

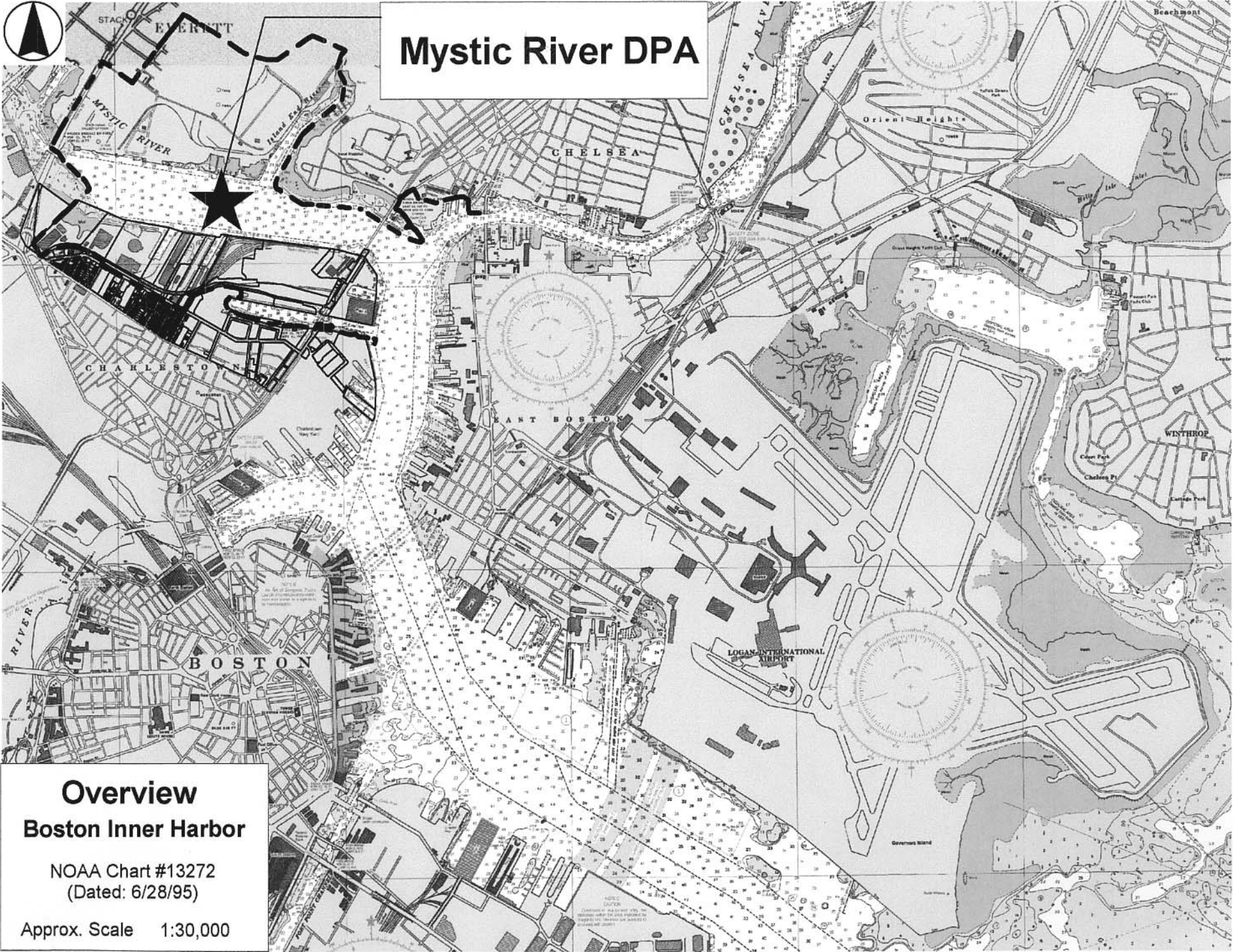
**Boundary Review of the Mystic River Designated Port Area,
Charlestown Shore**

**Executive Office of Environmental Affairs
Office of Coastal Zone Management**

October 9, 2002



Mystic River DPA



Overview
Boston Inner Harbor

NOAA Chart #13272
(Dated: 6/28/95)

Approx. Scale 1:30,000

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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)]. Congress identified a number of coastal resources of interest and encouraged states to develop coastal resource management plans and policies enforceable under state law to address these interests.

In response to the CZMA, the Commonwealth established the Massachusetts Office of Coastal Zone Management (CZM) and developed its coastal zone management plan, which was approved by the National Oceanic and Atmospheric Administration in 1978. Included in that plan, as amended, are CZM's program policies with underlying state statutory and regulatory authorities, which articulate Massachusetts' priorities for protection and management of its coastal resources. CZM's policies address water quality, marine habitat, protected areas, coastal hazards, port and harbor infrastructure, public access, energy, ocean resources, and growth management.

One of the interests established by the Congress in the CZMA is the promotion of economic uses of coastal resources. Reflecting this interest, CZM and the Massachusetts Department of Environmental Protection Waterways Program established the state's Designated Ports Areas to protect and promote the use of existing waterfront infrastructure. CZM's Ports Policy #3 seeks to:

Preserve and enhance the capacity of Designated Port Areas to accommodate water-dependent industrial uses, and prevent the exclusion of such uses from tidelands and any other DPA lands over which a state agency exerts control by virtue of ownership, regulatory authority, or other legal jurisdiction.

Designated Port Areas (DPAs) are the primary working waterfronts within the Commonwealth's developed coastal harbors. DPAs were established on the fundamental premise that it makes both good environmental and good economic sense to encourage maritime business development within harbor areas that have already been altered extensively – at great public expense – to meet the special operational and physical requirements of port-related commerce. Thus, the central goal of CZM's Ports Policy #3 is to preserve and enhance the capacity of DPAs to accommodate both existing and future water-dependent industrial use.

The purpose of the DPA boundary review process is to determine whether a DPA boundary should remain as it is currently constituted or whether it should be modified to more appropriately protect and promote contemporary state tidelands policy objectives related to DPAs. DPA boundaries are reviewed in accordance with the procedures set forth at 301 CMR 25.00.

In response to a request from the proponents of proposed artists live/work space at the Nancy Sales Building in the Fall of 2001, CZM began a boundary review of the Charlestown shore of the Mystic River DPA pursuant to regulations governing the Designation Port Areas at 301 CMR 25.00¹. (See **Figure 1.**) In January of 2002, two other property owners within the DPA requested that their properties be removed from the DPA. This review, therefore, is the result of requests from three property owners to have the following five specific parcels located along the Charlestown shore of the DPA reviewed for consistency with the DPA designation standards at 301 CMR 25.04. (See **Figure 2.**)

Parcel	Owner
529 Main Street “Schrafft Center”	Schraffts Nominee Trust, John J. Flatley and Gregory D. Stoye, Trustees
465 Medford Street	465 Medford Nominee Trust, John J. Flatley and Gregory D. Stoye, Trustees
425 Medford Street	425 Medford Nominee Trust, John J. Flatley and Gregory D. Stoye, Trustees
261-287 Medford Street “Nancy Sales Property”	Suffolk Medford Realty Trust, Michael J. Rauseo, Trustee
30-50 Terminal Street “Charlestown Commerce Center”	CCC Realty Trust, Donato Pizzuti, Trustee

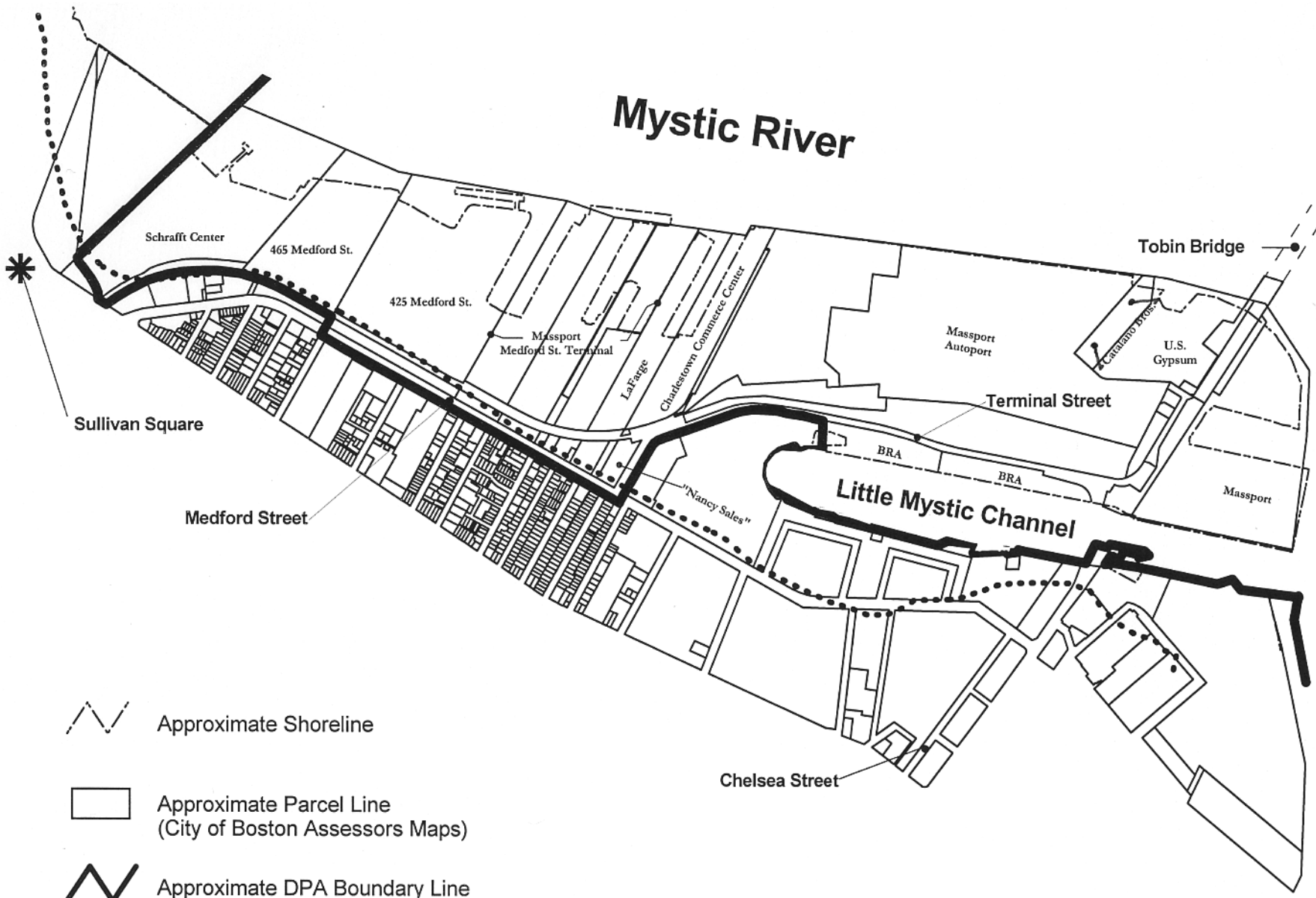
Report Structure and Process





This report is organized to provide an overview of CZM’s DPA Program and related Department of Environmental Protection (DEP) Chapter 91 policy and regulations; to describe the physical conditions of the DPA in general and the subject properties in particular; to evaluate the DPA and subject properties in accordance with the Designation Standards; to respond to comments from the owners of the subject properties; and last, to discuss CZM’s conclusions and recommendations for the configuration of the DPA.

At the completion of our review, CZM will publish notice of this report in the Environmental Monitor for a thirty-day public comment period, hold a public hearing, and issue its decision, pursuant to 301 CMR 25.03(4) and (5) within 60 days from the close of public comment.

Pursuant to 301 CMR 25.03(3)(b), public information meetings to present the proposed boundary review process and to solicit public comment were held on August 21 and September 12, 2001 specific to the Nancy Sales petition, and on January 17, 2002, specific to the Charlestown Commerce Center and the Flatley properties. Over the course of the study, CZM received approximately 25 comment letters addressing the Nancy

¹ For the purposes of this report, when the DPA under review is discussed, “DPA” shall mean the Charlestown shore of the Mystic River DPA unless otherwise indicated.

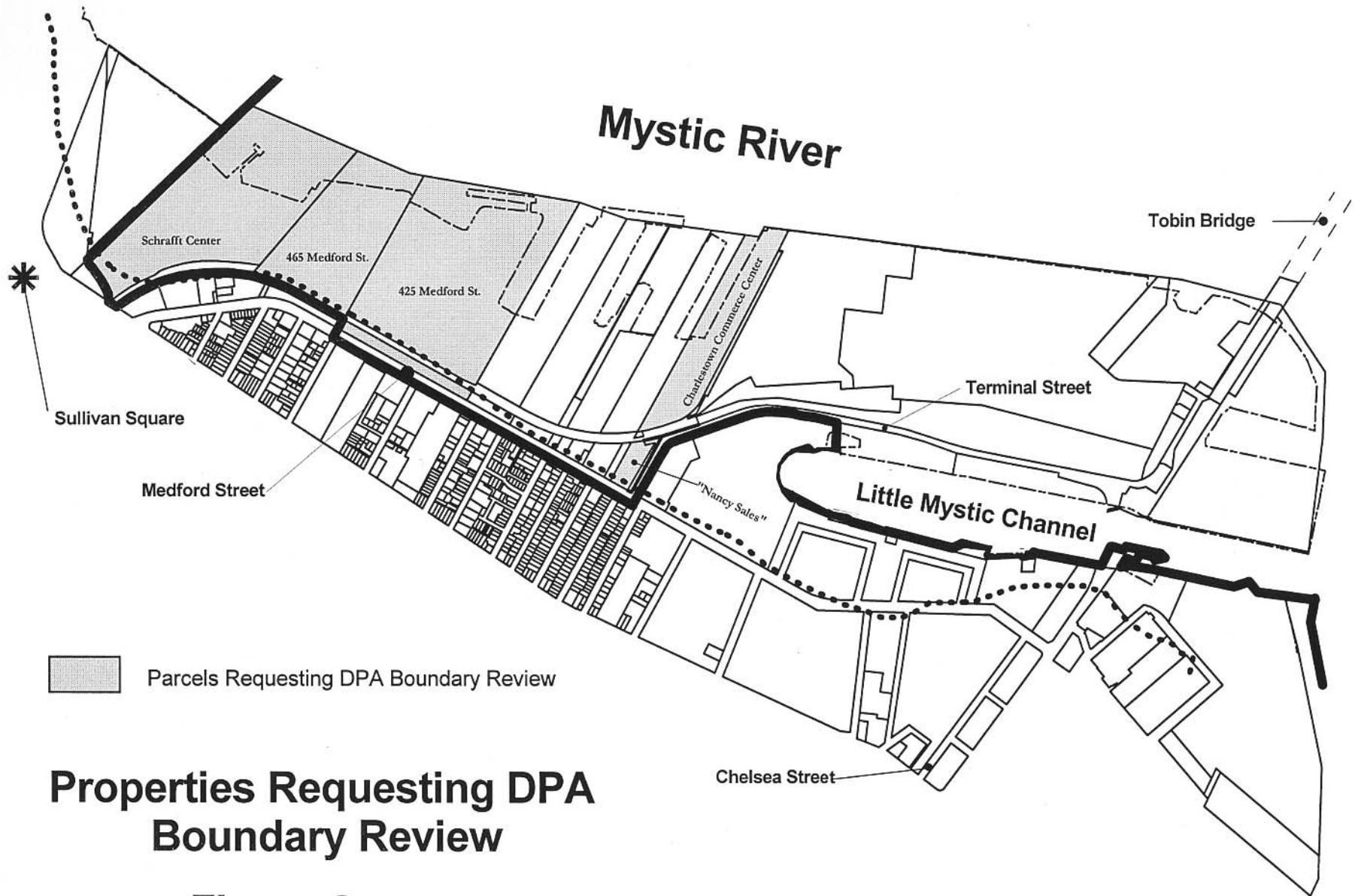


-  Approximate Shoreline
-  Approximate Parcel Line
(City of Boston Assessors Maps)
-  Approximate DPA Boundary Line
-  Historic High Water Line
(Approximate Location)



**Mystic River DPA
- Charlestown -
Figure 1**

Scale: 1" = 800' +/-



Properties Requesting DPA Boundary Review

Figure 2

Scale: 1" = 800' +/-



Sales and Charlestown Commerce Center properties and approximately 16 comment letters addressing the Flatley properties. Commenters included members of the public, local neighborhood organizations, public interest groups, City and state agencies, businesses, city government, and the state legislature.

To facilitate the boundary review process, the petitioners provided additional information, at CZM's request, in the form of detailed site plans, narrative parcel-specific use histories, building descriptions and zoning histories. CZM held follow-up fact-finding meetings with all petitioners, Massport, DEP, and the maritime industrial businesses currently operating within the DPA.

Throughout the course of this boundary review study, CZM received extensive formal and informal comment from DPA property owners, the public, elected representatives, citizens, neighborhood groups, and City and state agencies. CZM has carefully considered all comment, regardless of when it was received, in the context of the policy and regulatory framework that guides this review. Comments that provided substantive information regarding the history, uses, constraints, impacts, and other features of either the existing DPA or in support for, or opposition to, proposed changes, have been particularly useful to our work. CZM appreciates the time that all commenters have taken to participate in the boundary review process.

II. THE DPA PROGRAM

Purpose

The primary purpose of the DPA program is to ensure that state ports-related policy objectives are promoted actively within those geographic areas that support water-dependent industrial uses that contribute to the Commonwealth's and, indeed, the region's maritime economy. As discussed in detail below, water-dependent industrial uses include a broad range of uses, including, through the integrated application of the related Municipal Harbor Plan regulations and Chapter 91 Waterways regulations, uses beyond those typically associated with maritime industry. DPA uses require infrastructure comprised of three "essential components": a waterway and associated developed waterfront; backland area capable of supporting industrial facilities and operations; and transportation and public utilities similarly capable of supporting industrial operations. [301 CMR 25.01(2)]

Because these attributes are "found in a very limited and diminishing portion of the coastal zone..."

[a]s a matter of state policy, it is not desirable to allow these scarce and non-renewable resources of the marine economy to be irretrievably committed to, or otherwise significantly impaired by, non-industrial or nonwater-dependent types of development that enjoy far greater range of locational options. [301 CMR 25.01(2)]

To achieve port policy objectives, the CZM Program uses the related DPA planning and regulatory tools (*e.g.*, boundary regulations, Municipal Harbor Plans, DPA Master Plans), to "encourage water-dependent industrial use and to prohibit, on tidelands subject to the jurisdiction of M.G.L. c.91, other uses...." [301 CMR 25.01(2)]

Water-dependent Industrial Use

For those portions of DPAs within Chapter 91 jurisdiction, the Waterways Regulations (310 CMR 9.00), while ensuring that state tideland policy objectives are achieved, also provide flexibility through the definition of water-dependent industrial use. The DPA regulations at 301 CMR 25.02 define water-dependent industrial uses to be "any use found to be such in compliance with 310 CMR 9.12(2)(b)" [the Waterways regulations]. The Waterways regulations definition of "water-dependent industrial use" includes those uses that rely directly on a functional connection to the water to exist, including, for example, marine terminals, commercial fishing facilities, marine repair and construction, and manufacturing facilities that rely on bulk receipt of goods by waterborne transportation.

In addition, recognizing that the productivity of DPAs can be enhanced by a multiplicity of related uses, the Waterways regulations permit a range of both Temporary

Uses and Supporting DPA uses, expanding allowable land use mixes within DPAs.

Temporary uses include “warehousing, trucking, parking, and other industrial and transportation uses which occupy vacant space...in a [DPA]” provided such uses do not entail “significant structural alteration.” [310 CMR 9.02] Supporting DPA Uses, as defined at 310 CMR 9.02, include “industrial or commercial use ... that provides water-dependent industrial use in the DPA with direct economic or operational support...” and must be compatible with activities characteristic of a working waterfront and its backlands. [310 CMR 9.02] Supporting uses that are presumed compatible include “storefront retail and service facilities; shops operated by self-employed tradespersons; eating and drinking establishments with limited seating, and smaller scale administrative offices.” [310 CMR 9.02] The regulations also identify several uses that are inherently incompatible including “...transient group quarters such as hotels/motels...recreational boating facilities...and new buildings devoted primarily to office use.” [310 CMR 9.02] Residential uses, due to their obvious incompatibility with the nature of industrial operation, are not allowed in DPAs. Beyond these categorical use prohibitions, determinations relative to compatibility of proposed Supporting DPA Uses consider the type, scale, duration, operation, and other relevant aspects of the industrial or commercial use. The allowable distribution of Supporting DPA uses is generally limited to 25% of the total project area, unless otherwise modified by a DPA Master Plan.

A DPA Master Plan, “the component of a municipal harbor plan pertaining to lands and waters of a DPA,” [301 CMR 23.02] provides substantive guidance for the application of Waterways DPA requirements. Through a DPA Master Plan, the types of uses allowable in a DPA, their location within the DPA, and their allocation across the DPA can be tailored to meet the individual harbor goals and needs. Using a focused and public planning process, municipalities can voluntarily develop flexible strategies to provide specific and enforceable guidance to DEP that will capitalize on the unique infrastructure and geographic characteristics of these land areas to promote maritime industry in the context of a broader vision for the harbor.

Parcels Not Eligible for Review

Certain parcels within the DPA are not eligible for review by virtue of their location, configuration and/or current use. Pursuant to 301 CMR 25.03(2), the following areas are not eligible for review:

- (a) any area that has been the subject of a designation decision under 301 CMR 25.03(5) within the previous five years, except upon a demonstration by a requesting party that substantial and rapid change has occurred in circumstances affecting the suitability of the area to accommodate water-dependent industrial use, as governed by the designation standards set forth in 301 CMR 25.04;*
- (b) any area within a DPA on which water-dependent industrial use has occurred within the previous five-years, unless the use:*
 - 1. did not take place on a reasonable continuous basis, for a substantial period time; or*

2. *has been or will be discontinued voluntarily by the user*

- (a) *any area within a DPA that is recommended for exclusion from review by the City Council or other municipal body with authority to enact zoning, unless the area is the site of a proposed project which is exempt by law from compliance with zoning or has been granted relief from the use restrictions applicable under zoning; and*
- (d) *any land area within a DPA that is entirely bounded by existing DPA lands and/or by any waters.*

None of the properties that have petitioned for this boundary review meet these criteria.

Designation Standards

The DPA boundary regulations stipulate that an area shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with the specific criteria governing its suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question.

Boundary reviews are guided by the Commentary section of the regulations at 301 CMR 25.04(3) that recognizes that the ability of a DPA to foster maritime industry typically depends on an aggregation of the unique characteristics of individual parcels and that individual parcels must be evaluated in the context of their contribution to the larger DPA.

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.
[301 CMR 25.04(3)]

Therefore, the regulations direct CZM to “apply the...criteria in the context of *groups of parcels* that form coherent planning units....” (Emphasis added.)

Thus, while the DPA boundary review necessarily assesses and evaluates the physical characteristics of individual properties, the standard for determining whether or not they should remain in the DPA is the “overall suitability to accommodate water-dependent industrial use” within the context of the broader geography of the DPA.

In the case of a land area, the designation criteria are as follows:

- (a) *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 the regulations [at 301 CMR 25.04(1)];*

- (b) the land area must lie in reasonable proximity to:*
- 1. established road or rail links leading to major trunk or arterial routes;*
- and*
- 2. water and sewer facilities capable of supporting general industrial use;*
- (c) 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; and*
- (d) the land area must exhibit a use character that is predominantly 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.*

For a water area, the designation criteria are as follows:

- (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 in the regulations [at 301 CMR 25.04(2)].*
- (b) the water area must be of a configuration, size, and location that is appropriate for the maneuvering or berthing of vessels, the placement of intake/outfall structures, or other activities involving direct utilization of the water. At a minimum, the DPA shall include:*
- 1. all channels (including sloped sides necessary to create actual depth), and mooring and turnaround areas within or serving as access channels to land or water areas meeting the designation standards in the regulations [at 301 CMR 25.04]; and*
 - 2. any water area lying between an entrance or main channel and any land or water areas meeting the designation standards in the regulations [at 301 CMR 25.04] that extend channelward from such areas.*

III. ANALYSIS OF ATTRIBUTES

General Physical Characteristics

As described by the Charlestown Business Association,

Charlestown has been the ‘business place to be’ for more than 350 years...[T]he town has been blessed with excellent waterfront; fine access by land and water; bridges, highways, and later, rail and subway lines; and most importantly, a great location.²

Similarly, this could also be a description of the attributes that determine an area’s suitability for inclusion in a Designated Port Area, making it no coincidence that the Mystic River DPA includes the Charlestown shore. For the past 350+ years, businesses along Charlestown’s working waterfront have taken full advantage of the benefits of prime waterfront location, access and infrastructure, greatly enriching the interests of the local community, the region, and the country.

The area of the DPA, land and water combined, is approximately 193 acres. The watershed associated with those properties comprising the Charlestown shore of the DPA is approximately 40 acres. The land area comprises approximately 153 acres along approximately 1.9 miles of shoreline of the Mystic River, Inner Confluence, and Little Mystic Channel. The land/water border of the DPA is approximately 1.75 miles long, and runs for approximately 3,200 feet along the south side of the Little Mystic Channel, cutting across the western edge of the Boston Redevelopment Authority (BRA) property to Terminal Street. From there it runs for approximately 1,200 feet east along Terminal Street until it meets Medford Street, then approximately 2,000 feet along Medford Street until it meets the line of the boundary between 465 and 425 Medford Street extended, where it cuts in approximately 100 feet to the northeast to meet the Boston and Maine railroad property; the line then follows the southern edge of the railroad property for approximately 1,400 feet until it parallels the southwestern edge of the Schrafft Center where it turns and follows a line approximately 200 feet to the northwest to the property line between the Ryan Playground and the Schrafft Center, where it turns northeast and runs approximately 1,000 feet to the Mystic River shoreline. (See **Figure 1**.)

Almost all of the current Charlestown DPA land area is comprised of filled tidelands, reflecting a working waterfront that has been continually built out over the past three and a half centuries to provide access for shipping. The Mystic River area, generally east of what is now the Charlestown Commerce Center and north of what became the Little Mystic Channel, was filled by the Mystic River Corporation to create terminals serviced by the Boston & Lowell (later the Boston & Maine) Railroad. Piers and wharves were also constructed and expanded along the south side of the Little Mystic, and along Medford Street to accommodate growing exports of pond ice, apples,

²charlestownbusiness.com, *Charlestown’s Business History* (Charlestown Business Association, P.O. Box 290303, Charlestown, MA 02129)

livestock, grain, and lumber, and imports of tropical lumber for the furniture business, and coal for the railroad.³

The filling of tidelands was vital to the fortunes of Charlestown merchants. Shippers needing to reach the navigable waters of the Mystic sought permission from the Legislature to fill out to low water. Responding to the influence of the railroad as the prime developer of the industrial waterfront, bulk cargoes, which require handling space and rail access, began to dominate Charlestown commerce. Beginning in the 1900s, the port handled high volume cargoes of grain, coal, wood pulp, cocoa beans, Egyptian cotton, and sugar⁴. Under the headline “Many Opportunities for Shippers at Charlestown,” in the *Boston Port Reporter* in 1947, Piers 46 to 50 at the juncture of the Main Channel and the Mystic River were advertised as importing woodpulp and newsprint from Sweden, Norway and Finland, sisal from India, tea and hemp from the East Indies, and granite from Sweden, and exporting sheet steel to Finland, bagging to Africa, and sugar to France and Mediterranean ports.⁵

The historic influences on the evolution of the contemporary port are immediately apparent in the physical characteristics of the DPA today. (See **Figure 3** for an aerial view of the DPA circa 1980.) The DPA can be currently characterized as long and relatively narrow, generally one parcel deep, with significant open space for bulk cargo handling that requires large lay-down and handling areas, access to rail and truck routes, and parking. Bulk cargo continues to play a significant role for current DPA businesses engaged in traditional marine industrial port operations relying on shipments of automobiles, cement, and gypsum, and the importing, assembling, and transshipping of heavy industrial machinery.

Although the DPA contains 45 parcels, a review of the City of Boston assessor’s records indicates that there are eight major landholders. These include:

- Schraffts Nominee Trust, 425 Medford Nominee Trust, and 465 Medford Nominee Trust, John J. Flatley and Gregory D. Stoye, Trustees (hereinafter “Flatley Company” or “Flatley Properties”)
- Massachusetts Port Authority
- CCC Realty Trust, Donato Pizzuti, Trustee (hereinafter “Charlestown Commerce Center” or “the Center”)
- US Gypsum, Inc.
- Catalano Brothers, Inc.
- LaFarge North America
- City of Boston, Boston Redevelopment Authority
- Suffolk Medford Realty Trust, Michael J. Rauseo, Trustee (hereinafter “Nancy Sales Property” or “Nancy Sales Building”)

³ W.H.Bunting, *Portrait of a Port, Boston, 1852-1914*, (the Belknap Press of Harvard University Press, Cambridge MA, and London, England, 1971), p.62. and charlestownbusiness.com, *op. cit.*

⁴ Arthur A. Lane, Peabody & Lane Shippers, personal communication, April 11, 2002.

⁵ *The Boston Port Reporter*, Volume I, September 1947, Number 4, p. 4.

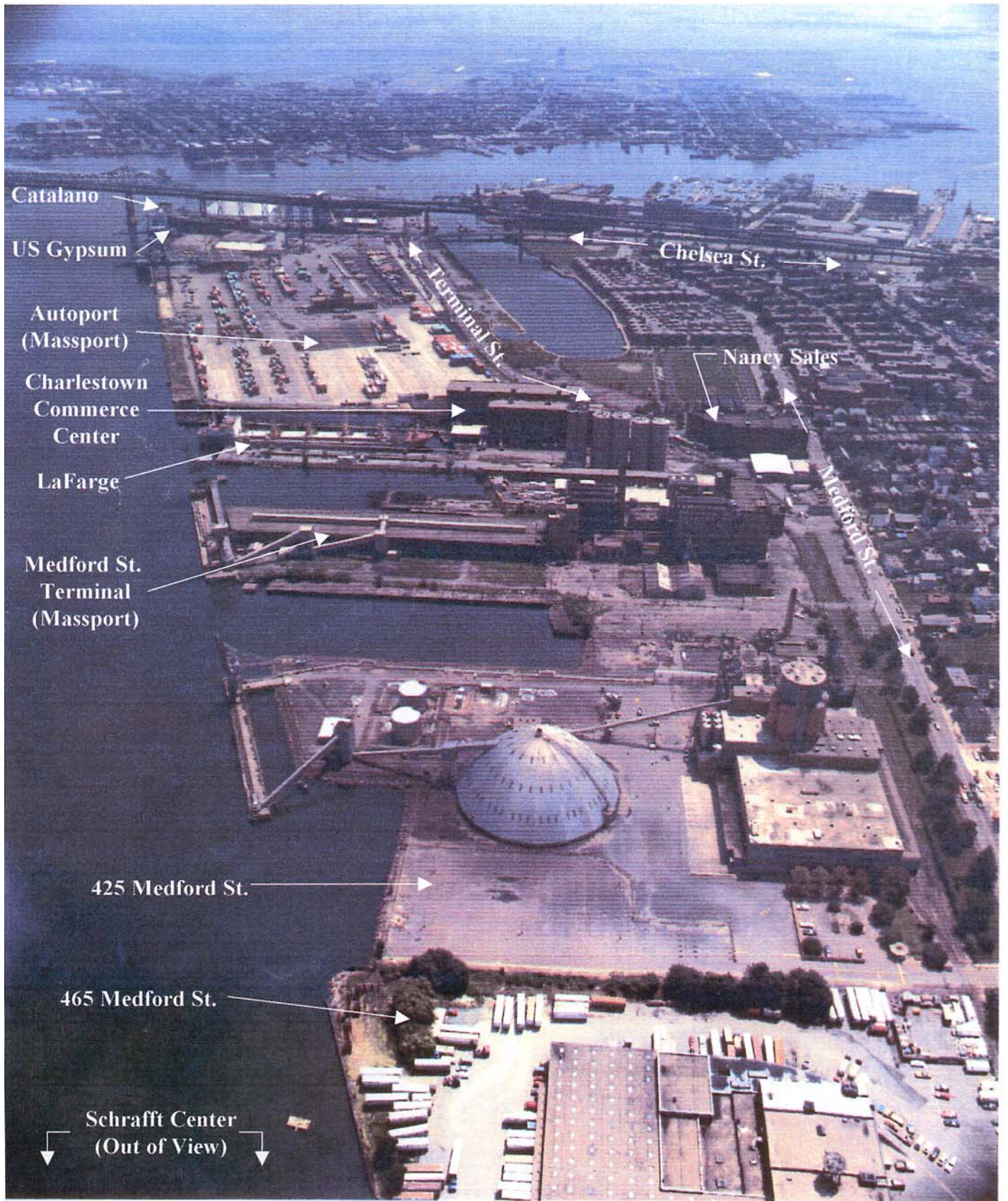


Figure 3

**Mystic River DPA
Charlestown – circa 1980**

The current distribution of land uses in the DPA can be generally characterized as core industrial uses, mixed industrial and commercial uses, and vacant or underutilized historical industrial use properties. The Schrafft Center, at the extreme west end of the DPA, is the only property given over entirely to non-industrial use. The majority of the DPA land area, or approximately 82%, is currently in maritime industrial or industrial use. While not distributed uniformly, maritime industrial uses generally increase in density moving west to east along the Mystic River. (See **Figure 4**) The Massachusetts Port Authority (Massport), created in 1956 to manage public port facilities in the interest of the Commonwealth, is the largest property owner in the DPA, leasing a significant acreage to a number of on-going maritime industrial industries. (See below.)

In general, the waterfront parcels maintain significant open space with only approximately 14% of the 153 acres of the DPA land occupied by structures. Most of the properties are characterized by a developed waterfront (pier or bulkhead, in various conditions of repair) paved open space, and a large industrial-type structure (with the size depending on the historical use) located towards the landward side of the property and used typically for storage, processing, shipment and administration. At the west end of the DPA, properties that were historically in industrial or maritime industrial use are now in authorized and unauthorized commercial use, with open space used for parking, temporary industrial lay-down, or are vacant. Of the buildings on the two properties that do not have significant open space, and are not currently in marine industrial use, one is vacant and the other is underutilized.

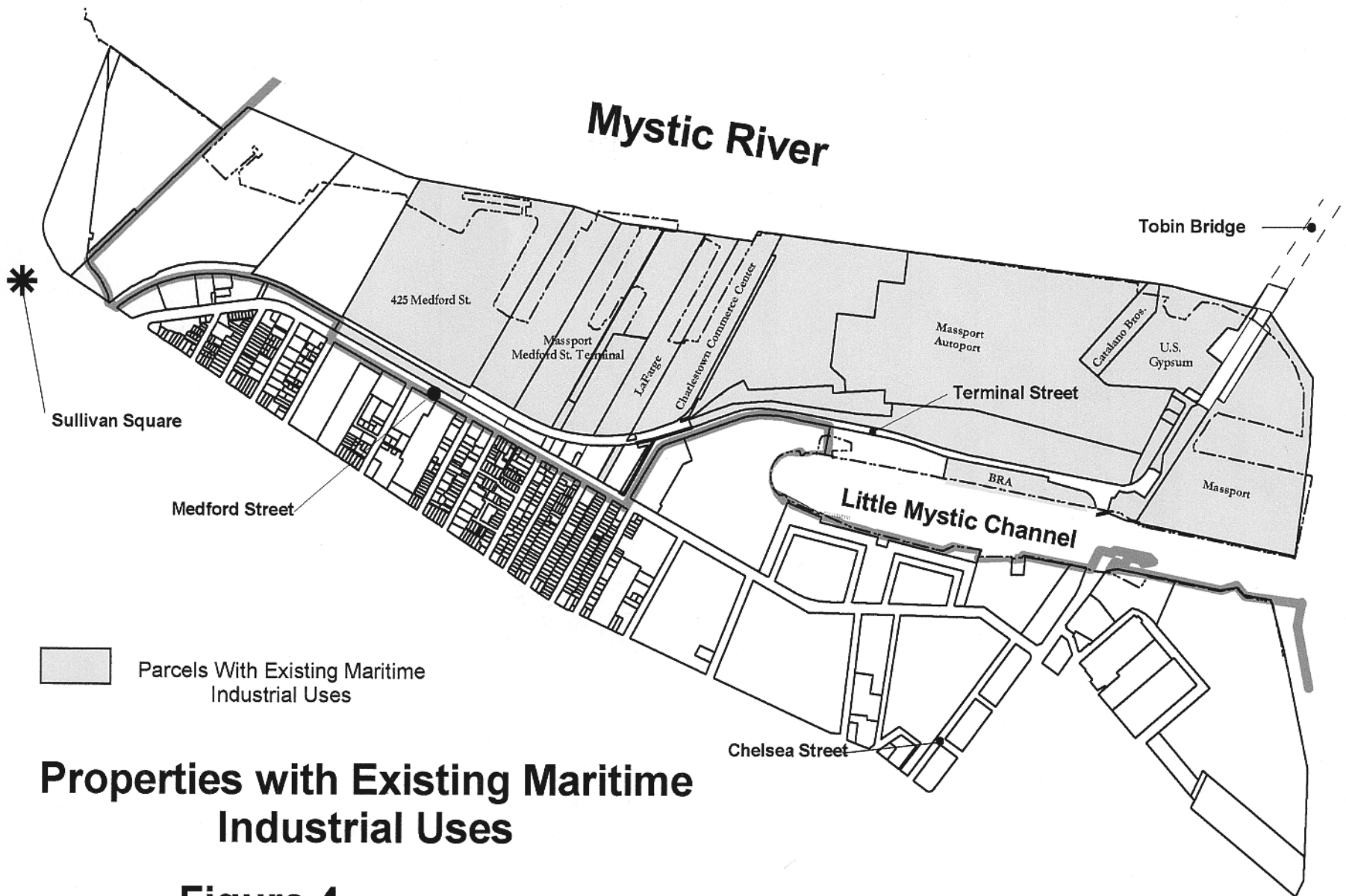
The three principal abutters to the DPA are the Charlestown neighborhood along the southwestern side of Medford Street, the Charlestown High School and athletic fields along Terminal Street, and the CharlesNewtown housing development along the southern shore of the Little Mystic Channel.

Truck and Rail Access

The DPA is proximate to the interstate highway system. (See **Figure 5**.) Truck access to Route 93 South only is available via Chelsea Street, the Charlestown Bridge, and Causeway Street. Access to Route 93 North and South is available via Terminal Street, Medford Street, and Sullivan Square. The removal of access ramps to Route 93 at City Square associated with work on the Central Artery and load restrictions on the Charlestown Bridge currently restrict the Catalano Brothers Trucking Company's use of the Chelsea Street access to Route 93.⁶ Chelsea Street is used by car carriers from the Autoport. Commercial traffic is prohibited on Medford Street between Terminal Street and Chelsea Street. (See discussion of individual users, below, for more detail.)

The Boston and Maine Corporation (B&M), owned by Guilford Transportation, owns a rail line, the Mystic Wharf Branch, through the DPA. The rail line connects the waterfront to the yard located outside Somerville and provides for regional and national

⁶Letter from Fredric Catalano, Catalano Bros., Inc, to Thomas W. Skinner, CZM, February 28, 2002.



Properties with Existing Maritime Industrial Uses

Figure 4

Scale: 1" = 800' +/-



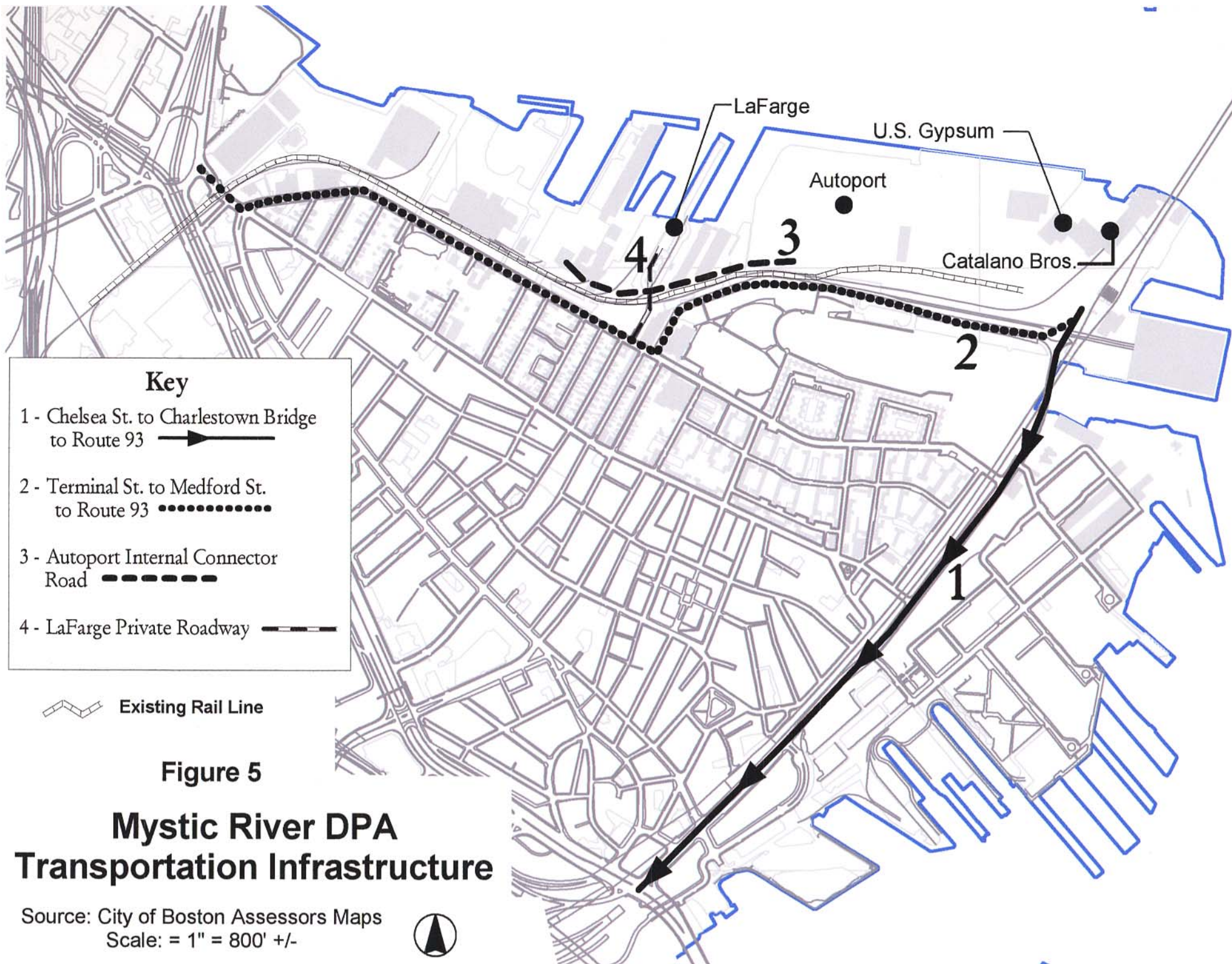


Figure 5

Mystic River DPA Transportation Infrastructure

Source: City of Boston Assessors Maps
Scale: = 1" = 800' +/-



rail service. In 2000, B&M had one customer on the line, US Gypsum, who received 27 carloads of sand, gypsum, flour grain, corn flour and plaster.⁷

Recently, B&M applied to the Surface Transportation Board (STB) to abandon and discontinue service between milepost 0.00 and milepost 1.45 along the Mystic Wharf Branch, citing a lack of current customers, the loss of former customers and the lack of planned port improvements that further reduces potential customers as the basis for seeking the abandonment. B&M added, "...the underlying value of this property for development consistent with other uses in the area is significant."⁸ Massport has opposed the proposed abandonment, and has requested that the STB find the property suitable for "other public use, specifically use as a future dedicated truck haul road or rail corridor serving the ...DPA...."⁹

CZM, pursuant to the interests of Ports Policy #3, asserted federal consistency jurisdiction pursuant to 301 CMR 21.00. The STB, in its December 2001 decision, stated that B&M can abandon the line provided that the Commonwealth be given 180 days to negotiate the purchase of the line from B&M, and that B&M not perform any salvage activities until it completes the CZM federal consistency review process.¹⁰ Massport is currently negotiating a fair market purchase price with B&M for the rail line. CZM has deferred its federal consistency review until this matter is resolved.

As early as 1990, the City of Boston, as a component of its planning initiatives for Charlestown and in response to community concerns about traffic, recognized the potential significance of the rail line as a transportation corridor that could alleviate the impact of commercial and industrial truck traffic on the Charlestown neighborhoods. Specifically, the construction of a haul road was anticipated in its *Harborpark Plan, City of Boston Municipal Harbor Plan*:

The [BRA], in conjunction with its planning effort in the Charlestown Navy Yard, has identified the need to construct a new roadway known as the Medford Street Bypass Road between Sullivan Square, and the proposed Gate 6 entrance to the Navy Yard. *This proposed route would largely pass through the working waterfront subdistricts of Charlestown and provide opportunity for improved roadway connections for truck transport to and from these subdistricts.* [emphasis added.] It is also expected to relieve traffic congestion in the City Square area of Charlestown. A landscaped buffer zone will be erected between the industrial waterfront districts north of Medford Street [in the DPA] and the residences south of Medford Street. The proposal will allow Medford Street which now carries truck traffic to be reconfigured as a neighborhood street which would improve the quality of life for residents abutting Medford Street. Truck,

⁷ Boston and Maine Corporation, *Application to Abandon and Discontinue Service*, STB Docket No. AB-32 (Sub No. 92), August 31, 2001.

⁸ *Ibid.*

⁹ Letter from Michael A. Leone, Massport, to Vernon A. Williams, Secretary, Surface Transportation Board, October 16, 2001.

¹⁰ Surface Transportation Board, *Decision*, STB Docket No. AB-32 (Sub-No. 92) Boston and Maine Corporation-Abandonment-in Suffolk County, MA, December 18,2001.

bus, and through traffic could be largely diverted from Medford Street onto the new bypass road. [Page 10]

In support of the bypass/haul road concept, the BRA commissioned a feasibility study that assessed a number of alternative configurations for traffic efficiency, and for impacts to existing business, neighborhoods, and existing infrastructure.¹¹ Following extensive analysis and discussion of the identified alternatives with local businesses and the community, the report recommends a preferred alternative that provides for two-way traffic parallel to and contiguous with the rail line. The preferred alternative requires relocating a section of the rail line at what are now the Flatley Company properties, and would require the reconfiguration of parking and traffic circulation on several of the DPA properties. The report notes that, while this alternative is most sensitive to impacts to existing businesses, it is also the most expensive of the alternatives due largely to the need for relocating the rail line. The total cost (in 1991 dollars), not including land acquisition and utilities, was estimated for conceptual purposes at approximately \$5 million.¹² There has been no further formal planning action on the haul road since the release of the study.

Waterside Attributes

The Boston Inner Harbor Channel is the access route by which all vessel traffic enters and reaches Boston Harbor, Chelsea Creek, and Mystic River destinations. (See **Figure 6.**) In 1998, the Massachusetts Port Authority in conjunction with the U.S. Army Corps of Engineers initiated the “Boston Harbor Navigation Improvement and Berth Dredging Projects.” The project involved the deepening of three tributary channels (Reserved Channel, Mystic River Channel and Chelsea Creek Channel) and two areas in the Main Ship Channel to provide sufficient ship maneuvering areas, as well as the deepening of several berths. All areas were dredged to – 40 feet Mean Low Water (MLW) except for the Chelsea Creek Channel, which was dredged to –38 feet MLW.

In 1998, as part of the harbor dredging project, the Medford Street Terminal, former home of Revere Sugar, was dredged to –40 feet MLW in anticipation of bulk cargo carriers. Moran Terminal, home of the Autoport, was dredged to –40 feet MLW in 1994 in advance of the full federal dredging project.

Overall, direct access to deep-water (-20 feet MLW or deeper) is available at all of the DPA properties on the Mystic River except the Schrafft Center and 465 Medford Street, which could access the channel through either dredging or pier construction. In 2001, 94 ships and 60 barges used the Mystic River to serve DPA maritime industrial uses on the Charlestown shore, not including the barges used by Raytheon to bring in the components of the energy plant being constructed on the Everett waterfront. When the

¹¹ Bruce Campbell & Associates, Inc., *Feasibility Study, Proposed Medford Street Bypass Road (Haul Road), Charlestown, Massachusetts*, Draft Report October 1990, Final Report, March 1991.

¹² *Ibid.*, Final Report, page 10.

corrected on or
agree with this



Scale: 1" = 1,000'

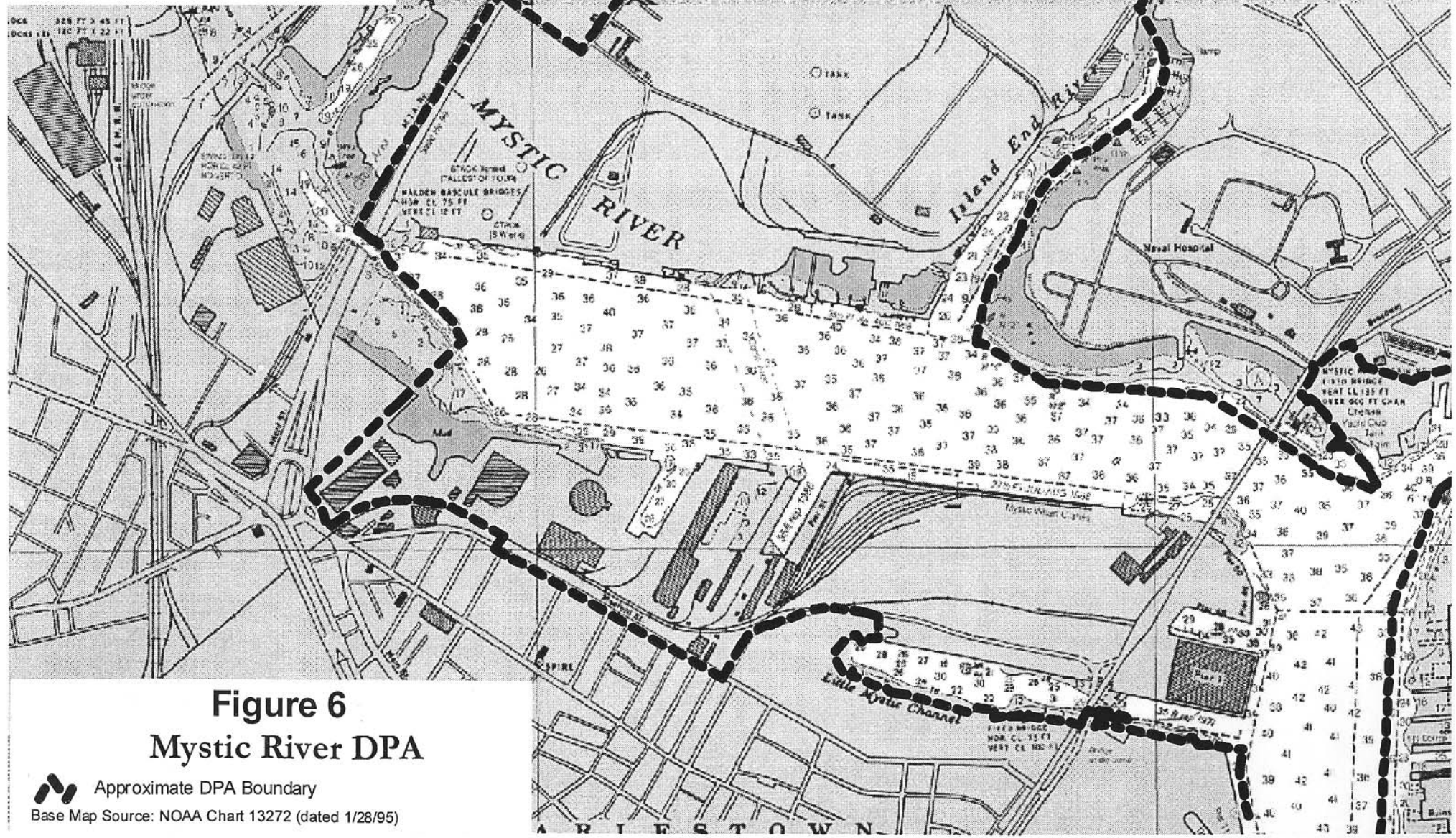



Figure 6
Mystic River DPA

 Approximate DPA Boundary

Base Map Source: NOAA Chart 13272 (dated 1/28/95)

DPA users on the Everett side of the river are included, approximately 350 ships and barges used the Mystic River Channel in 2001.¹³

Water and Sewer

Existing municipal water and sanitary sewer utilities are located in Medford Street abutting the Charlestown properties of the Mystic River DPA.¹⁴ A review of the recent water use history of the DPA parcels, based on water meter readings obtained from the Boston Water and Sewer Commission, indicates that, with the closing of the candy factory (Schrafft Center) and the sugar refineries (425 Medford Street and the Medford Street Terminal), average daily water use for this portion of the DPA has declined by almost 75% since the mid- to late-1980's. As depicted in **Figure 7**, average daily water use over the period from 1983 to 1988 was on the order of 500,000 gallons per day. With the conversion of the Schrafft Center to commercial uses, the demolition of the sugar refineries, and the use of large areas of the DPA for product staging by Massport's Autoport, average daily water use for the entire DPA from 1990 to the present has been relatively stable at approximately 130,000 gallons per day. Of the properties in the DPA, U.S. Gypsum (an average of 85,700 gpd from 1990 to 2002), and the Schrafft Center (an average of 28,800 gpd from 1990 to 2002) are the primary users.

Topography

Topography refers to the science of delineating the natural and artificial features of the earth in such a way that depicts both horizontal position and elevation of the feature(s), and the relief (general elevation trend) of specific land areas or regions.¹⁵ The topography of the Charlestown portion of the Mystic River DPA typifies a highly urbanized waterfront that has been altered significantly to accommodate industrial activity through the progressive filling of tidelands and subsequent development. Elevations range from approximately 20.2 NAVD88 along Medford Street in the vicinity of 465 and 425 Medford Streets and the Massport Medford Street Terminal to approximately 10.0 NAVD88 along the upland portion of the shoreline.¹⁶ Generally, the relief from Medford Street to the existing B&M Railroad right of way can be characterized as moderate and from the right of way to the edge of the upland shoreline as flat.¹⁷ Although steeper micro-relief is exhibited in limited sections of the DPA (such as in the vicinity of retaining walls), the topography of these discrete areas could be re-

¹³ Letter from Erica P. Bigelow, Perkins, Smith & Cohen, attorneys for US Gypsum, to Thomas W. Skinner, Director, CZM, February 15, 2002, citing information provided by DPA businesses.

¹⁴ Source: Water and sewer maps obtained from the Boston Sewer and Water Commission.

¹⁵ See definitions, Appendix A – Glossary, Nautical Chart User's Manual, U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Ocean Service, Washington, DC, 1997 and Appendix A, Shore and Sea Boundaries, Volume 1, by Aaron L. Shalowitz, Publication 10-1, U.S. Dept. of Commerce.

¹⁶ Source: Topographic maps for the city of Boston obtained from the Boston Sewer and Water Commission.

¹⁷ Relief is typically classified as: Flat (slopes ranging from 0 to 3%); Moderate (slopes ranging from 3 to 8%); and Steep (> 8%). Guidelines for Soil & Water Conservation in Urbanizing Areas of Massachusetts, U.S. Department of Agriculture, Soil Conservation Service, Amherst, MA. October 1977.

Mystic River DPA Water Use History - Charlestown -

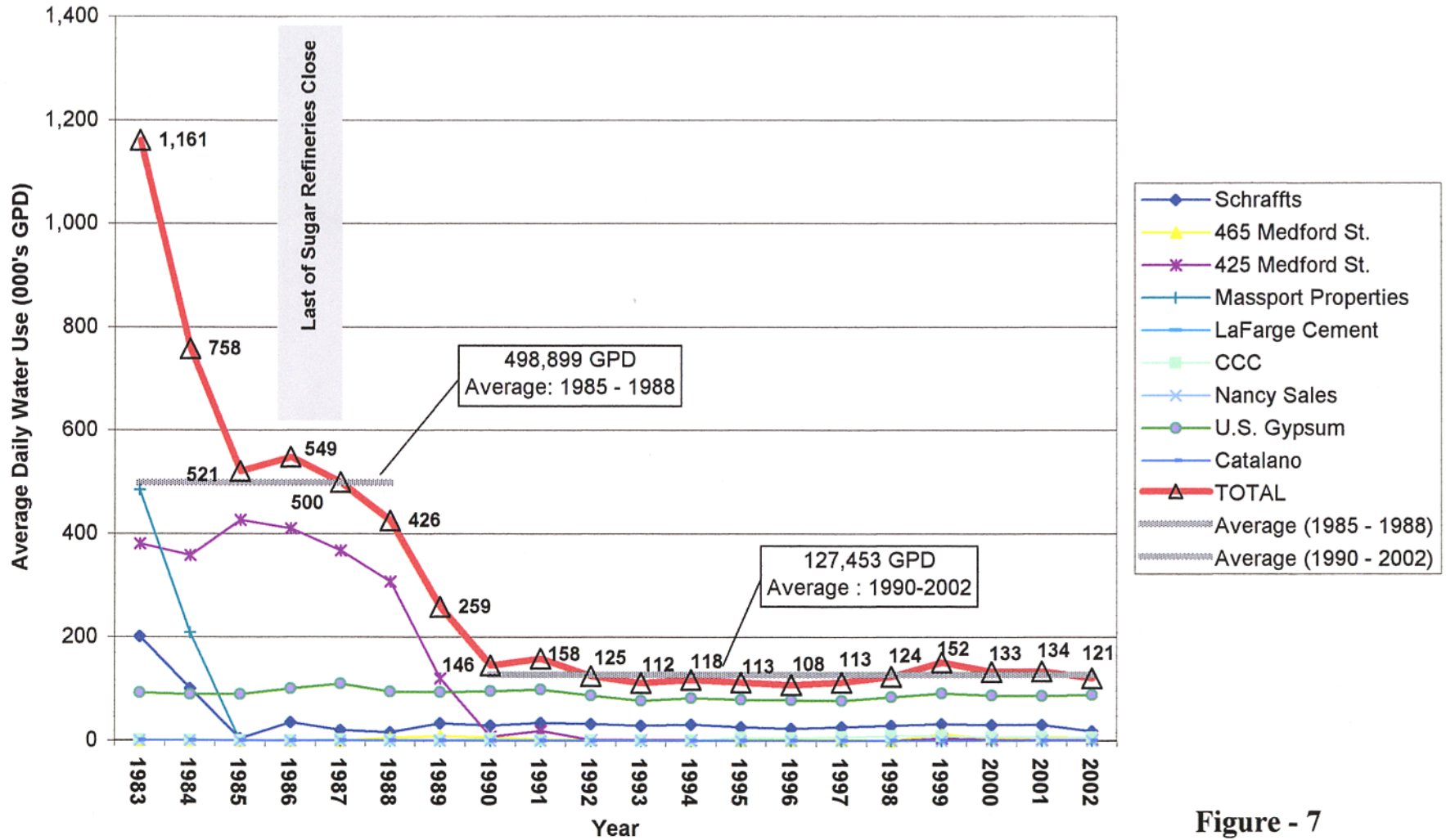


Figure - 7

worked easily and clearly does not restrict the present or future ability of the DPA to accommodate maritime industry.

DPA Land Use – Existing Marine Industrial

The properties currently supporting maritime industrial uses, including the Autoport, US Gypsum, Catalano Bros., and LaFarge Cement, occupy a significant amount of the DPA land area and generate significant economic activity. These current marine industrial uses are concentrated in the easterly portion of the DPA. (See **Figure 4.**)

Massport is the largest owner of DPA property currently in maritime industrial use, almost all of which is currently leased to Foreign Auto and Diversified Auto, collectively forming the Boston Autoport. This centrally located and largest property in the DPA is an approximately 60-acre parcel that is currently used for automobile import, processing and distribution. Prior to use by the Autoport, the parcel supported Massport's container terminal operations, now located in South Boston at Conley Terminal. The Autoport receives approximately 80 ships per year and processes approximately 100,000 Volkswagens, Audis, and Subarus per year. Although Volkswagen is now in the process of moving its operations out of state, the Autoport is currently negotiating with other car manufacturers to replace the business.¹⁸ The production aspect of the Autoport, which involves installing optional packages on cars, painting, and minor bodywork, operates on a 5-day workweek. At capacity, the Autoport generates approximately 20,000 truck trips (car-carriers) on Chelsea Street for 250 days per year.¹⁹ In addition, another 10-15 trucks per day carry miscellaneous materials to and from the Autoport. Cars are trucked offsite 24-hour per day, 7 days per week. The Autoport employs 500 people with economic benefits to the Commonwealth estimated by Massport to be in excess of \$20 million per year.²⁰

Other Massport properties include Mystic Pier 1, an approximately 5-acre site with a covered storage shed, that is currently leased to the Autoport; Mystic Piers 48, 49, and 50, which contain a fuel dock and together comprise a 3-acre bulk cargo terminal currently used to import, store, and distribute road salt; and the Medford Street Terminal, a 14-acre multi-use marine terminal (the former Revere Sugar terminal and Somerville Lumber property), of which 6 acres are used by the Autoport, and 8 acres are used as a temporary staging area by Raytheon for material and equipment related to construction of the new Sithe Energy Power Station across the Mystic River.

¹⁸ Prior to the decision by Volkswagen to relocate their operations, the Autoport facilities were operating at capacity. The Autoport intends to backfill the loss of Volkswagen with new business. (Personal communication from Allan Johnson, Autoport, and Deborah A. Hadden, Massport, May 22 and 15, 2002, respectively.) The statistics presented above are, therefore, considered representative for the purpose of characterizing this use of the DPA for this review.

¹⁹ Personal communication from Allan Johnson, Autoport, February 6, 2002.

²⁰ Letter from Deborah A. Hadden, Massport Deputy Port Director, to Thomas W. Skinner, CZM, February 1, 2002.

US Gypsum, located between the Autoport and Massport's Mystic Piers, has been in its current location since 1929. The company primarily produces gypsum wallboard. Gypsum mined at a company mine in New Brunswick, Canada, is transported approximately 14 times per year by ship to the Charlestown facility. Additional materials are received by truck at a rate of 10 to 15 per day, or 7,000+ truck trips per year.²¹ Wallboard is fabricated on site, and then shipped to retail outlets throughout the Northeast. Home Depot is US Gypsum's largest customer, and requires early morning truck deliveries to avoid conflict with store hours. Due to the processing schedule and kiln capacity, production and transportation operate on a 24-hour per day schedule, 7 days per week, to accommodate the needs of this major client. US Gypsum has 105 full-time employees.

Water depth at US Gypsum's dock is approximately – 35 feet, MLW. The company is currently engaged in a \$3.8 million capital upgrade of the docking and offloading facilities, including replacing wooden dock piles with steel piles, upgrading offloading equipment, and engineering design to reconfigure docking to accommodate a new generation of self-unloading vessels.²²

Catalano Brothers Trucking Co. has been the house carrier for US Gypsum since 1929. The company operates 24 hours per day, 5 days per week, and makes approximately 16,000 truck-trips per year delivering US Gypsum product. Catalano has 35 full-time employees.²³ The primary truck route for US Gypsum product runs west on Terminal Street and then west along Medford Street to Sullivan Square, then to Route 93.²⁴ (See **Figure 5**.)

LaFarge Building Materials, Inc. (formerly Blue Circle Cement), is located midway up the Mystic River immediately west of the Charlestown Commerce Center and imports cement for wholesale distribution. Approximately 60 barges per year deliver cement to the company pier where unloading operations take approximately 30 hours. Lafarge has an easement to use the adjacent watersheet owned by the Charlestown Commerce Center to accommodate the docking of its barges. Cement is stored on site in eight silos 150 to 180 feet tall that fill distribution trucks beginning at 4:00 a.m. Truck traffic to and from the terminal averages approximately 135 trucks per day, five days per week, or approximately 35,000 truck trips per year. Approximately 30% of the truck trips, or 10,500, take Terminal Street to Chelsea Street to access Route 93; the remaining 70%, or 24,500 take Medford Street to Route 93.²⁵ (See **Figure 5**.) The LaFarge terminal employs 10 people.

²¹ Personal communication from John Yakowenko, US Gypsum, February 6, 2002.

²² Letter from Erica P. Bigelow, *op. cit.*

²³ Letter from Fredric Catalano, Catalano Bros., Inc, to Thomas W. Skinner, CZM, February 28, 2002.

²⁴ Personal communication from Frederick Catalano, February 6, 2002.

²⁵ Letter from Francis J. Harney, attorney for LaFarge Building Materials, Inc., to Thomas W. Skinner, CZM, February 21, 2002.

Water depth at the bulkheaded pier is approximately -32 to -35 feet MLW with ownership of the watersheet in the slip divided between LaFarge and the Center and subject to the easement discussed above.

The Boston Redevelopment Authority owns two properties in the DPA along the Little Mystic Channel. The eastern parcel is approximately 3.5 acres and is leased to the Autoport for vehicle staging and storage. The western parcel is approximately 3 acres and is the site of a public boat ramp, associated parking, and a grassed area. The boat ramp is fenced and locked, and is managed by a residents group from the adjacent CharlesNewtown housing development.

DPA Properties That have Petitioned for Removal

The owners of the following DPA properties have requested that their parcels be removed from the DPA, and, pursuant to 301 CMR 25.03(2), CZM has determined that they are eligible for review.

<u>Property</u> 529 Main Street 425 Medford Street 465 Medford Street	“Schrafft Center” 529 Main Street and 425 and 465 Medford Street collectively the “Flatley properties”
261-287 Medford Street 30-50 Terminal Street	“Nancy Sales building” or “Nancy Sales Property” “Charlestown Commerce Center” or “Center”

529 Main Street “Schrafft Center”

The Schrafft Center lies at the far western end of the DPA. The property is bounded by the Mystic River to the north, the 465 Medford Street property to the east, the Ryan Playground, a public park, to the west, and the Boston & Maine rail line and Main Street to the south. The approximately 16.7 acre parcel contains approximately 16.1 acres of upland and .6 acres of flowed tidelands. According to the 1987 DEP Chapter 91 written determination for the Center, nearly all of the site’s upland consists of previously filled tidelands; the existing buildings are located on these filled tidelands. The property consists of a main, six-story brick building and two single-story structures, with a cumulative footprint of 362,000 square feet. The remainder of the landside property is comprised of a parking lot, which accommodates approximately 1,200 cars. The Schrafft Center is currently used as office space for 42 businesses employing 2,400 people. Ceiling heights are 16 feet, except for the first and mezzanine floors, which are 9.5 feet. The single-story buildings contain a fitness center and a day-care center.

The Schrafft Center was built in 1928 and operated as a candy factory until 1984, using raw materials imported at terminals immediately adjacent to the building. In 1985 and 1986 the building was retrofitted for commercial tenants and in 1988 and 1989 the

main building, powerhouse and annex buildings were completely renovated and the parking lot constructed. The property is located within the Mystic Waterfront Manufacturing Subdistrict of the City's Charlestown Waterfront Harborpark District. The current tenants in the Schrafft Center represent such diverse businesses as insurance, travel, non-profit advocacy, food service, state offices, and software engineering. Generally, the current uses of the Schrafft Center do not conform to uses permitted in a DPA by the Waterways regulations.

The shoreline of the Schrafft Center consists, from west to east, of an approximately 650-foot riprap bulkhead and a reinforced concrete boat ramp approximately 25 feet wide. The high tide line of the Mystic River meets the riprapped bulkhead with intertidal mud flats exposed at low water approximately 20 to 180 feet seaward of the riprap. Improvement dredging would be required to provide navigational access to the property for large vessels. (See **Figure 8.**) A pile-supported access pier projects approximately 210 feet into the Mystic River; the river bottom is dredged to a depth of -7 MLW to support small vessel traffic in an irregularly shaped area around the pier. The current shoreline is the result of a major renovation project undertaken in 1988, at which time the bulkhead was built, the backlands filled to support the new parking lot, the pier and boat ramp built, and the intertidal area dredged. Associated with the authorization from DEP to construct these improvements are several conditions requiring significant commitments to ensure and enhance the public's ability to pass along the shore and to access the water.

465 Medford Street

The property at 465 Medford Street is bounded by the Schrafft Center to the west, the Mystic River to the north, 425 Medford Street to the east, and Medford Street to the south. As discussed above, the Boston & Maine Railroad owns the rail line that runs across the extreme Medford Street side of the property and separates a narrow, approximately .5-acre strip from the remainder of the parcel. The lot area is 387,541 SF, or approximately 8.9 acres, with a building footprint of 113,721 square feet. Filled tidelands occupy approximately 7.6 acres of the property.²⁶ The original structure was built in 1924, and the property now consists of multi-story renovated warehouse, including a five-story section, a three-story section, and a single story section. Ceiling heights are 10 feet in all but the single story section, where they are 18.5 feet high.

The property has been used for industrial purposes since at least the 1890's. The Flatley Company purchased the property in 1987 and in 1996 filed an Environmental Notification Form with the Massachusetts Environmental Policy Act Office (MEPA) proposing to demolish the existing multi-story building and replace it with a 51,000 square foot section, and to renovate and modernize the remaining sections. In supporting the project, and the request for a waiver from the mandatory Environmental Impact Report, CZM recognized that "this portion of the DPA has no immediate prospects for water-dependent industry, and could benefit from an interim reuse of a project that meets

²⁶ Richard A. Ellis, The Flatley Company, *Environmental Notification Form*, April 25, 1996.

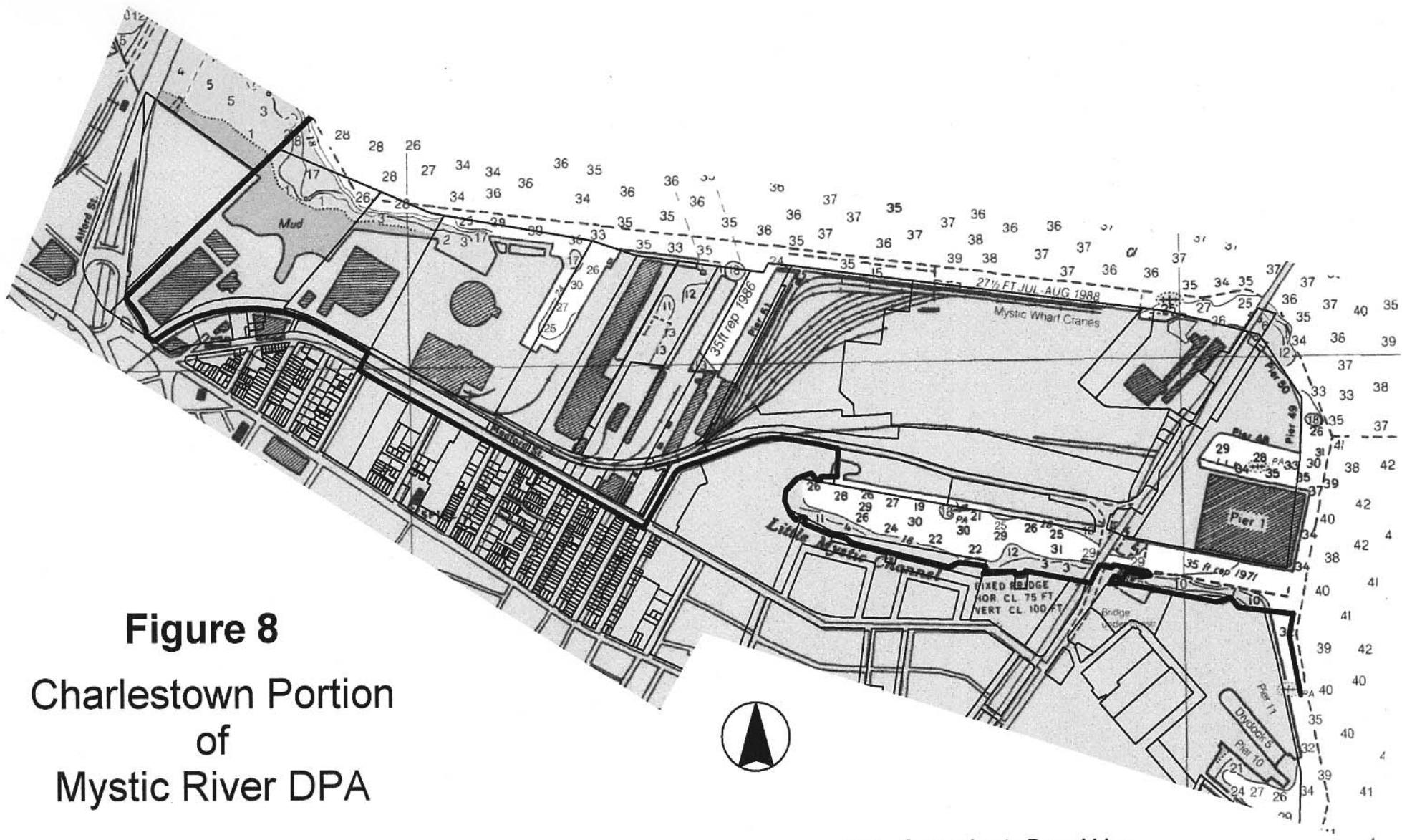


Figure 8

Charlestown Portion of Mystic River DPA

Approximate Scale: 1" = 800'

Base Map: NOAA Chart # 13272 (Dated: 1/28/95)


 Approximate Parcel Line
 (City of Boston Assessors Maps)


 Approximate DPA Boundary

all applicable criteria for supporting DPA use....”²⁷ In 1997 the loading area was demolished and new roofing, utilities and an elevator were installed. In 2001, DEP issued its written determination for the Chapter 91 license, and licensed nonwater-dependent industrial uses on the property for a term of ten years. Significantly, DEP also found that certain existing on-site uses (in place but unlicensed following the 1997 renovation) did not comply with the water-dependent use and DPA provisions of the Waterways regulations and, because these uses are unlicensable, must vacate the property. The Flatley Company has appealed and the case is currently before a DEP Administrative Law Judge, stayed pending the outcome of this boundary review.

The shoreline of the property is largely continuous riprap with no fixed structures projecting seaward. Water depths range from exposed intertidal flats to - 8 feet at MLW. (See **Figure 8.**) The federal navigation channel lies approximately 225 feet seaward of the riprap. Improvement dredging or the construction of a pier would be necessary for large vessel to access the property.

The property is located within the Mystic Waterfront Manufacturing Subdistrict of the City’s Charlestown Waterfront Harborpark District. Current uses include software, dental services, engineering, pharmaceutical research, and foodservices companies.

425 Medford Street

The property at 425 Medford Street is an approximately 20-acre parcel bounded by 465 Medford Street to the west, Medford Street to the south, Massport’s Medford Street Terminal (the former Revere Sugar facility) to the east, and the Mystic River to the north. It is comprised of an existing 3-story warehouse building with an 116,945 square foot footprint on an approximately 16.1-acre of upland. The watershed area of the parcel is approximately 4.3 acres. The Boston & Maine Railroad owns the rail line that runs across the extreme Medford Street side of the property separating a narrow, approximately 1.1-acre strip from the larger parcel. The building is industrial in character, with ceiling heights of 36 feet on the first floor and 16 feet on the upper floors. From the 1900s through the 1950s the property was operated as a maritime shipping facility and lumberyard. From the 1950s through 1988 the site was home to the American Sugar Refining Company refinery, which received shipments of raw sugar by ship and transported finished sugar to markets by rail and truck.

The property’s shoreline is riprapped from the top of slope to approximately 5 below mean low water. A 25-foot wide by 371-foot long reinforced concrete pier, supported by steel piles and with a deck live load of 250 pounds per square foot, sits approximately 50 feet off the western end of the parcel. The pier, located approximately 125 feet from the 1,300-foot wide federal channel, supports a non-functioning travel lift and is connected to the shore by a 20-foot wide access trestle. Water depth at the pier is approximately 27 to 30 feet below mean low water, and at a distance of twenty to thirty feet off the pier the water depth is approximately 30 to 35 feet below mean low water.

²⁷Letter from Margaret M. Brady, CZM Director, to Jan Reitsma, MEPA Director, June 11, 1996.

(See **Figure 8.**) These features provide direct deep-water access for large vessels. According to a study conducted in 1990, the pier can accommodate vessels of up to 30,000 Dead Weight Tons (DWT) with the mooring of vessels of up to 40,000 DWT possible under controlled conditions.²⁸ This translates to an approximate maximum vessel dimension of 675 feet in length with a draft of 36 feet (although the report notes that the vessel could not sit at the berth fully loaded unless the adjacent dock was dredged).

In 1991, pursuant to the Waterways regulations, DEP issued a Chapter 91 license authorizing a Marine Industrial Park (MIP) for 425 Medford Street. MIPs are licensable projects that allow for multi-use complexes within DPAs, provided the predominant use is for water-dependent industrial facilities. General industrial and nonwater-dependent, non-industrial uses may be permitted subject to limitations on the size and impact of the use and the location within the Park. Under the terms of the Chapter 91 license, the Marine Park Master Plan for 425 Medford Street filed by the predecessor in title to the Flatley Company, 82% to 87% of the leaseable space must be devoted to maritime-industrial uses. The remaining area may be allocated to nonwater-dependent industrial, maritime industrial supporting, and/or unleaseable zones. The intent of the master plan was to “ensure that the Charlestown Marine Park remains a viable, predominantly maritime-industrial complex.”²⁹

The Flatley Company purchased the property in 1994 and through 1997 remediated asbestos and oil contamination and removed sugar residue associated with the previous operation. In 1998, it completed building renovations to accommodate the current lessee, Saleslink Corporation, which uses the site for warehousing products associated with direct mail services. The current uses do not appear to conform to the conditions of the existing license.

267-281 Medford Street “Nancy Sales Property”

The Nancy Sales Building is located on a 30,470 SF parcel at the upland edge of the DPA at the corner of Terminal and Medford Streets. The site, which has no shoreline, is bounded by the LaFarge Cement Company to the west, the Charlestown Commerce Center to the north, Terminal Street and the Charlestown High School athletic fields to the east, and Medford Street and a residential neighborhood to the south. The property is comprised of a five-story brick and heavy timber frame building with a footprint of 22,500 SF. The building is divided laterally into 10-foot by 30-foot bays and across its width by a series of brick firewalls. The lower four floors have floor-to-floor heights of 12 feet; the height of the fifth or top floor is 13.5 feet.

Four roads abut the property, including a private way to the west owned by LaFarge Cement Company, an industrial roadway paralleling the rail line to the north, Terminal Street to the east, and Medford Street to the south. An easement allowing the

²⁸ HMM Associates, *Marine Park Master Plan, Charlestown Marine Park* November 1990, page 4-14 et. seq.

²⁹ *Ibid.*, page 2-2.

right to pass and repass over property of the Center on the Terminal Street side appears to run with the property. An easement from LaFarge allowing for passage over the LaFarge private way for the purpose of maintaining a switch house and transformer station also appears to run with the property. The Boston & Maine rail line lies immediately adjacent the property to the north, running parallel to the industrial roadway to the north of the building.

From a review of historical records, it appears that the property is comprised almost entirely of filled tidelands, with only a narrow strip of the property adjacent to Medford Street appearing to be historic upland.³⁰ On an 1848 map, the property is shown as extending into the Mystic River; by 1851 the property is identified as part of a “Pistol Factory.”³¹ In 1918 the current building was constructed as an industrial warehouse as part of the Wiggin Terminal Company complex, designated Wiggin Terminal Building #3. The Wiggin Terminals (see also the Charlestown Commerce Center, following) transshipped lumber, cotton, woodpulp and cocoa beans, and relied on the railroad as the landside shippers of their bulk materials.³² The warehouses stored material for export and import through the late 1940’s and the building was used until the early 1980’s as a warehouse for children’s toys. The site has been vacant for the last 15 years with the building currently the subject of an October 3, 2001, City of Boston Inspectional Services Department complaint.

Under the terms of a settlement agreement between the owner of the Nancy Sales property and Massport (see following), Massport was granted access over a piece of land abutting the north end of the building, between the rail line and the edge of the Nancy Sales building, to be used by Massport “in connection with [a connector road or haul road] or any other industrial activity, including a buffer for any such activity.”³³

As described in the October 1990 *Harborpark Plan, City of Boston Municipal Harbor Plan* (MHP), the property is zoned as the Terminal Street Waterfront Manufacturing Subdistrict of the Charlestown Waterfront. This subdistrict applies solely to the Sales property with the DPA area abutting the property zoned as Charlestown Maritime Economic Reserve Subdistrict. In 1995, the Boston Board of Appeals granted a variance to allow residential use of the property³⁴ and the Inspectional Services Department issued a building permit in 2000.

³⁰ A letter from Carla Munroe Moynihan, attorney for Michael Rauseo, to Deerin Babb-Brott, CZM, February 7, 2002, states that “[t]he [p]roperty consists entirely of filled tidal flats and does not include any land formerly in Commonwealth ownership.” The owner has challenged Chapter 91 jurisdiction “because private tidelands were filled under statutory authority prior to the enactment of the licensing system.” (Environmental Notification Form for 267-281 Medford Street, Carla Monroe Moynihan, December 26, 2001); the property owner filed a petition with the Land Court on April 11, 2002 to delete from his certificate of title reference to any and all rights of the public in the land below the historic high water mark. As of this writing the Land Court case is still pending (Case # 1874)

³¹ *Ibid.*, page 3.

³² Arthur A. Lane, Peabody & Lane Shippers, personal communication, May 31, 2002

³³ Letter from Michael A. Grieco, Massachusetts Port Authority, to Michael J. Rauseo, Suffolk/Medford Street Trust, July 8, 1998.

³⁴ Massport challenged the variance. The appeal was withdrawn in 1998 subject to an agreement between Massport and the property owner regarding an easement granted to Massport for a section of the so-called

As described in a an ENF submitted to the MEPA Office on December 26, 2001, the owner of the property is seeking to convert the existing structure into 124 residential units, characterizing the proposed use as “artists’ studios and residences” and associated on- and off-site parking.³⁵ Under the terms of an agreement between Massport and the owner of the Nancy Sales Property, the “units (each to accommodate mixed working studios and residential uses)...shall not be conveyed or transferred as condominiums or used principally for general residential purposes for a minimum of five (5) years.”³⁶

30-50 Terminal Street “Charlestown Commerce Center”

The Charlestown Commerce Center (Center) is located in the middle of the DPA, with direct access to the Mystic River. It is bounded by LaFarge Cement to the west, the Nancy Sales Property to the north, and the Autoport to the east. The Center property is an approximately 6.2 acre parcel extending from the Mystic River to Medford Street. Approximately one acre of the property is comprised of watersheet with an 80,000+ SF dilapidated pier structure extending approximately 690 feet out into the Mystic River. The property consists of two eight-story brick buildings with footprints of 33,293 and 30,622 square feet, respectively, and several one and two story additions. The Boston & Maine Railroad owns rights through the property with the rail line running inland of the two buildings. The property south of the B&M Railroad extends to Medford Street as a 20-foot wide strip between Terminal Street and the edge of the Nancy Sales building.

Constructed in 1911 by the Wiggin Terminal Company, the ceiling heights in both buildings are 12 feet -3 inches on the first floor, 10 feet- 3 inches on the second through seventh floors, and from 12 feet-3 inches to 14 feet-3 inches on the eighth floors. Columns, spaced 12 and 15 feet apart, support the two buildings internally. In 1925, the Massachusetts Department of Public Works (the predecessor to DEP as the issuer of Chapter 91 licenses) issued a license to build and maintain bulkheads and a pile wharf and to dredge a 30-foot deep by 75-foot wide berth the length of the bulkhead. At that time the Center was occupied by light manufacturing, warehousing, and associated office uses for importing and exporting as described above for the Nancy Sales building, also a Wiggin property.

The Center shares a mutual access easement (originally executed in 1961 and amended in 1988) with the Lafarge Cement Co. property to the west. Under the terms of the easement, the Center has a right of passage over upland property of LaFarge for access and loading at the Center. LaFarge, in turn, has use of the berthing area and watersheet owned by the Center. As discussed above, LaFarge actively uses the berth to dock ocean-going cement barges in which it imports its product.³⁷

haul road to travel over Nancy Sales property and conditions on the future use and design of the property and building. Letter from Michael A. Grieco, *op. cit.*

³⁵ Environmental Notification Form, *op. cit.*

³⁶ Letter from Michael A. Grieco, *op. cit.*

³⁷ Letter from Paula M. Devereaux, attorney for the Center, to Deerin Babb-Brott, CZM, February 6, 2002.

In 1988 the Boston Zoning Board of Appeals granted the Center a Conditional Use Permit allowing the building to be used for “storage, office and light manufacturing purposes.” This approval pre-dates the designation of the Maritime Economic Reserve Zone under the 1990 *Harborpark Plan, City of Boston Municipal Harbor Plan*, a zoning sub-district that would otherwise prohibit many of the current uses.

The current owner purchased the Center in 1992, and in 1996 applied to DEP for an amnesty license under Chapter 91. The Center is currently working to demonstrate that the existing uses are eligible for amnesty and its application is still pending. Of the total 382,199 SF of leasable floor area of the two buildings, approximately 237,473 SF, or two-thirds is occupied. Uses include moving and storage companies, music studios, woodworkers, and bakeries. DEP has not yet made a determination on the compliance current uses at the Center.

IV. APPLICATION OF SUITABILITY CRITERIA

Following a careful review of the attributes as described above, CZM determines that the DPA defined by the current boundary conforms, except as described below, with the suitability criteria set forth in the DPA regulations at 301 CMR 25.04. The basic findings, in relation to the applicable criteria, can be summarized as follows:

25.04(1)(a)1. – The water area of the DPA includes a federal shipping channel with a design depth of –40 feet MLW and an actual depth of between –40 and –55 feet MLW.

25.04(1)(a)2. – The shoreline is substantially developed to establish a functional connection with a DPA land area. See 25.04 (2)(a), below.

25.04(1)(b) – The Commonwealth recently invested over \$20 million in maintaining and improving the federal channel in Boston Harbor, including the Mystic River Channel, for the specific purpose of improving the capability of the channels to support the maneuvering and berthing of maritime industrial traffic. The Mystic River Channel currently supports diverse vessel traffic, ranging from liquefied natural gas carriers, car carriers, scrap-metal ships, and ocean-going barges, as well as the intake/outfall structure for the Sithe Mystic Station power plant.

25.04(2)(a) – The shoreline has been substantially developed in order to establish a functional connection with a navigable waterway. Regardless of its current condition (see discussion below under Section V.), the facilities along the Charlestown shore are unquestionably “functional” in that they currently support the manifold existing maritime industrial activities of the DPA.

The information reviewed indicates that a preponderance of current DPA upland area consists of tidelands filled for the purpose of facilitating and promoting maritime commerce. As a result, the DPA contains significant open space associated with a developed shoreline that has in the past, does now, and can in the future support maritime industrial uses. Only two waterfront properties, the Schrafft Center and 465 Medford Street, do not have a vertically bulkheaded shoreline; however, these properties are contiguous with other DPA lands that have been substantially developed. Of the thirteen major parcels along the water (excluding small parcels owned by the Commonwealth of Massachusetts and Massport in the vicinity of the Tobin Bridge abutments) nine parcels are in active maritime industrial use:

- 425 Medford Street
- Massport Medford Street Terminal (three contiguous parcels)
- LaFarge Cement
- The Autoport
- US Gypsum

- Massport Piers 48, 49, and 50
- BRA East Parcel

25.04 (2)(b)1. – The land area is adjacent to and served by both road and rail links leading to major arterial routes. While Guilford Transportation, the owner of the B&M line, has proposed to abandon the Mystic line, Massport is currently negotiating to purchase the line and thus preserve the potential for future rail service.

25.04 (2)(b)2. – As evidenced by its current and recent industrial history of high water demand, the land area contains water and sewer facilities capable of supporting general industrial use.

25.04 (2)(c). – Reflective of its development as filled tidelands, the land area is essentially flat and free of topographic restrictions to industrial use.

25.04 (2)(d). – The land area exhibits a use character that is predominantly industrial, made so by the current DPA uses including the importation and transshipment of automobiles, the importation of gypsum and the on-site fabrication of wallboard, the importation of bulk cement, and the storage, assembly, and transshipment of heavy machinery for the construction of a power plant. Indeed, many of the current non-maritime uses, at 465 and 425 Medford Street and the Charlestown Commerce Center, are industrial in nature, with up to 25% of this total square footage on such properties potentially permissible by DEP under the DPA Supporting Use provisions of the Waterways Regulations.

25.04 (2)(d)1. and 2. – Because the land area exhibits a use character that is predominantly industrial, subsections 1 and 2 do not apply.

The individual properties are addressed as follows.

529 Main Street “Schrafft Center”

As described above, the Schrafft Center sits at the far western end of the Charlestown shore of the DPA. While the property does not currently contain a shoreline substantially developed to support maritime industrial uses, it is contiguous with DPA lands that do, by virtue of its position at the end of a contiguous chain of parcels that are or can be configured to support such uses pursuant to 301 CMR 25.04(2)(a). Moreover, although common ownership is not a criterion that affects the definition of “contiguous” under the regulations, three parcels that establish an immediate contiguous link (425 Medford Street, 465 Medford Street, and the Schrafft Center) are owned by the Flatley Company: 425 Medford Street is licensed as a Marine Industrial Park and currently supports active maritime industrial use.

The Schrafft Center is bordered by the Boston & Maine Railroad’s Mystic Wharf Branch, and by Medford Street, which currently supports industrial traffic and which

leads to a Route 93 interchange in the immediate vicinity of the property. As evidenced by its pre-1985 use history, the property has access to adequate sewer and water facilities capable of supporting general industrial use; past use similarly demonstrates that the topography of the land area is capable of supporting general industrial use.

Pursuant to 301 CMR 25.04(2)(d) the land area does not exhibit a use character that is predominately industrial. The Schrafft Center, as described above, consists of a fully developed and thriving commercial complex that provides a full complement of supporting services, including food service, recreation, physical fitness, and daycare facilities to businesses, employees, and the public.

As of 1985, the Flatley Company was in the process of renovating the Schrafft building as a research and development and office building, a change of use grandfathered under 310 CMR 9.05(3)(b). In conjunction with this renovation, the project received a Waterways license in 1987 to eliminate an irregularity in the shoreline with fill, and to use the newly created land for parking and a boardwalk for public access.³⁸ When this 1987 filling was authorized, the Waterways license focused exclusively on the provision of amenities necessary to ensure that the project provided greater public benefits than detriments to the public's rights in private tidelands.

Extensive public access amenities were required under the terms of the license. In response to the license conditions, the Flatley Company has constructed, a public boat ramp, a 650-foot public walkway, public parking spaces, a public access pier for fishing, observation, and access to floating docks, and supplementary street furniture, lighting, and other open space amenities. (The Flatley Company is not in total compliance with the license conditions and is currently working with the Charlestown community and DEP to complete its public access obligations by constructing a walkway to connect the property to the Ryan Playground park area abutting the property to the west and by resolving unauthorized restrictions to public access facilities.) These public access facilities, required by DEP explicitly to make the shoreline as accessible as possible to the public, and an integral component of the property's status as a Chapter 91-licensed area, effectively render the property incompatible with future re-industrialization.

While CZM has previously (in 1987; see discussion below) found the license terms to be not incompatible with potential maritime industrial use of the site by virtue of the ease with which the public access amenities could be removed, we find that the property's public access amenities have served their purpose well, and have become fully integrated in fabric of the community, even allowing for the less than complete compliance in providing access. To suggest that they continue to be considered as features subject to displacement by a future DPA use is unrealistic.

Because the pre-1990 Waterways regulations afforded only partial interpretation (at 310 CMR 9.24) of the state's coastal policy that governed the allocation of land and water space within DPAs, the authorization for dredging, fill and bulkheading in support of non-maritime industrial uses in a DPA was addressed by CZM in a consistency

³⁸ Waterways License No. 1729, issued December 16, 1987.

determination that found the proposed fill and uses to be consistent with state coastal policy as articulated under the Coastal Zone Management Program.³⁹

In its 1987 consistency determination, CZM explored, after a discussion of the applicable policy guidance regarding DPAs, “whether the physical and operational attributes of the Schraffts [sic] site, or the Mystic River DPA as a whole, are likely to be impaired to any significant degree by the fill and structures proposed to be licensed”⁴⁰ and concluded that

There is no indication of conflict with either a present or prospective maritime use of the site or nearby properties. Nor does the proposed work appear to constitute a preemptive use of the site, since the parking area and boardwalk would be physically easy to remove and will not be subject to irreversible legal arrangements. The fill is presumably permanent, of course; but we do not consider this detrimental to DPA interests...[because the fill will eliminate irregularities] that would seem to be a limiting factor on the capacity of the site to accommodate uses associated with maritime industry....⁴¹

Given the refinements to the DPA regulations in 1994, CZM finds that the principles of “conflict” and “preemption”, as enumerated in the 1987 determination remain operational in DPA policy as a whole, but are subordinate in this instance to the language of the DPA regulations that now provide specific direction for the evaluation of the suitability of a property to remain in a DPA, and to the real-world circumstances described above, whereby the public access amenities can no longer realistically be held to be only transitory features of the property.

We also note the language in the 1987 guidance that speaks to the issue of “transitional” uses:

...it is important to add that in some circumstances the presence of seemingly non-conforming use may actually be helpful in encouraging water-dependent industries to locate (or stay) in the area. This is most apparent in the case of perimeter sites within a [DPA], which are often found to be occupied by uses that are “transitional” in the sense that they are generally in keeping with the working character of maritime industry, but not to an extent that gives rise to severe incompatibility with the fabric of the community just outside of the DPA boundary.⁴²

³⁹ The subject of the 1987 CZM policy guidance is what was then Policy 7: *Encourage the location of maritime commerce and development in segments of urban waterfronts designated as port areas. Within these areas, prevent the exclusion of maritime dependent industrial uses that require the use of lands subject to tidelands licenses.* Massachusetts Coastal Zone Management Program and Final Environmental Impact Statement, U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management, March 3, 1978.

⁴⁰ Memorandum from Richard F. Delaney, CZM Director, to Gary Clayton, DEP Director of Wetlands and Waterways, September 14, 1987.

⁴¹ *Ibid.*

⁴² *Ibid.*

After careful review of the circumstances under which the Schrafft Center was originally licensed, of the current allocation of uses on the property, and of the functional relationship between the property, the DPA, and the surrounding neighborhood, CZM is convinced that the Schrafft Center can continue to provide as effective a transitional function from a location outside the DPA as it has within the DPA.

Pursuant to 301 CMR 25.04(2)(d), therefore, CZM determines that the Schrafft Center does not exhibit a predominately industrial use character within the meaning of the DPA regulations. Based on these findings, it is our conclusion that the property and buildings comprising the Schrafft Center do not meet the designation standards for inclusion in a DPA and that removing the property from the DPA is therefore appropriate. Beyond the perspective of the regulations, CZM believes that such action is to the benefit the DPA, the Charlestown community, and the City as a whole.

465 Medford Street

The Flatley Company property at 465 Medford Street sits between properties under similar ownership at the Schrafft Center and 425 Medford Street. 465 Medford Street has not been substantially developed to establish a functional connection to DPA waters, but is contiguous with 425 Medford Street, which has, and currently supports maritime industrial use.

The property abuts the Boston & Maine Railroad's Mystic Wharf Branch, and has direct access to Medford Street, which leads, via Sullivan Square, to an interchange with Route 93. As demonstrated by its previous industrial use, and its current (unauthorized) commercial and office uses, the property has access to water and sewer facilities capable of supporting general industrial use. The land area is flat and, as demonstrated by its built-out configuration, generally conducive to industrial use.⁴³

The property was developed as an industrial site that relied on its location between the Mystic River channel and the rail line to conduct its business. In 1924, a portion of the Mystic River was dredged and wharves and a 5-story building were constructed to support millwork storage, warehousing, distribution, and related office functions. Through the 1970s and 1980s the property supported warehousing and

⁴³ Petitioner suggests that "topography," as described by the standard at 25.04(2)(c), which reads in part "topography that is generally conducive to industrial use, or reasonably capable of becoming so..." also encompasses the concept of relative elevation. Because two of the Flatley properties are in the 100-year flood zone as designated by the National Flood Insurance Program, the petitioner states, "If this area were converted to industrial use, major storm events would likely increase the Mystic River's exposure to the inevitable pollutants of industrial processes." Letter from R. Jeffrey Lyman, Goodwin Procter, attorney for the Flatley Company, to Deerin Babb-Brott, CZM, March 21, 2002. CZM notes that industrial activity is generally not prohibited in such flood zones due to the features specific to the flood zone itself; an array of federal, state, and local building and environmental regulations are in place to prevent and control the consequences hypothesized by the petitioner. (See also a provision of the Waterways Regulations at 310 CMR 9.33 requiring that "all projects must comply with applicable environmental regulatory programs of the Commonwealth....")

transshipment of goods by truck and rail. The Flatley Company, after purchasing the property in 1987, applied for a Chapter 91 license to authorize a reconfiguration of the structures to support industrial, distribution, light manufacturing, warehousing, and parking uses.⁴⁴ The written determination issued by DEP requires that non-conforming uses (i.e., uses that do not qualify as DPA Supporting or Temporary Uses) be removed. The written determination is currently under appeal and the process has been stayed pending the outcome of this review. The history of the land area is unequivocally industrial, and, as the presence of unauthorized commercial use made possible by the unauthorized physical alteration of the structures cannot be held to legitimately ‘de-industrialize’ the use character, CZM finds that the land area at 425 Medford Street does exhibit a use character that is predominately industrial pursuant to 301 CMR 25.04(2)(d).

Pursuant to the regulations at 301 CMR 25.04(2) and (3), nothing in the analysis of the property’s characteristics, individually and in the context of the DPA as a whole, suggests that the DPA boundary should be revised to exclude the Flatley property at 465 Medford Street. Based on these findings, it is our conclusion that the property and buildings comprising 465 Medford Street site meets the designation standards for inclusion in a DPA.

425 Medford Street

425 Medford Street is the easternmost of the Flatley properties along the Mystic River. The property has been substantially developed with structures that establish a functional connection with the Mystic River Channel. Originally the site of a municipal beach, the site was developed in the early 1900s as a maritime shipping facility and was later developed to facilitate the importation of raw sugar by ship. The infrastructure developed to support these uses continues to serve its purpose. Indeed, the company constructing the energy plant across the river in Everett is actively using the deep-water access and pier facilities today as a staging area, importing heavy equipment and components of the power plant by barge, fabricating on site, and shipping the completed pieces across the river.

The land area of 425 Medford Street abuts the Boston & Maine Railroad’s Mystic Wharf Branch; the property has direct access to Route 93 via Medford Street and Sullivan Square. As evidenced by its previous use, the property has access to water and sewer facilities capable of supporting general industrial use; past use similarly demonstrates that the topography of the land area is capable of supporting general industrial use.

The land area of 425 Medford Street exhibits a use character that is predominately industrial. As described above, the property’s entire history is one of maritime industrial use. Indeed, the property is currently licensed by DEP under the Waterways regulations as a Marine Industrial Park (although the uses are currently not in full compliance).

Pursuant to the regulations at 301 CMR 25.04(2) and (3), nothing in the analysis of the property’s characteristics, individually and in the context of the DPA as a whole,

⁴⁴ Waterways Application No. W96-5070-N.

suggests that the DPA boundary should be revised to exclude the Flatley property at 425 Medford Street. Based on these findings, it is our conclusion that the property and buildings comprising 425 Medford Street site meets the designation standards for inclusion in a DPA.

30-50 Terminal Street “Charlestown Commerce Center”

The Center is located at the geographic center of the DPA and bisects the DPA from the Mystic River to Medford Street. The Center is also adjacent to the land-side transportation hub of the DPA, with Terminal Street, the Lafarge Cement access road, the Autoport road to the Medford Street Terminal, and the rail line all intersecting at the southern end of the main property.

The Center’s shoreline has been developed with structures that establish a functional connection with a navigable water area. The pile-supported wharf, while dilapidated, could be repaired or replaced in the future; as the Center itself states in its chapter 91 amnesty license application, “...the [a]pplicant may restore [the piers] at some future time and will seek the [DEP’s] approval.”⁴⁵ Furthermore, the Center currently permits the use of the berthing area within its watershed by ocean-going barges operated by the abutting cement company.

Also confirmed by the Center is that the site “consists predominantly of industrial (warehousing/manufacturing) uses which do not preclude water-dependent uses and are compatible with a variety of uses currently existing proximate to the project site.”⁴⁶ The site also has access to ample transportation infrastructure, on which current tenants at the Center rely to accommodate truck traffic⁴⁷, and is served by sewer and water adequate for its current and potential future needs.

Pursuant to the regulations at 301 CMR 25.04(2) and (3), nothing in the analysis of the property’s characteristics, individually and in the context of the DPA as a whole, suggests that the DPA boundary should be revised to exclude the Center. Based on these findings, it is our conclusion that the property and buildings comprising the Center site meets the designation standards for inclusion in a DPA.

267-281 Medford Street “Nancy Sales Property”

The Nancy Sales Property occupies a unique location in the DPA. Alone among the major properties along the Mystic River it has no waterfront. Lying to the south of the rail line, the property occupies a corner of the DPA. The property is surrounded on two sides by a neighborhood and a school, and on two sides by vacant industrial land and active industrial uses.

⁴⁵ Paula M. Devereaux, *op. cit.*, *Addendum to Waterways (Amnesty) License Application*, Appendix 4.

⁴⁶ *Ibid*

⁴⁷ Letter from Paula M. Devereaux, attorney for the Center, to Deerin Babb-Brott, CZM, October 9, 2001.

The property is, however, contiguous to two parcels that have developed shorelines. (See the Center, previous, and a description of LaFarge Cement facilities, above.) It also lies in close proximity to road and rail facilities and, like the Center, is adjacent to the land-side transportation hub of the DPA, with Terminal Street, the Lafarge Cement access road, the Autoport road to the Medford Street Terminal, and the rail line intersecting at the northerly end of the property. Approximately 47,500 trucks from the DPA pass within feet of all sides of the building every year.⁴⁸ Water and sewer service is available for general industrial use and the topography is conducive to industrial development.

The building was built expressly for, and was used until fifteen years ago for industrial use (warehousing), and the land area of the property and the area immediately surrounding the property within the DPA exhibits an industrial use character.

Pursuant to the regulations at 301 CMR 25.04(2) and (3), nothing in the analysis of the property's characteristics, individually and in the context of the DPA as a whole, suggests that the DPA boundary should be revised to exclude the Nancy Sales building. Based on these findings, it is our conclusion that the Nancy Sales Property meets the designation standards for inclusion in a DPA.

⁴⁸ From data supplied by LaFarge Cement, US Gypsum, and Catalano Brothers. See discussion of maritime industrial users, above.

V. RESPONSE TO PETIONER'S COMMENTS

As described above, three landowners petitioned CZM to remove their properties from the DPA, The Nancy Sales Property, the Charlestown Commerce Center, and the Flatley Properties. The following section addresses the comments that each petitioner submitted in support of their request.

Comments from the Nancy Sales Petitioner

The Nancy Sales petitioner began this boundary review process with its submission of a letter on May 25, 2001, requesting that the property be removed from the DPA. The letter compared the characteristics of the property to the designation standards at 301 CMR 25.04 and offered the conclusion that because the property did not meet the standards it should be removed from the DPA. The arguments put forward by the petitioners in support of this contention can be summarized as follows:

Lack of functional connection to the water – There cannot be a functional connection to the water because “piers along the shoreline [at the Charlestown Commerce Center] burned down twenty years ago and have not been used since. Moreover, the structures comprising the [Center] ‘have been historically used for non-maritime industrial use...’”⁴⁹ In addition, the railroad right-of-way that separates the Nancy Sales property from the Center further reduces the connection to the water. Last, and in any event, “there exists no foreseeable functional connection to a developed shoreline” because “the...property is not suited for maritime terminal use.”

Road and rail links are not accessible – “[T]he apparent proximity to road and rail links is illusory” because the rail line adjacent the property is inactive and “has not served the Property for many years”. Additionally, “the ability of Massport’s facilities within the DPA to better utilize such links is tied to the use of the Property for [nonwater-dependent use]” through the execution of an easement that grants to Massport the use of a 3,200 square foot area of the property to facilitate a haul road. The easement both “eliminates a substantial portion of the Property’s antiquated loading dock and renders its use unfeasible,” and effectively cut[s] the Property off” from the road or rail links.

The topography does not support DPA uses – The petitioner provides a description of the internal features of the building and states that “[t]he interior configuration of the...building...does not allow it to be renovated for any use permitted in the Terminal Street Waterfront manufacturing sub-district.”

The property is not appropriate for industrial use – “The property has not been used for any industrial, commercial, or office use for over fifteen years,” the

⁴⁹ Letter from Eric W. Wodlinger, attorney for the property owner, to Thomas W. Skinner, Director, CZM, May 25, 2001. The letter cites the Chapter 91amnesty license application filed by the Charlestown Commerce Center.

Board of Appeals granted a variance for the property to allow residential use and parking, and the property is adjacent to a “dense concentration of non-industrial buildings that are residential, neighborhood services...and educational....”

The foregoing comments from the Nancy Sales petitioner are not supported by the detailed analysis of the property, both individually and within the context of the broader DPA.

First, the Nancy Sales Property is contiguous with the Charlestown Commerce Center and the Lafarge Cement Company within the clear meaning of the regulations. The Charlestown Commerce Center has been substantially developed to establish a functional connection to the water. In addition, the Center received a license in 1925 to create a pile supported pier of greater than two acres and to dredge a berthing slip 30 feet deep by 75 feet wide along the face of the pier. This berth is still used today by LaFarge. Neither the rail line nor the current roadway act in any adverse way on the physical contiguity of the properties.

The fact that the Center’s pier is dilapidated is not contemplated by the regulations. Run-down facilities can be rebuilt. The purpose of the DPA regulations is not to evaluate the physical condition of every component of marine infrastructure and its current serviceability for maritime industrial use. Rather, the regulations are designed to support the Commonwealth’s interest in preserving

what remains of the industrial coast...to the maximum extent practicable in order to meet the long term, cumulative space needs of the water-dependent industries which these areas are so well suited to accommodate. [301 CMR 25.01(2)]

Thus, the regulations assess the physical *potential* of the land area to support maritime industrial use; the fact that, in this instance, a licensed structure, built to provide access to a navigable waterway for maritime industrial purposes, currently occupies the property is sufficient for the purpose of satisfying the regulations.

This is further demonstrated by the specific language of the regulations that requires “substantial conformance,” not conformance absolute, with the criteria at 301 CMR 25.04 governing suitability to accommodate water-dependent industrial use. The use of the term “substantial conformance” recognizes that not every DPA property need contain all attributes necessary to support maritime industrial use, nor must the facilities it does contain be in perfect or even working order in order to satisfy the regulations. The term “functional connection” is therefore properly read in its broadest possible context; that is, as the capacity of a developed shoreline, evaluated individually and in the context of the DPA with all of its attributes as discussed above, to support DPA uses now or in the future. As CZM has stated in a previous DPA boundary review,

[w]hile not blind to the limiting effect of existing conditions, the intent of the regulations is to look beyond the serviceability of infrastructure in its present state

and focus instead on the extent to which the DPA as a whole retains an underlying physical potential for activation in the future.⁵⁰

Piers, wharves and bulkheads tend to be repaired on an as-needed basis. In fact, the owner of the piers is on record with DEP stating that he may restore the piers in the future. Further, the contiguity of the Nancy Sales Property with LaFarge, and its perfectly serviceable and currently operational pier, satisfies the requirements of the regulations.

Second, the Nancy Sales Property lies in reasonable proximity to road or rail links to the satisfaction of the regulations. The property lies on and has direct access to Terminal Street and Medford Street, both of which connect directly to the interstate highway system via access at Sullivan Square to Route 93. The property also abuts the B&M rail line through the DPA. As discussed above, Massport is negotiating to purchase the line and retain the potential for rail service to the DPA. In addition, the rail bed is envisioned to be developed as an industrial transportation corridor with rail and roadway potential for commercial and industrial traffic through and within the DPA. Even if the transportation corridor does not come to pass, Chelsea Street and the Terminal Street/Medford Street routes clearly meet the standard at 301 CMR 25.04(2)(b)1.

The petitioner argues that the proximity is now “illusory” as a result of the access easement granted by the owner of the Nancy Sales Property to Massport over land abutting the north end of the building, between the rail line and the edge of the Nancy Sales building, to facilitate Massport’s construction of a road connecting the main Autoport facility with the Medford Street Terminal. The north end of the first floor of the Nancy Sales building is the location of the building’s loading dock. The petitioner now claims that the loss of use of the loading dock, by virtue of the granting of an easement to Massport, effectively isolating the building from access to the roadways that surround the building.

The fact that the property owner has knowingly eliminated one potential access point to immediately proximal roadways neither renders that proximity illusory nor makes the situation permanent. We note that such isolation has not affected the petitioner’s formal development plans from reconfiguring the existing building to provide transportation access for residential uses on two other sides of the building,⁵¹ and that nothing prevents a similar configuration in the interest of DPA uses.

Last, the property’s physical character and use history exhibits an industrial use character. The building was constructed as a warehouse for a water-dependent import/export business with high ceilings, heavy brick and timber construction, and numerous loading bays fronting Terminal Street. The land area of the surrounding DPA exhibits a similar character. The fact that the building is on the edge of the DPA, across

⁵⁰ *Plymouth Cordage Park DPA Boundary Review: Findings and Recommendations*, Massachusetts Office of Coastal Zone Management, March 27, 1997.

⁵¹ Environmental Notification Form for 267-281 Medford Street, *op. cit.*

the street from residences and a school, does not bear on whether the DPA land area, including the Nancy Sales Property, are industrial in character. By definition, boundaries must necessarily serve to separate differing land uses.

It follows that the petitioner's discussion of the internal configuration of the building is not relevant to an assessment of a land area that exhibits a "predominately industrial" use character. [301 CMR 25.04(d)] (Note that the petitioner, in the May 25, 2001 request to remove the property from the DPA, appears to have misapplied the word "topography," which is generally understood to refer to the surficial features of the land⁵², and instead discusses the structural details of the building.) The Nancy Sales property and the surrounding DPA clearly exhibit an industrial use character.

The petitioner cites the action of the City Board of Appeals to grant a variance for the property to allow residential use and parking as evidence of the non-industrial nature of the property. As CZM has previously commented,

[t]he project site is subject to the October 1990 *Harborpark Plan, City of Boston Municipal Harbor Plan* (MHP) that designates the property at 267-281 Medford Street as part of the Terminal Street Waterfront Manufacturing Sub-District. While the project proponent references relief from this zoning through a variance granted by the City of Boston's Board of Appeal in December 1995, harbor planning regulations at 310 CMR 9.34 2(a)(2): Conformance with Municipal Zoning and Harbor Plans, states "the Department shall not find the requirement [to conform with a harbor plan] has been met if the project requires a variance...from the substantive provisions of the municipal harbor plan". Under the current designation, the property may only be used for light manufacturing or industrial water-dependent uses, with a percentage of the building available for office space (*MHP, Appendix A, Boston Zoning Code Text and Map Amendments*). In order for DEP to license the proposed use under Chapter 91, an amendment to this Harbor Plan also would be required.⁵³

If an official action of the City is to be cited as the expression of the appropriate use character of the property, the City's Municipal Harbor Plan and the Board of Appeals, must be considered co-authoritative sources.

Comments from the Charlestown Commerce Center Petitioner

The petition from the Charlestown Commerce Center does not offer any comments specific to the character of the property in relation to the designation standards in favor of amending the DPA boundary to exclude the property. Instead, the comments from the Center address the potential adverse impact to the Center of a boundary review determination that redraws the DPA boundary to exclude only the Nancy Sales

⁵² See detailed discussion at *Topography*, above.

⁵³ Comment letter from Thomas W. Skinner, CZM Director, to Bob Durand, Secretary, Executive Office of Environmental Affairs, January 11, 2002.

Property.⁵⁴ In effect, the Center opposes such a boundary change on the grounds that current and prospective industrial uses on its site “are not compatible with residential uses, and will result in direct conflict with future residents of the [Nancy Sales] Property.”⁵⁵ Among the concerns cited are those involving truck traffic safety, noise, vibration, dust, and hours of operation. CZM addresses these issues in Section VI.

Comments from the Flatley Properties Petitioner

The Flatley Company requested on January 25, 2002 that its properties described above be removed from the DPA.⁵⁶ The letter compared the characteristics of the properties to a generalized description of the designation standards at 301 CMR 25.04 and offered the conclusion that, because the properties did not meet the standards, they should, therefore, be removed from the DPA. The arguments put forward by the petitioner in support of this contention can be summarized as follows:

The properties are non-industrial buildings – The buildings are not well suited to today’s “heavy industry, with its premium on efficiency, accuracy, and automation,” which require horizontal, rather than vertical, configurations. In contrast, the Flatley properties were designed and constructed at a time when large, multi-story buildings were the industrial norm.

Reversion to industrial use would be unreasonable – Requiring that the properties be used for traditional maritime industrial uses by maintaining their status as properties in the DPA would be unreasonable because “the lack of market demand for water-dependent, industrial uses” has led to underutilized properties blighting the neighborhood, and it would “displace the commercial tenants who provide thousands of jobs, as well as aesthetic improvement and environmental advantages over heavy industry.”

Industrial use would destabilize other proximal uses – “Residential uses currently exist on and adjacent to the Flatley Properties” by virtue of the public walkway, boat ramp, public parking, and the planned walkway to the Ryan Playground on the Schrafft site, by the Playground itself, and by the residential neighborhood across Medford Street; all these uses would be destabilized by industrial activity. Moreover, the existing commercial uses on the Flatley Properties would be destabilized by conversion to industrial use. Thus, and perversely, the effect of converting the Flatley Properties to industrial use would be to actually frustrate the DPA objective of preventing destabilization by commingling them with industrial use.

CZM has, in the previous section, determined that the Schrafft Center does not meet the standards for inclusion in a DPA. We therefore address our response to the

⁵⁴ Paula M. Devereaux, *op. cit.*

⁵⁵ *Ibid.*

⁵⁶ Letter from R.J. Lyman, attorney for the Flatley Properties, to Thomas W. Skinner, CZM Director, January 25, 2002.

comments as they apply to the Flatley Properties at 465 and 425 Medford Street. Our responses thus qualified, CZM finds that the foregoing comments from the Flatley Properties petitioner are not supported by a detailed analysis of the property, both individually, and within the context of the broader DPA.

The designation standards do not require that buildings in DPAs be able to accommodate “heavy industry”; rather, the standard at 301 CMR 25.04(2)(d) requires that the land area “exhibit a use character that is predominately industrial.” As discussed above, both the 465 and 425 Medford Street properties were developed as, and used extensively for, maritime industrial use, and each supports industrial uses currently. To the contention that the properties cannot be converted to contemporary industrial configurations, we point out that the renovation of 465 Medford Street appears to have been a routine construction project, undertaken in the interest of reconfiguring the structure to accommodate new uses. We see nothing that would prevent a similar reconfiguration in the interest of industrial use, were such use desired.

The overarching complaint reflected here (and in the comments from the Nancy Sales petitioner), that contemporary industrial requirements render DPA infrastructure obsolete, and therefore functionally non-industrial in character, reflects a narrow view of the issue of suitability not contemplated by the regulations. A recitation of current inadequacies cannot be cited as evidence that the applicable standards are not met.⁵⁷ As CZM has stated in a previous DPA boundary review,

It is essential not to confuse the matter of short-term, project specific feasibility with the longer range, more generic considerations governing suitability as reflected in the designation standards of 301 CMR 25.04. The proper application of these standards is one that centers on a more basic determination of whether a land/water area contains, to a substantial degree, the combination of major attributes which establish the fundamental ability to respond to future marine-related economic opportunity.⁵⁸

Three examples will illustrate this point. Five years ago, an argument could have been made, similar to those made now, that the structures on the property at 425 Medford Street are unsuitable for maritime industrial reuse, that the site is a general eyesore, and that, although the property is licensed as a Marine Industrial Park, appropriate tenants have not been forthcoming; the site should therefore be removed from the DPA. No one observing port operations at the time could have foreseen that 8 acres of the property would serve perfectly as a staging area for industrial construction, removing an estimated 3,000 truck-trips from local streets and providing cost-savings to the construction of the Site power plant. Similarly, Massport has made inquiries about using the outdoor space at 425 Medford Street as parking for cars from the Autoport when the power plant is completed, parking that will be necessary for the Autoport to increase its business. Last, as noted above, renovations at 465 Medford Street were made to accommodate commercial uses; put differently, the structures prior to renovation were not physically

⁵⁷ *Plymouth Cordage Park DPA Boundary Review, op. cit.*

⁵⁸ *Ibid.*

suited to accommodate the use that eventually filled the space, yet no one suggested that such incompatibility was insurmountable.

In response to the petitioner's second argument, that a requirement that the properties revert to industrial use would be unreasonable, CZM suggests that as the uses at 465 Medford Street that would be made to revert are currently unauthorized, they constitute an illegitimate basis for a claim of unreasonableness. And the contention cannot apply at 425 Medford Street, because that property is licensed for, and currently supports, maritime industrial activity. Particulars aside, the petitioner's general thrust is that the lack of market demand for water-dependent industrial use is itself justification for removing properties from the DPA. Neither the regulatory language at 301 CMR 25.04(2) nor the principles on which it is based envision or allow for the application of a 'snapshot test' to determine suitability. As the Purpose section of the DPA regulations state,

[b]ecause economic, environmental, and social factors now virtually preclude further development of [land areas that meet the standards at 310 CMR25.04(2)], what remains of the industrialized coast should be preserved to the maximum extent practicable *in order to meet the long term, cumulative space needs* of the water-dependent industries which these areas are so well-suited to accommodate." [301 CMR 25.01(2)] (Emphasis added.)

The DPA regulations reflect an understanding that the character and prevalence of maritime industrial uses evolve in response to forces of technology and patterns of trade, factors often (usually) beyond our immediate control, and they seek to maintain these areas because their value is measured as much by the potential they represent, as by their contribution at only one moment in time.

Importantly, the operation of regulatory authority in DPAs under the Waterways regulations is designed to act singly or in concert with the DPA regulations and the Municipal Harbor Plan regulations to permit interim and supporting economic opportunity, through the allowance of certain uses not maritime industrial per se, when the market is not demanding land area for purely maritime industrial use. Collectively, these regulations and the principles they embody represent a deliberate and thoughtful balance of public and private interests in the tidelands of the Commonwealth.

To the last comment, that industrial use would have a destabilizing effect on the residential, commercial, and recreational uses on and around the Flatley properties, we point out that the standard cited here, at 301 CMR 25.04(2)(d)2, applies only to those land areas that do not exhibit an industrial use character. We have previously determined that both the 465 and 425 Medford Street properties do exhibit such character; the comment therefore does not apply.

VI. CONCLUSIONS AND RECOMMENDATIONS

Based on the land and water characteristics discussed above, the findings of this report lead to the conclusion that the Nancy Sales Property, the Charlestown Commerce Center, and the Flatley Properties at 425 and 465 Medford Street do meet the designation standards at 301 CMR 25.04(2). The findings of this report also lead to the conclusion that the Schrafft Center does not meet the designation standard at 301 CMR 25.04(2)(d). The findings of this report lead to the conclusion that the water area of the DPA meets the designation standards at 301 CMR 25.04(1).

The findings of this report also demonstrate that this DPA consists of a successful complex of maritime industrial uses along the Mystic River. Core businesses at US Gypsum, Catalano Brothers, the Autoport and LaFarge Cement are thriving and substantial maritime industrial users that require the water and land infrastructure that the DPA uniquely provides. The Autoport depends, for example, on the space provided by the BRA East and Medford Street Terminal properties, which serve as storage space for imported cars. The Marine Industrial Park at 425 Medford Street and a portion of the Medford Street Terminal currently support the construction of the new power plant across the river. Chelsea, Terminal and Medford Streets serve as industrial corridors for the truck traffic that connects the DPA to the regional interstate highway system. Finally, the Commonwealth recently spent \$20 million to improve Boston Harbor's navigation channels, including the Mystic River Channel, on which the maritime industry relies, and, as described above, Massport is currently negotiating to buy the B&M Mystic Wharf Branch rail line with funds from the Commonwealth to preserve the DPA's rail link for current and future industry. The Commonwealth's investments in the infrastructure of the DPA demonstrate a long-term commitment to the fortunes of maritime industrial use commensurate with the long-term view of the DPA regulations.

The foregoing review establishes the suitability of the subject properties, excepting the Schrafft Center, to remain in the DPA. As a final step in the boundary review process, the DPA regulations also provide CZM with an opportunity to "qualify, limit, or otherwise condition the designation decision in any manner that serves the purposes of these regulations..." [301 CMR 25.03(5)] This provision of the regulations allows CZM to exercise its professional judgment and expertise with port and harbor planning, as informed by the information and analysis developed as part of the boundary review process, to condition the conclusions to promote the maritime industrial interests of the Commonwealth. In this regard, the language at 301 CMR 25.03(5) allows CZM to consider whether there are significant extenuating factors identified by the review process, beyond physical and use characteristics, that should be considered in making the final boundary decision.

The DPA regulations themselves anticipate this evaluation at 301 CMR 25.04(3), which states that "[a]s a general rule, CZM intends to apply the ... suitability criteria in the context of groups of parcels that form coherent planning units, rather than to individual project sites..." The determination of the suitability of an individual property to remain in the DPA must, obviously, be made by assessing the infrastructure and use

characteristics specific to that property in the context of the designation standards at 301 CMR 25.04. If a subject land or water area does not meet the designation standards, that area may be removed from the DPA (as we have done with the Schrafft Center). The key distinction lies in *how* the individual property's suitability is assessed: the Commentary section cited above requires that assessment to occur "in the context of groups of parcels that form coherent planning units." Thus, while a subject property may itself lack a feature required under 301 CMR 25.04 for inclusion in a DPA, it may, acting in concert with the attributes of other sites, demonstrate the requisite characteristic. This is reflected in the language of the regulations at 301 CMR 25.04, where the designation standards are themselves qualified with the phrases "must include, *or be contiguous with*", and "must lie *in reasonable proximity to* [necessary infrastructure]." (Emphasis added.)

This construction similarly compels CZM to evaluate the decision suggested by the designation standards for individual properties in the context of the DPA as a whole. In this case, CZM must therefore determine whether the decision suggested by the findings of suitability should be qualified, limited or otherwise conditioned to achieve a greater benefit to the interest of the Commonwealth than may be realized through the application of the designation standards alone.

As we have quoted above, the core underlying principle of the DPA regulations is articulated in the Purpose section, which states, in part,

[b]ecause economic, environmental, and social factors now virtually preclude further development of [land areas that meet the standards at 301 CMR 25.04(2)], what remains of the industrialized coast should be preserved to the maximum extent practicable in order to meet the long term, cumulative space needs of the water-dependent industries which these areas are so well-suited to accommodate." [301 CMR 25.01(2)]

We therefore approach any exercise of discretionary authority under 301 CMR 25.03(5) with care, recognizing that the purpose of the regulations establishes an extraordinarily high threshold to be met by any action that proposes to materially affect the outcome of the review of subject properties under 301 CMR 25.04. If an action taken under 301 CMR 25.03(5) can be clearly demonstrated to substantially improve the capacity of the DPA to serve the interest of the Commonwealth for which it was originally designated, such action is warranted.

One aspect of the DPA has been consistently identified, explicitly or implicitly, as fundamentally problematic by almost all commenters over the course of the boundary review study. Truck traffic is a basic element of industrial use, and the DPA generates heavy truck traffic. Indeed, the volume of truck traffic associated with the facilities discussed above is substantial proof that the DPA supports working uses. However, the majority of that traffic currently uses a roadway (Medford Street) better suited for primarily residential use. According to Charlestown residents and DPA businesses, Medford Street has two related deficiencies as an industrial roadway: it is inefficient for the industrial users and it is a quality of life aggravation to the Charlestown

neighborhood. To DPA businesses, the neighborhood character of the street, with on-street parking, driveway entrances, and heavy pedestrian use, impose significant constraints on industrial traffic. Residents consider heavy truck use to be a safety hazard, particularly given the location of Terminal Street and the right turn to Medford Street immediately adjacent to the Charlestown High School and its related recreational and cultural facilities. CZM has been made aware that the noise of industrial traffic idling, accelerating, downshifting, and braking is significant and unwelcome. We have also been made aware that the neighborhood's objections are long-standing, and that the City has for some time been committed to resolving the issue.

It is the purpose of the DPA program is to protect certain areas with the capacity and characteristics to support maritime industrial uses, which include associated traffic and noise. The DPA regulations are designed to support these activities and do not address these potential safety and nuisance issues. Thus, the neighborhood objection to impacts of abutting industrial use is not, in the purest sense, germane to the boundary review process for an existing DPA. The conflict between residential and industrial areas is not unique to Charlestown. However, CZM addresses it here because, where possible, reasonable mitigating approaches to DPA management should be employed, and because longstanding community objection to industrial traffic manifests itself in the community's opposition to activities within and appropriate to the DPA itself.

In 1990, the City commissioned a study to evaluate alternative configurations for an industrial haul road that would deliver truck traffic to Sullivan Square via a route based on the location of the railroad line.⁵⁹ The report evaluated ten alternative configurations, and, after review by the City and the neighborhood, identified a preferred alternative route. The proposed alternative would take all industrial traffic off Medford Street as far as Sullivan Square, and would create a two-way industrial roadway parallel to the rail line. Each alternative, including the preferred route, was found to have significant impacts to DPA properties through which the rail line runs, and the report evaluated various configurations for each property to assess those impacts. The cost of the preferred alternative was estimated to be about \$5 million (in 1991 dollars), not including land acquisition, telephone, gas and electric. The report also envisions that land between the new roadway and Medford Street would be taken or acquired to create a landscaped buffer between the neighborhood and the Medford Street edge of the new roadway. Despite frequent discussion and continued expressions of support, the haul road concept has not advanced materially since the 1991 report was issued due to the complexity and cost of the undertaking.

Based on the information and analysis developed through our review of the DPA, we believe that development of an industrial transportation corridor for truck and rail service would substantially improve the infrastructure capacity of the DPA. Further, CZM believes that this DPA boundary review provides the unique opportunity to create and develop sustained support for a process that can successfully develop the corridor, using the preferred alternative from the 1991 study as a starting point.

⁵⁹ Feasibility Study, op. cit.

To make the new transportation corridor a reality, three key issues must be addressed: a state agency or authority must acquire the rights to the rail line, the transportation corridor must be studied and designed, and, if necessary, the Flatley Properties must allow the corridor to be built over its land.

To address the first point, the Commonwealth and Massport are negotiating the purchase of the Mystic Wharf Branch rail line. This property would be owned and managed by Massport.

To address the second point, the private parties who would be impacted by the development of the transportation corridor (the owners of the Flatley and Nancy Sales properties) have agreed to enter into an agreement with the Executive Office of Transportation and Construction (EOTC), or its designee, to underwrite the development of the engineering study, design and preparation of construction plans necessary to advance the process to construction. To support these commitments, CZM recommends that a Memorandum of Understanding be developed that commits the signatories to participation in a working group composed of the several parties with an interest in construction of a transportation corridor. Participants could include, but not be limited to, EOTC, the Executive Office of Environmental Affairs, Massport, the Boston Redevelopment Authority, the Boston Transportation Department, representatives of the Charlestown community, the Flatley Company, the owner of the Nancy Sales Property, and owners of property in the DPA. The MOU would specify the commitments of the participants, establish the schedule, and assign project management responsibilities, and would also commit the working group participants to overcoming the design, financial, and political challenges that may face the project. A qualified engineering firm (to be financed as described above) would be contracted to complete the necessary feasibility studies to identify the optimal route for the transportation corridor and to develop the final design and construction plans.

To address the third point, it appears from CZM's review and analysis that the transportation corridor may have an impact on the Flatley Properties through either direct imposition on land and current uses, or on the functionality and aesthetics of existing business. The Flatley Company has agreed to make available rights over its land, with reasonable limitations, over 425 and 465 Medford Street and the Schrafft Center that would accommodate the design and development of the transportation corridor.

CZM's recommendation for the final DPA boundary is therefore based on the importance to the DPA of constructing an industrial transportation corridor for truck and rail service. Because the transportation corridor will significantly and directly impact the Flatley Properties, because the Flatley Company will support the technical studies necessary to design the corridor, and given a prohibition on future residential use of the site, CZM recommends that the DPA boundary be redrawn, *after the agreement with EOTC or its designee has been executed, financing for the engineering studies is in escrow, and a notice to proceed has been issued to an engineering firm to study and design the corridor, after receipt of an executed deed restriction prohibiting future residential development of the property, after a formal commitment of rights over its land*

has been received, and after the MOU has been executed as described above, to exclude the property at 465 Medford Street. We note that this recommendation will affect the disposition of the Chapter 91 license for 465 Medford Street, the appeal of which is currently stayed pending the outcome of this review. CZM recommends that DEP and the Flatley Company jointly request that the matter be resolved through an administrative consent order conditioned by the terms of Flatley's participation in design and construction of the transportation corridor as described above.

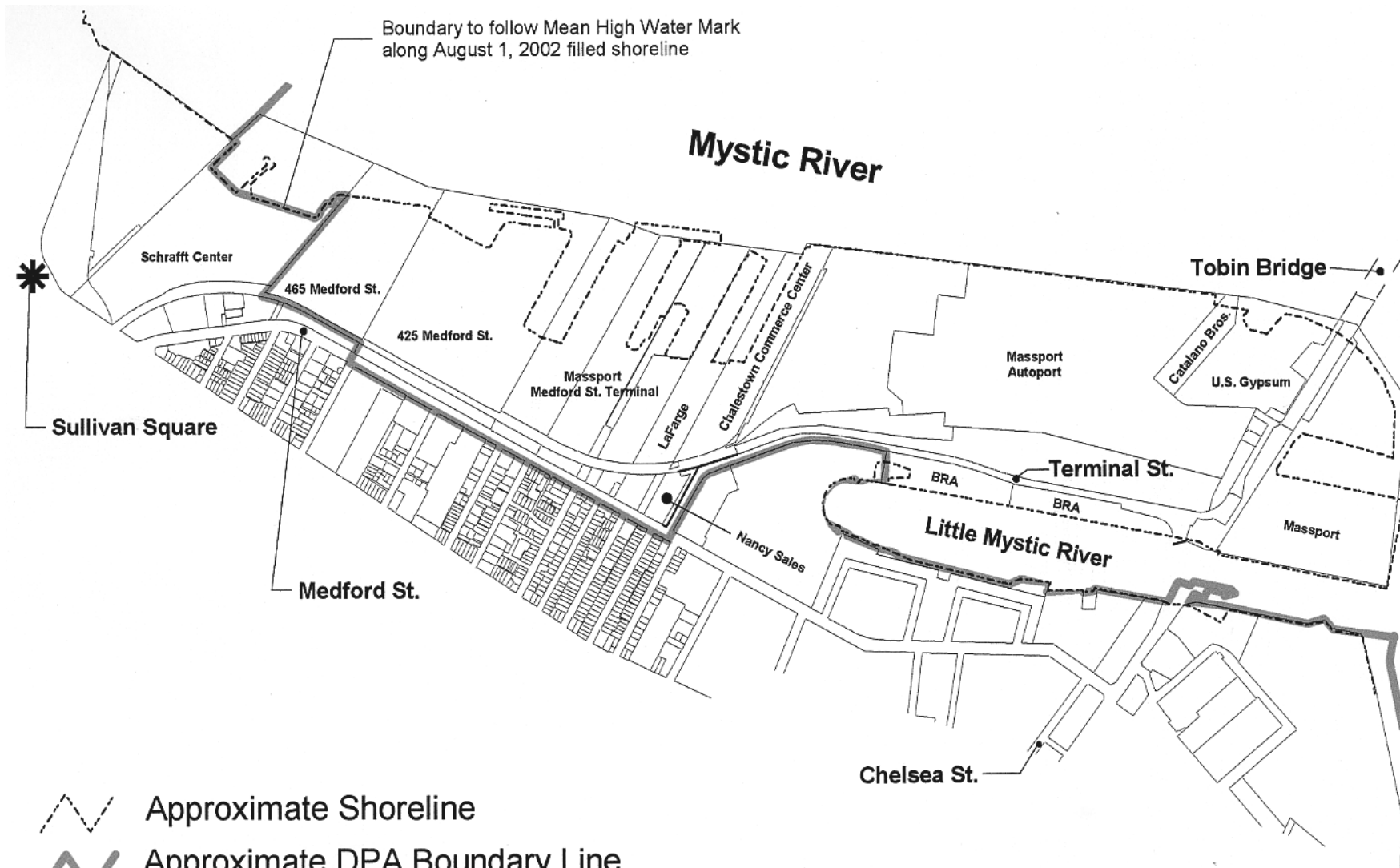
The construction of the industrial corridor also bears on our recommendation for the Nancy Sales Property. While the construction of the transportation corridor will not sever the property's contiguity to waterfront infrastructure pursuant to 301 CMR 25.04(2)(a) (an access way across the corridor would be easy to construct), such action arguably diminishes the property's physical relationship to active DPA properties. In other cases in the DPA, the property on either side of the new route is owned by the same party (Charlestown Commerce Center, LaFarge Cement, Massport, Flatley), a condition that more directly preserves the interest and connection to the waterside infrastructure. Conversely, when the corridor is completed, the industrial traffic that currently passes along each of the four sides of the Nancy Sales property will pass primarily along the building's short north side. Given the significant benefit of the corridor to the DPA and the petitioner, and the need for support for the design process, the petitioner has agreed, as described above, to provide financial support for the technical studies necessary to facilitate construction of the corridor.

The Nancy Sales petitioner has, in support of his long-stated commitment to developing the property for artist live/work space, proposed a floor plan design that may facilitate the building's use by artists, and is implementing design elements to mitigate conflicts with neighboring industrial use. He has also agreed to a restrictive covenant, to run with the property, by which the owner of the Nancy Sales Property agrees not to object in any manner with respect to future industrial impacts to the property. He has also agreed to require that future tenants or owners of units in the Nancy Sales building waive, as a condition of lease or ownership, objection to impacts of industrial use, including truck and rail traffic along the adjacent transportation corridor, regardless of the results of the feasibility study. While the substance of these provisions do not guarantee that no non-artist residences will be developed in the long run, or that no potential conflict with industrial use will arise, we believe that they do provide – in conjunction with the industrial corridor – an adequate buffer that will contribute to the long-term interests of the DPA.

While the foregoing provisions will not remove the conflict incurred by introducing a use with residential attributes or a use that is residential in fact into the immediate proximity of industrial uses (directly at LaFarge Cement and the Charlestown Commerce Center, and indirectly through the truck traffic from other DPA users), CZM believes that the design of the building to support artist live/work space, the development of the industrial transportation corridor, and the development provisions described above will provide for a use with sufficient transitional and buffering attributes to mitigate the potential impacts of the action. Therefore, CZM recommends that the DPA boundary be

redrawn, after the agreement with EOTC or its designee has been executed, financing for the engineering studies is in escrow, and a notice to proceed has been issued to an engineering firm to study and design the corridor, after the restrictive covenant described above has been executed, after a demonstration that the lease/ownership waiver of objection described above has been implemented, and after the MOU has been executed as described above, to exclude the Nancy Sales Property.

In conclusion, CZM recommends, pursuant to 301 CMR 25.04(2), that the DPA boundary be immediately redrawn to exclude the land area of the Schrafft Center as illustrated at **Figure 9**. We further recommend, pursuant to 301 CMR 25.03(5), that at the time the conditions described above have been executed to the benefit of the DPA, CZM amend the DPA boundary map, with public notice, to exclude the Flatley property at 465 Medford Street and the Nancy Sales Property from the DPA, as illustrated at **Figure 10**.





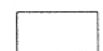

-  Approximate Shoreline
-  Approximate DPA Boundary Line
(Modified to reflect removal of Schrafft Center)
-  Approximate Parcel Line
(City of Boston Assessors Maps)

Figure - 9
Mystic River DPA
- Charlestown -
Modified to reflect removal of Schrafft Center

Scale: 1" = 800' +/- 

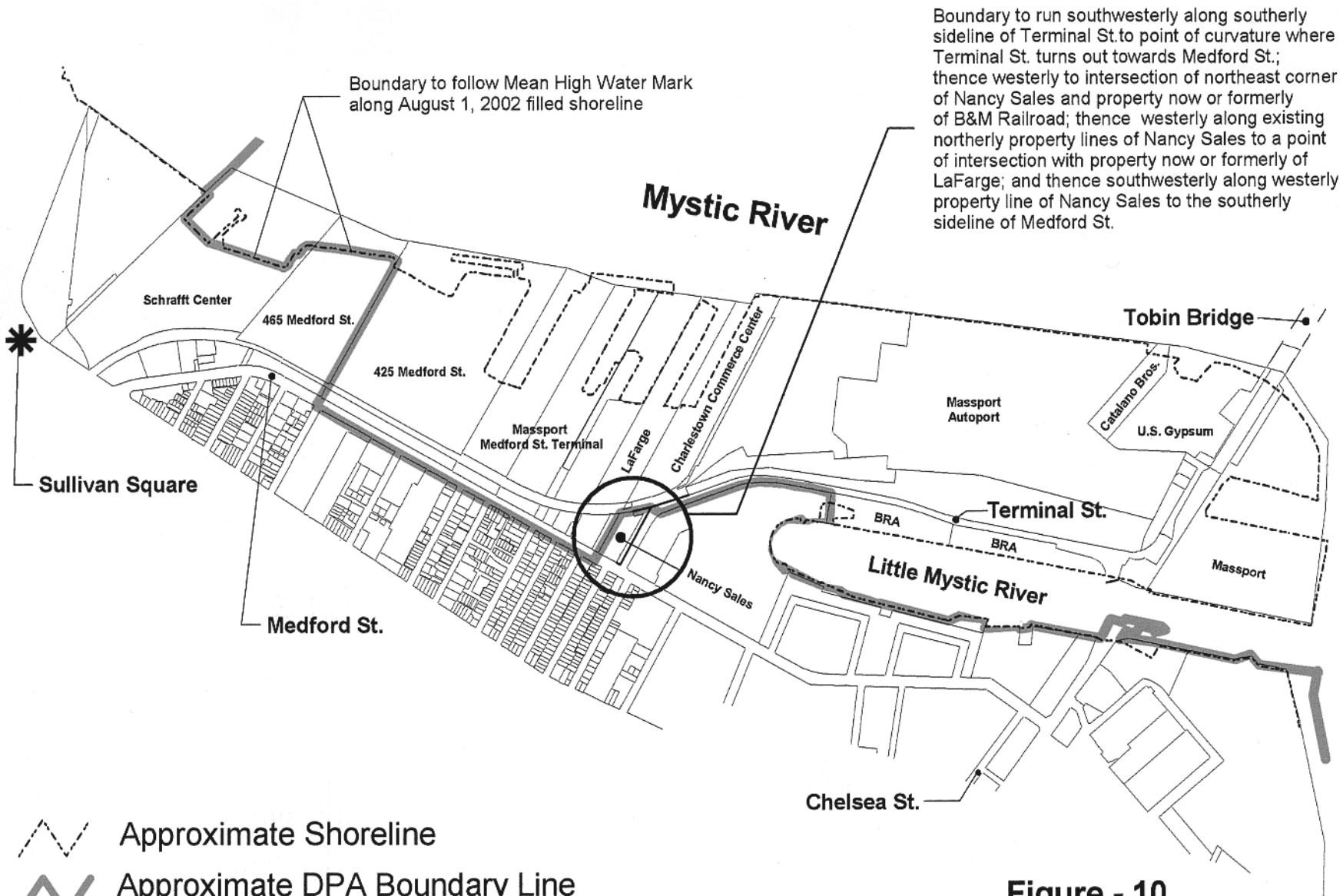





Figure - 10
Mystic River DPA
- Charlestown -

Modified to reflect removal of Schrafft Center, 465 Medford St., and Nancy Sales properties

-  Approximate Shoreline
-  Approximate DPA Boundary Line (Modified to reflect removal of Schrafft Center)
-  Approximate Parcel Line (City of Boston Assessors Maps)

Scale: 1" = 800' +/-

