

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
C.A. No. _____

EBCDC, INC.,

Plaintiff,

v.

THE OFFICE OF COASTAL ZONE
MANAGEMENT WITHIN THE
EXECUTIVE OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS,

Defendant.

COMPLAINT

I. Introduction

Plaintiff, EBCDC, Inc., known as East Boston Community Development Corporation (“EBCDC”), a nonprofit committed to local improvement and community development, owns abutting properties along the East Boston waterfront in what is known as a “Designated Port Area,” which limits uses to industrial and commercial maritime purposes. EBCDC brings this complaint to appeal from the Office of Coastal Zone Management’s (“CZM”) December 2022 decision that refused to remove the properties from the Designated Port Area by ignoring the expert evidence and factual record in front of them. This decision will preclude EBCDC from building affordable housing, community access space, and climate resiliency structures on the properties, all of which are major goals of the City of Boston and the local East Boston Neighborhood, an environmental justice community. Contrary to CZM’s decision, the properties at issue—surrounded by housing, art galleries, and offices—are not viable for a maritime industrial use. CZM’s Decision prejudices EBCDC’s substantial rights and is in excess of CZM’s

statutory authority, is unreasonable, is based upon an error of law, is unsupported by substantial evidence, is arbitrary and capricious, and is unwarranted given the facts of record. CZM's disregard of the factual record and legal errors deprive the Commonwealth and the City of desperately-needed affordable housing and an environmental justice community of the resiliency measures necessary to protect it from sea level rise.

II. Parties

Plaintiff EBCDC

1. Plaintiff EBCDC, Inc., known as East Boston Community Development Corporation, ("EBCDC") is a nonprofit developer and manager of affordable housing located at 80 Border Street in East Boston, Massachusetts. EBCDC owns the real properties located at 80 and 102 Border Street, East Boston, at issue in this appeal.

2. EBCDC was established in 1970 with the mission of enhancing the quality of life of low- and moderate-income residents, including the elderly population, through economic development activities. Some of EBCDC's achievements include the development of 711 units of affordable housing, the development of 32 units for affordable first-time homeowners in the City of Boston-sponsored Homestead Program, and the renovation and construction of a commercial space to create an affordable community space for a non-profit day care center and workspace for 44 local artists. Recently EBCDC also provided commercial space to the East Boston Museum and Historical Society. The museum will showcase various displays of East Boston's maritime and immigration history with emphasis on the shipbuilding of Donald McKay.

3. EBCDC has a long history in job development particularly with the waterfront. Clients EBCDC has funded in the past include Boston Ship, Cashman Marine, RDA – a waterfront construction company, and Cora Electric – specializing in repairs and services of drawbridges.

4. EBCDC's history also includes many community projects, including (1) the development of the Meridian House –transitional housing for people recovering from substance use disorder; (2) development of an addiction treatment center with North Suffolk Mental Health; and (3) the sponsorship and funding of a day care center that expanded into a new facility at 80 Border Street.

Defendant CZM

5. Defendant the Office of Coastal Zone Management ("CZM") within the Executive Office of Energy and Environmental Affairs ("EOEEA"), is an office within the executive branch of the Commonwealth of Massachusetts. CZM issued the final Designation Decision under appeal in this matter. CZM's principal office is located at 100 Cambridge Street, Suite 900, Boston, MA 02114.

III. Jurisdiction

6. Jurisdiction is proper in this Court pursuant to the state Administrative Procedure Act, G.L. c. 30A, § 14, and the Declaratory Judgment statute, G.L. c. 231A § 1. To the extent that the final Designation Decision is not the result of an adjudicatory proceeding, the Court also has jurisdiction under the Certiorari statute, G.L. c. 249, § 4.

IV. Statutory and Regulatory Background

7. At issue in this proceeding is the statutory and regulatory framework for Designated Port Areas ("DPAs").

Statutory Framework

8. Designated Port Areas were first created to secure funding for improvements to coastal facilities. To that end the Legislature in 1983 passed, Section 19 of Chapter 589 of the Acts of 1983, which adopted G.L. c. 21F, entitled "Coastal Facilities Improvement."

9. G.L. c. 21F, § 2, defines “Designated port area” as “any port area suitable for maritime-industrial uses and so designated in accordance with procedures established by the **department of environmental protection** under chapter 91.” (Emphasis supplied.)

10. Chapter 91 of the General Laws is the Massachusetts Public Waterfront Act. The Commonwealth formally established the program in 1866 to preserve and protect the rights of the public and to guarantee that private uses of tidelands and waterways serve a proper public purpose. The Massachusetts Department of Environmental Protection (“MassDEP”) is the primary division charged with implementing and enforcing this program.

11. CZM’s statutory authority derives from G.L. c. 21A, § 4A, which authorizes CZM to constitute the coastal zone management program, the purpose of which is “to secure for the inhabitants of the commonwealth the objectives and benefits of the federal Coastal Zone Management Act, 16 U.S.C. 1451 *et seq.*”

CZM’s DPA Regulations

12. Despite this statutory framework, CZM—not MassDEP—alone determines what properties are included in a DPA by applying its regulations at 301 CMR 25.00, entitled “Designation of Port Areas” (the “DPA Regulations”).

13. The DPA Regulations are not a procedure established by MassDEP under Chapter 91. CZM’s application of the DPA Regulations nonetheless has the effect of determining the uses that can be made of a property consisting of filled tidelands pursuant to Chapter 91.

14. Once CZM designates a property within a DPA, if it consists of filled tidelands, it can only be used for water-dependent industrial uses and certain limited commercial activity designated as a “Supporting DPA Use” or a “Temporary DPA Use.” Residential uses are prohibited in a DPA. *See* 310 CMR 9.32(1)(b).

15. CZM's DPA Regulations establish a complicated procedure for determining which properties are within a DPA. CZM first delineates what it calls "groups of parcels that form coherent planning units" instead of applying the regulatory criteria for inclusion within a DPA "to individual project sites or other properties under common ownership or control." The DPA Regulations provide no meaningful criteria for CZM to delineate these planning units.

16. After drawing its planning units, CZM then follows a two-step review process created by the DPA Regulations. The first step is to determine whether a planning unit is eligible for review under 301 CMR 25.03(2). This step relies on four criteria:

1) Has the unit been subject to a designation decision within the last five years;

2) Has the planning unit contained active water-dependent industrial use throughout the previous five years;

3) Did the city or municipality request the unit be excluded from review; and

4) Is the unit entirely bounded by existing DPA lands and/or waters.

17. If a planning unit meets any of these criteria, that area is not eligible for further review.

18. The second step – only for those planning units that CZM decides are eligible for review – is to evaluate whether the planning unit meets the criteria for suitability to accommodate marine industrial use under 301 CMR 25.04(1) for waters and 301 CMR 25.04(2) for lands.

19. The designation standards for waters require that the water area:

(1) Must include or be contiguous with other DPA waters that include both a navigable channel with a design depth of at least 20 feet deep and a substantially developed shoreline that creates a functional connection to a land area meeting the regulatory standards; and

(2) Must be of a configuration, size, and location appropriate for direct use of the water.

20. Waters must exhibit both criteria to be included within the DPA.

21. The designation standards for lands require that a planning unit:

- (1) Include a substantially developed shoreline that creates a functional connection to a waterway;
- (2) Lie in close proximity to road or rail links and water and sewer facilities;
- (3) Exhibit a topography that is conducive to industrial use; and
- (4) Exhibit a use character that is predominantly industrial in nature or reasonably capable of becoming so.

22. The planning unit must meet all four land criteria to remain in the DPA.

23. The result is that a property unsuitable to accommodate marine industrial use can be included in a DPA by inclusion in a planning unit that CZM either (a) deems ineligible for review, or (b) determines meets the criteria for suitability to accommodate marine industrial use.

24. The DPA Regulations have the effect of allowing CZM to arbitrarily draw planning units so that a particular property's inclusion within a DPA becomes inevitable, even if it is impractical to use the property for maritime industrial or other limited uses allowed within a DPA under MassDEP's Waterways Regulations.

25. CZM's application of the DPA Regulations – and in particular its inclusion of specific parcels within a planning unit – has the effect of prescribing what uses MassDEP can and cannot license under Chapter 91 for a specific parcel and thereby impacts the public benefits that can be realized through Chapter 91 licensing and constitutes an improper delegation of MassDEP's authority under Chapter 91. *See Armstrong v. Secretary of Energy and Environmental Affairs*, 490 Mass. 243, 251 (2022) (“The [MassDEP] has no authority to delegate to the Secretary its public trust duties to preserve and protect the public's interest in tidelands in this manner.”)

Relationship Between the CZM DPA Regulations and Chapter 91

26. All structures and uses proposed on filled tidelands require a license from the MassDEP pursuant to M.G.L. c. 91. *See* 310 CMR 9.03, 9.05.
27. The MassDEP will only issue a Chapter 91 license for water-dependent industrial uses within a DPA. *See* 310 CMR 9.32(1)(b).
28. The MassDEP defines water-dependent-industrial as including marine terminals and related facilities for the transfer between ship and shore, and the storage of, bulk materials or other goods transported in waterborne commerce; facilities associated with commercial passenger vessel operations; manufacturing facilities relying primarily on the bulk receipt or shipment of goods by waterborne transportation; commercial fishing, shellfishing, and other seafood and fish processing facilities for fish, shellfish and other seafood; boatyards, dry docks and other facilities related to the construction, serving, maintenance, repair, or storage of vessels or other marine structures; facilities for tug boats, barges, dredges, or other vessels engaged in port operations or marine construction; hydroelectric power generating facilities; offshore renewable energy infrastructure facilities and their related appurtenances; facilities for the manufacture of coastal or offshore structures, buoys, autonomous underwater vehicles among other, similar, uses. *See* 310 CMR 9.12(2)(b).
29. Both CZM and MassDEP are within EOEEA.

Commonwealth Environmental Justice Policy

30. In November 2014, then-Governor Deval Patrick issued Executive Order 552, which required EOEEA and its departments to take action in promoting environmental justice.
31. On June 24, 2021, EOEEA issued the updated Environmental Justice Policy (“EJ Policy”), which expressly states that it is to be implemented by both CZM and MassDEP.

32. The EJ Policy states:

While significant progress was made under the old Policy, communities today, **particularly those densely populated urban neighborhoods in and around the state's older industrial areas, still face challenges. Residents in these communities are more likely to live next to existing large and small sources of pollution and old abandoned, contaminated sites, which can pose risks to public health and the environment.** By ensuring a healthy living environment and restoring resources that have been degraded in the past, municipalities can attract new businesses where the infrastructure already exists and create new open spaces that are consistent with the character and needs of the community. This Policy reinforces that all communities must have a strong voice in environmental decision-making regardless of race, color, national origin, income, or English language proficiency, that such voices can influence environmental decision-making, and that increased investment in the preservation and enhancement of the Commonwealth's open spaces and urban park network must also remain a priority. **In addition, increased attention must be focused on communities that are built in and around the state's oldest areas with a legacy of environmental pollution, particularly in areas with residents who have elevated rates of disease and health burdens.** (Emphasis supplied).

33. The EJ Policy defines “Environmental Burdens” as “any destruction, damage, or impairment of natural resources that is not insignificant, resulting from intentional or reasonably foreseeable causes, including but not limited to climate change, air pollution, water pollution . . . excessive noise, activities that limit access to natural resources and constructed outdoor recreational facilities and venues . . . increased flooding or stormwater flows . . . from private industrial, commercial or government operations or other activity that contaminates or alters the quality of the environment and poses a risk to public health.

34. The EJ Policy expressly states “that environmental justice principles shall be an integral consideration, to the extent applicable and allowable by law, in making any policy, making any determination or other action related to a project review, . . . and in implementation of all EEA

programs, including but not limited to, the grant of financial resources or technical assistance, the promulgation, implementation and enforcement of laws, regulations and policies, the provision of access to both active and passive open space, and the diversification of energy sources”

35. The EJ Policy further states that it will affirmatively take direct action to address environmental and health risks associated with existing and potential new sources of pollution, to appropriately address climate change, and to improve overall quality of life.

V. Factual Background

The Properties

36. At issue in this appeal are two abutting properties located at 102 Border Street and 80 Border Street, East Boston.

102 Border Street

37. EBCDC owns the real property located at 102 Border Street, East Boston, Massachusetts (“102 Border”). 102 Border is a vacant lot consisting of 308,232 square feet, as shown on the below image from September 2022:



38. 102 Border is primarily grass and is currently used for some parking, a Wellness Garden, and the Harborwalk. A portion of the site has been fenced off to allow residents in the area to use

this section as a dog park. 102 Border also has the fragmented, unusable historic remains of a ship railway that hauled ships on shore for repair. The marine walkway that was constructed on the site as part of the abutting Boston East development goes around the upland perimeter of the railway to allow residents to view the remains up close.

39. There is a deed restriction on 102 Border that requires EBCDC to get approval from the owners of the abutting residences at Boston East for any development at the property.

40. 102 Border is located in the East Boston Neighborhood and is surrounded by residences, community spaces, and a shopping area:



41. To the west, the 102 Border is bounded by Boston Harbor.

42. To the east, the 102 Border is bounded by Border Street. Immediately across Border Street is a 15-unit modern residential apartment building, known as Coppersmith Village.

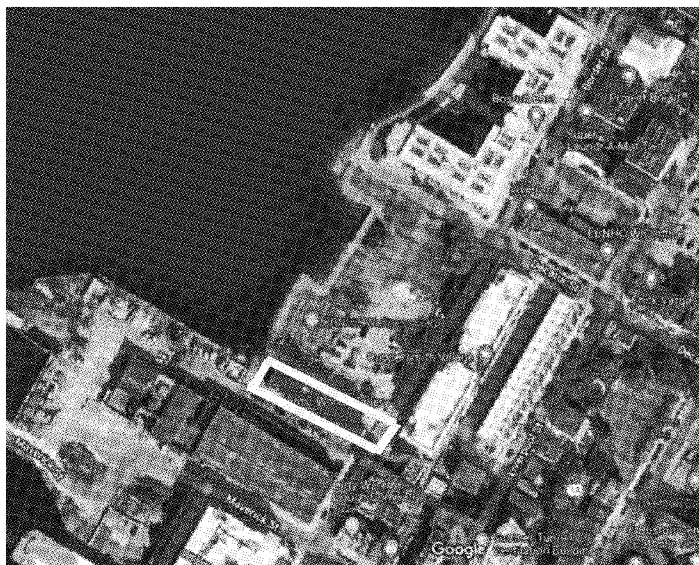
43. To the north, 102 Border is bounded by Decatur Street. Immediately across Decatur Street is a 200 unit modern residential apartment building, known as Boston East.

44. 102 Border has been vacant for decades. EBCDC marketed the property several times for marine industrial uses with no success.

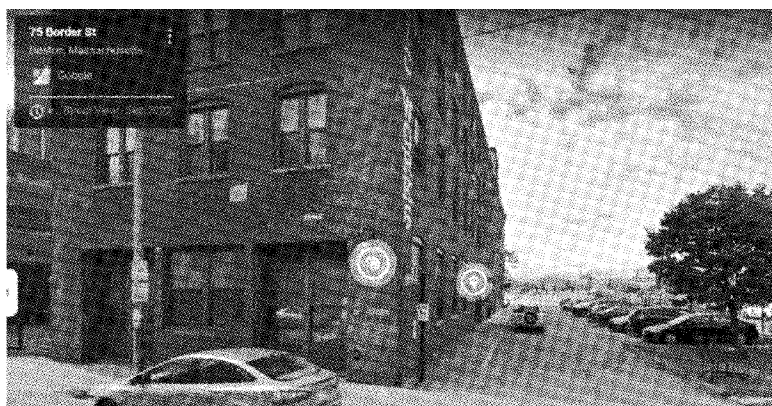
45. These marketing attempts were unsuccessful because 102 Border has no water access or infrastructure that would be conducive to an economically feasible marine industrial development.

80 Border Street

46. To the south, the 102 Border abuts 80 Border Street (“80 Border”), which EBCDC also owns:



47. 80 Border consists of a 22,320 square foot lot developed with a single re-purposed former factory building currently used as an office building with several art work spaces, the Atlantic Works Gallery, The East Boston Historical and Museum Society and a day care center known as Shining Star Day Care (EBCDC funded the improvements to 80 Border to permit the day care’s relocation after it was displaced from its prior location):



48. 80 Border is completely landlocked. To the north and the west, 80 Border is bounded by 102 Border.

49. To the east, 80 Border is bounded by Border Street. Immediately across Border Street is the Coppersmith Village residential apartment building.

50. To the south, 80 Border is bounded by 60 Border Street. 60 Border Street is a former industrial building currently used for offices and parking.

51. Further to the south along Border Street are more apartment buildings and a pizza shop with residences above it.

52. There are no water-dependent industrial uses surrounding 80 Border or 102 Border (collectively, the “Properties”).

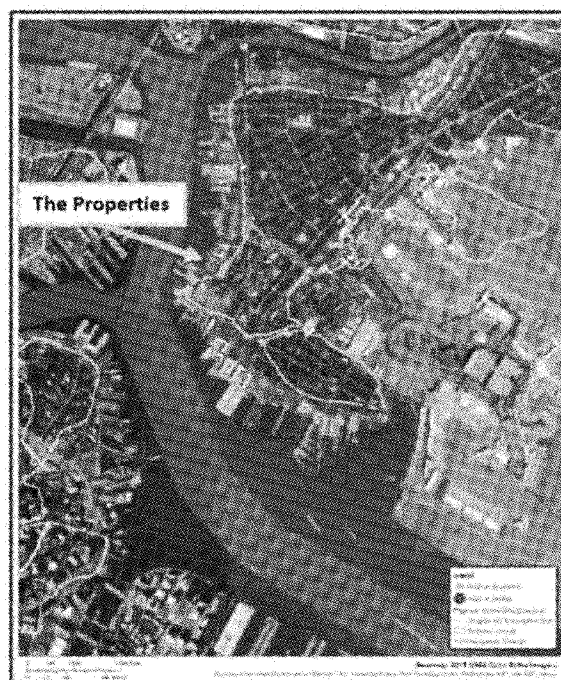
The Properties are within an Environmental Justice Block Group

53. According to the Commonwealth’s Environmental Justice Populations Map Viewer, the Properties and the South Border Street planning unit are within an Environmental Justice Block Group.

54. According to the Commonwealth’s Environmental Justice Populations Map Viewer, the entirety of East Boston apart from one parcel, East Boston Memorial Park, is within an Environmental Justice Block Group.

55. The Properties are within the East Boston Designated Port Area (“East Boston DPA”).

The DPA boundary before the proceeding at issue is shown in red in the following image:



56. The Properties consist of filled tidelands and accordingly any structure or use on the Properties requires a Chapter 91 license from the MassDEP.

57. Because residential uses are prohibited in a DPA, EBCDC cannot develop its Properties for affordable housing, community space, or any other non-industrial marine purpose.

VI. Procedural History

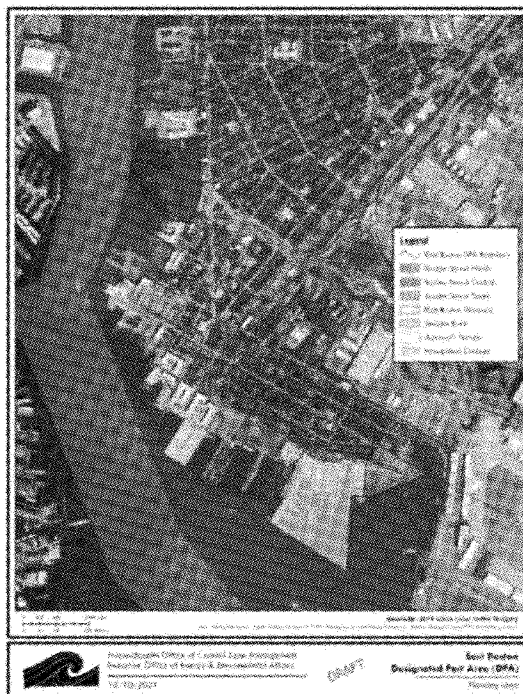
58. By letter dated January 30, 2020, the Boston Planning and Development Agency (“BPDA”) requested that CZM reconsider the boundaries of the East Boston DPA in accordance with 301 CMR 25.03.

59. CZM issued notice of its intent to review the East Boston DPA boundary on February 10, 2021 and held a public comment period until March 12, 2021.

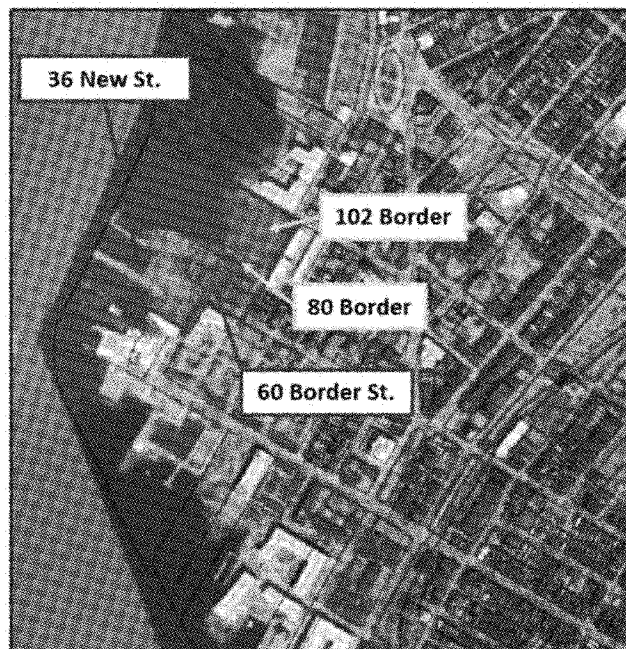
Preliminary Decision

60. Following a consultation process required by 301 CMR 25.03(4), on December 22, 2021, CZM issued its Boundary Review of the East Boston Designated Port Area (“Preliminary Decision”). A true and correct copy of the Preliminary Decision is attached as **Exhibit A**.

61. The Preliminary Decision divided the East Boston DPA into smaller “Planning Units” to evaluate whether each Planning Unit merited removal from the East Boston DPA:



62. The Preliminary Decision placed the Properties in the so-called “Border Street South” Planning Unit:



63. This Planning Unit consists of the Properties, 60 Border Street, 36 New Street, and waterways and a wharf to the south of 36 New Street.

64. The inclusion of the Properties within this Planning Unit is arbitrary and legal error. Among other reasons, it deliberately excludes the abutting residential uses, and ties the Properties to wharfs to the south that share no commonality with the Properties, one of which is landlocked with no water access. The Properties should instead be treated similarly to the properties immediately to the North and East, which are not in the DPA. The wharf, the sole property with infrastructure for water access, should be evaluated separately.

65. Under the first step of the review process, the Preliminary Decision determined that the Border Street South planning unit met all of the eligibility criteria for review.

66. Under the second step, however, the Preliminary Decision found that the planning unit is in “substantial conformance” with the suitability criteria and concluded that the Border Street South planning unit, including the Properties, should remain in the East Boston DPA.

67. CZM held a public hearing on the Preliminary Decision on January 11, 2022 and held open a public comment period on the Preliminary Decision until November 1, 2022.

VII. The Designation Decision

68. On December 23, 2022, CZM issued the Designation Decision. The Designation Decision is a final decision. A true and correct copy of the Designation Decision is attached as **Exhibit B.**

69. The Designation Decision affirmed the Preliminary Decision’s determination that the Properties should remain in the Border Street South planning unit and that the unit should remain in the East Boston DPA.

70. In its Designation Decision, CZM noted, among other things that “water-dependent industrial uses have only intermittently been present in this planning unit since 2013”, “the land use character of the areas around the Border Street South planning unit is increasingly residential”, “The Border Street South planning unit is bounded by two relatively recent residential developments” and “that large trucks may be challenged navigating congested areas of urban streets.”

71. Under the first step of CZM’s review, in 301 CMR 25.03(2), CZM determined that the Border Street South planning unit met the criteria to be eligible for review.

72. In reaching this conclusion, CZM concluded that the Border Street South planning unit did not consist primarily of water-dependent industrial use.

73. Under the second step, however, despite its acknowledgement of ample evidence to the contrary, CZM elected to ignore that evidence and maintain the Border Street South planning unit, including the Properties, within the East Boston DPA.

Water Criteria

74. Under 301 CMR 25.04(1), CZM must evaluate two physical suitability criteria for the water adjacent to the land to remain within the DPA.

75. With respect to the water criteria, CZM ignored the site-specific criteria that preclude water access to the Properties from reasonably being developed by instead focusing solely on 36 New Street within the Border Street South planning unit.

76. The water criteria include: “(a) the water area must include, or be contiguous with, other DPA waters that include: 1. A navigable entrance or main channel with a design depth of at least 20 feet; and 2. A shoreline that has been substantially developed with piers, wharves, bulkheads or other structures that establish a functional connection with a land area meeting the criteria set forth in 301 CMR 25.04(2); and (b) the water area must be of a configuration, size, and location appropriate for the maneuvering or berthing of vessels, the placement of intake/outfall structures, or other activities involving the direct utilization of water”

77. 36 New Street is the only site within the Border Street South planning unit with navigable water access and consists of a wharf and three piers.

78. 80 Border is landlocked with no water access whatsoever.

79. 102 Border Street has never been dredged and is more than 500 feet from the deep draft navigation channel. Its shoreline consists of riprap and has no boat access. To develop 102 Border Street for marine use would require that tens of thousands of cubic yards of contaminated

sediments be dredged to provide access to the navigation channel, in addition to the development of piers and bulkheads for boat access, at a cost of tens of millions of dollars.

80. The waterfront adjacent to 102 Border is not deep water but instead consists of shallow tidal flats that extend hundreds of feet into the harbor.

81. The Designation Decision also contains factual errors, including its mistaken claim that “dilapidated pile fields” were removed as part of the Boston East development in 2009. The piles, in fact, were only cut just below the mudline and remain. Any maritime use of the Properties would need to remove the pilings, likely at significant cost.

82. Accordingly, CZM had no basis on which to conclude that the Properties met the water criteria and its inquiry should have ended there.

Land Criteria

83. As discussed above, under 301 CMR 25.04(2), there are four physical suitability criteria that the land must meet in order to remain within a DPA.

A. Substantially developed shoreline

84. First, “the land area must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a water area meeting the criteria set forth in 301 CMR 25.04(1).”

85. The Properties do not have a pier or wharf. 102 Border has a riprap shoreline supporting a pedestrian harborwalk along the waters’ edge. There is no access for boats to 102 Border. 80 Border has no access to the water whatsoever and is completely landlocked.

86. The only DPA land contiguous to the Properties is 60 Border Street. 60 Border Street is an office building with very limited waterfront. The next property to the south from 60 Border

Street, 36 New Street, owns the entirety of the wharf. Accordingly, 80 Border and 102 Border do not abut DPA land with a functional connection to the water.

87. Accordingly, the Properties do not include and are not contiguous with other DPA lands that include a shoreline substantially developed with piers, wharves, bulkheads or other structures that would establish a functional connection with a water area.

88. CZM thus had no evidence, let alone substantial facts to find that the Properties and the Border Street South planning unit met the first criteria.

B. Reasonable proximity to transportation links and water/sewer

89. The second criteria is that “the land area must lie in reasonable proximity to:

(1) established road or rail links leading to major trunk or arterial routes; (2) and water and sewer facilities capable of supporting general industrial use.”

90. In its Designation Decision, CZM notes that “a transportation consultant was hired to evaluate access by WB-67 vehicles to and from the DPA from the Route 1A interchange and Porter Street (TetraTech, May 2022). The analysis concluded **that there is inadequate or unsafe access for large highway vehicles (WB-67 trucks) to reach the waterfront areas of the Border Street Central and Border Street South planning units.**” (Emphasis supplied.)

91. Despite the expert testimony that truck access is inadequate or unsafe, CZM eschewed the advice of the traffic expert. Instead, CZM picked up on a comment in the traffic expert’s report that the grocery store within a different planning unit (the Border Street Central planning unit) receives truck deliveries. Based on this comment, CZM asserted “this indicates that the access road over the grocery store parking lot is active, functional, and able to support trucks.”

92. CZM went on to note that “Although the transportation analysis highlighted specific congestion areas in the East Boston area, it did not definitively convey insurmountable

operational and safety challenges of vehicle access to the DPA that would preclude access to support water-dependent industrial uses.”

93. Rather than evaluating the suitability criteria in the regulations for whether the expert evidence showed that the area was suitable for the regular truck access necessary for water-dependent industrial uses, CZM effectively applied a new standard: Is it impossible for a truck to get through?

94. CZM’s decision to ignore the testimony of a traffic expert and make unsupported assumptions is arbitrary and capricious and contrary to its own assertion that it can’t look beyond the DPA boundaries in assessing the four regulatory factors. Here, CZM relied on information concerning a wholly separate planning unit to draw its conclusions.

C. Topography generally conducive to industrial use

95. The third criteria is that “the land area must exhibit a topography that is generally conducive to industrial use, or reasonably capable of becoming so in terms of technology, cost, and other appropriate factors governing engineering feasibility;”

96. CZM’s decision states that “the Border Street South planning unit generally consists of filled tidelands that are low-lying and flat” and relies solely on this assertion to conclude that the third criteria is satisfied. CZM, however, completely ignores a critical element in assessing whether 80 Border and 102 Border are reasonably capable of becoming conducive industrial use.

97. CZM ignores the fact that the “relatively flat” topography and low-lying land of the Properties sit within Zone AE on the FEMA Flood Plain Map and are thus vulnerable to flooding resulting from coastal storms and sea level rise.

98. Because of the vulnerability of the Properties to flooding, any new structure or use introduced on the Properties will require extensive coastal resiliency improvements to address flooding at significant cost.

99. In response to comments raising the concern of coastal flooding, CZM references a report in which it “provides tailored flood resilience strategies to address coastal flood risks while continuing to support the operational needs of water-dependent industrial uses in DPAs.”

Designation Decision, p. 8. CZM, however, never answers the critical questions: how much do such measures cost and who pays for that cost?

100. The costs of implementing coastal resiliency measures on a property cannot simply be ignored to conclusively assert that the land is “generally conducive to industrial use”. CZM’s own regulations require that technology, cost and other appropriate factors be taken into account.

101. CZM’s Designation Decision contains no discussion of the costs and technology that would be required to implement a new industrial use on the Properties and further, contains no analysis about whether expected revenues from maritime industrial uses would be able to support such costs. Instead CZM asserts that a “community-based planning process like that under consideration by the City of Boston could seek to address climate vulnerabilities, plan for water-dependent industrial uses in the DPAs, and address other community needs.” *Designation*

Decision, p. 6. In other words, CZM told the community to figure it out themselves.

D. Industrial use character

102. The fourth criteria is that “the land area must exhibit a use character that is predominately industrial or reasonably capable of becoming so because it does not contain a dense concentration of: (1) non-industrial buildings that cannot be removed or converted, with relative

ease, to industrial use; or (2) residential, commercial, recreational, or other uses that unavoidably would be destabilized if commingled with industrial activity.”

103. Despite repeatedly acknowledging in the Designation Decision that the Properties and Border Street South planning unit are generally surrounded by residential uses, the Designation Decision elects to blindly assert that CZM can only look at the land within the existing DPA to consider the boundary of the DPA.

104. First, in assessing whether the planning unit is either predominantly industrial or “reasonably capable of becoming so”, CZM should have reviewed the applicable local zoning ordinance, the Boston Zoning Code, which expressly dictates the character of the area and what it is reasonably capable of becoming.

105. Both Properties are within the East Boston Neighborhood District on the Zoning Map and within the Waterfront Commercial (“WC”) subdistrict. 60 Border Street is also within the WC subdistrict.

106. By contrast, the arbitrarily included 36 New Street is within the “Maritime Economy Reserve” subdistrict, a wholly separate zoning subdistrict with separate allowed uses and requirements.

107. Under the “Industrial Uses” category of the Table C, Article 53 of the Zoning Code, the sole industrial use permitted in a Waterfront Commercial Subdistrict is Artists’ mixed-use.

108. The WC subdistrict permits a variety of residential uses, including multi-family and elderly housing, restaurant uses, and some retail uses.

109. Under the “Maritime-Dependent Facilities” category, all of the listed uses, such as Manufacturing facilities relying on the bulk receipt of shipments of goods by waterborne commerce, require a so-called Conditional Use permit under the Zoning Code.

110. A “Conditional Use” permit is discretionary and is issued by the Boston Board of Appeals following a public hearing process.

111. The Conditional Use permit process is in addition to any review process, such as large or small project review, that may be required by the Boston Planning and Development Agency depending upon the scale of the proposed facility.

112. CZM cannot simply ignore the intense opposition that any proposed industrial use would face in a public hearing from the surrounding residences. To the extent the permit for such a facility is discretionary, the low likelihood of obtaining approvals must be considered by CZM in evaluating whether the Properties are generally conducive to industrial uses. Certainly, the difficulties likely to be faced by such a proposed development are made apparent by the fact that 102 Border has sat vacant for decades despite having been marketed for water-dependent industrial use.

113. Nor should CZM rely on the very limited as-of-right uses that do overlap with the water-dependent industrial uses under the Zoning Code, which include “Recreational marina, rack, dry stack, or landslide facility for seasonal dry storage of private pleasure craft vessels; provided that the number of slips and spaces associated with any such facility does not exceed 20.” It would seem contradictory to both EOEEA’s EJ Policy and the Commonwealth’s widely-publicized affordable housing goals, not to mention the purported objective of preserving space for marine industrial uses, for CZM to thwart the production of affordable housing so that yachts might be seasonally stored in an Environmental Justice Block Group.

114. Moreover, with respect to the 80 Border and 60 Border Street within the DPA, both of which are used as office buildings, with a day care center and artist galleries in 80 Border, CZM

summarily concludes that because the two buildings are “industrial in character,” they could readily be repurposed for industrial use.

115. CZM’s Designation Decision contains no assessment of the costs or feasibility of doing so whatsoever.

116. In fact, CZM’s analysis under the fourth factor seems to largely rely on the inclusion of 36 New Street, which CZM concedes has not been in water-dependent industrial use since 2013 and that “intermittent uses of the site, which has three piers, have included temporary boat storage” within the Border Street South planning unit. *Preliminary Decision*, p. 8.

117. The Border Street South planning unit’s boundaries are inherently arbitrary. Nothing in the regulations requires CZM to establish planning units rather than looking at the specific facts of each property, rather the regulations at 301 CMR 25.03(3) state that “As a general rule, CZM intends to apply foregoing eligibility criteria in the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control.”

118. By drawing the Border Street South planning unit to include two separate zoning districts, CZM relied on the uses allowed in one district to draw conclusions about what might be possible in an abutting, unrelated zoning district. Such a decision has no basis in law and certainly does not establish a “coherent planning unit.” The zoning subdistricts themselves, in fact, would seem to be the more appropriate “coherent planning units” as they are developed by the City following a local planning and public process.

119. CZM’s decision to arbitrarily include a property with a developed wharf in the same planning unit as the Properties, one of which has no boat access and one of which has no waterfront access at all, is legal error.

120. Had CZM instead evaluated the Properties and their immediate surroundings, they would have found two properties surrounded by residences that could not be developed for water-dependent industrial use without overcoming significant opposition and cost hurdles that are likely to be insurmountable for most industrial users.

CZM Failed to Follow EOEEA's EJ Policy in Rendering the Designation Decision

121. The CZM Designation Decision completely disregards EOEEA's EJ Policy, which it is expressly charged with implementing.

122. Yet, despite the significance of this important policy and regulatory goal, the terms "environmental justice," and "environmental burdens," do not appear in CZM's Preliminary Decision or Designation Decision.

123. Despite the fact that the South Border planning unit is within a Minority Environmental Justice block group the term "minority" does not appear within the Preliminary Decision or the Designation Decision.

124. CZM made no consideration of Environmental Justice whatsoever in issuing its Designation Decision, ignoring EOEEA's policy and express directive to CZM to implement the EJ Policy, including by considering the current and future impacts the climate change will have on EJ populations and to "take appropriate measures towards ensuring that EJ populations are equally protected from hazards and health risks imposed by future climate changes." *EJ Policy*, p. 15.

125. Fundamentally, the Designation Decision is a determination that noxious industrial uses must be located within an environmental justice block group.

126. By severely restricting the uses to which the Properties may be put, the Designation Decision fundamentally limits the probability that the Properties will be redeveloped and resiliency measures implemented.

127. The Designation Decision accordingly fails to follow the EJ Policy.

COUNT I
(G.L. c. 30A, § 14)
State Administrative Procedure Act

128. EBCDC reasserts the above paragraphs as if set forth fully herein.

129. EBCDC's substantial rights have been prejudiced by, and it is aggrieved by, the Designation Decision, for the reason, among others, that CZM wrongfully kept the Property within the East Boston DPA and for the reasons set forth in the EBCDC Comments. As a result of the Designation Decision, the Property can only be used for maritime industrial uses and a handful of other uses for which the Property is not suitable. These restrictions diminish the value of the Property and, as a practical matter, render it unusable.

130. The Designation Decision is a final decision of an agency of the Commonwealth in an adjudicatory proceeding, all within the meaning of G.L. c. 30A, § 14, and CZM's DPA decisions have been reviewed as such in other civil actions. *See United States Gypsum Company v. Executive Office of Environmental Affairs*, 69 Mass. App. Ct. 2453 (2007).

131. The Designation Decision (a) exceeds the statutory authority or jurisdiction of CZM; (b) is based upon an error of law; (c) is made upon unlawful procedure; (d) is unsupported by substantial evidence; (e) is unwarranted by facts on the record; and/or (f) is arbitrary or capricious, or otherwise not in accordance with law.

COUNT II
(G.L. c. 249, § 4)
Certiorari

132. EBCDC reasserts the above paragraphs as if set forth fully herein.

133. In the alternative to Count I, if the Court determines that the Designation Decision is not reviewable under G.L. c. 30A, § 14, then the Designation Decision is a decision that is not otherwise reviewable and is subject to certiorari review under G.L. c. 249, § 4.

134. EBCDC is substantially and specifically harmed and aggrieved by the Designation Decision for the reasons set forth above.

135. The Designation Decision is erroneous and not according to the course of the common law for the reasons set forth above.

COUNT III
(G.L. c. 231A, § 1)
Declaratory Judgment Regarding the DPA Regulations

136. EBCDC reasserts the above paragraphs as if set forth fully herein.

137. An actual controversy exists between EBCDC and CZM regarding the Designation Decision and the DPA Regulations under which CZM issued the Designation Decision.

138. The relevant statute, G.L. c. 21F, § 2, defines a “Designated Port Area” as an area “designated in accordance with procedures established by the **department of environmental protection** under chapter 91.” (emphasis added). The DPA Regulations were promulgated by CZM as part of EOEEA, neither of which is MassDEP.

139. These regulations are directly contrary to the Supreme Judicial Court’s decision in *Armstrong v. Secretary of the Executive Office of Energy and Environmental Affairs*, 490 Mass. 243 (2022).

140. Authority to administer the public trust rights in tidelands is reserved for the Commonwealth of Massachusetts or its delegate. Through Chapter 91, the Legislature delegated

this authority to MassDEP as the agency responsible for protecting public trust rights in tidelands. The definition of “Designated port area” in G.L. c. 21F, § 2 is consistent with this delegation. The DPA Regulations are not.

141. Public trust principles require “express legislative delegation,” and the Legislature has designated MassDEP as the agency charged with making these determinations. *See Armstrong*, 490 Mass. at 253.

142. MassDEP may not delegate its statutory authority to another entity. As confirmed by *Armstrong*, MassDEP “has no authority to delegate to the [EOEEA] Secretary its public trust duties”

143. Even if the Court were to determine that CZM has statutory authority to delineate DPAs through the DPA Regulations, the DPA Regulations cannot be reconciled with this statutory authority and are arbitrary and unreasonable for the reason, among others, that the “planning unit” approach has the effect of including properties unsuitable to accommodate marine industrial use in a DPA. This in turn restricts the allowed use of these properties under Chapter 91 and thwarts the public benefits that Chapter 91 licensing exists to promote.

Prayers for Relief

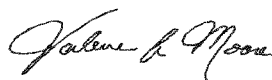
WHEREFORE, EBCDC respectfully prays that the Court:

- (a) Under Count I, find that the Designation Decision has prejudiced EBCDC’s substantial rights and (i) exceeds the statutory authority or jurisdiction of CZM; (ii) is based upon an error of law; (iii) is made upon unlawful procedure; (iv) is unsupported by substantial evidence; (v) is unwarranted by facts on the record; and/or (vi) is arbitrary or capricious or otherwise not in accordance with law;

- (b) Under Count II, in the alternative to Count I, find that the Designation Decision is erroneous and not according to the course of the common law for the reasons set forth above;
 - (c) set aside or modify the Designation Decision;
 - (d) Under Count III, declare that DPA Regulations exceed CZM's statutory authority and/or are arbitrary and unreasonable on their face and as applied to the Properties;
 - (e) grant EBCDC its attorneys' fees and costs in prosecuting this appeal; and
- grant such further relief as the Court deems appropriate in the interests of justice.

EBCDC, INC.

By its attorneys,



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Dated: January 23, 2023

5841212

Exhibit A

**Boundary Review of the East Boston Designated Port Area
Boston, MA**

**Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
December 15, 2021**

TABLE OF CONTENTS

I.	INTRODUCTION
II.	THE DESIGNATED PORT AREA (DPA) PROGRAM
III.	EAST BOSTON DPA BOUNDARY REVIEW PROCESS
IV.	EAST BOSTON DPA
V.	PLANNING UNITS FOR BOUNDARY REVIEW
VI.	CZM REVIEW
VII.	ELIGIBILITY REVIEW
VIII.	DESIGNATION CRITERIA AND ANALYSIS
IX.	CONCLUSIONS AND RECOMMENDATIONS
X.	FIGURES

I. INTRODUCTION

In 1972, Congress passed the Coastal Zone Management Act (CZMA), which establishes a national policy to “preserve, protect, develop, and where possible, to restore or enhance, the resources of the nation’s coastal zone for this and succeeding generations” and to “encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone...” [16 U.S.C. 1452, Sec. 303(1) and (2)]. In the CZMA, Congress made declarations of national policy elements and encouraged states to develop management programs enforceable under state law to address these interests.

The Commonwealth established the Massachusetts Office of Coastal Zone Management (CZM) and developed its coastal zone management program, which was approved by the National Oceanic and Atmospheric Administration in 1978. The program plan, as amended, contains the coastal policies and underlying state statutory and regulatory authorities, which articulate Massachusetts’ priorities for protection and management, habitat, ocean resources, ports and harbors, protected areas, public access, and water quality.

One of these interests established by Congress in the CZMA is the promotion of economic uses of coastal resources, including the priority consideration being given to coastal-dependent uses” and processes for the siting and preservation of port, transportation, and other commercial and industrial development “in or adjacent to areas where such development already exists.” The Designated Port Area (DPA) policy was established in 1978 within the Massachusetts Coastal Zone Management Plan after extensive consultation with state agencies, elected officials, municipal planners, non-government organizations, and representatives from the business community, local citizens, and others. The two central principles of the DPA policy are to (1) promote water-dependent industries as an important sector of the state’s economy and (2) prevent the loss of areas that have certain key characteristics that make them particularly well suited to water dependent industrial uses. The premise for this strategy is that it is sound public policy to maximize use of areas currently suited for water-dependent industrial uses and avoid the conversion of these areas to incompatible residential, commercial, and recreational uses, so that future marine industrial uses will not have to develop new areas for such use. The impact and expense of developing new marine industrial locations—including dredging, bulk-heading, building docks, development of transportation, power, and water infrastructure—are very high in terms of both economic and environmental costs, and such proposals are met with major concerns and opposition.

Under the Designation of Port Areas regulations at 301 CMR 25.00, CZM is responsible for mapping, interpreting, and periodic review of DPA boundaries. The purpose of the DPA boundary review process is to determine whether a DPA boundary should remain as it is currently established or whether it should be modified to more appropriately protect and promote the goals of DPA policy. DPA boundaries are reviewed in accordance with the procedures set forth in the Designation of Port Area regulations at 301 CMR 25.00.

II. THE DPA PROGRAM

DPAs are geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine

transportation or the withdrawal or discharge of large volumes of water. These water-dependent industrial uses vary in scale and intensity but share similar needs for infrastructure with three essential components: (1) a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; (2) backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and (3) land-based transportation and public utility services appropriate for general industrial purposes.

This combination of industrial attributes is found in a very limited and diminishing portion of the coastal zone, and particularly few areas are of sufficient contiguous extent to invite concentrations of related businesses and/or large-scale facilities. Because economic, environmental, and social factors now virtually preclude further development of such an intensive nature, these marine industrial coastal areas are protected to assure that the long-term needs of these water-dependent industries are accommodated. Therefore, state policy seeks to prevent these areas from becoming irretrievably committed to, or otherwise significantly impaired by, non-industrial or non-water dependent types of development which could be sited elsewhere. Accordingly, within DPAs, state policy encourages water-dependent industrial use and, on tidelands subject to the jurisdiction of laws and regulations, limits or prohibits other uses except for compatible public access and certain industrial, commercial, and transportation activities that can occur without significant detriment to the capacity of DPAs to accommodate water-dependent industrial use in the future.

After the establishment of the DPA policy and the physical boundaries of the DPAs in 1978, the legal framework was further developed through a succession of regulatory measures. In 1979, the Department of Environmental Protection (DEP) incorporated DPA rules into its Waterways regulations under M.G.L. Chapter 91, with provisions to protect water-dependent industrial uses on the water-side areas of DPAs. In 1984, the legislature expanded the Chapter 91 licensing authority to include filled tidelands, and DPA jurisdiction was extended to include upland areas. In 1994, the Designation of Port Area regulations at 301 CMR 25.00 were promulgated to set forth the procedure for establishing and modifying DPA boundaries.

III. EAST BOSTON DPA BOUNDARY REVIEW PROCESS

Since the East Boston DPA boundary was originally established in 1978, there has been one review of it using the designation standards found at 301 CMR 25.04 in 2003 and a separate modification of the boundary in 2008. However, the previous review in 2003 did not include Sub-Area 4, as identified in the 2002 review report. By contrast, the current review is considering the entirety of the East Boston DPA, which is depicted in Figure 1.

In January 2020, in accordance with 301 CMR 25.03, the Boston Planning & Development Agency (BPDA) submitted a request to CZM to review portions of the East Boston DPA boundary. After evaluating the request, CZM determined that a review of the entire DPA, inclusive of land and water, was warranted. Prior to the publication of CZM's notice of intent to review the boundary, which initiates the review process, the BPDA requested a delay due to the developing COVID-19 health emergency. Simultaneously, local and state declarations of states of emergency related to the pandemic necessitated the postponement of the review. After the successful completion of multiple virtual public engagement processes, the BPDA requested that CZM proceed with the review. In consultation with the BPDA and other stakeholders, CZM issued its notice of intent to review the East Boston DPA boundary on February 10, 2021. A virtual public information meeting was held on February 23,

2021 and the formal 30-day public comment period closed on March 12, 2021. The consultation, which typically lasts up to six months, was extended for an additional two months based upon mutual agreement between the BPDA and CZM to complete the process.

To inform the DPA boundary review process, CZM conducted the consultation process required by 301 CMR 25.03(4). CZM reviewed comments submitted and met with property owners, city officials, state agency partners, and interested constituents. CZM also conducted site visits and reviews of available plans, permits, and licenses applicable to the DPA review area. Throughout the course of the review, CZM received formal and informal comments from DPA property owners, the public, local organizations and City and state agencies. CZM considered all comments in the context of the policy and regulatory framework that guides the review. Many commenters provided substantive information regarding history, uses, constraints, impacts, and other features of the existing DPA which was particularly useful in the assessment.

Notice of this designation report, a public hearing, and a 30-day public comment period will be included in the December 22, 2021 edition of the *Environmental Monitor*, published in a local newspaper of general circulation and distributed to those identified in 301 CMR 25.06(5). A final decision will be issued pursuant to 301 CMR 25.03(4) and (5) within 60 days of the close of the public comment period.

IV. EAST BOSTON DPA

East Boston, which was incorporated into the City of Boston in 1822, has evolved through the filling around five islands. In the 1800s, East Boston became one of the leading ports and shipbuilding areas of the United States because of its shipbuilding and servicing industries along its waterfront, coupled with the construction of a railroad terminal near Maverick Square. The construction of clipperships in the Donald McKay Shipyard and production of some of the first steel-hulled sailing ships and iron steamships ensured East Boston remained at the forefront the global shipping industry through the early 1900s. At this time, space restrictions associated with railroad track use made rail transport a less viable option compared to truck and automobile transportation.

The unique geographic features of East Boston limit backland space in most areas of the DPA. As a result, large port operations, such as container, breakbulk, and other terminals are not present and unlikely to be developed. However, the water-dependent industrial uses currently located in the East Boston DPA – barge and water transportation services, construction staging and material fabrication, tugboat operations, small vessel supply and repair, and marine robotics – provide critical support for other maritime activities throughout the Port of Boston, which is an economic driver for all New England. The Port of Boston is the oldest continuously active major port in the Western Hemisphere and handles more than 13 million metric tons of containerized and bulk cargo per year. The Port supports more than 66,000 jobs annually and contributes more than \$8.2 billion to the local, regional, and national economies.

The development of the offshore renewable energy industry presents a growing economic opportunity for the Commonwealth and specifically its designated port areas. Many underutilized properties within DPAs may be repurposed to meet the emerging industry's needs for manufacturing and fabrication, staging and pre-assembly, and operations and maintenance. Although these different sectors will each have varying demands in terms of proximity to lease areas, available acreage, and infrastructure, an increase in demand for land to support this industry is anticipated. Similar to its support for the Port

of Boston, the East Boston DPA may not be suitable for uses such as construction bases/marshalling or storage ports that require significant backland space, but it may be able to play a role in the operations and maintenance and service/repair aspects of the offshore renewable energy industry.

V. PLANNING UNITS FOR BOUNDARY REVIEW

The boundaries of DPAs are established by CZM in accordance with criteria governing the suitability of contiguous lands and waters to accommodate water-dependent industrial use, as appropriate to the harbor in question. The Designation of Port Area regulations at 301 CMR 25.00 define water-dependent industrial use to mean any use found to be such in accordance with the Waterways regulations at 310 CMR 9.12(2)(b).

As a general rule, CZM applies DPA boundary review criteria within the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control. DPA-related attributes vary across different parcels, such that the combined characteristics of associated parcels in the same general vicinity are not reflected accurately in the characteristics of any single property. For this reason, it is important that geographic areas proposed to be included in (or removed from) a DPA be sized and configured in a manner that allows consideration of all relevant factors affecting overall suitability to accommodate water-dependent industrial use. For this DPA review, CZM defined five planning units, forming coherent areas with groups of parcels that are delineated by shared physical, geographical, and land use characteristics, as described below and shown in Figure 2.

Because physical and functional characteristics are such that water-dependent industrial and non-water dependent industrial uses are frequently inter-mixed or co-occur, CZM considered the primary use of a planning unit to be that use to which a majority of that area is dedicated in determining whether an area was to be classified as water-dependent industrial. The Waterways regulations affirm this principle, recognizing that water-dependent industrial uses are permitted to include licensable accessory and supporting uses that co-occur and are compatible with water-dependent industrial uses. Accessory uses include parking facilities, access and interior roadways, administrative offices, and marine-oriented retail facilities. Supporting uses are industrial or commercial uses that provide direct economic or operational support for the water-dependent industrial use in the DPA and must be compatible with activities characteristic of a working waterfront and its backlands.

The East Boston DPA includes four distinct areas connected by water within the DPA from the McCardle Bridge around East Boston to Jeffries Point. As a result, the landside segmentation of the DPA lends itself naturally to the formation of planning units consistent with the original boundary review, including Border Street North (Sub-Area 1), Border Street Central (Sub-Area 2), and Border Street South (Sub-Area 3), with one exception. The sub-area of the DPA comprising the East Boston Shipyard and Jeffries Point, which was not included in the 2002 boundary review, contains planning units defined by their segregation of incompatible uses: the predominantly water-dependent industrial uses in the East Boston Shipyard planning unit and the residential, recreational, and buffer areas of the Jeffries Point planning unit.

Border Street North Planning Unit

The Border Street North planning unit comprises approximately eight acres of land within the DPA, almost all of which is subject to Chapter 91 jurisdiction, and almost seven acres of watersheet, generally located at 330-404 Border Street between Mario Umana Academy and South Shore Plaza. All seven

parcels within the planning unit are owned by Reinauer Transportation Companies, LLC and/or its subsidiaries and occupied primarily by water-dependent industrial users, including BTT Marine Construction, Boston Towing and Transportation, and various water-dependent industrial tenants such as Boston Blast & Finish, Great Lakes Dredge & Dock, and Westerbeke Marine Safety. The waterfront includes two wooden piers and two concrete piers that combine for seven berths with a range of depths 11-30 feet below mean lower low water (MLLW) with five buildings authorized by Waterway License No. 11884 issued in 2007. The owner has developed conceptual plans to rebuild the planning unit into a more cohesive marine campus to better support water-dependent industrial and accessory uses and accommodate Supporting DPA Uses.

Border Street Central Planning Unit

The Border Street Central planning unit comprises approximately 22 acres of DPA land and water, including the area commonly referred to as Liberty Plaza. Generally located at 170-282 Border Street, this planning unit of the East Boston DPA includes a mix of ownership and uses. Besides the commercial uses at Liberty Plaza such as Shaw's, Kappy's, Marshalls, and McDonald's, the planning unit, which is generally flat, includes Wigglesworth Machinery at 276 Border Street and industrial structures that are now vacant or occupied by commercial uses. Most of the shoreline is developed with bulkhead and riprap and includes two dilapidated piers in the northern half of the planning unit. The northern-most of these, located behind Wigglesworth Machinery, has been documented to be the site of a vessel dismantling operation. The southern pier, which is seaward of Kappy's, is part of the area leased by C. White Marine, Inc., whose operations now include two crane barges, a commercial dive barge, a push boat, work skiffs, and several land cranes. The majority of Liberty Plaza is subject to Waterways License No. 6757, which enabled the development of the Shaw's as a Supporting DPA Use for the water-dependent industrial uses on-site, including C. White Marine, Inc. Large tractor-trailers regularly make deliveries to the various users across the planning unit. Vehicles are able to access the waterfront (and rear of commercial buildings) generally between the parking lots serving the Shaw's and retail strip. The building at 276 Border Street has access directly from Border Street to its front, but also benefits from an access easement from Border Street between the parking lots associated with Shaw's and the perpendicular retail strip around the Shaw's and to the rear of 276 Border Street. This is also how the property seaward of 276 Border Street is accessed. Vehicles are also able to circulate the entire site using a paved roadway at the southern end of the retail strip before turning back into the parking lot to exit onto Border Street. The access from Border Street to the waterfront and water-dependent industrial uses, including the easement, are critical to the viability of the water-dependent industrial uses within this planning unit.

Border Street South Planning Unit

The approximately 14-acre Border Street South planning unit, located between the Boston East and Eddy developments, was a part of Atlantic Works and still retains many of the structures and infrastructure of the historic shipbuilding operations. The Boston East DPA site, located at the northern edge of the DPA, was the subject of the 2002 boundary review, and its capacity to accommodate water-dependent industrial uses was significantly improved as a result of the Secretary's Decision on Part II of the 2009 Amendment to the East Boston Municipal Harbor Plan. These improvements included removal of dilapidated pile fields, restoration of seawalls and adjacent surfaces, and regrading and remediation. The site is currently unoccupied except for a community garden, but it is being marketed for water-dependent industrial uses in accordance with Waterway License No. 14492 issued in 2017. The adjacent sites at 60 & 80 Border Street feature historically industrial structures; 60 Border Street has a mix of office and industrial uses that were previously used by Wigglesworth Machinery, while 80 Border Street includes space for artists, a daycare, and offices.

The parcels within the DPA on New Street were not part of the previous boundary review because they were used by Boston Towing & Transportation for water-dependent industrial uses that were voluntarily discontinued at this site (and consolidated with their operations at 330-404 Border Street) in 2013. Intermittent uses of the site, which has three piers, have included temporary boat storage (both in-water and on-land). The Secretary's Decision on Part I of the 2009 Amendment to the East Boston Municipal Harbor Plan, regarding the proposed redevelopment of 6-26 New Street, required that all pile fields both within the DPA and outside of the DPA at the project site be removed and that access to the adjacent site in the DPA be provided via a truck route. The required truck route is included in the Waterways license for the 6-26 New Street development. Current water depths vary across the planning unit, but certain areas have historically authorized dredge depths of 40 feet below MLLW.

East Boston Shipyard Planning Unit

The East Boston Shipyard planning unit is composed of the Boston Harbor Shipyard & Marina, which is owned by Massport and partially subject to a memorandum of understanding (MOU) between Massport and the Department of Environmental Protection as it relates to Chapter 91. The planning unit is occupied by: water-dependent industrial uses, including Blue Atlantic Fabricators, Sea Machines Robotics, and Boston Pilots, which are the primary occupants of the planning unit; a marina authorized by the MOU and a collection of supporting and temporary uses. The shipyard includes five piers of varying construction material and conditions and a former graving dock across its developed shoreline, all of which provide access to berthing areas up to 45 feet below MLLW.

Jeffries Point Planning Unit

The Jeffries Point Planning Unit includes Massport's Navy Fuel Pier, which is an edge buffer area pursuant to the 1997 Community Mitigation Agreement with the East Boston community; the city block bound by Marginal, Jeffries, and Sumner Streets; and Jeffries Yacht Club, the oldest chartered yacht club on the eastern seaboard. Though water-dependent industrial uses historically operated in the planning unit, the area is now predominantly occupied by residential uses and recreational open space adjacent to a shoreline developed with riprap and bulkhead. The floating docks associated with Jeffries Yacht Club are surrounded by generally shallow depths.

VI. CZM REVIEW

Pursuant to 301 CMR 25.00, CZM employs a two-step review process when evaluating planning units for inclusion within a DPA boundary. The first step assesses whether planning units meet the eligibility for review criteria according to 301 CMR 25.03(2). These criteria include whether any area within a DPA: 1) has been subject to a designation decision within the previous five years; 2) contained active water-dependent industrial use throughout the previous five years; 3) was requested for exclusion from review by the City or other municipal body; and 4) is entirely bounded by existing DPA lands and/or waters. If a planning unit meets any of these criteria, that area is not eligible for further review and the second step of the review process is not applied. For those ineligible planning units, the DPA boundary does not change. If a planning unit is not disqualified from review by any of these criteria, it is eligible for review and proceeds to the second step of the review process.

The second step of the review process evaluates planning units with respect to their compliance with the designation standards for waters (301 CMR 25.04(1)) and for lands (301 CMR 25.04(2)). The designation standards for waters include two criteria governing suitability to accommodate water-dependent industrial use. The designation standards for waters require that the water area 1) must

include or be contiguous with other DPA waters that include both a navigable channel with a design depth of at least 20 feet deep and a substantially developed shoreline which creates a functional connection to a land area meeting the standards of 301 CMR 25.04(2); and 2) must be of a configuration, size, and location appropriate for direct utilization of the water. Waters must exhibit both criteria to remain in the DPA.

The designation standards for lands include four criteria governing physical suitability to accommodate water-dependent industrial use pursuant to 301 CMR 25.04(2). The four physical suitability criteria require that a planning unit 1) include a substantially developed shoreline which creates a functional connection to a waterway; 2) lie in close proximity to road or rail links and water and sewer facilities; 3) exhibit a topography that is conducive to industrial use; and 4) exhibit a use character that is predominantly industrial in nature or reasonably capable of becoming so. As with the designation standards for water, a planning unit must exhibit all four criteria to remain in or be included within the DPA. If a planning unit exhibits all four of the physical suitability criteria, the DPA boundary does not change in that area. Alternatively, in the case of areas reviewed that are currently outside a DPA boundary but that exhibit all four of the physical suitability criteria, the DPA boundary would change to include the area. If a planning unit lacks one of more of the physical suitability criteria, it is removed from the DPA.

The request for the review from the BPDA cited, among other reasons, the need to reduce the present and future flood vulnerability of certain areas of the East Boston DPA, especially along Border Street. Numerous comments on CZM's notice of intent to review the boundary agreed with this goal but suggested a lack of clarity regarding the permissibility of certain flood control structures with DPAs, especially those structures integrated with other co-beneficial uses, such as open space. As noted above, the criteria for inclusion in a DPA do not include flood vulnerability or climate resilience. Rather, per 310 CMR 9.12(2)(b)(7), shore protection structures and flood, water level, and tidal control facilities are determined to be water-dependent-industrial, provided they associated with the operation of a Designated Port Area. Supporting DPA Uses, which are commercial or industrial uses that provide direct economic or operational support, may occupy 25% of a project site, but cannot be uses that give rise to conflict with port operations or excessively consume port space.

VII. ELIGIBILITY REVIEW

Based on the eligibility for review standards at 301 CMR 25.03(2)(a) through (d), certain areas within the DPA are not eligible for review if they meet any of the four criteria.

For the first criterion, CZM has determined that no portion of the East Boston DPA has been the subject of a designation decision under 301 CMR 25.03(5) within the previous five years. Therefore, the five planning units within the DPA area under review (Figure 2) are eligible for review based on 301 CMR 25.03(2)(a).

The criterion at 301 CMR 25.03(2)(b) states that any area that consisted primarily of water-dependent industrial use throughout the last five years is not eligible for review. As indicated in the regulations, in applying 301 CMR 25.03(2)(b), CZM considered the primary use within a given area to be the use to which a majority of the planning unit is dedicated. For this criterion, CZM considered first, whether water-dependent industrial use had occurred throughout the previous five years; and second, whether the water-dependent industrial use, if present, was the primary use for a given planning unit. Based on the review, this criterion was met by three planning units: Border Street North, Border Street Central,

and East Boston Shipyard. The Border Street North and East Boston Shipyard planning units are composed primarily of water-dependent industrial uses and have been so throughout the previous five years. Two water-dependent industrial uses currently operate in the Border Street Central planning unit, one of which is confirmed to have been operating throughout the previous five years. These two water-dependent industrial uses occupy almost the entire shoreline of the planning unit and their viability is dependent on access from Border Street across the surface parking lots within the planning unit. Further, a significant portion of the Border Street Central planning unit is licensed as a Supporting DPA Use that provides direct economic support to water-dependent industrial use(s) within the planning unit in accordance with the special conditions of Waterways license No. 6757. As a result, these three areas do not meet the criterion for eligibility for review pursuant to 301 CMR 25.03(2)(b) and were not further analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. The boundary of the East Boston DPA should not change in the area of the Border Street North, Border Street Central, and East Boston Shipyard planning units.

Pursuant to 301 CMR 25.03(2)(c), areas recommended for exclusion by the City or municipal body shall not be eligible for review. No areas were recommended for exclusion by the City of Boston. Therefore, the five planning units within the East Boston DPA are eligible for review based upon 301 CMR 25.03(2)(c).

Any area within a DPA that is entirely bounded by existing DPA lands or waters is ineligible for review pursuant to 301 CMR 25.03(2)(d). This criterion is intended to avoid conflict that could result from incompatible uses being developed in the middle of an otherwise substantially water-dependent industrial use area. This scenario could arise if a portion of the DPA that is otherwise completely surrounded by DPA lands is removed from the DPA. Because the DPA boundary review includes the watersheet, as well as roads within and surrounding the DPA, no such isolated area is under review, and this scenario is avoided. Therefore, all planning units within the DPA are eligible for review based upon the criterion at 301 CMR 25.03(2)(d).

The Border Street South and Jeffries Point planning units meet all of the eligibility criteria for review (Figure 3) and are therefore subject to the designation criteria and analysis for inclusion in the East Boston DPA described below.

VIII. DESIGNATION CRITERIA AND ANALYSIS

The DPA regulations requirement that an area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use at 301 CMR 25.04(2)(a) through (d). Similarly, the DPA regulations require that an area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use at 301 CMR 25.04(1)(a) and (b). The following contains a synopsis of CZM's analysis and findings of each planning unit's conformance with the criteria for land and water in 301 CMR 25.04. The next section of this report concludes with a summary of the planning units' conformance and CZM's recommendation for continued inclusion in the DPA.

Border Street South Planning Unit

Pursuant to 301 CMR 25.04(2)(a), any area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially

developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. A significant extent of the shoreline in the Border Street South planning unit features piers, wharves, bulkheads and other structures, all of which allow for the berthing of vessels or withdrawal/discharge of water. Though the planning unit has not generally accommodated water-dependent industrial uses since 2013, intermittent uses have demonstrated sufficient waterside infrastructure and connection between land and water via a developed shoreline, including a marine railway. Therefore, CZM finds that the Border Street South planning unit meets the criterion for a substantially developed shoreline that provides a functional connection with DPA water area at 301 CMR 25.04(2)(a)

The second criterion for determining suitability of a land area for industrial use, pursuant to 301 CMR 25.04(2)(b), is that the land must lie in reasonable proximity to: an established road or rail link that leads to a major trunk or arterial route; and water and sewer facilities that are capable of supporting general industrial use. Anecdotal information provided by property owners and other stakeholders prior to and during the consultation process suggest that recent changes to the roadways, namely their width and turning radii, challenge truck access to the area, which is no longer served by active rail links. However, additional information collected from the City of Boston's Transportation Department, as well as visual evidence of truck usage of Border and New Streets, indicate that while there may be challenges for trucks on urban roadways, the planning area is adjacent to and served by roadways leading to major arterial routes, namely the Massachusetts Turnpike and Route 1A. Further, this planning unit is also served by a truck access route across 6-26 New Street, which was a provision of Secretary's Decision on Part I of the 2009 Amendment to the East Boston Municipal Harbor Plan and a special condition of the Waterways license for the 6-26 New Street development. Additionally, the Boston Water and Sewer Commission serves the area with both water and sewer services that support general industrial use. Based on this analysis, CZM determines that the Border Street planning unit meets the criterion of 301 CMR 25.04(2)(b).

To accommodate water-dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use or is reasonably capable of becoming so (301 CMR 25.04(2)(c)). The Border Street South planning unit generally consists of filled tidelands that are low-lying and flat, including the Boston East DPA site, which was remediated and regraded pursuant to the Secretary's Decision on Part II of the 2009 Amendment to the East Boston Municipal Harbor Plan. Therefore, CZM concludes that the topography of the Border Street South planning unit is generally conducive to industrial use and therefore meets the criterion of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial or is reasonably capable of becoming so because it does not contain a dense concentration of: non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational, or other uses that would unavoidably be destabilized if commingled with industrial activity (301 CMR 25.04(2)(d)). The land use character of the areas around the sections of the East Boston DPA along Border and New Streets is increasingly residential; the Border Street South planning unit is bound by two relatively recent residential developments, Boston East and the Eddy, which were facilitated by amendments to the East Boston Municipal Harbor Plan. However, as noted in the 2003 designation decision, the regulations are referring to the land use character of the area within the DPA, not the area around it. Decisions on the amendments to the Municipal Harbor Plans, as well as the Waterways licenses for these residential developments, intend for this planning unit to support water-dependent industrial uses despite the increased concentration of residential uses adjacent to the DPA. Specifically, the licenses for both

Boston East and the Eddy required special conditions, such as glazed windows and disclosures of each project's adjacency to the DPA, to ensure the viability of future water-dependent industrial uses on the adjacent sites within the DPA. Though there are some commercial uses adaptively reusing some existing structures within the planning unit, the buildings themselves are industrial structures that retain some features beneficial to industrial uses. As a result, CZM finds that the Border Street South planning unit meets the use character criterion as required by 301 CMR 25.04(2)(d).

Jeffries Point Planning Unit

Pursuant to 301 CMR 25.04(2)(a), any area to remain in or be included in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. Though the planning unit does not support any water-dependent industrial uses currently, the shoreline is mostly developed with bulkheads and riprap and functionally connected to waters within the DPA. Therefore, CZM finds that the Jeffries Point planning unit meets the criterion for a substantially developed shoreline that provides a functional connection with DPA water area at 301 CMR 25.04(2)(a).

The second criterion for determining suitability of a land area for industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to: an established road or rail link that leads to a major trunk or arterial route; and water and sewer facilities that can support general industrial use. Similar to the Border Street South planning unit, rail access is not available at the Jeffries Point planning unit, but the public ways within and leading to the planning unit generally accommodate truck traffic, as demonstrated by the users within the East Boston Shipyard planning unit, and lead to arterial routes, specifically the Massachusetts Turnpike and Route 1A. Additionally, the Boston Water and Sewer Commission serves the area with both water and sewer services that support general industrial use. Based on this analysis, CZM determines that the Border Street planning unit meets the criterion of 301 CMR 25.04(2)(b).

To accommodate water-dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use or is reasonably capable of becoming so (301 CMR 25.04(2)(c)). The Jeffries Point planning unit generally consists of filled tidelands that are low-lying and flat with a gentle increase in grade to the historic uplands. Therefore, CZM concludes that the topography of the Jeffries Point planning unit is generally conducive to industrial use, and therefore meets the criterion of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial or is reasonably capable of becoming so because it does not contain a dense concentration of: non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational, or other uses that would unavoidably be destabilized if commingled with industrial activity (301 CMR 25.04(2)(d)). Though adjacent to the water-dependent industrial uses at the East Boston Shipyard, the land use character of the Jeffries Point planning unit is almost entirely residential, recreational, or Massport-owned edge buffer areas. These buffer areas are a neighborhood amenity used for passive recreation and were created to benefit the East Boston community as mitigation for the impacts of Logan International Airport; their conversion back to industrial use is not reasonably foreseeable. Similarly, the residential uses, recreational open spaces, and yacht club are unlikely to be removed or converted with relative ease to industrial use, but these uses could be destabilized if comingled with industrial activity. As a result,

CZM finds that the Jeffries Point planning unit does not meet the use character criterion as required by 301 CMR 25.04(2)(d).

DPA Water Areas

For the DPA boundary review, CZM completed the above analysis of land areas before applying the criteria of 301 CMR 25.04(1) in order to understand how the water area in the East Boston DPA is currently used in regard to water-dependent industrial uses and compatibility within the DPA. Should any water area not meet the criteria, CZM would return to the review of eligible planning units of land to determine if the criterion for a functional connection to water within a DPA were met.

This review excludes water areas contiguous with land areas that have been determined by this DPA boundary review to be ineligible for further review under 301 CMR 25.03(2)(b) above, as it is presumed that these areas provide and support the necessary functional connection to the water-dependent industrial uses within those planning units. These areas include all channels and any water area lying between these channels and the land areas determined to be ineligible for review. Because the Border Street North, Border Street Central, and East Boston Shipyard planning units were excluded from the review based upon 301 CMR 25.03(2)(b), the adjacent water areas were not reviewed.

Pursuant to 301 CMR 25.04(1)(a), an area of water shall be included or remain in the DPA if and only if that area includes, or is contiguous with, other DPA waters that include: 1) a navigable entrance or main channel with a design depth of at least 20 feet; and 2) a shoreline that has been substantially developed and has a functional connection to land within the DPA. Further, water within a DPA must also be of a configuration, size, and location appropriate for the maneuvering of vessels, the placement of intake/outfall structures, or other activities directly utilizing the water, as directed by 301 CMR 25.04(1)(b). The DPA must include all channels and mooring and turnaround areas within or serving as access channels to land or water within a DPA and any water area lying between an entrance or main channel and any land or water including in a DPA. The water adjacent to the Border Street South planning unit is contiguous with DPA waters that include the federal navigation channel through Boston's Inner Harbor, which has depths greater than 20 feet, and is functionally connected to land that meets the criteria for inclusion in the DPA at 301 CMR 25.04(2). As demonstrated by both the historic uses of the parcels and the intermittent use of the piers within the planning area for docking, the water area is of a configuration, size, and location appropriate for maneuvering and berthing vessels. As a result, CZM determines that the water area adjacent to the Border Street South planning unit is in substantial conformance with the criteria for inclusion in the East Boston DPA.

As a result of the review of the Jeffries Point planning unit, the water within the DPA adjacent to this planning unit is no longer between land within the DPA and an entrance or main channel. However, the water is contiguous with other DPA waters that have a design depth of greater than 20 feet, meaning that it satisfies the requirements in 301 CMR 25.04(1)(a). Further, this area of water is also of a configuration, size, and location appropriate for maneuvering or berthing of vessels, as demonstrated by the utilization of the water by vessels of various sizes and nearby mooring areas, and it therefore satisfies the requirements in 301 CMR 25.04(1)(b). Based upon this analysis, CZM concludes that the water area within the DPA adjacent to the Jeffries Point planning unit is in substantial conformance with the criteria governing suitability of the water to accommodate water-dependent industrial use for inclusion in the East Boston DPA.

IX. CONCLUSIONS AND RECOMMENDATIONS

The DPA regulations direct that an area of land or water reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with all of the criteria governing suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question.

The Border Street North, Border Street Central, and East Boston Shipyard planning units did not meet the eligibility criterion for review pursuant to 301 CMR 25.03(2)(b), as they have been in active water-dependent industrial use over the past five years. Therefore, they were not analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. CZM concludes that these planning unit should remain in the DPA.

The Border Street South planning unit is eligible for review and CZM's analysis determined that the planning unit is in substantial conformance with the suitability criteria. In addition, the water area adjacent to this planning unit also meets the designation standards, so CZM concludes that the Border Street South planning unit should remain in the East Boston DPA.

The Jeffries Point planning unit is eligible for review and CZM's analysis determined that while the planning unit meets the physical suitability criteria, namely a topography conducive to industrial use, proximity to established road/rail links and water/sewer facilities, and a developed shoreline with a functional connection to DPA waters, the land area does not exhibit a use character that is predominantly industrial, but rather contains a dense concentration of residential and recreational uses. As a result, CZM concludes that the Jeffries Point planning unit, as well the sections of Jeffries, Marginal, and Sumner Streets that serve these parcels, should be removed from the East Boston DPA. However, the water area adjacent to this planning unit continues to meet the designation standards, so CZM concludes that this water area should remain in the East Boston DPA.

With the removal of the Jeffries Point planning unit, the total land area of the East Boston DPA subject to this review decreases from 97.18 acres to 88.57 acres.

Pursuant to this review, a revised East Boston DPA boundary reflecting the findings of this Boundary Review Report is shown on the map, Figure 4.

X. FIGURES

Figures referenced in the report are included in the following pages.

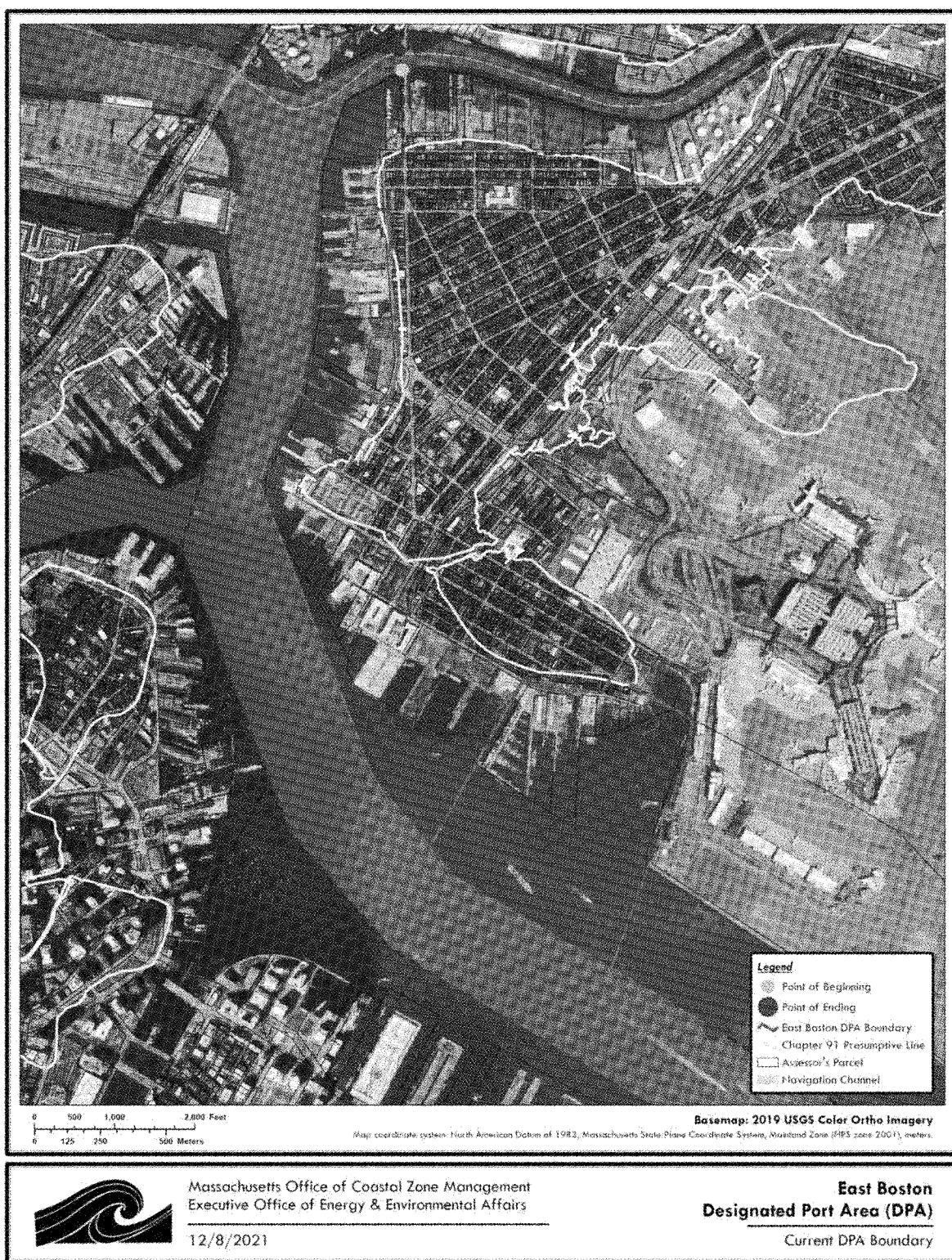


Figure 1 – Current East Boston DPA boundary map



Figure 2 – Planning units within East Boston DPA boundary review

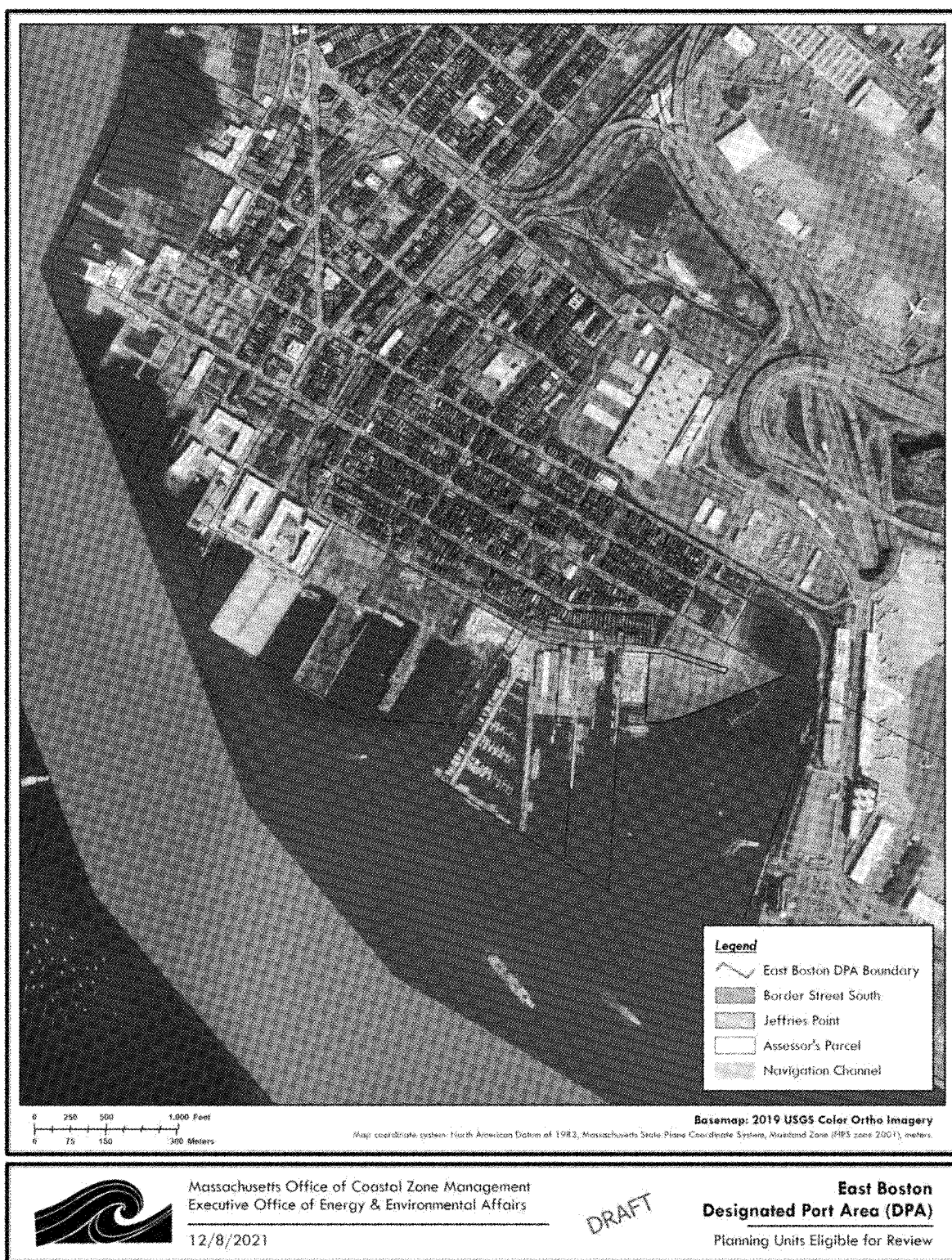


Figure 3 – Planning units eligible for review

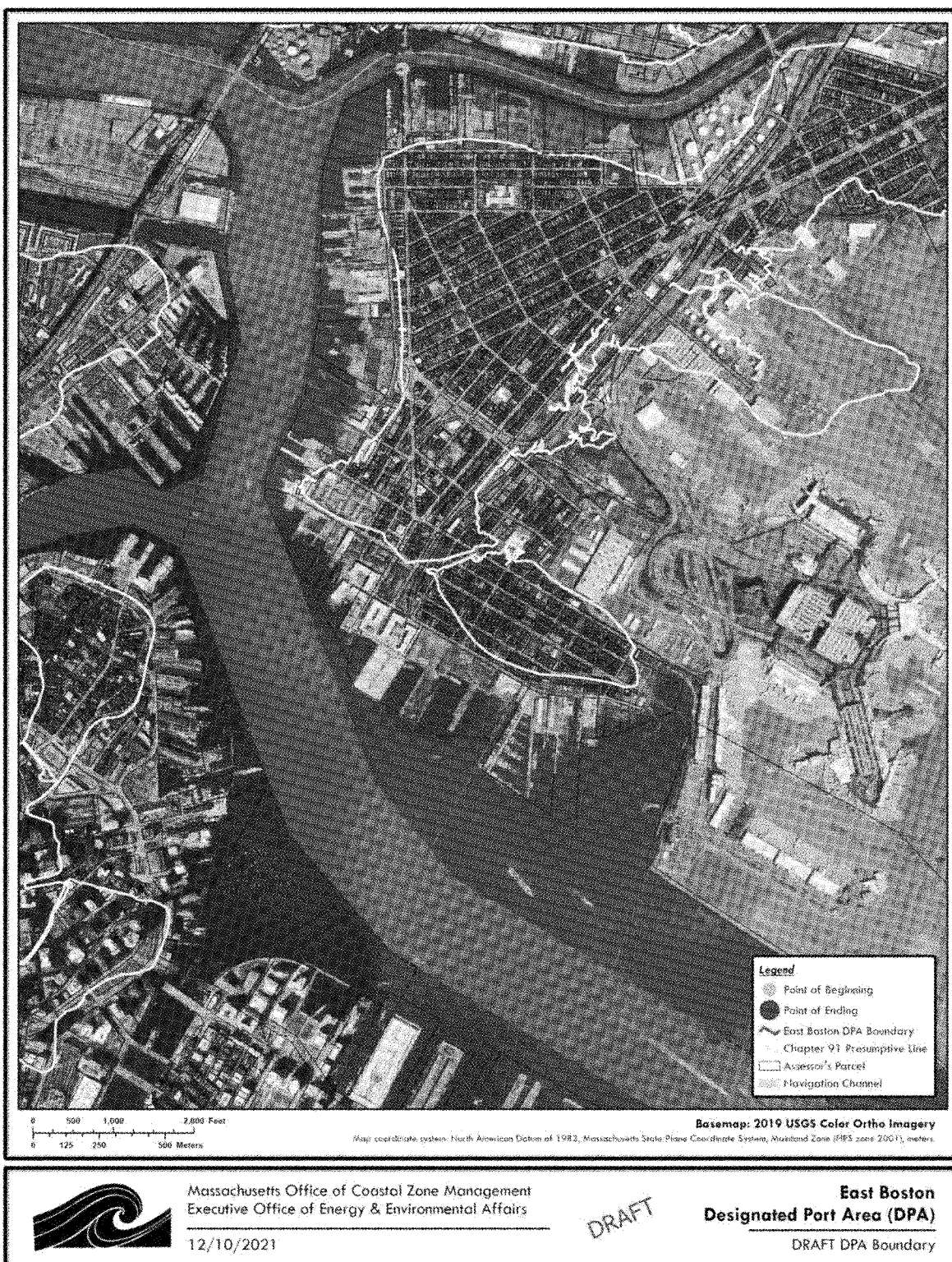


Figure 4 – Revised East Boston DPA boundary map

Exhibit B

**Designation Decision for the
East Boston Designated Port Area
Boston, MA**

**Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
December 23, 2022**

I. INTRODUCTION

Pursuant to the Designated Port Area (DPA) regulations at 301 CMR 25.00, today as Director of the Office of Coastal Zone Management (CZM), I hereby issue this designation decision for the boundary review of the East Boston DPA. This decision affirms the findings and proposed DPA boundary modifications in CZM's December 15, 2021 designation report, *Boundary Review of the East Boston Designated Port Area, Boston, MA* ("boundary designation report"), and its issuance concludes the boundary review process, as described below.

In January 2020, in accordance with 301 CMR 25.03, the Boston Planning & Development Agency (BPDA) submitted a request to CZM to review portions of the East Boston DPA boundary. After evaluating the request, CZM determined that a review of the entire DPA, inclusive of land and water, was warranted. Prior to the publication of CZM's notice of intent to review the boundary, which initiates the review process, the BPDA requested a delay due to the developing COVID-19 pandemic. Simultaneously, local and state declarations of states of emergency related to the pandemic necessitated the postponement of the review. After this postponement and in consultation with the BPDA and other stakeholders, CZM issued its notice of intent to review the East Boston DPA boundary on February 10, 2021. After which, a virtual public information meeting was held on February 23, 2021 and the 30-day public comment period closed on March 12, 2021. The consultation period, which by regulation may last up to six months, was extended for an additional two months based upon request by the BPDA.

To inform the DPA boundary review process, CZM conducted the consultation process required by 301 CMR 25.03(4). CZM reviewed comments submitted and met with property owners, city officials, state agency partners, neighborhood constituent groups, and interested constituents. CZM also conducted site visits and reviewed available plans, permits, and licenses applicable to the DPA boundary review area. Throughout the course of the review, CZM received formal and informal comments from DPA property owners, the public, local organizations and City and state agencies. CZM considered all comments in the context of the policy and regulatory framework that guides the review. Many commenters provided substantive information regarding history, uses, constraints, impacts, and other features of the existing DPA which was particularly useful in the boundary review process.

A boundary review designation report was issued on December 15, 2021. The report concluded with the finding that the DPA boundary should be modified to exclude the upland areas of the Jeffries Point planning unit and the DPA boundary should remain the same in the area of the Border Street North, Border Street Central, Border Street South and East Boston Shipyard planning units. In accordance with 301 CMR 25.00, the designation report was noticed in the December 22, 2021 edition of the *Environmental Monitor*, the Boston Globe and El Mundo, with a public hearing on January 11, 2022 and a 30-day public comment period ending on January 21, 2022. Upon request by the Boston Planning & Development Agency (BPDA) the public comment period was extended four times, each with notice in the *Environmental Monitor*, and concluded on November 1, 2022.

This designation decision summarizes and responds to concerns and matters that were raised by commenters on the boundary designation report, and following careful consideration and analysis, formally designates the East Boston DPA boundary. On behalf of CZM, I want to thank everyone who participated in the boundary review process and acknowledge your valuable input.

II. SUMMARY OF BOUNDARY DESIGNATION REPORT

As detailed in the December 15, 2021 boundary designation report, CZM defined five planning units, forming coherent areas with groups of parcels that are delineated by shared physical, geographical, and land use characteristics. These planning units were sized and configured in a manner that allowed for consideration of all relevant factors affecting overall suitability to accommodate water-dependent industrial use.

Pursuant to 301 CMR 25.00, CZM employs a two-step review process when evaluating planning units for inclusion within a DPA boundary. The first step assesses whether planning units meet the eligibility for review criteria according to 301 CMR 25.03(2). If a planning unit meets any of the criteria, the area is not eligible for further review and the second step of the review process is not applied. For the ineligible planning units, the DPA boundary does not change. If a planning unit is not disqualified from review by any of the review criteria standards, it is eligible for review and proceeds to the second step of the review process.

The second step of the review process evaluates planning units with respect to their compliance with the designation standards for waters (301 CMR 25.04(1)) and for lands (301 CMR 25.04(2)). The designation standards for lands include four criteria governing physical suitability to accommodate water-dependent industrial use. A planning unit must exhibit all of the four criteria to remain in or be included within the DPA. If a planning unit exhibits all four of the physical suitability criteria, the DPA boundary does not change in that area. If a planning unit lacks one or more of the physical suitability criterion, the DPA boundary would change in that area and the DPA lands are removed from the DPA. For DPA areas under review that are currently outside a DPA boundary, if that planning unit exhibits all the physical suitability criteria for DPA lands and water, as applicable, the DPA boundary would change to include the area.

For the first criterion, CZM has determined that no portion of the East Boston DPA has been the subject of a designation decision under 301 CMR 25.03(2)(a) within the previous five years. Therefore, the five planning units within the DPA area under review are eligible for review based on 301 CMR 25.03(2)(a).

The criterion at 301 CMR 25.03(2)(b) states that any area that consisted primarily of water-dependent industrial use throughout the last five years is not eligible for review. As indicated in the regulations, in applying 301 CMR 25.03(2)(b), CZM considered the primary use within a given area to be the use to which a majority of the planning unit is dedicated. For this criterion, CZM considered first, whether water-dependent industrial use had occurred throughout the previous five years; and second, whether the water-dependent industrial use, if present, was the primary use for a given planning unit. Based on the review, this criterion was met by three planning units: Border Street North, Border Street Central, and East Boston Shipyard. The Border Street North and East Boston Shipyard planning units are composed primarily of water-dependent industrial uses and have been so throughout the previous five years. In the case of the Border Street Central planning unit, two water-dependent industrial uses currently operate, one of which is confirmed to have been operating

throughout the previous five years. These two water-dependent industrial uses occupy almost the entire shoreline of the planning unit, and their viability is dependent on access from Border Street across the surface parking lots within the planning unit. Access to the shoreline is codified in the special conditions of Waterways license No. 6757 for one of the parcels located between the shoreline parcels and Border Street. The use is allowed within the boundaries of the DPA as a Supporting DPA Use that provides direct economic support to water-dependent industrial use(s) within the planning unit. The Chapter 91 Waterways regulations affirm this principle, recognizing that water-dependent industrial uses are permitted to include licensable accessory and supporting commercial uses that co-occur and are compatible with water-dependent industrial uses. Accordingly, the boundary designation report determined that water-dependent industrial use is the primary use of the Border Street Central planning unit.

As a result of application of the active water-dependent industrial use criteria, the Border Street North, Border Street Central, and East Boston Shipyard were found to not meet the criterion for eligibility for review pursuant to 301 CMR 25.03(2)(b) and were not further analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. The boundary of the East Boston DPA will not change in the area of the Border Street North, Border Street Central, and East Boston Shipyard planning units.

Pursuant to 301 CMR 25.03(2)(c), areas recommended for exclusion by the City or municipal body shall not be eligible for review. No areas were recommended for exclusion by the City of Boston. Therefore, the five planning units within the East Boston DPA are eligible for review based upon 301 CMR 25.03(2)(c).

Any area within a DPA that is entirely bounded by existing DPA lands or waters is ineligible for review pursuant to 301 CMR 25.03(2)(d). This criterion is intended to avoid conflict that could result from the development of incompatible uses in the middle of an otherwise substantially water-dependent industrial use area. This scenario could arise if a portion of the DPA that is otherwise completely surrounded by DPA lands is removed from the DPA. The area under review does not include any such isolated areas so this scenario is avoided. Therefore, all planning units within the DPA are eligible for review based upon the criterion at 301 CMR 25.03(2)(d).

The Border Street South and Jeffries Point planning units meet all of the eligibility criteria for review and are therefore subject to the designation criteria and analysis for inclusion in the East Boston DPA. Upon application of the designation criteria and analysis to the Jeffries Point planning unit, the Jeffries Point planning unit does not meet the use character criterion as required by 301 CMR 25.04(2)(d) because the land use character is almost entirely residential, recreational, or Massport-owned edge buffer areas. The buffer areas are a neighborhood amenity used for passive recreation and their conversion back to industrial use is not reasonably foreseeable. Similarly, the residential uses and recreational open spaces are unlikely to be removed or converted to industrial use. Further, the residential uses could be destabilized if comingled with new or expanded industrial activity. For this reason, the Jeffries Point planning unit, as well as the sections of Jeffries, Marginal, and Sumner Streets that serve these parcels, will be removed from the East Boston DPA. However, the water area adjacent

to the Jeffries Point planning unit meets the designation standards for DPA waters, so this water area will remain in the East Boston DPA.

As stated in the boundary designation report, after applying the designation criteria and analysis to the Border Street South planning unit, CZM concluded it is in substantial conformance with the suitability criteria, and therefore will remain within the DPA. To remain in the DPA, any area must include or be contiguous with other DPA lands that include a developed shoreline. A significant extent of the shoreline in the Border Street South planning unit features piers, wharves, bulkheads, and other structures, all of which allow for the berthing of vessels or withdrawal/dischARGE of water. Though water-dependent industrial uses have only intermittently been present in this planning unit since 2013, these intermittent uses have demonstrated a viable connection between land and water via a developed shoreline. The next designation criterion requires that the land area must lie in reasonable proximity to: (1) an established road or rail link that leads to a major trunk or arterial route; and (2) water and sewer facilities that can support general industrial use. This planning unit includes roadways leading to the Massachusetts Turnpike and Route 1A, which are major arterial routes as well as an internal truck access route that connects New Street to the DPA watersheet. The Boston Water and Sewer Commission serves the planning unit with both water and sewer services that support general industrial use. The boundary designation report, therefore, found that the second criterion is met. Third, to be suitable to accommodate water-dependent industrial use, the land area must exhibit a topography that is generally conducive to industrial use or is reasonably capable of becoming so. Because the Border Street South planning unit generally consists of filled tidelands that are low-lying and flat, the topography of the Border Street South planning unit is generally conducive to industrial use. Finally, the land area must be predominately industrial or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be converted to industrial use or non-industrial uses that would unavoidably be destabilized if commingled with industrial use. The land use character of the areas around the Border Street South planning unit is increasingly residential. The Border Street South planning unit is bounded by two relatively recent residential developments, Boston East and the Eddy, which were facilitated by amendments to the East Boston Municipal Harbor Plan¹. However, as noted in the 2003 designation decision², the DPA regulations refer to the land use character of the area within the DPA, not the area around it. Decisions on the amendment to the Municipal Harbor Plan, as well as the Waterways licenses for these residential developments, intended for this planning unit to support water-dependent industrial uses despite the increased concentration of residential uses adjacent to the DPA. Though there are some commercial uses adaptively reusing existing structures within the planning unit, the buildings themselves are industrial structures that retain features beneficial to and capable of supporting industrial uses. As a result, the Border Street South planning unit meets the use character criterion as required by 301 CMR 25.04(2)(d).

¹ <https://www.mass.gov/files/documents/2016/08/vh/east-boston-mhp-decision-part1-12-17-08.pdf>
<https://www.mass.gov/files/documents/2016/08/sz/east-boston-mhpa-decision-part2-03-04-09.pdf>

² <https://www.mass.gov/files/documents/2016/08/wt/east-boston-dpa-decision-2003.pdf>

III. RESPONSE TO COMMENTS ON THE BOUNDARY REVIEW DESIGNATION REPORT

The 76 written and three oral comments received on the boundary designation report expressed support for the proposed modifications to the East Boston DPA boundary, raised concerns with the removal of any areas from the DPA, and specifically requested to modify the DPA boundary to exclude the Border Street Central and Border Street South planning units from the East Boston DPA. Nearly a third of the comments received relating to the exclusion of the Border Street South planning unit were form letters. Other topics raised in written and oral comments included climate resiliency; affordable housing; transportation access; future opportunities for water-dependent industry; and the delineation of the Border Street Central and Border Street South planning units.

A common theme in multiple comment letters was that of the importance of incorporating climate resiliency into development within the East Boston DPA. Some comments suggested the need to leverage development within the DPA to create opportunities to block and restrict flood pathways that act as conduits for coastal waters to landward portions of East Boston. And in some cases, commenters suggested combining the implementation of flood-resilience infrastructure with publicly accessible open space within the DPA. These comments suggest that regulations governing development in DPAs do not allow for climate adaptation through resilient infrastructure. However, DPAs and increasing protection from coastal flooding, sea level rise, and storms are not mutually exclusive. In fact, the distinct infrastructure needs and functional requirements of DPA uses present unique opportunities for innovative solutions that can achieve the dual goals of DPAs and climate resiliency. Earlier this year, CZM released the report *“Building Resilience in Massachusetts Designated Port Areas”*, which provides tailored flood resilience strategies to address coastal flood risks while continuing to support the operational needs of water-dependent industrial uses in DPAs. A few structural examples of resilience strategies within DPAs may include: backing up critical systems (e.g., emergency generator); elevating piers/wharfs; elevating structures/assets; increasing permeable structures; raising roads to act as barriers to flooding; and adding pumps, sandbags, and outfall tide gates. The report also suggests short-term approaches that are implemented within a year can help engage stakeholders, bring attention to the urgency of the issues, and build consensus around longer-term structural interventions. Structural resilience strategies such as elevated sites and linear berms along upland parcel edges can be implemented within DPAs to address coastal flood risks. DPAs are important resources for the Commonwealth, the region, and the nation, and advancing and implementing climate resilience strategies and development in these areas is critical to ensuring they may continue to function effectively. A community-based planning process like that under consideration by the City of Boston could seek to address climate vulnerabilities, plan for water-dependent industrial uses in the DPAs, and address other community needs.

Fourteen commenters expressed concern about how the Border Street South and Border Street Central planning units were delineated. As described here, DPA boundary review criteria are applied within the context of groups of parcels that form coherent planning units, rather than to individual project sites or other properties under common ownership or control. As part of the due diligence of the boundary review, different configurations of planning units were evaluated. These

alternative configurations were discarded for the Border Street Central and Border Street South planning units due to specific Waterways licensing which codifies conditions to parcels within the planning units. Additionally, the existing shape of the East Boston DPA naturally lends itself to division into planning units and specifically the Border Street North, Border Street Central, and Border Street South planning units.

Nearly one third of the comments were a form letter expressing the desire to remove the 80 and 102 Border Street parcels from the Border Street South planning unit to ultimately allow for affordable housing. As previously stated, the DPA boundary review criteria are applied to geographic areas known as planning units that are sized and configured in a manner that allows consideration of all relevant factors affecting overall suitability to accommodate water-dependent industrial use. As provided in the DPA regulations at 301 CMR 25.04(3), planning units are generally groups of parcels rather than individual parcels or properties under common ownership because, “DPA-related attributes typically vary across different parcels, such that the combined characteristics of associated parcels in the same general vicinity are not reflected accurately in the characteristics of any single property.” More specifically, the 80 and 102 Border Street sites were determined to remain within the Border Street South planning unit because the planning unit of which they are a part met each specific criterion of the designation analysis, which is the second step in the review process after determining whether the planning unit is eligible for review. Once it is determined that the eligibility criteria are met, the regulations require that the area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability of land to accommodate water-dependent industrial use at 301 CMR 25.04(2)(a) through (d). This designation decision affirms the recommendation of the boundary designation report that the Border Street South planning unit, including 80 and 102 Border Street, meets each of the four criteria and therefore will remain in the DPA.

Several commenters expressed that the Border Street Central planning unit should have been eligible for review because it is largely comprised of commercial uses. While this planning unit does host commercial uses, it was found ineligible for review because it is predominantly comprised of active water-dependent industrial uses. Because physical and functional characteristics are such that water-dependent industrial and non-water-dependent industrial uses are frequently inter-mixed or co-occur, in the determination of whether an area is to be classified as water-dependent industrial, CZM considered the primary use of a planning unit to be that use to which a majority of that area is dedicated. The Chapter 91 Waterways regulations affirm this principle, recognizing that water-dependent industrial uses are permitted to include licensable accessory and supporting commercial uses that co-occur and are compatible with water-dependent industrial uses. Within the Border Street Central planning unit, the water-dependent industrial uses include a Supporting DPA Use, which provides an access easement across landlocked parcels to the water-dependent industrial uses along the DPA shoreline. This property is licensed under the Waterways regulations as a supporting DPA use and was authorized because it provides direct economic support to the water-dependent industrial uses within the planning unit. The viability of the water-dependent industrial uses relies on access from Border Street across the surface parking lots within the planning unit. As such, and consistent with past DPA designation decisions, this parcel was included in the eligibility criteria for whether the

Border Street Central planning unit is considered predominantly water-dependent industrial. And finally, despite the questions regarding the licensing and ownership of the vessel dismantling operation on the shoreline, it is in active use, demonstrating the area has the capacity to support water-dependent industry. As a result of this, the area does not meet the criterion for eligibility for review pursuant to 301 CMR 25.03(2)(b).

Even if CZM agreed that the Border Street Central planning unit was eligible for review, it would not result in removal of this area from the DPA. Were the designation criteria to be applied, the Border Street Central planning unit would be in substantial conformance with the criteria governing suitability to accommodate water-dependent industrial use. (1) The planning unit has a shoreline that has been substantially developed with piers, wharves, and bulkheads that establish a functional connection with the watersheet. (2) The land area is suitable for industrial use with connections to transportation networks and utilities. The planning unit lies in reasonable proximity to major arterial routes, namely the Massachusetts Turnpike and Route 1A. Additionally, the Boston Water and Sewer Commission serves the area with both water and sewer services that support general industrial use. (3) The planning unit exhibits a topography that is generally flat and conducive to industrial use or reasonably capable of becoming so. (4) The land use character of the planning unit is industrial or capable of becoming so because the commercial buildings on site could be removed or converted to industrial use with relative ease and the non-industrial uses are not destabilized by being commingled with industrial activity presently. To the contrary, the [Shaw's] parcel is licensed as a Supporting DPA Use which provides direct economic support to water-dependent industrial use(s) within the planning unit in accordance with the special conditions of Waterways license No. 6757.

Several comments emphasized the challenge of truck access to the DPA parcels within the Border Street Central and Border Street South planning units via New Street and Border Street. To support this concern, a transportation consultant was hired to evaluate access by WB-67 vehicles to and from the DPA from the Route 1A interchange and Porter Street (TetraTech, May 2022). The analysis concluded that there is inadequate or unsafe access for large highway vehicles (WB-67 trucks) to reach the waterfront areas of the Border Street Central and Border Street South planning units. However, the analysis also states that the grocery store within the Border Street Central planning unit regularly receives deliveries from large trucks. This indicates that the access road over the grocery store parking lot is active, functional, and able to support trucks of sizes up to WB-67. In addition, while the analysis only focused on WB-67 trucks, it noted that evidence of smaller trucks accessing the area was apparent. Although the transportation analysis highlighted specific congestion areas in the East Boston area, it did not definitively convey insurmountable operational and safety challenges of vehicle access to the DPA that would preclude access to support water-dependent industrial uses. The regulations at 301 CMR 25.04(2)(b)(1) do not require a specific level of access by specific vehicles, but only that "the land area [within the DPA] must lie in reasonable proximity to established road or rail links leading to major trunk or arterial routes". While the large trucks may be challenged navigating congested areas of urban streets, the DPA parcels on New Street and Border Street are adjacent to and served by roadways leading to major arterial routes, namely the Massachusetts Turnpike and Route 1A. This condition is therefore met for both the Border Street Central and Border Street South planning units.

There were 17 form letters that opposed the boundary designation report recommendation that maintains the existing DPA Boundary in the area of the Border Street South and Border Street Central planning units and requested to remove these planning units from the DPA. These commenters expressed concern that preserving the DPA boundary in these areas limits other business opportunities from thriving. In fact, the purpose of the DPA boundary review and any resulting modifications is to strengthen Boston's working port and water-dependent industry by continuing to preserve lands and waters if they possess the ability to provide areas for water-dependent industry. There was also a sentiment that the Border Street Central and Border Street South planning units should not continue to be restricted to marine industrial uses when the areas have not recently supported successful water-dependent industrial business operations. This characterization is inaccurate, as demonstrated by the presence of water-dependent industrial uses currently and in the recent past in each area. Moreover, the lack of maritime industry within a planning unit is not justification to modify the DPA boundary on its own. In order for the DPA boundary to be modified, the area under review must be eligible for review and must not meet the designation standards for DPA lands and waters. As discussed, Border Street Central is not eligible for review and Border Street South meets the designation criteria. Further, the DPA boundary review and regulatory framework do not authorize any future use, specific redevelopment, or other elements of future redevelopment - these matters are the subject of other jurisdictions, authorities, and review. The DPA program seeks to preserve and enhance the capacity of the DPAs to accommodate existing and future water-dependent industrial uses. Preserving eligible land and water areas is critical to supporting the long-term sustainability of water-dependent industrial industry in the Commonwealth.

Comments from the Mayor and the City of Boston's Planning and Development Agency (BPDA) advocated for the need to reimagine the East Boston waterfront and modify the DPA boundary to accommodate uses that would meet the needs of the local community and the City including affordable housing, commercial development, climate resilient infrastructure and public access. CZM applauds the inclusive local planning processes which have engaged local residents and stakeholders in visioning a future for the waterfront that could include these uses. CZM anticipates working with the City in upcoming planning process to consider how these uses can be accommodated within the East Boston neighborhood while also continuing to support the water-dependent industrial demands of the area and the Commonwealth.

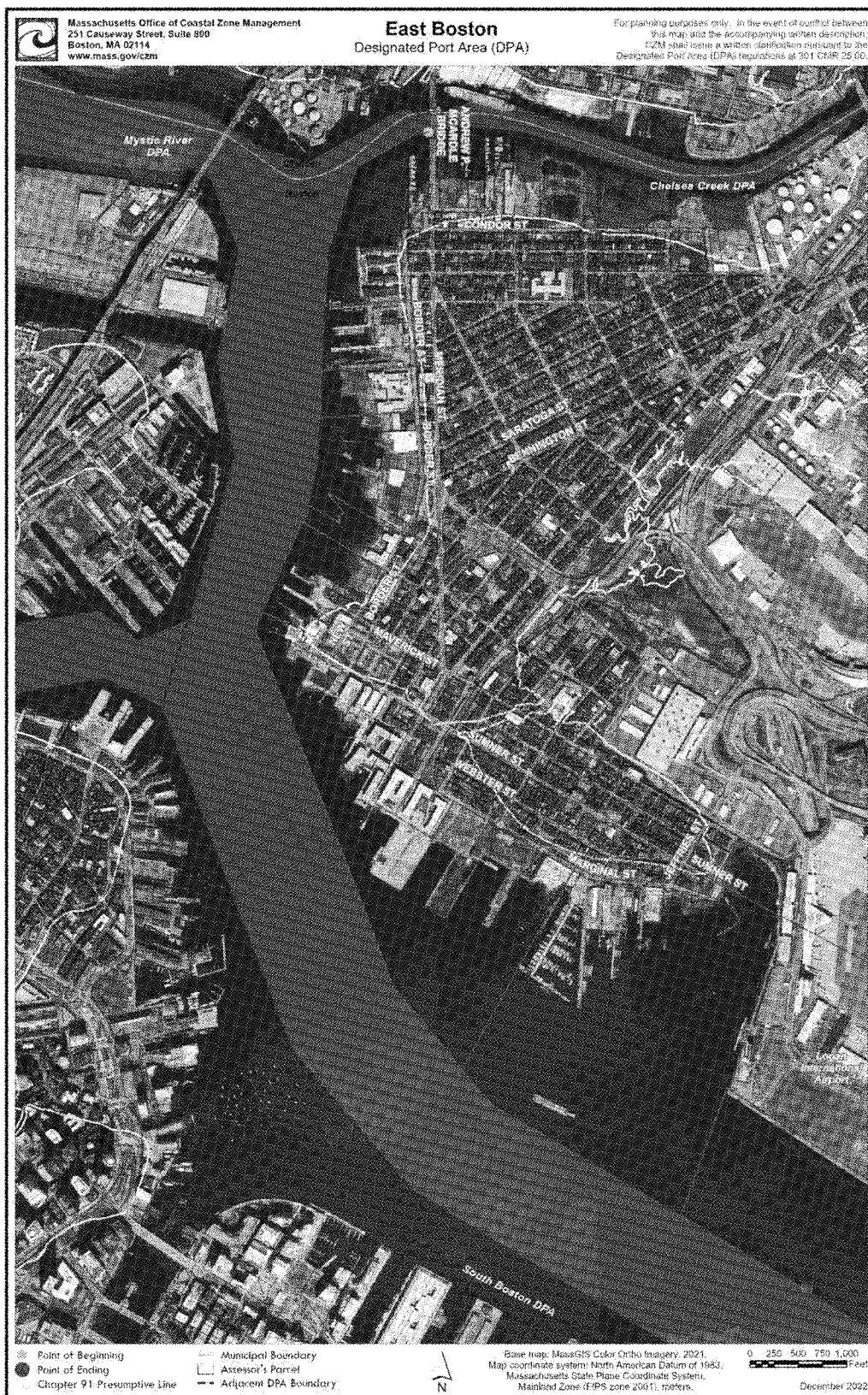
IV. DESIGNATION DECISION

In conclusion, effective today, I affirm the findings and proposed boundary modifications of the December 15, 2021 *Boundary Review of the East Boston Designated Port Area, Boston, MA* designation report and hereby determine that, pursuant to 301 CMR 25.03(6), the East Boston DPA boundary shall be modified, such that the Jeffries Point planning unit, as well as the sections of Jeffries, Marginal, and Sumner Streets that serve these parcels, will be removed from the East Boston DPA. However, the water area adjacent to this planning unit will remain in the East Boston DPA. As each DPA boundary review is based upon the characteristics of the areas of land or water under review, the conclusions of this decision are unique to the portions of the East Boston DPA subject to this boundary review.

The resulting total area of the East Boston DPA subject to this review decreases from 97.18 acres to 88.57 acres. The new boundary of the East Boston DPA is depicted on the attached map, described in the attached boundary description, and available in electronic format from CZM.



Lisa Berry Engler, Director



East Boston Designated Port Area

An area of land and water within Boston Harbor and located in the municipality of (East) Boston in the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the westerly line of the Andrew P. McArdle Bascule Bridge formed by the intersection of the easterly line of Parcel 0103680001ⁱ and the southerly line of the federal navigation channelⁱⁱ in the municipality of Boston;

Thence westerly along the southerly line, southwesterly along the southeasterly line, and southerly along the easterly line of the federal navigation channelⁱⁱ to the intersection of said line and the westerly projection of the northernmost line of Parcel 0103676001;ⁱ

Thence easterly along the westerly projection of the northernmost line of Parcel 0103676001ⁱ and continuing along the northernmost line of said parcel to the intersection of the easterly projection of said line and the easterly line of Border Street;

Thence southerly along the easterly line of Border Street to the intersection of said line and the easterly projection of the southerly line of Parcel 0103671000;ⁱ

Thence westerly along the easterly projection of the southerly line of Parcel 0103671000ⁱ and continuing along the southern boundary of said parcel to the intersection of the westerly projection of said line and the easterly line of the federal navigation channel;ⁱⁱ

Thence southerly along the easterly line of the federal navigation channelⁱⁱ to the intersection of said line and the westerly projection of the southerly line of Parcel 0103668000;ⁱ

Thence easterly along the westerly projection of the southerly line of Parcel 0103668000ⁱ and continuing along the southerly line of said parcel to the intersection of the easterly projection of said line and the easterly line of Border Street;

Thence southerly along the easterly line of Border Street to the intersection of said line and the southeasterly projection of the northeasterly line of Parcel 0105414000;ⁱ

Thence northwesterly along the southeasterly projection of the northeasterly line of Parcel 0105414000ⁱ and continuing along the northeasterly line of said parcel to the northerly corner of said parcel;

Thence generally southerly along the northwestern boundary of Parcel 0105414000ⁱ to the intersection of said line and the northeasterly line of Parcel 0105413000;ⁱ

Thence northwesterly along the northeasterly line of Parcel 0105413000ⁱ to the intersection of the northwesterly projection of said line and the easterly line of the federal navigation channel;ⁱⁱ

Thence southerly along the easterly line of the federal navigation channelⁱⁱ to the intersection of said line and the northwesterly projection of a line constructed parallel to and approximately 10 feet northeasterly of the northeasterly line of Parcel 0105412003;ⁱ

Thence southeasterly along the northwesterly projection of a line constructed parallel to and approximately 10 feet northeasterly of the northeasterly line of Parcel 0105412003ⁱ to the intersection of the southeasterly projection of said line and the southeasterly line of Border Street;

Thence southwesterly along the southeasterly line of Border Street to the intersection of the southwesterly projection of said line and the southwesterly line of Maverick Street;

Thence northwesterly along the southwesterly line of Maverick Street to the intersection of the northwesterly projection of said line and the southeasterly line of New Street;

Thence southwesterly along the southeasterly line of New Street to the intersection of said line and the southeasterly projection of the northeasterly line of Parcel 0105410000;ⁱ

Thence northwesterly along the southeasterly projection of the northeasterly line of Parcel 0105410000ⁱ and continuing northwesterly along the northeasterly line, westerly along the northerly line, and southwesterly along the northwesterly line of said parcel to the intersection of said line and the northeasterly line of Parcel 0105409000;ⁱ

Thence northwesterly along the northeasterly line of Parcel 0105409000ⁱ to the intersection of said line and the shoreline;ⁱⁱⁱ

Thence southwesterly, southeasterly, and southwesterly along the shorelineⁱⁱⁱ to the intersection of said line and the northeasterly line of Parcel 0105408000;ⁱ

Thence northwesterly along the northeasterly line of Parcel 0105408000ⁱ to the intersection of the northwesterly projection of said line and the easterly line of the federal navigation channel;ⁱⁱ

Thence southerly along the easterly line of the federal navigation channelⁱⁱ to the intersection of said line and the southwesterly projection of the southeasterly side of the existing piling pier, formerly shown as Pier 5 on the 46th edition of National Oceanic and Atmospheric Administration (NOAA) Chart #13272^{iv} (dated April 15, 2000) and as shown on the Massachusetts Office of Geographic Information (MassGIS) ortho imagery;^v

Thence northeasterly along the southwesterly projection of the southeasterly side of the existing piling pier, formerly shown as Pier 5 on the 46th edition of NOAA Chart #13272^{iv} (dated April 15, 2000) and as shown on the MassGIS ortho imagery,^v to the southeasterly corner of said pier;

Thence northeasterly along the southeasterly side and northwesterly along the northeasterly side of the existing piling pier, formerly shown as Pier 5 on the 46th edition of NOAA Chart #13272^{iv} (dated April 15, 2000) and as shown on the MassGIS ortho imagery,^v to the intersection of said pier and the shoreline;ⁱⁱⁱ

Thence generally northeasterly along the shoreline,ⁱⁱⁱ including the small cove, to the intersection of said shoreline and the southwesterly projection of the southeasterly line of Parcel 0104684000;ⁱ

Thence northeasterly along the southwesterly projection of the southeasterly line of Parcel 0104684000ⁱ to the intersection of said line and the northerly line of Marginal Street;

Thence easterly along the northerly line of Marginal Street to the intersection of said line and the southeasterly corner of Parcel 0104669000;ⁱ

Thence southerly crossing Marginal Street by a straight line to the northwesterly corner of Parcel 0104442000;ⁱ

Thence southerly along the westerly line of Parcel 0104442000;ⁱ to the intersection of said line and the shoreline;ⁱⁱⁱ

Thence generally easterly along the shoreline,ⁱⁱⁱ to the intersection of said shoreline and the northwesterly line of Parcel 0104420000ⁱ at approximate location N42°21'50.6" W71°01'43.0";

Thence northeasterly along the northwesterly line of Parcel 0104420000ⁱ to the intersection of said line and the southwesterly line of Parcel 0104419000;ⁱ

Thence southeasterly along the southwesterly line of Parcel 0104419000ⁱ and thence to the intersection of the southeasterly projection of the southwesterly line of Parcel 0104419000 and the armored shorelineⁱⁱⁱ on the westerly side of the Massachusetts Port Authority's (Massport) Logan International Airport;

Thence generally southerly along the westerly armored shorelineⁱⁱⁱ of Massport's Logan International Airport and around the Logan Airport Ferry Terminal pier and wharf, as shown on the MassGIS ortho imagery,^v to the southwesterly corner of said armored shoreline;

Thence southerly along the southerly projection of the westerly armored shorelineⁱⁱⁱ of Massport's Logan International Airport to the intersection of said line and the northeasterly line of the federal navigation channelⁱⁱ located at approximate coordinates N42°21'16.5" W71°01'48.0", NAD83;

Thence southeasterly along the northeasterly line of the federal navigation channelⁱⁱ to the point of ending coincident with the point of beginning of the South Boston Designated Port Area Boundary, located at the intersection of said line and a line projected due south from Navigation Buoy 29ⁱⁱ (W Or "29" Fl 4s at approximate coordinates N42°21'20.4" W71°01'30.8", NAD83) at approximate coordinates N42°21'08.9" W71°01'30.8", NAD83.

The above described East Boston Designated Port Area is shown generally on a plan entitled: "East Boston Designated Port Area (DPA)," Scale: 1" = 900' +/-, Prepared by: Massachusetts Office of Coastal Zone Management, 251 Causeway Street, Suite 800, Boston, MA 02114, Date: March 2011.

Please note: In the event of conflict between this written description and the accompanying map, CZM shall issue a written clarification pursuant to the Designated Port Area (DPA) regulations at 301 CMR 25.00.

ⁱ The City of Boston Assessor's parcel data were extracted from the Massachusetts Office of Geographic Information (MassGIS) Assessors' Parcels data layer, which is a collection compiled by MassGIS of digital parcel data that were provided by municipalities and regional planning agencies. The data were last updated for Boston in 2003 and were accessed March 10, 2010, from the MassGIS website (<http://www.mass.gov/mgis/parcels.htm>). Please note: These data were used for planning purposes only and should not be used for, and are not intended for, survey and engineering purposes. The data do not take the place of a legal survey or other primary source documentation.

ⁱⁱ U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of Coast Survey (OCS). *Boston Inner Harbor* [nautical chart]. 50th ed. 1:10,000. Chart #13272. Washington, D.C.: DOC, NOAA, NOS, OCS, Aug. 2008.

ⁱⁱⁱ Refers to the present mean high water shoreline. See M.G.L. c. 91: Public Waterfront Act; 310 CMR 9.00: Waterways Regulations.

^{iv} U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of Coast Survey (OCS). *Boston Inner Harbor* [nautical chart]. 46th ed. 1:10,000. Chart #13272. Washington, D.C.: DOC, NOAA, NOS, OCS, Apr. 15, 2000. Online. OCS Historical Map and Chart Collection. Available at: http://historicalcharts.noaa.gov/historicals/historical_zoom.asp (accessed Aug. 20, 2009).

^v MassGIS. "1:5,000 Color Ortho Imagery" [aerial photograph]. 1:5,000. Boston, MA: MassGIS, Apr. 2001. Available at: <http://www.mass.gov/mgis/colororthos2001.htm>.