

DEPARTMENT OF STATE

[Public Notice 7115]

Issuance of a Presidential Permit Authorizing the Construction, Operation, and Maintenance of the San Diego-Tijuana Airport Cross Border Facility Near San Diego, California, at the International Boundary Between the United States and Mexico

SUMMARY: The Department of State issued a Presidential permit, effective August 3, 2010, authorizing Otay-Tijuana Venture, L.L.C., to construct, operate, and maintain an international pedestrian bridge called San Diego-Tijuana Airport Cross Border Facility near San Diego, California, at the international boundary between the United States and Mexico. In making this determination, the Department consulted with other federal agencies, as required by Executive Order 11423, as amended.

FOR FURTHER INFORMATION CONTACT:

Stewart Tuttle, U.S.-Mexico Border Affairs Coordinator, via e-mail at WHA-BorderAffairs@state.gov; by phone at 202-647-9894; or by mail at Office of Mexican Affairs—Room 3909, Department of State, 2201 C St., NW., Washington, DC 20520. Information about Presidential permits is available on the Internet at <http://www.state.gov/p/wha/rt/permit/>.

SUPPLEMENTARY INFORMATION: Following is the text of the issued permit:

By virtue of the authority vested in me as Under Secretary of State for Economic, Energy, and Agricultural Affairs, including those authorities under Executive Order 11423, 33 FR 11741, as amended by Executive Order 12847 of May 17, 1993, 58 FR 29511, Executive Order 13284 of January 23, 2003, 68 FR 4075, and Executive Order 13337 of April 30, 2004, 69 FR 25299; and Department of State Delegation of Authority 118-2 of January 26, 2006; having considered the environmental effects of the proposed action in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321 *et seq.*) and other statutes relating to environmental concerns; having considered the proposed action in accordance with the National Historic Preservation Act (80 Stat. 917, 16 U.S.C. 470f *et seq.*); and having requested and received the views of various of the federal departments and other interested persons; I hereby grant permission, subject to the conditions herein set forth, to Otay-Tijuana Venture, LLC (hereinafter referred to as “permittee”) to construct, operate, and maintain a new international pedestrian bridge (the proposed San Diego-Tijuana Airport Cross Border Facility) connecting in Mexico to the Tijuana International Airport.

The term “facilities” as used in this permit means the bridge and any land, structure, or installations appurtenant thereto.

The term “United States facilities” as used in this permit means that part of the facilities in the United States.

This permit is subject to the following conditions:

Article 1. The United States facilities herein described, and all aspects of their operation, shall be subject to all the conditions, provisions, and requirements of this permit and any amendment thereof. This permit may be terminated at the will of the Secretary of State or the Secretary’s delegate or may be amended by the Secretary of State or the Secretary’s delegate at will or upon proper application therefore. The permittee shall make no substantial change in the location of the United States facilities or in the operation authorized by this permit until such changes have been approved by the Secretary of State or the Secretary’s delegate.

Article 2. The standards for, and the manner of, the construction, operation, and maintenance of the United States facilities shall be subject to inspection and approval by the representatives of appropriate federal, state and local agencies. The permittee shall allow duly authorized officers and employees of such agencies free and unrestricted access to said facilities in the performance of their official duties.

Article 3. The permittee shall comply with all applicable federal, state, and local laws and regulations regarding the construction, operation, and maintenance of the United States facilities and with all applicable industrial codes. The permittee shall obtain the requisite permits from state and local government entities and relevant federal agencies.

Article 4. Upon the termination, revocation, or surrender of this permit, and unless otherwise agreed by the Secretary of State or the Secretary’s delegate, the United States facilities in the immediate vicinity of the international boundary shall be removed by and at the expense of the permittee within such time as the Secretary of State or the Secretary’s delegate may specify, and upon failure of the permittee to remove this portion of the United States facilities as ordered, the Secretary of State or the Secretary’s delegate may direct that possession of such facilities be taken and that they be removed at the expense of the permittee; and the permittee shall have no claim for damages by reason of such possession or removal.

Article 5. This permit and the operation of the United States facilities hereunder shall be subject to the limitations, terms, and conditions issued by any competent agency of the United States Government, including but not limited to the Department of Homeland Security (DHS) and the United States Section of the International Boundary and Water Commission (USIBWC). This permit shall continue in force and effect only so long as the permittee shall continue the operations hereby authorized in exact accordance with such limitations, terms, and conditions.

Article 6. When, in the opinion of the President of the United States, the national security of the United States demands it, due notice being given by the Secretary of State or the Secretary’s delegate, the United States

shall have the right to enter upon and take possession of any of the United States facilities or parts thereof; to retain possession, management, or control thereof for such length of time as may appear to the President to be necessary; and thereafter to restore possession and control to the permittee. In the event that the United States shall exercise such right, it shall pay to the permittee just and fair compensation for the use of such United States facilities upon the basis of a reasonable profit in normal conditions, and the cost of restoring said facilities to as good condition as existed at the time of entering and taking over the same, less the reasonable value of any improvements that may have been made by the United States.

Article 7. Any transfer of ownership or control of the United States facilities or any part thereof shall be immediately notified in writing to the United States Department of State, including the submission of information identifying the transferee. This permit shall remain in force subject to all the conditions, permissions and requirements of this permit and any amendments thereto unless subsequently terminated or amended by the Secretary of State or the Secretary’s delegate.

Article 8. (1) The permittee shall acquire such right-of-way grants or easements, permits, and other authorizations as may become necessary and appropriate.

(2) The permittee shall save harmless and indemnify the United States from any claimed or adjudged liability arising out of the construction, operation, or maintenance of the facilities.

(3) The permittee shall maintain the United States facilities and every part thereof in a condition of good repair for their safe operation.

Article 9. The permittee shall reach agreement with U.S. Customs and Border Protection (CBP) on the provision of suitable facilities for the CBP officers to perform their duties at the Cross Border Facility. Such facilities must meet the latest CBP design standards—and-operational requirements which-could-include, but are not limited to, inspection and office space, CBP personnel parking and restrooms, an access road, kennels, and other operationally required components.

Article 10. (1) The permittee shall take all appropriate measures to prevent or mitigate adverse environmental impacts or disruption of significant archeological resources in connection with the construction, operation, and maintenance of the United States facilities, including those mitigation measures set forth in the Final Environmental Assessment and in the Department’s Finding of No Significant Impact (FONSI) dated June 22, 2010.

(2) Before beginning construction, the permittee shall obtain the concurrence of the Commissioner of the USIBWC that the project is consistent with the terms of boundary and water treaties between the United States and Mexico and other relevant international agreements in force.

Article 11. The permittee shall file with the appropriate agencies of the United States Government such statements or reports under

oath with respect to the United States facilities, and/or permittee's actions in connection therewith, as are now or may hereafter be required under any laws or regulations of the United States Government or its agencies.

Article 12. The permittee shall not begin construction until it has obtained authorization for such construction from the Government of the United States and from the Government of Mexico through the exchange of diplomatic notes. The permittee shall provide written notice to the Department of State at such time as the construction authorized by this permit is begun, and again at such time as construction is completed, interrupted, or discontinued.

Article 13. This permit shall expire ten years from the date of issuance in the event that the permittee has not commenced construction of the United States facilities by that deadline.

In witness whereof, I, Robert D. Hormats, Under Secretary of State for Economic, Energy, and Agricultural Affairs, have hereunto set my hand this 15th day of July 2010 in the City of Washington, District of Columbia.

End Permit text.

Dated: August 4, 2010.

Alex Lee,

*Director, Office of Mexican Affairs,
Department of State.*

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 698]

Establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee

AGENCY: Surface Transportation Board.

ACTION: Notice of establishment of the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee.

SUMMARY: As required by § 9(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. app., the Surface Transportation Board hereby gives notice that, following consultation with the General Services Administration, the Board will create the Toxic by Inhalation Hazard Common Carrier Transportation Advisory Committee (TIHCCTAC), to provide independent advice and policy suggestions to the Board on issues related to the common carrier obligation with respect to the rail transportation of toxic by inhalation hazards (TIH), and specifically, to outline what is a railroad's reasonable response to a shipper's request that it transport TIH cargo. The TIHCCTAC will convene for a two-year period

during which the Board anticipates it will produce a report that will include a recommended policy statement for further consideration by the Board. The Board may renew the TIHCCTAC charter if the Board deems it advisable. This notice seeks comments on the proposed TIHCCTAC structure, as outlined below. It also requests nominations for members of the TIHCCTAC.

In the context of its proposed structure, outlined below, the Board seeks input from interested persons on a number of issues, including: (1) What should be the appropriate scope of such a committee's mandate? (2) How would the scope of the committee's mandate affect its utility? (3) What would be the optimum size of such a committee? and (4) How should the committee's membership be allocated among various stakeholder groups to achieve a fairly balanced "cross section of those directly affected, interested, and qualified," as required under FACA, 41 CFR 102-3.60(b)(3).

DATES: Comments regarding the proposed TIHCCTAC structure and scope must be received by 5 p.m. E.D.T., Friday, September 24, 2010. Nominations for members must be received by 5 p.m. E.D.T., Monday, October 25, 2010.

ADDRESSES: All comments and nominations should be submitted to the Board, and may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a nomination in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: STB Ex Parte No. 698, 395 E Street, SW., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Ronald Molteni, Office of the General Counsel, at 202-245-0267. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: The Board, created by Congress in 1996 to take over many of the functions previously performed by the Interstate Commerce Commission, exercises broad authority over transportation by rail carriers, including regulation of railroad rates and service (49 U.S.C. 10701-10747, 11101-11124), as well as the construction, acquisition, operation, and abandonment of rail lines (49 U.S.C. 10901-10907) and railroad line sales,

consolidations, mergers, and common control arrangements (49 U.S.C. 10902, 11323-11327). As part of its regulatory function, the Board oversees the common carrier obligation.

The common carrier obligation refers to the statutory duty of railroads to provide "transportation or service on reasonable request." 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. *G.S. Roofing Prods. Co. v. STB*, 143 F.3d 387, 391 (8th Cir. 1998). The common carrier obligation, however, is not absolute, and service requests must be reasonable. *Id.* In recent years, the Board has seen an increasing number of questions arising, both formally and informally, regarding the extent of a railroad's common carrier obligation. As a result, in its docket styled, *Common Carrier Obligation of Railroads*, EP 677, the Board held a hearing on April 24-25, 2008, to hear comments from interested parties on the common carrier obligation and to provide a forum for discussion of that obligation.

That hearing raised issues involving the obligation of railroads to haul hazardous materials, including toxic by inhalation hazards. For many hazardous materials, including TIH, rail is the safest and most efficient mode of transportation. But, according to the railroads, the transportation of these materials subjects them to the potential for extremely high liability in the event of an accident.

Consequently, to allow a more detailed discussion, the Board opened another docket styled, *Common Carrier Obligation of Railroads—Transportation of Hazardous Materials*, EP 677 (Sub-No. 1), and held a hearing on July 22, 2008, to further explore the issues surrounding the transportation of hazardous materials by rail. At that hearing, the Board heard testimony that touched on, among other things, specific potential policy solutions to the liability concern.

In EP 677 (Sub-No. 1), the Board invited parties to comment on what constitutes a reasonable request for service involving the movement of TIH, as well as whether there are unique costs associated with the transportation of hazardous materials, and if so, how railroads recover those costs.

The American Association of Railroads (AAR) suggested that the Board adopt the following policy statement:

It would not be an unreasonable practice for a rail carrier, under the provisions of 49 U.S.C. 11101(a) and 49 U.S.C. 10702, to require (if it elected to), as a condition of providing common carrier transportation