



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1  
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BOSTON, MA 02109-3912

Superfund Records Center  
SITE: New Bedford  
BREAK: 4-9  
OTHER: 523824

**BY HAND**

September 28, 2012

Brona Simon  
State Historic Preservation Officer  
Massachusetts Historical Commission  
220 Morrissey Boulevard  
Boston, MA 02125

Re: South Terminal Project, New Bedford, MA

Dear Ms. Simon:

On July 16, 2012, the United States Environmental Protection Agency, Region 1 (EPA), issued a Draft Determination that the proposed South Terminal Project in New Bedford, MA (the Project) is both protective of human health and the environment and meets the substantive requirements of applicable or relevant and appropriate federal environmental standards that such a project would be required to meet if it were to follow normal permitting requirements. A copy of this Determination was submitted to your office. EPA also proposed to accept the determination by the Commonwealth of Massachusetts (Commonwealth) that the proposed Project meets the applicable or relevant and appropriate state environmental standards.

As you may remember, the Commonwealth's proposed expansion of the State Enhanced Remedy was integrated into EPA's 1998 Record of Decision for the cleanup of the Upper and Lower New Bedford, MA Harbor under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). You may also be aware that in its Draft Determination, EPA conditioned its conclusion on, among other things, a requirement that "[a] final assessment of the upland area of the proposed Project that complies with National Historic Preservation Act requirements is provided to EPA and the consulting parties, and appropriate consultation is conducted regarding potential effects to historic properties." (Draft Determination, page 15). Implementation of the Project can commence after EPA determines that it complies with this and all other conditions set out in the Draft Determination and issues its final decision.

In accordance with the National Historic Preservation Act and at the behest of EPA, the Commonwealth commissioned a number of archeological investigations and assessments of the area projected to be impacted by the Project to determine its impacts, if any, on historic properties. After reviewing the archeological investigations and assessments of the areas projected to be impacted by the Project, and in consideration of input by the Massachusetts Historical Commission and the consulting parties, including the Massachusetts Bureau of

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Underwater Archaeological Resources (MBUAR), and the federally recognized Wampanoag Tribes of Gay Head (Aquinnah), and Mashpee, **EPA finds that no historic properties will be affected within the Project's area of potential effects.**

The areas of investigation associated with this Project include the subtidal, intertidal, and upland portions of the Project site. In particular, the Project includes the construction of a Confined Disposal Facility in the intertidal and subtidal portions, navigational dredging in the intertidal and subtidal portions, and construction of a marine terminal facility on the upland portion of the site. The archeological investigations and assessments of these areas are summarized in the following reports (listed chronologically):

- Cultural Resources Background Study and Archeological Assessment, South Terminal Marine Infrastructure Park (Upland Portion) by John Milner Associates, Inc. (June 2010);
- Phase I & IB Underwater Archeological Investigations, South Terminal Marine Infrastructure Park, New Bedford, MA, submitted to MBUAR by Dolan Research, Inc. (September 2010);
- Assessment of Prehistoric Archeological Site Potential: Subtidal Portions of the Proposed South Terminal Marine Infrastructure Park, New Bedford, MA, submitted to the Massachusetts Historical Commission and MBUAR by John Milner Associates, Inc. (October 2010);
- Assessment of Prehistoric Archeological Site Potential: Intertidal Portions of the Proposed South Terminal Marine Infrastructure Park, New Bedford, MA, submitted to the Massachusetts Historical Commission and MBUAR by John Milner Associates, Inc. (October 2010);
- Phase II Investigation of target M4/S5, Proposed South Terminal Marine Infrastructure Park, New Bedford, MA, submitted to MBUAR by Dolan Research, Inc. (January 2011); and
- Cultural Resources and Background Study and Archeological Sensitivity Assessment submitted to the Massachusetts Historical Commission and MBUAR by John Milner Associates, Inc. (September 2012).

These studies, with the exception of the September 2012 Cultural Resources Background Study and Archeological Sensitivity Assessment of the upland portion of the site, were initially submitted to the Tribes on March 23, 2011. The studies were resubmitted to the Massachusetts Historical Commission and the consulting parties as part of the Commonwealth's January 18, 2012 comprehensive submittal to EPA entitled State Enhanced Remedy in New Bedford, South Terminal. The September 2012 Cultural Resources Background Study and Archeological Sensitivity Assessment was transmitted to the Massachusetts Historical Commission and consulting parties on September 18, 2012.

The June 2010 study and assessment, Cultural Resources Background Study and Archeological Assessment, South Terminal Marine Infrastructure Park (Upland Portion), concerns a cultural resources background research and an archeological sensitivity assessment of the upland portion of the Project. Because this portion of the Project expanded as the Project developed, a second assessment, Cultural Resources and Background Study and Archeological Sensitivity Assessment, was conducted in September 2012. The June 2010 assessment noted that the upland

area was extensively disturbed by 19<sup>th</sup> century industrial development and concluded that no additional cultural resources background research or archeological subsurface investigation was necessary in the upland area. In your July 6, 2010 letter to Lois K. Adams, U.S. EPA, you concurred with the findings and recommendations of this report (see attachment).

The September 2012 assessment confirmed that the current parameters of the upland portion fall entirely within the June 2010 study area and as a result, do not change the findings of the June 2010 assessment. Note, however, that this assessment recommended that a Phase 1B archeological survey be performed to test for the presence of intact archeological features and deposits associated with the former dwellings in the former Acushnet Mills company housing before any Project-related construction activities intrude more than 12 inches below present ground surface. In response, the Commonwealth confirmed that the project will not impact this culturally sensitive area because activities contemplated in the final designs will not involve the disturbance of soil in this area. See attached September 18, 2012 letter from Apex Companies, LLC to Ann Williams, US EPA - Region 1. In addition, EPA's final decision will contain the condition that before any contemplated ground disturbance of more than 12 inches in the Acushnet Mills company housing area is undertaken, a Phase 1B archeological survey of this area must be submitted to EPA for review and approval.

The Commonwealth also conducted intensive marine archaeological reconnaissance surveys of the subtidal portions of the Project area to identify any previously recorded or unrecorded historic properties. The Phase I & IB surveys, Phase I & IB Underwater Archeological Investigations, South Terminal Marine Infrastructure Park, New Bedford, MA, were submitted to MBUAR in September 2010. The Phase I survey found, and the Phase IB survey confirmed, the presence of a late 20<sup>th</sup>/early 19<sup>th</sup> century sailing ship. The report concerning the results of additional archeological research into the wreck site, Phase II Investigation of Target M4/S5, Proposed South Terminal Marine Infrastructure Park, New Bedford, MA (January 2011), concluded that because of the deteriorated condition of this vessel, the archeological research potential of the wreck site is limited. In addition, the report recommended that further investigation was not warranted. On February 17, 2011, EPA and the Commonwealth's consultant, Apex Companies, LLC (Apex) received concurrence letters from the Massachusetts Historical Commission and MBUAR which agreed that the shipwreck does not meet the Criteria of Eligibility for listing in the National Register of Historic Places (36 CFR Part 60), the site lacks integrity, and no further investigation is warranted (see attached).

In addition, the Commonwealth conducted assessments of prehistoric archeological site potential for the intertidal and subtidal portions of the Project. The intertidal report, Assessment of Prehistoric Archeological Site Potential: Intertidal Portions of the Proposed South Terminal Marine Infrastructure Park, New Bedford, MA, concluded that the portion has low prehistoric archeological potential, and recommended that no further prehistoric evaluation of the intertidal portions of the project areas be performed.

The subtidal report, Assessment of Prehistoric Archeological Site Potential: Subtidal Portions of the Proposed South Terminal Marine Infrastructure Park, New Bedford, MA, concluded that this portion has a moderate potential for submerged prehistoric sites. Accordingly, the report recommended that a suitably trained archeologist be on board dredging vessels to monitor

ground disturbing activities. In accordance with this report, and in consultation with the Wampanoag Tribe of Gay Head (Aquinnah) and Mashpee Wampanoag Tribe, the Commonwealth has agreed to have a suitably trained archeologist on board dredging vessels to monitor ground disturbing activities.

The consulting parties also noted concerns about the preservation of paleosol, i.e., fossilized soils preserved within a sequence of geological deposits that are indicative of past conditions, in the subtidal and intertidal areas. In particular, in your November 18, 2010 letter to Lois K. Adams regarding the intertidal and subtidal investigations, you noted that both the subtidal and intertidal zone investigations identified areas with intact paleosol, and requested that the Project planners consider an alternative to avoid and protect these soils.

In its January 12, 2011 letters to you and to the MBUAR, Apex confirmed that “in keeping with the comments of MHC and MBUAR, the project footprint has be re-evaluated and Re-designed [sic] such that it avoids the mapped Paleosol areas [emphasis in original]” (see attached letters). Moreover, the Project planners will take the following actions to protect subtidal and intertidal paleosol from inadvertent impacts:

- The location of the paleosol will be identified on contract drawings and within the specifications issued to contractors as an off-limits area (without identifying it as an archaeological feature). The areas will be marked as off-limits (with only very minor exceptions for maneuvering small craft on the water surface if necessary).
- Physical indicators will be installed at the water surface prior to the start of construction to show the location of the paleosol and assist in keeping contractors, subcontractors and delivery personnel from entering and inadvertently impacting the area.
- Pathways for use by heavy equipment, established to specifically avoid the paleosol area, will be clearly identified on the Project plans.
- Locations for material stockpiles and other components of construction will be identified in locations that safely avoid the location of the paleosol.
- Construction site supervisory staff, trained in the location of paleosol areas, will alert contractors to its presence on an as-needed basis and ensure that the Harbor bottom above the paleosol remains undisturbed.

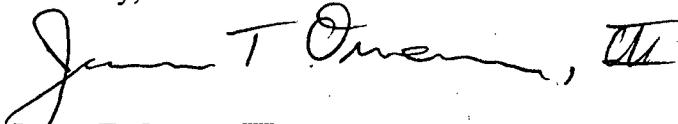
Because of recent changes proposed by the Commonwealth to the dredge footprint in the intertidal and subtidal portions of the site, EPA requested written confirmation that the October 2010 assessments of prehistoric archeological site potential for the subtidal and intertidal portions of the Project were broad enough to cover all potential work in these areas. In its September 18, 2012 response, Apex stated that **“all areas of the proposed dredge footprint as well as proposed expansions fall entirely within area of cultural resources investigation that has been completed for the Project [emphasis in original].”** See attached September 18, 2012 letter from Apex to Ann Williams, US EPA - Region 1. Also attached is a figure that shows the intertidal and subtidal investigation areas with the new dredge footprint superimposed.

**In light of the surveys, assessments, and investigations described above and actions that will be taken to avoid effects to historic properties, in accordance with 36 CFR 800.4, EPA**

**has concluded that the proposed Project will not affect historic properties.** If you have any questions regarding this finding, contact LeAnn Jensen at (617) 918-1072.

Please respond within 30 days after your receipt of this letter. If we do not hear from you within this time period, we will assume that you concur with the Agency's finding, and will proceed with our final decision concerning the Commonwealth's South Terminal Project Application, subject to the provisions contained in 36 CFR Section 800.12 for treating historic properties discovered during implementation of this Project.

Sincerely,



James T. Owens, III  
Director, Office of Site Restoration and Remediation

Attachments

cc: Bettina Washington, Wampanoag Tribe of Gayhead (Aquinnah)  
Ramona Peters, Mashpee Wampanoag Tribe  
Victor Masone, Massachusetts Bureau of Underwater Archaeological Resources  
Gary Davis, Jr., Executive Office of Energy and Environmental Affairs  
Chet Myers, Apex Companies, LLC  
LeAnn Jensen, U.S. Environmental Protection Agency, Region 1