



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

**Item No.
6**

Meeting Date: **NOVEMBER 3, 2011**

Subject:

Indemnity Issues Regarding Certain Government Entities

Recommendation:

Adopt Resolution No. 2011-0140, precluding the Authority from indemnifying a government entity when that entity is precluded by law from indemnifying the Authority.

Background/Justification:

- A. Summary.** The purpose of the attached resolution is to facilitate the exchange of easements between the Authority and Marine Corps Recruit Depot San Diego ("MCRD") that are associated with the pending improvements to the Washington Street access to the northern portion of the San Diego International Airport – Lindbergh Field ("Airport").
- B. Background.** Naval Facilities Engineering Command – Southwest ("NAVFAC") acts on behalf of the Department of the Navy for real estate transactions in the southwestern United States, including San Diego County. Negotiations with MCRD and NAVFAC regarding improvements to the Washington Street access to the Airport and MCRD include an exchange of easements over and across Authority leasehold and MCRD parcels of Washington Street extending south of Pacific Highway.

The Anti-Deficiency Act (31 U.S.C §1341) precludes the federal government from accepting an indemnity clause in contracts including easements granted to the federal government unless funds have been authorized for such purpose by Congress. Federal policy requires easements granted by the federal government include a provision by which the grantee indemnifies the government against environmental claims, property damage, or personal injuries. However, NAVFAC advises there is an exception to the government's requirement for indemnity provisions when the grantee of a federal property easement is a government entity precluded by law from indemnifying other parties. In such instances, the government's requirement for an indemnity provision is waived.

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- C. Justification.** Early on in the negotiations regarding the Washington Street easements, the parties agreed that obligations in the easements should be equitable and mutual. This goal for easement obligations to be mutual cannot be realized if the MCRD/NAVFAC-granted easements have indemnity provisions that are precluded from being repeated in the Authority-granted easements. Adoption of the attached resolution will permit mutual easement obligations by eliminating the indemnity provisions from all easements. As a result, customary tort law will determine liability in the event an environmental, property or personal injury occurs on an easement parcel.

Fiscal Impact:

Not applicable.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA, Pub. Res. Code §21065.
- B. This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

BRETON K. LOBNER
GENERAL COUNSEL

RESOLUTION NO. 2011-0140

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY, PRECLUDING THE AUTHORITY
FROM INDEMNIFYING A GOVERNMENT ENTITY
WHEN THAT ENTITY IS PRECLUDED BY LAW
FROM INDEMNIFYING THE AUTHORITY

WHEREAS, the San Diego County Regional Airport Authority Act (Cal. Pub. Utilities Code (§§ 170000 *et seq.*) ("Act") established the Authority, as a local governmental entity of regional government, with jurisdiction extending throughout the County of San Diego; and

WHEREAS, the Act provides that the Authority's board of directors shall act by ordinance, resolution, or motion; and

WHEREAS, the Authority, from time to time, enters into real property agreements with other government entities that are precluded by law from indemnifying the Authority, but such entities request the Authority to indemnify them unless the Authority is precluded by law from indemnifying the government agency; and

WHEREAS, the Board determined that it is in the best interest of the Authority that, whenever feasible in reciprocal real property agreements, the Authority not indemnify another government entity that is precluded from indemnifying the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby RESOLVES and DIRECTS that for reciprocal real property agreements with another government entity, the Authority is precluded from indemnifying such government entity when that entity is precluded by law from indemnifying the Authority; and

BE IT FURTHER RESOLVED that the Board hereby ADOPTS the above recitals as findings; and

BE IT FURTHER RESOLVED that the President/CEO is hereby authorized to take such actions to comply with this Board action; and

BE IT FURTHER RESOLVED that the Board of the San Diego County Regional Airport Authority finds that this Board action is not a "project" as defined by the California Environmental Quality Act (CEQA) Pub. Res. Code Section 21065; and is not a "development" as defined by the California Coastal Act Pub. Res. Code Section 30106.

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PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 3rd day of November, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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