATIONAL GEODETIC SURVEY, 301-443-8168.

111 INSPECTOR: (F) 112 LAST INSP: 22SEP93 113 LAST INFO REQ:

RUN DATE: 06/24/94 RUN TIME: 8:05:19

STATE OF CALIFORNIA

ALL PHASES

CITY / GRANT NO	AIRPORT NAME	WORK DESCRIPTION	DISC. FUNDS	ENTIT. FUNDS	FEDERAL FUNDS (AIP
HAYWARD	HAYWARD AIR TERMINAL				
01 83		RECONSTRUCT AND WIDEN TAXIWAY; REHABILITATE RUNWAY AND TAXIWAY LIGHTING AND TAXIWAY SIGNS; INSTALL RUNWAY LIGHTING CONTROLS AND TAXIWAY LIGHTING	348,454	0	348,454
02 84		IMPROVE RUNWAY SAFETY AREA; RECONSTRUCT RUNWAY; CONSTRUCT AND LIGHT TAXIWAY AND APRON; CONSTRUCT SERVICE ROAD; INSTALL FENCING	516,519	0	516,519
03 85		CONSTRUCT TAXIWAY; EXPAND APRONS	654,234	0	654,234
04 85		CONDUCT NOISE COMPATIBILITY PLAN STUDY	99,769	0	99,769
05 86		REHABILITATE RUNWAY; CONSTRUCT AND LIGHT TAXIWAY; SEAL COAT TAXIWAYS	739,831	0	739,831
06 88		CONSTRUCT AND LIGHT TAXIWAY AND APRON	623,660	0	623,660
07 90		SEAL COAT TAXIWAYS AND APRON; INSTALL RUNWAY AND TAXIWAY LIGHTING, TAXIWAY SIGNS AND VISUAL APPROACH AID	457,721	0	457,721
		SITE TOTAL	3,440,188	0	3,440,188
		STATE TOTAL	3,440,188	0	3,440,188

HAYWARD FBO LEASE DATA

Name of FBO	FBO facilities	Site Description	Date of Lease	Term of Lease	Leg./SF rate	2/88 /SF rate	Curr./SF rate	Current Rental Amount	Period of Adjustment	% of FMV	Remarks
Bendor Company	Aircraft sales, maintenance, manufacturing	Plots 3 & 4; 45,000 SF	3/26/57	50 yrs.	1.3 cents	1.3 cents	13 or 17 cents*	$600/yr. first 35 yrs.	rates for similar facilities	---	*based on info provided by Cavichee & City
American Aircraft Sales	Aircraft sales, maintenance, engine overhaul, equipment & supplies; tiedowns	Lease 1: Lot 1, 22,500 SF	2/4/58	50 yrs.	5 cents	5 cents	Proposed of 20 cents/SF by city	$480/year	10 yr.; FMV based $2200		
			Amd. 1; 6/2/59					$1,125/year; $93.75/mo.	10 yr.; FMV based $5150		*New rent period 1/1/61 to 7/30/70
		new SF to 27,115 SF	Amd. 2; 8/22/72*		5 cents	4 1/2 cents		$1,220.16/year; $101.68/mo.*	After 3/1/78; FMV based $20,336		Amd. due to litigation settlement
			Amd. 3 12/26/80					$1,355.76/year; $112.98/mo.	10 yr. 1990, 2000,2010; FMV of $22,641		Term extended to 12/31/2010
	Storage & parking aircraft	Lease 2: Lot 2, 22,500 SF	8/2/59	35 yrs.	2 cents	5 cents	Proposed of 20 cents/SF by city	$1,125/year, $93.75/mo.	10 yr.; FMV based $5,150		
			Amd. 1; 8/22/72					$1,012.44/year; $84.37/mo.*	10 yr.; After 7/1/89 FMV based $16,875		*New rent period 7/1/61 to 6/30/70 - litigation settlement
		adds Parcel G-1 & G-2	Amd. 2; 12/26/80	ext. 12/31/2010		4 1/2 cents		$1,125/year, $93.75/mo.	10 yr.; FMV based $18,788 as of 7/1/79;		
		83,544 SF less 7,425 SF free									
		Total of Lot 1 & 2= 119,169 SF						$3,105/yr., $258.83/mo.			
								Ext. 1/90, 1995, 2005,& 2010	5 yr.; FMV based $57,930.15		
Anderson Aviation* (formerly Western Engine Service Co. 11/15/88)	Aircraft sales, maintenance, engine overhaul, equipment & supplies	Plot 6; 22,500 SF	2/24/59	35 yrs.	5 cents	5 cents	23 cents*	$1,125/year	10 yr. FMV $18,750		*Data from City & Cavichee
Flightcraft/Beechcraft Pope Properties	Aircraft sales, maintenance, storage, tiedown, flight & ground schools; air taxi; air ambulance, fuel	Segment V-A 426,708 SF	6/25/1963 w/Airport Investors	50 yrs.	3 cents	6 cents					
		9.7773 acres	11/3/1966 Airport Investors & Flight Safety								
		Parcels I, II & III	2/1/72 Beechcraft West	Ext. 12/31/85							
			8/29/79 New Parcel 1			5 cents		$19,008/yr			
			5/1/88 New Parcels 2 & 3	Ext. 6/30/2013			16 cents	$1,526,866.20		4%	1/1/85 settlement of rental
			378,876 SF								
			5/23/89 - Pope, Inc.								
			12/21/92 w/Pope; deletes Parcel 3; new 426,708 SF				18 cents*				*based on data from City & Cavichee
Career Aviation Academy	Aircraft sales, maintenance, storage, flight & ground schools, air taxi, fuel	Segment VI; Plot E; 67,981 SF	6/1/65	48 yrs, 1 mo.							
		238,776 SF	Amd. 1 7/1/76								
			Amd. 2 3/15/83	6/30/13	3 cents	5 cents	15 or 18 cents*	Est. 1/1/91, 1/2 of 8%* every 5 yr. period	5 yrs. 1996, 2001, 2006	4%	*based on data from City & Cavichee
Aircraft Modification	Aircraft sales, maintenance, storage, flight & ground schools, air taxi	Plot H, 113,197 SF	5/1/65	48 2/12 yrs ends 6/30/2013	3 cents	5 cents	20 cents*	Based on FMV 8%	20 yr. period 1/88 & 1/2008	8%	*based on data from City & Cavichee
Aviation Training, Inc.	Aircraft sales, maintenance, storage, flight & ground schools; air taxi	Site Lease 1; 50,018 SF	9/1/75	25 yrs. 8/2000	5 cents	5 cents	11 cents	$5,455/yr.	5 yr. FMV	4%	Appraised as industrial zoned real property less improvements
Hunt-Myers	Aircraft sales, maintenance, storage, flight & ground schools, avionics, fuel, car rental	Plot I, 270,604 S.F. (6.212 Ac)	8/1/77	30 yrs.	5 cents	5 cents	18 cents	Est. 1/92, FMV 1/2 of 8%* every 5 yr. period	5 yr. 1997 & 2002	4%	*Appraised as industrial zoned real property