

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

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

**April 23, 2003**

## **I. Introduction**

Pursuant to the Designated Port Area (DPA) regulations at 301 CMR 25.00, I issue this designation decision for the boundary review of the East Boston DPA. Issuance of the decision concludes a three-part review and decision-making process, as follows.

In coordination with the East Boston Municipal Harbor Plan (MHP) developed by the Boston Redevelopment Authority (BRA), the Massachusetts Office of Coastal Zone Management (CZM) initiated a boundary review of three of the four sub-areas of the East Boston DPA. During the review process, three property owners informally requested that their properties be removed from the DPA. CZM conducted the boundary review in accordance with the provisions of 301 CMR 25.03, and assessed the characteristics of the subject properties and the DPA as a whole. The review process concluded with a report that determined that the DPA boundary should be modified.<sup>1</sup> Over the course of our study, CZM conducted a series of public information meetings and met extensively with owners of DPA properties, city and state agency staff, and community representatives to gather information and comment on the DPA. The report was published on December 18, 2002, for a 30-day public comment period that was extended by 30-days based on a request from the BRA. Pursuant to 301 CMR 25.03(4), CZM held a public hearing on January 16, 2003, to solicit comment. CZM received eleven letters commenting on the report. An additional property owner requested removal from the DPA during this comment period.

This designation decision summarizes and responds to key issues that have been raised by commenters and formally designates the DPA boundary. I have carefully considered all of the oral and written comments received in response to the boundary review report. Comments that provided substantive information regarding perceived impacts of the proposed modification, and commentary in support of, or opposition to, the regulatory and policy implications of our proposed approach, have been particularly useful to our work. I appreciate the time that all commenters have taken to participate in this boundary review process.

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<sup>1</sup> See East Boston Designated Port Area Boundary Review, Executive Office of Environmental Affairs, Office of Coastal Zone Management, December 18, 2003.

## II. Summary of Boundary Review Recommendations

Four owners informally petitioned CZM to remove fourteen parcels from the DPA:

<u>Owner</u>	<u>Property</u>
New Street Realty Trust	4-26 New Street
Joseph Messina	80 Border Street
J. Ricupero & M. Merullo	170-180 Border Street
Boston Towing & Transportation	34-40 New Street, 334-404 Border Street

After an analysis of the characteristics of the subject properties and the DPA as a whole, the boundary report concluded that all of the properties currently located in the East Boston DPA meet the designation standards at 301 CMR 25.04.<sup>2</sup>

The boundary report then considered the functional attributes of the DPA, pursuant to 301 CMR 25.04(3), and considered “all relevant factors affecting overall suitability [of the DPA] to accommodate water-dependent industrial use.” As informed by CZM’s analysis of the individual components, collective functionality, and land use context of the DPA, the report concludes that the capacity of the DPA to serve the interests of the Commonwealth for which it was originally designated can be achieved through the current boundary configuration.

The DPA regulations set forth the procedure under which CZM establishes and modifies the boundaries of DPAs. Pursuant to 301 CMR 25.05(2), DPA boundaries should “... coincide to the maximum practicable extent with roadways, property lines, or other physical or legal landmarks that are generally permanent...”<sup>3</sup> The DPA boundary at the 4-26 New Street site currently bisects the site and an existing building. As shown on the CZM boundary maps for the East Boston DPA, the landward component of this boundary line does not appear to be coincident with any permanent, ascertainable physical monument, feature, or legal description. This situation, in combination with the site’s location on the edge of the DPA, led CZM to recommend in the Review that the boundary be redrawn to exclude the landside portions of the 4-26 New Street site, and that the waterside portions of the site remain in the DPA<sup>4</sup>.

Boundary lines were similarly recommended for adjustment at 310 Border Street, the Umana Barnes School. The DPA boundaries on this site run from Border Street out to the Inner Harbor channel, and are currently offset from the property line by approximately 30 feet to the north, thus including approximately 12,000 square feet of land area, and 13,000 square feet of water area. Similar to the above referenced 4-26 New Street site, the boundary line does not appear to be coincident with any permanent,

<sup>2</sup> See 301 CMR 25.01(2), Purpose.

<sup>3</sup> See 301 CMR 25.05(2), Boundary Delineation.

<sup>4</sup> See pg. 22 of the *East Boston Designated Port Area Boundary Review* for a full discussion of the 6-26 New Street site.

ascertainable physical monument, feature, or legal description, and is therefore recommended for adjustment in the boundary review. The land and water areas of this site are recommended for removal from the DPA<sup>5</sup>.

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<sup>5</sup> See pg. 23 of the *East Boston Designated Port Area Boundary Review* for a full discussion of the 310 Border Street site.

### III. Response to Comments on the Boundary Report

The public comment letters reflected a range of opinion in support of and in opposition to the recommendations of the boundary review. Comments critical of the boundary report focused on the designation standards and the capacity of various sites currently within the DPA boundaries to meet these standards. Several commenters stated that their various properties have never, and will never, have the attributes necessary to accommodate water-dependent industrial use due to various constraints such as transportation access, lack of active rail service, lack of sufficient backland, lack of access to the shoreline, and the proximity to substantially developed residential areas. Further, several commenters contend that the overall effect of the continuation of the DPA program on the East Boston waterfront will be continued blight and deterioration.

The fact that the East Boston DPA does not have the backland capacity to support land-intensive marine industrial operations was clearly acknowledged in the Boundary Review. However, this DPA is capable of providing sufficient land area for maritime industrial uses and supporting services that are essential to the continued operation of the Port of Boston and other marine industrial businesses in the Boston Harbor area.

The contention by several commenters that the lack of adequate rail access makes their properties unsuitable for continued inclusion is unsubstantiated based on the above acknowledgement that the East Boston DPA mainly provides land area for marine industrial support services. A direct connection to rail service is not necessary for this particular DPA area as the existing or potential future water-dependent industrial uses need not be of a scale that require rail infrastructure in order to operate. A discrete parcel need not display all of the characteristics required by the standards in order to meet the overall criteria to remain in a DPA. Further, all three East Boston DPA sub-areas are located "...in reasonable proximity to: established road...links leading to major trunk or arterial routes."<sup>6</sup> Although the Boundary Review found that sub-area three displayed some geometry constraints for large tractor-trailers, in general, all three sub-areas were determined to meet the standard for continued inclusion in a DPA<sup>7</sup>.

One commenter takes exception to the interpretation that a property lacking legal access to the shoreline meets the criteria to remain in a DPA, stating that no "functional connection with a water area" exists due to an intervening parcel. The criteria for inclusion in a DPA, however, states that the land area in question must "include, *or be contiguous with other DPA lands that include* a shoreline..." (emphasis added).<sup>8</sup> The majority of the parcels in the East Boston DPA are directly linked to the shoreline, and none are more than one parcel removed from the water's edge.

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<sup>6</sup> See 301 CMR 25.04(2)(b)(1)

<sup>7</sup> See pg. 10 of the *East Boston Designated Port Area Boundary Review* for a full discussion of transportation infrastructure.

<sup>8</sup> See 301 CMR 25.04(2)(a)

Several commenters contend that the mixed-use nature of the area surrounding the East Boston DPA (commercial, residential and recreational) is sufficient reason for partial or wholesale removal of DPA restrictions from the East Boston waterfront. The regulations, however, state that the “*land area* must exhibit a use character that is predominately industrial, or is reasonably capable of becoming so, because it does not contain a dense concentration of...residential, commercial, recreational, or other uses that unavoidably would be destabilized if commingled with industrial activity” (emphasis added).<sup>9</sup> Land area refers to the land area within the DPA boundary. The land area of the East Boston DPA as currently configured meets all applicable criteria to remain in the DPA<sup>10</sup>.

While the comments of the owners of the 6-26 New Street properties are represented generally above, issues specific to this site were also raised, and will be addressed here. The Trust objected to the reference on page 24 of the boundary review which stated that the Trust would pursue water-dependent industrial uses “for the watersheet portion of the site... and [in] the water-dependent use zone (WDUZ) as delineated at 310 CMR 9.51(3)(c)...” The Trust states in its comment letter that the current Chapter 91 regulations governing the WDUZ do not require an industrial use in the WDUZ, and that the Harborwalk is an acceptable WDUZ activity. This assertion appears to be accurate, subject to review by DEP. Under 310 CMR 9.12(2)(a)(4), public pedestrian access qualifies as a water-dependent activity.

Section VII of the boundary review referenced a November 25, 2002, letter in which the Trust states its commitment to certain infrastructure improvements on the property, both on the DPA restricted portion of the site as well as the non-DPA portion of the site. I am pleased to note that the following actions were committed to by the Trust, and look forward to seeing these actions included in the Trust’s Chapter 91 license application for the site:

1. Removal or restoration of all on-site piles (DPA and non-DPA portions of the site);
2. Site-wide reconstruction of deteriorated sections of the bulkhead; and
3. The design of any future project will include a permanent vehicle access route from New or Sumner Street to the site’s WDUZ and DPA that will be included in any future Chapter 91 license review process.

A marine industrial use has not yet been identified for the site. However, the Trust has committed to significant upgrades to the existing infrastructure in the form of one of the following options<sup>11</sup>:

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<sup>9</sup> See 301 CMR 25.04(2)(d)

<sup>10</sup> See pg. 20 of the *East Boston Designated Port Area Boundary Review* for a full discussion of the application of land and waterside suitability criteria.

<sup>11</sup> Option No. 3 was inadvertently omitted from Section VII of the boundary review.

1. Construction of a permanent pile supported pier in the DPA;
2. Installation of floating docks capable of berthing vessels of a type and size common to marine industrial use; or
3. Restoration of the DPA portion of the site to a level that will allow the area to be accessible for vessel berthing at the existing neighboring dock.

Boston Towing and Transportation (BTT), the primary marine industrial user in the East Boston DPA, commented that the boundary review report incorrectly characterized the properties at 334 through 400 Border Street as “heavily utilized.”<sup>12</sup> At a follow-up meeting with the owners of BTT, the owner explained that while the area appears fully occupied, much of the equipment alongside the piers has been abandoned and is essentially a liability that must be disposed of by the owners of BTT.

Lastly, an overall sentiment expressed both in comment letters and at the several public hearings was that the DPA designation precludes the revitalization of the East Boston waterfront. The DPA regulations expressly prohibit a limited number of activities that have proven to be incompatible with marine industrial uses, including housing, entertainment complexes, nursing homes, schools, and hotels. Allowable commercial, supporting, and temporary uses, as well as the flexibility provided under a DPA master plan can provide viable options for the redevelopment of the East Boston waterfront.

Over the course of the boundary review, CZM worked closely with DEP to review Chapter 91 licenses in the DPA. Upon review, it appears that several properties in the DPA may be eligible for “grandfathering” under DEP’s Chapter 91 regulatory program. Unauthorized uses or structures located on previously authorized filled private tidelands do not require licensing, pursuant to 310 CMR 9.05(3)(b), so long as the property owner can demonstrate to DEP’s satisfaction that the uses and structures existed on the site since January 1, 1984, and have undergone no unauthorized structural alteration or change in use since that time. The DPA designation will continue to prohibit the conversion of these areas to housing or other inherently incompatible uses. However, options for development that are compatible with the character and purpose of the DPA exist. CZM and DEP are available to assist the City of Boston and its residents in planning and licensing efforts along the East Boston waterfront in order to achieve the community’s goals for this important area.

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<sup>12</sup> Pg. 14, *East Boston Designated Port Area Boundary Review*

#### **IV. Designation Decision**

In conclusion, I determine, pursuant to 301 CMR 25.04(2), that the DPA boundary shall be immediately redrawn to exclude the land area of 6-26 New Street, and the land and water area of 310 Border Street, as illustrated in the attached figure. The waterside portion of the 6-26 New Street site shall remain in the DPA.

The owners of the 6-26 New Street properties have previously agreed to provide language in lease forms or deeds describing the prior existence of nearby water-dependent industrial facilities with operational characteristics as enumerated at 310 CMR 9.51(1), and have agreed to develop any non-water dependent facilities "in a manner to prevent significant conflict in operation between their uses with those of any water-dependent facility which can reasonably be expected to locate on or near the project site....." as required by 310 CMR 9.51(1). Commitments to upgrades in site infrastructure, referenced above, have the potential to provide facilities for water dependent industrial use on this site. CZM will work closely with DEP and the New Street Realty Trust to ensure that these goals are achieved.

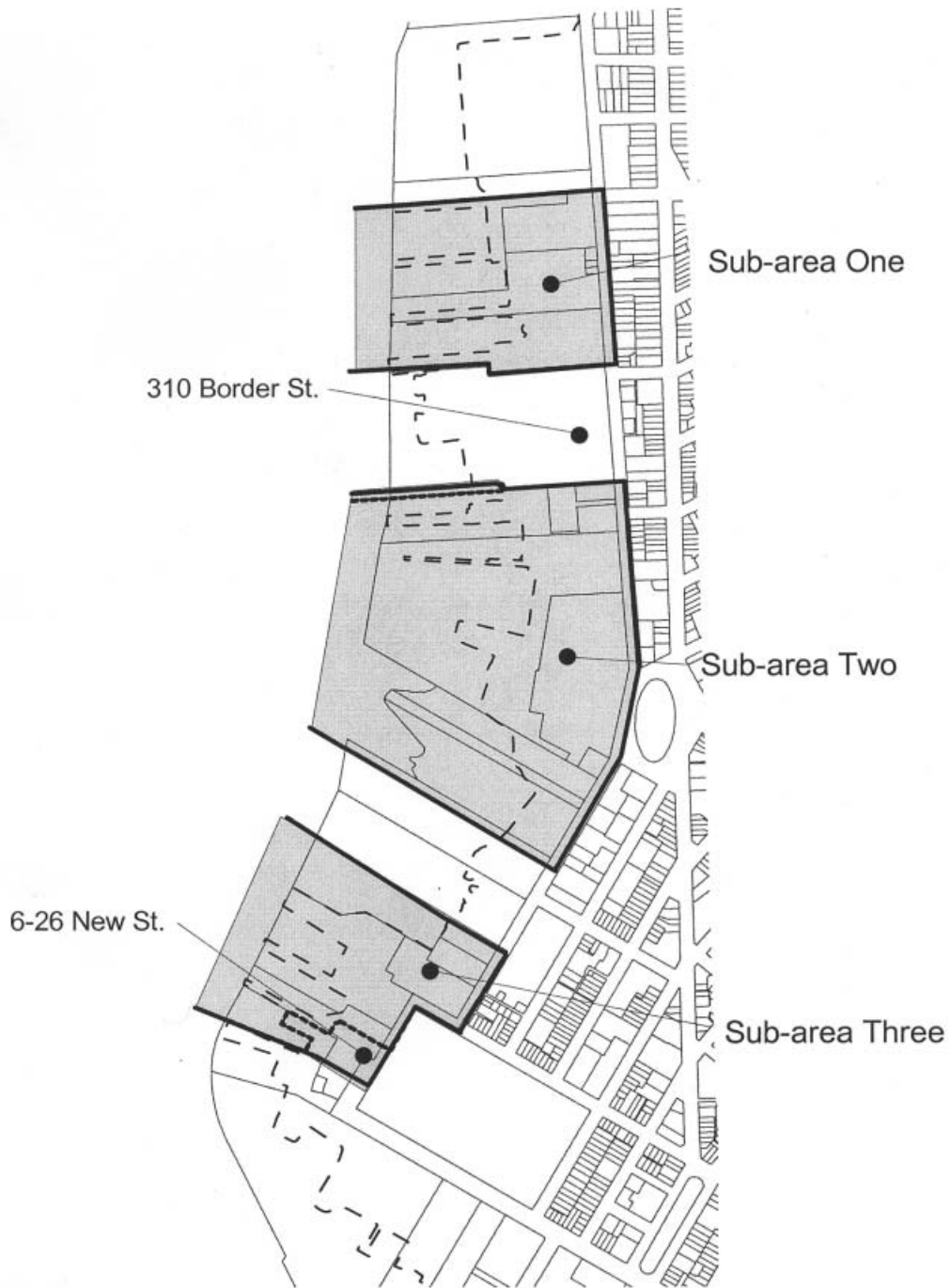


Tom Skinner

04/24/03

Date





East Boston Revised DPA Boundary  
 April, 2003

