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New Bedford Harbor
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MEMORANDUM

To: Members of the New Bedford Harbor Superfund Forum
From: Michael Keating and Jane Wells *SK*
Subject: Final Agreement on the Phase 2 ROD June 4, 1996

The comment period on the final version of the Phase 2 ROD agreement closed on May 22, 1996. A couple of members inquired about the map, referred to in the agreement as an attachment but not included with the version of the agreement distributed to everyone following the May 1 meeting. That map was not then available, but it is now and is attached to the copy of the final agreement accompanying this memorandum.

There were also some minor language changes suggested. All were cosmetic and had no impact on the substance of the agreement. Most dealt with terminology designating the Phase 2 ROD. Most of those were incorporated in this final version.

One other language change was suggested by Joe Forns and incorporated into paragraph 9 of the agreement. This involved the insertion of the phrase, "intertidal circulation and" between the words, "normal" and "water" in the last line of the paragraph. That change seemed consistent with the intention of the Forum, as discussed in the May 1 session, and seemed to make that intent somewhat clearer.

Had those been the only changes suggested, we would have gotten this final version off to you before Memorial Day. But one other proposal involved a matter of substance. Joe Forns, on behalf of the various businesses that abut the proposed CDFs, sought the inclusion in the agreement of a provision committing the agencies to the protection of the property interests of abutting landowners. After an exchange of telephone calls and some proposed language among Joe Forns, EPA and the facilitators, the provision that emerged read as follows:

During remedial design and construction, EPA agrees to work cooperatively with persons whose property abuts the CDFs to minimize disruption of land use and to plan for future use of CDFs.

Because this language seems consistent with discussions held during several sessions of the Forum, seems to reflect concepts endorsed in those discussions and has been reviewed and accepted by the constituencies most directly affected, we have taken the liberty of adding the provision as a new paragraph 11 in the accompanying final version of the agreement. That, of course, required a re-numbering of the remaining paragraphs.

It is our hope that we have accurately read the sense of the Forum, and that you will approve this addition. We thought about convening another meeting of the Forum, but decided against bringing everyone together

just to consider this one paragraph. Not surprisingly, we urge you to approve the proposed addition without amendment, but we do not wish to prevent anyone seriously offended by the provision from expressing his or her complaint, nor, if principle demands, requesting a full meeting of the Forum to consider the issue. We would just urge you not to do so lightly; there ought to be some compelling motivation behind such a request.

As you will remember, when we circulated the final version of the Phase I agreement, we put each organization represented at the Forum on a separate signature page, so we would not have to circulate the same document to everyone for signature, nor call a meeting of the Forum just for the purpose of signing the document. That seemed to work well, so we are adopting the same approach here.

I will send everyone on the Forum whose address I have, and I think I have everyone's, a copy of the final version of the agreement, but I will send the signature page only to one representative from each group, agency, entity, as follows: Concerned Parents of Fairhaven: Claudia Kirk; HARC: Jim Simmons; Downwind Coalition: Carol Sanz; DEP: Helen Waldorf; EPA: Cindy Catri; NOAA: Ken Finkelstein; New Bedford City Council: George Rogers; New Bedford Mayor's Office: Molly Fontaine. The person who gets the signature page is responsible for getting the signatures of others in the group and getting the signed page back to Michael Keating. Everybody else will get their personal signature page.

Attached, then, is a final version of the agreement. Those with a duty to sign and get others to sign need return only the dated and executed signature page for their organization, agency or entity, not the whole document. We are looking for a return of signatures by June 21, and have included self-addressed stamped envelopes for your greater convenience.

We ought, also, to think about how we may want to mark the finalization of this Phase 2 agreement. Certainly, some sort of press release seems in order. Any other suggestions will be appreciated

Have a wonderful summer unburdened by Forum meetings and cares!

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New Bedford Harbor Superfund Site Community Forum

AGREEMENT

The New Bedford Harbor Superfund Site Community Forum has been meeting since April 25, 1995 on issues related to the second record of decision (ROD 2) for remediation of contamination in New Bedford Harbor. After extensive review and discussion of the agencies' original proposal, the Forum met on May 1, 1996, and agreed to the following:

1. The PCBs and heavy metals presently contaminating the Acushnet River and New Bedford Harbor need to be removed from the river and harbor. The health and ecological risks associated with their continued presence are unacceptable.

2. The Forum prefers the treatment and destruction of the PCBs and the treatment of heavy metals rather than their storage and containment in long-term or permanent confined disposal facilities (CDFs) along the shores of the river and harbor.

3. While the use of CDFs does not destroy the PCBs and heavy metals, the Forum agrees that the employment of CDFs for storage and containment of the dredged and contaminated sediments accomplishes their removal and reduces the risks to human health and the environment.

4. The Forum acknowledges that the use of CDFs for permanent storage and containment of the dredged and contaminated sediments, however, involves some risks associated with leakage and the long-term integrity of the

CDFs, as well as issues of long-term cost allocation for their maintenance.

5. The Forum also acknowledges that existing treatment alternatives for such a large amount of sediments with such high levels of contamination are neither technically nor economically feasible at this time. If, pursuant to paragraphs 6 and 7, below, treatment becomes technically and economically feasible, the agencies commit themselves to seek funding for such treatment, consistent with Superfund legislation. The agencies further commit to make public the results of, and reasons for, any such decision.

6. The agencies are committed to a continuing literature review of the applicability and feasibility of treatment alternatives developed during the ROD 1 (Hot Spot) remediation process for the materials stored in the CDFs. After the signing of the ROD 2 (Upper and Lower Harbor), the agencies will continue the literature review of viable treatment alternatives during the early stages of the Phase 2 remediation, before the CDFs are capped. The Forum agrees that one of the treatment alternatives to be reviewed will be bioremediation.

7. If no technically and economically feasible alternative treatment is developed prior to the capping of the CDFs, the agencies pledge to conduct a literature review, no less frequently than every five years, or more frequently upon receipt of significant new information, of developments in alternative technologies

that, in the future, may become technically and economically feasible for application to the stored materials.

8. The Forum supports the utilization of some portion of the remediation CDFs to store navigational dredging spoils from the harbor.

9. The Forum agrees with EPA's proposal to use CDFs A, B, C, and D (formerly, respectively, the northern portion of CDF 1B, the southern portion of CDF 1B, CDF 1A and CDF 7) for the storage and containment of contaminated sediments and other navigational dredging spoils from New Bedford Harbor for which there may be adequate capacity. See the attached map for the location of the CDFs that are the subject of this agreement. ROD 2 will expressly require that the final configuration of CDFs A and B be so designed and engineered as to ensure the integrity of the salt marshes and to maintain normal intertidal circulation and water levels in the Acushnet River.

10. The Forum urges all governmental agencies, federal, state and local, with a role in either remedial or navigational dredging in New Bedford Harbor to work closely together to coordinate and expedite their actions in meeting all of the many regulatory and permit issues involved in the dredging operation.

11. During remedial design and construction, EPA agrees to work cooperatively with persons whose property abuts the CDFs to minimize disruption of land use and to plan for future use of CDFs.

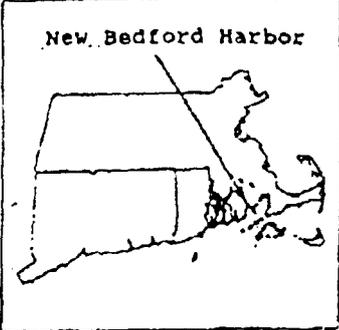
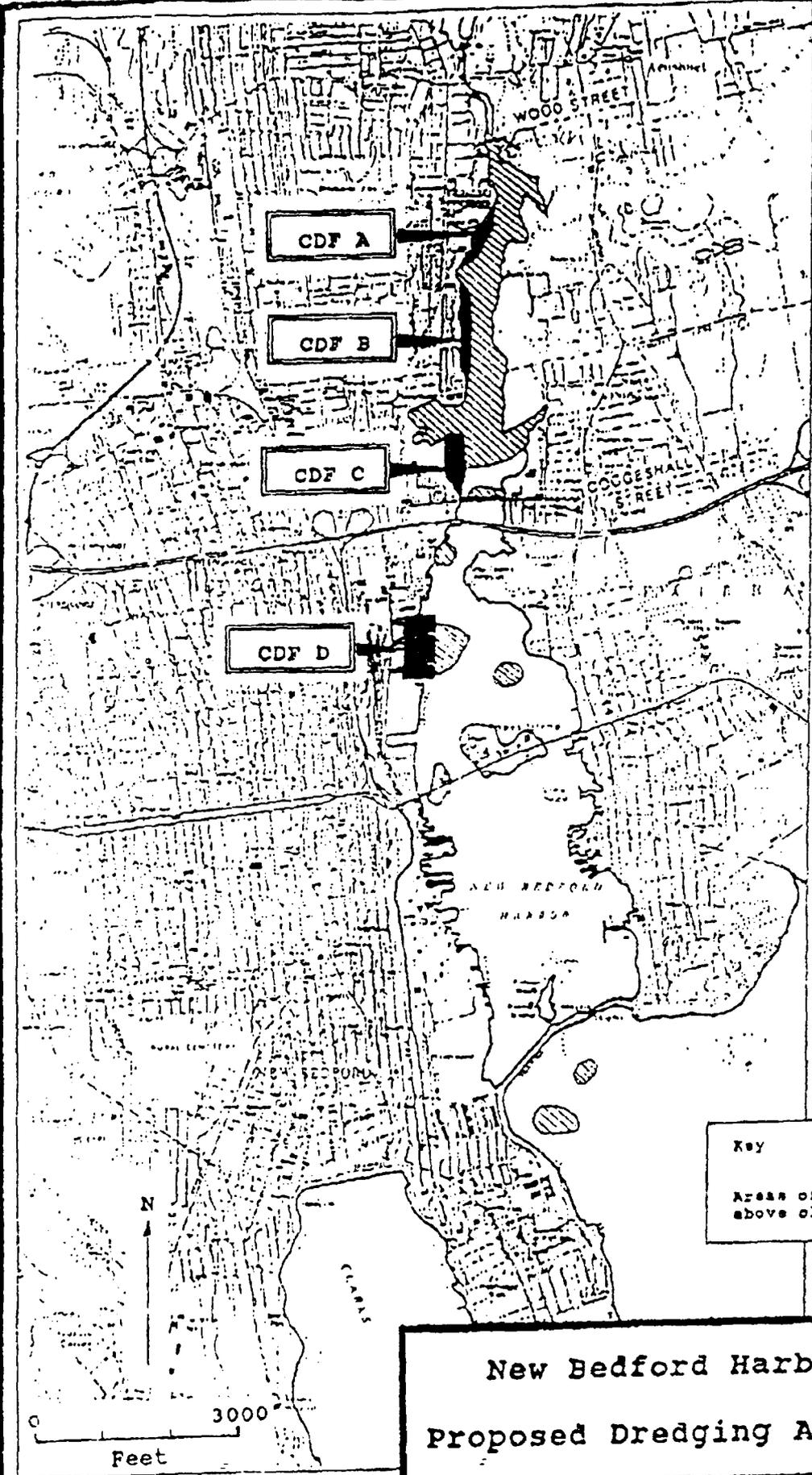
12. The Forum is committed to full implementation of the established process for identifying

and preserving any Native American artifacts in the Acushnet River that may be affected by the dredging conducted during ROD 2 operations.

13. There is a strong commitment on the part of all its members to the continuance of the Forum to participate actively in the development of the engineering design of any CDFs, the design and implementation of monitoring plans, the planning and implementation of dredging activity; the development of appropriate uses for any capped CDFs, the review of alternative treatment developments, and all other aspects of the development of the ROD 2 remedy.

Signatures of Forum representatives are attached on separate signature pages.

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Key

Area of sediment above cleanup levels 

**New Bedford Harbor ROD II
Proposed Dredging Areas and CDFs**