

Information Needed from the Commonwealth before EPA Can Make a Final Determination for the NBH-SER South Terminal Project

1. Site Configuration

* Provide a map showing all the parcels that make up the final terminal site configuration, including the main site and ancillary properties identified in the January 18, 2012 submission, as well as the new parcels shown in either Configuration A or B of Attachment D of the June 18, 2012 submission (depending on which configuration has been finally chosen). Include the parcel lines, map lot/number, and ownership for each parcel.

* Confirm the Commonwealth's site control over all parcels that comprise the project site.

* Identify what work will be done on each parcel as well as whether any 21E assessment or remediation work has been conducted on those parcels or if any 21E assessment or remediation work is planned. Provide any sampling results (any media).

* For the newly identified (i.e., in the June 18, 2012 submission) parcels in the final configuration, identify any traffic, noise and light impacts on residents living next to or near those properties.

* If Configuration A is the final configuration, provide scaled plan sheets for the freshwater wetland in parcel 48 that contain the level of detail and type of information described in item 2 below, as well as information discussing the nature of the impacts if it were filled. Also provide information related to proposed mitigation to address the loss of this wetland.

2. Wetland Impacts (salt marsh areas on parcel 48; freshwater wetland on parcels 49/53)

* Provide scale drawings showing site resources and project impacts on those resources. Scale should be chosen such that plans clearly show the boundaries of all delineated wetlands, including the exact location of wetland flagging. Separate plans and/or details depicting existing resources as well as the project and compensatory mitigation site footprints should also be provided, such that field confirmation of wetland resources and project impacts can be readily accomplished.

Specifically, the Commonwealth should provide:

(1) scaled plan sheets showing existing resources with wetland flag locations for both the project site and the mitigation site;

(2) the scaled plan sheets described in (1) above (or details as appropriate), with the project footprint overlain over the resources. Areas of direct impact should be indicated, preferably with color shading/cross hatching;

(3) the scaled plan sheets described in (1) above (or details as appropriate), with the mitigation project location and grading overlain over the resources. Areas of direct impact should be indicated, preferably with color shading/cross hatching;

(4) the exact area of impacts associated with the proposed project and the proposed mitigation;

(5) an indication of the High Tide Line (HTL), Mean Low Water (MLW), and Mean High Water (MHW) on all plans, and additionally on the mitigation plans an indication of the Mean Higher High Water (MHHW), preferably in various colors for clarity; and

(6) the location of various plantings on mitigation site plans.

- * Flag the high tide line in the field and depict the line on the plans.

- * Provide an explanation for the recent change in the estimate of salt marsh impacts from that which had been previously provided for review.

3. Mitigation (General)

- * Provide a draft mitigation plan that satisfies the various elements that we identified in EPA's draft determination. This needs to be provided in time to give EPA an opportunity to review and comment. A final plan addressing the comments also needs to be submitted before a final decision.

4. Wetland Mitigation Proposal (Successional Marsh)

- * Provide additional information on existing salt marsh resources adjacent to the channel in terms of location and areal extent, and the extent of impacts due to the proposed mitigation.

- * Provide revised design and data from any new sampling conducted for redesigned mitigation as well as sampling of areas not originally included (if any). Also provide confirmation that disposal of PCB contaminated sediment removed from redesigned mitigation project will be into CAD cell 2.

- * We will identify additional information needs following our meeting about the revised plan.

5. Shellfish Mitigation

- * Provide a revised plan that includes 24,542,803 shellfish to be seeded over 10 years.

- * Identify, with some specificity, the location, sequence and schedule of reseeding activities.

- * Identify the types of seed and percentage of each type per area.

6. Winter Flounder, Intertidal, and Subtidal Habitat Enhancement and Creation

- * Provide a revised plan containing a corrective action plan to supplement the creation/enhancement areas in the event that bathymetric surveys show that sediment erosion or accretion has resulted in a significant loss of the newly created or enhanced habitats.

- * Confirm that the winter flounder bathymetric surveys will be conducted annually and will continue annually unless otherwise approved by EPA, in consultation other federal and state resource agencies.

7. Invasive Species Management Plan

* Provide additional information justifying why invasive species around the periphery of the successional marsh mitigation site cannot be removed.

* Revise the ISMP to include monitoring of invasive species at the marsh mitigation site on an annual basis for at least five years and a corrective action plan in the event that invasive species interfere with successful mitigation.

* Revise the ISMP to address potential invasive species colonizing the bulkhead (annual survey, consultation with experts, control plan, etc. -- see p. 33 of the draft determination).

8. Blasting and Pile Driving

* Conduct and submit results of a modeling study that evaluates potential effects of noise from blasting and pile driving on the Atlantic sturgeon. The results of the modeling should be displayed in a series of figures that show sound magnitude displayed with each contour. The analysis should look at sound at the bottom, mid-depth and near the surface.

9. CWA Section 402 -- Stormwater

* If the Commonwealth intends to use cationic treatment chemicals, it must inform EPA so that the EPA can determine what additional conditions must be satisfied, before EPA makes a final decision about authorizing this project under the SER.

10. Endangered Species and EFH

* Provide the Commonwealth's proposal for addressing impacts from noise and dredging on the Atlantic sturgeon and anadromous fish species.

11. Disposal of Contaminated Sediment Dredged from Footprint of Proposed CDF and Floatation Dredging

* Identify into which CAD cell these sediments will be disposed.

12. National Historic Preservation Act

* Intertidal/Subtidal areas: Provide EPA with written confirmation, with copy to SHPO, THPO and MBUAR, that the October 2010 Assessments of Prehistoric Archeological Site Potential for the subtidal/intertidal portions of the site were broad enough to cover potential work areas (including potential dredging of federal channel and additional deep draft dredging) with identification of the archeological study(s), along with section and page, where the information can be found.

* Upland areas (including ancillary properties): Provide to EPA, in writing, with a copy to the SHPO and THPO, a map of the final configuration (as described above in paragraph 1) and a completed archeological assessment of any new areas not included in the 2010 assessment. If all parcels were included in the 2010 assessment, identify in writing the archeological study(s), along with section and page, where the information can be found.

Note on timeline -- Once the above information is provided to EPA, SHPO, THPO and MBUAR, EPA should wait an appropriate amount of time (15 business days)

for the consulting parties to review and comments upon the information. Assuming EPA then issues a finding of no adverse effects, the consulting parties have 30 days to respond to EPA's finding. If EPA does not receive feedback, or if the feedback is supportive, EPA's no adverse effects finding becomes final. If issues are raised, the finding may need to be revised. Consultation and agreement regarding the resolution of adverse effects must be done in advance of EPA's final decision.

* Provide EPA with a copy of the transmittal letter from Apex to the SHPO, THPO and MBUAR that evidences transmission of the January 18, 2012 submittal to those stakeholders.

13. Floodplains

* Confirm in writing whether or not the resulting flood storage capacity gain from Marsh Island restoration work is currently, or is anticipated to be, identified as mitigation for any other project or activity occurring or scheduled to occur in New Bedford Harbor.

* To the extent that such information is currently available, confirm that the flood storage mitigation work will occur on a schedule that will, to the extent practicable, parallel the loss of flood storage capacity from construction of the South Terminal.