

September 2, 2010

Writer's Direct Contact
202.887.1577
kescalante@mofo.com

FILED ELECTRONICALLY

Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: Finance Docket No. 35360: *San Francisco Bay Railroad-Mare Island – Petition for Declaratory Order – Lennar Mare Island, LLC, and Pursuant to 49 U.S.C. § 11123 and 49 C.F.R. § 1146.1(b)(1)(i) for Expedited Relief Due to Unauthorized Cessation of Operations*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above-referenced docket is the Reply of Lennar Mare Island, LLC to San Francisco Bay Railroad-Mare Island's "Supplementary Submission Based Upon New Demands for Service."

Respectfully,



Karen E. Escalante

cc: John F. McHugh, Esq.
Thomas Sheaff
Frederick G. Soley, Esq.
Claudia M. Quintana, Esq.
Charles A. Spitulnik, Esq.
Allison I. Fultz, Esq.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35360

**SAN FRANCISCO BAY RAILROAD - MARE ISLAND –
PETITION FOR DECLARATORY ORDER – LENNAR
MARE ISLAND LLC, AND PURSUANT TO 49 U.S.C. § 11123
AND 49 C.F.R. § 1146.1 FOR EXPEDITED RELIEF
DUE TO UNAUTHORIZED CESSATION OF OPERATIONS**

**REPLY OF LENNAR MARE ISLAND LLC TO “SUPPLEMENTARY
SUBMISSION” OF SAN FRANCISCO BAY RAILROAD-MARE ISLAND**

Lennar Mare Island, LLC (“LMI”) submits this reply in response to the “Supplementary Submission Based Upon New Demands for Service” (“Submission”) filed by San Francisco Bay Railroad - Mare Island (“SFBR-MI”) on August 26, 2010. SFBR-MI closes its Submission by contending that “an emergency service order should be entered immediately so that SFBR-MI can” handle two potential rail movements¹ and, in addition, “to put SFBR-MI in a position to meet reasonably foreseeable future demands to load onto rail cars and to move cargos to and from *any spot on the existing serviceable tracks* on Mare Island.” Submission, pp. 16-17 (emphasis added).

Neither SFBR-MI’s Submission nor any other evidence adduced by SFBR-MI in this proceeding warrants any action by the Board, much less the sweeping and

¹ SRBF-MI asserts a “current demand to move 39 cars of steel and 23 cars of contaminated soils, both commencing in early October.” Submission, p. 16.

overreaching usurpation of LMI's property that SFBR-MI demands. There is no service failure here, much less "an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States" (49 U.S.C. § 11123(a)) such as might trigger application of 49 U.S.C. § 11123. First, LMI is in the process of accommodating the sole request of a third party, XKT Engineering ("XKT"), to unload approximately 40 railcars on Mare Island beginning in early- to mid-September. Second, the other potential movements of LMI's own contaminated soil from environmental remediation projects on the Island have not materialized. Even if it were the case that a business on Mare Island could not obtain the rail service it desired, however, there would still be no recourse to a Board order pursuant to 49 U.S.C. § 11123. As LMI has shown in its prior submissions, there is no extant common carrier obligation associated with the former U.S. Navy rail trackage on Mare Island, and there is thus no basis on which the Board could compel service. *See* pages 12-14 below.

Once the facts are understood, it is plain that SFBR-MI's repeated demands for Board intervention have everything to do with SFBR-MI attempting to gain forced access to LMI's property and very little to do with any bona fide desire to provide shippers with the rail service they desire. Although LMI is not privy to SFBR-MI's business plans, we are more concerned than ever that SFBR-MI and its non-rail affiliate Waste Solutions Group, of which David Gavrich is also the President, seek access to LMI's property to further their own business interests, running roughshod over LMI's redevelopment

obligations under the guise of ICCTA preemption.² Such a motive is reflected in the sweeping nature of SFBR-MI's new (and flawed) request for a service order, which as proposed would encompass "any spot on the existing serviceable tracks on Mare Island" where SFBR-MI might choose to load or unload railcars. Submission, p. 16-17. Such a motive is also reflected in SFBR-MI's assertion, made in an April 2010 email to the City of Vallejo, that it *would not attempt* to provide rail service to businesses on Mare Island so long as LMI continued to prevent SFBR-MI from conducting *its own operations* on LMI's property and instead required an exchange of railcars with LMI's rail switching contractor MIRS.³ And, such a motive is also reflected in SFBR-MI's decision to file its recent Submission despite being well aware that LMI and MIRS were fully prepared to accommodate the one request for rail service that remains outstanding – the delivery of 39 carloads of steel to XKT. *See* Sheaff Sept. 2 V.S., ¶ 10-15.

The Board should reject SFBR-MI's new calls for intervention and dispose of this matter once and for all by denying the Petition for Declaratory Order SFBR-MI seeks and, in Finance Docket No. 35304, revoking SFBR-MI's exemption on Mare Island. This outcome would provide a clear path for LMI and the City of Vallejo to continue to work together to facilitate potential rail service to businesses on Mare Island in a manner

² LMI is cognizant of SFBR-MI's assertions in these proceedings that "the presence of the railroad is inconsistent with a landowner's plans or even with a municipality's plans is immaterial." Reply of San Francisco Bay Railroad-Mare Island, STB Finance Docket No. 35304 (filed Apr. 7, 2010), p. 19. *See also* Reply of Lennar Mare Island in Opposition to Petition for Emergency Service Order Pursuant to 49 U.S.C. § 11134 ("LMI ESO Reply"), STB Finance Docket No. 35360 (filed Mar. 22, 2010), p. 18; Petition to Revoke Exemption, STB Finance Docket No. 35304 (filed Mar. 29, 2010), pp. 13-14, n.7.

³ Sheaff Sept. 2 V.S., Ex. A (Email from David Gavrich (SFBR-MI) to Claudia Quintana (City of Vallejo) (Apr. 2, 2010)).

that would not interfere with the ongoing redevelopment and environmental remediation efforts on this former U.S. Navy facility.

I. The Supposed “Demands” for Rail Service Discussed in SFBR-MI’s Submission Do Not Support SFBR-MI’s Request for an Emergency Service Order

Even if one *assumes* – contrary to fact (*see* pages 12-14 below) – that there is a common carrier obligation attached to the former U.S. Navy trackage on Mare Island, the supposed “demands” for rail service that SFBR-MI identifies in its Submission do not support SFBR-MI’s request for an emergency service order. Quite simply, there is no service failure, much less any service emergency warranting Board intervention under 49 U.S.C. § 11123.

SFBR-MI expends considerable energies attempting to portray LMI as having “blockaded” rail service, suggesting for example that LMI stated categorically that it would not allow railcars to be unloaded on Mare Island. *See* Submission, pp. 7, 11, 15, 16. These assertions are simply false. LMI in fact acted *to facilitate*, not to interfere with, each of the potential rail movements discussed in SFBR-MI’s Submission. The three “demands” identified there amount to (a) two movements *of LMI’s own soil* in connection with ongoing environmental remediation projects being undertaken by LMI on this former U.S. Navy facility, neither of which LMI refused to allow to be moved by rail; and (b) one potential movement of steel to XKT, which LMI and its rail switching contractor (MIRS) are currently in the process of accommodating.

We discuss the facts associated with each of these potential rail movements, and correct some of SFBR-MI’s numerous mischaracterizations, in the sections below. As we explain, SFBR-MI’s Submission – much of which is devoted to a collage of self-

serving emails sent by SFBR-MI's own president, David Gavrich – badly distorts the facts. Ironically, to the extent there have been problems arranging for the movements of railcars to or from Mare Island, those problems have stemmed from SFBR-MI's *own* posturing. Although SFBR-MI acknowledges that it “obviously can't service the Island directly” and thus “need[s] the cooperation of MIRS and LMI” (Submission, p. 1), it has nonetheless proceeded unilaterally, in a manner seemingly calculated to *avoid* effective communication and cooperation with LMI and MIRS. Sheaff Sept. 2 V.S., ¶ 20.

SFBR-MI's conduct was perhaps calculated to lead to failure, so that SFBR-MI could use these failures as a pretext for again seeking Board intervention. The Board should not give encouragement to this sort of gamesmanship under any circumstances. But here SFBR-MI's strategy fails for a more fundamental reason: LMI has not acted to thwart the potential rail shipments, but instead has gone to great lengths and considerable expense to make rail service possible – initially by allowing Alstom to receive railcars at its facility near the Causeway and subsequently to retain the services of MIRS and, as discussed below, to undertake efforts to make potential rail shipments feasible.

(a) The Two Pending “Demands” for Service

We begin with the two potential rail movements that SFBR-MI describes as still active possibilities, and to which SFBR-MI's desired service order would ostensibly be directed: (i) a 39-car movement of steel to XKT; and (ii) a 23- or 24- car movement of contaminated soil from Mare Island to an off-Island disposal location. LMI has worked *to facilitate* – not to block – both of these potential rail movements.

The 39-Car XKT Engineering Move

A potential 39-car movement of steel destined for XKT on Mare Island (described at pages 13-14 of SFBR-MI's Submission) is the only potential rail shipment identified by SFBR-MI that would be on behalf of a third party (*i.e.*, not LMI itself). There has been no service failure with respect to this potential movement, and certainly no emergency. Indeed, when SFBR-MI's Submission is read carefully, it is apparent that despite SFBR-MI's bluster, it offers no facts suggesting any service problem at all.

Quite to the contrary, LMI and its contract switching provider (MIRS) have been working diligently to accommodate the delivery and efficient unloading of these shipments destined for XKT. Sheaff Sept. 2 V.S., ¶ 10-13; Peterson Sept. 2 V.S., ¶¶ 4-7, 16-18. As Mr. Sheaff explains, LMI did not learn of this potential rail movement until August 7. Sheaff Sept. 2 V.S., ¶ 11. Moreover, as soon as LMI learned of the movement and XKT's desire to have the cars unloaded on Mare Island rather than at an off-Island transloading facility that it has used in the past, LMI contacted XKT and the City of Vallejo to discuss logistical issues associated with potential deliveries of railcars to Mare Island. *Id.*, ¶ 12.

Far from imposing a "blockade," LMI and MIRS have worked with both SFBR-MI and the City of Vallejo to develop a plan for accommodating the delivery of railcars for unloading by XKT. Well before SFBR-MI filed its Submission, those efforts had culminated in an understanding that SFBR-MI would deliver the cars to XKT on the City of Vallejo trackage adjacent to the Mare Island Causeway, and MIRS would facilitate XKT's unloading of those cars by pulling them to a location where XKT could efficiently unload the steel shipments. Sheaff Sept. 2 V.S., ¶ 13; Peterson Sept. 2 V.S., ¶ 7. So long

as SFBR-MI cooperates, MIRS will have equipment on Mare Island capable of handling these movements. Peterson Sept. 2 V.S., ¶ 18.⁴ Accordingly, provided SFBR-MI honors its commitment to exchange cars with MIRS at the east end of the Mare Island Causeway, there will be no impediment to XKT receiving the rail service it desires.

SFBR-MI is well aware of this plan,⁵ and perhaps for that reason its Submission presents no facts whatsoever suggesting that LMI has stood in the way of these deliveries.

The 23/24-Car CSI/TurnKey Soil Movement

The only other “demand” relating to a potential future movement of railcars identified in SFBR-MI’s Submission is the 23- or 24-car movement of contaminated soil that SFBR-MI erroneously attributes to both CSI and TurnKey. *Compare* Submission, p. 4 *with id.*, p. 11. SFBR-MI fails to disclose, however, that the soil in question *belongs to LMI*. As explained by Ed Aromi, of LMI’s primary environmental remediation contractor CH2M Hill, the contaminated soil at issue is from a remediation project associated with work on an underground fuel oil pipeline on LMI’s property. Aromi V.S., ¶¶ 2-4. LMI, not CSI or TurnKey, would not have been the shipper of this soil. CSI and TurnKey were merely bidders seeking to become *subcontractors* to CH2M Hill in connection with the CTA remediation project. *Id.*, ¶ 2.

⁴ MIRS had arranged to base a track-mobile on Mare Island, and kept one there until April 2010. That unit was relocated after there emerged no demand for switching services on the Island, and SFBR-MI communicated that it would not pursue rail traffic on the Island so long as LMI did not allow SFBR-MI access to LMI’s property. As SFBR-MI explained, it preferred to await the outcome of the STB process,” and MIRS accordingly concluded that it no longer made sense to keep a tack-mobile on stand-by on Mare Island. Peterson Sept. 2 V.S. ¶ 5-6.

⁵ LMI recently confirmed the particulars of this service plan (*see* Sheaff Sept. 2 V.S., ¶ 15 and Ex. C), but that plan was in place before SFBR-MI filed its Submission on August 25, 2010.

As Mr. Aromi also explains, however, there is no longer any desire for rail transportation in connection with this remediation work. Only TurnKey submitted a bid that included a rail transportation option, but it was not selected by CH2M Hill as a subcontractor (for reasons unrelated to its transportation proposal). *Id.* The subcontractor that was chosen to perform this remediation work was awarded a contract based upon its bid to use truck transportation only, and there is thus no further potential for rail shipments. *Id.*

In any event, however, contrary to SFBR-MI's assertions that SFBR-MI has blocked all loading of railcars on Mare Island (a false claim that we address in more detail below), LMI was fully prepared to consider having this soil moved by rail, provided the logistics could be worked out for an exchange of cars between MIRS and LMI and provided further that the economics and timing of rail movement made sense for LMI and its environmental contractors. *Sheaff Sept. 2 V.S.*, ¶¶ 16, 28; *Roebuck V.S.*, ¶ 3.

(b) The 240-Car Movement of Contaminated Soil

The majority of SFBR-MI's Submission is devoted to a discussion of the circumstances surrounding a movement of contaminated soil from the Crane Test Area ("CTA"), which SFBR-MI asserts could have been moved by rail but which is instead being moved by truck because of LMI's "refusal to allow" rail service. *See Submission*, pp. 15, 27. SFBR-MI misrepresents the facts. This contaminated soil is also the property of LMI, and as a result LMI would have been the shipper. *Sheaff V.S.*, ¶ 16; *Aromi V.S.*, ¶ 4. Indeed, when LMI learned that rail transportation was one option under consideration by CH2M Hill's subcontractors that were working on the CTA project,

LMI took active steps to make rail transportation a possibility. Sheaff Sept. 2 V.S., ¶¶ 19, 21; Roebuck V.S. ¶ 2-8. As it turned out, neither the requisite governmental approvals nor rail logistics could not be worked out before CH2M Hill's subcontractor determined it had to proceed with truck transportation to avoid delaying the remediation project. Sheaff V.S., ¶¶ 27-28.

The key facts, set forth in more detail in the verified statements of Mr. Sheaff, Ms. Roebuck, Mr. Peterson, and Mr. Aromi, are as follows:

- The CTA project involves the removal of contaminated soil belonging to LMI from LMI's property. LMI was the shipper here – not LMI's contractor CH2M Hill, CH2M Hill's subcontractor USAE, or USAE's subcontractor Magnus Pacific Corp. Sheaff Sept. 2 V.S., ¶ 16-17; Aromi V.S., ¶¶ 4-5.⁶

- Despite the fact that SFBR-MI knew it had no right to operate on Mare Island, and thus could not originate rail shipments on Mare Island without LMI's consent and the cooperation of LMI's switching contractor (MIRS) (*see* Submission, p. 1), SFBR-MI and its affiliate Waste Solutions Group (of which, as noted above, David Gavrich is also President) submitted to USAE a bundled proposal for SFBR-MI to operate “directly from Mare Island” and move loaded and empty cars on LMI's property – *i.e.*, “directly to the project site along Azuar Way or to the railyard on A Street.”⁷ SFBR-MI inexplicably did not share this proposal with LMI, MIRS, or CH2M Hill, nor did it initiate any contact

⁶ There can be no question that SFBR-MI has been aware of this fact as a result of its participation during the past year in meetings involving LMI, the City of Vallejo, Mare Island businesses, and the environmental remediation subcontractors. *See* Sheaff Sept. 2 V.S., ¶ 16.

⁷ *See* Sheaff Sept. 2 V.S., Ex. F (Waste Solutions Group and SFBR-MI Proposal (May 28, 2010)).

directly with LMI, MIRS, or CH2M Hill to discuss how such a movement could be accomplished in light of SFBR-MI's lack of any contractual right to operate on the Island. Sheaff Sept. 2 V.S., ¶ 20; Aromi V.S., ¶ 5.

- When LMI learned in mid-June that USAE was considering the potential for rail movement of soil from the CTA project, LMI *did not* reject the proposal. To the contrary, LMI promptly reached out to SFBR-MI, CH2M Hill, the City of Vallejo, and MIRS to explore the logistics associated with such an arrangement, including where MIRS would exchange cars with SFBR-MI and the terms that SFBR-MI was proposing for the exchange of cars with MIRS (including such matters as car hire and demurrage responsibility). Sheaff Sept. 2 V.S., ¶ 21-24. MIRS had sought this information from SFBR-MI five months earlier, in February 2010, but SFBR-MI had not responded (and still has not). Peterson Sept. 2 V.S., ¶ 13.

- During these discussions about logistics, LMI made clear its position that SFBR-MI would not be allowed to operate on LMI's property, and that only MIRS would handle the movement of railcars on the Island. MIRS and SFBR-MI corresponded about several alternative locations for exchanging railcars near the Mare Island Causeway. For reasons LMI has made clear in this proceeding, it was not prepared to consider alternatives that would have allowed SFBR-MI to operate on LMI-owned trackage beyond the Alstom facility. LMI also considered whether SFBR-MI and MIRS could exchange cars adjacent to the Alstom facility (which SFBR-MI already serves), but concluded that exchange of railcars there would not be feasible, because it would require blocking streets and could interfere with Alstom's use of its premises. Sheaff Sept. 2 V.S., ¶ 25. For its part, SFBR-MI would not agree to exchange cars east of the Causeway

on City of Vallejo trackage until August 7 (as discussed below), when it was already too late for rail to be used to handle the CTA soil movement. Sheaff Sept. 2 V.S., ¶ 25.

- LMI also took other steps to make rail transportation a possibility. As Sheila Roebuck, LMI's Environmental Director, explains, rail transportation required additional governmental approvals, and the responsible governmental agency insisted that the rail option be put to public comment. Rather than using these obstacles as an excuse to block the rail option, LMI moved quickly to seek governmental approval, and to have the option included on the agenda of a Mare Island Restoration Advisory Board meeting scheduled for July 29, even though the agenda for that meeting had already been finalized. Roebuck V.S., ¶¶ 4-8. That agenda item was withdrawn only after LMI learned that USAE had decided to abandon the rail option, as discussed below. *Id.* at ¶ 9.

- When discussions with SFBR-MI regarding the logistics for an exchange of railcars with MIRS did not bear immediate fruit, and the feasibility of rail shipments remained uncertain, USAE – not LMI – concluded (on or before July 26, 2010) that it needed to lock in truck transportation so as not to delay the soil remediation project. Aromi V.S., ¶ 5; Sheaff Sept. 2 V.S., ¶ 24-26 & Ex. E.

- Only after SFBR-MI learned that the rail option was no longer viable did it express for the first time (on August 7) its willingness to exchange railcars with MIRS on the City of Vallejo trackage, which had been LMI's and MIRS's favored solution all along. Sheaff Sept. 2 V.S., ¶ 28; Peterson Sept. 2 V.S., ¶ 15. This proposal was, as SFBR-MI well knew, more than a week too late to allow the movement of the 240-cars of LMI-owned soil from the CTA remediation project.

In light of these facts, it is apparent that LMI did not “blockade” the potential movement of contaminated soil from Mare Island. Nor, contrary to SFBR-MI’s repeated assertions (*see* Submission, pp 11, 15), did LMI direct that there be “no direct loading of rail cars on Mare Island.” LMI issued no such instructions. *Sheaff Sept. 2 V.S.*, ¶ 26; *Aromi V.S.*, ¶ 6. SFBR-MI goes astray by incorrectly attributing to LMI a statement by one of CH2M Hill’s subcontractors made to David Gavrich (in his capacity as “President of *Waste Solutions Group*”) on August 10 purporting to describe what CH2M Hill – not LMI – said to that subcontractor. *See* Submission, p. 7. Importantly, this statement was not made by LMI, and did not accurately reflect LMI’s position on the potential for railcar loading or unloading on Mare Island. At most, this statement reflected the fact that an arrangement for the exchange of railcars on this project had yet to be worked out between SFBR-MI and MIRS, or that LMI would not allow “direct loading” of railcars by SFBR-MI itself. *Sheaff Sept. 2 V.S.*, ¶ 26; *Aromi V.S.*, ¶ 6.

* * *

As these facts amply confirm, there is no service failure and no basis whatsoever for the Board to grant SFBR-MI access to LMI’s property. *See Granite State Concrete Co., Inc. & Milford-Bennington R.R. v. Boston & Maine Corp. & Springfield Terminal Ry.*, STB Docket No. 42083 (served Sept. 15, 2003).

II. Even if Specific Demands for Rail Service Were Being Blocked by LMI, SFBR-MI’s Service Order Request Would Still Lack Merit

Even if SFBR-MI could make a showing that specific third-party demands for rail service were being “blockaded” by LMI, SFBR-MI’s request for a service order would still lack merit, for two reasons: (1) for the reasons addressed at length in LMI’s previous submissions, there is no common carrier obligation with respect to any of the trackage on

Mare Island, and (2) the order SFBR-MI seeks is in any event vastly overreaching, extending well beyond the scope of the Mare Island trackage on which SFBR-MI has even attempted to demonstrate any past rail service (other than the U.S. Navy's own operations) or on which there is any potential for future rail service demand.

A. There is No Extant Common Carrier Obligation Associated with the Trackage on Mare Island

As addressed extensively in LMI's previous submissions, neither SFBR-MI nor anyone else has any common carrier obligation with respect to the trackage on Mare Island, all of which is owned by LMI.⁸ Accordingly, the entirety of SFBR-MI's Submission – just like the entirety of its previously-stated position before the Board – is fundamentally misguided.

LMI has explained in detail (at pages 4-12 above) that SFBR-MI's account of the facts associated with the supposed "new demands" for rail service are misleading and erroneous in numerous significant respects. But at bottom, the specific facts do not make a difference to the outcome. In the absence of a common carrier obligation, and trackage within the jurisdiction and authority of the Board, the Board lacks authority "to order the restoration of rail service."⁹ The new "demands" add nothing to SFBR-MI's failed

⁸ See LMI ESO Reply, p. 8; Reply of Lennar Mare Island, LLC in Opposition to Petition for Declaratory Order ("LMI DO Reply"), STB Finance Docket No. 35360 (filed Apr. 5, 2010), pp. 6-7, 17-25; Reply of City of Vallejo to San Francisco Bay Railroad-Mare Island's Reply to Petition to Revoke Exemption ("City Reply to SFBR-MI Reply"), STB Finance Docket No. 35304 (filed June 8, 2010) pp. 4-6; Reply of City of Vallejo in Opposition to Request for Expedited Relief, STB Finance Docket No. 35360 (filed Mar. 22, 2010) p. 5.

⁹ The Board has consistently interpreted the common carrier obligation (49 U.S.C. § 11101) as not giving the Board authority "to order the restoration of rail service where, as here, there is an absence of authority over the discontinuance or abandonment of service because side track is at issue." *Battaglia Distributing Co., Inc. v. Burlington Northern R.R.*, STB Finance

(footnote continued on next page ...)

attempt to create out of whole cloth its own entitlement to operate on LMI's property to reach "any spot on the existing serviceable tracks on Mare Island." In light of this context, SFBR-MI's vitriolic claims that LMI has somehow "blockaded" SFBR-MI (*see* Submission, pp. 1-2, 18) or violated "LMI's obligation as a common carrier" (*id.*, p. 13) must be rejected on their face, as they hinge on a common carrier obligation that simply does not exist.

B. The Scope of SFBR-MI's Proposed Service Order Is In Any Event Vastly Overreaching and Inappropriate

In addition, even if SFBR-MI were to present facts warranting entry of a Board emergency service order, the scope of that order would necessarily be of limited duration (30 days)¹⁰ and confined to the specific traffic as to which there has been a "demonstrated inadequacy in rail service," and the specific trackage needed to serve those needs. *Granite State Concrete*, p.6. The scope of SFBR-MI's requested order grossly exceeds these parameters. SFBR-MI makes no showing of any concrete rail service needs beyond the three specific movements addressed in its Submission and discussed above. Nor does SFBR-MI make any effort to demonstrate any basis for SFBR-MI's sweeping demand that it also be given access to every inch of "serviceable track" anywhere on Mare Island. Submission, p. 16-17. SFBR-MI has never even suggested, much less proved, that anyone other than the Navy operated on every inch of "serviceable

(... footnote continued from previous page)

Docket No. 32058 (served Dec. 11, 1998), p. 8. Where no common carrier obligation is present, the Board may not compel the provision of rail service.

¹⁰ SFBR-MI also ignores the fact that potential relief under 49 U.S.C. § 11123 would be limited to a period of 30 days, and not the open-ended access order SFBR-MI seems to desire. *See* 49 U.S.C. § 11123(a).

track” on Mare Island, and in any event there is no service failure that would require SFBR-MI to have access of such scope.

LMI submits that the sweeping and overreaching nature of SFBR-MI’s demand only underscores what LMI has been concerned about all along – that SFBR-MI is opportunistically seeking to insert itself on Mare Island so that it can take advantage of the sweeping preemption associated with Board-authorized rail operations to conduct whatever ancillary businesses it sees fit, perhaps including new transloading operations undertaken on behalf of its affiliate, Waste Solutions Group. The Board should reject SFBR-MI’s request in its entirety, and at the very least reject SFBR-MI’s effort to transform a supposed need to serve particular rail traffic into a sweeping grant of access to LMI’s property.

CONCLUSION

For the foregoing reasons, the Board should reject the relief requested by SFBR-MI in its Submission.

Respectfully submitted,

David Meyer

David L. Meyer

Karen E. Escalante

MORRISON & FOERSTER LLP

2000 Pennsylvania Ave., N.W.

Suite 6000

Washington, D.C. 20006

202.887.1519

dmeyer@mof.com

Attorneys for Lennar Mare Island, LLC

September 2, 2010

CERTIFICATE OF SERVICE

I, Karen E. Escalante, certify that on this date a copy of the Reply of Lennar Mare Island, LLC to the Supplementary Submission of San Francisco Bay Railroad-Mare Island, filed on September 2, 2010, was served by email and by first-class U.S. mail, postage prepaid, on all parties of record, specifically:

John F. McHugh
6 Water Street
Suite 401
New York, NY 10004
Email: JFMcHughPC@AOL.com

Charles A. Spitulnik
1001 Connecticut Avenue, NW
Suite 800
Washington, DC 20036
Email: cspitulnik@kaplankirsch.com



Karen E. Escalante

Dated: September 2, 2010

VERIFIED STATEMENT

OF

THOMAS SHEAFF

1. My name is Thomas Sheaff. I am a Vice President and an officer of Lennar Homes of California, the sole member of Lennar Mare Island, LLC (“LMI”). I have previously submitted a verified statement in this proceeding. I am providing this statement in response to the Supplementary Submission Based Upon New Demands for Service (“Submission”) filed by San Francisco Bay Railroad-Mare Island (“SFBR-MI”).

2. SFBR-MI’s Submission is a misrepresentation of facts and events over the past several months. Far from “blockading” Mare Island, LMI has worked hard to accommodate potential rail shipments to and from Mare Island at significant expense and effort. As LMI has articulated in its previous submissions in this proceeding, we have long desired to provide our tenants and other businesses on Mare Island with the option of rail service, so long as that service can be provided in a way that is consistent with the Island’s long-term mixed use commercial and residential redevelopment plans and LMI’s many obligations. *See*, for example, my March 22, 2010 verified statement at ¶ 27.

3. As I explain further in this statement, LMI has taken concrete steps *to facilitate* the provision of rail service on Mare Island – not to block it. SFBR-MI either omits the facts, or distorts them, in suggesting that LMI stood in the way of the specific rail service opportunities discussed in its Submission. Nothing could be further from the truth.

4. The simple fact is that SFBR-MI is accusing LMI of blockading rail service on Mare Island only because LMI has determined not to allow SFBR-MI to conduct its own operations on LMI’s property. LMI has legitimately concluded that allowing SFBR-MI to

operate on Mare Island would threaten the ongoing development and environmental remediation efforts for which so many have worked so hard for so long and invested hundreds of millions of dollars. As we have previously explained, LMI is entitled to make that choice because SFBR-MI has no rights to operate on the Island, and, moreover, the trackage on the Island has no common carrier obligation associated with it. SFBR-MI's conduct over the past several months, and its disingenuous Submission to the Board here, only confirm to me the wisdom of LMI's decision. Even if there was a common carrier obligation on Mare Island, LMI is not required to choose SFBR-MI to operate it.

5. LMI believes that SFBR-MI's track record shows that it is more interested in gaining forced access to LMI's property to serve its own (or its affiliate's) business purposes than to provide rail service to interested businesses on the Island. One strong indication of this is SFBR-MI's decision in April to suspend all efforts to pursue rail traffic on the Island so long as SFBR-MI would not be allowed to operate on Mare Island itself, but instead would have to exchange cars with MIRS. In an email dated April 2, 2010, SFBR-MI wrote: "After further consultation with our legal team, we've determined that it would not be in the best long-term interests of either SFBR-MI or the rail shippers on Mare Island for us to support the two-railroad scenario at this time. Doing so could prejudice our position in the STB case, and could also negatively impact our options going forward." (*See Ex. A*) For the past several months, LMI has had no indication that SFBR-MI's position had changed.

6. Let me reiterate: LMI, has in the past, and is prepared to continue to accommodate rail service for the benefit of its customers, including if necessary via Board authorization of a rail-service provider that – unlike SFBR-MI – demonstrates that it is prepared to cooperate with and accommodate LMI's development and environmental remediation

obligations. LMI has proven its desire to accommodate rail service if possible. For several years, LMI subsidized the very small volumes of rail shipments that originated or terminated on the Island, while at the same time attempting to minimize the significant costs associated with upgrading the rail infrastructure to comport with the conversion of the Mare Island facility from a Navy base into a vibrant mixed-use community. In 2009, LMI entered into a lease agreement with Alstom that brought rail service back to part of Mare Island. One of Alstom's obligations was to improve the City-owned track, which LMI knew could facilitate additional rail service to Mare Island. And then, in 2010, LMI contracted for Mare Island Rail Service to be available to switch cars on the Island to serve other customers, in the event a demand for rail shipments materialized.

7. I submit that, when the facts are properly understood, the three examples addressed in SFBR-MI's Submission further confirm LMI's ongoing willingness to accommodate rail service. Two of those examples involve LMI's own contaminated soil that LMI was prepared to have moved by rail, and as to which we worked hard to preserve rail as an option. The other example involves rail shipments of steel to XKT Engineering, which LMI is in the process of accommodating.

8. LMI would not have engaged MIRS to provide switching services, nor would it have gone to the great lengths it did in an effort to accommodate the rail option if its goal was to block rail service on Mare Island. LMI is determined not to allow SFBR-MI to force its way onto LMI's property, which would have negative consequences for LMI's development obligations. But LMI is prepared to allow rail service on Mare Island to the extent it can be provided without significantly interfering with those obligations.

9. The remainder of my statement addresses in more detail (a) the potential delivery of steel to XKT; and (b) an accurate presentation of the facts concerning potential rail shipment of contaminated soil in connection with certain soil remediation projects on Mare Island, including the role of the environmental contractors working on these projects.

Potential Delivery of Steel to XKT

10. LMI is not standing in the way of rail delivery of steel to XKT. To the contrary, LMI and MIRS have acted quickly and responsibly to *facilitate* those deliveries. So long as SFBR-MI honors its commitment to permit the exchange of rail cars on the east end of the Causeway, these shipments will occur, with XKT receiving delivery at the Causeway and MIRS moving the cars to a convenient location for unloading by XKT.

11. On August 7, 2010, I learned that XKT was expecting approximately 40 rail cars containing sheet steel to be delivered from a manufacturer over several weeks in September and October 2010. Neither I, nor to my knowledge, anyone at LMI, had any knowledge of this requirement before that date.

12. Shortly after I learned about the shipment, I called Alfred Bottini, the owner of XKT and Craig Whittom of the City of Vallejo to discuss logistics for these movements, including recommendations for coordination with SFBR-MI.

13. On August 13, 2010, I again reached out to both Mr. Bottini and Mr. Whittom, asking them to meet with me to discuss XKT's needs and coordination with SFBR-MI. A meeting was held on August 17, 2010, at which LMI, the City and XKT discussed that: (a) SFBR-MI and MIRS had recently established a safe and practical exchange location at the east end of the Causeway as the location suggested by SFBR-MI in David Gavrich's email to Randolph Peterson dated August 7, 2010 (a copy of which is attached to Mr. Peterson's verified

statement as Exhibit J); (b) to protect the City from potential liability associated with MIRS's operations on the City's trackage, LMI would arrange for MIRS to name the City as an additional insured; (c) to ensure that SFBR-MI was in fact prepared to deliver these railcars to XKT, LMI would provide SFBR-MI with the details associated with the upcoming XKT movements and request SFBR-MI's confirmation that it was prepared to provide service and on what terms. The initial request to SFBR-MI was sent on August 26, 2010 (*See Ex. B*); and (d) asked Craig Whittom for the City's assistance to ensure that SFBR-MI would cooperate with LMI's efforts to facilitate the receipt of railcars by XKT. I followed up with Craig Whittom in an August 18 email confirming the exchange location and asking him to report on his conversation with SFBR-MI. I was concerned about these details because of the months long track record by SFBR-MI of not cooperating, a pattern that was consistent with SFBR-MI's April 2, 2010 email. (*See Ex. A*) Because the SFBR-MI contract with the City gives SFBR-MI the exclusive right to operate over the City track, I was seeking Mr. Whittom's input and assistance with cooperation from SFBR-MI.

14. Beginning on August 26, MIRS submitted and sought SFBR-MI's confirmation that it would deliver railcars to XKT for movement and placement by MIRS as planned. After three requests, we had not received a response. Ironically, August 26 was the same day that I received SFBR-MI's Submission falsely accusing LMI of seeking to blockade XKT and others on Mare Island.

15. There was some urgency as XKT had indicated that they believed that at least one car was en route, or about to be en route, to Mare Island. On August 31, I sent a more formal letter. (*See Ex. C*) SFBR-MI did respond to this last letter, and we are in the process of coordinating the XKT delivery.

Potential Rail Shipments in Connection With Soil Remediation Projects at Mare Island

16. To understand the events surrounding the potential rail movements of contaminated soil discussed in SFBR-MI's Submission, it is important to understand who is responsible for these projects and the role played by the various entities mentioned in the Submission. Based on a reading of SFBR-MI's Submission, one might think that several third party shippers – including USAE, CSI, Magnus, and TurnKey – were requesting rail service that LMI refused to allow. But SFBR-MI was well aware not only that the soil in question was owned by LMI, and that LMI was thus the ultimate shipper here, but also that LMI was taking steps to make rail service a possibility. There could be no question that LMI was the owner of the soil and that SFBR-MI was well aware of this considering the number of meetings, correspondence, and communications that SFBR-MI has participated in within the past year involving LMI, the City, Mare Island businesses, and the environmental remediation subcontractors.

17. In 2002, the U.S. Navy and the City transferred 653 acres of land to LMI. Today, approximately 500 acres is still owned by LMI, including the property at both of the environmental remediation sites mentioned in SFBR-MI's Submission. LMI has primary responsibility for clean up of these sites. LMI owns the soil and the property on which the soil sits, and it has entered into agreements with CH2M Hill ("CH") pursuant to which CH serves as LMI's the primary contractor on these environmental remediation projects.

18. The other entities mentioned in SFBR-MI's Submission – USAE, Magnus, TurnKey and CSI – are CH's subcontractors (or sub-subcontractors) or potential subcontractors seeking to perform work on environmental remediation projects managed on LMI's behalf by CH. LMI has no direct contractual relationship with these entities.

19. In mid-June 2010, LMI became aware that one of CH's subcontractors (USAE) was considering using rail for transportation of soil at the former Crane Test Area ("CTA"). Sheila Roebuck, LMI's Environmental Director, describes how we learned of this in her verified statement at ¶2. As Ms. Roebuck explains in her statement, LMI immediately informed CH that rail transportation was possible, but several logistics needed to be addressed.

20. The fact that we did not learn of this potential from SFBR-MI is surprising. SFBR-MI was well aware that it could not operate on Mare Island, but it nevertheless made a proposal to USAE in conjunction with SFBR-MI's affiliate Waste Solutions Group calling for SFBR-MI to move cars directly to the site of the remediation project. (See Ex. F) SFBR-MI made no effort to contact LMI or MIRS to work out arrangements for MIRS to exchange cars with SFBR-MI so that the delivery of empty cars, and pickup of loaded cars could actually take place.

21. Nonetheless, far from blockading rail service, LMI worked hard to make it a possibility despite the late notice, including by pushing for necessary governmental approvals (as Ms. Roebuck describes in her VS, ¶¶ 4-8) and working with MIRS, the City of Vallejo and SFBR-MI to arrange logistics for MIRS to exchange railcars with SFBR-MI. LMI *never* said loading could not occur on the Island, contrary to what SFBR-MI would have the Board believe. SFBR-MI and Mr. Gavrich pay a tremendous amount of attention to this issue, but are not able to attribute any statements supporting this notion to LMI, and. This was done seemingly without making any effort to ascertain what LMI actually did communicate to CH.

22. In fact, LMI and MIRS spent much of July attempting to have cars loaded on Mare Island and to coordinate the rail service, after belatedly being notified of the potential for such service. LMI made it clear that, although we could not allow SFBR-MI to come on to Mare

Island, MIRS had been hired to provide switching service on Mare Island and would be available to move cars for loading in connection with this potential soil movement. My July 8, 2010 letter to CH (*See* Ex. D) is one example of the many communications in which LMI made this clear. Ms. Roebuck attaches others to her statement.

23. Oddly, during the same period in July when LMI and MIRS were working hard to facilitate the rail movement of soil from the CTA project, Mr. Gavrich suggests that no such efforts were going on. Mr. Gavrich testifies, for example, that “[t]he next thing I knew, Jacob Park, wishing to follow-up on what we had discussed, exchanged e-mails with MIRS on July 26, 2010 and July 27, 2010.” Gavrich Aug. 16 V.S., ¶ 13. In fact, as Mr. Peterson discusses in his statement, there were email exchanges over the weeks preceding this exchange, including a proposal from MIRS to which Mr. Park responded on July 12 with: “Sounds like a plan.” *See* Peterson Sept. 2 V.S., ¶ 10, Ex. F.

24. Underscoring the effort that LMI undertook to facilitate (rather than block) the potential use of rail for these shipments, Mr. Aromi of CH wrote to LMI in late July, after CH’s subcontractor had decided to go forward with the truck option to avoid delays, to express his appreciation for LMI’s efforts. He wrote: “Please accept my appreciation for the efforts of you and your staff to attempt to make this possibility real.” (*See* Ex. E)

25. During the discussions concerning the logistics of these rail movements, LMI determined that the best place for exchanging cars was near the east end of the Causeway. Railcars (10 cars or longer) could sit at this location for short periods of time without impacting traffic or affecting commerce on Mare Island. LMI considered whether SFBR-MI and MIRS could exchange cars adjacent to the Alstom facility (which SFBR-MI currently serves), but concluded that an exchange of railcars there was not feasible because it would require blocking

streets, thereby negatively affecting other businesses and residents on Mare Island, and could interfere with Alstom's use of its premises. LMI also preferred that SFBR-MI not operate on LMI-owned trackage on the Island beyond the Alstom facility. LMI discussed these issues primarily with CH as the prime contractor for the work. SFBR-MI, for its part, ultimately agreed to the exchange location on City track on August 7.

26. At several points in SFBR-MI's Submission, (pp. 7, 11, 12, 13) SFBR-MI mischaracterizes LMI's position as being that no loading of railcars could occur on the Island, when in fact LMI's position was only that *SFBR-MI* could not operate on LMI-owned trackage on the Island. SFBR-MI's suggestion that LMI instructed that there be no rail service whatsoever is just flat wrong. SFBR-MI cannot point to any statement to this effect made by anyone at LMI, because there was none. Instead, SFBR-MI quotes a comment by one bidder for a subcontract with CH2M Hill, Turn-Key Construction Services, Inc. ("TurnKey"), in which Turn-Key says that "CH2M Hill ha[d] stated to [Turn-Key] that there will be no direct loading of rail cars on Mare Island." Submission, p. 7. However, I know that LMI issued no such instruction. And, CH2M Hill likewise understood that LMI was not forbidding any railcar unloading on Mare Island, as Mr. Aromi confirms in his statement (where he explains that "To my knowledge, LMI has never indicated to CH that rail cars could not be loaded on LMI property"). See *Aromi V.S.*, ¶ 6.

27. LMI is satisfied that MIRS and LMI did all that could reasonably have been done under the circumstances to make rail transportation of the contaminated soil removed from the CTA project a possibility. In the end, however, with rail logistics not yet finalized and governmental approval for a switch to rail not yet obtained, CH and subcontractors moved to avoid delay to the remediation work which would have had serious cost implications, by locking

in truck transportation, which had been fully considered and previously approved by both regulatory agencies and the public, and which proceeded without delay.

28. SFBR-MI's August 7, 2010, agreement to exchange cars with MIRS on the City of Vallejo trackage across the Causeway from Mare Island was too little, too late. Although SFBR-MI takes credit for agreeing to this arrangement, it does not disclose that its "agreement" occurred more than one week after CH's and its subcontractor had already determined that the rail transportation move was no longer viable.

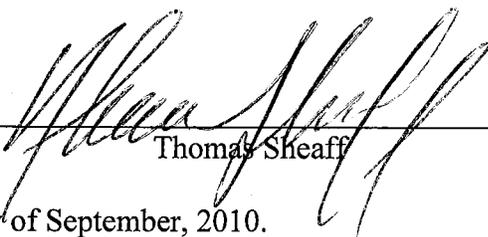
29. SFBR-MI also takes issue with LMI's response to a potential shipment of soil from another remediation project on the Island, this one in connection with Building 493/971 Work. Again, LMI would have been the shipper of this soil too. But SFBR-MI's reliance on this example is all the more bizarre given that the one subcontractor that had proposed rail transportation was not selected by CH and the other was not even a bidder, as Mr. Aromi explains. *See Aromi V.S.*, ¶ 2. As a result, there was no potential rail movement at all. Moreover, LMI would in any event have been prepared to pursue the rail option for this project, just as we pursued that option in connection with the CTA project.

VERIFICATION

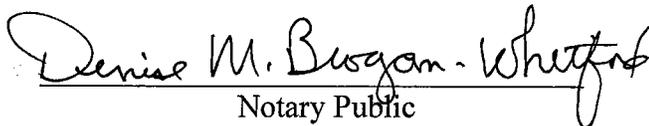
State of California)
)
)
)
County of Solano)

SS

Thomas Sheaff, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

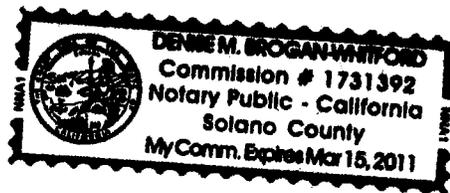

Thomas Sheaff

Subscribed and sworn to before me this 1 day of September, 2010.


Notary Public

Notary Public of California

My Commission expires: March 15, 2011



TOM SHEAFF VERIFIED STATEMENT EXHIBIT A



"Craig Whittom"
<cwhittom@ci.vallejo.ca.us>
04/02/2010 03:35 PM

To "David Gavrich" <david@sfbayrail.com>
cc "Claudia Quintana" <cquintana@ci.vallejo.ca.us>, "Tom Sheaff" <Tom.Sheaff@lennar.com>

bcc

Subject Service to Mare Island rail shippers during STB deliberations

History: This message has been forwarded.

David,

Thanks for your response. We disagree that it is in the interest of the rail shippers to have no access to rail service during the STB proceedings. A two-operator scenario has merit from that perspective. We encourage you to reconsider your decision and to contact LMI to discuss this scenario or any other temporary agreement which might facilitate giving shippers rail access during the STB proceedings.

Claudia and I will both be out of the office next week, returning April 12th.

Craig

>>> David Gavrich <david@sfbayrail.com> 4/2/2010 12:11 >>>

Claudia - I wanted to get back to you on SFBR-MI's position regarding service on Mare island during the period while the STB deliberates the common carrier status of rail service on the Island. After further consultation with our legal team, we've determined that it would not be in the best long-term interests of either SFBR-MI or the rail shippers on Mare Island for us to support the two-railroad scenario at this time. Doing so could prejudice our position in the STB case, and could also negatively impact our options going forward. Since the status quo is currently what it has been for more than two years since LMI cut-off service to the shippers, we do not feel that changing the status quo at this time to an inefficient and non-sustainable option would be in the best interests of any party involved.

Against that background, if LMI is truly concerned about the shippers on Mare Island receiving rail service at this time, SFBR-MI is fully prepared to provide that service just as soon as LMI removes their prohibition for us to cross their property. If, on the other hand, LMI continues to prevent us from crossing their property to serve the shippers, we will await the outcome of the STB process, which will hopefully find in favor of of the shippers receiving long-term, sustainable rail service.

In the meantime, SFBR-MI will continue to maintain the City's rail line between Flosden and Alstom, and we will continue to service Alstom's needs for railcars.

Please contact me if you have any questions about our position on this matter.

Sincerely,

David Gavrich
San Francisco Bay Railroad
Tel: (415) 642-7177
Fax: (415) 642-7174
Cell: (415) 515-3703

www.sfbayrail.com

TOM SHEAFF VERIFIED STATEMENT EXHIBIT B



Randolph Peterson
<rvpeterson@mac.com>
08/26/2010 09:04 AM

To Gavrich David <david@sfbayrail.com>
cc Park Jake <jacob@sfbayrail.com>, Peterson Rydel
<rydel@tcry.com>
bcc
Subject Rate Request - Mare Island

David,

Please see attached Rate Request for the forty cars for LMI/XKT . I trust this information will be sufficient and look forward to your rate/service information. Thanks, Randolph



MIRS Rate Request Form.pdf



690 Walnut Street, Suite 100

Vallejo, CA 94592

Rail Service Request

1. Date: August 25, 2010
2. Receiver: XKT Engineering, Inc. (in care of Lennar Mare Island LLC)
3. Origin: Inbound loads originating Delaware
4. Destination: XKT Engineering, Inc. shop facility on Mare Island, Vallejo, California. Pick-up and delivery of cars at east end of Mare Island Causeway for switching on Island by LMI's contractor, Mare Island Rail Service.
5. Commodity: Sheet Steel.
6. Total Number of Cars: Approximately 40 cars.
7. Total Number of Shipments: 10-15
8. Total Number of Cars Per Shipment: 3-4
9. Private or System Cars: System.
10. Manifest or Unit Train Service: Manifest
11. Projected Date of Inbound Arrival: September 2010 – October 2010.

Please Provide the San Francisco Bay Railroad rate and all applicable terms of service for City of Vallejo Line portion, including:

- A). Tariff Rate:**
- B). Demurrage Tariff:**
- C). Service Schedule:**



August 31, 2010

Via Electronic Mail

Mr. David Gavrich
President & CEO
San Francisco Bay Railroad
100 Cargo Way, Pier 96 Railyard
San Francisco, CA 94124

Re: XKT Engineering
Mare Island, Vallejo, CA

Dear Mr. Gavrich:

As you are aware, XKT has approximately 40 inbound rail cars expected to arrive beginning in early- to mid-September. You mentioned the potential for such shipments in your email of August 7, 2010 to Randy Peterson (of Mare Island Rail Service), in which you also proposed exchanging cars with MIRS at the Vallejo end of the Mare Island Causeway. On August 13, 2010, you sent MIRS a list of the information SFBR-MI required about a potential rail shipment in order for you to prove pricing to the shipper for your handling of railcars between Flosden Yard and the Mare Island Causeway. We have also received a copy of Jacob Park's letter, dated August 16, 2010, to XKT (attached) in which you address many of these issues. Out of an abundance of caution, in order to ensure that you had the information you needed so as to allow XKT to receive its rail shipments, MIRS emailed you the required information relating to those shipments on August 26, 2010. We have attempted to follow up with you since then, but have not received any response. We would like to make certain that SFBR-MI will in fact be providing service to XKT between Flosden Yard and the Mare Island Causeway in connection with the 40 inbound rail shipments, and therefore, I would like to confirm the following:

1. Delivery and Exchange Location: Consistent with your August 7, 2010 email to Mr, Peterson, and the August 16 letter to XKT, SFBR-MI will deliver cars to XKT (for exchange with and subsequent movement by MIRS) "across the bridge on our track in the City of Vallejo." To avoid any misunderstanding, we understand this to refer to a location between the east end of the Causeway and Mare Island Way, as marked on the attached photo.

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax

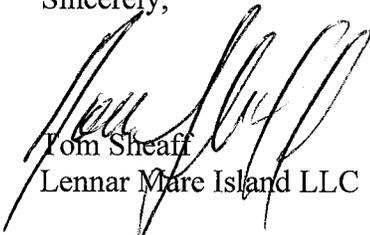


Mr. David Gavrich
August 31, 2010
Page 2

2. Costs: The rates, demurrage, charges, and restrictions shall be consistent with Mr. Park's August 16 letter with delivery to XKT deemed to occur when cars are placed at the delivery location described above, and return to SFBR-MI deemed to occur when empty cars are placed at this location for SFBR-MI to pick up. No other costs will be charged to MIRS or XKT.

Please notify me immediately, but no later than 5:00pm on September 2, 2010 if you have concerns that would prevent the delivery to XKT in accordance with these terms. Thank you.

Sincerely,



Tom Sheaff
Lennar Mare Island LLC

cc: Jacob Park, SFBR
Craig Whittom, City of Vallejo
Randy Peterson, MIRS
Al Bottini, XKT

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax



196131



July 8, 2010

Sent Via Electronic Mail

Mr. Edward Aromi
CH2M HILL
690 Walnut Avenue, Suite 230
Vallejo, CA 94592

Re: Crane Test Area ("CTA")
Possible Rail Use for Transportation

Dear Ed:

As we discussed yesterday, I was informed that CH2M HILL ("CH") was considering using Waste Solutions Group and San Francisco Bay Railroad (collectively, "SFBR") to haul waste from the CTA to an offsite location.

Background

1. The rail trackage from the west end of the Causeway to the CTA is private track. In order for a rail operator to use the track, an agreement is required with LMI.
2. In late 2009, LMI attempted to reach an agreement with SFBR in order to provide switching services for Mare Island customers. Unfortunately LMI's efforts were unsuccessful. SFBR could not accept our business terms, and they were unable to work with LMI to address many concerns.
3. SFBR had, initially without our knowledge, filed an adverse action with the Surface Transportation Board ("STB") in September 2009. As CH is aware, these filings continued through April 2010. SFBR's actions jeopardize numerous entitlements and the ability to develop Mare Island consistent with many existing agreements, and although LMI supports rail service on Mare Island, we had no alternative but to oppose SFBR's actions. The City of Vallejo has also opposed SFBR. While SFBR has indicated to you that working on-site on the CTA project will not influence the case before the STB, the fact is that there is no way of knowing whether or not the STB would be influenced.
4. In early 2010, after an agreement could not be reached with SFBR, LMI still sought to provide rail service on Mare Island, and therefore, LMI contracted with Mare Island Rail Service ("MIRS") to provide switching services on Mare Island. That contract is in place today, and we can ensure that it remains in place throughout the term of your CTA hauling activities.

LENNAR MARE ISLAND

690 Walnut Avenue, Suite 100 Mare Island, Vallejo, California 94592
707.562.4000 Phone 707.562.4002 Fax

Ed Aromi
July 8, 2010
Page 2

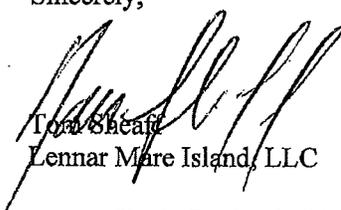
5. In April and May of 2010, there were numerous discussions with CH regarding rail. CH has been aware that MIRS, not SFBR, is providing switching services on Mare Island. During this time, LMI also allowed CH to alter the CTA remediation design to save costs.
6. On June 17, 2010, at CH's request, LMI facilitated a phone call between LMI, CH and MIRS to pursue the rail transportation option, and discuss pricing and logistical concerns related to movement of rail cars from the CTA. LMI agreed that MIRS could speak directly with CH's subcontractor, and Mr. Crim indicated that he would make the introduction. I understand that this option was not pursued at that time. However, I understand that an initial discussion took place this morning.

Path Forward

- As summarized above, SFBR does not have the right to operate on LMI trackage, and due to the situation created by SFBR, LMI cannot allow SFBR to operate on its private property.
- As a solution, LMI has contracted with MIRS to provide rail service on Mare Island, and they are ready to perform.
- In order to avoid further delay, I recommend that CH work with LMI and MIRS to evaluate the rail transportation option. Based on these discussions, CH should be in a better position to assess waste disposal options and whether the rail option can be pursued within CH's proposed schedule.

CH and LMI worked collaboratively for many months on the CTA remedial design to reduce costs and establish a schedule. We believe that continued collaboration is essential. I understand that at least one phone call occurred this morning and coordination has started again. Please let me know if Sheila Roebuck or I can assist you or your team. Thank you.

Sincerely,



Tom Shean
Lennar Mare Island, LLC

cc Sheila Roebuck, LMI



<Edward.Aromi@CH2M.com
>
07/27/2010 11:17 AM

To <Tom.Sheaff@lennar.com>,
<bethpennington@paulhastings.com>,
<Sheila.Roebuck@Lennar.com>, <Neal.Siler@lennar.com>
cc <Stephen.Watson@CH2M.com>,
<Dan.Smith@CH2M.com>, <Rex.Long@CH2M.com>,
<Dick.Crim@CH2M.com>, <Annette.Davis@CH2M.com>,
bcc
Subject CTA - Transportation - Reissued w/attachments

Tom,

Attached please find correspondence from USA Environmental (USAE) officially requesting that Bid Alternate 2 (concerning the possibility of rail transportation for waste derived from remedial activities on their CTA contract with CH2MHILL) of their bid proposal be withdrawn. Also, please find correspondence to USAE from San Francisco Bay Rail Line (SFBR), that they provided to us at our request. Given the position of Lennar Mare Island, relative to SFBR not being able to use the on island Alstom location for the transfer of rail cars to Mare Island Rail Service (MIRS), and SFBR's unwillingness to allow MIRS to use the City of Vallejo track that SFBR leases from the City to move rail cars across the causeway bridge, we see no alternative but to allow USAE to withdraw its proposal.

USAE won the bid based upon their qualifications and the fact that they were the low bidder. Bid Alternate 2 was not a consideration in their selection. However, since award, we feel that USAE has done everything that could be reasonably expected, working with Waste Solutions (a subsidiary of SFBR, who brought the rail idea to USAE before bid submittal) and MIRS to facilitate the possibility of using the rail option.

Please accept my appreciation for the efforts of you and your staff to attempt to make this possibility real. Unfortunately, historic issues related to rail service in the city and on the Island make it difficult to the point where we cannot reasonably expect to achieve any realistic additional savings.

We are confident that the DTSC approved Remedial Action Plan, using trucks, will be successfully implemented by USAE. In the end, our view is that the trucking option, with the ease of access at California Highway 37, will be less problematic than the possible disruption that the rail cars shipments through Vallejo posed.

Ed Aromi
CH2MHILL
509-531-7112



Bid Alternate - 2 withdrawal.doc SFBRResponseOnMareIslandRailService(7-26-10).pdf



July 26, 2010

Mr. Clay Bowers
Project Director
USA Environment, LP
17301 West Colfax Avenue, Suite 152
Golden, Colorado 80401

Re: Rail Service To Mare Island for Crane Test Area Project

Dear Clay:

This is in response to your request to David Gavrich regarding rail service for the Crane Test Area (CTA) remediation project on Mare Island. As you may know, in November 2009 SFBR-MI was authorized by the U.S. Surface Transportation Board (STB) to be the common carrier railroad providing service from Flosden, CA to Mare Island. Since that time, SFBR-MI has been providing rail service under contract to Alstom TLS, a railcar repair facility on Mare Island immediately adjacent to the Vallejo Causeway Bridge. We understand Lennar - Mare Island (LMI) agreed to allow Alstom to receive rail service from SFBR. We have wanted to provide rail service to other customers on Mare Island, but thus far LMI has blocked us from providing that service. As a result, on March 12, 2010 SFBR filed a Request for Declaratory Order from the STB seeking an order allowing SFBR-MI to provide rail service to other rail-served customers on the Island on reasonable terms, a status LMI opposes due to its insistence on its right to terminate rail service to the Island at will.

Against that background, we had proposed a compromise for rail service to the CTA project which we had thought was acceptable to both LMI and their private rail switching service, Mare Island Rail Service (MIRS). We had discussed with MIRS that SFBR would bring blocks of 20 empty railcars across the causeway and interchange with MIRS just beyond the Alstom switch on the Island. MIRS would then deliver the cars to the project site, and at the end of each day SFBR would bring 20 more empty cars in exchange for 20 loaded cars that MIRS would provide. We agreed to do this interchange with MIRS without prejudice to the pending case at the STB.

In that regard we have provided you with our rates for these car movements based upon 20 cars per day. The rate was provided to you as a customer of Waste Solutions Group. We expect that any service provided by MIRS would either be billed by MIRS directly to or billed to you by LMI, as MIRS is the private switcher of LMI. If they would allow us to serve you directly, our rate would be the same as we already provided you.

The proposed interchange will take place on a single track, but as there is no other traffic at this time, MIRS can shove cars to a point just beyond the Alstom switch and SFBR-MI can pull them from that point. SFBR-MI crews must have sufficient access to inspect the loaded cars before they are moved onto our line, and we need the right to move the locomotive past the switch to couple to the string of cars, if necessary.

100 Cargo Way @ Pier 96 Railyard • San Francisco, CA 94124
Tel (415) 642-7170 • www.wastesolutionsgroup.com • Fax (415) 642-7174

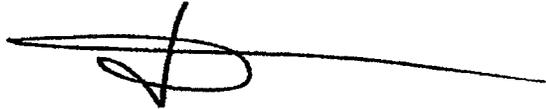
Mr. Clay Bowers
July 26, 2010
Page Two

We cannot allow MIRS, a non-carrier, to move beyond the Alstom switch. SFBR-MI is the exclusive carrier beyond that point, and SFBR-MI has the common carrier obligation, responsibility, and liability on the causeway.

SFBR-MI has made a major investment in this line to make it available to Mare island shippers. We have a locomotive and crew available to provide this service. However, please let us know ASAP if LMI will allow direct rail service to and from Mare Island for the forthcoming CTA project. We need time to accumulate railcars for USA Environment's projected August 15th start-up.

We are hopeful that LMI and MIRS will allow for the proposed compromise so that the CTA project can benefit from the environmentally sound and economically advantageous direct rail service option.

Sincerely,

A handwritten signature in black ink, consisting of a long horizontal line with a loop and a vertical stroke crossing it.

Jacob Park
Vice President - Rail Operations



17301 W. Colfax Ave., Suite 152
Golden, Colorado 80401
Phone – 303.242.8050

July 26, 2010

Mr. Dick Crim
Project Manager
CH2M HILL Constructors, Inc.

RE: Withdrawal of Bid Alternate – 2: Rail Transport of Project Waste Soils

Dear Mr. Crim:

USA has worked diligently to develop an acceptable program to utilize existing trackage adjacent to the Site for waste shipment. Due to circumstances beyond our control, this option will not be possible. As bid, the option required that San Francisco Bay Railroad (SFBR) be allowed to access the tracks owned by Lanar Mare Island. Permission for access has been denied. USA worked with Mare Island Railroad (MIR) to see if they could supply on-island services to shuttle rail cars to a location acceptable to both SFBR and LMI. Since SFBR can not access the island and MIR can not cross the causeway we are at an impasse.

USA formally requests that Bid Alternative-2 be omitted from the scope of work for the Crane Test Area project.

Sincerely,

Clay Bowers
Project Manager
USA Environment, LP

cc: Erin Black
files



"Clay Bowers"
<CBowers@usaenviro.com>
08/23/2010 09:18 AM

To "David Gavrich" <david@sfbayrail.com>
cc "Tom Sheaff" <tom.sheaff@lennar.com>, "Randolph
Peterson" <rvpeterson@me.com>,
<Dick.Crim@CH2M.com>
bcc

Subject RE: Mare Island

Mr. Sheaf. Please find attached a copy of our quotation from WSG for transport and disposal of impacted soil from the CTA area using the direct rail option. Should you have any further questions, please feel free to contact me through Mr. Crim.

Thank you,

Clay Bowers
Project Director
USA Environment, LP
17301 West Colfax Avenue, Suite 152
Golden, Colorado 80401
303.242.8424 - Direct
303.834.5775 - Cell
cbowers@usaenviro.com
www.usaenviro.com

NOTICE: This communication (including any accompanying document (s) is for the sole use of the intended recipient and may contain confidential information. Unauthorized use, distribution, disclosure or any action taken or omitted to be taken in reliance on this communication is prohibited, and may be unlawful. If you are not the intended recipient, please notify the sender by return e-mail or telephone and permanently delete or destroy all electronic and hard copies of this e-mail. By inadvertent disclosure of this communication USA do not waive confidentiality privilege with respect hereto.

From: David Gavrich [mailto:david@sfbayrail.com]
Sent: Friday, August 13, 2010 6:53 PM
To: Clay Bowers
Cc: Tom Sheaff; Randolph Peterson
Subject: Fwd: Mare Island

Clay - Please see the attached request from Tom Sheaff of Lennar-Mare Island asking us to provide him with the pricing which we had provided you through our Waste Solutions Group affiliate for the direct rail transportation and disposal of waste from the CTA project site on Mare Island. Mr. Sheaff claims that "LMI is the owner of the soil, and shipper". However, everything that we've seen in the documentation for this CTA project was that USAE and the other contractors who bid on the project were told they would be responsible for transportation.

By copy of this e-mail I will leave it up to you whether you feel it is appropriate to share with LMI the pricing we provided you for direct rail service on Mare Island.

I apologize again that SFBR-MI was prevented from providing you the rail service that you had requested and the savings that you would have realized by using direct rail for the contaminated

soils from Mare Island.

Sincerely,

David Gavrich
San Francisco Bay Railroad
Tel: (415) 642-7170
Fax: (415) 642-7174
Cell: (415) 515-3703

www.sfbayrail.com

Begin forwarded message:

From: Tom.Sheaff@lennar.com
Date: August 13, 2010 3:34:30 PM PDT
To: david@sfbayrail.com
Cc: rvpeterson@me.com
Subject: Mare Island

Mr. Gavrich: Randy Peterson forwarded the email that you sent to him this morning. We are in the process of reviewing the numerous issues that you raise. However, in the interim, please provide copies of the pricing that you provided to USAE. As you are aware, LMI is the owner of the soil, and shipper, and this information will assist us with a response. Thank you.

Tom Sheaff
707-562-4003



MareIslandT&DQuotation(5-26-10).pdf



**WASTE SOLUTIONS
GROUP**



**Price Quotation for Transport & Disposal of
Class 1 Non-RCRA Soils**

**Crane Test Area – Mare Island
Bid Date: May 28, 2010**

Waste Solutions Group (WSG) and its railroad affiliate, San Francisco Bay Railroad (SFBR), in conjunction with the California Northern Railroad and Union Pacific Railroad, proposes the use of rail transport directly from Mare Island to ECDC Environmental in Utah for the approximate 17,800 tons of Class 1 non-RCRA (California Hazardous) soils, and at US Ecology in Idaho for 1,800 tons of RCRA and 4,800 tons of RCRA Stabilized Waste. All WSG's partner landfills are CERCLA-approved facilities.

WSG is a small business enterprise that is arguably the most efficient and environmentally sound option for large Bay Area clean-up projects with hazardous soils. Use of our rail option will reduce truck activity on Mare Island, reduce fuel use and emissions by 90%, and will increase on-site productivity by allowing 2,000-3,000 tons of soils to be loaded daily. These advantages have earned WSG the privilege of handling more than 5 million tons of contaminated and hazardous soils from projects on behalf of Fortune 100 companies and public agencies throughout Northern California and the U.S. We have worked extensively on military bases, including Mare Island from which we sent 15,000 tons of California Hazardous soils in trains to Utah from an adjacent DRMO clean-up that we performed on behalf of CH2MHill. SFBR can provide daily exchanges of loaded and empty railcars directly to the project site along Azuar Way or to the railyard on A Street diagonally across Azuar Way. WSG and SFBR will work with you to plan the most efficient loading program so as to optimize your on-site productivity.

Attached to this quotation is a list of some example projects and clients for which we have used rail transport to move large quantities of contaminated, hazardous and LLR soils.

Bid Item Description - Transport & Disposal of Hazardous Waste¹

Class 1 non-RCRA soils (California Hazardous)	\$ 72.50 per ton
Class 1 RCRA (no stabilization required)	\$129.90 per ton
Class 1 RCRA (with stabilization at landfill)	\$149.00 per ton

¹Price includes waste profiling; pre-printed manifests, rail equipment, rail transport; railcar liners, rail switching services on Mare Island (20-30 cars per day), disposal; State and local disposal taxes.

For questions about this quotation, please call Larry Frias at (415) 642-7170 or cellphone (415) 823-8772. Good luck with your bid and we hope to work with you on this project.

100 Cargo Way @ Pier 96 Railyard • San Francisco, CA 94124
Tel (415) 642-7170 • www.wastesolutionsgroup.com • Fax (415) 642-7174



**WASTE SOLUTIONS
GROUP**

Examples of Waste Solutions Group Projects

Chevron-Tesoro Joint ART Remediation Project

Owner: Chevron-Tesoro

Scope: Transport/disposal of 8,000 tons of processed refinery waste (F037) from canals and tanks at Contra Costa County refinery site. Provided on-site efficiencies and savings.

Martinez, CA

Contractor: Arcadis; URS

Mission Bay Project - Pier 64, San Francisco

Owner: Chevron-Unocal

Scope: Transport/disposal of 200,000 tons of Cal Haz soils from major site remediation from former Southern Pacific and Santa Fe railyards near downtown San Francisco.

San Francisco, CA

Contractor: ENTACT; Arcadis-US

Trans Bay Cable Project

Owner: Babcock & Brown; Siemens

Scope: Transport/disposal of 200,000 tons of Cal Haz soils from major site remediation from former Southern Pacific and Santa Fe railyards near downtown San Francisco.

San Francisco, CA

Contractor: Cleveland Wrecking; URS

Hunters Point Naval Shipyard

Owner: US Navy

Scope: Transport/disposal of more than 80,000 tons of contaminated and hazardous soils.

San Francisco, CA

Contractors: IT, Shaw Environmental, ITSI, Tetra Tech, PRC

Pier 92 - Port of San Francisco

Owner: Port of San Francisco

Scope: Loading/transport/disposal of 25,000 tons non-RCRA, California hazardous soils from remediation of old scrap yard and soils dump site at Port of San Francisco.

San Francisco, CA

Contractor: Waste Solutions Group

Oyster Point Low-Level Radioactive Clean-Up

Owner: Slough Estates, LLC

Scope: Logistics/transport/disposal of 5,200 tons low-level radioactive uranium slag and 5,000 tons of lead-impacted Class 1 soils from old SSF steel mill site being developed as a Bay Area biotech center. WSG completed removal in minimal time.

South San Francisco, CA

Contractor: Hathaway-Dinwiddie

Gold Run Caltrans Clean-up

Owner: California Department of Transportation

Auburn, CA
Contractor: Kiewit Pacific

Scope: Responded quickly to clean-up of 100,000 gallons of liquids and 1,000 tons of soils from remediation effort adjacent to Interstate 80 in the Sierra foothills.

Union Pacific Railyards - Northern California

Owner: Union Pacific Corporation Contractors: ERM West; Turnkey; Dobbas
Scope: Provide on-site treatment, transload and disposal to UP for more than 1 million tons of waste from railyards in Oakland, San Jose, South San Francisco, Eureka, Newark, Sacramento, Truckee, and many other locations throughout Northern California. Also treated RCRA waste down to non-RCRA levels to save UPRR substantial cost of disposal.

Third Street Light Rail - Segments A,B,C,&E From Mission Bay to Bayshore

Developer: SFPUC-MUNI Contractors: Mitchell Engineering Shimmick-Obayashi
Scope: Transport/disposal of more than 35,000 tons of contaminated and hazardous soils.

SF Giants Pacific Bell Park

Developer: SF Giants Contractor: Kajima Urban
Scope: Transport/disposal of 40,000 tons of hazardous soils from ballpark construction site.

Embarcadero Waterfront Improvement Project

Developer: SFDPW Contractors: Stacey & Witbeck, Dillingham Construction
Scope: Transport/disposal of 200,000 tons of hazardous and contaminated soils from along Embarcadero. WSG loaded large portion of soils into railcars along Berry and King Streets.

The GAP Headquarters

Developer: GPS Management/WilsonMeany Contractor: Swinerton Builders
Scope: On-site treatment of 10,000 tons of RCRA soils to non-RCRA levels. Transport and disposal of 40,000 tons of soils to CERCLA Class 1 facility.

Mare Island Naval Shipyard

Owner: US Navy Contractor: CH2MHill
Scope: Treat, transport, disposal of more than 20,000 tons of hazardous soils from DRMO.

Tracy Army Depot

Owner: U.S. Army Contractor: IT Shaw
Scope: Transport and disposal of more than 18,000 tons of toxic soils from Army base.

East Bay Municipal Utility District

Owner: EBMUD Contractor: EBMUD-Direct
Scope: WSG has served two consecutive 5-year terms as EBMUD's standby hazardous waste contractor for the transport and disposal of RCRA and Non-RCRA waste from all of its excavation activities.

San Francisco PUC Baylands Project

Owner: SF Public Utilities Commission Contractor: SFPUC-Direct
Scope: WSG has a long term As-Needed Environmental Services contract with \$3 million of capacity for environmental remediation projects and transportation and disposal of waste from SFPUC sites.



**WASTE SOLUTIONS
GROUP**



**Price Quotation for Transport & Disposal of
Class 1 Non-RCRA Soils**

**Crane Test Area – Mare Island
Bid Date: May 28, 2010**

Waste Solutions Group (WSG) and its railroad affiliate, San Francisco Bay Railroad (SFBR), in conjunction with the California Northern Railroad and Union Pacific Railroad, proposes the use of rail transport directly from Mare Island to ECDC Environmental in Utah for the approximate 17,800 tons of Class 1 non-RCRA (California Hazardous) soils, and at US Ecology in Idaho for 1,800 tons of RCRA and 4,800 tons of RCRA Stabilized Waste. All WSG's partner landfills are CERCLA-approved facilities.

WSG is a small business enterprise that is arguably the most efficient and environmentally sound option for large Bay Area clean-up projects with hazardous soils. Use of our rail option will reduce truck activity on Mare Island, reduce fuel use and emissions by 90%, and will increase on-site productivity by allowing 2,000-3,000 tons of soils to be loaded daily. These advantages have earned WSG the privilege of handling more than 5 million tons of contaminated and hazardous soils from projects on behalf of Fortune 100 companies and public agencies throughout Northern California and the U.S. We have worked extensively on military bases, including Mare Island from which we sent 15,000 tons of California Hazardous soils in trains to Utah from an adjacent DRMO clean-up that we performed on behalf of CH2MHill. SFBR can provide daily exchanges of loaded and empty railcars directly to the project site along Azuar Way or to the railyard on A Street diagonally across Azuar Way. WSG and SFBR will work with you to plan the most efficient loading program so as to optimize your on-site productivity.

Attached to this quotation is a list of some example projects and clients for which we have used rail transport to move large quantities of contaminated, hazardous and LLR soils.

Bid Item Description - Transport & Disposal of Hazardous Waste¹

Class 1 non-RCRA soils (California Hazardous)	\$ 72.50 per ton
Class 1 RCRA (no stabilization required)	\$129.90 per ton
Class 1 RCRA (with stabilization at landfill)	\$149.00 per ton

¹Price includes waste profiling; pre-printed manifests, rail equipment, rail transport; railcar liners, rail switching services on Mare Island (20-30 cars per day), disposal; State and local disposal taxes.

For questions about this quotation, please call Larry Frias at (415) 642-7170 or cellphone (415) 823-8772. Good luck with your bid and we hope to work with you on this project.

100 Cargo Way @ Pier 96 Railyard • San Francisco, CA 94124
Tel (415) 642-7170 • www.wastesolutionsgroup.com • Fax (415) 642-7174



Examples of Waste Solutions Group Projects

Chevron-Tesoro Joint ART Remediation Project

Owner: Chevron-Tesoro

Scope: Transport/disposal of 8,000 tons of processed refinery waste (F037) from canals and tanks at Contra Costa County refinery site. Provided on-site efficiencies and savings.

Martinez, CA

Contractor: Arcadis; URS

Mission Bay Project - Pier 64, San Francisco

Owner: Chevron-Unocal

Scope: Transport/disposal of 200,000 tons of Cal Haz soils from major site remediation from former Southern Pacific and Santa Fe railyards near downtown San Francisco.

San Francisco, CA

Contractor: ENTACT; Arcadis-US

Trans Bay Cable Project

Owner: Babcock & Brown; Siemens

Scope: Transport/disposal of 200,000 tons of Cal Haz soils from major site remediation from former Southern Pacific and Santa Fe railyards near downtown San Francisco.

San Francisco, CA

Contractor: Cleveland Wrecking; URS

Hunters Point Naval Shipyard

Owner: US Navy

Scope: Transport/disposal of more than 80,000 tons of contaminated and hazardous soils.

San Francisco, CA

Contractors: IT, Shaw Environmental, ITSI, Tetra Tech, PRC

Pier 92 - Port of San Francisco

Owner: Port of San Francisco

Scope: Loading/transport/disposal of 25,000 tons non-RCRA, California hazardous soils from remediation of old scrap yard and soils dump site at Port of San Francisco.

San Francisco, CA

Contractor: Waste Solutions Group

Oyster Point Low-Level Radioactive Clean-Up

Owner: Slough Estates, LLC

Scope: Logistics/transport/disposal of 5,200 tons low-level radioactive uranium slag and 5,000 tons of lead-impacted Class 1 soils from old SSF steel mill site being developed as a Bay Area biotech center. WSG completed removal in minimal time.

South San Francisco, CA

Contractor: Hathaway-Dinwiddie

Gold Run Caltrans Clean-up

Owner: California Department of Transportation

Auburn, CA

Contractor: Kiewit Pacific

Scope: Responded quickly to clean-up of 100,000 gallons of liquids and 1,000 tons of soils from remediation effort adjacent to Interstate 80 in the Sierra foothills.

Union Pacific Railyards - Northern California

Owner: Union Pacific Corporation Contractors: ERM West; Turnkey; Dobbas
Scope: Provide on-site treatment, transload and disposal to UP for more than 1 million tons of waste from railyards in Oakland, San Jose, South San Francisco, Eureka, Newark, Sacramento, Truckee, and many other locations throughout Northern California. Also treated RCRA waste down to non-RCRA levels to save UPRR substantial cost of disposal.

Third Street Light Rail - Segments A,B,C,&E From Mission Bay to Bayshore

Developer: SFPUC-MUNI Contractors: Mitchell Engineering Shimmick-Obayashi
Scope: Transport/disposal of more than 35,000 tons of contaminated and hazardous soils.

SF Giants Pacific Bell Park

Developer: SF Giants San Francisco, CA
Contractor: Kajima Urban
Scope: Transport/disposal of 40,000 tons of hazardous soils from ballpark construction site.

Embarcadero Waterfront Improvement Project

Developer: SFDPW San Francisco, CA
Contractors: Stacey & Witbeck, Dillingham Construction
Scope: Transport/disposal of 200,000 tons of hazardous and contaminated soils from along Embarcadero. WSG loaded large portion of soils into railcars along Berry and King Streets.

The GAP Headquarters

Developer: GPS Management/WilsonMeany San Francisco, CA
Contractor: Swinerton Builders
Scope: On-site treatment of 10,000 tons of RCRA soils to non-RCRA levels. Transport and disposal of 40,000 tons of soils to CERCLA Class 1 facility.

Mare Island Naval Shipyard

Owner: US Navy Vallejo, CA
Contractor: CH2MHill
Scope: Treat, transport, disposal of more than 20,000 tons of hazardous soils from DRMO.

Tracy Army Depot

Owner: U.S. Army Tracy, CA
Contractor: IT Shaw
Scope: Transport and disposal of more than 18,000 tons of toxic soils from Army base.

East Bay Municipal Utility District

Owner: EBMUD Oakland, CA
Contractor: EBMUD-Direct
Scope: WSG has served two consecutive 5-year terms as EBMUD's standby hazardous waste contractor for the transport and disposal of RCRA and Non-RCRA waste from all of its excavation activities.

San Francisco PUC Baylands Project

Owner: SF Public Utilities Commission East Palo Alto, CA
Contractor: SFPUC-Direct
Scope: WSG has a long term As-Needed Environmental Services contract with \$3 million of capacity for environmental remediation projects and transportation and disposal of waste from SFPUC sites.

VERIFIED STATEMENT
OF
RANDOLPH V. PETERSON

1. My name is Randolph V. Peterson. I am a member and manager of Tri-City Railroad Company, LLC (“TCRY”), a Class III rail carrier licensed by the Surface Transportation Board (*see* Finance Docket Nos. 33653, 33888 & 34994) with operations in Olympia and Richland, Washington. TCRY, and its predecessor Livingston Rebuild Center, Inc., have successfully conducted rail operations, including extensive switching of spur and industrial trackage, since 1998. TCRY also operates under the business name Tri-City & Olympia Railroad Company, reflecting its operation in both the Tri-City and Olympia, Washington areas. I am also the President of T&O Railroad Company, Inc., a Washington corporation licensed to do business in the State of California, and operating in California as Mare Island Rail Service or “MIRS.” MIRS is a contract provider of railroad switching services, drawing on the experience of the managerial and operating employees of TCRY.

2. I have previously submitted a verified statement in this proceeding. I am providing this statement in response to the Supplementary Submission Based Upon New Demands for Service filed by San Francisco Bay Railroad-Mare Island (“SFBR-MI”).

3. My statement addresses three topics:

- (a) The efforts MIRS has undertaken to facilitate the delivery of railcar shipments to XKT Engineering, including the arrangements MIRS has made to locate locomotives on Mare Island, and to work out arrangements to facilitate the unloading by XKT of cars delivered by SFBR-MI and exchanged with MIRS for further movement by MIRS on Mare Island;

- (b) The efforts MIRS undertook in an attempt to facilitate potential movement of contaminated soil from Mare Island to off-Island disposal locations, again including extensive discussions with SFBR-MI about logistics for the exchange of railcars; and
- (c) The more general steps MIRS has taken since February 2010 to put itself in a position to facilitate movement of railcars on Mare Island, and the lack of cooperation by SFBR-MI, which may suggest that SFBR-MI's real motivation is access to LMI's property on Mare Island rather than a bona fide desire to provide rail service to potentially interested businesses.

MIRS's Preparations and Readiness to Facilitate Deliveries to XKT Engineering

4. For the past several months, MIRS has undertaken considerable effort to facilitate the delivery of rail shipments to XKT Engineering. For example, upon learning of a potential rail shipment to XKT, on February 16, 2010, I telephoned Mr. Jacob Park at SFBR-MI requesting SFBR-MI's demurrage tariff and service schedule, so that MIRS could be prepared to facilitate the movement of potential shipments to XKT. On that same day, I e-mailed Mr. Tom Sheaff at LMI to inform him of my most recent conversation with XKT concerning logistics to facilitate the contemplated move and to confirm that MIRS would have its car mover shipped to arrive that weekend. Although the XKT shipment ultimately did not materialize, MIRS was in position to make the delivery to XKT the following week. At the same time, MIRS also undertook responsibility for cleaning switches to ensure proper operation of the rail facilities.

(See Exs. A, B)

5. LMI has always been cooperative with facilitating the movement of rail shipments for XKT, and both LMI and MIRS have been deeply involved in attempting to

coordinate the movements for XKT. (See Ex. C) In fact, MIRS made arrangements to move the rail car mover to Mare Island at considerable expense. For example, MIRS spent approximately \$9,000 to rent and relocate to Mare Island a railcar mover (model SWX465Be, manufactured by Shuttlewagon) so that MIRS would be able to move railcars on Mare Island. The rail car mover, which arrived on or about February 22, 2010, was in place to accommodate the potential movement of nine cars to XKT referenced in LMI's February 9, 2010, e-mail to MIRS (although those shipments never materialized).

6. In April 2010, after MIRS learned that SFBR-MI would not participate in a "two-railroad" arrangement (i.e., one involving the exchange of railcars with MIRS rather than SFBR-MI's own direct access to the trackage on Mare Island), and that SFBR-MI would not pursue the movement of railcars to or from the Island until the STB proceedings were resolved, MIRS moved the railcar mover off of Mare Island.

7. I remained in close contact with LMI and potential rail customers at Mare Island to be sure that sufficient and proper equipment would be available to serve Mare Island customers as needed. For example, recently, I have been busy making arrangements to move carloads of steel that are to be delivered by SFBR-MI to XKT, which SFBR-MI will exchange with MIRS for further movement by MIRS on Mare Island. In connection with this potential movement, on August 9, 2010, I e-mailed Mr. David Gavrich regarding arrangements for relocating one of our available locomotives to Mare Island. (See Ex. D¹)

MIRS's Efforts To Facilitate The Movement Of Contaminated Soil

8. On June 16, 2010, I learned that rail was being considered for the removal of contaminated soil from Mare Island. On June 17, 2010, I participated in a telephone conference

¹ Note that the reference in this email to "July 7" is an error. The referenced telephone conversation took place on Saturday, August 7, 2010.

that included representatives from LMI and CH2M Hill, LMI's environmental remediation contractor. I learned during the call that the projected car loading would begin August 1, 2010, if the rail option was chosen. A representative for USAE, CH2M Hill's subcontractor responsible for the soil remediation project, was not on the call. CH2M Hill informed me, however, that USAE would contact me as soon as possible. During the same telephone conference, LMI informed me that it was interested in taking steps to accommodate these rail movements. (See Ex. E)

9. Two weeks later, on Friday, July 9, 2010, USAE contacted me for the first time and informed me that an on-site meeting might be scheduled to take place the following Monday, July 12, 2010, at 11:30 am. At that point, USAE told me that the meeting was tentative. As it turned out, a meeting did take place on July 12, but I had a previous commitment and could not attend.

10. Although I was not able to attend the July 12 meeting, I had previously attempted to reach agreement with SFBR-MI regarding logistics for exchanging cars between MIRS and SFBR-MI. On July 11, 2010, I had sent an email to SFBR-MI outlining MIRS's plan for the handling of railcars on Mare Island in connection with this project, and providing my preliminary suggestions as to the logistics for the exchange of railcars between MIRS and SFBR-MI. (See Ex. F) On July 12, 2010, SFBR-MI emailed a reply stating, "Sounds like a plan," which I took to mean that SFBR-MI was in agreement with my July 11th email. (See Ex. F) (As it turned out, the specific exchange location I had suggested would not have been feasible, for reasons that Mr. Sheaff explains in his statement.)

11. During this entire period, LMI was on board with and supportive of MIRS's efforts to figure out the logistics of the rail option. In connection with LMI's efforts to obtain

necessary approvals for the use of rail transportation, LMI contacted me about interfacing with CH2M Hill and compiling a proposal for CH2M Hill describing the rail plan logistics. (See Ex. G)

12. In a further effort to facilitate the consideration of a rail option – and with the complete support of LMI – on July 15, 2010, I emailed USAE, CH2M Hill’s subcontractor, with MIRS’s rates to place, switch, spot, and pull railcars. In an effort to be as accommodating as possible, I noted that MIRS would provide the service based on USAE’s work schedule. At the same time, LMI was working on its end to determine its invoicing terms and process. (See Ex. H)

13. Meanwhile, I was still waiting for SFBR-MI to provide MIRS with demurrage terms and conditions, which I had had requested from SFBR-MI in February but had not yet received. Despite at least four requests for the tariff information to SFBR-MI, the most recent being on August 27, 2010, SFBR-MI has never provided MIRS with this information (See Ex. I).

14. On July 27, 2010, LMI informed me that USAE and CH2M Hill had withdrawn their proposal to use rail to transport the soil for the CTA project.

15. On Saturday, August 7, 2010, I received a call from SFBR-MI’s David Gavrich, with whom I had not previously spoken. He followed up the telephone call with an email to me indicating that SFBR would allow the exchange of rail cars to occur on the City of Vallejo trackage – a complete reversal of its prior position. (See Ex. J) However, SFBR-MI made this offer only after learning that USAE and CH2M Hill had elected to forgo the rail option.

MIRS’s Steps Since February 2010 to Facilitate Switching of Railcars on Mare Island on Behalf of LMI

16. In addition to the efforts MIRS undertook to facilitate use of rail in connection with the specific movements discussed in SFBR-MI’s Submission, all of which had the full

support of LMI (including arranging the movement of locomotives and exchange locations), MIRS has consistently undertaken efforts in conjunction with LMI to facilitate the potential switching of railcars on Mare Island—the task for which MIRS was hired by LMI. LMI has not attempted to erect any blockade against the movement of railcars to and from Mare Island.

17. For example, in February 2010, MIRS arranged for the movement to Mare Island of the equipment needed to clean and repair track at Mare Island. At the same time, MIRS personnel were dispatched from Richland, Washington to perform cleaning and repair. (See Ex. B) That maintenance equipment remains on the Island today.

18. In addition, as noted above, MIRS has stood ready to return a railcar mover (or locomotive) to Mare Island at any time. TCRY and its affiliated companies own nine locomotives and lease two additional locomotives all of which are currently located in Richland, Washington. We remain ready, willing and able to provide locomotive power to service Mare Island.

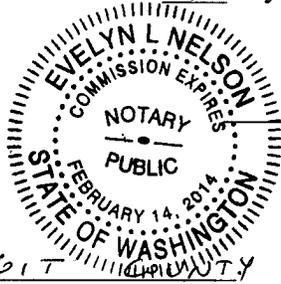
VERIFICATION

State of Washington)
)
) SS
)
)
County of Skagit)

Randolph V. Peterson, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

Randolph V Peterson
Randolph V. Peterson

Subscribed and sworn to before me this 1st day of September, 2010.



Evelyn L Nelson
Notary Public

EVELYN L NELSON

Notary Public of SKAGIT COUNTY

My Commission expires: 2-14-2014.

From: Randolph Peterson <rvpeterson@me.com>
Date: February 16, 2010 2:10:29 PM PST
To: Tom Sheaff <Tom.Sheaff@lennar.com>
Cc: Rydel Peterson <rydel@tcry.com>
Subject: City line

Good afternoon Tom, I called and spoke with Jake at sfbr this morning about status of the City tracks. Jake reported that they would use a Cal Northern locomotive and don't yet have a rate established for service. We discussed the XKT cars that possibly could be diverted. He is going to call me this afternoon or in the morning with a rate. I will call you to discuss as soon as I receive it. I spoke with Gregg Forbes at XKT. He told me he thought four (4) of the nine cars may be at Roseville. I don't know if those four could be diverted but the other five, I believe could be. With that in mind, and with your approval, I would suggest we have the car mover shipped so it will arrive this coming weekend. We then are ready to make delivery to XKT next week. They would reserve making a diversion decision until they know the cost so to compare against the current method of transload. I will stay in contact with XKT on this item.

Jake stated they don't have the signals operational and intend to had flag the crossings through town. I believe the FRA waiver has expired but that is just my opinion.

Craig has not yet returned by call from earlier this morning.

Randy

From: rvpeterson <rvpeterson@me.com>

Subject: **Cleaning switches**

Date: February 25, 2010 10:08:23 AM PST

To: Sheaff Tom <Tom.Sheaff@lennar.com>

Cleaning more switches this morning.



Sent from my iPhone

From: rvpeterston <rvpeterston@me.com>

Subject: **Orange horse is on Island.**

Date: February 22, 2010 12:22:35 PM PST

To: Sheaff Tom <Tom.Sheaff@lennar.com>



Sent from my iPhone

From: Sheaff Tom <Tom.Sheaff@lennar.com>

Subject: In-bound to XKT

Date: February 9, 2010 8:32:40 AM PST

To: Peterson Randolph <rvpeterson@me.com>

Cc: Bottini Al <albottini@xktengineering.com>

Randy: Al and I just spoke. He has 9 in bound cars, and we both have questions about the logistics and rates to get them to Mare Island. Al wants to make sure that this is seamless and avoids the worst case scenario, which would be that there is a dispute somewhere along the line and XKT's material is stuck somewhere.

Can you coordinate this with XKT?

Also, do you know if PG&E reinstalled the track at Butte Street?

Tom Sheaff
707-562-4003

From: Randolph Peterson [mailto:rvpeterson@me.com]
Sent: Monday, August 09, 2010 10:24 AM
To: Gavrich David
Cc: Paul Petit; Rydel Peterson
Subject: City of Vallejo rail traffic movement

Dear David,

Thank you for the email confirming and clarifying our conversation earlier in the day on July 7. I would like to initially respond with the questions below, and then I plan to meet with LMI first thing this coming week to discuss your proposal.

CTA Work: In spite of the efforts of all parties, it is my understanding from LMI that soil transportation by rail is no longer a viable option for LMI's contractor, CH2M Hill, who has sub-contracted this portion of the clean up of LMI's property to USAE. LMI would be the shipper in this case. Has USAE indicated to you in the past week that this is still an option?

Tariff Rate: On July 19, 2010, I followed up on my original February 17, 2010 request to SFBR to provide tariff rates for moving railcars on the City track interchanged with CNRR at Flosden siding as well as SFBR's demurrage tariff and daily service schedule. To be clear this request for rates is on behalf of LMI (the shipper). We would appreciate a response from you.

With regard to the issue of locomotives, we will relocate one of our eleven (11) engines to the Island.

Again thank you for your call and followup note and I look forward to working with you moving rail traffic through the City of Vallejo,

Randolph.

From: Roebuck Sheila <Sheila.Roebuck@Lennar.com>
Subject: **Mare Island CTA Rail Haul Specifics**
Date: June 16, 2010 2:00:00 PM PDT
To: Peterson Randolph <rvpeterson@me.com>
Cc: Crim Dick <Dick.Crim@CH2M.com>

Dear Randy,

This is a follow up to the voicemail I left earlier, related to potential use of the rail to transport wastes away from the Crane Test Area (also referred to as the CTA, and located on the northwest corner of the intersection of Azuar Drive and A Street - see area highlighted in yellow on attached exhibit).

Our environmental contractor is CH2M Hill, and their Construction Supervisor for the remediation project is Dick Crim. In the attached email, he has provided answers to the questions you asked via voice mail, in your message this morning. Please let us know when we could set up a call, so we can touch base and see if we can answer any additional questions you or CH2M Hill may have. If you would be available some time tomorrow, that would be ideal.

Thanks,
Sheila

Sheila Roebuck
707-557-8223
415-640-5921 (cell)

From: Jacob Park <jacob@sfbayrail.com>
Subject: **Re: CH2M Hill outbound rail move from Mare Island**
Date: July 12, 2010 9:32:37 AM PDT
To: Peterson Randolph <rvpeterson@me.com>

Randy - Sounds like a plan. I am walking the job today and I will let you know of any pending changes. Regarding the crossings 8 of the 11 are in operation. The other 3 will be in operation before the end of the month. Lets talk before the project to discuss any further issues. I hope you had a great Independence Day.

Thank you.

Jake
SFBR Co.

On Jul 11, 2010, at 11:57 PM, Randolph Peterson wrote:

Jake, it's my understanding the potential outbound rail move of 250 cars would begin on or about August 16th and be completed September 21st. The load schedule would be single day shift of approximately ten cars each work day Monday through Friday (50 cars per week) over the five week period.

Please confirm the at grade crossing safety warning systems through the City of Vallejo will have been reactivated in

accordance with applicable CFR code prior to delivering the first inbound empties.

We will also need to confirm the schedule time for receiving the daily inbound empties (approximately ten) and the daily outbound loads (approximately ten). A cut of inbound empties in the morning and a return cut of outbound in the afternoon? If you pull the empties through town, you could cut away just across the causeway and pull in the Alstom spur. We would connect and pull past to clear. We'll place the outbound loads so the first car is clear of the Alstom spur. I understand you park your locomotive there. We'll need to coordinate so to minimize handoff time.

I understand SFBR or Cal Northern will be arranging car ordering.

Car placement of ten per day and with the contractor loading ten per day will prevent demurrage from becoming an issue.

Thanks
Randolph

From: Roebuck Sheila
<Sheila.Roebuck@Lennar.com>
Subject: **Re: Fwd: CH2M Hill outbound rail
move from Mare Island**
Date: July 13, 2010 11:09:55 AM PDT
To: Randolph Peterson
<rwpeterson@mac.com>
Cc: Sheaff Tom <Tom.Sheaff@lennar.com>

Randy,

Thanks for forwarding. Just so you know, I was told, after the meeting that took place here on Mare Island yesterday, that the SFBR representatives had said that they planned to bring 20 cars to the island at a time, and remove that same number once all were filled. They also said that removal from and delivery to Mare Island of the 20 cars, would be at night. This is in conflict with the information communicated in your forwarded email. It would be better for us, in a number of ways, if we could go with the 10 cars per day, and daytime operation, unless there are overriding concerns of which we are not currently aware.

I believe Dick Crim of CH2M Hill will be asking for a combined proposal that describes the totality of the rail plan logistics - number of cars, timing, location of handoff, etc., by this Wednesday. I believe you should be contacted about that directly. If that does not occur by COB today, please let me know.

One last item, you got the spelling of my name correct in the email address, but it looks like my last name in your address book entry is incorrectly spelled. Please note the correct

spelling, so future correspondence is more likely to reach me.

Thanks,
Sheila

Sheila Roebuck
707-557-8223
415-640-5921 (cell)

RANDOLPH PETERSON VERIFIED STATEMENT EXHIBIT H



Randolph Peterson
<rvpeterson@me.com>
07/15/2010 01:08 PM

To Bowers Clay <CBowers@usaenviro.com>
cc Sheaff Tom <Tom.Sheaff@lennar.com>, Roebuck Sheila
<Sheila.Roebuck@Lennar.com>, Crim Dick
<Dick.Crim@CH2M.com>, Rydel Peterson
bcc

Subject Switch Rate

History: This message has been forwarded.

Clay, nice to talk with you today. The MIRS rate to place, switch, spot, and pull is Three Hundred Fifty Dollars (\$350) per railcar for a total of Eighty Seven Thousand Five Hundred Dollars (\$87,500) plus any applicable state/local taxes and FSC at Eighteen percent (18%) based on two hundred and fifty (250) cars over the sixty day period beginning on or about August 16th. During this period MIRS will provide service based on your work schedule whether single or double shift. Additional cars will be billed at the same per car rate within the sixty day period.

LMI is currently determining invoicing terms and process.

Thanks,
Randolph
MIRS

From: Randolph Peterson [rvpeterson@mac.com]
Sent: 02/18/2010 01:00 AM PST
To: Jake Park <jacob@sfbayrail.com>
Cc: Tom Sheaff
Subject: Information Request SFBR 2-17-10

Jake Park
Manager of Operations
San Francisco Bay Railroad

Jake, it was a pleasure to visit with you by telephone earlier today and yesterday. Lennar Mare Island, LLC. (LMI) owns certain railroad track on Mare Island connecting with railroad track owned by the City of Vallejo at a point just on the west side of the Mare Island Causeway that crosses Mare Island Straight. It is my understanding the City owns railroad track beginning there and travels easterly for approximately two miles to a point (Flosden Siding) connecting with track owned by the Union Pacific Railroad (leased & operated by California Northern Railroad "CNR").

It is my understanding that the City of Vallejo has contracted with San Francisco Bay Railroad (SFBR) to operate and maintain this two miles of track it owns.

LMI has contracted with Mare Island Rail Service (MIRS) to manage, maintain and operate the track it owns on Mare Island. LMI has tenants on Mare Island that desire to have rail service

available as an option to their present methods of receiving/originating freight.

In order evaluate the rail option, MIRS requests that SFBR provide its tariff rate for moving railcars on the City track, interchanged with CNRR at Flosden Siding. MIRS understands the LMI tenant Alstom will receive railcars from SFBR directly, otherwise all cars would be placed by SFBR on LMI's private industry track beginning at the point of connection just on the west side of the Mare Island Causeway and not past Railroad Avenue (approximately 800'). MIRS will place returning railcars for pickup by SFBR at the same location.

Also, please provide the SFBR demurrage tariff applicable for all railroad owned/marked cars if different than that of CNRR and SFBR's daily service schedule.

Providing this requested information will allow us to better evaluate the economic viability for utilizing rail on Mare Island.

Thank you and we look forward to receiving this requested information at your earliest opportunity.

Sincerely,

Randolph Peterson, Manager
Mare Island Rail Service
509 554 0503
690 Walnut Ave. Suite 100
Mare Island, Vallejo, CA 94592



Randolph Peterson
<rvpeter@mac.com>
02/26/2010 05:14 PM

To Al Bottini <albottini@xktengineering.com>
cc Tom Sheaff <Tom.Sheaff@lennar.com>
bcc

Subject rail service

History: This message has been replied to.

Good afternoon Al,

We have cleaned/repared the switches and inspected the track from the causeway down Railroad Ave. to your facility.

You showed an interest in receiving inbound railcars of which several either were or are in route. On February 18th, we requested a rate from the City's rail operator from Flosden Siding to the west side of the causeway where Lennar's private track begins. We have not yet received a response to our request. In addition to the rate, we have requested demurrage information and service schedule. I will contact you with the information as soon as it is received.

Thanks, Randy

Randolph Peterson
Mare Island Rail Service
690 Walnut Street, Suite 100
Mare Island, Vallejo, CA 94592
509 554 0503

From: Randolph Peterson <rvpeterson@me.com>
Date: August 27, 2010 2:17:20 PM PDT
To: Gavrich David <david@sfbayrail.com>
Cc: Park Jake <jacob@sfbayrail.com>
Subject: Rate Request LMI/XKT

David,

Was wondering when you might be able to reply to the rate request sent to you on the 23rd? Al is nervous about a smooth exchange of cars and doesn't want any delays. I don't see that there should be any. If there is any that you see, please let me know.

Once we know your service schedule, we can get setup for our pickup / drop off there on the east side of the causeway.

He said they expect the first of the forty cars to begin to show up the first week in October.

Randolph

From: Gavrich David <david@sfbayrail.com>
Subject: **Proposed Compromise On Rail Service To Mare Island**
Date: August 7, 2010 7:42:12 PM PDT
To: Peterson Randolph <rvpeterson@me.com>

Randolph - As follow-up to our phone conversation today, I told you that San Francisco Bay Railroad - Mare Island (SFBR-MI) wants to do everything we can, within reason, to make rail service available to shippers on Mare Island. We have had recent demands for service from three entities with projects on the Island: (1) USA Environment, the contractor selected to clean-up the US Navy's former Crane Test Area on Mare Island, which has approximately 24,000 tons of waste soils to be removed from the site in the period between late August and late September, 2010 (240 railcar loads); (2) CSI, Inc., a company bidding on the clean-up of 2,300 tons of waste from FOPL 493, Building 121 on Mare Island for a project which is expected to move sometime in October, 2010 (23 railcars); and (3) XKT, who has informed SFBR-MI that they want 40 cars of steel delivered to their Mare Island facility between the end of September and early November (40 railcars).

The above projects have a total demand for more than 300 cars to move off and on Mare Island in the next few months. This is a great opportunity for SFBR-MI, MIRS, and the shippers on Mare Island. On the USA Environment project alone, the shipment of waste by direct rail from the Island will reduce truck traffic on local roadways and highways to Southern California by more than 1,200 trucks; reduce fossil fuel use by

an estimated 100,000 gallons; reduce emissions of CO2 greenhouse gases by an estimated 2.2 million pounds; and finally, save the project more than \$300,000 in transportation costs compared to long-haul trucking. Since this is a former Navy facility, I assume that the US taxpayers will be ultimately paying the tab, so there is a significant benefit to the taxpayer by using direct rail from the Island.

Against that background, your e-mail to Jacob Park regarding how MIRS and SFBR-MI might coordinate rail movements said: "If SFBR is unwilling to allow "exchange" of the cars (twenty or otherwise) to occur across the causeway on the City Line, this rail move will not happen."

In the interest of trying to get a long overdue re-start of rail service to and from Mare Island, today I proposed to you that SFBR-MI would indeed be willing to allow the exchange of cars with MIRS on the track that is alongside the roadway at the Vallejo end of the causeway, just before the crossing to Mare Island Way. That is a track that is currently under our agreement with the City of Vallejo, and under our exemption with the STB. I even extended to you the offer for your MIRS qualified crews to use our locomotives to pull empty trains across the bridge and deliver cars onto Mare Island. I hope that you and LMI will see that we are offering a major "olive branch" in order to bring rail service back to shippers on Mare Island. Of course, we'll need the appropriate indemnifications and insurance for you to operate our locomotives across that track, but if there's the will to get this done, there's a way to get it done. There is certainly

the will on our part, and we hope there is on yours and LMI's as well.

Please call me anytime over the weekend on my cellphone if you have questions or suggestions. We need to move forward with dispatch if we are going to meet the scheduling needs of the shippers requesting service.

Sincerely,

David Gavrich
President & CEO
San Francisco Bay Railroad
100 Cargo Way @ Pier 96 Railyard
San Francisco, CA 94124

Tel: (415) 642-7177
Fax: (415) 642-7174
Cell: (415) 515-3703

www.sfbayrail.com

VERIFIED STATEMENT

OF

EDWARD AROMI

1. My name is Edward Aromi. I am a senior project manager with CH2M Hill Constructors, Inc. ("CH"). I am currently overseeing a substantial environmental remediation project underway at Mare Island in Vallejo, California. The property subject to the remediation is owned by Lennar Mare Island, LLC ("LMI"). The work is being conducted pursuant to a 2001 contract, and has been in progress for the past nine years. I am providing this statement in connection with the Supplementary Submission Based Upon New Demands for Service (the "Submission") filed in connection with the Petition for Declaratory Order filed by San Francisco Bay Railroad-Mare Island ("SFBR-MI").

2. The Submission refers to a rail request relating to movement of 23 cars of contaminated soils by rail expected to result from the environmental remediation of an underground fuel oil pipeline in the area of Buildings 493 and 971 on Mare Island (the "Building 493/971 Work"). On projects like this, CH prepares the scope of work necessary to remediate the contamination, obtains regulatory approval and then solicits bids from subcontractors to conduct the field work. A request for bids on the Building 493/971 Work was issued on July 1, 2010. While on page four of the Submission two companies are noted, CSI Inc. and TurnKey Construction neither was selected as the winning bidder and only TurnKey was one of the four responding bidders. Following the review of all bids, CH awarded the contract to Innovative Construction Solutions, Inc on August 25, 2010. The contract awarding the Building 493/971 Work is based upon the use of truck transportation in

connection with this soil removal. As a result, CH has no current plans to utilize rail service in connection with the Building 493/971 Work.

3. Contrary to the assertions in the Submission, CH is not the “agent” of LMI, nor does CH hold itself out to be an agent of LMI.

4. While CH has been engaged to perform work on land owned by LMI, including the portion of Mare Island referred to as the Crane Test Area or “CTA,” neither CH nor any of its subcontractors has ever taken ownership of any portion of the LMI property, including the contaminated soil or any other waste or property of LMI. As documented by the waste haul manifests, LMI is the owner and shipper of the waste, regardless of the identity of the party signing the associated manifests.

5. This past spring, CH solicited bids for a significant remediation job at CTA, which was anticipated to include a major excavation of contaminated soils, along with removal of such soils. The contract was awarded to USA Environment (USAE). USAE’s bid included two alternatives for transportation of contaminated soil to waste facilities – trucking and rail. The rail option had not been requested by CH. It is our understanding from discussions with USAE, that they were originally approached by Waste Solutions Group with an unsolicited proposal to transport and dispose waste by rail. This proposal was contingent upon an agreement being reached between LMI and SFBR to use the existing railway line on Mare Island. On July 26, 2010, USAE withdrew Bid Alternate 2 (concerning the possibility of rail transportation of waste) from consideration. USAE immediately moved forward with removal of waste from Mare Island using truck transport as contained in their base bid to maintain project schedule. USAE’s work continues at CTA, with waste being trucked to disposal

facilities, as contemplated in the original regulator approved remediation action plan. The current schedule calls for the transport of waste to conclude on October 28, 2010.

6. To my knowledge, LMI has never indicated to CH that rail cars could not be loaded on LMI property. CH was aware of the dispute between LMI and SFBR, as reflected in Surface Transportation Board filings made by SFBR in early 2010, but LMI has made clear to CH that rail transportation could still be an option. As an example, on June 15, 2010, the CH personnel coordinating the work at the CTA received notice from Sheila Roebuck, working for LMI, indicating that the use of rail was a possibility at the CTA, but that CH's contractor would have to coordinate with Randy Peterson (See Attached Exhibit A). From my interactions with LMI personnel on the current remediation work, I understand that LMI continues to support rail as an option when appropriate.

VERIFICATION

State of Georgia)
)
) SS
)
County of Richmond)

Edward Aromi, being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.



Edward Aromi

Subscribed and sworn to before me this 1st day of September, 2010.



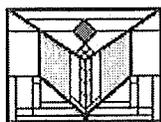
Notary Public

Notary Public of Richmond Co, GA

My Commission expires: 11/13/10

**Notary Public, Richmond County, Georgia
My Commission Expires Nov. 13, 2010**

Exhibit A to Edward Aromi Verified Statement



Sheila
Roebuck/SAN FRANCISCO/W
EST/Lennar

06/15/2010 02:34 PM

To <Dick.Crim@CH2M.com>

cc Jennifer.Low@CH2M.com, Paula.Bolio@CH2M.com

bcc

Subject Re: CTA Alternative Waste Disposal Sites Acceptance 

Dick,

The alternative waste disposal locations suggested by your subcontractors, as identified in the attached file, are acceptable to LMI.

Regarding the rail question. Use of the rail is a possibility, but your subcontractor would have to coordinate with Randy Peterson. Randy has been helping LMI with all of the rail issues. The most important thing is to get ballpark estimates of volumes, number of cars, dates and destination. Randy is familiar with the CTA, switches and the general layout of the CTA area.

Thanks,
Sheila

Sheila Roebuck
707-557-8223
415-640-5921 (cell)

<Dick.Crim@CH2M.com>



<Dick.Crim@CH2M.com>

06/10/2010 04:01 PM

To <Sheila.Roebuck@lennar.com>

cc <Paula.Bolio@CH2M.com>, <Jennifer.Low@CH2M.com>,
<Dick.Crim@CH2M.com>

Subject CTA Alternative Waste Disposal Sites Acceptance

Sheila, the purpose of this email is twofold:

- To request acceptance of alternative waste disposal sites proposed by potential subcontractors on the CTA project. A list of these sites is contained in the attached spreadsheet. We would like to request that LMI let us know whether the alternative waste disposal sites are or are not acceptable to LMI for disposal of the waste generated at the CTA.
- As a condition to transport to some of these waste disposal sites, rail transport has been proposed as an option by some of the potential subcontractors. Load out to rail would be along the west side of Azuar Drive. The potential cost reduction associated with these alternative waste disposal sites and rail transport is in excess of \$500,000. We would like to request that LMI let us know if the existing rail line on Mare Island and along Azuar Drive is currently functional and operational for access/use and that

permission from LMI can be obtained. If rail transport is a viable option and LMI can grant permission, then we will contact DTSC to evaluate whether this would meet with their approval.

Your earliest response would be appreciated. We are currently evaluating the potential subcontractors and their alternative bids. We may be awarding to subcontractors as early as 17 July.

If you have any questions or comments, please contact me via email or my mobile listed below.

Regards

Dick

Dick Crim, P.E.
Direct 503.872.4496
Mobile 503.789.9158
Fax 503.736.2027



email dick.crim@ch2m.com CTA Subcontractor Proposed Waste Disposal.xlsx

VERIFIED STATEMENT

OF

SHEILA ROEBUCK

1. My name is Sheila Roebuck. I am the Environmental Director at Lennar Mare Island, LLC (“LMI”). My primary role at LMI is to work within the LMI team to oversee the environmental remediation of the Eastern Early Transfer Parcel portion of Mare Island, which includes over 600 acres on Mare Island. I am providing this statement in response to the Supplementary Submission Based Upon New Demands for Service filed by San Francisco Bay Railroad-Mare Island (“SFBR-MI”).

2. The first mention of the possibility of rail transportation in connection with the Crane Test Area (“CTA”) environmental remediation project of which LMI is aware was made by Dick Crim of CH2M Hill Constructors, Inc. (“CH”) on June 10, 2010. He raised the issue in connection with his inquiry to me whether certain alternative waste disposal sites were acceptable to LMI, and also whether rail transportation would be an option in connection with the CTA remediation.

3. On June 15, 2010, I responded, approving the alternative waste disposal sites and indicating that rail transportation would be a possibility, but that CH’s subcontractor would need to coordinate with Randy Peterson of Mare Island Rail Service (“MIRS”). My June 15, 2010 email to Mr. Crim is Exhibit A.

4. Because rail transportation had not been included as an option in the approved Feasibility Study/Remedial Action Plan (FS/RAP) for the CTA site, however, that mode of transportation would require further approval from the California Department of Toxic

Substances Control (“DTSC”), and Mr. Crim and I agreed that CH would contact DTSC to obtain such approval.

5. CH contacted DTSC, and DTSC responded by saying that because the original FS/RAP contemplated removal by truck only, the rail option could not be approved without some form of public participation, allowing for community input. The Mare Island Restoration Advisory Board (“RAB”) had a meeting scheduled for July 29, 2010, and DTSC agreed that the RAB would be an appropriate forum for such public comment.

6. LMI moved swiftly to get the rail option on the RAB agenda, which had already been finalized and distributed. On July 20, 2010, LMI put in a request to Shelly Samaritoni of CDM, a consulting firm representing the U.S. Department of the Navy on RAB issues, asking that an item titled “Potential Use of Railroad during Implementation of the Crane Test Area B.1” (the “CTA Item”) be added to the RAB agenda for the July meeting. LMI’s request is Exhibit B.

7. On July 21, 2010, Ms. Samaritoni indicated that the RAB agenda had already been mailed out and that any changes to the agenda would need to be approved by the Navy directly. Ms. Samaritoni’s response is also part of Exhibit B.

8. On the same day (July 21), LMI made such a request to Heather Wochnick, the Acting Lead Remedial Project Manager at the Navy, and LMI offered to assist by getting a revised announcement in the local newspaper the same day. The Navy agreed to the change, and Carolyn Moore of CDM indicated that the CTA Item would be added to the agenda. On July 22, LMI provided RAB members with a revised agenda and notice, and additionally provided a PowerPoint presentation to DTSC, addressing the rail transportation option. (The presentation is Exhibit C.)

9. On July 26, 2010, LMI learned that CH's subcontractor, USAE, had withdrawn its request to use rail transportation in connection with the CTA work. Because the request to use rail had been withdrawn, and CH had accepted the withdrawal, LMI had no choice but to withdraw the CTA Item from the RAB's agenda. Mr. Crim's email requesting the withdrawal of this agenda item, together with his email alerting LMI that CH's subcontractor has withdrawn the rail option, is Exhibit D. LMI had devoted substantial effort to placing the item on the agenda and believed that the rail option was worthwhile, if it could be made to work.

VERIFICATION

State of California)
)
) SS
)
County of Solano)

Sheila Roebuck, being duly sworn, deposes and says that she has read the foregoing statement, knows the facts asserted therein are true and that the same are true as stated.

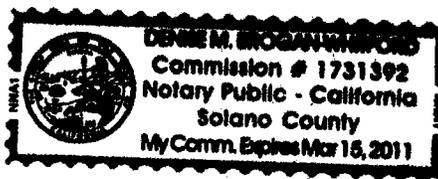
Sheila Roebuck
Sheila Roebuck

Subscribed and sworn to before me this 1 day of September 2010.

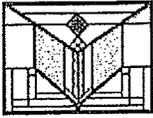
Denise M. Bryan-Whitford
Notary Public

Notary Public of California.

My Commission expires: March 15, 2011



SHEILA ROEBUCK VERIFIED STATEMENT EXHIBIT A



Sheila
Roebuck/SANFRANCISCO/W
EST/Lennar
06/15/2010 02:34 PM

To: <Dick.Crim@CH2M.com>
cc: Jennifer.Low@CH2M.com, Paula.Bolio@CH2M.com
bcc:
Subject: Re: CTA Alternative Waste Disposal Sites Acceptance [1]

Dick,
The alternative waste disposal locations suggested by your subcontractors, as identified in the attached file, are acceptable to LMI.

Regarding the rail question. Use of the rail is a possibility, but your subcontractor would have to coordinate with Randy Peterson. Randy has been helping LMI with all of the rail issues. The most important thing is to get ballpark estimates of volumes, number of cars, dates and destination. Randy is familiar with the CTA, switches and the general layout of the CTA area.

Thanks,
Sheila

Sheila Roebuck
707-557-8223
415-640-5921 (cell)

<Dick.Crim@CH2M.com>



<Dick.Crim@CH2M.com>
06/10/2010 04:01 PM

To: <Sheila.Roebuck@lennar.com>
cc: <Paula.Bolio@CH2M.com>, <Jennifer.Low@CH2M.com>, <Dick.Crim@CH2M.com>
Subject: CTA Alternative Waste Disposal Sites Acceptance

Sheila, the purpose of this email is twofold:

- To request acceptance of alternative waste disposal sites proposed by potential subcontractors on the CTA project. A list of these sites is contained in the attached spreadsheet. We would like to request that LMI let us know whether the alternative waste disposal sites are or are not acceptable to LMI for disposal of the waste generated at the CTA.
- As a condition to transport to some of these waste disposal sites, rail transport has been proposed as an option by some of the potential subcontractors. Load out to rail would be along the west side of Azuar Drive. The potential cost reduction associated with these alternative waste disposal sites and rail transport is in excess of \$500,000. We would like to request that LMI let us know if the existing rail line on Mare Island and along Azuar Drive is currently functional and operational for access/use and that

permission from LMI can be obtained. If rail transport is a viable option and LMI can grant permission, then we will contact DTSC to evaluate whether this would meet with their approval.

Your earliest response would be appreciated. We are currently evaluating the potential subcontractors and their alternative bids. We may be awarding to subcontractors as early as 17 July.

If you have any questions or comments, please contact me via email or my mobile listed below.

Regards

Dick

Dick Crim, P.E.
Direct 503.872.4496
Mobile 503.789.9158
Fax 503.736.2027



email dick.crim@ch2m.com CTA Subcontractor Proposed Waste Disposal.xlsx

SHEILA ROEBUCK VERIFIED STATEMENT EXHIBIT B

-----Original Message-----

From: Samaritoni, Shelley [mailto:SamaritoniSA@cdm.com]
Sent: Wednesday, July 21, 2010 3:57
To: Neal.Siler@lennar.com
Cc: Wochnick, Heather M CIV NAVFAC SW, PACO; Paula.Bolio@CH2M.com;
Sheila.Roebuck@Lennar.com; Kevin Spala; Brookshire, Matthew; Moore, Carolyn
Subject: RE: RAB agenda

Hi Neal,

The RAB Mailer has already been mailed out with the agenda and public notice (newspaper add). It will be up to the Navy if they would like to change the agenda at this time. CDM could print sufficient revised agendas and bring them to the meeting and the Navy could make an announcement at the beginning of the meeting. The change in topic could easily be explained to the RAB based on the reasons you cited below.

The public notice has to be submitted to the newspaper today. If the topic is going to change and the public notice needs to be updated, please let Carolyn Moore know as soon as possible. Also, please coordinate with Carolyn for any changes to the copies of the agenda she brings to the RAB meeting. I will be on a plane most of today and out of the office through August 6th.

Thank you,

Shelley

From: Neal.Siler@lennar.com [mailto:Neal.Siler@lennar.com]
Sent: Tuesday, July 20, 2010 5:11 PM
To: Samaritoni, Shelley
Cc: Heather.Wochnick@navy.mil; Paula.Bolio@CH2M.com; Sheila.Roebuck@Lennar.com
Subject: RE: RAB agenda
Importance: High

Dear Shelly:

Would it be possible to get another LMI item on the RAB Agenda for July 2010. The title will be:

Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area B.1

by

Steve Farley

Sorry for the late notice, but there is the opportunity to use the railroad to transport waste from the Crane Test Area, at a significant reduction in cost when compared to truck transport. This scenario was not considered in the FS/RAP or in the Initial Study/Negative Declaration, so we need to get in front of the public and move the schedule for the project along.

If we need to change out the IA C3 BGM Implementation (other LMI topic discussed in yesterday's RAB agenda teleconference) then we can do so or we can do both. Please let me know.

This is very important.

Thank you very much.

Lennar

Neal Siler
Div Environmental Mgr
Lennar Corporation

neal.siler@lennar.com
www.lennarurban.com

Office Phone: (707) 557-8224
FAX Number: (707) 562-4002

690 Walnut Avenue, Suite 100
Vallejo, California 94592

This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Thank you.



LENNAR MARE ISLAND

MEMORANDUM

TO: Mare Island Restoration Advisory Board (RAB) Members

FROM: Mr. Neal E. Siler *NES*
Environmental Manager
Lennar Mare Island, LLC (LMI)

PHONE: (707) 557-8224

FAX NO.: (707) 562-4002

DATE: July 22, 2010

SUBJECT: Change in LMI's Presentation – July 2010 RAB Meeting

Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area B.1, Lennar Mare Island, Vallejo, California

The purpose of this Memorandum is to formally notify the Mare Island RAB membership of a change in LMI's presentation for the July 2010 RAB Meeting (see attached). We are making this change because there is the potential opportunity to use the existing railroad on Mare Island to transport waste associated with the remedial action at the Crane Test Area (Investigation Area B.1) that is scheduled to take place later this summer. This transportation option was not presented in the *Investigation Area B.1 Feasibility Study / Remedial Action Plan, Lennar Mare Island, Vallejo, California* or in the California Environmental Quality Act *Initial Study / Negative Declaration* documentation for the project. In order to use this option, we want to notify the public, provide the public with information that would be needed to evaluate the pros and cons and hear any comments or concerns.

Please note that just by making this presentation does it mean that this is the offsite transportation option that will ultimately be used. There are many factors that go into evaluating and deciding to use such an option with one of the main factors being public notification and acceptance.

We apologize for any inconvenience that this may have caused, look forward to your attendance at the RAB Meeting and listening to your comments and concerns. In the interim, should you require any additional information and/or clarification, please contact Sheila Roebuck at (707)-557-8223 or Sheila.Roebuck@Lennar.com.



PUBLIC MEETING
MARE ISLAND NAVAL SHIPYARD
RESTORATION ADVISORY BOARD (RAB)
JULY 2010 MEETING



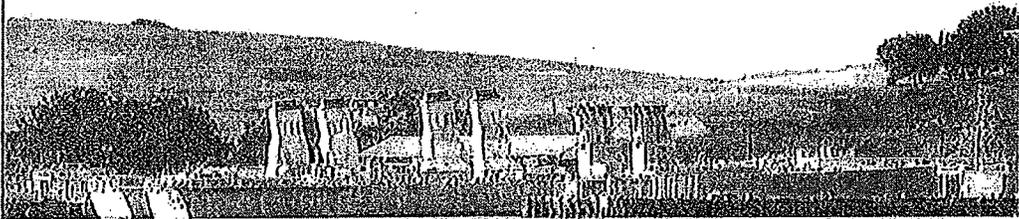
The Department of Navy (DON) invites interested members of the public to attend monthly updates and presentations with members of the Restoration Advisory Board (RAB) made up of representatives from the local community, Navy, Federal and State regulatory agencies. The DON encourages the public to keep informed about the environmental cleanup at former Mare Island Naval Shipyard (MINSY), Vallejo, California.

July 2010 Featured Topics

Finding of Suitability to Transfer - Parcel II, XB- (1, 2, 3) & Sanitary Sewage Treatment Plant (SSTP) Outfall

And

Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area (IA) B.1



Date: Thursday, July 29, 2010

Time: 7:00 p.m. to 9:00 p.m.

Location: Mare Island Conference Center
375 G-St., Vallejo, CA

Ask questions and voice your concerns. You Can Make a Difference!

FOR MORE INFORMATION CONTACT:

Heather Wochnick, (619) 532-0763 or Myrna Hayes, (707) 557-9816

Navy BRAC Web Page: <http://www.bracpmc.navy.mil>
Mare Island Environmental Web Page: <http://www.mareisland.org>



AGENDA
MARE ISLAND NAVAL SHIPYARD
Restoration Advisory Board (RAB) Meeting Agenda
July 29, 2010 – Mare Island Conference Center
375 G Street, Vallejo, CA

7 p.m.	Welcome and Introductions (Heather Wochnick, Myrna Hayes)	5 mins.
7:05	Presentation: <i>Findng of Suitability to Transfer - Parcel II, XB- (1, 2, 3) & Sanitary Sewage Treatment Plant (SSTP) Outfall</i> Ms. Brooks-Pauly, Navy	20 mins.
	Discussion	5 mins.
7:30	Presentation: <i>Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area (IA) B.1</i> Mr. Steve Farley, CH2MHill/Lenmar Mare Island	20 mins.
	Discussion	5 mins.
7:55	Public Comment Period	5 mins.
8:00	10-minute break	10 mins.
8:10	Administrative Business and Announcements (Myrna Hayes, Heather Wochnick) June 24, 2010 Meeting Minutes	5 mins.
8:15	Focus Group Reports/Discussion a) Community (Wendell Quigley) b) Natural Resources (Jerry Karr) c) Technical (Paula Tygielski) d) City Report (Gill Hollingsworth) e) Lenmar Update (Steve Farley) f) Weston Update (Cris Jespersen) g) Regulatory Agency Update (Janet Naito/Carolyn d'Almeida/ Elizabeth Wells)	30 mins.
8:45	Co-chairs' Report (Myrna Hayes, Heather Wochnick)	10 mins.
8:55	Public Comment Period	5 mins.
9:00	Adjourn	

THE NEXT RAB MEETING WILL BE HELD AUGUST 26, 2010

For more information concerning environmental restoration at Mare Island, contact:
Heather Wochnick, Acting BRAC Environmental Coordinator & Navy Co-chair (619) 532-0763;
Myrna Hayes, RAB Community Co-chair (707) 557-9816
Janet Naito, Department of Toxic Substances Control (510) 540-3833; Carolyn d'Almeida, US EPA (415) 972-3150;
Elizabeth Wells, Regional Water Quality Control Board (Navy), (510) 622-2440;
RAB Support Contractor: Shelley Samaritoni, CDM Inc (858) 627-1553
Navy BRAC Web Page: <http://www.bracpmo.navy.mil>
Mare Island Environmental Web Page: <http://www.mareisland.org>



AGENDA
MARE ISLAND NAVAL SHIPYARD
Restoration Advisory Board (RAB) Meeting Agenda
July 29, 2010 – Mare Island Conference Center
375 G Street, Vallejo, CA

7 p.m.	Welcome and Introductions (Heather Wochnick, Myrna Hayes)	5 mins.
7:05	Presentation: <i>Finding of Suitability to Transfer - Parcel II, XB- (1, 2, 3) & Sanitary Sewage Treatment Plant (SSTP) Outfall</i> Ms. Brooks Pauly, Navy	20 mins.
	Discussion	5 mins.
7:30	Presentation: <i>Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area (IA) B.I</i> Mr. Steve Farley, CH2MHill/ Lennar Mare Island	20 mins.
	Discussion	5 mins.
7:55	Public Comment Period	5 mins.
8:00	10-minute break	10 mins.
8:10	Administrative Business and Announcements (Myrna Hayes, Heather Wochnick) June 24, 2010 Meeting Minutes	5 mins.
8:15	Focus Group Reports/Discussion a) Community (Wendell Quigley) b) Natural Resources (Jerry Karr) c) Technical (Paula Tygielski) d) City Report (Gil Hollingsworth) e) Lennar Update (Steve Farley) f) Weston Update (Cris Jespersen) g) Regulatory Agency Update (Janet Naito/Carolyn d'Almeida/ Elizabeth Wells)	30 mins.
8:45	Co-chairs' Report (Myrna Hayes, Heather Wochnick)	10 mins.
8:55	Public Comment Period	5 mins.
9:00	Adjourn	

THE NEXT RAB MEETING WILL BE HELD AUGUST 26, 2010

For more information concerning environmental restoration at Mare Island, contact:
Heather Wochnick, Acting BRAC Environmental Coordinator & Navy Co-chair (619) 532-0763;
Myrna Hayes, RAB Community Co-chair (707) 557-9816
Janet Naito, Department of Toxic Substances Control (510) 540-3833; Carolyn d'Almeida, US EPA (415) 972-3150;
Elizabeth Wells, Regional Water Quality Control Board (Navy), (510) 622-2440;
RAB Support Contractor: Shelley Samaritoni, CDM Inc (858) 627-1553
Navy BRAC Web Page: <http://www.bracpmo.navy.mil>
Mare Island Environmental Web Page: <http://www.mareisland.org>



PUBLIC MEETING
MARE ISLAND NAVAL SHIPYARD
RESTORATION ADVISORY BOARD (RAB)
JULY 2010 MEETING



The Department of Navy (DON) invites interested members of the public to attend monthly updates and presentations with members of the Restoration Advisory Board (RAB) made up of representatives from the local community, Navy, Federal and State regulatory agencies. The DON encourages the public to keep informed about the environmental cleanup at former Mare Island Naval Shipyard (MINSY), Vallejo, California.

July 2010 Featured Topics

Finding of Suitability to Transfer - Parcel II, XB- (1, 2, 3) & Sanitary Sewage Treatment Plant (SSTP) Outfall

And

Potential Use of Railroad During Implementation of the Remedial Action for the Crane Test Area, Investigation Area (IA) B.1



Date: Thursday, July 29, 2010

Time: 7:00 p.m. to 9:00 p.m.

Location: Mare Island Conference Center
375 G-St., Vallejo, CA

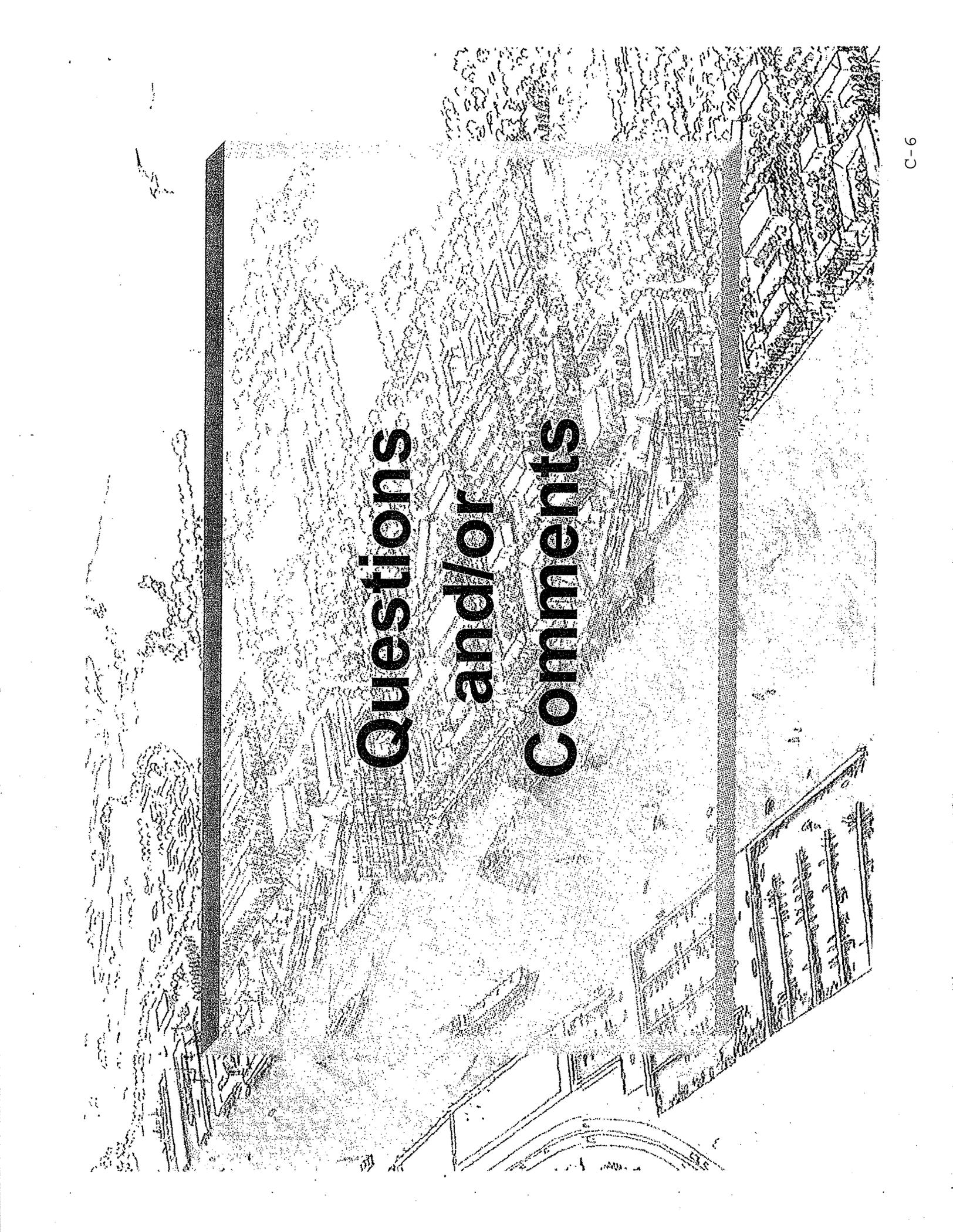
Ask questions and voice your concerns. You Can Make a Difference!

FOR MORE INFORMATION CONTACT:

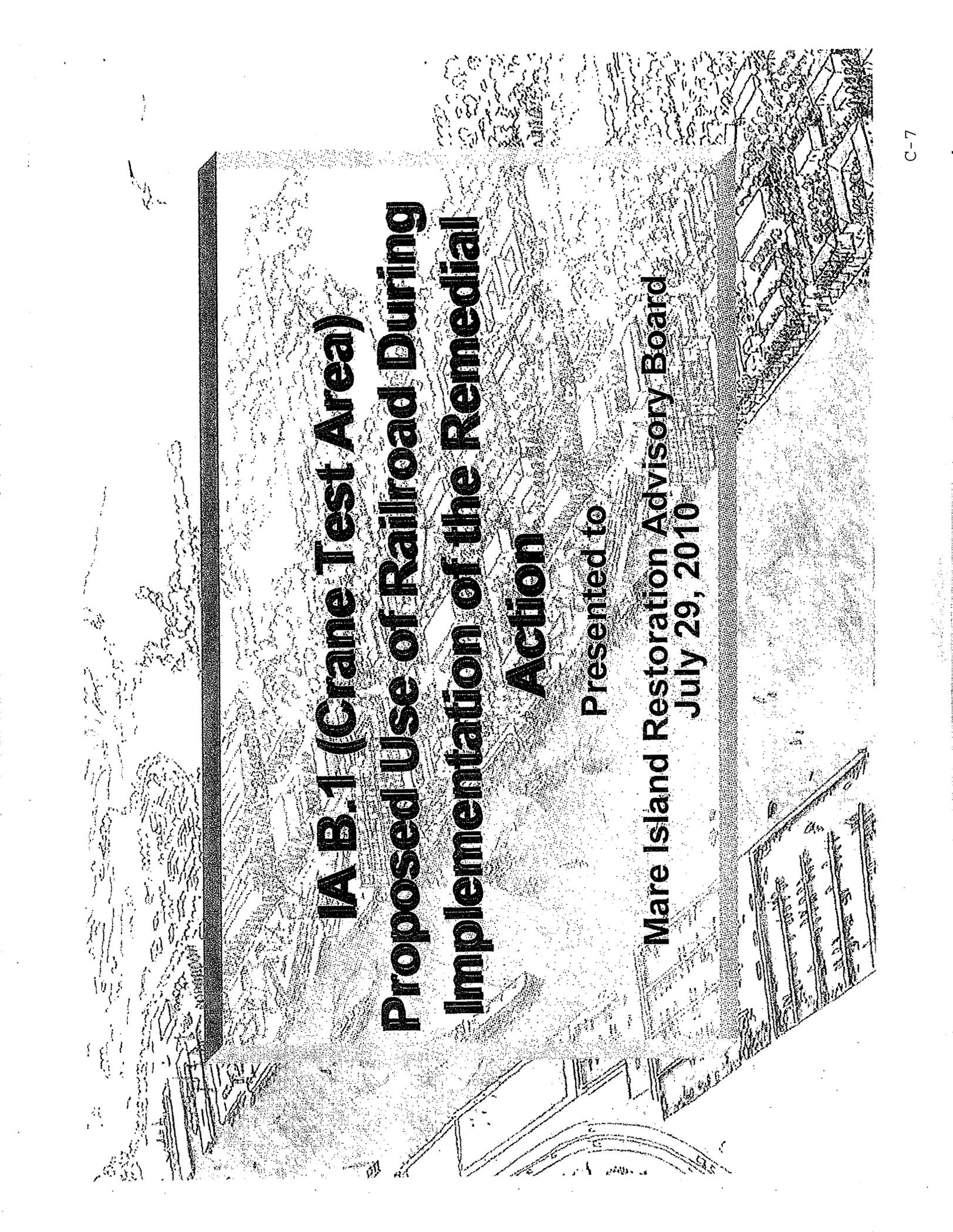
Heather Wochnick, (619) 532-0763 or Myrna Hayes, (707) 557-9816

Navy BRAC Web Page: <http://www.bracpino.navy.mil>

Mare Island Environmental Web Page: <http://www.mareisland.org>



**Questions
and/or
Comments**



IA B.1 (Crane Test Area)
Proposed Use of Railroad During
Implementation of the Remedial
Action

Presented to

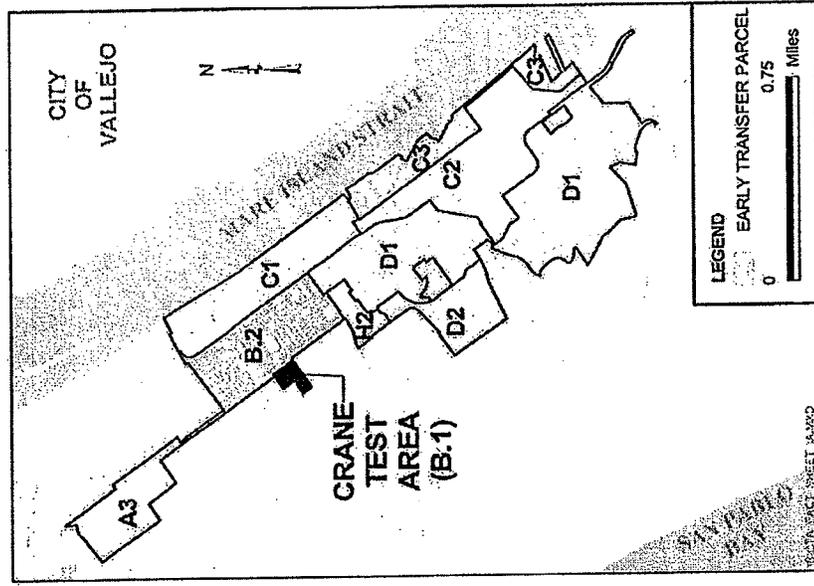
Mare Island Restoration Advisory Board
July 29, 2010

Agenda

- Brief Summary of Selected Remedy for Investigation Area B.1 (IA B.1) (referred to as Crane Test Area (CTA))
- Review of Assumptions for Transport of Removed Soil from IA B.1
- Proposed Alternative for Transport of Removed Soil from IA B.1
- Questions and/or Comments

Selected Cleanup Remedy

- Selected cleanup remedy described in Final Investigation Area B.1 Feasibility Study/Remedial Action Plan (FS/RAP)
 - Approved by DTSC on March 18, 2010.
- Excavation of impacted shallow soil & fill material in:
 - existing utility corridors impacted by separate-phase TPH
 - areas containing soil vapor concentrations exceeding screening levels
- Offsite disposal of excavated soil and debris
- Construction of 3-foot-thick engineered soil cap over select soil areas
- Construction of a clean utility corridor for future development
- Institutional controls to prohibit sensitive uses and protect the cap



Review of Assumptions for Transport of Removed Materials from the CTA

The Final FS/RAP assumes:

- Transport of removed materials to offsite disposal facilities using trucks.

As part of preconstruction activities, methods for transport of removed materials to offsite disposal facilities were reviewed.

- Railroad system was evaluated as an alternate method for transporting removed material to offsite facilities.
 - More cost efficient and effective than trucking.
 - Reduced noise, dust, traffic, and relatively less health and safety risks.
 - Relatively less inconvenience to MI tenants and residents.
 - Reduced emissions from truck exhaust

Proposed Use of Rail: Truck vs. Rail

	Estimated Number of Trips*			
	Truck Trips - Transport of Removed Materials from Site	Truck Trips - Transport of Import Backfill to Site	Total Truck Trips	Rail Trips - Transport of Removed Materials from Site
Using Truck Only	1,433	1,470	2,903	0
Using Truck and Rail	253	1,470	1,723	236
Reduced Number of Truck Loads			1,180	

* - Based on current estimated removal and import quantities.

- No rail access to some landfills; therefore some trucks are still needed even if the railroad is used.
- For both options, import backfill would be delivered to the CTA via truck (location of import backfill is not accessible by rail).
- Using truck and rail to transport removed materials from CTA would reduce the number of truck trips by 1,180.
 - One truck can hold approximately 20 tons of soil. One rail car can hold approximately 100 tons of soil.

Proposed Use of Rail (continued)

- Rail cars waiting to be loaded will be staged:
 - South of A Street (between Azuar Drive and Walnut Avenue) – main staging area.
 - Along west side of Azuar Drive – temporary staging area during loading activities.
- Temporary fencing will be installed along north and south sides of A Street, in between the Sports Complex and the rail car staging area.
 - Temporary fencing will also be installed along Azuar Drive on eastern portion of CTA.
- When ready to be loaded, rail cars will be shuttled across from main staging area, across Azuar Drive to the CTA for loading.

Proposed Use of Rail (continued)

- Rail services will be generally conducted during daylight hours.
 - Transfer of loaded and unloaded rail cars will occur at Alston Yard in the evenings.
 - Rail cars will not cross Mare Island Causeway during peak traffic hours (7AM to 9AM and 4:30PM to 5:30PM).
- Rail use estimated to begin mid-August 2010 and continue through end of September 2010.



**Questions
and/or
Comments**

SHEILA ROEBUCK VERIFIED STATEMENT EXHIBIT D

Neal
Siler/SANRAMON/WEST/Lennar
07/28/2010 06:06 PM

To <Dick.Crim@CH2M.com>
cc Clemena.Balbuena@CH2M.com, Jennifer.Low@CH2M.com,
Sheila.Roebuck@Lennar.com
bcc
Subject RE: CTA Rail Haul Option 

Dear Dick:

Received your voice mail message and confirm that CH2M Hill will not be making a presentation on the rail option, but will be reverting back to the original presentation topic (Implementation of IA C3 Triangle BGM RAP). I have alerted the Navy to this change in topic.

I will not be at the RAB meeting tomorrow night - I have to take care of something else tomorrow afternoon. Someone will let everybody know that the LMI topic has changed.

Any questions or comments, please call or e-mail.

LENNAR
URBAN

Neal Siler
Div Environmental Mgr
Lennar Corporation

neal.siler@lennar.com
www.lennarurban.com

Office Phone: (707) 557-8224
FAX Number: (707) 562-4002

690 Walnut Avenue, Suite 100
Vallejo, California 94592

This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Thank you.

<Dick.Crim@CH2M.com>



<Dick.Crim@CH2M.com>
07/27/2010 01:47 PM

To <Neal.Siler@lennar.com>
cc <Clemena.Balbuena@CH2M.com>,
<Jennifer.Low@CH2M.com>,
<Sheila.Roebuck@Lennar.com>
Subject RE: CTA Rail Haul Option

Neal, can I assume you will make an announcement at the beginning of the RAB meeting that indicates that the option for transport by rail was an option being proposed and that is why it was on the agenda and it is now not an option and being removed from discussion?

I have talked with Janet regarding the rail option and informed her it would not be a topic discussed at

the RAB and that is why I had not forwarded the PowerPoint presentation for her review. She was appreciative in my letting her know and did not express any concerns.

Regards

Dick

From: Neal.Siler@lennar.com [mailto:Neal.Siler@lennar.com]
Sent: Tuesday, July 27, 2010 13:08
To: Crim, Dick/PDX
Cc: Balbuena, Clemena/BAO; Crim, Dick/PDX; Low, Jennifer/BAO; Sheila.Roebuck@Lennar.com
Subject: Re: CTA Rail Haul Option
Importance: High

Dear Dick:

Thanks for letting me know. We will not be able to recall the newspaper notice or the flyers that went to the stakeholders. But, probably better to remove it as a topic since it appears that this option is no longer viable.

Steve Farley is seeing if the former topic - IA C3 BGM Triangle Implementation - is in a state to go forward and he should get back to me within the hour. CH2M will have to make some sort of presentation.

I met with Janet Naito on a different topic this morning and you may want to call her and let her know that this will not be the topic. She wanted to know where the presentation on the rail option was as she thought that you were going to send it along to her for review. You may want to consider giving her a heads up.

Any other questions or comments, please call or e-mail.

LENNAR
URBAN

Neal Siler
Div Environmental Mgr
Lennar Corporation

neal.siler@lennar.com
www.lennarurban.com

Office Phone: (707) 557-8224
FAX Number: (707) 562-4002

690 Walnut Avenue, Suite 100
Vallejo, California 94592

This message, including any attachments, may include privileged, confidential and/or inside information. Any distribution or use of this communication by anyone other than the intended recipient(s) is strictly prohibited and may be unlawful. If you are not the intended recipient, please notify the sender by replying to this message and then delete it from your system. Thank you.

<Dick.Crim@CH2M.com>
m>

To <Neal.Siler@lennar.com>
cc <Sheila.Roebuck@Lennar.com>, <Clemena.Balbuena@CH2M.com>, <Jennifer.Low@CH2M.com>,
<Dick.Crim@CH2M.com>

07/27/2010 11:55 AM

Subject: CTA Rail Haul Option
ct

Neal, USAE has requested their alternative bid option concerning the possibility of rail transportation for waste derived from remedial activities on their CTA contract with CH2MHILL be withdrawn and we are going to allow this. This alternative bid option regarding rail transportation is currently on the RAB agenda for this Thursday. Can you have it removed from this agenda? What do you need CH2M HILL to do to assist with having this removed from the agenda?

Please let me know.

Regards

Dick

Dick Crim, P.E.
Mare Island Office Direct 707.554.8177
Mobile 503.789.9158
Fax 503.736.2027
email dick.crim@ch2m.com