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February 22, 2012

Greggory B. Mendenhall, Esq.
Sheppard Mullin
30 Rockefeller Plaza
New York, NY 10112-0015

Dear Mr. Mendenhall:

We refer to your letter of October 14, 2011, with its enclosures, by which you requested a United States build determination pursuant to 46 C.F.R. § 67.97 for the construction by VT Halter Marine, Inc. ("Halter") at its shipyard in Pascagoula, Mississippi, of a combination container and roll-on/roll-off car truck carrier ("ConRo" or "Vessel") for Pasha Hawaii Shipping Company LLC ("Pasha").

Upon receipt we referred your letter to the Coast Guard's Naval Architecture Division ("NAD") for review and analysis to assist us in this determination. We did so as well with your subsequent submissions dated December 20, 2011, and January 30, 2012, which were provided in response to their and our requests for additional information and clarification. A copy of the NAD report dated February 10, 2012, has been attached hereto as Exhibit A in support of this determination.

Halter has been engaged to construct the ConRo based upon a design by the Uljanik Shipyard, Croatia, with certain modifications. As you have stated, Halter intends to purchase from Uljanik certain three dimensional curvature plates for the construction of the ConRo and foreign fabricated container fittings and castings, some of which will be flush to the ConRo's decks. In addition, the self loading/unloading container cranes and most outfitting equipment and materials will be sourced from foreign manufacturers.

Upon delivery, Pasha intends the ConRo to be documented under the United States flag with a coastwise endorsement entitling it to be operated in the domestic trades of the United States. Your letter clearly reflects your understanding that, in order for that to occur, the ConRo must be determined to have been built in the United States and that, in order for that to be the case, its construction must satisfy both of the requirements of 46 C.F.R. § 67.97; namely:

" To be considered built in the United States a vessel must meet both of the following criteria:

- (a) All major components of its hull and superstructure are fabricated in the United States;
and
- (b) The vessel is assembled entirely in the United States."

The term "hull" is defined at 46 C.F.R. § 67.3, in pertinent part, as follows:

"Hull means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations..."

The term "superstructure" is defined at 46 C.F.R. § 67.3 as follows:

"Superstructure means the main deck and any other structural part above the main deck."*

*The term "main deck", as used in the above definition, is not defined by regulation. Because of the unusual design features of the ConRo, questions arose as to the appropriate deck to be considered the main deck in this case. For the limited purposes of the findings necessary to support a determination in this particular case, we believe that issue has been adequately addressed by paragraphs 2), 7) and 12) of the NAD report.

At the outset, we note that we had some questions concerning your determination of the Vessel's lightship steelweight which, without detail, provided an estimate of that weight which was stated to be 11,600 MT. By our further e-mail inquiries dated October 20, 2011, November 7, 2011, and January 19, 2012, we sought clarification of that issue, as well as certain other questions raised in the course of our review of your initial submission. You responded to our inquiries by the submissions referred to above and we have taken those responses into account herein.

With regard to the Vessel's lightship steelweight:

As already stated, your initial submission stated that weight to be an estimated 11,600 MT but did not provide detail. We inquired further and your letter of December 20, 2011, provided detail supporting a revised lightship steelweight of 11,629 MT --- which certainly bears out the slightly more conservative estimate provided initially. The NAD reviewed the calculations submitted and concluded, in paragraph 11) of its report, as follows:

"11) Reference (c) [your submission dated December 20, 2011] provides a 'hull group' weight of 11,439 Mtons. It is assumed that this is the basic steel weight of hull plating and stiffeners, and does not include other hull component weights that complete the flotation envelope: welding rod electrodes (190 Mtons), the watertight vehicle door on 06 Deck (6 Mtons), the watertight door portion of the stern quarter ramp (82 Mtons), the three thruster tunnels (4.7 Mtons total), the stern & rudder tube castings (24.8 Mtons total), and the pilot doors (not more than 2 Mtons). Therefore our best determination of the discounted steel weight is 11,748 Mtons (11,538 Ltons), and the 1 ½ percent 'major component' weight limit is 176 Mtons (173 Ltons)."

We will use the NAD's conclusions as to steelweight for the purposes of this determination.

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With that issue resolved, we turn to your presentation of the foreign material, foreign fabricated components and equipment and outfitting components proposed to be used to construct and assemble the ConRo at Halter's shipyard in Pascagoula.

(i) Steel Plate and Bulb Flats

You have indicated that Halter intends to procure steel plate, T-beams and flat bar from domestic U.S. suppliers and steel bulb flats and rectangular tubing from both domestic and foreign suppliers --- all of which will be sourced in standard sizes and shapes from the producing mills. With the exception of certain compound curvature plates, which will be considered below, all fabrication and assembly of those materials will take place in Pascagoula.

It has been well-established that foreign steel, in standard mill shapes, may be used without limitation in the construction of a vessel deemed built in the U.S. However, fabrication has always been deemed to include any processes that create unique parts, such as marking, cutting, drilling, beveling, shaping or bending. In that regard, the Coast Guard has long permitted foreign manufactured steel plates, angles, flat bars, T-bars and bulb flats to be used in the construction of a vessel without compromising its coastwise eligibility.

You correctly recognized, however, that the bending and shaping of compound curvature plates would constitute fabrication and, as such, the incorporation of those plates into the vessel, even if done in Pascagoula, requires separate consideration.

(ii) Foreign Fabricated Components of the Hull and Superstructure

Enclosure (2) to your initial submission set forth in table form certain components of the hull superstructure which were to be fabricated foreign and included the weights of those items. In response to questions raised by our inquiry of November 7, 2011, you then revised upwards the weights of certain items (e.g. bow and stern thruster tunnel sections and flush container deck fittings) and noted that, due to cost and schedule constraints, Halter has elected to fabricate certain other items (manhole covers) at its facilities in the United States. The revised table of those items and their weights was provided as Attachment B to your letter of December 20, 2011. Based upon that revised information, and taking into account the comments offered by the NAD in paragraph 8) of their report, the total weight of those foreign-fabricated components is well less than 176 Mtons, or 1.5% of the Vessel's lightship steelweight. This conclusion assumes the inclusion of 112 Mtons attributed to the foreign fabrication of certain compound curvature hull plates, as addressed in paragraph 8) f) of the NAD report and allows more than adequate margin for inclusion of the pilot doors referred to in paragraph 10) of the NAD report, if intended to be foreign-fabricated. [We note that, with regard to the stern quarter ramp (82 Mtons), paragraph 8) f) may have overlooked the fact that, in accordance with your initial submission dated October 14, 2011, "the entire quarter ramp/door and systems will be fabricated by MacGregor in the United States and installed on the ConRo by Halter at its Pascagoula shipyard." See (iv), below. Assuming that to be the case, the tonnage attributable to it would not need to have been included in your revised

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table, leaving adequate margin for inclusion of the stated amount of compound curvature hull plates, even taking into account the minimal tonnage possibly attributable to the pilot doors.]

Finally, we also note that your initial submission indicated that you have built into your construction plan the flexibility to reduce the number of compound curvature hull plates to be fabricated overseas in order to control for any unintended or unanticipated overages in the estimated weights.

(iii) Foreign Fabricated Equipment and Outfitting Components

Halter also proposes to utilize certain units and sub-assemblies of equipment and outfitting in the construction of the ConRo which are free-standing, self-supporting and independent of the Vessel's structure. Your initial submission included Enclosure (5) to itemize that equipment and outfit.

With respect to all those items which meet the description of being "free-standing, self-supporting and independent of the Vessel's structure", which most of those items appear to be, it is well-established by past determinations (among them those cited by your letter), as well as past Court rulings (see, Philadelphia Metal Trades Council v. Allen and Aker Philadelphia Shipyard, Inc., 2008 WL 4003380 (USDC, EDPA)(August 21, 2008)) that the "assembled entirely" prong of the regulatory test for vessels to be considered built in the United States (46 C.F.R. § 67.97(b)) applies to the assembly of the vessel in the United States and does not require the assembly in the United States of every part or component of the vessel. Consequently, provided that the items listed are assembled into the Vessel at Halter's shipyard in the United States the Vessel's status as built in the United States will not be adversely affected.

It appears that the only item that has been included in Enclosure (5) which would have structural implications (we refer to Item 210, Formed Plates – Curvatures), has been factored into the "fabricated" prong of the regulatory test (46 C.F.R. § 67.97(a)), as is appropriate.

(iv) Cargo Quarter Ramp/Door

The fabrication and installation of the quarter ramp/door system, among other matters, were discussed in a telephone conference call on October 6, 2011. By your letter of October 14, 2011, subsequent to that call, your client has elected to have the entire system fabricated in the United States and installed on the ConRo by Halter at its Pascagoula shipyard. Consequently, this aspect of the ConRo's construction presents no U.S. build issues requiring further consideration.

(v) Cargo Self Loading/Unloading Container Cranes

All aspects of the two cranes and crane installations which are integral to the ConRo's hull or superstructure --- their below deck foundations and support structures --- will be constructed, fabricated and assembled by Halter at their Pascagoula shipyard. Although the cranes themselves and their intermediate foundations (which serve the function of extending the

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cranes to the correct vertical height but are not integral to the hull or superstructure) will be fabricated overseas, these assemblies --- outfitting items and not components of the hull or superstructure --- will be installed in the ConRo at Pascagoula. As described, this process for the foreign manufacture of cranes which are assembled into a vessel in the United States on foundations and supports integral to the vessel's hull or superstructure which are themselves fabricated and constructed as part of the vessel in the United States, is consistent with past Coast Guard determinations on the subject and will not implicate the ConRo's U.S. build status.

Based upon all of the foregoing, and provided that construction is accomplished consistent with the parameters which govern these findings, we confirm that construction of the ConRo as described will not adversely affect its eligibility to be documented with a coastwise endorsement and employed in the coastwise trades of the United States.

Sincerely,



Timothy V. Skuby
CAPT, USCG Retired
Director