THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS. SUPERIOR COURT

City of Portsmouth

v.

Town of Newington Planning Board

Docket No. 218-2014-CV-00654

CERTIFIED RECORD OF THE TOWN OF NEWINGTON PLANNING BOARD

July 21, 2014

TOWN OF NEWINGTON PLANNING BOARD
By and through its attorneys,
DONAHUE, TUCKER & CIANDELLA, PLLC
John J. Ratigan, Esq.
225 Water Street
Exeter, NH 03883
(603) 778-0686
jratigan@dtclawyers.com

CERTIFIED RECORD OF THE TOWN OF NEWINGTON

The undersigned, Newington Town Planner Thomas Morgan, is keeper of the records of the Planning Board of the Town of Newington, New Hampshire, and certifies that the attached is a complete, true and correct copy of the records before the Planning Board in the matter of City of Portsmouth v. Town of Newington Planning Board, Docket #218-2014-CV-00654 and that these documents constitute the record appealed from in this matter.

The attached includes all written documents and minutes of the Planning Board.

TOWN OF NEWINGTON

Date: July 22, 2014 By: _____

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham, SS

Sworn to before me this 22nd day of July, 2014.

OFFICIAL SEAL
ELEANOR BOY
NOTARY PUBLIC
NEW HAMPSHIRE
My Comm. Expires 2-28-2019

_____
Notary Public/Justice of the Peace
My Commission Expires: _____

THE STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS. SUPERIOR COURT

City of Portsmouth

v.

Town of Newington Planning Board

Docket No. 218-2014-CV-00654

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Letter of Authorization

Re: Tax Sheet 20/13 & 14/2
190 Shattuck Way
Newington, NH 03801-2823

"SEA-3 Inc. Facility Expansion"
Site Plan Review

To whom it may concern:

V.P. of OPERATIONS

I, Paul Bogan, the Vice President of Operations for SEA-3 Inc. , the ~~owner~~ of the above referenced lot, do hereby authorize Haight Engineering, LLC of Dover, NH, to present plans and pursue permits for the development of the above referenced lot on our behalf.

Sincerely,

Paul N Bogan
Paul Bogan, VP Operations SEA-3 Inc.

8-7-13
Date

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

August 23, 2013

Thomas Morgan, Planner
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

Re: **Conceptual Site Plan Review: "SEA-3 Inc. Facility Expansion"**
Tax Sheet 20/13 & 14/2
109 Shattuck Way
Newington, NH 03801-2823

Dear Mr. Morgan,

On behalf of the applicant, SEA-3 Inc., we are requesting that the above referenced "Conceptual Site Plan" be placed on the next available Planning Board and Conservation Commission agenda's for conceptual review.

The applicant is proposing to construct additional facilities on their lot 14/2 at 109 Shattuck Way to provide for an increase in off -loading capacity of Liquefied Petroleum (LP) gas. The expansion will include upgrades to the existing railroad siding, installation of a new railroad siding with discharge pads to accommodate up to an additional 10 rail cars, installation of 3-90,000 gallon above ground tanks and associated chilling and pumping equipment.

The purpose of the expansion is to increase the volume of product the existing facility can off-load from rail cars and store in the existing tanks on-site. This will allow SEA 3 to provide bulk volume available for shipping by sea to accommodate domestic and foreign product price fluctuations.

Attached for your information and use are:

- 8 copies each of the "conceptual" site plan full-size (22"x32") and (11"x17")
- authorization letter from the Owner of record

Please let me know if you need any additional information.

Sincerely,

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

HAIGHT ENGINEERING

Stephen J. Haight

c.c. Paul Bogan, SEA3 Inc.
James Verra, James Verra & Associates, Inc.

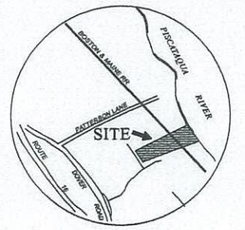
Front

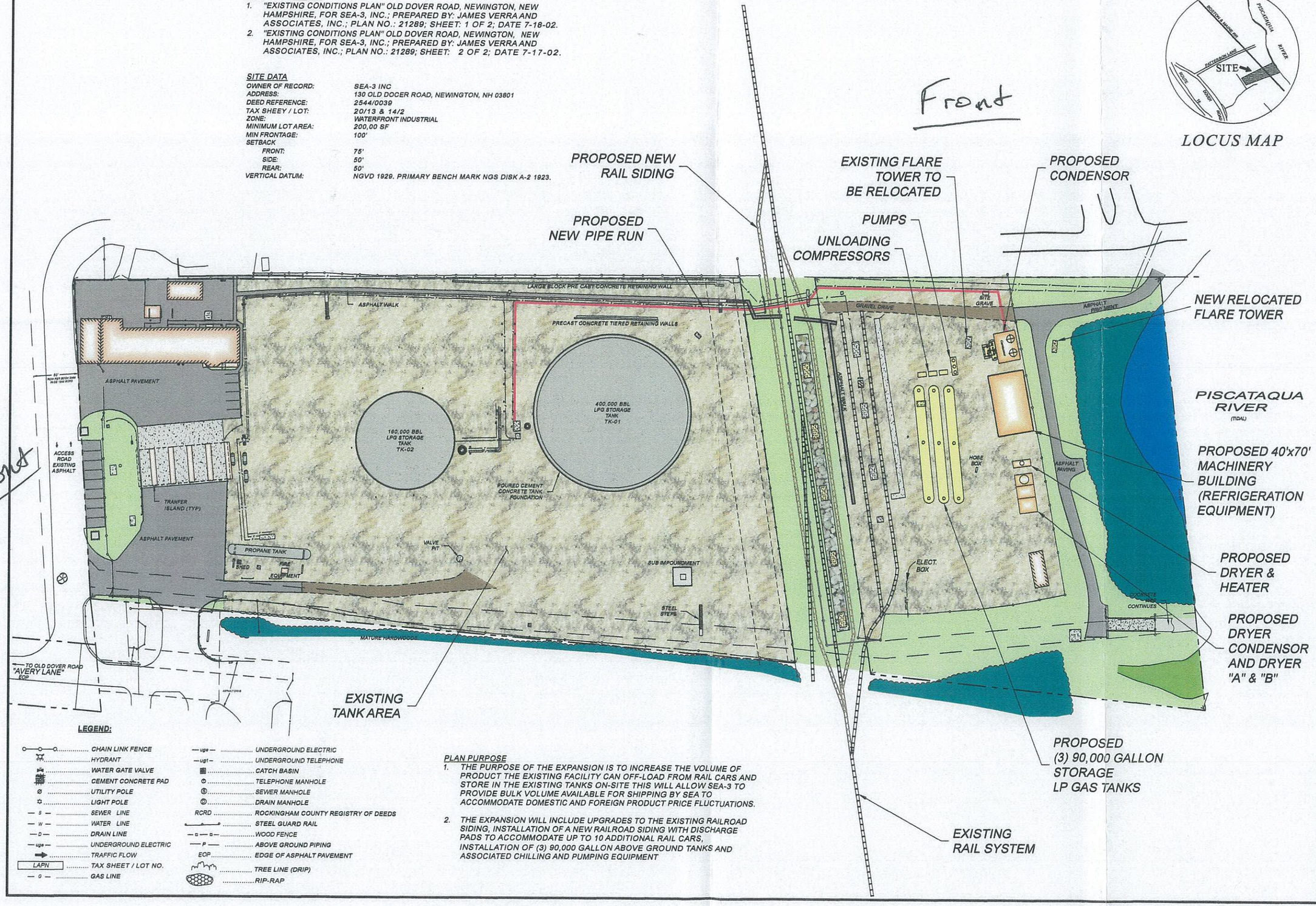
REFERENCE PLANS

1. "EXISTING CONDITIONS PLAN" OLD DOVER ROAD, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY: JAMES VERRA AND ASSOCIATES, INC.; PLAN NO.: 21289; SHEET: 1 OF 2; DATE 7-18-02.
2. "EXISTING CONDITIONS PLAN" OLD DOVER ROAD, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY: JAMES VERRA AND ASSOCIATES, INC.; PLAN NO.: 21289; SHEET: 2 OF 2; DATE 7-17-02.

SITE DATA

OWNER OF RECORD:	SEA-3 INC
ADDRESS:	130 OLD DOCER ROAD, NEWINGTON, NH 03801
DEED REFERENCE:	2544/0039
TAX SHEEY / LOT:	20/13 & 14/2
ZONE:	WATERFRONT INDUSTRIAL
MINIMUM LOT AREA:	200,00 SF
MIN FRONTAGE:	100'
SETBACK	
FRONT:	75'
SIDE:	50'
REAR:	50'
VERTICAL DATUM:	NGVD 1929. PRIMARY BENCH MARK NGS DISK A-2 1923.





Front

LEGEND:

CHAIN LINK FENCE	UNDERGROUND ELECTRIC
HYDRANT	UNDERGROUND TELEPHONE
WATER GATE VALVE	CATCH BASIN
CEMENT CONCRETE PAD	TELEPHONE MANHOLE
UTILITY POLE	SEWER MANHOLE
LIGHT POLE	DRAIN MANHOLE
SEWER LINE	ROCKINGHAM COUNTY REGISTRY OF DEEDS
WATER LINE	STEEL GUARD RAIL
DRAIN LINE	WOOD FENCE
UNDERGROUND ELECTRIC	ABOVE GROUND PIPING
TRAFFIC FLOW	EDGE OF ASPHALT PAVEMENT
TAX SHEET / LOT NO.	TREE LINE (DRIP)
GAS LINE	RIP-RAP

PLAN PURPOSE

1. THE PURPOSE OF THE EXPANSION IS TO INCREASE THE VOLUME OF PRODUCT THE EXISTING FACILITY CAN OFF-LOAD FROM RAIL CARS AND STORE IN THE EXISTING TANKS ON-SITE THIS WILL ALLOW SEA-3 TO PROVIDE BULK VOLUME AVAILABLE FOR SHIPPING BY SEA TO ACCOMMODATE DOMESTIC AND FOREIGN PRODUCT PRICE FLUCTUATIONS.
2. THE EXPANSION WILL INCLUDE UPGRADES TO THE EXISTING RAILROAD SIDING, INSTALLATION OF A NEW RAILROAD SIDING WITH DISCHARGE PADS TO ACCOMMODATE UP TO 10 ADDITIONAL RAIL CARS, INSTALLATION OF (3) 90,000 GALLON ABOVE GROUND TANKS AND ASSOCIATED CHILLING AND PUMPING EQUIPMENT

BAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

NO.	REVISION	APP'D	DATE

DATE: 8-23-2013
SCALE: 1"=50'
DRAWN BY: SRD
DESIGN BY: SRD
APPROVED BY:S.H
PROJECT NO: 1322
FILE: CONCEPT-A

CONCEPTUAL SITE LAYOUT

SEA-3 INC.
109 SHATTUCK WAY
NEWINGTON, NH 03801-2823

SEA-3
FACILITY EXPANSION
NEWINGTON, NEW HAMPSHIRE

C-X

Newington Planning Board

Monday September 9, 2013 6:30 PM

Agenda

1) **Public Hearings:**

A) Proposal by Keypoint Partners to move and/or upgrade seven free-standing signs at the Crossings at Fox Run, 45 Gosling Road, Tax Map 34, Lot 3.

B) Proposal by Cumberland Farms to raze and rebuild a gas station at 97 Gosling Road, Tax Map 34, Lot 2.

2) **New Business:**

A) Proposal by Barbara Hackett for additional parking at 105 Gosling Road, Tax Map 28, Lot 1.

B) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

3) **Planning Board minutes** of August 12

4) **Correspondence**

5) **Pending Business**

A) Revisit Newington Master Plan
B) Improve signage in the Shattuck Way corridor
C) Capital Improvements Program
D) Update Rules of Procedure
E) LED signs

Denis J. Hebert, Chair

Planning Board

SEA-3, Newington, NH JVA Job No. 21289

; Newington Assessor: 2013-08-12
; Last Updated: hrm: 2013-08-12
Last Update: JV 2013-11-01

08-2A
Pan Am Railways
1700 Iron Horse Park
North Billerica, MA 01862

14-01
Marshall Remick Rev. Trust
Matthew J. Metivier, Trustee
164 Shattuck Way
Newington, NH 03801
4379/2596

14-02
190 SHATTUCK WAY
Sea-3 Inc.
190 Shattuck Way
Newington NH 03801

14-03
OFF PATTERSON LANE
U.s Government D.O.D.
205 Nimble Hill Rd
Newington NH 03801

14-16
194 SHATTUCK WAY
Sprague Operating Resources LLC
2 International Dr, Ste 200
Portsmouth NH 03801

14-17
OFF PATTERSON LANE
US government-Defence Fuel Supply
61 International Dr
Portsmouth, NH 03803-0157

19-10
PATTERSON LANE
EP Newington Energy LLC
150 College Rd Westm, Ste 300
Princeton NJ 08540-6659
4928/0688

20-02
170 SHATTUCK WAY
Georgia-Pacific Gypsum LLC
Attn: Property Tax
Po Box 105681
Atlanta GA 30348-5681
4772/0623

20-03
178 SHATTUCK WAY
Westinghouse C E
1000 Westinghouse Dr, Ste 430

Cranberry PA 16066

20-12
174 SHATTUCK WAY
Sprague Operating Resources LLLC
2 International Dr, Ste 200
Portsmouth NH 03801

20-13
190 SHATTUCK WAY
Sea-3 Inc
190 Shattuck Way
Newington NH 03801

20-14
Jennifer A. Cole
166 Shattuck Way
Newington, NH 03801
4386/2154

20-15
162 SHATTUCK WAY
Metivier, Matthew
164 Shattuck Way
Newington NH 03801
4388/2235

20-17
Lordco Pier Association
138 Shattuck Way
Newington, NH 03801

James Verra and Associates, Inc.
101 Shattuck Way, Suite 8
newington, NH 03801-7876

Haight Engineering, PLLC
PO Box 1166
Dover, NH 03820

Luke D. Hurley CWS
Gove Environmental Services, Inc
8 Continental Dr, Unit H, Exeter, NH 03833-7507

Town of Newington, NH
PLANNING BOARD
Meeting Minutes, Monday, September 9, 2013

Call to Order: Vice Chair, Mike Marconi called the September 9, 2013 meeting at 6:36 PM.

Present: Bernie Christopher; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Thomas Morgan, Town Planner, and Jane Kendall, Reporting Secretary

Absent: Chair Denis Hebert and Board of Selectmen Chair, Rick Stern;

Public Guests: Alicia Busconi, VP, Keypoint Property Management for the Crossings; Barbara Hallett; Paul Bogan, VP Operations, and John Mielke, Operations Manager of Sea-3; Stephen Haight, P.E., Haight Engineering; James Vera, Surveying & Mapping; Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways; Attorney Alec McEachern

1) Public Hearings:

A) Proposal by **Keypoint Partners** to move and/or upgrade seven free-standing signs at the **Crossings at Fox Run, 45 Gosling Road**, Tax Map 34, Lot 3

Alicia Busconi of Keypoint Partners informed the Board that the Zoning Board of Adjustment (BOA) had granted their requests for variances, and she was returning for Site Plan Review.

Town Planner, Tom Morgan said he had spoken with Planning Board Chair, Denis Hebert regarding possible changes to the ordinances regarding reader boards, but those changes would take several months before they could be implemented, and because the Crossings already submitted their proposal, they would be grand fathered. However, Mr. Morgan said the Board expressed concern with brightness and motion during the preliminary discussions during the August 12, 2013 meeting.

Alternate Board member, Peggy Lamson said she was not in favor of the height and would prefer more traditional signage, but she understood that it was a place of commerce. Ms. Busconi said they would still take Ms. Lamson's comments into consideration and see what they could do to make the signs look less modern.

Board member, Justin Richardson asked if an engineer looked at the plan, and Ms. Busconi said they provided a letter from Gorrill-Palmer Engineers.

Board member, Jack Pare asked if the plan before the Board showed the modifications, and Ms. Busconi said Tom Morgan had the plan that was presented to the BOA. Mr. Richardson who is the Board's representative on the BOA said their approval was conditional on the Planning Board's approval.

Mr. Richardson went on to say that the Zoning Ordinance specifies the interval of time a sign can change, and it would be important to stipulate that the sign should be used like a traditional sign, showing who the tenants are, and events, but not as a form of advertising sales that would cause vehicles to stop and read details. Ms. Busconi agreed that they would not put monetary advertising on the signs, but clarified that some of the tenants like Best Buy are associated with certain brand names that they may want to list with their logos.

Vice Chair Marconi closed the public discussion.

Justin Richardson moved to approve the application for Site Review by Keypoint Partners to move and/or upgrade seven free-standing signs at the Crossings at Fox Run, 45 Gosling Road, Tax Map 34, Lot 3 as shown on Gorrill-Palmer Engineering Plan Dated August 2013, File #2820 subject to the following conditions:

1) *That the signs be used for trademark or brand names affiliated with on site businesses, or events*
2) *And that the signs not be used for sales or statements requiring reading except those listed in Condition 1 above*
3) The sign shall not change more frequently than 30 seconded as listed on Article 17, Section 2 of the Zoning Ordinance.

Peggy Lamson seconded, and all were in favor.

B) Proposal by **Cumberland Farms** to raze and rebuild a gas station at **97 Gosling Road**, Tax Map 34, Lot 2.

This hearing was postponed until the October 17, 2013 meeting at the request of the applicant.

2) New Business

A) Proposal by **Barbara Hallett** for additional parking at **105 Gosling Road**, Tax Map 28, Lot 1

Barbara Hallett came before the Board with a preliminary parking plan as suggested by Ambit Engineering with straight parking instead of angled parking to increase her shopping center parking by a few spaces. Ms. Hallett also said she would need to pave for extra space. Mr. Morgan said she would need to apply to the BOA to request a variance to pave outside the setback requirement, and the Board would want an engineer's report on the impact the additional paving would have on storm water runoff. Mr. Richardson said it would be helpful to have a plan submitted in digital PDF form to be made available for Board members to review online.

B) Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate liquefied petroleum gas (propane) shipments via rail, and the export of same via ocean-going ships.

Paul Bogan, VP Operations, reviewed the history of Sea-3 that started importing propane at their Newington location in 1975. However, two years ago sales competition caused their Algerian suppliers to increase their costs, which caused them to lose domestic sales drastically. They have since come up with a plan to bring domestic propane from Western Pennsylvania and West Virginia by refrigerated rail and then redistribute it overseas, and some parts of New Hampshire, and New England. In order to do this they are planning to expand their rail unloading facility on Shattuck Way. The product will be unloaded into ambient pressure storage tanks, then pumped into drying towers to remove moisture, and then into chilling tanks to bring the temperatures down to - 45 degrees Fahrenheit for transportation.

Mr. Richardson asked if the pressure of the product would be different than that coming in from the ships than that coming in from rail, and Mr. Bogan said it would.

Ms. Lamson asked if the roadways would need to be closed when shipments came in by rail just as the river is closed when shipments came in by ship. Mr. Bogan said they have brought shipments in by rail before, but they would be bringing in more to make it profitable. Ms. Lamson asked how my rail cars would be coming in a day, and Mr. Bogan said he expected twelve a day.

Mr. Richardson asked about noise issues, and Mr. Bogan said all the refrigeration units were electric motor driven so there should be very little noise.

Vice Chair Marconi asked if they would ever shut down for maintenance, and Mr. Bogan said they would.

Mr. Pare asked where extra rail cars would be stored, and Cynthia Scarano Executive Vice President for Pan Am Railways said they would probably be stored at Rockingham Junction. Mr. Pare asked if hey had talked with the Newington and Portsmouth fire chiefs regarding an increased need for fire readiness, and Mr. Bogan said they had. Mr. Morgan said LPG is already transported through the rail yards in Portsmouth. Mr. Pare said he imagined there would be the same issues with rails as ships except that they would be exporting instead of importing.

Vice Chair Marconi asked if they would be upgrading the rails, and Ms. Scarano said they would. Ms Lamson asked for clarification for the record where Rockingham Junction is and what route the freight would take. Mr. Bogan said the shipments would be coming through Rotterdam, NY to Rockingham Junction in Strafford, through Greenland, and then up to Portsmouth past Market Street and Atlantic Heights to their destination at their Newington site. Mr. Richardson asked how many miles of rail tracks would be upgraded, and Ms. Scarano said they would be upgrading from Portsmouth to Newington. She said their tracks are currently rated as Class I, which allows hazardous materials to be transported at 10 mph. They were considering upgrading to Class II that would allow them to travel at 25 mph, which would enable more cars to be delivered. Mr. Morgan said the should keep in mind that RSA 36; Section 54 states that Planning Boards can notify and invite other communities to join their review whenever they suspect a project may have an impact outside their community.
Mr. Morgan asked what the differences from importing to exporting would have on ships, and Mr. Bogan said they used to have 12-13 import ships a year, and then it went down to six, but they hope to bring the numbers back up over time.

Surveyor, Jim Vera said the intent of their discussion was to determine frontage so they could proceed with plans. Mr. Morgan pointed out that Sea-3 owns two parcels bisected by the railroad, which is out of their jurisdiction. Engineer, Steve Haight said they talked to the fire chief and he suggested the best access on one parcel would be through Sprague, and the other would be through Avery Road. Mr. Morgan said Avery Road is private, not a Town road. Mr. Pare suggested they stick with the existing ingress and egress. Mr. Richardson asked why the Board would make that recommendation, and Mr. Morgan said most towns leave it to their planners, but Newington wanted to leave it to their Planning Board.

Jack Pare moved that the Planning Board recommend the access points for Sea3's terminal at 190 Shattuck Way (Tax Map 14, Lot 2; and Map 20, Lot 13) be from the north bordering the Piscataqua River be through Sprague Energy, and the inland access to the front yard to the west be through Avery Road. Bernie Christopher seconded, and all were in favor.

Mr. Haight asked if there were any other concerns or issues that the Board wanted them to address. Vice Chair Marconi said they would need to apply to the NH Department of Environmental Services, and Mr. Pare said they should submit a statement from their design engineer as well. Mr. Morgan said they should consult with a specialist who understands propane for their peer review. He also said the Board did site walks with Sea-3 in the past, and they should do another. A date was discussed for Monday, September 16, 2013.

Comments and Discussion:

Ms. Lamson said is always important to consider surrounding communities before granting projects such as the change over from Pease Air Force Base to the Pease Development Authority where the FAA, the State of New Hampshire, and the former Portsmouth City Manager "sold Newington down the river" when they consented to a public benefit transfer because despite her serving as a representative for the Town, the surrounding communities have little or no influence in what they do, and now a helicopter school and touring operation will be coming in to Pease.

Mr. Richardson said they should be looking at financial solvency at the troubled airport. He also questioned the time the helicopter operation put into securing qualified pilots in such a short period of time.

Minutes:

Ms. Lamson was absent from the meeting and recused herself from voting. Mr. Richardson said he didn't have a chance to review them and requested that approval of the Minutes for the August 12, 2013 Meeting be moved to the next meeting.

Adjournment: *Justin Richardson motioned to adjourn, and Peggy Lamson seconded. All were in favor and meeting adjourned at 8:15 pm*

Next Meeting: Monday, September 22, 2013

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

Newington Planning Board

Monday September 16, 2013 3:00 PM

Agenda

1) **New Business:** In response to a proposal by Sea-3 to reconfigure its terminal (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, the Newington Planning Board will conduct a site inspection of Sea-3's facility at 190 Shattuck Way.

Denis J. Hebert, Chair
Planning Board

MINUTES OF THE NEWINGTON PLANNING BOARD
September 16, 2013 3 PM.
Sea-3 Site Visit

Present: Michael Marconi, Jack Pare, Justin Richardson, Tom Morgan.
Members of the Public: Paul Bogan, Steve Haight, Jim Verra

The Board members met at the Gate at Sea-3 on Avery Lane at 2:50 PM and waited for other members or members of the public to arrive as the meeting had been posted for 3 PM. At 3:10 PM the site visit commenced.

Control room. After signing in, the Board members observed the control room. CEO provided an overview of operations and controls in the control room, including an explanation of:

- Overview of LP delivery points, operations, monitoring and controls.
- Alarm systems
- Truck loading areas
- Marine loading areas
- UV detection systems, alarms and fire systems

Tank/Containment Area. The Board passed through the LP tank area and observed the tanks and containment structure and discussed its purposes (110% containment of the largest tank).

Rail site/proposed loading area. The Board next visited the proposed rail delivery area and examined existing rail and loading area. The Board members discussed:
Rail loading and unloading procedures.
Emergency shut down, controls and valves
UV and Vapor Detection systems.
Flare systems.
Other rail uses, properties served.
CEO explained Pan Am proposes to remove the GP Gypsum spur
Stormwater regulations (AOT and Town) requirements were discussed.
Shoreland and property line setbacks were discussed.
Rail safety classes were discussed.

Newington Energy pier. The Board members briefly visited the Newington Energy pier for the cooling water pump house, and discussed river access points for Sea-3 and other facilities.

The Board then travelled back to the entrance/control room. No decisions or votes were taken. The meeting adjourned at 4:20 PM.

RAIL SYSTEM SAFETY REPORT

Prepared for Governor Paul R. LePage
as required by
Executive Order 2013-004

September 30, 2013

MaineDOT

1. Introduction

On July 6th 2013, a runaway and unattended freight train operated by Montreal, Maine and Atlantic (MMA) carrying 72 cars of crude oil derailed and exploded in Lac Megantic, Québec, taking 47 lives and destroying more than 30 buildings in the town. To assure Maine citizens that systems are in place to prevent such a tragedy in Maine, on July 9th Governor LePage issued Executive Order 2013-004, which required the Maine Department of Transportation (MaineDOT) to review the safety of the State's rail system and report back to the Governor.

The rail transportation system in the State of Maine consists of approximately 1,150 miles of rail track. All railroads in Maine are operated by private sector companies. In fact, Maine state law prohibits the State from operating a railroad. 23 MRSA 7155. Rail transportation is crucial to the well-being of Maine's economy, and is an integral part of interstate and international commerce. Accordingly, the field of railroad safety is generally pre-empted by federal law and regulations promulgated and enforced by the Federal Rail Administration (FRA).

In acknowledgement of the primary federal role, the Executive Order 2013-004, copy attached as Appendix A, required MaineDOT to review available FRA rail safety reports, request FRA reports on MMA inspections, use any available information on the cause of the Lac Megantic tragedy to mitigate any safety concerns, and continue to cooperate with the FRA. The Order also required a report back to the Governor, including any findings and recommendations, within 90 days of the Order.

This report is the result. It summarizes inspections that occurred before and after the Lac Megantic tragedy, the results of a request by MaineDOT Commissioner Bernhardt to Maine's five freight rail companies regarding best practices for securing freight trains, emergency orders that have been issued by federal rail safety regulators in Canada and the United States in response to the events in Lac Megantic, and findings and recommendations.

As set forth below, although no form of transport is free from all risk, it appears that existing rail safety practices are adequate, and that a tragedy like Lac Megantic will not occur in Maine if the private railroad operators follow their own safety practices and those of the FRA, the agency responsible for rail safety in the United States.

2. Safety Inspections Occurring Before the Lac Megantic Tragedy

a. The General Regulatory Framework

As noted above, federal law governs rail activity and the FRA provides oversight and enforcement of railroad safety. FRA rules govern all aspects of rail safety including the following five disciplines: (1) track, (2) grade crossings, (3) mechanical / rail equipment, (4) operating practices and procedures, and (5) movement of hazardous materials. Under FRA regulations, each railroad operator has primary responsibility to ensure its infrastructure and

operations meet or exceed applicable federal safety standards. The FRA conducts periodic, random inspections of the railroads to ensure regulations are being followed and infrastructure properly maintained.

The 1970 Railroad Safety Act authorizes states to work in partnership with the FRA to enforce federal rail road safety regulations. The Act allows state inspectors to be trained and certified by the FRA. The state inspectors are then able to conduct investigative and surveillance activities to ensure the application and interpretation of federal rail safety rules, regulations, orders and standards reflect national uniformity. These state inspectors work in concert with regional FRA inspectors who perform inspections in several states within a designated region.

Pursuant to 23 MRSA § 7312, MaineDOT has participated in the FRA track and equipment safety inspection program since the early 1980s. MaineDOT currently employs a full time track inspector and our rail maintenance manager also acts as a part-time inspector, working closely with the FRA to perform safety inspections on rail track and equipment. The MaineDOT inspectors are delegated certain authority by the FRA as set forth in 49 Code of Federal Regulations, part 212. These certified inspectors file inspection reports with the FRA for necessary enforcement of observed deficiencies or rule violations. Through MaineDOT participation in this program, our inspectors have access to private rail track throughout the state as well as the FRA database containing inspection reports and results of Maine inspections.

Working in cooperation with the FRA, inspection reports were thoroughly reviewed after the Governor's Executive Order to ensure that the ongoing FRA inspection program in Maine is consistent and concentrated in areas of highest rail traffic and/or concern. This type of data review is also done internally at FRA on an ongoing basis to improve its inspection program. In addition, if concerns are raised by the public or if significant data or events show areas of concern, an increased number of inspections and FRA scrutiny comes into play.

b. Focused Inspections Due to Increased Volume of Crude Oil Shipments

In addition to routine random inspections, there have been recent focused inspections on routes that carry bulk crude oil and other hazardous material in Maine.

In July of 2012, the FRA conducted a focused inspection on Pan Am Railways reviewing track conditions within Maine, with particular focus on the Pan Am mainline track.

During the week of May 6, 2013, the FRA conducted another focused inspection on 200 miles of Pan Am track between Portland and Mattawamkeag, and the FRA reviewed over 600 of Pan Am's internal track inspection records.

In June of 2013, FRA inspectors completed additional concentrated inspections and completed a planned FRA Automated Track Inspection (ATIP) of the Pan Am Freight mainline between the New Hampshire border and Mattawamkeag, Maine. Their focused inspection continued onto the Eastern Maine Railway from Mattawamkeag to Brownville, followed onto the Maine Montreal Atlantic track, from Brownville to Hermon. The ATIP car rides over rails

testing for a variety of track conditions simultaneously; highlighting areas of defects or locations where additional on the ground inspection might be needed.

In sum, prior to the Lac Megantic tragedy, there were 1,201 FRA observations performed in 2013 on railroads in Maine across the five (5) disciplines from January through June. Many were focused specifically on the risk posed by increased transport of crude oil. During this process, defects were identified, requiring attention by the railroad operators, however, no defects were found that warranted the shutdown of any rail lines in Maine. Assuming the railroad companies follow established safety procedures, there was no indication from these inspections that a disaster like Lac Megantic could occur.

3. Safety Inspections Occurring After the Lac Megantic Tragedy

The July 6th Lac Megantic tragedy obviously required that FRA inspections be expedited and focused on the MMA.

Accordingly, during the second and third weeks of July, 2013, the FRA conducted focused inspections on the Montreal, Maine and Atlantic Railway, across all five (5) FRA disciplines. The FRA expanded the ATIP inspection program to include additional portions of the MMA lines, Eastern Maine Railway (EMR) lines, and Pan Am Rail lines. Specifically, the inspection program targeted the crude oil and high volume rail routes. Specifically, the ATIP returned to Maine and inspected from Vanceboro on the EMR, to Brownville and then from Brownville on the MMA line to the Canadian border in Jackman. They tested from Brownville to Searsport on the MMA line, and also tested the Bucksport Branch on the Pan Am line. The ATIP car also tested from Maine into Lac Megantic, Québec per a Transport Canada request. The ATIP also tested track as it departed the state back to the Maine/New Hampshire border.

Since July, there have been an additional 581 observations conducted by FRA and state inspectors across the five (5) disciplines. All concerns and defects observed in inspections are documented and forwarded to the railroad being inspected and FRA staff for correction and follow up. During this process, defects were identified, requiring attention by the railroad operators. Again, however, no defects were found that warranted the shutdown of any rail lines in Maine.

4. Industry Best Practices Regarding Securing Parked Freight Trains

The cause of the Lac Megantic disaster is still under investigation by Transport Canada, the federal agency with oversight of rail safety within Canada. A final report may not come for many months. However, the very existence of a high-speed, unattended, runaway freight train carrying hazardous material indicated that certain railway safety practices were either not being followed or could be improved. Statements from MMA officials themselves indicated that the train may not have been properly secured.

To move this discussion forward, on July 17th MaineDOT Commissioner Bernhardt requested each of the Presidents/General Managers of the five freight railroads operating in Maine to voluntarily share their best practices on securing parked freight trains. See copy attached as Appendix B. Asking for voluntary best practices, recognizing that the FRA is the pre-emptive regulator for rail safety in the United States, gave MaineDOT and the rail operators in Maine an inventory of practices in use by the freight railroads with overall rail safety in mind.

As requested, by July 31st MaineDOT received responses from all five of the freight carriers within the State. Most have recently updated or added additional requirements around parked trains due to the Lac Megantic derailment. Early reviews by MaineDOT demonstrated that the following commonalities among most of the railroads.

- Additional and updated training for all engineers and conductors around securing trains, including operational rules as well as TSA training.
- Crew staffing, including two person crews in most cases.
- Train crews are to notify dispatchers whenever a freight train is parked and left, with notification to include that the train is locked, the number of handbrakes that have been set, that the handbrakes have been tested, and if any wheel chocks or derails have been applied.
- Parked trains will be left on mainlines only when no other option is available to the crew, again crew will notify the dispatcher the train is on the mainline and how it is secured.
- All parked trains will have locomotive cabs locked to prevent any unauthorized entry and reverser controls removed. (the reverser is what the engineers use to control the movement of the train)
- Any cars left in a siding without a locomotive attached will have handbrakes set and derails at both ends of the cars or that switches are set so the cars cannot leave the siding.

5. Emergency Orders Issued By Canadian and U.S. Rail Safety Officials

Further review of these practices by MaineDOT were not required, as the federal agencies responsible for railroad safety each issued emergency orders that pre-empted the issue.

On July 23rd, Transport Canada issued a one-page Emergency Directive pursuant to Section 33 of the Canadian Railway Safety Act. This Directive, attached as Appendix C, applies only to railway operations in Canada. but it is indicative of best practices. The Directive requires that railway companies ensure that:

- unattended locomotives be protected from unauthorized entry;
- hand brakes be applied according to Canadian rail operating rules if a train is unattended for more than one hour;
- unattended trains also have the automatic brakes set and the independent brake fully applied;

- all trains carrying "dangerous goods" be left unattended on main track;
- two person crews on trains carrying "dangerous goods".

On August 2nd, the FRA issued Emergency Order 28. A two page News Release summarizing the Order is attached as Appendix D, and the full text of the 23-page Order can be found www.fra.dot.gov/eLib/details/L04719. This Order, which was effective September 1, 2013, required that all railroads undertake the following measures.

- Trains carrying specified hazardous materials on mainline or side track outside the yard must not be unattended.
- Procedures to secure unattended trains carrying specified hazardous materials including locking the locomotive and reporting of the setting of the correct number of hand brakes.
- Communication to dispatchers and recordation of number of hand brakes applied, tonnage and length of train, grade and terrain of track, relevant weather conditions, and type of equipment.
- Training and notification requirements.

MaineDOT was encouraged, as both of these emergency directives were in line with the best practices the state's rail operators reported using or had implemented post-Lac Megantic. MaineDOT believes these new directives will help clarify rules regarding securing freight trains and improve rail safety on both sides of the border.

6. Finding and Conclusions

Based upon the foregoing, and after review of available FRA rail safety reports including MMA inspections and available information on the cause of the Lac Megantic tragedy, MaineDOT makes the following findings and draws the following conclusions.

1) Prior to the Lac Megantic tragedy, there were 1,201 FRA observations performed in 2013 on railroads in Maine across the five (5) disciplines from January through June. Many were focused specifically on the risk posed by increased transport of crude oil. During this process, defects were identified, requiring attention by the railroad operators, however, no defects were found that warranted the shutdown of any rail lines in Maine. Assuming the railroad companies follow safety procedures, there was no indication from these inspections that a disaster like Lac Megantic could occur.

2) Since Lac Megantic tragedy, there have been an additional 581 observations conducted by FRA and state inspectors across the five (5) disciplines. All concerns and defects observed in inspections are documented and forwarded to the railroad being inspected and FRA staff for correction and follow up. Again, during this process, defects were identified, requiring attention by the railroad operators. Again, however, no defects were found that warranted the shutdown of any rail lines in Maine.

3) Although no form of transport is free from all risk, existing rail safety practices appear adequate. A tragedy like Lac Megantic will not occur in Maine if the private railroad operators follow their own safety practices and those required by the Federal Railroad Administration (FRA).

4) MaineDOT should continue to closely monitor the investigation into the cause of the Lac Megantic being conducted by Transport Canada, and should continue to work closely with the FRA to ensure that there are timely safety inspections of our rail infrastructure throughout the state. MaineDOT should follow the implementation of FRA Emergency Order 28 and weigh-in on other proposed rulemaking for improving railroad safety nationally.

List of Appendices

Appendix A – Executive Order 2013-004 – July 9, 2013

Appendix B – Letter Commissioner Bernhardt Letter Requesting Best Practices to Secure Freight Trains – July 17, 2013

Appendix C - Transport Canada Emergency Directive – July 23, 2013

Appendix D – News Release Regarding FRA Emergency Order 28 – August 2, 2013

OFFICE OF
THE GOVERNOR

NO. 2013-004
DATE July 9, 2013

AN ORDER DIRECTING MAINEDOT TO REVIEW THE SAFETY OF FREIGHT RAIL TRANSPORTATION IN MAINE

WHEREAS, Maine has significant rail systems moving freight throughout and across our State;

WHEREAS, this system is crucial to the well-being of Maine's economy, consisting of over 1,100 miles of trackage;

WHEREAS, this rail system is regulated by the federal government and the tracks are owned both by governmental entities and private businesses; and

WHEREAS, a review by the Maine Department of Transportation of our rail system is in order to ensure our system is safe;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. The Maine Department of Transportation (MDOT) shall:

    a. Review all available safety reports related to railroads in Maine compiled by the Federal Rail Administration, and request additional inspections if warranted;
    b. Request from the Federal Rail Administration a report on the results of inspections of the track, equipment and operations of the Montreal, Maine, and Atlantic Railway;
    c. Utilize information as it becomes available on the cause of the Quebec train derailment to reassess the safety of Maine's rail infrastructure and take appropriate action to mitigate any safety concerns; and
    d. Continue to coordinate cooperation between MaineDOT track inspectors and the Federal Rail Administration.

Appendix A

2. MDOT shall report back to the Governor on any significant findings as they become available, and within 90 days provide the Governor with a progress report on the review and analysis conducted pursuant to this Order, including any findings and recommendations.

The effective date of this Executive Order is July 9, 2013.

Paul R. LePage, Governor

Appendix A

STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R LePage
GOVERNOR

David Bernhardt
COMMISSIONER

July 17, 2013

Dear

RE: Request for Voluntary Best Practices Regarding Securing of Parked Freight Trains

The tragedy in Lac-Megantic, Quebec has caused everyone to reflect on how our transportation industry can provide the level of railroad safety that the public deserves and expects, while at the same time allowing the efficient movement of goods needed to support our economy here in Maine and across North America.

As Canadian officials continue to investigate, no one should jump to conclusions regarding exact causes of the derailment on July 6th. However, the very existence of a high-speed, runaway freight train carrying volatile materials indicates that certain railroad safety practices can be established, improved, or communicated. Of course, we at the Maine Department of Transportation (MaineDOT) understand that the Federal Railroad Administration (FRA) is the pre-emptive regulator of rail safety in the United States. However, pursuant to the Executive Order of Governor Paul R. LePage dated July 9, 2013, MaineDOT wants to facilitate a voluntary, proactive effort to establish reasonable and common sense practices that address the risk of runaway freight trains.

Toward that end, I have directed my staff to work with rail operators in Maine to gather and review best practices regarding the securing of parked freight trains. Specifically, we ask that you submit existing or proposed policies or practices that relate to securing parked trains including parking locations, grades, surrounding terrain, setting of hand brakes, monitoring of trains, timing of crew changes, security, derails, and related training. Obviously, it would be most helpful if the railroads carrying freight in Maine could communicate with each other and agree upon such best practices. Alternatively, your company can separately submit to us suggested practices and related communications by letter or email.

Given the importance of the issue, I request that you submit the requested information to Nate Moulton, MaineDOT's Director of Rail Transportation, by July 31, 2013. After we have heard from you, we hope to document these best practices and that rail operators in Maine will voluntarily agree to follow them until federal rules or guidelines on these topics are issued.

We at MaineDOT hope that you will see this as an opportunity to work together to improve rail safety in Maine, which at the end of the day is the responsibility of all of us, whether we work in public service or private industry.

If you have any questions do not hesitate to contact Nate Moulton or myself.

Sincerely,

David Bernhardt
Commissioner

Appendix B

Emergency Directive Pursuant to Section 33 of the *Railway Safety Act*

Safety and Security of Locomotives in Canada

To: All Railway Companies and Local Railway Companies

Section 33 of the *Railway Safety Act* (RSA) gives the Minister of Transport the authority to issue an emergency directive to any company when the Minister is of the opinion that there is an immediate threat to safe railway operations or the security of railway transportation.

Although the cause of the tragic accident in Lac-Mégantic remains unknown at this time, and although I remain confident in the strength of the regulatory regime applicable to railway transportation in Canada, I am of the opinion that, in light of the catastrophic results of the Lac-Mégantic accident and in the interest of ensuring the continued safety and security of railway transportation, there is an immediate need to clarify the regime respecting unattended locomotives on main track and sidings and the transportation of dangerous goods in tank cars using a one person crew to address any threat to the safety and security of railway operations.

Pursuant to section 33 of the RSA, all railway companies and local railway companies are hereby ordered to:

1. Ensure, within 5 days of the issuance of the emergency directive, that all unattended controlling locomotives on main track and sidings are protected from unauthorized entry into the cab of the locomotives;
2. Ensure that reversers are removed from any unattended locomotive on main track and sidings;
3. Ensure that their company's special instructions on hand brakes referred to in Rule 112 of the *Canadian Rail Operating Rules* are applied when any locomotive coupled with one or more cars is left unattended for more than one hour on main track or sidings;
4. Ensure, when any locomotive coupled with one or more cars is left unattended for one hour or less on main track or sidings, that in addition to complying with their company's special instructions on hand brakes referred to in item 3 above, the locomotives have the automatic brake set in full service position and have the independent brake fully applied;
5. Ensure that no locomotive coupled with one or more loaded tank cars transporting "dangerous goods" as this expression is defined in section 2 of the *Transportation of Dangerous Goods Act* (TDGA) is left unattended on main track; and
6. Ensure that no locomotive coupled with one or more loaded tank cars transporting "dangerous goods" as this expression is defined in section 2 of the TDGA is operated on main track or sidings with fewer than two persons qualified under their company's requirements for operating employees.

For the purpose of this emergency directive an "unattended locomotive" or a "locomotive coupled with one or more cars that is left unattended" means that it is not in the immediate physical control or supervision of a qualified person acting for the company operating the locomotive or car(s) in the case of items 3 and 4 above or a person acting for the company operating the locomotive or car(s) in the case of items 1, 2 and 5 above.

For the purpose of this emergency directive, "main track" and "sidings" do not include main track or sidings in yards and terminals.

For greater certainty, nothing in this emergency directive relieves a company of the obligation to

comply with Rule 112 of the *Canadian Rail Operating Rules.*

Pursuant to section 33 of the RSA, this emergency directive takes effect immediately and is to remain in effect until 23:59 EST on December 31, 2013.

_____
Assistant Deputy Minister
Safety and Security

Date:_____

Related Items

July 23, 2013
News Release - **Transport Canada announces emergency directive to increase rail safety**

Date modified: 2013-07-24

Appendix C

U.S. Department of Transportation
Office of Public Affairs
1200 New Jersey Avenue, SE
Washington, DC 20590
www.dot.gov/briefingroom

News

FRA 22-13
Friday, August 2, 2013
Contact: Kevin F. Thompson
Tel.: 202-493-6024

Federal Railroad Administration Issues Emergency Order to Prevent Unintended Hazardous Materials Train Movement

WASHINGTON – The U.S. Department of Transportation's Federal Railroad Administration (FRA) today issued an Emergency Order and Safety Advisory to help prevent trains operating on mainline tracks or sidings from moving unintentionally. The FRA's announcement was made in response to the July 6, 2013 derailment in Lac-Mégantic, Quebec, Canada, as it awaits additional data once the investigation into the crash is complete. The actions announced today build on the success of FRA's rigorous safety program, which has helped reduce train accidents by 43 percent over the last decade, and made 2012 the safest year in American rail history.

The Emergency Order is a mandatory directive to the rail industry, and failure to comply will result in enforcement actions against violating railroads.

"Safety is our top priority," said U.S. Transportation Secretary Anthony Foxx. "While we wait for the full investigation to conclude, the Department is taking steps today to help prevent a similar incident from occurring in the United States."

Today's Emergency Order outlines measures that all railroads must undertake within the next 30 days:

- No train or vehicles transporting specified hazardous materials can be left unattended on a mainline track or side track outside a yard or terminal, unless specifically authorized.
- In order to receive authorization to leave a train unattended, railroads must develop and submit to FRA a process for securing unattended trains transporting hazardous materials, including locking the locomotive or otherwise disabling it, and reporting among employees to ensure the correct number of hand brakes are applied.
- Employees who are responsible for securing trains and vehicles transporting such specified hazardous material must communicate with the train dispatchers the number of hand brakes applied, the tonnage and length of the train or vehicle, the grade and terrain features of the track, any relevant weather conditions, and the type of equipment being secured.

Appendix D

- Train dispatchers must record the information provided. The dispatcher or other qualified railroad employee must verify that the securement meets the railroad's requirements, and they must verify that the securement meets the railroad's requirements.
- Railroads must implement rules ensuring that any employee involved in securing a train participate in daily job briefings prior to the work being performed.
- Railroads must develop procedures to ensure a qualified railroad employee inspects all equipment that an emergency responder has been on, under or between before the train can be left unattended.
- Railroads must provide this EO to all affected employees.

"Today's action builds upon a comprehensive regulatory framework we have had in place for some time," said FRA Administrator Joseph C. Szabo. "The safe shipment of all cargo is paramount and protecting the safety of the American public is fundamental to our enforcement strategy and we are encouraged by the industry's willingness to cooperate with this approach going forward."

In addition to the Emergency Order, the FRA, together with the Pipelines and Hazardous Materials Safety Administration (PHMSA), issued a Safety Advisory detailing a list of recommendations railroads are expected to follow. U. S. DOT believes that railroad safety is enhanced through the use of multiple crew members, and the Safety Advisory recommends railroads review their crew staffing requirements for transporting hazardous material and ensure that they are adequate. Other recommendations in the Safety Advisory include: conducting system-wide evaluations to identify particular hazards that may make it more difficult to secure a train or pose other safety risks and to develop procedures to mitigate those risks. A copy of the Safety Advisory can be viewed HERE.

"When PHMSA talks about the transportation of hazardous materials, safety is a prerequisite to movement," said PHMSA Administrator Cynthia Quarterman. "We are taking this action today and we will be looking hard at the current rail operating practices for hazardous materials to ensure the public's safety."

As FRA continues to evaluate safety procedures following the recent crash, it will convene an emergency meeting of its Railroad Safety Advisory Committee to consider what additional safety measures may be required. FRA plans to develop a website that will allow the public to track industry compliance with the Emergency Order and Safety Advisory issued today. FRA has developed a plan that outlines six major actions that have occurred or will occur to further ensure that our regulatory response to the Canadian rail accident remains transparent.

Under current DOT regulations, all freight railroads are required to develop and implement risk assessments and security plans in order to transport any hazardous material, including a plan to prevent unauthorized access in rail yards, facilities and trains carrying hazardous materials. Railroads that carry hazardous materials are required to develop and follow a security protocol while en route; railroad employees are subject to background checks and must complete training. Training programs and protocols are reviewed and audited by the FRA routinely and generally designed to be progressive so as the level of risk increases so does the level of security required. A description of past, present, and proposed FRA actions on this issue can be found here.

###

Appendix D

INTEROFFICE MEMORANDUM

TO: PLANNING BOARD
FROM: CHIEF SYLVIA
SUBJECT: SEA III
DATE: OCTOBER 9, 2013
CC: FILE

In reference to Sea III request to expand their rail capability, we have been researching this a great deal. I met with the NH Fire Marshall's office to discuss the operation and with two Fire Marshall's we inspected the proposed site. In addition to fire protection we are reviewing federal laws and how this may affect our neighboring communities. From a fire department view I believe this is positive for Newington, because it gives us the opportunity to update and increase fire protection systems that are already in place but outdated. The operation they are proposing in not dramatically different then their current operation.

Working with the Fire Marshall's office we are also going to require a third party Fire Engineer review, but one that specializes in propane operations. The State is researching potential engineers for us.

Having said that, we recommend conditional approval in concept. If approved by Newington Planning Board to go forth, Sea III will have numerous requirements set by Newington Fire, with the assistance of the State Fire Marshall's office and an independent Engineer.

Respectfully submitted,

Chief Dale Sylvia

Town of Greenland

575 Portsmouth Avenue
Post Office Box 100
Greenland, New Hampshire 03840-0100
Voice: 603-431-7111 · Fax: 603-430-3761

FROM THE OFFICE OF:
- ☐ SELECTMEN
- ☐ TOWN CLERK
- ☐ TAX COLLECTOR
- ☐ PLANNING BOARD
- ☐ BOARD of ADJUSTMENT
- ☐ TOWN ADMINISTRATOR
- ☐ BUILDING INSPECTOR
- ☐ _____

October 28, 2013

Mr. Tom Morgan, Planner
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: SEA -3

Dear Mr. Morgan,

On behalf of the Town of Greenland, we would like to request that the proposal from SEA – 3 currently in front of the Newington Planning Board, be declared a development with regional impact under NH RSA 36:54. We strongly believe that impact to the transportation network is a significant impact to Greenland.

SEA - 3 is proposing to import LPG through the Town of Greenland via a railroad system that has eight road crossings, seven of which are located in residential neighborhoods and adjacent to streams and water channels to Great Bay.

The Town of Greenland should be given the opportunity to provide timely input to this project.

Sincerely,

Karen Anderson

Karen Anderson
Town Administrator

cc: Greenland Board of Selectmen
Newington Board of Selectmen

REC'D OCT 30 2013

Town of Newington, New Hampshire

Application Form

For land subdivision and site plan review

Deadline for Submittal: Last Monday of the month

Property Owner

Name SEA-3, INC.
Address 190 SHATTUCK WAY
NEWINGTON NH 03801
Telephone 603.431.5990
Fax 603.431.4442
Email PAUL.BOGAN@SEA-3.COM

Applicant's Agent

Name STEPHEN HAIGHT PE
Address PO BOX 1166 181 WATSON RD
DOVER NH 03820
Telephone 603.750.4266
Fax 603.749.7348
Email SHAIGHT@HAIGHTENG.COM

Location of Property

Address 190 SHATTUCK WAY
Tax Map 14 Lot 2

Pit & Perc Tests

Date Performed N/A
Witness Signature _____

Permits Obtained

Municipal _____
State _____
Federal _____

Property Owner's Consent

I have read Newington's land use regulations and will comply with all the requirements therein.

Signature(s) of *all* property owners & date signed

S Haight AGENT 11/5/13

Fees

Subdivision: 3 lots or less: $200
Subdivision: more than 3 lots: $500 + $100 per lot
Lot Line Adjustment: $100
Site Plan Review: $200

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

November 5, 2013

Thomas Morgan, Planner
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

Re: **Formal Site Plan Review: "SEA-3 Inc. Facility Expansion"**
Tax Sheet 20/13 & 14/2
109 Shattuck Way
Newington, NH 03801-2823

Dear Mr. Morgan,

On behalf of the applicant, SEA-3 Inc., we are requesting that the above referenced " Site Plan" be placed on the next available Planning Board agenda for formal review.

The applicant is proposing to construct additional facilities on their lot 14/2 at 109 Shattuck Way to provide for an increase in off -loading capacity of Liquefied Petroleum (LP) gas. The expansion will include upgrades to the existing railroad siding, installation of a new railroad siding with discharge pads to accommodate up to an additional 10 rail cars, installation of 3-90,000 gallon above ground tanks and associated chilling and pumping equipment.

The purpose of the expansion is to increase the volume of product the existing facility can off-load from rail cars and store in the existing tanks on-site. This will allow SEA 3 to provide bulk volume available for shipping by sea to accommodate domestic and foreign product price fluctuations.

Attached for your information and use are:

- 3 copies of the Site plan full-size (22"x32")
- 8 copy reduced (11"x17")
- Application
- Abutters List
- Supporting documentation

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

Please let me know if you need any additional information.

Sincerely,
HAIGHT ENGINEERING, PLLC

Stephen J. Haight

c.c. Paul Bogan, SEA3 Inc.
James Verra, James Verra & Associates, Inc.
Alec McEachern, Esq., Shaines & McEachern, P. A.

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

PROJECT NARRATIVE

The applicant is proposing to construct additional facilities on their lot 14/2 at 190 Shattuck Way to provide for an increase in off -loading capacity of Liquefied Petroleum (LP) gas. The expansion will include upgrades to the existing railroad siding, installation of a new railroad siding with 5 discharge pads to accommodate up to 10 rail cars, installation of 3-90,000 gallon above ground tanks and associated chilling and pumping equipment.

The purpose of the expansion is to increase the volume of product the existing facility can off-load from rail cars and store in the existing tanks on-site which will allow SEA 3 to provide bulk volume available for shipping by sea to accommodate domestic and foreign product price fluctuations.

It is projected that with the expansion of the off-loading capacity the facility will operate 24-hrs a day 365 days a year.

Proposed site development on the subject parcel will be limited to site grading of the existing gravel areas to provide pad areas for the 90,000 gallon tank cradles and miscellaneous slabs for the machinery building, an electrical transformer and footings for the chillers, pumps and condensers. The site will remain gravel.

Appropriate Buffers will be maintained. All proposed work is within the existing gravel area of the lot and no clearing of existing vegetation is required. As this is an expansion of an existing use no additional off-street parking or loading spaces are required. The proposed expansion is for the offloading LP gas from specialty railcars directly into on-site storage tanks.

Dust will likely be created during construction but will be minimal once the site has been regraded and stabilized. Currently the entire developed portion of the site is gravel surface. No change in surface treatment is required for the expansion of use and none is proposed. Site grading to accommodate the facility components will incorporate appropriate storm water erosion/sedimentation mitigation BMPs.

The facility is currently lit during all night time hours. Additional security lighting will be incorporated to encompass the new components. Light, glare, odors, noise and vibration will be consistent with current operational levels and will not impact abutting properties or public highways or streets.

Vehicular access to the site is currently from the west over well maintained paved access roads through the Sprague Terminal. No new access ways to the site are proposed. Once on site within the secure area, travel will be over gravel surfaces. No new utilities are proposed; however, upgrades to the existing electrical utilities and the water supply for fire suppression are expected.

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

The proposed facility expansion will be unmanned and monitoring will be done predominately from the existing control room in the main facility office. No sewage or refuse disposal facilities are proposed. There are no changes expected to the public health, safety, and welfare with this proposed expansion.

There is a private graveyard on the subject site which has been located and identified on the existing conditions plan. None of the proposed work will impact this resource. A cultural resource determination is not required as this is an existing and operating industrial site and a management plan is not required.

This is an industrial site that currently has security lighting that remains on for all night hours.

The expansion of the facility including the reconfiguration of the rail lines within the PanAm railways is and will be encompassed by a security fence. The area within the security fence is approximately 120,000 sf. Of this approximately 60,000 sf is expected to be impacted with regrading and installation of new components.

Stormwater management will consist of gravel swales directing stormwater to the existing drainage collection system.

HAIGHT ENGINEERING, LLC

P.O. BOX 1166, 181 WATSON ROAD
DOVER, NH
TEL: (603) 750-4266, FAX: (603)749-7348

SEA-3, INC.
APPLICATION FOR SITE PLAN REVIEW

INDEX

- Application
- Project Narrative
- Letter of Authorization
- Abutters List
- Facility Components Sketches
  - Rail Skid
  - Rail Car Specifications
  - Rail Cars at Rail Skid
  - 90,000 gallon Tank
  - Pumps
  - Condenser Cooling Tower
  - LP Dryer
  - Compressors
  - Compressor Control Panel
  - Machinery Building

RAIL SKID
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

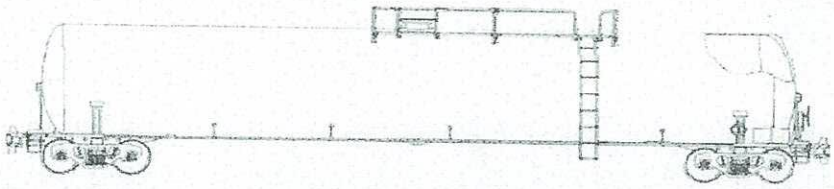
DATE: 11-4-2013

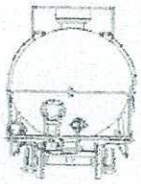
PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

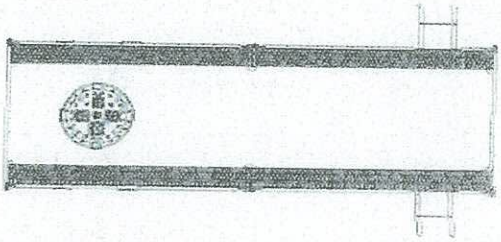
SK-1

BD 67-100-34J(340) (Liquefied Petroleum Gas Car)

UTLX







DOT Class	112J340W
UTLX Basic Design	BD 67-100-34 J(340)
AAR Clearance	Plate C
Curve Negotiability, Radius	258 ft

Capacities & Weights :	
Shell Full Capacity, Gallons	33,600
Shipping Capacity	Per Tariff
Load Limit, lbs	163,500
Lightweight, lbs	99,500
Design Weight/Gallon, lbs	Per Tariff

Tank :	
Design	Straight Shell
Plate Specifications	AAR TC128-B
	Normalized
Test Pressure	340 psi
Inside Diameter	117 7/8 in
Shell Thickness	0.619 in
Head Thickness	0.572 in

HM Safety Provisions	
Thermal Protection	1/2 in
Ceramic Fiber	
Jacket Shell	11 GA
Jacket Heads, Full	1/2 in

Top Fittings :	
Manway Diameter	20 in
Siphon Pipes (2), CS Sch 40	3 in
Liquid Angle Valves (2),	3 in
with Excess Flow Valves	
Vapor Angle Valve,	2 in
with Excess Flow Valve	
Pressure Relief Valve	280.5 psi
Sample Line, CS Sch 80	3/4 in
Thermowell, CS Sch 80	3/4 in
Gauging Device	Magnetic

Top Platform :	
	2 Round 2 Way
	Galvanized Grating

Bottom Outlet :	
	None

Paint :	
DTM Epoxy	Black
Decals	Sunflower Yellow

Updated: 09/17/2008

NEW RAIL CAR
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-2

RAILS CARS
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-3

90,000 TANK
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-4

PUMPS
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-5

CONDENSER COOLING TOWER
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-6

LGA ENGINEERING

Figure 8.9 View of the dehydrator system, from left: heater, fuel tank, water separator hidden by plastic drums of water, condenser, adsorbent towers, and piping connections.

PROPANE DRYER
NOT TO SCALE

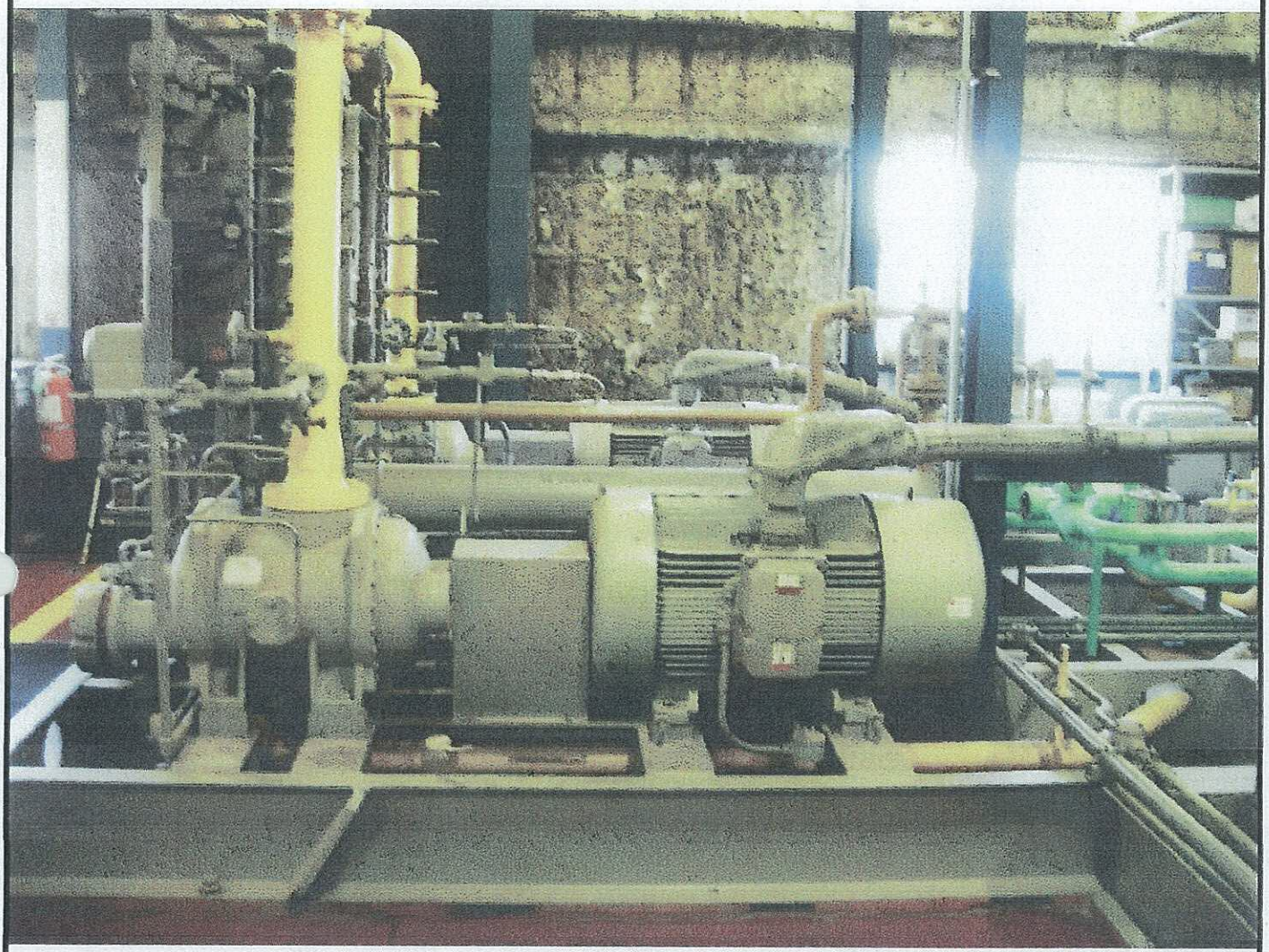
SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-7



COMPRESSORS
NOT TO SCALE

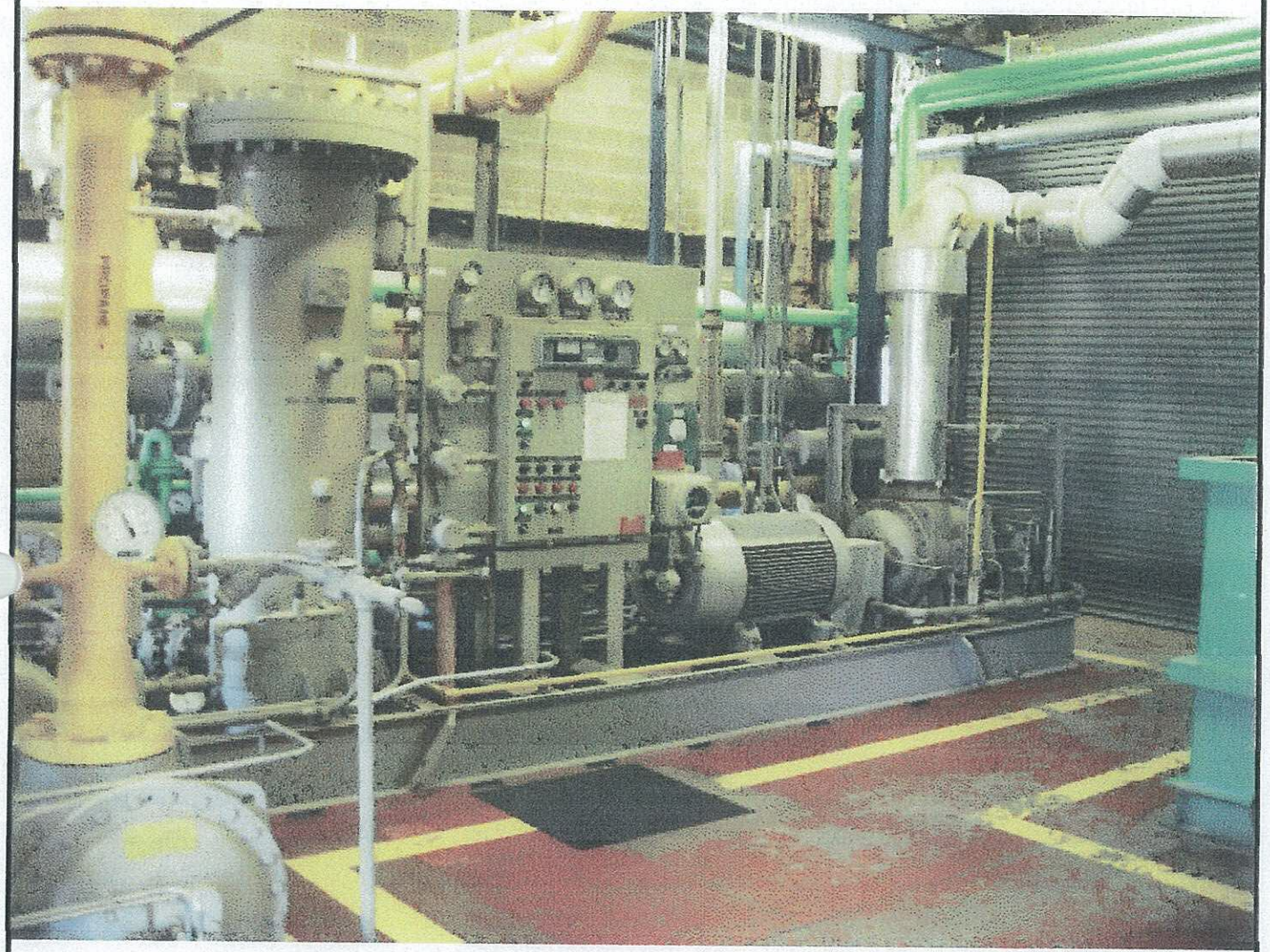
SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-8



COMPRESSOR
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-9

MACHINERY BUILDING
NOT TO SCALE

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

DATE: 11-4-2013

PROJECT No.: 1322
FILE: PHOTO SKETCH.DWG

SK-10

PHILIP R. SHERMAN, P.E.

FIRE PROTECTION ENGINEERING AND BUILDING CODE CONSULTING

P.O. BOX 216
444 WILMOT CENTER ROAD
ELKINS, NH 03233-0216
PHONE: 603-526-6190
FAX: 603-526-4979
EMAIL: PSHERMAN@PRSHERMAN.COM

Date: November 15, 2013
Proj: 1716.01

Sea-3, Inc.
190 Shattuck Way
Newington, NH 03801

Attention: Mr. Paul N. Bogan
Vice President - Operations

Re: Newington Terminal
2013 Proposed Plant Expansion
190 Shattuck Road
Newington, New Hampshire
Fire Safety Analysis

Dear Mr. Bogan:

Philip R. Sherman P.E. has been retained by Sea-3, Inc. to provide a fire safety analysis of the proposed plant expansion. This expansion includes the addition of three, 90,000 gallon, day tanks, additional rail car capacity and reworking of rail tracks, and related ancilliary piping and equipment.

This analysis is conducted in accordance with the New Hampshire State Fire Code, specifically NFPA 58, Liquified Petroleum Gas Code, 2011 edition[1] and the Fire Safety Analysis Manual for LP-Gas Storage Facilities, developed by the National Fire Protection Association and the National Propane Gas Association. This analysis does not address environmental, federal or other regulations that might apply to the proposed work. At your direction, a review of the fire safety analysis for the existing facility, is outside the scope of this work.

---

[1] The New Hampshire State Fire Code adopts the 2008 edition of NFPA 58, however standing approval has been provided by the state fire marshal to utilize the latest edition of the NFPA codes.

This analysis is based on a site visit on October 11, 2013, a review of limited preliminary drawings and discussions with the Newington Fire Department, the Office of the State Fire Marshal, and yourself.

Engineering design of the project has not proceeded at this time, therefore much of the analysis assumes compliance with NFPA 58. This will be verified once design documents are available, and this report will be revised to reflect the actual details of the design. Siting of tanks and major equipment is not expected to change.

Existing Site and Proposed Plant Expansion

Please reference undated drawing ZBA-1, received by email November 5, 2013, by Haight Engineering, PLLC for the proposed site layout.

The site currently consists of 400,000 bbl and 160,000 bbl LPG storage tanks, which are located in an impounding area. A 30,000 gallon day tank, rail car loading and unloading facilities, truck loading facilities, a control and support building, ship dock, and other miscellaneous tanks and structures are also present on the site.

The expansion will occur at the rail yard, and at a mostly vacant part of the site between the rail yard and the tree line near the Piscataqua River. Three 90,000 gallon day tanks are planned, with an additional three rail car unloading stations, with capacity for two future stations, totaling 16 tank cars, with ancillary buildings, piping and equipment.

Propane will arrive to this part of the site by rail car, be stored in the day tanks and the large capacity tanks on site, then transported outward by ship at the existing dock and by truck at the existing loading rack.

Fire exposure distances within, and near, the expansion portion of the site include the following:

- Day tank to property line, not considering rail line ..... approximately 120 feet
- Distance between day tanks ..... at least 5'-6"
- Day tank to nearest building on the site ..... approximately 38 feet
- Day tank to cottage south of the site ..... approximately 280 feet
- Day tank to nearest Sprague tank ..... approximately 350 feet
- Sea-3 rail car unloading station to nearest building on the site ... approximately 120 feet
- Sea-3 rail car unloading station to property line, other than rail spur ..... approximately 40 feet

- Sea-3 rail car unloading station to through rail spur, car to car .... approximately 10 feet
- Sea-3 rail car unloading station to car at adjacent station ..... approximately 10 feet
- Sea-3 rail car unloading station to nearest Sprague tank ..... approximately 400 feet
- Sea-3 rail car unloading station to Sprague rail car unloading station ..... approximately 400 feet
- Sea-3 rail car unloading station to cottage south of the site ..... approximately 200 feet
- Sea-3 rail car unloading station to 400K bbl tank on site ..... approximately 115 feet

Existing site water mains will be reworked as necessary by the project. Fire protection water for the site is supplied from the Portsmouth Water Authority, which supplies the Town of Newington. A diesel fire pump, located in an underground structure at the entrance to the site supplies underground mains. The fire pump is rated at 2000 gpm at 100 psi. The speed of the engine has been reduced, to prevent the relief valve from opening during tests. Due to this reduction in engine RPM, the pump currently produces 2000 gpm at something less than 90 psi.

The fire pump is activated by UV detection, manual pull stations or manually from the control room. The pump is shut off manually at the pump. Underground fire protection piping is unlined cast iron, installed in 1975. Hydrants and hose houses are located throughout the site.

A flow test was conducted on November 7, 2013 using 2.5" outlets on four hydrants near the proposed work, with the fire pump in operation. The flow test resulted in flowing 3,360 gpm with the lowest residual hydrant pressure at 23 psi.

Scope of Fire Safety Analysis

NFPA 58 6.25.3.2 requires the modes of fire protection to be specified in a written fire safety analysis for new bulk plant installations. The NFPA 58 annex provides explanatory information and references the Fire Safety Analysis Manual for LP-Gas Storage Facilities (FSAM). This manual is intended to provide a format and instructions for the analysis. It is important to understand that while the FSAM contains forms and guidance for certain criteria and data collection, it does not provide "cookbook" results for the analysis. A summary of the requirements for the analysis is as follows:

- Planning for inadvertent LP-Gas release, fire and security breach is to be coordinated with local emergency response agencies
- Planning is to consider safety of emergency response personnel, workers, and the public.

- Evaluate total product control system.
  - Effectiveness of product control measures
  - Analysis of local conditions of hazard within the site
  - Exposure to or from other properties, population density, and congestion within the site
  - Probable effectiveness of fire department
  - Consideration for the adequate application of water or other means to control leakage
- Provide special protection if there is a hazard to adjacent structures.

Please reference Appendix A of this report, to find various FSAM forms completed as a part of the fire safety analysis.

Analysis - General Information

- Form 4.1 provides general contact information for the site.
- Form 4.2 identifies the individual and total water capacity of the three 90,000 gallon day tanks and the 16, 33,500 gallon rail cars.
- Form 4.3 provides general information about the facility.
  - This portion of the site is currently accessed through the Sprague fuel farm. Sea-3 is considering a second entrance from the south, but approval from private owners for this access has not yet been obtained.

Analysis - Product Control Measures

- Forms 5.4, 5.5, 5.6, and 5.7 indicate the valving arrangement for the tanks, and await engineering design documents. At this time, the facility is assumed to comply with NFPA 58.
- For reasons seen below, this installation will be provided with both redundant fail-safe design provisions, and low emission transfer equipment, in order that the best reasonable precautions are taken to prevent a leak.
- Form 5.8 evaluates optional redundant fail-safe design provisions.

- Redundant fail-safe provisions will be provided. At this time, the facility is assumed to comply with NFPA 58.

- Form 5.8 evaluates optional low emission transfer equipment.

  - Low emission transfer equipment will be provided. At this time, the facility is assumed to comply with NFPA 58.

Analysis - Local Conditions

- Form 6.1 evaluates physical protection and other measures, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

- Form 6.2 evaluates sources of ignition and adjacent combustible materials, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

- Form 6.3 evaluates distances from fixed tanks to other hazards.

  - All distances are found to comply, or will be made to comply, with NFPA 58 requirements.

  - The ZBA drawing will be corrected to reflect minor changes in the distance between adjacent tanks.

- Form 6.4 evaluates distances from transfer points, in this case the rail cars, to other hazards.

  - All distances are found to comply with NFPA 58 requirements.

    - The rail line that passes the site is a low speed spur that serves this and limited other industrial sites. As rail traffic can easily be stopped during an incident, this is not considered a "mainline" as identified in Form 6.4

- Form 6.5 evaluates passive special protection measures

  - Passive special protection measures are not used..

- Form 6.6 evaluates active special protection measures

  - Active special protection measures are planned, consisting of fixed water spray systems.

- Water spray systems will be in accordance with NFPA 15, will be activated on a zoned basis manually, or automatically by means of flame detectors.

- Systems will be supplied by the existing site fire protection water mains. Hydrants will be provided as required for manual fire department operations, but will not be equipped with monitor nozzles, as is currently the case.

- Water spray systems protecting day tanks will be provided for a total of three tanks. Water density will be 0.25 gpm/sf over 50% of the surface area of the tanks, at the valve end of the tanks.

- Water spray systems protecting transfer at tank cars will be provided for the car in question, and one or two adjacent cars, depending on the specific car location. As valves are in the center of the car, water density will be 0.25 gpm/sf over the entire surface area of the tank, in order to provide the same perimeter of protection as for fixed tanks with valves on one end.

- Form 6.7 evaluates protection against vehicular impact, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

Analysis - Exposures

- Table 7.1 provides hazard distances for various scenarios

  - This part of the analysis is intended to address hazards to exposures located off the site.

  - As the piping arrangement has not been designed at this time, it is not possible to identify specific scenarios that apply.

  - For the purpose of this report, it is assumed that the cottages south of the site will be within the hazard range, but that other off-site properties, including the Sprague fuel storage tanks, are outside the hazard range. This will be confirmed once the engineering design proceeds.

  - Rail traffic near the site is assumed to be stopped during an incident.

  - The FSAM forms only address exposures outside the site, and deal with exposures within the site by means of water application. Given the fact that the 400,000 bbl tank is about 115 feet from the nearest rail unloading station, redundant fail-safe design provisions and low emission transfer equipment are provided for new tanks and equipment.

- Form 7.1 identifies types of occupancies near the site. None of these occupancies are near this site.

- Form 7.2 identifies exposure to the facility from external hazards. None of these occupancies are near this site.

Fire Department Operations

- Form 8.1 provides data on the responding fire departments.
  - The Newington Fire Department is a combination paid and call department, with at least two firefighters on duty. Normal response to a verbal alarm report of a leak, or an automatic alarm, is a single engine with the two firefighter duty crew. Any sign of fire, or a decision by the duty crew, results in a first alarm response, consisting of Newington duty and call-back crews, and apparatus from four other departments, and this response is used in this analysis.
  - The first alarm assignment consists of four engines, one tower, an ambulance with 24 firefighters.
- Form 8.2 identifies response times for the responding fire departments
  - It is expected to take about seven minutes for the first alarm apparatus with about 14 firefighters to arrive on site.
  - It is expected to take about 25 minutes for the remaining call back firefighters to arrive on site.
  - These times do not include potential delay due to single engine response prior to first alarm activation.
  - These times are for arrival at the site, and do not include set up time required prior to applying water to a fire.
- Form 8.3 calculates the required water demand to wet one half the tank at a rate of 0.25 gpm/sf, with additional water demand for firefighter protection.
  - Three, 90,000 gallon day tanks require a water application rate of about 2,000 gpm.
  - Three, 33,500 gallon tank cars require a water application rate of about 1,875 gpm.
  - These water application rates will not be required to be supplied simultaneously.

- This water application is required within 10 minutes. Given the time and manpower involved in the fire department response, is it not likely that this amount of water can be staged, and delivered within the 10 minutes.

- The required water will therefore be delivered by fixed systems, supported by fire department operations.

- Form 8.4 evaluates the available water supply

  - Flow test results at the existing hydrants on November 7, 2013 indicate a total flow at the expansion area of about 3,360 with a residual pressure of 23 psi.

Fire Safety Analysis Summary

- Form 9.1 summarizes product control and separation distances, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

- Form 9.2 summarizes exposure hazards to and from other properties.

  - No unmanageable external hazards or targets were identified.

- Form 9.3 summarizes the fire department evaluation

  - The results of the above analysis indicate that water application should be delivered through automatic fixed systems, supported by the fire department.

- Form 9.4 summarizes the redundant fail-safe provisions, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

- Form 9.5 summarizes the low emission transfer equipment, and awaits engineering design documents. At this time, the facility is assumed to comply with NFPA 58.

Conclusions

To the best of my knowledge, information and belief, the preliminary design for the proposed plant expansion is in accordance with NFPA 58, 2011 edition, subject to the comments in this preliminary analysis..

Yours truly:

Philip R. Sherman, P.E.

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Appendix A - Fire Safety Analysis Forms

Form 4.1
Initial Data on the LP-Gas Facility

A	B	C
Item #	Information Item	Data
1	Name of the LP-Gas Facility Owner or Operator	Sea-3, Inc.
2	Contact Name:	Paul N. Bogan
3	Contact Telephone & Fax Numbers	603-431-5990 x4
4	Contact Email Address	paul.bogan@sea-3.com
5	Mailing Address	Street 1: 190 Shattuck Way
		Street 2:
		City, State, Zip: Newington, NH 03801

Form 4.2
Facility Storage Capacity [1,2,3,5]

A	B	C	D
Item #	Individual Container Water Capacity (w.c.) (gallons)	Number of containers	Total Water Capacity (w.c.) of each container size (gallons)
1	500		0
	1,000		0
	2,000		0
	4,000		0
	10,000		0
	18,000		0
	30,000		0
	60,000		0
	Other: 90000	3	270000
	Other:		0
	Other:		0
	Other:		0
2	**Aggregate Water Capacity[4]**		270000

Notes:
(1) Column D = Column B x Column C.
(2) Parked bobtails, transports and tank cars should not be considered for aggregate capacity calculations.
(3) Do not consider containers that are not connected for use.
(4) For the purpose of this manual, "Aggregate Water Capacity" means any group of single ASME storage containers separated from each other by distances less than those stated in the aboveground containers column of Table 6.3.1.

Form 4.3
Additional Information on the LP-Gas Facility

☐ Existing Facility; Built to NFPA 58 Edition _____ ☒ Proposed Facility

a) Name of the Facility (if applicable): 2013 Plant Expansion

b) Type of LP-Gas Facility: ☐ Commercial ☐ Industrial ☒ Bulk Plant

c) Facility is located in: ☐ City Industrial Zone ☐ Suburban Area ☐ Rural Area
☐ City Commercial Zone
X Waterfront industrial

d) Facility neighbors§: ☐ Agri Fields ☐ Commercial Bldgs. ☒ Flammable Liquids Storage
(Check all that apply) ☐ Industrial Activity (metal fabrication, cutting and welding, etc.)
☒ Manufacturing ☐ Others (explain) _____

e) Geographic Location of Facility/Address: 190 Shattuck Way, Newington
_____

f) Landmarks, if any: Piscataqua River
_____

g) LP-Gas liquid supply by: ☐ Bobtail ☐ Truck Transport ☒ Rail Tank Car
(Check all that apply) ☐ Pipeline

h) LP-Gas Distribution by: ☐ Liquid Piping ☒ Truck Transport ☐ Vapor Piping
Plant (Check all that apply): ☐ Bobtail ☐ Dispensing or Vehicle Liquid Fueling
X Ship

i) Number of Vehicle Entrances: ☒ One ☒ Two ☐ More than two

j) Type of Access Roads to the Facility: ☐ Rural ☒ City or Town ☐ Highway
(One check per line) Entrance 1: ☐ Dirt road ☐ Gravel road ☒ Paved
(One check per line) Entrance 2: ☐ Dirt road ☒ Gravel road ☐ Paved
Private roads

k) Staff presence: ☐ Not staffed ☒ Only during transfer operations
☐ Staffed always (24/7) ☐ Only during business hours
☒ Other (Explain) Monitored 24/7

l) Location and distances to Assembly, Educational or Institutional Occupancies surrounding the facility, if any, within 250 ft from the facility boundary in the direction of the assets.
None

n) Overview plot plan of the facility attached? ☒ Yes ☐ No

§ All properties either abutting the LP-Gas facility or within 250 feet of the container or transfer point nearest to facility boundary.

A-2

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.4

Compliance with Code Requirements for Appurtenances on Containers Having a Water Capacity Greater Than 4,000 Gallons Used in Bulk Plants and Industrial Plants

A	B	C	D		E	F	G
Container #	LP-Gas inlet to and outlet from the container**		Enter Configuration Number		Total Number of Product Control Appurtenances		NFPA 58 Section Reference (2011 edition)
					Required by NFPA 58 (applicable edition)	Installed on the container	
1	Vapor	Inlet	5-2				See §5.7.4.2 and Table 5.7.4.2
		Outlet	5-3				
	Liquid	Inlet	5-6				
		Outlet	5-7				
2	Vapor	Inlet	5-2				
		Outlet	5-3				
	Liquid	Inlet	5-6				
		Outlet	5-7				
3	Vapor	Inlet	5-2				
		Outlet	5-3				
	Liquid	Inlet	5-6				
		Outlet	5-7				
4	Vapor	Inlet	5-2				
		Outlet	5-3				
	Liquid	Inlet	5-6				
		Outlet	5-7				

** If the container does not provide an opening for the specific function listed, enter 0 (zero) in columns E and F corresponding to that row.

If in Form 5.4 any one of the numbers in column F is less than the number in Column E of the corresponding row, these items must be addressed and brought into compliance with the specific edition of NFPA 58 that the facility was constructed to.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.5

Requirements for Transfer Lines of 1½-inch Diameter or Larger, Liquid-into-Containers

A	B	C	D	E	F
Item #	Appurtenance (Either No. 1 or No. 2)**	Appurtenance Provided with the Feature	Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 edition)
1	Emergency shutoff valve (ESV) (Ref § 6.12)	Installed within 20 ft. of lineal pipe from the nearest end of the hose or swivel-type connections.	☐	☐	6.12.2
		Automatic shutoff through thermal (fire) actuation element with maximum melting point of 250 °F	☐	☐	6.12.6
		Temperature sensitive element (fusible link) installed within 5 ft from the nearest end of the hose or swivel type piping connected to liquid transfer line.	☐	☐	6.12.6
		Manually operated remote shutoff feature provided for ESV.	☐	☐	6.12.10 (1)
		Manual shutoff device provided at a remote location, not less than 25 ft., and not more than 100 ft. from the ESV in the path of egress.	☐	☐	6.12.10 (2)
		An ESV is installed on each leg of a multi leg piping each of which is connected to a hose or a swivel type connection on one side and to a header of size 1½ inch in diameter or larger on the other side.	☐	☐	6.12.5 6.18.2.6 (1)
		Breakaway protection is provided such that in any pull-away break will occur on the hose or swivel-type connection side while retaining intact the valves and piping on the plant side.	☐	☐	6.12.8
2	Backflow check valve (BCK)**	Installed downstream of the hose or swivel-type connection	☐	☐	6.12.3
		BCK is designed for this specific application.	☐	☐	6.12.4
		A BCK is installed on each leg of a multi leg piping each of which is connected to a hose or a swivel type connection on one side and to a header of 1½ inch in diameter or larger on the other side.	☐	☐	6.12.5
		Breakaway protection is provided such that in any pull-away break will occur on the hose or swivel-type connection side while retaining intact the valves and piping on the plant side.	☐	☐	6.12.8

** In lieu of an emergency shutoff valve, the backflow check valve (BCK) is only permitted when flow is only into the container and shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with a combustible material (6.12.3, 6.12.4).

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.6

Requirements for Transfer Lines of 1½-inch Diameter or Larger, Liquid Withdrawal From Containers

A	B	C	D	E	F
Item #	Appurtenance	Appurtenance Provided with the Feature	Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 Edition)
1	Emergency shutoff valve (ESV) (Ref § 6.12)	Installed within 20 ft. of lineal pipe from the nearest end of the hose or swivel-type connections.	☐	☐	6.12.2
		Automatic shutoff through thermal (fire) actuation element with maximum melting point of 250 °F.	☐	☐	6.12.6
		Temperature sensitive element installed within 5 ft from the nearest end of the hose or swivel type piping connected to liquid transfer line.	☐	☐	6.12.6
		Manually operated remote shutoff feature provided for ESV.	☐	☐	6.12.10 (1)
		Manual shutoff device provided at a remote location, not less than 25 ft., and not more than 100 ft. from the ESV in the path of egress.	☐	☐	6.12.10 (2)
		An ESV is installed on each leg of a multi leg piping each of which is connected to a hose or a swivel type connection on one side and to a header of 1½ inch in diameter or larger on the other side.	☐	☐	6.12.5 6.18.2.6 (1)
		Breakaway protection is provided such that in any pull-away break will occur on the hose or swivel-type connection side while retaining intact the valves and piping on the plant side.	☐	☐	6.12.8
		Number of ESV's in liquid withdrawal service			

Note: If more than one ESV is installed in the facility, use one Form 5.6 for each ESV.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.7
Requirements for Vapor Transfer Lines 1¼-inch Diameter or Larger

A	B	C	D	E	F
Item #	Appurtenance	Appurtenance Provided with the Feature	Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 edition)
1	Emergency shutoff valve (ESV) (Ref § 6.12)	Installed within 20 ft. of lineal pipe from the nearest end of the hose or swivel-type connections.	☐	☐	6.12.2
		Automatic shutoff through thermal (fire) actuation element with maximum melting point of 250 °F	☐	☐	6.12.6
		Temperature sensitive element installed within 5 ft from the nearest end of the hose or swivel type piping connected to liquid transfer line.	☐	☐	6.12.6
		Manually operated remote shutoff feature provided for ESV.	☐	☐	6.12.10 (1)
		Manual shutoff device provided at a remote location, not less than 25 ft., and not more than 100 ft. from the ESV in the path of egress.	☐	☐	6.12.10 (2)
		An ESV is installed on each leg of a multi leg piping each of which is connected to a hose or a swivel type connection on one side and to a header of 1-1/4 inch in diameter or larger on the other side.	☐	☐	6.12.5 6.18.2.6 (1)
		Breakaway protection is provided such that in any pull-away break will occur on the hose or swivel-type connection side while retaining intact the valves and piping on the plant side.	☐	☐	6.12.8
2	Backflow check valve (BCK)**	Installed downstream of the hose or swivel-type connection	☐	☐	6.12.3
		BCK is designed for this specific application.	☐	☐	6.12.4
		A BCK is installed on each leg of a multi leg piping each of which is connected to a hose or a swivel type connection on one side and to a header of 1-1/4 inch in diameter or larger on the other side.	☐	☐	6.12.5
		Breakaway protection is provided such that in any pull-away break will occur on the hose or swivel-type connection side while retaining intact the valves and piping on the plant side.	☐	☐	6.12.8

** In lieu of an emergency shutoff valve, the backflow check valve (BCK) is only permitted when flow is only into the container and it shall have a metal-to-metal seat or a primary resilient seat with metal backup, not hinged with a combustible material (6.12.3, 6.12.4).

If a checkmark is made in the "No" column of any one of Form 5.5, Form 5.6 or Form 5.7, then these items must be addressed and brought into compliance with the specific edition of NFPA 58 that the facility was constructed to.

If the LP-Gas facility is designed using ALTERNATE PROVISIONS for the installation of ASME CONTAINERS, then continue the analysis below. Otherwise skip Forms 5.8 and 5.9 and go to Chapter 6.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.8
Evaluation of Redundant Fail-Safe Design

A	B		C	D	E	F
Item #	Description		Features	Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 edition)
1	Container sizes for which the appurtenances are provided		Appurtenances and redundant fail-safe equipment are provided for <u>each</u> container of water capacity 2,001 gal. through 30,000 gal.	☐	☐	6.26.3 and 6.26.4
2	Liquid or vapor withdrawal (1-1/4 in. or larger)		Internal valve having internal excess-flow valve	☐	☐	6.26.3.1 and 6.26.3.2
			Positive shutoff valve installed as close as practical to the internal valve	☐	☐	6.26.3.4
3	Liquid or vapor inlet		Internal valve having internal excess-flow valve or backflow check valve	☐	☐	6.26.3.5
			Positive shutoff valve installed as close as possible to the internal valve or the backflow check valve	☐	☐	6.26.3.5
4	Railcar transfer	Flow into or out of railroad tank car	Approved emergency shutoff valves installed in the transfer hose or the swivel-type piping at the tank car end	☐	☐	6.18.2.6 (1) and 6.26.4.1
		Flow only into railroad tank car	Approved emergency shutoff valve or back-flow check valve installed in the transfer hose or the swivel-type piping at the tank car end	☐	☐	6.18.2.6 (2) and 6.26.4.1
5	Cargo tank transfer		Protection provided in accordance with 6.26.4.1	☐	☐	6.26.4.1
6	Automatic closure of all primary valves (IV & ESV) in an emergency		By thermal (Fire) actuation	☐	☐	6.26.4.2
			Actuated by a hose pull-away due to vehicle motion	☐	☐	6.26.4.2
7	Manually operated remote shutdown of IV and ESV		Remote shutdown station within 15 ft of the point of transfer	☐	☐	6.26.4.3 (A)
			Another remote shutdown station between 25 ft and 100 ft of the transfer point	☐	☐	6.26.4.3 (B)
			Shutdown stations will shut down electrical power supply, if any, to the transfer equipment and primary valves	☐	☐	6.26.4.3
			Signs complying with the requirements of 6.26.4.3 (C) provided	☐	☐	6.26.4.3 (C)

Note: If the facility does not have a rail terminal, write the word NA in both the "Yes" column and the "No" column in item 4 of this Form in the railroad tank car row. Similar option is also available if there is no cargo tank vehicle transfer station.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 5.9
Evaluation of Low Emission Transfer Equipment

A	B	C		D	E	F
Item #	Description	Features		Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 Edition)
1	Transfer into permanently mounted ASME containers on vehicles	Delivery nozzle and filler valve- Max. liquid release after transfer of 4 cc.	Fixed maximum liquid level gage not used during transfer operations	☐	☐	6.26.5.1 (B)
2	Transfer into stationary ASME containers. delivery valve and nozzle combination	During product transfer or post transfer uncoupling of the hose, liquid product volume released to the atmosphere	Does not exceed 4 cc (0.24 in^3) from a hose of nominal size 1 in or smaller	☐	☐	6.26.5.2 (A)
			Does not exceed 15 cc (0.91 in^3) from a hose of nominal size larger than 1 in.	☐	☐	6.26.5.2 (B)
3	Transfer into stationary ASME containers maximum filling limit	Do containers of less than 2,001 gal (w.c.) have an overfilling prevention device or another approved device?		☐	☐	6.26.5.2 (F)
		Do containers 2,001 gal (w.c.)or greater have a float gage or other non-venting device?		☐	☐	6.26.5.2 (E)
4	Transfer into stationary ASME containers fixed maximum liquid level gage	Not used during routine transfer operations but used to calibrate other non-venting liquid level gages in the container		☐	☐	6.26.5.2 (C,D)

Note: 1) If the facility does not have a particular feature described in items 2 or 3, write "NA" in both the "Yes" and "No" columns corresponding to its row.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 6.1
Evaluation of Physical Protection and Other Measures

A	B	C	D	E	F
#	Item	Features	Installed in the facility? Yes	Installed in the facility? No	NFPA 58 Section Reference (2011 Edition)
1	Lighting‡	Provide lighting for nighttime operations to illuminate storage containers, container being loaded, control valves, and other equipment	☐	☐	6.18.5
2	Vehicle impact protection	Protection against vehicular (traffic) impacts on containers, transfer piping and other appurtenances is designed and provided commensurate with the size of vehicles and type of traffic in the facility. (Example protection systems include but not limited to (1) Guard rails, (2) Steel bollards or crash posts, (3) Raised sidewalks.	☐	☐	6.6.1.2, 6.9.3.10 and 6.19.3.2
3	Protection against corrosion	Provide protection against corrosion where piping is in contact with supports or corrosion causing substances.	☐	☐	6.9.3.11
		Complete only 4A or 4B			
4A	Perimeter Fence	Is an industrial type or chain link fence of at least 6 ft high or equivalent protection provided to enclose (all around) container appurtenances, pumping equipment, loading and unloading and container filling facilities?	☐	☐	6.18.4.2
		Are at least two means of emergency accesses (gates) from the enclosure provided? **NOTE: Write "N.A." (not applicable) if** (i) The area enclosed is less than 100 ft^2, or (ii) The point of transfer is within 3 ft of the gate, or containers are not filled within the enclosure	☐	☐	6.18.4.2 (A)
		Is a clearance of at least 3 feet all around to allow emergency access to the required means of egress provided?	☐	☐	6.18.4.2 (B)
	Guard Service	If a guard service is provided, does this service cover the LP-Gas plant and are the guard personnel provided with appropriate LP-Gas related training, per section 4.4 of NFPA 58?	☐	☐	6.18.4.3
4B	Lock-in-Place devices	Are Lock-in-Place devices provided to prevent unauthorized use or operation of any container appurtenance, system valves, or equipment in lieu of the fence requirements above?	☐	☐	6.18.4.2 (C)

Note: Fill only items 1, 2, 3, and 4A or 4B. Indicate with "NA" when not filling the "Yes" or "No" column.
‡ Indicate with "NA" if the facility is not operated at night.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 6.2
Assessment of Sources of Ignition and Adjacent Combustible Materials

A	B	C	D	E
#	Sources of Ignition and Requirements Pertaining to Adjacent Combustible Materials	Is the Facility compliant?		NFPA 58 Section Reference (2011 Edition)
		Yes	No	
1	Are combustible materials, weeds and tall grass not closer than 10 ft. from each container?	☐	☐	6.4.5.2
2	Is a distance at least 20 ft. provided between containers and tanks containing flammable liquids with flash point less than 200 °F (ex., gasoline, diesel)?	☐	☐	6.4.5.5
3	Are electrical equipment and wiring installed per Code requirements?	☐	☐	6.22.2
4	Is open flame equipment located and used according to Code?	☐	☐	6.22.3.1
5	Are ignition control procedures and requirements during liquid transfer operations complied with.?	☐	☐	7.2.3.2
6	Is an approved, portable, dry chemical fire extinguisher of minimum capacity 18 Lbs. and having a B:C rating provided in the facility?	☐	☐	6.25.4.2
7	Is an approved, portable, dry chemical fire extinguisher of minimum capacity 18 Lbs. and having a B:C rating provided on each truck or trailer used to transport portable containers?	☐	☐	9.4.7
8	Is the prohibition on smoking within the facility premises strictly enforced?	☐	☐	7.2.3.2 (B) & 9.4.10

Note: Insert "NA" in both "Yes" and "No" columns of any items that are not applicable.

Form 6.3

Separation Distances from Containers to Buildings, Property Lines that can be Built upon, Inter-container Distances, and Aboveground Flammable or Combustible Storage Tanks

A	B	C	D	E	F	G
#	Container Size Range in gal (W.C.)	Separation between a property line, important building or other property and the nearest container which is	Minimum Distance (ft)	Is the Facility compliant? Yes	Is the Facility compliant? No	NFPA 58 Section Reference (2011 Edition)
1	501 through 2,000	Above Ground	25	☐	☐	6.3.1 and Table 6.3.1
		Underground or Mounded	10	☐	☐	
		Between containers	3	☐	☐	
2	2,001 through 30,000	Above Ground	50	☐	☐	
		Underground or Mounded	50	☐	☐	
		Between containers	5	☐	☐	
3	30,001 through 70,000	Above Ground	75	☐	☐	
		Underground or Mounded	50	☐	☐	
		Between containers	¼ sum of diameters of adjacent containers	☐	☐	
4	70,001 through 90,000	Above Ground	100	☒	☐	
		Underground or Mounded	50	☐	☐	
		Between containers	¼ sum of diameters of adjacent containers	☒	☐	
5	All sizes greater than 125 gal	Separation distance between a LP-Gas container and an above ground storage tank containing flammable or combustible liquids of flash points below 200 °F.	20	☐	☐	6.4.5.5 and 6.4.5.6

Note: If any of the container sizes indicated in the above form are not present in the facility, enter "NA" in both Yes and No columns.

If the LP-Gas plant is provided with every one of the redundant and fail-safe product control-design equipment indicated in Form 5.8, then the minimum distance in column D of Form 6.3 can be reduced to 10 feet for underground and mounded containers of water capacity 2,001 gal to 30,000 gal.

Form 6.4
Separation Distances between Points of Transfer and other Exposures

A	B		C	D	E	F	G
#	Type of Exposure within or outside the facility boundary		Check if exposure is present	Minimum Distance (ft)	Is the Facility compliant?		NFPA 58 Section Reference (2011 Edition)
					Yes	No	
1	Buildings, mobile homes, recreational vehicles, and modular homes with at least 1-hour fire-rated walls		☐	10	☒	☐	
2	Buildings with other than at least 1-hour fire-rated walls		☒	25	☒	☐	
3	Building wall openings or pits at or below the level of the point of transfer		☒	25	☒	☐	
4	Line of adjoining property that can be built upon		☒	25	☒	☐	
5	Outdoor places of public assembly, including school yards, athletic fields, and playgrounds		☐	50	☒	☐	
6	Public ways, including public streets, highways, thoroughfares, and sidewalks	From points of transfer in LP-Gas dispensing stations and at vehicle fuel dispensers.	☐	10	☒	☐	Section 6.5.3 Table 6.5.3
		From other points of transfer	☒	25	☒	☐	
7	Driveways		☐	5	☒	☐	
8	Mainline railroad track centerlines		☐	25	☒	☐	
9	Containers other than those being filled		☒	10	☒	☐	
10	Flammable and Class II combustible liquid dispensers and aboveground and underground containers		☐	20	☒	☐	
11	Flammable and Class II combustible liquid dispensers and the fill connections of LPG containers		☐	10	☒	☐	
12	LP-Gas dispensing device located close to a Class I liquid dispensing device.		☐	10	☒	☐	6.24.4.3

NOTE: Place a checkmark in column C against an exposure that is present in or around the facility. Fill columns E or F for only those rows for which there is a checkmark in column C.

If the facility contains low emission transfer equipment (i.e, all equipment identified in Form 5.9 are installed and are in working order), then the minimum separation distances in column D of Form 6.4 can be reduced to one half of the indicated values.

If the containers in the LP-Gas facility are provided with SPECIAL PROTECTION MEASURES, then continue the analysis below. Otherwise skip Forms 6.5 and 6.6 and go to Form 6.7. Also see Chapter 9.

Form 6.5
Special Protection Measures –Passive Systems

A	B	C	D		E
#	Special Protection Option	Question	Is the Facility compliant?		NFPA 58 Section Reference (2011 Edition)
			Yes	No	
1	Container Insulation	Insulation provided on each of the containers?	☐	☐	6.25.5.1
		Insulation material complies with the requirements of NFPA 58?	☐	☐	6.25.5.1 and 6.25.5.2
2	Mounding of containers	Each container in the facility is mounded?	☐	☐	6.25.5.3
		Mounding complies with each requirement under section 6.6.6.3 of NFPA 58.	☐	☐	6.6.6.3 & 6.25.5.3
3	Burying of containers	Each container in the facility is buried?	☐	☐	6.25.5.4
		Buried containers comply with each requirement under section 6.6.6.1 of NFPA 58.	☐	☐	6.6.6.1 & 6.25.5.4

Form 6.6
Special Protection Measures –Active Systems

#	Special Protection Option	Question	Is the Facility compliant?		NFPA 58 Section Reference (2011 Edition)
			Yes	No	
1	Water spray systems	Are fixed water spray systems, complying with NFPA 15[1] requirements, used for each container in the facility?	☒	☐	6.25.6.1
		Do fire responsive devices actuate water spray system automatically?	☒	☐	6.25.6.2
		Can the water spray systems be actuated manually also?	☒	☐	6.25.6.2
2	Monitor nozzle systems	Are the monitor nozzles located and arranged so that the water stream can wet the surfaces of all containers exposed to a fire?	☐	☐	6.25.6.3
		Can the water stream from a monitor nozzle reach and wet the entire surface of, at least, one half of a length from one end of each of the containers it is designed to protect?	☐	☐	6.25.6.3
		Do fixed monitor nozzles comply with NFPA 15[1] requirements?	☐	☐	6.25.6.1
		Do fire responsive devices actuate the monitor nozzles?	☐	☐	6.25.6.2
		Can the monitor nozzles can be actuated manually also?	☐	☐	6.25.6.2

1. See discussion in Section 8.2
2. Refer to Chapter 8 for a discussion on NFPA 15 *Standard for Water Spray Fixed Systems for Fire Protection*

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 6.7
Protection Against Vehicular Impact

#	System Protected	Is physical protection provided?		Type of physical protection installed
		Yes	No	
1	Storage containers	☐	☐	
2	Transfer stations	☐	☐	
3	Entryway into plant	☐	☐	

Table 7.1
Distances to Various Types of Propane Hazards Under Different Release Models**

Model #	Details of the Propane Release Model Releases from or due to		Vapor Dispersion Distance to LFL (ft)	Explosion Hazard Distance (ft)	Fire Ball Radiation Distance (ft)
1A	Bobtail hose failure. Release of the entire inventory in the hose, quickly.	1" ID x 150 ft hose length	250	110	50
1B		1" ID x 120 ft hose length	230	103	45
1C		1" ID x 75 ft hose length	190	90	40
2a	Release of the inventory in a transfer piping 1" x 30 ft + @ 20 gpm for 10 min., due to failed excess flow valve.		135	120	25
2b	Release of the inventory in a transfer piping 2" x 30 ft + @80 gpm for 10 mins.		230	252	48
2c	Release of the inventory in a transfer piping 2" x 80 ft. @ 70 gpm for 10 mins.		328	235	74
2d	Release of the inventory in a transfer piping 2.5" x 30 ft @80 gpm for 10 mins.		269	252	59
2e	Release of the inventory in a transfer piping 3" x 30 ft + @100 gpm for 10 mins.		312	287	69
2f	Release of the inventory in a transfer piping 3" x 18 ft + @100 gpm for 10 mins.		256	284	55
3	Release from the container pressure relief valve		No ignitable vapor concentration at ground level		
4	Release from a 1" ID x 150 ft transfer piping to a vaporizer and reduced flow from a partially open excess flow valve @ 20 gpm for 10 min.		250	120	50
5	Leak from a corrosion hole in a transfer pipe at a back pressure of 130 psig (corresponding to 80 °F) for 60 min. Hole size is ¼" ID.		110	120	5
6	Release of the entire inventory in a 2" ID x 20 ft., transfer hose.		195	90	40
6a	Release of the entire inventory in a 2.5 inch dia. transfer hose x 16 ft. length		215	98	45
6b	Release of the entire inventory in a 3-inch dia. transfer hose x 12 ft. length		230	100	46
7	Transport hose blow down: Hose size 2" ID, 20 ft length release for 3min., from a Transport after the tank is filled.		25	30	<5
7a	Transport hose blow down: Hose size 2.5" ID, 16 ft length release for 3min., from a Transport after the tank is filled.		25	29	<5
7b	Transport hose blow down: Hose size 3" ID, 16 ft length release for 3min., from a Transport after the tank is filled.		31	36	<5

** Results from models described in Appendix B. The results are rounded to the nearest 5 feet.

Worse cases identified above. Final decisions as to scenarios will be made when engineering documents are available.

None near facility

Form 7.1

Types of Occupancies[1] Near or Surrounding the LP-Gas Facility

Type of Occupancies	Model # from Table 7.1	Hazard Distance[2] (feet)	Is Occupancy located within the hazard distance from the Facility?	
			Yes	No
Assembly Occupancies (Places of worship, Libraries, Theaters and Auditoriums, Food or Drink Bars, Sports Stadiums, Amusement Parks, Transportation Centers, etc. with 50 or more people).				
Institutional Occupancies (Elderly Persons Home or Nursing Home, Hospitals, Alcohol & Drug Rehabilitation Centers, Prisons)				
Educational Occupancies (Elementary Schools, Day Care facilities, etc).				

NOTES: (1) Different types of occupancies are defined in NFPA 5000

(2) Table 7.1 provides a number of scenarios that can result in propane release, and the resulting area exposed for different ignition mechanisms. Determine the scenarios that are applicable to the facility, for the quantities that can be released, and enter the greatest value from Table 7.1. Use the hose diameters and length that will be used at the facility if they differ from the ones in Table 7.1 and recalculate the hazard distances using a spreadsheet method that is available at npga.org. Some scenarios may not be applicable to an installation because of other mitigation measures implemented, such as a hose management procedure to minimize the possibility of hose failure.

Form 7.2
Exposure to LP-Gas Facility from External Hazards

A	B	C	D
Item #	Type of Neighboring Operation	Hazard exists to the LP-Gas Facility	
		Yes	No
1	Petroleum and other hazardous material storage, wholesale dispensing, etc.	☐	☒
2	Metal cutting, welding , and metal fabrication	☐	☒
3	Industrial Manufacturing that can pose external hazards	☐	☒
4	Ports, rail yards and trans-shipment terminals handling flammable and explosive materials.	☐	☒
5	Other operations that may pose hazards (gasoline and other hazardous material dispensing stations, fertilizer storage, etc).	☐	☒

NOTE: If a particular activity indicated in column B does not exist, fill both "Yes" and "No" columns with "NA."

Where a "Yes" has been checked in either Form 7.1 or Form 7.2:

1) For an existing facility, communicate this information to local emergency responders for inclusion in their emergency planning.
2) For a proposed facility, implement the actions indicated in Chapter 9.

Form 8.1 First alarm data shown

Data on the Responding Fire Department

A	B		C
Item #	**Data Item**		Data Entry
1	Name of the Fire Department (FD).		Newington Fire Department
2A	Name of the person in the FD assisting with the data acquisition.		Chief Dale Sylvia
2B	Position of the person in the FD assisting with the data acquisition.		Fire Chief
3A	Date on which FD data was collected.		10/30/13
3B	Name of the person collecting the data.		Philip R. Sherman, P.E.
4	Number of firefighters on duty at any time.		3
5	Average number of firefighters available for response.		24
6A	Number of firefighters qualified to	"Firefighter I" level.	All
6B		"Firefighter II" level.	3-5
7A	Number of firefighters who would:	Respond on the first alarm to the facility.	24
7B		Respond on the first alarm and who are qualified to the operations level requirements of NFPA 472 or similar local requirements	3-5
7C		Respond on the first alarm with specific knowledge and training on the properties of LP-Gas and LP-Gas fires.	3-5
8A	Number of fire apparatus that have the capability to deploy a 125 gpm hose line supplied by onboard water for at least 4 minutes, and, which:	Are in service in the department.	3
8B		Would respond on a first alarm.	7

6B, 7B, 7C, 8A - data on responding fire departments, other than Newington, not obtained.

Form 8.2

Response Time data for the Fire Departments

A	B	C	D	E
Company or Department	Time in Minutes for			
	Alarm Receipt & Handling	Turnout	Travel	Total Time
Newington	2	1	4	7
Newington call back	1	20	4	25
Portsmouth	2	1	4	7
Pease	2	1	4	7
Dover	2	1	6	9
Durham	2	1	9	12
				0
				0

Note: Number in Column E = Sum of numbers from Columns B through D.

Flow rate for three rail cars is 2150 sf x 0.25 x 3 = 1612 gpm, rounded to 1625 gpm, plus 250 gpm = 1875 gpm

Form 8.3

Water Flow Rate and Total Water Volume Required to Cool Containers Exposed to a Fire

A	B	C	D	E	F	G	H
Item #	ASME Container Size (gallons)	Total Surface Area of each Container[1] (ft^2)	Surface Area of each container to be Cooled (ft2)	Water flow rate required per container (gpm)	Number of containers of the size indicated‡	Total Water flow rate required (gpm)	Total volume of water required for 10 min (gal)
1	500	86	43	10.8	0	0	
	1,000	172	86	21.5	0	0	
	2,000	290	145	36.3	0	0	
	4,000	374	187	46.8	0	0	
	6,500	570	285	71.3	0	0	
	9,200	790	395	98.8	0	0	
	12,000	990	495	123.8	0	0	
	18,000	1,160	580	145	0	0	
	30,000	1,610	805	201.3	0	0	
	45,000	2,366	1,183	295.8	0	0	
	60,000	3,090	1,545	386.3	0	0	
	90,000	4,600	2,300	575	3	1725	
	Other Size				0	0	
2a	Calculated water flow rate for container protection					1725	
2b	Water flow rate rounded up to nearest multiple of 125					1750	
3	Water for firefighter protection, if required					250	
4	Total water flow rate and volume					2000	20000

Note: Column D = (1/2) x Column C Column E = 0.25 (gpm/ft^2) x Column D ;
Column G = Column F x Column E Column H = 10 x Column G
Line 2a, Column G and Column H are the sum of numbers in each row above line 2 of each column.
Line 4, Column G and Column H are the sum of numbers in rows 2b and 3.

‡ Consider only 3 containers for water supply evaluations even if the number of containers in a group is more than 3. See Section 8.2.

1 ASME container approximate dimensions

The total water requirement for the facility is indicated in item 4, column G (water flow rate) and column H (total water volume or quantity) of Form 8.3. If multiple groups of containers are present in the facility, repeat the calculations in Form 8.3 for each group of containers. The total water requirement for the facility is the largest value for any single group of containers.

Form 8.4
Evaluation of Water Availability in or Near the LP-Gas Facility

A	B	C	D		
Item #	Water from...	Available?	Quantitative information		
1	Public supply or from another piped-in supply through one or more fire hydrants in or near the facility	☒ Yes ☐ No	Hydrant data	Distance from Container(s) on which water will be applied (feet)	Available water flow rate from all hydrants[1] (gpm)
			Hydrant 1		
			Hydrant 2		
			Hydrant 3		
2	A nearby static water source (stream, pond, lake, etc).	☐ Yes ☐ No	Distance to water source = _____ feet Time to set up relay = _____ min. Rate of delivery = _____ gpm		
3	Only through mobile water tanker shuttle.	☐ Yes ☐ No	Time to set up shuttle = _____ min. Sustainable flow rate = _____ gpm		

(1) Obtain the available flow rate from the local municipal water authority or the entity that supplies water to the hydrant or conduct a test to determine total available flow rate.

1. For an exiting facility, communicate this information to local responders for inclusion in their emergency planning.
2. For a proposed new facility, refer to Chapter 9

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 9.1

Analysis Summary on Product Control and Local Conditions of Hazard

A	B	C	D	E
Item #	CHAPTER Title	Section & Title	Reference FORM #	Number of "No" checked
1	Product Control Measures in Containers & Transfer Piping	5.1: Product Control in Containers	5.1 or 5.2 or 5.3 or 5.4§	
		5.2 Product Control in Transfer Piping	5.5	
			5.6	
			5.7	
			5.8	
			5.9	
2	Analysis of Local Conditions of Hazard	6.1 Physical Protection Measures	6.1	
		6.2 Ignition Source Control	6.2	
		6.3.1 Separation distances; Container and outside exposures	6.3	
		6.3.2 Separation distances; Transfer points and outside exposures	6.4	
		6.4 Special Protection Measures	6.5	
			6.6	

§ The number of "No" for Forms from Chapter 5 is the difference between the required number of appurtenances according to NFPA 58-2011, and a lesser number found to be actually installed on the container or the transfer piping.

If, in any row of column E ("No") of Form 9.1, the entry number is greater than zero, the proposed LP-Gas facility is not in compliance with the requirements of NFPA 58-2011 for product control appurtenances or other safety measures. The design of the proposed facility must be modified to conform to the code requirements. In addition, the following items should be noted.

- If there are any "No" checks in Form 6.3, then the separation distance requirements for containers are not satisfied. An option that may be considered is the reduction in separation distance to 10 feet for underground and mounded containers by providing "Redundant and Fail-Safe Product Control Measures." In this case, complete Form 9.4 below to ensure that each requirement of "Redundant and Fail-Safe Product Control Measures" is provided.

- If there are any "No" checks in Form 6.4, then the separation distance requirements for transfer points are not satisfied. In this case, relocate the transfer points so that the separation distances conform to the code requirements or provide the Low Emission Transfer Equipment. Complete Form 9.5 below and ensure that all requirements for Low Emission Transfer Equipment are fulfilled.

Form 9.2
Analysis Summary on Exposure from and to the LP-Gas Facility

A	B	C	D	E
Item #	CHAPTER Title	Section & Title	Reference FORM #	Number of "Yes" checked
1	Exposure to and from Other Properties	7.1 Exposure to off-site properties and persons from in-plant propane releases	7.1	0
		7.2 Exposure to propane facility from external events.	7.2	0

If the entry number in column E ("Yes"), Form 9.2 corresponding to Form 7.1 is greater than zero, consider one or more of the following design alternatives.

1 Consider moving the container or the transfer point to a different location, if possible and space exists, so that the property or the person is beyond the hazard distance.
2 Provide "Redundant and Fail-safe Product Control Measures". Complete Form 9.4 to ensure compliance.
3 Institute other technical measures such as installing gas and flame detectors (connected to facility shut down systems), sounding alarm outside facility premises, etc.
4 Institute administrative controls such as additional training for personnel, more frequent inspections of hoses and transfer piping, etc.

If the entry number in column E ("Yes"), Form 9.2 corresponding to Form 7.2 is greater than zero, consider one or more of the following design alternatives.

1 Implement procedures to monitor neighboring activity.
2 Install means in the adjacent plant to shut down the LP-Gas plant in case of an emergency in that plant.

Form 9.3
Analysis Summary on Fire Department Evaluations

A	B	C	D	E	F
Item #	CHAPTER Title	Section & Title	Reference FORM #	Number "zeros" entered in Column C, Lines 6 through 8 of Form 8.1	Number of "Yes" checked in Column C of Form 8.4
1	Fire department capability, adequacy of water supply and Emergency Planning	8.1 Data on the Fire Department	8.1	0	
2		8.2 Fire response water needs and availability	8.4		1

If the entry number in row 1, Column E of Form 9.3 is greater than zero, consider one or more of the following design alternatives.

1 Discuss with the local Fire Department the needs of the LP-Gas facility and the evaluation results on the capability and training inadequacies of the Department.

2 Consider developing a cadre of personnel within the LP-Gas facility to respond to emergencies.

3 Institute container special protection system based on active protection approaches or passive approaches. Complete Form 9.6 and Form 9.7 below.

If the entry number in row 2, Column F of Form 9.3 is equal to zero, consider one or more of the following design alternatives.

1 Provide special protection (other than water spray or monitor systems) to containers, satisfying the requirements of section 6.25.5 of NFPA 58, 2011 edition. Complete Form 9.6 to ensure compliance.

Consider implementing the various options indicated in Table 9.1.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 9.4
Redundant and Fail-Safe Design for Containers

A	B		C	D	E	F
Item #	Description		Features	Proposed for the facility?		NFPA 58 Section Reference (2011 Edition)
				Yes	No	
1	Container sizes for which the appurtenances are provided		Appurtenances and redundant fail-safe equipment and low emission transfer lines are provided for <u>each</u> container of water capacity 2,001 gal to 30,000 gal	☐	☐	6.26.3,6.26.4 and 6.26.5
2	Liquid or vapor withdrawal (1-1/4 in. or larger)		Internal valve with internal excess-flow valve	☐	☐	6.26.3.1 and 6.26.3.2
			Positive shutoff valve installed as close as possible to the internal valve	☐	☐	6.26.3.4
3	Liquid or vapor inlet		Internal valve with internal excess flow valve or Backflow check valve	☐	☐	6.26.3.5
			Positive shutoff valve installed as close as possible to the internal valve or the Backflow check valve	☐	☐	6.26.3.5
4	Railcar transfer	Flow into or out of railroad tank car	Emergency shutoff valve installed in the transfer hose or the swivel-type piping at the tank car end.	☐	☐	6.18.2.6 (1) and 6.26.4.1
		Flow only into railroad tank car	Emergency shutoff valve or backflow check valve installed in the transfer hose or the swivel-type piping at the tank car end.	☐	☐	6.18.2.6 (2) and 6.26.4.1
5	Cargo tank transfer		Protection provided in accordance with 6.26.4.1	☐	☐	6.26.4.1
6	Automatic closure of all primary valves (IV & ESV) in an emergency		By thermal (fire) actuation	☐	☐	6.26.4.2
			Actuated by a hose pull-away due to vehicle motion	☐	☐	6.26.4.2
7	Manually operated remote shutdown of IV and ESV		Remote shutdown station within 15 ft of the point of transfer?	☐	☐	6.26.4.3 (A)
			Another remote shutdown station between 25 ft and 100 ft of the transfer point?	☐	☐	6.26.4.3 (B)
			Shutdown stations will shut down electrical power supply, if any, to the transfer equipment and primary valves?	☐	☐	6.26.4.3
			Signs complying with the requirements of 6.24.4.3 (C) provided?	☐	☐	6.26.4.3 (C)

Note: If your facility does not have a rail terminal, write the word NA in both the "Yes" column and the "No" column in item 4 of the form in the railroad tank car row. Similar option is also available if there is no cargo tank vehicle transfer station.

Assume compliance with NFPA 58, complete form when engineering documents are available.

Form 9.5
Evaluation of Low Emission Transfer Equipment

A	B	C		D	E	F
Item #	Description	Features		Proposed for the facility?		NFPA 58 Section Reference (2011 Edition)
				Yes	No	
1	Transfer into permanently mounted ASME containers on vehicles	Delivery nozzle and filler valve-Max. liquid release after transfer of 4 cc.	Fixed maximum liquid level gage not used during transfer operations	☐	☐	6.26.5.1 (B)
2	Transfer into stationary ASME containers delivery valve and nozzle combination	During product transfer or post transfer uncoupling of the hose, liquid product volume released to the atmosphere	Does not exceed 4 cc (0.24 in^3) from a hose of nominal size 1 in or smaller	☐	☐	6.26.5.2 (A)
			Does not exceed 15 cc (0.91 in^3) from a hose of nominal size larger than 1 in.	☐	☐	6.26.5.2 (B)
3	Transfer into stationary ASME containers maximum filling limit	Do containers less than 2,001 gal (w.c.) have an overfilling prevention device or another approved device?		☐	☐	6.26.5.2 (F)
		Do containers greater than 2,000 gal (w.c.) have a float gage or other non-venting device?		☐	☐	6.26.5.2 (E)
4	Transfer into stationary ASME containers fixed maximum liquid level gage	Not used during routine transfer operations but may be used in calibrating other non-venting liquid level gauges in the container		☐	☐	6.26.5.2 (C,D)

Note: If the facility does not have a particular feature described in items 2 or 3, write "NA" in both the "Yes" and "No" columns corresponding to its row.

Form 9.6
Special Protection Measures –Passive Systems

A	B	C	D		E
Item #	Special Protection Option	Question	Proposed for the facility?		NFPA 58 Section Reference (2011 Edition)
			Yes	No	
1	Container insulation	Insulation provided on each of the containers?	☐	☐	6.25.5.1
		Insulation material complies with the requirements of NFPA 58?	☐	☐	6.25.5.1 and 6.25.5.2
2	Mounding of containers	Each container in the facility is mounded?	☐	☐	6.25.5.3
		Mounding complies with each requirement under section 6.6.6.3 of NFPA 58.	☐	☐	6.6.6.3 & 6.25.5.3
3	Burying of containers	Each container in the facility is buried?	☐	☐	6.25.5.4
		Buried containers comply with each requirement under section 6.6.6.1 of NFPA 58.	☐	☐	6.6.6.1 & 6.25.5.4

Form 9.7
Special Protection Measures –Active Systems

Item #	Special Protection Option	Question	Is the Facility compliant?		NFPA 58 Section Reference (2011 Edition)
			Yes	No	
1	Water spray systems	Are fixed water spray systems, complying with NFPA 15 requirements, used for each container in the facility?	☒	☐	6.25.6.1
		Do fire responsive devices actuate water spray system automatically?	☒	☐	6.25.6.2
		Can the water spray systems be actuated manually also?	☒	☐	6.25.6.2
2	Monitor nozzle systems	Are the monitor nozzles located and arranged so that the water stream can wet the surfaces of all containers exposed to a fire?	☐	☐	6.25.6.3
		Can the water stream from a monitor nozzle reach and wet the entire surface of, at least, one half of a length from one end of each of the containers it is designed to protect?	☐	☐	6.25.6.3
		Do fixed monitor nozzles comply with NFPA 15 requirements?	☐	☐	6.25.6.1
		Do fire responsive devices actuate the monitor nozzles?	☐	☐	6.25.6.2
		Can the monitor nozzles be actuated manually also?	☐	☐	6.25.6.2

Equivalent Protection to a Water Supply for Industrial and Bulk Facilities

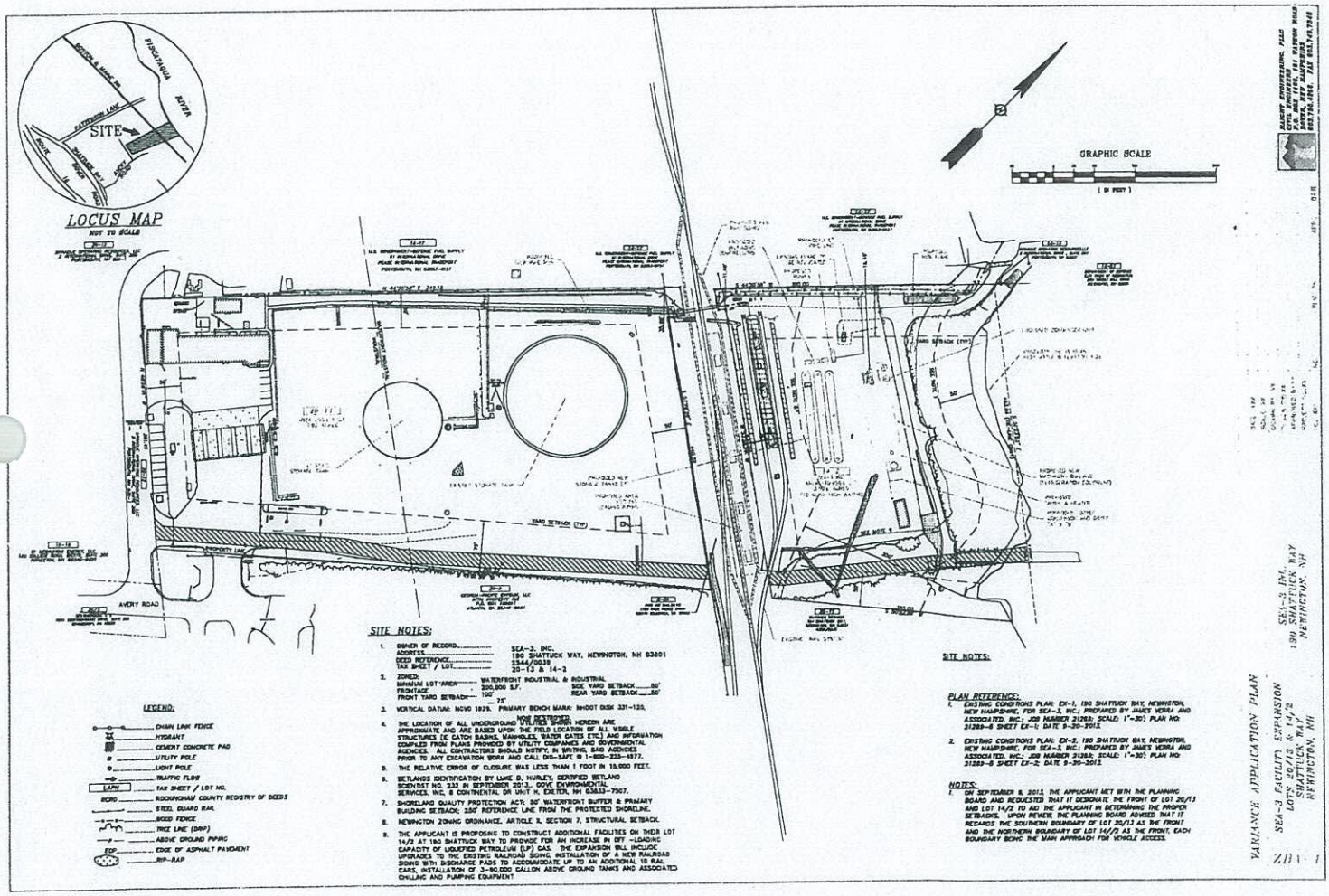
In the case where water supply is not available in or near the LP-Gas facility, or is inadequate or it is prohibitively expensive to connect to a public or private water supply hydrant, alternative methods for providing protection should be considered. In lieu of providing a water supply, several alternatives are indicated in Table 9.1, which can offer an equivalency to a water supply system.

The intent of the controls identified in Table 9.1 is to maintain the entire system as a gas tight entity. These methods include reducing the service life of equipment, increasing the design pressure rating of the system beyond the requirements of NFPA 58, or providing early detection and isolation of the system to ensure product control. This list is not exhaustive and is not ranked in an order of priority.

Table 9.1

Suggested Alternative Methods for Industrial and Bulk Plants That Do Not Pose a Hazard But Lack a Water Supply

Item #	Possible options to implement when adequate water supply is not available
1	Reduce the service life of hoses.
2	Increase frequency of equipment inspection.
3	Establish a service life program for the maintenance of the container pressure relief devices. This could include the installation of a listed multiple port valve and certifying that the relief devices are properly set and maintained every 5 to 10 years.
4	Increase the design strength of the piping and fitting systems.
5	Install emergency shutoff valves in conjunction with container internal valves.
6	Install emergency shutoff valves downstream of transfer pump outlets and upstream of the vapor and liquid valves at the bulkhead.
7	Install pneumatic tubing along the facility boundary to serve as a perimeter fire detection system. This would provide protection of the facility against exposure fires.
8	Provide optical flame detection or linear heat detection, or a gas detection system connected to an isolation valve installed downstream of every liquid and vapor nozzle on the container. This system could also be monitored to send a signal to an alarm company that notifies the fire department of an event.
9	Increase the separation distances of internal facility exposures to the container. These exposures would include a site dumpster, idle or waste pallets and combustibles, and increasing the parking distances between the bobtails and transports in relation to the container.
10	Relocate overhead power lines away from all container and cylinder storage areas to protect against ignition in the event of a line dropping due to wind or power pole impact.
11	Eliminate all combustible vegetation within 30 feet of the LP-Gas container. This can be accomplished using gravel, or paving the site yard.
12	Install tanks using the mounding or burial method.


LOCUS MAP
NOT TO SCALE
SITE
PISCATAQUA RIVER
SHATTUCK WAY
AVERY ROAD
GRAPHIC SCALE
(IN FEET)
SITE NOTES:
1. OWNER OF RECORD: SEA-3, INC.
ADDRESS: 190 SHATTUCK WAY, NEWINGTON, NH 03801
DEED REFERENCE: 5344/0639
TAX SHEET / LOT: 20-13 & 14-2
2. ZONED: WATERFRONT INDUSTRIAL & INDUSTRIAL
MINIMUM LOT AREA: 200,000 S.F.
FRONTAGE: 100'
FRONT YARD SETBACK: 75'
SIDE YARD SETBACK: 50'
REAR YARD SETBACK: 50'
3. VERTICAL DATUM: NGVD 1929. PRIMARY BENCH MARK: NHDOT DISK 331-120.
NOT RESTRICTED
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-800-225-4977.
5. THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
6. WETLANDS IDENTIFICATION BY LUKE D. HURLEY, CERTIFIED WETLAND SCIENTIST NO. 232 IN SEPTEMBER 2012. GOVE ENVIRONMENTAL SERVICES, INC. 8 CONTINENTAL DR UNIT H, EXETER, NH 03833-7507.
7. SHORELAND QUALITY PROTECTION ACT; 50' WATERFRONT BUFFER & PRIMARY BUILDING SETBACK; 250' REFERENCE LINE FROM THE PROTECTED SHORELINE.
8. NEWINGTON ZONING ORDINANCE, ARTICLE X, SECTION 7, STRUCTURAL SETBACK.
9. THE APPLICANT IS PROPOSING TO CONSTRUCT ADDITIONAL FACILITIES ON THEIR LOT 14/2 AT 190 SHATTUCK WAY TO PROVIDE FOR AN INCREASE IN DIT -LOADING CAPACITY OF LIQUEFIED PETROLEUM (LP) GAS. THE EXPANSION WILL INCLUDE UPGRADES TO THE EXISTING RAILROAD SIDING, INSTALLATION OF A NEW RAILROAD SIDING WITH DISCHARGE PADS TO ACCOMMODATE UP TO AN ADDITIONAL 10 RAIL CARS, INSTALLATION OF 3-90,000 GALLON ABOVE GROUND TANKS AND ASSOCIATED CHILLING AND PUMPING EQUIPMENT
LEGEND:
CHAIN LINK FENCE
HYDRANT
CEMENT CONCRETE PAD
UTILITY POLE
LIGHT POLE
TRAFFIC FLOW
TAX SHEET / LOT NO.
ROCKINGHAM COUNTY REGISTRY OF DEEDS
STEEL GUARD RAIL
WOOD FENCE
TREE LINE (DRIP)
ABOVE GROUND PIPING
EDGE OF ASPHALT PAVEMENT
RIP-RAP
SITE NOTES:
PLAN REFERENCE:
1. EXISTING CONDITIONS PLAN: EX-1, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21265; SCALE: 1"=30'; PLAN NO 21265-S SHEET EX-1; DATE 9-20-2012
2. EXISTING CONDITIONS PLAN: EX-2, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21265; SCALE: 1"=30'; PLAN NO 21265-S SHEET EX-2; DATE 9-20-2012
NOTES:
1. ON SEPTEMBER 8, 2013, THE APPLICANT MET WITH THE PLANNING BOARD AND REQUESTED THAT IT DESIGNATE THE FRONT OF LOT 20/13 AND LOT 14/2 TO AID THE APPLICANT IN DETERMINING THE PROPER SETBACKS. UPON REVIEW, THE PLANNING BOARD ADVISED THAT IT REGARDS THE SOUTHERN BOUNDARY OF LOT 20/13 AS THE FRONT AND THE NORTHERN BOUNDARY OF LOT 14/2 AS THE FRONT, EACH BOUNDARY BEING THE MAIN APPROACH FOR VEHICLE ACCESS.
SEA-3, INC.
190 SHATTUCK WAY
NEWINGTON, NH
VARIANCE APPLICATION PLAN
SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

Public Notice

The Newington Planning Board will hold a public hearing on **Monday November 18, 2013** at **6:30 PM** at the **Town Hall** to consider a proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

The plans are available for public inspection at the Town Hall.

Denis Hebert
Chairman

Guilford Transportation
Iron Horse Park
Billerica, MA 01821

Sprague Energy
2 International Drive, Suite 200
Newington, NH 03801

Georgia Pacific
P.O. Box 105681
Atlanta, GA 30348-5681

Matthew Metivier
164 Shattuck Way
Newington, NH 03801

Newington Planning Board

Monday November 18, 2013 6:30 PM

Agenda

1) **Public Hearing:** Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

2) **Planning**: Bicyle infrastructure improvements

3) **Preliminary Discussions:**

A) Proposal for a lot line adjustment between Dorothy Watson's property at 133 Fox Point Road and the Mathes lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lots 11 & 11-2.

B) Proposal by the Fox Run Mall to modernize exterior signs throughout its shopping center propery at 45 Fox Run Road, Tax Map 27 Lot 11.

C) Proposal by Pickering Marine to construct a pier and laydown area near the eastern end of Shafmaster Drive, Tax Map 20, Lot 1.

D) Proposal by Lam Brothers Partnership for residential, office, sales or service use at 21 River Road, Tax Map 19, Lot 4.

4) **Driveway Permit Application:** Request by Troy Leedberg for land off of Hannah Lane, Tax Map 18, Lot 3A.

5) **Planning Board Fee Schedule**

6) **Site Plan Approval Extension:** Request by Doloma Investment of Portsmouth, Inc. for property between Woodbury & Shattuck, Tax Map 20, Lot 4C.

7) **Planning Board minutes** of October 28

8) **Correspondence**

9) **Pending Business**: Re-visit Newington Master Plan; Improve signage in the Shattuck Way corridor; Capital Improvements Program; Update Rules of Procedure; and LED signs

Michael Marconi, Vice Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes, Monday, November 18, 2013

Call to Order: Chair Denis Hebert called the November 18, 2013 meeting at 6:35 PM.

Present: Vice Chair, Mike Marconi; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Bernie Christopher

Public Guests: Paul Bogan, VP Operations, Sea-3; Stephen Haight, P.E., Haight Engineering; Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways; Attorney Paul Sanderson; Craig Daigle; Matt Metiber; Michael Mathers; Edna Mosher; Keith Boyle, Boyle Studios; Ken Anderson, Riverside Pickering Marine; Linn Lebel, Appledore marine Engineering; Gregg Mikolaities, Tighe and Bond Engineering; Attorney Richard Uchida; Attorney Lee Witham; Troy Leeburg; Brenda Belonigan; Attorney Bernie Pelech; Joey Cresta; Dorene Stern; Eric Weinreib; Altus Engineering

1) Public Hearings:

A) Proposal by **Sea-3** to reconfigure its terminal at **90 Shattuck Way** (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG shipments via rail, the export of same via ocean-going ships.

Mr. Paul Bogan, VP of Operations for Sea-3 said the were no longer able to make a profit from importing foreign propane since their costs had gone up after lower cost propane and natural gas had glutted the domestic market. Mr. Bogan said they were proposing to convert the majority of their operation from importing foreign propane to exporting domestic propane, with a small percentage to the local market in New England. The propane would be brought in from Pennsylvania and West Virginia on rail, and processed at their plant for shipping out. An expansion of their facility would be required for the process. Steve Haight, of Haight Engineering said they would be applying for Shoreline Protection and Alteration of Terrain permits in the next week.

Justin Richardson asked if it would be possible to reverse the process to accept imports if the market changed, and Mr. Bogan said it would only be designed to unload by rail, chill and ship out, whereas the facility previously received chilled product by ship.

Alternate Board member, Peggy Lamson asked how many trucks would be coming in and out of the plant, and Mr. Bogan said there would be twelve a week. Craig

Daigle of Nimble Hill Road asked if the there was any possibility that there would be more than twelve trucks, and Mr. Bogan said they didn't expect any more than twelve any time soon, but the maximum they could have would be sixteen trucks. Edna Mosher of Nimble Hill Road asked if the change would increase truck traffic on Shattuck Way and Mr. Bogan said the number of shipments and trucks would be reduced.

Vice-Chair Mike Marconi asked where the railroad cars would be stored, and Cynthia Scarano, Executive VP of Pan Am Railways 12 cars would come in from Rockingham Junction and be unloaded with no cars stored at the facility. Vice-Chair Marconi asked if any would be stored at Patterson Lane, and Ms. Scarano said they would not.

Ms. Lamson said Greenland Town Administrator, Karen Anderson sent a request to Town Planner, Tom Morgan that the SEA-3 proposal be declared a development with regional impact under NH RSA 36:54.

Attorney Paul Sanderson, Greenland Planning Board Chair said the Town of Greenland is concerned over the transportation of propane through their town ten crossings and only two active, not protected at all, and an antiquated trestle. Attorney Sanderson said they were particularly concerned for the residents of Bayside Drive that would have no means of escaping their neighborhood if there was a rail accident at the crossing. He said he understood that town boards have no jurisdiction over the railways, which are under U.S. Federal jurisdiction, but the NH Department of Transportation does, so they may need to work with them.

Matt Metiber, an abutter asked if they'd done a safety assessment, and Mr. Bogan said improvements had to be done under the FDA's National Fire Protection, and the NFPA would work with the local fire chief when the project moved forward.

Chair Denis Hebert said people were concerned with the risks of propane hazards and asked Mr. Bogan to explain what the worst-case scenario would be like. Mr. Bogan said their main concern would be to prevent boiling liquid vapor explosions resulting from a lack of cooling water should the liquid propane become hot and weaken the steel causing an explosion. Mr. Bogan said that was the reason they were proposing a sprinkler system for cooling and prevention. Mr. Bogan said DOT has required rail cars to be insulated and equipped with head shields at the front and ends to prevent explosions as well as safety couplers that cannot come apart.

Chairman Hebert asked where the water would come from, and Mr. Bogan said they would be able to pump 3,500 gallons per minute where they were only required to pump 2,000 per minute from their sprinkler system on the tanks. Chairman Hebert said he would be concerned if they lost pressure. Mr. Morgan asked how the fire suppression system would work if they lost electricity, and Mr. Bogan said they had a diesel water pump that supplied two sprinklers. Mr. Bogan said they could get water from their Sprague's next door has a water storage tank that fire fighters could tap into, and there were two dry fire hydrants available, and firefighters could draught water from the river. Chairman Hebert said fire prevention would be critical in the first few seconds, and the fire department could be more concerned with evacuation in an emergency. Mr. Bogan said he hadn't recalled losing water from the City of Portsmouth in 38 years.

Mr. Richardson said he was impressed and confident with the safety systems he saw during the site walk, but wondered if they should have a review for their FDA 50 compliance. Mr. Bogan said they were hesitant to expend $100,000 during the preliminary stages without a better sense that they might receive approval for their proposal. Ms. Scarano said the Class I tracks were used twice a week, the trains were all under 260 tons, and limited to 10 mph. Chairman Hebert asked why they couldn't go faster, and Ms. Scarano said it was not necessary for the trains to go any faster. She said Federal inspectors inspected the tracks, cars, and systems regularly. Chairman Hebert asked if the inspection records were available, and Ms. Scarano said some were and some information was not available to the public because of Homeland Security.

Mr. Richardson said he would like Mr. Morgan to get a professional engineer rather than debating the idea. Mr. Morgan said they would need to follow certain procedures first. He said they would need to notify abutters and publish a legal notice for a public hearing to determine if the plan was substantially complete, then they would need to decide if the proposal made a regional impact, and send notice to the surrounding communities. Mr. Morgan said he had been talking with the former fire chief about working with the fire marshal.

Mike Marconi moved that the proposal by Sea-3 to reconfigure its terminal at 90 Shattuck Way (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, the export of same via ocean-going ships was substantially complete. Jack Pare seconded, and all were in favor.

Jack Pare said here would be significant regional impact in providing propane at a lower price for the region.

Mike Marconi moved to request a regional impact notice to be sent out to the surrounding towns of Greenland, Portsmouth, Newfield and Stratham regarding the Sea-3 proposal to reconfigure its terminal at 90 Shattuck Way (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas shipments via rail, the export of same via ocean-going ships. Jack Pare seconded, and all were in favor.

Mike Marconi moved to request a regional impact notice to be sent out to the surrounding towns of Greenland, Portsmouth, Newfield and Stratham regarding the Sea-3 proposal to reconfigure its terminal at 90 Shattuck Way (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas shipments via rail, the export of same via ocean-going ships. Jack Pare seconded, and all were in favor.

Justin Richardson moved to authorize the Planning Board Chair in consultation with the Town Planner to hire fire safety and rail safety experts, and to pass the associated costs on to the applicant Sea-3 of 90 Shattuck Way (Tax Map 14, Lot 2; and Map 20, Lot 13). Jack Pare seconded, and all were in favor.

Chairman Hebert continued the hearing to Monday, December 9, 2013.

2) Planning: Bicycle infrastructure improvements

Eric Weinrieb with Altus Engineering said in 2012 the Town of Newington had asked him to do a bike lane or bike path feasibility from the Spaulding Turnpike to the town center. Mr. Weinrieb said environmental consultant Mark West and Dave Hislop from Knight Hill Surveying did a wetlands study and survey of the area. He said a year ago the Board of Selectmen worked with DOT to allow a bike path on the southbound lane of the Spaulding to Arboretum Drive, which would reduce the number of commuters coming through town and up Fox Point to get to Arboretum Drive and Pease, but biking enthusiasts and local bikers would still go through town. Ms. Lamson said there was concern for bikers' safety on the roundabout connecting to Pease. Board of Selectman Chair, Rick Stern said the PDA said they wouldn't allow a bike path on that section of Arboretum Drive because they saw that area as having prime development potential. Ms. Lamson said people tend to take the shortest path from one place to another.

Mr. Weinrieb said they needed to determine what they were trying to accomplish, whether a built up bike path on one side of the road for locals, or a bike lane on both sides of the road for enthusiasts. He said one of the issues was that a bike path probably wouldn't be used with biking enthusiasts, and widening the road for a bike lane would involve more land acquisition and could give the impression that vehicles could travel faster through town. Mr. Weinrieb said they also needed to consider whether they wanted to limit doing something on Nimble Hill Road, or elsewhere in town.

Mr. Morgan said there was a serious concern for safety due to the narrow shoulder and poor visibility for bikers and pedestrians along Nimble Hill Road across from Coleman Drive and near the school. Mr. Richardson said most towns have designated school zones and there could be safety concerns with a bike path going through a school zone.

Chairman Hebert said there was a variety of travel from locals and people going through town to get to Pease or Greenland. He said he saw a need to come up with a plan for the entire town. Mr. Daigle said he thought there was a need to reduce the speed through town, but he didn't want to see the look of the town change. Mr. Richardson said bicyclists and pedestrians blame cars and drivers blame bicyclists and pedestrians, but the issue still needed to be addressed. He said they also needed to be concerned with traffic slowing down traffic speed. He said curb bump outs were shown to slow traffic down as well as signs placed in the center lane. He said a four-way stop at Fox Point Road and Nimble Hill Road has also been suggested.

Ms. Mosher said she the lack of adherence and enforcement of the speed limits was part of the problem, but she said poor visibility and no place to get out of the way

was also a problem. Brenda Belonigan of Hannah Lane agreed that enforcement of the speed limit was more of a problem than the speed limit. Vice-Chair Marconi said he thought speed was the first problem, and room for bike travel was the second problem.

Chairman Hebert said they should identify the issues further before asking Mr. Weinrieb to make a preliminary recommendation. He set a date for a work session on Disremember 9, 2013.

3) Preliminary Discussions

A) Proposal for a lot line adjustment between **Dorothy Watson's** property at **133 Fox Point Road** and the **Mathes** lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lots 11 & 11-12.

Mr. Michael Mathes came before the Board to discuss his lot line adjustment. Mr. Mathes said any trees required to open up the line of site from the curb cut would have to be taken down by the new owner.

Chairman Hebert said he it would be important to understand that the remaining lot couldn't be subdivided further due to wetlands and limited frontage. Mr. Richardson said they could put that on the plan.

Edna Mosher of Nimble Hill Road said she had known the applicant's family for many years, and Mr. Mathes had made many improvements to Dorothy Watson's place, and selling the property would help provide for her household care and healthcare as she goes into her 95th year.

Mike Marconi moved to going into a public hearing on December 9. Justin Richardson seconded, and all were in favor.

B) Proposal by the **Fox Run Mall** to modernize exterior signs throughout its shopping center property at **45 Fox Run Road**, Tax Map 20, Lot 1.

Keith Boyle with Boyle Studios said they submitted a lumens study for their new sign proposal. Chairman Hebert asked if they would be able to dim the lights if it was determined that they were too bright, and Mr. Boyle said they were fixed, but the lumens of the current sign was 30,000 lumens and the new sign would be 11,000 lumens. Mr. Pare asked if they had a diffuser in front of the LED and Mr. Boyle said the LED was behind acrylic lettering. Mr. Richardson said they could approve the sign subject to conditions that the light not be unreasonably bright in comparison. Mr. Pare said the pixels of the LED light would be diminished behind the acrylic.

Mike Marconi moved to go to a public hearing on December 9. Justin Richardson seconded and all were in favor.

C) Proposal by **Pickering Marine** to construct a pier and laydown area near the eastern end of **Shaftmaster Drive**, Tax Map 20, Lot 1.

Ken Anderson with Riverside and Pickering Marine said they were finalizing their plans with minor changes to Phase I of the floating dock system to support their operation. Mr. Anderson said they would extend another pier parallel in the next 3-5

years. He said they had applied for an Expedited Review Permit, which usually takes 75 days. He said once it was accepted as complete, it would be bumped up as a commercial project that would be beneficial to the economy. Mr. Anderson said they had me with DES, and the EPA National Fisheries Division.

Mr. Pare asked if they were applying for Phase I or Phase II and Mr. Anderson said they were applying for both. Mr. Morgan said site plan regulations say approval would expire in two years so they would need to reapply if they didn't complete the second phase before that time.

Vice-Chair Marconi asked when they anticipated beginning the project, and Mr. Anderson said their lease in Eliot, Maine they planned on starting in 2½-3 months.

Mr. Stern asked if they owned land, and Mr. Anderson said they owned approximately one acre for the gravel laydown area. He said they were hoping to purchase more land, and were also looking for another area for office space. Chairman Hebert said he was concerned with their limited space, and traffic hazards with the narrow access roadway, and said he would propose putting a condition of shut down if safety hazards occurred.

Mr. Anderson said Riverside Marine they started as a small marine contractor in 2007, and then acquired Pickering Marine in 2009. He said they have operated with tugboats, two box vans, and two pickup trucks. He said they would delivery trucks would come into the site, and load construction materials onto the boats.

Peggy Lamson moved to move to a public hearing on December 9. Mike Marconi seconded, and all were in favor.

D) Proposal by **Lam Brothers Partnership** for residential, office, sales or service use at **21 River Road**, Tax Map 19, Lot 4.

Attorney Don Witham came before the Board on behalf of his client who purchased the foreclosed property. He said Mr. Gilman the former owner of Superior Towing came before the Zoning Board of Adjustment for a special exception as to allow him and his family to continue residing in the commercial 30' x 50' building. He said the Board approved the exception with the stipulation that it would revert to commercial use after sale of the property. Attorney Witham said the current owner was having difficulty finding a buyer for the property that was at the back between two office buildings with only thirty feet of frontage. He said they haven't been able to advertise the property as part residential and part commercial to rent it, and asked if the Board would consider lifting the mixed use. Mr. Morgan said they would have to go before the ZBA. Chairman Hebert said he wasn't sure if that would be a good use of the property. Mr. Richardson said they may be able to make a case that there was a hardship, and Chairman Hebert said the history was available for the owners and they still purchased the property.

4) Driveway Permit Application: Request by **Troy Leeberg** for land off of **Hannah Lane**, Tax Map 18, Lot 3A.

Mr. Troy Leeburg said he purchased 20 acres off Hannah Land with just 59 feet of frontage on Hannah Lane and a right of way easement on the deed for access

through the end lot accessing Fox Point Extension cul-de-sac. Mr. Leeburg came before the Board asking for their determination on road frontage.

Abutter Brenda Belonigan of Hannah Lane said she attended the public hearing for the subdivision in the 90's, and she recalled being assured that the access point would be off Fox Point Road, but she would also accept the driveway off Nimble Hill Road. Mr. Leeburg said there would be four driveways in succession on Nimble Hill Road and his preference was for Hannah Lane. Mr. Morgan said there were six meetings on the subject and it was not as clear from the meeting minutes for those meetings that was approved, but said the ordinance requires 200' of continuous road frontage, and neither Fox Point or Nimble Hill Road would meet that requirement.

Mr. Richardson said the ordinance came about in 2008/2009 after the land was subdivided. Chairman Hebert said the tax card listed the property as buildable, but referred to the Fox Point access. Mr. Morgan said the Fox Point access was listed as a right of way so the Watson family could gain access to their orchards. Mr. Morgan said a corner lot has to be 40' from both corners. He said he would like to look into the matter further with the tax assessor. The Board decided that they would continue the discussion at the December 9 meeting.

5) Site Plan Approval Extension: Request by **Doloma Investment of Portsmouth, Inc.** for property between **Woodbury Avenue and Shattuck Way**, Tax Map 20, Lot 4C

Attorney Bernie Pelech said the applicant's original site plan had been approved in 2007 and 2008 before the project was postponed due to a down turn in the economy and nothing had been changed in their plan. Attorney Pelech said they had a potential buyer that was proposing the same hotel plan as the original.

Vice-Chair Marconi suggested making a motion to approve the original proposal. Chairman Hebert asked if State permits would be approved on projects that had been delayed from the 2008 economic down turn, and for how long. Mr. Richardson said the permits would only extend five years after approval if site development had begun, but it had not. Chairman Hebert said he thought they would need to go through site plan review and a public hearing again, but it would probably be quicker since they'd already gone through the process and little had changed.

The Board agreed to continue the site plan review of Doloma Investment of Portsmouth, Inc. for property between Woodbury Avenue and Shattuck Way, Tax Map 20, Lot 4C until the January meeting.

Adjournment: Mike Marconi motioned to adjourn, and Jack Pare seconded. All were in favor and meeting adjourned at 10:15 pm

Next Meeting: Monday, December 9, 2013

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

SHAINES & MCEACHERN, PA
Attorneys at Law

December 3, 2013

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Mr. Hebert:

I am writing on behalf of Sea-3, Inc. as a follow up to the Planning Board's November 18, 2013, Meeting at which the Board voted to retain the services of a rail safety expert in connection with the above referenced application. The purpose of this letter is to request a limitation on the proposed expert's scope of review to confine it to just information regarding the existence and nature of applicable federal safety standards.

Subsequent to last month's Meeting, legal counsel for Pan Am Railways expressed significant concern to Sea-3, Inc. regarding both Sea-3, Inc.'s agreement to pay for the Town's rail safety expert and any possible attempt to regulate Pan Am's operations based on what an expert might state. Pan Am maintains that the Town cannot require an applicant to pay for a rail safety expert because the Town is prohibited by federal law from regulating rail operations, which fall under the exclusive jurisdiction of the Federal Railroad Administration per federal law.

While Paul Bogan understands Pan Am's concerns, he represented to the Board that Sea-3, Inc. would pay for the rail safety expert and he stands by his representation. However, in light of Pan Am's concerns, Mr. Bogan feels it is important to delineate the expert's scope of review at the outset in order to avoid a situation that would implicate a violation of federal law.

In this situation, Sea-3, Inc. believes that the rail safety expert may properly provide the Board with information regarding the existence and nature of federal safety standards applicable to rail service without violating the Federal Railroad Administration's exclusive jurisdiction. In fact, Pan Am has suggested to Sea-3, Inc. that the Town may wish to contact the following persons to discuss any questions it may have regarding these standards:

Janet A. Lee, Deputy Regional Administrator Region I
Federal Railroad Administration, U. S. Dept. of Transportation
(617) 494-3990

282 Corporate Drive, P.O. Box 360
Portsmouth, New Hampshire 03802-0360
Telephone: 603/436-3110, Fax 603/436-2993

John Robinson, Railroad Inspector
New Hampshire Dept. of Transportation
(603) 271-2448

However, to the extent the proposed safety expert attempts to give an opinion on whether Pan Am's rail operations meet the applicable federal safety standards, Sea-3, Inc. believes that such opinion would not be relevant to its application and would likely lead to a claim that the Board violated federal law by attempting to regulate Pan Am's operations.

For these reasons, Sea-3, Inc. requests that the rail safety expert's scope of review be limited to providing the Board with information regarding the existence and nature of the federal safety standards applicable to rail service.

Respectfully Submitted,

SHAINES & McEACHERN, P.A.

By: _____
Alec L. McEachern

Cc: Thomas Morgan, Planner
Paul Bogan, Sea-3, Inc.
Stephen Haight, P. E.

Notice of Regional Impact

The Newington Planning Board will hold a public hearing on **Monday December 9, 2013** at **6:30 PM** at the **Town Hall** to consider a proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships. The applicant estimates that daily rail traffic will number twelve full tank cars and twelve empty cars.

The Newington Planning Board determined that this project could potentially impact the municipalities of Portsmouth, Greenland, Stratham, and Newfields. Accordingly, those municipalities are accorded the status of abutters pursuant to NH RSA 36:57, and are welcome to testify at the December 9 hearing.

Plans are available for public inspection at the Town Hall. Digital copies of the plans have been forwarded electronically to the above referenced muncipalities.

Denis Hebert, Chair
Newington Planning Board

From: Paul Sanderson <psanderson@nhmunicipal.org>
Subject: Railroad information
Date: December 6, 2013 1:35:36 PM EST
To: "'newington@ttlc.net'" <newington@ttlc.net>

Here is a link to an important FRA database. This one shows all of the crossings known to them, and all accident history of all of the crossings. This is available for each of the towns along the route into Sea 3. What it shows is that there have been accidents along the line, but they have uniformly been minor collisions between train and automobiles without loss of life. http://safetydata.fra.dot.gov/OfficeofSafety/Default.aspx

That being said, you will also note in the inventory reports of the crossings that the data about train movements is not consistent as to times and frequencies of movements. At the very least, the data is not current.

When it comes to crossing safety, I already referred you to RSA 373, which is how the NH DOT controls highway railroad grade crossing safety. You will note that when a petition is filed with them, there is an allocation of cost between the highway owner and the railroad. Generally this means that the railroad picks up the cost of any actual changes to the rails at the crossings, the costs of vegetation clearance on the rail ROW, and the cost of rail signals. This is because signals are activated by equipment on the rails, not equipment on the highway. Towns and/or the state are allocated the costs of changing items on the highways. This includes signage, pavement markings, vegetation clearance on the highways and physical changes to the grade of the highway as it meets or exits the crossing. Because this is a DRI, these sorts of off site highway changes could be allocated to the applicant by your planning board.

Here is a link to the general FRA page about highway crossings. http://www.fra.dot.gov/Page/P0040 On the right hand column, note the 2007 Grad Crossing Handbook, at this link: http://www.fra.dot.gov/Elib/Details/L02829 This is where you find the objective information about Class 1 track, train speed, sight distances, and recommendations for signalization.

Given the lack of accident data, there might not be much objective support for upgrading most crossings from stop sign control to signal control, and virtually no support for installing gates. That doesn't mean that no changes are needed. If you have digital pictures of sight distance at the stop bar at most crossings, you will see that sight is impeded by overgrown vegetation. You will see inadequate advance warning signs and inadequate pavement markings. You will also see "Operation Lifesaver" which is a public relations campaign tool to make sure that users of the public crossings know about train movements and do not continue to ignore protection controls at the crossings.

I am not in any way knowledegeable about the fire safety or emergency response issues, which should be based upon comments from the police and fire departments of the towns.

Paul G. Sanderson, Esq.
Staff Attorney
NH Municipal Association
psanderson@nhmunicipal.org

1-800-852-3358
224-7447 x 3408
Fax: 224-5406

PAN AM RAILWAYS
IRON HORSE PARK
NO. BILLERICA, MA 01862

LAW DEPARTMENT
(978) 663-1126

December 6, 2013

Members of the Town of
Newington Planning Board
205 Nimble Hill Road
Newington, NH 03801

Re: Sea -3, Inc. Terminal
90 Shattuck Way

Dear Members of the Planning Board:

Please accept this letter in response to the heightened scrutiny being applied to continued rail service at the Sea-3 facility in Newingtom. While Pan Am Railways has been a strong supporter of this project and has shown its willingness to answer questions from numerous local boards, agencies and departments, there is also a growing concern that the Sea-3 project could be unnecessarily delayed because the Planning Board is attempting to extend its jurisdiction into rail service, an area where no such jurisdiction exists.

Prior to discussing the legal issues relating to Planning Board scrutiny of rail service, I believe it is important to reiterate that transportation by rail is the most secure method of transportation available. In fact, the most recent available statistics show that railroads moved over 1.8 million carloads of hazardous materials in 2010, with 99.998% of those movements being completed without a release of these materials into the environment. Furthermore, when comparing similar shipments by other modes such as pipelines or trucks, railroads continue to be the safest option for transportation of all types of materials. Specifically, other recent studies have shown that through 2009 pipelines released approximately 55% more hazardous materials and trucks released approximately 23% more of such materials than rail carriers. It is also important to note that rail movements generally occur within a contained corridor, making the likelihood of a hazardous materials release having the same public impact as a similar incident on a highway much lower.

Moreover, while I recognize that the Planning Board may be concerned with its limited knowledge of track maintenance and is seeking an "expert" to guide Board deliberations, I would

respectfully submit that such additional expertise is neither necessary nor relevant to this project. As discussed in more detail below, jurisdiction over track maintenance lies exclusively with the Federal Railroad Administration ("FRA"), which has established comprehensive standards for the maintenance and renewal of track and structures. Through regulations contained at 49 C.F.R. Part 213, FRA establishes minimum track maintenance standards that railroads must meet depending upon track class, and the rail lines over which propane will move to Sea-3 easily meet or exceed those standards. Furthermore, Pan Am does not simply rely on the minimum maintenance standards established by FRA, and often undertakes additional measures to ensure that its trains can move safely and efficiently to customers such as Sea-3. One such measure, recently undertaken by Pan Am on the Newington Branch, includes ultrasonic testing of the tracks themselves to identify conditions that may not be seen through weekly FRA mandated visual inspections. As a result, statistics maintained by FRA show a decrease in accidents/incidents on Pan Am of over 71% since 2003. This is a safety trend that we are proud of and that we fully expect to continue through constant diligence and maintaining safety as our primary goal in all that we do. For these reasons, it is no surprise that both the Portsmouth and Newington Fire Departments have expressed their support for rail service to Sea-3, as this is by far the safest transportation mode alternative.

Notwithstanding: (a) the inherently safe nature of rail transportation; (b) the fact that Pan Am is not a party to the Sea-3 permit; and (c) rail service currently exists at Sea-3 and other locations in Newington, the Planning Board is now planning to engage a "rail expert" to assist in assessing rail service to Sea-3. While we appreciate the Planning Board's desire to address concerns raised during public meetings, it is also imperative that the Board recognize that any attempt to link rail service to Sea-3's permitting efforts intrudes upon an area exclusively controlled by the federal government.

In general terms, railroads are regulated in two distinct categories: (a) by the Federal Railroad Safety Act ("FRSA") in relation to safety matters; and (b) by the Interstate Commerce Act ("ICA") in relation to operational and commercial matters, with each Act preempting most state and local regulation of rail carriers and their customers. Pursuant to this regulatory scheme, any determination as to the track conditions on the Newington Branch is vested exclusively in the Federal Railroad Administration ("FRA") by the FRSA. Furthermore, FRA has also promulgated regulations governing track maintenance at 49 C.F.R. Part 213. Consequently, the Secretary of Transportation has prescribed a regulation "covering the subject matter" of track conditions and safety, and any attempt by the Planning Board to impede on this area of regulation would be preempted by federal law. *49 U.S.C. §20106.* Similarly, railroad operation are also broadly regulated by the Surface Transportation Board ("STB") pursuant to the ICA, and the STB's jurisdiction extends to all manner of "Transportation" by rail carriers, including: "a locomotive, car…related to the movement of passengers and property" and "services related to that movement, including receipt, delivery…transfer in transit…handling and interchange of passengers and property." *49 U.S.C. §10102(9).* Importantly, the ICA also contains a preemption clause that would also void any attempt by the Planning Board to interfere with Pan Am's ability to perform its rail operations, and other preemption principles such as field preemption and conflict preemption have also been found to apply pursuant to the ICA. *49 U.S.C. §10501(b).*

Notwithstanding the expansive federal regulation of railroads and the preemptive effect of that regulatory scheme, the Planning Board should also be aware that the ICA also provides remedies for rail customers. Specifically, Pan Am recently encountered a situation in Winchester, Massachusetts where the local zoning authority attempting to utilize zoning rules to prevent a customer from receiving rail service. In response, Pan Am initiated litigation at the STB seeking a determination that the use of local zoning to regulate rail carriers was preempted. In that proceeding, the STB not only held that local zoning is preempted to the extent that it seeks to regulate rail carriers, but also that: "The Interstate Commerce Act provides any person with the right to ask for common carrier rail service and carriers have the obligation to provide such service upon reasonable request. *49 U.S.C. §11101.* The Town's orders prohibiting all rail traffic to the warehouse conflict with Tighe's right to request common carrier service and the federal obligation of Pan Am to provide that service, as well as the Board's exclusive jurisdiction over that service." *Boston and Maine Corp. & Springfield Terminal Railway Co., Petition for Declaration Order*, STB Docket No. 35749.

Finally, we also note that concerns have been raised with regard to railroad crossings along the route by which Sea-3 will be served. In response, it should be noted that in general terms the New Hampshire Department of Transportation determines the level of protection at public railroad crossings based upon multiple factors such as vehicular traffic, sight views and railroad volume. While we have not yet been contacted by DOT with any concerns for the existing protection at crossings along the route, we would be happy to reach out to DOT to determine if upgrades are necessary to both public and private crossings in accordance with DOT's federal crossing program.

While Pan Am is well aware of its potential remedies in the event of inappropriate Planning Board regulation of its service to Sea-3, Pan Am at this time would much rather work cooperatively with the Planning Board to finalize Sea-3's application and to increase the productivity of an important local business. Toward that end, we remain willing to meet with the Planning Board to continue the application process, and to appear at public hearings to address any questions that may arise. We truly believe that we operate a safe and responsible railroad, and look forward to working with the Town of Newington and Sea-3 to complete this process.

Thank you for your attention to this matter. Please feel free to contact me if you should have any questions or comments.

Sincerely,

Robert B. Culliford
Senior Vice President
& General Counsel

Notice of Regional Impact

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Denis Hebert, Chair
Newington Planning Board

Paul Deschaines
10 Bunker Hill Ave
Stratham, NH 03885

Board of Selectmen
65 Main Street
Newfields, NH 03856

Glenn Greenwood
Rockingham Planning Commission
156 Water Street
Exeter, NH 03833

Karen Anderson
575 Park Street
Greenland, NH 03840

Rick Taintor
City Hall
1 Junkins Avenue
Portsmouth, NH 003801

Public Notice

The Newington Planning Board will hold a public hearing on **Monday December 9, 2013** at **6:30 PM** at the **Town Hall** to consider the following:

A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

B) Proposal for a lot line adjustment between Dorothy Watson's property at 133 Fox Point Road and the Mathes lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lots 11 & 11-2.

C) Proposal by the Fox Run Mall to modernize exterior signs throughout its shopping center propery at 45 Fox Run Road, Tax Map 27 Lot 11.

D) Proposal by Pickering Marine to construct a pier and laydown area near the eastern end of Shafmaster Drive, Tax Map 20, Lot 1.

Plans are available for public inspection at the Town Hall.

Denis Hebert
Chairman

Guilford Transportation
Iron Horse Park
Billerica, MA 01821

Sprague Energy
2 International Drive, Suite 200
Newington, NH 03801

Georgia Pacific
P.O. Box 105681
Atlanta, GA 30348-5681

Matthew Metivier
164 Shattuck Way
Newington, NH 03801

Lordco Pier Associates
158 Shattuck Way
Newington, NH 03801

MMC Fox Run LLC
304 Maplewood Avenue
Portsmouth, NH 03801

Sears Roebuck & Co.
3333 Beverly Road
Hoffman Estates, IL 60179

JC Penney
P.O. Box 10001
Dallas, TX 75301-1217

Texas Roadhouse
6040 Dutchman's Lane
Louisville, KY 40205

Julia Beals
33 Fox Run Road
Newington, NH 03801

Mindrift LLC
210 Commerce Way, Suite 300
Portsmouth, NH 03801

Underdog Realty, LLC
281 North Haverhill Road
Kensington, NH 03833

Doloma Investment P...
153 Split Rock Roac
Paramus, NJ 07652

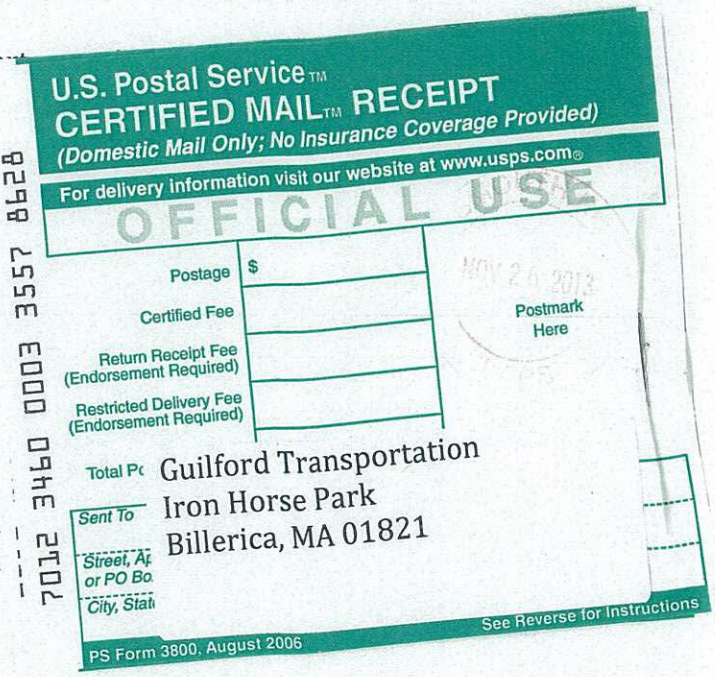
Realty Income Corporation
Marvin Poer & Co.
P.O. Box 54257
Atlanta, GA 30355

GMRI Inc.
P.O. Box 695019
Restaurant #002143[illegible]

Fox Run Joint Venture
P.O. Box 6120
Indianapolis, IN 46206

PSNH
P.O. Box 330
780 North Commercial
Manchester, NH 03101

NH Dept. of Transportation
7 Hazen Drive
Concord, NH 03302



Michael Mazeau
124 Fox Point Road
Newington, NH 03801

Dana Nowell
12 Coleman Drive
Newington, NH 03801

Joyce Wilson
33 Hannah Lane
Newington, NH 03801

Sh[illegible]n Alley
273 Bradley's Crossing
East Chatham, NY 12060

Alan & Lillian Wilson
14 Hemlock Lane
North Brunswick, NJ 08902

Brewster Family Trust
99 Old Post Road
Newington, NH 03801

CITY OF PORTSMOUTH
Community Development Department
(603) 610-7232
Planning Department
(603) 610-7216

December 9, 2013

Newington Planning Board
Town Hall
205 Nimble Hill Road
Newington, NH 03801

RE: Sea-3 Terminal, 190 Shattuck Way, Newington

Dear Planning Board Members:

Thank you for designating the proposed Sea-3 terminal expansion project as a Development of Regional Impact and according the City of Portsmouth the status of an abutter in the Site Plan Review process. The potential impacts of this project on the City of Portsmouth relate to the possible storage of rail cars at the rail yard adjacent to North Mill Pond and the increased frequency of rail transport through the City and in particular through the downtown area.

The Portsmouth rail yard abuts the dense McDonough Street neighborhood and faces the Creek and Christian Shore neighborhoods across North Mill Pond. In past years, nighttime idling of locomotives in the yard was a significant problem due to the noise impacts on these neighborhoods. The City is strongly opposed to any change in railroad operations that would include nighttime idling in the rail yard. In addition, the City is opposed to storage of LPG tank cars in the same yard because of the proximity to the McDonough Street neighborhood.

The rail line crosses Maplewood Avenue and Market Street at grade in downtown Portsmouth. These two crossings are currently adequate for the small volume of rail traffic on the line. We understand that while the proposed project will increase the number of tank cars per train, it will not necessarily increase the number of trains passing through the City on a daily or weekly basis. If the frequency of trains were to increase, these at-grade crossings should be evaluated for improvements.

We also understand that the railroad does not anticipate increasing the speed of trains in the City. Nonetheless, we have concerns about the condition of the tracks, and particularly of the bridge over the Route 1 Bypass, and request that the railroad evaluate these conditions and their acceptability for increased usage and potential increases in speed.

1 Junkins Avenue
Portsmouth, New Hampshire 03801
Fax (603) 427-1593

We request that the Board include the following conditions in its approval of a site plan for this project:

1. Locomotives shall not be permitted to idle for extended periods of time in the evening or in the rail yard adjacent to North Mill Pond.

2. LPG tank cars shall not be stored in the rail yard adjacent to North Mill Pond.

3. The railroad company shall provide the City of Portsmouth with an evaluation of the conditions of the tracks in Portsmouth, with particular attention to the rail bridge over the Route 1 Bypass.

4. If the frequency of rail trips through downtown Portsmouth increases from its current level, the railroad company shall work with the City of Portsmouth to evaluate the need for improvements to the crossings at Maplewood Avenue and Market Street.

Thank you for your consideration of the above concerns and issues. Please feel free to contact me if you have any questions.

Sincerely,

Rick Taintor
Planning Director

copy: John P. Bohenko, City Manager
David S. Allen, Deputy City Manager
John Ricci, Chair, Planning Board

Newington Planning Board

Monday December 9, 2013 6:30 PM

Agenda

1) **Public Hearings:**

A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

B) Proposal for a lot line adjustment between Dorothy Watson's property at 133 Fox Point Road and the Mathes lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lots 11 & 11-2.

C) Proposal by the Fox Run Mall to modernize exterior signs throughout its shopping center propery at 45 Fox Run Road, Tax Map 27 Lot 11.

D) Proposal by Pickering Marine to construct a pier and laydown area near the eastern end of Shafmaster Drive, Tax Map 20, Lot 1.

2) **Driveway Permit Application:** Request by Troy Leedberg for land off of Hannah Lane, Tax Map 18, Lot 3A.

3) **Planning Board minutes** of October 28 and November 18

4) **Land Regulation:** Proposal for shared driveway regulations

5) **Correspondence**

6) **Pending Business**: Re-visit Newington Master Plan; Improve signage in the Shattuck Way corridor; Capital Improvements Program; Update Rules of Procedure; and LED signs

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes, Monday, December 9, 2013

Call to Order: Chair Denis Hebert called the December 9, 2013 meeting at 6:30 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Alternate Member, Peggy Lamson; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Jack Pare and Justin Richardson

Public Guests: Karen Anderson, Administrator for the Town of Greenland; Ken Anderson, Pickering Marine; Brenda Belonigan; Paul Bogan, VP Operations, Sea-3; Jeff Buxton, Town of Newfields Fire Department; Maggie Cook; Rich DiPentima; Stephen Haight, P.E., Haight Engineering; Bob Keating, Shaftmaster; Dan Latievierre; Troy Leedburg; Attorney, Alec McEachren; Greg Mikolaites, Tighe & Bond Engineering; Michael Mathes; Nicholas Middle, Fox Run Mall Representative; Edna Mosher; Paul Reardon; Attorney Paul Sanderson; Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways; John Sullivan; Steven Sawyer; Bill and Sandy Sweeney; Attorney Richard Uchida; David Vincent, Surveyor; Randy Watson; Attorney Patricia Weathersbee; Joey Cresta with "Portsmouth Herald"

1) Public Hearings:

A) Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Paul Bogan, VP Operations, Sea-3 returned to the Board to continue the public hearing for their proposal after a regional impact notice had gone out to the towns of Greenland, Portsmouth, Newfield and Stratham. Ms. Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways were also in attendence to answer questions regarding the rail line.

Mr. Paul Reardon of Patterson Lane, Newington asked Mr. Bogan how many rail trucks would be coming in and out for propane pickup and deliveries a day, and Mr. Bogan said no more than twelve a day. When asked how many homes or business were direct abutters, Mr. Bogan replied that there were a couple of cottages and the Sprague Energy Terminal.

Ms. Karen Anderson, Administrator for the Town of Greenland said they were concerned with railcars carrying LPG going over railroad crossings on their public roads on a daily basis at increased speeds. She asked if there were any plans on training school children on railway safety. Ms. Cynthia Scarano, Executive VP for Pan Am Railways said railcars were using the tracks already, and the number of railcars had always varied depending on the amount of business they were seeing. Ms. Scarano

said inspection of the railway crossings came under the Department of Transportation (DOT), and the rest of the railroad came under the Federal Railway Administration (FRA). She said they were under Federal jurisdiction because they were passing through several states and numerous cities and towns so there was no requirement for local approval on the number of cars that passed through. Ms. Scarano said the rails were inspected regularly and were currently approved for 10 mph travel with no plans to increase rail speed at this time. She also said Pan Am Railways is a member of Operation Life Saver made up of employees that volunteer to go into schools to educate students on rail safety, and they could be called to set up a presentation.

Mr. Rich DiPentima, a member of the Portsmouth Conservation Commission expressed concern with LPG railcars passing within 20 feet of the Harbor House Hotel and condominiums, the upcoming Wholefoods Market on Maplewood Avenue, and within 5-20 feet of Atlantic Heights, Spinnaker Point, and other residences and businesses in Portsmouth. Ms. Scarano said it was already an active railroad operating three times a week, and that freight rails operated at slower speeds and not on the same schedule as passenger rails. Mr. Bogan said they had transported propane in various volumes over the tracks since 1995.

Ms. Peggy Lamson, alternate Board member said she understood economic importance of the product, but it was the town's duty to look at safety for their citizens.

Chairman Denis Hebert said the Town had hired an independent railway-engineering consultant, Mr. Steven Sawyer, P.E. with Sebago Transportation Services. Chairman Hebert asked Mr. Sawyer to explain the railroad safety inspection process. Mr. Sawyer said the FRA is responsible for monitoring railway track safety and standards in the region, and the DOT is responsible for railway crossings. Mr. Sawyer suggested they proceed with due diligence and write a letter to the FRA informing them of the proposal and requesting they investigate the condition of the railroad tracks and product carrier, and also contact Mr. John Robinson in railroad inspection with DOT to access and inspect the railways crossings. Chairman Hebert asked how the towns within the regional impact should get involved, and Mr. Sawyer said it would have a greater impact to write the letter as a community effort. Chairman Hebert asked Ms. Anderson if the Town of Greenland would be interested in being included in the letter, and she said they would.

Chairman Hebert asked Mr. Sawyer if the DOT and the FRA would have a forum open for public comment. Mr. Sawyer said he doubted if they would conduct an open process.

Mr. Reardon said he spoke with the Speary inspection crew from Portsmouth and they told him there were multiple deficiencies on the rail line, that there were still materials from the late 1800's to early 1900's. He said he observed bowing of the railroad ties in some areas and gravel laid under them to shore them up. Mr. Reardon said they should be fixed because safety should come before all else. Vice-Chair Marconi asked Ms. Scarano how far the cars would go up toward Patterson Lane, and she said the cars would only go as far as the Sea-3 facility.

Mr. Bill Sweeney of Patterson Lane asked if there would be an increase in the number of rail cars and times they passed, and Mr. Bogan said the capacity of the chillers and drying towers prevented more than twelve cars a day.

Mr. Reardon asked where the ships would come in and Mr. Bogan said they would come into the same pier they had used for the past 34 years.

Attorney Patty Weathersbee, representing Matt Mateva who owns two rentals between Shaftmaster and the proposal said her client was concerned about any potential for explosions or acts of terrorism. Attorney Weathersby said they would like to see the construction of passive protection like a berm with a blast wall, fire suppression and improved security to seal off the area. She said she was pleased that the Town had hired Mr. Sawyer as a consultant. Mr. Bogan said they were required by the U.S. Coast Guard to have security plans, monitoring cameras 24 hours a day, adequate lighting, fire safety analysis and meet fire protection standards. He also said they had discussed a berm along the property line.

Mr. Reardon asked where the railroad cars would rest over night, and Mr. Bogan said they would hold six cars overnight on their lot near the chillers. Ms. Scarano said the business owner does all the loading and unloading and they do all the switching of cars.

Mr. Don Lalevierre, who lives at one of his brother's properties on Patterson Lane, said it was already noisy and he was concerned with light and noise. Mr. Bogan said there might be noise from other industry nearby, but there was very little noise from their operation, and they didn't anticipate any added noise impact from the insulated chillers. Chairman Hebert said steel on steel does make noise, but he hoped they would try to minimize it. He said they used berms at Pease and it worked quite well to reduce noise. Attorney Weathersbee asked if the tanks could be moved further north from the residents, and Mr. Bogan said they could only be moved 10-12 feet at best and their location proposal was to give emergency responders space.

Ms. Anderson said recognizing a list of deficiencies would not resolve issues and Greenland would like to make it a stipulation for approval that Pan Am Railroad work with the communities on safety improvements. Chairman Hebert said Pan Am had offered to work with them, but he didn't think the Town could take on any liability by making safety improvements by Pan Am a stipulation for approval as they were under Federal jurisdiction, and it was up to the FRA to do their job.

Mr. Reardon asked if the railroad cars had alarms and fire suppression systems and Mr. Bogan said the operation was manned 24/7, 365 days a year and were trained in emergency safety response. Mr. Reardon asked if water was the only means of fire suppression, and Mr. Bogan said it was the primary source to cool metal to keep it from rupturing and to stop the flow of fuel, keeping in mind that they would want fire to burn the fuel out at the source in some cases rather than allow gas to spread.

Vice-Chair Mike Marconi asked Mr. Bogan what his qualifications in fire safety were, and Mr. Bogan said he was a principal member of the NFPA50 committee and also a fire safety instructor of propane fire emergencies at the Massachusetts and New Hampshire Fire Academy twice a year.

Mr. DiPentima asked who owned the tank cars and who was responsible for their maintenance. Ms. Scarano said some customers own their own cars and some lease them, but the Association of American Railroads was responsible for inspecting them. She said GATX was a major leaser of boxcars and tankers. Chairman Hebert asked if they would refuse a car in poor condition, and Ms. Scarano said they only inspected the exterior. Chairman Hebert asked Mr. Bogan what safety measures there were on the cars and Mr. Bogan said after a review of cars bumping into one another, improvements were made in the couplings and insulating front and back with header shields. Vice-Chair Marconi asked if they had cameras to monitor the engineers driving behaviors to avoid derailment as had happened in the Bronx recently, and Ms. Scarano said they did not. He said that was an improvement they might consider.

Mr. John Sullivan of Dunlavey Way in Portsmouth said he lived in a house 50' from the tracks and was concerned that the 10 mph speed might increase to 25 mph. Ms. Scarano said the speed was determined by track classification which was set by the FRA, and was based on the track condition. She said Amtrak passenger rails go at higher speeds and have a higher track classification. Mr. Sullivan asked if the speed was based on the residential areas they go through and Ms. Scarano said it was not.

Mr. Jeff Buxton from Newfields Fire Department said they shared safety concerns because they went through their town as well, and he believed they went through at higher speeds. Chairman Hebert asked why they only went 10 mph through the towns of Greenland, Newington, and Portsmouth, and Ms. Scarano said it had to do with the condition of the tracks.

Town Planner, Tom Morgan said the Planning Board had asked him to locate a LPG fire safety consultant, and the State fire marshal recommended Mr. Nicholas Criscenti, President of SFC Engineering Partnership. Chairman Hebert said he would like legal counsel to review the terms of the contract first. Mr. Bogan said he would like to know the fee, and Chairman Hebert said he could check with Mr. Morgan.

Vice-Chair Marconi asked if there was anyone representing the City of Portsmouth, and no one spoke up, but Chairman Hebert said they had received a letter from Portsmouth Planning Director, Rick Taintor. Vice-Chair Marconi said they should ask the City of Portsmouth to take part in the process. Chairman Hebert asked Mr. Morgan to invite the other towns to participate within the next ten days, and draft a letter to the FRA to investigate the condition of the tracks and the DOT to investigate the railroad crossings.

Chairman Hebert continued the public hearing to Monday, January 13, 2014.

B) Proposal for a lot line adjustment between Dorothy **Watson's** property at **133 Fox Point Road** and the **Mathes**' lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lot 11 & 11-2.

Chairman Hebert asked Mr. Morgan to update the Board on what he found out regarding a lot line adjustment stipulations for a single house. Mr. Morgan said Mr. Mathes' potential buyer did not want a stipulation to be referenced on the deed that would restrict future subdivision of the lot, despite limited buildable area due to wetlands

buffers. Chairman Hebert said they contacted Town counsel, Attorney Rattigan who said the owner could come back to the Board if they wanted to subdivide and they would need a wetlands scientist report, and request a curb cut be added to the plan. Ms. Dorothy Watson's nephew, Randy Watson asked where the adjustment was being made and Mr. David Vincent, the surveyor showed him.

Chairman Hebert asked Mr. Mathes if he had legal authority to represent Ms. Watson, and Mr. Mathes said he had power of attorney through Attorney Bill Boshe

Chairman Hebert said he would like a concrete or granite marker, not just a pin, and Mr. Vincent agreed.

Peggy Lamson moved to accept the proposal for a lot line adjustment between Dorothy Watson's property at 133 Fox Point Road and the Mathes lot on the corner of Fox Point Road and Nimble Hill Road, Tax Map 17, Lots 11 & 11-2. Mike Marconi seconded, and all were in favor.

(Chairman Hebert left at this point in the meeting and Vice-Chair Marconi chaired the rest of the meeting from this point on)

C) Proposal by **Fox Run Mall** to modernize exterior signs throughout its shopping center property at **45 Fox Run Road**, Tax Map 27 Lot 11.

Mr. Nicholas Middle, representing the Fox Run Mall came in response to questions posed to Mr. Keith Boyle with Boyle Studies at the November 18, 2013 meeting regarding the intensity of sign lighting. Mr. Middle presented the same drawings that Mr. Boyle presented. Mr. Middle reiterated that the incandescent lights illuminating the signs on the pylons would have the same 30,000 lumens that they had before and the LED signs on the buildings would only be shining through the lettering, not the entire backboard.

Mr. Morgan said mall management would need to follow the ordinances regarding the size of the wayfinding signs or come before the Board of Adjustment.

Bernie Christopher moved to accept the proposal by Fox Run Mall to modernize exterior signs throughout its shopping center property at 45 Fox Run Road, Tax Map 27 Lot 11. Peggy Lamson seconded, and all were in favor.

D) Proposal by **Pickering Marine** to construct a pier and laydown area near the eastern end of **Shaftmaster Drive**, Tax Map 20 Lot 1.

Mr. Gregg Mikolaites with Tighe and Bond Engineering reviewed the site plan showing how delivery trucks would enter and exit. He said they met with the Conservation Commission and received a recommendation for their DES permits.

Mr. Bob Keating abutter from Shaftmaster said they had no problem with the proposal.

Board of Selectmen representative, Rick Stern asked what they were going to use for the laydown area, and Mr. Ken Anderson with Pickering Marine said they would use gravel. Mr. Stern asked if there were any plans to pave, and Mr. Anderson said there were not.

Vice-Chair Marconi asked where the run off would go, and Mr. Mikolaites aid it would go into the wetlands buffer.

Peggy Lamson moved to approve the proposal by Pickering Marine to construct a pier and laydown area near the eastern end of Shaftmaster Drive, Tax Map 20 Lot 1. Bernie Christopher seconded, and all were in favor.

2) Driveway Permit Application: Request by Troy Leedberg for land off **Hannah** Lane, Tax Map 18 Lot 3A.

Mr. Troy Leedburg said he submitted a detailed plan to the Board at the previous meeting and had since checked Google maps regarding question of frontage. He said he also consulted with Attorney Bernie Pelech who informed him that the zoning ordinance reference to road frontage could mean more than one side facing a public roadway.

Mr. Leedburg said the property was listed and sold as a buildable lot since it was subdivided 17 years ago. Mr. Stern asked how much of the property was buildable, and Mr. Leedburg said much of the 20 acres was wetlands with only five to six acres buildable.

Brenda Blonigan of Hannah Lane said she and several others attended the subdivision 17 years before, and recalled the access as being through an easement through private property at the end of Fox Point Road, however she could not find any record of the minutes from that time. Ms. Lamson said Fred Smith was on the Board of Selectmen at that time.

Ms. Maggie Cook of Hannah Lane said all the residents of Hannah Lane were required to have 200 feet of frontage and this lot did not have 200 feet so an attorney would have to determine whether the frontage was on Hannah Lane or Nimble Hill Road.

Mr. Morgan said the application before the Board was for a curb cut, but Town counsel, Attorney Rattigan agreed that Mr. Leedberg would need a variance to build and the Planning Board would have to decide which side is the frontage. Mr. Morgan said the Town changed the ordinance on frontage in 2012.

Mr. Stern said he didn't feel they could approve the curb cut if the lot was no longer considered buildable because of a lack of road frontage, however Mr. Leedburg could have temporary access to cut trees. Mr. Leedburg expressed financial distress at not being able to start building, saying it would cost him an additional $10,000 for the delay. Mr. Morgan said the ZBA scheduled meetings as soon as they received applications.

Rick Stern moved to table the request by Troy Leedburg for a driveway permit off Hannah Lane, Tax Map 18 Lot 3A. Bernie Christopher seconded, and all were in favor.

3) Land Regulation: Proposal for **Shared Driveway Regulations**

Mr. Morgan said town counsel, Attorney Rattigan recommended the Board establish criteria for shared driveway permits. Discussion ensued regarding concerns

for property owners with shared driveways and conflicts that could arise from lack of cooperation with current or future owners. Mr. Stern said he didn't feel shared driveways should be permitted, and Mr. Morgan said that had been the general consensus of the Board.

Bernie Christopher moved to amend the Driveway Regulations so as to prohibit shared driveways and Peggy Lamson seconded. All were in favor with Vice-Chair Marconi voting as well.

4) Additional Discussions:

Mr. Stern said he was not comfortable accepting $10,000 from Cumberland Farms that was originally intended for a COAST bus stop shelter on Gosling Road near their new building site, but had since been scrapped and was offered to go toward the Town's contribution to COAST bus service. Vice-Chair Marconi agreed and said the Town would also be returning bus stop funds to Tyco since there would be no bus stop shelter near their site either, and it would not be right to keep the money for a different use.

Mr. Morgan said abutters would have to be notified if a condition of approval was changed.

On another matter, Mr. Stern asked if a lot wouldn't be grandfathered as buildable, and Mr. Morgan said the Town used to have the authority to make that decision, but in 2012 the Planning Board presented a warrant article before Town Meeting that frontage could not be included around corners. Vice-Chair Marconi said he thought the applicant had a hardship because the lot was considered buildable at the time it was subdivided, and it was listed as buildable. Mr. Stern asked how the Planning Board could fix the ordinance so it wouldn't happen again, and Mr. Morgan said the Board could rescind the amendment, but it wouldn't help the current applicant who would still have to go through the process of requesting a variance.

Minutes: ***Peggy Lamson moved to approve the Minutes for the October 28, 2013 meeting. Bernie Christopher seconded, and all were in favor.***

Peggy Lamson moved to approve the Minutes for the 2013 meeting and Rick Stern seconded. Bernie Christopher was absent and abstained, all others voted in favor.

Adjournment: ***Rick Stern motioned to adjourn, and Bernie Christopher seconded. All were in favor and meeting adjourned at 9 pm.***

Next Meeting: Monday, December 18, 2013

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

Town of Greenland

575 Portsmouth Avenue
Post Office Box 100
Greenland, New Hampshire 03840-0100
Voice: 603-431-7111 · Fax: 603-430-3761

December 11, 2013

Mr. Leslie Fiorenzo – Regional Administrator
Federal Railroad Administration – Region 1
55 Broadway, Room 1077
Cambridge, Massachusetts 02142

Request for Track Inspection - Greenland Industrial Tracks - NH

Dear Mr Fiorenzo:

The Planning Board of the Town of Newington, New Hampshire has received an application from Sea-3, Inc. for expansion of its facilities in Newington. Sea-3 owns and operates a facility which stores and transfers liquefied petroleum gas (LPG) between land-based and water-based modes of transportation. The Sea-3 facility is served by Pan Am Railways.

The applicant has stated that the intent is to have 12 cars of LPG delivered daily to the site by Pan Am Railways. The cars of LPG would be transported from Rockingham Junction to the Sea-3 facility via the Portsmouth and Newington Industrial Tracks owned by Pan Am. Those tracks go through the Town of Greenland, with several road crossings through residential neighborhoods. Safety is very important to the Town and we are requesting an inspection of the tracks and crossings to insure that the transport of the LPG will be safe. Initial concerns include the lack of visibility at some of the crossings for vehicles and pedestrians to see a train coming.

The Town of Greenland is requesting that the Federal Railroad Administration conduct an inspection of that track and provide the Board of Selectmen with the results of that inspection. Would you please provide us an approximate timeframe within which we could expect the results of your investigation. Thank you in advance for your cooperation and assistance in addressing this matter.

Sincerely,

Karen Anderson

Karen Anderson
Town Administrator

Town of Greenland

575 Portsmouth Avenue
Post Office Box 100
Greenland, New Hampshire 03840-0100
Voice: 603-431-7111 · Fax: 603-430-3761

December 11, 2013

Mr. Brian Lombard, RR Operations Engineer, PE
New Hampshire Department of Transportation
Bureau of Rail and Transit
P.O. Box 483, 7 Hazen Drive
Concord, NH 03302-0483

Request for Track Inspection - Greenland Industrial Tracks - NH

Dear Mr. Lombard:

The Planning Board of the Town of Newington, New Hampshire has received an application from Sea-3, Inc. for expansion of its facilities in Newington. Sea-3 owns and operates a facility which stores and transfers liquefied petroleum gas (LPG) between land-based and water-based modes of transportation. The Sea-3 facility is served by Pan Am Railways.

The applicant has stated that the intent is to have 12 cars of LPG delivered daily to the site by Pan Am Railways. The cars of LPG would be transported from Rockingham Junction to the Sea-3 facility via the Portsmouth and Newington Industrial Tracks owned by Pan Am. Those tracks go through the Town of Greenland, with several road crossings through residential neighborhoods. Safety is very important to the Town and we are requesting an inspection of the tracks and crossings to insure that the transport of the LPG will be safe. Initial concerns include the lack of visibility at some of the crossings for vehicles and pedestrians to see a train coming.

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Sincerely,

Karen Anderson

Karen Anderson
Town Administrator

Class of Track

FRA's track safety standards establish nine specific classes of track (Class 1 to Class 9), plus a category known as Excepted Track. The difference between each Class of Track is based on progressively more exacting standards for track structure, geometry, and inspection frequency. Furthermore, each Class of Track has a corresponding maximum allowable operating speed for both freight and passenger trains. The higher the Class of Track, the greater the allowable track speed and the more stringent track safety standards apply.

Railroads determine the Class of Track to which each stretch of track belongs based upon business and operational considerations. Once the designation is made, FRA holds railroads accountable for maintaining the track to the corresponding standards for that particular class.

If through regular maintenance and inspection efforts a railroad discovers that a section of its track fails to meet the specified federal standard, the railroad is required to make appropriate repairs to maintain that Class of Track designation, or downgrade the track segment to a lower Class of Track to which the federal standard can be met.

Inspected Portsmouth Branch October 3, 2013. Cited 14 defective conditions. Followed up November 14th.

Inspected the Newington Branch November 14, 2013. Cited 2 defective conditions. Followed up December 17th.

FRA Inspected both lines in response to town letter(s) January 31.

Spoke with Tom Morgan regarding inspection, records availability and independent source.

Spoke to Jeff Barnum in regards to bridge 8.65/ 8.69 1931-1957 and P A Timetable instructions.

From: Tom Morgan <planning@newington.nh.us>
Subject: Shipments of LPG between Rockingham Junction and Newington
Date: December 11, 2013 3:55:09 PM EST
To: Rick Taintor <rtaintor@cityofportsmouth.com>, Karen Anderson <KAnderson@greenland-nh.com>, ldaley@strathamnh.gov, Selectmen@NewfieldsNH.gov
Bcc: Tom Morgan <newington@ttlc.net>

2 Attachments, 58 KB

As you may know, the Newington Planning Board is reviewing an application from Sea-3 to expand it's LPG terminal. Sea-3 anticipates the arrival of twelve LPG rail cars, via Rockingham Junction, on a daily basis.

The Planning Board retained the services of Sebago Technics to advise us on railroad safety issues. Sebago recommends that we seek assistance in this regard from the Federal Railroad Administration (FRA) and the NH Department of Transportation (DOT). Accordingly, the Town of Newington will be sending a written request to both agencies. We invite you to join us. The Planning Board believes that if the letter were to come from several municipalities, such a request would carry more weight.

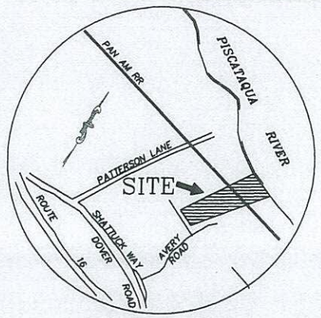
You will find attached draft letters to both agencies. Please let us know if you are interested in signing on, or alternately, in endorsing a revised version. We plan to send the letters out to both agencies no later than the end of December.

Thank you for your consideration.

Tom Morgan, Planning Director
Town of Newington
436-1252

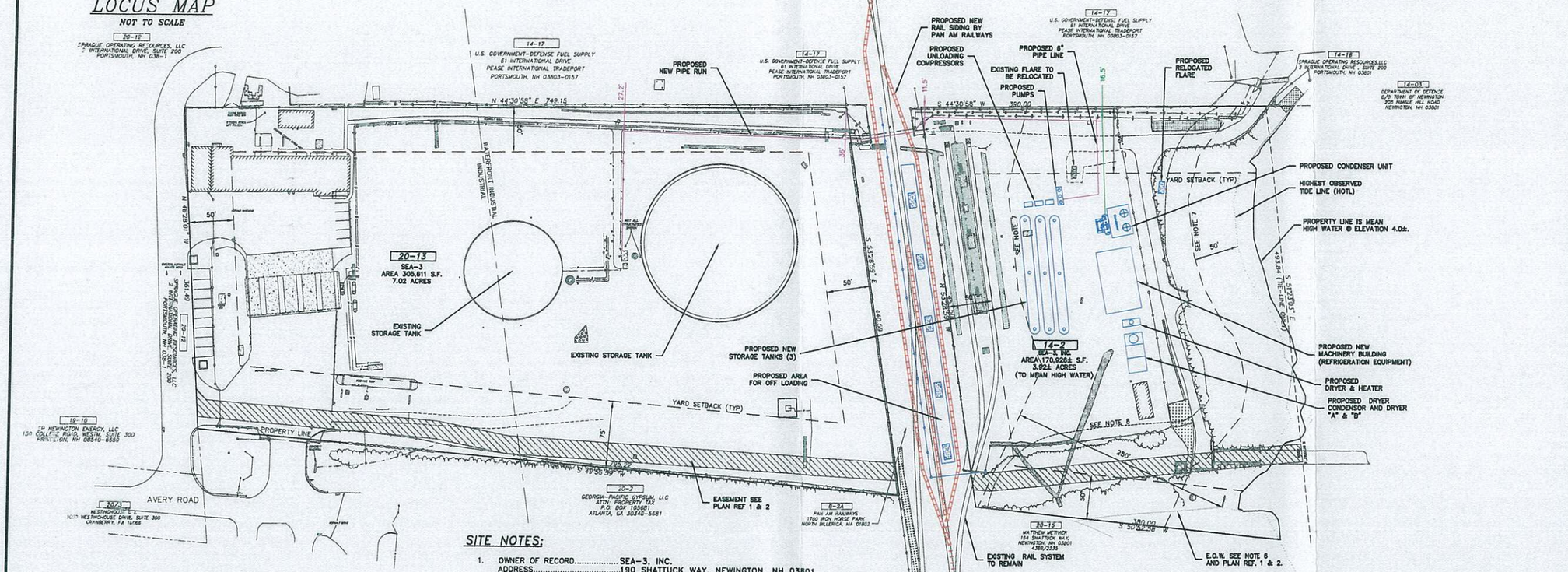
Draft Letter....doc (44 KB)

Draft Letter....docx (14 KB)



LOCUS MAP

NOT TO SCALE



SITE NOTES:

1. OWNER OF RECORD.....SEA-3, INC.
   ADDRESS.....190 SHATTUCK WAY, NEWINGTON, NH 03801
   DEED REFERENCE.....2544/0039
   TAX SHEET / LOT.....20-13 & 14-2
2. ZONED:..... WATERFRONT INDUSTRIAL & INDUSTRIAL
   MINIMUM LOT AREA ..... 200,000 S.F.
   FRONTAGE ..... 100'
   FRONT YARD SETBACK .... 75'
   SIDE YARD SETBACK.....50'
   REAR YARD SETBACK.....50'
3. VERTICAL DATUM: NGVD 1929. PRIMARY BENCH MARK: NHDOT DISK 331-120, (NOW DESTROYED)
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-800-225-4977.
5. THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
6. WETLANDS IDENTIFICATION BY LUKE D. HURLEY, CERTIFIED WETLAND SCIENTIST NO. 232 IN SEPTEMBER 2013., GOVE ENVIRONMENTAL SERVICES, INC, 8 CONTINENTAL DR UNIT H, EXETER, NH 03833-7507.
7. SHORELAND QUALITY PROTECTION ACT: 50' WATERFRONT BUFFER & PRIMARY BUILDING SETBACK; 250' REFERENCE LINE FROM THE PROTECTED SHORELINE.
8. NEWINGTON ZONING ORDINANCE, ARTICLE X, SECTION 7, STRUCTURAL SETBACK.
9. THE APPLICANT IS PROPOSING TO CONSTRUCT ADDITIONAL FACILITIES ON THEIR LOT 14/2 AT 190 SHATTUCK WAY TO PROVIDE FOR AN INCREASE IN OFF-LOADING CAPACITY OF LIQUEFIED PETROLEUM (LP) GAS. THE EXPANSION WILL INCLUDE UPGRADES TO THE EXISTING RAILROAD SIDING, INSTALLATION OF A NEW RAILROAD SIDING WITH DISCHARGE PADS TO ACCOMMODATE UP TO AN ADDITIONAL 10 RAIL CARS, INSTALLATION OF 3-90,000 GALLON ABOVE GROUND TANKS AND ASSOCIATED CHILLING AND PUMPING EQUIPMENT.

LEGEND:

- CHAIN LINK FENCE
- HYDRANT
- CEMENT CONCRETE PAD
- UTILITY POLE
- LIGHT POLE
- TRAFFIC FLOW
- LAPN ..... TAX SHEET / LOT NO.
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
- STEEL GUARD RAIL
- WOOD FENCE
- TREE LINE (DRIP)
- ABOVE GROUND PIPING
- EOP ..... EDGE OF ASPHALT PAVEMENT
- RIP-RAP

PLAN REFERENCE:

1. EXISTING CONDITIONS PLAN: EX-1, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21289; SCALE: 1"=30'; PLAN NO: 21289-5 SHEET EX-1; DATE 9-20-2013.
2. EXISTING CONDITIONS PLAN: EX-2, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21289; SCALE: 1"=30'; PLAN NO: 21289-5 SHEET EX-2; DATE 9-20-2013.

NOTES:

1. ON SEPTEMBER 9, 2013, THE APPLICANT MET WITH THE PLANNING BOARD AND REQUESTED THAT IT DESIGNATE THE FRONT OF LOT 20/13 AND LOT 14/2 TO AID THE APPLICANT IN DETERMINING THE PROPER SETBACKS. UPON REVIEW, THE PLANNING BOARD ADVISED THAT IT REGARDS THE SOUTHERN BOUNDARY OF LOT 20/13 AS THE FRONT AND THE NORTHERN BOUNDARY OF LOT 14//2 AS THE FRONT, EACH BOUNDARY BEING THE MAIN APPROACH FOR VEHICLE ACCESS.

NO.	REVISION	APP'D	DATE

DATE: 10-22-13
SCALE: 1"=60'
DRAWN BY: SRD
DESIGN BY: SRD
APPROVED BY:S.H.
PROJECT NO:1322
FILE: ZBA-SEA-3

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

STEPHEN J. HAIGHT No. 7976 REGISTERED PROFESSIONAL ENGINEER STATE OF NEW HAMPSHIRE
10/22/13

VARIANCE APPLICATION PLAN

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

ZBA-1

ABUTTER NOTIFICATION
OF
SHORELAND PERMIT APPLICATION

December 19, 2013

OFF PATTERSON LANE
U.S Government D.O.D.
205 Nimble Hill Rd
Newington, NH 03801

RE: Shoreland Permit Application
SEA-3
109 Shattuck Way
Newington, NH 03801-2823
Tax Sheet 20/13 & 14/2

Dear Sir or Madam:

This letter serves to inform you that a permit application will be filed with the New Hampshire Department of Environmental Services for a Shoreland Permit associated with the above referenced project.

Under NH RSA 483-B:5, iv-a, we are obligated to notify you of the application which proposes work on a parcel of land abutting your property. The proposal calls for construction of additional facilities on lot 14/2 at 109 Shattuck Way. Once filed, the permit application, including plans that show the proposed work, will be available for viewing at the City or Town Clerk's Office of Newington, NH where the proposed project is located.

Sincerely,

Steve Haight
Haight Engineering, PLLC
PO Box 1166
181 Watson Road
Dover, NH 03821
Phone: 603-750-4266

The New York Times http://nyti.ms/KnsH6k

U.S.

Concern Over Safety Grows as More Oil Rides the Rails

By MATTHEW L. WALD JAN. 2, 2014

WASHINGTON — Safety officials have worried for years about hazardous materials carried on trains, but concern has intensified recently as a drilling surge in remote oil fields has generated heavy traffic on North America's aging rail-freight networks.

That concern was heightened on Monday when a train of oil-tank cars near Casselton, N.D., plowed into a train carrying grain that had derailed on an adjacent track. The fire burned for more than a day.

That accident was outside the town. But last July, in Lac-Mégantic, Quebec, a similar train of tank cars that had been left unattended rolled down a grade and derailed, killing 47 people and burning down much of the downtown.

Even before the accident in Quebec, the United States Transportation Department had warned that shippers were failing to follow basic precautions, like determining the temperature at which oil will turn into a gas and burn or explode, and selecting appropriate tank cars to transport the material.

On Thursday, the department told oil shippers and railroads that it was "imperative" to test the oil being transported to determine its volatility. The department is also considering stricter requirements for the tank cars themselves, which are prone to puncture and burn in derailments. Sometimes the problem is as basic as the effect of a derailment, which can throw open valves and spill flammable contents.

Tank car specifications pit the shippers, which own the rail cars, against the railroads, which say they do no more than haul the cars. The National

Transportation Safety Board recently called the level of threat to the public "unacceptable." Municipal officials are worried.

"We have a couple of sets of tracks that run through town and we can see the increased number of cars going through," said Jeff Lawler, the village manager of Barrington, Ill., about 30 miles northwest of Chicago. Barrington was among several local governments to ask the Transportation Department to put tighter controls on shipments of dangerous chemicals, including oil.

"These tank cars, they've known for 20 years, they have failed in different derailments," Mr. Lawler said. "It's not like that's new news." But "just looking at the math, with the increases, the likelihood of tragedies occurring here or elsewhere increases," he said.

Deborah A. P. Hersman, the chairwoman of the safety board, said in a telephone interview, "It's called 'hazardous material' for a reason."

Derailed grain trains attract wild animals to feed at the site, creating another hazard. If the train carries coal, "it's not a big deal, you pick it up and drop it back in the hopper and move on," she said. But with oil, "we want to make sure we're addressing it in a way that's commensurate with the risk." And risk rises with traffic, she said.

The cargo involved in Monday's accident was crude oil from the Bakken formation in North Dakota. The state's oil production has doubled in the last two years and will nearly double again in the next three, to 1.6 million barrels a day, according to the state Department of Mineral Resources in Bismarck. Rail shipment capacity has increased far faster than pipeline capacity.

The safety board cited national figures that show that in 2012, there were 37 times the number of crude oil shipments by railroad as there were in 2007. Ethanol shipments more than quadrupled between 2005 and 2011, according to the board.

In February 2003, in Tamaroa, Ill., a train carrying methanol derailed and forced the evacuation of 850 people in a three-mile radius. In 2006, in New Brighton, Pa., a train carrying ethanol derailed, and the resulting fire burned for 48 hours. The Federal Railway Administration has been trying to persuade shippers to sample and characterize their shipments so they would be put in appropriate tank cars, although investigators have not said if that was a factor in Casselton.

The railroad industry voluntarily adopted new standards for newly built tank cars, although these are not as strict as the safety board recommends. A spokeswoman for the Association of American Railroads, Holly Arthur, said that about 14,000 of the 98,000 tank cars in service met the standard. Her group favors replacing the old cars if they cannot be retrofitted, she said.

The safety board has pointed out that if a train uses a mix of new and old designs, the benefit of the new designs will be lost if an older car derails, ignites and sets off the others.

Opponents of tighter standards argue that weak or defective tank cars do not cause derailments. But safety officials say that derailments happen daily.

In the next two years, railroads are supposed to install "positive train control," using GPS technology, which could alert engineers to problems ahead — as millions of car drivers are alerted — and could prevent some crashes.

The safety of rail shipments also affects the arguments over the Keystone XL pipeline, which would carry oil from Alberta to the Gulf Coast. While opponents of the pipeline claim that exploitation of the oil sands creates too much carbon dioxide, they have lately focused on pipeline leaks and spills. But few of those cause catastrophic fires.

Correction: January 4, 2014

An article on Friday about accidents involving trains that carry oil misstated the position of the Association of American Railroads regarding old tank cars. The association wants the cars retired if they cannot be retrofitted; it does not want them simply taken out of service.

A version of this article appears in print on January 3, 2014, on page A11 of the New York edition with the headline: Concern Over Safety Grows As More Oil Rides the Rails.

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ROCKINGHAM PLANNING COMMISSION

156 Water Street, Exeter, NH 03833
Tel. 603-778-0885 ◆ Fax: 603-778-9183
email@rpc-nh.org ◆ www.rpc-nh.org

January 10, 2014

Dennis Hebert, Chairman
Newington Planning Board
PO Box 456
Newington , NH 03801

Dear Mr. Hebert:

In response to the determination by the Newington Planning Board that a proposal by Sea-3, Incorporated to increase the size and operational capacity of their existing rail siding has potential regional impacts beyond Newington's municipal boundaries, the Rockingham Planning Commission (RPC) convened a meeting of its Developments of Regional Impact Committee (DRIC). As you may be aware, this meeting was held in the RPC offices on January 8th and was attended by Phil Wilson, Vice Chairman of the Committee and acting chairman for this project review; Joan Whitney, commissioner from Kensington and Rick Taintor, Commissioner from Portsmouth. Also in attendance were Cynthia Scaruno and David Nagy, representatives from Pan Am, the owners of the rail line involved with this expansion, Steve Haight, the engineer for the project from Haight Engineering, LLC and Paul Bogan, representative from Sea-3, Incorporated, were also in attendance (see attendance sheet attached)

Wilson, acting chairman of the committee opened the meeting and described the responsibilities of the committee. According to RSA 36:55 the committee can review a project as it may have impacts to neighboring communities in the following ways:

I. Relative size or number of dwelling units as compared with existing stock;
II. Proximity to the borders of a neighboring community;
III. Transportation networks;
IV. Anticipated emissions such as light, noise, smoke, odors or particles;
V. Proximity to aquifers or surface waters which transcend municipal boundaries;
VI. Shared facilities such as schools and solid waste disposal facilities.

Bogan provided a detailed explanation of the proposed site improvements and explained that the company was shifting its distribution model due to prevailing market forces. As a result the

company is going to begin using rail to distribute LP from their facility. The expansion planned for the site will result in daily rail service being used to distribute product daily.

After Bogan described the project Tom Morgan, Town Planner for Newington described the towns concerns with the project including possible fire protection issues on site as well as rail safety issues. Questions were asked by the committee and interested public and were answered by the design team and representatives from Pan Am.

After considerable discussion the Committee found four areas of concern regarding the proposal. First, although the increase of two train trips every day to the facility did not particularly concern the Committee, the potential for increased idling of trains near residential areas may warrant some effort by the company and the rail line to educate the public about the new frequency of service. In addition the Town of Newfields was concerned with fire safety at Rockingham Junction and Pan Am representatives indicated that no fire suppression systems are typically located at junction points along the rail. In light of this the developer might consider reaching out to all the fire departments along the line to educate them regarding the existing safety precautions used in the transport of liquid petroleum. The physical adequacy of the rail line was a concern of the Committee and they endorsed fully the request being submitted by the Town of Newington for rail inspections to be carried out by the Federal Railroad Administration and the NH Department of Transportation. Any concerns raised by these inspections should be a priority of the developers and Pan Am. Finally, the committee encouraged the Town of Newington to engage in post development approval inspections to insure that the new site improvements at the Sea-3 facility are constructed in accordance with NFPA 58.

Thank you for allowing the DRIC to review and offer comment upon this development proposal. If you have any questions regarding the comments offered above please do not hesitate to contact me at the above telephone number.

Sincerely,

Glenn Greenwood

Developments of Regional Impact Committee

Newington Planning Board

Monday January 13, 2014 6:30 PM

Agenda

1) **Public Hearings:**

A) Proposal by the Planning Board to add the following to the Driveway Regulations: *"No driveway shall serve more than one residential building."*

B) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

C) Proposal to amend the site approval granted to Cumberland Farms to raze and rebuild a gas station at 97 Gosling Road, Tax Map 34, Lot 2.

D) Proposal by Doloma Investment of Portsmouth, Inc. to erect a hotel between Woodbury & Shattuck, Tax Map 20, Lot 4C.

2) **Driveway Permit Application:** Request by Troy Leedberg for land off of Hannah Lane, Tax Map 18, Lot 3A.

3) **Voluntary Lot Merger pursuant to RSA 674:39-a:** Proposal by Ken Latchlaw for a lot merger at 48 Nimble Hill Road, Tax Map 12, Lot 1.

4) **Planning Board minutes** of December 18

5) **Correspondence**

6) **Pending Business**: Re-visit Newington Master Plan; Improve signage in the Shattuck Way corridor; Capital Improvements Program; Update Rules of Procedure; and LED signs

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes, Monday, January 13, 2014

Call to Order: Chair Denis Hebert called the January 13, 2014 meeting at 6:31 PM.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectmen Rep, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Jane and Michael Mazeau; Paul Bogan, VP Operations, Sea-3; Stephen Haight, P.E., Haight Engineering; Cynthia Scarano, Executive VP of Pan Am Railways; Mary Andrews; Jeff Barnum; Brenda Belonigan; Sherry Brandsema; Laura Bygero; Rich DiPentima; Robert Gibbons; Christopher Hayden; John Klanchesser; Paul Reardon;; Don Seeger; Jane and John Sutherland; Pat White; Attorney F.X. Bruton; Attorney Bernie Pelech; Troy Leedberg; Ken and Cathy Latchlaw; Joey Cresta, Portsmouth Herald

1) **Public Hearings:**

A) Proposal by **Planning Board** to add the following to the **Driveway Regulations**: "No driveway shall serve more than one residential building."

Mr. Michael Mazeau of Fox Point Road said he visited Town Planner, Tom Morgan with his first set of subdivision plans and was told the Planning Board frowned upon shared driveways so he changed his plans, but when he filed his DES application, the Conservation Commission did not make a recommendation for the plan and it was because they said there were other alternatives that would limit the wetlands crossings. Mr. Mazaeu asked the Board why they would now want to amend the regulations, which would cause more wetlands crossings.

Board member, Justin Richardson said Mr. Mazeau was correct that the Conservation Commission had not made a recommendation to DES for the original plan, and he still believed avoiding wetland impacts with shared driveways could work if done properly. Mr. Richardson said some towns create condo associations for responsible maintenance, and have statutory authority to lean fees if members do not follow the bylaws. He said Newington has some old land crossings from the original Kings' grant properties and it is challenging to prove ownership and responsibility each time someone purchases a new lot.

Alternate Board member, Ms. Peggy Lamson said she liked the way Mr. Mazeau's shared driveway turned out, but could see how some shared driveways could cause problems

Attorney Bernie Pelech passed out an article from the Office of State Planning regarding shared driveway incentives. He said DES discouraged excessive impervious

surfaces because of storm water runoff that increases harm to the environment and wildlife. Attorney Pelech said the Newington Master Plan also encouraged the reduction of impervious surfaces and curb cuts for the same reason, as well as the importance of saving pastures and trees to preserve the rural nature of town. Attorney Pelech said fewer curb cuts were also encouraged by the DOT to reduce traffic flow.

Attorney Pelech said there was a meeting in June of 2012 where Mr. Morgan said he didn't have a preference for shared driveways over Town roads, both of which limited wetlands crossings, but the Board voted in favor of a shared driveway over a Town road to keep infrastructure costs down.

Attorney John Bosen representing Mr. Bruce Belanger said there were numerous commercial and residential shared driveways in Newington and an amendment could result in "taking". He said a shared driveway agreement could be drawn up that would run with the property to protect owners.

Ms. Lamson agreed, but said Planning Board members took an oath of responsibility to look out for all citizens, present and future. She said it was good that they went to a public hearing to allow the public to speak before making any decisions

Chairman Hebert asked Attorney Bosen if he had spoken with Town Counsel, Attorney John Rattigan, and Attorney Bosen said he had, and said he would withdraw his administrative appeal to the ZBA on a December 2013 Planning Board decision that had never been made. Mr. Morgan asked him to send him an email confirming his withdrawal.

Chairman Hebert said Attorney Rattigan said there was a wide range of approaches in towns. He said everyone knew he was not in favor of shared driveways because it could be hard to enforce and capture costs if people were in violation of agreements.

Ms. Lamson said one of the advantages of shared driveways was that they could reduce driveway cuts on subdivisions and improve safety. Chairman Hebert agreed that there could be environmental impacts to individual driveways, but he wasn't sure they were any worse than what runs into Great Bay when people used chemical fertilizers and pesticides on their lawns. Mr. Richardson said there is evidence that stormwater runoff from impervious surfaces also factor in to pollution to waterways.

Vice-Chair Marconi said as a real estate appraiser, he didn't see any change in surrounding property values as a result of shared driveways, and he thought there were environmental benefits. He said he didn't see a problem with shared driveways so long as homeowners agreed with responsible maintenance.

Ms. Lamson said she liked Mr. Richardson's suggestion about referencing agreements in deeds. Mr. Richardson said a deed conveyance was the worst way to specify who made decisions on maintenance costs, and it would work better if created along with a subdivision agreement. Mr. Marconi said the Town allows two property owners on one lot, however. Mr. Morgan said they could have condominium regulations on the site plan. Board member, Bernie Christopher said as a board member and citizen he agreed with Mr. Richardson that shared driveways could be the way to go, but he said as a developer he found they didn't work. Mr. Mazeau said the Town could have an agreement just as they had a culvert agreement. He said the guy at the end of the

shared driveway would always be willing to pay for plow service or he wouldn't be able to get home during a storm. Chairman Hebert said a town would have to step in to maintain a road for its residents if they were neglected, and it could be a problem if they weren't up to specifications. Board of Selectmen Chair, Rick Stern said they would need to be up to emergency vehicle access standards.

Chairman Hebert said a former Board member had told him that there was something in the regulations that restricted shared driveways, but he couldn't find it until recently. He read from page 124 on the Driveway Regulations that said there could be "...no drive within 15' of abutters' property line," which he said would make a shared driveway impossible as it would abut everyone's property line. Board member, Jack Pare said a waiver under Article A under specific circumstances or exceptions under condominium agreements. He said it would require a work session to work out the details of the procedure. Mr. Morgan agreed. Mr. Richardson suggested they consult with legal council to consider as part of the subdivision regulations. He said they would need to distinguish that a private road is different than a private drive on plans. Mr. Stern suggested that they create standards for private roads and eliminate the complications associated with shared driveways. Mr. Richardson agreed.
Chairman Hebert opened the discussion up to the public. He noted that someone had applied for a shared driveway permit after the public hearing had been noticed. A discussion ensued regarding their rights. Mr. Richardson suggested that Mr. Morgan consult with Town counsel to determine the requirements. Chairman Hebert continued the public hearing to February 24, 2014.

B) Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Chairman Hebert opened the continuation of the hearing to comments from the public.

Ms. Jane Sutherland of Dunlin Way, Portsmouth said she live 100' away from the railroad track. She said she felt the project should not be approved until the tracks had been surveyed and a written report was submitted that the tracks could withstand increased activity and speed had been submitted. Ms. Sutherland shared an article from the "New York Times" that said only 15% of all rails met safety standards, and asked how people would feel if only 15% of airplanes met safety standards. Mr. Paul Bogan, Operations VP of Sea-3 said he did not agree that only 15% of rails met standards. Mr. Richard DiPentima, also of Dunlin Way said this was a statement from the Association of American Railroads and statistics could be changed with an increase of hazards and volume just as it occurred with rail accidents in Canada, New York and North Dakota recently. Mr. DiPentima said these rail cars would not be hauling milk or grain though densely populated neighborhoods and hotels.

Mr. Richardson said the application was for Sea-3 and the Board did not have the authority to approve rail use directly, but he pointed out that propane transportation occurred elsewhere and safety risks were everywhere. Ms. Lamson said it was still important for them to look at the safety of the project that included the rails going

through communities. Chairman Hebert said the rails were under Federal law, they had the right to operate and the Town could not inspect them because they went through multiple states and townships so they were sending letters to DOT and FRA requesting inspection of the rail conditions. He said the Town he would want a written okay before anything was approved. Ms. Sutherland said they would want written assurances. Chairman Hebert agreed that rail safety was the biggest issue, but the area still needs electric, gas and oil energy to come into the region at an affordable cost.

Ms. Laura Bygero with the Greenland Conservation Commission expressed concern for the safety and environmental degradation of the area. She asked the Planning Board to reject the proposal.

Mr. Jeff Barnum said he attended the meeting with the Conservation Law Foundation at Rockingham county and thought he heard that most of the propane would be sold to regional retailers and very little shipped overseas. Mr. Bogan said that was correct.

Mr. Robert Gibbons of Spinnaker Point in Portsmouth expressed concern with increased rail traffic, and safety risks resulting from the age and condition of the tracks. Mr. Gibbons asked why they wouldn't have safety zones around the propane cars just as they did with the 1,000-foot safety zone around freighters. Mr. Pare said the size of the tankers was a determining factor.

Mr. John Sutherland of Dunlin Avenue, Portsmouth said they were originally told the rails were classified for the cars to run at 10pm, but he recently heard they might go up to 25 mph. Cynthia Scarano, Executive VP of Pan Am Railways said the tracks were a Class I for up to 25 mph, but they currently operated at 10 mph, though that might change. Ms. Bygero said she checked the FRA website and only 10 mph was listed for a Class I rail. Mr. Richardson said they had previously said a Class I was for 10 mph and they could only increase their speed if they upgraded the rails. Chairman Hebert said he wanted clarification from the FRA.

Mr. Frank Higher, Portsmouth and Eliot, ME property owner asked about the impact of the operation on air, water, noise and light. Mr. Bogan said their operation would be smaller than the Searsport, ME proposal and they were not required to do impact studies. Mr. DiPentima expressed concerns for environmental, noise and light impacts beyond Newington that should be considered.

Mr. Barnum said he heard the operation might run 13-16 cars a day, 6 days a week. Stephen Haight, P.E., for Haight Engineering said they were proposing 12-16 cars a day. Chairman Hebert said they would need to come back if there were any plans for expansion.

Mr. Barnum said there had been a verbal statement to DOT that they would run at 10 mph, but he said it was important that there be yearly inspections of the railroad bridges, trestle and crossings.

Ms. Sherry Brandsema of Portsmouth said there were crossings on Maplewood Avenue, which was a major artery in the City. She said she had spoken with a former Portsmouth City employee who said the rail cars used to go through at higher speeds, and expressed concern that they might increase speeds again. She said Portland, ME denied similar requests in the past. She said Newington would be making a decision

that would affect other communities, and expressed concern that the petroleum derived from fracking might be more flammable than what they have seen previously. Mr. Bogan said he was not a chemist, but he believed the product that was transported in the explosions in Quebec and North Dakota was a different product.

Mr. Bogan said liquid propane was of course flammable, but safety standards were followed and they had an excellent safety record over the last 38 years. They were increasing the number of cars coming in per week, but they were not proposing anything like 90 cars a day as some operations were doing. He said they were not increasing truck traffic exponentially either, and the 50 trucks they were proposing was significantly less than the 200 trucks they used to send out. Mr. Bogan explained that their LPG supply had been a foreign import, but the costs had gone up, and domestic supplies had gone down as a result of fracking so they needed to expand their operation to process domestic LPG coming in before most of it was trucked out to the NE Region, and some of it exported overseas.

Ms. Bygero said she was concerned that the railroads were not transparent about their safety records. She also expressed concerns that other states like ME and VT had taken up some of the costs of the rail repairs. Ms. Scarano said those contributions were only for passenger trains. Chairman Hebert said he could not see the Town making contributions to a business' capital gains.

Ms. Pat White of Spinnaker Point asked how often the cars would run, and Ms. Scarano said passenger rails took daytime precedence and there was no time table for freight cars, but they could run between 2 a.m. and 4 a.m.

Mr. Chris Hayden of Spinnaker Point, Portsmouth said he found it ironic that another town like Newington would make decisions for their community. Chairman Hebert said that was why Newington announced the Regional Impact to surrounding communities and invited their comments. Mr. Richardson said every abutting municipality had legal status as an abutter for commentary. Chairman Hebert said the applicants could move forward so long as they work with the DOT and FRA. Ms. Scarano agreed and said they already had a relationship with them.
Chairman Hebert continued the hearing to February 10, 2014

C) Proposal to amend the site approval granted to Cumberland Farms to raze and rebuild a gas station at 97 Gosling Road, Tax Map 34,and Lot 2.

Attorney F.X. Bruton gave a quick update on the drainage easement, and said DOT was slow in their approvals, but thought they should be ready to proceed in a month or two.

Board of Selectmen representative, Rick Stern said the Town would be returning the $10,000 donation for the COAST bus shelter that did not go forward. Attorney Bruton said Cumberland Farms was still interested in doing something to improve the entrance of the Town, perhaps with a marquee.

Mike Marconi moved to amend the site approval granted to Cumberland Farms to raze and rebuild a gas station at 97 Gosling Road, Tax Map 34, Lot 2 that would include a donation for a COAST bus line shelter. Rick Stern seconded, and all were in favor.

D) Proposal by **Dolma Investment of Portsmouth, Inc.** to erect a hotel between Woodbury & Shattuck, Tax Map 20, Lot 4C.

This meeting was postponed to the March 17, 2014 meeting at the request of the applicant's attorney, Bernie Pelech.

2) **Driveway Permit Application:** Request by **Troy Leedberg** for land off **Hannah Lane, Tax Map 18, Lot 3A.**

Chairman Hebert stepped down and Vice-Chair Marconi chaired this portion of the meeting.

Mr. Troy Leedberg said he applied to the ZBA and was granted a variance at their December 30, 2013 meeting.

A brief discussion on the width of the driveway ensued and Mr. Leedberg agreed to make the driveway 18 feet.

Mr. Richardson said the general consensus of the ZBA was that the subdivision was approved with the understanding that the lot had sufficient frontage and was vested as a single-family lot. He said the wording of the ordinance did not suggest that all frontages had to be contiguous.

Rick Stern moved to accept the request for a driveway permit by Troy Leedberg for land off Hannah Lane, Tax Map 18, Lot 3A as depicted by the applicant's plan. Bernie Christopher seconded, and all were in favor.

Chairman Hebert said the Board should look more closely at the definitions that required legal counsel and variances. Mr. Stern said there was also a lot of influence and pressure from residents. Ms. Lamson agreed that the applicant went through a lot.

3) **Voluntary Lot Merger Pursuant to RSA 674:39-a:** Proposal by **Ken Latchlaw** for a lot merger at 48 Nimble Hill Road, Tax Map 12, Lot 1.

Mr. Richardson said he had talked with the applicant months ago in reference to the bike path so stepped down.

Mr. Ken Latchlaw said they recently discovered when they were doing their septic system that their house was on two lots with a seven-foot strip between the lots. Mr. Morgan said this came about as a result of the voluntary lot merger statute, which was intended to make mergers easier. Mr. Latchlaw said it was a State approved subdivision, but the Registry of Deeds could not accept a paper or digital deed and required a signed Mylar.

Chairman Hebert said he wanted to be sure they weren't giving someone else's land away. Vice-Chair Marconi said the applicant was correct, and they were not setting a precedent. Ms. Lamson agreed. Mr. Latchlaw said 40 years of taxes showed it as one parcel.

Mike Marconi moved to approve the proposal by Ken Latchlaw for a lot merger at 48 Nimble Hill Road, Tax Map 12, Lot 1. Peggy Lamson seconded, and all were in favor.

Mr. Latchlaw asked if he could get a statement on the approval, and Chairman Hebert asked Mr. Morgan if he would draft a Letter of Decision.

Town of Newington, NH
PLANNING BOARD
Meeting Minutes, Monday, January 13, 2014

Minutes: ***Mike Marconi moved to approve the Minutes for the December 18, 2014 meeting with corrections and Justin Richardson seconded. Chairman Hebert, Peggy Lamson and Rick Stern were not at the meeting and recused themselves. Everyone else was in favor and the motion passed.***

Discussions:

Mr. Morgan said he received several inquiries from residents that surveyors were seen in town and said he and Chairman Hebert and Selectman Jan Stuart recently met with PSNH who was doing the surveying. He said they were looking into putting in new transmission lines from the Deerfield substation, under Great Bay and through town.

Chairman Hebert said he had discussed making the lines go underground. Mr. Stern said PSNH was switching from supplying electricity to transmitting electricity, and he was concerned they wouldn't put the lines underground. He said the Newington station was getting older. A discussion ensued regarding above ground versus underground lines, the aesthetics and the associated costs.

Mr. Richardson said the site evaluation committee was required to review their plans with municipal boards including the Board of Selectmen, the Planning Board and the Regulatory Planning Commission. Mr. Stern said Ms. Stuart was the point person and they were putting something on the Town website.

Adjournment: **Mike Marconi motioned to adjourn, and Rick Stern seconded. All were in favor and meeting adjourned at 9:30 p.m.**

Next Meeting: Monday, February 10, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

NOTICE OF ACCEPTANCE OF PERMIT APPLICATION
LAND RESOURCES MANAGEMENT

January 13, 2014

NEWINGTON MUNICIPAL CLERK
205 NIMBLE HILL RD
NEWINGTON NH 03801

RE: Shoreland Program Permit Application (RSA 483:B)
DES File Number: 2014-00105
Subject Property: 190 Shattuck Way, Newington, Tax Map/Lot#: 14 / 2, 20/13

Dear Sir or Madam:

Pursuant to RSA 541-A:39, please be advised that the Department of Environmental Services (NHDES) accepted an application on **01/13/2014** for the permit program and subject property referenced above.

The application requests a permit for impacts to jurisdictional shoreland at the subject property. A detailed technical review of the application package will be completed within the applicable timeframe: 30 days of receipt of an application for a permit or 30 days of receipt of an application for a permit that will require a waiver of the minimum standards of RSA 483-B:9.

Pursuant to RSA 483-B:5-b,IV-a and Env-Wq 1406.13(a), the applicant is required to have notified the municipality by certified mail and provided a completed and signed copy of the permit application. If you have not received the required information, please contact the applicant or their agent at the following address:

Haight Engineering, PLLC
PO Box 1166
Dover, NH 03820

Please provide a copy of this notice to all interested departments, boards and commissions. Also note that under current state law and regulations, NHDES is not authorized to consider local zoning and regulatory issues pertaining to a project; these must be addressed at the local level.

If you have any questions, please contact the NHDES Shoreland Program at (603) 271-2147.

Thank you,

Land Resources Management

cc: Sea-3, Inc.
Haight Engineering, PLLC

January 13, 2014

Mr. Brian Lombard, RR Operations Engineer, PE
New Hampshire Department of Transportation
Bureau of Rail and Transit
P.O. Box 483, 7 Hazen Drive
Concord, NH 03302-0483

Request for RR Grade Crossing Inspections - Newington and Portsmouth Industrial Tracks

Dear Mr. Lombard:

The Planning Board of the Town of Newington, New Hampshire has received an application from Sea-3, Inc. to expand its facilities in Newington. Sea-3 owns and operates a facility which stores and transfers liquefied petroleum gas (LPG) between land-based and water-based modes of transportation. The Sea-3 facility is served by Pan Am Railways.

The applicant has stated that the intent is to have 12 cars of LPG delivered daily to the site by Pan Am Railways. The cars of LPG would be transported from Rockingham Junction to the Sea-3 facility via the Portsmouth and Newington Industrial Tracks owned by Pan Am.

The Newington Planning Board has determined that the project could potentially impact the municipalities of Portsmouth, Greenland, Stratham and Newfields, New Hampshire. Those communities have been accorded the status of abutters in the review process.

There have been concerns raised about safety at highway-rail grade crossings, both public and private. This project would result in a significant increase in the frequency of train movements between Rockingham Junction and Newington.

We are requesting that New Hampshire Department of Transportation investigate the status and adequacy of signage, warning devices, pavement markings, advance warning signs, visibility of approaching trains and any other aspects of safety at all highway-rail grade crossings. We also request that you provide us with a report on your findings. In this regard, we respectfully request you formally acknowledgement receipt of this correspondence and provide us an approximate timeframe within which we could expect the results of your investigation. Thank you in advance for your cooperation and assistance in addressing this matter.

Sincerely,

Rick Stern, Chair
Newington Board of Selectmen

David Canada, Chair
Stratham Board of Selectmen

Vaughn Morgan, Vice Chair
Greenland Board of Selectmen

Rick Taintor, Planning Director
City of Portsmouth

January 13, 2014

Mr. Leslie Fiorenzo – Regional Administrator
Federal Railroad Administration – Region 1
55 Broadway, Room 1077
Cambridge, Massachusetts 02142

Request for Track Inspection - Newington and Portsmouth Industrial Tracks - NH

Dear Mr Fiorenzo:

The Planning Board of the Town of Newington, New Hampshire has received an application from Sea-3, Inc. to expand its facilities in Newington. Sea-3 owns and operates a facility which stores and transfers liquefied petroleum gas (LPG) between land-based and water-based modes of transportation. The Sea-3 facility is served by Pan Am Railways.

The applicant has stated that the intent is to have 12 cars of LPG delivered daily to the site by Pan Am Railways. The cars of LPG would be transported from Rockingham Junction to the Sea-3 facility via the Portsmouth and Newington Industrial Tracks owned by Pan Am.

The Newington Planning Board has determined that the project could potentially impact the municipalities of Portsmouth, Greenland, Stratham and Newfields, New Hampshire. Those communities have been accorded the status of abutters in the review process.

There have been concerns raised concerning the condition and safety of the track between Rockingham Junction and the Sea-3 facility. As part of our process of reviewing this application, we are requesting that the Federal Railroad Administration conduct an inspection of that track and provide the Board with the results of that inspection. In this regard, we respectfully request you formally acknowledge receipt of this correspondence and provide us an approximate timeframe within which we could expect the results of your investigation. Thank you in advance for your cooperation and assistance in addressing this matter.

Sincerely,

Rick Stern, Chair
Newington Board of Selectmen

David Canada, Chair
Stratham Board of Selectmen

Vaughn Morgan, Vice Chair
Greenland Board of Selectmen

Rick Taintor, Planning Director
City of Portsmouth

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

NOTICE OF ACCEPTANCE OF PERMIT APPLICATION
LAND RESOURCES MANAGEMENT

January 16, 2014

TOWN OF NEWINGTON
MUNICIPAL CLERK
205 NIMBLE HILL RD
NEWINGTON NH 03801

Alteration of Terrain Bureau Permit Application (RSA 485-A:17)
Project Name: SEA-3
DES File Number: 140116-009
Subject Property: Tax Map# 14, Lot# 2

Dear Sir or Madam:

Pursuant to RSA 541-A:39, please be advised that the Department of Environmental Services (NHDES) accepted an application on 01/16/2014 for the permit program and subject property referenced above.

The application requests a permit to disturb approximately 120,000 square feet of earth at the subject property. Pursuant to Env-Wq 1503.05 (f), the applicant is required to provide a copy of the application and plans to the municipality. If you have not received the required information, please contact the agent:

HAIGHT ENGINEERING, PLLC
C/O STEPHEN HAIGHT, P.E.
P.O. BOX 1166
DOVER, NH 03820

If you wish to comment on the application, please submit your comments by 01/30/2014. All comments should reference the DES file number and be directed to the following address:

NHDES Alteration of Terrain Bureau
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

Please provide a copy of this notice to all interested departments, boards and commissions. Also note that under current state law and regulations, NHDES is not authorized to consider local zoning and regulatory issues pertaining to a project; these must be addressed at the local level.

If you have any questions, please contact the Application Receipt Center at (603) 271-4057.

Thank you,
Land Resources Management

cc: Haight Engineering, PLLC., Stephen Haight, P.E.
SEA-3, Inc., Paul Bogan

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

SHORELAND IMPACT PERMIT 2014-00105

Permittee:	**Sea-3 Inc.** **190 Shattuck Way** **Newington, NH 03801**
Project Location:	**190 Shattuck Way, Newington** **Newington Tax Map/Lot No. 14 / 2**
Waterbody:	**Piscataqua River**

NOTE--
CONDITIONS

APPROVAL DATE: 01/22/2014 **EXPIRATION DATE: 01/22/2019**

Based upon review of the above referenced application, in accordance with RSA 483-B, a Shoreland Impact Permit was issued. This permit shall not be considered valid unless signed as specified below.

PERMIT DESCRIPTION: Impact 5,675 sq. ft. in order to construct facilities onsite and upgrade existing conditions.

THIS APPROVAL IS SUBJECT TO THE FOLLOWING PROJECT SPECIFIC CONDITIONS:

1. All work shall be in accordance with plans by Haight Engineering, PLLC dated January 2, 2014 and received by the NH Department of Environmental Services (DES) on January 13, 2014.
2. No more than 54% of the area of the lot within the protected shoreland shall be covered by impervious surfaces unless additional approval is obtained from DES.
3. At least 12,650 sq. ft. of the Natural Woodland Buffer beyond the primary building setback must remain in an unaltered state in order to comply with RSA 483-B:9, V, (b), (2).
4. Erosion and siltation controls shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.
5. All activities conducted in association with the completion of this project shall be conducted in a manner that complies with applicable criteria of Administrative Rules Chapter Env-Wq 1400 and RSA 483-B during and after construction.
7. No person undertaking any activity in the protected shoreland shall cause or contribute to, or allow the activity to cause or contribute to, any violations of the surface water quality standards established in Env-Ws 1700 or successor rules in Env-Wq 1700.
8. Any fill used shall be clean sand, gravel, rock, or other suitable material.
9. This permit shall not preclude DES from taking any enforcement or revocation action if DES later determines that any of the structures depicted as "existing" on the plans submitted by the applicant were not previously permitted or grandfathered.

118 Spinnaker Way
Portsmouth, NH, 03801
603-501-0595
Jshirley51@gmail.com

January 26, 2014

Mr. Denis Hebert, Chairman
Newington Planning Board
Newington Town Hall
205 Nible Hill Road
Newington, NH 03801

Re: Sea-3 Proposed change in operations

Dear Chairman Hebert,
Thank you for allowing public comment on this proposal. I live in the abutting City of Portsmouth next to the rail track that Sea-3 intends to use to increase the amount of propane that it brings into its plant for distribution.
The Newington Planning Board however well intended, does not have the legal ability to guarantee the safety of the transportation of propane through impacted communities. The Newington Planning Board does not have the authority to guarantee safe rail beds and quiet trains. The Newington Planning Board does not have the authority to regulate the hours of transport. The Newington Planning Board does not have the authority to guarantee the health and safety of sea coast citizens for environmental impacts. The Newington Planning Board does not have the ability to create a plant security plan that protect us from a terrorist attack.
The use of rail takes the local and state control out of governments hands. The use of rail is an effective way to say to the impacted citizens and communities you don't matter; you have no say in this activity. Has the federal government been asked to provide the Newington Planning Board with necessary regulatory and oversight approaches, plans and schedules that would satisfy the concerns that have been raised about rail transport of LP?
The discussion is really about the transportation methodology of potentially dangerous materials to a regional distributor. The use of rail is not the only answer. Rail may have been the distribution answer years ago but not now. The continued use of shipping by sea is the right answer to SEA 3's current market place problem. No one can know what the market place will look like in 3 years or what Sea-3 will have to change in order to keep being a viable LP energy provider for this region.
From my perspective, SEA 3's business model must include taking delivery of product through their seaport terminal which has been the case in the past. Mid Atlantic facilities export propane currently. SEA 3 must be one of the stops these ships make.
Change the delivery method of to SEA 3 insures that SEA 3 survives as a business by continuing to meet the energy needs of the area and the many communities that would have been impacted by the increased use of rail suddenly are not.

Sincerely yours,

John Shirley

SHAINES & MCEACHERN, PA
Attorneys at Law

Via Email and Regular

January 29, 2014

Thomas Morgan, Planner
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Tom:

I am writing on behalf of Sea-3, Inc. to inquire about the status of the Town's letter to the Federal Railroad Administration and possibly the NHDOT in connection with the above referenced application.

It is my understanding that the Town has solicited input for these letters from other communities and has received a response from the Rockingham Planning Commission dated January 10, 2014, endorsing a request by the Town to the FRA and NHDOT for rail inspections.

Sea-3, Inc. is eager to complete the site review process and it is concerned that the pendency of these letters may be holding up the process. Could you please kindly tell me if the Town has a deadline for input on these letters and when you expect them to go out? Thank you.

Respectfully Submitted,

SHAINES & McEACHERN, P. A.

By: _____
Alec L. McEachern

Cc: Paul Bogan, Sea-3, Inc.
Stephen Haight, P. E.

282 Corporate Drive, P.O. Box 360
Portsmouth, New Hampshire 03802-0360
Telephone: 603/436-3110, Fax 603/436-2993

Site Location

Lots 20/13 &14/2
190 Shattuck Way
Newington, NH

Scope

SFC Engineering Partnership, Inc. (SFC) has been engaged by the Town of Newington to complete an assessment of site plans depicting a planned facility expansion to be constructed at the Sea-3 liquefied petroleum gas (LPG) facility in Newington, New Hampshire.

This report is a first assessment of site plans to identify potential areas of legislative non-compliance, prior to submission of further documentation for permitting at a later stage. All conclusions drawn here are from the provided site plans only. No fire safety analysis, mechanical/electrical or structural plans have been reviewed at the time of writing. Conclusions drawn as part of this assessment may be rendered non-applicable on receipt of further documentation pertaining to system details.

Facility Design Documents Referenced

Site Plan, Sea-3 Facility Expansion, Lots 20/13 &14/2, 190 Shattuck Way, Newington, NH. Author: Haight Engineering, PLLC, Dover, NH.

Legislative Framework (Abridged)

In terms of legislative compliance, the design and installation of this system falls under the New Hampshire State Fire Code Saf-C 6000. The National Fire Prevention Association (NFPA) 1, *Fire Code*, 2009, is adopted under Saf-C 6000 and hence forms the specific requirements for fire safety compliance in the State of New Hampshire. NFPA 58, *Liquefied Petroleum Gas Code*, 2008, and NFPA 54, *National Fuel Gas Code*, 2009, are adopted by reference under Saf-C 6000 as incorporated documents in NFPA 1. NFPA 58 and 54 have specific applicability for compliance of systems such as the facility this report concerns.

Facility Expansion Description

Description of the facility expansion works, as it appears to the reviewer:

Additions to existing facility:

- Additional rail car offloading system (5 offloading stations).
- Rail siding(s) to service new unloading area.
- Three (3) 90,000 G.W.C. LPG storage tanks (bullet pressure tanks).
- Propane processing equipment housed in a new building.
- Outdoor propane processing equipment: pumps, compressors, condensers and dryers.
- Piping to service this equipment, including a (presumably insulated) line to the facility's main bulk refrigerated storage system.
- Fire suppression system, including two (2) monitor nozzles.
- Electrical works to service this equipment, including a new transformer box.
- Civil works as per grading plan (C-3).
- Extension of fencing to encompass new rail offloading area.
- Relocation of system flare.

It is noted that the reviewed plans do not indicate any works associated with transfer piping to vessels, nor piping for refrigerated propane other than a line (or lines) from the new condenser to the main site refrigerated tanks.

Specific Review Comments: Selected Sections from NFPA 58

The following tabulation contains specific commentary on the compliance of the proposed facility site plan for selected sections of NFPA 58. This is not an exhaustive list. Only parts relating to general layout have been considered.

Section	Compliance	Comments
6.3 – Separation Distances	Yes	Separation of new storage tanks to property lines (approximate): SE property border: 160 ft., NE: 110 ft. (river shore), NW: 160 ft., SW: 930 ft. Minimum requirement: 100 ft. for 90,000 G.W.C tanks. It is noted that properties abutting Sea-3 on three sides are industrial/commercial, with residential properties across the river.
6.3 – Separation Distances	Yes (but more information needed)	Separation of new storage tanks to important buildings: new machinery building: 40 ft., existing equipment storage building: 70 ft. The minimum requirement is 100 ft. for 90,000 gallon tanks, however clause 6.3.5 allows buildings that are 'devoted exclusively to gas manufacturing and distribution' to be within 10 ft. of storage tanks (if not wooden construction). The new machinery building is probably fine to be included in this exclusion, however more information is needed about the construction and contents of the existing storage building to determine if it can be considered to be 'devoted exclusively to gas manufacturing and distribution'.
6.22 - Ignition Source Control	Yes (but more information needed)	Separation of LPG system components from ignition sources must be achieved in accordance with classified areas outlined in Table 6.22.2.2. It can be seen that the proposed transformer box is clear of the new storage tanks by approximately 70 ft. This appears sufficient, however an assessment should be made of electrical plans in order to ensure the installation is adherent to this section and NFPA/NEC 70, *National Electric Code.*
6.25 – Fire Protection	More information required	Fire protection: Two (2) monitor nozzles (one is adjacent to tanks). Fire suppression cart. Further information is required as to the disposition of the monitor nozzle adjacent to the tanks.

Information Required for More Detailed Compliance Review

The following documentation is required in order to complete a more complete review of system compliance for the equipment added in this system expansion. It is noted that information listed here may be already earmarked for submittal as part of a Fire Safety Analysis or permit application.

- Cut sheets, or documentation depicting LPG storage tank compliance to ASME *Boiler and Pressure Vessel Code*, Section VIII, "Rules for the Construction of Unfired Pressure Vessels"; or API-ASME *Code for Unfired Pressure Vessels for Petroleum Liquids and Gases*. In addition, drawings or other depiction of container safety appurtenances including, where appropriate, pressure relief valves, excess flow valves etc.
- Details of rail car unloaders, including redundant safety systems.
- System piping schematic (process and instrumentation diagram). This may be a partial schematic depicting only new equipment.
- Electrical classified area plan.
- Further details of the existing storage building construction and contents (as mentioned in previous section).
- Details of new machinery building adherence to NFPA 58 Chapter 10: Buildings or Structures Housing LP-Gas Distribution Facilities.
- Details/calculations regarding water flow rate and design specifications of water deluge system as per NFPA 15: *Standard for Water Spray Fixed Systems for Fire Protection.*
- Details of any non-odorized propane to be stored at the site.
- Site lighting plan.

Concluding Remarks

Overall the site plan appears to be in general compliance with NFPA 58 and 54. In terms of fire safety compliance, no significant problems have been found with this layout.

Having said this, a review further documentation as listed, will would be required in order to more fully determine legislative compliance.

SFC ENGINEERING PARTNERSHIP, INC.

Doug Fountain
Engineer

Nick Cricenti, P.E.
President

STATE OF NEW HAMPSHIRE
NICHOLAS J. CRICENTI JR.
No. 6125
LICENSED PROFESSIONAL ENGINEER

clf
conservation law foundation

For a thriving New England

CLF New Hampshire
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Concord, NH 03301
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F: 603.225.3059
www.clf.org

February 3, 2014

Ms. Michelle Winters, Administrator
Bureau of Rail and Transit
N.H. Department of Transportation
John O. Morton Building
7 Hazen Drive
P.O. Box 483
Concord, NH 03302-0483

Re: Pan Am Railroad Line (Rockingham Junction to Newington, NH)

Dear Ms. Winters,

As Conservation Law Foundation's (CLF) Great Bay-Piscataqua Waterkeeper, I am writing to obtain information regarding the condition of Pan Am's railroad line extending from Rockingham Junction to Newington, NH. CLF is a non-profit environmental advocacy organization working to protect New Hampshire's, and New England's, environment for the benefit of all people. CLF's Great Bay-Piscataqua Waterkeeper program is dedicated to restoring and protecting the health of the Great Bay estuary, a critically important natural resource for the region.

As the Great Bay-Piscataqua Waterkeeper, I have some concerns related to the proposed expansion of a propane importing and distribution business, SEA 3, in Newington, NH, on the Piscataqua River. A change in the business model for SEA 3 will include the increased transport of propane over Pan Am's railroad line from Rockingham Junction through the communities of Newfields, Stratham, Greenland, Portsmouth, and Newington ("railroad line").

The railroad line is in close proximity to Great Bay and the Squamscott River, and indeed crosses a trestle over the Squamscott River at the head of the bay. We are concerned with the integrity of the railroad line, including but not limited to all of its water crossings, for purposes of avoiding a catastrophic event and associated water pollution in the Great Bay estuary. Accordingly, we urge NHDOT to take an active role in assessing the structural integrity of the railroad line and its current and future operation.

I have made inquiries to Pan Am regarding its safety record, derailments, speed limits, and bridge inspections, thus far to no avail. I would like to obtain answers to the following questions and hope that you can help. If necessary, I would be pleased to make a formal request for related documents pursuant to RSA 91-A.

1. When was the most recent inspection of the railroad line completed, and by whom? What are the findings of that report?

2. Are there specific requirements related to the inspection of water crossings, including but not limited to the so-called trestle over the Squamscott River? How frequently must such inspections be done, and do they include visual and other assessments of underwater components? What are the findings of any such inspections? What is the maximum allowable speed on the railroad line? Are there any special speed or other operational restrictions regarding the trestle over the Squamscott River and/or other water crossings.

3. Given the planned increase of rail traffic, will improvements be required at the numerous road crossings, and who will be the responsible party?

4. Is the operator free to transport over the line any commodity it sees fit, or are there restrictions prohibiting the transport of particular commodities, and if so, which ones?

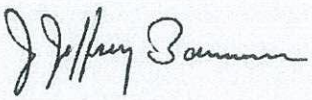
5. Has the NH DOT or the Federal Railroad Administration placed any additional operational restrictions upon the owner?

6. Is the owner obligated to report any and all derailments to the NH DOT? Have any derailments occurred on the railroad line?

7. Is Pan Am required by the State of New Hampshire or the Federal Railroad Administration to have adequate insurance to cover a catastrophic event if a future derailment results in contamination of the Great Bay estuary and/or the Piscataqua River?

I appreciate your assistance in this matter. I look forward to hearing from you. Thank you.

Sincerely,



Jeff Barnum
Great Bay-Piscataqua Waterkeeper
Conservation Law Foundation
27 North Main St.
Concord, NH 03301-4930
jbarnum@clf.org
603 770 3201

cc: Tom Irwin, Director, CLF – New Hampshire

City Council hears fears on Sea-3 propane plan

Residents wary of hazardous material on local train tracks

By **Charles McMahon**
cmcmahon@seacoastonline.com
February 04, 2014 2:00 AM

PORTSMOUTH — City residents concerned with the potential effects a propane freight business may have on the community made their voices heard in front of the City Council on Monday night at City Hall.

A handful of residents living in and around the Spinnaker Way and Atlantic Heights neighborhood went before the council in an effort to address a pending proposal from Newington business Sea-3 to expand operations to allow it to off-load more propane from tank cars.

The business, which is currently in front of planners in Newington, uses railroad tracks owned by Pan Am Railways that run through the city to the Shattuck Way industrial corridor in Newington.

Residents who spoke Monday night cited several concerns regarding safety and quality of life as reasons the city should be concerned with the proposal.

Spinnaker Way resident Robert Gibbons encouraged all city residents to voice their concerns with the proposal at an upcoming meeting in Newington. Gibbons said it is clear that the plan could mean major impacts to residents.

"An accident in the future seems inevitable," Gibbons said.

Atlantic Heights resident Andrea Abbott said she, too, was worried about the proposal, especially given the fact that residents living in her neighborhood only have one way in and out of Atlantic Heights.

"God forbid anything would happen," she said. "We'd be stuck with no place to go."

Dunlin Way resident Matt Nania said his home is roughly 100 feet away from the nearby train tracks that the propane would be shipped on.

"We are very concerned about the proposal by Sea-3 to ship propane," he said. "Across the country there has been an increase in accidents involving transportation of hazardous materials."

Laurel Court resident Lewis Brown said he was worried about the condition of the railroad tracks and how that could lead to accidents in the future.

Brown said he believes firefighters would not be able to reach the tracks should something happen.

"You'd need to be able to put that fire out quickly," he said. "As it stands now, you can't get anywhere near those tracks."

Assistant Mayor Jim Splaine, who in January held a neighborhood meeting involving the Sea-3 proposal, said he shares the residents' concerns.

"If something happens, it can be terribly devastating," he said.

Splaine said he wants the city to have its voice heard when it comes to ensuring federal authorities follow through with oversight of the railroad tracks.

"We can't allow 'buck-passing' to occur here," he said. "We need to do as much activism as we can."

City Manager John Bohenko said Monday night that he agrees with the concerns voiced by Splaine and residents.

Bohenko said not only has the city sent a letter to officials in Newington, but also to elected officials at the state and national level.

The city manager said it will be important for the city to help achieve a "regional dialogue" surrounding the proposal.

"It does take more than just the city of Portsmouth," he said.

Bohenko also encouraged citizens to reach out to their elected officials moving forward. He said he will ensure that contact information for all officials involved will be posted on the city's Web site, www.cityofportsmouth.com.

Jeff D. Bernarducci
30 Tidewater Farm Road
Greenland, NH 03840
(617) 447-6281

February 7, 2014

FIRST CLASS MAIL

Town of Newington, New Hampshire
c/o Tom Morgan, Town Planner
205 Nimble Hill Road
Newington, NH 03801

Re: **Governmental Records Request:**
SEA-3, Inc. - Shattuck Way Terminal and Related Facilities - Newington NH;
Upgrades and Expansion of Related Rail Lines and Infrastructure

Dear Mr. Morgan:

This letter constitutes a Governmental Records Request pursuant to RSA Ch. 91-A:1 *et seq* and prevailing public records law. I am requesting immediate production of all Governmental Records within the possession, custody, or control of the Town of Newington or any official, employee, or agent thereof relating to:

1. Any proposed expansion, construction, repair, or renovation of property owned, leased, and/or operated by SEA-3, Inc. and/or Trammo, Inc. (collectively, "SEA-3") in the State of New Hampshire including, without limitation, the Liquefied Petroleum Gas ("LPG") Terminal located on or about 190 Shattuck Way in Newington, New Hampshire ("Terminal");

2. The current or contemplated transportation of any cargo by railroad line to said Terminal (including, without limitation, LPG cargo);

3. Railroad lines in the State of New Hampshire, owned by Pan Am Railways or others, that have or are proposed to transport (either directly or indirectly) any cargo to or from the Terminal ("Terminal Rail Lines"); and/or

4. Any planned or proposed upgrades, construction, repair and/or expansion of the Terminal Rail Lines.

This request for Governmental Records includes, without limitation, any and all documents, data, and other things in any form (*i.e.* electronic, paper, video, drawing, photo or otherwise) related to submittals, plans, proposals, studies, analyses, data sets, agenda, meetings, communications, correspondence, memoranda, and the like related to topics 1-4 above and by and between any of the following:

1. SEA-3;
2. Pan Am Railways (and/or any other entity whose business includes transport of cargo by rail in Southern New Hampshire);
3. The Town of Newington NH (including, without limitation, the planning board);
4. The Town of Greenland NH;
5. Any division or body politic of the State of New Hampshire including, without limitation, the NH Department of Transportation;
6. Any division or body politic of the Federal Government including, without limitation, the Federal Railroad Administration and the Surface Transportation Board; and/or
7. Any other person or entity.

The Town of Newington is obligated to immediately produce records in response to this request. *See* RSA Ch. 91-A:4 (IV). I am therefore requesting that such records be made available on **Monday, February 17, 2014 at 10:00am**.

I am requesting a waiver of all fees associated with the Town's production. This request should be granted because the information sought is in the public interest and will contribute significantly to the public's understanding of the safety, environmental, and other concerns attendant to SEA-3's plan for expanded LPG operation and related rail transport in our area. This information is not being sought for commercial purposes.

Notwithstanding my request for a fee waiver, please advise in advance if the cost to produce these records will exceed $50.

If you deny any or all of this request, please cite each specific exemption under the law and notify me of the appeal procedures available.

Please advise.

Sincerely,

Jeff D. Bernarducci

Site Location

Lots 20/13 &14/2
190 Shattuck Way
Newington, NH

Scope

SFC Engineering Partnership, Inc. (SFC) has been engaged by the Town of Newington to complete a review of civil site plans and a drainage report depicting civil works and stormwater management for a planned facility expansion to be constructed at the Sea-3 liquefied petroleum gas (LPG) facility in Newington, New Hampshire.

This report is aims to identify any potential areas of legislative non-compliance. All conclusions drawn here are from the provided site documentation only.

Legislative Framework

The proposed civil and drainage works fall under the New Hampshire Codes of Administrative Rules: Env-Wq 1400 *Shoreland Protection*, Env-Wq 1500 *Alteration of Terrain*, as well as the Town of Newington *Building Code*. The Piscatqua River, abutting the northeastern boundary of the site, is not a 'Designated River' under the Rivers Management & Protection Act, RSA 483. As such *Env-Wq 1900, Rules for the Protection of Instream Flow on Designated Rivers*, is not applicable for these works.

As the proposed works will alter 65,000 ft^2 within 250 ft of the highest observable tide line of the river, Shoreland and Alternation of Terrain (AOT) state permits are likely to be required (Env-Wq 1406.01, RSA 483-B, Env-Wq 1503.02).

Referenced Applicant Documentation

Hydrology Study for SEA-3 Inc. Facility Expansion Lots 20/13 & 14/2, 190 Shattuck Way, Newington NH, December 2013.

Site Plan, Sea-3 Facility Expansion, Lots 20/13 &14/2, 190 Shattuck Way, Newington, NH. Author: Haight Engineering, PLLC, Dover, NH.

Plan Set Review Comments

- Plans C-3 through C-6 meet the requirements for Env-Wq 1504.03 Excavation, Grading, and Reclamation Plans, including information specified in Env-Wq 1504.06 (a) through (l).
- Plans WS-1 and WS-2 included with the hydrology report meet the requirements for drainage area plans, delineating each sub-basin for pre-/post-development (Env-Wq 1504.09 e).
- The plans show excavation and grading works to achieve a modestly inclined area where the LPG storage tanks will be located. One of the existing storm water swales will be partially removed during these works. In addition a six foot high earthen berm is to be constructed at the southeastern end of the site.
- Acceptable means of temporary sediment and erosion control are detailed on the plans.
- In terms of water runoff, the post-development grading will generally maintain a somewhat similar topology to the current conditions.
- New impervious cover will be the mechanical building and outdoor LPG processing equipment (presumably installed on concrete slabs).
- Sediment control for water runoff in the direction of the river is achieved with Slitsoxx tube (equivalent to Slit Fence as per Env-Wq 1506.04).

Hydrology Study Comments

- The report format appears to be in line with criteria set out in Env-Wq 1504.09 for a stormwater drainage report.
- HydroCAD hydrologic calculations depicted in the report are in line with methods outlined in Env-Wq 1509.04 (b). These calculations have not been resynthesized by this reviewer; however the use of the drainage software package is good and the results do appear accurate.
- The outcome of the stormwater modelling resulted in a minor increase (0.6 cfs for a 2-year event) in peak flow for 'Watershed A', which drains to the river.
- Considering the sediment and erosion control measures that are to be put in place, and the size of the tidal river, it is agreed that this additional peak flow is negligible, and will have no adverse effects.

Concluding Remarks

The reviewed documents show only a minor increase in peak flow into the river during a storm. Whilst one existing stormwater swale is removed during the works, the addition of sediment controls as depicted will likely improve stormwater quality flowing off-site. No legislative non-compliance has been found at the time of writing; however the applicant should be aware of applicable state permits for this project.

SFC ENGINEERING PARTNERSHIP, INC.

Doug Fountain
Engineer

Nick Cricenti, P.E.
President

Kim Ervin Tucker

Attorney at Law

Admitted to Practice:
State of Maine
State of Florida
District of Columbia

United States Supreme Court
U.S. Eleventh Circuit Court of Appeals
U.S. District Court Northern District of Florida
U.S. District Court Middle District of Florida

Tom Morgan, Town Planner
Newington Planning Board
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

RE: Sea-3 Conversion to Export
190 Shattuck Way, Newington

Dear Mr. Morgan and Members of the Newington Planning Board:

I am writing to express opposition to the proposed conversion of the Newington Sea-3 LPG import terminal to export use. This conversion risks the safety of New Englanders in far more profound ways than simply the threat posed by increased propane shipments by rail. The current propane shortages in New England, and the rest of the country, are a man-made crisis, created primarily by the export of U.S.-produced LPG to the world market, rather than using this valuable commodity to supply our nation's propane needs. Conversion of Newington to export use will exacerbate this problem and will eliminate an essential resource for supplying the growing propane needs of our region. While the increased rail shipments of propane to Newington will certainly exponentially increase the safety risks that this dangerous, but regionally essential, facility poses to the public in Newington and all communities along the rail route(s) that will supply it, the threat that conversion of this facility to export use poses to the energy and economic security of our region and our nation is much more profound and significant.

I became familiar with the use of, and need for, the Newington Sea-3 facility in my representation of a group of property and small business owners in Midcoast Maine, known as Thanks But No Tank, who were opposing the construction of a 22.7 million gallon LPG storage tank and marine "import" terminal in Searsport, Maine. Because of the rural nature of Searsport and the Midcoast region, the Searsport Planning Board (SPB) wisely denied local Land Use and Site Plan Review permits to DCP Searsport LLC, a subsidiary of DCP Midstream Partners, LP, on April 4, 2013. DCP had previously been granted all required State and federal permits needed to construct this facility.

Although the SPB considered the DCP applications *as filed* – as an *import* facility -- during consideration of that project by the Searsport Planning Board, it became apparent that the proposed DCP Searsport LLC project would really be used as an *export* facility. In fact, by the time of the SPB's final deliberations and vote on the DCP application, Newington Sea-3, and DCP's Providence, RI and Chesapeake, VA, marine import facilities had not accepted a

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k.ervintucker@gmail.com

shipment of propane in more than a year and DCP's Chesapeake, VA, facility had re-exported the last import shipment it had accepted.

We determined that if this facility was converted to use as an export facility the impacts on the surrounding communities and environment were exponentially greater. Rather than 4-8 vessels a year making LPG deliveries to Searsport, primarily in the late Fall and Winter, an export facility would have meant 8 to 14 ships ***a month*** operating at that pace twelve (12) months a year to supply worldwide propane needs. Rather than 12 tanker trucks a day in the Summer and up to 40 tanker trucks a day in the Winter, transporting propane from the terminal, an export facility would have been supplied by land by up to 144 tanker trucks a day on the two-lane rural roads of Maine or by an undisclosed number of railcars a day, transported by the now-defunct Montreal, Maine & Atlantic RR (in bankruptcy after the Lac Megantic disaster which killed 47 people).

Further, there was a significant threat posed by the lack of odorant in the propane at the facility. Currently, marine import terminals receive unodorized LPG brought by tanker ships. The LPG in the refrigerated tanks, like those at Newington, is unodorized. Odorant, usually mercaptan, is mixed with the liquefied petroleum gas when it is sent from the refrigerated tank and pressurized for shipments by railcar and tanker trucks for most uses. Thus, while propane leaving an import terminal like Newington for consumer use, by tanker truck and rail car, contains odorant to allow detection in the event of a leak, propane being shipped in for export likely will be UNodorized. Therefore, not only will the LPG rail cars coming to Newington be far greater in number, the nature of the propane they contain will be far more dangerous, because the heavier than air, colorless gas they will be carrying, will now also be odorless – making this cargo undetectable by human senses if a leak or spill occurs along the route to Newington.

Further, while currently and in the past, propane has been shipped to and from Newington, on primarily a *seasonal* basis, to meet the propane needs in the New England region, conversion of the Newington Sea-3 terminal to export use would mean that this facility would operate at full capacity twelve months a year to supply worldwide propane needs.

The impacts of an export versus import facility are thus exponentially greater in more ways than just rail car volumes. These impacts would have been devastating on the environment and quality of life in Midcoast Maine and would have resulted in significant safety risks on our people. The same increase in adverse impacts that Searsport would have experienced with an export versus import facility, will result to the people and businesses of Newington if the Sea-3 facility is converted to export use.

However, the adverse impacts on long-term domestic propane supplies that an export facility would pose are even greater to New England and the United States – I do not believe that these impacts have been explored on considered, to date, in the Planning Board's consideration of this proposed conversion. Yes, Newington and New England would have an increased safety risk from increased rail traffic from a conversion. But the exacerbation of propane shortages in New England and nationally, from increased exports of U.S.-produced propane, will cause an even greater long-term economic and safety threat. Newington and New England would endure these increased physical safety risks without obtaining any of benefit of increased propane

supplies to the region from these increased propane shipments. New England would be reduced to a mere conduit for propane going to the world market, while New Englanders would be required to pay ever-increasing prices for the reduced U.S. propane supplies.

Unlike LNG, exports of LPG (propane) are not currently under the jurisdiction of the Federal Energy Regulatory Commission (FERC) and, thus, unlike LNG, FERC authorization is not required for corporations to export our LPG supplies. That is why the current nationwide shortages have occurred, when LPG exports have been left unchecked by any federal regulatory authority. These exports have left many in our nation without adequate propane supplies and have allowed our people to be price-gouged to obtain the artificially reduced domestic stocks of propane. This means that the Newington Planning Board is in the unenviable position of being our region's (and our nation's) last line of defense to prevent approval of this economically damaging conversion of Sea-3 to export use.

The current rise in propane prices, in Maine, New England and throughout the United States, is not due to a lack of supply, the United States produces more propane a year than U.S. consumers use. The current propane crisis results from the manipulation of propane supplies by corporations that have chosen to *export* propane produced in the United States, rather than supplying the American public with sufficient propane to meet domestic agricultural, heating or other needs. By *increasing* exports, during the period of peak demand in the U.S., these companies have created a man-made supply crisis and an excuse to charge exorbitant rates for the propane remaining in U.S. stocks. The man-made propane shortages of the Winter of 2013-2014, have caused most State Governors, including the Governors in New England States, to suspend safety regulations relating to propane shippers.

During this unusually frigid winter, the people of this country, including New England, find themselves in the grip of the polar vortex, and their wallets in the grip of propane profiteers. Local propane suppliers are as much the victims of this man-made manipulation of domestic propane supplies as the consumers who use propane for agricultural applications or home and business heating. But the reason for rising propane prices is not the "lack of storage capacity" or "problems with rail shipments." It is not even the result of a lack of pipeline capacity to bring propane to consumers. The primary reason for the man-made propane shortage and price hikes is *too many exports*.

Propane is produced from natural gas at processing plants and from crude oil at refineries. According to a December 12, 2013, U.S. Energy Information Administration (EIA) Report, propane produced from natural gas has been the fastest-growing component of the overall U.S. propane supply. Propane production in the United States set record highs on an almost weekly basis in 2013, as a result of increased U.S. oil and natural gas drilling. *Propane production from natural gas supplies climbed 17.3% or roughly 126,000 b/d in 2013. Propane production from refineries was higher by 26,000 b/d to 294,000 b/d, in 2013.* Despite these production increases, U.S. propane stocks are at their lowest levels since 1993 according to the U.S. Energy Information Administration (EIA).

This conclusion is not based on my analysis, but rather, the assessment of propane industry representatives and analysts, and on data compiled by the U.S. Energy Information Administration (EIA). The Propane Gas Association of New England (PGANE), a trade association representing nearly 675 members who sell propane or propane-related appliances and equipment in the 6 New England States, has said the following about the so-called "propane shortage":

> Press Release
> There is No Propane Supply Shortage
> Epsom, NH (January 21, 2014)
> –
> Propane production in the United States remains the highest it has ever been. Supply is plentiful in the Gulf Coast where exports continue at record levels. What customers are feeling are the results of a strained transportation and infrastructure system that is masquerading as a propane shortage.

http://propane.net/uploadedFiles/State/Texas/PGANE%20No%20Supply%20Shortage%2001-21-14.pdf

One PGANE member company described the issues with our New England supplies as follows:

> [T]here is plenty of propane, but supply in New England can still be strained when there are issues with the rail or pipeline. Rail and pipeline are the primary ways of shipping propane to New England from propane storage hubs, such as Mt. Belvieu, Texas.
>
> When the infrastructure becomes strained, suppliers have to come up with other ways of getting the propane to New England, such as by truck, or by ship. Both these options, however, are unfortunately more costly. Ships generally export propane abroad where propane is significantly more expensive, this makes deliveries to U.S. ports less desirable for the ships, therefore resulting in higher prices. This affects the price of propane all around, and is a reason that the price this winter has risen fairly significantly in the last few weeks.

http://holdenoil.com/propane-situation-this-winter/

Industry analysts have acknowledged that U.S. propane prices have been driven higher as a direct result of exporting propane supplies to the world market. In the December 30, 2013 article, "*How Soaring Propane Exports Affect Prices (Part 1)*," published by the Market Realist, the impact of exports on prices is directly assessed, concluding that:

> **Propane exports have increased significantly through 2013, and have spiked recently**
>
> Propane exports have increased throughout 2013. First quarter propane exports averaged ~150 thousand barrels per day, second quarter propane exports averaged ~180 thousand barrels per day, third quarter propane exports averaged ~230

> barrels per day, and fourth quarter propane exports to date have averaged ~270 thousand barrels per day. Most recently, the U.S. Department of Energy reported that as of December 20, propane exports were at 370 thousand barrels per day.
>
> *Increased propane exports are a positive for domestic propane prices because they represent increased demand for domestic propane. U.S. propane prices have increased nearly 60% since mid-June—with much of the price increase likely due to increased demand from propane exports.*
>
> **More propane export capacity coming online further boosts propane demand**
> Currently, domestic propane trades at a discount to international propane. This is because domestic propane production has continued to grow and despite a growing amount of propane exports, export capacity has been limited by a lack of infrastructure. However, this price disparity provides an economic incentive to build the necessary infrastructure to export propane. Midstream companies have already announced projects to build or expand propane export terminal facilities, which should result in increased propane exports and support for propane prices.

The Market Realist, "*How Soaring Propane Exports Affect Prices (Part 1)*," by Ingrid Pan, CFA (December 30, 2013) (emphasis supplied)
http://marketrealist.com/2013/12/soaring-propane-exports-affect-prices/

On November 20, 2013, at a conference discussing propane supply issues held in Augusta, Maine, PGANE President Joe Rose enumerated the impediments to obtaining adequate propane supplies in N.E. this year, which include the region's dependence on rail to supply our growing propane needs, which has been necessitated by the fact that, because the United States' is a net exporter of propane, New England's two marine import terminals – in Newington, N.H., and Providence, R.I. – have been "essentially mothballed" for the past two years. Four years ago, these facilities brought in 60 percent of New England's propane. *However, no imports were received at these facilities for almost 2 years*, until the 3 shipments in the past month, including one to the Newington Sea-3 facility. Those shipments brought, *higher-priced, foreign* LPG to these facilities for sale and use in N.E. – despite the ample and record production of propane in the U.S. in 2013. While the need to use these terminals to bring in foreign propane, when our nation has a surplus of U.S.-produced propane is regrettable, the critical role that these terminals still play in supplying our propane needs is undeniable.

Converting the existing Newington Sea-3 marine import terminal to use as an *export* facility would permanently jeopardize N.E.'s supply sources for propane, would exacerbate the current U.S. and N.E. supply deficits, reduce diversity in the N.E. propane supply chain, and permanently eliminate this facility as a supply source for N.E. in the future -- removing this essential supply safety-net for the region.

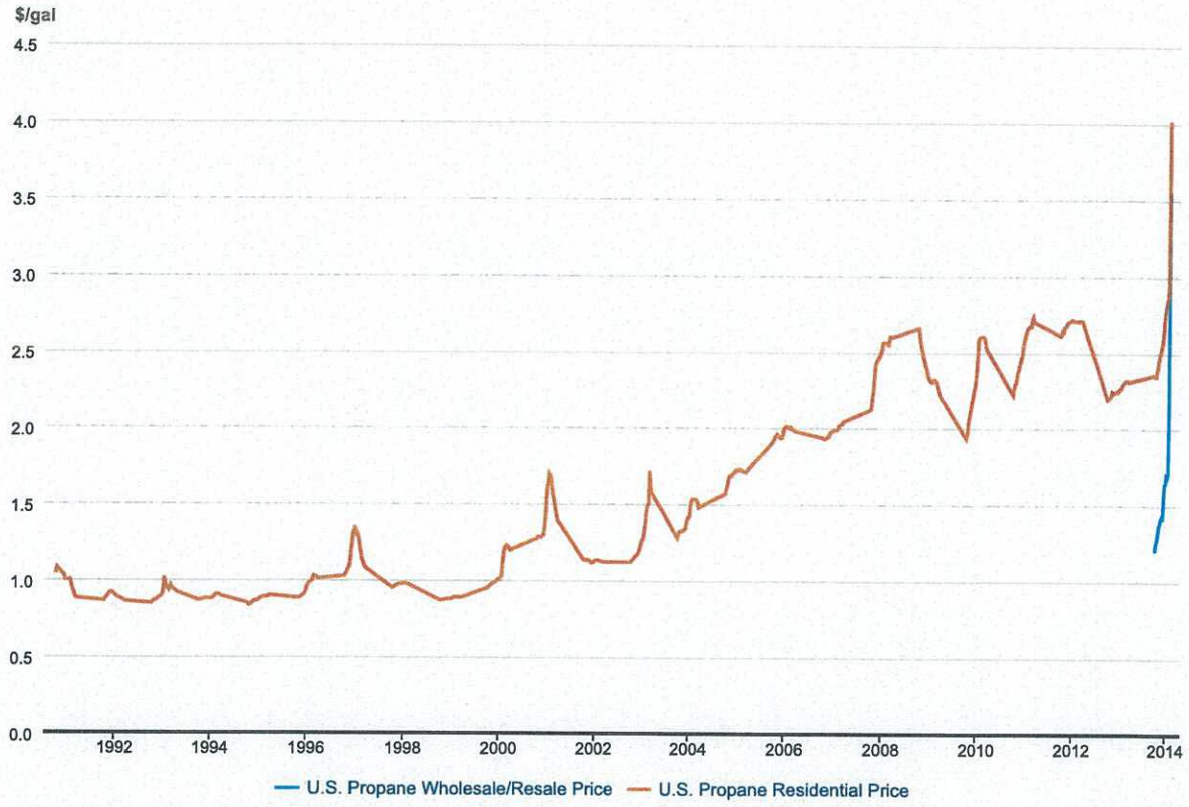
Would converting the Sea-3 facility impact the U.S. propane supply? *Absolutely – in fact converting this facility to **export** propane would exacerbate future regional and national, man-made propane supply problems and eliminate Sea-3 as a resource for obtaining propane for U.S. consumers in the future.* A better solution would be to work as a region to have the President suspend the Jones Act for LPG deliveries, to allow the use of foreign-flagged LPG tankers to transport propane from U.S. refineries and export facilities in TX and LA, and use them to

deliver LPG to Newington and the other under-utilized, existing East Coast LPG marine import terminals.

Because there are no U.S.-flagged LPG tankers that satisfy the criteria under the Jones Act (U.S.-built, U.S.-flagged, U.S.-crewed), suspension of the Jones Act by the President, for this limited purpose, would harm no U.S. shipping interests. There is precedent for suspending the Jones Act by Presidential Order in times of emergency – President Bush suspended the Jones Act after Katrina to bring in supplies to the storm-ravaged Gulf Coast. Such shipments would provide cheaper-cost U.S. propane supplies to New England from the Gulf Coast export facilities in TX and LA. It is unconscionable that New Englanders are being required to now import more costly, foreign LPG to supply our propane needs, when there is an abundance of cheaper LPG produced in this country that is being exported to the world.

The problem is that propane suppliers can make more money exporting the propane produced here, than they can make using it to meet our energy needs at home. The "energy independence" we have sought for more than a generation is being threatened by multi-national corporations that are using the propane resources of the United States for their own enrichment – to the detriment of national security and regional economic prosperity. Energy Independence can never be achieved if our nation's natural resources are allowed to by exported to the world market.

Weekly Heating Oil and Propane Prices (October - March)



Source: U.S. Energy Information Administration

The charts above (and additional charts sent with this letter), prepared by the U.S. Energy Information Administration (EIA), illustrate that, rather than reducing exports as demand and need in the U.S. increased, due to the unusually harsh winter and a larger fall corn crop that required propane for drying, propane producers *radically increased exports* – causing the current man-made crisis. Indeed, the chart produced by the EIA shows that propane exports have continued to significantly *increase* as the winter weather has gotten worse. As a result, U.S. propane prices have predictably spiraled out of control. Midcontinent propane stocks are down more than 35.9% from 2012, while the price is up by more than 74.3%. In some Midwest locations, propane is costing $5/gallon or more.

Texas and Louisiana, which have the largest propane storage tank capacity and greatest number of refineries in the country are, like most other States, suspending safety regulations for propane deliveries because of the "propane shortages" now being experienced in the Gulf States. As early as mid-November, *supplies fell the most on the Gulf Coast*. In 2013, Gulf Coast stocks were down 31% from 2012, while prices climbed 44%. Accordingly, having Sea-3 converted to export use will similarly do nothing to help New England's ability to obtain sufficient supplies of propane in the future.

Losing the Newington Sea-3 facility as a supply source for regional propane needs, supplementing pipelines and rail and truck transportation resources, will jeopardize our national and regional security, harm our economic stability and prosperity, and pose a public health and safety threat. *No additional marine import facilities should be converted to increase the volume of exports of U.S. propane – including Newington Sea-3.* Please take all steps needed to deny the request to convert Newington Sea-3 to export use. The proposed Sea-3conversion to export use fails to meet the requirements of Section 5(I), of the Newington Site Plan Ordinance, because the public health, safety, and welfare will *not* otherwise be protected if conversion is permitted.

Sincerely,

Kimberly J. Ervin Tucker
Maine Bar No. 6969

Sources:

"*Tracking the Latest Developments in U.S. Propane Supplies,*" by Brian Richesson (December 9, 2013). http://www.lpgasmagazine.com/tracking-the-latest-developments-in-u-s-propane-supply/

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http://www.vancouverobserver.com/environment/obama-approves-kinder-morgans-cochin-pipeline-expansion

CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7200
Fax (603) 427-1526

Robert J. Lister
Mayor

February 10, 2014

Denis Hebert, Chair
Newington Planning Board
205 Nimble Hill Road
Newington, NH 03801

Subject: Sea-3 Expansion Proposal at 190 Shattuck Way

Dear Planning Board Members:

Thank you for including the City of Portsmouth as an abutter in the land use review process now before you by Sea-3 of 190 Shattuck Way. Their proposal to reconfigure their terminal in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail and export of same via ocean-going ships has been the subject of a great deal of interest and concern by the Portsmouth City Council and residents of the City.

We appreciate the determination by the Newington Planning Board that this project has potential regional impacts beyond Newington's municipal boundaries and the rights that have been granted to the City of Portsmouth as abutters in this process. The City has created a webpage to provide information about the process (http://cityofportsmouth.com/Sea-3.html) and City Manager, John P. Bohenko has designated the City's Environmental Planner, Peter Britz to coordinate the City's interest in this project.

The City is primarily concerned about the public safety implications of increased rail traffic carrying hazardous materials close to neighborhoods and business areas. There are two components to this issue. First, we are concerned that this rail corridor has not been maintained adequately to support the level and type of rail use proposed for this project, as reflected by the current limitations on travel speed. Given the lack of rail traffic volume on the corridor to date, it is understandable that the corridor has not been maintained to a higher level. However, the proposed increase in volume of rail traffic combined with the hazardous nature of the cargo warrants a higher standard of maintenance.

The second aspect of our safety concern has to do with the equipment that will be used to transport LPG through the City. It is our understanding that the majority of tank cars carrying propane are not built to the latest industry safety standards.

Newington Planning Board

Monday February 10, 2014 6:30 PM

Agenda

1) **Informal Discussion:** Update by Seacoast Growers Association to run a farmers' market at the Crossings.

2) **Public Hearing:** Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

3) **Curb Cut Application:** Request by Victoria & Ben Auger for a driveway off of Swan Island Lane, Tax Map 53, Lot 16.

4) **Request for Comments** pursuant to RSA 674:41 regarding a proposal by Great Bay Marine, Inc. to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

5) **Old Business:** Request by KWA, LLC for an extension of site plan approval for office building development off Shattuck Way, Tax Map 7, Lot 2A.

6) **Preliminary Discussion:** Proposal by Barbara Hallett to expand the parking lot at 105 Gosling Road, Tax Map 28, Lot 1.

7) **Planning Board minutes** of January 27

8) **Correspondence**

9) **Pending Business**: Re-visit Newington Master Plan; Improve signage in the Shattuck Way corridor; Capital Improvements Program; Update Rules of Procedure; and LED signs

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, February 10, 2014

Call to Order: Chair Denis Hebert called the February 10, 2014 meeting to order at 6:31 p.m.

Present: Vice Chair, Mike Marconi; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Bernie Christopher

Public Guests: Sea-3, Paul Bogan, Cynthia Scarano, Executive VP & Robert Culliford, Senior VP & General Counsel of Pan Am Railways; Steve Haight, Haight Engineering; Attorney Alec McEachern; Nick Cricenti, SFC Engineering; Senator Martha Fuller Clark; Portsmouth City Officials: Manager, John Bohenko; Deputy Manager, David Allen; Environmental and Sustainability Director, Peter Britz; Mayor, Robert Lister; Assistant Mayor, Jim Splaine; Councilor Ester Kennedy; Councilor Jack Thorsen; Councilor Stefany Shaheen, Portsmouth Herald Reporter, Joey Cresta; Greenland Resident, Laura B; Newington Resident, Paul Reardon; Portsmouth Residents: Lewis Brown; Joe Calderola; Rich and Catherine DiPentima; Pat Ford; Bob Gibbons; Jean Heino; Richard Langan; and John Chagnon, P.E., Ambit Engineering

1) **Informal Discussion:** Update by Seacoast Growers' Association to run a farmers' market at the Crossings.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

2) **Public Hearings:** Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Due to the large number of regional impact officials and residents in the audience, Chairman Hebert requested that the meeting adjourn from the DeRoachmont Room to the Town Hall auditorium where the meeting reconvened at 6:40 p.m.

Town Planner, Tom Morgan introduced Mr. Richard Cricenti with SFC Engineering who had been engaged by the Town to complete an assessment of Sea-3's site plan. Mr. Cricenti said his review of the site was based on NH State codes as well as comments from the National Fire Protection Association to arrive at an impartial consensus. He said the NFPA would take a vote whether they approved of the site or not and give reasons for their decision. He said local government could not reduce those standards, but they could add requirements.

Portsmouth City Mayor Robert Lister read his February 10, 2014 letter addressed to Chair Hebert and Planning Board members. Mayor Lister's letter said, "The City was primarily concerned about the public safety implications of increased rail traffic carrying hazardous materials close to neighborhoods and business areas." He also announced the City's web page: http://cityofportsmouth.com/Sea-3.html and the City's Environmental Planner, Peter Britz coordination of the City's interest in the project.

Portsmouth City Manager, John Bohenko also addressed the Chair and Board, expressing the City's concerns with the impact that the Sea-3 terminal expansion would have on Portsmouth and its citizens. Mr. Bohenko said they heard from the DOT, but had not heard from the FRA. He said they would meet with the Department of Transportation in the near future for a better understanding of the condition of the rails, and would coordinate their efforts with surrounding towns.

Chairman Hebert said the findings of the Federal Railway Association and the NH DOT were crucial. He said he had informed Sea-3 and Pan Am Railways that they needed to get the FRA to work with the Town.

Board member, Justin Richardson said Newington had received the opinion that they could take no action with Pan Am Railways. Chair Hebert agreed that they could not tell Pan Am what to do, but he said citizens had a right to public commentary and a right to know what the safety conditions of the rail tracks were. He said if the tracks were found to be unsafe, they would want to know what the FRA would do to make Pan Am resolve the issues. He said the FRA had offered to meet Town officials privately, but he would not consider a non-public meeting so there would be no question of transparency. Town could also deny the application if the FRA did not agree to a public meeting and provide them with an inspection report. Cynthia Scarano, V.P. of Pan Am Railways said they were determined to have safe tracks.

Alternate Board member, Peggy Lamson said they did not want to prevent the expansion of this business, but they needed confirmation of its safety. She said this transport would go through several states and NH towns and she felt the time had come to solicit the assistance of their Congressional delegation as well as local representatives and those from Concord.

Mr. Richardson asked Mr. Cricenti if he had discussed the review with the Town fire chief and Mr. Cricenti said he had not, but in the early 1990's the NFPA had changed the fire code to prevent fires by design. He said tanks were designed to absorb heat and the biggest fire would be confined to the longest pipe run so it would burn out. Mr. Richardson said the report mentioned that there was some additional information needed, and said it would be important to get answers to any questions before approval. Chairman Hebert said they wouldn't receive the State's approval until all the information was provided.

Ms. Lamson asked if the U.S. government required the use of odor in gasoline, and Mr. Cricenti said they did not. Ms. Lamson asked how anyone would know if leaks occurred if they didn't add odor to the LPG and how they could make sure that it did. Mr. Cricenti said odor was typically added in tanks, but the Town could make it a stipulation of approval.

Mr. Paul Bogan, VP of Operations for Sea-3 identified the uses of the structures on the site, and explained their plans for the water-cooling systems. Vice-Chair Marconi asked how often they tested their safety systems, and Mr. Bogan said he believe they were required to test once a year, but they tested the system in the spring and fall.

Mr. Paul Reardon of Patterson Lane in Newington said there was an article in the "New York Times" that said tank cars didn't meet Federal standards. Mr. Bogan said those were a different type of tanker car for oil transport, but all propane tankers had to meet upgraded safety standards that included interlocking couplings so they would not puncture the tanks in the case of a crash, as well as insulated tanks with steel heat shields on the tankers to prevent puncture in case of accidents.

Mr. Rich DiPentima of Dunlan Way, Portsmouth agreed, but said the American Railroad Association supplied extensive studies that there would be "...no loss of product from tanks that traveled less than 5 mph."

Mr. Bogan said propane was a non-pollutant, but Mr. Richard Landry of Laurel Court said the diesel engines were polluting. Chairman Hebert said he understood what he was saying, but they had no jurisdiction over railroad operations because it was already in place and grand fathered.

Mr. Richardson said he thought Newington and Portsmouth should seek legal counsel. Mr. Morgan said the City of Portsmouth had a copy of Pan Am's legal opinion posted on the City website. Ms. Lamson said they should pass that on to their congressional delegation as well.

Mr. Reardon asked why they didn't look at alternate means of transporting the propane on freighters up the Piscataqua River. Mr. Bogan said in 1927 the U.S. Government enacted the Jones Act that said commodities could not be transported from one port to another unless it was U.S. built and crewed and there are no propane freighters built in the U.S.

Ms. Catherine DiPentima of Dunlan Way, Portsmouth passed out a list of safety data on railway accidents and incidents with Pan Am Railways in New England that showed increases over time.

Mr. DiPentima said he was sure the Town would fight against nuclear waste transport, and Board of Selectmen Chair, Rick Stern said there already is nuclear waste transport on the rail lines from the Portsmouth Naval Shipyard.

Mr. DiPentima went through a list of rail accidents and evacuations in various parts of the country. Mr. Richardson asked how much weight they should give to an incident that occurred in Canada and Mr. DiPentima said Canada's standards were higher than U.S. standards. He said 4,000 homes were evacuated as a result of an incident in Lincoln, CA in 2011. Chairman Hebert said there were no explosions in these incidents, but Mr. DiPentima said people were displaced for days and the town revoked the conditional use permit after the incident because the rail failed to apply proper safety procedures. Vice-Chair Marconi asked what the FRA's response was to the incidents, and Mr. DiPentima attributed the incidents to environmental, human or mechanical errors, but none of their own.

Chairman Hebert reiterated that he was asking Ms. Scarano with Pan Am and Mr. Bogan with Sea-3 to assist the Town in getting the FRA to meet with them. He said the citizens had a right to know the safety condition of the rails and the Town also needed to hear assurances from the FRA before a decision on the site could be made. Ms. Scarano said the FRA did inspections and would act if there were any issues, including drug and alcohol issues and hours of service. She said they would provide correspondence. Chairman Hebert said they needed to see a face and Ms. Scarano said they were a Federal agency. Chairman Hebert said they would go through Federal representatives if necessary to get a response. Mr. Richardson asked if they could get a copy of the last inspection, and Chairman Hebert said they needed the findings as well as what was being done to improve conditions. Ms. Scarano said the inspection report was done by the FRA and was not Pan Am's document to provide.

Mr. Lewis Brown of Laurel Court said Portsmouth filed a Freedom of Information Act petition and the FRA had dodged the request. He suggested the proposal be put on hold until they received more information.

Ms. Jean Heino asked if Pan Am would be financially responsible in case of a disaster. Board member, Mr. Richardson said they could request a bond from Sea-3, Chairman Hebert said they couldn't ask Sea-3 to be financially responsible for Pan Am.

Mr. Gibbons said Seacoast Media received a response from that the FRA had a backlog of requests. He said he also read that Pan Am would not be responsible for any accidents. Ms. Scarano said the railroad carried a substantial amount of liability insurance.

Mr. Richard Langan asked if an environmental study needed to be done. Mr. Joe Calderola said he hadn't heard much about ground water recharge on the site plan. Chairman Hebert said this was a cursory review, and all of the information was not available yet, but they would get more information as they moved forward.

Ms. Laurie B, from Greenland said one of her concerns was that the tracks be improved to accommodate the increase in propane freight traffic. She asked if the trains would be running at a speed of 25 mph. Board member, Jack Pare said it sounded like they needed to do upgrades to travel at an increase speed, and Ms. Scarano acknowledged that they did. Ms. Scarano said the tracks were currently set up as a Class I for 10 mph, but they would be doing improvements to bring the rails up to a Class II that could go up to 25 mph, though they only intended to run them at 10 mph at this time.

Ms. Pat Ford of Spinnaker Point asked if there were be fewer trucks going out. Mr. Bogan said they used to send out 100-200 trucks a day when they were importing fuel, but this operation would only send out 50 trucks a day. Mr. DiPentima asked how they could verify a certain percentage would be shipped overseas, and Chairman Hebert said the Planning Board was not a regulatory commission.

Mr. Lou Salomi of Portsmouth asked what Sea-3's construction time table would be if approved. Mr. Bogan said they expected the project to take a year before it would be operational.

City Councilor Jack Thorsen asked what action they might take to pursue the use of freighters as an alternate to rails. Chairman Hebert said that would involve changing the Jones Act. Vice-Chair Hebert said that would also require a presidential signature. Mr. Bogan said they had looked into that alternative and were told they could get a short-term waiver, but they would also have to build a vessel in that time period, and they were not in that business. Mr. Thorsen said that was all the more reason to insist that the rails be safe.

Chairman Hebert said the Board could not deny Pan Am's operations, but they could say they needed more safety information from the FRA before they approved Sea-3's proposal for expansion. He said the FRA agreed to meet informally, but they said they wouldn't meet in public. He said the FRA was a servant of this country and they needed the FRA to meet in public for transparency so there would be no perception of behind door deals being made. Vice-Chair Marconi agreed with what Ms. Lamson said that a letter should be written to the congressional delegates to put pressure on the FRA to respond. Mr. Morgan said he had been working with Carol Shea-Porter's staff and Senator Shaheen to gain cooperation and they were preparing a letter to the FRA.

Chairman Hebert informed Sea-3 that they could voluntarily request an extension in writing until more information became available, or the Board of Selectmen or the Planning Board could vote for an extension. Mr. Bogan said he understood the concerns and they weren't avoiding the safety issue of a report from the FRA. Chairman Hebert said Mr. Bogan had been very cooperative with the Board.

Chairman Hebert continued the public hearing to March 10, 2014.

Justin Richardson asked if they would get comments on the project from the Fire Chief and Chairman Hebert said he would meet with the new Fire Chief himself. Mr. Stern said they might also need to review the standards with a qualified consultant.

3) **Curb Cut Application**: Request by **Victoria & Ben Auger** for a driveway off of **Swan Island Lane**, Tax Map 53, Lot 16.

This item was postponed to March 10, 2014 at the applicant's request.

4) **Request for Comments** pursuant to RSA 674:41 regarding a proposal by **Great Bay Marine, Inc.** to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

No one appeared for this discussion so the Board moved on to the next item on the agenda.

5) **Old Business:** Request by **KWA, LLC** for an extension of site plan approval for office building development off **Shattuck Way**, Tax Map 7, Lot 2A.

John Chagnon, P.E., Ambit Engineering appeared before the Board requesting a two year extension for their application that was first approved in January 2010 and received an extension on December 2011.

Chairman Hebert asked if there had been any changes. Mr. Chagnon said all their permits were still in place. Chairman Hebert said they would need to return if there were any changes to the plans.

Vice-Chair Marconi asked if they were still planning on using glass on the building. Mr. Chagnon said they were. Vice-Chair Marconi said he was concerned with sun reflecting off the building and blinding drivers along the Spaulding Turnpike.

Vice-Chair Marconi asked when they intended to begin their project and Mr. Chagnon said they hoped to begin in two years once the Spaulding Turnpike expansion was done.

A discussion ensued as to how long the application should be extended.

Mike Marconi moved to extend site plan approval for an office building development off Shattuck Way, Tax Map 7, Lot 2A to 24 months from January 25, 2014 to January 24, 2016. Peggy Lamson seconded the motion. Rick Stern abstained as an abutter and all others were in favor.

6) **Preliminary Discussions**: Proposal by **Barbara Hallett** to expand the parking lot at **105 Gosling Road,** Tax Map 28, Lot 1.

No one appeared for this discussion. Chairman Hebert continued the discussion to the next meeting.

Minutes: ***Mike Marconi motioned to approve the Planning Board Minutes for January 27, 2014 with corrections as noted. Peggy Lamson seconded the motion. Mike Marconi was absent from meeting and abstained from voting and the motion passed with all others voting in favor.***

Discussion:

Mr. Morgan excused himself from the rest of the meeting while the Board discussed Warrant Article 6 that would eliminate the position of Town Planner and would hire a consultant on an as need basis.

Mr. Richardson said he didn't think the Town could operate properly with out a Town Planner. He said it would also affect the Planning Board.

Mr. Stern said there was a suggestion that Newington operate with a planning consultant as Seabrook does, but he said Seabrook has a full-time, paid technical review board. Ms. Lamson said Mr. Morgan started out as a consultant and the position grew into a full-time position. She said he attended and assisted with most all the land use boards.

Chairman Hebert moved that the Planning Board supported the position of a Town Planner. Peggy Lamson seconded, and all were in favor with one abstention.

Adjournment: ***Rick Stern motioned to adjourn. Justin Richardson seconded, and all were in favor. The meeting adjourned at 9:25 p.m.***

Next Meeting: Monday, February 24, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

2/4/14

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PROGRESS FOR SUPPORTERS OF GUN BILL A3

HELP SOUGHT IN FIGHT FOR SAFETY DATA

Local planners reach out to Shea-Porter and Shaheen

BY JOEY CRESTA
jcresta@seacoastonline.com

NEWINGTON — The town's Planning Board is putting the heat on the Federal Railroad Administration to become an active participant in the ongoing debate over the proposed expansion of a Seacoast propane operation.

The planners agreed that the state's congressional delegation should become involved in the process by pushing the FRA to cooperate with requests to provide track inspection reports on branches of railroad that would carry propane to dealer Sea-3's facility on Shattuck Way.

See SEA-3, Page A2

SEA-3: Political help sought in rail safety issue

Continued from page A1

In fact, Town Planner Tom Morgan said during Monday night's Planning Board meeting that process is already under way. He informed the board and the roughly 50 members of the public in attendance that he has been working with the staff of U.S. Rep. Carol Shea-Porter, D-N.H., and U.S. Sen. Jeanne Shaheen, D-N.H., on urging the FRA to release the information.

"They're preparing a letter to the FRA," Morgan said.

The requests for track inspection reports come in the context of Sea-3's proposal to make substantial upgrades to its facility. A subsidiary of Trammo Inc., Sea-3 wants to be able to off-load more domestic propane delivered by freight rail.

Numerous residents have raised concerns about the tracks leading to Sea-3, which are categorized as Class 1 and are limited to speeds of 10 mph. Cynthia Scarano, executive vice president of Pan Am Railways, revealed Monday night that Pan Am has capital improvement plans to upgrade the tracks to Class 2, which would allow for speeds of up to 25 mph.

Even so, she said, the company remains committed to limiting speeds to 10 mph.

Attempts by the town of Newington and the Portsmouth Herald to obtain the FRA's most recent inspection reports on the tracks have been unsuccessful. The Herald filed a Freedom of Information Act with the federal agency in December seeking the documents, but the FRA cited a "backlog" in FOIA requests in explaining the lack of a response thus far.

Scarano said Pan Am does not even have a copy of the inspection report, even though the report is relative to tracks the company owns.

"That's not our document," she said.

While Scarano said the FRA would be willing to weigh in on the issue via written correspondence to the town, Planning Board Chairman Denis Hebert said the town wants an official from the agency to attend a meeting in person to answer questions.

Hebert said the FRA had indicated it was willing to meet with the Planning Board in private, but he is unwilling to accept that offer.

"I don't want to give the impression of anything (unethical) going on," he said.

Hebert said that if the town is unable to get necessary information on the condition of the tracks, the Planning Board may have no choice but to deny the Sea-3 plan on the grounds it is unsafe. The board needs to see the evidence from the FRA to consider approving the application, he said.

"We can't get the people or the information we need. That's what I'm hearing very clearly right now," he said.

Monday's meeting drew a large crowd of Portsmouth and Greenland residents. Among those in attendance were Portsmouth City Manager John Bohenko, Mayor Bob Lister, Assistant Mayor Jim Splaine and City Councilors Esther Kennedy, Jack Thorsen and Stefany Shaheen. State Sen. Martha Fuller Clark also was in attendance.

Hebert agreed with Lister's and Bohenko's sentiments that the safety of the region has to be the primary concern.

"Inspection of those tracks and the condition of those tracks is paramount to us," he said. "We really need to get the FRA involved in this."

Under state law, the Sea-3 application has reached a deadline for approval. Sea-3 voluntarily agreed to an extension to keep the project alive until the town receives the requested Federal Railroad Administration documents.

Sea-3, Inc. Terminal: 190 Shattuck Way Newington, NH 03801-7868 Tel: (603) 431-5990 Fax: (603) 431-5652 E-mail: newington@sea-3.com

February 11, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Mr. Hebert:

This letter will confirm my statement last evening that Sea-3, Inc. has agreed to waive the requirement for Planning Board action within the 65 day time period specified in RSA 676:4, I (c) and consents to a 90 day extension.

Respectfully Submitted,

SEA-3, INC.

By: Paul Bogan
Paul Bogan, Vice President

Cc: Thomas Morgan, Planner
Stephen Haight, P. E.
Alec L. McEachern, Esq.

Marketing: 190 Shattuck Way Newington, NH 03801-7868 Tel: (603) 436-6225 Fax: (603) 436-3263 E-mail: newington.marketing@sea-3.com

New Hampshire DOT
Department of Transportation

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF TRANSPORTATION

CHRISTOPHER D. CLEMENT, SR.
COMMISSIONER

JEFF BRILLHART, P.E.
ASSISTANT COMMISSIONER

February 11, 2014

Rick Stern, Chair
Newington Board of Selectman
205 Nimble Hill Road
Newington, NH 03801

RE: SEA-3 inquiries

Dear Mr. Stern,

This letter should serve to summarize the Bureau of Rail & Transit's involvement in the proposed SEA-3 project that would involve utilization of Pan Am's privately owned Portsmouth and Newington Railroad Branches. While the Department acknowledges the concerns you expressed, our involvement and jurisdiction is limited with respect to a privately owned and maintained railroad such as Pan Am. Please find some pertinent information, below, that may address some of your concerns or inquiries.

- Inspections of the lines, which NHDOT conducts in conjunction with FRA, are limited to the present use of the lines
  - NHDOT inspector, accompanied by Pan Am staff, conducts a minimum of two inspections per year in a hi-rail vehicle
  - FRA staff, accompanied by Pan Am staff, conducts two inspections per year in a hi-rail vehicle
  - NHDOT inspector and FRA staff conduct (unaccompanied) annual walking inspections of the lines
    - These inspections are ideally conducted during periods of non-snow cover
    - Track inspections determine maximum safe speed and not the frequency or type of cargo
  - Most recent inspections:
    - January 31, 2014: FRA staff conducted an inspection of the Portsmouth and Newington Branches
      - Inspection of snow covered tracks can be somewhat limited in capacity
    - October 3, 2013: NHDOT's Railroad Inspector, John Robinson, inspected the Portsmouth Branch
    - November 14, 2013: NHDOT's Railroad Inspector, John Robinson, inspected the Newington Branch
      - Results of the aforementioned inspections are considered Federal records and must be requested, under the Freedom of Information Act, from the FRA Region I office:
        - Les Fiorenzo, FRA Regional Administrator, 55 Broadway Room 1077, Cambridge, MA 02142

- Safety concerns relative to signage, visibility, and other crossing-related items
  - NHDOT staff conducts other safety-related assessments of the crossings and signage as follows:
    - NHDOT conducts periodic crossing inspections of public-only crossings
      - October 2013: NHDOT inspector conducted a signage review of the crossings
      - January 2010: NHDOT inspector completed a crossing inspection program on behalf of NHDOT
    - Noteworthy items for consideration:

- Stop signs at the crossings are only as effective as the enforcement of motor vehicle law
- The railroad (Pan Am) in only responsible for vegetation control within its own right-of-way, not the roadside or approach, which would fall upon the landowner, presumably the municipality, in which the crossing is located

- There are no specific requirements relative to the inspection of water crossings as all bridge spans are inspected and maintained in accordance with 49 CFR 237. Additionally, there are no operational restrictions placed on water crossings. A rudimentary observation of bridge structures is included during all track inspections.

- The proposed increase in rail traffic as a result of SEA-3 will not necessarily require crossing improvements as crossing safety requirements are predicated by a hazard index that includes train speed and roadway traffic volume, neither which has been mentioned as changing.

- As a privately operated railroad, NHDOT has no jurisdiction over the commodities that Pan Am transports over the line. With respect to commodities that can be transported, Pan Am is subject to rules of the Surface Transportation Board.

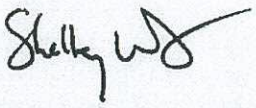
- NHDOT has not placed any additional operational restriction on Pan Am. To our knowledge FRA has not placed any operational restrictions either, but we recommend that you confirm this with FRA.

- Pan Am is required to report derailments and accidents that meet an FRA-established monetary threshold. No reported derailments have occurred on this line.

- NHDOT and FRA are not involved in the insurance requirements of a private railroad.

The Department is committed to the provision of safe rail transportation, both passenger and freight, and will continue to support all efforts in accordance with Federal and State statutes. If you should have additional questions, please feel free to write me again.

Sincerely,



Shelley Winters
Administrator, Bureau of Rail & Transit

cc: Janet Lee, FRA Region I Office
Patrick Herlihy, NHDOT Division of Aeronautics, Rail & Transit
Melodie Esterberg, NHDOT Chief of Design Services
John Robinson, NHDOT Railroad Inspector

From: "Denton, Josh" <Josh.Denton@mail.house.gov>
Subject: FRA Letter
Date: February 12, 2014 4:20:35 PM EST
To: 'Tom Morgan' <newington@ttlc.net>

Tom,

Below is the text of the letter that the Congresswoman, Senator Shaheen, and Senator Ayotte are sending to FRA Administrator Szabo. I should be able to send you a signed copy once it goes out. Until then, I ask you not to share this with the public.

Thanks,

Josh Denton
Outreach Coordinator / Veterans Liaison
Congresswoman Carol Shea-Porter
33 Lowell Street, Manchester, NH 03101
Phone: 603-641-9536 Fax: 603-641-9561

Administrator Joseph C. Szabo
Federal Railroad Administration
US Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

Dear Administrator Szabo:

As you know, on January 13, 2014, the New Hampshire Towns of Newington, Stratham, Greenland, and the City of Portsmouth requested that the FRA conduct an inspection of the Portsmouth and Newington Industrial Tracks, which are owned by Pan Am Railways. Given the pending application from Sea-3, Inc. to expand its liquefied petroleum gas (LPG) facilities in Newington, we strongly urge the FRA to conduct this inspection in a timely manner. In addition, because of the public safety concerns raised by residents in these communities, we believe the FRA attendance at a public forum on track safety would be beneficial.

These communities have raised concerns about the condition and safety of these tracks, and the dangers associated with using them to transport highly flammable material. The safety of these tracks is of paramount importance, especially in light of a recent study of freight train derailments that found that broken rails or track welds are the leading cause of derailments. Pan Am Railways currently operates two to three trains per week, each with seven to 12 rail cars, which are only allowed to travel 10 miles per hour due to track conditions.

We ask that the FRA conduct an inspection of the Portsmouth and Newington Industrial Tracks and provide the results to the Town of Newington in an expedient manner, and that the FRA participate in a public forum to discuss track safety.

Thank you for your consideration of this request. We look forward to your response.

Sincerely,

SEA- 3 EXPANSION RAILROAD RELATED ISSUES

February 12, 2014 MEETING

TIME: 10:00 AM
PLACE: CITY MANAGER'S CONFERENCE ROOM

AGENDA

I. WELCOME & INTRODUCTIONS

II. MEETING PURPOSE

III. PROJECT UPDATE

IV. NEWINGTON PLANNING BOARD STATUS

V. NH DOT RAIL CROSSING INFORMATION

VI. NEXT STEPS

Class of Track

FRA's track safety standards establish nine specific classes of track (Class 1 to Class 9), plus a category known as Excepted Track. The difference between each Class of Track is based on progressively more exacting standards for track structure, geometry, and inspection frequency. Furthermore, each Class of Track has a corresponding maximum allowable operating speed for both freight and passenger trains. The higher the Class of Track, the greater the allowable track speed and the more stringent track safety standards apply.

Railroads determine the Class of Track to which each stretch of track belongs based upon business and operational considerations. Once the designation is made, FRA holds railroads accountable for maintaining the track to the corresponding standards for that particular class.

If through regular maintenance and inspection efforts a railroad discovers that a section of its track fails to meet the specified federal standard, the railroad is required to make appropriate repairs to maintain that Class of Track designation, or downgrade the track segment to a lower Class of Track to which the federal standard can be met.

Inspected Portsmouth Branch October 3, 2013. Cited 14 defective conditions. Followed up November 14th.

Inspected the Newington Branch November 14, 2013. Cited 2 defective conditions. Followed up December 17th.

FRA Inspected both lines in response to town letter(s) January 31.

Spoke with Tom Morgan regarding inspection, records availability and independent source.

Spoke to Jeff Barnum in regards to bridge 8.65/ 8.69 1931-1957 and P A Timetable instructions.

14 - On-Call Transit

An on-call transit system, similar to that which runs in rural areas of Sweden, should be established to serve Newington's residential district.

15 - Rail service should be upgraded

Such an improvement would facilitate the transport of cargo from the Piscataqua's industrial waterfront to and from locations throughout North America.

16 - Improve the Safety of the Transport of Hazardous Materials

A number of hazardous materials are presently transported through town on local rails, highways, and along the Piscataqua River. Flammable, toxic, and explosive materials pose a threat to the environment and nearby residents. The local rail is in poor condition and should be upgraded. Highway and river traffic warrant further study to better assess potential problems.

Staff Meeting with Town Administrators and NH DOT

Date: February 12, 2014
TIME: 10:00 AM
PLACE: CITY MANAGER'S CONFERENCE ROOM

Staff meeting summary:
A meeting was called by Portsmouth City Manger, John P. Bohenko on February 12, 2014 at 10am in Portsmouth City Hall. In attendance representing municipal interests were: For the City of Portsmouth John P. Bohenko, City Manager, David Allen Deputy City Manager, Rick Taintor, Planning Director, and Peter Britz, Environmental Planner; Town Administrators Paul Deschaine for the Town of Stratham and Karen Anderson for the Town of Greenland; and Tom Morgan, Town Planner for the Town of Newington;. Also in attendance were Melodie Esterberg, Chief of Design Services, Bureau of Highway Design and John H. Robinson, Railroad Inspector/Investigator, both from the New Hampshire Department of transportation. Representatives from the Town of Newfields were invited but were unable to attend this meeting.

This meeting was called by Portsmouth City Manger, Bohenko to bring representatives of these communities together as they all have concerns with a proposal to expand the Sea-3 propane terminal in Newington which will increase rail traffic from Rockingham Junction in Newfields to the Sea-3 facility along the Piscataqua River in Newington. Residents in all the communities have expressed concern over the potential for increased rail service.

The concern expressed by all the communities is safety of the rail service proposed. The Town of Newington's Planning Board has been requesting inspection and safety records for the rail corridor from the Rockingham Junction to the Sea-3 site in Newington.

John Robinson gave a description of what is involved with track inspections and some details about the requirements:

Track safety standards establish 9 classes of track (Class1 to Class 9) plus a category know as "Excepted Track". The difference in class is based on standards for track structure, geometry, and inspection frequency. Each class has a maximum operating speed for freight and passenger trains. The higher the level of track the greater the allowable track speed and the more stringent the track safety standards. The railroad is the entity that determines class of track and the Federal Railroad Administration (FRA) holds them accountable to the standards for that class. Although John Robinson is a railroad inspector for NHDOT he is doing the inspection in conjunction with the FRA and enforcing FRA track safety standards. If through regular maintenance and inspection efforts by Pan Am Railways or through inspections by NHDOT or FRA it is discovered that a section of track fails to meet the specified federal standard, the railroad is required to make appropriate repairs to maintain that Class of Track designation or downgrade the track segment to a lower Class of Track to which the federal standards can be met. Class 1 track that is used only for freight must be inspected at least once per week by a person

the railroad has designated as a qualified inspector. Reports for these inspections must be kept by the railroad and made available to NHDOT or FRA upon request for one year after the inspection.

The Portsmouth and Newington lines which begin at Rockingham Junction and continue into Newington are classified as Class 1 with one exception. There is a segment of excepted track located in downtown Portsmouth from just east of Barberry Lane to Green Street, the majority of which is in the Portsmouth rail yard. Track classified as excepted is not allowed to carry more than 5 cars carrying hazardous cargo placards. Therefore it was noted that if the Sea-3 project were to go through today that section of track would need to be upgraded in order to allow passage of more than 5 tank cars full of LPG.

The FRA regulates the reporting of incidents such as derailments. Incidents which occur on the tracks must be reported if train accident results in damage of $150,000 or more to railroad or non-railroad property. According to John Robinson's records there was no derailments reported since 2000 on the Portsmouth or Newington branch.

The Portsmouth Branch was inspected on October 13, 2013 with 14 defective conditions found. Follow-up occurred November 14th. (Follow-up means that defective conditions were corrected.)

The Newington Branch was inspected on November 14, 2013, two defective conditions were found with follow-up on December 17, 2013.

On January 31, 2014 both the Newington and Portsmouth branch were inspected by the FRA at the request of the Town of Greenland. There were three defects written on the Newington Branch and none on the Portsmouth Branch upon which they have thirty days to follow-up.

There was some discussion about the merits of asking Pan Am Railways to upgrade the tracks to a Class 2 line or just to have them insure that all tracks are safe and maintained to Class 1 standards, while Class 2 has more stringent safety requirements, trains are allowed to travel up to 25 mph. The consensus of the group seemed to be that the slower speeds were more desirable than an upgrade to allow speeds of 25mph.

Melodie Esterberg discussed the State's role in rail crossing maintenance and funding sources available under the Rail-highways crossing (Section 130) Program to upgrade these crossings. Ms. Esterberg stated that the rail crossings are inspected by NH DOT. A revised inspection program began about three years ago utilizing an assessment team and a comprehensive rating system. There are 4 crossings eligible for funding along the Portsmouth line and the program will pay 90% for upgrades to road crossings and 100% of the cost of protective devices would be covered by this program. DPW has begun coordinating with NHDOT to come up with a schedule for crossing upgrades at the eligible locations.

The Town of Greenland provided a letter which they wrote to NHDOT and FRA requesting track inspections. The City agreed to place this letter on its website. All present said they would share any future correspondence with their congressional delegation and try to share information as much as possible. It was agreed by all that communities present that assuring the tracks are safe was the number one priority for all the communities

Next steps for the communities was to attempt to get a meeting with Pan Am so that they could explain their expansion plans and the communities would be able to ask questions of them about any proposed rail upgrades to accommodate Sea-3.

Great Bay Stewards
89 Depot Rd
Greenland, NH 03840
Phone: (603) 778-0015
Fax: (603) 778-7398

GREAT BAY STEWARDS

Email:
info@greatbaystewards.org
Website:
www.greatbaystewards.org

Supporting education, research & conservation on Great Bay

February 13, 2014

The Great Bay Stewards are writing this letter to express our concerns about the company Sea-3's proposal to expand its propane facility in the town of Newington.

As stated by Sea-3, this proposed expansion will necessitate a marked increase in the use of Pan Am's rail line, which crosses the Great Bay estuary. This increase in railway traffic has the potential to negatively affect the estuary. In addition, local residents have also raised concerns regarding public safety and the danger posed to the Great Bay. We are asking for your assistance to contact the Federal Railroad Administration (FRA) and the National Transportation Safety Board and obtain the public release of the safety inspection records for Pan Am railways as soon as possible.

In September of 2013, Sea-3 made a request to the Newington Planning Board to expand/upgrade their existing facility along the Piscataqua River. The requested upgrades would increase the volume of propane that Sea-3 can off-load from freight train cars and store in tanks on their site prior to export or local distribution. This increase in activity will increase the freight train traffic running along a railway that has seen only a weekly train or two for several decades. The Pan Am railway is currently ranked as a Class I railway, which means that the maximum speed allowed is 10 MPH.

Despite concerns raised about the condition of the rail bed, to date, Pan Am has not agreed to release its past inspection records. The Portsmouth Herald reported on December 6, 2013 that their requests for these inspection records from the railway and from the Federal Railway Administration (FRA) were denied. The paper then filed a Freedom of Information Act request. To date, no response has been given as to when these materials will be made available.

Newington is also in the process of sending letters to the FRA requesting a full inspection of the rail line going along the south edge of Great Bay. At the last public hearing, the Newington Planning Board said it would not support the Sea-3 proposal until the issues around the railway are resolved to ensure public safety.

We should all be concerned about the potential negative environmental impact that increased rail traffic may have on the Great Bay estuary. Historically this railway has been poorly maintained and the fact that Pam Am has been resistant to release its maintenance records is of great concern. The mission of the Great Bay Stewards is to provide the long-term protection of the Great Bay estuary. The surrounding marshes and numerous tributaries perform critical ecosystem functions such as water filtering, storm surge protection, and wildlife habitat. To demonstrate the importance of this ecosystem, NOAA has invested nearly 100 million dollars in the protection of Great Bay and an additional 62 million dollars for land protection.

and to the quality of life that we deserve. It is vitally important that FRA and Pan Am railways be transparent in this process so that the quality of the Great Bay is not further denigrated. In fact, if done properly, this may even be an opportunity to improve the quality of the Great Bay.

For these reasons, we are formally requesting that you contact the FRA and the NTSB and ask that the safety and inspection records of Pan Am be released as soon as possible.

We greatly appreciate your attention in this matter.

Jack O'Reilly, President
Peter Wellenberger, Executive Director

From: "Nagy, David" <dnagy@panam.com>
Subject: C 3 Newington
Date: February 14, 2014 10:46:03 AM EST
To: "Newington@ttlc.net" <Newington@ttlc.net>

2/14/14

Good Afternoon,

As a resident of New Hampshire and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

Sea-3 has an impeccable operational and safety record established through its continuous presence in New Hampshire since 1975. Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before Planning Board of Newington for approval of non-rail related improvements.

To assist Sea-3 with this project, Pan Am has been working cooperatively with all interested parties to develop a rail service plan that will meet the requirements of Sea-3 to continue to provide propane to New Hampshire customers. Pan Am's proposal is to increase rail transportation of domestic propane to the Sea-3 above historical levels, while maintaining the safety of rail operations. Pan Am has a long history of safe operations, having been awarded the prestigious Harriman Award for safety on numerous occasions and maintaining a consistent focus on safety in every area.

My understanding is that there are special interest groups as well as political individuals attempting to block this future project because of the potential for increased rail shipments. Notwithstanding these stated concerns, it is imperative that all parties recognize that the rail transportation aspect of Sea-3's expansion is not before the Planning Board and that rail shipments of propane to Sea-3 have always occurred with no significant incidents. Furthermore, while not required to do so as part of any permitting process, Pan Am has also committed to making additional track improvements to support higher rail volumes if Sea-

3's proposal is approved, further supporting safe operations.

In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,
David Nagy

From: "Irwin, Lori" <lirwin@panam.com>
Subject: If Sea-3 is not granted this permit they will no longer remain competitive and will be forced to move their business elsewhere
Date: February 14, 2014 11:11:39 AM EST
To: "Martha.fullerclark@leg.state.nh.us" <Martha.fullerclark@leg.state.nh.us>
Cc: "pam.tucker@leg.state.nh.us" <pam.tucker@leg.state.nh.us>, "joe.scarlotto@leg.state.nh.us" <joe.scarlotto@leg.state.nh.us>, "Newington@ttlc.net" <Newington@ttlc.net>

2 Attachments, 33 KB

As a resident of New Hampshire and concerned employee of Pan Am Railways, I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before Planning Board of Newington for approval of non-rail related improvements.

Pan Am's proposal is to increase rail transportation of domestic propane to the Sea-3 above historical levels, while maintaining the safety of rail operations. My understanding is that there are special interest groups as well as political individuals attempting to block this future project because of the potential for increased rail shipments. Notwithstanding these stated concerns, it is imperative that all parties recognize that the rail transportation aspect of Sea-3's expansion is not before the Planning Board and that rail shipments of propane to Sea-3 have always occurred with no significant incidents.

In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thank you for supporting NH Industries and jobs.

Lori A. Irwin
Revenue Accounting ST/PAS - Director
PAN AM RAILWAYS
Iron Horse Park
N Billerica, MA 01862
ph(978)663-1051
fax(978)663-1152
lirwin@panam.com

From: "Hitchcock, Pam" <phitchcock@panam.com>
Subject: Request for Support
Date: February 14, 2014 11:27:31 AM EST
To: "Newington@ttlc.net" <Newington@ttlc.net>

2/14/14

Good Afternoon,

As a resident of New Hampshire and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

Sea-3 has an impeccable operational and safety record established through its continuous presence in New Hampshire since 1975. Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before Planning Board of Newington for approval of non-rail related improvements.

To assist Sea-3 with this project, Pan Am has been working cooperatively with all interested parties to develop a rail service plan that will meet the requirements of Sea-3 to continue to provide propane to New Hampshire customers. Pan Am's proposal is to increase rail transportation of domestic propane to the Sea-3 above historical levels, while maintaining the safety of rail operations. Pan Am has a long history of safe operations, having been awarded the prestigious Harriman Award for safety on numerous occasions and maintaining a consistent focus on safety in every area.

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3's proposal is approved, further supporting safe operations.

In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,

Pamela J. Hitchcock
phitchcock@panam.com
Pamela J. Hitchcock
Director of Claims
Pan Am Railways
Iron Horse Park, No. Billerica, MA 01862
Tel: (978) 663-1024 Fax: (978-663-1213)

The above communication is confidential and may be protected by the attorney-client privilege and/or the work product doctrine. If you believe you received this email by mistake, please notify the sender by return email as soon as possible. Thank You.

From: "Beck, Stacy" <sbeck@panam.com>
Subject: Support the Sea-3 Expansion project
Date: February 14, 2014 11:31:43 AM EST
To: "'newington@ttlc.net'" <newington@ttlc.net>

1 Attachment, 15 KB

Dear Town of Newington,

As a resident of New Hampshire and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

Sea-3 has an impeccable operational and safety record established through its continuous presence in New Hampshire since 1975. Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before Planning Board of Newington for approval of non-rail related improvements.

To assist Sea-3 with this project, Pan Am has been working cooperatively with all interested parties to develop a rail service plan that will meet the requirements of Sea-3 to continue to provide propane to New Hampshire customers. Pan Am's proposal is to increase rail transportation of domestic propane to the Sea-3 above historical levels, while maintaining the safety of rail operations. Pan Am has a long history of safe operations, having been awarded the prestigious Harriman Award for safety on numerous occasions and maintaining a consistent focus on safety in every area.

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In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,

Stacy Beck
VP Brands & Licensing
Office: 603-516-0802
Fax: 603-516-0809
Cell: 603-502-8548
E-mail: sbeck@panam.com
Website: www.panam.com

From: "Bourassa, Debbie" <dbourassa@panam.com>
Subject: Sea-3 Propane Distribution Facility
Date: February 14, 2014 11:44:49 AM EST
To: "'Newington@ttlc.net'" <Newington@ttlc.net>

Good Afternoon,
As a family member of many NH residents and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

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In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,
Deborah J. Bourassa

From: "Pleisch, Sandra" <spleisch@panam.com>
Subject: Support NH Economy - Support SEA-3 - Support Pan Am Railways
Date: February 14, 2014 12:45:42 PM EST
To: "Newington@ttlc.net" <Newington@ttlc.net>
Cc: "Pleisch, Sandra" <spleisch@panam.com>

2/14/14

Good Afternoon,

As a resident of New Hampshire and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

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3's proposal is approved, further supporting safe operations.

In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,

Sandra Pleisch
978-663-1025

From: Mike Twidle <miketwidle@gmail.com>
Subject: Sea-3
Date: February 14, 2014 2:03:36 PM EST
To: newington@ttlc.net

2/14/14

Good Afternoon,

As a longtime resident of the New Hampshire seacoast and an employee of Pan Am Railways I am writing to you regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. This project is important for the long term viability of both propane distribution and rail service in the Seacoast region, and therefore I am requesting your support for this important project.

Sea-3 has an impeccable operational and safety record established through its continuous presence in New Hampshire since 1975. Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before Planning Board of Newington for approval of non-rail related improvements.

To assist Sea-3 with this project, Pan Am has been working cooperatively with all interested parties to develop a rail service plan that will meet the requirements of Sea-3 to continue to provide propane to New Hampshire customers. Pan Am's proposal is to increase rail transportation of domestic propane to the Sea-3 above historical levels, while maintaining the safety of rail operations. Pan Am has a long history of safe operations, having been awarded the prestigious Harriman Award for safety on numerous occasions and maintaining a consistent focus on safety in every area.

My understanding is that there are special interest groups as well as political individuals attempting to block this future project because of the potential for increased rail shipments. Notwithstanding these stated concerns, it is imperative that all parties recognize that the rail transportation aspect of Sea-3's expansion is not before the Planning Board and that rail shipments of propane to Sea-3 have always occurred with no significant incidents. Furthermore, while not required to do so as part of any permitting process, Pan Am has also committed to making additional track improvements to support higher rail volumes if Sea-3's proposal is approved, further supporting safe operations.

In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you for your anticipated support.

Sincerely,

Michael Twidle
Dover, NH

From: "Treadwell, Norman" <ctreadwell@panam.com>
Subject: Sea-3 Expansion
Date: February 17, 2014 5:06:59 PM EST
To: "Newington@ttlc.net" <Newington@ttlc.net>

To Whom it may Concern,

As a resident of New Hampshire and an employee of Pan Am Railways I am writing to request your support regarding a proposed expansion of the Sea-3 propane distribution facility located on Pan Am's right of way in Newington, NH. I believe this project is important for the long term viability of both propane distribution and rail service in the Seacoast region.

Sea-3 has an impeccable operational and safety record, established through its continuous presence in New Hampshire, since 1975. Today, Sea-3 is facing challenges with the economics of its current distribution method, and needs to alter its supply chain from delivery of foreign propane by ship, to receiving domestic propane by rail. Without this change in operations, Sea-3 will be challenged to remain viable, and an important source of propane to New Hampshire could be in jeopardy. The proposed changes to Sea-3's operation and infrastructure is currently before the Planning Board of Newington for approval of non-rail related improvements.

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In light of the importance of this project to New Hampshire, I am asking for your support of Sea-3's current application before the Newington Planning Board.

Thanking you in advance.

Sincerely,
Norman Treadwell
Center Barnstead, NH

Train disaster could happen in Portsmouth

February 17, 2014 2:00 AM

Feb. 14 — To the Editor:

Sea-3 Inc., a division of Trammo Inc., a New York based company, has applied for a permit from the town of Newington to expand their Shattuck Way propane processing and storage facility. This is an extreme safety concern for the communities from Newfields, Stratham, Greenland, Portsmouth, to Newington, and abutting communities. Separate but closely tied to this proposed expansion is the necessary requirement for propane rail car transportation using tracks owned by Pan Am Railways to pass through these communities.

It couldn't happen in Kingman, Ariz., but it did. Propane being transferred from rail car to holding tank exploded, killing 11 firefighters, buildings destroyed, debris and flames spewed 2000 feet away. It couldn't happen in Lincoln, Calif., but it did. Fearing an explosion, a burning propane loaded rail car forced the evacuation of 4,800 homes and businesses in a 1 mile radius. These accidents involving propane are fully documented by newspaper articles. Hazardous material (hazmat) accidents involving fires and explosions are becoming more and more frequent as rail traffic increases.

Accidents specific to Pan Am Railways are numerous. An article in the Jan. 25, 2007 Valley Post, which serves the Pioneer Valley, Brattleboro, and Keene, titled "No Way to Run a Railroad" stated Pan Am did such a poor job maintaining its tracks that trains typically average 5 to 10 mph. Even at these glacial speeds, Pan Am trains sometimes derail, as happened in Deerfield, Mass., when several heavy cars ended up lying on their sides. In 2004 a Pan Am train carrying sulfuric acid derailed in Greenfield. The article reported that Warren Flatau, a spokesman for the Federal Railroad Administration (FRA) said Pan Am's safety record is "pretty average."

The Coast Guard enforces a watercraft exclusion zone around ships carrying hazmat materials up the Piscataqua River. They know accidents and potential terrorism attacks can happen and take precautions to prevent them. The Deerfield police chief was quoted saying "both passenger trains and freight trains carrying hazardous cargo are considered potential terrorist targets." Think of the damage a lone sniper could cause. It is not hard to imagine how vulnerable we are.

The Sea-3 propane laden tank cars have been rolling through wetlands, and within 150 feet of many of our residential homes. Specifically, 20 cars in 2009, 25 in 2011, and 42 in 2013. Sea-3 proposes to increase the volume, rolling 12 cars a day, six days a week, 52 weeks of the year, a total of 3,744 cars, or an 860 percent increase. These 12 propane filled car trains will cross many unprotected crossings, and then return empty to their origin. It isn't too hard to imagine that this is an accident waiting to happen.

As solid as these cars are built, a truck or car speed-induced accident at one of these crossings could cause a derailment, tank puncture, leak, and potentially a fire and explosion. Can you imagine that occurring at the Market Street crossing? Pan Am's safety record in the New England Region, is far from stellar. Increasing the volume of propane carrying cars per year from 42 to 3744 increases the possibility of an accident exponentially. Their stated objective of increasing train speeds compounds the safety concern. It is not hard to imagine how vulnerable we are.

Contact your elected city, state, and federal representatives and explain that this expansion is a danger to our homes, lives, and communities. Newington holds the key to the construction permit approval. If they hear how concerned the citizens of the surrounding communities are over their safety, they will understand why the permit for plant expansion should not be approved.

J Sutherland

Portsmouth

Great Bay Stewards
89 Depot Rd
Greenland, NH 03840
Phone: (603) 778-0015
: (603) 778-7398

GREAT BAY STEWARDS

Email:
info@greatbaystewards.org
Website:
www.greatbaystewards.org

Supporting education, research & conservation on Great Bay

February 17, 2014

Tom Morgan
Newington Town Planner
205 Nimble Hill Rd.
Newington, NH 03801

Dear Sir,

The Great Bay Stewards is forwarding to you, as the Town Planner for Newington, a copy of a letter sent by the Board of the Great Bay Stewards to New Hampshire's state delegates on February 13, 2014. The letter expresses the Stewards' concerns regarding the pending proposal for Sea-3 to ship increased supplies of propane via the Pan Am rail line that crosses the southern edge of the Great Bay estuary. The letter requests the delegates' to obtain from the Federal Railroad Administration and the National Transportation Safety Board the public release of all safety inspections and accident investigations concerning Pan Am rail. Please share this letter with the members of the Newington Planning Board.

The Great Bay Stewards are concerned enough about potential safety issues for the public and environmental impacts to the Great Bay from the proposal to expand the Sea-3 facility in Newington that they wanted to join with the community effort to ensure that this commercial proposal is not detrimental to the public or the environment. This letter has also been forwarded to Portsmouth, Greenland, Exeter, and Stratham as well as to several newspapers.

U.S. Department
of Transportation

**Federal Railroad
Administration**

Region 1

55 Broadway
Room 1077
Cambridge, MA. 02142

February 21, 2014

Karen Anderson, Town Administrator
Town of Greenland
T2014-PA-1-022115
575 Portsmouth Avenue
Post Office Box 100
Greenland, NH 03840

Ref. #

Dear Ms. Anderson;

This communication is in further response to your letter dated December 11, 2013 that expressed concern for an inspection to be conducted on track that serves a facility known as Sea 3. Sea-3 has a planned expansion of its facilities in Newington, NH. It owns and operates the facility which stores and transfers liquefied petroleum gas (LPG) between land-based and water-based modes of transportation. The facility is served by Pan Am Railways who owns and operates this track.

On January 23, 2014, an FRA Track Safety Inspector, along with Pan Am Railways, conducted a hi-rail inspection of the Portsmouth Branch from CPF 256 in Newfield, NH to the end of track in Portsmouth and the Newington Industrial track. The track is listed as Class 1 in the Pan Am Timetable and is required to be inspected on a weekly basis by Pan Am Railways to ensure compliance with Federal Track Safety Standard codified under 49 CFR Part 213. Review of the railroad's property maps found that the railroad right-of-way varies from between 100 feet to 70 feet, for the length of both the Portsmouth Branch and Newington Industrial track.

The track structure was covered with snow limiting the visibility to just the top of the rail. The inspection revealed four exceptions to the Federal Track Safety Standard, which were listed on an inspection report and given to the Pan am Railways Track Supervisor. Repairs were made immediately. The FRA Track Inspector will be returning to conduct a re-inspection of the track once the snow is cleared. Additionally, the FRA is planning on conducting a survey of the track with one of our Automated Track Inspection Vehicles sometime around May of this year.

Thank you for bringing this safety matter to our immediate attention.

Sincerely,

John Killoy
Acting Deputy Regional administrator

Sea-3, Inc. 1111 Bagby, Suite 1910 Houston, Texas 77002 TEL: (713) 650-6520 FAX: (713) 650-3504

February 27, 2014

Administrator Joseph C. Szabo
Federal Railroad Administration
U.S. Department of Transportation
1200 New Jersey Ave., S.E.
Washington, D.C. 2090

Dear Administrator Szabo:

We are in receipt of a letter to you from United States Senators Shaheen and Ayotte and Congresswoman Carol Shea-Porter, dated February 18, 2013, in support of the local communities of Newington, Stratham, Greenland and Portsmouth, requesting that (1) the Federal Railroad Administration (FRA) conduct an inspection of the Portsmouth and Newington Industrial Tracks which are owned by Pan Am Railways; and (2) the FRA's attendance at a public forum to discuss track safety. As you are aware, the request was made in connection with Sea-3's pending permitting application to retrofit its liquefied petroleum (LPG) facility in Newington, New Hampshire to allow domestic supplies of propane to be received and stored in the region which would not otherwise be available.

We have been operating the Newington Terminal for over 38 years and safety has always been our top priority in supplying half of the propane consumed annually in the New England area. Pan Am Railways has been an active and supportive participant in our expansion project and we know safety is also of paramount importance to them.

We strongly support the request of Senators Shaheen and Ayotte and Congresswoman She-Porter to the FRA to conduct an inspection of the Newington and Portsmouth Industrial Tracks and also welcome the FRA's attendance and participation in a public hearing to discuss track safety at the upcoming hearing regarding Sea-3's permitting application to be held on March 10, 2014 at Newington Town Hall, 205 Nimble Hill Road, Newington.

Thank you for your consideration. In the meantime, if you have any questions for Sea-3, please do not hesitate to contact me.

Very truly yours,

Fred M. Lowenfels

Fred M. Lowenfels
General Counsel

SHEEHAN
PHINNEY
BASS +
GREEN
PROFESSIONAL
ASSOCIATION

SHEEHAN PHINNEY BASS + GREEN
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F 603 643-3679

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F 617 439-9363

WWW.SHEEHAN.COM

Writers Direct Dial: (603) 627-8223
ccole@sheehan.com

March 4, 2014

By Facsimile: (603) 427-1526

John P. Bohenko
City Manager
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

MAR - 4 2014

Re: Proposed Sea-3 Terminal Expansion

Dear Mr. Bohenko:

I am a resident of Portsmouth and also represent a group of Portsmouth residents who have serious concerns about the proposal by Sea-3 to reconfigure its Newington terminal to accommodate Liquefied Petroleum Gas (LPG) shipments by rail. I understand from recent news reports that you and representatives of Newington, Greenland and Stratham are having a meeting with Pan Am Railways officials on Wednesday, March 5, to discuss the proposal, and that the public will be permitted to attend and observe. I hope you will take the concerns of my clients and other Portsmouth residents into account in your meeting and discussions with Pan Am and Sea-3.

As you are already aware, Sea-3's proposed expansion would result in a profound intensification of freight rail traffic hauling LPG from Rockingham Junction in Newfields to Newington, running directly through downtown Portsmouth and a number of our residential communities located in very close proximity to the rail lines. Indeed, my clients Cathy and Rich DiPentima reside approximately 100 feet from the rail line, at 16 Dunlin Way in Portsmouth. If approved, the expansion would result in over 3,700 tank cars of LPG traveling this route per year, an increase in LPG rail traffic by many orders of magnitude. In addition to the significant safety concerns regarding this type of activity and this magnitude of use intensification, there are potential environmental impacts such as increased noise, light and diesel exhaust, and the potential impact on wetlands where the trains pass, as well as to the Great Bay Estuary and Piscataqua River, where the trains will pass over and beside at various locations along the route from Rockingham Junction to Newington. In the event of a serious accident or derailment, these sensitive ecological and economic resources would almost certainly be severely impacted.

With the exception of a very limited and narrowly focused site-specific safety review by SFC Engineering, no comprehensive safety or security review of the full scope of the Sea-3 expansion proposal (or its external ramifications) has been

conducted. At a recent City Council meeting, my clients asked the City of Portsmouth to engage a qualified consultant to conduct such a comprehensive review, but unfortunately, the City Council has not yet approved this expense. In order to have reasonable assurance that all appropriate safety and security considerations have been addressed, a comprehensive all-hazards assessment must be conducted, including at a minimum: hazard identification and vulnerability assessment; risk evaluation; environmental risk assessment; analysis of the emergency response capabilities for the impacted communities; physical security assessment and an incident/hazard response analysis. A comprehensive safety assessment of this proposal must go far beyond simply assessing the condition of the tracks used to carry the trains. While such an assessment is an important part of the entire package, there are many more safety and security issues to be considered when determining whether the public health, and the safety and welfare of community residents, is being protected.

In addition, a comprehensive environmental impact study must take into account not only the worst-case-scenario impacts of a derailment or other hazardous material incident, but also the direct and daily impact to residents of Portsmouth, Newington, Greenland, Newfields, Stratham and other communities from being awakened six nights per week by train noise, lights and exhaust odors. We urge you and the City Council to press for a comprehensive environmental impact analysis that will fully assess existing conditions and the impact of the proposed expansion.

My clients and other City residents whose properties and quality of life may be affected by Sea-3's proposal and the resulting intensification of the use of the rail lines are effectively forced, under the circumstances, to rely on City leadership and on political leaders to assure that the rail line is safe, can handle the anticipated use, and will not adversely affect home values, quality of life and the local environment. We believe that Sea-3 and Pan Am can share the financial burdens of carrying out the comprehensive studies described above.

Thank you for taking these concerns into the meeting with Pan Am and other municipal officials on Wednesday. I am gratified that Pan Am has agreed to permit public attendance and observation of the meeting, and my clients will almost certainly be in attendance. We would be very happy to discuss our concerns further at your convenience, and appreciate your time and consideration.

Very truly yours,

for

Christopher Cole

Cc: Richard DiPentima
Cathy DiPentima

Bloomberg

Frozen East Coast Pays as Law Blocks Cheaper Fuel Flows

By Natasha Doff and Naomi Christie - Feb 28, 2014

As freezing weather drained stockpiles of propane to their lowest seasonal level in two decades on the U.S. East Coast this month, shivering New Englanders couldn't tap abundant supplies sailing out of Texas. They had to look 4,000 miles away to more-expensive heating fuel from Europe.

The reason? The Jones Act, a 94-year-old law that prohibits non-U.S. ships from transporting cargoes between the country's ports. With pipelines full and not a single eligible propane tanker to deliver fuel from Houston to states such as New York, consumers have had to pay more than $100 a metric ton extra for propane from across the Atlantic.

"It's kind of a crazy thing, where we're sending ships to Europe and then in return, at some point in time, Europe is sending propane cargoes back to us," Peter Fasullo, a principal at energy consultant EnVantage Inc. who has been following the natural gas liquids market for over 30 years, said by phone from Houston. "You have to think, isn't there a more efficient way of doing this?"

Related: Natural Gas Futures Gain on Forecasts for Frigid March Weather

This costly two-way propane trade is the latest example of how the unforeseen U.S. boom in shale oil and gas has left energy consumers and producers, such as Houston-based Enterprise Products Partners LP (EPD), complaining about outdated laws and infrastructure.

Jones Act

Trading in growing domestic supplies of heating oil and gasoline has also been inhibited by the Jones Act. Oil drillers are lobbying the government to allow crude exports, currently banned under a different 39-year-old law.

The Jones Act has a broad support group among U.S. shipyards, vessel owners and labor unions, such as the Washington, D.C.,-based American Maritime Partnership, which said in an emailed statement yesterday that it is critical for the U.S. economy and national security.

Demand for propane jumped this winter as an arctic weather system, or polar vortex, caused temperatures to plunge from Boston to Miami. The more than 3 percent of households in the Northeast that use propane as a main source of heating are expected to spend on average $206, or 11 percent, more on the fuel this winter than last, according to the U.S. Energy Information Administration.

Propane stockpiles in the region dropped to 1.6 million barrels in the week ended Feb. 14, the lowest level for the time of year since 1994, said the EIA, the Energy Department's statistical arm. They were at 1.68 million last week, the lowest seasonal level since 2010.

Cheaper Fuel

"If you didn't have the Jones Act, you could have had this thing resolved pretty easily by moving product off the Gulf Coast into the Northeast," James Teague, the chief operating officer of Enterprise Products, which runs propane export and transportation facilities, said in a conference call on Jan. 30. "We don't have that in our toolbox."

A ton of propane cost about $673 in Houston on Feb. 24, according to data compiled by Bloomberg. Were the Jones Act not in place, this could be transported by tanker to the port of Philadelphia for about $18 a ton, based on current charter rates compiled by ship broker Clarkson Plc, Erik Stavseth, an analyst at Arctic Securities in Oslo, said by phone on Feb. 24.

The same product was about $785 in Northwest Europe, according to the Gaithersburg, Maryland-based Oil Price Information Service, and would cost $28 a ton to ship to Philadelphia, Stavseth said. This cargo would cost about $121 per ton, or 18 percent, more than product shipped from the Gulf, if such a journey were possible.

Foreign Propane

Signed into law in 1920, the Jones Act requires all domestic cargoes to travel on vessels that are U.S.-built, - owned and -crewed. Limited supply has pushed up rental rates for such vessels carrying other fuels including heating oil, making international imports a cheaper option.

U.S. authorities tried to improve the flow of propane overland by ordering Enterprise Products to prioritize propane shipments by pipeline from Texas to the Midwest and Northeast and authorizing truck drivers moving propane and other heating fuels in 34 states to work longer hours.

"We have wanted Jones Act waivers for ships from Houston to New England," Jeff Petrash, vice president of Washington-based trade group the National Propane Gas Association, said in an e-

mailed answer to questions. "It would have greatly taken the pressure off the Northeast and supplied New England with domestic propane rather than the foreign propane."

The U.S. Maritime Administration, part of the Department of Transportation, said the Jones Act had not affected supply of propane to the Northeast.

Emergency Waivers

"Both U.S.-flag and non-U.S.-flag vessels were fully employed" during the recent freezing weather, meaning the law did not negatively affect trade, Kim Strong, spokeswoman for the Maritime Administration, said in an e-mailed answer to questions. "The Jones Act supports U.S.-flag vessel operators, U.S. mariners, and U.S. shipyards vital to this country's economic and national security."

Short-term waivers to the Jones Act have been issued during emergencies, most recently in the aftermath of Hurricane Sandy, when non-U.S. flagged ships were allowed to deliver petroleum products from the Gulf coast to the storm-damaged Northeast.

The rise in shale oil and gas production has made the U.S. more self-sufficient. It supplied 86 percent of its own energy in the first 11 months of 2013, the most since 1986, EIA data show. U.S. production of propane and propylene, byproducts of natural gas processing and petroleum refining, rose by 39 percent in the four years to January, enabling the country to be a net exporter of the fuel in 2012, the most recent full year of data, according to the EIA.

Exports Triple

Total U.S. exports of the fuels more than tripled between 2009 and 2013. They reached an average of 373,000 barrels a day in the first seven weeks of this year. At the same time, imports of the fuels on the East Coast rose to a four-year seasonal high of 73,000 barrels a day, according to Energy Department data compiled by Bloomberg.

"We were shipping propane out of the south side and bringing it in on the north side. It's ridiculous," Bill Smith, who purchases the fuel wholesale to sell to domestic consumers and businesses in Delaware, said by phone on Feb. 21, referring to the exports and imports. Smith raised the price he charges for a gallon of propane by 20 percent to $3.59 in late January, from $2.99 at the beginning of the month.

"The Jones Act, which is the most stupid law ever on books, was good for its time, but it's a little out of date," he said.

Lower Prices

Gasoil used for heating has also been shipped from Europe to the U.S. Northeast, even as exports of similar fuels from the Gulf Coast run near record levels, the International Energy Agency said in a report published Feb. 13. Revoking the Jones Act would reduce gasoline prices by as much as 15 cents a gallon by increasing the supply of ships able to shuttle the fuel between U.S. ports, Fadel Gheit, an analyst at Oppenheimer & Co. in New York, said by phone Feb. 26.

As the shale boom continues, making the U.S. the world's biggest oil producer by 2015 according to the IEA, pressure on the Jones Act will grow.

"There's going to come a point where things have to change," Charlie Papavizas, a partner and specialist in maritime law at Winston and Strawn LLP, said by phone from Washington. "There's going to be so much oil and so much gas, it's like a tidal wave of issues. But for the foreseeable future I don't see the law changing."

To contact the reporters on this story: Natasha Doff in London at ndoff@bloomberg.net; Naomi Christie in London at nchristie5@bloomberg.net

To contact the editor responsible for this story: Alaric Nightingale at anightingal1@bloomberg.net

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Sea-3 Expansion - Railroad Related Issues

11AM on Wednesday March 5, 2014

Conference Room A at Portsmouth City Hall

Agenda

I. Welcome & Introductions

II. Review of Pan Am's long and short-term capital improvement projects for rail lines, bridges, crossings and signage in the communities of Newfields, Stratham, Greenland, Portsmouth, and Newington.

III. Status of inspections of railroad tracks, bridges, crossings and signage for affected communities.

IV. Status of condition and maintenance of all railroad crossings, signals and signage in all the affected communities.

V. Update and review of Pan Am's plans for upgrade of the railroad tracks through affected communities. Does Pan Am plan to upgrade railroad tracks from Class 1 to Class 2 and further, upgrade the Excepted Track in Portsmouth?

CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
jpb@cityofportsmouth.com
(603) 610-7201

John P. Bohenko
City Manager

March 5, 2014

Cynthia Scarano, Executive Vice President
Pan Am Railways
Iron Horse Park
North Billerica, MA 01862

Dear Ms. Scarano:

Attached please find a letter to the City of Portsmouth specific to the Proposed Sea-3 Terminal Expansion. The letter represents concerns of residents of Portsmouth specific to the intensification of rail traffic along the Portsmouth, Newington industrial tracks.

The letter is requesting a comprehensive safety and/or security review of the full scope of the Sea-3 expansion proposal (or its external ramification). According to the letter from Attorney Christopher Cole, a comprehensive safety assessment must go beyond simply assessing the condition of the tracks used to carry the trains. According to this letter this review would include: hazard identification and vulnerability assessment; risk evaluation; environmental risk assessment; analysis of the emergency response capabilities for the impacted communities; physical security assessment and an incident/hazard response analysis. In addition, Attorney Cole states that a comprehensive environmental impact study take into account worst-case-scenario impacts of a derailment or other hazardous material incident and direct daily impact to the residents of Portsmouth, Newington, Greenland, Newfields, Stratham and other communities. This work will provide a better understanding of the existing conditions and the impacts of the proposed expansion. Attorney Cole is requesting that the costs of the work described above be borne by Sea-3 and Pan Am.

In providing this information and attached letter to you, I urge you to consider the request and respond to this letter in order that I may keep the residents of Portsmouth and the City Council informed on this issue. If you have questions or need additional information, please contact me at 610-7201or jpb@cityofportsmouth.com or Portsmouth's Environmental Planner, Peter Britz at (603) 610-7215 or plbritz@cityofportsmouth.com.

Very truly yours,

John P. Bohenko
City Manager

Attachment

c.: Tom Morgan, Town of Newington Planner
Karen Anderson, Town of Greenland Administrator
Paul Deschaines, Town of Stratham Administrator
Christopher Cole, Esquire
Rich DiPentima, Portsmouth Resident
Portsmouth City Council Members
Robert P. Sullivan, City Attorney

CITY OF PORTSMOUTH

City Hall, One Junkins Avenue
Portsmouth, New Hampshire 03801
jpb@cityofportsmouth.com
(603) 610-7201

John P. Bohenko
City Manager

March 5, 2014

Paul Bogan, Vice President of Operations
Sea-3, Inc.
190 Shattuck Way
Newington, NH 03801

Dear Mr. Bogan:

Attached please find a letter to the City of Portsmouth specific to the Proposed Sea-3 Terminal Expansion. The letter represents concerns of residents of Portsmouth specific to the intensification of rail traffic along the Portsmouth, Newington industrial tracks.

The letter is requesting a comprehensive safety and/or security review of the full scope of the Sea-3 expansion proposal (or its external ramification). According to the letter from Attorney Christopher Cole, a comprehensive safety assessment must go beyond simply assessing the condition of the tracks used to carry the trains. According to this letter this review would include: hazard identification and vulnerability assessment; risk evaluation; environmental risk assessment; analysis of the emergency response capabilities for the impacted communities; physical security assessment and an incident/hazard response analysis. In addition, Attorney Cole states that a comprehensive environmental impact study take into account worst-case-scenario impacts of a derailment or other hazardous material incident and direct daily impact to the residents of Portsmouth, Newington, Greenland, Newfields, Stratham and other communities. This work will provide a better understanding of the existing conditions and the impacts of the proposed expansion. Attorney Cole is requesting that the costs of the work described above be borne by Sea-3 and Pan Am.

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Very truly yours,

John P. Bohenko
City Manager

Attachment

c.: Tom Morgan, Town of Newington Planner
Karen Anderson, Town of Greenland Administrator
Paul Deschaines, Town of Stratham Administrator
Christopher Cole, Esquire
Rich DiPentima, Portsmouth Resident
Portsmouth City Council
Robert P. Sullivan, City Attorney

SFC ENGINEERING PARTNERSHIP, INC.
"FROM VISION TO REALIZATION"

Project Memorandum

To: Tom Morgan
From: Nick Cricenti P.E.
RE: Fire Chief Mtg.
CC:

Project: SEA-3
Project No.: 601701
Date: March 5, 2014

On February 26 I met with Chief Head about any site plan issues that he may have with the proposed LP Gas handling changes that are being made at SEA-3. He has two issues at the site plan stage. The first issue and most important is that currently there is only one way onto the site. He states that if that way is blocked in some manner then the Fire Department cannot access the site. He is correct. SEA-3 should add a second access point suitable for fire apparatus to the facility.

The second point he made that since the two master stream appliances are going to be removed in favor of spray protection for the tanks he would like to have the master streams installed along the railroad sidings so that they can be used to provide water protection for the rail cars. We also agree with this request.

You had requested that I also meet with the City of Portsmouth Fire Chief. That meeting was scheduled and postponed due to weather and has not been rescheduled.

Thank you

66 Gold Ledge Avenue • Auburn, NH 03054 • Phone (603)647-8700 • Fax (603)647-8711
www.sfceng.com

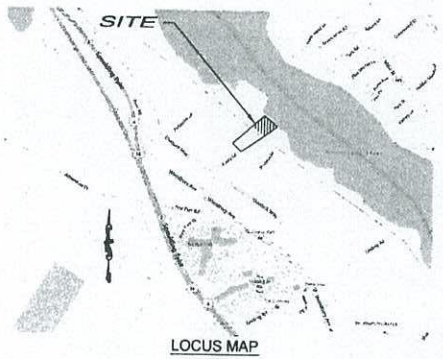
SITE PLAN
SEA-3 FACILITY EXPANSION

LOTS 20/13 & 14/2

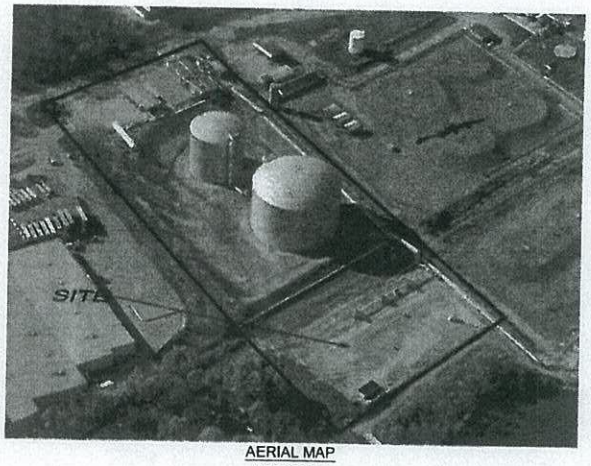
190 SHATTUCK WAY

NEWINGTON, NH

NOVEMBER 4, 2013
REVISED: MARCH 6, 2014



LOCUS MAP
NOT TO SCALE



AERIAL MAP
NOT TO SCALE

OWNER	SEA-3, INC. 190 SHATTUCK WAY NEWINGTON, NH 03801
SITE CIVIL ENGINEER	HAIGHT ENGINEERING, PLLC 181 WATSON ROAD DOVER, NH 03820
LAND SURVEYOR	JAMES VERRA AND ASSOCIATES, INC 101 SHATTUCK WAY SUITE 8 NEWINGTON, NH 03801
SOIL SCIENTIST	GOVE ENVIRONMENTAL SERVICES, INC. 8 CONTINENTAL DRIVE UNITS H EXETER, NH 03833

SHEET INDEX	SHEET
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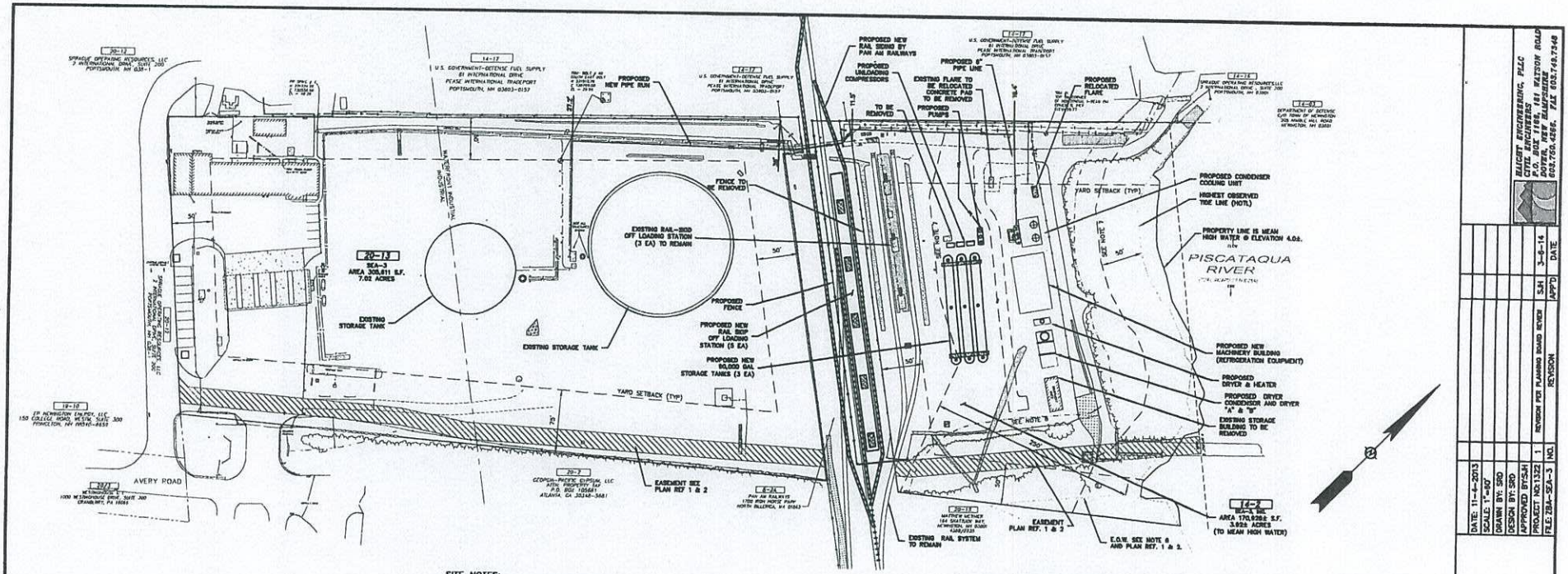
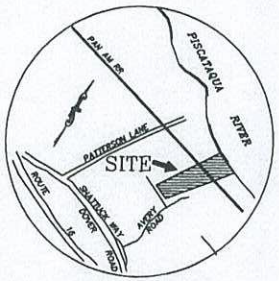




LOCUS MAP
NOT TO SCALE

SITE NOTES:

1. OWNER OF RECORD: SEA-3, INC.
   ADDRESS: 190 SHATTUCK WAY, NEWINGTON, NH 03801
   DEED REFERENCE: 2544/0039
   TAX SHEET / LOT: 20-13 & 14-2
2. ZONED: WATERFRONT INDUSTRIAL & INDUSTRIAL
   MIN. LOT AREA: 200,000 S.F.
   FRONTAGE: 100'
   SETBACK: FRONT: 75', SIDE: 50', REAR: 50'
3. BOUNDARY AND TOPOGRAPHIC INFORMATION PROVIDED BY JAMES VERRA AND ASSOCIATES. SEE REFERENCES 1 & 2 EXISTING CONDITIONS PLANS WHICH ARE PART OF THIS PLAN SET.
4. THE PURPOSE OF THIS PLAN IS TO SHOW THE SITE IMPROVEMENTS ASSOCIATED WITH THE EXPANSION OF EXISTING FACILITIES TO INCREASE OFF LOADING CAPACITY OF LIQUID PETROLEUM (LP) GAS. THE EXPANSION INCLUDES UPGRADES TO THE EXISTING RAILROAD SIDING TO ACCOMMODATE UP TO AN ADDITIONAL 10 RAIL CARS, THE INSTALLATION OF (3) 90,000 GALLON ABOVE GROUND TANKS AND THE ASSOCIATED DRYING, CHILLING AND PUMPING EQUIPMENT.
5. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-800-225-4977.
6. WETLANDS IDENTIFICATION BY LUKE D. HURLEY, CERTIFIED WETLAND SCIENTIST NO. 232 IN SEPTEMBER 2013., GOVE ENVIRONMENTAL SERVICES, INC. 8 CONTINENTAL DR UNIT H, EXETER, NH 03833-7507.
7. SHORELAND QUALITY PROTECTION ACT: 50' WATERFRONT BUFFER & PRIMARY BUILDING SETBACK; 250' REFERENCE LINE FROM THE PROTECTED SHORELINE.
8. NEWINGTON ZONING ORDINANCE, ARTICLE X, SECTION 7, STRUCTURAL SETBACK.
9. ALL CONSTRUCTION SHALL BE TO THE APPLICABLE REGULATION AND STANDARDS OF THE TOWN OF NEWINGTON AND THE STATE OF NEW HAMPSHIRE.
10. VARIANCE TO ARTICLE VI: DIMENSIONAL REQUIREMENTS: PENDING

NOTES:

1. ON SEPTEMBER 9, 2013, THE APPLICANT MET WITH THE PLANNING BOARD AND REQUESTED THAT IT DESIGNATE THE FRONT OF LOT 20/13 AND LOT 14/2 TO AID THE APPLICANT IN DETERMINING THE PROPER SETBACKS. UPON REVIEW, THE PLANNING BOARD ADVISED THAT IT REGARDS THE SOUTHERN BOUNDARY OF LOT 20/13 AS THE FRONT AND THE NORTHERN BOUNDARY OF LOT 14//2 AS THE FRONT, EACH BOUNDARY BEING THE MAIN APPROACH FOR VEHICLE ACCESS.

PLAN REFERENCE:

1. EXISTING CONDITIONS PLAN: EX-1, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21289; SCALE: 1"=30'; PLAN NO: 21289-5 SHEET EX-1; DATE 9-20-2013. REV. 1 (9-25-2013)
2. EXISTING CONDITIONS PLAN: EX-2, 190 SHATTUCK WAY, NEWINGTON, NEW HAMPSHIRE, FOR SEA-3, INC.; PREPARED BY JAMES VERRA AND ASSOCIATED, INC.; JOB NUMBER 21289; SCALE: 1"=30'; PLAN NO: 21289-5 SHEET EX-2; DATE 9-20-2013. REV.1 (9-25-2013)

LEGEND:

PPL	PROPOSED PIPE LINE
	CHAIN LINK FENCE
	HYDRANT
	CEMENT CONCRETE PAD
	UTILITY POLE
	LIGHT POLE
	TRAFFIC FLOW
LAPN	TAX SHEET / LOT NO.
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
	STEEL GUARD RAIL
	WOOD FENCE
	TREE LINE (DRIP)
—P—	ABOVE GROUND PIPING
EOP	EDGE OF ASPHALT PAVEMENT
	RIP-RAP

GRAPHIC SCALE
(IN FEET)

DATE: 11-4-2013
SCALE: 1"=60'
DRAWN BY: SBD
DESIGN BY: SBD
APPROVED BY: SHJ
PROJECT NO: 21321
FILE: 21321-SEA-3

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-6-14

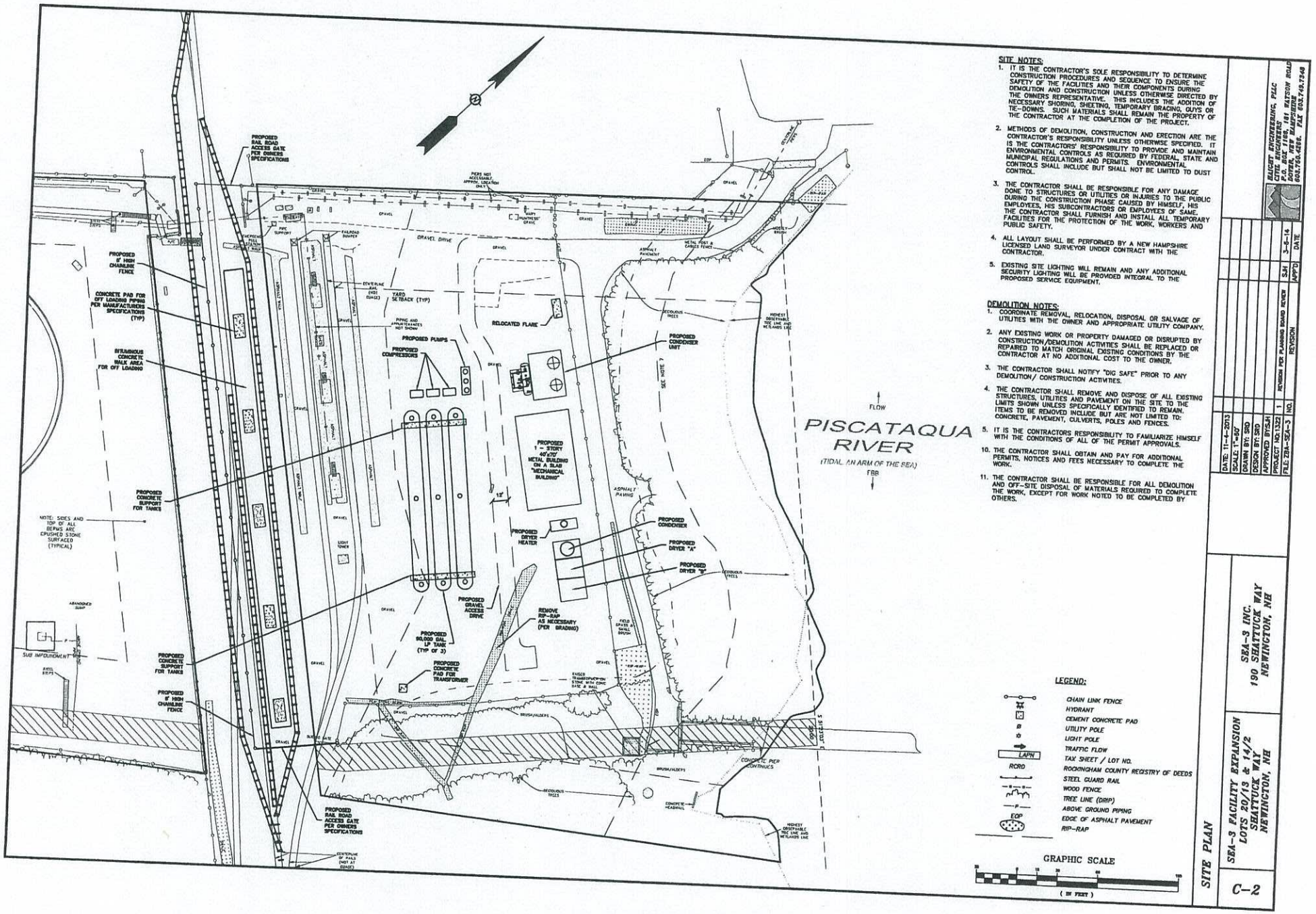
BAUCHT ENGINEERING, PLLC
CIVIL ENGINEERS
1 WILLIAM H. WILSON ROAD
DOVER, NEW HAMPSHIRE 03820
603.750.4595 FAX 603.749.7348

OVERALL SITE PLAN

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

C-1



SITE NOTES:

1. IT IS THE CONTRACTOR'S SOLE RESPONSIBILITY TO DETERMINE CONSTRUCTION PROCEDURES AND SEQUENCE TO ENSURE THE SAFETY OF THE FACILITIES AND THEIR COMPONENTS DURING DEMOLITION AND CONSTRUCTION UNLESS OTHERWISE DIRECTED BY THE OWNERS REPRESENTATIVE. THIS INCLUDES THE ADDITION OF NECESSARY SHORING, SHEETING, TEMPORARY BRACING, GUYS OR TIE-DOWNS. SUCH MATERIALS SHALL REMAIN THE PROPERTY OF THE CONTRACTOR AT THE COMPLETION OF THE PROJECT.
2. METHODS OF DEMOLITION, CONSTRUCTION AND ERECTION ARE THE CONTRACTOR'S RESPONSIBILITY UNLESS OTHERWISE SPECIFIED. IT IS THE CONTRACTORS' RESPONSIBILITY TO PROVIDE AND MAINTAIN ENVIRONMENTAL CONTROLS AS REQUIRED BY FEDERAL, STATE AND MUNICIPAL REGULATIONS AND PERMITS. ENVIRONMENTAL CONTROLS SHALL INCLUDE BUT SHALL NOT BE LIMITED TO DUST CONTROL.
3. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY DAMAGE DONE TO STRUCTURES OR UTILITIES OR INJURIES TO THE PUBLIC DURING THE CONSTRUCTION PHASE CAUSED BY HIMSELF, HIS EMPLOYEES, HIS SUBCONTRACTORS OR EMPLOYEES OF SAME. THE CONTRACTOR SHALL FURNISH AND INSTALL ALL TEMPORARY FACILITIES FOR THE PROTECTION OF THE WORK, WORKERS AND PUBLIC SAFETY.
4. ALL LAYOUT SHALL BE PERFORMED BY A NEW HAMPSHIRE LICENSED LAND SURVEYOR UNDER CONTRACT WITH THE CONTRACTOR.
5. EXISTING SITE LIGHTING WILL REMAIN AND ANY ADDITIONAL SECURITY LIGHTING WILL BE PROVIDED INTEGRAL TO THE PROPOSED SERVICE EQUIPMENT.

DEMOLITION NOTES:

1. COORDINATE REMOVAL, RELOCATION, DISPOSAL OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.
2. ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO MATCH ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.
3. THE CONTRACTOR SHALL NOTIFY "DIG SAFE" PRIOR TO ANY DEMOLITION/ CONSTRUCTION ACTIVITIES.
4. THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, UTILITIES AND PAVEMENT ON THE SITE TO THE LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ITEMS TO BE REMOVED INCLUDE BUT ARE NOT LIMITED TO: CONCRETE, PAVEMENT, CULVERTS, POLES AND FENCES.
5. IT IS THE CONTRACTORS RESPONSIBILITY TO FAMILIARIZE HIMSELF WITH THE CONDITIONS OF ALL OF THE PERMIT APPROVALS.
10. THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK.
11. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ALL DEMOLITION AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK, EXCEPT FOR WORK NOTED TO BE COMPLETED BY OTHERS.

LEGEND:

- CHAIN LINK FENCE
- HYDRANT
- CEMENT CONCRETE PAD
- UTILITY POLE
- LIGHT POLE
- TRAFFIC FLOW
- LAPN — TAX SHEET / LOT NO.
- RORD — ROCKINGHAM COUNTY REGISTRY OF DEEDS
- STEEL GUARD RAIL
- WOOD FENCE
- TREE LINE (DRIP)
- ABOVE GROUND PIPING
- EOP — EDGE OF ASPHALT PAVEMENT
- RIP-RAP

GRAPHIC SCALE
(IN FEET)

BAUER ENGINEERING, PLLC
CIVIL ENGINEERS
41 WASHINGTON AVE. 181 WATSON ROAD
DOVER, NEW HAMPSHIRE ROCHESTER, NEW HAMPSHIRE
603.750.4896. FAX 603.749.7348

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-5-14

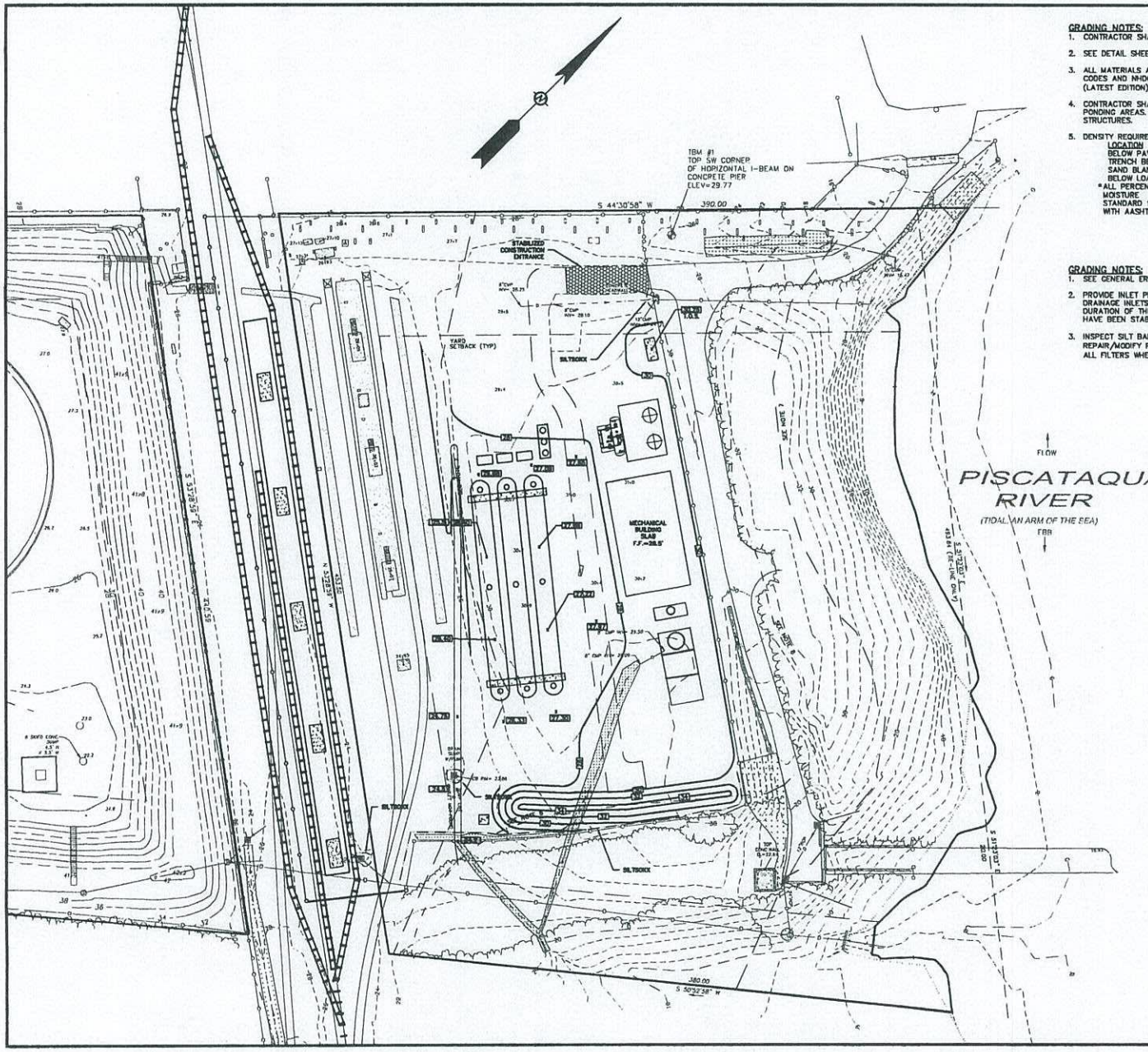
DATE: 11-4-2013
SCALE: 1"=60'
DRAWN BY: SBD
DESIGN BY: SBD
APPROVED BY:SJH
PROJECT NO:1322
FILE: ZBA-SEA-3

SITE PLAN

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

C-2



GRADING NOTES:

1. CONTRACTOR SHALL RELOCATE ALL BENCHMARKS AS NECESSARY.
2. SEE DETAIL SHEETS FOR EROSION CONTROL PROCEDURES AND CONSTRUCTION SEQUENCING.
3. ALL MATERIALS AND CONSTRUCTION SHALL CONFORM WITH APPLICABLE TOWN AND STATE CODES AND NHDOT – STANDARD SPECIFICATION FOR ROAD AND BRIDGE CONSTRUCTION (LATEST EDITION).
4. CONTRACTOR SHALL PROVIDE A FINISH GRADED SURFACE FREE OF LOW SPOTS AND PONDING AREAS. CRITICAL AREAS INCLUDE BUILDING ENTRANCE AND UNDER RAISED STRUCTURES.
5. DENSITY REQUIREMENTS:

LOCATION	MINIMUM DENSITY
BELOW PAVED OR CONCRETE AREAS	95%
TRENCH BEDDING MATERIAL AND SAND BLANKET BACKFILL	95%
BELOW LOAM AND SEED AREA	95%

*ALL PERCENTAGES SHALL BE OF THE MAXIMUM DRY DENSITY AT THE OPTIMUM MOISTURE CONTENT AS DETERMINED AND CONTROLLED IN ACCORDANCE WITH AASHTO STANDARD 180, METHOD C. FIELD DENSITY TESTS SHALL BE MADE IN ACCORDANCE WITH AASHTO STANDARD T-191, T-204, OR T-238 AND T-239.

GRADING NOTES:

1. SEE GENERAL EROSION CONTROL NOTES ON DETAIL SHEET.
2. PROVIDE INLET PROTECTION BARRIERS AROUND ALL EXISTING AND PROPOSED STORM DRAINAGE INLETS WITHIN THE WORK LIMITS AND AS SHOWN ON PLAN. MAINTAIN FOR THE DURATION OF THE PROJECT UNTIL PAVEMENT HAS BEEN INSTALLED AND UPSTREAM AREAS HAVE BEEN STABILIZED.
3. INSPECT SILT BARRIERS AFTER EACH RAIN STORM OF 1/4 INCH OR GREATER. REPAIR/MODIFY PROTECTION AS NECESSARY TO MAXIMIZE EFFICIENCY FILTER. REPLACE ALL FILTERS WHEN SEDIMENT IS 1/3 THE STRUCTURE HEIGHT.

DIG-SAFE
1-888-344-7233

CALL BEFORE YOU DIG!

NOTE:
CONTRACTOR IS REQUIRED TO CALL DIGSAFE AND COORDINATE LOCATIONS OF EXISTING UTILITY SERVICES A MINIMUM OF 72 HOURS PRIOR TO STARTING ANY WORK ON SITE.

LEGEND:

- PROPOSED SPOT ELEVATION
- PROPOSED FINISH CONTOUR
- EXISTING SPOT ELEVATION
- EXISTING CONTOUR
- CHAIN LINK FENCE
- HYDRANT
- CEMENT CONCRETE PAD
- UTILITY POLE
- LIGHT POLE
- TRAFFIC FLOW
- LAPN — TAX SHEET / LOT NO.
- RCPD — ROCKINGHAM COUNTY REGISTRY OF DEEDS
- STEEL GUARD RAIL
- WOOD FENCE
- TREE LINE (DRIP)
- ABOVE GROUND PIPING
- EOP — EDGE OF ASPHALT PAVEMENT
- RIP-RAP

GRAPHIC SCALE
(IN FEET)

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1168, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4268. FAX 603.749.7348

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-6-14

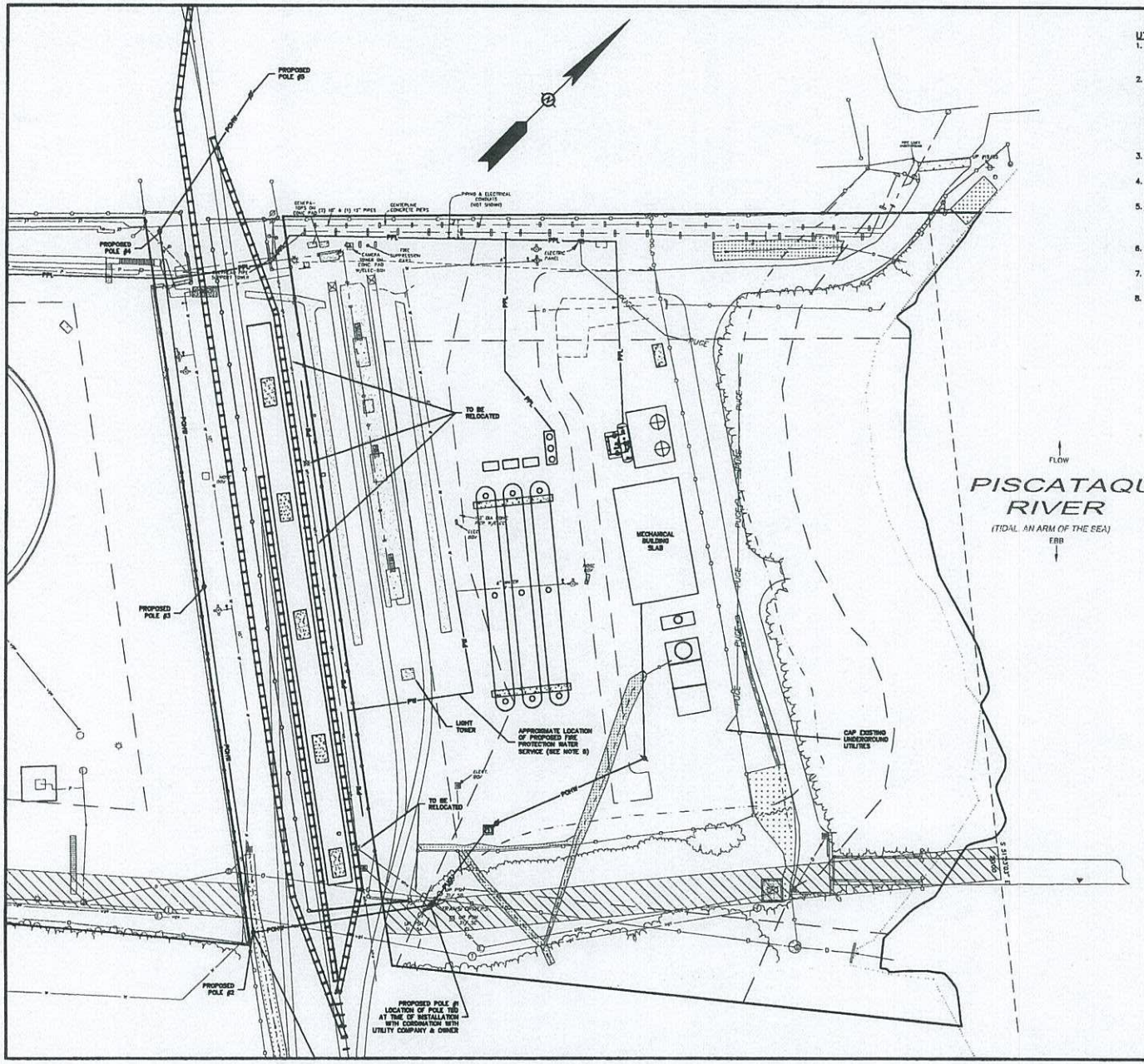
DATE: 11-4-2013
SCALE: 1"=80'
DRAWN BY: SRD
DESIGN BY: SRD
APPROVED BY: SJH
PROJECT NO: 1322
FILE: ZBA-SEA-3

GRADING, DRAINAGE & EROSION CONTROL PLAN

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

C-3



UTILITY NOTES:

1. THE CONTRACTOR SHALL CONTACT "DIG-SAFE" 72 HOURS PRIOR TO COMMENCING CONSTRUCTION. THE CONTRACTOR SHALL HAVE THE "DIG-SAFE" NUMBER ON-SITE AT ALL TIMES.
2. THE BEST AVAILABLE INFORMATION WAS USED TO DETERMINE THE LOCATION AND SIZE OF EXISTING UTILITIES. THE LOCATION IS NOT GUARANTEED BY THE OWNER OR THE ENGINEER. THE EXACT SIZE AND LOCATION OF UTILITIES SHALL BE CONFIRMED IN THE FIELD BY THE CONTRACTOR PRIOR TO COMMENCING WORK. IT IS ALSO THE CONTRACTOR'S RESPONSIBILITY TO ANTICIPATE CONFLICTS AND REPAIR EXISTING UTILITIES AS NECESSARY TO COMPLETE THE WORK AT NO ADDITIONAL COST TO THE OWNER.
3. ALL ON-SITE UTILITIES SHALL BE INSTALLED UNDERGROUND, UNLESS OTHERWISE INDICATED.
4. ALL MATERIALS AND CONSTRUCTION SHALL CONFORM WITH APPLICABLE TOWN AND STATE CODES.
5. THE EXACT LOCATION OF NEW PAD MOUNTED TRANSFORMER, UTILITY POLES, UTILITY SERVICES AND CONNECTIONS NUMBER TO BE DETERMINED BY UTILITY COMPANY. INSTALLATION SHALL CONFORM THE NATIONAL ELECTRIC CODE AND TO UTILITY COMPANY STANDARDS.
6. SEE GRADING, DRAINAGE AND EROSION CONTROL PLAN FOR PROPOSED GRADING AND EROSION CONTROL MEASURES.
7. ALL UNDERGROUND CONDUITS SHALL HAVE NYLON PULL ROPES TO FACILITATE PULLING CABLES.
8. ANY UPGRADE REQUIRED TO THE FIRE SUPPRESSION TO BE DESIGNED BY A FIRE PROTECTION ENGINEER.

DIG-SAFE
1-888-344-7233

NOTE:
CONTRACTOR IS REQUIRED TO CALL DIGSAFE AND COORDINATE LOCATIONS OF EXISTING UTILITY SERVICES A MINIMUM OF 72 HOURS PRIOR TO STARTING ANY WORK ON SITE.

LEGEND:

	FIRE HYDRANT WITH SPRAY NOZZLES
	PROPOSED TRANSFORMER
PPL	PROPOSED PIPE LINE
PUGU	PROPOSED UNDERGROUND UTILITIES
	PROPOSED UTILITY POLE
POHW	PROPOSED OVERHEAD WIRES
	CHAIN LINK FENCE
	HYDRANT
	CEMENT CONCRETE PAD
	EXISTING UTILITY POLE
	EXISTING LIGHT POLE
	TRAFFIC FLOW
LAPN	TAX SHEET / LOT NO.
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
	STEEL GUARD RAIL
	WOOD FENCE
	TREE LINE (DRIP)
—P—	EXISTING ABOVE GROUND PIPING
EOP	EDGE OF ASPHALT PAVEMENT
	RIP-RAP
—PW—	PROPOSED FIRE PROTECTION WATER LINE

GRAPHIC SCALE
(IN FEET)

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1168, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7348

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-6-14

DATE: 11-4-2013
SCALE: 1"=80'
DRAWN BY: SRD
DESIGN BY: SRD
APPROVED BY: SJH
PROJECT NO: 1322
FILE: ZBA-SEA-3

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

UTILITY PLAN

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

C-4

DESCRIPTION

The purpose of this plan is to show the site improvements associated with the expansion of existing facilities to increase oil loading capacity of liquid petroleum (lp) gas. The expansion includes upgrades to the existing railroad siding to accommodate up to an additional 10 rail cars, the installation of (3) 80,000 gallon above ground tanks and the associated pi-ping, utilities and pumping equipment.

PROJECT NAME AND LOCATION

Sea-3, Inc.
190 Shattuck Way
Newington, NH

LATITUDE 43°09'23"
LONGITUDE 070°49'02"

NAME OF RECEIVING WATERS

Piscataqua River

SOIL CHARACTERISTICS

Active – Industrial Yard Urban Developed Condition

DISTURBED AREA

±60,000 square feet

SEQUENCE OF MAJOR ACTIVITIES

1. Place all temporary erosion and sediment control BMP's.
2. Selective demolition of fencing and miscellaneous concrete pads.
3. Regrade gravel site to grades on site plan.
4. Installation of underground utilities and pads for structures.
5. Place finish gravels and fine grade.
6. When all site work is complete and all disturbed areas are stabilized remove all temporary erosion control measures.
7. All work shall be performed in accordance and meet the requirements of RSA 430:53 and Chapter AGR 3800 relative to invasive species.
8. All erosion control and perimeter controls shall be installed prior to commencing earth moving operations.
9. Swales and ponds (as applicable) shall be constructed early on in the construction sequence and before rough grading of the site and all ditched and swales shall be stabilized prior to directing runoff to them.
10. Stabilize, roadways & parking lots within 72 hours of achieving finished grade.
11. all cut and fill slopes shall be loamed and seeded (as applicable) within 72 hours of achieving finish grade.
12. All erosion control measures shall be inspected at least weekly and after every 1/2" of rainfall.
13. In all areas the smallest practical area shall be disturbed during construction and in NO case shall exceed 5 acres at any one time before disturbed areas are stabilized. All disturbed areas shall be stabilized within 14D days of initial disturbance.

DEFINITIONS

An area shall be considered stable of one of the following has occurred.
1. Base course gravels have been installed in areas to be paved
2. A minimum of 85% vegetated growth has been established
3. A minimum of 3" of non-erodible material such as stone or rip-rap has been installed, or
4. Erosion control blankets have been properly installed

INSTALLATION, MAINTENANCE AND INSPECTION PROCEDURES OF EROSION AND SEDIMENT CONTROLS

A. GENERAL

These are the general inspection and maintenance practices that will be used to implement the plan.

- All ditches and swales shall be stabilized prior to directing runoff to them.
- The smallest practical portion of the site will be denuded at one time.
- All control measures will be inspected at least once each week and following any storm event of 1/2 inch or greater.
- All measures will be maintained in good working order; if a repair is necessary, it will be initiated within 24 hours of report.
- Built up sediment will be removed from silt fence or check dams when it has reached one third the height of the fence or dam.
- All diversion shoes will be inspected and any breaches promptly repaired.
- Temporary seeding and planting will be inspected for bare spots, washouts, and unhealthy growth.
- A maintenance inspection report will be made after each inspection.
- A representative of the owner, will be responsible for inspections, maintenance and repair activities, and filling out the inspection and maintenance report.
- All areas shall be stabilized within 72 hours of achieving finish grade

B. FILTERS

1. SH Fence

a. Synthetic filter fabric shall be a pervious sheet of propylene, nylon, polyester or ethylene yarn and shall be certified by the manufacturer or supplier as conforming to the following requirements:

Physical Property	Test	
Filtering Efficiency	VTM-51	75% minimum
Tensile Strength at	VTM-52	Extra Strength
20% Maximum Elongation*		80 lbs/in in (min)
Standard Strength		
30 lbs/in in (min)		
Flow Rate	VTM-51	0.3 gal/sf/min (min)

* Requirements reduced by 50 percent after six (6) months of installation.

Synthetic filter fabric shall contain ultraviolet ray inhibitors and stabilizers to provide a minimum of six (6) months of expected usable construction life at a temperature range of 0 degrees F to 120 Degrees F.

b. The height of a silt fence shall not exceed thirty-six (36) inches.

c. The filter fabric shall be purchased in a continuous roll cut to the length of the barrier to avoid the use of joints. When joints are necessary, filter cloth shall be spliced together only at support post, with a minimum of (6) inch overlap, and securely sealed.

d. Posts shall be spaced a maximum of ten (10) feet apart at the barrier location and driven securely into the ground (minimum of 16 inches). When extra strength fabric is used without the wire support fence, post spacing shall not exceed 6 feet.

e. Posts for silt fences shall be 2-inch diameter wood with a minimum length of 5 feet.

f. Wire fence reinforcement for silt fences using standard strength filter cloth shall be a minimum of 42 inches in height, a minimum of 14 gauge and shall have a maximum mesh spacing of 6 inches.

g. A trench shall be excavated approximately four (4) inches wide and four (4) inches deep along the line of posts and upslope from the barrier.

h. When standard strength filter fabric is used, a wire mesh support fence shall be fastened securely to the upslope side of the posts using heavy duty wire staples at least one (1) inch long, tie wires or hog rings. The wire shall extend no more than 36 inches above the original ground surface.

i. The "standard strength" filter fabric shall be stapled or wired to the fence, and eight (8) inches of the fabric shall be extended into the trench. The fabric shall not extend more than 30 inches above the original ground surface. Filter fabric shall not be stapled to existing trees.

j. When wire strength filter fabric and closer post spacing are used, the wire mesh support fence may be eliminated. In such a case, the filter fabric is stapled or wired directly to the posts with all other provisions of item (i) applying.

k. The trench shall be backfilled and the soil compacted over the filter fabric.

l. SH fences shall be removed when they have served their useful purpose, but not before the upslope areas has been permanently stabilized.

E. Sequence of Installation

Sediment barriers shall be installed prior to any soil disturbances of the contributing drainage area shown there.

J. Maintenance

a. Check dams and silt fence barriers shall be inspected immediately after each rainfall and at least daily during prolonged rainfall. They shall be repaired if there are any signs of erosion or sedimentation below them. Any required repairs shall be made immediately. If there are signs of undercutting at the center or the edges, or impounding of large volumes of water behind them, sediment barriers shall be replaced with a temporary check dam.

b. Should the fabric on a silt fence or filter barrier decompose or become ineffective prior to the end of the expected usable life and the barrier still is necessary, the fabric shall be replaced promptly.

c. Sediment deposits should be removed after each storm event. They must be removed when deposits reach approximately one third (1/3) the height of the barrier.

d. Any sediment deposits remaining in place after the silt fence or filter barrier is no longer required shall be dressed to conform with the existing grade, prepared and seeded.

C. MULCHING

1. Timing

In order for mulch to be effective, it must be in place prior to major storm events. There are two (2) types of standards which shall be used to ensure this.

a. Apply mulch prior to any storm event. It will be necessary to closely monitor weather predictions, usually by contacting the National Weather Service in Concord, to have adequate warning of significant storms.

b. Required Mulching within a specified time period. The time period can range from 14 to 21 days of inactivity on a area, the length of time varying with site conditions. Professional judgement shall be used to evaluate the interaction of site conditions (soil erodibility, season of year, extent of disturbance, proximity to sensitive resources, etc.) and the potential impact of erosion on adjacent areas to choose an appropriate time restriction.

2. Application Rate

Mulch shall be applied at a rate of between 1.5 to 2 tons per acre, or 80 to 100 pounds per 1000 square feet.

3. Guidelines for Winter Mulch Application. When mulch is applied to provide protection over winter (past the growing season) it shall be at a rate of 6,000 pounds of hay or straw per acre. A tackifier may be added to the mulch.

4. Maintenance All mulches must be inspected periodically, in particular after rainstorms, to check for rill erosion. If less than 90% of the soil surface is covered by mulch, additional mulch shall be immediately applied.

5. Erosion Matting Erosion matting shall be used in place of mulch on all slopes steeper than 3:1.

D. TEMPORARY GRASS COVER

1. Seedbed Preparation

Apply fertilizer at the rate of 600 pounds per acre of 10-10-10. Apply limestone (equivalent to 50 percent calcium plus magnesium oxide) at a rate of three (3) tons per acre.

2. Seeding

a. Utilize annual rye grass at a rate of 40 lbs/acre.

b. Where the soil has been compacted by construction operations, loosen soil to a depth of two (2) inches before applying fertilizer, lime and seed.

c. Apply seed uniformly by hand, cyclone seeder, or hydroseeder (slurry including seed and fertilizer). Hydroseedings, which include mulch, may be left on soil surface. Seeding rates must be increased 10% when hydroseeding.

3. Maintenance

Temporary seedings shall be periodically inspected. At a minimum, 85% of the soil surface should be covered by vegetation. If any evidence of erosion or sedimentation is apparent, repairs shall be made and other temporary measures used in the interim (mulch, filter barriers, check dams, etc.).

E. PERMANENT SEEDING

1. Seedbed – stones larger than 1 ½" , trash, roots, and other debris interfere with seeding and future maintenance of the area should be removed. Where feasible, the soil should be tilled to a depth of 4" to prepare a seedbed and mix fertilizer into the soil.

3. Fertilizer – lime and fertilizer should be applied evenly over the area prior to or at the time of seeding and incorporated into the soil. Kinds and amounts of lime and fertilizer should be based on an evaluation of soil tests. When a soil test is not available, the following minimum amounts should be applied:

Agricultural Limestone @ 100 lbs. per 1,000 s.f.
10-20-20 fertilizer @ 12 lbs. per 1,000 s.f.

3. Seed Mixture (recommended)

Note:

Type	LBS. per Acre	LBS. per 1,000 s.f.
Tall Fescue	20	0.45
Creeping Red Fescue	20	0.45
Birdsfoot Trefoil	8	0.20
Total	48	1.10

4. Seeding – seeding is done where it is desirable to rapidly establish cover on a disturbed area. Seeding an area may be substituted for permanent seeding procedures anywhere on site. Bed preparation, fertilizing, and placement of seed shall be performed according to the S.C.S. Handbook.

Seeding is recommended for steep sloped areas, areas immediately adjacent to sensitive water courses, easily erodible soils (fine sand/silt) etc.

5. Provide a minimum of 4 inches (3 inches loose) of topsoil to all areas to be seeded.

F. STORM DRAIN INLET PROTECTION

1. Straw/Hay Bale Inlet Structure

a. Bales shall be either wire bound or string tied with the bindings oriented around the sides rather than over and under the bales.

b. Bales shall be placed lengthwise in a single row surrounding the inlet, with the ends of adjacent bales pressed together.

c. The filter barrier shall be anchored and backfilled. A trench shall be excavated around the inlet the width of bale by a minimum depth of four (4) inches. After the bales are staked, the excavated soil shall be backfilled and compacted against the filter barrier.

d. Each bale shall be securely anchored and held in place by at least two (2) stakes or rebars driven through the bale.

e. Loose straw/hay shall be wedged between bales to prevent water from entering between bales.

f. All structures should be inspected after every rainstorm and repairs made as necessary.

g. Sediment should be removed from the drainage after the sediment has reached a maximum of one-third the depth of the trap.

h. Mulch/soil should be removed and the area repaired as soon as the contributing drainage area to the inlet has been completely stabilized.

TIMING OF CONTROLS/MEASURES

As indicated in the sequence of Major Activities the silt fences shall be installed prior to commencing any clearing or grading of the site. Structural controls shall be installed concurrently with the applicable activity. Areas where construction activity temporarily ceases for more than twenty one (21) days will be stabilized with a temporary seed and mulch within fourteen (14) days of the last disturbance. Once construction activity ceases permanently in an area, all fences and any earthworks will be removed and any permanent measures are established. All areas shall be stabilized within 72 hours of achieving finish grade.

WASTE DISPOSAL

A. WASTE MATERIALS

All waste materials will be collected and stored in securely lidded receptacles. All trash and construction debris from the site will be deposited in a dumpster. No construction waste materials will be buried on site. All personnel will be instructed regarding the correct procedure for waste disposal by the superintendent.

B. HAZARDOUS WASTE

All hazardous waste materials will be disposed of in the manner specified by local or state regulation or by the manufacturer. Site personnel will be instructed in these practices by the superintendent.

C. SANITARY WASTE

All sanitary waste will be collected from the portable units a minimum of once per week by a licensed sanitary waste management contractor.

SPILL PREVENTION

A. MATERIAL MANAGEMENT PRACTICES

The following are the material management practices that will be used to reduce the risk of spills or other accidental exposure of materials and substances during construction to stormwater runoff:

Good Housekeeping:

The following good housekeeping practices will be followed on site during the construction project:

- Job effort will be made to store only sufficient amounts of products to do the
- All materials stored on site will be stored in a neat, orderly manner in their proper (original if possible) containers and, if possible, under a roof or other enclosure's.
- Manufacture's recommendations for proper use and disposal will be followed.
- The site superintendent will inspect daily to ensure proper use and disposal of materials.
- Substances will not be mixed with one another unless recommended by the manufacturer.
- Whenever possible all of a product will be used up before disposing of the container.

Hazardous Products:

The following practices will be used to reduce the risks associated with hazardous materials:

- Products will be kept in their original containers unless they are not resealable.
- Original labels and material safety data will be retained for important product information.
- Surplus product that must be disposed of will be discarded according to the manufacturer's recommended methods of disposal.

B. PRODUCT SPECIFICATION PRACTICES

The following product specific practices will be followed on site:

Petroleum Products:

All on site vehicles will be monitored for leaks and receive regular preventive maintenance to reduce leakage. Petroleum products will be stored in tightly sealed containers which are clearly labeled. Any asphalt based substances used on site will be applied according to the manufacturer's recommendations.

Fertilizers:

Fertilizers used will be applied only in the minimum amounts directed by the specifications. Once applied fertilizer will be worked into the soil to limit exposure to stormwater. Storage will be in a covered shed or enclosed trailers. The contents of any partially used bags of fertilizer will be transferred to a sealable plastic bin to avoid spills.

Paints:

All containers will be tightly sealed and stored when not required for use. Excess paint will not be discharged to the storm sewer system but will be disposed of properly according to manufacturer's instructions or state and local regulations.

Concrete Trucks:

Concrete trucks will discharge and wash out surplus concrete or drum wash water in a controlled area on site.

C. SPILL CONTROL PRACTICES

In addition to good housekeeping and material management practices discussed in the previous section the following practices will be followed for spill prevention and cleanup:

- Manufacturer's recommended methods for spill cleanup will be clearly posted and site personnel will be made aware of the procedures and the location of the information and cleanup supplies.
- Materials and equipment necessary for spill cleanup will be kept in the material storage area on site. Equipment and materials will include but not be limited to brooms, dustpans, mops, rags, gloves, goggles, kitty litter, sand, sawdust and plastic or metal trash containers specifically for this purpose.
- All spills will be cleaned up immediately after discovery.
- The spill area will be kept well ventilated and personnel will wear appropriate protective clothing to prevent injury from contact with a hazardous substance.
- Spills of toxic or hazardous material will be reported to the appropriate state or local government agency, regardless of the size.
- The spill prevention plan will be adjusted to include measures to prevent this type of spill from occurring and how to cleanup the spill if it occurs. A description of the spill, its cause, and the cleanup measures will be included.
- The site superintendent responsible for day-to-day site operations will be the spill prevention and cleanup coordinator.

MAINTENANCE OF STORMWATER MANAGEMENT FACILITIES

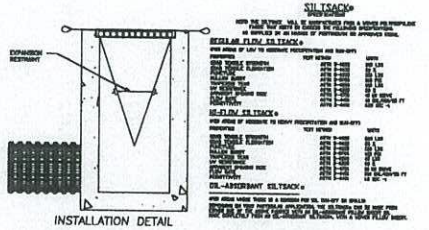
The project proponent is responsible for the maintenance of roadway and of all stormwater facilities.

CATCH BASINS & STORMWATER TREATMENT STRUCTURES

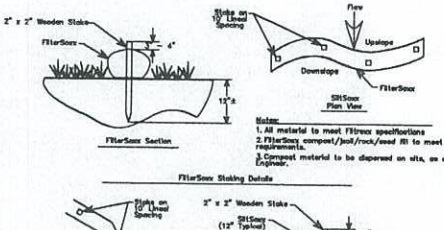
1. Catch basins & Stormwater treatment structures should be inspected on a monthly basis and/or after a major rainfall event to ensure that debris or sediments do not reduce the effectiveness of the system.

WINTER CONSTRUCTION NOTES

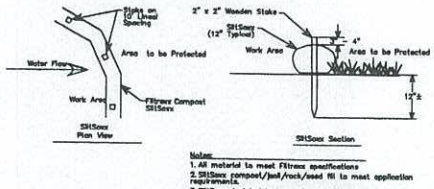
1. All proposed post-development vegetated areas which do not exhibit a minimum of 85 % vegetative growth by October 15th, or which are disturbed after October 15th, shall be stabilized by seeding and installing erosion control blankets on slopes greater than 3:1, and seeding and placing 3 to 4 bales of mulch per acre, secured with crisscrossed netting, elsewhere. The placement of erosion control blankets or mulch and netting shall not occur over accumulated snow or on frozen ground and shall be completed in advance of thaw or spring melt.
2. All slopes which do not exhibit a minimum of 85% vegetative growth by October 15th, or which are disturbed after October 15th shall be stabilized with stone or erosion control blankets.
3. After October 15th, incompleta road surfaces shall be protected with a minimum of 3-inches of crushed gravel per NHDOT Item 403.3, or 3" penetration to be continue through the winter season be cleared of any accumulated snow after each storm event.



DETAIL OF INLET SEDIMENT CONTROL DEVICE
NOT TO SCALE



FilterSox Staking Details



Filter Barrier Detail
NOT TO SCALE

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-6-14

PROJECT NO: 1322
FILE: SEA-3

DATE: 10-22-13
SCALE: 1"=60'
DRAWN BY: SRD
DESIGN BY: SRD
APPROVED BY: SJH

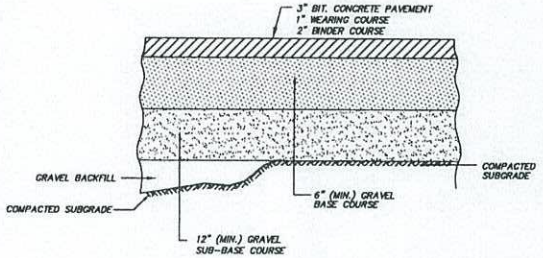
BAUCH ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
ROCHESTER, NH 03867
603.750.4266 FAX 603.749.7349

EROSION CONTROL NOTES & DETAILS

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

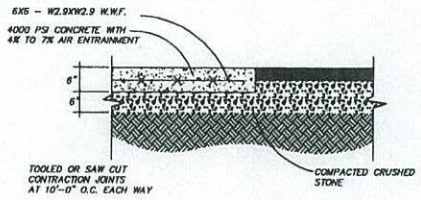
SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

C-5



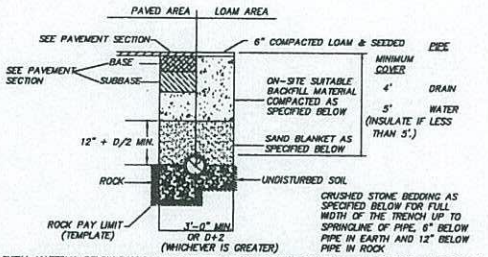
PAVEMENT SECTION AT RAIL SKIP

NOT TO SCALE



CONCRETE PAD DETAIL FOR FLARE

NOT TO SCALE

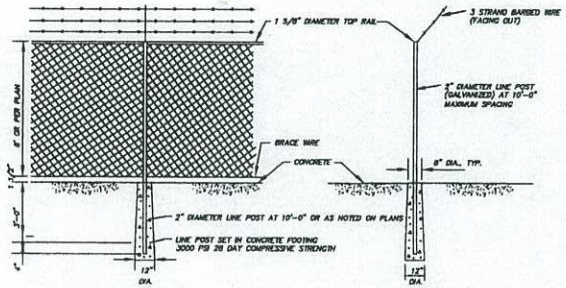


BACKFILL MATERIAL BELOW PAVED OR CONCRETE AREAS, BEDDING MATERIAL, AND SAND BLANKET SHALL BE COMPACTED TO NOT LESS THAN 95% OF AASHTO T 99, METHOD C. SUITABLE BACKFILL MATERIAL BELOW LOAM AREAS SHALL BE COMPACTED TO NOT LESS THAN 90% OF AASHTO T 99, METHOD C.

SAND BLANKET & BEDDING		3/4" CRUSHED STONE BEDDING	
SIEVE SIZE	% FINER BY WEIGHT	SIEVE SIZE	% FINER BY WEIGHT
1/2"	90 - 100	1"	100
200 (FOR WATER MAIN BEDDING)	0 - 15	3/4"	90 - 100
		1/2"	20 - 50
		3/8"	0 - 20
		#4	0 - 5

UTILITY TRENCH

NOT TO SCALE



CHAIN LINK FENCE DETAIL

NOT TO SCALE

BAUCET ENGINEERING, PLLC
CIVIL ENGINEERS
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GREENLAND, NEW HAMPSHIRE 03840
603.766.4288, FAX 603.749.7348

NO.	REVISION	APP'D	DATE
1	REVISION PER PLANNING BOARD REVIEW	SJH	3-6-14

PROJECT NO.1322
FILE: 2SEA-SEA-3
DESIGN BY: SRD
DRAWN BY: SRD
SCALE: 1"=60'
DATE: 10-22-13

DETAILS

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

C-6

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GREEN

PROFESSIONAL
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March 6, 2014

By Fax (603-436-7188) and First Class Mail

Newington Planning Board
Denis Hebert, Chairman
Town Hall
205 Nimble Hill Road
Newington, NH 03801

Re: Proposed Sea-3 Terminal Expansion

Dear Mr. Hebert and the Members of the Planning Board:

I represent a group of Portsmouth residents who have serious concerns about the proposal by Sea-3 to reconfigure its Newington terminal to accommodate Liquefied Petroleum Gas (LPG) shipments by rail. I understand that the Planning Board has Sea-3's site plan application under consideration, and has declared the application to affect regional interests pursuant to RSA 36:54, according abutter status to the City of Portsmouth and other neighboring municipalities affected by the proposed expansion. I hope you and the Board will take the concerns of my clients and other Portsmouth residents into consideration in your deliberations.

Consistent with Section 5 of the Town of Newington's Site Plan Review Regulations, Sea-3's application must be reviewed "so as to minimize traffic congestion, traffic hazards, unsightliness, annoyance to other nearby land uses, erosion, and other effects detrimental to the abutters, the neighborhood, [and] the environment of the Town." Furthermore, the Planning Board must determine that "the public health, safety, and welfare will be otherwise protected" before approving the application. Respectfully, we do not think Sea-3's application has met, or can meet, this standard.

As you are already aware, Sea-3's proposed expansion would result in a profound intensification of freight rail traffic hauling LPG from Rockingham Junction in Newfields to Newington, running directly through downtown Portsmouth and a number of residential communities located in very close proximity to the rail lines. If approved, the expansion would result in over 3,700 tank cars of LPG traveling this route per year, an increase in LPG rail traffic by many orders of magnitude. In addition to the significant safety concerns regarding this type of activity and this magnitude of use intensification, there are potential environmental impacts such as increased noise, light and diesel exhaust, and the potential impact on wetlands where the trains pass, as well as to the Great Bay Estuary and Piscataqua River, where the trains will pass over and beside at various locations along the route

from Rockingham Junction to Newington. In the event of a serious accident or derailment, these sensitive ecological and economic resources would almost certainly be severely impacted.

With the exception of a very limited and narrowly focused site-specific safety review by SFC Engineering, no comprehensive safety or security review of the full scope of the Sea-3 expansion proposal (or its external ramifications) has been conducted. In order to have reasonable assurance that all appropriate safety and security considerations have been addressed, a comprehensive all-hazards assessment must be conducted, including at a minimum: hazard identification and vulnerability assessment; risk evaluation; environmental risk assessment; analysis of the emergency response capabilities for the impacted communities; physical security assessment and an incident/hazard response analysis. A comprehensive safety assessment of this proposal must go far beyond simply assessing the condition of the tracks used to carry the trains. While such an assessment is an important part of the entire package, there are many more safety and security issues to be considered when determining whether the public health, and the safety and welfare of community residents, is being protected.

In addition, a comprehensive environmental impact study must take into account not only the worst-case-scenario impacts of a derailment or other hazardous material incident, but also the direct and daily impact to residents of Portsmouth, Newington, Greenland, Newfields, Stratham and other communities from being awakened six nights per week by train noise, lights and exhaust odors. We urge the Board to require a comprehensive environmental impact analysis that will fully assess existing conditions and the impact of the proposed expansion before deciding on Sea-3's application.

I have also reviewed Pan Am Railway's December 6, 2013 letter to the Planning Board, in which Pan Am asserts that rail transportation of LPG is "inherently safe," and in which Pan Am seems to suggest that this Board lacks the authority to regulate Sea-3's proposed expansion because of federal law preemption and suggests that it is prepared to engage in a litigation if necessary. I want to address the issues of safety and supposedly exclusive federal regulation of railways.

First, I understand that you already have before you information regarding a number of very serious accidents involving propane tank cars, and a ten-year Federal Railway Administration (FRA) report of Pan Am Railway's Region 1 accidents. There has also been a significant amount of national attention given to the transportation of hazardous materials by rail due to a large number of recent serious rail accidents. Congress will be holding hearings to review the entire safety impacts of hazardous material rail transport, and the National Transportation Safety Board (NTSB) has recently made recommendations that would require, "expanded hazardous materials route planning for railroads to avoid populated and other

sensitive areas." I am enclosing for the Planning Board's record a document provided by Greenland Selectman John Penacho listing numerous incidents of Pan Am Railways train derailments and environmental incidents over the last several years, including the recent derailment of a Pan Am train hauling LPG in Westford, Massachusetts, on February 19, 2014, in which Pan Am failed to notify town officials until the Fire Chief discovered the incident. This history must also be included in any assessment of the safety aspects of Sea-3's proposal.

Second, contrary to the assertions made by Pan Am Railways in the December 6 letter, the Planning Board's review and oversight of Sea-3's application and use of the site is not preempted by federal law or regulation of the railways that would be utilized by Pan Am to transport LPG to the Sea-3 terminal. The only case cited by Pan Am in support of federal preemption is a July 19, 2013 decision of the Federal Surface Transportation Board (STB) regarding a cease and desist order issued by the Town of Winchester, Massachusetts Zoning Board prohibiting outright all rail traffic to a warehouse owned by Tighe Logistics Group, after neighboring residents complained about the noise from trains coupling and switching at night. The Winchester ZBA attempted to regulate the area as being used as a "freight yard," in violation of municipal zoning laws, and the STB held that federal law prohibited the ZBA from banning all rail service to the warehouse. This improper action by the Winchester ZBA is readily distinguishable from this Board's proper and mandated regulation and oversight of a significant site development plan, which falls directly within this Board's jurisdiction.

It is well established that municipal land use boards retain certain police powers to regulate health, safety and welfare concerns, even where the municipal regulation will have more direct impact on railway operations than is the case here. See, e.g., New York & Atl. Ry. Co. v. Surface Transp. Bd., 635 F.3d 66, 71 (2d Cir. 2011) (holding that the STB does not exercise exclusive jurisdiction over facility that is not owned by a "rail carrier" as defined under 49 U.S.C. § 10501(b)(1), where the railway company's "involvement is essentially limited to transporting cars to and from the facility" and the railway does not control the facility, thus subjecting the facility to municipal regulation under the local zoning ordinance); Iowa, Chicago & E. R.R. Corp. v. Washington Cnty., Iowa, 384 F.3d 557, 561 (8th Cir. 2004) (holding that federal law does not preempt state law requirement that railroad must replace four bridges necessary for the crossing of roads, at its own expense); Florida E. Coast Ry. Co. v. City of W. Palm Beach, 266 F.3d 1324, 1339 (11th Cir. 2001) (holding that Interstate Commerce Commission Termination Act (ICCTA) does not preempt City's application of its zoning and licensing ordinances to operations by aggregate distribution business that leased railway property); In re Vermont Ry., 171 Vt. 496, 503, 769 A.2d 648, 655 (2000) (holding that permitting requirements imposed on railroad's salt shed operation by the City were not preempted by the ICCTA).

In short, this Planning Board has the right and responsibility to give careful scrutiny to Sea-3's application, and the Board must deny the application if the "public health, safety, and welfare" is not protected. At a minimum, we believe that the Board must require Sea-3 to undertake comprehensive safety and environmental impact studies before deciding whether the proposed expansion should be permitted, consistent with the Board's authority under Section 19 of the Site Plan Review Regulations to require such an investigation and review.

Thank you for your thoughtful consideration and attention to this serious matter.

Very truly yours,

for

Christopher Cole

Enclosure

cc: John Bohenko, City Manager, City of Portsmouth
Paul Bogan, Vice President of Operations, Sea-3, Inc.
Cynthia Scarano, Executive Vice President, Pan Am Railways
Richard DiPentima, 16 Dunlin Way, Portsmouth
Cathy DiPentima, 16 Dunlin Way, Portsmouth

PAN AM RAILWAYS 2011 TO 2014 YTD DERAILMENTS AS REPORTED IN THE PRESS (1/2)

Date	Location	Incident	Source
May, 2011	Bangor, ME	Seven rail cars carrying sheet rock flipped on their side along the Penobscot River, spilling cargo behind the Eastern Maine Medical Center. The cars were part of a 29 car train.	http://bangordailynews.com/2011/05/23/news/bangor/train-cars-derail-in-bangor/?ref=relatedBox
Dec, 2011	Smith Crossing, ME	A Pan Am Railways car derailed and around 20 gallons of sodium chloride leaked from the out-of-commission rail car. The local fire department setup an isolation zone of 300 feet to prevent the chemical spill from spreading further into the environment and contaminating people in near-by communities.	http://www.xsorb.com/blog/51968/residential/sodium-chloride-spill-in-maine-shuts-down-pan-am-railway-for-brief-period/
Mar, 2012	Leeds Jct, ME	Pan Am train derailed. Cars did not topple over but destroyed a section of track.	http://www.youtube.com/watch?v=mLoIMGAUqmA
May, 2012	Bucksport, ME	A 31 car Pan Am train derailed, damaging about 200 feet of track and sent two tanker cars into the Penobscot River. The cars were carrying liquid latex and leaked an amount of it into the river..	http://wabi.tv/2012/05/26/pan-am-railways-investigating-bucksport-train-derailment/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A%20wabi%2Fnews%20%28WABI%20-%20News%29
Feb, 2013	Glenville, NY	An engineer reached 25 mph in a 10 mph zone — in reverse — while trying to catch up to a runaway rail car, according to documents the Federal Railroad Administration provided in response to a Freedom of Information Act request. A total of 32 people were evacuated when 11 cars derailed just a few feet from residences in the nearby mobile home park near the town of Glenville's drinking water supply. Pan Am Railways did not respond to a request for comment. A conductor was shifting cars to assemble an 80-car train and too many cars were hooked up for three handbrakes to hold, so the train began rolling downhill. The car they were chasing slammed into the other 70, then they slammed their two connected locomotives into the rear-most car. Documents detail a rebuke to the engineer from a Pan Am Railways official who called the lack of serious injuries "miraculous". The derailment caused $334,788 in damage to rail equipment. The state Department of Environmental Conservation subsequently fined Pan Am $5,000 for solid waste and air quality violations after determining that a slurry of lime and grain that spilled out of one of the derailed cars was left to rot.	http://www.dailygazette.com/news/2013/dec/12/crew-faulted-glenville-train-crash/?free
Mar, 2013	Nashua, NH	Six cars of a Pan Am coal train derailed on the Black Ridge trestle forcing Bridge Street at the railroad crossing to be closed for about three hours. About 100 feet of track was damaged.	http://www.nashuatelegraph.com/news/996213-469/crews-expected-friday-to-move-derailed-coal.html
Mar, 2013	South Portland, ME	a Pan Am Railways tanker car at the Rigby Rail Yard in South Portland derailed and caused damage to five other train cars. Some of the tankers were carrying liquid propane gas. The cause was said to be a failed coupler.	http://www.wmtw.com/news/maine/wmtw-news-8-investigates-maine-train-derailments/20925462#ixzz2uxU4h9Cu
Mar, 2013	Mattawamkeag, ME	Fifteen 31,000 gallon tank cars full of crude oil derailed and 13 tipped over by the Penobscot River. The cars were part of a 96 car train. The cars did not rupture.	Bangor Daily News http://bangordailynews.com/2013/03/07/news/penobscot/freight-train-pulling-oil-tankers-derails-in-mattawamkeag/?ref=inline

PAN AM RAILWAYS 2011 TO 2014 YTD DERAILMENTS AS REPORTED IN THE PRESS (2/2)

July, 2013	Veazia, ME	Six cars of a 92 car Pan Am train derailed near the Penobscot River. Three of the cars were carrying CO2.	http://bangordailynews.com/2013/07/03/news/penobscot/train-derails-in-veazie-near-penobscot-river-3-cars-off-tracks/
Aug, 2013	Hermon, ME	Propane tank cars on a Pan Am train derailed blocking an intersection for more than four hours.	http://bangordailynews.com/2013/08/19/news/bangor/train-derailment-shuts-down-hermon-intersection/
Jan, 2014	Saco, ME	The Pan Am locomotive slipped off the track leaving the engine and its single car blocking traffic at the railroad crossing for about 4½ hours.	http://www.pressherald.com/news/Slippery_track_causes_train_derailment_in_Saco.html
Feb, 2014	Westford, MA	Pan Am train derailed near an overpass with five freight cars teetering over the edge. At least two of the cars contained LPG. Westford Town Manager Jodi Ross, was "dismayed" Pan Am did not find this to be an "urgent matter." She said she was not notified until 9:30 a.m. when Fire Chief Joe Targ happened upon the area. She stressed the town is prepared for a crisis. Evacuation centers were set up at the Rita miller and Westford Academy schools with buses ready to transport people.	http://www.lowellsun.com/breakingnews/ci_25190331/train-derails-westford#ixzz2uwRdLnxF
Feb, 2014	Newfields, NH	Fire broke out in a locomotive that had been left occupied but idling on a spur track about 100 feet south off the Route 108 railroad bridge between Newfields and Newmarket	http://www.unionleader.com/article/20140227/NEWS07/140229385/1016/news07

PAN AM RAILWAYS ENVIRONMENTAL INCIDENTS (1/2)

Date	Location	Incident	Source
1999	Deerfield, MA	Pan Am train derailed spilling 6000 gallons of latex into the Deerfield River	http://valleypost.org/node/135
Dec, 2000	Fairfield, ME	Four cars of a 17 car train derailed when they stuck a broken rail. The cars were carrying heating oil, tumbled into a deep pond by the Kennebec River and sank.	Bangor Daily News, March 9, 2000 http://news.google.com/newspapers?nid=2457&dat=20000309&id=a69JAAAAIBAJ&sjid=0g4NAAAAIBAJ&pg=1960,2397027
Aug, 2006	Ayer, MA	Pan Am and three of its subsidiary rail companies was found guilty for trying to cover up a hazardous-materials spill of more than 900 gallons of diesel fuel from an idling locomotive at an Ayer rail yard. Despite a two-hour time period for reporting spills of ten gallons or more to the MassDEP, the fuel spill was not reported by the company. The MassDEP was first notified of the fuel spill by a caller, who wished to remain anonymous out of a concern for retribution by the railroad. The caller indicated that the railroad was alleging the spill was less than the reportable quantity of ten gallons and appeared to be trying to hide the spill and avoid its detection by covering the spill area with fresh ballast. The judge ordered three years probation and a $500,000 criminal fine -- the largest corporate criminal fine in Massachusetts history.	http://www.nashobapublishing.com/ayer_news/ci_18668011
Aug, 2006	Ayer, MA	Judge Elizabeth Fahey schedules evidentiary hearing to decide if Pan Am breached the law by paving a 26-acre lot in Ayer. The paving is pitched toward catch basins that lack required storm water pollution control devices. Movement on the project caps years of legal struggle with the town of Ayer, which derives 60 percent of its drinking water from beneath the site. The watershed also serves Littleton and Westford. In a joint letter, state Department of Environmental Protection and federal Environmental Protection Agency officials rebuked the company for paving without pollutant-protection measures in place. They also faulted Pan Am for failing to appear at meeting meant to update regulators on the company's construction schedule. Pan Am was required to provide Ayer with its stormwater pollution prevention plan (SWPPP) 60 days before work was to begin. Yet the third draft of the SWPPP, dated Aug. 31, was delivered to the town in early September. Two weeks later, unprotected paving began, within weeks of the town rejecting Pan Am's request to use cheaper filtration systems, straying from DEP- and EPA-approved plans. Assistant Attorney General Andrew Rainer of the Environmental Crimes Strike Force said "They didn't want to set forth a schedule because they wanted to do exactly what they've done -- they've plowed ahead."	http://www.lowellsun.com/sunsanta/ci_13436830#ixzz2v29BCTfw
Oct, 2013	Glenville, NY	Officials with the state Department of Environmental Conservation fined Pan Am Railways for allowing chicken feed spilled from a train derailment in Feb 2013 to rot alongside the tracks and create a foul odor that permeated in a residential neighborhood in Glenville. The company was assessed a $5,000 fine and ordered to remedy the situation.	

PAN AM RAILWAYS ENVIRONMENTAL INCIDENTS (2/2)

Feb, 2011	East Haddam, CT	A federal court has ruled against Timothy Mellon owner of Goodspeed Airport and Pan Am Railways in a decade long dispute over the cutting of trees in protected wetlands along the Connecticut River. In its decision Thursday, the U.S. 2nd Circuit Court of Appeals upheld a previous ruling faulting Mellon for clear-cutting trees 11 years ago on conservation land bordering the airstrip. Mellon, 68, of Lyme, a son of the late philanthropist Paul Mellon and heir to the Mellon banking fortune, **argued that federal aviation safety laws preempted local regulations and allowed him to remove obstructions such as trees in an area of protected wetlands** known as the Chapman Pond Preserve, just south of the airport runway.	http://articles.courant.com/keyword/timothy-mellon
Jan, 2014	East Deerfield, MA	After more than a decade, the East Deerfield Rail Yard on Railroad Avenue is finally getting cleaned up. By spring, Pan Am Railways, owner of the rail yard, will place a cover system, also known as a soil cap, over the asbestos-impacted soils in the eastern portion of the rail yard site and continue monitoring the soil cap, maintaining at least 20 inches of cover over the area. **The clean-up was a long fight for community members,** led by an ad-hoc Economic Development Committee who originally pushed for Pan Am to clean up the area.	http://www.recorder.com/home/10263503-95/east-deerfield-rail-yard-to-get-cleaned-up

CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7200
Fax (603) 427-1526

Robert J. Lister
Mayor

March 6, 2014

Newington Planning Board
Denis Hebert, Chairman
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

Dear Mr. Hebert:

This letter is in reference to the proposed Sea-3 terminal expansion on your agenda for March 10, 2014. The City of Portsmouth has concerns with the operational changes specific to rail operations that will be implemented as a result of the site improvements proposed by Sea-3.

We have been copied by Attorney Christopher Cole representing a group of Portsmouth residents who have requested that the Newington Planning Board request that a comprehensive safety or security review of the full scope of the Sea-3 expansion proposal (or its external ramifications) and a comprehensive environmental impact analysis be conducted at the expense of the applicant before the Newington Planning Board makes a decision on this site review application. As Mayor of Portsmouth, I would support this request.

Thank you for your consideration on this matter.

Sincerely,

Robert J. Lister

Robert Lister
Mayor of Portsmouth

c.: Portsmouth City Council
John P. Bohenko, Portsmouth City Manager
Tom Morgan, Newington Town Planner
Christopher Cole, Esquire

Hot Time in the Old Port?

Since Sea-3 announced plans to dramatically increase the volume of its propane shipments through Portsmouth via Pan Am Railways, local interest in the potential hazards of such operations has understandably increased. An incident in Lincoln, CA [pop. 43,000] provides some context.

A single railroad tank car carrying propane caught fire on August 23, 2011. Fire officials decided not to extinguish the fire because escaping unburned gas might form an explosive, ground-hugging cloud. Instead, firefighters sprayed the burning tank car with water to keep it cool and prevent it from exploding.

Initially it was thought that the tank was full and might burn for as long as three weeks, so a team of experts was brought in to perform a risky "hot tap" procedure: a hole would be drilled into the tank and the propane drained into a nearby pit where it would be burned off.

Fortunately the tank car turned out not to be full; the "hot tap" was called off and the fire burned itself out in two days. The end of the emergency was no doubt a relief to those living in the 4,800 homes within a one-mile radius of the fire, where a mandatory evacuation was in force while the fire burned. Businesses were shut down as well.

A evacuation radius of at least one mile appears to be fairly typical in such cases; *e.g.* in Waverly, TN on February 24, 1978, when a derailed tank car full of liquified petroleum gas [LPG] exploded killing 16 people; in Weyauwega, WI on March 4, 1996, when a broken rail caused the derailment of fourteen cars carrying propane and LPG which then burned for two weeks; and in Plaster Rock New Brunswick on January 7, 2014, when 17 derailed cars carrying crude oil and propane caught fire.

Curious how far such an evacuation area would extend here in Portsmouth, we commissioned the Cartography Department to create an image superimposing a circle of that size over a Google Earth image [see left]. The circle is centered where Pan Am's rails cross Maplewood Avenue [and batter the life out of automobile suspensions].

Clearly any effective evacuation would empty downtown Portsmouth. To the north the evacuation area would extend to the Piscataqua River Bridge and Walker Street in Kittery. The western end of the Portsmouth Naval Shipyard and the Peirce Island swimming pool would be included, as would the northern end of the South Street Cemetery. To the west the evacuation area would go as far as the Button Factory and the Rt. 1 Traffic Circle.

Derailment in Westford, MA

A fourteen-car freight train belonging to Pan Am Railways derailed in Westford, MA on Wednesday, February 19th. The derailment occurred at about 11:00 p.m., leaving a number of the cars "teetering on the overpass" where it crosses Bridge Street, according to the *Lowell Sun*. Two of the cars that left the tracks contained LPG.

Officials in Westford first learned of the derailment at 9:30 a.m. on Thursday, when Fire Chief Joe Targ happened to drive by the scene. He then called Westford Town Manager Jodi Ross.

"We called our contacts at Pan Am, and there was no answer, so I walked down the tracks to find the general manager," Ross told WCVB-TV, which also reported that "[r]ailroad managers who refused to talk with reporters wouldn't talk to the town manager, either."

"We were dismayed, especially when he called the police to get me off the tracks," Ross reportedly said.

Pan Am Vice President Cynthia Scarano told the *Lowell Sun*, "If there was a regulation saying we had to, or we needed to [notify

Fortunately the train that derailed in Westford did not catch fire — it was the idling but unattended train on a spur in Newfields, NH that burned on February 25th. The *Herald* reported that an electrical fire "extensively damaged" a locomotive and boxcar. The fire was extinguished by Newfields and Newmarket fire fighters.

A meeting between Pan Am representatives and regional officials was scheduled for Wednesday at City Hall. Originally planned as a closed meeting, it was later opened to the public, provided that they hold their tongues. The Newington Planning Board will take up Sea-3's proposal again on March 10th.

The New Hampshire Gazette
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U.S. Department
of Transportation

**Federal Railroad
Administration**

Region 1

55 Broadway
Room 1077
Cambridge, MA. 02142

March 7, 2014

Town of Newington
Town Offices
205 Nimble Hill Road
Newington, NH 03801
Attention: Rick Stern, Chair, Newington Board of Selectmen

Dear Mr. Stern,

This is in further reference to your letter dated January 13, 2014 that expressed concerns related to Sea-3, Inc., which intends to have 12 cars of Liquefied Petroleum Gas (LPG) delivered daily to their facility. The facility is served by Pan Am Railways, who owns and operates the track. You asked the Federal Railroad Administration (FRA) to conduct an inspection of Pan Am's tracks between Rockingham Junction and the Sea-3 facility.

FRA has completed its inspection, which included a hi-rail vehicle inspection of the Portsmouth Branch from CPF 256 in Newfield, NH to the end of the track in Portsmouth, NH and the Newington Industrial track. The track is listed as Class 1 and is required to be inspected on a weekly basis by Pan Am to ensure compliance with 49 CFR Part 213 Federal Track Safety Standards. Review of the railroad's property maps found that the railroad right-of-way varies from between 100 feet to 70 feet, for the length of both the Portsmouth Branch and Newington Industrial track.

The track structure was covered with snow limiting the visibility to just the top of the rail. The inspection revealed four minor exceptions to the regulation. Pan Am was notified and corrective action was taken immediately.

Once the weather conditions permit it, FRA will return to conduct a re-inspection of the track. In addition, FRA is planning to conduct a survey of the track with one of our automated track inspection vehicles sometime in May 2014.

Thank you for bringing this safety matter to our attention.

Sincerely,

Janet Lee for
Les Fiorenzo
Regional Administrator

Newington Planning Board
Monday March 10, 2014 6:30 PM

Agenda

1) **Informal Discussion:** Update by Seacoast Growers Association to run a farmers' market at the Crossings.

2) **Public Hearings:**

A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

B) Proposal by Bruce C. Belanger for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.

C) Proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4.

3) **Curb Cut Application:** Request by Victoria & Ben Auger for a driveway off of Swan Island Lane, Tax Map 53, Lot 16.

4) **Request for Comments** pursuant to RSA 674:41 regarding a proposal by Great Bay Marine, Inc. to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

5) **Preliminary Discussions:**

A) Proposal by Westinghouse to place an office trailer at 25 Shattuck Way, Tax Map 19, Lot 14.

B) Proposal by American Medical Response to garage ambulances in the old Neslab paint shop, now owned by 25 Nimble Hill Road LLC, Tax Map 12, Lot 16.

6) **Planning Board minutes** of February 24

7) **Correspondence:** Letter to Tyco re: water line relocation

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, March 10, 2014

Call to Order: Chair Denis Hebert called the March 10, 2014 meeting to order at 6:32 p.m.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Christopher Cole; Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Steven Haight, Haight Engineering; John Killoy, Federal Railroad Administration Representative; Nick Cricenti, SFC Engineering; John Bohenko, City Manager for Portsmouth; David Allen, Deputy City Manager for Portsmouth; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Portsmouth City Councilors, Esther Kennedy and Stefany Shaheen; Senator Martha Fuller Clark; Portsmouth Residents: Joe Calderola; Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Jane Sutherland; Newington Residents; Nancy Cauvet; Jack O'Reilly; Melissa Prefontaine; Paul Reardon; Greenland Resident: Laura Bygero; Jeff McMenemy with the "Portsmouth Herald"; Doug LaRosa and Robert Stowell, Tritech Engineering; Attorney Dave Brown; Westinghouse Facility Manager, Fred Miller; David Choate with Choate International

1) **Informal Discussion:** Update by Seacoast Growers Association to run a farmers' market at the Crossings.

No one from Seacoast Growers Association appeared for this discussion.

2) **Public Hearings:**

A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, March 10, 2014

Chairman Hebert opened up the hearing and welcomed guests, introducing Portsmouth City Manager, John Bohenko who read a letter from Portsmouth Mayor Robert Lister who was not in attendance.

Chairman Hebert asked Ms. Cynthia Scarano, Pan Am Executive Vice President if it was true that Pan Am Railways intended to upgrade their tracks from Class I to Class II, but still keep to 10 mph. Ms. Scarano said that was correct that they intended on replacing approximately 10,000 ties and a number of cross ties. She said they were planning on upgrading to Class II, which could go up to 25 mph, but they were committed to staying to 10 mph. Chairman Hebert asked if there would be any reason to change the speed, and Ms. Scarano stated that they would not at this point though regulations allowed them to go up to 25 mph. Alternate Board member, Ms. Peggy Lamson asked Ms. Scarano to elaborate on her remark. Ms. Scarano replied that they didn't see any reason to go up to 25 mph at this point, but they couldn't guarantee that they would never go up to 25 mph. Chairman Hebert asked if they would stick to 10 mph for propane. Ms. Scarano said they would, but repeated that the regulations allowed them to go up to 25 mph.

Board member, Justin Richardson asked which portion of the tracks they would be traveling at 10 mph. Ms. Scarano stated that they would travel 10 mph from Rockingham Junction in Newfields to the Sea-3 Plant in Newington.

Chairman Hebert introduced John Killoy, Federal Railroad Association (FRA) Employee and Track Safety Administrator for the New England Region. Mr. Killoy said the FRA regulates the railroad and their partners to improve their tracks and employee safety.

Mr. Rich DiPentima of 16 Dunlin Way said the National Transportation and Safety Board made the recommendation that the transportation of hazardous routes be expanded to avoid populated areas. He said they were increasing the transportation of 20 propane tanks to 3,700 a year on the same route and wondered if the increase was consist with national increases. Mr. DiPentima then asked if twelve cars carrying propane were not considered hazardous materials. Mr. Killoy said the reports were for crude oil, but these cars would be carrying propane. Mr. DiPentima pointed out that they would be going through people's back yards.

Mr. Jeff Barnum, Great Bay and Piscataqua Water Keep said he understood DOT or FRA had not inspected the bridges, and Pan Am's inspection records were only available from the FRA by request. He asked if the FRA had looked at the records. Mr. Killoy said each railroad was responsible for their own bridges and several people would review those records with the railroad.

Chairman Hebert asked if there was any plan to follow up with the inspection findings. Ms. Scarano said both the bridges and the tracks have inspection schedules that were audited by the FRA. Chairman Hebert said he was under the impression that the FRA did inspections with DOT. Ms. Scarano said Pan Am did the inspections on an annual basis. Chairman Hebert asked if Pan Am did inspections and provided reports or if the FRA did the inspections. Mr. Killoy replied that they only had a few inspectors, but they did look at the structure of the tracks.

Mr. Richardson asked what it would take to upgrade the railroad track to a Class II status and if they submitted a capital improvement plan to the FRA for review or if it was an internal process. Mr. Richardson said he wanted it to be an approvable project, but he wanted to know how the process worked. Mr. Killoy said the railroad owns and maintains the track to whatever standards they set. Mr. Killoy said the tracks would be inspected after the upgrade was done. Mr. Richardson asked when the tracks would legally become Class II and if there was more than one way to upgrade. Mr. Killoy said it would all go together.

Chairman Hebert again asked at what point the tracks would switch from one class to the other and if Pan Am made that decision. Ms. Scarano said whatever they decided to do, they would have to meet the FRA's regulations. Chairman Hebert asked how they would know if they were at that level. Ms. Scarano stated that the tracks would be taken out of service or they would be fined if they didn't meat the FRA standards.

Chairman Hebert asked if they had a capital improvement plan and Ms. Scarano said they needed new ties and cross ties, but they would wait until they had the business before they made the upgrade.

Mr. Richardson asked who would pay for the upgrades and Ms. Scarano said they were privately owned and would pay for their own upgrades.

Mr. Richardson said a utility would have a rate agreement for improvements and asked if there would be a document to show the public a plan for what improvements would be made. Ms. Scarano stated that the last inspection was done in January and the track was not taken out of service. Mr. Richardson said it was his understanding that portions of the tracks were designated as "excepted". Ms. Scarano said cars could still travel on "excepted" tracks so they were meeting regulations. Mr. Richardson said they were being asked to take Pan Am's word even though there was no documentation. Ms. Scarano said the railroad was regulated and they didn't expect town officials to understand railroad design and engineering. Mr. Richardson said experts would clearly understand the operation best, but even utilities had to show plans for improvements, document details and show budgets for the municipalities they were in. Ms. Scarano said various plans were filed with the FRA, including drug testing, speeds, cars, analysis of town populations, etc. and the FRA could audit them. Mr. Richardson asked if they could see a copy and Ms. Scarano replied that they could provide a copy of the regulations that were required to obtain a Class II rail line status. Ms. Scarano said that report wouldn't be available because it was part of the track design. Mr. Richardson said there would always be a budget document, however. Board member, Bernie Christopher said he understood Pan Am was a private organization that didn't want to give out information, but he assumed they gave information to the FRA so wondered why the Town couldn't get that information from the FRA.

Chairman Hebert said it was his understanding that engineers went along the tracks and replaced bad ties as they were found. Mr. Killoy said someone marks the bad ties ahead of time and then someone is sent out to replace them, but no plans would be submitted because the rails were already there. Chairman Hebert said Pan Am went on record saying they would put in 10, 0000 ties and the FRA was supposed

to enforce the maintenance or they would be shut down. Ms. Scarano said the railroads had to stay within the regulations and they would be subject to fines if they didn't comply. Mr. Killoy said Pan Am owned the track, but the FRA did the inspection and that information was available through the Freedom of Information Act by request through the 96 Form.

Ms. Lamson asked Mr. Barnum, the Great Bay and Piscataqua Water Keeper for his comments regarding the bridge near the Great Bay Discovery Center. Mr. Barnum said the bridge was a wooden structure in the middle of nowhere crossing over the Squamset River at the head of Great Bay. He said he hoped the Board would continue to ask questions until they could get reports and plans for the bridge inspections. He said his understanding from DOT was that Pan Am had bridge inspection reports that were only available to the FRA and he was hoping they could get copies of those reports for review. Mr. Killoy said the FRA would audit their bridge inspections. Ms. Lamson said it was an extremely sensitive area and they needed to be concern for the estuary that went into the Great Bay water system. Mr. Killoy said the inspectors take their jobs seriously. Ms. Lamson said she took her job representing the Town of Newington seriously too. Mr. Barnum said the same inspection would be required for the bridge in Portsmouth near the State pier.

Mr. Matthew Nania of 18 Dunlin Way said he wanted a better understanding of the inspection process. He asked if they inspected the entire line or just a section, and asked how they could find deficiencies during their January inspection when the ties were covered by snow. Mr. Killoy replied that they don't expect any plans for repairs right after the January inspection when the tracks were covered with snow. He said the FRA inspectors typically make an appointment to go back after the snow melts in the month of May to look at ties that hold rails together. He said defects found during the inspections in January were repaired immediately, however.

Mr. Nania asked if the inspection recommendations were for the current standard. Mr. Killoy said it depended on the current class and if standards were not met, the class could be dropped down.

Ms. Laura Bygero from Greenland said the "Portsmouth Herald: asked the FRA for inspection records from Pan Am in December and wanted to know how responsive Pan Am had been. Mr. Killoy said those records could be obtained from Washington, DC through the Freedom of Information Act. Chairman Hebert said Newington had not submitted a request, but he understood that the "Portsmouth Herald" had. "Portsmouth Herald" representative, Jeff McMenemy said they had not yet heard back from the FRA. Ms. Bygero said letters had been sent to the senators asking for records to be released also. Mr. Killoy said the senators would have to go through the same procedures to request information as well. Chairman Hebert said he read the letter from the senators and didn't get the sense that they asked for safety records. Ms. Bygero asked if they would. Mr. Killoy said he would send Chairman Hebert the link and show him the process for requesting the information.

Ms. Catherine DiPentima of 16 Dunlin Way said everyone, Sea-3, Pan Am, and various representative from the cities and towns were saying they were concerned with safety and the Planning Board had an enormous responsibility for the expansion of

potentially explosive materials given that Pan Am had five incidents in last the month. She said her house was less than 100 feet from the railroad tracks. She said she was concerned for her family's safety and didn't think she was unique, that others with homes, families and businesses were also concerned. She said with such environmentally sensitive, densely populated residential and commercial areas, there was no reason not to conduct comprehensive studies. Mr. Killoy said the FRA didn't get involved in environmental impact studies.

Ms. Scarano said many goods moved through the country without incident. She said they had no deadlines or plans for any environmental impact studies, but some inspections were done weekly. She said Class I tracks were inspected once a month and Class II tracks were inspected twice a week.

Mr. Joe Calderola of Dennett Street asked if there were any FRA regulations prohibiting the railroad from releasing inspection audits from Rockingham Junction to Sea-3 over the last five years. Mr. Killoy s information could be obtained by going through the proper channels, but they would have to be specific.

Mr. Calderola asked when they did the last audit of Pan Am's internal inspection reports. Mr. Killoy said he thought they did an audit two years ago, but he couldn't remember for certain. Ms. Scarano said Pan Am just completed a hazardous material, a drug and alcohol and dispatchers audit. Mr. Killoy said the track and equipment inspection was done last spring

Mr. Calderola asked about the safety of the railroad crossings and the cause of a recent accident in Pennsylvania. Mr. Killoy said the crossings were set up for speed and a broken rail caused the accident in Pennsylvania. Mr. Killoy said Pan Am tests crossings, but the upgrades of approaches are from states & towns. Ms. Scarano said states and towns also pay for gates if they are on state and town roads. Mr. Killoy said the railroads sometime donate their labor.

Mr. Bob Gibbons of 135 Spinnaker Way asked Mr. Killoy if he was familiar with the local tracks. Mr. Killoy said he looked at map, but hadn't seen the tracks himself. Mr. Gibbons asked if he was familiar with where the area of "excepted" tracks was and what the limitations were. Mr. Killoy said he had seen the inspection reports and the track on a map, but had not seen the track himself. He said "excepted" tracks were different than Class I and a certain level of degradation was allowed. Mr. Gibbons said he had read that only five hazardous cars were allowed to travel at one time, but then he read a conflicting statement on the FRA website that said there could be a risk of derailment with this amount of hazardous material traveling through a populated area. Mr. Killoy said he thought he was referring to unitrains, but this was a Class I track and incidents were usually as a result of a wheel falling off. He went on to say that events were usually not very significant with propane transportation going about 10 mph. Mr. Gibbons said he thought that would depend how close and how many people were in relation to an incident involving hazardous materials. Mr. Killoy said he thought the tanks were very safe.

Mr. Gibbons asked what the time line was for repairs to the tracks and Mr. Killoy said the rails could be left as they are forever, but it would be in their best interest to upgrade them.

Mr. Lou Brown of 65 Laurel Court said the existing tracks that passed by his house were grandfathered even though they were on wetlands. He said concerns with freeze thaw cycles would be taken under consideration if new tracks were built there now. Mr. Killoy said the railroads put ballasts under the rails to stabilize and keep them from sinking and heaving in the interest of running the cars smoothly. For clarification, Vice-Chair Marconi said the area was dry before Mariner's Village was built.

Mr. Alhamdan Abdallah of 12 Dunlin Way said he was concerned with safety because the tracks pass by his backyard and his work place in Newington too. He asked if the propane tanks were required to be odorized. Mr. Killoy said the FRA inspects the tanks for safety appliances and structural integrity. He said odorizing depended on the customer and the product, for instance the product would not be odorized if used in a spray can,

Chairman Hebert asked Mr. Paul Bogan, Sea-3 Vice President of Operations to elaborate. Mr. Bogan said their product at the terminal was deodorized. He said propane could be labeled as deodorized when shipped, or equipment could be installed to deodorize it once delivered, and they hadn't decided yet which they would do. Board member, Jack Pare asked why they didn't use an odorizing agent in the refrigeration process. Mr. Bogan replied they didn't use an odorizing agent because it would congeal and cause the system to malfunction.

Mr. Abdallah asked if the FRA inspected tanks and how they rated them for safety and compliance. Mr. Killoy said the customers owned the cars, not the railroad, which just moved them, but they were inspected and typical defects were brake shoes or hand holds. Ms. Scarano added that they would tag a tank found with a defect so it couldn't be moved. Mr. Abdallah asked if Pan Am made sure the tanks cars were compliant. Ms. Scarano said they only did a visual inspection of the outside of the cars or tanks, but rest of the inspection would be up to the person who leased or owned the car.

Mr. Richardson asked if they would agree to put a note on the site plan that the railroad would be upgraded to Class II standards within a given period of time. Ms. Scarano said the capital plan was to upgrade over the coming summer. She went on to say that Sea-3 could put whatever they wanted on the plan, but Pan Am had no control over Sea-3 and they has no control over Pan Am. Attorney Alec McEachern, representing Sea-3 said the issue was that Sea-3 had no authority over Pan Am and couldn't put a condition that the railroad line be upgraded to Class II.

Mr. Richardson said the Board had to consider the health, safety and welfare of the public when reviewing the ordinance and regulations. Attorney McEachern said there was a lot of case law on the issue of jurisdiction and the ability of Planning Boards to regulate the operation of the railroads beyond their jurisdiction. He said he submitted a four page legal memo in reply to Attorney Christopher Cole's letter to the Board that came down to the Town having jurisdiction over what happens on Sea-3's site after Pan Am delivers the product, but Federal law had exclusive jurisdiction over the rails that brought the product to and from the site. Mr. Richardson said he read the cases and thought it was a valid point that the Board had the authority to approve or deny uses on Sea-3's property depending on the hazards to the surrounding community. He said the

only recourse they would have to protect the public's safety would be to deny the application. Attorney McEachern said it would be illegal to do so because the town did not have the authority to regulate railroad operations. He said they could only enforce their zoning in respect to Sea-3's property, and could not deny the application based on the railroad lines, which was under Federal jurisdiction only. Mr. Richardson said some of the cases ruled that towns were in their authority to deny an application when it did not comply with the zoning ordinance when considering the health, safety and welfare of the public. Mr. Richardson asked if they were to accept that there was a capital improvements plan to upgrade the railroad without any documentation. Attorney McEachern said they had to rely on Federal law in respect to their jurisdiction of the railroad.

Chairman Hebert said he understood what Attorney McEachern was saying in regards to Federal jurisdiction of the railroad lines, but asked if Sea-3 if they would be willing to tell Pan Am they would not accept LPG delivery by rail unless they brought the railroad lines up to safe standards. Attorney McEachern replied that they were suggesting another party besides the FRA regulate the rails and that was illegal.

Ms. Susan Parker of 23 Bayridge Road in Greenland asked if an environmental study be done and what the change of classification might do to the environment. Mr. Killoy said the railroad owned the tracks and it was in their interest to make the tracks stable. Ms. Parker said as a former executive for the Department of Labor she knew how regulations change over time based on new science. She said she thought she heard Mr. Killoy say senators had to go through the same process to obtain information from the Freedom of Information Act just as citizens did. Mr. Killoy said senators couldn't release information without going through the process. Ms. Parker said her experience was that if a Senator Harkin sent a letter, an answer would be expected.

Attorney Chris Cole, a representative for several citizens of Portsmouth said neither he nor his clients were trying to regulate the rails, but they were trying to help the Town regulate this site because it had important safety implications. He asked to look at site-specific questions and didn't think Federal law would agree that was the limit of the Planning Board's power. He said they also wanted to ensure the site could handle the ingress and egress of traffic with propane. Attorney Cole refered to his letter requesting a comprehensive study for the 20 million gallons of propane they were bringing in annually. Chairman Hebert said he planned on asking Pan Am those questions later as they progressed through the review of the proposal.

Mr. Lou Salomi of Spinnaker Way asked what it would take to get the rails to Class II and who would decide if the speed would stay at 10 mph or if it could go up to 25 mph. Mr. Salomi read from a study that said out of 40,000 incidents, there was no loss of product when the train's speed was less than 5 mph, but even at 10mph there was a great risk of damages.

Chairman Hebert asked Pan Am for clarification on whether they were only keeping their speeds at 10mph prior to an upgrade and when they would be upgrading. Ms. Scarano said Pan Am was there to answer questions, but repeated that they were

not before the Board looking for approval. She went on to say their construction season ran to frost, and if Sea-3 told them their proposal for expansion was approved and they were ready for operation, they would complete their rail upgrade in four to six weeks.

Mr. Richardson said it was his understanding that a Class I rail standard couldn't meet Sea-3's requirements to bring in propane. Ms. Scarano it was correct that they would need to upgrade to meet Sea-3's requirements for a sixteen car train, but she pointed out that Pan Am didn't need approval of Sea-3's building permit to travel seven days a week as a common carrier if a customer called for a pick up and delivery.

Mr. Richardson said it was a conundrum because the regulations said they had to determine there would be no impact on the public safety, and yet they were told they can't regulate the railroad. He said he heard them say they were upgrading to a Class II, but they had no agreement to keep their commitment. Ms. Scarano said towns did not make determinations as shown in case law. Vice-Chair Marconi asked if it would be their determination when they went up to 25 mph once they upgraded to a Class II and Ms. Scarano said that was correct.

A resident from Tidewater Farm Road in Greenland asked if there was any intention of exporting and Mr. Bogan explained that their main focus would be for domestic sales, but they might do some exporting in the summer when demands in the New England region were lower so long as they fulfilled their contractual domestic commitments. Mr. Bogan said they were requesting the installation of three additional towers with a future projection of two, but they didn't know if they would ever do that. Chairman Hebert said they would have to return to the Board for any additional expansion.

Mr. Barnum asked if there were any insurance requirements for propane carriers and Mr. Killoy said there were not. Mr. Barnum asked who would carry the insurance to cover accidents and Ms. Scarano said Pan Am had a considerable amount of insurance and Class II would have more coverage than Class I. Mr. Barnum said he thought the Planning Board would like documentation. Chairman Hebert said he knew Sea-3 had insurance and wanted to know what kind of insurance Pan Am had in case of a catastrophic event. Mr. Culliford said they had a $25,000,000 insurance policy and had significantly more, but they couldn't make a commitment because of market fluctuations. Attorney Ratigan said this was Sea-3's application, not Pan Am's application.

Mr. DiPentima asked Mr. Killoy to respond to his comment that there had been no accidents at 10 mph considering the American Railroad Institute's findings. Mr. Killoy said he wasn't familiar with that study, but he thought a derailment at 10 mph wouldn't be the same as at 40 mph. Mr. DiPentima said there was no ability to control when Pan Am went up to 25 mph and asked what kind of incident would happen at 25 mph. Mr. Killoy said tank car integrity was typically solid and accidents usually occurred when wheels fell off. Mr. DiPentima said he felt they were being told they wouldn't discuss the results of a catastrophic incident. Mr. Killoy said there could be a lot of variables, but Ms. Scarano said they would be staying at 10mph on a track that could handle 25 mph. Chairman Hebert said he knew the Federal government was reviewing railroad safety.

Ms. Melissa Prefontaine of McIntyre Road, Newington said they had discussed management plan costs and asked if there was any plan for education for local resources such as the fire and police departments to prepare in case of an emergency and how would pay for that. Mr. Bogan said they provided education to local fire, police and emergency responders over the years in case of accidents at the terminal as well as on the road. He said the Propane Gas Association of New England put together an emergency response document and twice a year they had three days of intensive training with live fire at the NH Fire Academy and in Massachusetts. Mr. Bogan said they have had discussions with the fire chief from Rockingham Junction who has been training his people for the project.

Ms. Prefontaine asked how they would mitigate a spill and Mr. Bogan said they did a little bit of environmental training during the program. Mr. Bogan said propane is a noncontaminent gas. Chairman Hebert added that propane evaporates.

Chairman Hebert said the meeting would continue on March 24, 2014 when the State would come in with more information on inspections.

Dr. Kozinski of Health Harbor on Deer Street said she had a sense that they cared for their customers and as a business owner, she found good will to be paramount, but was not hearing from Pan Am that they were concerned for people's safety. She said they were only seemed to be following the letter of law with limited regulations. She said the rail cars ran 5-10 feet from her parked car and there was a concern for her patients and employees.

Ms. Scarano said she was sorry that she felt that way and pointed out that they were regulated by agencies that knew the design of tracks and bridges and they were going beyond the regulations that were required of them. She said they were making a commitment to go below speed limits on other rails as well. Mr. Killoy said it was true that the FRA regulated a minimum standard, but railroads typically went above that standard, which was in their best interest.

Mr. Jack O'Reilly of Fox Point Road, President of Board of Trustees of Great Bay Stewards that was dedicated to the preservation of Great Bay said they were concerned with the effects that potential accidents and spills might have on Great Bay. He said their board generated a letter that was hand-carried to both senators in Washington, DC. He said they also sent a letter to the FRA who responded with the names of NH contacts, Mr. O'Reilly said he read that a Class I track had a certain site line, and asked if the site line would be met if the tracks were upgraded to Class II and traveled faster at 25 mph. Mr. Killoy replied that towns had to clear brush from crossings, but he didn't think there were any site line requirements. Mr. O'Reilly said that might be, but it stood to reason that a train could only go so fast on a blind curb, and Mr. Killoy agreed.

Ms. Jane Sutherland of 8 Dunlin Way said she lived 100' from the track. She said they heard a lot about track safety, upgrades and regulations. She then shared statistics from an FRA report that listed 140% increase in total accidents by Pan Am in 2013, a 200% increase in track caused incidents, a 166% increase in derailments, and a 200% increase in accidents with reportable damage of over$100,000. In the previous ten years there was an increase of over 2,400 cars carrying HAZMAT materials. She asked how that happened if all the cars were as safe as they were told, and the tracks

were inspected regularly then how did that happened and if it raised any concern for the review process. Mr. Killoy said he was not familiar with those statistics, but he knew there were people in Washington, DC that reviewed the statistics. He added that the more materials that were moved, the greater the likelihood that more things would happen.

Portsmouth City Councilor, Esther Kennedy of 41 Pickering Avenue, Portsmouth said she spent a lot of time on the Piscataqua River and was concerned with how the FRA looked at the pilings that the tracks crossed. She also encouraged to the Planning Board to ask Sea-3 put a safety plan together for all the surrounding communities. She said Portsmouth had a fireboat and asked where that fit in. Mr. Bogan said the Propane Gas Association put together an emergency response plan to cover the entire New England area that was distributed to every fire department in New England. Mr. Bogan said it was on the propane gas website and available for any fire dept to bring up on their computer in their fire track. Ms. Kennedy said she was looking for them to support the training and asked the Planning Board to make the agreement as part of their documentation.

Ms. Pat Ford of 135 Spinnaker Way asked for clarification on why Sea-3 was increasing the number of cars they were bringing in and Mr. Bogan explained that they were changing their supply to domestic from foreign import due to domestic market changes. Mr. Bogan explained that they were attempting to supply propane to the New England area at a more reasonable price. In response to further questions as to what was driving the need for site expansion, Ms. Scarano explained that the product didn't need to be chilled when it came in by ship, but did when coming in by rail.

Chairman Hebert asked if Pan Am owned the tracks on Sea-3's property and Ms. Scarano said they did not. Chairman Hebert then asked if the tracks on Sea-3's property were under their regulation. Mr. Steve Haight, of Haight Engineering said Sea-3 owned the existing rail siding, but Pan Am owned everything else. Chairman Hebert asked if Pan Am was responsible for the rail lines as they entered and left the property. Mr. Culliford, Counsel for Pan Am said regardless of who owned the underlying property or where the sidetrack was, all side tracks were regulated under the exclusive jurisdiction of the Surface Transportation Board.

Town Counsel, Attorney John Ratigan said he understood in order to have Federal jurisdiction the rail traffic had to be done by a licensed carrier on a railway, and thought the control of the rail cars shifted to Sea-3 when it was on their property and they were not a licensed rail carrier. Mr. Culliford said that was correct, but the jurisdictional statutes covered transportation by rail car and over sidings, facilities, grounds, yards and tracks that were necessary for transportation and operation regardless of ownership. He said even though those operations did not have licensing for rail operations, the rail operation was still under Federal jurisdiction.

Attorney Ratigan asked if that was independent whether or not there was agreement on the shift of responsibility and Mr. Culliford said that was correct. Attorney Ratigan asked for a description of how that would occur on the site physically once the cars were decoupled, the product was managed and handled by Sea-3 and then the cars were recoupled. Mr. Culliford said Sea-3 had a right to use the side rail as a

customer, but any attempt by a town to regulate Sea-3's ability to receive rail traffic with a cease and desist, then they would be out of their jurisdiction as was found in the case of the City of Winchester. Attorney Ratigan asked for a letter spelling out the basis for their exemption from town jurisdiction. Mr. Culliford said they already had in their reference to the City of Winchester decision and the customer had a right to request common carrier service by Federal law and any attempt to regulate would be a conflict. He said towns and states realized they couldn't regulate the rails so they had seen attempts to regulate end users, which still met the conclusion that railroads wouldn't exist anymore if they weren't allowed to service customers.

Vice-Chair Marconi asked how long it would take a train to stop at 10pm or 25 mph. Chairman Hebert said it would depend upon the mass Vice-Chair Marconi clarified the question by asking how long it would take to stop a sixteen car train. Ms. Scarano said she didn't know the answer, but was sure she could find it.

Chairman Hebert said was not sure they could satisfy everyone's desire, but he wanted to be sure everyone had a voice and that was why they invited a representative from the FRA to answer everyone's questions.

Chairman Hebert said it was important to bring in propane to the area, but they needed to do it safely. He said the propane would be delivered by another method like tractor trailer trucks if trains didn't do the deliveries and that would put twice as many propane trucks on the roads which would be a lot more unsafe. He said if they couldn't do it safely, then the Board wouldn't vote for it, so they needed more discussion. He said they also needed to resolve truck traffic coming out of Newington with the NH DOT and Sea-3 needed to supply data on where trucks parked, lined up and idled. He said he was very concerned with the condition of bridge crossings and wanted to hear DOT's response to that as well.

Chairman Hebert said he would check with fire chiefs to be sure the operation was as safe as possible and asked Pan Am if there was any training for fire fighters, as they exist. Ms. Scarano said they did classes for towns.

Mr. DiPentima said Section 2A of the site plan regulations said the Board could request safety studies and cold ask the applicant for reimbursement. Chairman Hebert said that was correct except they couldn't do studies on the railroad tracks that were under Federal jurisdiction. Ms. DiPentima asked about reviewing the impact to the wetlands and Chairman Hebert said the Board had no authority over the environmental impact of an existing railroad that was under Federal jurisdiction as well, but the Board would look into whatever controls they did have.

Chairman Hebert announced that the public hearing would continue on March 24, 2014.

B) Proposal by Bruce C. Belanger for a 3-lot subdivision at the corner of Nimble Hill Road and Fox Point Road, Tax Map 17, Lot 11-2.

This item was postponed until April 14, 2014.

C) Proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4.

Mr. Doug LaRosa and Mr. Robert Stowell with Tritech Engineering appeared before the Board on behalf of the owners. Mr. Stowell presented changes to their plans to configure the lots with a common drive, which has since been reconsidered. Mr. Stowell presented a new plan showing new driveway plans.

Mr. Richardson asked if their new proposal met all the criteria for street construction. Mr. Morgan reminded the Board that they needed to determine if the application was substantially complete before proceeding further. He went on to remind the Board that it was determined at the last meeting that the applicant needed to supply a copy of the deed and a letter from utilities.

Mr. Morgan said he reviewed the subdivision file and believed the application to be mostly complete although he had a couple of concerns with the design such as the drainage analysis that was for a shared drive, but not a street that would cause more hot top. Mr. LaRosa said the drainage study had been upgraded.

Mr. Richardson asked Mr. Morgan what the requirements were for the line of site from the curb cut. Mr. Morgan said the requirements called for 100 feet. Mr. Richardson expressed concern over additional traffic issues on that section of Nimble Hill Road. Chairman Hebert said that was a serious concern that they needed to review carefully. He wondered if it made sense for the curb cut to come off Nimble Hill Road or if it could go through the Town Hall parking lot. Mr. Pare said that would be a problem because the parking lot was not built to the same standard as Town roads.

Further discussion ensued regarding the line of site. Mr. Richardson said he wouldn't mind accepting the application as substantially complete, but they needed a study on the speed, safe stopping distance, line of site, traffic, etc. Chairman Hebert said it was up to the applicant to show the Board a study with the line of sight and then the Town's engineering consultant would review the study.

Chairman Hebert said the applicant would need to restore the stonewall if it was removed for the curb cut. Mr. Morgan said this was one of the most pristine historic properties in Newington with one of the most impressive stonewalls. He said ordinarily applicants were encouraged to have informal discussions before the Board before scheduling public hearings and he regretted that they had not because he had a few design concerns, one of which was where the road ingress was presented. Mr. Stowell said the problem was that they couldn't meet the site distance requirement if they put the driveway in another place.

Chairman Hebert recommended a site walk and to have a wetlands expert review the property because it appeared that they were trying to squeeze a lot of development into a very wet lot. Mr. Morgan said West Environmental had reviewed the property before, but they needed to look at the plan. He said Mr. West reviewed the lot three years ago and said it could support two lots, but not three.

Mr. LaRosa said the homes would be built on two knolls and there would be adequate drainage. Mr. Stowell said they did test pits highlighted the wetlands. Chairman Hebert said he understood subdivisions and land development was about a person making a living, but some of the land was marginal and he wanted to make sure developments were sustainable and livable.

Mr. Richardson said the statute said the Board had to vote to accept the application as substantially complete or not before going further. Chairman Hebert said they would normally have a work session prior to a public hearing. Mr. Pare said they had not received enough information and he was not comfortable in making a decision yet. Mr. Christopher said his main concern was with the site lines over the hump on Nimble Hill Road.

Mr. LaRosa and Mr. Stowell told the Board they had presented a subdivision plan with drainage, house placement, septic and wetlands and asked why they were being delayed. Chairman Hebert said a lot of paperwork had been done, but it had not been presented to the Board for review. Further discussion ensued whether the application was substantially complete, and how the Board should proceed. Mr. Richardson agreed that he didn't like the way the developer presented the application, and the Board could disapprove, but in a nutshell it looked substantially complete.

Chairman Hebert said they could continue the hearing next month after they did a site walk and had West Environmental and their engineering consultant review the plan. Mr. Richardson said the application was submitted on March 7, 2014 and they had to make a decision if the application was substantially complete before 30 days was up. Chairman Hebert said they still didn't have enough information to make a complete decision to approve he proposal however.

Rick Stern moved to accept the proposal by the Estate of Paul J. Beane for a 3-lot subdivision at 233 Nimble Hill Road, Tax Map 17, Lot 4 as substantially complete. Bernie Christopher seconded and all were in favor.

Chairman Hebert continued the public hearing to April 14, 2014.

3) **Curb Cut Application:** Request by Victoria & Ben Auger for a driveway off of Swan Island Lane, Tax Map 53, Lot 16.

Victoria and Ben Auger postponed this application for a later date.

4) **Request for Comments** pursuant to RSA 674:41 regarding a proposal by Great Bay Marine, Inc. to obtain a building permit to construct a residence off a private road, Tax Map 6, Lot 5.

Attorney Dave Brown appeared before the Board on behalf of Great Bay Marine President, Ellen Griffin to build on a vacant residential lot.

Attorney Brown said they reviewed the history and did some title work so they could sell the lot. He said there was plenty of acreage and 500 ' frontage. He said it had been taxed as a buildable lot since 1973 and a subdivision plan with a private road was approved in 1977. He said the private road would have straight site lines and low traffic.

Chairman Hebert asked why the Board of Selectmen were involved. Attorney Brown said it was required by State statute. Mr. Morgan said the Board's function was to review and comment. Mr. Richardson asked if they should have gone to the Board of Selectmen first. Additional discussion ensued whether the road was a Class 6 road or not. Mr. Morgan said it had been determined to be a private road.

Chairman Hebert suggested Attorney Ratigan review the application for a correct interpretation with Mr. Richardson and then go ahead to the Board of Selectmen once everything was in place except the utilities and perk tests, the siting and well.

Mr. Richardson said at some point the fire chief would need to determine if a fire truck could gain access. Mr. Stern said he wasn't sure if that was required if it was a private road. Mr. Richardson said the statute said the applicant would have to waive emergency access if approved. Mr. Morgan said the applicant could tell the Board of Selectmen that the applicant had been paying taxes for many years. Mr. Richardson said Attorney Ratigan should explain further. Chairman Hebert suggested that a surface for a fire truck be able to gain access, and a turnaround would be a factor. Attorney Brown said the fire chief would need to look at the road. Mr. Richardson asked that they bring in the deed and the right of way agreement.

5) **Preliminary Discussions:**

A) Proposal by Westinghouse to place an office trailer at 25 Shattuck Way, Tax Map 19, Lot 14.

Westinghouse Facilities Manager, Fred Miller came before the Board requesting approval for an office trailer for office space for visiting foreign nationals outside of the main building. He said the building would be three feet off the main building facing Shattuck Way. He said they planned on having a small transformer, self-contained with a restroom with a water holding tank that would be pumped weekly. Vice-Chair Marconi said they wanted to make sure no one would be spending the night. Mr. Miller said no one would be spending the night, but someone might work at night.

Mr. Miller said it would be a standard William Scotsman trailer in use for a period of 24 months. Vice-Chair Marconi said the ordinance normally allow trailers beyond a year. Mr. Morgan recommended that the Board take no jurisdiction because the alternative would be to notify abutters.

Chairman Hebert said permits were based on square footage and asked if the building inspector was aware of the application and would charge accordingly. Vice-Chair Marconi said they also needed to inform the building inspector that they would be there for two years. Mr. Richardson said they could recommend that the building inspector allow a temporary use. Chairman Hebert said that was what take no jurisdiction meant. Mr. Stern said that could mean longer than 24 months. Mr. Morgan

asked Mr. Miller if he would write the Board a letter that said the trailer would not remain on the site longer than 24 months, and Mr. Miller said he would.

Vice-Chair Marconi moved to take no jurisdiction on the proposal by Westinghouse to place an office trailer at 25 Shattuck Way, Tax Map 19, Lot 14. Bernie Christopher seconded and all were in favor of the motion.

B) Proposal by American Medical Response to garage ambulances in the old Neslab paint shop, now owned by 25 Nimble Hill Road LLC, Tax Map 12, Lot 16.

Mr. David Choate reminded the Board that New England Parts had purchased the building at 25 Nimble Hill Road from Thermo Fisher Scientific and Thermo had leased back 3,500 s.f. for their remaining operation. He said New England Parts ended up moving to another location and was now trying to lease out more space to another tenant, akin to the way Allard Park did to tenants.

Mr. Roland said they planned on using the space to house five to six ambulances and three to four wheelchair vans for their service which transported patients from one medical facility to another, 3-4 wheelchair vans. He said it was a 24 /7 operation of overnight services, primarily transported patients to Portsmouth Regional Hospital.

Mr. Morgan said he considered one of the permitted uses in the office district was storage.

Chairman Hebert asked if the vehicles would be stored inside. Mr. Roland said the State of NH required that all ambulances be housed inside, but the wheelchair vans might be housed outside. Chairman Hebert asked if they would use exhaust or ventilation systems and Mr. Roland said they were looking at both.

Mr. Richardson asked if they needed a variance and Chairman Hebert said they already received a variance when New England Parts Warehouse applied for the space.

Mr. Stern asked how long the shifts would be and Mr. Roland said there would be eight, ten and twelve hour shifts over 24 hours. Mr. Stern asked if anyone would be sleeping there and Mr. Roland said they would not.

Mr. Choate addressed the parking and presented a plan. Chairman Hebert said he would like to see something to scale to show how fire trucks could get in and out. Mr. Choate said the fire chief was there and he had no problems. Mr. Morgan passed out a letter from the fire chief.

Chairman Hebert asked that they put their plans together and work with Mr. Morgan. He said the earliest they could schedule a public hearing would be on April 7, 2014 at the earliest.

Minutes:

Vice-Chair Marconi moved to accept the minutes of February 24, 2014 as corrected. Rick Stern seconded and all were in favor.

Adjournment: ***Rick Stern motioned to adjourn. Bernie Christopher seconded, and all were in favor. The meeting adjourned at 10:35 p.m.***

Next Meeting: Monday, March 24, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

(The Board approved these minutes on March 24, 2014 with minor corrections.)

SUMMARY OF SEA-3 SITE PLAN FOR FACILITY EXPANSION

Location

Sea-3's Newington Terminal is located at 190 Shattuck Way in Newington, New Hampshire, on two parcels zoned Industrial and Waterfront Industrial. The terminal currently receives liquefied propane in refrigerated vessels and propane gas in pressurized railcars, stores the liquefied propane in two on-site storage tanks, then heats and odorizes the propane as the gas is loaded into transport trucks for delivery to propane dealers and suppliers across New England. For 38 years, Sea-3 has provided approximately half of all of the propane used by schools, homes and businesses in New England.

Facility Expansion

Sea-3's Site Plan, prepared by Haight Engineering, illustrates the site improvements and additional facilities necessary to provide for an increase to the terminal's existing railcar off-loading capacity. The facility expansion will include:

- Upgrades to the existing railroad siding
- Installation of a new railroad siding with 5 pads to accommodate up to 10 rail cars
- Installation of three 90,000-gallon above-ground storage tanks
- Associated chilling and pumping equipment
- Additional security lighting integral to the equipment towers
- Additional fencing
- A second means of access to the site for emergency vehicles

As part of the Planning Board's review process, the Site Plan has been reviewed by the Planning Board's outside consultant, SFC Engineering Partnership (SFC). SFC has indicated that the site plan is in general compliance with NFPA 58 and 54 and presents no significant fire safety issues. The Site Plan has also been submitted to the New Hampshire Department of Environmental Services for review for both a Shoreland Protection Permit and an Alteration of Terrain Permit. Both State permits have been issued. Light, glare, odors, noise and vibration will be consistent with current operational levels and will not impact abutting properties or public highways or streets. All improvements are consistent with the existing use of the site.

Fire Safety Analysis

Sea-3 hired Philip R. Sherman, P.E. to conduct a fire safety analysis in accordance with the New Hampshire State Fire Code, which references NFPA 58, Liquefied Petroleum Gas Code. The analysis will be completed in two phases, first at the site planning level, then a review of the final design. The site planning review determines that the proposed layout complies with NFPA 58. Highlights of the site planning analysis include:

1. The existing site water mains provide sufficient fire protection water to serve the proposed improvements. Approximately 3,400 gallons per minute is available and fire hydrant locations will be revised as required.

2. Two means of fire department access will be provided to this portion of the site.

3. Various redundant fail-safe provisions and low emissions transfer equipment are provided.

4. Tank and rail car locations comply with NFPA 58 requirements.

5. Fixed water spray will be provided for rail car stations and fixed tanks, providing efficient application of fire protection water and improved protection over that present for existing rail car stations. Minimal fire department resources will be required to cool tanks, as fixed systems will be used.

The final fire safety design review will be completed after the Site Plan has been approved and engineering completed.

Truck Traffic Assessment

Sea-3 hired Dr. Kim Hazarvartian of TEPP LLC, a transportation-engineering, planning and policy consulting firm, to prepare a Traffic Assessment Memorandum (TAM) of the site's historical and future truck traffic volume. Sea-3 records from 2002 to present show a range of 103 to 161 transport trucks per day during the peak month (January or February) of truck operations. TEPP LLC's TAM determined:

1. The Site Plan to expand the number of railcars that can be unloaded will not expand the number of trucks that can be loaded (limited to a maximum of ten trucks per hour), so truck traffic is not anticipated to exceed the historical range.

2. Transport trucks leaving the site will travel southeasterly along the site driveway, turn right to travel southwesterly along Avery Road, then split at Shattuck Way. Trucks will turn right to travel northwesterly toward the Spaulding Turnpike and inland points, or turn left to travel southeasterly toward the Spaulding Turnpike, I-95 and coastal points.

3. The Town's Shattuck Way corridor study included traffic counts over a large study area, as well as traffic growth due to potential area development; the Sea-3 facility was operational during the traffic study period. The area road network accommodates a wide range of large trucks, and LPG-transport trucks pose no significant traffic issue.

4. Sea-3 reports no significant history of truck safety issues, and literature review did not show significant traffic safety issues specific to LPG-transport trucks.

Emergency Response Training and Equipment

The Propane Gas Association of New England offers free 3-day training classes for Emergency Responders throughout New England, with a free One-day Refresher class on the third day. Classes are conducted at the Massachusetts Firefighting Academy in Stow, MA and at the New Hampshire Fire Academy in Concord, NH.

PGANE has also developed a "Propane Emergency Response Plan" that first responders across New England can utilize to supplement their own department's Emergency Response Plan.

Sea-3 has provided firefighting equipment and on-site training/drills to the Newington Fire Department, and conducted emergency response exercises with the U.S. Coast Guard.

Site Safety and Security

Sea-3 operates an on-site Control Room that is manned 24/7/365. Sea-3 has conducted a Process Hazard Analysis of its on-site operations that meets or exceeds all requirements of the Occupational Safety and Health Administration, and maintains a Risk Management Plan for its site that meets or exceeds all requirements of the U.S. Environmental Protection Agency under the Clean Air Act. Sea-3 has developed a Facility Security Plan that meets or exceeds all requirements of the U.S. Coast Guard under the Maritime Transportation Security Act. The required safety and security plans have been prepared in accordance with applicable laws and have been approved as meeting all legal requirements.

Railcar Safety

Sea-3 has been safely receiving propane railcars for all 38 years of the terminal's operation. With the expansion of the facility, rail service would increase from an average of three trains per week to six trains per week (one train per day) pulling six to twelve propane railcars per train.

Under federal rail safety standards, propane is only transported by rail in DOT-112 tank cars which have shelf couplers, safety shields and thicker steel shells and heads (the two ends of the tank car) to prevent damage or puncture if derailed, plus thermal protection outside the railcar shell to insulate against any fire.

During the past 38 years, Sea-3 has had no propane releases that caused an explosion, fire, or off-site impact from DOT-112 rail cars being transported to or unloaded at its Newington terminal.

Neither the Newington Planning Board nor Sea-3 has the authority to require Pan Am Railways to participate in a comprehensive safety or environmental impact study of the Pan Am tracks running from Newington to Rockingham Junction, since the Federal Railroad Administration has exclusive jurisdiction over railroads, preempting local and state regulations and oversight.

SHAINES & MCEACHERN, PA
Attorneys at Law

Hand-Delivered

March 10, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Mr. Hebert:

On behalf of my client Sea-3, Inc. (Sea-3) I wish to respond to Attorney Christopher Cole's letter to the Board dated March 6, 2014. In his letter on behalf of his clients, Portsmouth residents Richard and Cathy DiPentima, Attorney Cole asserts that the Board has jurisdiction over the rail operations of Pan Am Railways (Pan Am) and he urges the Board to require a comprehensive report on impacts from increased rail operations by Pan Am. In support of his claim of jurisdiction over Pan Am's rail operations, Attorney Cole mischaracterizes the prior proceedings before this Board and misreads the applicable federal law.

On pages 2 and 3 of his letter, Attorney Cole asserts that the proponents of this project have maintained that this Board lacks jurisdiction over Sea-3's property. This claim is inaccurate. Sea-3 voluntarily invoked this Board's jurisdiction over its property by filing its application for site plan approval. No one who has participated in this permitting process has ever asserted that the Planning Board lacks jurisdiction over Sea-3's property.

The cases cited by Attorney Cole are apparently intended to prove that the Board has jurisdiction over Sea-3's property. This issue is not in dispute; moreover the cited cases confirm the legal conclusion that this Board's jurisdiction stops where Pan Am Railways' railroad operations begin.

In *New York & Atlantic Ry. Co. v. Surface Transp. Bd.*, 635 F. 3d 66 (2011), the United States Court of Appeals for the Second Circuit upheld the Surface Transportation Board's decision that Coastal Distribution, LLC - a facility operator engaged in the processing and loading of construction debris onto rail cars - was subject to local zoning regulations. As stated by the Second Circuit:

> It is well settled that 'Congress has exercised broad regulatory authority over rail transportation.' *Island Park, LLC v. CSX Transp.*, 559 F. 3d 96, 102 (2d Cir. 2009). Congress chose to vest the STB [Surface Transportation Board] with exclusive jurisdiction over 'transportation by rail carriers,' and it is 'uniquely

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> qualified' to determine whether state law is preempted by Section 10501(b). *Green Mountain R. R. Corp. v. Vermont*, 404 F. 3d 638, 639-43 (2d Cir. 2005) (internal quotation marks and citation omitted).

Id. at p. 70. In seeking the benefit of preemption in the New York case, the rail carrier and the facility operator argued that the facility was operated under the control of the rail carrier, which would have resulted in preemption under ICCTA. In rejecting this argument, the Second Circuit relied on the STB's finding that, "[u]nder the parties' agreement, NYAR's responsibilities and liability for the cars end when they are uncoupled at the Farmingdale Yard and resumes when they are coupled to NYAR's locomotive." *Id.* Preemption ends when a rail carrier uncouples the cars at an independent facility operator's property and it resumes when the rail carrier picks the cars up.

Similarly, in *Florida East Coast Ry. Co. v. City of West Palm Beach*, 266 F. 3d 1324, 1338 (2001), the United States Court of Appeals for the Eleventh Circuit ruled that Rinker Materials Corporation, as the operator of an aggregate distribution facility on land leased from the Florida East Coast Railway Company, was subject to local zoning regulations. ("[W]e conclude that the application of the ordinances against Rinker, based on the facts found by the district court, does not qualify as "regulation of rail transportation" and does not frustrate the objectives of federal railroad policy.")

In the case of *In re Vermont Railway*, 171 Vt. 496, 497 (2000), Vermont Railway acquired a piece of real estate containing "antique shops, a roofing company, metal works, storage facilities, a salt shed and semi-tractor storage." Vermont Railway argued that the application of local zoning to its salt shed was preempted by ICCTA because it was a rail carrier. In rejecting this claim, the Vermont Supreme Court noted that the trial court, "appears to have drawn the line between conditions that purported to regulate the operation of the railroad, including the transport of goods by the railway, and conditions that merely regulated activity regarding motor vehicles coming and going from the facility and the storage of materials at the facility." *Id.* at p. 503. As evident from the court's observation, any attempt by the local government to regulate the operation of the railroad would have impermissibly crossed the preemption line.

The case of *Iowa, Chicago & Eastern R. R. Corp. v. Washington County, Iow*a, 384 F. 3d 557 (2004) stands for the isolated proposition that a particular Iowa statute governing funding for the replacement of bridges fell under the realm of the Federal Rail Safety Act (FRSA), for purposes of preemption analysis, and not ICCTA.

These cited cases provide no authority for the proposition that a local land use board may regulate railroad operations under ICCTA as a proper exercise of their police powers, either in conjunction with a third party's land use application or otherwise. As noted in *Fayard v. Northeast Vehicle Services, LLC*, 533 F. 3d 42, 47 (1'st Cir. 2008) (quoting James Riffin –

Petition for Declaratory Order, 2008 WL 1924680 (Surface Transp. Bd. May 1, 2008)), "[T]he courts and the Board have found that any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad its ability to conduct its operations or to proceed with activities that the [STB] has authorized, is preempted . . . ." *See also, A & W Properties, Inc. v. Kansas City Southern Ry. Co.*, 200 S. W. 3d 342, 347 (Tex. App. 2006) ("Congress made no blanket exception for a state's police power when describing the ICCTA's preemptive scope. And a careful reading of the cases on which A&W relies makes clear that courts have not read such a categorical exception into the ICCTA. Instead, where cases have made reference to a state's police power in the course of ICCTA preemption analysis, the premise for the discussion is inevitably that the state retains its traditional police power in terms of public health and safety **except where the state's actions regulate rail transportation**.") [Emphasis added.]; *Joint Petition for Declaratory Order—Boston and Maine Corporation and Town of Ayer, MA,* 2001 WL 458685 (finding that the Town was using federal environmental laws as a pretext to impermissibly regulate railroad facility.); *Friberg v. Kansas City Southern Railway Co.*, 267 F.3d 439 (2001) (Finding that *direct regulation* of rail carrier operations is not permissible and preempted by the ICA).

When it comes to the operation of trains, federal law provides firm, clear guidance on the extent of the STB's jurisdiction:

> **(b) The jurisdiction of the Board over--**
>
> **(1) transportation by rail carriers**, and the remedies provided in this part with respect to rates, classifications, rules (including car service, interchange, and other operating rules), **practices, routes, services, and facilities of such carriers**; and
>
> **(2)** the construction, acquisition, **operation**, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,
>
> **is exclusive**. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

49 U.S.C. §10501(b) (Emphasis added.) As noted by one court, "It is difficult to imagine a broader statement of Congress's intent to preempt state regulatory authority over railroad operations." *CSX Transportation, Inc. v. Georgia Public Service Commission,* 944 F. Supp. 1573 (1996).

Attorney Cole's letter ignores relevant language from the decision cited by Pan Am previously, in which the STB noted that:

> "In interpreting the reach of § 10501(b) preemption, the Board and the courts have found that it prevents states and localities from intruding into matters that are directly regulated by the Board (e.g., railroad rates, services, construction and abandonment). It also prevents states or localities from imposing requirements that, by their nature, could be used to deny a railroad's ability to conduct freight operations. Thus state or local permitting or preclearance requirements including building permits, zoning ordinances, and environmental and land use permitting requirements are preempted."

Boston and Maine Corporation and Springfield Terminal Railway Company—Petition for Declaratory Order, S.T.B. Docket No. F.D. 35749 (2013).

By inviting the Board to order a safety assessment of Pan Am's rail operations, Attorney Cole is asking this Board to regulate railroad operations. This Board should reject any invitation to regulate Pan Am's rail operations as part of this permitting process as any such attempt would be preempted under federal law by ICCTA.

Respectfully Submitted,

By: _____
Alec L. McEachern

Cc: Thomas Morgan, Planner
Paul Bogan, V. P., Sea-3, Inc.
Stephen Haight, P. E.
Cynthia Scarano, Pan Am Railways
Christopher Cole, Esq.

FACTS ABOUT SEA-3 AND ITS NEWINGTON PROJECT

Sea-3

Sea-3 is the largest supplier of liquefied propane gas (LPG) in the northeastern United States. Sea-3's propane terminal located in Newington, New Hampshire provides half of the propane consumed in the New England area each year. The Newington Terminal receives propane by vessel and rail for distribution by truck to propane dealers and suppliers. Propane is used in private homes, schools, hospitals, nursing homes, shopping malls, hotels and other businesses.

As a vital link to the Northeastern energy market, Sea-3 provides a critical energy source for homes and businesses that are not connected to a natural gas utility network. Propane provides a practical and environmentally-friendly alternative to increasing electricity prices and unstable heating oil prices. Propane is one of the most clean-burning of all fossil fuels.

Sea-3 Newington Project

Built and opened for business as an import propane facility in 1975, the Newington facility historically imported propane from the North Sea, Middle East, Venezuela and North Africa. In recent years, there has been a lack of propane supplies from overseas. At the same time, domestic U.S. propane prices have declined rapidly primarily due to increases in U.S. propane supplies. As a result, the price spread of U.S.-produced propane versus foreign-produced propane widened so drastically that Sea-3's long-standing business model of importing propane on oceangoing vessels to meet local propane demand ceased to be viable. However, instead of closing the terminal and laying off workers, Sea-3 continued to pay taxes and retained all of its employees while it searched for other means of providing propane to New England homes and businesses.

Unfortunately, domestic propane cannot be delivered to Newington by vessel because of the Jones Act, which prohibits non-U.S. ships from transporting cargoes between the country's ports. See attached Bloomberg article entitled "Frozen East Coast Pays as Law Blocks Cheaper Fuel Flows" dated Feb 28, 2014. There are no U.S. built and flagged vessels capable of delivering propane in sufficient quantities to supply the New England market. Nor is there any realistic prospect that the Jones Act will be repealed. Historically, waivers of the requirements of the Jones Act are impossible to obtain. Therefore, in order to meet the supply challenges created by propane market changes and to keep its Newington facility open, Sea-3 is applying for permits to retrofit the Newington facility to facilitate the receipt of U.S. produced propane by rail. Sea-3's permit application will meet or exceed all Site Plan Review requirements.

The Project would allow propane produced from oil shale to be received and stored for local distribution throughout the region – propane which would not otherwise be available. The propane will be shipped by railcar at an ambient temperature and then chilled to the required temperature for liquid storage in Sea-3's existing refrigerated storage tanks. Historically, these refrigerated storage tanks have enabled Sea-3 to store propane for distribution to homes and

businesses across New England during the high-demand cold winter months, thereby securing a critical supply of propane for our region.

The Project will improve the current imbalance of supply and demand created by the lack of international supply. With the resulting increase in supplies of U.S. produced propane, consumers and other propane users in the region will benefit from lower propane prices.

As we are all aware, the lack of available propane supplies to meet the demands of our New England community during this extremely cold winter has reinforced the importance of this Project. Although Sea-3, through tireless efforts, reacted this winter as quickly as it could to secure and import large quantities of foreign produced propane, the availability of a steady supply of domestic propane shipped by rail car to the Newington terminal will help resolve the supply and logistical bottlenecks experienced during peak propane demand periods, ease supply and demand imbalances and help to avoid shortages in times of need.

The Project will allow Sea-3 to have propane on hand for its customers and the community during periods such as this winter when it is desperately needed. If Sea-3 is unable to enhance its terminal to allow receipt of domestic propane by rail, both the long term viability of the terminal and the availability of this critical energy source for thousands of New England families will be placed in serious jeopardy.

Rail Operations and Infrastructure

We recognize and appreciate the concerns from the local community with regard to the rail infrastructure and increased rail operations. All of our terminal's employees live in these same surrounding communities. During all 38 years that Sea-3 has been operating the Newington terminal, safety has always been our top priority.

Sea-3 has been safely receiving railcars at the Newington Terminal for all of its 38 years of operation. With the expansion of the facility, rail service would increase from an average of three trains per week to seven trains per week (one train per day) pulling six to twelve propane tank cars per train.

Under federal rail safety standards, propane is transported by rail in DOT-112 tank cars, specially designed with the latest safety features for carrying pressurized gases. DOT-112 rail cars have shelf couplers, safety shields and thicker steel shells and heads (the two ends of the tank car) to prevent damage or puncture if derailed, plus thermal protection outside the railcar shell to insulate against any fire. Unlike non-pressurized DOT-111 tank cars, DOT-112 cars do not have bottom outlet valves, which have been criticized as prone to failure in derailment accidents. The fire chiefs for both the Town of Newington and the City of Portsmouth have expressed their support for rail service to Sea-3 as the safest mode of transportation.

Propane is <u>not</u> carried in DOT-111 tank cars, as has been mistakenly reported in some media reports and websites. DOT-111 tank cars are used to carry only non-pressurized liquids such as crude oil. DOT-111 cars lack the extensive safety features of the DOT-112 cars. There have been concerns raised about DOT-111 tank cars, and their use to carry crude oil is currently under

review by the Federal Railroad Administration which enforces rail safety standards nationwide. No such concerns have been raised about DOT-112 cars.

Sea-3 takes pride in its exemplary record of safety and expects the same from all of its service providers, including the railroads which serve Newington. Pan Am Railways has been an active and supportive participant in the Sea-3 Newington Project, and has voluntarily provided information about its weekly track inspections, annual ultrasonic testing, and its commitment to upgrade its tracks and railroad crossings where needed.

Sea-3 knows safety is also of paramount importance to Pan Am, so we will continue to work with Pan Am in the future to make sure that all rail deliveries to the Newington Terminal are handled as safely as possible.

Cynthia Scarano, Executive Vice President of Pan Am Railways has been involved with the Project since its inception and has been an active participant at the many planning board meetings for this Project. She continues to remain available to answer your questions regarding rail infrastructure and safety.

Facts about the Sea-3 Newington Terminal:

Overview:

- Operations in Newington began in 1975 on an 11-acre site
- Facility abuts Piscataqua River, 6.5 miles upriver from Sea buoy 2KR
- Site handles up to 175 million gallons of liquefied propane annually
- Product historically imported from North Sea, Middle East, Venezuela and North Africa
- 2 on-site tanks can store up to 560,000 barrels of refrigerated propane

People:

- Experienced 16-person staff operates the terminal on a "24/7" basis every day
- All employees receive extensive, hands-on training in both Operations & Safety
- Staff required to attend Massachusetts Firefighting Academy every 3 years
- Personnel experienced in operating state-of-the-art equipment & technology
- Member of National Fire Protection Association & American Petroleum Institute

Operations:

- Liquefied propane arrives via refrigerated vessel or pressurized railcar
- Product from either a vessel or railcar is pumped into on-site tanks for storage and further distribution into New England
- Refrigerated propane is pumped from the on-site tanks, heated and then odorized as it is loaded into transport trucks
- Truck and railcar racks capable of loading up to 2 million gallons of propane daily
- All loading, unloading and storage activities are highly automated

Facts about Propane:

Propane is a safe and environmentally-friendly product with 20 billion gallons consumed annually by homeowners, businesses and industries across the United States.

OVERVIEW

- Considered one of the most clean-burning of all fossil fuels
- Listed as an approved, alternative clean fuel in federal laws like1990 Clean Air Act
- Non-toxic, non-poisonous product which is stored as a liquid and consumed as a gas
- Heats water at one-half the cost of electricity, making it economical and efficient

HISTORY

- Developed in 1912 by a chemist puzzled by vapors leaking from a Ford Model-T
- Derived from natural gas processing (59%) or crude oil refining (41%)
- Initially used in home stoves to cook food; first propane-fueled car ran in 1913
- Ethyl Mercaptan added as an odorant to quickly and safely detect leaks

HOMEOWNERS

- Used by over 14 million families to fuel furnaces, heaters, grills, fireplaces and dryers
- Fuels equipment for 600,000 farmers, including dryers, generators, & pumps
- Distributed to homes and farms via buried pipelines or portable storage tanks
- GAS Check™ program teaches homeowners safe handling and maintenance tips

BUSINESS & INDUSTRY

- Used in schools, hospitals, nursing homes, shopping malls and hotels
- Fuels buses, taxis, trucks and similar fleet vehicles for government and industry
- Is a feedstock for end products made by petrochemical plants such as plastics
- Is a fuel source for industrial space heating, cutting and soldering treatments

Facts about Security and Safety:

Sea-3 stresses security and safety throughout our terminal operations. Sea-3 has been operating the Newington Terminal for over 38 years and safety has always been our top priority in supplying propane consumed in the New England area. This fact is proven by our ongoing record for excellent performance in security, safety and emergency preparedness procedures.

Security

- ☐ Security Plan exceeds 2002 Maritime Transportation Security Act requirements
- ☐ Extensive investments continue in security planning, surveillance, & training
- ☐ US Coast Guard escorts & closely monitors vessels traveling anywhere on river
- ☐ Federal & state agencies provide steady intelligence information to area industry
- ☐ Security sensitivity of site operations remains focused priority for all personnel

Safety

- ☐ No explosions, fires, fatalities, or major environmental incident in 30+ years
- ☐ Refresher training ensures employee compliance with stringent safety rules
- ☐ State-of-the-art vapor & fire detection systems continuously monitor equipment
- ☐ Control room directly connected to local responders via communication links
- ☐ Assisted government/industry panel in boosting propane safety guidelines

Emergency Response

- ☐ Supervisors receive specialized training in emergency response & preparedness
- ☐ 16-foot high protective berms completely surround product storage tanks
- ☐ Fire pump can spray up to 2,000 gallons of water per minute anywhere on site
- ☐ Regular drills refresh response skills of terminal personnel & emergency crews
- ☐ Experienced contractors available "24/7" for specialized response skills

Bloomberg

Frozen East Coast Pays as Law Blocks Cheaper Fuel Flows

By Natasha Doff and Naomi Christie - Feb 28, 2014

As freezing weather drained stockpiles of propane to their lowest seasonal level in two decades on the U.S. East Coast this month, shivering New Englanders couldn't tap abundant supplies sailing out of Texas. They had to look 4,000 miles away to more-expensive heating fuel from Europe.

The reason? The Jones Act, a 94-year-old law that prohibits non-U.S. ships from transporting cargoes between the country's ports. With pipelines full and not a single eligible propane tanker to deliver fuel from Houston to states such as New York, consumers have had to pay more than $100 a metric ton extra for propane from across the Atlantic.

"It's kind of a crazy thing, where we're sending ships to Europe and then in return, at some point in time, Europe is sending propane cargoes back to us," Peter Fasullo, a principal at energy consultant EnVantage Inc. who has been following the natural gas liquids market for over 30 years, said by phone from Houston. "You have to think, isn't there a more efficient way of doing this?"

Related: Natural Gas Futures Gain on Forecasts for Frigid March Weather

This costly two-way propane trade is the latest example of how the unforeseen U.S. boom in shale oil and gas has left energy consumers and producers, such as Houston-based Enterprise Products Partners LP (EPD), complaining about outdated laws and infrastructure.

Jones Act

Trading in growing domestic supplies of heating oil and gasoline has also been inhibited by the Jones Act. Oil drillers are lobbying the government to allow crude exports, currently banned under a different 39-year-old law.

The Jones Act has a broad support group among U.S. shipyards, vessel owners and labor unions, such as the Washington, D.C.,-based American Maritime Partnership, which said in an emailed statement yesterday that it is critical for the U.S. economy and national security.

Demand for propane jumped this winter as an arctic weather system, or polar vortex, caused temperatures to plunge from Boston to Miami. The more than 3 percent of households in the Northeast that use propane as a main source of heating are expected to spend on average $206, or 11 percent, more on the fuel this winter than last, according to the U.S. Energy Information Administration.

Propane stockpiles in the region dropped to 1.6 million barrels in the week ended Feb. 14, the lowest level for the time of year since 1994, said the EIA, the Energy Department's statistical arm. They were at 1.68 million last week, the lowest seasonal level since 2010.

Cheaper Fuel

"If you didn't have the Jones Act, you could have had this thing resolved pretty easily by moving product off the Gulf Coast into the Northeast," James Teague, the chief operating officer of Enterprise Products, which runs propane export and transportation facilities, said in a conference call on Jan. 30. "We don't have that in our toolbox."

A ton of propane cost about $673 in Houston on Feb. 24, according to data compiled by Bloomberg. Were the Jones Act not in place, this could be transported by tanker to the port of Philadelphia for about $18 a ton, based on current charter rates compiled by ship broker Clarkson Plc, Erik Stavseth, an analyst at Arctic Securities in Oslo, said by phone on Feb. 24.

The same product was about $785 in Northwest Europe, according to the Gaithersburg, Maryland-based Oil Price Information Service, and would cost $28 a ton to ship to Philadelphia, Stavseth said. This cargo would cost about $121 per ton, or 18 percent, more than product shipped from the Gulf, if such a journey were possible.

Foreign Propane

Signed into law in 1920, the Jones Act requires all domestic cargoes to travel on vessels that are U.S.-built, - owned and -crewed. Limited supply has pushed up rental rates for such vessels carrying other fuels including heating oil, making international imports a cheaper option.

U.S. authorities tried to improve the flow of propane overland by ordering Enterprise Products to prioritize propane shipments by pipeline from Texas to the Midwest and Northeast and authorizing truck drivers moving propane and other heating fuels in 34 states to work longer hours.

"We have wanted Jones Act waivers for ships from Houston to New England," Jeff Petrash, vice president of Washington-based trade group the National Propane Gas Association, said in an e-

mailed answer to questions. "It would have greatly taken the pressure off the Northeast and supplied New England with domestic propane rather than the foreign propane."

The U.S. Maritime Administration, part of the Department of Transportation, said the Jones Act had not affected supply of propane to the Northeast.

Emergency Waivers

"Both U.S.-flag and non-U.S.-flag vessels were fully employed" during the recent freezing weather, meaning the law did not negatively affect trade, Kim Strong, spokeswoman for the Maritime Administration, said in an e-mailed answer to questions. "The Jones Act supports U.S.-flag vessel operators, U.S. mariners, and U.S. shipyards vital to this country's economic and national security."

Short-term waivers to the Jones Act have been issued during emergencies, most recently in the aftermath of Hurricane Sandy, when non-U.S. flagged ships were allowed to deliver petroleum products from the Gulf coast to the storm-damaged Northeast.

The rise in shale oil and gas production has made the U.S. more self-sufficient. It supplied 86 percent of its own energy in the first 11 months of 2013, the most since 1986, EIA data show. U.S. production of propane and propylene, byproducts of natural gas processing and petroleum refining, rose by 39 percent in the four years to January, enabling the country to be a net exporter of the fuel in 2012, the most recent full year of data, according to the EIA.

Exports Triple

Total U.S. exports of the fuels more than tripled between 2009 and 2013. They reached an average of 373,000 barrels a day in the first seven weeks of this year. At the same time, imports of the fuels on the East Coast rose to a four-year seasonal high of 73,000 barrels a day, according to Energy Department data compiled by Bloomberg.

"We were shipping propane out of the south side and bringing it in on the north side. It's ridiculous," Bill Smith, who purchases the fuel wholesale to sell to domestic consumers and businesses in Delaware, said by phone on Feb. 21, referring to the exports and imports. Smith raised the price he charges for a gallon of propane by 20 percent to $3.59 in late January, from $2.99 at the beginning of the month.

"The Jones Act, which is the most stupid law ever on books, was good for its time, but it's a little out of date," he said.

Lower Prices

Gasoil used for heating has also been shipped from Europe to the U.S. Northeast, even as exports of similar fuels from the Gulf Coast run near record levels, the International Energy Agency said in a report published Feb. 13. Revoking the Jones Act would reduce gasoline prices by as much as 15 cents a gallon by increasing the supply of ships able to shuttle the fuel between U.S. ports, Fadel Gheit, an analyst at Oppenheimer & Co. in New York, said by phone Feb. 26.

As the shale boom continues, making the U.S. the world's biggest oil producer by 2015 according to the IEA, pressure on the Jones Act will grow.

"There's going to come a point where things have to change," Charlie Papavizas, a partner and specialist in maritime law at Winston and Strawn LLP, said by phone from Washington. "There's going to be so much oil and so much gas, it's like a tidal wave of issues. But for the foreseeable future I don't see the law changing."

To contact the reporters on this story: Natasha Doff in London at ndoff@bloomberg.net; Naomi Christie in London at nchristie5@bloomberg.net

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From: Tom Morgan [mailto:newington@ttlc.net]
Sent: Friday, March 14, 2014 11:39 AM
To: Karen Anderson; John Bohenko; Paul Deschaine
Subject: Off-Site Improvements

The Newington Planning Board Chairman asked me to contact you in regards to improvements to rail crossings in your respective communities. You may recall that some repairs and improvements to rail crossings are the responsibility of the railroad, while the cost of others fall to state and municipal governments.

Our initial reading of RSA 674:21V(j) would provide the Newington Planning Board with the authority to require Sea-3 to fund a proportional share of certain off-site improvements. We are reaching out in order to get you thinking about the specific costs of improvements that may be required due to an increase in rail traffic.

At the same time, we are running this by our attorneys to ensure that we are on solid ground in pursing such exactions. Such levies are not typically applied to rail crossings, or to improvements situated beyond the municipality's bounds.

The pertinent section of RSA 674:21V reads as follows:

(j) The failure to adopt an impact fee ordinance shall not preclude a municipality from requiring developers to pay an exaction for the cost of off-site improvement needs determined by the planning board to be necessary for the occupancy of any portion of a development. For the purposes of this subparagraph, "off-site improvements" means those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage, and sewer and water upgrades pertinent to that development. The amount of any such exaction shall be a proportional share of municipal improvement costs not previously assessed against other developments, which is necessitated by the development, and which is reasonably related to the benefits accruing to the development from the improvements financed by the exaction.

We look forward to hearing from you.

Tom Morgan
Town Planner
436-1252

PAN AM RAILWAYS

IRON HORSE PARK
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LAW DEPARTMENT
(978) 663-1126

March 18, 2014

John J. Ratigan, Esq,
Donahue, Tucker & Ciandella, PLLC
225 Water Street
Exeter, NH 03833

Dear Attorney Ratigan:

Please accept this correspondence in response to your inquiry regarding the nature of the existing sidetrack located at the Sea-3 facility in Newington, New Hampshire and possible regulation of Pan Am's service to that side track. As a matter of both statute and case law, side tracks such as those located at the Sea-3 facility are subject to the exclusive jurisdiction of the United States Surface Transportation Board ("STB") pursuant to the Interstate Commerce Act ("ICA"). STB jurisdiction over transportation by rail carriers is established by 49 U.S.C. §10501 and is extremely broad, including jurisdiction over the construction, acquisition, operation, abandonment or discontinuance of side tracks, even if the tracks are located entirely in one state. *49 U.S.C. §10501(b).* Moreover, "rail carrier" is defined as "...a person providing common carrier railroad transportation for compensation,..." and "railroad" includes "a switch, spur, track, terminal, terminal facility and a freight depot, yard or ground, used or necessary for transportation", while "transportation" is defined as, "a locomotive, car, vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, by rail, regardless of ownership or an agreement concerning use", as well as services related to that movement.. *49 U.S.C. §10102(5), (6) & (9).*

While there is a limited exception to STB jurisdiction for so-called "Private Tracks", that exception does not apply here because service to the Sea-3 facility will continue to be provided by Pan Am, which is a Class II rail carrier subject to the jurisdiction of the STB. Specifically, the STB has found, "Under the statute, the Board has jurisdiction over 'transportation by rail carrier'...and the term 'rail carrier' is defined as 'a person providing common carrier railroad transportation for compensation.' The agency's jurisdiction does not extend to private rail operations (those not operated for hire)...Private tracks constitute a narrow, limited category of rail operations...Operations over private tracks can be conducted by the shipper/owner itself, or the shipper/owner of the private track may arrange for a contractor to conduct operations over

the track. *B. Willis, C.P.A.—Petition for Declaratory Order,* STB Finance Docket 34013 (October 3, 2001).[1]

With regard to the Sea-3 sidetrack, operations historically have been performed by a rail carrier subject to STB jurisdiction and not by a private contractor, and therefore the "Private Track" designation is not applicable and the STB retains jurisdiction. "In this proceeding, the Board has exclusive jurisdiction over the planned new track, and local regulation is preempted because the new track will be operated by rail carriers...as part of the interstate rail network. The fact that the track owner…is not itself a rail carrier is not relevant. And the fact that the new track is outside the Board's licensing authority does not change this outcome." *The New York City Economic Development Corporation—Petition for Declaratory Order*, STB Finance Docket No. 34429 (July 15, 2004). "Moreover, state and local permitting or preclearance requirements (including environmental requirements) have been found to be preempted because, by their nature, they interfere with interstate commerce by giving the state or local body the ability to deny the carrier the right to construct facilities or conduct operations." *Fletcher Granite Company, LLC—Petition for Declaratory Order*, STB Finance Docket No. 34020 (June 29, 2001).

Perhaps more importantly, however, the STB has recently held that whether or not the track at issue is Private Track is not determinative. Specifically, when the Town of Winchester, Massachusetts sought to regulate railroad operations on a side track owned by a customer, the STB found: "In interpreting the reach of §10501(b) preemption, the Board and the courts have found that it prevents states or localities from intruding into matters that are directly regulated by the Board (e.g., rates, services, construction, and abandonment). It also prevents states or localities from imposing requirements that, by their nature, could be used to deny a railroad's ability to conduct rail operations…Applying these well-established preemption principles, we find that the Town's actions here are preempted by §10501(b)" The STB also found that, "In any event, the dispute between the parties regarding the nature of the track immediately adjacent to the warehouse is not dispositive. Even if we assume this track is private track, this does not permit the Town to deprive Tighe of its federal right to receive common carrier rail service over the track." *Boston and Maine Corp. and Springfield Terminal Rwy Co.—Petition for Declaratory Order,* STB Finance Docket No. 35749 (July 19, 2013). Interestingly, the STB also noted another recent decision regarding the scope of preemption pursuant to the ICA, citing a Fourth Circuit decision that found attempts to regulate interstate commerce indirectly by regulating truck traffic was also preempted by Section 10501(b), *Norfolk S. Ry. v. City of Alexandria,* 608 F.3d 150 (4th Circuit, 2010). Perhaps most tellingly, the STB noted that:

> "Otherwise, states and localities could engage in impermissible regulation of the interstate freight rail network under the guise of regulations directed at shippers who would use the network, and thereby create the patchwork of conflicting local regulations that Congress sought to avoid in the Interstate Commerce Act.

---

[1] This exception to STB jurisdiction is also confused by the fact that the STB does not have licensing authority relating to the construction and operation of sidetracks. *49 U.S.C. §10906.* In laymen's terms, this means that no STB permit or license is required to construct or operate a sidetrack, but does not remove STB jurisdiction from the sidetrack.

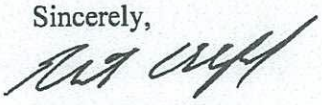
Furthermore, there is also a factual issue present here in the sense that Sea-3 has been receiving rail traffic at its existing siding for well over 30 years, and is not seeking to alter that siding in this proceeding before the Planning Board. Rather, additional trackage will be constructed on Pan Am's property to serve the expanded facility, further removing those new tracks from any Private Track designation.

As a final note, we are also concerned because the Planning Board has made repeated references to the proposed class of track and the possibility of conditioning Sea-3's use of rail to the condition of the track or other rail related issues. To be clear, any attempt to directly or indirectly regulate track speeds, track class or routing of propane would be preempted by the ICA and the Federal Railroad Safety Act ("FRSA").

While Pan Am appreciates the Planning Board's desire to address the safety of propane transportation and its belief that it may have some "police power" authority to do so, that authority is very narrow pursuant to the FRSA and the ICA. Specifically, the FRSA permits state regulation of railroad safety under certain circumstances, but this exception has been interpreted as being extremely limited in its application. In fact, courts have noted that "an essentially local safety hazard" is one that is not statewide in character and not capable of being addressed within national uniform standards. *Duluth, Winnipeg and Pacific Railway Company v. City of Orr*, 529 F.3d 794 (2008), *CSX Transportation, Inc. v. Williams*, 406 F.3d 667 (2005). In analyzing whether a condition meets this exception, courts have further found that such factors as: (a) proximity of buildings to railroad rights of way; (b) the location of propane tanks near the right of way; (c) the transportation of hazardous materials near the U.S. Capitol; and (d) the location of water bodies near the railroad tracks are all issues statewide in character and capable of being addressed by uniform national regulation. Furthermore, courts have also examined the other two prongs of the local regulation exception in the FRSA, noting that local governmental attempts to regulate track conditions and hazardous materials routing would also conflict with federal regulations and unduly burden interstate commerce. Accordingly, none of the conditions discussed to date by the Planning Board or any other municipality in this proceeding would meet the exception to preemption established by the FRSA. To be clear, therefore, while Pan Am is willing to voluntarily improve the existing track conditions should Sea-3 transport by rail sufficient volumes to support those improvements, the Planning Board does not have any jurisdiction to require such upgrades or the continued maintenance of them.

I trust that this information is responsive to your inquiry. In addition, Cyndi Scarano and I are available to meet with you this week to discuss this matter further, and I would ask that you propose some dates to meet with you in your offices if you feel that would be appropriate.

Sincerely,



Robert B. Culliford
Senior Vice President &
General Counsel

SHAINES & MCEACHERN, PA
Attorneys at Law

Via Email and Regular Mail

March 20, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Mr. Hebert:

On behalf of my client Sea-3, Inc. (Sea-3), I am requesting that a portion of the Board's Agenda for the March 24, 2014, Hearing be reserved for Sea-3 to address its site plan. While Sea-3 is certainly aware of the public interest in its project and the Board's decision to undertake a thorough review of the issues presented by rail service to the site, Sea-3 is concerned with the amount of time that has passed since it voluntarily extended the review period, without any consideration of its site plan.

With the Board's permission, Sea-3 would like to reserve time on the Board's Agenda for March 24, 2014, to present the following speakers to address the identified issues:

1) Paul Bogan: Introduction of all Sea-3 presenters;
2) Stephen Haight, P. E., Haight Engineering: Discuss Revised Site Plan and status of State permits;
3) Phil Sherman, P.E.: Discuss Preparation of Fire Suppression Plan under NFPA 58;
4) Dr. Kim Eric Hazarvartian, TEPP LLC: Discuss Preparation of Traffic Study;
5) Paul Bogan, Sea-3: Discuss Site Compliance with OSHA, EPA, and USCG regulations regarding site safety and security;
6) Bill Cornell, Sea-3: Discuss DOT-112 railcar design and historical safety record;
7) Ken Taylor, Propane Gas Association of New England (PGANE): Discuss Emergency Response Plan for New England (as it relates to railcars); and
8) Joe Rose, Propane Gas Association of New England (PGANE): Discuss Propane Industry Responders Conference in April; PERC funding for Fire Service 3-day training; industry sponsorships for Fire Service personnel; Emergency supply situation in New England; regional need for Sea-3 terminal.

282 Corporate Drive, P.O. Box 360
Portsmouth, New Hampshire 03802-0360
Telephone: 603/436-3110, Fax 603/436-2993

I thank you for your consideration in this matter.

Respectfully Submitted,

By: _____
Alec L. McEachern

cc: Thomas Morgan, Planner
Paul Bogan, V. P., Sea-3, Inc.
Stephen Haight, P. E.
Cynthia S. Scarano, Pan Am Railways
Christopher Cole, Esq.

From: "Steve Haight" <shaight@haighteng.com>
Subject: RE: Sea-3 answers to quesitions 3/20/14
Date: March 20, 2014 5:28:33 PM EDT
To: "'Tom Morgan'" <newington@ttlc.net>
Cc: "Alec McEachern" <alecm@shaines.com>, "Paul Bogan" <paul.bogan@sea-3.com>

3 Attachments, 3.3 MB

Tom

In response to your emailed questions: I have responded in bold and the original questions are in italic

Attached please find the Shoreland Protection Application as submitted to NHDES on 1/10/14 and the NHDES Shoreland Permit #2014-00105 issued 1/22/14

Q: Also, under Env-Wq 1411.01 (b) they are required to show the Waterfront Buffer. It would also be helpful to see where the Natural Woodland Buffer (150 ft) is located. Under RSA 483-B:3 and Env-Wq 1411.02 (a) the PB cannot approve a project unless it is consistent with the requirements in RSA 483-B. I am not clear how they intend to comply with the natural woodland buffer "unaltered state" requirement given the current status of the lot.

The site is an active industrial site with an area of woodland directly adjacent to the river and within the 150' buffer line. This project does not propose any impacts outside of existing areas of use and none within the existing wooded areas. All proposed work is limited to the existing gravel areas.

Q: RSA 483-B:9, V (b) Maintenance of a Natural Woodland Buffer

(1) A natural woodland buffer shall be maintained within 150 feet of the reference line. The first 50 feet of this buffer is designated the waterfront buffer and is subject to the additional requirements of subparagraph (a). The purpose of the natural woodland buffer shall be to protect the quality of public waters by minimizing erosion, preventing siltation and turbidity, stabilizing soils, preventing excess nutrient and chemical pollution, maintaining natural water temperatures, maintaining a healthy tree canopy and understory, preserving fish and wildlife habitat, and respecting the overall natural condition of the protected shoreland.

(2)(A) Within the natural woodland buffer of a given lot the vegetation, except lawn, within ***at least 25 percent of the area outside the waterfront buffer shall be maintained in an unaltered state or improved with additional vegetation****.*

46% of the lot will remain unaltered after the upgrades proposed. See chart below as contained within the Shoreland Application as approved. (Note: the existing shed on the site is actually going to be removed so the actual impervious will be less than appoved)

CALCULATING THE IMPERVIOUS AREA WITHIN 250 FEET OF THE REFERENCE LINE			
	STRUCTURE DESCRIPTION	**PRE-CONSTRUCTION IMPERVIOUS AREA**	**POST-CONSTRUCTION IMPERVIOUS AREA**
PRIMARY STRUCTURE Including all attached decks and porches	Mechanical Building, Condensing Unit, and Pumping / Chilling Equipment	0 FT^2	5206 FT^2
ACCESSORY STRUCTURES All other impervious surfaces excluding lawn furniture, well heads, fences and septic systems	Compacted Gravel Lot	60000 FT^2	54325 FT^2
	Paved Way	8280 FT^2	8280 FT^2
	Existing Dock	830 FT^2	830 FT^2
	Existing Shed	660 FT^2	660 FT^2

	Concrete Pads and Footings	275 FT^2	744 FT^2
	TOTAL:	(A) 70045 FT^2	(B) 70045 FT^2
Area of the lot located within 250 ft of reference line:			(C) 130000 FT^2
Percentage of lot covered by pre-construction impervious area within 250 ft of the reference line:*[divide (a) by (c) x 100]*			(D) 54 %
Percentage of lot to be covered by post-construction impervious area within 250 ft of the reference line upon completion of the project: *[divide (b) by (c) x 100]*			(E) 54 %

Q; Owners of lots legally developed or landscaped prior to July 1, 2008 that do not comply with this standard are encouraged to, but shall not be required to, increase the percentage of area to be maintained in an unaltered state. The percentage of area maintained in an unaltered state on nonconforming lots shall not be decreased. In addition, the commissioner of the department of resources and economic development may order vegetation on lands or properties owned by, leased to, or otherwise under the control of the department of resources and economic development within the protected shoreland to be cut when overgrowth of vegetation impairs law enforcement activities and endangers public safety. If such cutting will exceed that which is allowed under this subparagraph, the commissioner of the department of resources and economic development shall provide written notification to the department of environmental services identifying the areas to be cut and an explanation of the need for the cutting at least 2 weeks prior to the undertaking.

As indicated on the permit plans there is no increase to the area of the lot altered and no vegetation affected in the buffer area along the river.

Q: PART Env-Wq 1411 CONSISTENCY OF STATE AND LOCAL ACTION ON SHORELAND ZONE PROJECTS

Env-Wq 1411.01 Required Information. The following information shall be included on all plans submitted to any state or local agency for any project that includes work in the protected shoreland:

See attached plans.

(a) The reference line;

(b) The primary building line, 50 feet from the reference line; and

(c) Any local setbacks.

Source. (See Revision Note at chapter heading for Env-Wq 1400) #9188, eff 7-1-08

Env-Wq 1411.02 Consistency Required; Notice Required.

(a) As specified in RSA 483-B:3, state and local permits for work within the protected shoreland zone shall be issued only when consistent with RSA 483-B.

(b) State and local permits for work within the protected shoreland zone shall include a notice that a state shoreland permit under RSA 483-B may be required.

Source. (See Revision Note at chapter heading for Env-Wq

From: "Paul Deschaine" <pdeschaine@strathamnh.gov>
Subject: RE: Off-Site Improvements
Date: March 21, 2014 1:39:13 AM EDT
To: "'Tom Morgan'" <newington@ttlc.net>, "'Karen Anderson'" <KAnderson@greenland-nh.com>, "'John Bohenko'" <jpb@cityofportsmouth.com>
Cc: "Lincoln Daley" <ldaley@strathamnh.gov>, "Bruno Federico" <brunofederico@comcast.net>, "'David Canada'" <canadafamily@comcast.net>, "'Timothy Copeland'" <kirin88@comcast.net>

Tom,

I have discussed this matter with the Stratham Board of Selectmen and with Town Planner Lincoln Daley. The comments that I have received are as follows:

1. Stratham does not have any rail crossings that are physically in Stratham. The only crossing is at Depot Road before entering the Great Bay Discovery Center. It is unclear who owns the road at which the crossing occurs, but it is physically in Greenland. Given the increasing amount of traffic whose destination is the Discovery Center, which also includes the Hugh Gregg Coastal Conservation Center, we would strongly support a request to upgrade that crossing if the Town of Greenland were to make it. In addition, the use of the only turnaround available for winter maintenance vehicles servicing Depot Road requires the crossing of the tracks not once but twice with each pass. Once to reach the turnaround and again upon the return of the vehicle to complete its route. So in addition to school buses and other vehicle accessing the Centers on the other side of the tracks, you have Stratham's heavy plow trucks routinely using the crossing too during the winter months.
2. The existing rails abut several neighborhoods within Stratham and Greenland. Our residents have expressed a concern about noise created by the increase in rail traffic. Absent noise barriers being erected, there is not much that can be done to mitigate the noise caused by the increase frequency of the trains. We believe this nuisance is at least transient and intermittent thus tolerable. However, using the rail line in Stratham as a siding for the storage of cars and more importantly idling engines would not be acceptable and not in keeping with the historic use of this line. Consequently, a prohibition on parking trains with engines on the line itself would be appropriate and in keeping with the representations of Pan Am and their historic use of Rockingham Junction for those purposes.
3. Lastly, a commitment should be made by the applicant and Pan Am to provide continual, current, and relevant training to emergency responders to not only the SEA-3 location, but anywhere along the rail line in preparation for an unfortunate incident requiring their response. This may include an evaluation of need for specialized equipment, if needed, not presently owned by any of the regional responding departments. Should a need be identified, the applicant and/or Pan Am should be required to provide access to such equipment to enhance the response capabilities of the responding departments and improve their safety and the safety of the nearby residents being affected by such an incident.

I hope this provides you with an adequate understanding of the Town of Stratham's concerns and requests consideration of these issues. Thank you for providing us the opportunity to share them with you as your Planning Board considers the application currently before them.

Paul

Paul R. Deschaine
Town Administrator
Town of Stratham
10 Bunker Hill Ave.
Stratham, NH 03885
(v) (603) 772-7391 ext. 181
(f) (603) 775-0517

Fire chief: Propane expansion not a safety concern

By **Jeff McMenemy**
jmcmenemy@seacoastonline.com
March 22, 2014 2:00 AM

PORTSMOUTH — Fire Chief Steven E. Achilles said the consensus of a group of area fire chief meeting is that the proposed expansion of the Sea-3 rail terminal in Newington will not create ad the area.

Sea-3 officials have said the number of trains carrying propane through the area would increase expansion is approved from three a week to seven a week, with each one carrying "six to 12 pro train." That's a total of 42 to 84 propane cars a week, or 2,184 to 4,368 propane cars a year.

"It was our general feeling that the additional propane tank car transportation does not pose an a significant hazard that does not exist right now," Achilles said on Friday. "We realize that propan rail, also by ship and over the roads right now. If something were to happen, most of the time we manage that."

Achilles said the fire chiefs who met in Portsmouth City Hall last week agreed there is always a p catastrophic event could occur, but that risk already exists now.

"A catastrophic event is high risk but low probability," Achilles said.

His comments came before the Newington Planning Board is scheduled to hold another meetinç 6:30 p.m. at Newington Town Hall to discuss Sea-3's application. The board is scheduled to hea Robinson, rail safety inspector/investigator for the state Department of Transportation's Bureau c and will discuss a fire safety analysis and a traffic study.

In addition, Newington Fire Chief Andrew Head is scheduled to speak about emergency respons

Achilles said the fire chiefs met to discuss "our general concerns about shipping propane gas by the increase in rail cars that could result from the approval of the project "is not to a level that it v safety."

"Fortunately for the fire services in our area, the rail company has provided training in our region distributors have provided training," Achilles said.

He said he does not remember responding to a train derailment where there was a propane leak that are used are extremely safe," Achilles said.

If there was a spill, firefighters would work to try to avoid any kind of ignition by flooding the area there was a fire on arrival, they would evacuate the area, he said. "This is something the fire ser prepared for," he said.

There is a regional hazardous materials team to deal with any such emergencies that has assets Hampton, Exeter and Dover, Achilles said.

The fire chiefs did discuss some concerns posed by the railroad crossings if the number of rail c increased.

"That would be something that the local communities are going to have to pay attention to, but th related to traffic safety to avoid an accident," Achilles said.

Officials from Seacoast cities and towns will need to work with rail and state officials to address t

"That could range from signals and arms coming down (at the crossings) or just signals or visual Achilles said.

The chiefs continue to follow the situation while trying to be "extremely factual," he said.

"It's important we look at the information from a fire- and life-safety perspective and that we're pr project) does not add any undue burden or risk to the community," Achilles said.

The State of New Hampshire

DEPARTMENT OF ENVIRONMENTAL SERVICES

Thomas S. Burack, Commissioner

March 21, 2014

SEA-3, Inc.
Attn: Paul Bogan
190 Shattuck Way
Newington, New Hampshire 03801

Re: SEA-3 Facility Expansion
190 Shattuck Way
Tax Map 14, Lot 2, Newington, NH

Permit: AoT-0695

Dear Applicant:

Based upon the plans and application, approved on March 21, 2014, we are hereby issuing RSA 485-A:17 Alteration of Terrain Permit AoT-0695. The permit is subject to the following conditions:

1. Activities shall not cause or contribute to any violations of the surface water quality standards established in Administrative Rule Env-Wq 1700.

2. You must submit revised plans for permit amendment prior to any changes in construction details or sequences. You must notify the Department in writing within ten days of a change in ownership.

3. You must notify the Department in writing prior to the start of construction and upon completion of construction. Forms are available at: http://des.nh.gov/organization/divisions/water/aot/categories/forms.htm

4. The plans and supporting documentation in the permit file are a part of this approval.

5. **This permit expires on March 21, 2019.** No earth moving activities shall occur on the project after this expiration date unless the permit has been extended by the Department. If requesting an extension, the request must be received by the department before the permit expires. The Amendment Request form is available at: http://des.nh.gov/organization/divisions/water/aot/categories/forms.htm.

6. This permit does not relieve the applicant from the obligation to obtain other local, state or federal permits that may be required (e.g., from US EPA, US Army Corps of Engineers, etc.). Projects disturbing over 1 acre may require a federal stormwater permit from EPA. Information regarding this permitting process can be obtained at: http://des.nh.gov/organization/divisions/water/stormwater/construction.htm.

7. No construction activity shall occur until a Wetlands Permit is obtained from the Department, if applicable.

Sincerely,

Ridgely Mauck

Ridgely Mauck, P.E.
Alteration of Terrain Bureau

cc: Newington Planning Board
Newington Conservation Commission

ec: Haight Engineering, PLLC

Great Bay Stewards
89 Depot Rd
Greenland, NH 03840
Phone: (603) 778-0015
Fax: (603) 778-7398

GREAT BAY STEWARDS

Email:
info@greatbaystewards.org
Web site:
www.greatbaystewards.org

Supporting education, research & conservation on Great Bay

March 24, 2014

Newington Planning Board
Denis Hebert, Chair
Newington Town Hall
205 Nimble Hill Rd
Newington, NH 03801

Dear Mister Hebert

This letter is in reference to the proposed Sea-3 terminal expansion on your agenda for 24 March 2014. The Great Bay Stewards, a non-profit organization dedicated to the preservation and protection of Great Bay, has concerns with the railroad operational changes that would be implemented as a result of the site changes proposed by Sea-3.

We have obtained a copy of a letter from Attorney Christopher Cole on behalf of a group of Portsmouth residents in which a request has been made to the Newington Planning Board to have a comprehensive environmental impact analysis of the full scope of theSea-3 expansion proposal (and its external ramifications) and that the cost be at the expense of the applicant. You were request in Attorney Cole's that this analysis be completed before the Newington Planning Board makes a decision on this application.

As has the Mayor of Portsmouth in a letter dated March 6, 2014, the Great Bay Stewards also support this request.

Jack O'Reilly
President, Great Bay Stewards

Copy to"
Great Bay Stewards Board of Trustees

From: "John P. Bohenko" <jpbohenko@cityofportsmouth.com>
Subject: Railroad Crossings - Portsmouth
Date: March 24, 2014 3:17:00 PM EDT
To: "newington@ttlc.net" <newington@ttlc.net>
Cc: "KAnderson@greenland-nh.com" <KAnderson@greenland-nh.com>, "pdeschaine@strathamnh.gov" <pdeschaine@strathamnh.gov>, "Dave S. Allen" <dsallen@cityofportsmouth.com>, "Peter L. Britz" <plbritz@cityofportsmouth.com>

Tom,

In response to the request of the Newington Planning Board Chairman, the City of Portsmouth has done some preliminary inventory work on the rail crossings in the City. As you are aware, we have multiple rail crossings and rail infrastructure in the City. Although the City recognizes that it only has any control over the infrastructure that it owns and maintains (the at grade crossings and municipal bridges) the rail infrastructure running through the City is significant. Below is a list of rail crossings and rail infrastructure in the City:

- 6 at grade crossings on City streets
- 2 bridges, one over a City Street
- 6 underpasses two under City bridges
- Trestle bridge across Cuts cove
- North Mill Pond rail yard

From the preliminary review, it appears that all 6 crossings are in need of upgrades. Assuming a cost of $400,000 per crossing, the total cost of the upgrades would be approximately $2,400,000.

I would also like to reiterate our concern of the fact that Portsmouth has over a mile and a half of excepted rail track, which is the lowest condition grade of track running through our most densely populated sections of the City. This area of excepted track includes the North Mill Pond rail yard. Transferring of loaded and unloaded cars, as well as the potential for diesel engines idling in that rail yard continue to be a significant concern for the City.

I would also like to take this opportunity to thank the Chairman and the Newington Planning Board for allowing the surrounding communities and affected abutters for the opportunity to express our concerns

John

John P. Bohenko
City Manager
(603) 610-7201

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Please deliver this and any accompanying pages

TO: Denis Hebert, Chairman – Newington Planning Board

FAX #: (603)436-7188 PHONE #:

FROM: Christopher Cole, Esq.

PHONE # *(call this number if there is a problem)*: (603)627-8223

DATE: MARCH 24, 2014

NUMBER OF PAGES *(including cover sheet)*: 32

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Writer's Direct Dial: (603) 627-8223
ccole@sheehan.com

March 24, 2014

By Fax (603-436-7188) and First Class Mail

Newington Planning Board
Denis Hebert, Chairman
Town Hall
205 Nimble Hill Road
Newington, NH 03801

Re: Proposed Sea-3 Terminal Expansion

Dear Mr. Chairman and Members of the Planning Board:

As you know, I represent a group of Portsmouth residents who continue to have serious concerns about the proposal by Sea-3 to reconfigure its Newington terminal to accommodate expanded movement of propane for import and export. This letter supplements my letter of March 6, responds to the letter submitted to the Planning Board by Sea-3's counsel dated March 10, 2014, and reiterates the request made in my March 6th letter for the benefit of this group of Portsmouth residents, and the Town of Newington.

Let me say, as a preliminary matter, how very much we appreciated the manner in which the well-attended meeting on March 10 was managed by the Board and its Chair. Many people got an opportunity to speak and let their feelings, positions, questions and concerns be known, in an orderly and respectful manner, and we appreciate being part of that process.

1. The Factual Record Does Not Support Approval of the Application

As you know, Section 5 of the Town's Site Plan Review Regulations mandates that Sea-3's application be reviewed:

> "so as to minimize traffic congestion, traffic hazards, unsightliness, annoyance to other nearby land uses, erosion, and other effects detrimental to the abutters, the neighborhood, [and] the environment of the Town."

Site Plan Review Regulations, § 5. Approval of the application would require that the Planning Board make a finding that "the public health, safety, and welfare will be otherwise protected." Site Plan Review Regulations, § 5(l).

Respectfully, none of the testimony presented at the March 10 hearing suggested that, for example, traffic would be effectively managed or minimized, or that the project envisioned by Sea-3 would otherwise protect public health and safety. Although it appears that all agree that the Sea-3 application will almost certainly involve an intensified use of the subject property and surrounding points of logistical ingress to and egress from the property, the application and accompanying materials contain no meaningful estimate of traffic (rail, automobile, trucking) volumes into and out of the facility, and thus no basis for a meaningful understanding of the off-site effects on "other nearby land uses, erosion, and other effects detrimental to the abutters, the neighborhood, [and] the environment of the Town." To our knowledge, Sea-3's application includes no traffic estimates and/or study, no environmental evaluation, and no health and safety evaluation, no emergency management evaluation and plan to manage what will be a substantial increase in the presence and movement of hazardous materials.[1] Accordingly, the application and supporting materials are inadequate and do not allow the Board to make the factual findings required by Section 5 of the Site Plan Regulations for approval of the application.[2]

Without these sorts of materials, the Board can either deny the application for failing to meet the express requirements of the Site Plan Review Regulations, or the Board can exercise its rights under Section 19 of the Regulations and engage engineers and consultants to carry out such evaluations and studies and be reimbursed by the applicant. We ask that the Board do one or the other of these things: deny the application, or take steps to engage the independent consultants necessary to make the factual findings envisioned by the Regulations.

---

[1] The potential increase in traffic on Shattuck Way and River Road is very significant. As we understand it, Sea-3 claims that they will have at least 12 rail tank cars delivered six days per week, 52 weeks a year. This suggests about 3,744 tank cars (e.g., 12 x 6 = 72 x 52 weeks =3,744). We understand further that to haul the contents of one rail car generally requires three tank trucks. Thus, 3,700 tank cars would yield or require something on the order of 11,000 trucks (e.g., 3,744 cars x 3 trucks = 11,232) to haul the propane brought in by rail. Sea-3 has publicly stated that the propane received by rail will primarily serve the needs of the New England region, with very little being exported overseas by one or two ships during the summer. If we assume that something like 80% of the propane they receive by rail is thus distributed to the New England region, the math suggests that moving the propane would require something on the order of 8,000 trucks or more (e.g., 11,000 x .80 = 8,800). However one does the math, at the volumes suggested by Sea-3, the additional traffic into and out of the facility is plainly material.

[2] As you almost certainly know, an appropriate and complete traffic study will establish a baseline with existing traffic patterns, counts and analysis, along with existing lane and ingress/egress configuration sketches. Such a report will describe accurately the conditions and intensity anticipated by any new activity that the project that is the subject of the application might create, measure the increased traffic counts, and, as necessary, describe appropriate measures to manage the additional trips, exhaust and other off-site effects. We are unaware of anything like this having been submitted by the applicant or contemplated as yet by the Board.

2. Sea-3's Letter of March 20, 2014

Sea-3's counsel's letter of March 20 to the Board essentially acknowledges that the application is largely unsupported, and asks the Board to reserve time for the Board to hear the testimony or presentation of seven separate individuals, including two professional engineers and a Sea-3 retained traffic consultant. As neither the anticipated testimony nor the reports (if any) of these individuals have been described, even at a high level, or distributed to the Board, my clients ask that the Board allow them the time necessary to review the information received and, if necessary, respond to that information.

In particular, the people and families I represent will need time to evaluate the study and conclusions of the traffic consultant, and an opportunity to either retain one of their own or to request that the Town exercise its powers under Section 19 of the Site Plan Review Regulations to hire an independent consultant.

3. Municipal Power and the Railway

Finally, I would like to briefly address Mr. McEachern's March 10 letter and comments relating to the issues of federal preemption under the Interstate Commerce Commission Termination Act (ICCTA), and his apparent suggestion that this Board's jurisdiction – and regulatory power – extends only to the specific site on which Sea-3's activities will occur, and can consider no other off-site areas that relate to the rails. In summary, and briefly, Mr. McEachern's letter asserts that "this Board's jurisdiction stops where Pan Am Railways' railroad operations begin" and that my clients' request that the Board require a meaningful study of the effects – for example, health and safety, environmental, and traffic-related effects – would necessarily intrude on the jurisdiction of the federal Surface Transportation Board's (STB's) regulatory powers. Even the First Circuit Court of Appeals and the STB, however, have acknowledged that the legal analysis is considerably more nuanced than stating that "local regulation ends where rail operations begin" – in a case cited by Sea-3 and in which current counsel for Pan Am Railways was involved.

In Boston & Maine Corporation v. Town of Ayer, 330 F.3d 12 (1st Cir. 2003), the Town of Ayer planning board and conservation commission attempted to impose 36 conditions, including pre-construction approval requirements, upon the issuance of a permit to Boston & Maine to engage in certain development activities on B&M land within the town's aquifer protection district. The Ayer Board of Health also effectively barred the B&M project altogether when it deemed the project "noisome trade" under local ordinances. With this outright bar by the local board of health, together with the planning board's conditions precedent and subsequent, B&M asked a federal court for a declaration that Ayer's efforts were preempted by the ICCTA. The federal court described the parties' positions as follows:

> The parties presented the case as a pure conflict between the strong federal interest in a uniform system of railroad regulation and the strong local interest in protecting water supplies. As the ensuing discussion shows, the law presents much more nuanced accommodations.

Town of Ayer, 330 F.3d at 15-16. The federal court referred the matter to the STB for its consideration, and summarized the STB's decision, in pertinent part, as follows:

> Effectively, the STB said the town may not flatly ban Guilford's efforts at developing the [B&M] site, as it did in its noisome trade determination, and that it may not impose pre-conditions to construction, **but that it may impose reasonable and non-discriminatory environmental restrictions which do not unduly burden interstate commerce or unduly restrict the railroad from conducting its operations**. The STB did not hold that all state and local regulation of Guilford's activity was preempted. It rejected Ayer's argument that the express preemption language of § 10501(b) did not apply to instances where the STB lacked licensing authority under 49 U.S.C. §§ 10901 and 10906, and it held that state and local law are preempted in those instances in limited circumstances. It held that "preclearance requirements (including environmental requirements) are preempted because by their nature they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations." The STB viewed pre-construction approval requirements as giving local authorities impermissible veto power over rail transportation issues.
>
> Nonetheless, the STB found state and local regulation to be permissible "where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety."

Town of Ayer, 330 F.3d at 16 (emphasis added). The court concluded – on the determination of the STB – that local regulation, such as the Newington Site Plan Review Regulations, is subject to the same test: "whether the … regulation is being applied to 'unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce.'" Id. at 17. The court illustrated the task by quoting the STB's advice concerning the 36 conditions attached to the B&M permit by the Town:

> **Examples of solutions that appear to us to be reasonable include conditions requiring railroads to (1) share their plans with the community, when they are undertaking an activity for which another entity would require a permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin.**

Town of Ayer, 330 F.3d at 17 (emphasis added); see also id. ("Moreover, railroads may not deny towns access in emergencies and for reasonable inspection of the railroad facilities").

This discussion of the law by the United States Court of Appeals seems a far cry from the facile assertion that "local regulation ends where railroad operations begin," and suggests that the Newington Planning Board may – and in the view of these abutters, really must – engage in a considerably more nuanced analysis of the situation than the applicant or Pan Am Railways have thus far suggested. Retention of expert consultants to engage in relevant studies of the situation would, it seems to us, hardly "unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce."

Freedom of Information requests by the Portsmouth Herald have revealed significant concerns about Pan Am's "railroad operations," which are properly the concern of the railway, federal authorities and state and local officials, and we have to trust that those concerns and interests will be promptly advanced by those people in an appropriate forum. This Board's task in reviewing the site plan application of Sea-3 is distinct, but does not involve shrugging off, on some supposed jurisdictional basis, the concerns raised by the admittedly profound intensification of use of the subject property and the almost certain off-site effects on the infrastructure, environment, health and safety, and emergency management – ramifications of this application about which these abutters and this Board know very little.

I have taken the liberty of sending a copy of this letter and enclosures directly to the Board's counsel, John Ratigan. Thank you again for your thoughtful consideration and attention to this serious matter.

Very truly yours,

for
Christopher Cole

Enclosures:

(1) Boston & Maine Corporation v. Town of Ayer, 330 F.3d 12 (1st Cir. 2003); and

(2) Boston & Me. Corp., 2001 Fed. Carr. Cas. (CCH) ¶ 38,352 (Surface Transportation Board, May 1, 2001) (available at 2001 WL 458685)

Cc: John Bohenko, City Manager, City of Portsmouth
John J. Ratigan, Esquire
Alec L. McEachern, Esquire (for Sea-3)
Richard DiPentima, 16 Dunlin Way, Portsmouth
Cathy DiPentima, 16 Dunlin Way, Portsmouth

330 F.3d 12, 33 Envtl. L. Rep. 20,201
(Cite as: 330 F.3d 12)

▷

United States Court of Appeals,
First Circuit.
BOSTON AND MAINE CORP.; Springfield Terminal Railway Co.; Guilford Transportation Industries, Inc., Plaintiffs, Appellees/Cross–Appellants,
v.
TOWN OF AYER; Ayer Board of Selectmen; Ayer Planning Board; Ayer Board of Health; Paul D. Bresnahan; Connie F. Sullivan; Robert J. Pena; William Oelske; James F. Fay; James F. Williams; James Lucchesi; Thomas Gibbons; Lauri J. Rosas; Margaret M. Kidder; C. Jane Witherow, Defendants, Appellants/Cross–Appellees.

Nos. 02–1537, 02–1828, 02–1843, 02–2258.
Heard March 3, 2003.
Decided May 21, 2003.

Operator of automobile unloading facility sought to enjoin town from regulating operator's construction of new facility for unloading automobiles from railway, asserting that town's regulations were preempted by federal law. The District Court referred matter to Surface Transportation Board (STB), and subsequently adopted resulting STB decision and granted summary judgment for operator. On operator's motion for attorney fees, the United States District Court for the District of Massachusetts, 206 F.Supp.2d 128,Joseph L. Tauro, J., held that operator was entitled to attorney fees under § 1988, and town appealed. The Court of Appeals, Lynch, Circuit Judge, held that operator was not entitled to attorney fees under § 1988.

Reversed and vacated.

West Headnotes

[1] Federal Courts 170B 3567

170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)2 Standard of Review
170Bk3566 Questions of Law in General
170Bk3567 k. In general. Most Cited Cases
(Formerly 170Bk776)

An appellate court reviews legal determinations inherent in a district court's order de novo.

[2] Civil Rights 78 1041

78 Civil Rights
78I Rights Protected and Discrimination Prohibited in General
78k1041 k. Contracts, trade, and commercial activity. Most Cited Cases
(Formerly 78k108.1)

Civil Rights 78 1479

78 Civil Rights
78III Federal Remedies in General
78k1477 Attorney Fees
78k1479 k. Proceedings, grounds, and objections in general. Most Cited Cases
(Formerly 78k293)

Separate cause of action was not created under § 1983 for violations of the Interstate Commerce Commission Termination Act (ICCTA), and thus operator of facility for unloading automobiles from railway was not entitled to attorneys' fees under §

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1988 upon district court's affirmance of Surface Transportation Board's (STB) ruling that the ICCTA preempted town's enforcement of its regulations; Congress, through the STB statutory scheme, created an explicit and complex statutory scheme for judicial review of STB orders and remedies, and that scheme did not include awards of attorneys' fees. 28 U.S.C.A. § 1336; 42 U.S.C.A. §§ 1983, 1988; 49 U.S.C.A. §§ 701–727, 10101–16105.

***13** Leonard H. Kesten, with whom Jocelyn M. Sedney, Deidre Brennan Regan, and Brody, Hardoon, Perkins & Kesten were on brief, for appellants.

William S. Eggeling, Nikolas P. Kerest, Michael T. Marcucci, and Ropes & Gray on brief for Conservation Law Foundation, Town of Littleton Water Department, Massachusetts Municipal Association and National League of Cities, amici curiae.

Eric L. Hirschhorn, with whom Winston & Strawn and Robert B. Culliford were on brief, for appellees.

Louis P. Warchot and Michael J. Rush on brief for Association of American Railroads, amicus curiae.

Before LYNCH, Circuit Judge, BOWNES, Senior Circuit Judge, and HOWARD, Circuit Judge.

LYNCH, Circuit Judge.

Guilford Transportation, which runs the Boston & Maine railroad, owns a railroad yard in Ayer, Massachusetts. In 1997, in order to expand its storage capacity, Guilford[FN1] purchased land, the San Vel site, which lies across the street from its railroad yard and is bounded by two railroad tracks. The site is in an aquifer protection area. Understandably, Ayer sought protection for the aquifer.

FN1. Throughout this opinion, we will refer to the plaintiffs collectively as "Guilford."

Guilford accordingly sought permits from the town and attempted to reach agreements. These negotiations broke down when the town Planning Board imposed thirty-six conditions on issuance of any permit and another town body, the Board of Health, declared the proposed plan to be a noisome trade, allowing Guilford's activities to be banned outright. Concerned that these town actions effectively prohibited or unduly burdened its planned operations, Guilford went to federal court to seek a declaration that Ayer's efforts were preempted.

***14** After the parties filed cross motions for summary judgment, the district court (with the parties' agreement) sought the views of the Surface Transportation Board (STB) on October 19, 2000.[FN2] The Board gave its views to the court in decisions served on May 1 and October 5, 2001. The court entered judgment for Guilford, but without the declaratory or injunctive relief Guilford had sought. It also awarded attorneys' fees and costs of $286,839.49 to the railroad under 42 U.S.C. §§ 1983 and 1988 (2000).

FN2. Under 5 U.S.C. § 554(e) (2000), an agency "with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." *See* 49 U.S.C. § 721 (2000) (powers of STB).

Ayer appealed, arguing it had at stake important environmental interests, buttressed by the Clean Water Act, 33 U.S.C. §§ 1311–1330 (2000) and the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j–26; that none of its actions are preempted; and that the railroad is not entitled to attorneys' fees. The Conservation Law Foundation, the Town of Littleton Water Department, the Massachusetts Municipal Association and the National League of Cities and Towns, as amici, supported reversal of the district court decision.

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330 F.3d 12, 33 Envtl. L. Rep. 20,201
(Cite as: 330 F.3d 12)

Guilford sought affirmance of the district court's orders, but cross-appealed, saying it was entitled to a declaratory judgment and an injunction against the Town, relief the district court omitted to give it. Guilford was supported on its view of preemption by the Association of American Railroads as amicus. [FN3]

FN3. The court expresses its appreciation to both sets of amici for their assistance.

The parties presented the case as a pure conflict between the strong federal interest in a uniform system of railroad regulation and the strong local interest in protecting water supplies. As the ensuing discussion shows, the law presents much more nuanced accommodations.

At oral argument, we sought a practical solution to a portion of the case and requested that the parties meet with this court's Civil Appeals Management Program (CAMP) to see if they could negotiate an agreement as to Guilford's voluntary compliance with certain conditions. Admirably, the parties have reported back that they have reached partial settlement through an agreement on the conditions under which Guilford will proceed with the development, construction, and operation of an automobile unloading facility at the San Vel site, thus mooting that aspect of the case. They have asked us to dismiss the appeals in cases Nos. 02–1537, 02–1828, and 02–1843, and aspects of case No. 02–2258, and to remand them with instructions to the district court to enter a consent decree. Thus, we do not reach the substance of these issues.

That leaves for decision only the issue in case No. 02–2258 of whether the district court erred in awarding Guilford its attorneys' fees and costs under 42 U.S.C. § 1988. We reverse and vacate the award of attorneys' fees.

I. Background

A. *Factual Background*

Guilford has owned and operated a railroad yard in Ayer since 1974. The site serves as an unloading and temporary storage area for automobiles brought in by rail; it has approximately two thousand parking spaces. In 1997, Guilford purchased 126 acres at the San Vel site, also within the town of Ayer, across the road from its existing railroad yard. Its intention was to create three thousand additional***15** parking spaces on this new site for temporary automobile storage, as well as adding more unloading tracks, a building, and an access road.

The San Vel site is located within the Zone II Aquifer Protection Area. This aquifer protects the water wells at Spectacle Pond, which are the main supply for Ayer's drinking water.[FN4] In November 1997, Guilford began to seek approval from the town to construct the new storage facility. On May 18, 1998, it filed a "notice of intent" with the Ayer Conservation Commission. In this notice, and at a Planning Board meeting on May 26, 1999, Guilford agreed to abide by a list of conditions. It also petitioned for Site Plan Approval from the Ayer Planning Board.

FN4. The site is also within the Zone III aquifer protecting the Town of Littleton's Spectacle Pond well.

The town's response was less than encouraging. On August 26, 1999, the Planning Board issued a Certificate of Approval; however, it contained thirty-six conditions. Many of these were preconditions to construction. Complicating matters further, on August 18, 1999, the Ayer Board of Health adopted new by-laws authorizing it to designate certain occupations as "noisome trades" and prohibit them within town limits. On November 17, 1999, the Board of Health declared that "an 'auto unloading facility' will be considered a noisome trade." Thus, in addition to the thirty-six conditions, Guilford now had to contend with the possibility of being prohibited from operating its proposed facility altogether. Indeed, the Board of

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Health ruling threatened the operation of the existing railroad yard as well, as it also unloaded automobiles.

B. *Procedural History*

1. *District Court History*

On December 20, 1999, Guilford filed suit in the United States District Court for the District of Massachusetts. Guilford's complaint alleged that the STB was granted exclusive jurisdiction over the construction and operation of railroad facilities under 49 U.S.C. § 10501(b) (2000), and that the Interstate Commerce Commission Termination Act (ICCTA), 49 U.S.C. §§ 701–727, 10101–16105, preempted the Board of Health's designation of the new facility as a noisome trade. It also alleged that the local permitting conditions violated the dormant Commerce Clause and thus the Supremacy Clause. The complaint sought declaratory and injunctive relief and attorneys' fees.

In October 2000 the district court referred the matter to the STB, stating that the "expertise of the Board in evaluating the right of the defendants, if any, to regulate the plaintiffs' proposed development off Willow Road in the Town of Ayer, Massachusetts would assist this Court in determining the rights, duties, and obligations of the parties." On May 1, 2001, the STB issued its decision. The defendants filed a petition for reconsideration on May 21, which the STB denied on October 5, 2001.[FN5]

> FN5. While the STB was considering the petition for reconsideration, Ayer successfully sought to restrain Guilford from its ongoing activity on the site. When Guilford appealed the restriction, this court noted that the parties' agreement to maintain the status quo lasted only so long as the STB proceedings were ongoing (the court was unaware of Ayer's motion to the STB for reconsideration). By order dated July 16, 2001 this court vacated the preliminary injunction because it was not accompanied by the requisite findings, but left the parties free to broach the issues anew in the district court.

And there the case largely ended. For procedural reasons, the district court itself ***16** never reached the preemption or Commerce Clause issues raised in Guilford's complaint. The STB gave its views to the district court as to whether federal law preempted some of the conditions imposed by the town. When the district court granted summary judgment for Guilford on March 20, 2002, it declined to evaluate whether some or all of the conditions were indeed preempted. Instead, it ruled for Guilford because Ayer had failed to request judicial review within ninety days of the STB's order, as required by 28 U.S.C. § 1336(c) (2000).[FN6] The status of the thirty-six conditions was left, to some degree, unresolved.

> FN6. The district court, for the purpose of calculating the ninety days, included the time between the STB's May 1 order and Ayer's May 21 motion for reconsideration. That approach was mistaken; if a petition for reconsideration of an administrative order is filed, the original order is not final, and the limitations period begins only when the petition for reconsideration is denied. *See ICC v. Bhd. of Locomotive Eng'rs,* 482 U.S. 270, 284, 107 S.Ct. 2360, 96 L.Ed.2d 222 (1987). Even calculated in the correct manner, it appears that neither party timely sought review of the STB order. In any event, that aspect of the case has since been settled.

Guilford then moved for attorneys' fees under 42 U.S.C. § 1988. The district court allowed the motion on June 10, 2002, and on August 20 the court awarded $286,839.49.

2. *STB's Holding*

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The analysis by the STB of federal preemption under 49 U.S.C. § 10501(b) was finely crafted. *See Boston & Me. Corp.*, 2001 Fed. Carr. Cas. (CCH) ¶ 38,352 (May 1, 2001), *available at* 2001 WL 458685. Effectively, the STB said the town may not flatly ban Guilford's efforts at developing the San Vel site, as it did in its noisome trade determination, and that it may not impose pre-conditions to construction, but that it may impose reasonable and non-discriminatory environmental restrictions which do not unduly burden interstate commerce or unduly restrict the railroad from conducting its operations. The STB did not hold that all state and local regulation of Guilford's activity was preempted. It rejected Ayer's argument that the express preemption language of § 10501(b) did not apply to instances where the STB lacked licensing authority under 49 U.S.C. §§ 10901 and 10906, and it held that state and local law are preempted in those instances in limited circumstances. It held that "pre-clearance requirements (including environmental requirements) are preempted because by their nature they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations." The STB viewed pre-construction approval requirements as giving local authorities impermissible veto power over rail transportation issues.

Nonetheless, the STB found state and local regulation to be permissible "where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety." In its May order, the STB gave three guidelines for permissible state and local regulation:

> 1. Non-discriminatory enforcement of requirements such as building and electrical codes (other than pre-construction requirements) generally are not preempted.
>
> 2. A town may seek enforcement of voluntary agreements a railroad has entered into with a town.
>
> 3. Section 10501(b) should not be interpreted as intending to interfere with the ***17** role of state and local agencies in implementing federal environmental statutes.

All local regulation, in the STB's view, is subject to the same test: whether the statute or regulation is being applied to "unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce." This, said the STB, was a fact-bound question. Accordingly, the STB held that federal law preempted the noisome trade ordinance and the two town pre-construction processes—the Planning Board permit process and the Conservation Commission's pre-construction approval process.

The STB treated the Conservation Commission's thirty-six conditions as a separate matter and offered advice to the district court as to how to evaluate each of these:

> Examples of solutions that appear to us to be reasonable include conditions requiring railroads to (1) share their plans with the community, when they are undertaking an activity for which another entity would require a permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin.
>
> Communities also can enforce their local codes for electrical, building, fire, and plumbing, unless the codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its

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> operations, or unnecessarily burden interstate commerce. Moreover, railroads may not deny towns access in emergencies and for reasonable inspection of the railroad facilities. And to the extent a railroad is willing to undertake an activity or restriction, the activity or restriction generally should be seen as reflecting the carrier's own determination that the condition is reasonable and will not unduly burden interstate commerce.

The STB suggested that conditions 1, 2, 3, 4, 8, 15, 16, 17, 18, 27, and 28 would likely not be preempted, that conditions 7 and 14 would likely be preempted, and that conditions 9 and 12 were examples of areas to which Guilford could agree. In its October order denying Ayer's petition for reconsideration, *Boston & Me. Corp.*, STB Finance Docket No. 33971, 2001 WL 1174385 (Oct 3, 2001), the STB made clear that it had engaged in no factfinding as to any of these conditions, but merely attempted to provide general guidance to the district court.

3. *Settlement*

On May 1, 2003, Guilford and the Town of Ayer, through CAMP, reached a settlement that resolved almost all issues in the case. The parties agreed on a permissible list of conditions Ayer may impose on a railroad facility on the San Vel site; they also agreed that these conditions comprise the sole regulatory ability of the town. Finally, the parties agreed to a dismissal of all of the appeals except Ayer's appeal of the district court's orders on June 10 and August 20, 2002, finding Guilford eligible for attorneys' fees and awarding fees and costs.

II. Discussion

[1] The district court awarded Guilford $286,839.49 in attorneys' fees under 42 U.S.C. § 1988, on the premise that Guilford successfully vindicated its rights under*18 § 1983. We review the legal determinations inherent in the court's order de novo. We note initially that it is not clear that Guilford was the "prevailing party," *id.* § 1988, in the district court proceedings, since the only issue resolved was the STB order and no party sought timely judicial review of that order, *see supra* note 6. However, for the purposes of this discussion we assume that Guilford meets the prevailing party requirement.

[2] Count I of Guilford's complaint alleged Supremacy Clause violations. A claim based solely on the Supremacy Clause does not create rights within 28 U.S.C. § 1343(a)(3) and is not cognizable under 42 U.S.C. § 1983. *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 615, 99 S.Ct. 1905, 60 L.Ed.2d 508 (1979); *see Md. Pest Control Ass'n v. Montgomery County*, 884 F.2d 160, 163 (4th Cir.1989) (per curiam) (attorneys' fees under § 1988 not available under § 1983 on a Supremacy Clause preemption claim). Guilford's claim for attorneys' fees thus depends on an interpretation of the ICCTA.

To the extent Guilford is a prevailing party, it is because the STB ruled largely, though not entirely, in its favor. The STB order is part of a comprehensive statutory scheme of federal regulation of the railways. Accordingly, the STB has primary jurisdiction over aspects of railway operations and facilities. *Pejepscot Indus. Park, Inc. v. Grimmel Indus.*, 215 F.3d 195, 197 (1st Cir.2000). Indeed, Guilford's complaint asserted that the STB had primary jurisdiction over all aspects of this case. Here, the ICCTA creates an explicit and complex statutory scheme, and § 1336 contains provisions authorizing judicial review. None of those provisions authorizes an award of attorneys' fees. Had Congress wished to authorize such fees under § 1336, it could easily have done so.

The district court did not have the benefit of the Supreme Court's later decision in *Gonzaga University v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L.Ed.2d 309 (2002). Acknowledging some ambiguity in its precedent, the *Gonzaga* Court further clarified when an action is cognizable under 42 U.S.C. § 1983 and held that the same analysis applied to § 1983 questions as in implied cause of action cases. A plaintiff must

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assert violation of a federal right which is "unambiguously conferred." *Id.* at 283, 122 S.Ct. 2268.

Ultimately, the test is one of congressional intent. *Bryson v. Shumway,* 308 F.3d 79, 88–89 (1st Cir.2002). This case is not one in which a statute seems to benefit a class, where the question would be whether Congress meant to create rights which are judicially enforceable under § 1983. *Id.* Here, Congress has not been silent. It has made clear in ICCTA where primary jurisdiction lies, and it has created an explicit scheme for judicial review of STB orders and remedies. That scheme does not include awards of attorneys' fees. Indeed, § 1336(a) authorizes injunctive and declaratory relief but has no provisions for attorneys' fees; it would be more than odd to create an action under § 1983 solely to provide for attorneys' fees. It would be contrary to Congressional intent to create a § 1983 action here.

Of course, the mere existence of a statutory enforcement scheme does not always preclude the creation of remedies under 42 U.S.C. § 1983. *See Golden State Transit Corp. v. City of L.A.,* 493 U.S. 103, 106, 110 S.Ct. 444, 107 L.Ed.2d 420 (1989) ("The availability of administrative mechanisms to protect the plaintiff's interests is not necessarily sufficient to demonstrate that Congress intended to foreclose a § 1983 remedy."). But nothing suggests that Congress intended to create rights for railroads apart from the STB statutory ***19** scheme. Even the "rights" cited by Guilford are less than clear and definitive. Guilford does not have the right to be free of all local environmental regulation; the STB order makes that pellucid. Moreover, the district court's judgment was entered based on the STB order under § 1336, not under the Commerce Clause.

In the end, Guilford's argument devolves to the assertion that the town should not have attempted to enforce its own environmental regulations, but should have ceded all authority to the STB, and that Congress created a right, enforceable under § 1983, to sue the town and recover attorneys' fees for the town's error in judgment over jurisdiction. Given that the town does have environmental responsibilities under federal law, we are convinced Congress did not intend this to be a situation where a separate cause of action is created under § 1983.

The award of attorneys' fees is ***reversed*** and ***vacated.*** The joint motion regarding partial settlement is ***allowed.*** Each side shall bear its own costs.

C.A.1 (Mass.),2003.
Boston and Maine Corp. v. Town of Ayer
330 F.3d 12, 33 Envtl. L. Rep. 20,201

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Fed. Carr. Cas. P 38352, 2001 WL 458685 (S.T.B.)

SURFACE TRANSPORTATION BOARD (S.T.B.)

*1 JOINT PETITION FOR DECLARATORY ORDER -- BOSTON AND MAINE CORPORATION AND TOWN OF AYER, MA

Decided: April 30, 2001
Service Date: Late Release May 1, 2001

SURFACE TRANSPORTATION BOARD DECISION

MOTOR CARRIER

STB Finance Docket No. 33971

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

In a decision served December 22, 2000 (the December 2000 decision), we instituted this declaratory order proceeding in response to a joint petition filed by Boston and Maine Corporation, Springfield Terminal Railway Co., and Guilford Transportation Industries, Inc. (collectively, Guilford) and the town of Ayer, Massachusetts. We instituted the proceeding to address the extent to which regulation by Ayer of Guilford's proposed construction and operation of an automobile unloading facility is preempted by 49 U.S.C. 10501(b), [FN1] as broadened by the ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA).

Statements were filed by Guilford, Ayer, the Littleton Electric Light and Water Department (a division of the municipal government of Littleton, Massachusetts) (together with Ayer, the towns), the Association of American Railroads (AAR), and the Norfolk Southern Corporation and Norfolk Southern Railway Company.

As discussed below, it is our view, based on the evidence presented by the parties, that Ayer's Planning Board permit process, the ordinance determining that automobile unloading facilities are a "noisome trade" or nuisance, and the Conservation Commission's pre-approval process are all preempted under 49 U.S.C. 10501(b) and the court and agency decisions interpreting it. In addition, we provide general guidance for the court as to the reasonableness of the types of conditions Ayer would have imposed on Guilford in this case.

BACKGROUND

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This matter was referred to us by order dated October 19, 2000, by the United States District Court for the District of Massachusetts in Boston and Maine Corp. et al. v. Town of Ayer et al., Case No. 99-CV-12606 JLT (Boston & Maine). The court asked that we "evaluat[e] the right of the defendants, if any, to regulate the plaintiffs' proposed development off Willow Road in the Town of Ayer . . . [to] assist this Court in determining the rights, duties, and obligations of the parties."

As described by the parties, since 1974, Guilford has operated an automobile unloading facility (existing facility) on 40 acres of land in Ayer's "Heavy Industry District." [FN2] In 1997, Guilford purchased a 126-acre parcel of land (the San Vel site) located across the road from the existing facility. This site is bordered by two rail lines, and since 1997 has been used by Guilford for off-loading rail cars and storage. [FN3]

Guilford plans to construct and operate a second car unloading facility (new facility) on 57.7 acres of the San Vel site, which will include an access road, 6 unloading and 2 support tracks to be used for car switching and storage, a parking area for about 3,000 cars, and a 55-foot by 75-foot maintenance building. About 40 acres of this site will be surfaced. The new facility, which like the existing facility will be located entirely within a "Heavy Industry District," will be used for unloading, temporarily storing, and transferring cars to motor carriers for distribution in New England.

***2** The new facility is located in an aquifer area categorized as a Zone II wellhead protection area, which "is an area where precipitation will enter the ground and migrate towards a drinking water well."[FN4] It is also in the Zone III protection area (which is an "upgradient watershed to a drinking water source") for Littleton's well at Spectacle Pond. [FN5] Ayer receives drinking water from 2 wells at Spectacle Pond. Littleton gets water from a third well situated at the opposite end of the Pond. The three wells have a collective capacity of about 3.5 million gallons a day, and provide about 50% of the combined drinking water capacity of Ayer and Littleton.

Guilford states that it will take appropriate action to address the risk of pollutant leaks at the new facility. [FN6] It explains that new automobiles will arrive at the new facility with less than one gallon of gas in their fuel tanks and the normal quantity of motor oil. There is to be no maintenance or fueling of the autos at the new facility, and, if an automobile arrives damaged, the vehicle will be removed from the site and repaired elsewhere. [FN7] In the event that an auto were to leak fuel or oil onto the pavement of the new facility, the leak would drain into one of the approximately 40 catch basins that will be installed to contain any spills of fuel or motor oil. [FN8]

Guilford will place an impermeable membrane and an isolated drainage system under the entire portion of the site over which the locomotives will travel. Guilford states that, should a fuel or oil leak from a locomotive occur, the spill would be retained in a structure that drains the impermeable membrane so that it would not reach the aquifer. The spill contents then would be removed from the structure and disposed of in accordance with applicable regulations. [FN9] Accordingly, Guilford maintains that there will be no threat of pollution to the San Vel site or the aquifer. [FN10]

Guilford began seeking local approval for construction in November 1997. In May 1998, it filed an application with the Ayer Planning Board requesting site plan approval. Ayer hired Camp, Dresser & McKee (CDM) as environmental consultants to review Guilford's plans. CDM's report to the town concluded that Guilford's initial proposal to pave the San Vel site could retard percolation and reduce the water flow to the aquifer, and accordingly recommended certain

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changes to Guilford's plans. Guilford then incorporated into the design of the new facility "almost all the features and adjustments requested by . . . CDM, that relate to aquifer protection."[FN11] The Planning Board issued a certificate of approval for the new facility on August 26, 1999, but made the permit subject to 36 separate conditions, which are listed in the Appendix to this decision.

In accordance with a state conservation law, [FN12] Guilford filed a "notice of intention" for the new facility with the Conservation Commission in April 1998, but that agency has not yet issued any ruling addressing the plans. Moreover, on November 17, 1999, the Ayer Board of Health determined that auto unloading facilities are a "noisome trade" and could thus be prohibited within town limits. [FN13] Guilford claims that this action could threaten both the new facility and continued operations at the existing facility.

***3** On December 20, 1999, Guilford filed its court action in Boston & Maine seeking a declaratory judgment, injunctive relief, and damages based on the ICCTA preemption provision and the Supremacy and Commerce Clauses of the Constitution. On October 19, 2000, the court stayed its proceedings and referred the matter to us. In our December 2000 decision instituting a proceeding, we asked the parties to address whether the project comes under 49 U.S.C. 10901 or 10906; [FN14] whether the conditions set by Ayer interfere with interstate railroad operations; and whether we should address both the existing and new facilities or only the new facility.

POSITION OF PARTIES

The towns argue that Ayer can regulate the new facility because most of the regulation it seeks to impose is rooted in the Safe Drinking Water Act, 42 U.S.C. 300f etseq. (SDWA), and the Clean Water Act, 33 U.S.C. 1311 etseq. (CWA).[FN15] The towns point to Board precedent [FN16] indicating that, where state and local entities have been given enforcement authority under Federal environmental statutes such as the SDWA and the CWA, the actions of the local entities are not preempted by section 10501(b). They state that, where there are two overlapping Federal statutes capable of coexistence, courts will give effect to both, by reading them together, assuming that Congress did not intend to create an inconsistency. The towns contend that Congress did not intend, when it enacted ICCTA, to allow railroads to act without regard to the environment. Absent town regulation, they claim, there would be a regulatory void that Congress did not intend. The towns note that we undertake an environmental review under the National Environmental Policy Act, 42 U.S.C. 4321 etseq. (NEPA), only when Board authorization is needed. When authorization from us is not required, as in actions that fall within section 10906, they claim that state and local entities can step in and perform their role under Federal environmental statutes such as the CWA to fill the regulatory void.

Guilford does not object to the towns' imposing appropriate after-the-fact remedial measures should Guilford cause environmental injury. [FN17] But it argues that Ayer's efforts to inhibit the facility or to block it entirely by imposing prior restraints -- the Ayer Planning Board's site plan permit (with its 36 conditions), the Board of Health's determination that automobile unloading facilities are a "noisome trade" or nuisance, and the preconstruction review of the Conservation Commission -- are preempted under section 10501(b).[FN18] Guilford contends that the SDWA and CWA are not applicable here; that, if those statutes apply, ICCTA preempts them; and that, in any event, the towns in fact are applying local law, and only using the CWA and SDWA as a pretext. Additionally, Guilford argues that Ayer's actions should be voided as (1) discriminatory (because other local businesses have not faced similar restrictions) [FN19] and (2) an undue burden on interstate commerce.

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*4 Guilford states that it is unlikely that substantial volumes of pollutants will be leaked by the new cars at the new facility. [FN20] Guilford indicates that it will comply with "the substance" of the town ordinances concerning aquifer protection and that its operations will meet the requirements of Massachusetts regulations for aquifers. [FN21] The railroad notes that the Massachusetts Department of Environmental Protection concluded in a recent study that the new facility poses no risk to the Littleton water supply and, if the system proposed by Guilford is implemented, no risk to the Ayer water supply either. [FN22] Moreover, Guilford states that it provided the Environmental Protection Agency (EPA) with detailed information about the project, but EPA has never expressed any concerns about it. [FN23]

DISCUSSION AND CONCLUSIONS

Section 10901 vs. Section 10906.

We agree with the parties that this project does not come within section 10901. Railroads are not required to obtain Board approval under section 10901 to build or expand facilities that are ancillary to a railroad's operations unless the activity is part of a larger project subject to our jurisdiction (such as construction of a new rail line).SeeNicholson, 711 F.2d at 368-70. Railroads also do not require authority from us to upgrade an existing line, to increase the level of traffic on a line, or to construct "spur," "industrial," or "switching" track." 49 U.S.C. 10906; Detroit/Wayne County Port Auth. v. ICC, 59 F.3d 1314 (D.C. Cir. 1995). Indeed, "[t]rackage . . . used in the loading, reloading, storage and switching of [rail] cars incidental to the receipt of shipments by the carrier or their delivery to the consignee . . . is 'spur, industrial, team, switching or side tracks"' under section 10906. Railway Labor Executives Ass'n v. City of Galveston, 849 F.2d 145, 148 (5th Cir. 1988) (quoting New Orleans Terminal Co. v. Spencer, 366 F.2d 160, 165-66 (5th Cir. 1966)).

New Facility/Existing Facility.

In light of the court's referral order, which, as noted above, is limited to the new facility, we will focus on that facility. However, the legal principles set out in this decision can provide general guidance as to how section 10501(b) applies to state and local regulation of the existing facility.

The General Parameters of Preemption Under Section 10501(b).

State and local railroad regulation has long been preempted to a significant extent. SeeChicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311, 318 (1981) (historically, the Interstate Commerce Act was recognized as "among the most pervasive and comprehensive of federal regulatory schemes."). In 1980, Congress adopted "an exclusive Federal standard, in order to assure uniform administration of the regulatory standards of the Staggers [Rail] Act of [1980]."H.R. Rep. No. 104-311, reprinted in 1995 U.S.C.C.A.N. 807-808 (ICCTA Conference Report). In 1995, in ICCTA, Congress broadened the express preemption, so that both "the jurisdiction of the Board over transportation by rail carriers" and "the remedies provided under [49 U.S.C. 10101-11908] are exclusive and preempt the remedies provided under Federal or State law."49 U.S.C. 10501(b).SeeCity of Auburn, 154 F.3d at 1029-31;Riverdale I at 5. Several courts have held that this statutory preemption applies even in cases -- such as the construction of ancillary facilities under section 10906, as involved here -- where we lack licensing and conditioning authority and therefore do not conduct our own environmental review. See cases cited in Riverdale I at 5-9 and in Borough of Riverdale -- Petition for Declaratory Order -- The New York Susquehanna and Western Railway Corporation, STB

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Finance Docket No. 33466 (STB served Feb. 27, 2001) (Riverdale II).[FN24] As the court stated in CSX Transp., Inc. v. Georgia Pub. Serv. Comm'n, 944 F. Supp. 1573, 1581 (N.D. Ga. 1996), "[i]t is difficult to imagine a broader statement of Congress' intent to preempt state regulatory authority over railroad operations" than that contained in section 10501(b).

***5** Court and agency precedent interpreting the statutory preemption provision have made it clear that, under this broad preemption regime, state and local regulation cannot be used to veto or unreasonably interfere with railroad operations. Thus, state and local permitting or preclearance requirements (including environmental requirements) are preempted because by their nature they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations. SeeStampede Pass; City of Auburn, 154 F.3d at 1029-31.

As the courts also have found in addressing the scope of section 10501(b), zoning ordinances and local land use permit requirements are preempted where the facilities are an integral part of the railroad's interstate operations. Austell;Ridgefield Park.Moreover, in Ridgefield Park, the court found that section 10501(b) precluded the state court from adjudicating common law nuisance claims involving noise and air pollution from a railroad maintenance facility because to do so would infringe on the Board's exclusive jurisdiction over the location and operation of railroad facilities.

This does not mean that all state and local regulations that affect railroads are preempted. As we stated in Stampede Pass, 2 S.T.B. at 337-38, and Riverdale I, state and local regulation is permissible where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety. [FN25] For example, non-discriminatory enforcement of state and local requirements such as building and electrical codes generally are not preempted. Id. at 8-9;Flynn. While a locality can not require permits prior to construction, the courts have found that a railroad can be required to notify the local government "when it is undertaking an activity for which another entity would require a permit" and to furnish its site plan to the local government. Ridgefield Park.Furthermore, a town may seek court enforcement of voluntary agreements that the town had entered into with a railroad, notwithstanding section 10501(b), because the preemption provisions should not be used to shield the carrier from its own commitments, and "voluntary agreements must be seen as reflecting the carrier's own determination and admission that the agreements would not unreasonably interfere with interstate commerce."Township of Woodbridge, NJ et al. v. Consolidated Rail Corporation, Inc., STB Docket No. 42053 (STB served Dec. 1, 2000), at 5 (Woodbridge).

Finally, nothing in section 10501(b) is intended to interfere with the role of state and local agencies in implementing Federal environmental statutes, such as the Clean Air Act, the CWA, and the SDWA. SeeStampede Pass, 2 I.C.C.2d at 337 & n.14; Riverdale I at 7. [FN26] Thus, the lack of a specific environmental remedy at the Board or under state and local laws (as to construction projects such as this, over which the Board lacks licensing power) does not mean that there are no environmental remedies under other Federal laws.

***6** Of course, whether a particular Federal environmental statute, local land use restriction, or other local regulation is being applied so as to not unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce, is a fact-bound question. Accordingly, individual situations need to be reviewed individually to determine

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the impact of the contemplated action on interstate commerce and whether the statute or regulation is being applied in a discriminatory manner, or being used as a pretext for frustrating or preventing a particular activity, in which case the application of the statute or regulation would be preempted.

This Case.

Both Ayer and Littleton acknowledge that a prior restraint interferes with interstate commerce and is preempted under section 10501(b).[FN27] Nevertheless, the towns argue that Ayer can regulate the new facility because most of the regulation it seeks to impose is rooted in the SDWA and the CWA, which are not preempted. [FN28] However, those statutes may not be used simply to permit local communities to hold up or defeat the railroad's right to construct facilities used in railroad operations through the guise of saying they are enforcing the CWA or the SDWA, as Ayer appears to be doing here.

Guilford has presented arguments why the CWA and the SDWA may not even apply to the new facility. [FN29] But even if those statutes were found to be applicable, it appears that Ayer is simply using them as a pretext to do what Congress expressly precluded: interfere with interstate commerce by imposing a local permitting or environmental process as a prerequisite to the railroad's ability to conduct its operations. The towns insist that there is a potentially significant water quality problem that needs to be addressed here. But as Guilford notes, an expert agency, the Massachusetts Department of Environmental Protection, recently concluded that, with the mitigation system proposed by Guilford, the new facility poses no threat to the local water supply. Moreover, EPA, which was given detailed information about the project, has expressed no concerns about it.

The record supports Guilford's argument that it is unlikely that substantial volumes of pollutants will be leaked by the new cars at the new facility. Guilford agrees to comply with the substance of the Ayer ordinances addressing aquifer protection, and has incorporated the recommendations of Ayer's contractor in making its final plans to protect against pollutant leaks and degradation of water quality. Guilford indicates that it will comply with best management practices and that the new facility will include a system for artificial recharge of precipitation that meets the requirements of the applicable Massachusetts Department of Environmental Protection regulations for Zone II aquifers. The impermeable membrane and catch basins that Guilford will install should provide protection if a fuel or oil leak occurs. And Guilford will also conduct appropriate monitoring of water quality and the rate at which the aquifer is being recharged.

*7 In these circumstances, the towns cannot reasonably argue that Ayer is basing its various permitting requirements, prohibitions, and conditions on the SDWA and the CWA. Rather, the record here supports the conclusion that the SDWA or the CWA are being used merely as a pretext. As Ayer's actions do not appear needed to carry out the SDWA or the CWA, we agree with Guilford and AAR that the noisome trade ordinance, [FN30] the Ayer Planning Board permit process, and the Conservation Commission's pre-construction approval process are preempted under the statutory preemption provision and the case law interpreting it. SeeCity of Auburn;Riverdale I; Stampede Pass; Ridgefield Park.

The 36 Conditions.

Finally, as not all state and local regulation that affects railroads is preempted -- and some of the 36 conditions (see Appendix) that the Ayer Planning Board would have imposed on Guilford in August 1999 might be reasonable

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measures in and of themselves -- we will offer some general observations regarding the kinds of restrictions that might be reasonable in individual circumstances. [FN31]

Both the courts and the Board have found that railroads, while exempt from traditional permitting and zoning processes, are not necessarily exempt from other generally applicable laws. [FN32] Like any citizen or business, railroads have some responsibility to work with communities to seek ways to address local concerns in a way that makes sense and protects the public health and safety, and to assume responsibility if they act negligently. But at the same time, literal compliance with state or local laws often may be impractical in cases involving railroad facilities. Thus, as the court indicated in Ridgefield Park, a certain degree of pragmatism on the part of communities and cooperation on the part of railroads is necessary to reach reasonable solutions to state and local concerns that do not unreasonably interfere with interstate commerce. [FN33]

Examples of solutions that appear to us to be reasonable include conditions requiring railroads to (1) share their plans with the community, when they are undertaking an activity for which another entity would require a permit; [FN34] (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; [FN35] (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin. [FN36]

Communities also can enforce their local codes for electrical, building, fire, and plumbing, [FN37] unless the codes are applied in a discriminatory manner, unreasonably restrict the railroad from conducting its operations, or unnecessarily burden interstate commerce. Moreover, railroads may not deny towns access in emergencies and for reasonable inspection of the railroad facilities. And to the extent a railroad is willing to undertake an activity or restriction, the activity or restriction generally should be seen as reflecting the carrier's own determination that the condition is reasonable and will not unduly burden interstate commerce. [FN38]SeeWoodbridge.

***8** This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is discontinued.

2. This decision is effective 30 days from the date of service.

3. A copy of this decision will be served on:

United State District Court, District of Massachusetts

(Attn: District Judge Joseph L. Tauro)

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(RE: Case No. 99-CV-12606 JLT)

United States Courthouse

1 Courthouse Way - Suite 2300

Boston, MA 02210

Vernon A. Williams

Secretary

FN1. That section reads in relevant part:

> The jurisdiction of the Board over . . . transportation by rail carriers, and the remedies provided in this part with respect to rates, classifications, rules (including car service interchange, and other operating rules), practices, routes, services, and facilities of such carriers; and . . . the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching, or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one state, is exclusive. Except as otherwise provided under this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.

FN2. This facility is bordered by a rail line and can be reached by vehicles via an access road. The existing facility has several unloading tracks with space for about 35 rail cars. It also has 2,000 automobile parking spaces, and an 8,800-square foot building. The existing facility receives rail serve twice daily and truck service about 75 times a day.

FN3. Prior to Guilford's acquisition, the site evidently was used to make railroad ties and for other industrial activities.

FN4. Littleton opening statement, Affidavit (Aff.) of Davos,¶3.

FN5. Id.

FN6. According to Guilford, its proposed system for protecting against pollution or contamination is similar to what it has used for many years at its nearby Deerfield yard refueling facility.

FN7. Guilford opening statement at 9; Verified Statement (VS) of Michael C. Emerson.

FN8. Guilford opening statement at 10; VS Emerson; VS Reply Emerson; VS John Drobinski; Guilford reply at 3-6.

FN9. Id.

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FN10. Id.

FN11. Guilford opening statement at 11. See also Guilford reply at 22-23.

FN12. Mass. Gen. Laws ch. 131, section 40.

FN13. The Board of Health stated that the new facility was a noisome trade because it "may be harmful to the inhabitants of the Town of Ayer, injurious to their estates, dangerous to the public health, pose a threat to the aquifer and may be attended by injurious odors and noise resulting from the increased truck and vehicular traffic and attendant emissions and potential releases of harmful pollutants . . . ." Guilford opening statement, exhibit 4.

FN14. Under 49 U.S.C. 10901, a license from the Board (and an appropriate environmental review) is required for a railroad's construction of "an extension to any of its railroad lines [or] an additional railroad line."In a licensing proceeding, after conducting an environmental review, we typically impose appropriate environmental conditions to address environmental concerns raised by the parties, including local authorities. SeeCity of Auburn v. STB, 154 F.3d 1025, 1031-33 (9th Cir. 1998), cert. denied, 527 U.S. 1022 (1999)(City of Auburn). However, there is no statutory requirement for a railroad to obtain Board approval to build or expand facilities that assist the railroad in providing its existing operations but do not give the carrier the ability to penetrate new markets. SeeNicholson v. ICC, 711 F.2d 364, 368-70 (1983), cert. denied, 464 U.S. 1056 (1984)(Nicholson). Nor do railroads require authority from us to upgrade an existing line. Finally, 49 U.S.C. 10906 explicitly provides that no regulatory permission is required for "construction . . . of spur, industrial, team, switching, or side tracks."Where no license is required, there is no environmental review by the Board.

FN15. The towns claim that Ayer is not seeking to obstruct the construction of the new facility or to dismantle the existing facility, and that it is not operating in bad faith or in a discriminatory manner. Rather, the towns state, Ayer simply disagrees with Guilford's view that the railroad's proposed mitigation will be sufficient to protect against contamination.

FN16. Borough of Riverdale - Petition for Declaratory Order - The New York Susquehanna and Western Railway Corporation, STB Finance Docket No. 33466 (STB served Sept. 10, 1999) (Riverdale I) at 7; Auburn and Kent, WA-Petition for Declaratory Order - Burlington N.R.R. - Stampede Pass Line, 2 S.T.B. 330, 337 (1997) (Stampede Pass), aff'd, City of Auburn.

FN17. Guilford reply at 1.

FN18. AAR agrees that section 10501(b) preempts any attempt to use local environmental requirements to preclude construction of the new facility. AAR is particularly concerned about the Board of Health's attempt to prohibit the new facility on noisome trade/nuisance grounds. AAR notes that labeling the proposed facility as a nuisance prohibits Guilford from proceeding with its rail transportation proposal, which is precisely the kind of interference with interstate commerce that section 10501(b) is designed to prevent.

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FN19. Ayer responds that a proposed development of the San Vel site by Patriot Energy was withdrawn when the threat to drinking water became apparent. Moreover, the town argues, other businesses within Zone II did not run afoul of the SDWA and the CWA because they were preexisting or located farther away from the aquifer.

FN20. As previously noted, a new car contains only about 1 gallon of gasoline and 8 quarts of motor oil, and Guilford is planning to install catch basins to contain spills. An impermeable membrane and a drainage system will be placed under the part of the site over which locomotives travel.

FN21. Guilford reply at 22. Specifically, Guilford contends that the new facility will have a system that complies with Ayer Aquifer Protection By-Law, ¶6.C.vi: "A system of groundwater recharge . . . which does not degrade groundwater quality," that uses "storm water infiltration basins or similar systems," and that precedes such systems with "traps to facilitate removal of contamination."Guilford also submits that the new facility will comply with Ayer Site Protection By-Law ¶6.A.(e) by having "adequate measures to prevent pollution of surface or groundwater, to minimize erosion and sedimentation, and to prevent changes in groundwater levels, increased runoff, and potential for flooding."Moreover, Guilford states that it intends to comply with best management practices and to do appropriate monitoring of (1) the rate at which the aquifer is being recharged and (2) water quality.

FN22. Guilford reply at 3, 6-12; reply exhibit 1 at 5-6.

FN23. Ayer contends that EPA's failure to object is due to budget problems and limited resources and does not constitute tacit approval of the project.

FN24. The towns' theory that there is an exception to the broad preemption of section 10501 in instances where we lack licensing and conditioning authority and the state or local authority is enforcing environmental laws has been rejected by various courts. SeeFlynn v. Burlington Northern Santa Fe Corp., 98 F. Supp. 2d 1186 (E.D. Wash. 2000)(Flynn);Norfolk Southern Ry. v. City of Austell, No. 1:97-cv-1018-RLV, 1997 U.S. Dist. LEXIS 17236, at 17 n.6 (N.D. Ga. 1997)(Austell);Village of Ridgefield Park v. New York, Susquehanna & Western Ry., 750 A.2d 57 (N.J. 2000)(Ridgefield Park). Notwithstanding the usual presumption to the contrary, seeCipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992), even local environmental regulation is preempted where Congress intended to preempt all state and local law. As explained in City of Auburn, 154 F.3d at 1030-31, congressional intent to preempt a state or local permitting process for prior approval of rail activities and facilities related to interstate transportation by rail is explicit in the plain language of section 10501(b) and the statutory framework surrounding it.

FN25. In Stampede Pass, 2 S.T.B. at 339, we offered the following examples of state and local regulation that would not be preempted:

> [E]ven in cases where we approve a construction or abandonment project, a local law prohibiting the railroad from dumping excavated earth into local waterways would appear to be a reasonable exercise of local police power. Similarly, . . . a state or local government could issue citations or seek damages if harmful substances were discharged during a railroad construction or upgrading project. A railroad that violated a local ordinance involving the dumping of waste could be fined or penalized for dumping by the state or local entity. The railroad also could be required to bear the cost of disposing of the waste from the construction in a way that did not harm

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the health or well being of the local community.

FN26. Section 10501(b) also does not preempt valid safety regulation under the Federal Rail Safety Act, 49 U.S.C. 20101 etseq.SeeTyrrell v. Norfolk Southern Railway Company, No. 99-4505 (6th Cir. April 25, 2001); Riverdale II at 2 n.4.

FN27. Aff. of James Kreidler at ¶ 3, 4; Littleton reply at 20.

FN28. As the towns note, if two Federal statutes are "capable of coexistence," the statutes should be harmonized and each should be regarded as effective unless there is a "positive repugnancy" or an "irreconcilable conflict" between the laws. Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 381 (1998); Blanchette v. Connecticut General Ins. Corp., 419 U.S. 102, 133-34 (1974); Unocal Corp. v. Kaabipour, 177 F.3d 755, 769 (9th Cir. 1999).Section 10501(b) need not be read to preempt valid regulation under the CWA and the SDWA where regulation under these statutes, fairly enforced, does not unreasonably interfere with railroad operations.

FN29. According to Guilford, the SDWA is not directed at private parties like Guilford. Moreover, the two parts of SDWA upon which Ayer bases its regulation of the new facility -- the Source Water Assessment Program and the Wellhead Protection Program -- are inapplicable, as the former is limited to assessments and the latter is a voluntary program. The CWA, Guilford asserts, is not applicable because it applies to discharges of stormwater only if they are associated with industrial activity and travel into waters of the United States, which is not the case here.

FN30. As AAR notes, the noisome trade ordinance here is similar to the nuisance ordinance involving air and noise pollution that the court found to be preempted in Ridgefield Park.

FN31. The fact that the 36 conditions were initially imposed as part of an impermissible permit does not mean that every one of them is preempted.

FN32. SeeRidgefield Park;Riverdale I; Stampede Pass.

FN33. Some cooperative efforts appear to have been made here. For example, the record shows that, at least initially, Guilford worked closely with the Ayer Planning Board and Ayer's contractor, CDM. Guilford incorporated almost all the features and recommendations of CDM that relate to aquifer protection in its final plans to protect against pollution. Guilford also states that it will comply with the substance of local ordinances concerning aquifer protection and that its operations will meet state requirements for aquifers. In addition, Guilford provided information about the project to EPA, and the Massachusetts Department of Environmental Protection studied the new facility.

FN34. Conditions such as 2-4 and 27-28 listed in the Appendix appear to be that type of restriction. But see condition 7 (unduly burdening interstate commerce by requiring Guilford to submit drawings for the catch basins "for review and approval" by the Planning Board, prior to construction).

FN35. See, e.g., conditions 16-18. On the other hand, certain conditions (including condition 14, which requires

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Guilford to provide Ayer with "an adequate water supply" if the town's existing water supply becomes contaminated) appear to be attempts to apply state and local regulation in a discriminatory manner. Ayer can seek redress for contamination from Guilford, but the normal processes for redress (i.e., fines, citations, or damages) should apply.

FN36. See conditions 8 and 15.

FN37. See, e.g., condition 1, which requires Guilford to install a sewer line and connect to Ayer's sewer system.

FN38. Railroads may agree voluntarily to take actions that go beyond that which a state or local government could require. See, e.g., condition 9 (requiring Guilford to pay for certain road improvements) and condition 12 (pertaining to the railroad's giving up land). We encourage railroads and communities to work together to reach mutually acceptable solutions to localized environmental concerns.

APPENDIX

TERMS AND CONDITIONS

*9 1. Guilford shall install a sewer line to their lot line, as part of the original project and shall connect to the Town's sewer, at Guilford's sole expense, within 6 months of receiving notice from the Town that the Town's Wastewater System, is accessible to Guilford's property.

2. Prior to construction, Guilford shall provide a detailed monitoring plan for water quality as discussed in Camp Dresser & McKee, Inc.'s (CDM) memorandum from Andrew Miller regarding "Review of Environmental Monitoring Plan - Ayer, MA" dated May 18, 1999 and summarized in CDM's memorandum "Final Report on Proposed Guilford Automobile Transfer Facility" dated June 30, 1999 (Groundwater Quality Section). Guilford shall bear all expenses associated with water quality monitoring.

3. Guilford shall provide the Planning Board with final copies of the Spill Prevention Control and Countermeasures Plan and the Stormwater Pollution Prevention Plan prior to construction.

4. Guilford shall provide detailed design plans for the retention basin showing all grade contours and spot grades, inverts of control structures and slope treatments prior to construction. The plans shall be stamped by a Registered Professional Engineer.

5. Guilford shall provide a plan showing the drainage areas on the site and demonstrating the 50/50 split in flows to each basin system prior to construction.

6. The Stormwater Calculations indicate that, except under the most extreme events, the infiltration basins will not see any significant flows. Guilford shall provide the Planning Board with similar as[-]built percolation rates for the detention and infiltration ponds upon construction. If the as-built percolation rates are not within acceptable bounds, then the pond system must be reconstructed to provide [ ] acceptable percolation rates.

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7. Guilford shall submit, for review and approval, detailed design drawings for the catch basins including the oil/gas separator hoods from the vendor who will supply them prior to construction.

8. Guilford has proposed a monitoring well network around the site for both groundwater quality and quantity. There is also an existing network of Monitoring Wells. Guilford shall measure groundwater elevations for the existing and new wells monthly during the first year after construction of the paved areas and new wells monthly during the first year after construction of the paved areas is completed to determine any trends in groundwater elevation. Guilford shall provide the Town's DPW Water Department with a monthly report on the groundwater elevations which shall include discussion of any changes with respect to historic conditions. After the first year of monitoring, the Town will require Guilford to continue with monthly monitoring until it is determined by the Town of Ayer's Water Department that there is no significant impact on Groundwater elevations in the vicinity of the site.

9. Guilford shall write up a temporary improvement plan for the intersection of Willow Road and Route 2A for the grading of the intersection, widening of the intersection and lines for designation of the intersection, with the cost of repair or improvements provided by Guilford with a cap of $5,000. The temporary improvements shall be accomplished prior to the beginning of construction of the new facility.

***10** 10. The Planning Board shall appoint a local citizens group. Guilford shall meet with this citizens group at least on a monthly basis to address their concerns regarding the facility. This group will be organized prior to construction beginning and last until residents no longer wish to meet. This local citizen group map [sic] report back to the Planning Board whenever they deem necessary.

11. Guilford shall plow the entire emergency access road provided to Wagon Road residents that is on Guilford's property to ensure safe passage for Wagon Road residents during winter storms.

12. Guilford agrees to convey to the Town of Ayer in fee, or convey to the Town of Ayer a Conservation Restriction on the Property described as Lot B on the plan entitled "Plan of Land in Ayer, Massachusetts for Guilford Transportation Industries, Inc. prepared by Chase International, Inc. dated July 7, 1999" subject to any existing easements or rights of way, for use as Conservation and/or Open Space Land. Guilford shall provide access to the public to Lot B by providing an easement over its other land if necessary. This conveyance shall be subject to acceptance by Town Meeting. This condition shall be null and void if Town Meeting does not accept this conveyance. The conveyance shall be null and void if Town Meeting does not accept this conveyance. The conveyance will occur prior to the commencement of operation of Guilford's Facility. An authorized representative of Guilford shall confirm in writing Guilford's agreement to this 30 days of the date of this decision.

13. Guilford shall utilize only organic non-slip material or plan sand on site for slip prevention.

14. Guilford shall provide the Town of Ayer with an adequate water supply if the Town's existing water supply is contaminated as a result of the contaminants entering the Town's water supply from Guilford's facility. Guilford shall submit to the Planning Board prior to the beginning of construction of the facility a detailed plan describing how Guilford will provide an adequate water supply to the Town if such contamination occurs. Said plan shall be subject to

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review by the Ayer Board of Health and shall be modified to meet the requirements, if any, of the Board of Health.

15. Guilford shall provide to the Planning Board, on a quarterly basis during construction and during the first two years of operation of the facility, test sections to demonstrate whether the protective membrane under the railroad tracks is performing adequately.

16. Guilford agrees to monitor the loading of asphalt at the asphalt plant as part of the contract with the asphalt company to assure that there are no possible carcinogens to the asphalt transporter. Guilford shall include in its contract with the asphalt provider for the project a provision stating that the asphalt not contain possible carcinogens.

17. Guilford shall include in the contract with any asphalt provider for the project a condition that the asphalt not contain ground up or other tire material.

***11** 18. Guilford shall develop a procedure to ensure that the asphalt and any other paved surfaces on the property are at all times sealed.

19. Guilford shall comply with all Federal, State, and Local Statutes, Regulations, By-laws, and other requirements concerning the length of time the Willow Road and Wagon Road Crossing may be blocked during operation of its facilities.

20. Guilford shall monitor the length of time that the Wagon Road Crossing and Willow Road Crossing is blocked and shall provide to the Planning Board, at six months intervals for two years after the facility is in operation, reports of the results of the monitoring.

21. A Storm Water Maintenance Control Plan shall be submitted to the Planning Board for review by the Town of Ayer Department of Public Works and/or the Planning Board's Engineering Consultant prior to the beginning of construction of the facility.

22. Guilford will ensure that adequate landscaping to serve as a noise buffer is provided around the property. A specific Landscaping Plan will be submitted for Planning Board approval prior to the beginning of construction of the project.

23. Guilford will meet all requirement of the Town of Ayer's Aquifer Protection District Zoning By-law approved at the May 1999 Town of Ayer Annual Town Meeting prior to the beginning of construction.

24. Guilford shall comply with the requirements of the Town of Ayer Noise By-law and may not operate its facility at any time at which the noise from the facility exceeds the requirements of the Noise By-law.

25. The infiltration basins are designed for a minimum infiltration rate of 0.5 inches per hour. Prior to the operation of the facility, Guilford will provide documentation to the Planning Board that this infiltration rate is being met and, if it is not, they will provide additional measures such as drainage blankets to insure the appropriate amount of the re-

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charge.

26. Guilford has conducted some test pits in the vicinity of the retention basins as a demonstration of the types of soils in this area. During construction, Guilford will conduct soil samples in this area to confirm that the soils in this area are consistent. Town Engineer, or his/her representative, will be invited to witness the taking of the soil samples.

27. Two full sets of final plans stamped by a Registered Professional Engineer will be provided to the Planning Board prior to the beginning of construction.

28. A set of As-Built Plans for the site stamped by a Registered Professional Engineer will be provided to the Planning Board prior to starting operations.

29. All lights on the property will be boxed and angled down to avoid light pollution into the neighborhood.

30. There will be no snow removal from the site. All snow removed from the paved areas of the site shall be piled and allowed to melt on another portion of the site.

31. All upgrades to the crossing signal and gate systems on Willow Road shall be completed and operational prior to the commencement of the operation of the facility as described in the Guilford Rail System memorandum dated 5/17/99 subject; 'Crossing circuit design upon construction of New Auto Facility at Willow Park' from Mr. Tom Cary, Jr.

***12** 32. Guilford shall notify the Town of Ayer Board of Health concurrently with any required notification to the Massachusetts Department of Environmental Protection ("DEP") pursuant to G.L. C.21E and/or the Massachusetts Contingency Plan, 310CMR 40.00. Guilford shall provide to the Board of Health copies of all required filings with DEP pursuant to G.L. C.21E and/or the Massachusetts Contingency Plan. This condition is in addition to any and all other notices Guilford is required to provide to the Town of Ayer pursuant to any other Federal, State, or Local Statute, Regulation, By-law or other requirement concerning a release or threat of release of oil or hazardous materials at Guilford's property.

33. A geo-textile material as described in the approved Site Plan will be placed under the entire Storm Water Retention Basins Area of the facility prior to the operation of the facility.

34. All references to "Guilford" shall mean Guilford Rail System, it[]s successor, and assigns.

35. For the purposes of these conditions any reference to "construction" or "construction of this facility" shall mean any site work or any application for a building permit.

36. A determination that any of the above conditions is invalid or unenforceable shall not affect the validity of the remaining conditions.

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Fed. Carr. Cas. P 38352, 2001 WL 458685 (S.T.B.)

END OF DOCUMENT

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MEMORANDUM

Ref: 1255

Subject: Traffic Assessment
Sea-3, Inc. Facility
Trucks Related to Proposed Site-Plan Modifications
Newington, New Hampshire

From: Kim Eric Hazarvartian, Ph.D., P.E., PTOE
Principal

Date: March 24, 2014

INTRODUCTION

Sea-3, Inc. has retained TEPP LLC to prepare this traffic assessment memorandum (TAM). This TAM regards liquefied petroleum gas (LPG) or propane-transport-truck traffic related to proposed site-plan modifications for the Sea-3, Inc. facility at 190 Shattuck Way in the Town of Newington, New Hampshire.

In summary:

- the proposed site-plan modifications do not materially affect the transport-truck land-side component
- approximate average daily transport trucks per peak-month operating day is not anticipated to exceed the historical range
- the land-side transport-truck configuration limits the number of trucks that can be filled with LPG to about 10 per hour, a small number in terms of traffic operations.
- the area road network accommodates a wide range of large trucks, and LPG-transport trucks pose no significant issue in this regard
- the Town's Shattuck Way corridor study included 1999 traffic counts over a large study area, as well as traffic growth due to potential area development; Sea-3 facility was operational over this period.
- literature review showed that the propane industry utilizes extensive safety equipment and procedures
- literature review did not show significant traffic-safety issues specific to LPG-transport trucks
- Sea-3, Inc. reports no significant history of safety issues

RELEVANT ASPECTS OF THE SITE PLAN

The Sea-3, Inc. facility encompasses a transportation terminal that includes three components:

- water-side, with bulk transport of LPG in vessels
- rail-side, with bulk transport of LPG in rail cars
- land-side, with bulk transport of LPG in transport trucks

The proposed site-plan modifications do not materially affect the transport-truck land-side component.

TRANSPORT-TRUCK RECORDS

Sea-3, Inc. provided transport-truck records from 2002 to present, summarized in Table 1.

Table 1 shows approximate average daily transport trucks per operating day. The number ranged between 103 and 161 trucks, except for the unusual 2012 and 2013. Each truck made one trip into the facility and one trip out of the facility.

ANTICIPATED TRANSPORT-TRUCK ACTIVITY

Approximate average daily transport trucks per peak-month operating day is not anticipated to exceed the range that Table 1 shows. In addition, the land-side transport-truck configuration limits the number of trucks that can be filled with LPG to about 10 per hour, a small number in terms of traffic operations.

AREA ROAD NETWORK

Transport trucks leaving the site:

- travel southeasterly along the site driveway
- then turn right to travel southwesterly along Avery Road
- then split at Shattuck Way, turning right to travel northwesterly toward the Spaulding Turnpike and inland points, or turning left to travel southeasterly toward the Spaulding Turnpike, Interstate Route 95 and coastal points

Table 1. Transport-truck records.

Year	Peak Month	Approximate Average Daily Transport Trucks Per Peak-Month Operating Day
2014 to Date	February	103
2013	January	8
2012	January	40
2011	January	105
2010	January	133
2009	January	158
2008	January	131
2007	February	149
2006	January	109
2005	January	137
2004	January	161
2003	January	114
2002	January	115

Per records of Sea-3, Inc.

The routings all accommodate varying volumes of large trucks, and LPG transport trucks pose no significant issue in this regard. Also, the Town's Shattuck Way corridor study included 1999 traffic counts over a large study area, as well as traffic growth due to potential area development. The Sea-3 facility was operational over this period.

LPG TRANSPORT TRUCKS AND TRAFFIC SAFETY

Regarding LPG transport trucks and traffic safety:

- literature review showed that the propane industry utilizes extensive safety equipment and procedures
- literature review did not show significant traffic-safety issues specific to LPG transport trucks
- Sea-3, Inc. reports no significant history of safety issues

CONCLUSION

In conclusion:

- the proposed site-plan modifications do not materially affect the transport-truck land-side component
- approximate average daily transport trucks per peak-month operating day is not anticipated to exceed the historical range
- the land-side transport-truck configuration limits the number of trucks that can be filled with LPG to about 10 per hour, a small number in terms of traffic operations.
- the area road network accommodates a wide range of large trucks, and LPG-transport trucks pose no significant issue in this regard
- the Town's Shattuck Way corridor study included 1999 traffic counts over a large study area, as well as traffic growth due to potential area development; Sea-3 facility was operational over this period.
- literature review showed that the propane industry utilizes extensive safety equipment and procedures
- literature review did not show significant traffic-safety issues specific to LPG-transport trucks
- Sea-3, Inc. reports no significant history of safety issues

Newington Planning Board

Monday March 24, 2014 6:30 PM

Agenda

1) **Public Hearing:** A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

A) Track Inspection – Report by John Robinson of NH DOT

B) Fire Safety Analysis – Report by Philip Sherman

C) Traffic Study – Report by TEPP, LLC

D) Emergency Response – Report by Chief Andrew Head

2) **New Business:** PSNH Transmission lines

3) **Planning Board minutes** of March 10

4) **Correspondence**

5) **Pending Business**: Re-visit Newington Master Plan; Improve signage in the Shattuck Way corridor; Capital Improvements Program; Update Rules of Procedure; and LED signs

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, March 24, 2014

Call to Order: Chair Denis Hebert called the March 24, 2014 meeting to order at 6:35 p.m.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Christopher Cole; Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; John Robinson, NH DOT Rail Inspections; Philip Sherman, P.E., Fire Protection Engineering and Building Code Consulting; Kim Eric Hazarvartian, P.E., Transportation Engineering, Planning and Policy; Newington Fire Chief, Andrew Head; Steven Haight, Haight Engineering; David Allen, Deputy City Manager for Portsmouth; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Senator Martha Fuller Clark; Portsmouth Residents: Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Jane Sutherland; Newington Residents; Mr. Paul Bagley; Jack O'Reilly; Bill Sweeney; Greenland Resident: Laura Bygero; Jeff McMenemy with the "Portsmouth Herald"

A) Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Alternate Board member, Peggy Lamson opened the meeting by thanking Mr. Rich DiPentima and his wife, Catherine of Portsmouth for all their research that they shared.

Mr. Dave Allen, Deputy City Manager for Portsmouth read Portsmouth City Manager, John Bohenko's email to Newington Town Planner, Tom Morgan regarding a preliminary inventory on the condition of rail infrastructure in Portsmouth, which would cost approximately $2,400,000 for upgrades. He also pointed out that there was over a mile and a half of excepted track, which was the lowest condition grade of track, running through the most densely populated sections of the City.

A) Track Inspection – Report by John Robinson, of NH DOT

Chairman Hebert introduced Mr. John Robinson, railroad safety inspector for the NH Department of Transportation Rail and Transit Bureau. Mr. Robinson mentioned that he had recently discussed track inspections with the City of Portsmouth.

Mr. Leonard Schwab of 59 Great Bay Drive in Greenland asked Mr. Robinson to address a report that was published in the "Portsmouth Herald" regarding the removal of I.D. tags from the crossties. Mr. Robinson said date nails were something that had been used in the past to monitor the manufacturers and lifespan when rail ties were changed more frequently, but had been phased out and were not required by the FRA. Mr. Robinson couldn't say why they were removed, but they were a popular item with rail fans and were often pillaged. He said a seasoned rail person would be able to tell the age of railroad ties, however.

Mr. Schwab asked Mr. Robinson how he assessed the percentage of ties that were punky or rotten on a 15 mile run. Mr. Robinson said there were between 3,000 and 3,200 railroad ties per mile and Federal regulations were written to address 39 feet at a time. He said in Class I classification eight non-defective crossties in 39 feet were required. He said the location of the ties had to be effectively distributed to support the track, for instance, out of twenty-five ties on a Class I railroad track, five had to be classified as non-defective. Mr. Schwab asked Mr. Robinson if that would mean 20 ties could be defective and Mr. Robinson confirmed that was correct. Mr. Robinson stated that a certain amount of deflection was engineered into tracks to prevent steel failure. Mr. Schwab said he could appreciate the engineering, but it was hard to feel comfortable with those figures.

Mr. Bob Gibbons of 135 Spinnaker Way said the report said he inspected 21 segments and asked if the 39 feet was a segment. Mr. Robinson said the track inspection was done by units and different appliances were considered units. Mr. Gibbons asked if the inspection was from Rockingham Junction to Newington and Mr. Robinson said it was. Mr. Gibbons said there was no mention in the report of excepted track in downtown Portsmouth and Mr. Robinson said they looked at it, but only certain regulations applied. Mr. Gibbons asked how the track in its current condition would handle the proposed propane tanker traffic. Mr. Robinson stated that excepted tracks were available to transport hazardous materials with no more than five cars, but not passenger service. Mr. Gibbons said the proposal was for sixteen cars. Mr. Robinson said that was correct and it would create an operational challenge for the railroad.

Mr. Gibbons asked what it would take to build the tracks back up to Class I standards and Mr. Robinson said generally the replacement of ties, leveling and aligning the track better. Mr. Gibbons asked if it would require a substantial upgrade and Mr. Robinson didn't think so as the difference between excepted tracks and Class I was nominal.

Mr. Rich DiPentima of 16 Dunlin Way said Sea-3's proposal was for twelve to sixteen cars a day. Mr. Robinson stated that Pan Am would only be able to move five cars a day with the tracks in their current condition. Mr. DiPentima asked where the cars would stay and Mr. Robinson said they could resort to leaving the cars at Rockingham Junction, bringing five cars at a time or they could leave some of the cars at the beginning of Portsmouth rail yard, but they could not have more than five cars at a time on an excepted track. Mr. DiPentima said the cars would be unprotected and unguarded. Mr. Robinson said that was correct if the tracks were not upgraded.

Mr. DiPentima read from the Newington Master Plan that stated the railroad tracks in town were not up to par. Chairman Hebert responded that the tracks appeared to be in poor condition, but it was not a qualified statement as Newington had no railroad inspector giving that information.

Mr. DiPentima asked about the safety of track defects and Mr. Robinson said a certain number of defects were not outside the realm of other Class I tracks and they were considered safe.

Ms. Catherine DiPentima of 16 Dunlin Way asked if the six months between inspections was the typical period of time between inspections, saying it seemed like a long time. Mr.

Robinson agreed that it did. Ms. DiPentima said she lived 100 feet from the tracks and they looked in terrible condition. Mr. Robinson said his focus had revolved around the Down Easter passenger service over the past 10 years and freight lines in this area were standard to low. He said the DOT and the Federal Railroad Association (FRA) did joint inspections, and he had recently mentioned to the FRA inspector that it was time to focus on other lines now that the Down Easter was squared away with the Portsmouth and Newington branch being front and center. He said they walked three miles of track in 2012 and the 32 defects found were promptly repaired within 30 days. Ms. DiPentima said a lot of propane could travel over the tracks in 30 days. Mr. Robinson said the railroads were on notice that they could still conduct business at the designated speeds, but they could not go beyond the 30 days to repair the defects and the inspectors could not go back for another inspection until the 30 days were up.

Ms. DiPentima asked if they reviewed the inspection reports that were released. Mr. Robinson said a "Portsmouth Herald" reporter that requested the reports from the Freedom of information Act sent him a couple of pages of the FRA summary document. He admitted that the document was very hard to follow. He stated that some defects were more severe than others.

Mr. Raymond Faulkner said he lived across the Piscataqua River from Sea-3 in Eliot, Maine and had worked for the U.S. Coast Guard and with environmental compliance for many years and was concerned with the safety of the LPG ships. Mr. Faulkner reminded everyone living close to the rails that Portsmouth had an active rail yard for 67 years. He said all transportation methods had some risk, but he didn't think Pan Am wanted any incidents on their watch.

Mr. Faulkner said there was a speed limit for the Portsmouth traffic circle yet people still went at different speeds. He said roads were in bad repair, the bridge over the Piscataqua was in poor condition, but it was still used. He said there were dangers at railroad crossings and no railroad crossing had a right of way for cars - there were yield signs that said, "Look, Listen and Live" and people had to take some responsibility for their own safety.

Mr. Bill Sweeney of 90 Patterson Lane said there were trees growing between the rails past Sea-3 and asked if there were plans for the trains to continue on that line. Mr. Robinson said the Newington branch ended at the Sprague, but was out of service and it would only be put into use by making the required repairs. Mr. Sweeney said many hunters walked those tracks. Mr. Sweeney asked if there were plans to put them back in use and Mr. Robinson said it was not a secured area.

Mr. Jack O'Reilly asked if there was adequate line of sight and stopping distance at the crossings and Mr. Robinson said trains have the right of way, there was little a train could do if someone crossed in front of it.

Ms. Pat Ford of 135 Spinnaker Way handed out a map of Pease Development and displayed the map with highlighted areas showing the existing rail lines going to Newington, and a proposed line that would return the train line to a former line through Pease. Ms. Ford said this alternate route could eliminate crossings in Greenland, running through downtown Portsmouth, Maplewood Avenue, Christian Shores, Dunlin Way, Atlantic Heights, Spinnaker Way and Osprey Landing, reducing the hazard of railcars going through their backyards and providing for access in case of emergency. Mr. Robinson said he started his position in 2000 and he was not familiar this plan and could not speak on Pan Am's business plan.

Chairman Hebert said the Master Plan discussed what could potentially be done if someone wanted to throw money at it, but the line never continued all the way through Pease and that would take quite a lot of money and time to complete. He said he liked that people

were throwing ideas out and understood people were concerned with the track, but reminded them that it was not Pan Am that was before the Board.

Ms. Ford said there was a fund called the Railroad Rehabilitation Fund from the U.S. Department of Transportation under the FRA for loans to finance railroad infrastructure that would give public benefits for safety, the environment and economic development with loan terms and repayment periods at current interest rates. She added that Pan Am owned a subsidiary that manufactured railroad ties. Ms. Ford said she had no idea what the cost or time frame would be, but it seemed someone could come up with an alternative route through Pease to reduce the safety risk for residents and improve their business. She asked Pan Am if they would be willing to consider the feasibility. Ms. Cynthia Scarano, Pan Am Executive Vice President said that she didn't believe Pan Am owned that property through Pease any longer. Chairman Hebert said it probably always belonged to the U.S. government and now the State probably owned it. Alternate Board member, Peggy Lamson agreed that the rail was always part of the Federal government. She said continuing the line from Pease to the port was considered, but it was determined that it was not feasible because it was owned by the U.S. government and put away on the shelf. Chairman Hebert said the Master Plan listed a passenger service for consideration, but Pease Development Authority and the State and Federal Government would have to be on board with completing the line, and he didn't see that happening anytime soon. He said the Board had forty-five days to make a decision on the Sea-3 proposal and they probably couldn't even get on the PDA agenda in forty-five days.

Chairman Hebert asked Mr. Robinson who owned the railroad crossings and who was responsible for the costs according to RSA: 373 for municipalities. Mr. Robinson said RSA: 373 was probably the least clear RSA, but it did say that the railroad was responsible for the right of way, the maintenance of signage, signals, and tracks. As for road surface, the acid test was historic documentation on what came first, the railroad or the public way. He said the duty of the railroad was to provide suitable crossings for the public, but the railroad says they build railroad not roads. He said as part of a hearing process, a town official could petition the transportation commissioner for a change of protection. Mr. Robinson would testify on road traffic, number of trains and speed of trains, and the commissioner would make a decision on who was responsible for upgrades and distribution of costs. Chairman Hebert said Route 33 was an example of a major highway with a crossing in front of Lowe's and he didn't know if there were enough signals there and they would need to have further discussions as time went on.

Mr. Jeff Barnum, Great Bay Piscataqua Water Keeper said the railroad was only as good as the bridges. He said there were crossings over waterways in Stratham, Pickering Brook, over Winnicut River in Greenland, and in Portsmouth. Mr. Barnum asked Mr. Robinson who did inspections, how often and where the reports were kept for the Planning Board to review before they passed judgment. Mr. Robinson said he was not a licensed engineer, but he made cursory inspections with railroad personnel. He said he did not do subterranean or underwater inspections himself. He said Federal law required that annual, comprehensive bridge inspection be in place with records, ratings and results of changes available to the FRA and himself. Mr. Barnum said he heard the Planning Board couldn't get a hold of the reports and asked if DOT could review the reports. Mr. Robinson said he would be privy to look at the records and numerical rating system, but it was not likely that a licensed engineer from DOT would do the inspections. Mr. Barnum asked if the Planning Board had to go to the FRA who would get that information from Pan Am. Mr. Robinson said that was correct.

Mr. Richardson said he read RSA: 373:3 and looked online for the DOT regulations for calculations and he couldn't find them. Mr. Robinson said RSA: 373 was listed under the Public Utilities Commission and up to 1985, the railroad went under Public Utilities oversight and then

was given to DOT. Mr. Richardson asked how the Planning Board would determine cost to municipalities for the project and upgrades to crossings. Mr. Robinson said he thought the City of Portsmouth was exploring the Federal Section 130 Program that a lot safety upgrades and there would be a match with the City. He said the railroad often participates with construction forces for the installation or upgrade of signals at crossings.

Mr. Richardson said the Board was running out of statutory time to make a determination and asked the City of Portsmouth representatives if they would work out those costs, so not to throw a burden on the City's shoulders. Mr. Allen, Portsmouth's Deputy City Manager nodded that they would. Chairman Herbert said the process was new, but Pan Am mentioned they sometimes supplied labor if the towns supplied materials. He said after that the railroad owned and maintained it.

Chairman Hebert said like it or not how this was how the U.S. government set up the railroads and it was not within the Planning Board's purview to tell Pan Am what to do. He said it was they had to get engineering involved and trust the FRA guidelines and what DOT would do and it was in their best interest to begin that process as soon as possible. Ms. Scarano said they were meeting with town of Greenland to begin the process. She said towns and the railroad used to work separately, but they were now trying to sit down together to discuss what to do at crossings and how to proceed.

Chairman Hebert said every crossing needed to be assessed to determine what needed to be done, and to set priorities. He said he didn't know how much it would cost, but the Board was trying to make everything safer if this project was approved. He said the Board had to move away from the railroad, which was not in their purview and look at the site to consider if site changes were necessary. Mr. Robinson said he heard they might consider a third party inspector, but clarified that as the railroad safety inspector for the State, he was free to inspect private and industrial railroad tracks on a State level outside if they felt there was any reason for concern.

Mr. Mark Willis of 16 Caswell Drive in Greenland expressed concern that the railroad trestles were self-inspected and wanted to know why those reports were not available to all citizens. Mr. Robinson said rail bridges were private infrastructure going over public waters and that was why it had come under Federal scrutiny recently so he thought the records would be available through the Federal Freedom of Information Act. He said one of the problems with making inspection reports available to the public was they were open to interpretation that required a certain amount of expertise for proper understanding. He went on to say that a competent inspection would take training beyond his training and he was not an engineer. He said the reports were numerically rated, and if a situation were beyond his knowledge, he would refer to an engineer for his opinion to validate his concern. Mr. Robinson said a railroad employee accompanied a majority of the inspections. He said they were signing off and if he saw anything that was a peril, he would call the FRA immediately and impose an emergency order to stop operations on Federal order.

Mr. Richardson said he understood the railroad was under Federal jurisdiction and the Board couldn't tell the railroad what to do, but he wondered if the Board might be able to discuss the offsite costs and municipal share of highway improvements. Mr. Robinson said DOT could play the role of facilitator, but he never recalled the railroad offering to improve crossings because their top priority was not ride quality, although the railroad did want safe crossings. Mr. Robinson said the railroad owned their own tie company, but they were not road builders so they often referred to contractors. Mr. Richardson asked who would pay for widening the lane if it was necessary on the Maplewood Avenue crossing where major developments were being proposed. Mr. Robinson said DOT made decisions how costs would be allocated. He said after

a new signal went in at the cost $150,000 to $200,000, the railroad had a continuing expense of $5,000 per location per year to inspect and maintain that signal that the highway uses free of cost from there out. He said the railroad always starts contentiously, but they do want safety, as does the Town of Newington. He said they might like signals at every crossing in the State, but they could not engineer out poor judgment and complacency. He said if gates and bells malfunction, they operate in the most restrictive mode closing town roads. Mr. Richardson asked if signal requirements increased with Class II tracks and Mr. Robinson said the crossings, speed, and the number of trains were a determination, but signalization was not class specific to a class standard.

B) Fire Safety Analysis – Report by Philip Sherman

Mr. Philip Sherman, P.E., Fire Protection Engineering and Building Code Consulting said he reviewed the Sea-3 design against the New Hampshire fire code. He said there was a requirement for a fire safety analysis that was intended to include LPG release and fire to coordinate with local response to consider the safety of workers as well as the public. He said it was centered on product control to keep the product in the piping and equipment where it belonged to minimize hazards. He said an analysis of exposure to other properties, analysis of water supply and protection measures were also reviewed.

Mr. Sherman said Mr. Paul Bogan, Sea-3 Vice President of Operations sat on the board and they came to a meeting of the minds with some modifications to ensure sufficient water to support the installation, relocation of the hydrants as necessary, and fire access through Sprague and the rail right of way. Mr. Sherman said they looked at all the required setbacks at the site and adjacent structures off site and a decision was made to provide fixed water spray so someone at the control booth could press a button and everything could be sprayed and cooled, depending where the incident was.

Chairman Hebert asked Mr. Sherman if he was a P.E. and if he put his stamp on the plans. Mr. Sherman said he did put his P.E. stamp on the plans, and Chairman Hebert said another P.E. would review the plan before approval.

Board member, Jack Pare asked where the existing fire monitors would be relocated for flexible use. Mr. Sherman said the existing monitors were on a nozzle attached to hydrants. He said they were of some use in a fixed site, but of no use for multiple sites. He said that was part of what drove them to a fixed water spray system directed at the tanks. The hydrants would be used in conjunction with the fire dept. Mr. Pare asked if fire monitors would not be reutilized and Mr. Sherman said they would not.

Mr. Pare asked if the UV detectors detected flame or non-odorized vapor. Mr. Sherman said there were flame detectors. Mr. Pare asked if there were any sniffers and Mr. Sherman said there were not. Mr. Bogan said UV and gas detectors were already in place and they would duplicate that with state of the art equipment for the new construction.

Mr. Pare referred to increasing the number of LPG trained firefighters and asked about training firefighters in Newington and surrounding communities. Mr. Sherman said Newington had a small number of firefighters on duty so firefighters from surrounding areas would respond. He said they took a conservative view of available labor that included firefighters and first alarm people on duty. Mr. Bogan said they provided training in the past and would again for Newington, Portsmouth, Greenland and Stratham.

Mr. Pare asked if there were a train accident, would the training address that kind of effort. Mr. Bogan said yes, there was an emergency response plan to address off site incidents, which was on their website as well. Mr. Richardson asked what resources that Sea-3 had on

site should an accident occur and what Sea-3's role would be. Mr. Bogan said Sea-3 had equipment and personnel available to go to the scene. Ms. Chairman Hebert asked Pan Am if they provided training to fire fighters to respond to an accident off site. Ms. Scarano said they often worked with the FRA to provide a day of training for local fire departments.

Chairman Hebert said there was a mutual aid agreement with different towns. He said there would be an on scene commander, which was usually the fire department head that would call for assistance with their apparatus and equipment to stabilize the scene. Newington Fire Chief, Andrew Head agreed. Chairman Hebert said hazardous and flammable materials like jet fuel or heating fuel could contaminate the soil and environment, but these responders would control propane that usually remained contained.

Chief Head said if something happened down the track off the Sea-3 site, they would be called to assist, but it would not be their responsibility and the railroad police would be there quickly to respond. Mr. Richardson said there had been an incident with an engine fire that Newfields or Newmarket responded to and had to burn for a while because the equipment was in the way and they couldn't put it out. He asked what the local fire departments would do to respond to a fire. Chief Head said they would have the party in charge of the equipment explain what the best way to put the fire out would be. He said they might use lots of water to keep a tank cool, or if necessary, allow the spill to vaporize or burn off depending on the circumstances. Ms. Lamson asked if it would be the Newington fire chief's responsibility to seek the assistance of Sea-3 if there was a disaster on the rail line once the tank filled with propane left Sea-3. Chief Head said they could look to Sea-3 for information, but their doing anything more would be a liability.

Chairman Hebert asked if the fire department had what it needed for training and equipment to respond. Chief Head said they were in the preliminary stages, but he thought they were all set. He said he hadn't seen the system yet, but there was only a short distance of track in Newington off the facility. He said if the proposal was passed, they would review the full plan, but everything in their area should be in place, along with the fire trucks. He said they would also seek any training available. Mr. Bogan said funding from the National Propane and Gas Association would pay for the training.

Mr. Pare noted that they listed the public water supply, but asked if it would be worthwhile to install a dry stand pipe for the nearby Piscataqua if there was not enough pressure. Mr. Sherman said the intent was to see if there was enough water and the intent of the flow test was to see if there was enough pressure. Chairman Hebert asked if the nearby salt water could be used. Chief Head said there was too much of a draft pull and it didn't work. Vice-Chair Marconi asked Mr. Bogan if the facility had a backup tank and Mr. Bogan said they did. Mr. DiPentima said there was a derailment of a propane tank car in near Woodbury Avenue and Market Street in August 2001 that fortunately didn't have any loss of product, but that might change at 25 miles per hour. He asked if they had written evacuation plans for the hotels, restaurants and shops within a one-mile radius in a catastrophic event of an LPG explosion that addressed how long it would take and where people would go. Chief Head said Newington was his jurisdiction and it would be up to Portsmouth to set up their own evacuation plans. Chief Head said two years ago they did drills with the State for evacuation for an incident at the Seabrook nuclear power plant. Mr. DiPentima said he helped write the Seabrook evacuation plan in the 1980's for a stationary site, but this was a mobile hazard going through densely populated areas and thought they needed plans in place for a catastrophic event of regional impact to prevent the loss of life and destruction of property. Chief Head said the State emergency management plans included evacuations with escape routes for the whole area, but he didn't know of any drills.

Mr. Richardson said it was his understanding that part of the Clean Air Act was an emergency response plan for the Sea-3 facility that Newington participates in. Chief Head said they would receive a 911 and they would investigate any reports of leaks and recommend an evacuation of everyone in the area, including the malls with the assistance of the police department to get everyone on the highway. He said they were working on a phone tree system in conjunction with some of the other industrial facilities.

Chairman Hebert summed up by saying the fire chiefs from each town were responsible for emergency responses for their area and would call for assistance from other towns. He said it would be similar to the emergency response required for any incident involving an LPG tanker going down the highway. He said he was not trying to defend Sea-3 or Pan Am, but scenarios change, so they prepared with apparatus, equipment, personnel, and chains of command and practiced what they could on a regular basis. Chairman Hebert said the simulators used for putting out fires were all propane, which they could control better than oil fires, which were hazardous to the environment.

Mr. O'Reilly said the chief was co-director of the town's emergency plan, which included flooding, hurricanes, etc. and suggested they work with Sea-3 to include propane fires if they didn't already have that in place.

Mr. Richardson said there were requirements for separation distances and fencing in their plan and asked if there were any concerns with security. Mr. Bogan said that would be part of their upgrade with security, fencing, lighting, and surveillance. He said U.S. Homeland Security governed them and they would have to upgrade their plan if they went forward with the project.

Senator Martha Fuller Clark said the emergency response booklet to communities was developed in the 1980's and she wondered if it had been updated. Mr. Joe Rose, President of the Propane and Gas Association of New England said they updated their plan twice a year. He said the focus of the plan was to provide resources and tools for fire services that they might need to control situations should they occur. He said they had three day practice sessions with live fire and an actual rail car and rail car head with valves and fittings to teach fire fighters what would actually happen. Senator Clark asked who would address the plan for evacuation and Mr. Rose said that would be the local fire chief and the emergency management plan.

Board member, Chris Cross asked if the fire trucks were expected to drive over the railroad tracks for emergency access. Chief Head said Shaftmaster would have to lose some parking spaces for the trucks to fit and they were also concerned with where rails cars would be stored. Mr. Cross said driving over rails would be constraining and he thought a suitable secondary route would need to be available, plowed and maintained. Mr. Sherman said fire safety code required fire access roads before they could obtain a legal permit. Mr. Bogan said a second access would be built to code beside the tracks so trucks wouldn't have to go over ties.

Mr. Cross said the site plan for compressors, pumps and other facilities appeared to use overhead lines and he wondered if they might run underground. Mr. Bogan said Public Service lines were already running over them, and they could run future lines from the pole underground. He pointed out that fire codes from the Propane and Gas Association that would determine how many feet away electric lines would have to be from the equipment and that would be reviewed. Chief Head said the power lines to compressors would run underground.

C) Traffic Study – Report by TEEPP, LLC

Mr. Kim Hazarvartian, P.E., with Transportation Engineering, Planning and Policy reviewed his traffic assessment regarding truck traffic. He said the site had a waterside

component with bulk transport vessels, the rail side, and the land side component with LPG transport trucks. Mr. Hazarvartian said the trucks left the site, went down Avery Avenue, down Shattuck Way and then split directions up the Spaulding Turnpike or down I-95. He said site modifications would not materially affect the trucking component, which would stay the same with a capacity of filling ten trucks per hour. Mr. Hazarvartian reviewed the truck transportation history from February 2002 to present with an average of 103 to 161 trucks per day for all years except 2012 and 2013 due to market conditions. He said the site changes would not increase those volumes, as the site capacity was limited to ten trucks an hour.

Mr. Richardson asked how many trucks could be on the site at once, and asked where trucks queuing at the gate would go. Mr. Bogan said they had five transport loading spots, but they had an agreement with Newington Energy to stack trucks if they were backing up on Avery road.

Mr. Hazarvartian said at ten trucks an hour in a sixteen hour day, there could be as many as 161 trucks. Discussion ensued whether it would be possible for more trucks to come in and out of the site. Mr. Bogan said they had to factor in the time for drivers to pull on and off the rack. He also said they didn't have capacity to store rail cars, so they would unload product and store it in tanks.

Chairman Hebert asked about ships. Mr. Bogan said they would fill local market contracts and demands in the winter months first and then they could export any remaining product in summer months.

Mr. Morgan asked if they had any idea where the customers were and the percentages of product going north and south. Mr. Bogan said he thought it might be an even distribution between, New Hampshire, Maine and Massachusetts. Mr. Morgan said they relied on historic data for truck trips, but the propane market was expanding and he thought it might be helpful to get some information on consumer trends. Mr. Rose said New England was the only place in the United States where the demand for propane was increasing at a rate of 8% over the last five years because customers were converting from oil for clean and cheaper propane. He said Sea-3 distribution was constrained by the reality of a twenty-four hour day with a maximum of 200 trucks a day at peak capacity.

Mr. Morgan wondered if they could increase more than one train per day to supply product for export if recent events in Ukraine created a bigger demand in Europe, and how that would affect traffic. Mr. Bogan said the capacity of their chilling, drying and storage equipment could only handle sixteen cars a day and they would have to expand, but he didn't believe there was room at their site for required setbacks. Mr. Rose said they would have to have space for extra rail cars. He said New England's propane supply was 75% dependent on rail, but 87 million gallons came in by ship this winter because rail cars were not available and couldn't keep up. He said most of the gas for Europe came in quicker and cheaper from North Africa, across the Mediterranean. Mr. DiPentima said he didn't see how they could meet the increasing demands of propane without increasing truck traffic beyond historic levels. Mr. Hazarvartian said the decrease in traffic in 2012 and 2013 was an anomaly and they were only returning the level of traffic that they had previously, not increasing it from that number. Ms. Laura Bygero of Greenland expressed concern that Sea-3 might expand as an exporter to foreign markets that would bring in more propane tankers over the rails and that Sea-3 would return to the Board at a later date with a request to expand their capacity. Mr. Bogan reiterated that they had to comply with fire and safety setback regulations and they couldn't expand beyond 16 tankers a day because of the size of the property.

Ms. Bygero said it was harder to build a gas pipeline than rail lines so the shortage of rails was a national issue that was being looked at to address the increase of supply coming out

of fracking. Mr. Bogan said there was a difference between LPG and natural gas. Chairman Hebert asked if natural gas could be brought in and processed as Sea-3 for shipment, and Mr. Bogan said they could not be mixed and they were only doing LPG. Chairman Hebert said by law no board could restrict a business from making expansion proposals; they could only evaluate them fairly by law.

Mr. Richardson said he understood there was a limit to how much propane could be processed, but they couldn't use that as a stipulation for approval any more than they could require the railroad to upgrade to a Class II or limit the number of trains. Chairman Hebert said they couldn't regulate the rails, but they were reviewing the traffic study on the number of trucks going in and out of the facility, which had a limitation on how much product it could process due to the site limitations. Mr. Bogan again stated that the equipment could only handle 16 cars per day, unless there was a change in design and they were not doing that.

Mr. Mark Willis of Greenland said he was confused because the number of tankers and trucks reported was inconsistent. Chairman Hebert said the operation would be sending out the same average number of trucks a week depending on the demand as it had in the past. He added that the site had a limited capacity for processing and storage so there was a limited number of tankers that could come in as well. Ms. Scarano said there might be fewer tankers sent out some weeks, but those were the maximum numbers. Board member, Bernie Christopher asked Mr. Bogan to elaborate on what their storage capacity was. Mr. Bogan said they were bringing in 180 million gallons a year by ship and were proposing 16 tankers a day, but they would fall short during a peak year so additional product would be pumped out of the summer storage to make up difference during the heating season. He said eventually the tanks would be empty and then they would only operate on 16 tankers a day.

Mr. O'Reilly said it came down to economics – it was cheaper to buy domestic propane than importing foreign supply, so it was a matter of increased profit, but capacity was still capacity and that was not changing. Mr. Bogan said that was correct, that the expense of foreign supply had priced them out of the market over the last couple of years and this was an attempt to keep up the domestic supply at an affordable price.

Ms. Jane Sutherland of Dunlin Way said she thought the application was for export, not regional distribution. Chairman Hebert read Sea-3's application to reconfigure their LPG terminal to accommodate rail deliveries, truck shipments throughout New England *and* export via ocean going ships. Ms. Catherine DiPentima asked if there was a change of process if the application included export. Chairman Hebert said even if they were changing the method that they did business, it was still the same business with the same number of trucks going out so the Board could only look at changes to the site. Mr. Richardson said the zoning ordinance and site regulations applied to the site changes to accommodate the rail to plant changes , but the existing use for trucking LPG was approved in 1996 and it was in effect grandfathered as an existing, lawful use. He said the Board could only revoke approval if they were to expand beyond that 1996 agreement that would have to come back to the Board or Energy Board.

D) Emergency Response – Report by Fire Chief Andrew Head

Chairman Hebert said the fire safety details of an application were worked out with the Fire Chief and the State Fire Marshall. If issues were not addressed, the Planning Board backed the Fire Marshall up.

Mr. DiPentima said he read about the Pan Am incident that occurred recently in Westford, Massachusetts where propane tankers were teetering on a bridge and Pan Am didn't notify local officials. He said the only way it came to their attention was when the local Fire Chief

drove by. Ms. Scarano said local fire and police were notified, but the town manager was not notified. Mr. DiPentima said he heard there was no Federal regulation to notify local officials. Ms. Scarano said that was true, but she was not going to have a disagreement with the town manager in the newspaper.

Board of Selectmen representative, Rick Stern asked Chief Head how many people a year they sent out for the propane safety training. Chief Head said they try to send out two in the spring and two in the fall, but everyone in the department went through the training two years ago. Mr. Stern asked if he had been to the training and Chief Head said he had not, but others in the department had.

Portsmouth Assistant Mayor, Mr. Jim Splaine said he was chair of the traffic safety commission in the late 70's when Sea-3 was starting and they were quite concerned with the rail track conditions at that time. The police chief and the fire chief at the time worked out an informal arrangement to receive notifications of the Sea-3 rail traffic, which they shared with local fire departments. He said it seemed quite useful to the planning and preparation for any emergency that might occur, and he wondered if Chief Head would find such an arrangement with Sea-3 and Pan Am agreeable. Chief Head said there were few rails that came into Newington, but they received lists of ships once a day, including propane shipment notices from the Coast Guard so he imagined a list from the railroad would be helpful.

Chairman Hebert said the Board couldn't regulate or restrict the railroad, but he thought it was reasonable for Pan Am to work out a schedule voluntarily out of consideration of the noise impact to the local community. Ms. Scarano said the railroad operated on an as needed basis that was not scheduled, but they did give as much information as possible on what was going over the rails to the fire department. Chairman Hebert said they had said they planned on upgrading and replacing 10,000 cross ties, and he was asking if they would set up a liaison with the community and voluntarily avoid noises such as running engines in the yard unnecessarily. Ms. Scarano said she personally took calls from the community and they wanted to do what they could. She said they had a safety person who would work with local fire departments, but they were not a scheduled service so they would not be willing to make an agreement at anytime. Chairman Hebert said there were some things about the railroad that were outdated and needed to be reviewed, but that was not within the Board's purview. However, he did think there were some things the railroad could do to keep a good community relationship going.

Ms. Bygero said as a Great Bay steward she was asked by their president to express their concern for the environment and supported a request by the Portsmouth community to request a comprehensive safety and environmental impact study. She said they would also like to ask Pan Am to release their bridge inspection reports. Ms. Scarano said the bridges were inspected all the time, but they did not release their findings publically. Ms. Sutherland said no one understood how they could do an objective and thorough study on their own equipment without a conflict of interest.

Attorney Ratigan said Federal law was clear that local government had no say over environmental regulations in regards to rail improvements. Chairman Hebert said the reason these powers were given to the railways that were built across the country a long time ago was that they weren't going to ask for permission from every town they went through and those Federal laws hadn't changed. He suggested the only way to change things was to ask representatives in Washington to change the laws. He said they had discussed it with legal counsel for many hours and the Board could not consider anything to do with the rails, not even on site, but he hoped Pan Am would cooperate voluntarily to mitigate the impact on the communities.

Mr. DiPentima asked about the issues that affected the public health, safety and welfare. Attorney Ratigan said they listened to fire and traffic studies and the Board would review their finding with an independent consultant, but purview of the Board was limited to the Sea-3 site and they had no jurisdiction over the rails and rail traffic.

Chairman Hebert said cheap fuel could come through ship, but the Jones Act said they couldn't go from U.S. port to U.S. port unless it was piloted and crewed with a U.S. made ship and there were none. He said the Jones Act was another law with unintended consequences that was hurting the country. He said they could only go to their elicited officials to change laws. He said it had been an educational process for everyone.

Mr. Gibbons said there were many subjects that could not be discussed or disputed by the Planning Board, but there was an economic impact that will be thrown on all the abutting communities to protect citizens from increased traffic and speed hazards by building gateways across Maplewood Avenue and Market Street where there was high traffic. He said the expected time of travel would be in the early morning hours after bars let out, which would require an increase in safety considerations. Chairman Hebert said Pan Am worked with towns in the past to share costs, and Mr. Robinson said the State set up the process. He said unfortunately, there was more traffic as towns and cities grew. He said everyone liked the region and resources, and sometimes that meant that something like a railroad or a power line was proposed near people's homes in the interest of benefiting the larger community as a whole.

Senator Clark said she understood there were some difficulties with an alternate line, but asked if there was any way that Newington could reach out to the PDA to discuss a solution if it was practical and responsible to find an economic and safe solution to avoid dense residential and traffic areas. Chairman Hebert said they would ask those questions.

Mr. Richardson said they had been told that the lines would be upgraded to Class II and he thought it fair to say that these things would be done. He said the zoning ordinance called for determinations that they make sure projects were safe for neighborhoods. He said cases had been cited, and the idea that the Board could do nothing was something he would look into. Attorney McEachern said Pan Am said the lines would be upgraded to Class II, not the applicant. Ms. Scarano agreed that Pan Am came because they were asked to and they did not have an application before the Board.

Mr. DiPentima said this project had been declared as a development of regional impact and other towns had limited abutter status. He asked why the Planning Board couldn't ask the Portsmouth City Council and other planning boards to vote to see if they were in support or not. Chairman Hebert said there were near the end of the road regarding new information and the Board would need to make a decision soon and they could continue the discussion at the next meeting on Monday, April 14, 2014.

2) New Business: PSNH Transmission Lines

Chairman Hebert said the Town had just begun communicating with PSNH who was doing preliminary land surveys, borings, identifying types of soil in the river in consideration of replacing their distribution lines with transmission lines from Durham through Gundalow Landing to Hannah Lane. He said they were proposing going above ground by Hannah Lane and were told the town wouldn't accept the lines above ground. He said they were also looking at alternative routes. He said the schedule was for this and next year to be completed by 2015.

Mr. Paul Bagley of Hannah Lane said the right of way was already there and thought they could do whatever they wanted. Chairman Hebert said their right of way was for a distribution line and they might over burden their right of way with transmission lines, but he

wasn't sure what the easement said. Attorney Ratigan said PSNH might talk to residents while they were doing their surveys about acquiring additional land to widen their right of way and it would be helpful to let the Planning Board know so they could negotiate with them. He said PSNH had the right, but they typically didn't like to use eminent domain. Mr. Bagley said it sounded like they were similar to the railroad, but he had a little hope that he would get compensation.

Chairman Hebert said there was legislation in the State to regulate above ground power lines. He said they tried to put language in that would require them to show why they couldn't go underground. Mr. Bagley said the lines had to be buried underground on the Frink farm because of air traffic, but Mrs. Abbott's lot was right in front of Hannah Lane. Chairman Hebert said the Abbott property on Hannah Lane could be in a good position because there was more land. Mr. Stern said needing more land could encourage them to bury the lines instead of buying the land.

Chairman Hebert said they were staying in contact and the Town wanted to be involved in the process of routes chosen. Mr. Bagley asked if there was a better route. Chairman Hebert said possibly on the other side of Arboretum Drive, or at the edge of Great Bay Wildlife Refuge. Mr. Richardson asked why would need to go near the refuge. Chairman Hebert said it was near the river following the boundary of the refuge. Ms. Lamson said she believed they were surveying beyond Welch's Cove and agreed that the refuge boundary could be a good spot.

Minutes: ***Mike Marconi motioned to approve the Planning Board Minutes for March 10, 2014 with changes. Ms. Lamson seconded the motion, and all members voted in favor.***

Discussion: Chairman Hebert recommended having a work session with Attorney Ratigan before the next meeting

Adjournment: ***Mike Marconi motioned to adjourn. Bernie Christopher seconded, and all were in favor. The meeting adjourned at 10:15 p.m.***

Next Meeting: Monday, April 7, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

Concerns Re: SEA-3

To: Dennis Hebert 26 Mar 2014

Dennis, we residents of Portsmouth have serious concerns regarding the overall impact of the increased rail traffic on all communities near the rail lines, and I personally don't feel as though we've been provided with all the information necessary to make a truly informed decision.

You have only been provided an initial site plan, and we doubt that any decision of such magnitude can be based on such limited information. To my knowledge, the Planning Board has not requested a comprehensive impact study, so that all parties can be made aware of potential dangers that have not been discussed as yet. Clearly we must all be informed of any hazards by unbiased experts, so as to get the most factual report possible. We believe it is within the powers of the Planning Board to engage the appropriate parties to complete this study and pass the cost of such on to the applicant.

There will be significant economic impacts to all abutting communities in the form of upgrade crossings, safety equipment, increased administration costs related to the project,and we feel that Sea-3 should be held liable for impact fees equal to the expenditures imposed on abutting communities as a prerequisite to the passage of the their proposal, for Sea-3, PanAm, and the town of Newington are the only beneficiaries of this project, and we as abutters bear the burden of the dramatic increase of rail service through our neighborhoods, and the additional hazards resulting from those changes.

Although the math that Laura Byergo presented on Monday's meeting seemed a little confusing to me at the time, after carefully considering the future capacities of Sea-3, her statement makes a point that has not been discussed as yet. The idea that Sea-3 will be able to unload a maximum of 16 railcars at one time, does not take into consideration that when trucks are being loaded at the terminal, the product that is dispensed is at ambient temperature, not refrigerated LPG. Propane railcars being delivered to Sea-3 are ambient temperature. This means that the maximum number of trucks which can be filled in a 24 hr period is approximately 175, based on the fact that each railcar can provide for the filling of approximately 3 trucks. Mr. Bogan has stated that the propane can be transferred to trucks at a rate of 10 trucks per hour. Based on 16 railcars per day, Sea-3 will certainly never be able to supply the regional needs with domestic propane alone. Sea-3 will have to take delivery of approximately 64 railcars per day to adequately supply regional customers during peak season. There exists a possible way to accomplish this through the daily delivery of 64 Propane cars to the Portsmouth railyard, which would be used as a staging location for segmenting the train into 16 car units for final transport to the Sea-3 facility for offloading. This plan would require the passage of 4 sixteen car trains of propane

through our neighborhoods at all hours of the day, and since we all know now that the railways are under solely federal control, there would be little, if anything the Town of Newington, or any abutting community could do about it.

Given the recent history of missteps and resultant negative news coverage, we citizens are very skeptical of any promises made by Pan-Am regarding future notifications of any mishaps occurring along the railways under their ownership. I must mention that Mr. Robinson stated the expense of upgrading the current portion of track which is rated as "excepted " would not be significant, yet, Pan-Am has not endeavored to bring that section of track to Class 1 standards, even though Class 1 is the lowest rated rail system allowed. Based on statements by Ms. Scarano, we cannot trust that the future speed of trains through our communities will be held to 10mph., as stated, if the customer wants the deliveries faster, they (Pan-Am) will comply by traveling at 25mph. Additionally, Pan-Am has refused to offer for review the " proprietary " bridge inspection reports, that would only help to demonstrate a willingness for transparency in their dealings with the public.

We, as a community, greatly appreciate the Planning Board's willingness to invite abutters to voice concerns on this proposal, and only hope for the best solution for all, and in our opinion, that would be a denial of the application, based on the regional economic impact and the potential hazards related with such a high volume of Propane railcars travelling through our neighborhoods, and feel that a waver of the Jones Act would allow for the safe and somewhat normal delivery methods which have been in use historically.

Best Regards,
Bob Gibbons
135 Spinnaker Way
Portsmouth, NH 03801
603-205-1180
Bobg1029@gmail.com

Cc: Tom Morgan
Rich DePentima
Matthew Nania
Jim Splaine
John Bohenko

Rail rebuild 'challenging'

Pease exec cites cost as prohibitive

BY JEFF MCMENEMY
jmcmenemy@seacoastonline.com

PORTSMOUTH — A proposal to rebuild a roughly two-and-a-half mile section of rail line through the Pease Tradeport so rail cars carrying propane wouldn't travel through downtown Portsmouth is not economically feasible, according to David Mullen, the executive director of the Pease Development Authority.

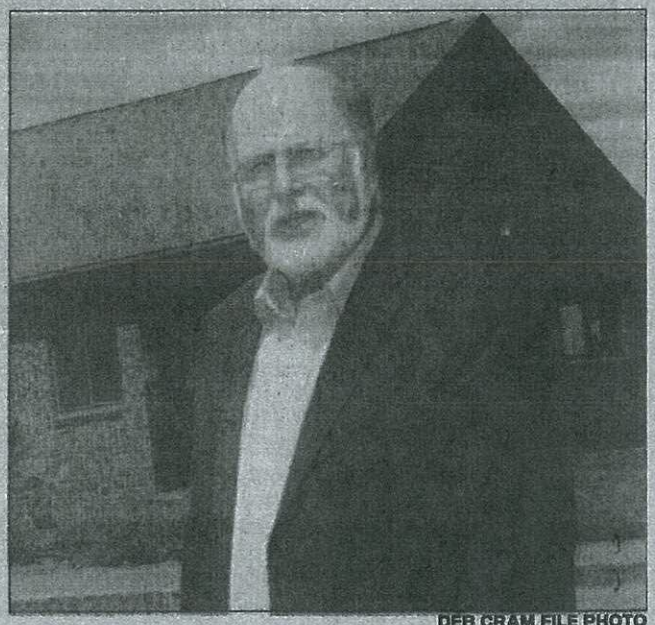
"I think the economics would make it difficult to justify it," Mullen said during an interview Tuesday.

Mullen said the rail line that once ran through a section of Pease "has been completely taken out, many, many years ago."

The Sea-3 propane plant in Newington has proposed an expansion that would allow them to receive domestic propane by rail.

If the expansion is approved, Sea-3 officials have said the number of trains carrying propane on Seacoast-area tracks would increase from three a week to seven a week, with each one carrying "six to 12 propane tank cars per train."

That's a total of 42 to 84 propane cars a week, or 2,184 to 4,368 propane cars a year.



DEB CRAM FILE PHOTO

David Mullen is the executive director of Pease Development Authority.

At Monday's meeting of the Newington Planning Board, the suggestion was made to avoid taking the trains through downtown Portsmouth and instead rebuild the rail through the tradeport, which had been suggested in the Newington Master Plan.

Pease Tradeport officials kept a 25-foot right-of-way for a potential rail project, Mullen said, but anybody wanting to do it would have a host of huge financial and engineering challenges.

"The land would have to be acquired from Pease, they'd have to do the engineering studies, the wetland studies, the permitting and that's before they started building," Mullen said. "The economics to do it would be difficult to imagine."

On top of that, to get the trains from Newington to Pease, they'd also have to build a rail bridge over where the work is being done on the Spaulding Turnpike, Mullen said.

"If money is no object, anything's possible," Mullen said.

But state Sen. Martha Fuller Clark, D-Portsmouth, who said Monday the idea was worth exploring, remained undeterred when reached Tuesday evening.

"It may not be feasible but it's certainly worth having additional discussions," Fuller Clark said about the proposal. "It removes a potential hazard from the really congested area of the city."

She described the increased rail traffic if the proposal is approved as a "huge intensification" of rail cars carrying propane.

"I understand it might be more expensive and I understand Pan Am might not want to do it and I understand we might not be able to force them to do it," she said. "I think it's worth considering."

Pan Am Railways Executive Vice President Cynthia Scarano has committed to upgrading the railway's tracks from Class 1 to Class 2 if the project is approved.

The upgrade in class would allow the trains to travel at 25 miles per hour. Scarano said Pan Am intended to keep the trains at 10 miles per hour, but also said that might not always be the case.

Fuller Clark said she had been told that Sea-3 had agreed to extend the time the Newington Planning Board has to consider their application by another 90 days.

But she remains concerned about the condition of Pan Am's tracks.

"It's a very difficult situation because the state and local communities have so little leverage," Fuller Clark said.

She also complained about the lack of access officials and citizens have to certain safety information and pointed to the fact that Pan Am inspects its own bridges and has refused to release that information.

"I think one of the difficulties we're having is really getting enough information about how safe the tracks are and how safe the bridges are," Fuller Clark said. "We need a lot more information."

HarborCorp plan details before TAC

Calculations Re: SEA-3 28 Mar 2014

Total Storage capacity= 24,000,000 gal.

Railcars needed to fill storage to capacity= 727.27 @ 33,000 gal. /car

727.27 / 16 per day = 45 days

16 railcars carry 528,000 gal. = 48 truckloads

175 truckloads = 1,925,000gal. =58.33 railcars

24,000,000 gal. / 1,925,000 /day = 12.46 days supply @ full capacity

1,925,000 / day – 528,000/ day = 1,397,000 = 17.17 days supply

SEA-3 can only attain regional distribution needs during peak season by receiving and offloading > 58.33 railcars / day.

SEA-3 cannot furnish adequate propane supplies to fulfill regional needs @ 16 railcars / day.

SEA-3 representatives have stated their goal to be a return to being the principal suppliers of propane @ a rate of approximately 160 – 200 trucks / day leaving the plant. This can only be accomplished by receiving at least 58.33 railcars of LPG /day

SEA-3 have stated that their anticipated offloading capacity, after expansion, will be 16 cars/day, but these figures only reflect how much propane can be refrigerated for storage in their tanks. The liquid propane received in railcars and dispensed to trucks is @ ambient temperature = no refrigeration required. Direct transfer from railcar to truck can be completed @ 64 railcars / day = 2,112,000 / day.

In order to facilitate this level of delivery, railcars will need to be staged at a site eastward of Rockingham Junction, broken down into segments of 16 cars and delivered to SEA-3 four times daily. Only Portsmouth possesses such a location, that being the railyard adjacent to the Islington St. neighborhood.

I anticipate the need for this level of storage and associated movements of railcars will change the character of downtown Portsmouth from a historic, people and business friendly destination to that of an industrial center with it's inherent disruptions of daily activities by residents and tourists alike.

From: "Steve Haight" <shaight@haighteng.com>
Subject: SEA 3 Fire Saftey Analysis prepared by Phil Sherman P.E. dated 3/20/14
Date: March 29, 2014 10:18:17 AM EDT
To: <ncricenti@sfceng.com>, "Tom Morgan" <newington@ttlc.net>
Cc: "Alec McEachern" <alecm@shaines.com>, "Paul Bogan" <paul.bogan@sea-3.com>

1 Attachment, 938 KB

Nick

At the 3/24/14 PB meeting Phil Sherman PE presented his Fire Safety Analysis for SEA-3 (attached). At the meeting the chairman indicated that they would be having you review the analysis and as we have done in the past, I am forwarding the information directly to you for your review and comment back to the Board.

Just as an FYI ... the next PB meeting is scheduled for April 14.

If you have any questions please do not hesitate to call me or Phil Sherman directly

Regards

Steve

Stephen J. Haight, P.E.
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SEA 3 1716....pdf (938 KB)

TITLE XXXIV
PUBLIC UTILITIES

CHAPTER 373
CROSSINGS, STATIONS, FENCES, CATTLE GUARDS, BRIDGES, AND BRIDGE GUARDS

General Statement of Duty

Section 373:1

373:1 Facilities. – It shall be the duty of every railroad to provide suitable crossings, stations and other facilities for the accommodation of the public, and suitable gates, crossings, cattle passes and other facilities for the accommodation of persons whose lands are divided, or are separated from a highway, by a railroad.

Source. RS 142:4. 1852, 1232:1. CS 150:35, 45. GS 147:1. GL 161:1. PS 159:1. PL 249:1. RL 299:1. 1951, 203:58 par. 1, eff. Sept. 1, 1951.

Section 373:1-a

373:1-a State-Owned Rail Lines. –

I. In instances where the state has acquired rail properties, the state shall have the same duty as under RSA 373:1 to provide suitable crossings and other facilities for the accommodation of the public and to provide suitable gates, crossings and other facilities for the accommodation of persons whose lands are divided, or are separated from a highway, by the state-owned railway.

II. Any party or landowner seeking crossing or other facilities pursuant to paragraph I shall make application for such crossing or other facility to the department of transportation.

III. The commissioner shall adopt rules, under RSA 541-A, establishing procedures and criteria for review of such applications and issuance of agreements for crossings and other facilities on state-owned rail property, including establishment of reasonable application and annual renewal fees.

IV. Such agreements shall include provision for apportionment of costs for construction and protection including insurance requirements and installation of appropriate safety devices.

V. The state shall provide such warning signs as are required for governmental authorities maintaining public crossings over state-owned railroad lines pursuant to RSA 373:11.

Source. 1993, 116:4. 1996, 77:2, eff. July 12, 1996.

Overhead Bridges and Underpasses

Section 373:2

373:2 Reconstruction. – Upon petition of a railroad, the selectmen of a town, or the mayor and council of a city, the department of transportation, after notice and hearing, may require a railroad (a) to separate the grades where a highway and railroad cross at grade or where a railroad crosses another railroad at grade, (b) to change the location of a highway or a railroad in order to avoid or improve a grade crossing or (c) to reconstruct or otherwise alter or improve any existing bridge or underpass and the approaches thereto in instances where separation of grades has been effected, or (d) to improve the approaches to any grade crossing so as to make them as nearly level as practicable where any such action is found necessary in the interest of safety to the railroad or the public. At any such hearing, the director of the division of motor vehicles shall sit and confer with the department of transportation in an advisory capacity in the determination of the necessity for such reconstruction and the apportionment of the cost of the same.

Source. 1937, 123:1. RL 299:2, 3. 1951, 203:58 par. 2. RSA 373:2. 1985, 402:6, I(e)(5).

Section 373:3

373:3 Apportionment of Costs. – Any order issued under RSA 373:2 shall provide for the apportionment of the cost (1) between the railroads in interest if the crossing eliminated or improved is a railroad crossing or (2) between the railroad and the state if such crossing is located at the intersection of a railroad and a state highway, trunk line or state-aided highway, or (3) between the railroad and the municipality if such crossing is located at the intersection of a railroad and a highway other than those above specified. In making such apportionment, the department of transportation shall give due consideration to whether the railroad or the highway was first constructed, to the nature and volume of highway traffic, to the number of trains operated by the railroad at the crossing, and all other relevant facts and circumstances. After such reconstruction, the abutments and superstructure of the bridge or underpass shall be maintained by the railroad; but the department of transportation may direct that the wearing surface of a highway at the crossing be maintained by the state or by the town or city whenever it finds that justice so requires.

Source. 1937, 123:1. RL 299:4. 1951, 203:58 par. 3. RSA 373:3. 1985, 402:6, I(e)(5).

Grade Crossings

Section 373:4

373:4 Consent of Department of Transportation. – No railroad hereafter constructed shall cross another railroad, a highway or other way, at grade, unless the consent in writing of the department of transportation is first obtained.

Source. 1885, 98:5, 6. 1889, 65:1. PS 159:2. PL 249:2. RL 299:5. 1951, 203:58 par. 4. RSA 373:4. 1985, 402:6, I(e)(5).

Section 373:5

373:5 Neglect to Obtain. – If a railroad shall neglect to comply with the requirements of RSA 373:4, the department of transportation may subsequently approve the crossing made by the railroad, or may order it to make such changes therein as the public good requires. If the railroad shall fail to comply with such order, it shall be guilty of a felony.

Source. PS 159:3. PL 249:3. RL 299:6. 1951, 203:58 par. 5. RSA 373:5. 1973, 529:88. 1985, 402:6, I(e)(5).

Section 373:6

373:6 New Highways. – No highway shall be laid out or constructed across a railroad at grade without the like consent of the department of transportation.

Source. 1895, 91:1. PL 249:4. RL 299:7. 1951, 203:58 par. 6. RSA 373:6. 1985, 402:6, I(e)(5).

Section 373:6-a

373:6-a Private Crossings Used by Public. – Whenever it shall appear, after notice and hearing held by the department of transportation upon its own motion or upon petition of any interested party, that an existing grade crossing is being used as a public highway and the adjacent approach or approaches thereto are maintained for use in a manner similar to a public highway, the department of transportation may require the same to be laid out, constructed and protected, and the costs thereof apportioned in accordance with the provisions of this chapter provided that the railroad shall not be charged with any of the said costs.

Source. 1963, 54:1. 1985, 402:6, I(e)(5).

Section 373:6-b

373:6-b Utility Crossings. – No railroad shall charge any municipality a fee for the privilege of constructing and laying water or sewer lines under existing railroad tracks, provided all construction and excavation costs shall be borne by the municipality. The municipality shall be obligated to rebuild the railroad track support to a condition at least as structurally strong and sound as its condition prior to the sewer or water line construction.

Source. 1978, 54:1, eff. Sept. 24, 1978.

Section 373:7

373:7 Expense. – In the event that a new railroad or highway is located or laid across an existing railroad or highway, the cost of construction and maintenance shall be apportioned between the parties in interest in accordance with the principles set forth in RSA 373:3.

Source. 1895, 91:1. PL 249:5. RL 299:8. 1951, 203:58 par. 7, eff. Sept. 1, 1951.

Section 373:8

373:8 Appeal. – Either party shall have the right to appeal from the decision of the commissioner to the superior court.

Source. 1895, 91:1. PL 249:9. RL 299:9. 1951, 203:58 par. 8. RSA 373:8. 1985, 402:6, I(e)(5).

Section 373:9

373:9 Taking Land. – The railroad may take and hold such land or rights in land as may be necessary to enable it to do such work as may be authorized or required by order of the department of transportation under this chapter by filing a location thereof, as provided for filing the location of a railroad; and the parties shall have like remedies for a change of location and for the appraisal of damages thereunder.

Source. 1951, 203:58 par. 9. RSA 373:9. 1985, 402:6, I(e)(5).

Crossing Protection

Section 373:10

373:10 Railroad Signs, Gates and Other Protection. – Every railroad shall construct, or improve, and operate and maintain at every grade crossing of its railroad with another railroad or highway such warning signs, gates or other protection; it shall so regulate the speed of its trains across any grade crossing and it shall give such appropriate warning of the approach of its trains to any grade crossing as the department of transportation, after notice and hearing, may find necessary in the interest of safety of the railroad or of the public; provided, however, that cost of constructing or improving such warning signs, gates or other protection shall be apportioned in accordance with the provisions of RSA 373:3. The railroad shall maintain signs, signals, gates or other equipment installed within the limits of its right of way, after the installation thereof.

Source. 1885, 98:1, 3. PS 159:4. PL 249:13. RL 299:16. 1951, 203:58 par. 10. RSA 373:10. 1985, 402:6, I(e)(5).

Section 373:11

373:11 Warning Signs. – The governmental authority responsible for maintaining a highway shall place and maintain warning signs on every highway approaching a crossing at grade of such highway and the tracks of a railroad, at a reasonable distance on each side of such crossing. The department of transportation shall prescribe the standards for warning signs for highway grade crossings. If any governmental authority, except the state, shall neglect to comply with the requirements hereof it shall forfeit $1 for each day during which it shall neglect to place or maintain each sign required hereby to be placed or maintained by it, such forfeiture to be recovered in an action of debt, in the name and for the use of the state.

Source. 1915, 4:1. PL 249:15. RL 299:18. 1951, 203:58 par. 11. RSA 373:11. 1977, 41:1. 1985, 402:6, I(e)(5).

Section 373:12

373:12 Design; Location. – [Repealed 1977, 41:3, eff. June 10, 1977.]

Section 373:13

373:13 Exemption. – If in the case of any crossing it appears that the placing of such signs is impracticable or unnecessary, the department of transportation, on petition of the governmental authority responsible for maintaining the highway on which such crossing is situated, may release such governmental

authority from the obligation of placing and maintaining the same.

Source. 1915, 4:3. PL 249:17. RL 299:20. 1951, 203:58 par. 13. RSA 373:13. 1977, 41:2. 1985, 402:6, I(e)(5).

Section 373:14

373:14 Alternatives. – [Repealed 1977, 41:4, eff. June 10, 1977.]

Section 373:15

373:15 Occupancy of Crossing by Engines or Cars. – A railroad shall not occupy a grade crossing over a highway by its engines and cars more than 5 minutes at one time without authority from the department of transportation.

Source. 1850, 965:2, 3, 4. 1852, 1302:1. CS 150:49, 52. GS 148:7. GL 162:7. 1883, 26:1, 2. 1885, 98:6. 1889, 65:1; 90:2. PS 159:8. PL 249:27. RL 299:29. 1951, 203:58 par. 15. RSA 373:15. 1985, 402:6, I(e)(5).

Section 373:16

373:16 Exceptions to 5 Minute Occupations. –

I. The department of transportation, upon petition, notice and hearing, may fix the maximum time for the occupancy of a railroad on a grade crossing over a highway. The maximum time shall not exceed 9 minutes.

II. The commissioner may adopt rules, pursuant to RSA 541-A, relative to the time of maximum occupancy of a grade crossing.

Source. 1883, 26:1, 2. 1885, 98:6. 1889, 65:1; 90:2. PS 159:8. PL 249:28. RL 299:30. 1951, 203:58 par. 16. RSA 373:16. 1981, 435:7. 1985, 402:6, I(e)(5).

Section 373:17

373:17 Penalty. – Any person who violates the provisions of any of the preceding sections, or of any order of the department of transportation made hereunder, shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person, unless otherwise specifically provided.

Source. 1850, 965:2, 3, 4. CS 150:51. GS 148:5, 7. 1883, 26:1, 2. GL 162:5, 7. PS 159:9. PL 249:29. RL 299:31. 1951, 203:58 par. 17. RSA 373:17. 1973, 530:54. 1985, 402:6, I(e)(5).

Section 373:18

373:18 Removal of Obstructions to View. – Whenever, after a hearing upon petition or upon its own motion, the department of transportation shall be of the opinion that the protection required by its order demands that the land adjacent to said crossing shall be cleared and kept clear of buildings, trees, brush or other obstructions, its order shall require the railroad corporation operating over the crossing to clear the land of such obstructions.

Source. 1951, 203:58 par. 18. RSA 373:18. 1985, 402:6, I(e)(5).

Section 373:19

373:19 Taking Land. – Whenever any railroad shall deem it necessary for the public safety, or to prevent the kindling and spread of fire from its locomotives, that the land at or near any highway or private crossing at grade, or upon the inside of any curve, be cleared and kept clear of buildings, trees, brush or other obstructions, or that a strip of land alongside its right of way be cleared and kept clear of trees, brush or other vegetation as a fire strip, or whenever, to comply with any order made under RSA 373:18 it shall be necessary for any railroad to remove buildings, trees, brush or other obstructions from land not owned by it, any such railroad may file a location with the secretary of state and apply by petition to the department of transportation for permission to take such land, or such rights and easements in land, as may be needed for such purposes.

Source. 1951, 203:58 par. 19. RSA 373:19. 1985, 402:6, I(e)(5).

Section 373:20

373:20 Procedure. – Such petition shall set forth the title of the land involved, a description of the land, or of the rights and easements, and the purpose for which required, and proceedings shall thereafter be had as provided in RSA 372.

Source. 1951, 203:58 par. 20, eff. Sept. 1, 1951.

Section 373:21

373:21 Recording Petition. – At any time after the filing of a petition under RSA 373:19, the petitioner may record in the registry of deeds for the county where the land lies a certified copy of said petition, and no sale, lease, or other transfer of said land made after such record shall affect the proceedings, nor the title of said petitioner to any land, rights, or easements which may be granted therein; but any person acquiring the title of any landowner may, on his motion, be substituted in place of said landowner as a party to said proceedings wherever the same may be pending.

Source. 1951, 203:58 par. 21, eff. Sept. 1, 1951.

Closing of Highway Crossings

Section 373:22

373:22 Department of Transportation Hearing. – Whenever, after hearing upon petition or upon its own motion, the department of transportation shall be of the opinion that the public safety requires the closing of any public or private crossing over a railroad, at grade or above or below such railroad, it shall order the same to be closed or shall make such order as in its opinion the public good may require, and it shall thereafter be the duty of the parties affected to comply therewith.

Source. 1935, 110:1. RL 299:39. 1951, 203:58 par. 22. RSA 373:22. 1985, 402:6, I(e)(5).

Section 373:23

373:23 Advisory Group. – At any such hearing, the director of the division of motor vehicles and one representative chosen by the selectmen of each town directly served by such crossing shall be invited to sit and confer with the department of transportation in an advisory capacity in the determination of the need for such crossing.

Source. 1935, 110:2. RL 299:40. 1951, 203:58 par. 23. RSA 373:23. 1985, 402:6, I(e)(5).

Section 373:24

373:24 Service of Orders. – In the case of a private crossing, such order shall be served upon the railroad and the landowner affected, or his legal representative. In the case of public crossings, service shall be made upon the railroad, the clerk or clerks of the towns directly served by such crossing, and, in addition, the order shall be published in a newspaper having general circulation throughout the county where such crossing is located.

Source. 1935, 110:3. RL 299:41. 1951, 203:58 par. 24, eff. Sept. 1, 1951.

Section 373:25

373:25 Damages. – Any landowner, or his legal representative, entitled to damages by reason of the closing of any private crossing may file a petition with the department of transportation for the assessment of the same within 30 days from the date of such order, and not otherwise. The department of transportation shall set a date and place of hearing, shall give notice to the parties that may be affected, and shall hear and determine the issues raised. Damages, if any, shall be assessed against the railroad or the other interested parties in such proportion as said department of transportation shall order.

Source. 1935, 110:4. RL 299:42. 1951, 203:58 par. 25. RSA 373:25. 1985, 402:6, I(e)(5).

Section 373:26

373:26 Appeal. – Any party aggrieved by the assessment of the department of transportation may, within 60 days after the report of the department of transportation thereon and not afterwards, appeal to the superior court in the county where such crossing may be situated, and the court shall assess the same by jury and award costs to the prevailing party.

Source. 1935, 110:5. RL 299:43. 1951, 203:58 par. 26. RSA 373:26. 1985, 402:6, I(e)(5).

Section 373:27

373:27 Limitation. – Nothing in this subdivision shall be construed as altering the method of discontinuing highways now provided for by law wherein a crossing may be discontinued incidental to the closing of a highway.

Source. 1935, 110:6. RL 299:44. 1951, 203:58 par. 27, eff. Sept. 1, 1951.

Stopping Places and Depots

Section 373:28

373:28 Order to Establish. – The department of transportation, upon petition of the selectmen or of 20 or more legal voters of a town, after notice and hearing, may order a railroad to establish such stopping places or depots in the town as it finds that the public good requires, within a time by it limited, and to stop trains at such stopping places or depots.

Source. 1850, 953:6. CS 150:61. GS 147:14. GL 161:14. PS 159:21. PL 249:37. RL 299:45. 1951, 203:58 par. 28. RSA 373:28. 1985, 402:6, I(e)(5).

Section 373:29

373:29 Neglect. – A railroad shall forfeit $100 for each month's neglect to comply with such order, for the use of the town.

Source. 1850, 953:6. CS 150:61. GS 147:15. GL 161:15. PS 159:22. PL 249:38. RL 299:46. 1951, 203:58 par. 29, eff. Sept. 1, 1951.

Fences and Cattle Guards

Section 373:30

373:30 Maintenance. – Every railroad shall erect and maintain a sufficient fence upon each side of their road, except at the crossings of public highways; and, at every such crossing, they shall construct and maintain, upon each side of the highway, sufficient cattle guards or fences to prevent cattle from passing upon their road.

Source. RS 146:6. CS 150:46. GS 148:1. 1868, 1:43. GL 162:1. PS 159:23. PL 249:39. RL 299:47. 1951, 203:58 par. 30, eff. Sept. 1, 1951.

Section 373:31

373:31 By Landowner. – If any railroad shall neglect to erect or maintain fences, as provided in RSA 373:30, the owner of adjoining land may give notice thereof to any agent of the railroad; and, if the fence is not erected or made sufficient within 20 days, such owner may build or repair it and recover of the railroad twice the expense of so doing in an action on the case.

Source. RS 146:6. CS 150:46. GS 148:2. GL 162:2. PS 159:24. PL 249:40. RL 299:48. 1951, 203:58 par. 31, eff. Sept. 1, 1951.

Section 373:32

373:32 Neglect to Repair. – If any person has agreed to repair or maintain such fence and neglects to do so, the railroad may rebuild the same and recover the expense of so doing of such person in an action on the case.

Source. RS 146:7. CS 150:47. GS 148:3. GL 162:3. PS 159:25. PL 249:41. RL 299:49. 1951, 203:58 par. 32, eff. Sept. 1, 1951.

Cattle Guards, Etc., for Accommodation of Individuals

Section 373:33

373:33 Establishing. – If the owner of land and a railroad are not agreed upon the place, number or kind of cattle guards, passes or crossings to be constructed for his accommodation, either party may apply to the department of transportation, which, after notice, hearing and examination, shall determine the number, places, time and manner of construction of the same.

Source. 1850, 953:5. CS 150:45. GS 147:16. GL 161:16. 1889, 54:1. PS 159:19. PL 249:42. RL 299:50. 1951, 203:58 par. 33. RSA 373:33. 1985, 402:6, I(e)(5).

Section 373:34

373:34 Failure to Construct. – If the railroad does not construct such cattle guards, passes and crossings within the times limited by the department of transportation, and does not pay the costs adjudged to be paid by it, upon request, it shall be guilty of a violation for each month's neglect.

Source. 1853, 1416:1. GS 147:17. GL 161:17. 1889, 54:1. PS 159:20. PL 249:43. RL 299:51. 1951, 203:58 par. 34. RSA 373:34. 1973, 531:111. 1985, 402:6, I(e)(5).

Bridges and Bridge Guards

Section 373:35

373:35 Alterations; Taking Land. – The department of transportation may require the railroad to raise any railroad bridge or any overhead highway bridge and, in the case of a highway bridge, to change the approaches thereto so as to make them as nearly level as practicable. Whenever it is necessary, in complying with such requirement of the department of transportation to raise or lower or otherwise change the location of a highway outside the railroad location, any land needed for that purpose shall be taken, and the damage, if any, to landowners shall be appraised and paid in the manner described in RSA 372.

Source. 1893, 39:1. PL 249:44, 45. RL 299:52, 53. 1951, 203:58 par. 35. RSA 373:35. 1985, 402:6, I(e)(5).

Section 373:36

373:36 Notice. – Proceedings under this subdivision shall only be had after due notice to the railroad, the town or city and the landowners.

Source. 1893, 39:1. PL 249:47. RL 299:55. 1951, 203:58 par. 36, eff. Sept. 1, 1951.

Section 373:37

373:37 Orders. – All orders and findings of the department of transportation shall be filed with the clerk of the town or city in which such bridge is located, and served upon the railroad.

Source. 1893, 39:1. PL 249:48. RL 299:56. 1951, 203:58 par. 37. RSA 373:37. 1985, 402:6, I(e)(5).

Section 373:38

373:38 Neglect to Comply. – Neglect by any railroad to comply with the orders of the department of transportation, within a reasonable time to be specified in such orders, shall be punished by a forfeiture of $50 a day, to be collected by the department of transportation, in the name and for the use of the state, in an action of debt.

Source. 1893, 39:3. PL 249:49. RL 299:57. 1951, 203:58 par. 38. RSA 373:38. 1985, 402:6, I(e)(5).

Section 373:39

373:39 Clearance of Bridges or Other Overhead Structures; Height of Cars. – No overhead bridge or other structure shall hereafter be constructed across a railroad track in this state with less than 22 feet between the top of the rails and the lowest point of the overhead structure, except with the written consent of the department of transportation, and no railroad corporation shall receive or haul any freight car exceeding 16 feet in height from the rails to the top of the running board.

Source. 1893, 39:2. PL 249:50. RL 299:58. 1951, 203:58 par. 39. RSA 373:39. 1957, 58:1. 1985, 402:6, I(e)(5).

Section 373:40

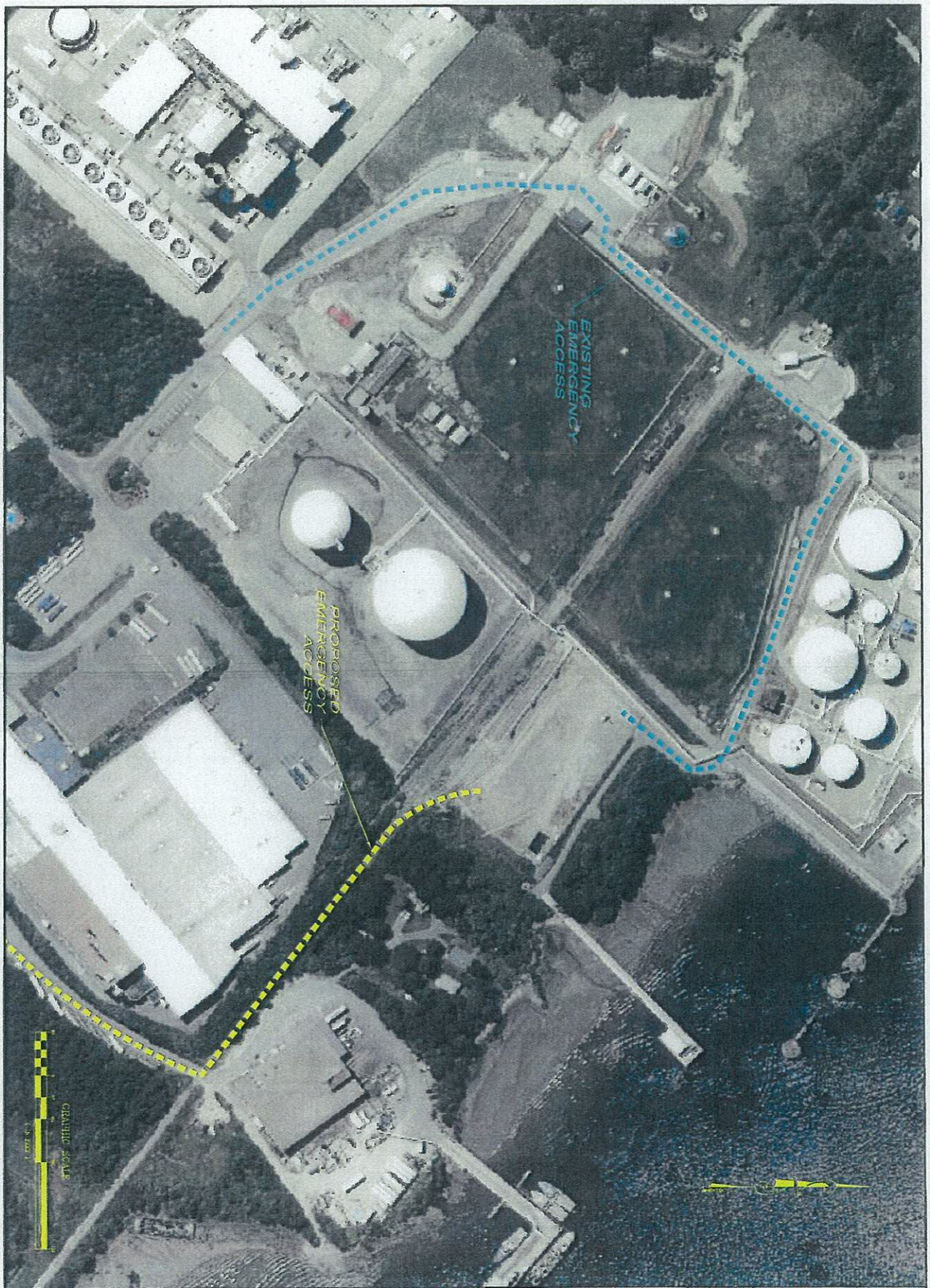
373:40 Bridge Guards. – [Repealed 1989, 52:1, I, eff. June 18, 1989.]

Section 373:41

373:41 Failure to Maintain. – [Repealed 1989, 52:1, II, eff. June 18, 1989.]

Section 373:42

373:42 Penalty for Damaging. – [Repealed 1989, 52:1, III, eff. June 18, 1989.]



CONCEPTUAL EMERGENCY ACCESS PLAN

X-2

SEA-3 FACILITY EXPANSION
LOTS 20/13 & 14/2
SHATTUCK WAY
NEWINGTON, NH

SEA-3 INC.
190 SHATTUCK WAY
NEWINGTON, NH

DATE: 3-6-2014				
SCALE: 1"=80'				
DRAWN BY: SRD				
DESIGN BY: SRD				
APPROVED BY:S.H				
PROJECT NO:1322				
FILE: ZBA-SEA-3	NO.	REVISION	APP'D	DATE

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4299. FAX 603.749.7348

Rail

Guilford Transportation, formerly the Boston & Maine Railroad, provides rail service to Newington. Freight service is available via Portsmouth and Rockingham Junction approximately once daily.

The Newington spur runs 18 miles from Rockingham Junction, through downtown Portsmouth, then northerly, parallel to the Piscataqua River, to its terminus at C.H. Sprague & Son's bulk storage facility, formerly known as Atlantic Terminal.

In general, the Newington spur line is in poor condition. This rail line last received a major upgrade in the 1980's. The New Hampshire State Rail Plan indicates that the Newington line needs additional ditching and that the two grade crossings (Patterson's & Gosling) are also in need of improvement. Due to the routine transport of Class I Flammable cargoes such as Methyl Methacrylate (MMA) and liquefied Propane Gas (LPG), track conditions should be carefully monitored on a regular basis.

The railroad is a very important component of Newington's industrial infrastructure. In light of its role in lessening truck traffic on the town's roadways, as well as its importance in attracting and serving industry, the Town's land use policies should continue to encourage and support rail service.

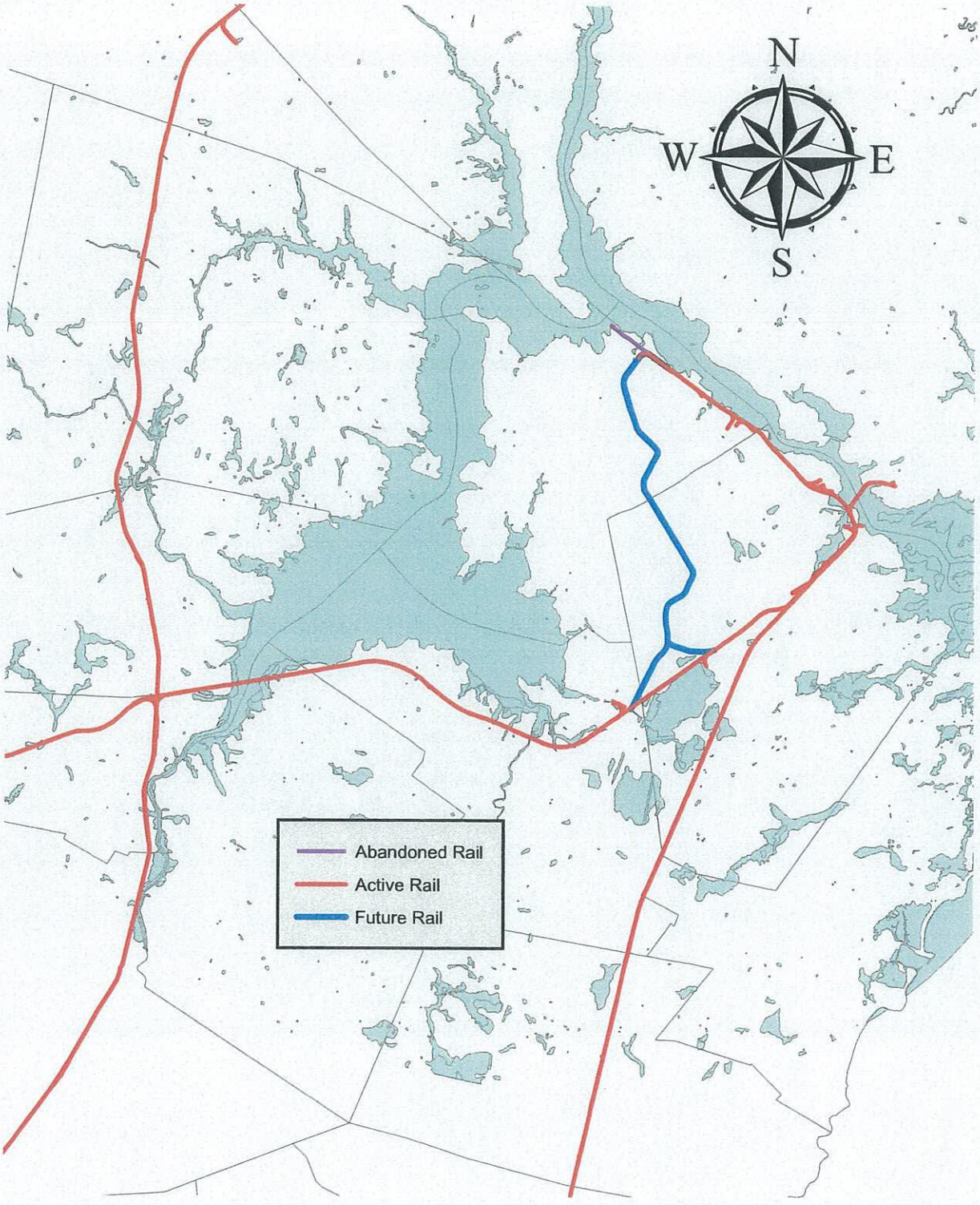
Rail Service Should be More Frequent

More frequent rail service would alleviate traffic congestion on local roadways.

Rail Service Should be Upgraded

Such an improvement would facilitate the transport of cargo from the Piscataqua's industrial waterfront to and from locations throughout North America. In every instance, the shipment of cargo *via rail* in or out of the waterfront is the Town's first preference. Trucking should be viewed as the last resort.

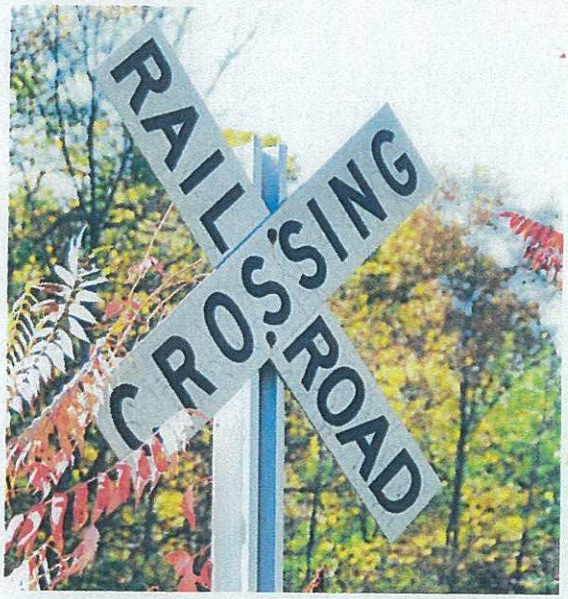
Local Rail Network



Rail Extension

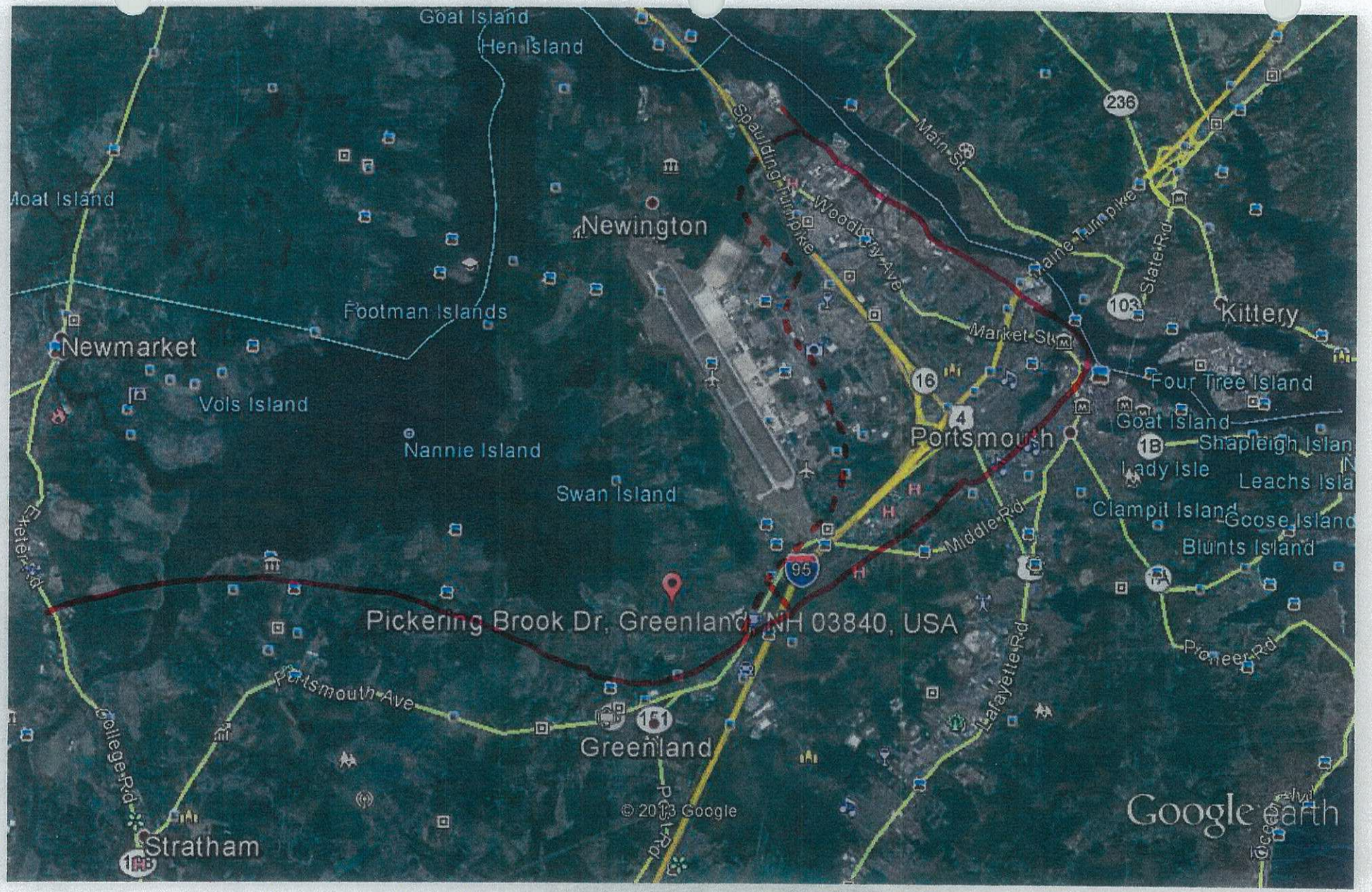
The railroad is an important component of Newington's industrial infrastructure. Guildford Transportation provides rail service. The Newington spur runs eighteen miles from Rockingham Junction, through downtown Portsmouth, then northerly to its terminus at C.H. Sprague & Son's bulk storage facility near Bloody Point.

Until recent years, the rail had continued southerly from Sprague to the heart of Pease's industrial area at the corner of Somersworth Street & Newfields Street (note map opposite). Although most of the rails on Pease were recently removed, the rail bed is still intact.



With the cooperation of Portsmouth and Greenland, the rail should be rebuilt to its former terminus at Somersworth & Newfields, and further extended southwesterly approximately two and one half miles across relatively flat terrain to connect with the Rockingham Junction line in the vicinity of Pickering Brook in Greenland, as depicted by the map on the previous page.

Such an extension would have several advantages. First, it would provide a rail link between State Port Authority facilities and the airfield. Secondly, rail would enhance the prospects for future industrial development at Pease. Thirdly, the loop created would greatly improve efficiency of present rail operations by providing more direct access from Newington to Rockingham Junction, while allowing simultaneous movement of goods to and from the port, movement that is not presently possible on a single rail.



Google earth

miles 7
km 10

From: Richard DiPentima <rdipentima@gmail.com>
Subject: Fwd: Rail Line Photos - Dunlin Way/Spinnaker Point, Portsmouth NH
Date: March 30, 2014 10:14:01 AM EDT
To: Tom Morgan <planning@newington.nh.us>

1 Attachment, 649 KB

Tom:

See the attached email. Click on the link to view the pictures of one small segment of the rail line. Looks like the statement in the Newington Master Plan was correct after all. I have sent these and other photos to the Governor, and have asked her to discuss them with her DOT staff. We have other pictures from Greenland, and will be taking more all along the line in the days to come. A picture is worth a thousand words!

Rich

---------- Forwarded message ----------
From: **Matthew Nania** <mjnania@gmail.com>
Date: Sat, Mar 29, 2014 at 8:53 PM
Subject: Rail Line Photos - Dunlin Way/Spinnaker Point, Portsmouth NH
To: jrobinson@dot.state.nh.us, swinters@dot.state.nh.us
Cc: Martha Fuller Clark <Martha.FullerClark@leg.state.nh.us>, Bob Lister <rjlportsmouth@yahoo.com>, Jim Splaine <jimsplaineportsmouth@gmail.com>, "John P. Bohenko" <jpbohenko@cityofportsmouth.com>, Rich and Cathy DiPentima <cathrich3@myfairpoint.net>, Richard DiPentima <rdipentima@gmail.com>, Robert Gibbons <bobg1029@gmail.com>, Laura Byergo <lgbyer@yahoo.com>, haltschiller@seacoastonline.com, Jane Sutherland <jane.sutherland76@gmail.com>, John Sutherland <sutherlandjohn34@gmail.com>, Erica Nania <ericainania@gmail.com>, Lew Brown <lew_b@me.com>

Mr. Robinson,

Good evening. My name is Matt Nania. My wife and I live on Dunlin Way in Portsmouth, 100 feet away from the tracks under consideration to be used by Sea-3 to transport propane.

Since the snow has finally melted, we are better able to see the rail lines, ties, spikes, and plates. Along the 0.3 mile stretch of tracks behind Dunlin Way and Spinnaker Point, there are numerous ties that appear severely splintered or shattered. Some have no spikes, and where the tie seems unsecured, I am able to move the spikes with a simple nudge of my foot. Is that normal?

Obviously, I'm not a rail expert, and obviously trains have successfully transported material on these tracks every now and then. But to a layman such as myself, the condition of the ties seems very poor, and I'm wondering if they are indeed up to standard and are actually safe for transporting daily shipments of 12-16 cars of propane. Are shattered ties and loose spikes normal? Up to standard? Safe? Can they cause derailments?

I've attached to this e-mail some photos I took today of these tracks along Dunlin Way. While I've only attached six photos, there were in fact MANY ties along this small stretch of track that were in similarly poor condition. All the photos I took can be found at the link below:

https://www.flickr.com/photos/60741659@N02/sets/72157643118803013/

Included in that photo set are pictures of one section of rail that is currently half-submerged in water. While I believe this section won't be used for propane (it splits off and heads towards Irving Oil), I can't imagine it's safe for shipping much else, especially if it freezes. I believe the area these tracks pass by are designated wetlands, and the pictures illustrate why.

Also, there are some spikes that have orange ribbon wrapped around them. Is that to signal that an inspection was done?

Again, I do not know enough about rail lines to be a proper judge of their condition. I and my fellow neighbors would like a better understanding of what we're seeing when we look at the condition of these rail lines.

Thank you,
Matt Nania

Rail line pho...cx (649 KB)

From: Paul Bogan <paul.bogan@sea-3.com>
Subject: RE: 2 queries
Date: March 31, 2014 9:22:34 AM EDT
To: Tom Morgan <newington@ttlc.net>

Tom;

Propane is a non-hazard to the environment, if spilled it will quickly vaporize and disperse into the atmosphere leaving nothing behind; it is also nontoxic.

The resident does not factor in the time it would take Pan Am to switch out the cars nor the time Sea-3 needs to unload the cars. We anticipate it will take between 14 and 16 hours to unload 16 railcars. We have designed our system to handle 16 cars per day even thou we will initially be receiving 12 cars per day and not the numbers of cars calculated by the resident. Also, we never said we were going to be the "principal supplier" of propane for the area, therefore the number of trucks calculated is far in excess of what we anticipate. Pan Am has also stated that they will store any excess cars at Rockingham Junction and not downtown Portsmouth.

If I can be of any further help, please advise.

Paul N. Bogan
Sea-3, Inc.
V.P. of Operations
190 Shattuck Way
Newington, NH 03801
Tele: 603-431-5990 X-4
Email: paul.bogan@sea-3.com

-----Original Message-----
From: Tom Morgan [mailto:newington@ttlc.net]
Sent: Friday, March 28, 2014 2:48 PM
To: Paul Bogan
Subject: 2 queries

Paul,

We continue to hear concerns about the potential damage a propane spill could cause to the environment, particularly the estuary. Could you address that scenario, in perhaps a paragraph or less? My understanding is that the propane would likely go airborne. Denis asked me to forward that question to you.

The second query comes from a Portsmouth resident. His calculations (attached) suggest a potential for more than one train per day, assuming that a transfer of product from train to truck would occur at ambient temperatures. Could you address that scenario as well?

I anticipate that these issues will be raised at the April 14 Planning Board meeting. Feel free to respond sooner.

Thanks Paul.

Tom

Pease
Air Force Base
Comprehensive Redevelopment Plan

Phases II/III
Action Plan

August 1990

Bechtel Corporation
In Association With
HTA Companies
RKG Associates, Inc.

Pease Development Authority
Portsmouth, NH

RAIL USE

A conceptual plan has been developed to show areas of reserved railroad rights-of-way. The plan is shown in Figure 2.61.

These are two primary areas where rail access has been identified. The first is an existing/abandoned railroad corridor at the northeast section of the site. Most of the track has been removed, leaving only the old railroad bed. This spur forms an at-grade crossing with the Turnpike. To revive this spur would require a grade separation across the Spaulding Turnpike. The second area is a new corridor running adjacent to the proposed access road at the southern end of the site near Exit 3 ramps at Route 101. The link would be with an existing line running through Greenland. The railroad corridors have been labeled "reserved", because it is not readily apparent if and what type of industry in the development would need service. Construction costs for rail service have not been prepared due to an undetermined need.

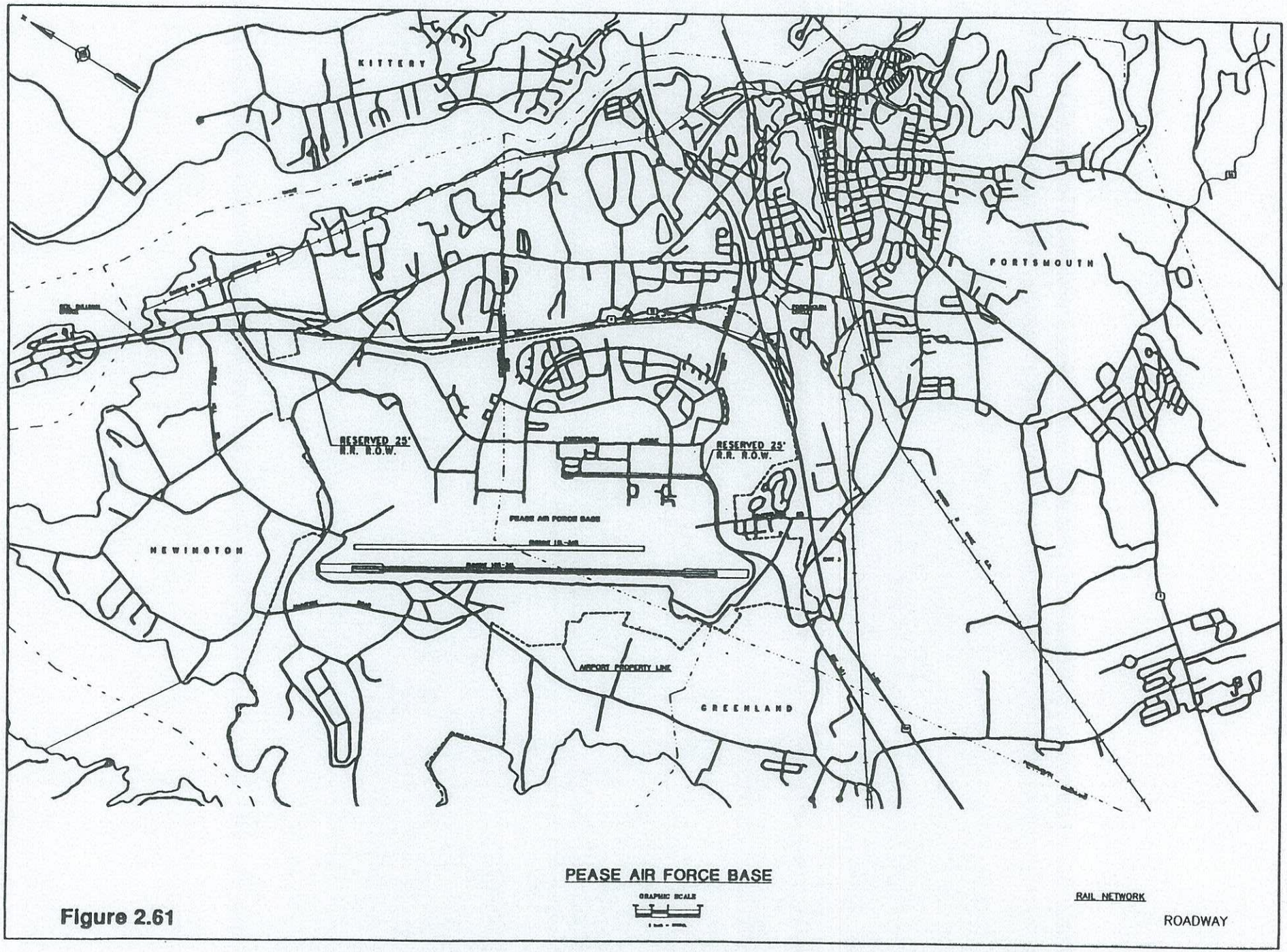

KITTERY
PORTSMOUTH
RESERVED 25'
R.R. R.O.W.
RESERVED 25'
R.R. R.O.W.
PEASE AIR FORCE BASE
NEWINGTON
AIRPORT PROPERTY LINE
GREENLAND
PEASE AIR FORCE BASE
GRAPHIC SCALE
RAIL NETWORK
ROADWAY

Figure 2.61

SCOPE OF WORK

TO: Tom Morgan, Newington, NH Town Planner
FROM: David Saladino, PE; Mark Smith, PE
DATE: April 1, 2014
SUBJECT: SEA-3 Traffic Study Peer Review

RSG is pleased to submit this scope of work for a peer review of the traffic assessment performed for the proposed SEA-3 LPG (propane) terminal expansion at 190 Shattuck Way in Newington.

In preparing or reviewing traffic studies our primary objective is to thoroughly document the likely impacts of site traffic on travel safety and congestion and, if necessary, to recommend measures designed to mitigate projected adverse impacts. Within the context of land use permitting, our role is that of an objective third party evaluating impacts to public infrastructure. In assuming this role, we have found that our client's interests are best served.

1.0 PROJECT PARAMETERS & TASKS

The proposed SEA-3 project has been outlined in web page article (www.cityofportsmouth.com/Sea-3.html) and a traffic assessment memorandum by TEPP-LLC (dated March 24, 2014).

RSG will review the details of the above traffic assessment and any other information offered pertaining to the project's expected operations, vehicle traffic or safety, and provide a summary memorandum outlining the study's adherence to standard traffic engineering practices, questions on calculations or approach, and potential areas of concern.

2.0 PROJECT STAFF

David Saladino, PE will serve as Managing Director for the project. He will provide overall guidance and review and should be contacted with any questions or concerns about quality and progress of the work. Mark Smith, PE will serve as Project Manager, directing the technical work on the project. Mark will be your contact on details related to technical matters and, together with other RSG staff, will complete the technical work on this project. Brandon Bohr is RSG's Director of Finance and should be contacted with questions regarding invoicing/payment issues.

3.0 BUDGET

We estimate that this initial phase of the project will involve approximately 8 labor hours for a cost of $1,200. This cost estimate is based on the task(s) outlined above. The cost estimate does not include representation at meetings or hearings because the labor hours required to prepare for and attend a meeting or hearing can vary widely. Representation is available on an hourly basis.

4.0 GENERAL TERMS

If the above scope of work is satisfactory, a signed copy of this document may serve as a contract with the following general terms of agreement:

- Compensation will be on an hourly basis. Our rates are set annually, with changes effective January 1. We send invoices monthly in the second week of the month following the one in which charges are incurred. Invoices are payable on receipt. If you have questions about an invoice or, for some reason, you are unable to pay immediately, please contact Brandon Bohr as soon as possible after receiving the invoice. Balances unpaid within 30 days are subject to 1.5% per month interest charges. In the absence of a payment plan acceptable to us, work on the project will be suspended if the account becomes 60 or more days delinquent and you will be responsible for reasonable costs, including attorney's fees, that we incur in collecting any unpaid balance.
- As with all traffic study proposals, the foregoing is an estimate only. If during the course of the work the Scope should change in any way that affects the project budget, we would notify you of this directly.
- This proposal is valid for a period of 60 days, after which Resource Systems Group, Inc. (RSG) reserves the right to review and revise the estimated fee, time schedule, and other terms specified herein.

Please notify us as soon as possible if you have questions or concerns about any of the details listed above. Otherwise, we will assume that this agreement is acceptable to you. Please sign and return the original. We look forward to working with you on this project.

Sincerely,

RSG

AGREED:

_____ _____

Client Date

A closer look at federal law and Sea-3 proposal

April 02, 2014 2:00 AM

March 30 — To the Editor:

To the Editor:

I — and I would expect many other residents of Portsmouth, Newington, Greenland and Newfields — read with interest the article in Seacoast Sunday entitled "City leaders blast Pan Am's actions." In the article, several members of the City Council do indeed express their frustration with the Sea-3 application for site plan approval in Newington, which would, among other things, allow for expanded capacity at the Sea-3 facility and a potentially dramatic increase in the transport of propane on railroads owned by Pan Am Railways through these municipalities. In particular, Councilor Splaine expressed his frustration at Pan Am's unwillingness to release safety reports. Similarly, Councilor Shaheen acknowledged her concern about health and safety issues that might result from the Sea-3 proposal and a resulting substantial intensification of the use of the rails. Deputy City Manager Allen reported that necessary upgrades of six rail intersections in Portsmouth will cost something on the order of $400,000 per intersection. But both Councilor Shaheen and Councilor Splaine conclude that the city and its residents are powerless to do anything about it because Pan Am rail operations are governed exclusively by federal law.

Sea-3 and Pan Am appear to have been very successful in raising the banner — or sword — of "federal preemption of local law" to discourage any meaningful discussion of broader health and safety concerns that might arise from increased rail activity. Attorneys for Sea-3 and Pan Am have asserted that the Interstate Commerce Commission Termination Act (ICCTA) limits the Newington Planning Board's jurisdiction and regulatory power only to the specific site on which Sea-3's activities will occur, and can consider no other off-site areas that relate to the rail. Sea-3's March 10 letter to the Newington Planning Board asserts that the "board's jurisdiction stops where Pan Am Railways' railroad operations begin" and that a group of Portsmouth abutters' request that the board require a meaningful study of the effects — for example, health and safety, environmental and traffic-related effects — would necessarily intrude on the jurisdiction of the federal Surface Transportation Board's (STB's) regulatory powers. Even the federal courts and the STB, however, have acknowledged that the legal analysis is considerably more nuanced than stating that "local regulation ends where rail operations begin."

In Boston & Maine Corporation v. Town of Ayer (2003), the town of Ayer planning board and conservation commission attempted to impose 36 conditions, including pre-construction approval requirements, upon the issuance of a permit to Boston & Maine to engage in certain development activities on B&M land within the town's aquifer protection district. The Ayer Board of Health also effectively barred the B&M project altogether when it deemed the project "noisome trade" under local ordinances. With this outright bar to development by the local board of health, together with the planning board's conditions precedent and subsequent, B&M asked a federal court for a declaration that Ayer's efforts were preempted by the ICCTA. The federal court described the parties' positions as follows: "The parties presented the case as a pure conflict between the strong federal interest in a uniform system of railroad regulation and the strong local interest in protecting water supplies. As the ensuing discussion shows, the law presents much more nuanced accommodations."

The federal court referred the matter to the STB for its consideration, and summarized the STB's decision, in pertinent part, as follows:

Effectively, the STB said the town may not flatly ban Guilford's efforts at developing the (B&M) site, as it did in its noisome trade determination, and that it may not impose pre-conditions to construction, but that it may impose reasonable and non-discriminatory environmental restrictions which do not unduly burden interstate commerce or unduly restrict the railroad from conducting its operations. The STB did not hold that all state and local regulation of Guilford's activity was preempted. It held that state and local law are preempted in those instances in limited

circumstances. It held that "preclearance requirements (including environmental requirements) are preempted because by their nature they unduly interfere with interstate commerce by giving the local body the ability to deny the carrier the right to construct facilities or conduct operations." The STB viewed pre-construction approval requirements as giving local authorities impermissible veto power over rail transportation issues.

Nonetheless, the STB found state and local regulation to be permissible "where it does not interfere with interstate rail operations, and localities retain certain police powers to protect public health and safety."

The court concluded that local regulation — like the Newington Site Plan Review Regulations — is subject to the same test: "whether the ... regulation is being applied to 'unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce.'" The court illustrated the task by quoting the STB's advice concerning the 36 conditions attached to the B&M permit by the town:

Examples of solutions that appear to us to be reasonable include conditions requiring railroads to (1) share their plans with the community, when they are undertaking an activity for which another entity would require a permit; (2) use state or local best management practices when they construct railroad facilities; (3) implement appropriate precautionary measures at the railroad facility, so long as the measures are fairly applied; (4) provide representatives to meet periodically with citizen groups or local government entities to seek mutually acceptable ways to address local concerns; and (5) submit environmental monitoring or testing information to local government entities for an appropriate period of time after operations begin.

This discussion seems a far cry from the facile assertion that "local regulation ends where railroad operations begin," and suggests that the Newington Planning Board may — and in the view of the abutters, really must — engage in a considerably more nuanced analysis of the situation than Sea-3 or Pan Am Railways have thus far suggested. Retention of expert consultants to engage in relevant studies of the situation would, it seems to me, hardly "unduly restrict the railroad from conducting its operations, or unreasonably burden interstate commerce."

Respectfully (and I mean that), walking the rails, listening to the affected residents (which may, of course, include us all), communicating support for individual abutters' efforts and showing generalized support for residents in their effort to understand the changes that might be thrust upon them — these are all well and good, and Councilor Splaine in particular has been a steady supporter. But at a certain point, the city and its councilors need to determine whether federal law rigidly immunizes the railroad and actually requires us to simply accept whatever it is that Sea-3's proposal portends, including increased rail transport of propane through the city.

Christopher Cole

Portsmouth

SCOPE OF WORK

TO: Tom Morgan, Newington, NH Town Planner
FROM: David Saladino, PE; Mark Smith, PE
DATE: April 3, 2014
SUBJECT: SEA-3 Traffic Study Peer Review & Hearing Representation

RSG is pleased to submit this scope of work for a peer review of the traffic assessment performed for the proposed SEA-3 LPG (propane) terminal expansion at 190 Shattuck Way in Newington.

In preparing or reviewing traffic studies our primary objective is to thoroughly document the likely impacts of site traffic on travel safety and congestion and, if necessary, to recommend measures designed to mitigate projected adverse impacts. Within the context of land use permitting, our role is that of an objective third party evaluating impacts to public infrastructure. In assuming this role, we have found that our client's interests are best served.

1.0 PROJECT PARAMETERS & TASKS

The proposed SEA-3 project has been outlined in the following web page article (www.cityofportsmouth.com/Sea-3.html) and a traffic assessment memorandum by TEPP-LLC (dated March 24, 2014).

RSG will review the details of the above traffic assessment and any other information offered pertaining to the project's expected operations, vehicle traffic or safety, and provide a summary memorandum outlining the study's adherence to standard traffic engineering practices, questions on calculations or approach, and potential areas of concern. Our memorandum will be provided to you by April 11, 2014.

RSG staff will prepare for and attend the April 14, 2014 Planning Board meeting to discuss our technical review and respond to questions from the Board and applicant.

2.0 BUDGET

We estimate that this initial phase of the project will involve approximately 16 labor hours for a cost of $2,200. This cost estimate is based on the task(s) outlined above.

3.0 GENERAL TERMS

If the above scope of work is satisfactory, a signed copy of this document may serve as a contract with the following general terms of agreement:

- Compensation will be on an hourly basis. Our rates are set annually, with changes effective January 1. We send invoices monthly in the second week of the month following the one in which charges are incurred. Invoices are payable on receipt. If you have questions about an invoice or, for some reason, you are unable to pay immediately, please contact Brandon Bohr as soon as possible after receiving the invoice. Balances unpaid within 30 days are subject to 1.5% per month interest charges. In the absence of a payment plan acceptable to us, work on the project will be suspended if the account becomes 60 or more days delinquent and you will be responsible for reasonable costs, including attorney's fees, that we incur in collecting any unpaid balance.
- As with all traffic study proposals, the foregoing is an estimate only. If during the course of the work the Scope should change in any way that affects the project budget, we would notify you of this directly.
- This proposal is valid for a period of 60 days, after which Resource Systems Group, Inc. (RSG) reserves the right to review and revise the estimated fee, time schedule, and other terms specified herein.

Please notify us as soon as possible if you have questions or concerns about any of the details listed above. Otherwise, we will assume that this agreement is acceptable to you. Please sign and return the original. We look forward to working with you on this project.

Sincerely,

RSG

AGREED:

Client

4/3/14

Date

Durham St
Aviation Ave
Grafton Rd
Witmer Ave
Doris Ave
Holly Ln
Sutton St
Sherburne Rd
Colonial Dr
Mason Ave
Decatur Rd
© 2014 Google
©2010 Google
Imagery Date: 4/7/2013
1992
43°04'11.52" N 70°48'38.02" W elev 64 ft
Eye alt 4491 ft

Doris Ave
Holly Ln
Greenside Ave
Sherburne Rd
Ionian
Colonial
Country Club Rd
Grafton Rd
33
New Hampshire Turnpike
95
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Imagery Date: 4/7/2013
1992
43°03'38.64" N 70°48'26.76" W elev 62 ft
Eye alt 4491 ft

Newington Rd
Portsmouth Ave
Meadow Ln
Hillside Dr
Hudson Dr
Sanderson Rd
Country Club Ln
Greenland Rd
New Hampshire Turnpike (Old Road)
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© 2014 Google
©2010 Google
Imagery Date: 4/7/2013
1992
43°03'02.18" N 70°49'22.96" W elev 41 ft
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Newington planners should not approve Sea-3

April 03, 2014 2:00 AM

March 31 — To the Editor:

Many of us have been voicing concerns about the proposal that is before the Newington Planning Board that has the expansion of Sea-3 for purposes of exporting propane as its objective.

I would like to make a few important clarifications regarding this project.

1. The Newington Planning Board's mission and only reason for being is to protect public health and welfare, according its own regulations. It is not to protect corporate wealth or protect railroads or decrease Newington's tax rate, contrary to what you might have seen or heard at these meetings.

2. The Newington Planning Board has designated this as a project of regional interest and named Seacoast cities and towns as abutters, yet they seem to be unable to look beyond the site plan in Newington to protect people and the environment. The Planning Board states that we cannot interfere with Pan Am's operations (they will be transporting the propane from Newington through several cities and towns over to ships to be exported).

There is much to be done in our cities and towns including: emergency planning, evacuation planning, assessing environmental risks and assuring egress from neighborhoods that could be cut off by rail accidents. None of these items deal with railroad operations or interstate commerce.

3. The Newington Planning Board must uphold its responsibility to protect public safety and demand that Sea-3, which is the applicant for this project, pay for comprehensive studies that assess safety and environmental risks. Their Site Review Regulations allow them to require this and to obtain reimbursement from the applicant.

4. I do not believe that this project will help supply energy to New England:

a. The title before the board is an export plan.

b. Prices of propane have been higher in Europe.

c. East Texas and Louisiana have the largest propane exporters in the country. They also have higher prices and shortages. If this project is about supplying New England, how will the Planning Board hold then accountable?

5. Where is the tangible evidence that the Newington board has to pass the project and uphold its duty to protect public health and welfare? I am just a concerned citizen, but I have not seen or heard of documentation regarding improvements that are being talked about:

Pan Am states it cannot guarantee speeds of no more than10 mph.

Sea-3 says it will supply the region — when, how much? Pan Am inspects its own bridges, but will not release reports.

Pan Am says it will upgrade rotting tracks. When, how much? How will the public know? Who will hold them accountable?

Where is the concrete evidence that the board has regarding the protection of public health and welfare? Where are written conditions, plans, budgets or agreements?

In conclusion, I believe that the Planning Board does not have the information, documentation, studies or safety reports to conclude that this project can be approved and public safety can be assured.

Catherine R. DiPentima

David Mullen
Executive Director
Pease Development Authority
55 International Drive
Portsmouth, NH 03801

April 3, 2014

Dear Mr. Mullen,
At the last Newington Planning Board meeting on March 17, 2014, I raised the question of rerouting the present Pan Am Rail line to a more efficient direct route to Newington through Pease Tradeport. Rebuilding the rail to its former terminal at Somersworth and Newfields Street in Pease and extending the track southwesterly for 2 and ½ miles, to connect in the vicinity of Pickering Brook in Greenland is currently recommended in the 2010-2020 Newington Master Plan. Tom Morgan, Newington Town Planner shared the history of this alternate route was initially proposed by the Bechtel Corporation, an engineering and construction firm, who prepared the Pease Comprehensive Redevelopment Plan in 1990. Their thinking was to establish a new trans-Pease route to keep hazardous rail cargoes out of downtown Portsmouth and city neighborhoods with direct exposure which remains the present situation today. This proposed loop was envisioned to accommodate light rail passenger service with connections to the Downeaster at Rockingham Junction and to connect the airport to the State Port Authority facilities by rail. With the NH legislature mandating a rail link, a 25 foot right-of-way rail corridor was maintained to allow for future industrial development at Pease.

You were quoted in the Portsmouth Herald on March 26th that rebuilding the rail line was not economically feasible and difficult to justify. I would argue if we have a derailment on the magnitude of Lac Megantic, Quebec that occurred in 2013, fiscal justification would be of no importance when faced with the loss of human lives. I would like to point out the 2012 New Hampshire State Rail Plan lists a number of state and federal funding sources for freight rail improvements on privately owned rail lines. As a port authority, the PDA could also file for a TIGER grant for a port infrastructure investment as well as freight rail transportation projects. Although these loans are probably quite competitive, there doesn't seem to be a lack of funding sources and I question if economic feasibility is more likely the lack of political will to explore alternatives.

Interestingly enough, the New Hampshire State Rail Plan gives an estimate of $2-4 million to build a typical mile of rail line compared to $15 million or more to build a mile of lane highway and the current Spaulding Turnpike Newington-Dover Project estimate is now at $265 million. While there is no funding as yet for a rail bridge over the turnpike for the Newington Branch line into Pease, the design development is ongoing and the NH DOT is presently acquiring right-of-way easements. Tom did mention this rail bridge will be very costly to build but he feels some savings can be realized at wetland crossings because the 1952 rail bed remains intact within the wetland area.

In 2013, Sea 3 had 42 railcars carrying propane come into their plant. In 2012, there were none. This is because prior to this, the majority of Sea 3's propane came by ship. These numbers will dramatically increase to 12 to 16 cars a day, 6 days a week equaling 3744-4992 propane cars a year if the Newington Planning Board approves Sea 3's expansion. Both Sea 3 and Pan Am stand to profit significantly from the increase in their businesses but there is no benefit for Portsmouth and Greenland residents who are assuming much of the risk. Rerouting the train in my mind would directly mitigate the safety risks for downtown Portsmouth and neighborhoods. Unfortunately, for Greenland, only 2-3 of their 10 crossings will be eliminated, leaving them vulnerable while sparing Portsmouth.

Most of the public and city official's apprehension and opposition to the Sea 3 expansion centers on the safety and wisdom of bringing in large quantities of domestic propane by rail on Pan Am's aged Class 1 tracks. They are in poor condition and run through our populated areas in close track proximity. Cynthia Scarano, VP of Pan Am has committed 10,000 railway ties to upgrade the tracks to Class 2 but only if the expansion is approved.

Because this is an issue with regional impact, I feel looking at alternative routes in a comprehensive manner involving all of the affected communities bordering the railroad tracks is necessary. The input of the Pease Development Authority as to the viability of this project and working cooperatively with the Portsmouth City Council, Town of Greenland officials, Newington Planning Board, NH DOT and Pan Am to further discuss and explore alternative railroad routes is critical and needed to gain the public trust while moving forward in finding a solution to protect our safety.

Thank you for your consideration,

Pat

Patricia M. Ford
135 Spinnaker Way
Portsmouth, NH 03801

The Town of Newington
New Hampshire
Incorporated 1764

PLANNING
BOARD

April 7, 2014

Ms. Cynthia Scarano,
Executive Vice President
Pan Am Railways, Inc.
1700 Iron Horse Park
North Billerica, MA 01862

Re: Possible Re-establishment of Portsmouth Bypass Spur Rail Line

Dear Ms. Scarano:

In conjunction with the Newington Planning Board's review of the SEA-3 site plan application, it has been suggested by members of the public that an examination should be made into the possibility of re-establishing and extending a bypass spur line through Greenland, the Pease Development Authority and onto Newington to provide alternate access to Newington's Industrial district. This would utilize a portion of the long dormant track line that formerly provided access to the property that his now the Pease Development Authority's property.

The Planning Board recognizes that the planning horizon for such an undertaking is many years, and that this bypass spur line has no pertinence to the pending SEA-3 application; however, from a local freight rail perspective, in the longer term, it may make good sense to provide a spur route that bypasses the comparatively dense population areas in Portsmouth that the current freight rail line follows to provide service to Newington's Industrial district.

We have copied the City of Portsmouth, the Town of Greenland, the Pease Development Authority and the Rockingham Regional Planning Commission on this letter, so the stakeholders that have a long term interest in the continued safe and efficient rail service to freight customers in this area can begin to think and plan about the long term merits of such a proposal. The Board recognizes that the funds to support such an undertaking may need to come from multiple sources besides Pan Am, including funding from the federal government, the Pease Development Authority, the State of New Hampshire, Portsmouth and the Towns. This spur bypass project could be a great benefit to the region (N.H., M.E. and M.A.) by providing continued development opportunities at the only deep water port in New Hampshire and at the Pease Development Authority. Newington would be willing to start this initiative and proposes that Pan Am and the other stakeholders copied on this letter convene an informal meeting to discuss this matter.

205 Nimble Hill Road • Newington, NH 03801 • (603) 436-1252 • Fax (603) 436-7188 • Email: newington@ttlc.net

In closing, the Planning Board thanks you and Pan Am for its ongoing participation in the public hearings on the SEA-3 site plan review. The public and the site plan review process have benefitted from the robust public discussion of the rail and site plan issues that have arisen at these hearings. We believe the spur bypass line may have merit, and we request that Pan Am consider this idea as part of its long term review of future rail needs and rail planning. If Pan Am would like the assistance of the Town of Newington or its Planning Board on this issue, please do not hesitate to contact the Selectmen or the Planning Board.

Very truly yours,

Denis Hebert, Chair
Newington Planning Board

cc: Hon. Robert Lister, Mayor, City of Portsmouth
Greenland Board of Selectmen
Christopher Clements, Commissioner, NH Department of Transportation
Art Nickless, Chair, Pease Development Authority
Senator Martha Fuller Clark
Rockingham Planning Commission

Hon. Robert Lister
City Hall
1 [illegible]kins Avenue
Portsmouth, NH 03801

Board of Selectmen
Town Offices
P.O. Box 100
Greenland, NH 03840-0100

Christopher Clements
NH Dept. of Transportation
7 Hazen Drive
Concord, NH 03302—483

Art Nickless, Chair
Pease Development Authority
55 International Drive
Portsmouth, NH 03801

Senator Martha Fuller Clark
152 Middle Street
Portsmouth, NH 03801

Cliff Sinnott
Rockingham Planning Commission
156 Water Street
Exeter, NH 03833

mailed
4/8/14

Splaine wants Portsmouth council to oppose Sea-3 expansion

By **Jeff McMenemy**
jmcmenemy@seacoastonline.com
April 07, 2014 2:00 AM

PORTSMOUTH — Assistant Mayor Jim Splaine plans to ask the City Council tonight to vote "to express to the Newington Planning Board our opposition to the Sea-3 expansion project."

Splaine, during an interview Friday, said he feels the Newington Planning Board will likely vote this month on whether to approve the planned expansion of Sea-3's propane terminal — which will result in more train cars carrying propane on Seacoast tracks — and it's important to be on the record as opposing the project.

"It's coming to a head with the Newington Planing Board," Splaine said Friday. "It's our obligation to take a position that we're opposed to the Sea-3 expansion."

The Sea-3 propane terminal in Newington has proposed an expansion that would allow it to receive domestic propane, which is substantially less expensive than paying for propane received from overseas.

Sea-3 released a statement noting it already receives propane by rail at its Newington facility, but if the expansion is approved by the Newington Planning Board, "rail service would increase from an average of three trains per week to seven trains per week pulling six to 12 propane tank cars per train."

But many area residents — along with city and town officials throughout the Seacoast — said they don't believe the Pan Am Railways track that will be carrying the rail cars is in good enough condition to ensure residents' safety.

Pan Am Railways Executive Vice President Cynthia Scarano has promised that if the Sea-3 project is approved, the railroad will upgrade the rail line carrying the propane from Class 1 to Class 2.

By moving to a Class 2 line, trains could travel up to 25 mph, but Scarano said it's Pan Am's intention to operate the cars at 10 mph.

However, she has said several times that might not always be the case.

Splaine said he is concerned that Pan Am Railways executives won't promise to keep the train speeds at 10 mph.

"It's the subtlety of what they're saying," Splaine said. "They don't need to go any higher than 10 miles per hour."

In a memo to the City Council, Splaine also stated that the council should ask "the Pease Development Authority to seriously consider the proposal to build a track route through Pease Tradeport from the Newington Sea-3 area to Greenland, thereby avoiding the shipment of additional hazardous cargoes through Portsmouth's heavily populated neighborhoods and downtown businesses."

The idea was first raised by Portsmouth resident Pat Ford at a recent Newington Planning Board meeting and state Sen. Martha Fuller Clark, D-Portsmouth, said the idea is worth looking into.

But David Mullen, the executive director of the Pease Development Authority, said the proposal is not economically feasible, noting that the rail line that once ran through a section of Pease "has been completely taken out, many, many years ago."

He also said such a proposal would have to include building a rail bridge over the Spaulding Turnpike where an improvement project is being conducted.

Splaine acknowledged Friday that, "I don't know where all the money would come from" to pay for such a project, and said it's nothing he would expect to see completed in a year or two.

"It's one of those things that might be done in five to 10 years," Splaine said.

He noted that if the track were built, the new track would be safer for the roughly 8,000 people working at Pease than the existing track is for those people living and working in downtown Portsmouth.

City Manager John Bohenko has invited Scarano to appear before the City Council and, in his memo to the council for tonight's meeting, Bohenko said Scarano could appear either Monday, April 28, or Monday, May 5.

From: Laura Byergo <lgbyer@yahoo.com>
Subject: Fw: The Boston Globe - Westfsusord seeks answers from Pan Am on derailment -
Date: April 7, 2014 6:01:50 PM EDT
To: Fred Mason <fmason@chicagobooth.edu>, Susan Parker <sparkerski@aol.com>, Tom Morgan <planning@newington.nh.us>
Reply-To: Laura Byergo <lgbyer@yahoo.com>

Boston Globe article below on

----- Forwarded Message -----

From: Jim Splaine <jimsplaineportsmouth@gmail.com>
To: Richard DiPentima <rdipentima@gmail.com>
Cc: Jane Sutherland <jane.sutherland76@gmail.com>; Robert Gibbons <bobg1029@gmail.com>; Matthew Nania <mjnania@gmail.com>; Abdallah Mohammad <ab.alhamdan@yahoo.com>; "saeci@aol.com" <saeci@aol.com>; "patriciasalome@comcast.net" <patriciasalome@comcast.net>; Kristina Campbell <kristina.campbell@comcast.net>; Carole Renselaer <chrenselaer@comcast.net>; Lew Brown <lew_b@me.com>; "Chris.Hayden@henryschein.com" <Chris.Hayden@henryschein.com>; Cynthia Binari (Keenan) <cynthiakeenan@gmail.com>; John Shirley <jshirley51@icloud.com>; Laura Byergo <lgbyer@yahoo.com>; "md.andrews@comcast.net" <md.andrews@comcast.net>; Jeff Barnum <JBarnum@clf.org>; Cathy Pentima <cathrich3@myfairpoint.net>; "phgoldens@gmail.com" <phgoldens@gmail.com>; John Sutherland <sutherlandjohn34@gmail.com>; Corinne Szopa <tszopa@myfairpoint.net>; Pat Ford <pford123@gmail.com>; Martha Fuller Clark <mfclark@aol.com>
Sent: Monday, April 7, 2014 3:30 PM
Subject: Re: Westford seeks answers from Pan Am on derailment - The Boston Globe

Good information, Rich. I'll be prepared with a motion for the Portsmouth City Council to oppose Sea-3 expansion tonight -- and to encourage PDA to consider the Pease route. - Jim!

On Mon, Apr 7, 2014 at 11:10 AM, Richard DiPentima <rdipentima@gmail.com> wrote:

> All:
>
> FYI article in yesterday's Boston Globe. It still states that the officials in Westford were not notified, contrary to what Pan Am claimed at the last Newington Planning Board meeting. This is all it will take for a major incident that could seriously disrupt downtown Portsmouth with possible evacuations etc. And considering the condition of the tracks, it is a wonder it has not happened here since 2001, which was minor in comparison to what can happen with so many more cars coming through.
>
> Rich
> ---------- Forwarded message ----------
> From: **cdipent@aol.com** <r-5681943-17419-043AB522806049D38DBA68ABCC9F8891@bcast.boston.com>
> Date: Mon, Apr 7, 2014 at 10:56 AM
> Subject: Westford seeks answers from Pan Am on derailment - The Boston Globe
> To: "rdipentima@gmail.com" <rdipentima@gmail.com>
>
> ---
>
> The following appeared on Bostonglobe.com:
> Headline: Westford seeks answers from Pan Am on derailment - The Boston Globe
> Date: Apr 7, 2014
>
> As town officials and state and federal lawmakers press for a meeting with Pan Am Railways in the wake of the February derailment in Westford, inspectors with the Federal Railroad Administration have determined that the incident was caused by an issue with the track. According to Michael Hartigan, spokesman for Congresswoman Niki Tsongas, Pan Am Railways could be fined up to $5,000 for the wide gauge detected just before the site of the derailment. Gauge refers to the distance between the two rails. The incident occurred about 11 p.m. Feb. 19. Fourteen Pan Am freight cars slipped off the track at the Bridge Street

overpass. Two were carrying liquid petroleum gas, which has a risk of explosion. Pan Am never notified local leaders about the incident, town officals said. They learned of the derailment about 9:30 a.m. the following day, when Westford Fire Chief Joe Targ drove by the scene.

http://www.bostonglobe.com/metro/regionals/north/2014/04/05/westford-seeks-answers-from-pan-derailment/EWTSbfNg4HeSJhn7mbMIZO/story.html?s_campaign=8315

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603.750.4266 phone
603.749.7348 fax
603.817.6651 cell

haighteng.com

From: Alec McEachern [mailto:alecm@shaines.com]
Sent: Tuesday, April 08, 2014 8:35 AM
To: Steve Haight; Paul Bogan
Subject: RE: SEA-3 2nd means of access

Steve:

The railroad actually owns the fee title to the land so it wouldn't be Shaftmaster's property or a ROW. We can check with PanAm but I believe the width of its land is consistent down the track, ie the width as it goes between Sea-3's parcels is likely the same width as it goes by Shaftmaster. I would be surprised if the PanAm is allowing Shaftmaster to park on railroad property. We need to confirm the width of PanAm's real estate along the access and show the width of the access route. I recommend following up with the Fire Chief when we have the widths confirmed and ask him if it will be sufficient for his trucks.

Alec

From: Steve Haight [mailto:shaight@haighteng.com]
Sent: Monday, April 07, 2014 11:13 AM
To: Paul Bogan; Alec McEachern
Subject: SEA-3 2nd means of access

Following up on a couple of comments from the Board and the Fire Chief regarding the 2nd access.....

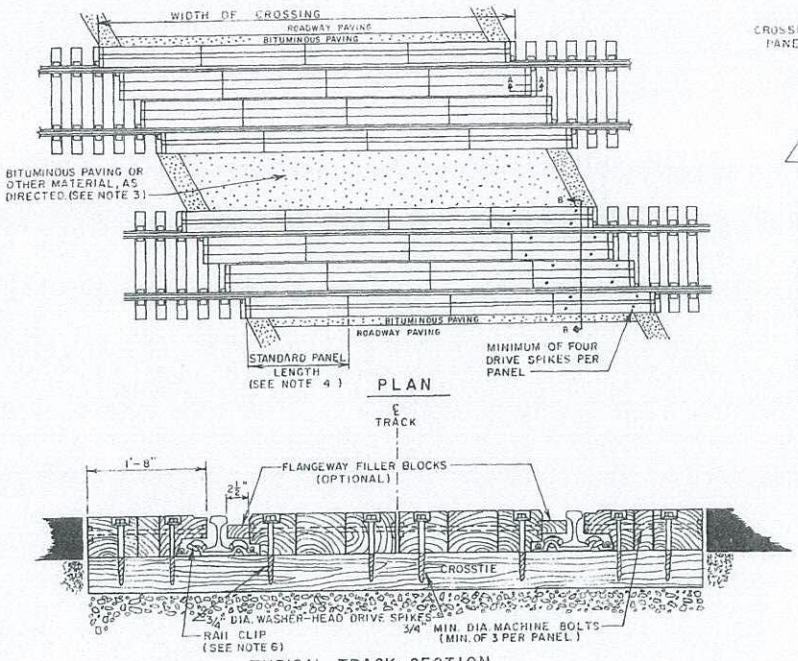
- The plan as shown I schematic ... the question was whether or not there is enough space to put the access road along the train track
- Fire Chief mentioned that Shaftmaster would likely lose some parking (parking in the railroad ROW?)
- Should we have PanAm provide any input..
  - Width of ROW
  - Design parameters of an emergency access route
- Should we follow up with the Fire Chief to see if he needs any additional information

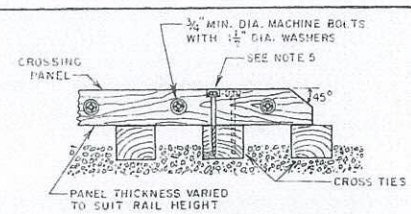
S

Stephen J. Haight, P.E.
Haight Engineering, P.L.L.C.
P.O. Box 1166
181 Watson Road
Dover, New Hampshire 03820

shaight@haighteng.com
603.750.4266 phone
603.749.7348 fax
603.817.6651 cell

haighteng.com





SIDE VIEW OF END PANEL
Section A-A

NOTES:

1. Timber grade crossing is to be used as a temporary crossing only, as directed or approved by the Chief Engineer.
2. When grade crossing is removed, spike holes shall be treated and plugged.
3. When the grade crossing contains multiple tracks, the paving material between the tracks shall be approved by the Chief Engineer.
4. Standard panel lengths are 8'-0" and 8'-4 3/4". Additional lengths are attained through multiples of these basic units.
5. Crossing panels to be bored in the field to fit existing tie spacing.
6. Timber panels to be manufactured to clear resilient track fastening system. Rail clip type and/or number to be provided to grade crossing supplier.
7. Timber panels shall be treated with creosote preservative as per A.R.E.A., Chapter 3.

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY	RAILROAD OPERATIONS	DWG. NO. 3120 Oct 28, 1992 (1)

TEMPORARY TIMBER GRADE CROSSING

John D. Ray — ENGINEERING OFFICER
W. A. [illegible] — CHIEF ENGINEERING OFFICER

CITY OF PORTSMOUTH

Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7200
Fax (603) 427-1526

Robert J. Lister
Mayor

April 9, 2014

Newington Planning Board
Denis Hebert, Chairman
Newington Town Hall
205 Nimble Hill Road
Newington, NH 03801

RE: Sea-3

Dear Mr. Hebert:

As you are aware, the residents of the City of Portsmouth have expressed abundant concern regarding the impact of the Sea-3 project on the public health, safety, welfare and the environment as a result of increased rail traffic through Portsmouth. On Monday April 7, 2014, the City Council voted unanimously to oppose the approval of this project. As a project that has been designated a project of regional impact, the City Council felt that it was important to go on record in an official capacity to voice its continued concern regarding this project.

In the event that the Newington Planning Board approves the project over the City's objection, the City requests that the applicant be required to provide a comprehensive safety and environmental plan. Such a plan would identify risks as well as needed improvements for the purpose of protecting the citizens of Portsmouth from the exponentially increased hazards that will exist as a result of the rail transportation of propane through the heart of the City and along residential neighborhoods.

While the City Council appreciates the collaborative relationship that it has shared with Newington over the years, the health, welfare and safety of our citizens is paramount.

Thank you for your consideration on this matter.

Very truly yours,

Robert J. Lister
Mayor

RJL/jed

c.: Portsmouth City Council
John P. Bohenko, Portsmouth City Manager
Tom Morgan, Newington Town Planner

Site Location

Lots 20/13 &14/2
190 Shattuck Way
Newington, NH

Scope

SFC Engineering Partnership, Inc. (SFC) has been engaged by the Town of Newington to complete an assessment of a Fire Safety Analysis (FSA) for a facility expansion to be constructed at the Sea-3 liquefied petroleum gas (LPG) facility in Newington, New Hampshire.

The reviewed document has been prepared by Phillip Sherman, P.E. for Sea-3 Inc, and is dated 03/20/14. The FSA document is preliminary and notes that final detailed design for the facility expansion has not yet been completed. As such, NFPA 58 compliance has been assumed at this point for much for the piping and mechanical design. This level of detail is fine for site plan purposes, but this review assumes in good faith that a more complete FSA document will be submitted prior to the issuing of a building permit and system commissioning.

Please note two items relating to secondary means of site access and installation of master streams were covered in a memo dated 04/05/2014, by Nick Cricenti, P.E. of SFC. Material covered in that memo has not been repeated in this review report.

Facility Design Documents Referenced

Fire Safety Analysis, Sea-3 Facility Expansion, Lots 20/13 &14/2, 190 Shattuck Way, Newington, NH. Author: Phillip Sherman, P.E., 03/20/14.

Legislative Framework (Abridged)

In terms of legislative compliance, the design and installation of this system must comply with the New Hampshire State Fire Code Saf-C 6000. The National Fire Prevention Association (NFPA) 1, *Fire Code*, 2009, is adopted under Saf-C 6000 and hence forms the specific requirements for fire safety compliance in the State of New Hampshire. NFPA 58, *Liquefied Petroleum Gas Code*, 2008, and NFPA 54, *National Fuel Gas Code*, 2009, are adopted by reference under Saf-C 6000 as incorporated documents in NFPA 1. NFPA 58 and 54 have specific applicability for compliance of systems such as the facility this report concerns. As per NFPA 58 a fire safety analysis is required to be drafted prior

to construction of a facility where storage of more than 4,000 gallons of LPG is proposed.

Specific Review Comments:

The following tabulation contains specific commentary on the compliance of the FSA document, and more broadly the proposed propane and fire protection systems.

Section Reference	Compliance	Comments
FSA – document whole	Yes	Generally the submitted FSA document and appended forms meet the required format as outlined in NFPA 58 and the NPGA FSA manual.
Pg. 1	Yes	The use of NFPA 58, 2011 edition is noted.
Pg. 2-3	Yes	Separation distances listed meet or exceed those laid out in NFPA 58 (90,000 gallon tank spacing minimum separation distances between containers should be calculated as per NFPA 58, Table 6.3.1, listed in this FSA document and check against the intended spacing as the design is completed).
Pg. 4	TBA	Assumptions regarding NFPA 58 compliance for the final LPG piping and equipment designs are noted here, and throughout applicable appended forms.
Pg. 5	Yes/TBA	Active water spray systems for the 90,000 gallon day tanks and 33,500 gallon rail cars appear conceptually satisfactory as described. Flow design calculations and engineering drawings that show compliance with NFPA 15 should accompany a more detailed FSA submission. These should be approved by the Newington FD prior to system commissioning.
Pg. 6	Yes	Whilst all proposed tank locations meet NFPA 58 separation distances, the commentary pertaining to appended table 7.1 identifies the 400,000 BBL refrigerated tank and cottages across the southern property border as being potentially exposed in the event of a major failure at the rail cars or day tanks respectively. There are no code compliance issues here, and further measures to reduce risk at both the rail car unloading point and the day tank farm are noted. It is this reviewer's opinion that the proposed water spray systems, if properly implemented, would provide adequate additional risk mitigation in this instance.
Pg. 7	Yes	Detailed fire department response section noted. This information should be double-checked for accuracy by the Newington FD Fire Chief.

Pg. 7	Yes	It is noted that it appears that the fire pump will meet a flow rate to wet the 90,000 gallon day tanks or three (3) rail cars via their respective spray systems, but it will not be able to service both at once. Considering the distance between these tank sets, and the local fire department response times, this arrangement should be satisfactory. As stated before, flow design calculations and engineering drawings that show that this system will work as described should be submitted.

Information Required for More Detailed Compliance Review

The following documentation will be required in order to complete a more complete review of system compliance for the equipment added in this system expansion. It is noted that information listed here may be already earmarked for submittal as part of a more detailed Fire Safety Analysis or permit application.

- Fire Safety Analysis completed after engineering design has been finished.
- Cut sheets, or documentation depicting LPG storage tank compliance to ASME *Boiler and Pressure Vessel Code*, Section VIII, "Rules for the Construction of Unfired Pressure Vessels"; or API-ASME *Code for Unfired Pressure Vessels for Petroleum Liquids and Gases*. In addition, drawings or other depiction of container safety appurtenances including, where appropriate, pressure relief valves, excess flow valves etc.
- Details of rail car unloaders, including redundant safety systems.
- System piping schematic (process and instrumentation diagram). This may be a partial schematic depicting only new equipment.
- Electrical classified area plan.
- Details of new machinery building adherence to NFPA 58 Chapter 10: *Buildings or Structures Housing LP-Gas Distribution Facilities.*
- Details/calculations regarding water flow rate and design specifications of water deluge systems as per NFPA 15: *Standard for Water Spray Fixed Systems for Fire Protection.*
- Details of any non-odorized propane to be stored at the site.
- Site lighting plan.

Concluding Remarks

This FSA document appears to be in general compliance with NFPA 58, and the NGPA FSA manual. No significant problems have been found with the proposed system or the FSA at this point however the above-listed detailed documentation should be submitted and reviewed prior to the issuing of a building permit and system commissioning.

SFC ENGINEERING PARTNERSHIP, INC.

Doug Fountain
Engineer

From: "Head, Andy" <ahead@newingtonfire.org>
Subject: FW: SEA-3 2nd means of access along the Rail ROW
Date: April 9, 2014 2:13:47 PM EDT
To: "Tom Morgan" <planning@newington.nh.us>

1 Attachment, 115 KB

For your information. Andy

From: Steve Haight [mailto:shaight@haighteng.com]
Sent: Wednesday, April 09, 2014 1:59 PM
To: Head, Andy
Cc: Paul Bogan; Alec McEachern; Scarano, Cyndi
Subject: SEA-3 2nd means of access along the Rail ROW

Chief Head

I have a paper copy of a plan titled Right of Way and Track Map - Boston and Maine R.R. dated June 30, 1914 and last endorsed as "current" 1/2013 by Jim Verra LLS... the width is shown as 83' at SEA-3 and stays the same width easterly through where Shaftmaster crosses ...there are some variations to the width further east (wider and narrower) but for the run that the FD would be on it appears to be at least 83' wide.

The track is not centered on the ROW... it is 36' off the north edge.

Based on my conversation with Pan Am The emergency access would have to be at least 5' off the edge of the rail

Therefore: (for purposes of this email north is the Piscataqua side of the ROW)

- **Center line of rail is 36' off north ROW line**
- **Rails are about 5' wide (outside edge of rail to outside edge of rail)**
- **Outside edge of rail is 33.5' off north ROW**
- **Emergency access can be no closer than 5' to the rail**
- **Therefore the inside edge (towards track) of the emergency access would be 28.5' off edge of north ROW line**
- **Say emergency access is 15' wide... this leaves 13.5' from the ROW line to outside edge (Piscataqua side) of the emergency access road**

There would appear to be adequate room to construct the emergency access within the ROW

Also, for your info... the attached document is the railroad rail crossing detail we would use crossing the rail at the site.

Let me know if/when you want to walk the section where the access would go ... we will need to contact Pan Am to schedule an escort.

Regards

Steve

Stephen J. Haight, P.E.
Haight Engineering, P.L.L.C.
P.O. Box 1166
181 Watson Road
Dover, New Hampshire 03820

shaight@haighteng.com

From: Elizabeth Hampton <elizabeth.hampton@argusmedia.com>
Subject: FW: Argus: New Hampshire propane terminal hits opposition
Date: April 10, 2014 11:49:58 AM EDT
To: "newington@ttlc.net" <newington@ttlc.net>

Hey Tom!

Please find the article I wrote below. It came out yesterday, but I forgot to send it!

From: argusalerts.com [mailto:noreply@argusalerts.com]
Sent: Wednesday, April 09, 2014 3:51 PM
To: Elizabeth Hampton
Subject: Argus: New Hampshire propane terminal hits opposition

New Hampshire propane terminal hits opposition

09 Apr 2014 20:50 GMT

Houston, 9 April (Argus) — The city council of Portsmouth, New Hampshire, is opposing Trammo's planned expansion to its Sea-3 propane import terminal in nearby Newington, highlighting growing community opposition to rail infrastructure projects.

Portsmouth in a formal letter to the Newington Planning Board said Sea-3 would double rail traffic in densely populated and residential areas.

Although the terminal is located in Newington, rail shipments out of the import site will move through nearby town Portsmouth. The terminal expansion timeline will depend on a decision by the Newington Planning Board, which has the sole power to veto an expansion to the terminal.

Pan Am, the Portsmouth City Council and community members disagree over whether Portsmouth has the authority to curtail rail movements through the city.

The Newington Planning Board does not plan to release a response to the letter, but will discuss the matter at a meeting on 14 April.

Pan Am Railways could not be reached for comment. Trammo had no comment.

Following a shortage of propane this winter, seven 12,000t cargoes were imported into the terminal from Europe to help meet winter heating demand. Three propane cargoes are already booked to arrive next winter.

Pan Am Railways, a Class II regional railroad, runs and operates the rail lines that move propane through Portsmouth. Two to three trains per week carrying 7-12 cars of product pass through the town. The proposed expansion would result in up to six round trips per week, bringing up to 16 tank cars through the town, according to the city of Portsmouth.

The controversy surrounding the rail expansion comes following several derailments involving crude oil or natural gas liquids in past year, and an explosion last July in the Lac-Megantic, Quebec, that resulted in 47 fatalities.

Portsmouth officials requested that, if approved, the Newington Planning Board provide a comprehensive safety and environmental plan related to the project, which would identify risks associated with an increase in rail shipments of hazardous materials.

eh/dcb

Send comments to feedback@argusmedia.com

MEMO

TO: Tom Morgan, Newington, NH Town Planner

FROM: Mark Smith, PE, and Dirk J. Grotenhuis, PE, LEED-AP

DATE: April 10, 2014

SUBJECT: SEA-3 Traffic Assessment Memo Peer Review

We have reviewed the traffic assessment memorandum by TEPP-LLC (dated March 24, 2014) regarding the proposed SEA-3 project, as well as additional information provided via the related City of Portsmouth web page article (www.cityofportsmouth.com/Sea-3.html). Our comments and questions regarding the assessment are as follows:

1. Sea-3 transport truck records show a wide range of activity in the past, with as few as 8 and as many as 161 average daily transport trucks per peak month operating day. In order to assess effects on the adjacent highway we expect traffic volumes expressed in average peak hour trips, including all other uses (employees, visitors, deliveries, etc.). Given the wide range in the past, and the new operational characteristics, is the average daily or peak hour vehicle trip rate expected to change? If so, please quantify.

2. Does any vehicle queuing or congestion occur at the facility entrance or adjacent intersections?

3. Reported on-site material handling constraints limit truck processing to 10 per hour. This may differ from actual arrivals/departures, as vehicles may queue on-site. Is there an estimate of potential for on-site queuing?

4. Are truck arrivals and departures scheduled to coincide with this 10/hr. limitation?

5. Are there any differences in expected truck activity due to the nature of the new facility or operation (i.e. more rail off-loading in future vs. past)?

6. How many truck-transport loads does a typical rail shipment involve?

7. What are the typical facility operating hours? If 160 trucks arrived in one day and the limit on material handling is 10 transport trucks/hour, can it be assumed the facility was operating 16 hours (or more) that day?

8. Are there any differences in site circulation due to the new emphasis on rail shipments? i.e. are rail to truck off-loading capabilities different than ship to truck off-loading (and also limited to 10 trucks per hour)?

9. Will there be any additional vehicle delay time to rail/road crossing locations in the area? If so, please quantify.

10. Will any of the ship bound cargo be loaded from transport trucks? Is there an increase in loaded truck arrivals due to the proposed change in operations?

11. While the owner's records were reportedly reviewed with regard to safety, no data relating public highway safety records (vehicle crashes) are offered. The occurrence and location of vehicle crashes on nearby roads and intersections are important indicators of the potential for future crashes.

END OF MEMO

Congress of the United States
Washington, DC 20510

April 11, 2014

Administrator Joseph C. Szabo
Federal Railroad Administration
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Administrator Cynthia L. Quarterman
Pipeline and Hazardous Materials Safety Administration
United States Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Administrator Szabo and Administrator Quarterman:

Enclosed is a letter we received from the Town of Greenland, New Hampshire Board of Selectmen regarding the proposed expansion of the Sea-3, Inc. facility in Newington, NH. Greenland is concerned with the public safety risks resulting from the increased shipments of Liquid Petroleum Gas via rail.

As you will read, Greenland has requested that a comprehensive regional safety and security study be conducted to assess the impact of the Sea-3 project including an analysis of Pan Am's response to any previous incidents. While we appreciate the steps the Federal Railroad Administration has already taken to ensure the safety of this rail line, including a hi-rail inspection in late January and a commitment to conduct additional safety inspections later this spring, we believe it is important that the federal government provide the information and analysis necessary for community officials and residents to fully understand the potential impacts of increased LPG shipments along this rail line.

We support the Town of Greenland in its request for the Federal Railroad Administration and Pipeline and Hazardous Materials Safety Administration to perform a comprehensive assessment of the regional safety and security effects of an expansion of LPG rail shipments to Sea-3's Newington, NH facility and urge your consideration their proposal. Thank you for your attention to this matter.

Sincerely,

Jeanne Shaheen
United States Senator

Kelly Ayotte
United States Senator

Carol Shea-Porter
Member of Congress

PAN AM RAILWAYS

IRON HORSE PARK
NO. BILLERICA, MA 01862

LAW DEPARTMENT
(978) 663-1126

April 11, 2014

John J. Ratigan, Esq.
Donahue, Tucker & Ciandella, PLLC
225 Water Street
Exeter, NH 03833

Dear Attorney Ratigan:

Further to our correspondence of March 18, 2014, Pan Am Railways ("Pan Am") believes that it is important to address the inaccurate assertions made by Attorney Christopher Cole regarding the scope of federal preemption in rail related matters. Consciously or unconsciously, Attorney Cole relies upon a specific, and limited, line of cases to support state and local regulation of rail transportation in relation to the Sea-3 permit application before the Newington Planning Board. Notwithstanding the fact that Pan Am is not seeking any approvals or authority from the Planning Board, Attorney Cole's statements are incorrect both factually and legally.

Specifically, Attorney Cole cites a case relating to fixed facilities to be constructed by rail carriers that are not subject to pre-clearance requirements by state and local authorities. *Joint Petition for Declaratory Order—Boston & Maine Corp. & Town of Ayer, MA*, STB Finance Docket No. 33971, (May 1, 2001). In such an instance, the STB has determined that pre-clearance requirements are preempted, though rail carriers are still subject to some state and local regulation such as compliance with non-discriminatory building codes. In this matter, however, Pan Am is not seeking to construct a fixed facility such as an automotive unloading facility or an intermodal facility.

Rather, Pan Am is solely involved in this process as a rail carrier providing transportation to Sea-3 and other customers on the Newington Branch. Accordingly, since Pan Am's rail transportation is directly regulated by the Surface Transportation Board ("STB"), there is no room for state and local regulation. This was made clear by the STB in a decision relating to permitting and routing restrictions sought to be imposed by the District of Columbia:

"Indeed, the courts have found two broad categories of state and local action to be preempted regardless of the context or rationale for the action. The first is any form of state or local permitting or preclearance that, by its nature, could be used to deny a railroad the ability to conduct some form of its operations…

Second, there can be no state or local regulation of matters directly regulated by the Board—such as the construction, operation, and abandonment of rail lines (see, 49 U.S.C. §§10901-10907)…

Where there is a particular local situation presenting safety or security concerns, those concerns must be directed to the federal authorities charged with assessing them and determining what measures (if any) would be appropriate to address the concerns in a manner that takes into account the operational needs of the national rail network.". *CSX Transportation, Inc.—Petition for Declaratory Order*, STB Finance Docket No. 34662 (May 3, 2005) (emphasis added).

Courts also agree with the STB's analysis, with one court finding that, "Nothing in the ICCTA otherwise provides authority for a state to impose operating limitations on a railroad..." *Friberg v. Kansas City Southern Rwy. Co.*, 267 F.3d 439, 444 (5th Cir. 2001). Similarly, another court held, "Here, Congress's intent is clear that any state law involving where to construct or how to operate a sidetrack is preempted." *Smith v. CSX Transportation, Inc.*,2010 WL 2232246 (11th Cir. 2010).

In closing, Attorney Cole's correspondence also make no mention of the preemptive effect of the Federal Railroad Safety Act ("FRSA"). However, by limiting his analysis of state and local regulation pursuant to the ICA, Attorney Cole fails to address the fact that the Federal Railroad Administration ('FRA") also regulates the very same subject matter discussed regularly throughout this proceeding: track class, track speed and bridges. *49 C.F.R. Parts 213 & 237.* Consequently, Attorney Cole's request for a comprehensive health and safety assessment fails to account for the fact that the FRA (and not the Planning Board) already regulates railroad safety to a significant extent and the preemptive effect of that regulation.

Thank you again for your attention to these issues. Please feel free to contact me if you should have any questions or comments.

Sincerely,

Robert B. Culliford
Senior Vice President
& General Counsel

Great Bay-Piscataqua WATERKEEPER®

27 N. Main Street
Concord, New Hampshire 03301-4930
(603) 225-3030
jbarnum@clf.org

April 14, 2014

Newington Planning Board
205 Nimble Hill Rd.
Newington, NH 03801

Re: SEA 3 Application

Dear Newington Planning Board Members,

As Conservation Law Foundation's Great Bay-Piscataqua Waterkeeper, I am writing to express concern with the above-referenced project.

The Newington Planning Board has determined that the SEA 3 expansion project is of regional significance due to a substantial increase in rail traffic over a line owned and operated by Pan Am Railways. The Pan Am Railways line includes a number of crossings of water bodies, including: two wooden trestles and earthen-approaches totaling over 1400 feet crossing the Squamscott River and marshland at the head of Great Bay between Newfields and Stratham; the Winnicut River and Pickering Brook in Greenland; and Cutts Cove near the state pier in Portsmouth.

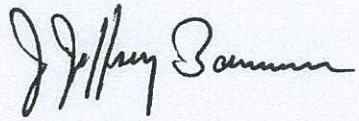
A derailment on or near one of the above crossings could have catastrophic impacts on the Great Bay estuary. The NH Oil Spill Recovery Team is poised to prevent a spill in the Piscataqua from reaching Great Bay. It is not prepared to address a spill coming from the other direction. A spill at the Squamscott trestles cannot be reached in the summer in less two hours and, in the winter, under ice conditions, not at all.

In light of this risk, it is essential that you be provided, and closely consider, detailed information about the safety and integrity of the railroad line at issue. Pan Am Railways has not provided such information, asking that you simply rely on oral assurances of the line's safety and integrity. Nor has it provided reliable information to substantiate its verbal claim of adequate insurance to cover an environmental or other disaster.

To guard against potentially catastrophic impacts - from a variety of commodities - to the Great Bay estuary, and other adverse impacts, we urge the Board to require a full environmental and safety impact study and detailed documentation regarding the integrity of the rail line and the manner in which it will

be operated. Absent such information, it is impossible for the Board to render an informed decision in this matter.

Sincerely,



Jeff Barnum
Great Bay-Piscataqua Waterkeeper

Newington Planning Board

Monday April 14, 2014 6:30 PM

Agenda

1) **Public Hearing:** Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

2) **Planning Board minutes** of April 7

3) **Correspondence**

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, April 14, 2014

Call to Order: Chair Denis Hebert called the April 14, 2014 meeting to order at 6:45 p.m.

Present: Vice Chair, Mike Marconi; Bernie Christopher; Christopher Cross; Jack Pare; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Absent: Justin Richardson

Public Guests: Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Steven Haight, Haight Engineering; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Dirk Grotenhuis, Senior PE, RSG Traffic; Portsmouth Assistant Mayor, Jim Splaine; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Senator Martha Fuller Clark; Jeff Barnum, Great Bay Water Keeper; Andy Jones, Toxic Actions Center, Portland, Maine; Portsmouth Residents: Abdullah; Lou Brown; Catherine and Richard DiPentima; Pat Ford; Bob Gibbons; Beth Moreau; David Rheaume; Lou Salomi; Jane and John Sutherland; Greenland Resident: Fred Mason

1) Public Hearing: Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Chairman Hebert commented that the Board had heard from many people in regards to their concerns with the safety of the rails. He said the Town's legal counsel were told by Pan Am Railways legal counsel that the Board only had jurisdiction over the Sea-3 site and jurisdiction of the rails came under the Federal Railroad Association and the rail inspector from the New Hampshire Department of Transportation. He said the Board would continue to review information as it came in, but at this point the Board needed to move forward with the Sea-3 site review. He asked that anyone speaking from the public keep their remarks to new information that the Board could act upon.

Portsmouth Assistant Mayor, Jim Splaine said the City of Portsmouth sent a letter that they were opposed to the expansion of Sea-3

He said he was Assistant Mayor in the 1970's when Sea-3 was first proposed, and they were concerned with the safety of the rail lines then. He said he was also involved with the Pease Redevelopment Authority in the early 1990's and at that time they considered Pease as a transportation hub for the industrial corridor.

Assistant May Splaine said Newington has done great job developing of developing industry along the river, but asked if they really wanted an Energy North

Central in Newington feeding NH, ME, NE for the next 20-30 yrs. He said if the Board agreed to the expansion, they would have to allow further expansion if they returned, and asked if that was what they wanted for the community He wondered what the younger generation to look back and say they could have stopped it, but they didn't.

Mr. Rich DiPentima of 16 Dunlin Way said the City of Portsmouth, neighborhood representatives and the Great Bay Stewards have asked for environmental and safety studies of the Sea-3 site and the subsequent rail lines on two different occasions. Chairman Hebert reminded Mr. DiPentima that the Board had been told that they had no authority to request or base their decision on environmental or safety studies. Mr. DiPentima said there was a decision in November that the proposal had regional impact and out of the five categories listed in the RSA, one of the impacts included transportation networks. He said they were told that they could not interfere with interstate commerce, and yet the Massachusetts Department of Transportation received a rail transportation safety report even though both states were covered by Federal jurisdiction. Chairman Hebert said he understood the question and would look into it.

Mr. Andy Jones of Hyde Street in South Portland, Maine said he was a community organizer from Toxic Actions Center, an public health and environmental non-profit that worked with communities to clean up neighborhoods. He said they were concerned with the review of the Sea-3 expansion that was rushing past environmental and safety impact studies.

Mr. Jones said he grew up and lives in South Portland, Maine where there was an oil pipeline that passes from Coos County in New Hampshire and up to Montreal. He said there was a proposal to use the pipes for the export of tar sands that would cross three states. The reverse process would put strains on old pipes. He said because the pipes passed through three states and an international border, they were told it was not their concern and the commerce laws prevented local evaluation. He said they were also told they would be sued if took any actions. They passed a moratorium on the construction tar sands infrastructure, their city council has appointed legal experts to draft a zoning ordinance to block tar sands from their community, and a lawsuit has not materialized.

Mr. Jones said local officials and residents have been told they have no power over their own safety. He said he was sympathetic to market changes and the need for businesses to be flexible. He said if a project was feasible, they needed to get buy in from the community and be forthcoming with safety reports. He said Sea-3 needed to demonstrate expansion is safe before they get approval

Mr. Bob Gibbons of 130 Spinnaker Way said the Sea-3 expansion would impose an economic impact upon all the abutting communities that would have to provide for the safety of those on the major thoroughfares such as Market Street and Maplewood Avenue. He asked why residents should subsidize the project, and suggested Sea-3 cover the costs instead. Chairman Hebert said the Board invited an FRA representative and the rail line inspector for the NH DOT, and communities could contact the State with questions about railroad crossing impacts. He said that process was set up by the U.S. Government and pre-empted local jurisdiction.

Mr. Gibbons said railroad crossings were not the only concerns. He said he was also concerned that communities were not adequately equipped for the types of emergencies that would occur if anything went wrong on the rails. Chairman Hebert reminded Mr. Gibbons that they were talking about rails again. Mr. Gibbons said he was talking about the impact Sea-3 on the safety of citizens and he was asking if they had a right to impact fees, whether it was on communities or through the State.

Catherine DiPentima said she was also concerned about living with for generations with things like emergency preparedness and thought Sea-3 should cover the costs.

Mr. David Rheaume and Ms. Beth Moreau, members of Islington Creek Neighborhood Association said they both served on land use boards in Portsmouth and would like to talk about the hours Sea-3 would be allowed to accept deliveries. Mr. Rheaume asked if Pan Am could operate any time they wanted and Chairman Hebert said there were court cases dealing with rail operations and the Board could not interfere with rail operations.

Mr. Jeff Barnum, Great Bay Water Keeper and speaking for the Conservation Law Foundation said most people didn't understand that the trestle that went over the Squamset River was not a single trestle, but was actually two trestles 455 feet long, separated by a causeway in between and on either end, totally 1500 feet. Chairman Hebert said he was talking about the rail bridge and they had already discussed. Mr. Barnum said he thought he heard Chairman Hebert say he wouldn't make a decision on the proposal unless he had bridge inspection. He said NH DES oil recovery could not respond to an accident in less than two hours in the summer and could not respond in the winter whatsoever. Chairman Hebert said they were not discussing the transportation of other hazardous materials over the rails. He said the proposal before the Board was for propane, which evaporated.

Mr. DiPentima said when Mr. Paul Bogan, Sea-3 Vice President of Operations was asked in November 2013 what the worst case scenario on the Sea-3 site would be, he said a boiling vapor catastrophe. Mr. DiPentima asked if the Town of Newington had the ability to respond or if they would rely on surrounding communities. Chairman Hebert said the fire chief addressed that at the last meeting and he would be able to handle the situation and all the fire chiefs in the region said the same. Mr. DiPentima said Sea-3 should provide the infrastructure for a mutual aid agreement that was supported by taxpayers.

Mr. Lou Salomi of 142 Spinnaker Way asked if the Board allowed the Sea-3 expansion would the propane would have to stay on the storage site, and the rail could not move it. Chairman Hebert said they keep going back to the railroad. Mr. Salomi said suggested the approval for the storage of propane could not be separated from the railway operation. Chairman Hebert said the proposal was for the propane coming in by rail, being trucked out and also exported by ship. Chairman Hebert said the expansion was not for storage, but for changing drying and refrigeration to support the receipt of the propane. He said nothing else was changing on their site. Mr. Salomi said the additional rail cars coming in was a change, and it was not correct to say there was no change coming in, at or leaving the facility. Chairman Hebert said they had no say on

the rail. Mr. Salomi said there had been a broad regional safety review inviting surrounding communities to share their opinions up until this point, but then a veil was brought down and he asked why that changed.

Chairman Hebert said they would go on to the traffic study. Chairman Hebert asked Mr. Dirk Grotenhuis, Senior PE, of RSG who was hired by Newington to share their responses to the applicant's traffic assessment memo. Mr. Grotenhuis said he normally reviewed traffic impact studied, but a memo was provided, which did not provide complete information. He said it appeared the traffic would remain the same as what was seen in the past with 160 trucks on an average day. He said they looked at how the truck traffic affected intersections, including changes with changes to the Spaulding Turnpike, which might alleviate some of the traffic down Woodbury Avenue and through Portsmouth. He said they also looked at the impact of trucks to and from site and rail crossings.

Mr. Bogan said a few trucks might go by way of Route 33. Alternate Board member, Peggy Lamson asked if there would be one or how many. Mr. Bogan there would be a few and Ms. Lamson asked for an exact number of how many. Mr. Bogan said between five and ten. Ms. Lamson said she would like to know because they would be crossing in front of Target. Chairman Hebert asked why they would travel Route 33 and Mr. Bogan said they would pick up Route 101 for the southern route. Chairman Hebert why they weren't taking Route I-95, Mr. Bogan said they could. Ms. Lamson said Route 33 was a shorter connection to Route 101 for them, but it would impact more communities.

Vice-Chair Marconi asked if there were any river traffic studies and Mr. Grotenhuis said they mostly did land traffic studies.

Mr. John Sutherland of 8 Dunlin Way said he asked if they were increasing the truck terminal within the site. Mr. Bogan said they were using the same slots they used since mid 1980's.

Mr. Sutherland asked if there would be an expansion to handle more rail cars and Mr. Bogan said they were expanding their rail car offloading to unload ambient temperature product that could go into ambient storage or into chiller.

Mr. Lou Brown of 56 Laurel Court asked if there would be increased volume and traffic going out from the refrigerated product. Chairman Hebert explained that the truck traffic would not increase and it had already been approved in a previous application.

Ms. Jane Sutherland of 8 Dunlin way asked Mr. Grotenhuis if he incorporated any studies of non-propane traffic, general traffic, and mall traffic that had increased over the last ten years. Chairman Hebert said the Town built an industrial corridor for Con Ed to reduce truck traffic going onto the highway. Mr. Grotenhuis said they didn't produce the study, but reviewed the study that the applicant prepared. Chairman Hebert said the Town did a traffic study in 1999.

Abdullah Alhamdan of 12 Dunlin Way said he was an engineer and relied on data. He said the memo provided by the applicant was not really a study and asked if they could see a more comprehensive report because the math for the number of trucks going out didn't account for all the propane coming in. Chairman Hebert said they only had five slots to load the trucks and couldn't load any more. He said they already had

permission for that same number of trucks and they weren't changing the number of trucks for the last 30 years. He said the increased propane coming in by rail would be chilled and stored. Mr. Bogan said the chilling would cause the liquid to contract a little for storage at very low pressure and then they would heat it up when they took it out so that would be the same volume that came in. Chairman Hebert said higher temperatures would cause the product to evaporate, but it could be shipped out at higher temperatures in tankers with thicker walls. Board member, Jack Pare said there was confusion because they were receiving more product by rail, but not increasing the number of trucks, but they were only replacing the foreign supply that had been shipped in with domestic rail supply. He said they would refrigerate and store some of the product to send out later during higher demand.

Mr. Fred Mason of Tidewater Farm in Greenland said he understood that Sea-3 might export a shipload during the summer season, and wondered if they would return to the Board for another expansion if they were able to ship out more. Mr. Bogan said they never said they would only export one ship, but they did say they would have to return to the Board if they wanted to expand the rail car unloading facilities.

Mr. Gibbons asked for clarification with the volume of rail cars, truckloads and ships, and asked if it wasn't possible for them to expand. Chairman Hebert said the offloading capacity of the trucks was not possible. Mr. Bogan said they would bring in sixteen cars, fill storage in 45 days, and load trucks as well. Once they had used up the stored product, they would still only be able to get sixteen cars a day based on the time it took to offload.

Mr. Gibbons said there was no way they could furnish enough propane to supply regional demands. Chairman Hebert said they only said they would contribute to regional demand, not supply the entire region. Mr. Gibbons asked if they would stop accepting ships and Mr. Bogan said they would still accept ships if foreign prices came down. Mr. Gibbons calculated that if might be possible to increase to 17 cars a day and Mr. Bogan said he would have to return to the Board if they were to do that.

Mr. Mason asked what factors the Board used when assessing a future expansion. Chairman Hebert said to be fair, he could not say what would be proposed in future or how future boards would decide, but he could say they would have to follow or what the ordinances. Board member, Chris Cross said any proposal for Sea-3 would be evaluated by whether the site could handle and process more than sixteen cars. Mr. DiPentima asked if accepting sixteen cars were inherent in the application or a condition. Chairman Hebert said it was not posted, but he thought the Board could make it a condition if approved.

Chairman Hebert commented that they had reviewed a tremendous amount of information, and they needed to review new information because the law said their time to make a decision was running out. He said they couldn't review it all at the last minute, but they would review it. Ms. Lamson said the information helped the Board to do due diligence. Vice-Chair Marconi said will need time to review material to assist with their decisions.

Chairman Hebert said when they started, he thought they could request safety improvements on the rails a condition, but found out they were completely dependent

on U.S. and State representatives to change the laws. Chairman Hebert said the laws in the country were as they were and with no limitations of product, just speed on certain standards of track. He said the value of a public hearing was tremendous and he hoped Pan Am would bring the rails up to Class II from excepted and Class I for greater safety. Ms. Cynthia Scarano, Pan Am Executive Vice President said there would be one trip up and back.

Mr. Pare said most of the concerns were with railroad safety and not so many over the Sea-3 site. He said the existence of heavy freight rail was there, but things could be done to mitigate concerns in the long term, whichever way this decision went. He suggested the public could ask their State representatives to reroute through the rail line through Pease without crossing Route 33. He said it wouldn't be quick, but it could be done. He said the largest holder of instate track mileage was the State of NH all the way north of Concord to Canada so there was a precedent. Chairman Hebert said a letter was sent regarding alternate routes, but it would not be a two-year process,

Senator Martha Fuller Clark said she was also a resident of Portsmouth and was meeting with the DOT Commissioner to look at a variety of steps. She said it was something to pursue and she would work with the Newington Planning Board. She agreed it would not be something that could be done quickly, but she was also looking into additional legislation to expedite the process.

Mr. Cross said he was a returning Board member as of March and had some site-specific questions for applicant to catch up on his understanding of the proposal. He asked if there would be an evening crew to offload evening deliveries. Mr. Bogan said there would be a crew of three on site overnight. Additional discussion ensued regarding the unloading process.

Mr. Cross asked if there was an easement from the power plant on the south side for underground piping for seawater. Mr. Bogan said it was an electric company easement with no road. He said he assumed it was sleeved so the rails could go over. Mr. Cross asked if there was an emergency assess road and Mr. Bogan said there was a second exit off Shaftmaster Road on the property. Mr. Cross asked if heavy fire trucks could cross over the easement and Mr. Bogan said they could, but he didn't think they would get that close.

Mr. Cross asked if Pan Am owned the rail corridor. Ms. Scarano said that was correct. Mr. Cross asked if the five new off loading stations were within the Pan Am corridor and Mr. Bogan said that was correct. Mr. Cross said they were building a new offloading delivery site on Pan Am's property and asked if Pan Am assumed any liability for that operation. Mr. Bogan said Sea-3 was leasing the Pan Am property. He said he thought Sea-3 would assume liability. Mr. Cross asked if there was a condition on the lease that Sea-3 would vacate their equipment from the property if their operation ever moved. Mr. Bogan said he assumed that would be correct. Mr. Cross suggested the Board see a copy of the lease.

Chairman Hebert said the drawings the Board received were different than what was just described Mr. Morgan asked if the Board had the correct plan. Mr. Steven Haight of Haight Engineering said the Pan Am corridor had always been on the plan.

Chairman Hebert said he had been under the impression that all offloading stations were on Sea-3 properties. Mr. Cross said he thought it was probably a frequent occurrence between businesses and the railroad. Chairman Hebert asked who would own the off loading station and Mr. Bogan said Sea-3 would own them. Chairman Hebert said wanted it to be on record that the infrastructure would be removed from Pan Am property if the lease ended so Sea-3 wouldn't walk away from the operation and Pan Am could take over. Ms. Scarano said this was a different scenario than Pan Am building for a customer. Mr. Bogan said they could make it part of the lease agreement or a stipulation. (*Board of Selectman Representative, Rick Stern arrived at this point of the meeting at 8:45 p.m.)*

Mr. Cross asked if the storage tanks could be placed end to end for additional safety where they were the strongest in case of an accident, rather than side-by-side. Mr. Bogan said the property had only so much acreage available to work with so that was the only configuration they could do. He said the tanks themselves would have a water system for fire protection cooling purposes.

Mr. Cross asked if the piping going up to the offloading stations or chillers would go over or under the ground. Mr. Bogan said the pipes were able to handle more than 200 psi. He said the line **coming off tank and chillers would go to the existing** pipe rack, go over the railroad and continue to the refrigerating system. Mr. Cross asked if the FRA determined the clearance. Ms. Scarano said that was correct and they had a chief engineer that worked with Sea-3.

Mr. Cross said there had been some discussion regarding the potential of additional cars that couldn't fit on the site because of scheduling being stored at different locations between the Newfields Junction and the Sea-3 site. He asked if any additional cars would be stored at the Georgia-Pacific Gypsum Plant. Mr. Bogan said that area would be deactivated and they wouldn't use it anyhow because it went up a steep grade.

Vice-Chair Marconi asked if a safety bond would be required for liability for the leased property from the railroad. Mr. Robert Culliford, Pan Am Senior Vice President and General Counsel said there were insurance requirements that were standard to the industry.

Mr. Pare asked about the second access point along Pan Am's 85' right of way where there had been discussions about getting fire trucks along side the tracks. He said the fire chief made a comment about the access down Shaftmaster Road. He said a lot of trucks parked in that area and he was not sure who owns what, but there might be a concern if a large ladder truck needed access. He asked if there was willingness to work with the town to improve Shaftmaster for fire access. Mr. Bogan said they would make improvements as needed to get fire trucks to a new access road, but Shaftmaster had already been improved in the last year or two. Mr. Morgan said trailers associated with the fish processing plant parked in that area and there wasn't a lot of room for a fire truck when the trucks were parked. Mr. Bogan said he looked at Pan Am's 85' wide right of way plan and the existing track was not dead center. Mr. Haight said they need 15' but seemed to be more than adequate access for fire truck, if trucks were parked there it could be an enforcement issue. Chairman Hebert said he was not aware of parked

trucks, but it was a private road with a 75' easement and there should no blockages so enforcement might need to be a condition for approval.

Sea-3 counsel, Attorney Alec McEachren said Mr. Bogan would be out of town traveling and asked if they could continue the hearing to May 5, 2014. Mr. Morgan said extending the deadline would not be a problem if the applicant requested it. Vice-Chair Marconi asked if May 5, 2014 would be a public hearing. Chairman Hebert said the meeting would be for Board deliberations, not a public hearing.

Chairman Hebert informed everyone that they would close the public hearing and took a voice vote with all members approving.

Adjournment: ***Vice-Chair Marconi motioned to adjourn and Bernie Christopher seconded, and all were in favor. The meeting adjourned at 9:15 p.m.***

Next Meeting: Monday, April 21st, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

Newington Fire & Rescue

80 Fox Point Road
Newington, NH 03801

Chief of the Department
Andrew Head

Assistant Fire Chief
Jeffrey LeDuc

Planning board
Town of Newington
205 Nimble Hill Rd
Newington NH, 03801

April 15, 2014

RE: Sea 3

The department has reviewed the information from Sea 3 on the proposed expansion at their Avery Lane location. The Fire Safety Analysis (FSA) is the basic overview of the operation. The analysis covers everything that is expected per NFPA for this type of operation. If Sea 3 is granted conditional approval by the Planning Board there are a few issues that the fire department will need addressed. The first will be part of the ongoing construction process with a full set of fire protection plans for the project. The FSA is again an overview and we will need to see an exact plan for operation. This will also include review of the second access point off Shattuck Way.

The other concern is for training and equipment. Sea 3 has always been a good neighbor and provided training at the department's request. We would like assurance that the training will continue and be extended to other local departments at their request. This would also include rail car training.

The department does not feel at this point that there is any type of specialized equipment that is needed at the location for firefighting but if any is required we would also request Sea 3 purchase that equipment.

I would like to again reiterate that this project is in the beginning stages and we still have a lot of questions to be answered with the fire protection systems and site access. I will do my best to keep the Planning Board updated with any other issues that arise. Any questions feel free to contact me.

Respectfully,

Andrew Head
Fire Chief

Office 603-436-9441

Fax 603-430-2007

Sea-3's regional impact justifies regional safety studies

April 16, 2014 2:00 AM

April 12 — To the Editor:

In the early stages of the Sea-3 expansion proposal currently before the Newington Planning Board, the decision was made to classify this proposal as development with regional impact. Considering that the site of Sea-3 lies entirely within the town of Newington, the only logical reason for declaring the proposed expansion as having regional impact was the fact that the trains delivering the large increase of propane would pass through a number of communities on the way to Newington. The Planning Board obviously realized that this large increase in the amount of hazardous material passing through these communities six days per week had serious safety, environmental and quality of life risks and concerns.

The Newington Site Plan Review Regulations state that: "The purpose of the Site Plan Review Procedure is to protect the public health, safety and welfare" as well as to "avoid development which may result in negative environmental impacts." These regulations also allow the Planning Board to conduct any study deemed necessary in order to make an informed decision and that the applicant shall reimburse the town for the costs of special investigations.

As a result of these concerns, and consistent with the Site Plan Review Regulations, a group of community residents, the Portsmouth City Council and the Great Bay Stewards all requested that the Newington Planning Board conduct comprehensive independent safety and environmental studies to thoroughly assess these risks. To date the Planning Board has refused to undertake the studies that have been requested, studies that would provide critical information that would assist in emergency response planning, assess the ability of communities to properly respond to an emergency and assist in developing environmental mitigation response plans. When asked at the March 24 Planning Board meeting why these studies were not being considered, the response from the board's attorney, Mr. Ratigan, was because "the purview of the board was limited to the Sea-3 site and they had no jurisdiction over the rails and rail traffic." The basis for this reasoning is the federal exemptions protecting rail operations and interstate commerce.

There are a number of inconsistencies with Mr. Ratigan's argument. First, it seems to be contrary for the reason the same board declared the proposal as having a regional impact. If his argument is correct, why did the board make this determination in the first place? Second, and more interesting, is the situation in Massachusetts related to the transport of large amounts of ethanol by rail through a number of communities on its way to Chelsea, Mass. As a result of the safety concerns resulting from this proposal, the Massachusetts Legislature passed a bill requiring that the Massachusetts Department of Transportation conduct a study to asses the public safety impacts of transporting ethanol by rail.

Except for the material being transported, the situation in Massachusetts is identical to the Sea-3 proposal and the related transport of propane by rail through populated communities. The same federal exemptions and interstate commerce laws apply in Massachusetts as in New Hampshire. How is it that Massachusetts was able to study the safety impacts of this proposal, while the Newington Planning Board refuses to conduct similar studies? A state is no less exempt from federal exemptions than a municipality.

It is interesting to note that the Massachusetts study found that the municipalities along the rail routes were not equipped to extinguish ethanol fires should a derailment, spill or explosion occur. Don't we deserve to know if our communities are prepared to deal with a propane emergency? And if not, what gaps need to be filled to ensure our safety? The refusal of the Planning Board to conduct these studies raises some very interesting questions, in light of the Massachusetts experience.

The Newington Planning Board has a legal responsibility to protect public health, safety and welfare. In the

absence of conducting the necessary safety and environmental studies that would provide a full assessment of all the safety and environmental risks involved, they cannot approve this proposal and claim that they have met their ... l obligations.

Rich DiPentima

Portsmouth

Newington puts its neighbors in harm's way

April 19, 2014 2:00 AM

April 16 — To the Editor:

Portsmouth resident Rich DiPentima's April 16 letter ("Sea-3's regional impact justifies regional studies," Portsmouth Herald) regarding Newington's failure so far to address the need for safety and environmental impact studies prior to any decision on the Sea-3 proposal was important to read. The comparison to the proposed ethanol transportation in Chelsea, Mass., and the subsequent refusal of that proposal due to safety concerns highlights the concerns of the community of Greenland even more. If a city like Chelsea, with a full-time fire department, was deemed at risk for extreme hazard and casualties in the event of a rail accident during transportation of hazardous material, why would communities such as ours, with an all-volunteer fire department, be any less at risk? Even as well trained and extremely responsible as our department is, the risk is just as high, if not higher.

The Newington Planning Board, in its continued pattern of refusing to discuss safety and environmental studies, appears to place the responsibility of safety on to Pan Am Railways and federal governmental regulations. Excuse me for some cynicism here, but that approach is irresponsible, short sighted and smacks of bureaucracy at its mightiest.

Will Newington also shirk responsibility and refer us all in Greenland to Pan Am when there is an accident with fire and injuries or loss of life because safety issues were not addressed? The Newington Planning Board seems to be attempting to set itself up for a "no liability" position in the event of an accident. At the risk of sounding like Pollyanna, this is neither prudent nor neighborly. But, mostly, it's just plain wrong.

Jane R. King

Greenland

PAN AM RAILWAYS

IRON HORSE PARK
NO. BILLERICA, MA 01862

EXECUTIVE DEPARTMENT
(978) 663-1028

April 21, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. /190 Shattuck Way

Dear Mr. Hebert:

On behalf of Pan Am Railways ("Pan Am"), I wanted to express our gratitude for the extensive time and effort invested by the Newington Planning Board to review all aspects of the potential expansion of the Sea-3 facility at 190 Shattuck Way, Newington. Despite not being an applicant before the Board, Pan Am appreciates the opportunity to provide information regarding rail service, as well as the efforts by NH DOT and FRA to reinforce the safety of transportation by rail. However, given the amount of information presented to the Board, Pan Am also believes that it would be prudent to reiterate that Pan Am's role in this process has solely been to provide information, and not to reach any agreements with the Planning Board. Moreover, Pan Am has repeatedly stated that it does not need and is not seeking Planning Board approval to provide rail service on this line, and that any attempt to regulate Pan Am's operations would be preempted by numerous federal laws, as noted by the Planning Board at multiple meetings.

Therefore, it is imperative that Pan Am remind the Board that, while Pan Am has developed a plan to improve the tracks leading to Newington to FRA Class 2, those plans are premised upon many factors, including, but not limited to, traffic volumes. Furthermore, continued maintenance of the rail line to Class 2 is dependent upon many factors as well, and Pan Am reserves the right to make any decisions relating to the condition of the line in its sole discretion. Similarly, while Pan Am currently plans to operate its trains at 10 miles per hour, the decision is also subject to change in Pan Am's sole discretion if track conditions warrant higher

speeds.

That being said, the Planning Board also requested information relating to the lease of property by Pan Am to Sea-3 as part of the planned expansion. While the particular commercial, and private, terms of the lease are the subject of continued negotiation between Pan Am and Sea-3, the standard form Pan Am lease generally contains the following provisions:

1. **INDEMNIFICATION.** The LESSEE shall defend, with counsel approved by the LESSOR, all actions against the LESSOR, any partner, trustee, stockholder, officer, director, employee or beneficiary of the LESSOR (hereinafter, "Indemnified Parties") and shall pay, protect, indemnify and save harmless to the extent permitted by law, all Indemnified Parties from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and expenses), causes of action, claims, demands or judgments of any nature arising from or in any way related to (a) LESSEE'S use, occupancy or possession of the Premises and Sidetrack, including, but not limited to: (i) loss or damage to property of any description or natural resources, (ii) injury, sickness or death of any person, (iii) delay damages and consequential damages and (iv) violation of any law, code or ordinance as described in Section 6 of this Lease; or (b) breach by LESSEE of any provision of this Lease.

2. **LESSEE'S LIABILITY INSURANCE.** The LESSEE shall maintain in respect of the Premises "Comprehensive General Liability Insurance" so-called, with all railroad related exclusions removed, affording comprehensive public liability and property damage insurance with combined limits no less than those set forth in Section 1 with responsible companies in good standing with the regulatory authorities of the state wherein the Premises are located. The insurance shall be under policies which name the LESSOR as an insured and which are acceptable to the LESSOR in form and substance. The LESSEE shall deposit the insurance policies with the LESSOR prior to taking possession of the Premises, and thereafter, no later than thirty (30) days prior to the expiration of the same. All insurance policies shall provide for no less than ten (10) days prior notice to the LESSOR of cancellation.

The specific per occurrence and aggregate levels of insurance shall be determined after discussion of Sea-3's existing insurance coverage.

3. **LESSEE'S USE AND OCCUPANCE OF THE PREMISES.**

   The LESSEE shall only use the Premises for the Use set forth in Section 1 of this Lease. The LESSEE may not change the Use in any respect without the express written consent of the LESSOR, which consent may be withheld by the LESSOR for any reason.

   The LESSEE shall not erect any signs or buildings upon the Premises nor make any alterations or additions thereto (hereinafter collectively referred to as "Improvements") without the express written consent of the LESSOR, which consent may be withheld by the LESSOR for any reason. All of such Improvements shall be at the LESSEE'S sole cost

and expense and shall be of a quality and design similar to that prevailing upon the Premises. The LESSEE shall not permit any mechanics' liens, or similar liens to remain upon the Premises for labor and materials furnished to the LESSEE, or claimed to have been furnished to the LESSEE in respect of the Improvements, or otherwise. The LESSEE shall forthwith cause any such liens to be released of record without cost to the LESSOR. The Improvements shall remain the property of and may be removed by the LESSEE at any time before the termination of this Lease for any reason or within ten (10) days thereafter, failing which, such Improvements may be removed by LESSOR at LESSEE'S sole cost and expense.

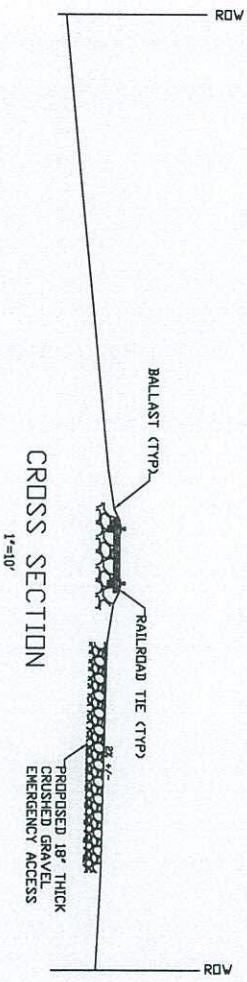
The use is generally contemplated to be the construction and operation of unloading racks for the unloading of propane from railroad tank cars.

The LESSEE shall comply with and shall cause the Premises to comply with all applicable local, county, state or federal laws, codes or ordinances of any description, including, but not limited to: zoning, building, health, fire, sanitation or environmental laws, particularly the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601, et seq.), as amended. The LESSEE shall forthwith remedy any breach of any of such law.

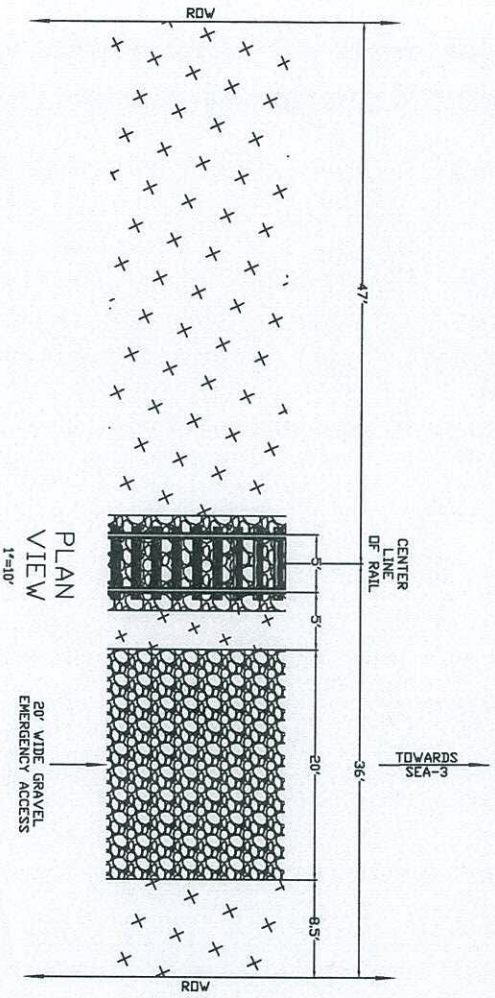
These are the general lease terms that I believe are responsive to the Planning Board's comments, and that are generally standard throughout the industry. Please feel free to contact me if you should desire to discuss these terms in more detail.

Sincerely,

Cynthia S. Scarano
Executive Vice President



CROSS SECTION
1"=10'



PLAN VIEW
1"=10'

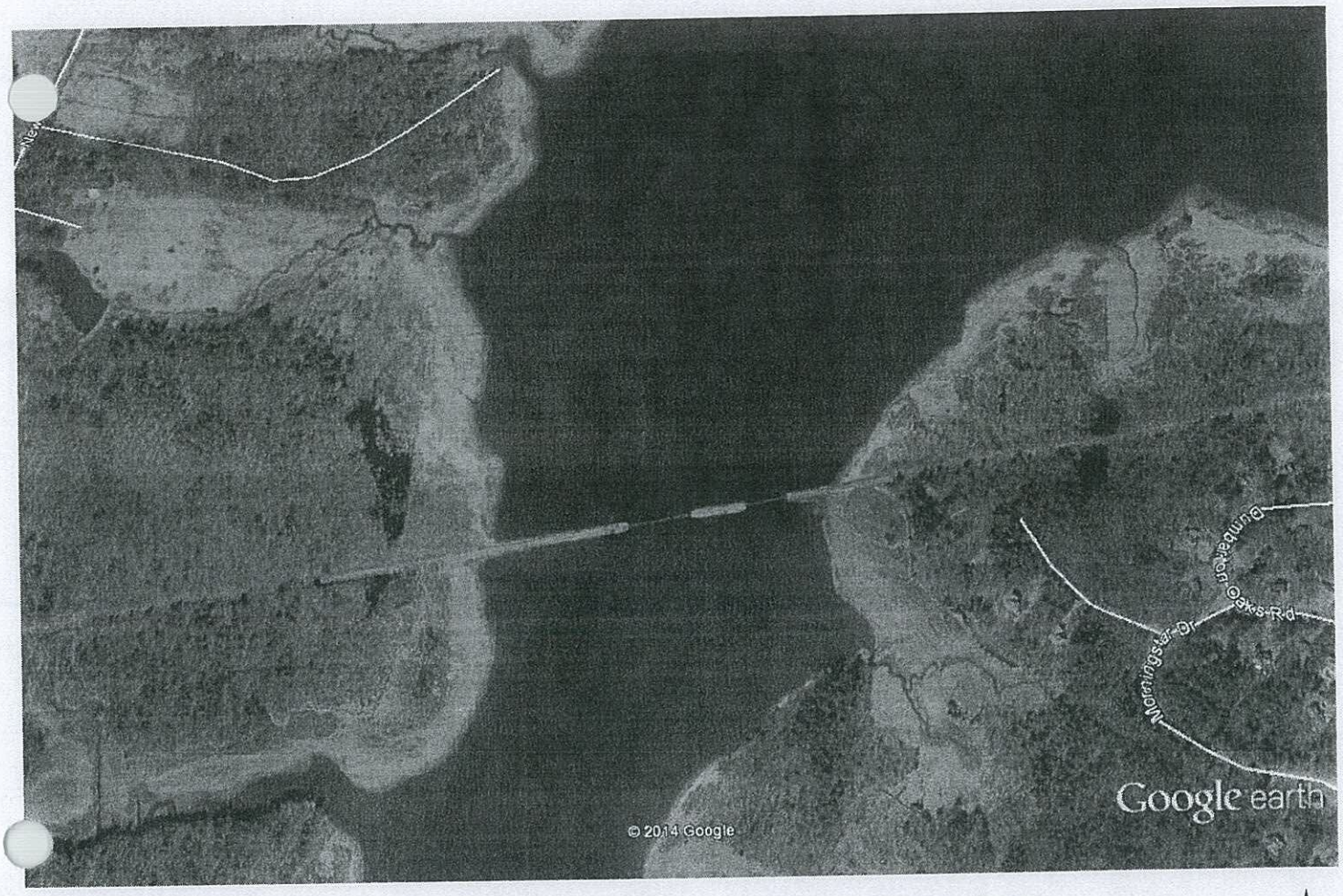
DATE: 4/24/2014	DESIGNED BY:	
SCALE: AS SHOWN	DRAWN BY:	
FILE NO:	APPROVED BY:	

HAIGHT ENGINEERING, PLLC
CIVIL ENGINEERS
P.O. BOX 1166, 181 WATSON ROAD
DOVER, NEW HAMPSHIRE
603.750.4266. FAX 603.749.7548

SCHEMATIC OF SECONDARY PROPOSED EMERGENCY ACCESS SEA-3 NEWINGTON, NH

No.	Appd	Date

REVISIONS



Google earth

feet 2000

meters 800

BOARD OF SELECTMEN
Town of Greenland • Greenland, NH 03840
575 Portsmouth Avenue • PO Box 100
Phone: 603.431.7111 • Fax: 603.430.3761
Website: greenland-nh.com

April 21, 2014

Newington Planning Board
Mr. Denis Hebert
Town Hall
205 Nimble Hill Road
Newington, NH 03801

Dear Mr. Hebert:

The Greenland Board of Selectmen is requesting your consideration for the need of a comprehensive safety, security and environmental assessment as part of the Sea-3, Inc. Liquefied Petroleum Gas (LPG) expansion permit approval process. We feel strongly that the regional impact on public safety, environmental protection and financial liability for rail crossing infrastructure improvements require further analysis and warrants the completion of an analysis prior to the Newington Planning Board's consideration for approving a permit.

The Town of Greenland requested assistance from our NH Congressional Delegation in supporting a comprehensive regional safety and security study as part of the regional impact. US Senator Jeanne Shaheen, US Senator Kelly Ayotte, and US Representative Carol Shea-Porter supported this request in a letter dated April 11, 2014 to the Administrators of the Federal Railroad Administration and the Pipeline and Hazardous Materials Safety Administration. We have enclosed a copy of our US Congressional Delegation's request for your information.

We respectfully request delaying any decision on the Sea-3 Inc. LPG expansion permit request until we have a response from these two government agencies and have a solid understanding of the potential safety, security, environmental and financial impact to our community. Thank you for taking our concerns into consideration.

Sincerely,

John Penacho
Chairman, Greenland Board of Selectmen

Attachment A:

Jim Splaine
201 Oriental Gardens
Portsmouth, NH 03801
Telephone: 1-72PHONEJIM (1-727-466-3546)
E-Mail: jimsplaineportsmouth@gmail.com

May 1, 2014

Creating A "2050 Vision"
Putting Our Seacoast Future First

To the Newington Planning Board,

I want to thank you for your time and effort in holding a series of hearings to provide open-comment concerning the Sea-3 expansion plans.

Your patience in listening to all points of view and the concerns of many of us throughout the Seacoast area who will be affected by Sea-3 plans, and the transportation of added hazardous cargoes on Pan Am rail lines, was an impressive display of democracy and inclusion.

I am offering this comment as a life-long Portsmouth citizen concerned about the long-term vibrancy of our future. I know you have heard from other area citizens in their official capacities, but I want to make a personal observation for your consideration.

And I make my observation based on your "land-use" decision regarding Sea-3, rather than focusing on the other primary concern that many of us have, which is the added transportation of rail cars containing propane on tracks of inferior quality through Portsmouth's neighborhoods and Downtown, and through abutting communities.

Individually for those who live hereabouts as the temporary caretakers of the New Hampshire-Maine Seacoast area, we have a burden, and a serious obligation.

As I looked at the dozens of people who attended your hearings during the past three months, I saw ages ranging from about 20 to 90. In age, that's a relatively short time in the grand scheme of things. Indeed, we are only temporary caretakers -- only as long as we live here. Then others take over.

What I'm saying is that we "inherited" the Seacoast where we now live, and soon we will all be gone. In just a few short decades, even the youngest of those attending your hearings will be passing their legacy -- the land they own, and that about which use we collectively make decisions -- onto other generations.

I think that perspective is important to keep in mind, because our decisions today greatly affect the lives of those who will follow us.

A Seacoast visionary, Dudley Dudley, recently spoke about the decision made 40 years ago that saved our precious area from what could have been incredible over-development and placed us in environmental danger. At the least, it would have brought enormous change to us.

In 1974 an oil refinery was proposed for Durham Point. I remember that time well, because I was in the N.H. State Legislature, and I voted with Dudley Dudley to stop what was a massive oil refinery proposal promoted by one of the world's richest men -- European shipping billionaire Aristotle Onassis -- and by the then-Governor Meldrim Thomson.

The refinery would have involved piping half a million gallons of crude oil -- who knows how much that would have become today -- from ships ported off the Isles of Shoals to Durham Point daily.

It was presented as an "economic boom" for the region, with tremendous dollars from construction and operational costs spent hereabouts as a boost for our economy -- plus all the related trucking, shipping, and development resulting from that "investment" in our area.

And we were told we'd have "cheaper oil," and all those "jobs," plus "lower taxes." A tough "deal" to refuse.

But at what real costs? Our area today would have been much different than what it is now.

Such is your decision. Do you really want to say "yes" to continued development along your riverfront -- ours, really -- that will significantly expand production and distribution of hazardous products?

By your approval for the expansion of Sea-3, you are setting yourselves up to say "yes" to even further requests for expansion, and for placement of other hazardous development.

That's what happens with this kind of cycle of business development -- once you say yes to expansion, it becomes very difficult, if not impossible, to set limits. Other parts of our country have found that difficulty. You see it in parts of the New Jersey and New York and Louisiana coastlines.

You say you can set limits? If we had an oil refinery in Durham Point and a depot off Rye today, do you think we could have set limits, especially after the influence of the money from related development had been engraved into our communities?

Do we want to leave as our legacy to future generations an "Energy North" environment full of transportation and distribution of hazardous cargoes, with the dangers and potential environmental impact that will create?

Isn't there much better water-related development you can encourage instead? Perhaps you are serving Newington and our New Hampshire-Maine Seacoast area with a short-sighted vision by

not encouraging better, cleaner development and recreational opportunities along the great asset that is our Piscataqua riverfront.

I have often spoken about the need for us to have a "2050 Vision." That's only 36 years from now. That proposal for an oil refinery in the mid-1970s had a suggested operational start-date of just 36 years ago.

You should reflect on that as you make your decision regarding Sea-3 expansion. Do you really want to do that to our future? Your future? That of the next generation?

Can't Newington, and our Seacoast area, do better than that? Shouldn't that ideal be our visionary goal?

I urge you, as temporary caretakers of a part of our wonderful piece of this planet, to say "no" to an expansion that might have some temporary economic impact of dollars, but in the long-term could injure our future, and those who will inherit our legacy.

We have been given a gift from those who lived before us. Let's not contribute to its destruction before we bequest it to those who will live here after us.

Thank You,

Reference:
Monday, May 5, 2014 Planning Board Agenda:
Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

From: Jaimie Wolf <js.wolf@comcast.net>
Subject: Sea-3
Date: May 1, 2014 11:05:09 AM EDT
To: planning@newington.nh.us

Dear Mr. Morgan
In case the Newington Planning Board hasn't yet seen these photos of sections of the rail lines Sea-3 intends to use to transport its propane, I am sending them along to you.
I live just yards from the tracks; in fact you can see my red house in some of the photos.

Our neighborhood (Laurel Court, Portsmouth) has as its only means of ingress/egress the Kearsarge Way bridge that passes over the tracks very close to my house.
Were an accident to occur making that road impassable, there would be no way out for residents and no way in for first responders.
I haven't heard anything about evacuation plans in case of a derailment or other event, but I'm hoping that Newington will require these as well as track improvements if it decides to approve the proposal.

The first set of photos was taken recently from a boat and shows the condition of the infrastructure supporting the Squamscott River railroad bridge.
The second set was taken directly behind my house and close to the Kearsarge Way bridge.
I hope the planning board takes into account the deplorable and dangerous condition of the tracks and votes to deny the plan until major studies and repairs are performed.

Thank you
Jaimie Wolf
25 Laurel Ct.
Portsmouth, NH

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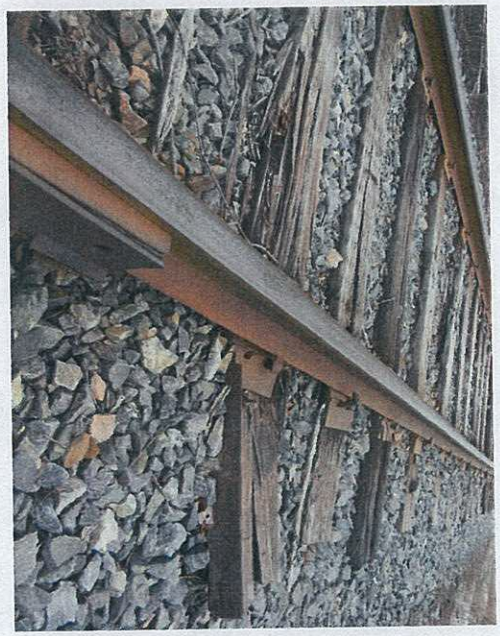
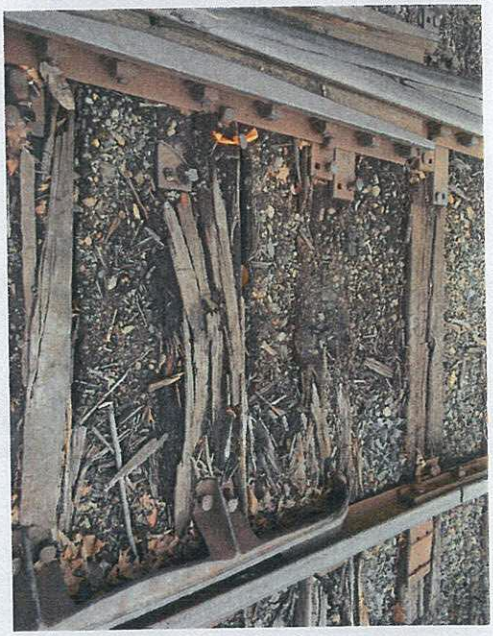
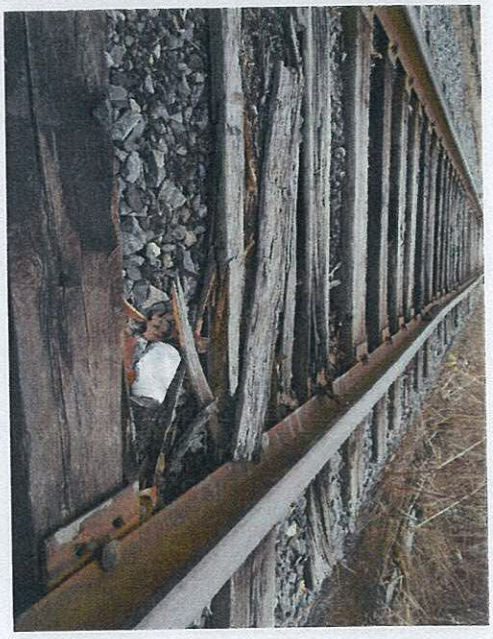





Proposed Increase of Propane Rail Traffic in Our Neighborhood

Shipment Proposal

- 1 shipment of 12-16 cars of propane, between 10pm and 6am, 6 days a week
- Estimated annual cars (one way): 3,600-4,800
- 87 tank cars transported to Sea-3 in past 5 years.
- Each car holds approximately 30,000 gallons of propane
- Trains must travel at 10mph, per governmental regulations
- Speed may increase to 25 MPH with track upgrade.
- Current activity level: 1-2 trains per week with 5-10 cars of various material

- **Tracks to be Used**
  - Neighborhoods along these tracks: Osprey Landing, Spinnaker Point, Atlantic Heights and Laurel Court, Noble's Island (on Market), Islington Creek
  - Pass through residential neighborhoods in Newfields, Stratham and Greenland
  - Major crossings: Market Street, Maplewood, Green St, runs parallel to Islington and North Mill Pond
  - Tracks run 17 feet from proposed Harborcorp development and very close to other hotels, restaurants and busy downtown Portsmouth
  - Crosses over North Mill Pond/Piscataqua River and Great Bay estuary.
  - Built in 19th and early 20th Century, operated by Pan Am
- **Safety Concerns**
  - Derailments, Spills, Explosions: Extensive property damage, environmental damage, potential injury or loss of life to residents
  - Increased traffic on old infrastructure
  - No crossing guards at major street intersections (3 in Portsmouth, 10 in Greenland}. Cost to upgrade crossings passed on to Cities and towns approx. $400,000 each.
  - Of 92,000 tank cars nationally that transport flammable liquids, only 14,000 are built to latest industry standards (source: Association of American Railroads)
  - The National Transportation Safety Board is advising that "planning routes for hazardous material trains avoid populated and other sensitive areas."
- **Pan Am Tainted History**
  - Nashua, NH March 2013
  - Saco, ME January 2014
  - Gardner, MA February 2014
  - Westford, MA 2014
  - Failure to release inspection reports on bridges owned by Pan Am
  - Fined $500,000 by MA, largest criminal corporate fine in MA history
- **Other Concerns**
  - No comprehensive safety and environmental impact studies conducted
  - Diesel exhaust, noise and light pollution
  - Environmental treats to sensitive ecological areas
  - Potential evacuation zone of ½ to 1 mile from train accident site {Hospital, hotels, residential neighborhoods and downtown Portsmouth}
  - Impact to business development, tourism/quality of life in Portsmouth and other communities along rail line
  - Impact on property values

Pan Am's excessive secrecy about its tracks and bridges makes a mockery of the public's interest

From: Richard DiPentima <rdipentima@gmail.com>
Subject: Article
Date: May 2, 2014 9:51:40 AM EDT
To: "Christopher Clement (Commissioner)" <cclement@dot.state.nh.us>, Molly.connors@nh.gov, "John P. Bohenko" <jpbohenko@cityofportsmouth.com>, Bob Lister <rjlportsmouth@yahoo.com>, "Altschiller, Howard" <haltschiller@seacoastonline.com>, Tom Morgan <planning@newington.nh.us>
Cc: Martha Fuller Clark <Martha.FullerClark@leg.state.nh.us>, Jim Splaine <jimsplaineportsmouth@gmail.com>

1 Attachment, 621 KB

All:
See the attached Wall Street Journal article on the recent train disaster in VA. Note that the slow speed did not prevent the accident and the discussion about trains avoiding populated areas with hazardous materials. I have asked both the FRA and the State DOT inspector about the study done by the Association of American Railroads and the Railroad Supply Institute that looked at 40,000 rail tank car accidents over 30 years. They found that there has never been a loss of product when trains were going less than 5 mph. that means that trains going 5 mph or faster involved in accidents have had a loss of product. Neither the FRA representative or our State DOT rep. were familiar with this study. The VA incident adds more proof that even at low speeds these trains are not safe to carry haz mat through populated areas.

Rich DiPentima

WSJ Train D....pdf (621 KB)

SHAINES & MCEACHERN, PA
Attorneys at Law

May 2, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

Re: Sea-3, Inc. Application for Site Review Approval
190 Shattuck Way

Dear Mr. Hebert:

On behalf of Sea-3, Inc., I submit the following proposed findings and request that they be adopted at the Planning Board's upcoming deliberation on Sea-3, Inc.'s Application for Site Review Approval, to be held on May 5, 2014.

REQUEST FOR FINDINGS

1. The applicant's proposal seeks to improve the site's existing rail offloading facilities for liquefied propane gas ("LPG") and add additional LPG rail offloading facilities on its property and on property to be leased from Pan Am Railways.

2. The purpose of the proposed site improvements is to allow the applicant to continue its existing historical LPG distribution operation by increasing the capability to receive domestically sourced LPG, which is only available by railroad. The existing capacity to receive internationally sourced LPG from ocean going vessels is unchanged.

3. If constructed, the proposed site improvements will not materially change operations on the site, which will continue to meet local distribution needs through its existing truck distribution facilities.

4. LPG is a combustible, non-toxic gas that evaporates into the atmosphere upon discharge.

5. The applicant's site is manned 24 hours a day, 365 days a year by personnel who are trained in emergency safety response procedures.

6. Throughout the existence of the applicant's LPG operations on the site, it has worked with the Town to provide training and information to the Town's emergency responders regarding emergency safety response procedures.

282 Corporate Drive, P.O. Box 360
Portsmouth, New Hampshire 03802-0360
Telephone: 603/436-3110, Fax 603/436-2993

7. The applicant's site is regulated by the U. S. Department of Homeland Security, as overseen by the United States Coast Guard, and is required to comply with the Department's regulations for security lighting, surveillance and fencing.

8. The applicant has never been cited for violation of any applicable regulations.

9. In his October 9, 2013, Interoffice Memorandum to the Planning Board, then Fire Chief Dale Sylvia stated with regard to the proposed site improvements that:

> In reference to Sea III [sic] request to expand their rail capability, we have been researching this a great deal. I met with the NH Fire Marshall's office to discuss the operation and with two Fire Marshall's [sic] we inspected the proposed site. In addition to fire protection we are reviewing federal laws and how this may affect our neighboring communities. From a fire department view I believe this is a positive for Newington, because it gives us the opportunity to update and increase fire protection systems that are already in place but outdated. The operation they are proposing in [sic] not dramatically different then [sic] their current operation.
>
> Working with the Fire Marshall's office we are also going to require a third party Fire Engineer review, but one that specializes in propane operations. The State is researching potential engineers for us.
>
> Having said that, we recommend conditional approval in concept. If approved by Newington Planning Board to go forth, Sea III [sic] will have numerous requirements set by Newington Fire, with the assistance of the State Fire Marshall's office and an Independent Engineer.

10. The proposed site improvements will update and modernize the site's existing fire protection systems.

11. Based on its review of the proposed site plan, the Town's retained safety expert, SFC Engineering Partnership, Inc. ("SFC"), concluded in its January 29, 2014, Report, "Overall the site plan appears to be in general compliance with NFPA 58 and 54. In terms of fire safety compliance, no significant problems have been found with this layout."

12. When asked by the Planning Board Chairman at the Board's March 24, 2014, Hearing if the Fire Department had everything it needed for training and equipment to respond to an emergency incident, Fire Chief Andrew Head stated that the Department was prepared

but would seek any additional training that became available. In response, the applicant stated that it would continue to work with the Town to make training available as in the past.

13. The applicant's Fire Safety Analysis determined that there is adequate water volume and pressure on site to service the proposed fire suppression equipment.

14. In its written review of the applicant's Fire Safety Analysis dated April 9, 2014, SFC concluded, "This FSA document appears to be in general compliance with NFPA 58, and the NGPA FSA manual. No significant problems have been found with the proposed system or the FSA at this point however the above-listed detailed documentation should be submitted and reviewed prior to the issuing of a building permit and system commissioning."

15. The proposed site improvements comply with NFPA 58 and 54.

16. The proposed site improvements will add a second means of emergency access to the site over the property of Pan Am Railways.

17. The proposed site improvements will maintain the site's existing vegetative buffers and add a 6-8' earthen berm at the southeastern corner of the site, within the existing fence line, where the site abuts a lot containing nonconforming residential uses.

18. No trees will be cut in connection with the construction of the proposed site improvements and all of the proposed equipment and facilities will be located on existing cleared, graveled areas within existing or proposed fence lines.

19. The proposed site improvements will result in no change to the site's existing parking or truck distribution facilities.

20. The proposed site improvements will not change the site's existing distribution capacity or increase traffic impacts associated with existing uses on the site.

21. The area of the proposed site improvements is currently hard packed gravel and will remain hard packed gravel, with the exception of where the improvements are affixed to the ground.

22. The proposed site improvements will result in no adverse change to existing dust, erosion or run-off conditions.

23. The proposed site improvements will upgrade the existing storm drainage system.

24. The applicant has received Shoreland Impact Permit 2014-00105, a copy of which was provided to the Planning Department by email dated March 24, 2014.

25. The applicant has received Alteration of Terrain Permit AoT-0695, a copy of which was provided to the Planning Department by email dated March 24, 2014.

26. The proposed site improvements will not alter the existing security lighting which was installed in accordance with a security lighting plan required and approved by the U. S. Department of Homeland Security.

27. In its April 21, 2014, letter to the Planning Board, Pan Am Railways confirmed in writing that it will lease a portion of its land to the applicant for a portion of the proposed site improvements, but advised the Board of its position that Pan Am Railways is not the applicant, is not asking the Board for any approvals and is not subject to the Town's land use regulations.

28. The proposed site improvements meet all applicable requirements of the Town of Newington's Site Plan Review Regulations.

Respectfully Submitted,

Shaines & McEachern, P. A.

By: _____
Alec L. McEachern, Esq.

Cc: Thomas Morgan, Planner
Stephen Haight, P. E.
Paul Bogan, Sea-3, Inc.

Newington has obligation to protect our Seacoast

By **Jim Splaine**
May 04, 2014 2:00 AM

To the Newington Planning Board,

Reference:

Monday, May 5, 2014, Planning Board Agenda:

Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

I want to thank you for your time and effort in holding a series of hearings to provide open comment concerning the Sea-3 expansion plans.

Your patience in listening to all points of view and the concerns of many of us throughout the Seacoast area who will be affected by Sea-3 plans, and the transportation of added hazardous cargoes on Pan Am rail lines, was an impressive display of democracy and inclusion.

I am offering this comment as a lifelong Portsmouth citizen concerned about the long-term vibrancy of our future. I know you have heard from other area citizens in their official capacities, but I want to make a personal observation for your consideration.

And I make my observation based on your "land-use" decision regarding Sea-3, rather than focusing on the other primary concern that many of us have, which is the added transportation of rail cars containing propane on tracks of inferior quality through Portsmouth's neighborhoods and downtown, and through abutting communities.

Individually, for those who live hereabouts as the temporary caretakers of the New Hampshire-Maine Seacoast area, we have a burden, and a serious obligation.

As I looked at the dozens of people who attended your hearings during the past three months, I saw ages ranging from about 20 to 90. In age, that's a relatively short time in the grand scheme of things. Indeed, we are only temporary caretakers — only as long as we live here. Then others take over.

What I'm saying is that we "inherited" the Seacoast where we now live, and soon we will all be gone. In just a few short decades, even the youngest of those attending your hearings will be passing their legacy — the land they own, and that about which use we collectively make decisions — onto other generations.

I think that perspective is important to keep in mind, because our decisions today greatly affect the lives of those who will follow us.

A Seacoast visionary, Dudley Dudley, recently spoke about the decision made 40 years ago that saved our precious area from what could have been incredible over-development and placed us in environmental danger. At the least, it would have brought enormous change to us.

In 1974 an oil refinery was proposed for Durham Point. I remember that time well, because I was in the N.H. Legislature and I voted with Dudley Dudley to stop what was a massive oil refinery proposal promoted by one of the world's richest men — European shipping billionaire Aristotle Onassis — and by then-Gov. Meldrim Thomson.

The refinery would have involved piping half a million gallons of crude oil — who knows how much that would have become today — from ships ported off the Isles of Shoals to Durham Point daily.

It was presented as an "economic boom" for the region, with tremendous dollars from construction and operational

costs spent hereabouts as a boost for our economy — plus all the related trucking, shipping and development resulting from that "investment" in our area.

... we were told we'd have "cheaper oil," and all those "jobs," plus "lower taxes." A tough "deal" to refuse.

But at what real costs? Our area today would have been much different than what it is now.

Such is your decision. Do you really want to say "yes" to continued development along your riverfront — ours, really — that will significantly expand production and distribution of hazardous products?

By your approval for the expansion of Sea-3, you are setting yourselves up to say "yes" to even further requests for expansion and for placement of other hazardous development.

That's what happens with this kind of cycle of business development — once you say yes to expansion, it becomes very difficult, if not impossible, to set limits. Other parts of our country have found that difficulty. You see it in parts of the New Jersey and New York and Louisiana coastlines.

If we had an oil refinery in Durham Point and a depot off Rye today, do you think we could have set limits, especially after the influence of the money from related development had been engraved into our communities?

Do we want to leave as our legacy to future generations an "Energy North" environment full of transportation and distribution of hazardous cargoes, with the dangers and potential environmental impact that will create?

Isn't there much better water-related development you can encourage instead? Perhaps you are serving Newington and our New Hampshire-Maine Seacoast area with a short-sighted vision by not encouraging better, cleaner development and recreational opportunities along the great asset that is our Piscataqua riverfront.

I have often spoken about the need for us to have a "2050 Vision." That's only 36 years from now. That proposal for an oil refinery in the mid-1970s had a suggested operational start date of just 36 years ago.

You should reflect on that as you make your decision regarding Sea-3 expansion. Do you really want to do that to our future? Your future? That of the next generation?

Can't Newington, and our Seacoast area, do better than that? Shouldn't that ideal be our visionary goal?

I urge you, as temporary caretakers of a part of our wonderful piece of this planet, to say "no" to an expansion that might have some temporary economic impact of dollars, but in the long term could injure our future, and those who will inherit our legacy.

We have been given a gift from those who lived before us. Let's not contribute to its destruction before we bequest it to those who will live here after us.

Jim Splaine is a Portsmouth city councilor.

Sea-3 propane plan vote expected

Proposal hits Newington Planning Board agenda again

By **Crystal A. Weyers**
cweyers@seacoastonline.com
May 05, 2014 3:21 PM

NEWINGTON — Monday night's Planning Board agenda calls for another public hearing on the proposal by Sea-3 to reconfigure its Shattuck Way terminal to accommodate rail shipments of liquefied petroleum gas.

The topic has been hotly debated by those opposed to the proposal for the past six months and it is unclear whether the Planning Board will finally put the debate to rest. At its last meeting on April 14, the board moved to take three weeks to review all of the information that has been brought before it.

That meeting revealed that some of the property in question, specifically where five new loading stations would be built, is actually on Pan Am property. This information is pertinent, as the board has been trying to base its decision primarily on land-use criteria that it has authority over.

Sea-3's Paul Bogan said the property would be leased from Pan Am and Sea-3 would assume liability over it. However, no lease or liability agreement had been presented at that time nor had the board ever been made aware that some of the property involved belonged to Pan Am.

In an April 28 letter to the editor of the Portsmouth Herald, Rich DiPentima, of Portsmouth, asked, "Was this intentionally left out of the application to avoid involvement of Pan Am Railways in any aspect of the site plan review process?"

The new information raised more concerns within the community that Sea-3 may not be offering full and honest disclosure to the public.

Portsmouth's Assistant Mayor Jim Splaine is adamantly opposed to the expansion and recently wrote a letter to the editor of the Portsmouth Herald calling on Newington's planning board to think carefully before giving such an expansion the green light based solely on land-use concerns.

"I urge you, as temporary caretakers of a part of our wonderful piece of this planet, to say 'no' to an expansion that might have some temporary economic impact of dollars, but in the long term could injure our future, and those who will inherit our legacy," he wrote. He said that saying "yes" would only set the Seacoast up for having to say "yes" to further expansion and "placement of other hazardous development" in the future.

Other concerns raised have had to do with the safety of Pan Am's rails.

The state's congressional delegation sent a letter in mid-April to federal officials seeking a "comprehensive assessment of the regional safety and security effects of an expansion of LPG rail shipments" on the Seacoast.

"We believe it is important that the federal government provide the information and analysis necessary for community officials and residents to fully understand the potential impacts of increased LPG shipments along the rail line," the delegation wrote in the letter.

Pan Am Railways Executive Vice President Cynthia Scarano has promised that if the Sea-3 project is approved, Pan Am would upgrade the rail line from Class 1 to Class 2. This would allow its trains to travel as fast as 25 mph. However, she has said Pan Am intends to run the trains at 10 mph, at least for now.

Portsmouth attorney Christopher Cole, who represents several city residents, has pushed for the Newington Planning Board to order Sea-3 to pay for "a comprehensive all-hazards assessment," but the board refused to do so citing lack of authority over Sea-3's railroad operations. The board did however label the project one of regional

impact.

Portsmouth's City Council also sent a letter to the Pease Development Authority asking it to seriously consider a proposal by a city resident to run a new rail line through Pease International Tradeport to avoid running the propane rail cars through its downtown. PDA Executive Director David Mullen said previously that the idea is not economically feasible.

The Sea-3 propane terminal would allow it to receive domestic propane, which is substantially less expensive than paying for propane from overseas. In its filing with the town of Newington, Sea-3 states that if the expansion is approved, the facility will operate 24/7 and increase the number of rail cars carrying propane on Seacoast train tracks from three to seven per week on average. The trains would pull loads of six to 12 propane tank cars each.

The Planning Board will meet tonight at 6:30 p.m. at the Town Hall.

Planning Board votes against further studies into Sea-3 impact

By **Crystal A. Weyers**
cweyers@seacoastonline.com
May 05, 2014 3:21 PM

NEWINGTON — The Planning Board is leaning toward approval of the proposal by Sea-3 to reconfigure its Shattuck Way terminal to accommodate rail shipments of liquefied petroleum gas, or propane.

At Monday night's meeting, the board deliberated whether more studies needed to be completed before its approval or denial, and which conditions they would like in writing if they do pass the proposal.

After about an hour of deliberation, the board voted to proceed without the requirement of any additional studies.

"We've had a lot of public comment, we've had state and federal officials," Chairman Denis Hebert said. "I'm not sure what else we could do."

The board discussed whether the project meets the uses appropriate for the area in which it will be introduced, including whether or not it is in harmony with the character of the surrounding area, consistent with the overall long-range plans of the community, will not result in an overly intensive use of the land or create increased traffic congestion or hazards.

"We've heard a lot of testimony about the rails, about needs for upgrades," board member Justin Richardson said. "The evidence is kind of weak."

Town Planner Thomas Morgan disagreed, saying that in November, the board determined that the project was going to have a regional impact.

"I think a study would be useful to determine what kind of an impact that's going to be," he said.

Board alternate Peggy Lamson reiterated that the issue of "safety, safety" has come up repeatedly.

"It's a regional issue," she said. "I feel that we need this. We need to have this done."

Hebert said that all area emergency management personnel have said they are prepared to handle any accident that could happen on the rails, but Morgan still felt a study would help identify any weaknesses or deficiencies that they may have overlooked.

"Who are we to say we want to reconsider what they're the expert at?" Hebert asked. "I have a lot of faith in my public fire chiefs in the region."

Board member Christopher Cross reminded others that Sea-3 has been operating for more than 35 years, and provides a valuable service and product to the region.

Lamson, who was not permitted to vote due to full board attendance Monday night, recalled when a women's group of concerned citizens fought to stop a refinery at Sprague several decades ago.

"I feel that we have a responsibility as Planning Board members to look at safety, health and the environment," she said, stressing that had she been able to vote, she would have voted in favor of more studies.

Although board member Bernie Christopher agreed he isn't impressed by the condition of the rails, he doesn't feel there is much else the board has the authority to do on the matter.

"I walked the railroads, I don't get warm and fuzzies," he said. "It scares the hell out of me."

The meeting concluded following a nonbinding, informal "straw vote" to determine which way the members were leaning. Seven indicated they were leaning toward approval, at which point audience members against the

proposal stood up and left the meeting.

"[illegible]vington cannot do it for Portsmouth, we can't do it for any other town," Hebert said of the town's role in the proposal, adding that they will submit copies of their findings to each of the communities affected by the proposed expansion if they vote in favor, so that they can come to their own determinations.

"It has been a really long process and a good process," he said.

Although the board was supposed to come to a decision by May 11, members will continue their deliberations at the board's May 19 meeting after putting together and finalizing potential conditions of approval.

Some of the preliminary conditions of approval set forth are:
A 16-railcar limit per day.

Requiring trucks coming and going from the corridor to enter and exit via Exit 4 on Shattuck Way, steering traffic northbound toward Dover.

Prohibiting the queuing and parking of trucks on Shattuck Way.

All Sea-3 improvements built on leased property to be removed when or if their lease is ever terminated.

Notification of any deficiencies in the tracks that Sea-3 may become aware of.

Training for local fire departments.

No encroachment on the waterfront buffer.

The Town of Newington
New Hampshire

Incorporated 1764

PLANNING
BOARD

TO	Planning Board
FROM	Tom Morgan
RE	Safety Impact Study – Sea-3
DATE	May 5, 2014

In regards to the proposed Sea-3 expansion, several parties from neighboring communities have requested an analysis of the safety impacts along the rail corridor, as follows:

- The City of Portsmouth, via correspondence dated March 6, requested *"a comprehensive safety or security review of the full scope of the Sea-3 expansion proposal (or its external ramifications) and a comprehensive environmental impact analysis.."*
- Attorney Christopher Cole, representing railroad abutters, requested a similar review and study, via correspondence dated March 6.
- The Great Bay Stewards, via correspondence dated March 24, echoed Attorney Cole's request.
- The Portsmouth City Council, via correspondence dated April 9, requested *"a comprehensive and environmental plan. Such a plan would identify the risks as well as needed improvements.."*
- The Town of Greenland, via correspondence dated April 21, requested *"a comprehensive safety, security and environmental assessment.."*

Several Portsmouth residents forwarded us a copy of a 2013 study prepared by the Massachusetts Department of Transportation entitled *"Report on the Safety Impacts of Ethanol Transportation by Rail."* I believe that such an analysis is applicable to the Sea-3 proposal, and would be responsive to the above referrenced requests made by our neighboring communities. Pursuant to your directive, I sought out qualified consultants, and discussed the potnential cost of such a study with Sebago Technics of South Portland. Sebago estimates a cost in the neighborhood of $25,000 to $40,000. You may recall that Sebago was recommended to us by NH DOT's Bureau of Rail & Transit.

I also conferred with Cliff Sinott, the Executive Director of the Rockingham Planning Commission. He and I entertained the prospect that the planning commission might be the most appropriate body to oversee the preparation of such a study.

205 Nimble Hill Road • Newington, NH 03801 • (603) 436-1252 • Fax (603) 436-7188 • Email: newington@ttlc.net

SEBAGO
TECHNICS

CIVIL ENGINEERING • SURVEYING • LANDSCAPE ARCHITECTURE

Memorandum

Projec t: 13434

To: Tom Morgan, Town of Newington

From: Steve Sawyer

Date: May 5, 2014

Subject: Emergency Preparedness Study for Transportation of Propane by Railroad to the Sea-3 Terminal in Newington, NH

CC: Robert Davids

Based on our phone conversation this date, Sebago has prepared a brief scope of work and associated fee for a study to examine the emergency preparedness of the five communities north of Rockingham Junction along the Portsmouth Industrial Track and the Newington Industrial Track (i.e. Newfield, Stratham, Greenland, Portsmouth, and Newington) should Pan Am Railroad begin regular transport of liquid propane via rail through these communities. You provided us a copy of a Study prepared by MASSDOT relative to an Enthanol Proposal by Global Petroleum as an example, but after discussing this Report with you, it became clear that the MA Report was much more comprehensive than you envision for the SEA – 3 Project. As such, we have outlined a more limited scope of work that focuses on emergency preparedness and would include the following efforts:

1) Document the existing rail lines and operations from Rockingham Junction to the Sea – 3 Terminal. This would include a summary of the highway/rail grade crossings and records of FRA reportable accidents from recent years.

2) Prepare a summary of the concerns/risks associated with transporting liquid propane via rail, and what actions would be needed in the case of an emergency involving this product.

3) Conduct meetings with emergency response staff in all five communities to determine their preparedness in the event this project moves forward. In cooperation with local fire officials document education and equipment needs to handle potential incidents with LP gas.

4) Summarize the findings of this investigation into a narrative report complete with graphics and non-binding recommendations.

75 John Roberts Road - Suite 1A, South Portland, ME 04106-6963 • 207.200.2100 • Fax: 207.856.2206

We anticipate that the conduct of such a study would take 2-3 months to compile, and the cost would be in the range of $25-40,000.

It is our understanding that your intent is to transfer the administration of such a study to the Rockingham Planning Commission, since this is a regional issue – not just a local one. That being the case, the scope of the eventual study might get refined and thus the effort and cost might look different from what we have provided above.

We hope that this information is helpful to you and we look forward to keeping abreast of your actions.

Portsmouth residents poised to appeal Sea-3 propane plan

By **Jeff McMenemy**
jmcmenemy@seacoastonline.com
May 05, 2014 4:44 PM

PORTSMOUTH — City resident Rich DiPentima is expected to present a petition to the City Council urging the city to file an appeal of what is expected to be the town of Newington's approval of the Sea-3 expansion plan on Monday night.

The petition, which has been signed by 561 city residents, 33 business operators and 35 residents of area towns, calls for the city to file the appeal with the Rockingham County Superior Court within 30 days of a ruling by the Newington Planning Board.

"This evening we expect that the Newington Planning Board will approve the Sea-3 expansion proposal," DiPentima is scheduled to tell the City Council tonight

DiPentima said the decision to petition the City Council to file the appeal of the Newington Planning Board's decision, comes after "the town of Newington Planning Board has refused to conduct the appropriate safety and environmental impact study requested by the city of Portsmouth."

The Sea-3 propane terminal has proposed an expansion that would allow it to receive domestic propane, which is substantially less expensive than paying for propane from overseas. In its filing with the town of Newington, Sea-3 states that if the expansion is approved, the facility will operate around the clock and substantially increase the number of rail cars carrying propane on Seacoast train tracks.

Numerous municipal leaders and area residents oppose the proposed expansion, primarily because they worry about the condition of the Pan Am Railways' tracks, which will carry the rail cars.

Pan Am Railways Executive Vice President Cynthia Scarano has promised that if the Sea-3 project is approved, Pan Am will upgrade the rail line from Class 1 to Class 2, which will allow its trains to travel as fast as 25 mph. Scarano has said Pan Am intends to run the trains at 10 mph, but that might not always be the case.

This story will be updated.

PEASE
INTERNATIONAL
DEVELOPMENT
AUTHORITY

55 International Drive Portsmouth, NH 03801

May 5, 2015

Mayor Robert J. Lister
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

Dear Bob,

I am writing in response to your letter of April 15, 2014 advising of the City Council's April 7, 2014 vote to ask the Pease Development Authority to examine the building of a track route for trains to re-activate the railway through Pease International Tradeport.

While the Pease Development Authority is not opposed to having someone research an industrial rail corridor through the Tradeport and would be happy to have our staff participate in a representative capacity on any study committee, we are, in fact, prohibited from spending any funds to undertake such research, even at a preliminary level.

All revenue received by the Pease Development Authority is "airport revenue" and its use is governed by four separate federal acts. The most relevant of these acts is the Airport and Airway Improvement Act of 1982 which serves as the basic tenant for authorized use. As set out in the Federal Aviation Administration Compliance Manual - Order 5190.6B:

> "All revenues generated by the airport, if it is a public airport, will be expended for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property."

The most recent discussions related to the expansion of the Sea-3 terminal in Newington and the City of Portsmouth's concern about the increased burden on the existing rail corridor through residential areas is not operationally related to the public airport and the study of the same is an inappropriate use of airport revenue.

If the City of Portsmouth and/or the Town of Newington are interested in pursuing an alternative rail corridor, the Pease Development Authority will be happy to share with you any existing plans or engineering data we have available to facilitate your research efforts.

Sincerely,

David R. Mullen
Executive Director

DRM:lmh

cc: John P. Bohenko, City Manager
PDA Board of Directors
Lynn Marie Hinchee
Maria J. Stowell
Irving E. Canner

Newington Planning Board

Monday May 5, 2014 6:30 PM

Agenda

1) **Planning Board Deliberations** at the Town Hall - Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

2) **Planning Board minutes** of April 14 & 21

3) **Correspondence**

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, May 5, 2014

Call to Order: Chair Denis Hebert called the May 5, 2014 meeting to order at 6:30 p.m.

Present: Mike Marconi, Vice Chair; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Alec McEachern; Attorney John Ratigan; Paul Bogan, Sea-3 Vice President of Operations; Steven Haight, Haight Engineering; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Peter Britz, Environmental and Sustainability Planner for Portsmouth; Jeff Barnum, Great Bay Water Keeper; Portsmouth Residents: Catherine DiPentima; Pat Ford; Bob Gibbons; Jane and John Sutherland; Newington Resident: Paul Reardon; Portsmouth Herald Reporter, Crystal Weyers

1) Public Hearing: Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Chair Hebert announced that the public hearing was complete and opened deliberations on the information received over the last seven months.

Board member, Jack Pare said he spent a lot of time reading the Massachusetts Department of Transportation's railroad impact study. He said it was an unusual study because special legislation was passed to withhold the permit before the study was done. The study reiterated that they were not able to do anything that would pre-empt Federal law. The study went on to inventory accidents, laws and safety plans. He said the report was concluded with a list of recommendations under "shoulds", but there were no follow up plans or "shalls" that carried any weight.

Mr. Pare said he didn't see that there would be any gain from requesting a safety study for the Sea-3 site review, but he wondered if they might come up with some safety action items that would be beneficial

Ms. Lamson said a group of women had started a group of concerned citizens to stop an oil refinery near the Sprague site along the Piscataqua forty years ago, and they were successful. She said she took her responsibility as a member of the Planning Board seriously and as a subdivision of the State they had to follow their RSA's and Town ordinances. She said she felt there was a responsibility to look at the site review procedures, and consider the health, safety and environment of the community

Board member, Justin Richardson said he wondered if a study would be helpful to accomplish the goals of the zoning ordinance and site plan regulations. He said he had trouble finding an appropriate role for a study. He said the public hearing already reviewed studies and it didn't seem like another study would be helpful and it would only be kicking the can further down the road.

Mr. Richardson read through "Uses Allowed" in the zoning ordinances and said a question of whether the use would create an over intensification of the area might be made in regards to the rails, but they would then be stepping outside of their jurisdiction. Mr. Richardson said the Board had been told the rail standards would be upgraded, and they could accept that finding to satisfy the criteria, or request a study to prove it, but there would need to be a determination first.

Town Planner, Tom Morgan said he started out asking the same questions. He said in November 2013 the Board determined if the project would have a regional impact. Mr. Morgan said he thought a study could help determine what that impact might be and to come up with some non-binding recommendations that would assist the communities that would be impacted. Mr. Richardson said he heard statements on the costs of upgrading crossings in surrounding communities, but he wasn't sure how the cost of the upgrades could be attributed to the Sea-3 project. Mr. Morgan said that was all the more reason to have a professional review. Chairman Hebert said a DOT and FRA representative had come before the Board to discuss their inspection process. He said the Federal government had set up a process so that towns could apply to the State and they would determine how to apportion a fair share of the cost. Mr. Richardson said there might be a need for a study, but it was challenging to define. Chairman Hebert said he didn't think the Board had the authority to ask the State to do a study on a crossing in another town. He said it was also a duplication of effort and cost to require a study that the State already did for free.

Mr. Pare said it might be useful as a part of their findings to include a copy of the RSA: 373 procedures that the town had to follow. He said they had heard from some towns, but not all, including Newfields. He said a letter to those towns that provided information and links to websites would be helpful to them.

Ms. Lamson said she thought an independent safety study was important for the regional impact consideration. Mr. Pare said something more than a paper study such as having the Rockingham Planning Commission or the UNH Complex Systems Group use their GIS capabilities and create a mapping system that would be available online to the surrounding fire departments for common coordinates would be more useful. He said right now they had text and he didn't think it would cost much for the applicant. Mr. Morgan said the study he envisioned would be broader than investigating rail crossings. He said he asked the director of the Rockingham Planning Commission if he would have any interest in administering such a study and was told he would need something specific. He said the Rockingham Planning Commission would be an appropriate agency to look at matters of concern outside of Newington.

Board member, Bernie Christopher said studies would be good except that the studies they already had were only political and didn't have any teeth to add more safety or anything. He said they were told that only the DOT and the FRA had authority

over the rails and the Board only had authority over the Sea-3 site. So he wondered what purpose a study would have.

Board member, Christopher Cross said the Sea-3 site had been reviewed and approved when it came to the area nearly forty years ago. He said there was a significant safety study at the time. He said it was an LPG transfer station that used cooling to maintain control of the product and it was never a refinery that used heat to break it the product apart and add other components, which was more volatile and dangerous. He said there was another expansion fifteen years ago that also went under another safety study as well.

Mr. Cross said Sea-3 had operated safely for thirty-five years distributing propane. He said Newington played a role in keeping the waterfront working to provide propane so NH residents wouldn't be completely dependent on ports in Boston and Portland for propane, which would add to the costs.

Mr. Cross said the public hearing for the change of use, increase of rail cars and the condition of the rails needed to be looked at. He said Federal and State studies had been done and he wasn't sure that an additional study would tell them anything new for the regional impact. He said the authorities were full aware of the major change to the rails and their testimony was on record.

Ms. Lamson they would need a new study for the changes and not rely on a study that was done forty years ago. She said she would also like to respect the concerns expressed by abutting communities.

Mr. Richardson said when it was designated as a regional project, they thought they might be able to do something to improve the condition of the rails. He said the Legislature gave the adjacent municipalities status in a regional impact project. He said the legislature also gave boards the authority to review and approve projects of regional impact and they also gave them authority to impose conditions.

Mr. Richardson said the ordinance said boards were supposed to consider the health, safety and welfare of the community, which could be identified as the waterfront from along the Piscataqua. He said they might be able to do something, but the question was where would they have an authority look and whom would they give the study to fix the problem, otherwise they would be speculating. He said they might be able to ask the applicant to pay a share of fixing the problem, but again, how would they determine what that share was. He said they were grasping to identify the problems and grasping to find a manner to address it.

Chairman Hebert said the testimony from the fire chief indicated that they worked together regionally, and that they wanted to work with Pan Am Railways for additional training and to upgrade any equipment that might be needed. He wondered what more the Board could do to question their authority and expertise if they testified that they were doing what needed to be done.

Mr. Richardson said one use of a study might be to identify emergency response deficiencies, but it was his understanding that the local fire chief and the State Fire Marshall had the authority to enforce the fire code on the facility and the railroad. Chairman Hebert asked what would then be gained from a study and Mr. Morgan said it would identify deficiencies, and he didn't see any harm in a third party review.

Mr. Pare said rather than doing a study, he thought identifying deficiencies, enhancing a mutual aid pool and augmenting the existing incident response with an aerial photo map showing public buildings within 1,000 foot buffer of the facility, a coordinate system of the tracks would be more useful. He said the action of getting the information would be the same as a study, but it would be available to the response team rather than sitting in a municipal file in a vault.

Chairman Hebert said he wasn't sure what value that would have for the fire department. Mr. Pare said it had more to do with people who were not familiar with other territory. Chairman Hebert said he thought they probably already had that information and the towns would be in contact with one another on the road, but he agreed that if they did a study, they would want something that had some teeth to it.

Mr. Christopher said the Coast Guard reviewed Homeland Security on the site and all the fire departments looked at it. He said if they just looked at the railroad as he did when he walked the tracks, it was scary, but they didn't have any authority to do anything. Chairman Hebert said there was one study by Sea-3 that was going to be done on the upgrade.

Chairman Hebert said Sea-3 was an ongoing use for some time, bringing propane in by ship and railroad, and now they were proposing an expansion of rail tanks, storage tanks and refrigeration tanks. He said they had DOT and the FRA come in and they contacted members of Congress to see if they could do anything. He said he couldn't' see doing a study like the one done in Massachusetts because this was not owned by the State, but a privately owned track. He also wondered how they would apportion the cost of a study, and make sure it was something they could work with rather than put on a shelf. He said they were at a point where they needed to make a motion whether they were going to do a study or not and then they needed to review the rest of the Sea-3 application.

Mr. Richardson said the application before them was Sea-3 under an ordinance that gave them the authority to decide if the project met the criteria for approval. He said if they determined there was a deficiency during their deliberations, they could address it through a condition for approval.

Justin Richardson moved that the Board not do a general study similar to the Massachusetts DOT study. Mike Marconi seconded.

Mr. Richardson clarified that his motion was not suggesting that they not address particular impacts, he was suggesting that they not do a study that was not articulated in the ordinances or site plan regulations without a need to address a particular impact.

Vice-Chair Marconi said everyone made good points, but in regards to the railroad they had no jurisdiction. In regards to safety he said he made the original motion that the project be considered as a regional impact. He said they heard a lot of testimony and he felt they followed due diligence. He said he understood safety concerns, but he didn't see that there was anything they could do and the operation was ongoing with tankers on the rails already.

Chairman Hebert said he wanted to be sure they did due diligence in regards to reviewing the safety of the project. He said they looked at the Jones act that prevented domestic LPG deliveries by ships and they looked at fire safety. He said one the positive outcomes of the project was that Pan Am Railways said they would upgrade the rails and make them safer as a result of this project. He said right now they were able to run five cars at five miles an hour on rails that were excepted, below Class I standards and he felt that was more dangerous than sixteen cars on an upgraded Class II railway line. He said the rail was not within their jurisdiction, but they spent more time looking at the railway operations than Sea-3's operation. He believed they did their due diligence and he didn't see any benefit of another study.

Ms. Lamson said she did her due diligence reading through all the materials. She said she hadn't misplaced Sea-3, but the rail was in their backyard and she still thought they needed an environmental and safety study because it was a regional impact. Ms. Lamson was not eligible to vote as an alternate member, but asked that the record show that she would have voted against the motion not to do a safety study.

The motion passed with all members in favor.

Mr. Richardson reviewed the criteria for approval in the zoning ordinance on page Z18. He said one of the most important decisions was that the Board would find that the project would promote the health, safety and welfare of the community. He said he believed that the Legislature meant for them to look beyond their borders regarding projects of regional impact and as their zoning ordinance intended, knowing that the layout of the waterfront district was what it was. He said the evidence presented by abutters and the surrounding communities made a credible case that there was concern regarding rail accidents, especially on excepted tracks that were defective. He suggested that their determination be based on the removal of excepted tracks that admittedly didn't meet the Federal standard and could only handle five rail cars at a time. He said it would also be undesirable to have tank cars stuck in queue waiting for the passing of five at a time, despite the management practice of leaving them at Rockingham Junction or somewhere else.

Mr. Richardson went on to say that it would be horrible to have a rail line accident with the Schiller station in Portsmouth, two power plants, and a nuclear manufacturing facility, all nearby and containing hazardous chemicals. Mr. Richardson said perhaps there could be a condition to alert the fire chief if any portion of the tracks were found to be in excepted condition so that operations would cease until they were repaired. Chairman Hebert said the Town could not have direct contact with Pan Am Rails, but they could contact the FRA or State authorities. He added that the FRA representative stated that he was aware of the proposed operation and they would be doing an inspection for that purpose. Mr. Richardson said he agreed with the letter that the Town of Greenland wrote that said Federal pre-emption was beside the point because the Board had the authority approve the project so long as they determined that the project promoted the health, safety and welfare of the community, which they could do so long as the excepted track was eliminated. Mr. Christopher said his only concern was in

speaking outside of their jurisdiction for other towns. Mr. Richardson said the Legislature gave the surrounding towns abutter status with their regional impact designation, which included the right to appeal, though he agreed that surrounding towns could not make requirements of the applicant. Attorney Ratigan said the sole purpose listed in the regional impact statute was to give notice and allow comment from abutting communities and he was not convinced that there was any other standing to other communities.

Vice-Chair Marconi noted that a former fire chief had written a letter requiring all trucks coming out of the facility to travel down Shattuck Way to Exit 4 on the Spaulding Turnpike to elevate traffic congestion on Woodbury Avenue and Gosling Road. He said he also observed trucks parked along the side of the road and that shouldn't be allowed.

Ms. Lamson asked former Fire Chief, Larry Wahl if the turning onto Exit 4 was being enforced at present. Chairman Hebert said the letter written represented the position and was still enforceable. Mr. Wahl shook his head that it was not. Chairman Hebert said the public hearing had been closed for public comment, but he recalled that agreement was in place when Shattuck Way was developed, though he couldn't say if the Board of Selectmen had made any changes.

Mr. Pare said the applicant should post signs as well. Chairman Hebert said he didn't know if they had been taken down, but there were signs there at one time.

Chairman Hebert asked for a show of hands if Board members thought that the proposal would bring about fire and rail safety improvements. Ms. Lamson said she saw site improvements, but she was still concerned with the regional impact.

Mr. Richardson said in regards to improving the public welfare of the community, one of the letters received said the project would only improve Newington's tax base, but would be of no benefit to the surrounding communities. He pointed out that the DRA education tax funding for 2013 was over 1.5 million dollars. He said the assessed value of Sea-3 compared to other properties in Newington worked out to $30,000 to $60,000 paid to the state wide education tax funding, yet Newington received no funding from the state except $250 for subsidized school lunches. He said it was also important to keep in mind that the facility provided heating fuel, competition in the market place and contributed to education in surrounding towns and school districts, which was a contribution to the community welfare in an economic sense. Vice-Chair Marconi said he was on the Budget Committee and agreed that the town only received $250 in education tax funding.

Chairman Hebert said another thing to consider was that the New England area had been dependent on foreign oil for heating fuel for a long time and many people were converting to other cleaner and safer alternatives like LPG, which was important in keeping people warm during the winter.

Mr. Richardson continued to read from page Z18 of the zoning ordinance on items that had not been previously discussed such as whether the project was in harmony with the character of the surrounding area and the long range plans of the community. He said they heard many residents talk about the rails not being in conformity with their vision of the community, but on the other hand there was the industrial zone and the Sea-3 site was in an appropriate location. He said he didn't think they could change the

existence of the rail lines, and if they agreed that the Sea-3 site was in the interest of serving the area, then they had to accept that the rail lines were there.

Mr. Pare said one of the reasons for creating the industrial zone was to encourage deep-water trade, and that was also one of the reasons for accepting the operation in the first place.

Mr. Richardson said they needed to determine whether it was a permitted use as outlined in the zoning ordinance and then they could look at the site review. Ms. Lamson asked if he was addressing the questions posed by the Greenland selectmen. Chairman Hebert said he was going through the criteria. Mr. Richardson said it was an important project and he didn't want it to go through the court system and have the court say they didn't go through the zoning ordinance.

Mr. Cross said it was an upgrade to an existing use and it had not been declared a non-conforming use in the last forty years. He said they needed to look at the upgrade and not the overall situation. Mr. Richardson said that was a good point, but it was an expansion and they needed to determine if it was conforming. He said they needed to determine how the expansion would change the site and the rails.

Mr. Richardson said they also needed to determine if the proposal would not result in an over intensive use of the land. Mr. Pare said he was impressed with the NFPA walk though. He said the buffer zones and setbacks that were tighter than anything in the Town's zoning, which also prevented the applicant from expanding the site and increasing the intensity more than they proposed. Mr. Richardson agreed and said they could make a stipulation that they would maintain the buffer, but it was a highly disturbed industrial site so the setbacks were appropriately designed.

Mr. Richardson said the rail capacity was currently for five cars, but the upgrade would allow sixteen cars to come and go in a single pass and he knew the rails were a concern to the public that spoke at the public hearing. Chairman Hebert said there had been a lot of public comment, and they had testimony from Federal and State officials, but he wasn't sure what else the Board could do. Mr. Richardson said the last thing they had to do was to find that the project and the subsequent increase in rail traffic was not an over intensive use of the land, which again went back to the railway to remove the excepted track to allow the rails to come in and depart all at once instead of willy-nilly, five at a time.

Mr. Richardson said the last criteria addressed the intensity of traffic. Vice-Chair Marconi said the applicant stated that they could only do ten trucks an hour, which they had already been approved for. Chairman Hebert said that was based on the number of loading station. Mr. Pare said it had been stated that the trucks would enter and exit onto Shattuck away, keeping the traffic patterns away from the shopping centers and apartments on Gosling Road.

Chairman Hebert said one of the criteria was landscaping and he hadn't heard anything about it, though it was an industrial zone with gravel. Mr. Pare said the proposal was consistent with the landscaping in an industrial zone. Mr. Richardson said the waterfront was something that was worth maintaining because there was a view from the river as well as Eliot, Maine so it would be important to maintain the buffer. He said in addition to that the Conservation Commission had guidelines for planting, though

he wouldn't suggest it would be appropriate to plant trees near a propane storage and distribution site, but he thought trash storage might be appropriate as a condition. Mr. Cross said it would be a three-man operation that had operated for nearly forty years and he didn't think there would be any changes in trash. He noted that Sea-3 had done an excellent job in landscaping with gravel that helped water conservation and prevented silt wind blow. Ms. Lamson said she still thought it should be looked at. Mr. Pare said the preservation of the waterfront buffer did need to be reviewed and maintained.

Mr. Richardson said Section 6 required that they determine the use, which was an industrial use dependent on the waterfront. He said it had been stated that they might send out an occasional shipment that came in on rail, but they still might receive an occasional shipment from overseas so that would continue.

Chairman Hebert asked for a raise of hands that the Board had reviewed the ordinances and found that the proposal was a permitted use. All members raised their hands except alternate member, Peggy Lamson.

Chairman Hebert said he also wanted to go through the site review. He suggested taking a straw vote to determine if the Board needed to determine conditions for approval or if they needed to discuss reasons for denial. Vice-Chair Marconi said he thought they should do the conditions first. Discussion ensued and the Board identified the following conditions:

- That the applicant shall restrict the queuing of trucks along the road sides entering the site
- The applicant shall only receive 16 propane tank cars at the Sea-3 sight by rail.
- The applicant shall post directional signs that all propane trucks shall enter and exit from and to the Spaulding Turnpike Exit 4 to avoid Gosling Drive
- The Woodbury Avenue and applicant shall improve the berm barrier to mitigate noise from idling trucks to residential areas near the site
- That the applicant and Pan Am Rails shall coordinate adequate training and safety procedures for the local emergency and fire departments
- The applicant shall remove all structures and equipment from Pan Am Railways property when the lease is terminated
- That the applicant notify the Board of any deficiencies in the rail equipment and tracks used for their operation that falls below Class II standards, including "excepted" track conditions.

Chairman Hebert asked for a straw vote to determine which direction the Board leaned on approving or denying the application at this time. All Board members raised their hands that they were in favor, except for alternate Board member, Peggy Lamson who was not eligible to vote and said she would still like the record to show that she would not vote in favor of the application if she could vote. Chairman Hebert said they would need to work on the wording of the conditions for the next meeting. Mr. Richardson said the raise of hands should not be considered a vote, but that it would give legal counsel and the town planner direction to form the wording for the motion.

Chairman Hebert said the Board voted to identify the project as having a regional impact and they invited the public to speak. He said they thought they might have authority to set stipulations that involved the railroad before they granted approval, but they found out that they could not. He said he thought some of the railroad regulations needed to be rewritten from how they were written in the 1700 and 1800's to take current circumstances into account and he thought Congress was starting to look at that. He said he didn't know what else they could do, but they heard there would be safety improvements on the tracks and on the site. Mr. Pare suggested they communicate to the State to consider alternate routing of the railroad to go over the improved Route 16 and onto Pease to rejoin the main line toward Rockingham junction, avoiding downtown Portsmouth and the south side of Great Bay. Chairman Hebert said they already sent a letter to the PDA requesting a discussion with local communities and Pan Am Railways for that purpose, but that would be a long-term project. Ms. Lamson said it was a good suggestion, but working with the State would take a long time, recalling that the State railroad inspector said he had been occupied with the Down Easter Amtrak line and this section of rails had been neglected for a long time. Mr. Richardson said the Board had followed the process and incorporated the information that had been provided. Chairman Hebert said the Board and the public had all worked hard on the process.

Chairman Hebert announced that the Sea-3 deliberations would be continued to Monday, May 19, 2014.

Alternate Board member, Peggy Lamson announced a meeting on Thursday, May 8, 2014 at 6:30 p.m. at the Pease International Board Office, 55 International Drive regarding noise control.

Adjournment: ***Mike Marconi motioned to adjourn. Bernie Christopher seconded, and all were in favor. The meeting adjourned at 8:49 p.m.***

Next Meeting: Monday, May 12, 2014, 6 p.m. site walk, 6:30 p.m. meeting;
Monday, May 19, 2014, 6:30 p.m. Sea-3 Deliberations

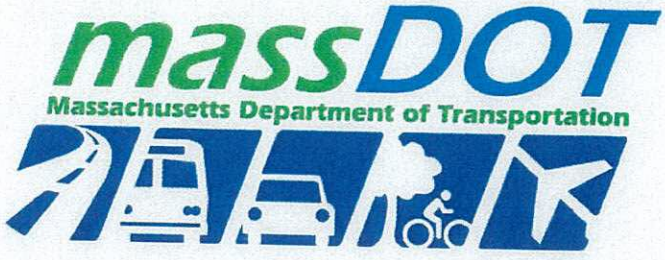
Respectfully Submitted by: Jane K. Kendall, Recording Secretary

Report on the Safety Impacts of Ethanol Transportation by Rail

through Boston, Cambridge, Chelsea, Everett, Somerville, & Revere

March 29, 2013

Prepared by:
Massachusetts Department of Transportation
Office of Transportation Planning



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Chapter 1: Background Information and Civic Engagement Plan

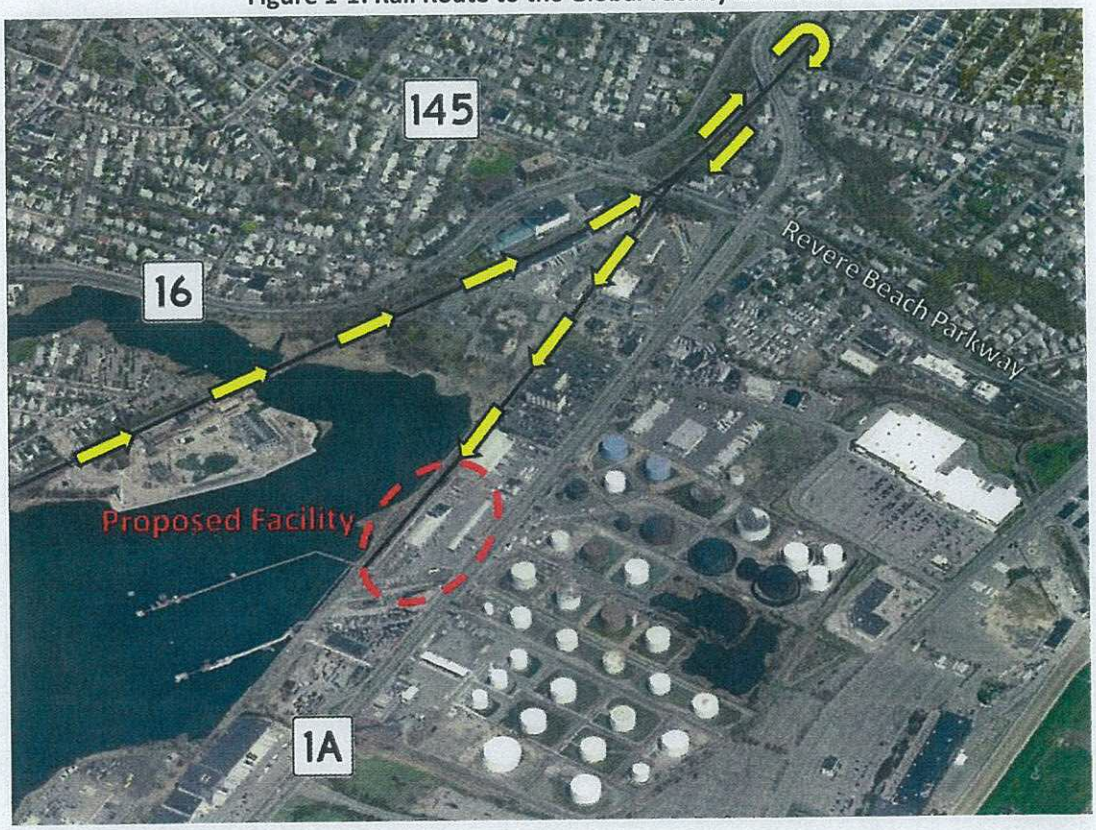
1.1 Summary of the Global Terminal Project History

Global Partners, LP (Global) operates a bulk petroleum storage terminal located on Route 1A (Lee Burbank Highway) in Revere, Massachusetts. At this facility, Global stores and mixes gasoline, ethanol, and other fuels for distribution to the New England market. The ethanol shipped to and stored at the facility is primarily used to mix with gasoline, as required by the Clean Air Act Amendments of 1990, in order to reduce carbon monoxide emissions and other impacts of gasoline.

Global intends to upgrade and modernize the existing railcar unloading facility at its Revere terminal. These site improvements will be made in coordination with a project by Pan Am Southern Railroad to upgrade the rail line spur that connects to the facility; these improvements would allow Global to receive ethanol by railcar. The proposed delivery of ethanol by rail would supplement and possibly replace existing deliveries by barge and truck.

The rail deliveries of ethanol would principally originate in the Midwest and be moved through Western Massachusetts and ultimately to the Revere location. It is expected that the rail deliveries will primarily be unit trains, a term for a freight train consisting of railcars hauling only one dedicated commodity.

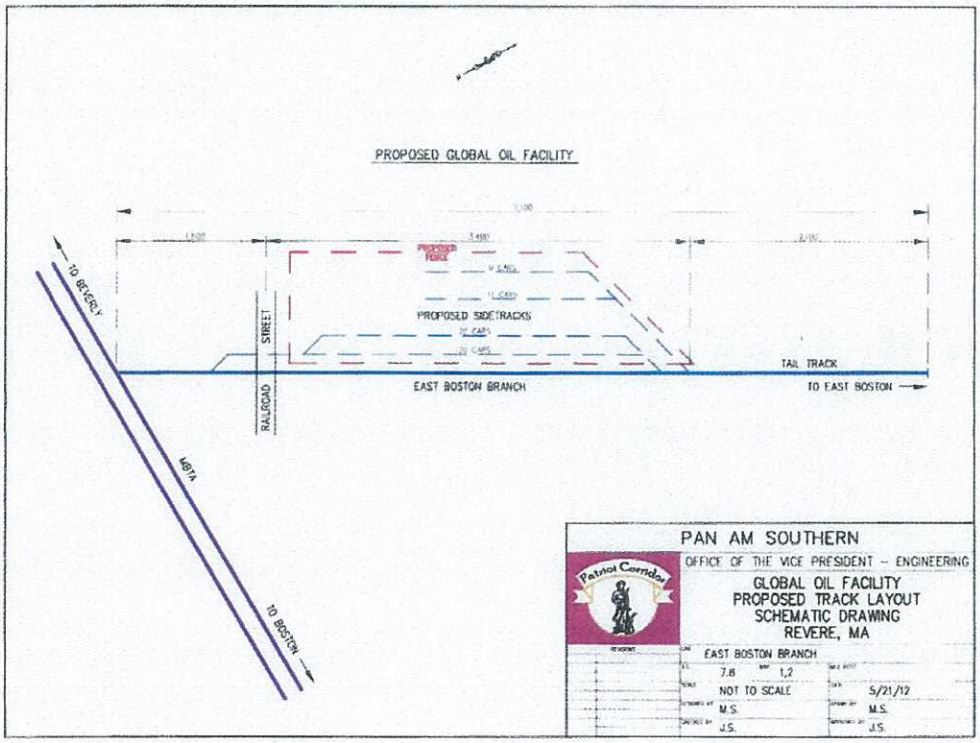
Figure 1-1: Rail Route to the Global Facility in Revere



As shown in Figure 1-1, the Global terminal is adjacent to rail lines owned by the Massachusetts Bay Transportation Authority (MBTA) and the terminal has an existing rail spur that connects the Global terminal to those rail lines. In order to modernize the existing off-loading facility on the terminal so that it can accommodate ethanol unit trains, Global's proposed project would split the existing rail spur into two adjacent tracks, each designed to hold a total of 20 rail cars at one time for unloading. The proposed modernization project includes installation of an upgraded drainage trench system running the length of the off-loading facility. This drainage trench system would be connected to the terminal's existing oil-water separator. In addition, a new impervious containment system would be installed to comply with U.S. EPA's current spill prevention, containment and countermeasures (SPCC) requirements. The pumps for the off-loading facility would be placed on the existing concrete pad adjacent to the spur and associated piping would be installed along the spur. In addition, a new vapor recovery system would also be installed on the existing concrete pad adjacent to the spur. The area will also be incorporated into the facility security and response plans.

Simultaneously with the proposed modernization of Global's existing rail off-loading facility, Pan Am Southern Railroad plans to perform maintenance and upgrades to the rail lines outside the terminal, reducing the number of tracks outside the terminal from five tracks to three. Additional railcars would be stored adjacent to the terminal in a fenced-in, secured access area on a portion of the rail lines. A full schematic of the proposed railroad infrastructure is shown in Figure 1-2.

Figure 1-2: Track Schematic of Proposed Improvements Adjacent to the Global Facility in Revere



1.2 Summary of Massachusetts Legislation

Ethanol, like gasoline, is a flammable liquid. Residents of the communities near the Global terminal have expressed concerns about the safety of transporting ethanol unit trains through their cities. In response to these concerns, the Massachusetts Legislature included Section 24 in Chapter 242 of the Acts of 2012. This provision charges the Massachusetts Department of Transportation (MassDOT) with executing a study on the potential public safety issues associated with ethanol transportation by rail through the cities of Boston, Cambridge, Chelsea, Everett, and Revere. The text of Section 24 is shown below.

> *Section 24. Notwithstanding any general law or special law or rule or regulation to the contrary, the Massachusetts Department of Transportation shall commission a study to determine the impact on the public safety of transporting ethanol by train through the cities of Boston, Cambridge, Chelsea, Everett and Revere. Public safety issues to be studied shall include, but not be limited to, the proximity to residences, elderly housing complexes, schools, hospitals, health care facilities and other population and demographic characteristics and emergency response capabilities. The report shall be completed not later than 6 months after the effective date of this act, and copies of the report shall be provided to the house and senate committees on ways and means, the executive office of public safety and security and the department of environmental protection. The department of environmental protection shall not issue a license under chapter 91 of the General Laws for the transportation of ethanol through the cities of Boston, Cambridge, Chelsea, Everett and Revere until it has received the report.*

At the request of the City of Somerville and the study's Technical Advisory Group, the study area was expanded to include Somerville. It is included in this report, despite the geographic restrictions in the legislation, because it is essentially surrounded by the other cities listed in the legislation; each of the potential ethanol rail routes also passes through Somerville; and it has population density and development patterns that are similar to those of the other cities listed in the legislation.

With the addition of the City of Somerville, MassDOT has issued this report to evaluate the potential safety impacts of transporting ethanol by train through the cities of Boston, Cambridge, Chelsea, Everett, Somerville, and Revere. The remainder of Chapter 1 of this report outlines the relevant regulations governing the transportation of ethanol by rail and provides a description of the civic engagement process utilized to inform the public about this report. Chapter 2 of this report identifies the rail routes within the study area communities that may be used to transport ethanol and evaluates the current physical and operational conditions along those routes. Chapter 3 evaluates the public safety impacts of transporting ethanol by rail by identifying the potential safety risks (based on rail accident reports and an assessment of potentially exposed populations) and comparing them to the existing safety procedures and emergency response capabilities of the cities, railroads and terminal operators. Chapter 4 summarizes the findings of this study and provides recommendations for further action.

1.3 Review of Relevant Regulations

Regulations Pertaining to Global Facility's Proposed Project

Global plans to upgrade the track and sidings along its property to accommodate storage and unloading of ethanol trains. Because the facility is located in a Designated Port Area (DPA), these changes are subject to Chapter 91 of the Massachusetts General Laws, which governs activities on Massachusetts' waterfronts, including filled tidelands and Designated Port Areas. As a result, Global needs a Chapter 91 license from the Massachusetts Department of Environmental Protection (DEP) in order to make improvements in this area. The license is not related to the transportation of ethanol by railroad, only to the physical changes at the Global facility. DEP has held a public hearing on the proposed project, but has withheld the issuance of the Chapter 91 license at the direction of the Legislature through Section 24 of the Transportation Bond Bill outlined above.

The proposed improvements are also subject to regulation under the Massachusetts Wetlands Protection Act because they are within 200 feet of Chelsea Creek and within the 100-year floodplain. Global filed a notice of intent with DEP on February 22, 2011 and was issued an order of conditions on May 4, 2011. The order of conditions includes instructions from DEP and the City of Revere's Conservation Commission that Global must follow to ensure protection of the wetlands and riverfront areas within the project limits.

Regulations Pertaining to the Transportation of Ethanol by Train to the Global Facility

The rail lines that will carry the proposed ethanol unit trains within the study area communities are owned by the MBTA as part of the commuter rail system that serves eastern Massachusetts. The MBTA commuter rail system comprises 270 miles of railroad tracks and related rail properties. These rail properties are operated pursuant to agreements that govern the relative rights and obligations of the MBTA and the railroad companies that sold the rail lines to the Commonwealth of Massachusetts or the MBTA. These agreements address the parties' roles in the operation and maintenance of freight only, passenger only, and shared use rail lines.

When the rail lines were sold to the MBTA or the Commonwealth for passenger rail operations, the railroad that sold the line generally retained the right to operate freight service over that line. Such an agreement is in place between CSX and MassDOT on the Grand Junction railroad through Boston and Cambridge which is one of the five rail lines that could potentially carry ethanol trains through the study area. The remaining four of the five lines that could potentially carry ethanol trains through the study area (the Fitchburg Line, the Lowell Line, the Haverhill Line, and the Newburyport/Rockport Line) were acquired from the Boston & Maine Railroad in 1976 and are subject to an exclusive easement to provide rail freight transportation service benefiting the Boston & Maine Railroad. Pan Am Railways, as the successor to the Boston & Maine Railroad, owns an exclusive easement to provide rail freight transportation service along its rail lines.

Railroads are regulated almost exclusively at the federal level. Railroad operations are under the jurisdiction of the Surface Transportation Board (STB), and railroad safety standards are governed by the

Federal Railroad Administration (FRA), while railroads are required to work with the federal Department of Homeland Security (DHS) on security issues.

Under STB rules, state or local laws and regulations are preempted for railroad operations in order to ensure uniform regulation of railroad operations and to safeguard interstate commerce. The federal preemption provision is contained in 49 U.S.C. 10501(b), as broadened by the Interstate Commerce Commission (ICC) Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA).

These laws shield railroad operations that are subject to the STB's jurisdiction from the application of many state and local laws, including local zoning and permitting laws and laws that would have the effect of managing or governing rail transportation. This preemption, therefore, limits state or local actions from blocking or regulating the rail transportation of ethanol, or any other railroad activity that is regulated at the federal level.

As an example, Pan Am Railways, which runs the Boston & Maine railroad, owns a railroad yard in Ayer, Massachusetts. In 1997, in order to expand its storage capacity, Pan Am purchased land, the San Vel site, which lies across the street from its railroad yard and is bounded by two railroad tracks. The Town of Ayer imposed a set of 36 conditions on issuance of any permit for construction on that property, and additionally the Board of Health declared the proposed plan to be a noisome trade, causing Pan Am's activities to be banned outright. These local ordinances were brought before the federal court and it was found that the Town of Ayer was violating the preemption afforded to railroad operations.

1.4 Technical Advisory Group (TAG) Meetings

Working with city staff, elected officials, and neighborhood groups, MassDOT collaboratively developed a technical advisory group made up of more than 25 key stakeholders to reflect the community interests in the study area. In addition to staff from MassDOT's Office of Transportation Planning (OTP) and its Rail and Transit Division, the stakeholders include officials from the Massachusetts Executive Office of Public Safety and Security, the Massachusetts Department of Public Health, the Massachusetts Department of Environmental Protection, the Massachusetts Department of Fire Services, the City of Boston, the City of Cambridge, the City of Chelsea, the City of Everett, the City of Somerville, the City of Revere, Alternatives for Community & Environment, Inc., the Chelsea Collaborative, Global Partners, LP, Renewable Fuels Association, and representatives of the communities.

MassDOT held a series of technical advisory group meetings as part of each study task to solicit feedback and ensure full understanding of the study process and products.

1st Technical Advisory Group Meeting

The first technical advisory group meeting was held on January 10, 2013 at the conference room of the MassDOT Office of Transportation Planning located at 10 Park Plaza in Boston. The primary topics of the meeting were: (1) a review of the Transportation Bond Bill legislation and the proposed scope of work and schedule for the study; (2) the findings to date related to Task 1, which included a summary of the proposed Global project and the regulations related to the transportation of ethanol by rail; and (3) the

potential rail routes for ethanol transportation. A full meeting summary is available in the appendix of this report.

2nd Technical Advisory Group Meeting

The second technical advisory group meeting was held on January 24, 2013 at the city council chambers in the Revere City Hall located at 281 Broadway in Revere. The primary topics of the meeting were: (1) a review of the comments from the first meeting on January 10, 2013; (2) the findings to date related to Study Task 2, which included a summary of the physical and operation conditions along the rail routes in the study area;, and (3) the findings to date related to Study Task 3, which included a review of ethanol train accidents and the distribution of maps showing the populations that could be exposed to safety risks associated with ethanol in the case of an accident. A full meeting summary is available in the appendix of this report.

3rd Technical Advisory Group Meeting

The third technical advisory group meeting was held on February 7, 2013 at The Chelsea Collaborative, located at 318 Broadway in Chelsea. The primary topics of the meeting were: (1) a review of the new project schedule, as members of the legislature had recently requested an extension of the deadline of the report's due date; (2) comments from a public meeting at East Boston High School and additional meetings with other interested parties: (i.e. the Chelsea Public Schools and New England Produce Center) ; and (3) the findings to date related to Study Task 3, which included a review of national ethanol train accidents, accidents in Massachusetts from 2008 to 2012, distribution of maps showing the populations potentially exposed to ethanol during rail shipment and emergency response capabilities of the communities in the study area. A full meeting summary is available in the appendix of this report.

4thTechnical Advisory Group Meeting

The fourth technical advisory group meeting was held on March 8, 2013 at the conference room of the MassDOT Office of Transportation Planning located at 10 Park Plaza in Boston. The primary topics of the meeting were: (1) a review of the draft presentation for the neighborhood meeting at the Argenziano School in Somerville; and (2) comments on the draft study findings to date. A full meeting summary is available in the appendix of this report.

5thTechnical Advisory Group Meeting

The fifth technical advisory group meeting was held on March 15, 2013 at the conference room of the MassDOT Office of Transportation Planning located at 10 Park Plaza in Boston. The primary topics of the meeting were: (1) a review of the draft report findings; and (2) comments on the draft study findings. A full meeting summary is available in the appendix of this report.

1.5 Public Informational Meetings

The civic engagement plan for this study also included additional coordination with the public through attendance at informal neighborhood meetings, special briefings with local officials, and a public informational meeting.

Neighborhood Public Meetings

East Boston High School

A meeting was held on February 6, 2013 at the East Boston High School, located at 81 White Street, East Boston. The primary purpose of the meeting was to (1) meet with the local communities, (2) inform them of the study and any findings to date, and (3) to get any feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

Argenziano School in Somerville

A meeting was held on March 11, 2013 at the Argenziano School, located at 290 Washington Street, Somerville. The primary purpose of the meeting was to (1) meet with the local communities, (2) inform them of the study and findings to date, and (3) to get any feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

Chelsea Collaborative in Chelsea

A meeting was held on March 18, 2013 at the Chelsea Collaborative, located at 318 Broadway, Chelsea. The primary purpose of the meeting was to (1) meet with the local communities, (2) inform them of the draft findings, and (3) to get feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

Informal Neighborhood Meetings

Chelsea Public Schools

A meeting was held on February 6, 2013 with the representatives from Chelsea Public Schools, at City Hall, in Chelsea. The primary purpose of the meeting was to (1) meet with the key members of the school system, (2) inform them of the study and any findings to date, and (3) to get any feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

New England Produce Center

A meeting was held on February 7, 2013 with the New England Produce Center in Chelsea. The primary purpose of the meeting was to (1) meet with representatives of local businesses, (2) inform them of the study and any findings to date, and (3) to get any feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

Chelsea Business Owners

MassDOT attended a meeting held on February 26, 2013 with business owners in Chelsea. The primary purpose of the meeting was to (1) inform the meeting attendees of the study and any findings to date, and (3) to get any feedback that could be beneficial to the study.

Massachusetts Emergency Management Agency

A meeting was held on March 13, 2013 with the Massachusetts Emergency Management Agency in Framingham. The primary purpose of the meeting was to (1) meet with representatives of state emergency preparedness agencies, (2) inform them of the study and any findings to date, and (3) to get

any feedback which could be beneficial to the study. A full meeting summary is available in the appendix of this report.

1.6 Project Web Site

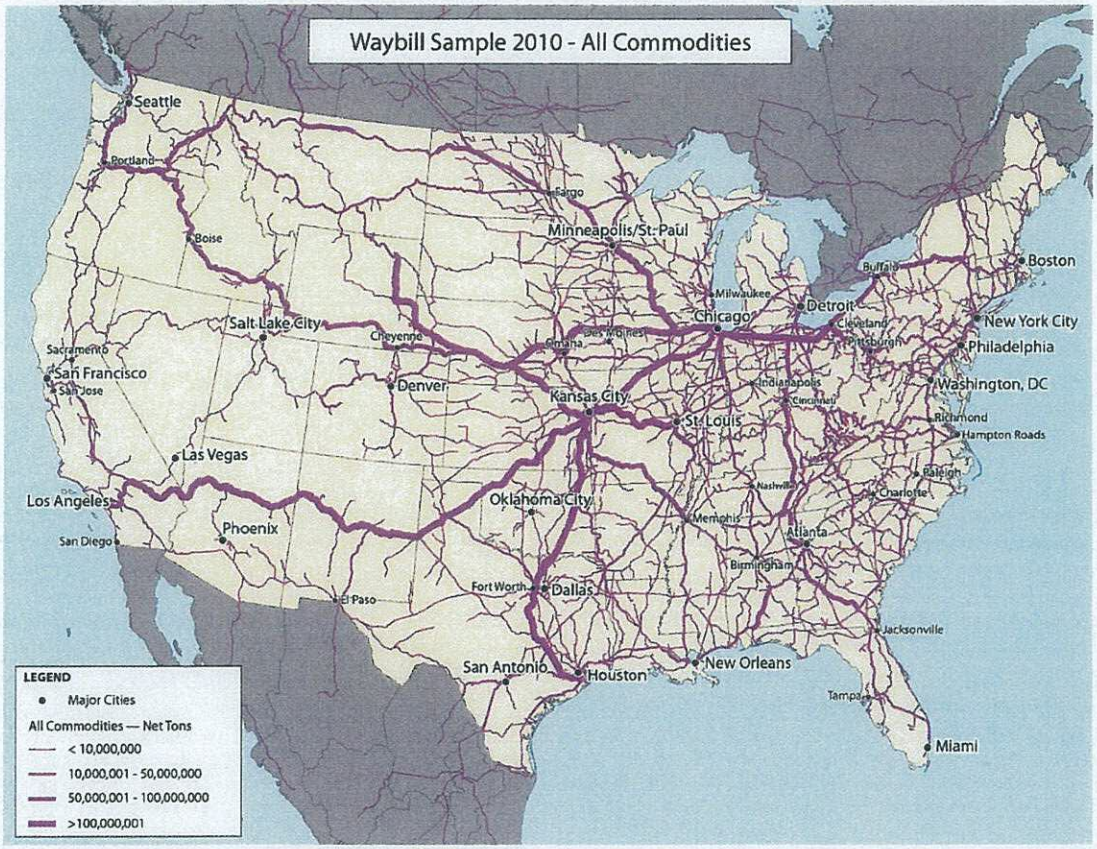
MassDOT established a bilingual project website for the study: www.mass.gov/massdot/ethanolsafety . The website was utilized as a tool for sharing information on the study, including the draft materials and information on public meetings.

Chapter 2: Identification of Rail Routes and Assessment of their Condition

2.1 Definition of railroad routes accessing the site

Determining the railroad routes that may carry ethanol through the study area requires an understanding of the national freight rail system that serves Massachusetts. A map of the national railroad system is shown below in Figure 2-1. This map depicts the general route and quantity of freight that travels across the United States. Railroads carry ethanol and many other commodities through both sparsely populated areas and densely populated areas of the country.

Figure 2-1: The National Freight Railroad System



There are many railroads in Massachusetts, most of which are smaller regional routes that distribute freight to local destinations. However, there are three primary rail routes that connect Massachusetts to the national railroad network, and that are used to transport freight longer distances into and out of the Commonwealth. The first two routes traverse the state in an east-west direction, while the third crosses the state from the north-south. The first of the east-west routes is the Pan Am Southern Mainline, which approximately parallels Route 2, entering Massachusetts in Williamstown and connecting to the MBTA Fitchburg commuter rail line in Fitchburg. The second east-west route is the CSX mainline, which approximately parallels the Massachusetts Turnpike, entering Massachusetts in West Stockbridge and

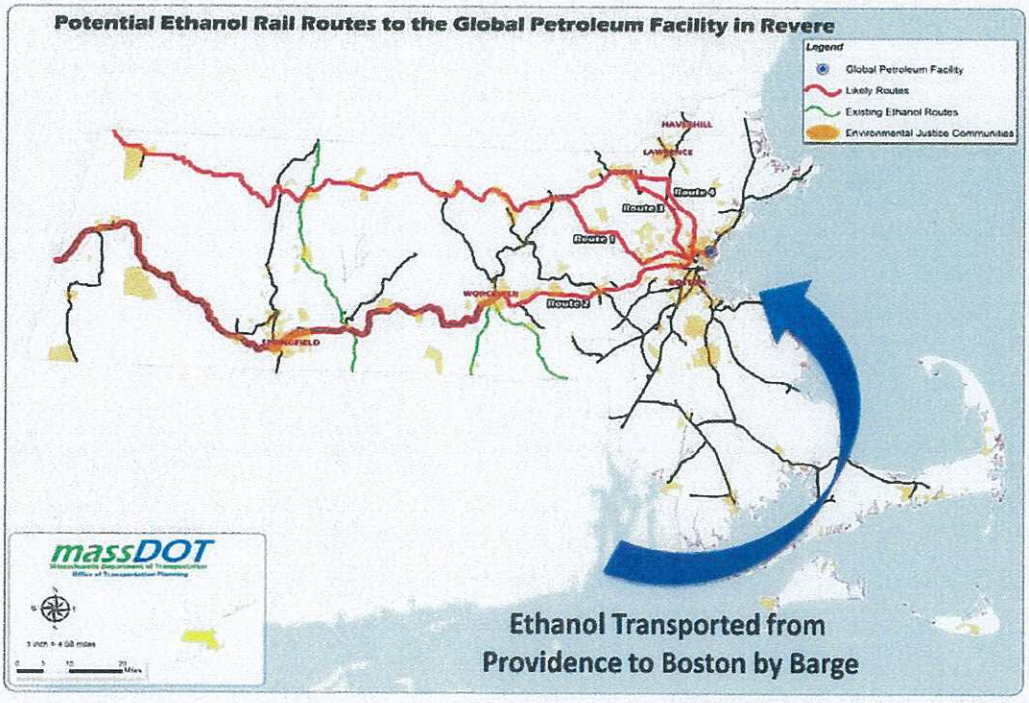
traveling through Pittsfield, Springfield, and then Worcester, where it connects to a number of rail lines, including the MBTA Worcester Commuter Rail Line, which is also the freight connection into Boston. These two routes link to the four possible routes that could be used to transport ethanol to the Global facility in Revere. These routes are highlighted in Figure 2-2.

Currently, ethanol is transported through Massachusetts on the CSX mainline and the New England Central Railroad to Worcester. From Worcester the ethanol trains are transported down to the Motiva Terminal in Providence where the ethanol is transferred to a barge for delivery to Global and other facilities. Barges typically carry between 680,000 and 2.5 million gallons of ethanol per vessel. As shown in Figure 2-2, ethanol trains currently pass through many dense urban areas; these include Pittsfield, West Springfield, Springfield, Greenfield, and Worcester in Massachusetts, as well as Providence, Rhode Island.

The north-south route, called the New England Central Railroad, enters into Massachusetts in Northfield from Vermont. The route primarily heads due south until Amherst, where it veers to the south-east until it crosses the Massachusetts Turnpike in Palmer. Once in Palmer the route heads due south again until it crosses the border into Connecticut in Monson. The route then re-enters Massachusetts in Webster and heads directly to into Worcester. At the freight terminal in Worcester freight that carries on to Providence then heads south-east into Providence crossing at Blackstone. Given that ethanol is primarily produced in the Midwest, this route will likely not be involved in the transportation of ethanol to the study area.

Figure 2-2 shows the potential routes that would be used to transport ethanol to the Global facility.

Figure 2-2: The Massachusetts Freight Railroad System & Potential Ethanol Routes



Rail Routes within the Study Area

As shown in Figure 2-2, there are a number of routes that Global could use to transport ethanol by rail directly to its Revere terminal. These rely upon either of the two main east-west rail routes through the Commonwealth, the Pan Am Southern Mainline and the CSX Mainline, which would then connect to one of four rail routes to access Revere. The Pan Am Southern Mainline could access the study area via the Fitchburg Commuter Rail Line (Route 1), the Lowell Commuter Rail Line (Route 3), or the Haverhill Commuter Rail Line (Route 4), while the CSX Mainline would access the study area via the Worcester Commuter Rail Line (Route 2).

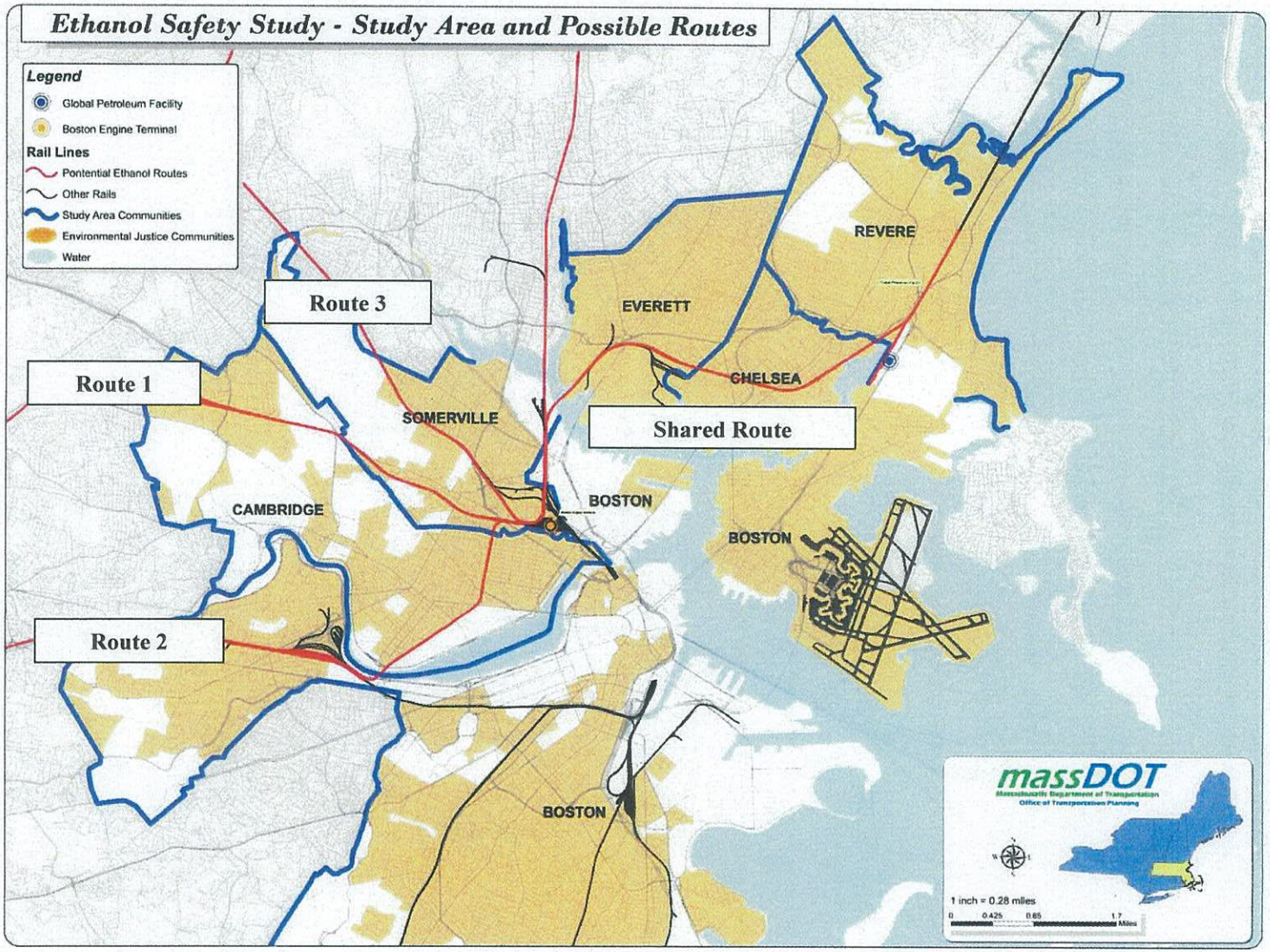
Once in the study area, each of these four routes would rely on the same route to make the connection between Somerville and Revere. That route accesses the Haverhill Commuter Rail Line in the vicinity of the Boston Engine Terminal and proceeds north into Somerville. At Assembly Square, the route switches to the Newburyport/Rockport Commuter Rail Line, crossing the Mystic River and passing through Everett and Chelsea to enter Revere. Once in Revere, the route continues north to approximately Revere Street where trains would need to make a reverse move to be switched to the spur track that leads to the Global facility. This Shared Route is shown in Figure 2-3.

Based upon current plans for the upgrade of Global's facility, the primary rail route that is expected to be used for transporting ethanol through the study area to its final destination in Revere is the Pan Am Southern Mainline. Route 1, which accesses the study area via the Fitchburg Commuter Rail Line, would be the most direct route for the transportation of ethanol to Global's facility. This potential route heads east along the Fitchburg commuter rail line into Somerville where the route would curve around the Boston Engine Terminal (BET) to access the Shared Route.

While Route 1 is the most direct rail route, two other possible rail routes – Route 2 and Route 3 - have been selected for a full evaluation as part of this report. Route 2 uses the CSX Mainline and enters the study area in Allston and travels through Brighton by means of the Worcester Commuter Rail Line. The route then crosses the Charles River via the Gran Junction Railroad Bridge and passes through Cambridge into Somerville where the route would curve around the Boston Engine Terminal (BET) to access the Shared Route. Like Route 1, Route 3 uses the Pan Am Southern Mainline but accesses the study area via the Lowell Commuter Rail Line into Somerville where the route would curve around the Boston Engine Terminal (BET) to access the Shared Route. Route 4 which could possibly carry ethanol utilizing the Haverhill Commuter Rail Line was not selected for a full evaluation because of operational considerations (additional distance, an added reverse move, etc.) that make its use unlikely.

Figure 2-3 shows the three routes chosen for a full evaluation and the approximate limits of the shared route that would be used by all three routes.

Figure 2-3: Possible Ethanol Rail Routes in the Study Area



There are four other rail routes within the study area that were not selected for consideration because they are not expected to carry ethanol. The Newburyport/Rockport Commuter Rail Line north of Revere Street in Revere was not included in the analysis because it lacks a connection to the remainder of the freight rail network. The Fairmount/Providence/Stoughton Commuter Rail Lines and the Old Colony Commuter Rail Lines were not included in the analysis due to the circuitous route necessary to connect to the Global facility. The Boston Mainline through downtown Boston was not included because there is no possible connection to the Global facility beyond the Grand Junction and because hazardous materials are not permitted to pass through the Prudential Tunnel in Boston.

Detailed Rail Route Descriptions

Route 1 accesses the study area at the Belmont/Cambridge line and heads east through Cambridge along the Fitchburg Commuter Rail Line passing under the Alewife Brook Parkway and through Porter Square. At Porter Square, the route passes into Somerville roughly paralleling Somerville Avenue into Union Square where it then passes under the McGrath Highway in the vicinity of the Twin City Plaza, to access the Boston Engine Terminal (BET), where it then joins the Shared Route.

Route 2 accesses the study area at the Newton/Boston line and heads east along the Worcester Commuter Rail Line which parallels the Massachusetts Turnpike through Allston and Brighton. The route passes through Beacon Park Yards in Allston, with trains then switching onto the Grand Junction route that crosses the Charles River and passes into Cambridge. In Cambridge, the Grand Junction route parallels Vassar Street until it turns north crossing Broadway and Cambridge Street before it enters Somerville, crossing under the McGrath Highway, in the vicinity of the Twin City Plaza, to connect to the BET, where it then joins the Shared Route.

Route 3 accesses the study area at the Medford/Somerville line and heads southeast along the Lowell Commuter Rail Line through a portion of Somerville and then enters Medford, leaving the study area. The route then re-enters Somerville and the study area, crossing under Broadway near Ball Square and following the Lowell Commuter Rail Line between Medford Street and Highland Avenue. The route then crosses under the McGrath Highway just north of the intersection with Highland Avenue and passes through the Inner Belt neighborhood to connect to the BET, where it joins the Shared Route.

The **Shared Route** starts at the BET then traverses the Haverhill Commuter Rail Line heading north. At Assembly Square in Somerville, the route switches to the Newburyport/Rockport Commuter Rail Line, crossing the Mystic River and passing through Everett and Chelsea to enter Revere. Once in Revere, trains would undertake a reverse move to enter the spur track that leads to the Global facility. To do this, the train would travel along the Newburyport/Rockport commuter rail line as far north as Revere Street and then run in reverse and be switched onto the East Boston spur to access the Global facility.

2.2 Physical Conditions of the Rail Routes

The rail routes within the study area are owned and maintained by the MBTA and MassDOT. Therefore, they share some similar physical characteristics, including track condition, track maintenance, signal control, and general operating speeds. Other physical characteristics, such as number of tracks, right-of-way width, and number of at-grade crossings vary with each route.

Each of these routes was purchased from a freight railroad and the freight railroads retain the right to operate freight service over the tracks through a permanent easement. Pan Am Railways (as the successor to the Boston and Maine Railroad) owns the freight easements over Route 1, Route 3, and the Shared Route. CSX Transportation owns the freight easements over Route 2, including the Grand Junction.

Railroad Track Condition

The MBTA and MassDOT currently maintain the railroad tracks that are used for MBTA commuter rail passenger service to Class 3 railroad standards as defined in the *Track Safety Standards Compliance Manual*. This manual provides a classification system to measure overall track quality based on the condition of the roadbed, track geometry, track structure, and track devices. As shown in Table 2-1, the classifications range from "excepted" through Class 9. Each class of railroad track carries separate speed limits for freight trains and passenger trains.

Table 2-1: FRA Classification Requirements Allowable Speeds

Over track that meets all of the requirements prescribed in this part for	The maximum allowable speed for freight trains is	The maximum allowable speed for passenger trains is
Excepted	10 mph	N/A
1	10 mph	15 mph
2	25 mph	30 mph
3	40 mph	60 mph
4	60 mph	80 mph
5	80 mph	90 mph
6	110 mph	
7	125 mph	
8	160 mph	
9	200 mph	

The MBTA contracts out the operation of its commuter rail system, including the maintenance of the tracks, to the Massachusetts Bay Commuter Railroad (MBCR). As a safeguard of the track condition and passenger safety and comfort, the MBTA has stipulated that MBCR must maintain all railroad tracks to Class 4 standards. This ensures that, even if the track should deteriorate somewhat between inspections, it is always compliant with the desired Class 3 standards. The MBTA also provides continuously welded track along the commuter rail lines; this provides added safety for rail operations by removing the rail joints, which can be a source of derailments if they are allowed to deteriorate significantly. It should be noted that the Grand Junction through Cambridge, while maintained to meet Class 3 railroad standards does not have continuously welded rail. Similarly, the East Boston Spur in Revere is currently an "excepted" track without continuously welded rail. However, upgrades will be required to the East Boston spur before ethanol trains utilize it.

Signaling Equipment

The MBTA signaling systems are controlled by one of two control centers, the North Side center for commuter rail lines into North Station, and the South Side center for commuter rail lines into South Station. These two stations communicate with the signal systems through a mix of fiber optic cables, copper cables, and wireless communications infrastructure that follows the rail right-of-way. The signals add a factor of safety to the rail routes both because they help control train movements and also because they allow for detection of missing rail segments and open switches. However, it should be noted that neither the Grand Junction line through Cambridge nor the East Boston Spur in Revere are signalized.

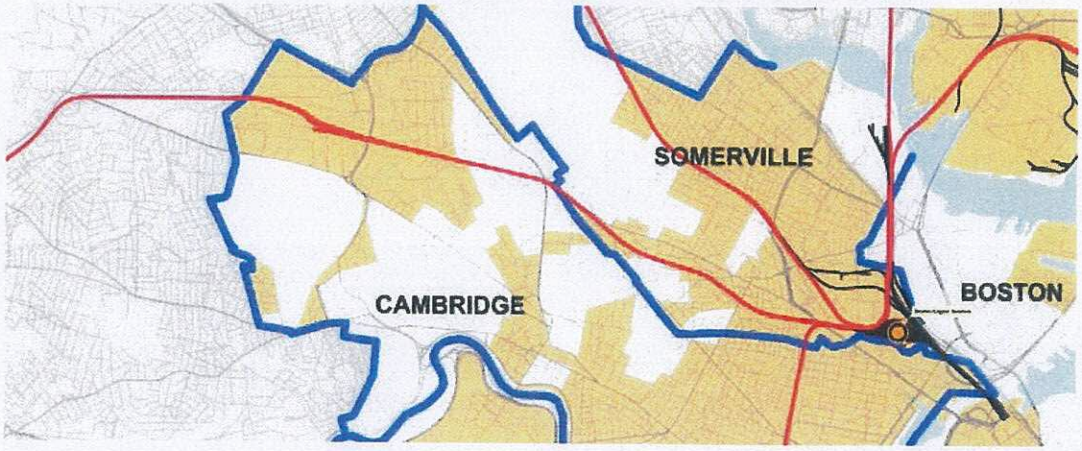
At-Grade Crossings

There are two types of warning indicators for all at-grade public railroad crossings: passive and active. Passive crossings are indicated by signs approaching the crossing informing drivers and pedestrians that a crossing is approaching. This could be in the form of street signs, or painting markings. Active warning signs are indicated by flashing lights and/or the use of gates to physically stop vehicles or pedestrians from crossing the tracks when a train is approaching, passing, or moving away from the crossing. A complete inventory of the crossings along each of the routes is included below in the description of each route.

Right-of-Way

The right-of-way width of most railroad lines in Massachusetts is approximately 70 feet. Any locations with wider right-of-way are noted in the description of each route.

Figure 2-4: Route 1 - Fitchburg Line to the Boston Engine Terminal (BET)

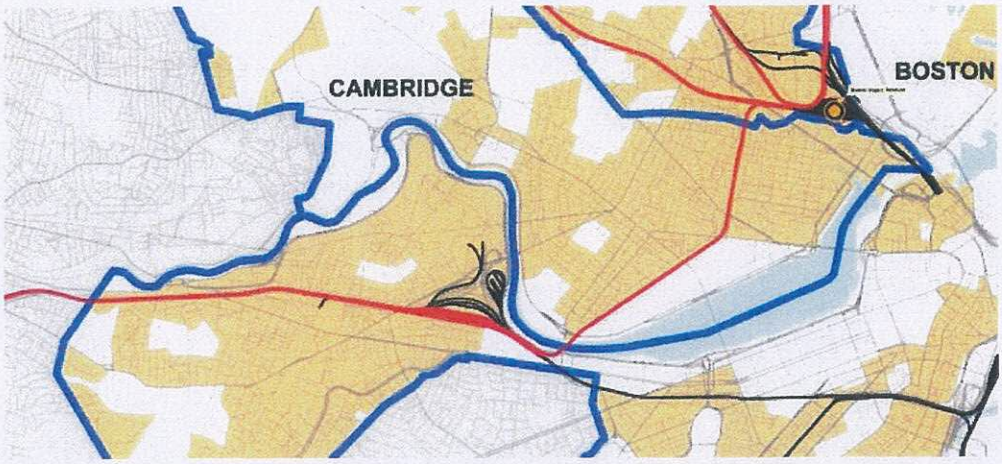


Route 1, shown in Figure 2-4, consists primarily of two railroad tracks from the Cambridge city line through to the Boston Engine Terminal. The widest track cross section is located in West Cambridge, west of the Alewife Brook Parkway, where there are five track sidings primarily used for maintenance of way equipment for the MBTA. There are two at-grade crossings along this segment as can be seen in the following table. The table additionally shows the number of tracks at each crossing.

Table 2-2: Route 1 Roadway/Rail crossings, locations and type

Street Crossing	Tracks	Type of Crossing	Warning Type- passive/ active	Type of Signals	Pedestrian Crossing
Switch-Grand Junction Section Track					
McGrath Highway	5	bridge	-	-	-
Medford Street	3	bridge	-	-	-
Prospect Street	2	bridge	-	-	-
Webster Street	2	bridge	-	-	-
Washington Street	2	bridge	-	-	-
Dane Street	2	bridge	-	-	-
Park Street	3	at-grade	active	street marking and gates	gates
Sacramento Street	2	bridge	-	-	-
Beacon Street	2	bridge	-	-	-
Porter Sq	2	bridge	-	-	-
Massachusetts Avenue	2	bridge	-	-	-
Signal Bridge	2	bridge	-	-	-
Walden Street	2	bridge	-	-	-
Yerxa Street	2	bridge	-	-	-
Sherman Street	2	at-grade	active	no street markings, gate only	gate
Alewife Brook Parkway	4	bridge	-	-	-
Culvert	7	bridge	-	-	-

Figure 2-5: Route 2 – Framingham/Worcester Line to the Boston Engine Terminal (BET)



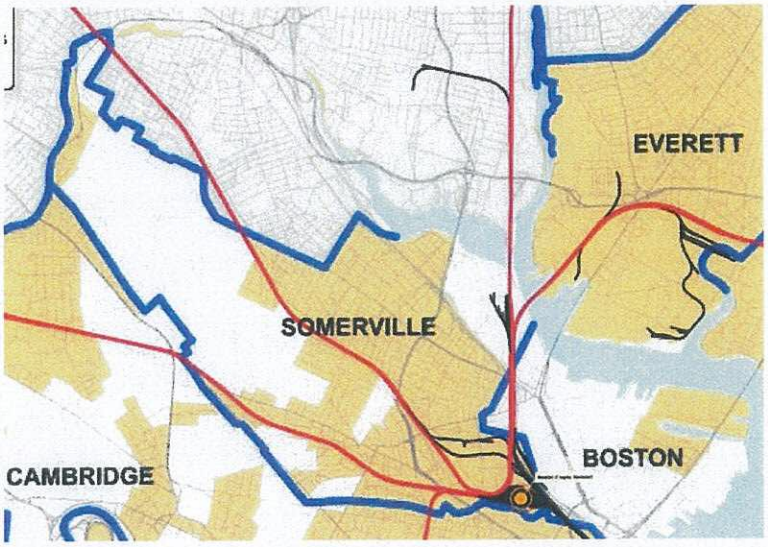
Route2, shown in Figure 2-5, consists primarily of two tracks from the Boston city line to the Beacon Park Yard in Allston and one railroad track from the Beacon Park Yard to the Boston Engine Terminal. The widest track cross section is located at the Beacon Park Yard, where there is a former CSX freight offloading operation. In addition to the sidings in the Beacon Park Yard facility, there is another siding ("the long siding") between the Fort Washington Pedestrian Way and Massachusetts Avenue. This route crosses the Charles River on a bridge in the vicinity of the BU Bridge. The route also passes through two buildings on the campus of the Massachusetts Institute of Technology (MIT). There are two major

switching moves along this route located just east of the Beacon Park Yard in Boston and at the BET. There are seven public and two private at-grade crossings along this segment as can be seen in the following table. The table additionally shows the number of tracks at each crossing.

Table 2-3: Route 2 Roadway/Rail crossings, locations and type

Street Crossing	Tracks	Type of Crossing	Warning Type- passive/ active	Type of Signals	Pedestrian Crossing
Grand Junction					
McGrath Highway	5	bridge	-	-	-
Medford Street	1	at-grade	active	gates	gates
Cambridge Street	1	at-grade	active	street markings & gate	gates
Binney Street	1	at-grade	passive	street markings	-
Broadway Street	1	at-grade	active	street markings & gates	gates
Main Street	1	at-grade	passive	street markings	-
University Pedestrian Way	1	at-grade	active	-	gates
Massachusetts Ave	2	at-grade	active	street markings & gates	gates
Private Street	2	bridge	-	-	-
University Pedestrian Way	2	at-grade	active	-	gates
Memorial Drive	2	bridge	-	-	-
Charles River	1	bridge	-	-	-
Soldiers Field Road	1	bridge	-	-	-
Switch - Beacon Park Yard					
Switch - Framingham Line					
Framingham-Worcester Line					
Switch - Grand Junction					
Cambridge Street	2	bridge	-	-	-
Underpass	2	bridge	-	-	-
Cambridge Street	2	bridge	-	-	-
Franklin Road	2	bridge	-	-	-
Everett Street/Frontage Road	2	bridge	-	-	-
Switch - Brighton Yard					
Market Street	2	bridge	-	-	-
North Beacon Street	2	bridge	-	-	-
Parsons Street	2	bridge	-	-	-
Brooks Street	2	bridge	-	-	-
Massachusetts Turnpike	2	bridge	-	-	-

Figure 2-6: Route 3 – Lowell Line to the Boston Engine Terminal (BET)

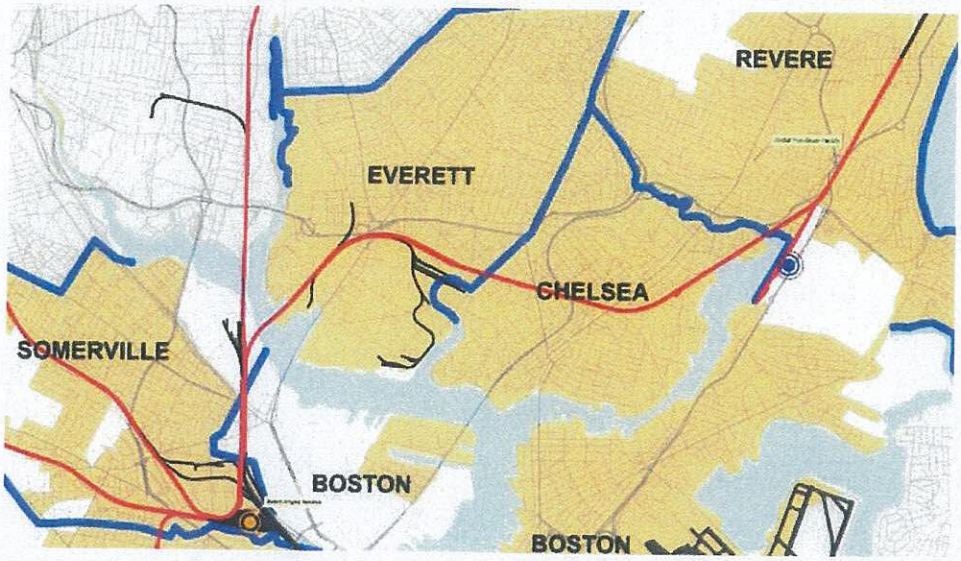


Route 3, shown in Figure 2-6, consists primarily of two railroad tracks from the Somerville city limits to the Boston Engine Terminal. This route passes through the campus of Tufts University. The widest track cross section is located just prior to the Boston Engine Terminal where there are four tracks. This route crosses the Mystic River as it enters the City of Somerville. There are no at-grade crossings along this segment, as noted in the following table.

Table 2-4: Route 3 Roadway/Rail Crossings, locations and type

Street Crossing	Tracks	Type of Crossing	Warning Type- passive/ active	Type of Signals	Pedestrian Crossing
Pipe Tunnel	2	bridge	-	-	-
B & A Tracks	2	bridge	-	-	-
Inner Belt Road	2	bridge	-	-	-
Switch - Yard 8 and 10 Lead					
Washington Street	5	bridge	-	-	-
Cross Street	3	bridge	-	-	-
Northern Artery	3	bridge	-	-	-
Wanut Street	3	bridge	-	-	-
Medford Street	3	bridge	-	-	-
School Street	3	bridge	-	-	-
Sycamore Street	3	bridge	-	-	-
Central Street	3	bridge	-	-	-
Switch - No. Cambridge					
Lowell Street	3	bridge	-	-	-
Mystic Valley Parkway	2	bridge	-	-	-

Figure 2-7: Shared Route - Boston Engine Terminal to the Global Partners Facility



The **Shared Route**, shown in Figure 2-7, consists primarily of two railroad tracks from the Boston Engine Terminal through to the East Boston spur line to the Global Partners facility. The widest track cross section is located at Assembly Square in Somerville, where the Newburyport/Rockport Commuter Rail Line parallels the Haverhill Commuter Rail Line and an industrial spur line for a total of six railroad tracks. There are also a significant number of siding tracks that serve the industrial properties along this route, including the Mobil facility in Everett and the New England Produce Center in Chelsea. The shared route passes over the Mystic River on a causeway. The East Boston spur line currently consists of 2 railroad tracks that are partially buried. As part of the proposal to transport ethanol to the Global facility, Pan Am Railways is planning to upgrade the line to a single railroad track with sidings for the ethanol trains located adjacent to the Global facility. There are three major switching moves along this route located at the BET, in Assembly Square, and at the East Boston branch in Revere near the intersection of Route 1A and Route 16. There are seven at-grade crossings along this segment, as shown in Table 2-5. The table also shows the number of tracks at each crossing.

Table 2-5: Shared Route, Roadway/Rail crossings, locations and type

Street Crossing	Tracks	Type of Crossing	Warning Type- passive/ active	Type of Signals	Pedestrian Crossing
Switch - Mystic Junction Yard					
Cambridge Street	2	bridge	-	-	-
Sullivan Square Station	1	bridge	-	-	-
Broadway/Maffa Way	5	bridge	-	-	-
Mystic Avenue	5	bridge	-	-	-
Pedestrian Path	2	bridge	-	-	-
Mystic River	2	bridge	-	-	-
Monsanto Private 1	2	bridge	-	-	-
Monsanto Private 2	2	bridge	-	-	-
Switch - Saugus Branch					
Broadway	3	bridge	-	-	-
Culvert	4	bridge	-	-	-
2nd Street	2	at-grade	active	gates	-
3rd Street	2	at-grade	active	gates	-
Everett Street	2	at-grade	active	street markings & gates	gates
Spruce Street	2	at-grade	active	gates	-
NE Expressway	2	bridge	-	-	-
Arlington Street	2	at-grade	active	street markings & gates	
6th Street	2	at-grade	active	street markings & gates	
Washington Avenue	2	bridge	-	-	-
Broadway	2	bridge	-	-	-
Switch - Chelsea Yard					
Eastern Avenue	2	at-grade	active	street markings & gates	gates
Forbes Street	2	bridge	-	-	-
Mill Creek	2	bridge	-	-	-
Railroad Street	2	bridge	-	-	-
Switch - East Boston Branch					
Culvert	3	bridge	-	-	-
Winthrop Avenue	3	bridge	-	-	-
Lee Burbank Highway	2	bridge	-	-	-
Beach Street	2	bridge	-	-	-
Wonderland	2	bridge	-	-	-
Revere Street	2	bridge	-	-	-

2.3 Operational Conditions Along Each Route

The three routes selected for a full analysis are used each day by MBTA passenger trains. Passenger train movements include scheduled MBTA commuter rail trains, scheduled Amtrak passenger trains, and movement of empty passenger rail equipment for maintenance or scheduling purposes (referred to as "deadhead movements"). The number of passenger train movements is shown in Table 2-6. The deadhead movements are primarily between North Station and the Boston Engine Terminal, which is used for mid-day train storage and maintenance of equipment. It should be noted that the numbers of trains moving across each line can vary depending on operating conditions.

Table 2-6: 2012 Average Daily Passenger Train Movements within the Study Area Routes

	Study Area Route			
Passenger Movements	1 - Fitchburg	2 - Worcester/GJ	3 - Lowell	Shared
MBTA Commuter Rail	34	41	58	62
Amtrak	0	2	0	0
Deadheads	10	0	19	11
Total	**44**	**43**	**77**	**73**

The MBTA and the freight companies have operating agreements that dictate how the freight and passenger trains interact along the three routes. Under these agreements, the MBTA controls the dispatching of all trains within the study area; as a result, passenger trains are given priority over the freight trains. Because of this priority for passenger movements, freight can move more freely at night when there are no passenger trains running. As a result, the freight railroads choose to make most, but not all, freight movements outside of the MBTA's standard operating times. Freight that must be moved during the day can move more freely outside of peak hours, when the passenger train traffic is highest. Any freight movements made within the operating times for the MBTA system would, therefore, most likely move during mid-day. Table 2-7 shows the span of passenger service along each of the study routes.

Table 2-7: Standard Hours of Weekday Passenger Train Operations

	Study Area Route			
	1 - Fitchburg	2 - Worcester/GJ	3 - Lowell	Shared
Start Time	6:36 AM	4:05 AM	5:45 AM	6:03 AM
End Time	12:20 AM	1:30 AM	12:22 AM	11:56 PM
Span of Service	17 h 44 m	21 h 25 m	18 h 37 m	17 h 53 m

The existing freight operations along the three routes are less consistent than the passenger operations because they are dependent on the needs of the rail customers along the routes. However, there are three freight trains that move along the study area routes on a regular basis. The first is a delivery of sand and/or gravel to Boston Sand & Gravel, which utilizes Route 3. The second is a mixed commodity train including hazardous materials that travels from Lawrence to Chelsea and Salem, which utilizes Route 3 and the Shared Route. The final freight train that operates on a regular basis is the "Fruit Train," which travels to the New England Produce Market in Chelsea via Route 2 and the Shared Route. Table 2-8 provides a summary of the freight rail movements along the study area routes.

Table 2-8: 2012 Average Daily Freight Train Movements within the Study Area Routes

Freight Movements	Study Area Route			
	1 - Fitchburg	2 - Worcester/GJ	3 - Lowell	Shared
Boston S&G	0	0	2	0
Lawrence to Salem	0	0	2	2
Produce Market	0	2	0	2
Total	**0**	**2**	**4**	**4**

Chapter 3: Evaluation of Impact on Public Safety

3.1 Rail Safety Record and Potential Safety Risks

In order to identify potential risks to public safety that could be caused by the transport of ethanol by rail in the Commonwealth, the following section provides a review of available information on rail accidents in the United States and Massachusetts for the past five years. On the national level, the analysis only includes train accidents that have resulted in the release of ethanol or another (unidentified) hazardous material. Focusing on these accidents provides a picture of the scale of ethanol accidents, the factors that contributed to the accident, the factors that contributed to the ethanol release, and the emergency response techniques employed. These aspects are crucial to understanding the risks of an accident involving an ethanol train.

The analysis of rail accidents in Massachusetts is split into two separate categories, rail accidents and highway-rail crossing accidents. Rail accidents represent events where a train collided with another train or derailed, while highway-rail crossing accidents represent events where a train and motor vehicle collide at an at-grade crossing. Both accident types are important for understanding the overall safety risks involved in transporting ethanol through the study area. Due to their very small chance of leading to an ethanol spill, this safety analysis does not include an evaluation of trespassing incidents on the railroad lines. The materials reviewed were those made publicly available by the Federal Railroad Administration (FRA), the Association of American Railroads (AAR), and the National Railroad Transportation Board (NTSB).

Nationwide Ethanol Rail Accidents

National freight carriers transport roughly 29.4 million carloads of freight every year across more than 140,000 miles of rail in the United States, according to the American Association of Railroads (AAR). Just under 1.8 million (or 6.1 percent) of the carloads moved each year contain hazardous materials. Of that, more than 200,000 of the carloads contain ethanol, making it the top hazardous material moved by train. Table 3-1 lists the top hazardous materials moved by train.

Table 3-1: Top Ten Hazardous Materials (by Volume) shipped by rail

Rank	Material	DOT Class #	DOT Class Name
1	Ethanol & Ethanol-Gasoline Mix	3	Flammable Liquid
2	Sodium Hydroxide	8	Corrosive
3	Liquefied Propane Gas	2.1	Flammable Gas
4	Molten Sulfur	9	Misc. Hazmat ORM-D
5	Sulfuric Acid	8	Corrosive
6	Anhydrous Ammonia	2.2	Non Flammable/Non Toxic Gas
7	Chlorine	2.3	Toxic Gas and/or Corrosive - Oxidizing
8	Asphalt	9	Misc. Hazmat ORM-D
9	Ammonium Nitrate Fertilizer	5.1	Flammable Liquid
10	Ethylene Glycol	9	Flammable Liquid

Source: Massachusetts Department of Environmental Protection and CSX

In the five years reviewed, approximately one percent of total accidents released hazmat, and 0.32 percent released ethanol. Table 3-2 details the summary statistics for accidents in the United States from 2008 to 2012.

Table 3-2: Summary Statistics for Rail Accidents, 2008-2012

	2008	2009	2010	2011	2012
Accidents Involving Hazmat					
Train Only (Not Highway-Rail)	2,481	1,910	1,902	2,010	1,678
Trains Carrying Hazmat	754	617	580	579	484
Involving the Release of Hazmat	22	22	21	20	23
% Involving Release of Hazmat	0.89%	1.15%	1.10%	1.00%	1.49%
Accidents Involving Ethanol, or Not Otherwise Specified Hazardous Material (NOS)					
Involving Release of Ethanol or NOS	4	8	4	7	8
% Involving Release of Ethanol or NOS	0.16%	0.42%	0.21%	0.35%	0.48%

Source: The Federal Railroad Administration

Table 3-3 lists all accidents involving ethanol or unknown hazardous materials, as catalogued by the FRA, in the United States from 2008 to 2012. The FRA identifies the following information for each: date of accident, state, county, type of track, primary cause of the accident, rail road property damage, people killed and/or injured, area evacuated, reported speed of accident, and number of locomotives and/or cars derailed. From 2008 to 2012 there were 31 accidents, 21 of which included the release of ethanol and 10 others that resulted in the release of an undefined hazardous material. Those 10 accidents have been included in the statistical analysis as if they were ethanol in order to provide the most conservative analysis.

Table 3-3: National Rail Accidents Involving Ethanol or Unknown Hazardous Material (2008-2012)

Date	State	County	Type Track	Primary Cause	Property Damage $	Killed	Injured	Evac-uated	Speed Mph	Derailed	
										Loco	Car
7/29/2008	MN	Houston	Main	Equipment	2,294,052	0	0	0	25	0	28
8/16/2008	NC	Columbus	Main	Equipment	358,839	0	2	0	17	0	10
8/22/2008	OK	Oklahoma	Main	Track	852,915	0	0	35	19	0	14
3/8/2009	IA	Buchanan	Siding	Track	148,926	0	0	31	8	0	7
4/9/2009	CA	Los Angeles	Yard	Track	400,924	0	0	0	10	0	6
5/18/2009	IL	Cook	Yard	Equipment	13,919	0	0	0	9	0	1
6/19/2009	IL	Winnebago	Main	Track	1,816,653	1	11	600	34	0	19
7/23/2009	ND	Mclean	Main	Track	610,000	0	0	0	11	0	7
8/15/2009	ME	Oxford	Main	Track	1,106,830	0	0	2	27	0	20
9/15/2009	TN	Knox	Main	Human Factor	462,073	0	0	25	10	0	8
11/27/2009	MN	Hennepin	Yard	Human Factor	124,506	0	0	0	7	0	5
4/19/2010	OH	Williams	Main	Equipment	2,431,870	0	0	28	44	0	39
8/3/2010	NE	Boone	Main	Human Factor	334,774	0	0	0	2	0	16
2/6/2011	OH	Hancock	Main	Track	1,917,500	0	0	20	46	0	33
5/4/2011	OR	Multnomah	Main	Equipment	785,677	0	0	0	24	0	11
7/15/2011	IL	Iroquois	Main	Track	106,510	0	0	0	22	0	1
7/19/2011	SD	Brookings	Yard	Track	89,842	0	0	0	8	0	5
10/7/2011	IL	Bureau	Main	Track	1,847,619	0	0	500	37	0	26
6/1/2012	IN	Pike	Main	Track	876,000	0	0	0	25	0	8
7/11/2012	OH	Franklin	Main	Miscellaneous	681,866	0	2	100	23	0	17
10/12/2012	TN	Knox	Yard	Track	250,000	0	0	0	5	0	6
Type of Hazmat Not Otherwise Specified (NOS)											
8/28/2008	NM	Curry	Yard	Equipment	23,117	0	0	0	3	0	1
2/20/2010	CA	Kern	Main	Track	2,222,672	0	0	35	20	0	6
9/13/2010	WI	Pierce	Main	Equipment	2,091,287	0	0	14	54	0	9
9/13/2011	TX	Galveston	Yard	Track	69,600	0	0	14	8	0	8
9/16/2011	TX	Potter	Yard	Human Factor	946,211	0	3	200	5	0	1
3/27/2012	IN	Nobel	Main	Track	1,311,523	0	0	54	47	0	25
8/5/2012	MT	Fallon	Main	Track	1,400,085	0	0	0	23	0	18
8/10/2012	NV	Clark	Siding	Human Factor	16,205	0	0	3	8	0	6
11/1/2012	AZ	Graham	Main	Track	66,335	0	0	0	22	0	7
11/30/2012	NJ	Gloucester	Main	Miscellaneous	413,388	0	121	0	8	0	7

The major causes of the accidents were inspection errors, maintenance problems, or lack of communication between train crews. The train speed and railcar design were the primary contributing factors to the release of ethanol. Although actual damage in most accidents was to the immediate area surrounding the tracks, the required minimum distance of a half mile was evacuated for each of the relevant accidents. In some situations, a greater distance was evacuated based on the specific circumstances. The average number of people evacuated per accident was 54, and the average cost of damages to railroad property was $841,000.

Of the 31 accidents, only the accident in Cherry Valley, Illinois resulted in a fatality. This accident occurred in a small rural community. The derailment was caused by a wash-out of a portion of the track, which was discovered about one hour before the train was scheduled to pass that section. The Canadian National Railway Company (CN) did not notify the train crew of the known wash-out in time to stop the train due to the inadequacy of CN's emergency communications procedures. Contributing to the accident was CN's failure to work with the local county government to develop a comprehensive storm water management plan in order to address previous wash-outs of track in 2006 and 2007. Contributing to the severity of the accident was CN's failure to issue a flash flood warning to the train crew and the design of the tank cars, which were subject to damage and catastrophic loss of hazardous materials during a derailment.

The DOT-111 is the primary model of tank car that transports liquid non-pressurized hazmat commodities throughout the United States. According to the National Transportation Safety Board (NTSB), 69 percent of all tank cars are DOT-111, and an estimated 40,000 DOT-111 cars are used to transport ethanol. The National Transportation Safety Board (NTSB) Office of Railroad, Pipeline and Hazardous Materials Safety has recently completed a report on the DOT-111 model tank cars. The report cites several accidents where the DOT-111 tank car design is the primary cause for the release of a hazardous material. The main concern with the cars is that upon impact, the tanks can puncture and valves can break open.

These design issues resulted in a collaborative effort between the AAR and the NTSB, where the AAR has suggested design modifications for all new DOT-111 tank cars made after October 1, 2011. However, the AAR actions do not address the existing fleet of DOT-111 railcars. The full safety benefits of the new design will only be realized once the existing fleet has been retired at the end of each car's useful life, which may be as much as 40 years. NTSB reports that ultimately the safety benefits suggested will not be fully realized if old and new tank cars are commingled in trainsets.

The potential for a breakdown in communication is increased at locations along rail lines that may require additional surveillance and maintenance, as the necessary information needs to be relayed to all pertinent members of the train crews. These locations include, but are not limited to: sidings, yards, switches, bridges, and tunnels; areas that are subject to impacts of severe weather; and areas that are more remote. A critical issue is the condition of a railroad mainline in a more remote area; trains travel at much higher speeds on rail mainlines and in more remote areas, where it is less likely that a problem will be detected. The railroad lines in the study are all in dense urban areas, and they are used many times daily for passenger trains, which should result in rapid detection of a problem.

The available information showed that five of the 31 accidents resulted in a fire. In each case the responding fire departments did not attempt to extinguish the fire, but let it burn out. It is important to note that employing this strategy at any accident within the study area would carry additional risks due to the high population density and the presence of structures adjacent to the rail routes.

Rail Accidents in Massachusetts

A review of all railroad accidents in Massachusetts provides a better understanding of the potential safety issues locally. Like the nationwide accident results analyzed above, five years worth of accidents were reviewed (2008 through 2012). However, all accidents, not just those involving hazardous materials, were included in the Massachusetts analysis. During this time period, 68 accidents were reported in Massachusetts, including five collisions, 39 derailments, and 24 other accidents. Thirty-eight accidents occurred on main lines, while 30 accidents occurred in yards and sidings. There were 28 accidents with passenger cars, 21 accidents involved freight traffic, and 19 with other types of train cars. Of the 68 accidents identified, none involved the release of ethanol and none resulted in a fatality.

Of all the accidents reported in Massachusetts, five resulted in personal injury and no evacuations were ordered. A record for each of these 68 accidents can be found in Appendix 2, along with the accident report data.

Highway-Rail Accidents in Massachusetts

From 2008-2012 there were 37 reported highway-rail accidents at grade crossings in Massachusetts. Of the 37, four accidents resulted in a fatality; two were deaths of automobile occupants, one death was a suicide, and one death was a child on a bicycle. Only eight of the remaining 33 accidents resulted in a personal injury. The detailed reports of these accidents are included in Appendix 2.

In all of the accidents reported, the FRA has recorded what type of crossing protection was at each accident location. Out of the 37 accidents, three did not have any protection because they occurred inside private facilities; only one of them resulted in an injury. Most of the accidents, 31 of the 37, were with a personal vehicle, four rail accidents were with commercial vehicles; and two accidents were with pedestrians. In its reports, the FRA attributed the cause for all of the accidents to errors made by the motor vehicle operator or the person walking or bicycling across the tracks.

Table 3-4: Highway-Rail Accidents in Massachusetts (2008-2012)

Date	Railroad Company	City	Highway Name	Rail Equipment	Highway User	Crossing	Killed/ Injured
2/6/2008	CSX	West Springfield	Bridge St	Freight Train	Car	Gates	.
4/17/2008	MBTA	Canton	Washington St	Commuter Train	Car	Gates	.
5/8/2008	CSX	Bellingham	Hardford Ave	Freight Train	Car	Cross bucks	.
5/25/2008	MBTA	Revere	Oak Island	Commuter Train	Pedestrian	Gates	1/0
7/16/2008	CSX	Framingham	Concord St	Freight Train	Car	Gates	.
9/22/2008	CSX	Foxboro	North St	Freight Train	Car	Flashing lights	0/1
9/26/2008	ATK	Amherst	Bridge St	Passenger Train	Van	Flashing lights	0/1
11/14/2008	MBTA	Abington	North Ave	Commuter Train	Car	Gates	0/1
2/27/2009	MBTA	Belmont	Brighton St	Commuter Train	Pedestrian	Gates	1/0
7/17/2009	NECR	Monson	Chestnut St	MOW equip.	Car	Flashing lights	0/1
9/29/2009	ATK	Not Listed	Private	Passenger Train	Car	Stop signs	.
9/29/2009	GRS	Springfield	Railroad Yard	Passenger Train	Car	Stop signs	.
12/21/2009	MBTA	Chelsea	Spruce St	Commuter Train	Car	Gates	.
1/13/2010	MBTA	Shirley	Patterson Rd	Commuter Train	Car	Gates	0/2
2/6/2010	NECR	Not Listed	Cranberry Pond Rd	Freight Train	Car	Cross bucks	.
2/15/2010	CSX	Taunton	Freemont St	Freight Train	Truck & Trailer	Flashing lights	.
3/14/2010	CSX	Berlin	West St	Maintenance	Car	Flashing lights	0/2
3/30/2010	CSX	Marlborough	Private Rd	Freight Train	Van	Cross bucks	.
4/22/2010	MBTA	Cambridge	Broadway	Light loco(s)	Car	Flashing lights	.
12/6/2010	MBTA	Braintree	Grove St	Commuter Train	Car	Gates	1/0
12/12/2010	NECR	Not Listed	Bay Rd	Freight Train	Car	Flashing lights	.
1/12/2011	MBTA	Waltham	South St	Passenger Train	Maintenance	Gates	.
1/18/2011	PW	Worcester	McKeon Rd	Freight Train	Car	Gates	.
1/27/2011	CSX	Foxboro	Mechanic St	Light loco(s)	Truck	Flashing lights	.
1/28/2011	MBTA	Rockport	Poole's Lane	Commuter Train	Car	Stop signs	.
3/4/2011	MBTA	Stoughton	Porter St	Passenger Train	Car	Flashing lights	.
3/17/2011	MBTA	Holbrook	EastHigh St	Commuter Train	Car	Gates	1/0
10/26/2011	ATK	Not Listed	StrathmoreMills Rd	Passenger Train	Car	None	.
11/10/2011	ATK	NORTHFIELD	Upper Farms Rd	Passenger Train	Truck & Trailer	Stop signs	.
1/13/2012	MBTA	Kingston	Route 3A	Commuter Train	Car	Gates	.
4/17/2012	CSX	West Springfield	Bridge St	Freight Train	Car	Gates	.
8/16/2012	ATK	Medford	High St	Passenger Train	Car	Gates	0/1
9/27/2012	CSX	Cambridge	Pedestrian Crossing	Freight Train	Car	Gates	.
11/8/2012	CSX	West Springfield	Yard Track Xing	Light loco(s)	Pickup Truck	None	.
11/9/2012	PW	Gardner	Whitney Rd	Light loco(s)	Car	Flashing lights	.
12/3/2012	CSX	Foxboro	Private Rd	Freight Train	Car	None	0/1
12/12/2012	PW	Worcester	Thomas St	Freight Train	Car	Gates	.

3.2 Potentially Exposed Populations

A major part of understanding the potential impact on public safety of transporting ethanol by rail is identifying the potentially exposed populations along the routes. The following section provides information on the populations and facilities potentially exposed in the event of an ethanol train accident.

Identifying the populations and facilities requires the definition of the potential reach of any ethanol incident. The U.S. DOT Emergency Response Guidebook recommends that an ethanol tanker or railcar be initially isolated for ½ mile in all directions, with evacuations of the same distance. The guide is an initial recommendation until the incident commander can assess the situation. The length of the train also factors into the definition of potentially exposed populations. The theoretical maximum length of a train within the study area, based on the state regulation that no grade crossing can be blocked for more than five minutes, is 100 railcars. Although an incident involving a whole train is very unlikely, this train length was used to provide a conservative estimate of the potential exposure. No plans have been discussed to bring in a train of that length to the Global Facility by any freight railroad.

These two conditions were then applied as a buffer around the routes identified in Section 2.1. These buffer zones were overlaid with the available data from the Massachusetts Geographic Information System (MassGIS) on Assisted Living Facilities, Nursing Homes, Rest Homes, Private/Public Colleges/Universities, Public/Private Schools, Hospitals, Fire Stations, and Commuter Rail/Transit Stations. These categories were selected based on the requirements set forth in Section 24 in Chapter 242 of the Acts of 2012. The potentially exposed facilities are listed in Tables 3-5, 3-6, 3-7, 3-8, 3-9, and 3-10.

Table 3-5: Assisted Living Facilities, Nursing and Rest Homes within ½-mile buffer zone

CODE	FACILITY NAME	ADDRESS	CITY
A5	WINGATE AT BRIGHTON REHAB & SN RESI	100 N BEACON ST	Boston
A6	PRESENTATION NURSING & REHAB CENTER	10 BELLAMY ST	BRIGHTON
A9	YOUVILLE HOUSE	1573 Cambridge ST	Cambridge
A11	Somerville HOME	117 SUMMER ST	Somerville
A12	CADBURY COMMONS	66 SHERMAN ST	Cambridge
A14	EASTPOINTE NURSING CARE CENTER	255 CENTRAL AVE	Chelsea
A15	NEVILLE PLACE	650 CONCORD AVE	Cambridge
A16	JEANNE JUGAN RESIDENCE	186 HIGHLAND AVE	Somerville
A17	NEVILLE CENTER AT FRESH POND FOR NU	640 CONCORD AVE	Cambridge
A18	HUTCHINS TRANSITIONAL CARE UNIT	230 HIGHLAND AVE	Somerville
A19	SANCTA MARIA NURSING FACILITY	799 CONCORD AVE	Cambridge
A20	DON ORIONE NURSING HOME	111 ORIENT AVE	East Boston
A21	FLORENCE & CHAFETZ HOME FOR SPECIALIZED CARE	175 CAPTAINS ROW	Chelsea
A22	COHEN FLORENCE LEVINE ESTATES	201 CAPTAINS ROW	Chelsea
A23	VISITING NURSE ASSISTED LIVING	259 LOWELL ST	Somerville
A24	Chelsea JEWISH NURSING HOME	17 LAFAYETTE AVE	Chelsea
A25	SOLDIERS' HOME IN MASS	91 CREST AVE	Chelsea
A26	HAVEN HEALTH CENTER OF Chelsea	932 BROADWAY	Chelsea
A27	MARGOLIS APARTMENTS HOUSING (FOR ELDERS)	260 CLARK AVENUE	Chelsea
A28	Chelsea SENIOR CENTER	10 RILEY WAY	Chelsea
A29	SENIOR LIVING BUILDING	5 ADMIRALS WAY	Chelsea
A30	SENIOR LIVING BUILDING	150 CAPTAINS ROW	Chelsea

Table 3-6: College or Universities within ½-mile buffer zone

CODE	FACILITY NAME	ADDRESS	CITY
C2	Boston University	121 Bay State Road	Boston
C3	Rets Technical Center	965 Commonwealth Ave	Boston
C4	Massachusetts Institute of Technology	77 Massachusetts Avenue	Cambridge
C5	Lesley University	29 Everett Street,	Cambridge
C7	Computer-ed Institute-Somerville	5 Middlesex Ave	Somerville
C8	Muscular Therapy Institute	122 Rindge Ave	Cambridge

Table3-7: Transit Stations within ½-mile buffer zone

CODE	FACILITY NAME	ROUTE	CITY
T3	Boston University East	GREEN: B - Boston College	Boston
T4	Boston University Central	GREEN: B - Boston College	Boston
T5	Harvard Avenue	GREEN: B - Boston College	Boston
T6	Boston University West	GREEN: B - Boston College	Boston
T7	Saint Paul Street	GREEN: B - Boston College	Boston
T8	Pleasant Street	GREEN: B - Boston College	Boston
T9	Packards Corner	GREEN: B - Boston College	Boston
T10	Babcock Street	GREEN: B - Boston College	Boston
T11	Kendall/MIT	RED: A - Ashmont B - Braintree C - Alewife	Cambridge
T12	Lechmere	GREEN: E - Lechmere	Cambridge
T13	Sullivan Square	ORANGE: Forest Hills to Oak Grove	Boston
T14	Porter	RED: A - Ashmont B - Braintree C - Alewife	Cambridge
T15	Alewife	RED: A - Ashmont B - Braintree C - Alewife	Cambridge
T39	PORTER SQUARE	Commuter Rail Station	Cambridge
T70	YAWKEY	Commuter Rail Station	Boston
T17	Chelsea	Commuter Rail Station	Chelsea

Table 3-8: Hospitals and Medical Facilities within 0.5 mile buffer zone in study area

CODE	FACILITY NAME	ADDRESS	CITY
H2	Cambridge Health Alliance - Cambridge Campus	1493 Cambridge Street	Cambridge
H3	Chelsea Soldier Home-Quigley Memorial Hospital	91 Crest Avenue	Chelsea
H4	Beth Israel Hospital	1000 Broadway Street	Chelsea
H1	Spaulding Cambridge Outpatient Center	1575 Cambridge Street	Cambridge
H2	Cambridge Health Alliance - Cambridge Campus	1493 Cambridge Street	Cambridge
H3	Chelsea Soldier Home-Quigley Memorial Hospital	91 Crest Avenue	Chelsea
H4	Beth Israel Hospital	1000 Broadway Street	Chelsea
M0	Brighton/Allston Afterschool Enrichment Program (BASE)	5 Saint Luke's Road	Allston
M1	Joseph M. Smith Community Health Center	287 Western Avenue	Allston
M2	Windsor Street Health Center	119 Windsor Street	Cambridge
M3	East Cambridge Health Center	163 Gore Street	Cambridge
M4	Cambridge Health Alliance	1493 Cambridge Street	Cambridge
M6	Primary Care Center	1493 Cambridge Street	Cambridge
M7	Zinberg Clinic	1493 Cambridge Street	Cambridge
M8	Cambridge Health Alliance Birth Center	1493 Cambridge Street	Cambridge
M9	Cambridge Pediatrics	1493 Cambridge Street	Cambridge
M10	Union Square Health Center	337 Somerville Ave	Somerville
M11	Central Street Health Center	26 Central Street	Somerville
M12	East Somerville Health Center	42 Cross Street	Somerville
M13	Somerville Teen Connection at Somerville High School	81 Highland Ave	Somerville
M14	Cambridge Health Alliance - Somerville Campus	230 Highland Avenue	Somerville
M15	Cambridge Health Alliance - Somerville Campus	230 Highland Avenue	Somerville
M16	Cambridge Health Alliance - Somerville Campus	230 Highland Avenue	Somerville
M17	Internal Medicine Associates	236 Highland Ave	Somerville
M18	Cambridge Family Health North	2067 Massachusetts Ave	Cambridge
M19	Broadway Health Center	300 Broadway	Somerville
M20	North Cambridge Health Center	266B Rindge Avenue	Cambridge
M21	MGH Chelsea HealthCare Center	151 Everett Avenue	Chelsea
M22	Chelsea High School	299 Everett Ave	Chelsea
M27	MGH Everett Family Care	19-21 Norwood Street	Everett
M28	MGH Revere HealthCare Center	300 Ocean Avenue	Revere
M29	MGH Community Health Associates	300 Ocean Avenue	Revere
M30	MGH Revere HealthCare Center	300 Broadway	Somerville
M31	MGH/Revere High School	101 School Street	Revere

Table 3-9: Public and Private Schools within ½-mile buffer zone

CODE	SCHOOL NAME	ADDRESS	CITY
S01	CAPIC HEAD START	67 CRESCENT AVENUE	Chelsea
S8	William McKinley School	90 Warren Avenue	Boston
S12	Lyon K-8 School	50 Beechcroft Street	Boston
S13	Boston University Academy	1 University Road	Boston
S14	Mesivta High School	34 Sparhawk Street	Boston
S16	Conservatory Lab Charter School	25 Arlington Street	Boston
S17	Lyon Upper 9-12 School	95 Beechcroft Street	Boston
S18	Jackson Mann School	40 Armington Street	Boston
S19	Horace Mann School for the Deaf	40 Armington Street	Boston
S20	Baldwin Early Learning Center	121 Corey Road	Boston
S21	Another Course To College	20 Warren Street	Boston
S22	St Columbkille Partnership School	25 Arlington	Boston
S23	Mt St Joseph Academy	617 Cambridge	Boston
S24	MATCH Charter Public High School	1001 Commonwealth Avenue	Boston
S25	Crittenton Inc School	10 Perthshire Rd	Boston
S32	Morse School	40 Granite Street	Cambridge
S37	German International School Boston	57 Holton Street	Boston
S38	Cambridgeport School	89 Elm Street	Cambridge
S39	Gardner Pilot Academy	30 Athol Street	Boston
S41	Farr Academy School	71 Pearl St.	Cambridge
S42	Fletcher/Maynard Academy	225 Windsor Street	Cambridge
S43	Community Charter School of Cambridge	245 Bent Street	Cambridge
S45	Albert F. Argenziano School at Lincoln Park	290 Washington Street	Somerville
S48	Maria L. Baldwin School	28 Sacramento Street	Cambridge
S50	Peabody School	70 Rindge Avenue	Cambridge
S52	John M Tobin School	197 Vassal Lane	Cambridge
S53	E Somerville Community School	42 Prescott Street	Somerville
S54	Cambridge Montessori School	161 Garden Street	Cambridge
S57	St Catherine Of Genoa School	192 Summer Street	Somerville
S58	Somerville High School	81 Highland Avenue	Somerville
S60	Full Circle High School	8 Bonair Street	Somerville
S61	Capuano Early Childhood Center	150 Glen Street	Somerville
S62	Cambridge Friends School	5 Cadbury Rd	Cambridge
S63	Next Wave Junior High School	8 Bonair Street	Somerville
S64	John F Kennedy School	5 Cherry Street	Somerville
S65	Shurtleff Early Childhood School	99 Hawthorn Street	Chelsea
S66	Winter Hill Community School	115 Sycamore Street	Somerville
S67	Manassah E Bradley School	110 Beachview Road	Boston
S69	Benjamin Banneker Charter Public School	21 Notre Dame Avenue	Cambridge

Table 3-9: Schools: Public and Private within 0.5 mile buffer zone in study area (continued)

CODE	SCHOOL NAME	ADDRESS	CITY
S70	Excel Academy Charter School	180 Second Street	Chelsea
S71	Joseph A. Browne School	180 Walnut Street	Chelsea
S72	Eugene Wright Science and Technology Academy	180 Walnut Street	Chelsea
S74	St Rose Elementary School	580 Broadway	Chelsea
S78	Clark Avenue School	8 Clark Avenue	Chelsea
S80	Benjamin G Brown School	201 Willow Avenue	Somerville
S81	Edgar A Hooks Elementary School	300 Crescent Avenue	Chelsea
S82	Frank M Sokolowski Elementary School	300 Crescent Avenue	Chelsea
S83	George F. Kelly Elementary School	300 Crescent Avenue	Chelsea
S84	William A Berkowitz Elementary School	300 Crescent Avenue	Chelsea
S85	Chelsea High School	299 Everett Avenue	Chelsea
S90	Sumner G. Whittier School	337 Broadway	Everett
S92	St Anthony Elementary School	54 Oakes Street	Everett
S93	West Somerville Neighborhood School	177 Powderhouse Blvd	Somerville
S94	Immaculate Conception Elementary School	127 Winthrop Avenue	Revere
S95	Revere High School	101 School Street	Revere
S96	Rumney Marsh Academy	140 American Legion Highway	Revere
S97	Paul Revere School	395 Revere Street	Revere

Table 3-10: Fire Stations within ½-mile buffer zone

CODE	FACILITY NAME	ADDRESS	CITY
F2	Boston FIRE DEPARTMENT	425 Faneul Street	Boston
F3	Boston FIRE DEPARTMENT	460 Cambridge Street	Boston
F6	Cambridge FIRE DEPARTMENT	378 Massachusetts Avenue	Cambridge
F7	Cambridge FIRE DEPARTMENT	175 Cambridge Street	Cambridge
F8	Cambridge FIRE DEPARTMENT	1384 Cambridge Street	Cambridge
F10	Somerville FIRE DEPARTMENT	255 Somerville Avenue	Somerville
F11	Boston FIRE DEPARTMENT	525 Main Street	Boston
F12	Cambridge FIRE DEPARTMENT	113 Garden Street	Cambridge
F13	Somerville FIRE DEPARTMENT	651 Somerville Avenue	Somerville
F14	Cambridge FIRE DEPARTMENT	2029 Massachusetts Avenue	Cambridge
F15	Somerville FIRE DEPARTMENT	266 Broadway	Somerville
F16	Somerville FIRE DEPARTMENT	265 Highland Avenue	Somerville
F17	Chelsea FIRE DEPARTMENT	307 Chestnut Street	Chelsea
F19	Chelsea FIRE DEPARTMENT	883 Broadway	Chelsea
F21	Everett FIRE DEPARTMENT	384 Broadway	Everett
F22	Revere FIRE DEPARTMENT	13 Walden Street	Revere
F23	Revere FIRE DEPARTMENT	4 Freeman Street	Revere
F25	Revere FIRE DEPARTMENT	140 Lynnway	Revere

MassDOT also identified the total number of people within the buffer areas based on the data from the 2010 Census. One notable aspect of the population within the study area is the high proportion of areas with identified environmental justice populations. "Environmental Justice" populations are defined by the Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," which directs federal agencies to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of programs, policies, and activities on minority populations and low-income populations. This evaluation identifies the environmental justice populations as defined by the Executive Office of Energy and Environmental Affairs.

From the MassGIS layer based on the 2010 Census data, the number of people living within this buffer zone for each of the cities was determined. Because the routes overlap within communities, Table 3-12 shows the total population for each city within the buffer zone for all routes. The table also shows the affected Environmental Justice population for each city.

Table 3-11: Population within ½-mile of the Potential Ethanol Rail Routes

City	Outside of EJ Area	Within EJ Area	Total Population in 0.5 mile buffer around all routes in Study Area
Total Boston	18,065	45,262	63,327
Allston/Brighton/Back Bay	15,621	39,744	55,365
Charlestown	2,444	-	2,444
East Boston	-	5,518	5,518
Cambridge	24,737	54,379	79,116
Chelsea	-	31,792	31,792
Everett	-	20,288	20,288
Revere	1,143	29,121	30,264
Somerville	32,344	38,136	70,480
Totals	76,289	218,978	295,267

Figure 3-1 shows the potentially exposed populations and facilities for Route1; Figure 3-2 shows the potentially exposed populations and facilities for Route2; Figure 3-3 shows the potentially exposed populations and facilities for Route3; and Figure 3-4 shows the potentially exposed populations and facilities for the Shared Route.

Figure 3-1: Potentially Exposed Populations in Route 1

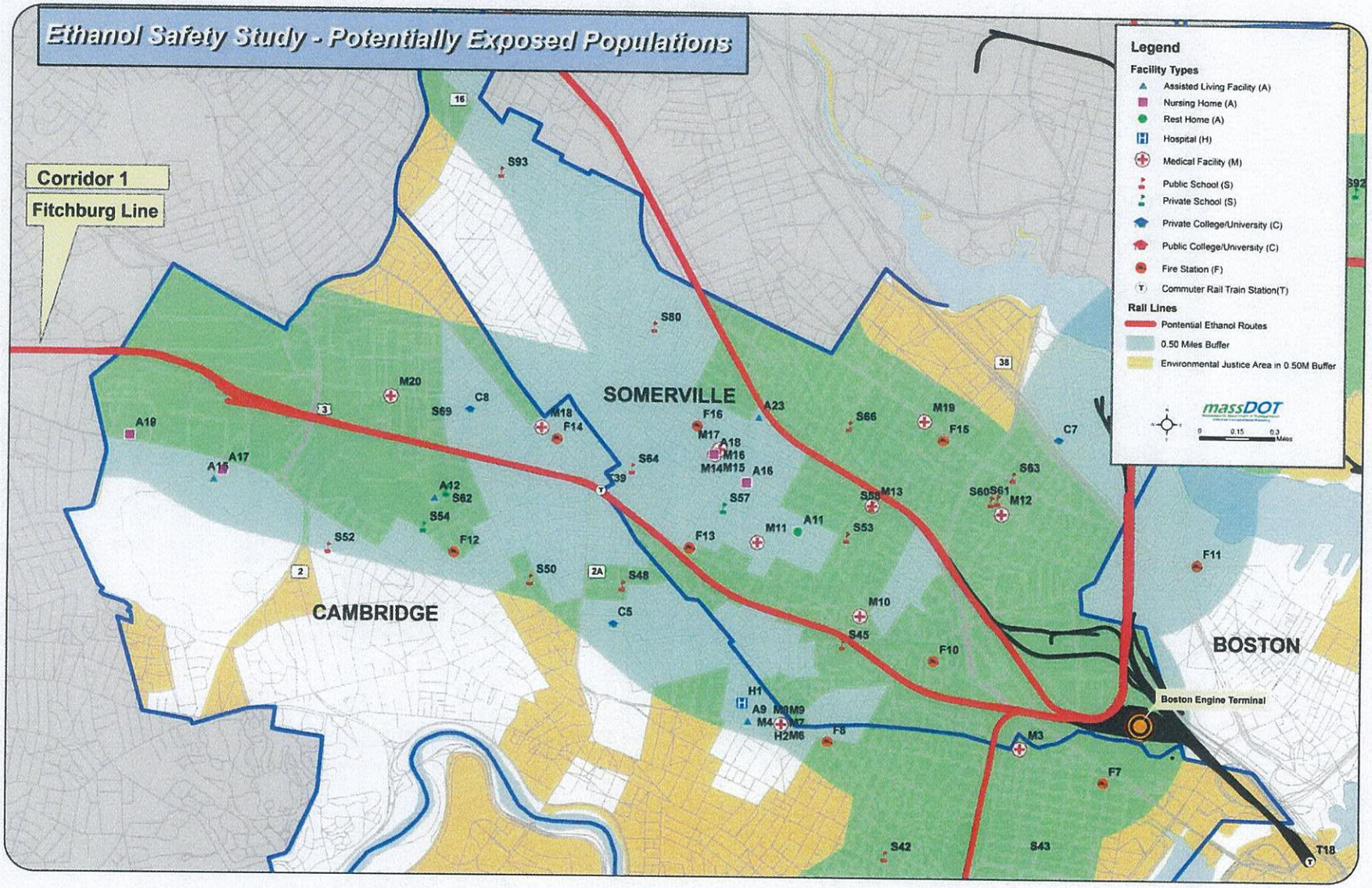


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Figure 3-2: Potentially Exposed Populations in Route 2

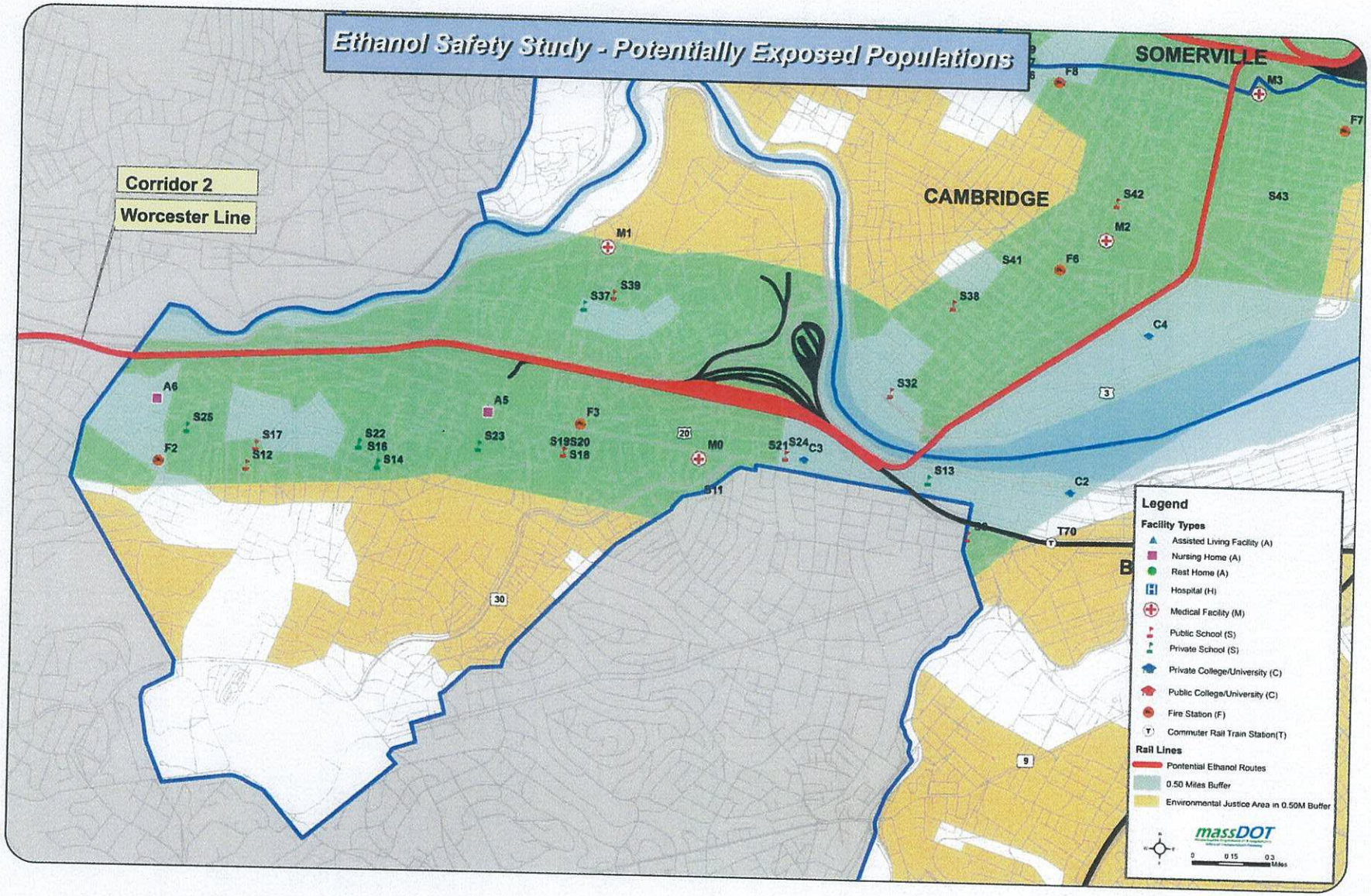

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Figure 3-3: Potentially Exposed Populations in Route 3

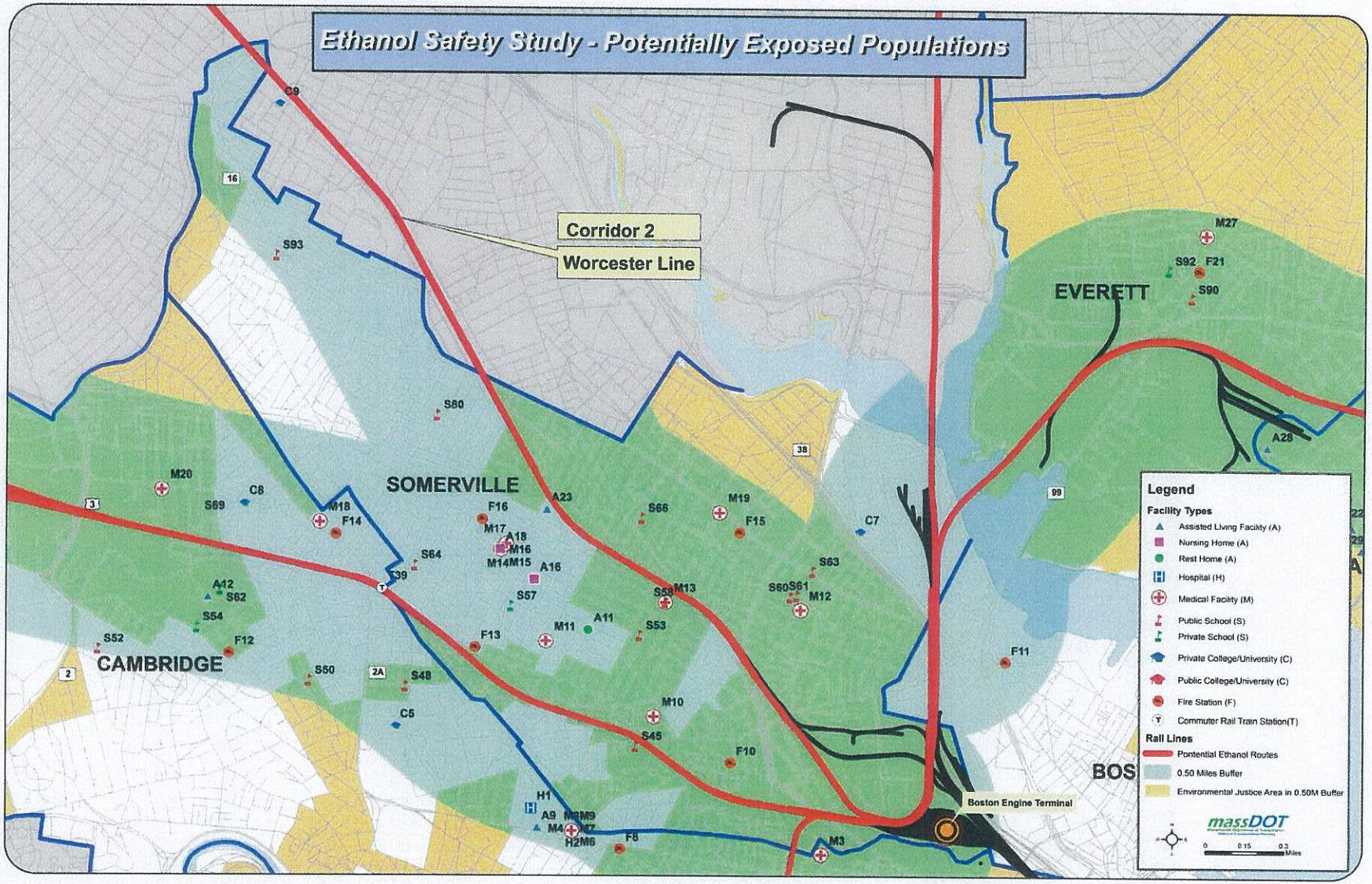

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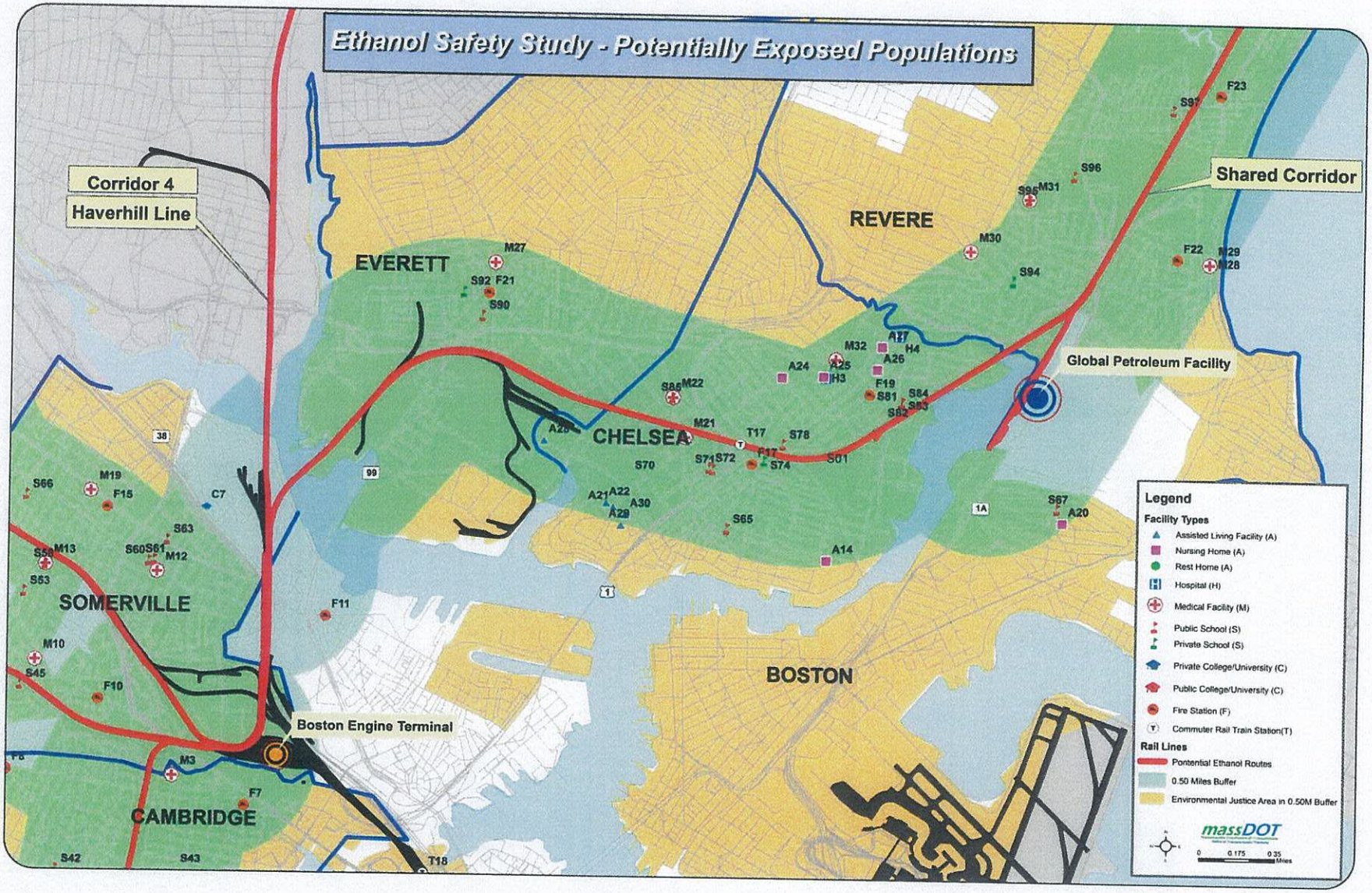
Figure 3-4: Potentially Exposed Populations in the Shared Route



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3.3 Existing Safety and Security Policies and Procedures for Handling Ethanol

The following section provides an overview of the safety and security regulations that govern the transportation of ethanol. Transporting ethanol and other hazardous materials is regulated by the federal government. There are a number of federal agencies responsible for oversight of hazardous material shipments and oversight of the businesses that deal with hazardous materials. The regulations discussed within this section are intended to ensure the safety and security of both people working with hazardous materials and the populations located in close proximity to railroad lines where hazardous materials are present.

Overview of Federal Agency Authority

Multiple federal agencies are tasked with regulating and authorizing the use and transport of hazardous materials. While the majority of rail-specific regulations are handled by the Federal Railroad Administration (FRA), other agencies have oversight of various aspects of hazardous materials transportation. The specific roles of each federal agency were outlined comprehensively in a 2010 Department of Homeland Security (DHS) plan: "Chemical Sector-Specific Plan, An Annex to the National Infrastructure Protection Plan." A section of this plan can be found in Appendix 1, and the full report is available on the DHS website.

Department of Homeland Security

The Department of Homeland Security is granted authority over hazardous materials through the Homeland Security Presidential Directive 7 (HSPD-7), Chemical Facility Anti-Terrorism Standards mandate (CFATS), the Maritime Transportation Security Act (MTSA), Hazardous Materials Transportation Act (HMTA) and other laws and regulations. DHS is responsible for managing the security of the entire chemical sector, with a specific focus on high-risk facilities and water-adjacent facilities.

HSPD-7 gives DHS responsibility for coordinating protection activities for the entire chemical sector. This includes development of risk management frameworks and sector-specific plans, such as the one for ethanol. It is through these plans and management tools that DHS coordinates with partners in the private sector to regulate high-risk materials. Executive Order 13416 improves upon HSPD-7. Titled "Strengthening Surface Transportation Security," the order facilitates the implementation of a comprehensive, coordinated and efficient security program. It set new deadlines for key security related activities, such as the development of security assessments.

CFATS gives DHS the authority to require high-risk facilities to develop vulnerability assessments, develop site security plans, and create security performance standards. These performance standards are used by DHS to evaluate facilities, and DHS is able to mandate that protective measures be implemented based on those evaluations. CFATS also requires DHS to inspect and audit chemical facilities.

The Maritime Transportation Security Act gives DHS the authority, via the US Coast Guard, to protect the transportation of hazardous materials over water, and to secure chemical facilities that are adjacent to navigable waterways. Much like CFATS, MTSA requires the development of security plans, the use of performance standards and the implementation of protective measures. MTSA also has provisions to ensure security within the workforce of ports and vessels.

The Transportation Worker Identification Credential program provides for biometric identification badges to allow access to secure areas of selected ports. All workers who require secure access for their jobs were required to submit biometric information and pass a security threat assessment by April 2009.

The Hazardous Materials Transportation Act (HMTA) regulates the 3.5 million commercial vehicle drivers that transport hazardous materials via truck. These drivers are required to submit to periodic background checks and security assessments in order to maintain the hazmat endorsement on their driver's license.

In addition, DHS tasks the TSA is permitted to inspect property, facilities, and records relevant to rail security. Freight carriers must also report the location and shipping information of various substances to TSA upon request, and maintain chain-of-custody documents to ensure the safe exchange of materials.

U.S. Environmental Protection Agency

The U.S. EPA has authority over hazardous materials through three federal laws: the Clean Air Act, The Emergency Planning and Community Right-to-Know Act (EPCRA), and Superfund. The Clean Air Act requires that any facility that stores or handles hazardous materials over a certain amount must develop and implement a risk management program that is submitted for review by EPA. These plans must be updated every five years for each facility, and include assessments of potential chemical release scenarios, information on accident prevention and emergency response, and a five year history of incidents at the facility. These program reports are also submitted to DHS, which uses them to determine which facilities to classify as "high risk" or "high consequence."

The Emergency Planning and Community Right-to-Know Act (EPCRA) requires states and municipalities to develop state and local emergency response commissions. The commissions are then responsible for developing emergency response plans for the potential release of chemical substances. Local facilities are required to assist the commissions in developing these plans, and to provide any information necessary. Commissions collect material safety data sheets on the substances stored at local facilities, and ensure that they are distributed to the appropriate local authorities. Finally, facilities must submit annual inventories of hazardous materials to the commissions.

The Superfund Amendments and Reauthorization Act of 1986 gave the Centers for Disease Control and Prevention (CDC) the responsibility for public health logistical support in the event of a chemical release event. The CDC has responsibility in the areas of public health assessments, establishment and maintenance of material databases, information dissemination, and medical education. In addition, the CDC has developed a plan for a laboratory response network in the event of a chemical event in order to allow for immediate testing and communication to benefit public health. This involves rapid material screenings to benefit the public and first responders.

U.S. Department of Justice

The U.S. Department of Justice, through the Drug Enforcement Administration (DEA), has authority under the Controlled Substances Act and the Controlled Substances Import and Export Act to regulate

the security of certain chemicals. DEA guards against theft or diversion of these materials, and evaluates the physical security of various facilities

U.S. Department of Labor

The U.S. Department of Labor has authority through the Occupational Safety and Health Act (OSHA) to regulate the handling of hazardous materials. OSHA requires facilities to conduct a hazard analysis, develop operational procedures, develop emergency action plans, report on incidents and conduct regular compliance audits.

U.S. Department of Transportation

The U.S. DOT has authority to regulate hazardous materials under a number of laws, including the Hazardous Materials Transportation Act (HMTA), the Federal Rail Safety Act, and multiple rulemaking responsibilities. HMTA gives US DOT wide authority to ensure safe and secure shipments of hazardous materials. General requirements are developed by the Pipeline and Hazardous Materials Safety Administration (PHMSA) within US DOT. PHMSA's regulations cover classification, packaging, emergency communication, training, and modal-specific requirements for materials. Much like other regulations, PHMSA also requires security plans, risk assessments and employee training.

The Federal Rail Safety Act gives authority to the FRA to ensure secure movement of hazardous freight via railroads. This includes regulations on the design, manufacture, and repair of the equipment, freight cars, locomotives, and track used to carry hazardous materials, and information on the movement of these materials.

The "Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments" rule requires railroads to use routes with the fewest overall safety and security risks to transport hazardous materials. The "Hazardous Materials: Risk-Based Adjustment of Transportation Security Plan Requirements" rule narrowed the list of materials subject to security plan requirements. This allows a greater focus on materials with the most potential for concern. One of the hazardous materials regulated under this rule is ethanol.

Overview of Federal Railroad Administration Programs

As discussed above, the Federal Railroad Administration, under the umbrella of U.S. DOT, is authorized to carry out a number of safety and security programs. At FRA, this is delegated to the Office of Safety, which has a number of divisions with programs aimed at addressing safety concerns.

Hazardous Materials Division

The Hazardous Materials Division administers a safety program that oversees the movement of hazardous materials. This program focuses on tank car safety and movement approvals. The tank car safety program ensures that vehicles that carry hazardous materials are secure and properly maintained. The program also includes procedures for loading and unloading railcars. The Division also regulates movement approvals and has developed a tiered process for shippers. The regulations supported by this division are found in 49 CFR 171 to 180.

Highway-Rail Grade Crossing and Trespass Prevention Division

This Division focuses on trespassing prevention and grade crossing security. FRA's program has reduced the number grade crossing deaths by 50 percent over 20 years. Information on train horns and quiet zones is also controlled by this Division. FRA works with the railroad industry and state and local governments, to sponsor, plan and conduct educational outreach efforts at schools, workplaces, and other venues, in order to raise awareness about the dangers and consequences of railroad trespassing. The regulations supported by this division are found in 49 CFR 222 and 229.

Rail and Infrastructure Integrity Division

The Rail and Infrastructure Integrity Division promotes an understanding of and compliance with standards concerning rail and bridge maintenance. The purpose of the Division is to prevent accidents that result from rail and structure degradation. In addition, the Division provides technical expertise to ensure maximum safety in railroad operations. Specific focuses are in the areas of maintenance and development of continuous welded rail, and bridge and structure worker safety. The regulations supported by this division are found in 49 CFR 213 and 214.

Motive Power and Equipment Division

This Division provides technical expertise and direction relevant to motive power and freight, passenger, and commuter equipment. It promotes an understanding of and compliance with Federal standards for locomotives, passenger and freight cars, and its safety appliances such as air brakes. The regulations supported by this division are found in 49 CFR 215, 218, 221, 223, 224, 229, 230, 231 and 232.

Operating Practices Division

The Operating Practices Division examines railroad carrier operating rules, employee qualification guidelines, and carrier training and testing programs to determine compliance with the Railroad Safety Act of 1970, railroad occupational safety and health standards, the Hours of Service Act, and accident and personal injury reporting requirements. The regulations supported by this division are found in 49 CFR 217 through 222, 225, 228, 239, 240 and 242.

Risk Reduction Program Division

The Risk Reduction Program Division evaluates safety risks and helps to manage those risks in order to reduce the numbers and rates of accidents. This includes collecting data on accidents, developing programs to mitigate risk, developing best practices and providing support. Some programs developed by this division include the Confidential Close Call Reporting System, the Peer-to-Peer Safety Program, Fatigue Management Plans, and programs to eliminate in-cab distractions.

Signal and Train Control Division

The Signal and Train Control Division promotes an understanding of and compliance with the various federal regulations related to signal and train control systems; highway-rail grade crossing warning systems; and the hours of service laws applicable to signal employees. The applicable regulations primarily address the design, installation, maintenance, inspection and testing of these signal systems, and the necessary system components adjustment, repair, or replacement, as well as the associated recordkeeping and reporting requirements. The regulations supported by this division are found in 49 CFR 214, 228 and 233 through 236.

Track Division

The Track Division's mission is to provide technical expertise and direction relevant to railroad track. This includes reports and guidance on track maintenance and conditions, standards development and compliance manuals.

Overview of Safety and Security Plans

As noted, facilities and shippers of hazardous materials are required to submit safety and security plans to reduce the risk and mitigate impacts of an incident with a hazardous material. The safety and security plans are also meant to address the potential threats from terrorism. For railroads, these regulations are codified in 49 CFR 172. Ethanol is classified as a Class 3 material under this regulation, meaning it qualifies for packaging in Group I or II type containers. In addition, the Maritime Transportation Security Act (MTSA) also enumerates components necessary in safety plans, specifically for ports and vessels.

The safety plans outlined under these two regulations are remarkably similar. Specific components of a security plan are listed in the regulation. These include measures to provide personnel security and authorized access; security en route to a destination; identification of key contacts; training received by employees; and background checks. The regulations also call for specific hazard drills, and screening of potential employees.

This railroad regulation also states that states or municipalities are not permitted to prohibit the use of a rail line for transporting hazardous materials.

Safety and security plans are typically required to remain confidential, due to the sensitive nature and risk of incident. This results in a limitation of available information on the subject. DHS classifies most information contained within safety and security plans to be either classified, sensitive security information, or information relating to a chemical terrorism vulnerability. The information on critical infrastructure and key resources is shared only with the specific agencies and private partners who need it. Protected information includes:

- Security Vulnerability Assessments;
- Site Security Plans;
- Documents related to the Department's review and approval of SVAs and Site Security Plans, including Letters of Authorization, Letters of Approval, and responses to them;
- Alternative Security Programs;
- Documents related to inspections and audits;
- Records required to be created and maintained by regulated facilities;
- Sensitive portions of orders, notices, or letters;
- Information developed pursuant to the Top-Screen process; and
- Other information designated as CVI by the Secretary of Homeland Security.

As a member of the Technical Advisory Group, Global Petroleum shared some information on their security plan. Their plan, which has been approved by the Department of Homeland Security, includes:

- Monitored camera surveillance at the facility,
- Recorded inspection rounds of the facility at specified intervals,

- A minimum number of terminal personnel at the facility,
- Gated facility with restricted access,
- The facility conducts security drills and training,
- Employees at the facility have TSA Transportation Worker Identification Credential cards,
- The facility is subject to unannounced security inspections by the U.S. Coast Guard,
- Contracts for spill response with local and national spill responders, and
- Protocols for reporting any security breach.

Various entities and laws govern the use and protection of this information, including the Critical Infrastructure Information Act of 2002 and the Critical Infrastructure Partnership Advisory Council. Within the Boston metropolitan area, the Metro-Boston Homeland Security Region (encompassing Boston, Brookline, Cambridge, Chelsea, Everett, Revere, Somerville, Quincy and Winthrop) and the Urban Area Security Initiative work with the federal government on the release and use of this information. Critical infrastructure and key resources are further protected by the Critical Infrastructure Monitoring System (a central hub of targeted cameras and sensors), target hardening, and work on enhancing the prevention tools of local bomb squads.

3.4 Existing Emergency Response Capabilities

While the safety and security of ethanol transportation and storage are regulated at the federal level, the response to any ethanol accident is the responsibility of the local fire departments and other local emergency responders. The following section provides an overview of the emergency response capabilities within the study area and the resources available for emergency planning and preparation.

Local Response

In the event of an ethanol train accident, the local fire departments and emergency personnel would be the first to respond. Table 3-12 identifies the fire stations within the study area that are located within ½ mile of the potential ethanol rail routes. The staff and apparatus from these stations would likely be the first on-site during an ethanol train incident.

Table 3-12: Fire Stations within ½ mile of the Potential Ethanol Rail Routes

City	Facility Name	Address
Boston	Engine 51	425 Faneuil Street
Boston	Engine 41, Ladder 14	460 Cambridge Street
Boston	Engine 32, Ladder 9	525 Main Street
Cambridge	Engine 8, Ladder Co. 4	113 Garden Street
Cambridge	Engine 5	1384 Cambridge Street
Cambridge	Engine 4	2029 Massachusetts Avenue
Cambridge	Engine 3, Ladder Co. 2	175 Cambridge Street
Cambridge	Engine 2, Ladder Co. 3	378 Massachusetts Avenue
Chelsea	Headquarters	307 Chestnut Street
Chelsea	Engine 3 Ladder 2	883 Broadway
Everett	Headquarters	384 Broadway
Revere	Engine 5	4 Freeman Street
Revere	Engine 1	13 Walden Street
Somerville	Headquarters	266 Broadway
Somerville	Engine 7	265 Highland Avenue
Somerville	Engine 4 & Tower 1	651 Somerville Avenue
Somerville	Engine 3	255 Somerville Avenue

Depending upon the scale and nature of the incident, responding fire departments will likely rely on mutual aid agreements to respond to the incident. Mutual aid agreements in the Boston metro area are coordinated through Metrofire, which is an association of 34 municipal fire departments in and around Boston.

Responding to an ethanol fire requires the use of alcohol resistant foam which is classified as AR-AFFF foam. Table 3-13 shows a listing of the mobile foam resources across the Commonwealth. Foam supplies within the study area response district (District 13) are highlighted. The table shows that there are approximately 5,500 gallons of alcohol-resistant foam available. The petroleum terminals also have additional foam resources that can be made available during an emergency. Despite these resources, several members of the technical advisory group, including representatives of local fire departments, voiced concerns that there is insufficient AR-AFFF foam to respond to an ethanol train fire.

Table 3-13: Mobile Alcohol-Resistant Foam Resources in Massachusetts

Foam trailers - Location	Type AFT = Attack Foam Tanker FT= resupply only	Type of concentrate UC = unconfirmed	District	Amount of concentrate (gallons)
Mashpee	AFT	AR-AFFF 1-3%	1	500
Nantucket	AFT	AR-AFFF 1-3%	1	500
Tisbury	AFT	AR-AFFF 1-3%	1	500
Sandwich	AFT	AR-AFFF 3-6% UC	1	1000
Kingston	AFT	AR-AFFF 1-3%	2	500
Raynham	AFT	AR-AFFF 1-3%	3	500
New Bedford	AFT	AR-AFFF 1-3%	3	600
Somerset	AFT	AR-AFFF 1-3%	3	600
Plainville	AFT	AR-AFFF 1-3%	4	500
Needham	AFT	AR-AFFF 1-3%	4	500
Randolph	AFT	AR-AFFF 1-3%	4	500
Danvers	AFT	AR-AFFF 3-6%	5	500
Worcester	AFT	AR-AFFF 1-3%	7 and 8	500
Ashburnham	AFT	AR-AFFF 1-3%	8	500
Holden	AFT	AR-AFFF 1-3%	8	500
Orange	AFT	AR-AFFF 1-3%	9	500
Westover AFB	AFT	AR-AFFF 1-3%	11	500
Longmeadow	AFT	AR-AFFF 1-3%	11	500
Palmer (Monsanto)	AFT	AR-AFFF 3-6% UC	11	1000
Pittsfield	AFT	AR-AFFF 1-3%	12	500
Chelsea	FT	AR-AFFF 3-6% UC	13	500
Revere	FT	AR-AFFF 3-6% UC	13	500
Everett	FT	AR-AFFF 3-6% UC	13	500
Braintree (Citgo) 1	FT	AR-AFFF 3-6%	13	2000
Braintree (Citgo) 2	FT	AR-AFFF 3-6%	13	2000
North Andover.	AFT	AR-AFFF 3-6%	15	500

Source: The Massachusetts Department of Fire Services

Local Emergency Planning

Each city is responsible for creating a comprehensive emergency management plan. As required by MEMA, the local government must accomplish the following through these plans:

1. Establish and maintain an emergency management framework at the local level involving all government, private, and volunteer organizations that have a role in the success of comprehensive emergency management within the jurisdiction.
2. Provide for development of a broad-based public awareness, education, and information program designed to reach all local citizens, including those needing alternative media formats such as Braille or non-English languages.

3. Participate actively in discussions and negotiations with the Commonwealth regarding policies and priorities to ensure that the work being done contributes to the improvement of emergency capabilities for the town or city.
4. Perform work for Federal and state emergency management programs within the negotiated scope and in a responsible manner.
5. Provide direction and control of a local response and recovery approach that involves broad participation from local organizations and is compatible with the state response and recovery organization and concept of operations.
6. Participate in programs and initiatives designed to avoid, reduce, and mitigate the effects of hazards through development and enforcement of policies, standards, and regulations.
7. Establish and maintain mutual aid agreements with other towns and cities.

MassDOT engaged representatives of the study area communities' fire departments in this study, and invited them to participate in the technical advisory group. On behalf of the fire departments, Boston Fire Commissioner Roderick J. Fraser submitted the following observations and proposed recommendations for addressing ethanol safety issues in the study area. These are quoted directly below, and have been substantially incorporated into the study recommendations in Chapter 4.

Fire Service Recommendations to the Department of Transportation Technical Advisory Group for the study of the Safety Impacts of Ethanol Transportation by Rail through Boston, Cambridge, Chelsea, Everett, Somerville & Revere

1. The leaders of the Fire Departments that are affected by the proposed transportation of ethanol by rail to the Global Petroleum facility in Revere have met to review the potential impacts of an accident and release of ethanol along the transit route.
2. On February 26, 2013 a meeting was held of the Fire Service leaders of Boston, Cambridge, Chelsea, Everett, Somerville and Revere at the BFD Holton St. Training facility to review the regional response capabilities and determine which, if any, additional response capability would be needed. The following attended the meeting:
    a. Roderick J Fraser Jr., Boston Fire Commissioner
    b. Steve Abraira, Boston Fire Department
    c. Eugene Doherty, Revere Fire Department
    d. David Butler, Everett Fire Department
    e. Gerald Reardon, Cambridge Fire Department
    f. Kevin Kelleher, Somerville Fire Department
    g. Gerard Mahoney, Cambridge Fire Department
    h. Robert Better, Chelsea Fire Chief
    i. Robert Donahue, MASSPORT Fire Department

Although not a community directly affected by the rail transportation of ethanol, Chief Donahue has a great deal of knowledge in combating flammable liquid fires and training for flammable liquid response incidents.

3. If faced with a large ethanol spill, large quantities of alcohol resistant foam will be needed to contain the spill and/or combat a fire that may result from an accident.
4. A review of the number of foam capable response units in the affected region and their capacity was conducted. Currently, the foam capabilities for the region are not sufficient to contain an ethanol fueled fire incident (one or more ruptured rail cars).
5. The Boston Fire Commissioner met with the Chief of the Providence, RI Fire Department to review the preparations that have been made in the communities affected by ethanol transportation by rail to the port of Providence and was briefed on the RI Foam Task Force concept that was put in place.
6. Other communities and Fire Service leaders that have similar threats were contacted to determine best practices for equipment and response training.
7. The Fire Service regional leadership recommends the following:
    a. Development of a regional Foam Response Task Force made up of Foam Tenders combined with existing Fire Engines that respond as a unit to emergencies where large quantities of alcohol resistant fire fighting foam is required.
    b. The DOT and/or shipping company and product owner fund the purchase of four (4) pieces of apparatus, commonly called "Foam Tenders" built on a commercial chassis with the following general specification:
        i. Foam Transfer pump
        ii. Balanced pressure foam proportioning system rated at 6,000 GPM
        iii. 3,000 gallon foam poly tank
        iv. 2,000 GPM deck gun with remote control capability
        v. Infrared camera mounted in the cab
    c. Once funded, the above listed Fire Service Chiefs will meet as a committee to develop one set of specifications to apply to the purchase of all 4 Foam Tenders.
    d. The DOT and/or shipping company and product owner fund the purchase of alcohol resistant class "B" aqueous film forming foam for each Foam Tender.
    e. The DOT and/or shipping company and product owner fund the training of twelve (12) regional training instructors in flammable liquid fire fighting tactics and procedures for 5 years.
    f. The DOT conduct an annual Tabletop and functional exercise to assist the region in preparation and training for potential emergencies. As part of the functional exercise, we recommend budgeting to expend 50 gallons of foam concentrate per unit per year for training.

Cost estimate for recommended actions:

1. Foam Tender ($380,000.00) X 4	$1,520,000.00
2. Foam ($20 per gallon) X 12,000 gallons	$240,000.00
3. Instructor training	$35,000.00
4. Foam for annual training	$4,000.00
Total cost (estimated)	**$1,799,000.00**

State-Level Initiatives

There are a number of resources available to the study area communities to assist in preparing and responding to an ethanol accident.

Massachusetts Emergency Management Agency

The Massachusetts Emergency Management Agency (MEMA) is the central state agency responsible for coordinating the deployment and coordination of local, regional, and statewide assets during an emergency. The primary emergency planning document produced by MEMA is the State Comprehensive Emergency Management Plan. The sixth revision of this document was published in September 2007. The State Comprehensive Emergency Management Plan includes a series of Massachusetts Emergency Support Functions (MAESFs), which are meant to lay out the framework for responding to an emergency that has overwhelmed a community's capabilities and resources. The framework under the MAESFs includes initial response actions, continuing response actions, and recovery actions for all potential emergencies, including fire fighting and environmental protection and hazardous materials. The Comprehensive Emergency Management Plan includes a Hazardous Materials Annex and a Large Volume Ethanol Annex which is included in Appendix 2.

Department of Fire Services

The Massachusetts Department of Fire Services (DFS) includes two special response groups that are available to assist local fire departments in their response to an emergency (such as an ethanol incident). The DFS Special Operations team is meant to provide the local command structure with specialized resources necessary to coordinate the response of multiple agencies to significant events within the Commonwealth of Massachusetts. This is accomplished through the deployment of their specialized mobile incident support unit. The DFS Hazmat Response group is made up of six regional response teams that are strategically located for a maximum of 1-hour response to anywhere in the Commonwealth. The teams are supported by specialized equipment, including the Operational Response Units (ORUs), which contain specialized personal protective equipment and decontamination equipment, and the Technical Operations Mobile Unit (TOM), which is a state-of-the-art support vehicle containing chemical information databases and a sophisticated communications network of radios and telephones. In addition to the emergency response teams outlined above, DFS is also a major planning and training resource for local fire departments.

DFS offers a number of training courses to local fire departments on ethanol-related issues. The courses are provided free to Massachusetts fire departments although attendance at the courses generally requires the firefighter to find a replacement who is paid at overtime rates, resulting in a cost to the communities. A list of the courses and their descriptions are provided below:

Course #266 – Ethanol for First Responders: This 6-hour program introduces the local response community to the risks and challenges for first responders when dealing with small and large volume gasoline/ethanol blended fuels and denatured ethanol. Topics covered: what is ethanol, how is ethanol made, what are its transportation modes, what are its primary and secondary hazards, what public protective actions are required, and what firefighting methods are required. The program stresses the use of alcohol resistant foams and dry chemical extinguishing agents, since

ethanol is a polar solvent. Program includes a live demonstration of AR-AFFF foam and dry chemical on an ethanol fire.

Course #267 – Ethanol Risk and Challenges for Community Leaders: Increased transportation and storage of ethanol within the Commonwealth is creating new challenges for fire service, emergency management, public health and the environment. In response to these challenges, the Department of Fire Services has developed a course specifically geared toward elected and appointed officials. The goal of this 3-hour course is to provide community decision makers with the information they need to support the new public safety challenges posed by ethanol. Topics include: transportation modes and routes, primary and secondary hazards, public protective actions, and firefighting considerations.

Course #401 – Flammable Gas Firefighter Training, Classroom: This course is designed to provide students with knowledge of the general properties of flammable gases to include a working knowledge of the effects of temperature and pressure as they relate to firefighting efforts. Classroom theory and practical application of firefighting evolutions on actual gas equipment and situations are included. Students applying must successfully complete the classroom portion of the course prior to acceptance into the practical session.

Course #402 – Flammable Gas Firefighter Training, Practical: Practical session for Flammable Gas Firefighting: See course #401 for description. This is day two (practical session) of the 2-day flammable gas program that must be attended during the same semester. As part of the 2-day program, the practical portion is designed to provide students with hands on experience and a working knowledge of the effects of temperature and pressure as they relate to firefighting evolutions on actual gas equipment. Safety considerations require that a minimum of 18 students be enrolled in this 12-hour course.

Department of Environmental Protection

Like DFS, the Massachusetts Department of Environmental Protection (MassDEP) is a statewide agency charged with protecting public health, safety, welfare and the environment. Within MassDEP, the emergency response program is a 24/7 operation with trained responders and multiple cleanup contractors. Under Chapter 21E/Massachusetts Contingency Plan, MassDEP participates from initial response, through cleanup and recovery to final release closure. MassDEP identifies potentially responsible parties, jointly and severally, and holds them responsible for conducting cleanup actions.

MassDEP is also mandated to undertake planning and prevention activities for potential oil and hazmat releases to the environment. They work with U.S. EPA and the U.S. Coast Guard on spill prevention control and countermeasures (SPCC) and facility response plans (FRP). MassDEP also provides technical research and training, such as the Large Volume Ethanol Spills – Environmental Impacts & Response Options document (included in Appendix 2).

Department of Public Health

The Massachusetts Department of Public Health (DPH) provides support to hospitals and other public health agencies to ensure their overall emergency preparedness. These programs include preparations for the treatment and transportation of patients during a mass casualty incident and the development of hospital evacuation plans. Hospitals are required to update their comprehensive plans for partial or full evacuation annually.

Chapter 4: Report Findings & Recommendations

Transporting ethanol by rail through the cities of Boston, Cambridge, Chelsea, Everett, Revere, and Somerville will be a change to the status quo for each of these communities. While the railroad lines that will be used to transport ethanol through these communities have existed for over 100 years, they have not recently been used on a regular basis to move ethanol or other hazardous materials in the quantities that are expected to be shipped to the Global Petroleum Facility in Revere. However, the movement of such materials is regulated at a federal level, and cannot be regulated in any manner at the state or local level.

The findings and recommendations outlined below are meant to provide a better understanding of the impacts on public safety of this change to the transportation system.

4.1 Report Findings

As with all hazardous materials there are inherent risks in transporting, storing, and transferring ethanol. There are a number of factors identified in the body of this report that mitigate the potential impact on public safety of ethanol transportation by rail through the Study Area.

The first is the existing regulatory environment. Businesses such as Global Petroleum and the railroads must comply with a comprehensive set of federal regulations that address both safety and security in order to transport or store ethanol. These regulations govern the training of their personnel, the operating procedures they employ, and the design of their facilities.

The second is the existing safety record of rail transportation. Looking specifically at the railroad industry, the regulations in place have helped keep the number of railroad accidents low. Between 2008 and 2012 there was an average of 5.66 accidents per million train miles nationwide. Thirty one train accidents that resulted in the release of ethanol were identified between 2008 and 2012. That represents only 0.32% of the accidents that occurred during that period while ethanol represented approximately 1.1% of all rail carloads during that same time. Additionally only five of the thirty one accidents resulted in a death or injury. Statewide, there were sixty eight railroad accidents between 2008 and 2012 and none of them involved the release of ethanol. The rail routes within the study area have added safety improvements such as block signaling systems, maintenance of the track at FRA Class 3 standards, and the use of welded rail which further helps reduce the risks of an accident.

The third is the added level of investment by the MBTA in the study area railroad tracks. At a minimum, the MBTA maintains its tracks to meet Class 3 railroad standards. As a safeguard of the track condition, the MBTA has stipulated in its contract with the Massachusetts Bay Commuter Railroad (MBCR) that it must maintain all tracks to meet the Class 4 railroad standards. Additionally, the MBTA utilizes continuously welded track which provides added safety for rail operations by removing the rail joints, which can be a source of derailments if they are allowed to deteriorate significantly. The MBTA's signaling systems rely upon the ability of continuously welded track to carry signals along the circuit that they form. These signal systems help control train movements and also allow for detection of missing rail segments and open switches which can also lead to accidents.

The fourth is the emergency response planning that occurs at the state and local level. Planning and preparing for such an incident is primarily the responsibility of city emergency management in cooperation with fire and other emergency response staff. Communities are closely supported by training and assistance from the Massachusetts Emergency Management Agency (MEMA), the Massachusetts Department of Fire Services (DFS), the Massachusetts Department of Environmental Protection (MassDEP), and the Massachusetts Department of Public Health (MassDPH). The railroad and fuel industries also have a responsibility to plan and prepare for emergencies and to fulfill their obligations to local emergency planning committees. These plans help identify the procedures for regional collaboration in the event of an emergency including training resources, on-site command, and mutual aid agreements.

Nonetheless, the rail routes in the study area are unusual in terms of their density of residents, joint public/private use of the rail assets, and adjacent industrial businesses that may also house hazardous materials on-site.

The report has identified a number of public safety factors that need to be addressed, including:

- That train speed and the old DOT-111 railcar design contribute to the release of ethanol in an accident,
- That the Grand Junction and East Boston Spur are not maintained to the same standards as the remainder of the MBTA/MassDOT system, and
- Additional alcohol-resistant foam resources are needed to battle an ethanol train fire.

4.2 Recommendations

Based on the report findings, MassDOT makes the following recommendations to ensure the safe and secure transportation of ethanol by rail.

1. The railroad tracks along any possible ethanol transportation routes should be maintained to a Class 3 standard (consistent with the current MBTA standards for passenger service). This recommendation includes the East Boston branch, which is currently planned for rehabilitation to provide access to the Global facility.
2. Despite the Class 3 rail, the ethanol train speeds should be as slow as possible to reduce the energy of any accident.
3. The railroads should work with shippers to maximize the use of DOT-111 railcars for ethanol delivery that were constructed after October 1, 2011 to be compliant with the new American Association of Railroads (AAR) design guidelines, which will limit the likelihood that the railcar would be pierced in the event of a derailment.
4. Ethanol trains should be scheduled to avoid conflicts with any other trains (passenger or freight) that may cause them to be delayed or stored on sidings during transit to the Global facility.
5. Ethanol train schedules should be reported to community and state fire officials and first responders with sufficient notice.
6. At-grade crossing safety and security equipment on the affected routes should be maintained and/or upgraded to prevent collisions with motor vehicles. One possible source of funding for these improvements is the Section 130 program overseen by the MassDOT Rail & Transit Division.

7. The railroads should utilize Department of Homeland Security (DHS) resources to update their security plans regularly to reflect changes in the safety and security conditions.

MassDOT makes the following additional recommendations for the safe and secure offloading of ethanol:

1. The railroads and Global Petroleum should secure the railroad tracks and sidings where the ethanol trains will be stored adjacent to the Global facility.
2. On-site fire suppression systems should be kept in working condition and tested regularly.
3. Global Petroleum should update its facility security plan to address the added risks of storing and offloading ethanol from railcars on their site. This revised plan should identify procedures to isolate any ethanol spill or fire to prevent spreading to the other stored railcars within the confined tracks along the facility. The revised plan should also identify facility upgrades necessary to adequately protect the storage of ethanol and ethanol-petroleum blends on its property.
4. Global Petroleum should utilize the Voluntary Chemical Assessment Tool (VCAT) in updating their facility security plans and work collaboratively with local, state, and federal security, emergency, and first responders to plan for and respond to an ethanol-related incident. The VCAT is a voluntary assessment tool available to chemical sector industries from the Department of Homeland Security.

MassDOT makes the following additional recommendations to ensure that the communities, railroad companies, first responders, and emergency managers are prepared to respond to any derailment or emergency:

1. City fire departments and other emergency personnel should take advantage of the training courses currently offered by the Massachusetts Department of Fire Services related to ethanol and flammable gases and by the Massachusetts Department of Environmental Protection on the latest methods for responding to an ethanol spill, including containment strategies. These courses include classroom and practical training sessions.
2. Hospitals and other healthcare facilities that may be exposed during an ethanol emergency should take full advantage of the programs offered by the Massachusetts Department of Public Health in planning for mass casualty incidents and hospital evacuations that may result.
3. City fire departments and other emergency personnel should utilize the informational materials and training resources provided by the Massachusetts Department of Fire Services, the Massachusetts Department of Environmental Protection, and the Massachusetts Department of Public Health, including the Large Volume Ethanol Annex of the Massachusetts Comprehensive Emergency Management Plan, in future revisions to their comprehensive emergency management plans in order to address any unusual issues that may result from an ethanol train fire within the study area, including protection of structures adjacent to the incident and methods for accessing the rail right-of-way.
4. City fire departments and other emergency personnel should identify critical facilities along the potential ethanol transportation routes and develop detailed emergency response plans as necessary using consequence modeling of the worst case scenario of a derailment, release and fire involving multiple ethanol railcars. The emergency response plans should include an analysis of the response time to get the appropriate amount of alcohol-resistant foam and water

flow deployed, taking into account the possibility that multiple at-grade crossings may be blocked. Additionally, the plans should include an analysis of whether an evacuation would be appropriate or whether the public should be advised to shelter in place.

5. City fire departments should ensure that risk communication and notification in the event of an incident is made in multiple languages to ensure communication with limited English language speakers.
6. The Massachusetts Department of Fire Services should work with the city fire departments and other emergency personnel to analyze the regional capabilities needed to battle an ethanol train fire, including the amount of alcohol resistant foam that would be required. This study should, at a minimum, include the following items, which address the recommendations of the study area fire department representatives:
    a. Development of a regional Foam Response Task Force made up of Foam Tenders combined with existing Fire Engines that respond as a unit to emergencies where large quantities of alcohol resistant fire fighting foam is required.
    b. The purchase of four (4) pieces of apparatus, commonly called "Foam Tenders" built on a commercial chassis and having the following general specification:
        i. Foam transfer pump
        ii. Balanced pressure foam proportioning system rated at 6,000 GPM
        iii. 3,000 gallon foam poly tank
        iv. 2,000 GPM deck gun with remote control capability
        v. Infrared camera mounted in the cab
    c. The Study Area Fire Service Chiefs should meet as a committee to develop one set of specifications to apply to the purchase of all four Foam Tenders.
    d. The purchase of alcohol resistant class "B" aqueous film forming foam for each Foam Tender.
    e. Train twelve (12) regional training instructors in flammable liquid fire fighting tactics and procedures for five years.
    f. Conduct an annual tabletop and functional exercise to assist the region in preparation and training for potential emergencies.

4.3 Next Steps & Implementation

As outlined in Section 24 in Chapter 242 of the Acts of 2012, completion of this report will permit the Massachusetts Department of Environmental Protection (MassDEP) to issue a written determination of either approval or denial of the Chapter 91 license for Global's proposed plan to upgrade the track and sidings along its property to accommodate storage and unloading of ethanol trains. MassDEP's written determination on the Chapter 91 license will be based on the information presented by Global in their original application, the public comment received through their public outreach process, and the findings and recommendations of this report which incorporates additional public feedback. Upon issuance of the Chapter 91 written determination, any party that provided comments to MassDEP will be able to request an appeal of that decision within 21 days. If an appeal is received, MassDEP will then work with the two parties to work out a settlement. If a settlement is not possible, the appeal will be brought before a MassDEP administrative law judge who will then issue a recommendation for the Commissioner's approval.

This report has also identified a number of ways that MassDOT can help reduce the impact on public safety of the transportation of ethanol by rail through the study area. The first is the recommendation that the railroad tracks along any possible ethanol transportation routes should be maintained to a Class 3 standard (consistent with the current MBTA standards for passenger service). MassDOT, working with the MBTA, will identify improvements necessary to improve any sections of railroad that may carry ethanol within the study area to meet Class 3 standards. MassDOT will then work to identify the appropriate funding for these improvement projects and develop a timeline for their implementation.

The second way that MassDOT can help reduce the impact on public safety of the transportation of ethanol by rail through the study area is the recommendation that at-grade crossing safety and security equipment on the affected routes should be maintained and/or upgraded to prevent collisions with motor vehicles. MassDOT will identify improvements necessary to improve the at-grade crossing safety and security equipment along the routes that may carry ethanol within the study area. MassDOT will also work to identify the appropriate funding for these improvement projects and develop a timeline for their implementation. One possible source of funding for these improvements is the Section 130 program overseen by the MassDOT Rail & Transit Division.

Addressing the remaining recommendations will require the cooperation of the federal agencies, state agencies, cities, community groups, and businesses that have an interest in the safe transportation of ethanol by rail. The federal preemption of state and local laws on railroad operations means that the Commonwealth and the communities within it do not have the power to require additional security and safety measures of either Global or the railroads. Therefore, it should be the responsibility of the federal agencies that oversee ethanol transportation by rail to provide a forum for the communities' safety and security concerns to be discussed. We hope that this would then lead to actions that will help augment the existing safety and security regulations on the transportation of ethanol by rail that do not force undue hardships on the railroads and other companies that provide ethanol and other fuels that are a vital part of the region's economy.

The state agencies, which include the Massachusetts Emergency Management Agency, the Massachusetts Department of Fire Services, the Massachusetts Department of Environmental Protection, and the Massachusetts Department of Public Health should continue to act as a resource for the cities and towns of the Commonwealth as they prepare for the potential large-volume ethanol incidents that may result from an ethanol train accident. The most important of these efforts is the analysis of the regional capabilities needed to battle an ethanol train fire, including the amount of alcohol resistant foam that would be required. The Department of Fire Services has agreed to coordinate this crucial effort.

The cities will continue to be the primary entities responsible for emergency planning and response. The comprehensive emergency management plans for each city should be updated to reflect the added risks associated with ethanol transportation by rail in the quantities proposed. Through the submission of their Fire Service Recommendations, the city fire departments have shown a great interest in coordination and cooperation. This should continue as they prepare plans to identify critical facilities along the potential ethanol transportation routes and develop detailed emergency response plans as

necessary using consequence modeling of the worst case scenario of a derailment, release and fire involving multiple ethanol railcars.

The businesses involved in the transportation and distribution of ethanol also have a vested interest in safe operations. Both Global and the railroads currently prepare and enforce safety and security plans in compliance with the federal regulations. We recognize that preparing these plans and ensuring compliance with these regulations does add to the cost of their operations. The report has identified several actions that these businesses can take to further ensure safe and secure operations. Many of the recommendations would not carry a significant additional cost beyond the existing plans and procedures they have in place.

Finally, it must be noted that the largest question raised during this study process was how the added costs of preparing for safe transportation of ethanol by rail will be covered when funding is being cut at all levels of government. The only way to address this issue is through a collaborative effort that involves all of the parties involved. Each has its own resources, either manpower or funding, to contribute to the safe transportation of ethanol by rail.

Newington planners deem propane plan studied enough

Sea-3 expansion nearing approval, many still concerned for regional impact

By **Crystal A. Weyers**
cweyers@seacoastonline.com
May 06, 2014 2:00 AM

NEWINGTON — The Planning Board is leaning toward approval of the proposal by Sea-3 to reconfigure its Shattuck Way terminal to accommodate rail shipments of liquefied petroleum gas, or propane.

At Monday night's meeting, the board deliberated whether more studies needed to be completed before its approval or denial, and which conditions they would like in writing if they do pass the proposal.

After about an hour of deliberation, the board voted to proceed without the requirement of any additional studies.

"We've had a lot of public comment, we've had state and federal officials," Chairman Denis Hebert said. "I'm not sure what else we could do."

The board discussed whether the project meets the uses appropriate for the area in which it will be introduced, including whether or not it is in harmony with the character of the surrounding area, consistent with the overall long-range plans of the community, will not result in an overly intensive use of the land or create increased traffic congestion or hazards.

"We've heard a lot of testimony about the rails, about needs for upgrades," board member Justin Richardson said. "The evidence is kind of weak."

n Planner Thomas Morgan disagreed, saying that in November, the board determined that the project was going to have a regional impact.

"I think a study would be useful to determine what kind of an impact that's going to be," he said.

Board alternate Peggy Lamson reiterated that the issue of "safety, safety" has come up repeatedly.

"It's a regional issue," she said. "I feel that we need this. We need to have this done."

Hebert said that all area emergency management personnel have said they are prepared to handle any accident that could happen on the rails, but Morgan still felt a study would help identify any weaknesses or deficiencies that they may have overlooked.

"Who are we to say we want to reconsider what they're the expert at?" Hebert asked. "I have a lot of faith in my public fire chiefs in the region."

Board member Christopher Cross reminded others that Sea-3 has been operating for more than 35 years, and provides a valuable service and product to the region.

Lamson, who was not permitted to vote due to full board attendance Monday night, recalled when a women's group of concerned citizens fought to stop a refinery at Sprague several decades ago.

"I feel that we have a responsibility as Planning Board members to look at safety, health and the environment," she said, stressing that had she been able to vote, she would have voted in favor of more studies.

Although board member Bernie Christopher agreed he isn't impressed by the condition of the rails, he doesn't feel e is much else the board has the authority to do on the matter.

"I've walked the railroads, I don't get warm and fuzzies," he said. "It scares the hell out of me."

The meeting concluded following a nonbinding, informal "straw vote" to determine which way the members were leaning. Seven indicated they were leaning toward approval, at which point audience members against the proposal stood up and left the meeting.

"Newington cannot do it for Portsmouth, we can't do it for any other town," Hebert said of the town's role in the proposal, adding that they will submit copies of their findings to each of the communities affected by the proposed expansion if they vote in favor, so that they can come to their own determinations.

"It has been a really long process and a good process," he said.

Although the board was supposed to come to a decision by May 11, members will continue their deliberations at the board's May 19 meeting after putting together and finalizing potential conditions of approval.

Some of the preliminary conditions of approval set forth are:

- A 16-railcar limit per day.
- Requiring trucks coming and going from the corridor to enter and exit via Exit 4 on Shattuck Way, steering traffic northbound toward Dover.
- Prohibiting the queuing and parking of trucks on Shattuck Way.
- All Sea-3 improvements built on leased property to be removed when or if their lease is ever terminated.
- Notification of any deficiencies in the tracks that Sea-3 may become aware of.
- Training for local fire departments.
- No encroachment on the waterfront buffer.

Portsmouth council puts plan to sue Newington on hold

Officials will vote after neighbor decides on Sea-3 expansion

By **Jeff McMenemy**
jmcmenemy@seacoastonline.com
May 06, 2014 2:00 AM

PORTSMOUTH — The City Council decided to wait to make a decision about whether to sue the Newington Planning Board for its anticipated approval of the proposed expansion of the Sea-3 propane terminal.

Assistant Mayor Jim Splaine made a motion for the city of Portsmouth to plan to file an appeal of the Newington board's decision if they approve the proposed expansion.

"We should make it clear we're ready to do what we need to do," Splaine said during Monday night's meeting in City Council Chambers.

Newington's Planning Board did not take an official vote on the proposed expansion Monday night.

But City Councilor Brad Lown made a motion to postpone any vote on filing a lawsuit against the town until Newington has officially acted.

"We would be so foolish to sue a neighboring town before it actually made its decision," Lown said.

City Councilor Stefany Shaheen agreed the city should wait until the Newington Planning Board formally acts. But she also encouraged her fellow council members to "look at every option," including possibly filing a lawsuit against Newington.

City Councilor Jack Thorsen said he had no problem filing the lawsuit if that's what is needed to protect Portsmouth's safety, but also wanted to wait to see the arguments the Newington Planning Board uses when making its decision.

City Councilor Esther Kennedy also said the council should wait before deciding whether to file an appeal in Rockingham Superior Court against Newington.

But if they do approve the expansion, "all the gloves are off at that point," she said.

The Sea-3 propane terminal has proposed an expansion that would allow it to receive domestic propane, which is substantially less expensive than paying for propane from overseas. In its filing with the town of Newington, Sea-3 states that if the expansion is approved, the facility will operate around the clock and substantially increase the number of rail cars carrying propane on Seacoast train tracks.

The council voted unanimously to postpone the motion.

The vote came a couple of hours after city resident Rich DiPentima presented a petition to the City Council urging officials to file an appeal of what is expected to be the town of Newington's approval of the Sea-3 expansion plan.

The petition, which has been signed by 598 city residents, started circulating six days ago, DiPentima said Monday night.

"The level of concern expressed by many individuals and business owners we spoke with is amazing," DiPentima said Monday night. "People cannot believe that Portsmouth would allow Portsmouth to be placed at such a high risk."

DiPentima said the decision to petition the City Council to file the appeal of the Newington Planning Board's expected decision comes after "the town of Newington Planning Board has refused to conduct the appropriate

safety and environmental impact study requested by the city of Portsmouth."

Numerous municipal leaders and area residents oppose the proposed expansion, primarily because they are concerned about the condition of Pan Am Railways' tracks, which will carry the rail cars.

Pan Am Railways Executive Vice President Cynthia Scarano has promised that if the Sea-3 project is approved, Pan Am will upgrade the rail line from Class 1 to Class 2, which will allow its trains to travel as fast as 25 mph. Scarano has said Pan Am intends to run the trains at 10 mph, but that might not always be the case.

DiPentima argued Monday night that the expected approval of the project by the Newington board "is in violation of their own site plan review regulations that require that they protect public health, safety and welfare, and to avoid any development that may harm the environment."

City Attorney Bob Sullivan agreed with DiPentima's contention that filing the appeal of any Newington Planning Board decision is the only option the city has from a legal standpoint.

"I think there are no other options," Sullivan said.

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HAIGHT ENGINEERING, PLLC

TRANSMITTAL

To:	Tom Morgan	**From:**	Steve Haight
	Newington Planning Dept.		
Phone:	436-7640	**Date:**	5/6/2014
Re:	SEA-3 SITE PLAN	**CC:**	Sea 3 Attorney Alec McEachern

- **Comments:**

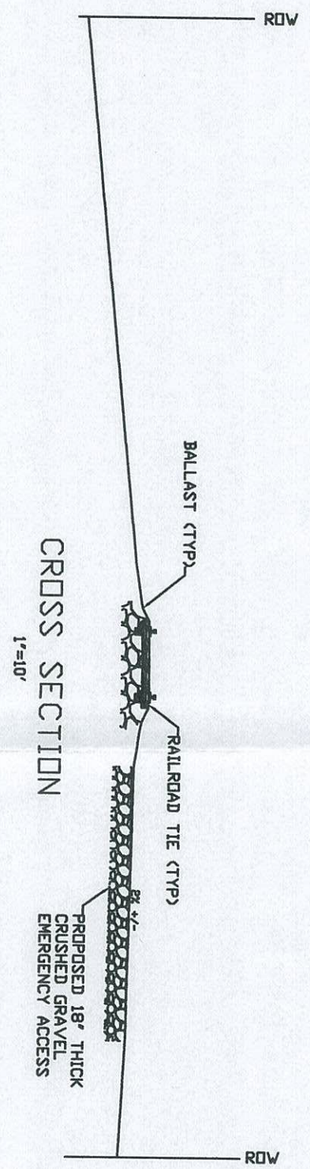
Enclosed are the latest revised plans of the Sea 3 SITE PLAN as requested.

1. 3 sets of paper plans (latest revision March 12, 2014)

If you need any additional information please give me a call

Thank you

Steve



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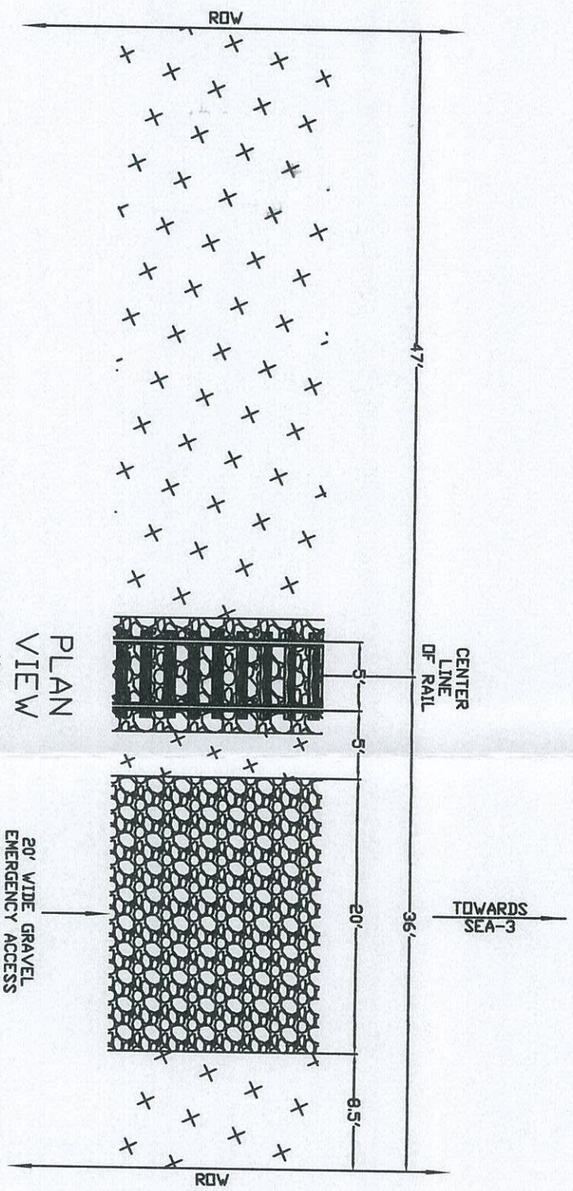

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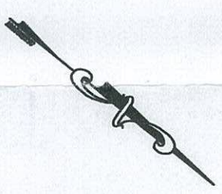

DATE: 4/24/2014	DESIGNED BY:	
SCALE: AS SHOWN	DRAWN BY:	
FILE NO:	APPROVED BY:	

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SCHEMATIC OF SECONDARY PROPOSED EMERGENCY ACCESS SEA-3 NEWINGTON, NH

No.	Appd	Date

REVISIONS

Many risk factors not considered in review by Planning Board

08, 2014 2:00 AM

May 7 — To the Editor:

After sitting through the May 5 Newington Planning Board meeting, it appeared that a few things weren't considered in regard to the propane terminal expansion proposal.

Propane has a relative weight of 44 g/mol to air's average of 29 g/mol and sinks to the ground. In the liquid form, it will float on the water's surface until it heats and vaporizes. Propane is derived as a byproduct when refining crude oil or separated during the processing of raw natural gas. Propane boils at minus 44 degrees Fahrenheit, so the transport materials have to be resistant to brittle fracture. It can be shipped in refrigerated or pressurized tanks. Non-refrigerated transfer is riskier, but this was not discussed. At 100 F, the pressure builds to around 172 pounds per square inch. So when expanding facilities handling propane, there should be a complete risk analysis. The board felt that it had all the evaluations it needed and voted against doing any more studies.

There is certainly the risk of transporting the propane to the facility. One DOT 112 tank car can carry 33,500 gallons, or about 127 cubic meters. The proposal discussed shipping no more than 16 rail cars at a time. This is little comfort. Propane is much more volatile than other fuels such as diesel and can form explosive concentrations between 2.15 and 9.6 volume percent in air. The maximum flame temperature in air is 3,595 F.

There is training for personnel and procedures to follow, but equipment can break or malfunction. Human errors can also occur, especially when major changes take place. There are increased security concerns that were barely touched on but were deemed to be adequately addressed in the opinion of the board. The matter of oversight, or the limitations of a responsible oversight agency, is a risk to consider.

It was interesting to hear how the rail service would be somehow improved if the project was approved. This seemed to be at odds with the fact that the existing use for many years has likely resulted in the degradation. Then there are the ships. Nothing could happen to the ships except that two ships have struck two bridges in the Piscataqua River in less than a year. Are they coastal carriers in the 3,500 to 10,000 cubic meter range or are they large prismatic tankers with 100,000 or more cubic meter capacity supporting export? Are they refrigerated or not? None of this was discussed. There are also the assignments of liability. When something goes wrong, who will respond and who will pay for the damage? This was not discussed. Does the Seacoast (or state) possess the capability to respond, even with mutual aid? Search the term "BLEVE." When you try to find out who is responsible for a company or ship, it can be more difficult than you think. We got to observe the liability process recently when a ship struck the Sarah Mildred Long Bridge. Are they limited liability corporations or foreign owned? Will the public end up paying for the response or recovery efforts?

By rail, ship or in a storage tank, just 164 cubic meters of liquefied propane has the energy equivalent of a kiloton. That equates to 12.4 kilotons of energy in a train with 16 tank cars. In comparison, "Little Boy" had the energy of 13 to 18 kilotons. You don't need complex math to see that the energy in a tank car or ship is sufficient to incinerate quite an area. Yes, the risk of a problem is low when handling and transporting propane, but there are billions of dollars worth of real estate, equipment and vessels in relatively close proximity to a massive amount of energy. How many billions in insurance should be carried to cover the risk, and by who?

Finally, propane is the third most common transportation fuel in the world following gasoline and diesel. Who will benefit from the risk we are being asked to accept? There are no laws on the books to restrict where and to whom propane can be sold. The board expressed that it did not even have a final plan but was willing to support the project's approval by a show of hands. It is ironic that we just passed the 40th anniversary of an attempt to put a refinery on Great Bay, and some still feel compelled to put our Seacoast at risk again.

So, if some day you see the Piscataqua River or Great Bay freeze over on a warm summer day, that will not be a

good day for the Seacoast. Hopefully, you will not be at an event involving a grill, open flames or brightly colored sparks.

ı Cavallaro

Rye

PAN AM RAILWAYS

IRON HORSE PARK
NO. BILLERICA, MA 01862

May 8, 2014

Denis Hebert, Chair
Planning Board
Town of Newington
205 Nimble Hill Road
Newington, NH 03801

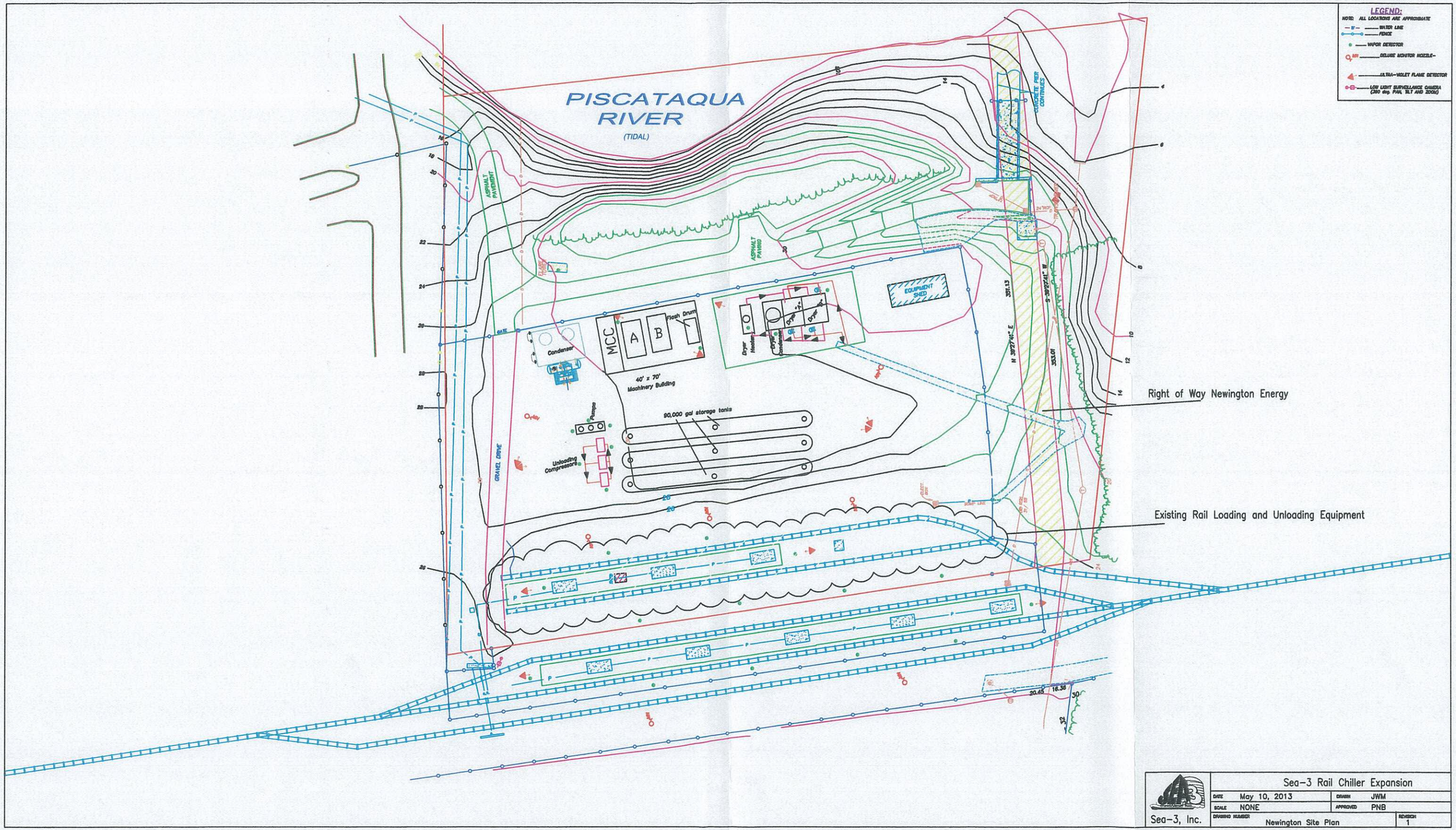
Re: Letter of Authorization
Sea-3, Inc. / 190 Shattuck Way

Dear Mr. Hebert:

On behalf of the Boston and Maine Corporation/Springfield Terminal Railway Company, d/b/a Pan Am, its successors and assigns, I hereby authorize Sea-3, Inc. to execute all land use applications for Pan Am's property situated in the Town of Newington as shown on Tax Map 8, Lot 2A that is the subject of lease negotiations between Pan Am and Sea-3, Inc. (the "Property") filed with the Planning Board in connection with Sea-3, Inc.'s proposed site plan improvements at 190 Shattuck Way and to take any action necessary for the application and permitting process, including but not limited to, attendance and presentation at public hearings.

I further authorize the Town of Newington Planning Board, Planning Department and other pertinent Town Departments to enter upon the Property for the purpose of evaluating Sea-3, Inc.'s application for Site Plan Approval, including performing inspections during the application phase, post-approval phase, construction phase and occupancy phase, but only as it relates to Sea-3, Inc's activities on the Property. This authorization specifically excludes the right to make any inspection of Pan Am's rail operations on the Property. It is understood that such individuals will use all reasonable care, courtesy and diligence when on the property and will follow all of Pan Am's safety rules while on the Property.

By: _____
Robert B. Culliford
Senior Vice President
& General Counsel



Sea-3, Inc.	Sea-3 Rail Chiller Expansion		
	DATE May 10, 2013	DRAWN JWM	
	SCALE NONE	APPROVED PNB	
	DRAWING NUMBER Newington Site Plan		REVISION 1

Science facts highlight propane transport risk

May 10, 2014 2:00 AM

May 9 — To the Editor:

In the May 8 edition of the Portsmouth Herald there was an excellent letter by Mr. Don Cavallaro of Rye. He presented compelling scientific information regarding the risks of transporting propane by rail through populated areas. There is one very important piece of information that also must be considered with regard to the risks associated with the Sea-3 expansion proposal that the Newington Planning Board has not given full consideration.

During hearings before the Newington Planning Board, Sea-3 has confirmed that the propane it will be receiving by rail from Rockingham Junction through Stratham, Greenland and Portsmouth will be unodorized, which greatly expands the risks associated with any accident involving these trains. This expanded risk also exists during the off-loading of the tank cars at the Sea-3 facility itself. If there were a leak or some malfunction of the tank car, where a loss of product was taking place, this might not be noticed immediately since the propane does not contain the odorizing agent when in the rail cars. As such, there could be a delay in recognizing the threat and properly responding, a delay that could result in a catastrophic event, such as a BLEVE (boiling liquid expansion vapor explosion) that Mr. Cavallaro referred to. While, as Mr. Cavallaro stated, the probability of such an event may be small, the consequences are so severe, the risks are not worth taking the chance of such an event occurring at all. Just imagine the consequences of such an event taking place in downtown Portsmouth, with the close proximity of a number of hotels and other crowded venues, including the proposed Harborcorp hotel, conference center, condominiums and Whole Foods market which will be only seventeen feet from the rail lines carrying the propane.

From a safety and commonsense perspective, the transport of this volume of volatile hazardous material through the center of a busy city six days a week is not justifiable under any circumstances. To allow this to take place will simply roll out the welcome mat for more hazardous materials to be brought through Portsmouth to other facilities along the rail line in Portsmouth to Newington. Once this precedent has been established, there will be no stopping other, even larger, threats.

Rich DiPentima

Portsmouth

Newington planners making landmark decision

May 16, 2014 2:00 AM

May 15 — To the Editor:

On Monday evening, May 19, the Newington Planning Board will make a landmark decision which will have a significant negative impact on the city of Portsmouth. The Newington Planning Board is poised to approve the application for Sea-3 to expand its operational capacity by receiving greatly increased shipments of liquid propane by rail. We, as concerned residents, and the Portsmouth City Council have been requesting a comprehensive safety, environmental and economic-impact study from the Newington Planning Board so that everyone can be afforded the opportunity to understand the effects that an approval of the expansion will bring. The Planning Board has consistently refused to conduct the requested study, instead choosing to make its decision based on extremely limited data as to the potential risks which Portsmouth, Greenland, Stratham and Newfields will be forced to endure. In its haste to put this issue behind them, the Planning Board has ignored the concerns of residents who have voiced our opinions at numerous meetings. After declaring the proposal by Sea-3 to be an issue of regional impact, the Planning Board has based its decision on data exclusively based on its own site plan review, and refused to consider the regional impact this project will have on our city and towns along the railway.

The Planning Board, in its May 5 meeting, took a straw vote among its members as an indication of their intentions with regard to approval of the Sea-3 proposal. Planning Board members voted unanimously to approve the application. At its next meeting, May 19, it is expected that a formal vote will be taken and the proposal will be approved.

We, as a group, circulated a petition requesting the Portsmouth City Council to appeal any decision to formally approve the Sea-3 plan by the Planning Board, and in a mere six days of gathering signatures of Portsmouth residents only, we garnered the support of more than 700 people, and provided information to many who were unfamiliar with this issue. We presented this petition to the Portsmouth City Council during its May 5 meeting.

Near the end of the May 5 meeting, Councilor Stefany Shaheen asked the city attorney for details regarding a potential appeal of the Sea-3 proposal, and received a response that any discussion regarding Sea-3 should not be held in public.

At this time, we are urging the Portsmouth City Council to discuss the merits and possible complications of the requested appeal in a forum open to the public so that we as the residents of Portsmouth can, with the City Council, develop a plan we can all support. In the interest of transparency, we deserve to know the mood of the City Council members on this critical matter, as anyone living in or visiting our city will be affected by the decision of the Newington Planning Board and the response by the Portsmouth City Council.

Bob Gibbons, Pat Ford, Lou and Pat Salome, John and Jane Sutherland, Rich and Cathy De Pentima, Matt and Erika Nania

Portsmouth

City must hold firm against Sea-3 expansion

May 17, 2014 2:00 AM

May 14— To the Editor:

On April 29, I talked with scores of people in downtown Portsmouth about signing a petition urging the Portsmouth City Council to appeal in court any decision by the Newington Planning Board to permit an increase of propane storage in that town. Newington's approval would mean a direct and dramatic increase in the rail shipment of propane through Portsmouth and several surrounding towns. The petition urges that Portsmouth appeal if Newington refused to conduct safety and environmental impact studies before making its decision, which Newington has rejected.

Fifty-five of the 60 people I spoke with signed the petition during my five days of knocking on doors. Many, including executives of major businesses and construction projects downtown, said they couldn't coexist with a propane railroad being literally a Little League pitcher's toss from their windows and walls. One of those who refused to sign shouted that I should "support your country." I wasn't sure whether he was talking about the invasion of Iraq, the war in Afghanistan or Vietnam, but he said it. More than 700 people signed the same petition passed around by others. And the signatures continue to pour in.

One man, who will remain nameless but refused to sign the petition on April 29, wrote me an e-mail later that day. This is what he wrote, in its entirety:

"Sorry couldn't talk too long ...;

"So, I'm not sure of your position and petition, please tell me a little more.

"[illegible] you against increased rail traffic with propane all together or just increased traffic with the tracks in such bad shape?

"In my opinion, I am not opposed to transporting freight, coal, gas, whatever, if it's safe.

"However, I am opposed to increasing traffic and speed on the rails in such poor condition.

"Thank you ..."

This was my answer, in its entirety. I also sent along photos of the crumbling railroad tracks:

"Safety is a main concern. So is truthfulness.

"The tracks are in terrible condition, which is why they are ranked as Level 1, meaning that trains aren't supposed to exceed 10 miles per hour on their crumbling remains. The standards, as you can see from the photos, for using railroad tracks through neighborhoods in cities and towns are very low. Neither Sea-3, the proposed propane shipper, nor Pan Am, which owns the tracks, will say whether the tracks will be improved enough to be granted Level 2 status, when train speeds would be allowed to reach 25 miles per hour, day or night. After listening to public hearings at the Newington Planning Board since January, it seems clear that the tracks would have to be upgraded if only because they're in such poor condition and everyone knows that now. My guess is that Pan Am will make just enough — no more than necessary — improvements in the tracks to be granted Level 2 status, which means speeds up to 25 miles per hour will be permitted. As with all of their murky comments, Pan Am and Sea-3 won't say clearly what they will do regarding rail improvements or speed.

"A minimal amount of propane — Sea-3 has transported only 87 propane-carrying tank cars in the past five years [illegible] already being transported on those terrible tracks. We are against the proposed dramatic increase — between 3,600 to 4,800 tank cars one way annually — in propane traffic through the neighborhoods of towns and cities on rail tracks that are unfit for walking on. The proposed increase in rail traffic would also require the state of

New Hampshire and cities and towns through which the tracks run to pay the cost of more rail crossing controls, which amount to between $250,000 and $400,000 per crossing. Portsmouth has several rail-street crossings, i[illegible]ding those on busy Market and Maplewood Streets; Greenland has 10. We also object to Pan Am's refusal to release reports concerning inspections of its rail bridges and trestles. Why the secrecy, we ask? If the conditions of the rail bridges and trestles are good, what's to hide? If the inspection reports are damning, secrecy naturally would be the word of Pan Am's day.

"Finally, and critically, Newington itself requires that independent safety, health and environmental studies be conducted before the town approves an increase in propane capacity. The cost of those studies would be charged to the propane applicant, Sea-3 in this case, according to Newington's own rules. The city of Portsmouth has officially asked the Newington Planning Board to demand that those studies be conducted, but the Planning Board has refused to do so. This is the focus of the petition to the Portsmouth City Council.

"We figure that there must be a better way to transport hazardous materials than through tight quarters in cities, towns and neighborhoods, where the number of derailments, explosions, fires and damage to people and property nationwide can be counted almost daily. One ka-boom in downtown Portsmouth would derail the boom town for some time.

"Thanks for your interest, and see you soon, Lou Salome"

Two days later, on May 1, I returned to see the man who sent me the e-mail. "I'll sign" the petition he said, soon after I walked in carrying a copy of a story in that day's Herald about a train derailment in Lynchburg, VA. The train was carrying crude oil, which caught fire. Three leaking tankers plunged into the James River. Change the names — Lynchburg to Portsmouth and the James River to the Piscataqua — and the Herald would have a big, bad, local story.

T[illegible] Associated Press story about the Lynchburg derailment said that "there have been at least eight significant oil t[illegible] accidents in the U.S. and Canada in the past year involving crude oil, including several that resulted in spectacular fires. ..." I told the man who signed our petition that there's a train derailment almost every week. On May 8, a freight train sparked a string of bush fires three-miles long from Scarborough to Biddeford, Maine, torching 10 mobile homes and forcing many people to evacuate their homes. Two propane tanks at the mobile homes exploded and spread the fire.

On May 5, the Newington Planning Board turned thumbs down on its previous concerns about safety, health and the Great Bay watershed and surrounding environment. Courageously, the board focused on the need for Sea-3 to provide proper landscaping and trash collection at its propane storage site. The suit — that is, the town's lawyer — apparently won the day. Using sham conditions as decorations, the Planning Board will give final approval on May 19.

That's when the Portsmouth City Council should step into the breach with an appeal. The city already has spoken publicly, in the City Council Chambers and before Newington officials, about the need for safety, health and environmental studies. This will be the moment for the city to hold firm and, by definitive action, defend the public interest in a way that's visible to everyone.

Louis J. Salome

Portsmouth

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May 19, 2014

Denis Hebert, Chairman
Newington Planning Board
205 Nimble Hill Road
Newington, NH 03801

RE: Sea-3 Expansion Plan
Abutter Safety Concerns

Dear Chairman Hebert:

This firm represents the interests of Matthew Metivier, individually and as Trustee of the Marshall Remick Revocable Trust, with respect to their concerns regarding the proposed expansion of use at the Sea-3 terminal. Mr. Metivier owns 162 Shattuck Way and the Trust owns 164 Shattuck Way (the "Properties"). These Properties would be enormously impacted by the activities proposed at the terminal.

In determining whether or not to give Sea-3 the necessary permits to expand the use of the railway lines in Newington at its terminal, the Planning Board should consider the following immediate impacts upon those properties adjacent to and nearby the proposed project:

First, the railway crossing at Shafmaster Drive that serves as the sole entrance and exit to the Properties is completely without markings or any other indication that an active rail line is in use. The crossing must be upgraded with signals that notify motorists of the active crossing. Further, since the Shafmaster crossing is very close to the terminus of the line, any increase in rail car length or train length could block any feasible access to the Properties, as well as that of other properties. In addition to those accessing residences in this area, there is significant commercial traffic making the potential for obstruction all but inevitable. Clearly, the Shafmaster Drive crossing requires careful and thoughtful examination and development to ensure safety and accessibility for all.

Safety is of paramount concern to this project. In addition to assuring a safe railway crossing, the surrounding homes and businesses should be protected from an explosion and/or fire by a berm and a blast firewall. In light of the recent railway disasters, this is a very

reasonable precaution given the proximity of the terminal to occupied dwellings. A berm and firewall would also address some of the privacy and security concerns outlined below.

There has been little to no information provided to the public regarding the type of security measures that would be taken by Sea-3 with respect to access to the terminal from adjacent properties. For instance, people can be frequently seen on the small beach underneath the Newington Energy pier which is only accessible by walking down the train tracks and onto the property occupied by Sea-3. Currently, there is no access control to this sensitive industrial area from the tracks. Mr. Metivier believes that anyone could easily wander onto the Sea-3 property without being noticed. Whether such a trespasser is acting with malicious intent or out of ignorance, the ramifications presented by either evil or ignorant trespassers abound. This too needs to be addressed as safety and security are concomitant.

The impact on the value of the Properties cannot be emphasized enough. Sea-3 is owned by Trammo, the world's largest private company in fertilizer trading and merchandising and one of the wealthiest privately held companies in the United States. Sea-3 can afford to address these concerns, and to protect the value of the Properties. The Properties' values are already diminished and are they realistically worth but half of their current tax assessed value. They will only become less valuable and more difficult to market with this proposed development and increased commercial train traffic. These measures may inconvenience Sea-3, but they are a small price to pay for to preserve the value and safety of the abutting and neighboring properties.

Mr. Metivier simply asks that you consider how you would feel if you lived next door to this operation, and if you would want your kids to play in the shadow of a storage tank alongside an active railway. Mr. Metivier's quality of life and right to quiet enjoyment are already infringed upon. He asks you to not only empathize with his plight, but act in the best interest of your citizen neighbors.

Very truly yours,

Daniel C. Hoefle

DCH/kjhm
cc: Matthew Metivier

TOWN OF NEWINGTON
PLANNING BOARD FINDINGS AND CONDITIONS OF APPROVAL
SEA-3, INC. SITE PLAN APPROVAL
190 SHATTUCK WAY

Adopted 5/19/14

FINDINGS

1. The applicant's proposal seeks to improve the site's existing rail off-loading facilities for liquefied propane gas ("LPG") and add additional LPG rail off-loading facilities on its property and on property to be leased from Pan Am Railways.

2. The purpose of the proposed site improvements is to allow the applicant to continue its historical LPG distribution operations by increasing the capability to receive domestically sourced LPG, which is only available by railroad. The existing capacity to receive internationally sourced LPG from ocean vessels would be unchanged.

3. The Board finds that the shipment by rail of LPG via rail to the SEA-3 facility at 190 Shattuck Way has been occurring since 1995, consistent with the existing site plan approval that SEA-3 has obtained from the Planning Board.

4. If constructed, the proposed site improvements would not materially change operations on the site, which would continue to meet local propane gas distribution needs through its existing truck distribution facilities.

5. LPG is a combustible, non-toxic gas that evaporates into the atmosphere upon discharge.

6. The applicant's site is manned 24 hours a day, 365 days a year, by personnel who are trained in emergency safety response procedures.

7. The Board finds that SEA-3 has a long history of facilitating and providing LPG fire safety training and incident response training to its personnel and to other public safety personnel, both in Newington and in the region. Further, that Mr. Bogans of SEA-3 has represented that these training opportunities would continue to be available to Newington's firefighters and public safety professionals, and to other communities in the region.

8. The applicant's site is regulated by the U.S. Department of Homeland Security, as overseen by the United States Coast Guard, and is required to comply with these agencies' regulations for security lighting, surveillance and fencing.

9. In his October 9, 2013 interoffice memorandum to the Planning Board, then Fire Chief, Dale Silva, stated with regard to the proposed site improvements that:

> "In reference to SEA-3's request to expand their rail capability, we have been researching this a great deal. I met with N.H. Fire Marshal's office to discuss the operation with two Fire Marshals, we inspected the proposed site. In addition to fire protection, we are reviewing federal laws and how this may affect our neighboring communities. From a fire department view, I believe this is a positive for Newington, because it gives us the opportunity to update and increase fire protection systems that are already in place but outdated. The operation they are proposing is not dramatically different than their current operation.
>
> Working with the Fire Marshal's office, we are also going to require a third party Fire Engineer review, but one that specializes in propane operations. The State is researching potential engineers for us.
>
> Having said that, we recommend conditional approval in concept. If approved by the Newington Planning Board is to go forth, SEA-3 will have numerous requirements set by Newington Fire, with the assistance of the State Fire Marshal's office and an Independent Engineer."

10. The proposed site improvements will update and modernize the site's existing fire protection systems.

11. That Newington Fire Chief Head testified that his department has the resources that it needs to respond to an incident, whether it be a SEA-3 facility, or along the railroad tracks. Chief Head said that his department would continue to take advantage of any training that it may require and that the final plan designs would be reviewed and approved by his office, and by the N.H. State Fire Marshal's office.

12. That Ms. Scarano of Pan Am represented to the Board, on the issue of fire incident response training and safety, that Pan Am

often worked with the Federal Railroad Administration [FRA] to provide a day of training for local fire departments.

13. Chief Head stated that as to jurisdiction over incident response, his department handles Newington, and jurisdiction for incidents in Portsmouth or other communities lies with the Fire Chiefs in those communities. Each community can call upon neighboring communities for mutual aid, if such aid is advisable. He also indicated that there are emergency management plans that include evacuation plans which have been put in place by the State of New Hampshire for the seacoast region, should an event occur of such magnitude that the plan is activated.

14. It has been reported from several sources that Portsmouth Fire Chief Steven Achilles has stated that he currently has the resources and training necessary to respond to a LPG incident in Portsmouth related to the LPG rail traffic that currently travels through the City, and that the Portsmouth Fire Department's current resources and training are sufficient to meet the risks presented by the proposed increase in LPG traffic presented by this site plan application.

15. Based on its review of the proposed site plan, the Town's retained safety expert, SFC Engineering Partnership, Inc. ("SFC"), concluded in its January 29, 2014 report, "Overall the site plan appears to be in general compliance with NFPA 58 and 54. In terms of fire safety compliance, no significant problems have been found with this layout."

16. The applicant's Fire Safety Analysis determined that there is adequate water volume and pressure on site to service the proposed fire suppression system.

17. In its written review of the applicant's Fire Safety Analysis ["FSA"] dated April 9, 2014, SFC concluded, "This FSA document appears to be in general compliance with NFPA 58, and NFPA FSA manual. No significant problems have been found with the proposed system or the FSA at this point; however, the above listed detailed documentation should be submitted and reviewed prior to the issuance of a building permit and system commissioning."

18. The applicant has represented that the final design and construction of the site improvements would comply with NFPA 58 and 54.

19. The proposed site improvements would add a second means of emergency access to the site over the property of Pan Am Railways.

20. The proposed site improvements would maintain the site's existing vegetative buffers and add a 6-8' earthen berm at the southeastern corner of the site, within the existing fence line, where the site abuts a residential use.

21. The proposed site improvements will result in no change to the site's existing motor vehicle parking or truck distribution facilities.

22. Mr. Hazarvartian, P.E. of Transportation Engineering, Planning and Policy, performed a traffic assessment for the applicant and concluded that the proposed site plan would not alter the historic truck traffic volume which averaged 103 to 161 trucks per day, from 2002 to the present (excepting 2012 and 2013, which were substantially below these numbers due to market conditions).

23. Mr. Bogans testified that there are site constraints that limit the number of LPG rail cars that SEA-3 can receive to 16 rail car tankers with LPG per day, even with the site improvements proposed by this application. (3/24/14 PB mtg. minutes).

24. Mr. Grotenhuis, Senior P.E. of RSG, reviewed for the Planning Board the applicant's traffic assessment and concluded that the truck traffic volume would remain essentially the same, at 160 trucks on average per day. He further found that ongoing changes to the Spaulding Turnpike may alleviate some of the traffic down Woodbury Avenue and through Portsmouth.

25. Based on the evidence presented, the site plan proposal will not increase the truck traffic to and from the site.

26. The proposed site improvements will not change the site's existing distribution capacity or increase traffic impacts associated with existing uses on the site.

27. The motor vehicle area of the proposed site improvements is currently hard packed gravel and will remain hard packed gravel, with the exception of where the improvements are affixed to the ground.

28. The proposed site improvements will result in no adverse change to existing dust, erosion or run-off conditions.

29. The proposed site improvements will upgrade the existing storm drainage system.

30. The applicant has received Shoreland Impact Permit No. 2014-00105, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

31. The applicant has received Alteration of Terrain Permit No. AoT-0695, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

32. The proposed site improvements will not alter the existing security lighting, which was installed in accordance with a security lighting plan required and approved by the U.S. Department of Homeland Security.

33. In its April 21, 2014 letter to the Planning Board, Pan Am Railways confirmed in writing that it will lease a portion of its land to the applicant for a portion of the proposed site improvements, but advised the Board of its position that Pan Am Railways is not the applicant. It is not asking the Board for any approvals and it is not subject to the Town's land use regulations. Pan Am is assenting to this application to the extent that a portion of the improvements are located on property that it will lease to SEA-3.

34. John Robinson, the N.H. Railway Safety Inspector at the N.H. Department of Transportation, testified that he met with Portsmouth officials to discuss track inspection issues.

35. Mr. Robinson testified that Pan Am would only be able to move 5 tank cars at a time to the SEA-3 facility over the tracks north of Rockingham Junction while the tracks were in their current condition (3/24/14 PB mtg. minutes).

36. Mr. Robinson said that he (as N.H. DOT's representative) and the FRA over joint track inspections of the Portsmouth and Newington branch line.

37. Mr. Robinson testified that N.H. RSA Chapter 373 governs the process by which N.H. municipalities can request a change of safety protection at railroad-roadway crossings. This is a N.H. DOT administrative hearing process that would examine whether the safety protections at the crossing are adequate, and if not,

who would be responsible for the upgrades and how that cost would be allocated.

38. Mr. Robinson testified that federal law required annual, comprehensive bridge inspections by Pan Am to be in place with records, ratings, and results available to the N.H. DOT and to the FRA.

39. Ms. Scarano of Pam Am stated that Pan Am was currently working with the Town of Greenland to begin the process of examining road crossing safety protections and reiterated that Pan Am would work constructively with communities on road/rail crossing issues.

40. Ms. Scarano of Pan Am testified that if SEA-3's application is approved, Pam Am intends to replace approximately 10,000 ties from Rockingham Junction to the SEA-3 facility, and that it would upgrade its tracks Class II status along this section of the railway.

41. Mr. John Killoy, Track Safety Administrator for the New England region of the Federal Railroad Administration (FRA) testified that the FRA regulates rail safety and employee safety. He stated that the railroad owns and maintains the track to whatever standards it sets for its use, and that tracks would be inspected by the FRA, once an upgrade of track has been completed to a new track class. (3/10/14 PB mtg. minutes).

42. The Board finds that rail safety regulations and inspections lie solely with the Federal Government under the jurisdiction of the FRA and the State of New Hampshire, through N.H. DOT. The Planning Board has heard lengthy, detailed testimony from John Killoy of the FRA and John Robinson of N.H. DOT. Each reaffirmed the Board's understanding that exclusive jurisdiction over rail safety, inspections and operations lies with these governmental bodies and not with N.H. municipal planning boards.

43. While Pan Am has supplied the Board with important information, SEA-3, and not Pan Am, is the applicant before the Board.

44. The Board finds that there are existing safety studies which detail the safety protocols and procedures to be followed on the SEA-3 property in the event of a LPG incident.

45. Based upon the evidence before it, the Board finds that public safety will be enhanced by this application, as Pan Am declared it will upgrade its tracks to Class II status. This will have to be done in order to accommodate a proposed increase to 16 tank car deliveries per day of LPG to the SEA-3 site, above the present limit of 5 cars at a time.

46. Public safety will also be enhanced by the new, state-of-the-art safety improvements that are to be installed on-site as proposed by the applicant.

47. The Planning Board has conducted 7 public hearings on this application. The Board has encouraged and received substantial public input from neighboring communities and their residents, after having declared this project to be a proposed development that has a potential for regional impact per N.H. RSA 36:57.

48. While the Planning Board received and reviewed a report prepared by the Massachusetts Department of Transportation entitled, "Report on the Safety Impacts of Ethanol Transportation by Rail" dated March 29, 2013, the Board finds that the circumstances of this study are not related to this application, as the product being transported in Massachusetts is different (ethanol in Boston vs. LPG in N.H.). The Massachusetts Legislature adopted a law in 2012 that required the Massachusetts DOT to commission this study; there are Massachusetts state permits required to transport ethanol through Boston that are not pertinent to New Hampshire. Most importantly, the rail lines within the Massachusetts study area over which the ethanol would travel are owned by the MBTA, and not by private rail carriers such as Pan Am.

49. The Board expressly finds that the requirements of Newington Zoning Ordinance Article 5, Section 6 have been satisfied, that the contemplated use would constitute a development of sustained desirability and stability, that it would be in harmony with the character of the surrounding area, and consistent with the overall long range plans for the community, that it would not result in an over-intensive use of the land, that it would not result in undue traffic congestion or traffic hazards, and that the plans indicate that it would be adequately landscaped and otherwise promote the health, safety and welfare of the community.

50. The Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V,

section 5, A, which anticipates that land zoned Industrial will be able to accommodate "expansion of existing industry…and to enhance economic development and employment opportunities."

51. The Board expressly finds, as is required by Newington Zoning Ordinance Article V, section 5, B that per the terms of this site plan application, "the proposed location, construction and operation will not injure present or prospective industrial development in the district, or the health and welfare of residential districts in the vicinity." The Board expressly finds that this application is precisely the type of business development and land use that the Industrial District is intended to protect and promote.

52. The Board expressly finds and recognizes that, in the aftermath of the recent economic recession, the importance of supporting business in the Industrial District, and promoting economic development and local employment, cannot be understated as an important purpose of this Industrial District.

53. That the Board finds that SEA-3 helps to provide a variety of energy sources to the N.H. seacoast area and the region, and to the extent that this approval will continue to allow SEA-3 to provide energy alternatives to local energy customers, Newington and the region benefit by having enhanced competition in the energy marketplace.

54. The proposed site improvements meet all applicable requirements of the Town of Newington's Site Plan Review Regulations.

CONDITIONS OF APPROVAL

1. Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.

2. The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.

3. Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by

SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.

4. The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

5. Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

6. If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

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P.O. Box 1166, 181 Watson Road, Dover NH
(603) 750-4266

HAIGHT ENGINEERING, PLLC

TRANSMITTAL

To:	Tom Morgan	**From:**	Steve Haight
	Newington Planning Dept.		
Phone:	436-7640	**Date:**	5/19/2014
Re:	SEA-3 SITE PLAN	**CC:**	Sea 3 Attorney Alec McEachern

- **Comments:**

Enclosed is a revised cover sheet for the Sea 3 SITE PLAN. For clarity Pan Am was added to the cover sheet as an owner

1. 3 sets of paper plans (latest revision May 16, 2014)

If you need any additional information please give me a call

Thank you

Steve

Newington Planning Board

Monday May 19, 2014 6:30 PM

Agenda

1) **Planning Board Deliberations** at the Town Hall - Proposal by Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships, and via truck to customers in New England.

2) **Planning Board minutes** of May 12

3) **Correspondence**

Denis Hebert, Chair
Planning Board

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, May 19, 2014

Call to Order: Chair Denis Hebert called the May 19, 2014 meeting to order at 6:35 p.m.

Present: Mike Marconi, Vice Chair; Bernie Christopher; Christopher Cross; Jack Pare; Justin Richardson; Alternate Member, Peggy Lamson; Board of Selectman Representative, Rick Stern; Jane Kendall, Recorder; and Thomas Morgan, Town Planner

Public Guests: Attorney Alec McEachern; Attorney John Ratigan; City of Portsmouth, Attorney Jane Ferrini; Paul Bogan, Sea-3 Vice President of Operations; Steven Haight, Haight Engineering; Cynthia Scarano, Pan Am Executive Vice President; Robert Culliford, Pan Am Senior Vice President and General Counsel; Sandy Sweeney; Jeff Barnum, Great Bay Water Keeper; Laura Bergeron; Bob Gibbons; Lou Salome

1) Public Hearing: Proposal by **Sea-3** to reconfigure its terminal at **190 Shattuck Way** (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships.

Chairman Hebert passed out the most recent updates conditions and findings draft by Town counsel, Attorney John Ratigan. Alternate Board member, Peggy Lamson asked if the Board agreed on the findings and Chairman Hebert said the point of the non-binding straw vote was to allow Mr. Morgan and Attorney Ratigan to determine the conditions based on the findings to date for the Board to review. He said he didn't know which way the Board wanted to go and it could still change.

Attorney Ratigan said he and Town Planner, Tom Morgan drafted the list after the last deliberation, and Mr. Morgan's suggestions were also incorporated. He said another issue came up on the last page of Condition 5 which read "…that several safety plans were adopted in conjunction to the original Sea-3 site plan…" would now read that the "…safety studies shall be reviewed by Sea-3, updated and submitted to public officials, including the Newington Fire Chief..." to show that there were several safety studies instead of just one. Chairman Hebert said the original study was done in increments and included emergency management practices. He said each study could stand alone, but some needed updating to present day standards. He said the fire chief said they also needed some equipment updates, but the plan itself needed to be updated as well. Ms. Lamson said Dale Sylvia was fire chief at the time and asked Chief Head if he conferred with former Chief Sylvia before he departed. Chief head said he did not.

Chairman Hebert commented that the rails would be safer once Pan Am upgraded the tracks because there would be one instance of 16 cars traveling to and

from the side instead of five cars at a time. Board member, Justin Richardson said he was confused because Pan Am wasn't the applicant, but the applicant was operating on Pan Am property where some of the improvements would occur. Board member, Chris Cross said that was the intent of the lease. Mr. Richardson said it was significant that part of the project was on Pan Am property, yet Pan Am made statements that they were not applicant. Chairman Hebert said he thought he was satisfied that they were only leasing the land and weren't doing anything with the equipment.

Attorney Ratigan summarized Pan Am's letter of April 21, 2013 that said they would lease a portion of its land to the applicant, but advised the board that they were not the applicants, were not asking the Board for any approvals and were not subject to the town's land use language. However, he did think it appropriate to add Mr. Richardson's language stating that a portion of the improvements were on Pan Am's property. Mr. Richardson read through the conditions and Attorney Ratigan agreed to change the wording to say "Pan Am was consenting to the application to the extent that a portion of the improvements were on their property leased to the applicant"

Mr. Morgan said they had received an update from Pan Am earlier stating that Pan Am was now recognized as one of property owners. Mr. Cross said Pan Am was the owner of the property, but they were not the owner of any of Sea-3's improvements on the leased property.

Mr. Richardson recommended that the wording on #45 at the bottom of page 6 that said the Board found that public safety would be enhanced and add "Pan Am has to upgrade..." Chairman Hebert recalled that Ms. Cynthia Scarano, Pan Am Executive Vice President said if the Sea-3 expansion was approved, they would upgrade the tracks, although he understood it was a non-binding statement. Mr. Morgan said the correct verb to use would be "declared". Mr. Richardson agreed that they should strike "have to" and separate their intent and regulatory requirements by clarifying that this would need to be done in order to accommodate 16 cars per day. Board member, Jack Pare said they needed clarification on the number of rail cars traveling five at a time, noting that more than five cars could travel in a day, but only five at a time could travel on accepted tracks. He said Sea-3 stated that they would have to come back if wanted to receive more than 16 cars a day, but they were still limited to five at time if improvements were not made. Mr. Pare pointed out another instance of a reference to five cars per day on the top of page 7. Chairman Hebert recommended the wording say, "...based on evidence before them, the Board finds that...Pan Am declared that they would upgrade to Class II status. Attorney Ratigan said the limit of cars was five at a time on excepted tracks, but they were proposing up to sixteen cars per day if they improved the track to Class II.

Mr. Morgan pointed out that Pan Am could still transport sixteen cars a day on Class I tracks. Mr. Richardson referred to paragraph 40 on page 6 and said Ms. Scarano expressed the intention to upgrade the rails with 10,000 new railroad ties. He recommended adding that the Board was relying on the representation that the upgrade would promote public safety if upgraded from excepted tracks to Class II. He said that understanding was the cornerstone of public safety. Chairman Hebert said the Board had many discussions and the Board had no authority to make any of those statements

binding. Board member, Bernie Christopher agreed, but said those statements were still part of the Board's findings.

Attorney Ratigan said he didn't recollect any discussion by the Board linking their findings to safety and he thought the Board was trying to walk close to that line while remaining within their jurisdiction. Mr. Cross disagreed that safety did not depend on the number of ties because it was clear there would be an increase in traffic, but to do so they would have to meet FRA regulations. He said he didn't believe anyone had the ability or legal standing to make that point, but everyone was aware of the site development and he had confidence that they would meet the regulations. Vice-Chair Marconi agreed that they couldn't get to that area.

Ms. Lamson said she agreed with Mr. Richardson because of her concerns for safety. Mr. Richardson said he specifically addressed the safety issue when they went into deliberations at the previous hearing, which he thought the minutes would reflect. He said it was much easier to approve a project than to say they couldn't determine if upgrades would be made and then asked if safe to bring 16 cars over, which created a dilemma and paradigm. Chairman Hebert said couldn't agree. Mr. Richardson said they had to determine safety improvements would be made for the community and he wasn't sure he could vote in favor of the project if they couldn't agree. Mr. Cross said the FRA would make sure safety improvements would be made if necessary.

Mr. Richardson said there had been many discussions on railway accidents, which had the attention of the public, Senator Shaheen, Senator Ayotte, and Carol Shea-Porter, but he had to ask what would happen ten years from now when that attention was gone and the tracks became excepted again. He said it would be important to include that the there had been a statement that the excepted tracks would be eliminated in the residential areas.

Chairman Hebert said he was surprised when informed at the beginning of the process that the Board had no say concerning the operation and condition of the tracks, which were solely under FRA and State jurisdiction, but several attorneys agreed. He said he was hearing him say that the Board should put a finding that they would vote based on being swayed on what Pan Am said they would do. He said he was afraid that he was suggesting they would try to hold them responsible as part of the regulation responsibility. Mr. Richardson said he just wanted to include a statement that they were relying on Pan Am's statement that they would upgrade the tracks. He said he was not suggesting any jurisdiction over the rails, just on the site. Chairman Hebert recalled a discussion about including a similar note on the site drawings and thought they came to an understanding that they could not make any stipulations that involved the operation of the rails. Mr. Richardson said in March and April they discussed the Sea-3 amplification and then a letter sent on April 21, 2014 showed that Pan Am was part of the land on which some of the improvements would be made so thought he their status shifted from a member of public. For that reason, Mr. Richardson was suggesting that the project would promote the safety of the public based on the finding that the railroad tracks would be upgraded.

Attorney Ratigan said at the conclusion of the meeting on May 5, 2014, the Board discussed a possible condition that Sea-3 would notify the Town and the

Planning Board if they learned that the track degenerated. He said that statement could satisfy protecting public safety without going beyond their jurisdiction. Board of Selectman Representative, Rick Stern said #45 already addressed the finding for public safety. Mr. Richardson said one characterized a basis for a finding and the other addressed the mechanics. He said he agreed with Attorney Ratigan's comments. Chairman Hebert said he recalled discussions of making a condition that Sea-3 would have to come back if the tracks degraded. Mr. Richardson said it shouldn't be a cat and mouse game where if only five cars showed up, then the applicant would know if there were rail impairments that limited their ability to transport sixteen cars at a time.

Mr. Cross asked if it was Mr. Richardson's intention that the Board would review and withdraw approval. Mr. Richardson said the Board's jurisdiction ended with the approval, but suggested that if the track deteriorated, then someone could go to Sea-3 and say the approval was based on an understanding of upgrade. Mr. Cross said he thought problems would be reported to the FRA, but he didn't think that would vacate Sea-3's approval. Chairman Hebert said if the applicant noticed the tracks deteriorated, then the Board could notify DOT or the FRA, but code enforcement had no jurisdiction. Ms. Lamson said she didn't have a lot of faith in the FRA. Chairman Hebert said any town notified could go through the proper channels to notify the FRA, but the building inspector had no authority. Ms. Lamson said the building inspector only had jurisdiction over the site and then asked if Greenland saw a problem they could work with the FRA and the State. Chairman Hebert agreed and said Sea-3 could also notify the proper authorities.

Mr. Richardson said they had wandered from the intent of the language, which was limited to Sea-3 in paragraph 40. He suggested adding the sentence, "…that the Board relies on this representation in determining that the project would promote public safety as required by the zoning ordinance…" Chairman Hebert said the railroad was not the applicant and they didn't apply to town boards and the Board had no jurisdiction over the railway. Mr. Richardson said the zoning ordinance required that they make finding that the project would promote public safety in the neighborhood and was not limited to the site. Mr. Pare said that language was already in #45. Chairman Hebert said it would cross the jurisdictional line, but the condition that Attorney Ratigan wrote up made sense and could be added.

Attorney Ratigan read #6 that said, "…if, after the track has been upgraded to Class II status, and Sea-3 learns that the Class II track has degraded to a lower level of service, then the Board of Selectman and the Planning Board shall be notified in writing by Sea-3 of this reduction and level of service within 7 days of learning. This is to allow Newington to notify the proper authorities." Chairman Hebert suggested adding "..for purpose of notifying the proper authorities." Mr. Richardson said he wanted to be sure the building inspector had all the tools necessary to review the safety of the site. Chairman Hebert said he had no problem if they were talking about the site, but the rail was beyond the building inspector's jurisdiction.

Chairman Hebert said he didn't like that the FRA only had jurisdiction over the rails coming in and out of the site, and town having none, but that was how it was. Attorney Ratigan said if the track wasn't upgraded, or was, but then degraded, then the

railroad could only run five tankers at a time and it would be under utilized, but there was no jurisdiction over the rail operation any more than it could be said that the railroad had jurisdiction over the site. Mr. Richardson said approving an expansion with the number of trains going over the tracks significantly could have an effect on public safety. Attorney Ratigan said the Board could only determine if the site could handle the receipt of those tanks. Mr. Richardson said if there was no plan to upgrade, and the zoning ordinance required the Board to find the project would promote public safety in the neighborhood, then the Board could deny the application. Chairman Hebert said he couldn't see how they could make that determination. Mr. Richardson asked if they could deny the application on the basis that it affected public safety based on the condition of the track. Attorney Ratigan said the applicant had the right to present a plan, build and have an underutilized plan. He said it would be self-executing if the track degraded or something like the market changing so that Sea-3 could no longer bring propane in anymore, which would be addressed under Condition # 6. Mr. Richardson agreed that the market would see-saw.

Ms. Lamson said the site review procedures required the Board to look at the health, safety, welfare and environment and she was concerned that they were not following site review procedures. Mr. Richardson said if the based approval on the intention to upgrade rails, and they did not upgrade the rails, then they could say they were not in compliance. Attorney Ratigan said they could not make any decisions regarding the rails. Chairman Hebert said Pan Am could deliver one train at a time, but they had said they would upgrade the tracks to Class II if Sea-3 were approved. He said they could consider the statement as showing good intent, but the Board still had to decide whether the proposal was acceptable without taking the railroad into account.

Mr. Richardson asked Attorney Ratigan if the Sea-3 could be considered an agent of the Boston and Maine Corporation that was listed on the site plan. Attorney Ratigan said the railroad's property was being leased, and they only had jurisdiction on the portion of land that was being leased for non-rail improvements.

Ms. Lamson said she didn't see any sense in listing #48 regarding the Mass DOT Transport report because an independent study on the local rails was requested and it had nothing to do with this case. Chairman Hebert, Mr. Pare, Mr. Cross and Mr. Richardson all agreed that they wanted to leave in to show similarities and nothing further could be done.

Mr. Richardson said for him the threshold was the excepted rail. Chairman Hebert thought they should stick to Class II because that was what was represented. Vice-Chair Marconi said the railroad inspector required the rails address the issue if he found something wrong. Mr. Richardson said the problem was that no one outside the railroad could get the inspection reports. Mr. Richardson said they needed a basic agreement that Sea-3 would notify them if the tracks fell into disrepair. He said he didn't want them to sit on the information so he wanted there to be an obligation to make officials know as soon as possible in case there was a situation where someone needed to respond, which couldn't happen if they were ignorant of the situation. Attorney Ratigan said they could make it less ambiguous by changing the wording from "…if they

should learn…" to "…if Sea-3 learned or had reason to believe…" because they couldn't ignore what was in front of them.

Mr. Cross said Pan Am ran the rails, not Sea-3. Chairman Hebert said they didn't expect Sea-3 to inspect the tracks, but the purpose of the condition was to inform the Town if they become aware of a problem, and then move forward.

Mr. Stern said they might want to make not if their rate of delivery changed which would indicate a problem with the tracks. Chairman Hebert said he was especially concerned if the track standard went below Class II, but they could list both. Mr. Richardson said they could specify notification if the rate of delivery dropped to five cars per day. Chairman Hebert said the rails could do self-inspection. Mr. Pare said the FRA was to be informed if the rate of delivery dropped to five cars per day. Mr. Richardson said the FRA said repairs only had to be done within thirty days. Attorney Ratigan read the changes that specified notification if there was a carrier reduction of service to five or less.

Vice-Chair Marconi said it was beyond the Board or Sea-3's jurisdiction to regulate the rails. Mr. Cross agreed and said they couldn't pull site approval if a trucking company came in less often because there were hazards that were under DOT jurisdiction. Mr. Stern said it was the same thing with ships coming in. Mr. Richardson said the corollary was that the Board could say that they would only allow deliveries to vehicles that had proper inspections. Chairman Hebert said the problem was that he was suggesting that Sea-3 do the regulation.

A majority of Planning Board members agreed to the adoption of the following Findings:

1. The applicant's proposal seeks to improve the site's existing rail off-loading facilities for liquefied propane gas ("LPG") and add additional LPG rail off-loading facilities on its property and on property to be leased from Pan Am Railways.

2. The purpose of the proposed site improvements is to allow the applicant to continue its historical LPG distribution operations by increasing the capability to receive domestically sourced LPG, which is only available by railroad. The existing capacity to receive internationally sourced LPG from ocean vessels would be unchanged.

3. The Board finds that the shipment by rail of LPG via rail to the SEA-3 facility at 190 Shattuck Way has been occurring since 1995, consistent with the existing site plan approval that SEA-3 has obtained from the Planning Board.

4. If constructed, the proposed site improvements would not materially change operations on the site, which would continue to meet local propane gas distribution needs through its existing truck distribution facilities.

5. LPG is a combustible, non-toxic gas that evaporates into the atmosphere upon discharge.

6. The applicant's site is manned 24 hours a day, 365 days a year, by personnel who are trained in emergency safety response procedures.

7. The Board finds that SEA-3 has a long history of facilitating and providing LPG fire safety training and incident response training to its personnel and to other public safety personnel, both in Newington and in the region. Further, that Mr. Bogans of SEA-3 has represented that these training opportunities would continue to be available to Newington's firefighters and public safety professionals, and to other communities in the region.

8. The applicant's site is regulated by the U.S. Department of Homeland Security, as overseen by the United States Coast Guard, and is required to comply with these agencies' regulations for security lighting, surveillance and fencing.

9. In his October 9, 2013 interoffice memorandum to the Planning Board, then Fire Chief, Dale Silva, stated with regard to the proposed site improvements that:

> "In reference to SEA-3's request to expand their rail capability, we have been researching this a great deal. I met with N.H. Fire Marshal's office to discuss the operation with two Fire Marshals, we inspected the proposed site. In addition to fire protection, we are reviewing federal laws and how this may affect our neighboring communities. From a fire department view, I believe this is a positive for Newington, because it gives us the opportunity to update and increase fire protection systems that are already in place but outdated. The operation they are proposing is not dramatically different than their current operation.
>
> Working with the Fire Marshal's office, we are also going to require a third party Fire Engineer review, but one that specializes in propane operations. The State is researching potential engineers for us.
>
> Having said that, we recommend conditional approval in concept. If approved by the Newington Planning Board is to go forth, SEA-3 will have numerous requirements set by Newington Fire, with the assistance of the State Fire Marshal's office and an Independent Engineer."

10. The proposed site improvements will update and modernize the site's existing fire protection systems.

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11. That Newington Fire Chief Head testified that his department has the resources that it needs to respond to an incident, whether it be a SEA-3 facility, or along the railroad tracks. Chief Head said that his department would continue to take advantage of any training that it may require and that the final plan designs would be reviewed and approved by his office, and by the N.H. State Fire Marshal's office.

12. That Ms. Scarano of Pan Am represented to the Board, on the issue of fire incident response training and safety, that Pan Am often worked with the Federal Railroad Administration [FRA] to provide a day of training for local fire departments.

13. Chief Head stated that as to jurisdiction over incident response, his department handles Newington, and jurisdiction for incidents in Portsmouth or other communities lies with the Fire Chiefs in those communities. Each community can call upon neighboring communities for mutual aid, if such aid is advisable. He also indicated that there are emergency management plans that include evacuation plans which have been put in place by the State of New Hampshire for the seacoast region, should an event occur of such magnitude that the plan is activated.

14. It has been reported from several sources that Portsmouth Fire Chief Steven Achilles has stated that he currently has the resources and training necessary to respond to a LPG incident in Portsmouth related to the LPG rail traffic that currently travels through the City, and that the Portsmouth Fire Department's current resources and training are sufficient to meet the risks presented by the proposed increase in LPG traffic presented by this site plan application.

15. Based on its review of the proposed site plan, the Town's retained safety expert, SFC Engineering Partnership, Inc. ("SFC"), concluded in its January 29, 2014 report, "Overall the site plan appears to be in general compliance with NFPA 58 and 54. In terms of fire safety compliance, no significant problems have been found with this layout."

16. The applicant's Fire Safety Analysis determined that there is adequate water volume and pressure on site to service the proposed fire suppression system.

17. In its written review of the applicant's Fire Safety Analysis ["FSA"] dated April 9, 2014, SFC concluded, "This FSA document appears to be in general compliance with NFPA 58, and NFPA FSA manual. No significant problems have been found with the proposed system or the FSA at this point; however, the above listed detailed documentation should be submitted and reviewed prior to the issuance of a building permit and system commissioning."

18. The applicant has represented that the final design and construction of the site improvements would comply with NFPA 58 and 54.

19. The proposed site improvements would add a second means of emergency access to the site over the property of Pan Am Railways.

20. The proposed site improvements would maintain the site's existing vegetative buffers and add a 6-8' earthen berm at the southeastern corner of the site, within the existing fence line, where the site abuts a residential use.

21. The proposed site improvements will result in no change to the site's existing motor vehicle parking or truck distribution facilities.

22. Mr. Hazarvartian, P.E. of Transportation Engineering, Planning and Policy, performed a traffic assessment for the applicant and concluded that the proposed site plan would not alter the historic truck traffic volume which averaged 103 to 161 trucks per day, from 2002 to the present (excepting 2012 and 2013, which were substantially below these numbers due to market conditions).

23. Mr. Bogans testified that there are site constraints that limit the number of LPG rail cars that SEA-3 can receive to 16 rail car tankers with LPG per day, even with the site improvements proposed by this application. (3/24/14 PB mtg. minutes).

24. Mr. Grotenhuis, Senior P.E. of RSG, reviewed for the Planning Board the applicant's traffic assessment and concluded that the truck traffic volume would remain essentially the same, at 160 trucks on average per day. He further found that ongoing changes to the Spaulding Turnpike may alleviate some of the traffic down Woodbury Avenue and through Portsmouth.

25. Based on the evidence presented, the site plan proposal will not increase the truck traffic to and from the site.

26. The proposed site improvements will not change the site's existing distribution capacity or increase traffic impacts associated with existing uses on the site.

27. The motor vehicle area of the proposed site improvements is currently hard packed gravel and will remain hard packed gravel, with the exception of where the improvements are affixed to the ground.

28. The proposed site improvements will result in no adverse change to existing dust, erosion or run-off conditions.

29. The proposed site improvements will upgrade the existing storm drainage system.

30. The applicant has received Shoreland Impact Permit No. 2014-00105, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

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31. The applicant has received Alteration of Terrain Permit No. AoT-0695, a copy of which was provided to the Planning Department by e-mail dated March 24, 2014.

32. The proposed site improvements will not alter the existing security lighting, which was installed in accordance with a security lighting plan required and approved by the U.S. Department of Homeland Security.

33. In its April 21, 2014 letter to the Planning Board, Pan Am Railways confirmed in writing that it will lease a portion of its land to the applicant for a portion of the proposed site improvements, but advised the Board of its position that Pan Am Railways is not the applicant. It is not asking the Board for any approvals and it is not subject to the Town's land use regulations. Pan Am is assenting to this application to the extent that a portion of the improvements are located on property that it will lease to SEA-3.

34. John Robinson, the N.H. Railway Safety Inspector at the N.H. Department of Transportation, testified that he met with Portsmouth officials to discuss track inspection issues.

35. Mr. Robinson testified that Pan Am would only be able to move 5 tank cars at a time to the SEA-3 facility over the tracks north of Rockingham Junction while the tracks were in their current condition (3/24/14 PB mtg. minutes).

36. Mr. Robinson said that he (as N.H. DOT's representative) and the FRA over joint track inspections of the Portsmouth and Newington branch line.

37. Mr. Robinson testified that N.H. RSA Chapter 373 governs the process by which N.H. municipalities can request a change of safety protection at railroad-roadway crossings. This is a N.H. DOT administrative hearing process that would examine whether the safety protections at the crossing are adequate, and if not, who would be responsible for the upgrades and how that cost would be allocated.

38. Mr. Robinson testified that federal law required annual, comprehensive bridge inspections by Pan Am to be in place with records, ratings, and results available to the N.H. DOT and to the FRA.

39. Ms. Scarano of Pam Am stated that Pan Am was currently working with the Town of Greenland to begin the process of examining road crossing safety protections and reiterated that Pan Am would work constructively with communities on road/rail crossing issues.

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40. Ms. Scarano of Pan Am testified that if SEA-3's application is approved, Pam Am intends to replace approximately 10,000 ties from Rockingham Junction to the SEA-3 facility, and that it would upgrade its tracks Class II status along this section of the railway.

41. Mr. John Killoy, Track Safety Administrator for the New England region of the Federal Railroad Administration (FRA) testified that the FRA regulates rail safety and employee safety. He stated that the railroad owns and maintains the track to whatever standards it sets for its use, and that tracks would be inspected by the FRA, once an upgrade of track has been completed to a new track class. (3/10/14 PB mtg. minutes).

42. The Board finds that rail safety regulations and inspections lie solely with the Federal Government under the jurisdiction of the FRA and the State of New Hampshire, through N.H. DOT. The Planning Board has heard lengthy, detailed testimony from John Killoy of the FRA and John Robinson of N.H. DOT. Each reaffirmed the Board's understanding that exclusive jurisdiction over rail safety, inspections and operations lies with these governmental bodies and not with N.H. municipal planning boards.

43. While Pan Am has supplied the Board with important information, SEA-3, and not Pan Am, is the applicant before the Board.

44. The Board finds that there are existing safety studies which detail the safety protocols and procedures to be followed on the SEA-3 property in the event of a LPG incident.

45. Based upon the evidence before it, the Board finds that public safety will be enhanced by this application, as Pan Am declared it will upgrade its tracks to Class II status. This will have to be done in order to accommodate a proposed increase to 16 tank car deliveries per day of LPG to the SEA-3 site, above the present limit of 5 cars at a time.

46. Public safety will also be enhanced by the new, state-of- the-art safety improvements that are to be installed on-site as proposed by the applicant.

47. The Planning Board has conducted 7 public hearings on this application. The Board has encouraged and received substantial public input from neighboring communities and their residents, after having declared this project to be a proposed development that has a potential for regional impact per N.H. RSA 36:57.

48. While the Planning Board received and reviewed a report prepared by the Massachusetts Department of Transportation entitled, "Report on the Safety Impacts of Ethanol Transportation by Rail" dated March 29, 2013, the Board finds that the circumstances of this study are not related to this application, as the product being transported in Massachusetts is different (ethanol in Boston vs. LPG in N.H.). The

Massachusetts Legislature adopted a law in 2012 that required the Massachusetts DOT to commission this study; there are Massachusetts state permits required to transport ethanol through Boston that are not pertinent to New Hampshire. Most importantly, the rail lines within the Massachusetts study area over which the ethanol would travel are owned by the MBTA, and not by private rail carriers such as Pan Am.

49. The Board expressly finds that the requirements of Newington Zoning Ordinance Article 5, Section 6 have been satisfied, that the contemplated use would constitute a development of sustained desirability and stability, that it would be in harmony with the character of the surrounding area, and consistent with the overall long range plans for the community, that it would not result in an over-intensive use of the land, that it would not result in undue traffic congestion or traffic hazards, and that the plans indicate that it would be adequately landscaped and otherwise promote the health, safety and welfare of the community.

50. The Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V, section 5, A, which anticipates that land zoned Industrial will be able to accommodate "expansion of existing industry…and to enhance economic development and employment opportunities."

51. The Board expressly finds, as is required by Newington Zoning Ordinance Article V, section 5, B that per the terms of this site plan application, "the proposed location, construction and operation will not injure present or prospective industrial development in the district, or the health and welfare of residential districts in the vicinity." The Board expressly finds that this application is precisely the type of business development and land use that the Industrial District is intended to protect and promote.

52. The Board expressly finds and recognizes that, in the aftermath of the recent economic recession, the importance of supporting business in the Industrial District, and promoting economic development and local employment, cannot be understated as an important purpose of this Industrial District.

53. That the Board finds that SEA-3 helps to provide a variety of energy sources to the N.H. seacoast area and the region, and to the extent that this approval will continue to allow SEA-3 to provide energy alternatives to local energy customers, Newington and the region benefit by having enhanced competition in the energy marketplace.

54. The proposed site improvements meet all applicable requirements of the Town of Newington's Site Plan Review Regulations.

DRAFT

Mr. Richardson moved to grant site plan approval in order to permit Sea-3 to reconfigure its terminal at 190 Shattuck Way (Tax Map 14 Lot 2; and Map 20 Lot 13) in order to accommodate Liquefied Petroleum Gas (LPG) shipments via rail, and the export of same via ocean-going ships consistent with the Sea-3 site plans dated November 4, 2013 (revised May 19, 2014), subject to the following conditions:

1. Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.

2. The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.

3. Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.

4. The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

5. Several safety plans were adopted in conjunction with the original SEA-3 site plan approval. They shall be reviewed by SEA-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

6. If, after the track has been upgraded to a Class II status, SEA-3 learns, or has reason to know, that the Class II track has degraded to a lower level of service, or there is a carrier mandated reduction in rail car deliveries to 5 cars or less, the Selectmen and the Planning Board shall be notified in writing by SEA-3 of this reduction in the level of service within seven (7) business days of receiving such information. This is to allow Newington officials to notify the proper authorities.

Bernie Christopher seconded the motion.

DRAFT

Mr. Richardson said he was uncertain if he would vote in favor of the proposal, but he thought the Board did all it could to protect the public safety, health and welfare and he thought the conditions discussed, particularly #6 went as far as possible. Vice-Chair Marconi agreed, including having the trucks turning onto exit 4 to keep trucks out of Portsmouth.

Chairman Hebert called for the vote. ***The Board voted to pass the motion unanimously.***

Ms. Lamson commented for the record that they had a full board and as an alternate she could not vote, but if she could have, she would not have because she felt they didn't look into the health and safety or environment of the area.

Chairman Hebert said he was bothered to discover they had no jurisdiction over the rail. He said it put them in a tough place along with the surrounding towns. He said he commended everyone for sticking to their positions no matter what their positions were. He said they covered a lot and it was best public hearing he had ever seen. He said Mr. Morgan had done a lot of work too.

Mr. Richardson said Portsmouth officials had told them they needed money for their railroad crossings, but they never came forward with information on what portions would be attributable to this project. He said the only thing he heard was that the City Council voted to put the rail line through Pease, which was a non-starter because it was impossibility for this project. Mr. Christopher said it was all political. Chairman Hebert said the alternate route was a political hot potato and there was barely anything left of former track. Mr. Richardson said it was too bad because the real issue on the table was if the rail crossings were safe. Ms. Lamson said Greenland had ten crossings. Mr. Cross said there was a State application process for upgrading town crossings. Mr. Richardson said if anyone was aware of an unsafe intersection, then they should have been informed with the specifics to consider.

Chairman Hebert said the surrounding towns were aware of the process and it was up to each town to contact the DOT and FRA if there were any concerns. He added that it was up to individuals to contact officials for change if they didn't like the laws.

Chairman Hebert said the FRA had told him that they had never been to a town before and wasn't sure if the DOT bridge inspector had ever been to a town hearing before either. Mr. Cross said they had visited with the Rockingham Planning Commission before.

Mr. Pare said he would like to see an invitation to participate with the Rockingham Planning Commission to study alternate routes for the rail line. Chairman Hebert said they sent a letter out previously and would consider if separately. Mr. Stern also recommended that the fire departments participate in training with Sea-3. Vice-Chair Marconi thought they should put a notice in local papers. Chairman Hebert said it would become public knowledge once they sent the letters to surrounding towns. Ms. Lamson said the Becktell plan for future economic development that including the rail coming from Portsmouth to Pease was still referred to on the plan.

Town of Newington, NH
PLANNING BOARD
Meeting Minutes – Monday, May 19, 2014

Chairman Hebert passed out a chronological listing of what the Board did while reviewing application. He said he wanted to capture what the Board had tried to do for those who were not present for all meetings. He said he also wanted to send out a synopsis to abutting towns on the Town letterhead and signed as chairman of the Board. Chairman Hebert asked if anyone was opposed to the letter and with no one raising their hands, he said would send it out.

Vice-Chair Marconi said he wanted to be sure that any calls or correspondence went through the chairman, the town planner or town attorney.

Mr. Richardson presented an example of a letter from the Moultonborough town planner's office listing staff recommendations on projects. Vice-Chair Marconi said he liked the checklist. Ms. Lamson asked how large Moultonborough's staff was and Mr. Richardson said they had a staff as one and Mr. Pare said their town was the same size as Newington. Chairman Hebert said he liked, but Newington only had one town planner on staff so he asked Mr. Morgan to review and comment for the next meeting.

Vice-Chair Marconi thanked Mr. Morgan for all his work and Chairman Hebert agreed and also thanked Town counsel, Attorney Ratigan along with many talented people that had reviewed evidence.

Mr. Paul Bogan, Sea-3 Vice President of Operations thanked the Board for their time and effort on behalf of himself and Sea-3. He said he would do his best to pull the project off and comply with the Board's conditions. He said the Sea-3 would be available to train the fire departments in the surrounding towns.

Chairman Hebert said the oil and gas delivery was keeping the rails so busy that they were too busy to deliver food.

Minutes: ***Vice-Chair Marconi motioned to approve the Planning Board Minutes for May 12, 2014 with changes as discussed. Peggy Lamson seconded the motion, and all members voted in favor.***

Adjournment: **Vice-Chair Marconi moved to adjourn and Ms. Lamson seconded. All were in favor and the meeting adjourned at 8:25 p.m.**

Next Meeting: Monday, June 9, 2014

Respectfully Submitted by: Jane K. Kendall, Recording Secretary

DRAFT

Newington planners approve Sea-3 propane expansion plan

Conditions finalized before unanimous vote

By **Crystal A. Weyers**
cweyers@seacoastonline.com
May 20, 2014 2:00 AM

NEWINGTON — After six months of deliberations, the Planning Board voted unanimously to approve the proposal by Sea-3 to reconfigure its Shattuck Way terminal to accommodate rail shipments of liquefied petroleum gas, or propane.

Attorney John Ratigan said, "After the last meeting, with direction from the board, I started to work on a draft of findings and conditions."

Ratigan drafted the document after the board held a nonbinding straw vote that indicated members were leaning heavily toward approval of the proposal at their last meeting on May 5.

On Monday evening, the Planning Board met, pens at the ready, to deliberate the exact wording of findings and conditions of the project before moving forward. Copies of the nine-page document were provided to those in attendance.

Town Planner Tom Morgan advised the board that a minor revision to the cover sheet of the Sea-3 site plan had been submitted earlier in the day. It clarified that Pan Am Railways is one of the owners of some of the property included in the proposal.

There was also some discussion surrounding the declaration by Pan Am Executive Vice President Cynthia Scarano that the rails will be upgraded to Class 2 status in order to accommodate the proposed increase to 16 tank car deliveries per day of propane to the Sea-3 site"‹ if the proposal were approved.

"I know that's exactly what was said," Chairman Denis Hebert said, adding that he trusted Scarano's intent to complete the upgrade.

"Whether it's one tie or 10,000 ties, if they're meeting the requirements to safely transport ... I'm happy," said board member Christopher Cross of rail improvements. "It's their job to ensure that it can be safely done and I have every confidence that they will do that."

Board member Justin Richardson was intent on making it clear that the board based its findings on promises that made the rails safer for the public, but Hebert disagreed. He kept reiterating that the board has no jurisdiction over the rails.

"I thought we could do a lot more," Hebert said of the board's scope of authority. "I don't like the fact that we have no jurisdiction over the rail. I don't like that we're being trumped (by the federal government), but that's the way that it is."

Board alternate Peggy Lamson expressed her discontent with the safety and regional impact concerns of the project. As she is an alternate, she was unable to participate in the vote due to the presence of all of the other members.

"We have to look at the public health, the safety and the environment," she said. "I feel that we are not following our site plan review procedures."

Portsmouth resident Lou Salome, who along with other Sea-3 plan opponents walked out of the meeting after the vote, said, "Interesting and ridiculous that the board put its faith in Sea-3 and the railroad operators to assure public safety when the tracks have been in terrible condition for the past 40 years."

Hebert continued discussion in the emptied room and said that if community members are unhappy with the laws set forth by the federal government, they need to "do something" because as a board, they "can't do anything" to change them.

"‹They will submit their findings to other affected communities.

The Sea-3 propane terminal will allow for receipt of domestic propane, which the company has said is substantially less expensive than paying for propane from overseas. In its filing with the town of Newington, Sea-3 "‹had "‹stated that if the expansion is approved, the facility will operate 24/7 and increase the number of rail cars carrying propane on Seacoast train tracks from three to seven per week on average"‹ and that"‹ "‹t"‹he trains would pull loads of six to 12 propane tank cars each.

The board's approval was contingent upon the following conditions:

The facility receive no more than 16 rail tank cars carrying propane per day and any increase shall be brought before the board for review.
Trucks exiting the Sea-3 facility turn right only and travel north on Shattuck Way toward Exit 4 of the Spaulding Turnpike.
Any construction by Sea-3 on Pam Am property be removed if their lease is ever terminated.
That Sea-3 review all safety plans adopted in conjunction with the original site plan approval.
That the final design and plan meet the requirements of the New Hampshire Fire Code and the National Fire Protection Association Code.
That Sea-3 notify the town if the condition of the tracks ever deteriorate or the number of deliveries drops below the amount mandated so that officials can notify the proper authorities.

The Town of Newington
New Hampshire

Incorporated 1764

PLANNING
BOARD

May 21, 2014

Paul Bogan, Vice President
Sea-3
190 Shattuck Way
Newington, NH 03801

RE: Proposed Terminal Expansion, 190 Shattuck Way,
Tax Map 14 Lot 2, and Map 20, Lot 13

Dear Mr Bogan:

On May 19, 2014, the Newington Planning Board voted to approve your proposal to reconfigure your terminal in order to accommodate Liquified Petroleum Gas (LPG) shipments via rail, and to export same via ocean-going ships and via truck to customers in New England. The vote was subject to the following stipulations:

1) Trucks exiting the SEA-3 facility shall make a right hand turn only and shall travel north on Shattuck Way to the Spaulding Turnpike's Exit 4.

2) The SEA-3 facility shall be authorized to receive no more than 16 rail tank cars carrying LPG per day. Any proposal by SEA-3 to receive more than 16 tank cars carrying LPG per day shall require further site plan review and approval by the Newington Planning Board.

3) Any lease between SEA-3 and Pan Am (or their successors or assigns) on land leased to SEA-3 for the siting of the unloading racks and other improvements to be constructed and operated by SEA-3 on such leased land, shall contain a provision that SEA-3 shall remove all such improvements prior to any termination of the lease. The lease shall further provide that if SEA-3's operation is ever moved or discontinued, such improvements shall not be transferred to Pan Am. These required lease provisions shall be submitted to the Planning Board for review and approval by the Board and its legal counsel, and any proposal to amend such lease provisions shall require the pre-approval of the Planning Board.

4) The final design and plan shall meet the requirements of the N.H. Fire Code and the NFPA Code, per the opinion of the Newington Fire Chief and the Town's Fire Safety Consultants.

205 Nimble Hill Road • Newington, NH 03801 • (603) 436-1252 • Fax (603) 436-7188 • Email: newington@ttlc.net

Portsmouth must now appeal Sea-3 decision

May 24, 2014 2:00 AM

May 21 — To the Editor:

In its wisdom and fervent desire to protect the public safety, health and environment of the Seacoast, the Newington Planning Board on May 19 voted to put the grizzly bears in charge of the salmon hatchery. To put it another way that may be more relevant because of its regional impact — that is locally, to residents in Newington, Stratham, Greenland, Newfields and Portsmouth — the planners put foxes in charge of the hen house. Better to have kept quiet on the safety issues than to have been deceptive and vacuous.

No one could make this up: The board put the railroad safety issues in the hands of Sea-3, a fox, which won approval to expand its propane storage facilities in Newington and thus to ship vastly more propane on rails owned by Pan Am, another fox.

This is almost impossible to believe, but it's true.

Pan Am is supposed to upgrade its tracks so the propane railroad can operate at speeds of up to 25 miles per hour, up from the 10 miles per hour permitted on the current tracks, which look as if they haven't been improved or used since they were laid, although they are used daily.

If the tracks indeed are improved but then degrade to the point where Sea-3 can't operate its services as intended, Sea-3 will be obligated within seven business days of learning about the tracks being below standard — a level so low that history shows it is impossible to reach — to inform the Newington Planning Board and selectmen of the poor tracks.

s is to allow Newington officials to notify the proper authorities," sayeth the Planning Board's approval.

At that point, the Planning Board would determine which blind and deaf federal, state and/or local authorities should be notified.

This is two-fisted action indeed. The tracks are in the same terrible and decaying condition now as they were 40 years ago, when three women from Durham sent packing one of the richest people in the world and two off-the-rails New Hampshire public figures — one a governor and the other a powerful newspaper editor — who favored building an oil refinery on the Seacoast and destroying it in the process. In those past 40 years, have any users or owners of those same rails improved the tracks noticeably or reported their degradation? Not so it's visible. See for yourself. But now, as the Newington Planning Board sees safety, the railroad owners and users can be relied upon to keep the salmon, the hens and roosters, all of us, safe. We are, indeed, in unsafe times.

All is not lost, however. If the city of Portsmouth ties its action to its rhetoric and to its stated desire to protect the public safety and its own investments, it will appeal Newington's decision in court. In doing so, it should be able to convince Stratham, Greenland and Newfields to join in the fight to save Newington from itself, and to protect the safety and environment of the Seacoast before a local train, like so many others in the nation, loaded with hazardous materials veers from rails that are unfit to carry anything but the iron rails themselves.

Louis J. Salome

Portsmouth

Ask councilors to repeal propane expansion vote

y 26, 2014 2:00 AM

May 24 — To the Editor:

Do you love Portsmouth?

If you answered yes to this question, I have a pop quiz for you.

Which of these "accolades" does not go with your vision of our fair city?

a. City of hospitality, romance and gastronomic delights.

b. A destination with historic, beautiful landmarks and homes.

c. A thriving music and art scene.

d. Propane/hazardous waste train running through downtown, neighborhoods, estuaries several times daily between 10 p.m. and 6 a.m.

If you answered d, I have a date for you: 7 p.m. Monday, June 2. Be at the City Council Chambers because the councilors will be taking a vote that will determine our way of life here on the Seacoast.

Do we share Sea-3's and Pan Am Railways' vision for us, which is a chemical, energy transportation hub (think New Jersey North)? If not, we must ask the councilors to vote to appeal the Newington Planning Board's reckless approval of the propane export expansion project.

I hope to see you in the council chambers, even if you have never been there before.

Catherine R. DiPentima

Portsmouth

P.O. Box 1166, 181 Watson Road, Dover NH
(603) 750-4266

HAIGHT ENGINEERING, PLLC

TRANSMITTAL

To:	Tom Morgan	**From:**	Steve Haight
	Newington Planning Dept.		
Phone:	436-7640	**Date:**	5/27/2014
Re:	SEA-3 SITE PLAN	**CC:**	Sea 3 Attorney Alec McEachern

- **Comments:**

Tom

Attached are 8 copies of the revised SEA-3 SITE PLAN for Planning Board signature. As discussed the PB Conditions of Approval, the Planning Board signature block and the State approvals have been added to the coversheet as requested.

Let me know when they are signed and we'll pick the extra copies.

Thank you

Steve

Must propane be shipped through Portsmouth?

May 29, 2014 2:00 AM

May 23 — To the Editor:

If unchecked, the recent approval by Newington for expansion of Sea-3 operations will result in approximately 5,000 tank cars of liquefied petroleum gas annually traveling through Portsmouth. That is 16 tank cars per week of propane passing within a few feet of neighborhoods, the Sheraton hotel and the HarborCorp conference center, as well as other hotels, condos and the Whole Foods grocery store. This is too close for comfort. An accident with one of these 5,000 rail cars could create a severe emergency in Portsmouth.

And accidents do happen. In fact, because of the number of recent, serious train accidents involving raw materials, the National Transportation Safety Board issued a recommendation to "require expanded hazardous materials route planning for railroads to avoid populated and other sensitive areas."

However, liquefied petroleum gas does not have to be shipped through the center of Portsmouth. An alternative route for these railcars may be feasible and should be investigated.

The 1990 Pease Comprehensive Development Plan proposed a route for hazardous rail cargo through Pease with the intent of bypassing Portsmouth. Subsequently, to enable industrial development at Pease, the N.H. Legislature mandated a rail corridor with a 25-foot right of way through Pease that still exists. In addition, the current widening of the Spaulding Turnpike includes provisions to allow for a rail bridge that would establish a connection to Pease, and the New Hampshire Department of Transportation committed to the acquisition of slope easements from several Newington property owners.

Thus, pieces are in place to avoid sending hazardous materials through Portsmouth. It makes sense to investigate the feasibility of completing the plans to do so. Accordingly and responsibly, Sen. Martha Fuller Clark has introduced legislation asking the N.H. DOT to do this. Her action should be applauded, and the citizens and government of Portsmouth should encourage passage of her amendment to HB 1376.

John Gregg

Portsmouth

Sea-3, Inc. Terminal: 190 Shattuck Way Newington, NH 03801-7868 Tel: (603) 431-5990 Fax: (603) 431-5652 E-mail: newington@sea-3.com

June 11, 2014

Chairman - Newington Planning Board
205 Nimble Hill Road
Newington, NH 03801

Attn: Denis Hebert

Dear Denis;

I am writing in response to your letter dated May 21, 2014 approving our project and listing the stipulations under which the approval was given. As an addendum to item #1 of the stipulations, Sea-3, Inc. is preparing to advise all transport drivers to ENTER as well as EXIT our facility using Exit 4 off of the Spaulding Turnpike. We will be posting a detailed "Google Earth" type road map as well as written directions for all drivers to see and adhere too.

If I can be of any further help, please advise.

Very truly yours;

Paul N. Bogan

Paul N. Bogan
V.P. of Operations
Tele: 603-431-5990 X-4
Fax: 603-431-5652
Email: paul.bogan@sea-3.com

cc: Tom Morgan
file

Marketing: 190 Shattuck Way Newington, NH 03801-7868 Tel: (603) 436-6225 Fax: (603) 436-3263 E-mail: newington.marketing@sea-3.com

STATE OF NEW HAMPSHIRE

THE CITY OF PORTSMOUTH'S APPEAL OF THE DECISION OF THE NEWINGTON PLANNING BOARD TO APPROVE THE SITE PLAN OF SEA-3 INC. PURSUANT TO RSA 676:5, III AND RSA 677:15, I-a (a)

PARTIES

1. The Petitioner is the City of Portsmouth, a municipal corporation with an address of 1 Junkins Avenue, Portsmouth, New Hampshire 03801.

2. The Newington Planning Board is a local land use board established by the Town of Newington pursuant to RSA 673.

3. The Town of Newington's Zoning Ordinance requires that the Planning Board review site plans under its Site Plan Review Regulations. No site plan will be approved until it complies in all respects to any and all pertinent zoning ordinances. (RSA 674.43, RSA 674.44, Town of Newington Site Plan Review Regulations, Section 1 and 2).

4. This City appeals the decision of the Planning Board pursuant to 676:5, III and 677:15, I-a (a) because it misapplied and misinterpreted the Newington Zoning Ordinance.

BACKGROUND

5. Sea-3 Inc. ("Sea-3") owns two parcels of property located off Shattuck Way in Newington, New Hampshire. These two lots are divided and separated by the rail way owned and operated by Boston and Maine Corporation/Springfield Terminal Railway Company d/b/a Pan Am Railways ("Pan Am").

6. Sea-3 presently uses both parcels to import foreign Liquefied Petroleum Gas ("LPG") by ship to distribute domestically by rail and truck.

7. The first parcel is depicted on the Town of Newington's Tax Map at Map 20, Lot 13 ("Lot 13"). This parcel is 7.02 acres located within both the General Industrial District ("I") and the Waterfront Industrial and Commercial District ("W"). The Zoning District boundary bisects the western most LPG storage tank. Lot 13 is located west of the rail line and contains a main building, truck loading racks, two large storage tanks for the storage of Liquefied Petroleum Gas (LPG), a smaller distribution tank and associated pipelines.

8. The second parcel is depicted on the Town of Newington's Tax Map at Map 20, Lot 2 ("Lot 2"). This parcel is 3.92 acres located within the Waterfront Industrial and Commercial District ("W"). Lot 2 contains a small building, three (3) rail berths with

pipelines to transport LPG between the waterfront loading docks through pipes located in Lot 2 to the storage tanks located in Lot 13.

9. Sea-3 has submitted an application ("Application") for the Newington Planning Board's review and approval to reconfigure its property and construct improvements to convert its operation from one that imports foreign LPG for domestic distribution by rail and truck to one that primarily exports domestic LPG received by rail and truck to foreign markets by ship.

10. This change in use requires construction of new facilities on the site to accommodate a substantial increase in volume of LPG that will be received, stored, chilled and distributed from the site for distribution to primarily foreign markets.

11. The improvements proposed by Sea-3 are located on three separate parcels, on Lots 13 and 2 as described above and on land owned by the owner of the rail lines, Pan Am, which includes the railway and surrounding property that divides Lots 13 and 2. The proposed improvements are as follows:

1. Lot 13: The installation of new piping to transport LPG to tanks located on Lot 13;

2. Lot 2: The construction of three 90,000 gallon storage tanks, unloading compressors, pumps, condensors, dryers and heaters along with a machinery building for refrigeration equipment and the relocation of the flare tower; and

3. Property owned by Pan Am: The construction of five rail unloading berths new rail sidings and new pipes to transport LPG from Lot 2 to the storage tanks on Lot 13.

12. Pan Am is not the Applicant and only after seven (7) public hearings was the site plan Application presented to the Planning Board revised to list Pan Am as the owner of the property described above.

13. There is no lease between Pan Am and Sea-3 for the use of Pan Am's property described above.

PROCEDURAL HISTORY

14. In August of 2013, Sea-3 submitted preliminary site plans of the project to the Newington Town Planner.

15. By letter dated October 28, 2013, the Town of Greenland requested that the Sea-3 project be deemed a "development of regional impact" pursuant to RSA 36:54-58.

16. By letter dated October 30, 2013, Sea-3 challenged the determination by the Newington Town Planner that both Lots required variances from Article VI and Article

XIII of the Newington Zoning Ordinance because the Lots did not have sufficient frontage on a public right of way and did not comply with minimum set backs.

17. On November 5, 2013, Sea-3 filed an Application for site plan review with the Newington Planning Board.

18. On November 6, 2013, Sea-3 filed an Administrative Appeal of the Town Planner's decision that variances were required and also filed for variance requests for the frontage and set back issues raised by the Newington Town Planner.

19. On November 25, 2013, the Zoning Board of Adjustment held a public hearing on Sea-3's administrative appeal and variance requests. The Zoning Board of Adjustment denied the administrative appeal but granted Sea-3's request for variances.

20. On December 9, 2014, the Town of Newington Planning Board deemed the project a "development of regional impact" pursuant to RSA 36:55.

21. A "development of regional impact" is a project that will impact neighboring communities for various reasons, including but not limited to the project's proximity to another community's border, the project's effect on the transportation network and its effect on anticipated emissions such as light, noise, smoke, odor or particles or proximity to aquifers or surface water that transcends municipal boarders. See RSA 36:55, II-V.

22. Notice was sent to the Rockingham Planning Commission and four affected communities, including the City of Portsmouth, the Town of Greenland, the Town of Stratham and the Town of Newfields, in order for the Commission and these affected communities to have appropriate notice in order to provide comment on the project to the Planning Board for its consideration. See RSA 36:54-58.

23. Public hearings were held on the Sea-3 project on December 9, 2014, February 10, 2014, March 10, 2014, March 24, 2014, April 14, 2014 and May 5, 2014.

24. The City of Portsmouth actively participated in these public hearings, including but not limited to the attendance, submission of written testimony, submission of letters and public comment by the following: Senator Martha Fuller Clark, Mayor Robert Lister, Assistant Mayor Jim Splaine, City Councilors Ester Kennedy, City Councilor Stephany Shaheen, City Councilor Jack Thorsen, City Officials, including City Manager John P. Bohenko, Deputy City Manager Dave Allen, Environmental and Sustainability Director Peter Britz, and numerous concerned citizens from Portsmouth, including but not limited to Rich DiPentima, Catherine DiPentima, Lewis Brown, Joe Calderola, Abdullah Alhamdan, Pat Ford, Beth Moreau, Bob Gibbons, Jean Heino, Richard Langan, John Sutherland, Jane Sutherland, David Rheaume, and Lou Salomi. The Portsmouth City Council also voted unanimously not to support the project.

25. The City of Portsmouth, through those participants listed above, initially raised concerns about rail safety because Sea-3's proposal would increase the volume and speed

of railcars transporting hazardous materials through its residential neighborhoods and through its downtown. This concern prompted United States Senators Jeanne Shaheen and Kelly Ayotte and Congresswoman Carol Shea-Porter to request the Federal Railroad Administration to inspect the tracks, and later to request a comprehensive safety study of the rails. In addition, the City met with Department of Transportation and officials from Pan Am on the issue of rail safety and created a website with pertinent documents regarding Sea-3's Application.

26. Through the public hearing process the City, through various participants, repeatedly raised its concerns about rail safety and requested that the Planning Board require rail safety reports and hire an expert to assess rail safety. However the Planning Board denied these requests due to its belief that federal preemption, pursuant to the Interstate Commerce Commission Termination Act, prohibited the Planning Board from addressing any site-related or site-specific issues that touched on the rails or "railway operations."

27. However, in addition to rail safety, the City, through those participants mentioned above, repeatedly and vociferously requested that the Planning Board require a comprehensive safety and/or security review of the full scope of Sea-3 proposal, including but not limited to a hazard identification and vulnerability assessment, an environmental risk assessment and an analysis of emergency response for the impacted communities, physical security assessments and incident /hazards response analysis. ("safety/hazard assessment").

28. Site Plan Review Regulations authorize the Planning Board to require "any other exhibits or data that the Planning Board may require in order to adequately evaluate the proposed development for site review." Section 8, (q), Town of Newington Site Plan Review Regulations.

29. The Planning Board uniformly denied all requests from the City for a safety/hazard assessment and granted Sea-3's site plan Application at its May 19, 2014 meeting, conditioning approval on receipt of an updated "safety plans" from Sea-3's prior site plan approval in 1996 before a building permit will issue.

30. The City has also appealed the Planning Board's decision to the Superior Court pursuant to RSA 677:15, I and RSA 677:15, I-a (a).for its failure to properly apply its site review regulations.

31. The City appeals the Planning Board's decision as unlawful and unreasonably because it misapplies and misinterprets the Town of Newington Zoning Ordinance as more fully set forth below.

STANDING

32. A non-abutter has standing to appeal a decision of a Planning Board if the Court finds, after a review of the facts, that the party has sufficient interest in the outcome. See Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541 (1979).

33. The Weeks Court lists certain factors that must be considered when evaluating whether a non-abutter has standing:

> ...Whether a party has a sufficient interest in the outcome of a planning board or zoning board proceeding to have standing is a factual determination in each case. The trial court may consider factors such as the proximity of the plaintiff's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the plaintiff's participation in the administrative hearings.

119 N.H. at 544-45.

34. The Court in Weeks also opined that the list of factors was not exhaustive and that Courts should consider "any other relevant factors bearing on whether the appealing party has a direct, definite interest in the outcome of the proceeding." Weeks at 544-45.

35. In several recent cases, the Supreme Court has further discussed these factors established by Weeks in evaluating whether a non-abutter has standing to appeal, and has further defined what it means to be "directly affected". Golf Course Investors of New Hampshire v. Town of Jaffrey, 161 N.H. 675 (2011); Hannaford Brothers Co. v. Town of Bedford, 164 N.H. 764 (2013).

36. Participation in administrative hearings before land use boards, although not the only factor, is a major factor the Court will consider in determining whether a so-called non-abutter has a direct, definite interest in the outcome and is a person directly affected. See Golf Course Investments at 684.

37. Standing will not be extended to all persons in the community who feel they are injured by a local administrator's decision (Goldstein v. Town of Bedford, 154 N.H. 393, 395 (2006)); or those who only have a generalized interest in the outcome of a decision of land use board (Nautilus of Exeter v. Town of Exeter, 139 N.H 450, 451-52 (1995)); or those who allege a speculative injury (Joyce v. Town of Weare, 156 N.H. 526 (2007); or to those whose only injury is potential economic loss due to business competition. See also Hannaford at 769.

38. Proximity: The City of Portsmouth is a community that abuts Newington. Although it does not own property immediately adjacent to the site itself, the City and

Newington share common transportation systems of rivers, roads and rails. In terms of proximity, any catastrophic event at the site would likely require the evacuation of City's residents and the loss of property and damage. Any significant logistical issue relating to bringing materials into the Sea-3 facility by rail would have a substantial effect on the logistics and operations of ordinary traffic and concourse in and for the City of Portsmouth.

39. Type of Change of Use: The type of change of use requested by Sea-3 is an expansion and intensification of use of not only its property, but the shared transportation systems of river, road and rail through the City due to the increase in volume of LPG being delivered, stored, chilled and distributed from the site. Although the Planning Board is not able to unduly restrict the railroad from conducting operations or unreasonably burden interstate commerce, its decision to allow Sea-3's expansion will cause a material and substantial impact and increased burden on the City by increasing traffic of hazardous material and their associated risks by river, roads and rail throughout the City.

40. Immediate Impact: The impact of Sea-3's expansion will be immediate because Pan Am has represented that it would be improving the tracks to accommodate a larger volume of LPG transported by rail cars that can travel at higher speeds. The City would be required to improve several rail crossings at an estimated cost of $2,400,000.00 million dollars. Although part of the cost may be deferred by working with NH DOT, some 20% of these costs will be borne by the City and its taxpayers. Citizens of Portsmouth will not only be obligated to pay for improved roadways at rail crossings, but will be supplementing Newington's Fire Department, given their limited number of fire fighters and equipment, in the event of an incident at the site. The City taxpayers will pay for this burden but will not receive any of the tax benefit Newington receives from Sea-3. The City also supplies water to Newington at the site and to the Newington Fire Department and the City's water resources would be impacted in the event of an incident at the site. In addition, on information and belief, there will be a potentially substantial diminution in value of certain property in the City, specifically those residential neighborhoods that abut the railway, reducing the City's tax base.

41. Participation in administrative hearings: As previously stated, the City submitted written testimony, letters and provided thoughtful, well researched and pointed public comment during the seven public hearings. There were more citizens, elected officials and staff from the City than any other stakeholder or representatives of any other towns at most of these hearings.

42. Towns are not "isolated enclaves, far removed from the concerns of the area in which they are situated. As subdivisions of the State, they do not exist solely to serve their own residents, and their regulations should promote the general welfare, both within and without their boundaries." Britton V. Chester, 133 NH 434, 441 (1991). This is particularly true where, as in this matter, the municipalities are closely connected by economic and resource concerns, and where the municipalities effectively share infrastructure and logistics.

43. Newington is not an isolated enclave. It must promote, and at least give meaningful consideration to, the general welfare of the City. Its failure to do so, and its unwillingness to order or provide for a safety/hazard assessment was a decision that clearly does not promote, but hinders – or at least largely and unreasonably ignores – the general welfare of the City. At the same time, Newington will receive a financial benefit from the tax revenue it receives from Sea-3, Newington is imposing a financial burden on the City to improve roads and to provide services of its first responders, all while it denies the City its request for a safety/hazard assessment of the project.

44. The City anticipates that its standing to bring suit will be challenged. This challenge will likely be based on the fact that the City became an abutter when it was given notice by the Town of Newington that the project of was development of regional impact because RSA 36:57 defined abutters "for the limited purpose of notice and providing comment".

45. However, the Court must look at the statutory scheme as a whole, in that RSA 36 is the enabling legislation for the creation of the Regional Planning Commissions, which are "political subdivision of the state" as established in RSA 36:49-a and have only the authority expressly provided for in the statue, providing that "nothing in this subdivision shall be deemed to reduce or limit any of the powers, duties or obligations of planning boards in individual municipalities." RSA 36:47.

46. The statutory scheme of RSA 36 was carefully drafted to create and empower these Commissions without granting them the ability to rest control from local land use boards. Thus, the limitation as an abutter for the limited purpose of notice and comment may apply to the Rockingham Regional Planning Commission, but not to the City of Portsmouth, as it has demonstrated above that it is a "person aggrieved" and a" person directly affected".

47. The City of Portsmouth is a "person aggrieved" and "person directly affected" for the aforementioned reasons and it has a direct define interest in the outcome of the Planning Board's decision to grant Sea-3's Application and appeals the decision of the Newington Planning Board because it misapplied and misinterpreted its Zoning Ordinance.

THE PLANNING BOARD MISINTERPRETED AND MISAPPLIED THE NEWINGTON ZONING ORDINANCE

ZONING DISTRICT

48. No site plan will be approved until it complies in all respects to any and all pertinent ordinances and regulations. Town of Newington Site Plan Regulations, Section 2.

49. Article III, Section 1 of the Newington Zoning Ordinance divides the Town of Newington into different districts or zones and provides that "the boundaries of these districts are hereby established as shown on the Official Zoning Map. Said map is hereby made a part of this ordinance."

50. Article III, Section 3 provides that "unless otherwise indicated, the district boundary lines are the nearest lot lines, the center lines of the streets or such lines extended, pier head or bulk head lines, or the town boundary lines."

51. Zones districts must be described with certainty. Nottingham v. Harvey, 120 NH 889 (1980).

52. The fixing of zoning lines is a matter of legislative discretion and necessarily results in classifications of uses on either side of the line. Windham v. Alfond, 129 NH 24, 31 (1986).

53. Each district has separately delineated "Description and Purpose", uses permitted and uses prohibited and no district incorporates by reference the description and purpose, uses permitted and prohibited from any other district.

54. Article IV, Section 1 of the Town of Newington Zoning Ordinance, provides that "no structure shall be erected, constructed, reconstructed, moved or altered unless in conformity with all regulations herein specified for the district in which it is located. The omission of a use from the list of those allowed in a particular district constitutes prohibition of that use in that district."

55. Lot 13 is in both the "I" and "W" district and Lot 2 is in the "W "district. The Town of Newington Zoning Map clearly bisects Lot 13 with one half of the lot closer to the railroad being in the "W" district and the other half located in the "I" district. The lot line passes through the smaller of the two LPG storage tanks on the lot.

56. Storage above or below the ground of any explosive or hazardous fluid (including waste), toxic or noxious matter, or material causing odor, dust, fire hazard, smoke, gas or fumes is a use prohibited in the General Industrial "I" Zone. Town of Newington Zoning Regulation, Article V, Section 5, C (3).

57. Storage and handling of above or below the ground of any material which is explosive, toxic, noxious, or capable of causing odor, dust, fire hazard, smoke, gas, or fumes shall be a permissible use in the Waterfront Commercial District when the use complies with the shipping, handling and storage requirements and regulations of the National Fire Protection Association Standards (NFPA), Department of Transportation (DOT) and Environmental Protection Agency (EPA). Town of Newington Zoning Regulations, Article V, Section 6, D (3) a-c.

58. LPG is explosive and a fire hazard. The storage tank partially located in the "I" zone is, therefore, not a permitted use under the current zoning ordinance, therefore, on

information and belief, this tank is either currently unlawful or was a pre-existing non-conforming use and no variance has been granted to allow this nonconforming use in the "I" District.

59. The Applicant did not request a variance for the tank in its present Application. Article XIII, Section 1 of the Zoning Ordinance expressly provides that "non-conforming uses and non-conforming structures shall not be enlarged, expanded or extended." Absent a variance or proof that the site proposal does not "enlarge, expand or extend" the existing non-conformity, the Applicant's operations currently run afoul of the Zoning Ordinance and the proposal simply exacerbates a non-conforming use, in violation of New Hampshire law.

60. Paragraph 50 of the Minutes of May 19, 2013, sets forth Findings whereby "[t]he Board expressly finds that this proposed expansion of a long-standing use that is permitted in the Industrial Zone is consistent with the aim of Newington Zoning Ordinance Article V, Section 5, A, which anticipates that land zoned Industrial will be able to accommodate "expansion of existing industry.. and to enhance economic development and employment opportunities."

61. However, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because storage and handling a gas that is explosive material and is a fire hazard and is not a permitted use in the General Industrial Zone, of which Lot 13 is a part.

62. Paragraph 51 of the Findings set forth in the Planning Board's minutes of May 19, 2014 states that "[t]he Board expressly finds, as is required by Newington Zoning Ordinance Article V, Section 5, B that per the terms of this site plan application, "the proposed location, construction and operation will not injure present or prospective industrial development in the district, or the health and welfare of residential districts in the vicinity". The Board expressly finds that this application is precisely the type of business development and land use that the Industrial District is intended to protect and promote."

63. Again, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because storage and handling of LPG, an explosive material that is a fire hazard, is a prohibited use in the General Industrial Zone.

64. Paragraph 52 of the Findings set forth in the Planning Board's minutes of May 19, 2014 states that "[t]he Board expressly finds and recognizes that, in the aftermath of the recent economic recession, the importance of supporting business in the Industrial District, and promoting economic development and local employment, cannot be understated as an important purpose of this Industrial District."

65. Yet again, the Planning Board misinterprets and misapplies the Town of Newington's Zoning Ordinance because the storage and handling of explosive material and material that is a fire hazard is a prohibited use in the General Industrial District.

66. The Planning Board's approval of the site plan was based on its reliance on a provision of the Zoning Ordinance that prohibits the proposed use at the site and as such, the Planning Board's decision was illegal and unreasonable and should be reversed.

67. Because the tank is a non-conforming and not a permitted use, at a minimum, the Applicant's request, involving the site's expansion to increase the delivery, storage and distribution of LPG, is an impermissible expansion of a non-conforming use. Because no variance was granted, the Planning Board misapplied the Zoning Ordinance, and as such, its decision to approve the site plan should be overturned.

PUBLIC HEALTH SAFETY AND WELFARE

68. Article 1 of the Town of Newington's Zoning Ordinance provides that the purpose of the zoning ordinance is to "promote the health, safety, morals, convenience and general welfare of the community" and Article 3 provides that the purpose of the ordinance is for "promoting the health, safety, morals, prosperity, convenience or general welfare."

69. The Planning Board misapplied and misinterpreted Article 1 and Article 3 of the Zoning Ordinance because it did not require and review a safety/hazard assessment prior to granting site plan approval.

70. The only mention by the Planning Board regarding a safety/hazard plan is in one of its conditions of approval dated May 19, 2014. The fifth condition provides as follows:

> 5. Several safety plans were adopted in conjunction with the original Sea-3 site plan approval. They shall be reviewed by Sea-3, updated and submitted to the appropriate public officials (including the Newington Fire Chief) for review and approval prior to the commercial operation of the improvements authorized by this approval.

71. The City, through its Mayor, Assistant Mayor, City Councilors. City Manager, City Staff and citizens, as evidenced in the record, repeatedly and vociferously requested that the Planning Board require a safety study/hazard assessment of the site prior to approval of the site plan.

72. The Planning Board's condition of approval requires that Sea -3 update "safety plans" submitted to "public officials (including the Newington Fire Chief) for its review and approval prior to the issuance of a building permit."

73. The requirement that this safety plan be submitted directly to "public officials", after site plan approval and outside the scope of any public hearing process violates the intent and purpose of RSA 36 that requires Newington to give prompt and effective notice to affected communities of "development of regional impact" in order to facilitate comment on the project.

74. Review of updated "safety plans" -outside public hearing process and the scrutiny of residents of the Town and abutters from other affected municipalities- denies the affected communities the opportunity to review, understand and comment on how these "updated safety plans" affect their communities. The Planning Board's post-approval "update" condition denies the City and other the opportunity to comment on these "safety plans' in violation of RSA 36 and constitutes a procedural error and also violates the Zoning Ordinance because approving a site plan without a safety/hazard assessment does not promote the health, safety and general welfare of the community, which in this case, includes the City, and as such, the Planning Board's decision to approve the Application should be overturned.

75. Nothing in the record in the current proceeding indicates that the Planning Board or any of its members reviewed these original "safety plans" referenced in condition five. Sea-3's last site plan was in 1996 when they expanded their facilities. The Planning Board does not have the same members it did almost 20 years ago. And even if they did, federal regulations regarding the transportation, handling and storage of LPG has changed, as have surrounding populations, abutters and transportation routes, rendering the original plans outdated. It is also unclear from the condition what "plans" the Planning Board is referring to as, on information and belief, there are six different "plans' or reports in the 1996 site review file.

76. The Planning Board's approval of a site plan without first reviewing a site/hazard assessment was a misapplication and misinterpretation of the Zoning Ordinance as it could not evaluate whether the site promoted the health welfare and safety of the public without first reviewing a site/hazard assessment.

77. Because the Planning Board misinterprets and misapplied the zoning ordinance, its decision should be reversed and the Application denied.

DELAY IN DECLARING PROJECT OF DEVELOPMENT OF REGIONAL IMPACT

78. The City was prejudiced and other abutters were prejudiced in the Zoning Board's delay in declaring this a "development of regional impact".

79. A request that this project be deemed a "development of regional impact" was received by the Town on October 28, 2013, but the Town delayed until December 9, 2013 to declare the project a development of regional impact.

80. RSA 36:56 provides that a "local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. **Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact." RSA 36:56** (emphasis added).

81. The appeal and request for variance was filed on November 6, 2013 and noticed for Zoning Board of Adjustment hearing on November 25, 2013, at which time the appeal was denied and the request for variance was granted.

82. Abutters were not given notice of the hearing and were denied the ability to comment on the project.

83. Failure of the Town to give abutters notice of application for variance, after request received almost one month prior, was a procedural error and as such, unreasonable and unlawful.

CONCLUSION

84. For all the foregoing reasons, the Zoning Board of Adjustment should deny the approval of the site plan. In the alternative, the Zoning Board of Adjustment should remand the matter to the Planning Board for further proceedings consistent with the Town of Newington's Zoning Ordinance.

The City of Portsmouth
By and through its Attorney

Jane M. Ferrini, Staff Attorney
NHBM # 6528
1 Junkins Avenue
Portsmouth, New Hampshire 03801
(603) 610-7256

CERTIFICATE OF SERVICE

I, the undersigned, Jane Ferrini, Attorney for the Appellants, the City of Portsmouth, hereby certify that on this 17 day of June, 2014, a true and correct copy of the foregoing Appeal was served upon the Town of Newington and hand delivery to the following counsel of record:

John Ratigan, Esquire
225 Water Street
Exeter N.H. 03833

Jane M. Ferrini

VERIFICATION

I, Robert Lister, Mayor of the City of Portsmouth, being first duly sworn according to law, depose and say that all of the facts and allegations set forth in this document, to the extent based on my personal knowledge, are true and correct to the best of my knowledge, information and belief.

Dated: June 16, 2014

Robert Lister, Mayor, City of Portsmouth

STATE OF NEW HAMPSHIRE
COUTNY OF ROCKINGHAM

Personally appeared the aforenamed and affirmed to me that the facts and recitals set forth in the foregoing document are true and correct to the best of his knowledge, information, and belief.

~~Notary Public~~/Justice of the Pease
Commission Expires 9/18/14

Town of Newington, New Hampshire

Application Form

Zoning Board of Adjustment

Appelant

Property ~~Owner~~

Name City of Portsmouth
Address 1 Junkins Ave
Portsmouth NH 03801
Telephone 603 610 7256
Fax 603 427 1577
Email jferrini@cityofportsmouth.com

Applicant's Agent

Name
Address
Telephone
Fax
Email

Location of Property

Address Shattuck Way
Tax Map 20 Lot 13
Tax Map 20 Lot 2

Fee

$50

Applicant's Request(s)

(Check applicable requests)

☐ Variance from Article ____ in order to _____

☐ Special Exception to allow _____

☒ ~~Administrative~~ Appeal from the decision of Newington Planning Board on 5/19/14 *(date)* regarding site plan approval for Sea-3 Inc. See attached.

☐ Equitable Waiver of Dimensional Requirements

☐ Rehearing

Property Owner's Consent

I have read Newington's land use regulations and will comply with all the requirements therein.

Jane M Fo.

Signature(s) of *all* property owners & date signed

Jane M. Ferrini,
Staff Attorney
City of Portsmouth

GALLAGHER, CALLAHAN & GARTRELL, PA
214 North Main Street
P.O. Box 1415
Concord, New Hampshire 03302-1415
(603) 228-1181
(800) 528-1181
Facsimile (603) 226-3477

E-Mail: ruedig@gcglaw.com
Web Site: www.gcglaw.com

To: Paul Bogan — Fax#: (813) 241-0730, Phone#: (813) 241-0550

From: Michael D. Ruedig

Date: September 28, 2000

Re:

Comments: SEA-3, Inc./Newington Energy, LLC Water Line and Pumping Station Easement.

Martha L. Andrus-DeRoy
Signature of Fax Operator

TOTAL NUMBER OF PAGES INCLUDING THIS COVER SHEET: 19

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL MARTHA ANDRUS DeROY AT 1-800-528-1181, EXT. 248.

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NEWINGTON FIRE DEPARTMENT

80 FOX POINT ROAD
NEWINGTON, N.H. 03801

LARRY G. WAHL
CHIEF

OFFICE
(603) 436-9441

February 11, 1994

Sea-3, Inc.
103 Old Dover Road
Newington, NH 03801

Gentlemen:

This is to reaffirm an order from this office regarding the direction of travel for vehicles carrying hazardous materials.

The materials naming are:
Liquefied Petroleum Gas UN1075
Methyl Methacrylate Monomer inhibited UN1247.

The direction of travel for these vehicle arriving to the terminals is as follows:

Vehicles traveling from the south on Interstate 95 or from Maine on Interstate 95, are to exit the Spaulding Turnpike at Exit 2, Fox Run Road. Proceed to the bottom of the hill, and turn left toward Woodbury Avenue. Go straight across the traffic lights to Old Dover Road, proceed to the terminals.

Vehicles traveling from the north from Route 4 or Spaulding Turnpike, exit the Spaulding Turnpike at Exit 3, Woodbury Avenue. Proceed to the first set of traffic lights at the intersection of Woodbury Ave., Fox Run Road, and Old Dover Road. Turn left onto Old Dover Road, and proceed to the terminals.

The direction of travel for those vehicle leaving the terminals is as follows:

Leave the terminals and travel to the traffic lights at the intersection of Old Dover Road, Woodbury Avenue, and Fox Run Road. Vehicles are to proceed either straight across the intersection onto Fox Run Road, or turn right onto Woodbury Avenue. Both roads intersect Spaulding Turnpike north bound. Vehicles wishing to go north into New Hampshire, or Vermont, are to stay on the Spaulding Turnpike until they cross over the bridge linking Newington to Dover, in the area of the Hilton Park.

Those vehicles wishing to use Interstate 95, must first go north on Spaulding Turnpike as stated above, then use Exit 4 on Spaulding Turnpike, to reverse direction and go south on the Spaulding Turnpike to intersect I-95.

NO vehicles will be permitted on the following roads:

1. arriving to the terminals:

   a) Gosling Road.
   b) Woodbury Avenue north bound from Gosling Road.

2. leaving the terminals:

   a) Woodbury Avenue, south bound toward Gosling Road.
   b) Gosling Road.
   c) parked at either of the two malls (Fox Run Mall, or Newington Mall or properties along Woodbury Avenue).

In addition, checking with the City of Portsmouth, there is an ordinance that vehicles carrying Liquefied Petroleum Gas, Methyl Methacrylate Monomer inhibited, and gasoline are permitted only on Interstate 95, Route 1 from the traffic circle to the Sara Long Bridge, and Route 101.

Sincerely,

Larry Wahl

Larry Wahl, Fire Chief
Newington Fire Department

cc: Portsmouth Fire Chief
file

NewingtonEnergy, LLC

November 4, 2003

Mr. Paul Bogan
SEA-3, Inc.
103 Old Dover Road
Newington, NH 03801

Re: Truck Staging Area – Newington, New Hampshire

Dear Mr. Bogan:

We are writing pursuant to the terms of the Water Line and Pumping Station Easement executed between SEA-3, Inc. and Hawkeye Funding, Limited Partnership. Pursuant to Paragraph 18, we hereby grant to SEA-3, Inc. a non-exclusive right to use the Truck Staging Area. It is understood that this Truck Staging Area is for the temporary placement of vehicles directly associated with product transfer operations at the Sea-3 facility, and will in no way inhibit Newington Energy, LLC's ability to perform operations and maintenance activities at the generation plant. Please provide us with certificates of insurance at your earliest convenience.

Very truly yours,

John McTear
Vice President
Newington Energy, LLC

111 Broadway, 16th Floor, New York, New York 10006
Tel: (212) 393-9242 Fax: (212) 393-9282

WATER LINE AND PUMPING STATION EASEMENT

THIS WATER LINE AND PUMPING STATION EASEMENT (the "Easement") is made and entered into this ____ day of _____, 2000 by SEA-3, INC., a Texas corporation ("Grantor"), in favor of NEWINGTON ENERGY, L.L.C., a Delaware limited liability company ("Grantee").

WHEREAS, Grantor is the owner of certain real property lying and being in Rockingham County, New Hampshire, being more particularly described on Exhibit "A" attached hereto and by this reference incorporated herein ("Grantor's Property") good and marketable title to which Property Grantor covenants and warrants;

WHEREAS, Grantee is the owner of the option to purchase certain real property lying and being in Rockingham County, New Hampshire to the west of the westerly boundary line of Grantor's Property, being more particularly described on Exhibit "B" attached hereto and by this reference incorporated herein ("Grantee's Property") upon which it intends to construct operate and maintain an electric generating facility("Facility") as more particularly described in the Grantee's application filed with New Hampshire Energy Facilities Siting and Evaluation Committee;

WHEREAS, Grantor desires to grant and Grantee does hereby accept from Grantor, upon the terms and conditions contained herein, easements for the purpose of installing, repairing, replacing, improving, maintaining, constructing, erecting, reconstructing, operating, rebuilding, renewing, replacing, removing, extending or adding onto within the Pipe Easement Property as permitted herein, obtaining access to, and inspecting (i) water line pipes, pipeline structures, valves, fittings, couplings, fixtures and all facilities and equipment appurtenant thereto (the "Pipes") to draw water from and to discharge water and materials from Grantee's Facility into the Piscataqua River (the "River") upon, over, under and across those portions of Grantor's Property being more particularly described on Exhibit "C- 1" attached hereto and by this reference incorporated herein ("Tract One") and on Exhibit "C-2" attached hereto and by this reference incorporate herein ("Tract Two") (Tract One and Tract Two are sometimes individually referred to as a "Tract" and are collectively referred to as the "Pipe Easement Property"), and (ii) a water pumping station, valves, fittings, fixtures, electrical wires and equipment, communications lines and equipment and all facilities and equipment appurtenant thereto (the "Pumping Station") upon, over, across and under Tract Two in connection with Grantee's use and operation of the Pipes.

NOW, THEREFORE, for and in consideration of the foregoing, the mutual covenants contained herein, the sum of $10.00 in hand paid by each party hereto to the other, and the sums hereinafter set forth paid by Grantee to Grantor at or before the signing, sealing and delivering of these presents, and other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged by Grantor, Grantor hereby covenants and agrees with Grantee as follows:

Easement interfere with the Grantor's use of its other land or its docking facilities. In the event that the Grantor's operations change so as to require the expansion or relocation of its docking facilities in a manner that affects the Grantee's Pipes, Pump Station or Water Structures then the Grantor shall at its own cost relocate the Grantee's Pipes, Pumping Station and Water Structures within the Pipe Easement Property so as to accommodate its proposed expansion or relocation. The Grantor hereby recognizes that its ability to relocate the Grantee's Pipes, Pump Station or Water Structures is subject to its ability to first obtain all necessary permits and approvals regarding same.

16. Except as otherwise provided in this Agreement, the rights and easements granted to Grantee under this Easement expressly include, without limitation, the right to exercise any and all rights and easements hereunder seven (7) days a week, twenty-four (24) hours a day.

17. Grantor shall only have the right to use the surface of the Pipe Easement Property for uses consistent with the rights and easements granted to Grantee pursuant to this Easement, such as pavement, ground cover and most landscaping. Provided Grantee is not in default under this Agreement, no use shall be made of the Pipeline Easement Property which would injure or interfere with the exercise of Grantee's rights hereunder, including the proper operation, use, maintenance, repair of, extensions or additions to the Pipes, Pumping Station, Water Structures and related facilities of Grantee within the Pipe Easement property. No buildings or structures other than fences may be erected upon or within the Pipe Easement Property, without the express written consent of Grantee, which consent may be withheld by Grantee in its sole and absolute discretion. In connection with any construction, installation or maintenance of the Pipes, Grantee shall restore the surface of the Pipe Easement Property to as near the condition it was in prior to such construction as circumstances will allow; provided, however, Grantee shall have no obligation to restore any buildings or structures prohibited under this Easement should it become necessary to remove such buildings or structures in constructing the Pipes, Pumping Station and Water Structures. Provided Grantee is not in default under this Agreement, Grantor shall not interfere in any way with Grantee's use and enjoyment of the Pipe Easement Property. Grantee covenants and agrees to protect, defend, indemnify and hold Grantor harmless from and against any and all claims, demands, liabilities or expenses to the extent arising out of any act or omission of Grantee, its representatives, agents, contractors, subcontractors and employees in the exercise of Grantee's rights under this Easement, but excluding any liability arising out of any existing environmental condition of Grantor's Property and excluding any claims arising out of a release of existing or in-place hazardous or toxic substances on or under Grantor's Property.

18. Within three (3) months of the start of commercial operation of the Facility, Grantee shall grant to Grantor the non-exclusive right to use the Truck Staging Area, shown on the Plan entitled "Mareld Property Agreement Plan" Sheet Q-8, for purposes of parking vehicles, in common with others, provided that such use shall be at Grantor's sole risk.

19. Grantee shall pay Grantor the following amounts:

From: Tom Morgan <planning@newington.nh.us>

Subject: Fwd: Article

Date: March 24, 2014 1:31:27 PM EDT

To: Justin Richardson <jrichardson@upton-hatfield.com>, Rick Stern <rstern@townofnewingtonnh.com>, Chris Cross <crossxx@comcast.net>, Jack Pare <jackpare@comcast.net>, Margarethe Lamson <margaretlamson@gmail.com>, Denis Hebert <denis.hebert@navy.mil>, Michael Marconi <msmarconi@comcast.net>, Jane Kendall <janekkendall@gmail.com>, Bernard Christopher <bcjr0925@comcast.net>

Begin forwarded message:

From: Jane Sutherland <jane.sutherland76@gmail.com>

Subject: Re: Article

Date: March 24, 2014 10:32:39 AM EDT

To: Richard DiPentima <rdipentima@gmail.com>

Cc: "Steven E. Achilles" <seachilles@cityofportsmouth.com>, Bob Lister <rjlportsmouth@yahoo.com>, "John P. Bohenko" <jpbohenko@cityofportsmouth.com>, Jim Splaine <jimsplaineportsmouth@gmail.com>, Laura Byergo <lgbyer@yahoo.com>, Robert Gibbons <bobg1029@gmail.com>, "Cynthia Binari (Keenan)" <cynthiakeenan@gmail.com>, Abdallah Mohammad <ab.alhamdan@yahoo.com>, Matthew Nania <mjnania@gmail.com>, "md.andrews@comcast.net" <md.andrews@comcast.net>, Martha Fuller Clark <Martha.FullerClark@leg.state.nh.us>, Tom Morgan <planning@newington.nh.us>, "patriciasalome@comcast.net" <patriciasalome@comcast.net>, "saeci@aol.com"

<saeci@aol.com>, John Sutherland <sutherlandjohn34@gmail.com>, "phgoldens@gmail.com" <phgoldens@gmail.com>, John Shirley <jshirley51@icloud.com>, Kristina Campbell <kristina.campbell@comcast.net>, Corinne Szopa <tszopa@myfairpoint.net>, Christopher Cole <CCOLE@sheehan.com>, Jeff Barnum <JBarnum@clf.org>, "patlasonde@erkacokullari.12.tr" <patlasonde@erkacokullari.12.tr>, "patlasonde@enkaokullari.k12.tr" <patlasonde@enkaokullari.k12.tr>, "plbritz@cityofportsmouth.com" <plbritz@cityofportsmouth.com>

Right on, Rich! You articulate the concerns of all of us, and your efforts to have these decisions made with the "facts" is both necessary and appreciated.
Jane

Sent from my iPad

On Mar 24, 2014, at 10:12 AM, Richard DiPentima <rdipentima@gmail.com> wrote:

> Steven:
>
> Thank you for your response. I greatly appreciate that the area fire chief's met to discuss the matter. Unfortunately, there are no facts provided to support the claims of the chief's that they are prepared to respond to the type of incident that could result from a release of this product and a subsequent catastrophic event. Considering an accident could take place at any point along the rail line, are their evacuation plans that cover the full length of the rail line from Newfields to Newington? If so, ave there been regional exercises to test these plans? Has a full analysis of the equipment and personnel needs been accomplished to determine if there are any gaps that would need to be addressed in the event of a catastrophic event? Has there been an analysis of the increased risk that results from hauling approximately 20 propane tank cars per year over these tracks, that the Newington Master Plan labels as being in "poor condition", to as many as 4,992 cars per year? Has the potential for increased speed of the trains from 10 mph to 25 mph and the resulting increased risk of an accident with loss of product been evaluated by the chiefs? Have the chiefs reviewed the safety record of Pan Am Railways as part of their risk assessment? Have the chiefs reviewed accidents across the nation involving propane tank cars such as in Murdock, IL, Lincoln, CA, Collinsville, IL, Kingman, AZ, Alberta, Canada, New Brunswick, Canada, and Mount Joy, PA? Have the chiefs considered that other hazardous materials are also being transported along these lines, such as gasoline, along with the propane?
>
> We all agree that the risks of a catastrophic accident are small, but, as you say, "not zero", possibly far from zero. The potential for substantial loss of life, tremendous property destruction, huge economic losses to both citizens and communities that may go well over any insurance coverage of the railroad, that could result from such an accident, say in downtown Portsmouth, should be a sobering consideration for any public safety official. Recall the august 2001 derailment of a Guilford/Pan Am train carrying propane in downtown Portsmouth. Consider if that train was traveling 25 mph, as may well be the case in the future, what might have been the result. Yes, these tank cars are very sturdy, but we know that they can fail from the above mentioned accidents, and that the increased speeds coupled with the huge increase in the number of tank cars, will greatly increase the risk.
>
> It is one thing for the fire chiefs to be confident in their ability to respond, it is another to back this confidence with appropriate studies, plans,statistical risk analysis, exercises, gap analysis,

and other data to support their confidence. In the absence of such comprehensive reviews, the public will justifiably question you ability to protect our safety. This is why we have requested that Newington conduct comprehensive safety and risk studies by an independent qualified consultant to give us this information, a request that the Mayor has supported in his letter to the Newington Planning Board. Without such studies, we will remain skeptical, and lack any confidence that the community is as prepared as the chiefs seem to think we are.

Thank you for your consideration.

Rich DiPentima

On Mon, Mar 24, 2014 at 9:04 AM, Steven E. Achilles <seachilles@cityofportsmouth.com> wrote:

Rich,

In reply to your emails regarding the article from this past Saturday; I appreciate your position and those of others in the community. The Portsmouth Fire Department and other area fire departments are not debating or questioning the many concerns of our elected representatives or citizens. We met to review and discuss the product, the mode of transportation, our ability to respond, and other related fire and life safety concerns. At this time the general consensus is that the risk of fire and the accidental release of product is extremely low, but not zero. Most fire departments are extremely familiar with the product and the emergency response required if there is an accidental release or fire.

I believe that the areas we discussed are only one component of the overall proposed project . Community leaders, citizens, and other stakeholders will have to determine the value or the lack of value if the project moves forward. Throughout the process our department will not show any preference or prejudice towards the project, but will fairly evaluate the information and facts from a fire and life safety perspective.

I am available to meet with you if have any further questions or concerns.

Steve

Steven E. Achilles

Fire Chief

City Portsmouth Fire Department

wk ph: (603).610.7340

<image001.jpg>

<image002.png>

Please don't print this e-mail unless you really need to.

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From: Richard DiPentima [mailto:rdipentima@gmail.com]
Sent: Sunday, March 23, 2014 10:09 AM
To: Steven E. Achilles
Cc: Altschiller, Howard; Jim Splaine; jmcmenemy@seacoastonline.com; John P. Bohenko; Bob Lister
Subject: Article

Chief:

Sorry to bother you, but after rereading the article I had more questions . At the end of the article you say, "It is important that we look at the information from a fire-and-life-safety perspective and that we are prepared ans (the project) does not add any undue burden or risk to the community." I agree. Can you define whattype of project would be an undue burden or risk to the community? What level of risk does it take to reach the level of an undue risk? Can you give us an example of something that would place an undue burden or risk on the community? You stated that we need to be "extremely factual." Could you provide us with the facts to support your statements?

Thank you.

Rich DiPentima

From: Tom Morgan <planning@newington.nh.us>
Subject: Fwd: SEA-3 2nd means of access along the Rail ROW
Date: April 14, 2014 12:37:27 PM EDT
To: Justin Richardson <jrichardson@upton-hatfield.com>, Jack Pare <jackpare@comcast.net>, Rick Stern <rstern@townofnewingtonnh.com>, Chris Cross <crossxx@comcast.net>, Margarethe Lamson <margaretlamson@gmail.com>, Bernard Christopher <bcjr0925@comcast.net>, Denis Hebert <denis.hebert@navy.mil>, Michael Marconi <msmarconi@comcast.net>, Jane Kendall <janekkendall@gmail.com>

Begin forwarded message:

From: "Steve Haight" <shaight@haighteng.com>
Subject: RE: SEA-3 2nd means of access along the Rail ROW
Date: April 10, 2014 2:38:05 PM EDT
To: "'Tom Morgan'" <planning@newington.nh.us>
Cc: "Alec McEachern" <alecm@shaines.com>, "Paul Bogan" <paul.bogan@sea-3.com>, "Scarano, Cyndi" <cscarano@panam.com>

Hi Tom

My apology for not including you on the email to the Fire Chief... I intend to but forget to add your email address

Anyway... attached is the ROW and Track Map from 1914 for the section of Rail through Newington starting at Simplex through Sea-3

Regards

Steve

Stephen J. Haight, P.E.
Haight Engineering, P.L.L.C.

P.O. Box 1166
181 Watson Road
Dover, New Hampshire 03820

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From: Tom Morgan [mailto:planning@newington.nh.us]
Sent: Wednesday, April 09, 2014 3:34 PM
To: Steve Haight
Subject: Fwd: SEA-3 2nd means of access along the Rail ROW

Steve, could we have a copy of the 1914 Boston & Maine plan?

Begin forwarded message:

From: "Head, Andy" <ahead@newingtonfire.org>
Subject: FW: SEA-3 2nd means of access along the Rail ROW
Date: April 9, 2014 2:13:47 PM EDT
To: "Tom Morgan" <planning@newington.nh.us>

For your information. Andy

From: Steve Haight [mailto:shaight@haighteng.com]
Sent: Wednesday, April 09, 2014 1:59 PM
To: Head, Andy
Cc: Paul Bogan; Alec McEachern; Scarano, Cyndi
Subject: SEA-3 2nd means of access along the Rail ROW

Chief Head

I have a paper copy of a plan titled Right of Way and Track Map - Boston and Maine R.R. dated June 30, 1914 and last endorsed as "current" 1/2013 by Jim Verra LLS... the width is shown as 83' at SEA-3 and stays the same width easterly through where Shaftmaster crosses ...there are some variations to the width further east (wider and narrower) but for the run that the FD would be on it appears to be at least 83' wide.

The track is not centered on the ROW... it is 36' off the north edge.

Based on my conversation with Pan Am The emergency access would have to be at least 5' off the edge of the rail

Therefore: (for purposes of this email north is the Piscataqua side of the ROW)

- **Center line of rail is 36' off north ROW line**
- **Rails are about 5' wide (outside edge of rail to outside edge of rail)**
- **Outside edge of rail is 33.5' off north ROW**
- **Emergency access can be no closer than 5' to the rail**
- **Therefore the inside edge (towards track) of the emergency access would be 28.5' off edge of north ROW line**
- **Say emergency access is 15' wide... this leaves 13.5' from the ROW line to outside edge (Piscataqua side) of the emergency access road**

There would appear to be adequate room to construct the emergency access within the ROW

Also, for your info... the attached document is the railroad rail crossing detail we would use crossing the rail at the site.

Let me know if/when you want to walk the section where the access would go ... we will need to contact Pan Am to schedule an escort.

Regards

Steve

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From: Alec McEachern [mailto:alecm@shaines.com]
Sent: Tuesday, April 08, 2014 8:35 AM
To: Steve Haight; Paul Bogan
Subject: RE: SEA-3 2nd means of access

Steve:

The railroad actually owns the fee title to the land so it wouldn't be Shaftmaster's property or a ROW. We can check with PanAm but I believe the width of its land is consistent down the track, ie the width as it goes between Sea-3's parcels is likely the same width as it goes by Shaftmaster. I would be surprised if the PanAm is allowing Shaftmaster to park on railroad property. We need to confirm the width of PanAm's real estate along the access and show the width of the access route. I recommend following up with the Fire Chief when we have the widths confirmed and ask him if it will be sufficient for his trucks.

Alec

From: Steve Haight [mailto:shaight@haighteng.com]
Sent: Monday, April 07, 2014 11:13 AM
To: Paul Bogan; Alec McEachern
Subject: SEA-3 2nd means of access

Following up on a couple of comments from the Board and the Fire Chief regarding the 2nd access.....

- The plan as shown I schematic ... the question was whether or not there is enough space to put the access road along the train track
- Fire Chief mentioned that Shaftmaster would likely lose some parking (parking in the railroad ROW?)
- Should we have PanAm provide any input..
  - Width of ROW
  - Design parameters of an emergency access route
- Should we follow up with the Fire Chief to see if he needs any additional information

S

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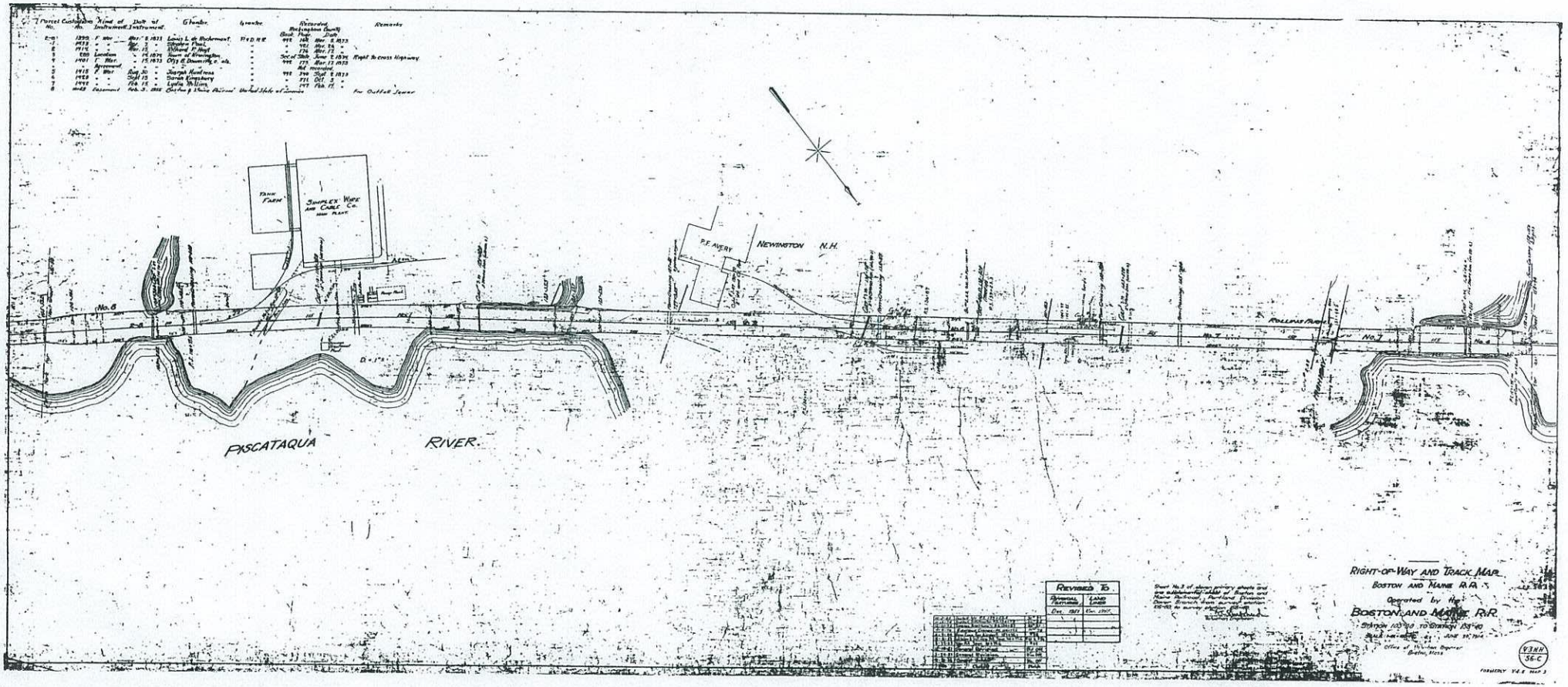
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SIMPLEX WIRE AND CABLE CO.
P.F. AVERY
NEWINGTON N.H.
No. 6
No. 7
PISCATAQUA RIVER
REVISED TO
RIGHT-OF-WAY AND TRACK MAP
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Operated by the
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