Boundary Review of the Beverly Harbor Designated Port Area, Beverly MA

Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management

January 5, 2015

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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)]. In the CZMA, Congress made declarations of national policy elements and encouraged states to develop management programs enforceable under state law to address these interests.

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

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

Under the Designation of Port Areas regulations at 301 CMR 25.00, CZM is responsible for mapping, interpreting, and periodic review of DPA boundaries. The purpose of the DPA boundary review process is to determine whether a DPA boundary should remain as it is currently established

or whether it should be modified to more appropriately protect and promote the goals of DPA policy. DPA boundaries are reviewed in accordance with the procedures set forth in the Designation of Port Area regulations at 301 CMR 25.00.

II. THE DPA PROGRAM

DPAs are geographic areas of particular state, regional, and national significance with respect to the promotion of commercial fishing, shipping, and other vessel-related activities associated with water-borne commerce, and of manufacturing, processing, and production activities reliant upon marine transportation or the withdrawal or discharge of large volumes of water. These water dependent industrial uses vary in scale and intensity but share similar needs for infrastructure with three essential components: (1) a waterway and associated waterfront that has been developed for some form of commercial navigation or other direct utilization of the water; (2) backland space that is conducive in both physical configuration and use character to the siting of industrial facilities and operations; and (3) land-based transportation and public utility services appropriate for general industrial purposes.

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

III. BEVERLY DPA AND BOUNDARY REVIEW PROCESS

Coincident with the initial development of the Commonwealth's DPA policy, the physical boundary for the Beverly Harbor DPA was established in 1978 (Figure 1). After the establishment of the physical boundaries of the state DPAs, the legal framework was further developed through a succession of regulatory measures. In 1979, the Department of Environmental Protection (DEP) incorporated DPA rules into its Waterways regulations under M.G.L. Chapter 91, with provisions to protect water dependent industrial uses only on the water-side areas of DPAs. In 1984, the legislature expanded the Chapter 91 licensing authority to include filled tidelands, and DPA

jurisdiction was extended to include filled tideland areas. In 1994, the Designation of Port Area regulations at 301 CMR 25.00 were promulgated to set forth the procedure for establishing and modifying DPA boundaries.

Since the Beverly DPA boundary was originally established in 1978, and the subsequent underlying regulatory framework was sequentially developed, there has not been a comprehensive boundary review, using the designation standards found at 301 CMR 25.04, to determine if the current DPA boundary should remain as currently established or whether it should be modified.

In April of 2014, the Mayor of Beverly requested that CZM initiate a review of the entire boundary of the Beverly Harbor DPA. CZM accepted the request in April 2014, and a notice of review was published in the *Environmental Monitor* and the *Salem News* on May 7, 2014. A public meeting was held on May 15, 2014 in Beverly City Hall, and the formal public comment period closed on June 6, 2014.

Notice of this draft boundary review report, a public hearing, and a thirty-day public comment period will be included in the January 7, 2015 *Environmental Monitor*. A final decision will be issued pursuant to 301 CMR 25.03(4) and (5) within 60 days of the close of the public comment period.

To inform the boundary review process, CZM reviewed comments submitted, consulted with property owners, city officials, DEP staff, and interested citizens. CZM also conducted intensive review of available plans, permits, and licenses applicable to the DPA review. Throughout the course of the review, CZM received formal and informal comment from DPA property owners, the public, elected representatives, and City and state agencies. CZM considered all comment in the context of the policy and regulatory framework that guides this review. Substantive information regarding history, uses, constraints, impacts, and other features of the existing DPA was particularly useful in the assessment. CZM would like to extend our appreciation for all those who provided written and informal comments, documentation, or otherwise participated in the boundary review process.

IV. PLANNING UNITS FOR BOUNDARY REVIEW

The boundaries of DPAs are established by CZM in accordance with criteria governing the suitability of contiguous lands and waters to accommodate water dependent industrial use, as appropriate to the harbor in question. The Designation of Port Area regulations at 301 CMR 25.00 define water dependent industrial use to mean any use found to be such in accordance with the Chapter 91 Waterways regulations at 310 CMR 9.12(2)(b).

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

Because physical and functional characteristics are such that water dependent industrial and non-water dependent industrial uses are frequently inter-mixed or co-occur, in the determination of whether an area was to be classified as water dependent industrial, CZM considered the primary use of a planning unit to be that use to which a majority of that area is dedicated. The Chapter 91 Waterways regulations affirm this principle, recognizing that water dependent industrial uses are permitted to include licensable accessory and supporting commercial uses that co-occur and are compatible with water dependent industrial uses. Accessory uses include parking facilities, access and interior roadways, administrative offices and marine-oriented retail facilities. Supporting uses are industrial or commercial use that provide direct economic or operational support for the water-dependent industrial use in the DPA and must be compatible with activities characteristic of a working waterfront and its backlands.

Central Waterfront

The Central Waterfront planning unit comprises just over five acres and includes the DPA land area from the City of Beverly's property at 1 Water Street to the Birarelli parcel at 7 Water Steet. The Central Waterfront area has been filled and developed over time to accommodate water-dependent uses, and is distinguished as the primary waterfront serving generally as a series of marinas at the western limit of the Beverly DPA, as well as a commercial fishing facility. The planning unit area exhibits a primarily water-dependent character, although most of the land area here is not in water dependent industrial use. While there is one commercial fishing use here, and some of the slips in the marinas are used for commercial vessels, the harbormaster's records show that fewer than a dozen commercial vessels are berthed here, and the substantial portion (97%) of the land area is devoted to non-water dependent industrial uses, with the majority of the waterfront used to provide berthing and services to recreational vessels.

The Central Waterfront planning unit is primarily dominated by recreational boating facilities (marinas).The City's property at 1 Water Street was purchased in 1995 through a Massachusetts Division of Conservation Services Parkland Acquisitions and Renovations for Communities (PARC) program grant. A current amendment to the requirements of that grant authorizes restaurant use on the property, which is the City's stated intent for the site, and specifies requirements to assure that an

adequate area of the site is reserved for the recreational uses as required by the grant. While the land area, historically used as a McDonald's restaurant site, is being considered for redevelopment as a new restaurant with the PARC requirements included, the waterfront consists of marina licensed for commercial use. However, most of the slips at the city's Glover Wharf marina are authorized through annual 10A permits, and the City identifies the use here as a recreational marina.

The vast majority (75%) of the Central Waterfront planning area consists of Beverly Port Marina, a licensed recreational boating facility. While this marina also provides boatyard services, these services are typically associated with a marina, which is not a water-dependent marine industrial use. Another small licensed marina is located adjacent to (and between two parcels of) Beverly Port Marina. The Birarelli commercial fishing business, which hosts a small fleet of lobster boats, occupies approximately 3% of the land area in the Central Waterfront planning unit. While this water-dependent industrial use is fully operational and continuous, it represents only a small percentage of the overall uses within this planning unit.

Tuck Point

The Tuck Point planning unit extends from the eastern parcel line of the Birarelli site to the terminus of Water Street, and includes the Tuck Point condominiums, the Tuck Point Marina, the Jubilee Yacht Club, and the South Essex Sewer District pump station sites. This approximately six-acre area is comprised entirely of non-water dependent industrial uses, although the entire waterfront along this stretch is developed for water-dependent uses with seawalls, docks, and piers. The Tuck Point condominiums and marina together comprise over four-and-a-half acres of this planning unit (75%). The Tuck Point condominiums project was developed prior to the legislature's 1984 decision to extend Chapter 91 jurisdiction to filled tidelands, and so is a pre-existing residential development in the DPA, and the Tuck Point Marina is a licensed recreational boating facility (marina). Similarly, the Jubilee Yacht Club, which has been in continuous operation since the late 1800's, is also fully licensed. The South Essex Sewer District pump station occupies less than four percent of this planning unit, and is not a water dependent industrial use.

Silver Court

The Silver Court planning unit extends from the Water Street terminus to the northeast boundary of the Beverly DPA, and includes six single- and two-family residences and an undeveloped beach. While the beach does include an existing boat-ramp, it is primarily undeveloped and the planning unit does not include any water-dependent industrial uses.

V. ELIGIBILITY REVIEW

As a first step, CZM must ascertain whether any of the planning areas within the DPA are ineligible for review pursuant to the criteria at 301 CMR 25.03(2)(a) through (d). Based on our review, CZM determined that no portion of the Beverly Harbor DPA has been the subject of a designation decision under 301 CMR 25.03(5) in the last five years. Therefore, all areas of the DPA are eligible for review based on the criteria at 301 CMR 25.03(2)(a).

Beverly's DPA comprises a mixture of water-dependent industrial and non-water dependent industrial uses. Though generally, these uses may be either primary, supporting, and/or accessory uses, in most cases in the Beverly DPA, one exists to the exclusion of the other. In applying 301 CMR 25.03(2)(b), CZM considered the primary use within a given area to be the use to which a majority of the planning unit is dedicated.

No portion of the Beverly Harbor DPA was recommended for exclusion from this review by the City Council or any other municipal body with authority to enact zoning. Therefore, all areas of the DPA are eligible for review based on the criteria at 301 CMR 25.03(2)(c).

Any area within a DPA that is entirely bounded by existing DPA lands or waters is not eligible for review pursuant to 301 CMR 25.03(2)(d). This criterion is intended to avoid conflict that could result from incompatible uses being developed in the middle of an otherwise substantially water dependent industrial use area. This scenario could arise if a portion of the DPA that is otherwise completely surrounded by DPA lands is de-designated. However, as the current review is of the entire DPA boundary, no such isolated area is under review, and this scenario is avoided. Therefore, this criterion is not implicated in this DPA boundary review.

As described in greater detail above, the Central Waterfront, Tuck Point, and Silver Court planning areas do not exhibit a primarily water dependent industrial use character. Therefore, they meet all of the criteria for eligibility for review pursuant to 301 CMR 25.03(2) and are further analyzed for substantial conformance with the criteria governing suitability to accommodate water dependent industrial use, below.

VI. DESIGNATION REVIEW CRITERIA AND ANALYSIS

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

Central Waterfront

Pursuant to 301 CMR 25.04(2)(a), any area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. The shoreline in the Central Waterfront planning unit consists extensively of filled tidelands, with seawalls, bulkheads and riprap providing stability for these areas. Most of the shoreline has been developed further with piers and floats that establish a connection between the land area and the water. Based on this, CZM concludes that the Central Waterfront planning unit meets this criterion.

The second key criterion for determining suitability of a land area for water dependent industrial use,

pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to an established road or rail link that leads to a major trunk or arterial route; and be served by water and sewer facilities that are capable of serving general industrial use. The Central Waterfront planning unit is primarily served by Water Street, which is a main public road that links Water Street to Route 1A (Cabot Street) and ultimately Route 128, which is a main regional highway. Water Street is generally a narrow road flanked by residential and commercial properties in this area, although large trucks serving area businesses routinely use it. While this road is not ideally suited for large commercial vehicles, CZM believes that the road does currently meet the criteria of an established road link leading to a major route. The area is also served by both city water and sewer services. Therefore, CZM concludes that the Central Waterfront planning unit meets the criteria for road access and infrastructure necessary to support water dependent industrial uses.

To accommodate water dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use, or be reasonably capable of becoming so. As discussed above, the entire shoreline and an extensive portion of the overall land area of the Central Waterfront planning unit consists of filled tidelands. These areas are primarily very low-lying and flat, and the area exhibits a relatively gentle slope from Water Street toward the harbor, with areas closest to the harbor being relatively flat and consistent in elevation. Based on this, CZM concludes that the topography of the Central Waterfront planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the land area must also exhibit a use character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational or other uses that would unavoidably be destabilized if commingled with industrial activity.

CZM's review determined that the waterfront land in the Central Waterfront planning unit is primarily dominated by recreational boating facilities (marinas), all of which are currently licensed. The waterfront at the Central Waterfront is developed with wharves, piers and floats that are licensed for use as recreational boating facilities or, in the case of Glover's Wharf, properly authorized under section 10A permits. While the Beverly Port Marina is licensed for both boat yard and recreational boating (marina) uses, the boat yard functions are incidental and associated with the marina, and consist of typical marina-related uses such as storage and boat repair. Though one commercial lobster company is located here, in total, water dependent industrial uses occupy approximately 3% of the Central Waterfront planning unit, and are functionally secondary to the predominantly commercial and recreational character of the area.

The Central Waterfront planning unit is dominated by non-industrial buildings that in most cases existed in this area before the establishment of the DPA, and have not been removed or converted to industrial use to date. CZM presumes that the predominant uses here, including primarily commercial recreational boating facilities and public recreational areas, are largely incompatible

with activities characteristic of a water dependent industry, because of the inherent functional conflicts and destabilization that may arise. Therefore, CZM finds that this area does not meet the criteria for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(d).

Tuck Point

As stated previously, pursuant to 301 CMR 25.04(2)(a), an area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. While much of the land area between the Birarelli site and the Water Street terminus in the Tuck Point planning unit is occupied by residences and public infrastructure, the shoreline itself in the Tuck Point planning unit consists predominantly of filled or altered tidelands, with seawalls, bulkheads and riprap providing stability for these areas. The majority of the shoreline has been developed further with piers, wharves, and floats that provide a functional connection to the water. Accordingly, CZM concludes that a substantial portion the Tuck Point planning unit includes, or is contiguous with other DPA lands that include a shoreline that is developed adequately to establish a functional connection with the DPA waters such that water dependent industrial use could be supported in this area.

The second key criterion for determining suitability of a land area for water dependent industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to an established road or rail link that leads to a major trunk or arterial route; and be served by water and sewer facilities that are capable of serving general industrial use. As is the case with the Central Waterfront planning unit, the Tuck Point planning unit is primarily served by Water Street, a main public road that links Water Street to Route 1A (Cabot Street) and ultimately Route 128, which is a main regional highway. Water Street is generally a narrow road flanked by residential and commercial properties in this area, although trucks serving area businesses routinely use it. Again, while this road is not ideally suited for large commercial vehicles, CZM believes that the road does currently meet the criteria of an established road link leading to a major route. The area is also served by both city water and sewer services. Therefore, CZM concludes that the Tuck Point planning unit meets the criteria for road access and infrastructure necessary to support water dependent industrial uses.

To accommodate water dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use, or be reasonably capable of becoming so. While a significant portion of the Tuck Point planning unit is comprised of residential development, as discussed above, the entire shoreline in the Tuck Point planning unit is either filled or altered tidelands that provide a generally stable and flat topography. Like the Central Waterfront planning unit, this area exhibits a relatively gentle slope and is typically relatively flat and consistent in elevation. Based on this, CZM concludes that the topography of the Tuck Point planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the Tuck Point land area must also exhibit a use

character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational or other uses that would unavoidably be destabilized if commingled with industrial activity.

As stated above, the vast majority (96%) of the Tuck Point planning unit consists of residential uses and recreational boating facilities, with the remaining four percent dedicated to a sewer pump station. The wharves and piers in this planning unit are entirely dedicated to recreational boating uses.

CZM finds that the Tuck Point planning unit is dominated by residential and non-industrial buildings that have not been removed or converted to industrial use since their construction. CZM presumes that the predominant uses here, including primarily residences and recreational marinas, are largely incompatible with activities characteristic of water dependent industry, because of the inherent functional conflicts and destabilization that may arise. Therefore, CZM finds that this area does not meet the criteria for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(d).

Silver Court

As previously discussed, pursuant to 301 CMR 25.04(2)(a), an area to remain in the DPA under this boundary review must include, or be contiguous with other DPA lands that include, a shoreline that has been substantially developed with piers, wharves, bulkheads, or other structures that establish a functional connection with a DPA water area. While the residential sites that comprise the Silver Court planning unit do in some cases have small retaining or sea walls along the seaward parcel lines, in all cases these sites are fronted by an undeveloped beach, with no opportunity to provide a functional connection to the water. Accordingly, CZM concludes that a substantial portion the Silver Court planning unit does not include, and is not contiguous with other DPA lands that include, a shoreline that is developed adequately to establish a functional connection with the DPA waters such that water dependent industrial use could be supported in this area. Therefore, the Silver Court planning unit does not meet this criterion for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(a).

The second key criterion for determining suitability of a land area for water dependent industrial use, pursuant to 301 CMR 25.04(2)(b) is that the land must lie in reasonable proximity to an established road or rail link that leads to a major trunk or arterial route; and be served by water and sewer facilities that are capable of serving general industrial use. Unlike the Central Waterfront and Tuck Point planning units, the Silver Court planning unit is served by a small, dead-end, residential side street (Silver Court), which is unsuitable to accommodate the types of large commercial vehicles generally needed to support industrial uses. In fact, a portion of this planning unit is not functionally connected to Water Street via Silver Court. Although the area is served by both city water and sewer services, CZM concludes that the Silver Court planning unit does not meet the

criteria for road access and infrastructure necessary to support water dependent industrial uses.

To accommodate water dependent industrial use, the land area must also exhibit a topography that is generally conducive to industrial use, or be reasonably capable of becoming so. The land area within the Silver Court planning unit is primarily upland, but does provide a generally stable and flat topography. The upland area exhibits a relatively gentle slope from toward the harbor, with areas closest to the harbor being relatively flat and consistent in elevation. Similarly, the beach area in this location is gently sloping toward the harbor. Based on this, CZM concludes that the topography of the Silver Court planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain within the DPA boundary, the Silver Court land area must also exhibit a use character that is predominately industrial, or reasonably capable of becoming so because it does not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use; or residential, commercial, recreational or other uses that would unavoidably be destabilized if commingled with industrial activity.

As stated above, the entirety of the Silver Court planning unit consists entirely of a small residential neighborhood. Therefore, CZM finds that the Silver Court planning unit is dominated by residential and non-industrial buildings that have not been removed or converted to industrial use since their construction. CZM presumes that the residential uses here are largely incompatible with activities characteristic of water dependent industry, because of the inherent functional conflicts and destabilization that may arise. Therefore, CZM finds that this area does not meet the criteria for inclusion in a DPA boundary as required by 301 CMR 25.04(2)(d).

DPA Water Areas

For this DPA boundary review, CZM completed the above analysis of land areas before applying the criteria for 301 CMR 25.03(2) or 15.04(1), in order to better understand how the water area in Beverly Harbor is currently used with regard to water dependent industrial uses and compatibility within the DPA.

The water areas adjacent to the Central Waterfront, Tuck Point, and Silver Court planning areas have been further analyzed for substantial conformance with the criteria pursuant to 301 CMR 25.04(1) below. These areas include the entire water sheet within the DPA boundary.

The Beverly DPA waters include a navigable entrance channel with a design depth of 20 feet or more, as the Beverly Harbor Federal entrance channel design depth is 24 feet. However, while the Central Waterfront and Tucks Point planning units, as detailed in the above land area analysis, have a shoreline that is substantially developed with piers, wharves, bulkheads or other structures, these do not establish a functional connection with a land area meeting the criteria set forth in 301 CMR 25.04(2), because these land areas do not have a use character that is predominantly industrial. The shoreline of the Silver Court planning unit is not substantially

developed, as detailed above, and the use character of the land area is not predominantly industrial. Therefore, the water areas adjacent to the Central Waterfront, Tuck Point, and Silver Court planning units, are not in substantial conformance with the first criteria governing suitability to accommodate water dependent industrial in Beverly Harbor.

The second set of criteria in determining suitability of a water area to accommodate water dependent industrial use concern the configuration, size and location of the water area. These criteria direct that all water areas serving as access channels to land or water areas meeting the designation standards, and any water area lying between these access channels and any water or land area meeting the standards, must be included in any DPA boundary. Because none of the planning units meet the review criteria standards for inclusion in the DPA, the water areas adjacent to them do not meet these criteria.

VII. CONCLUSIONS AND RECOMMENDATIONS

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

CZM's analysis of the land and water areas in the Beverly DPA indicates that the Silver Court planning area does not meet three of the four criteria for continued inclusion, and while the Central Waterfront and Tucks Point planning units are in substantial conformance with most of the physical suitability criteria in 301 CMR 25.04, they do not exhibit a use character that is predominantly industrial, or reasonably capable of becoming so because they do not contain a dense concentration of non-industrial buildings that cannot be removed or converted, with relative ease, to industrial use. To the contrary, this review found that the Central Waterfront, Tuck Point, and Silver Court planning units are not in substantial conformance with the use character suitability criteria, because they contain a dense mix of non-industrial buildings, including primarily residential and recreational uses. The use character is substantially residential, with authorized recreational boating facilities dominating the waterfront. The waterfront primarily serves recreational boating needs, and while commercial fishing uses do exist, they represent a very small percentage of the overall use of the area (approximately one percent), and are dwarfed by the extent of residential and recreational uses in the DPA. While an important and integral part of the Beverly Harbor waterfront, this commercial fishing use was established and has been successfully maintained within the context of the Central Waterfront without becoming destabilized, and is therefore unlikely to be affected by removal of the area from the DPA. As some of the "non-conforming" residential and recreational boating uses predate the establishment of the DPA on tidelands, have been in effect in many cases for decades, and are in some cases specifically authorized in long-term licenses, these areas cannot be found to be in substantial conformance with the review criteria at 301CMR 25.04.

Accordingly, CZM finds that the Central Waterfront, Tuck Point, and Silver Court planning units,

as well as the water areas associated with these, shall be removed from the boundary of the Beverly Harbor DPA. Pursuant to this review, the entirety of the Beverly Harbor DPA will be removed.

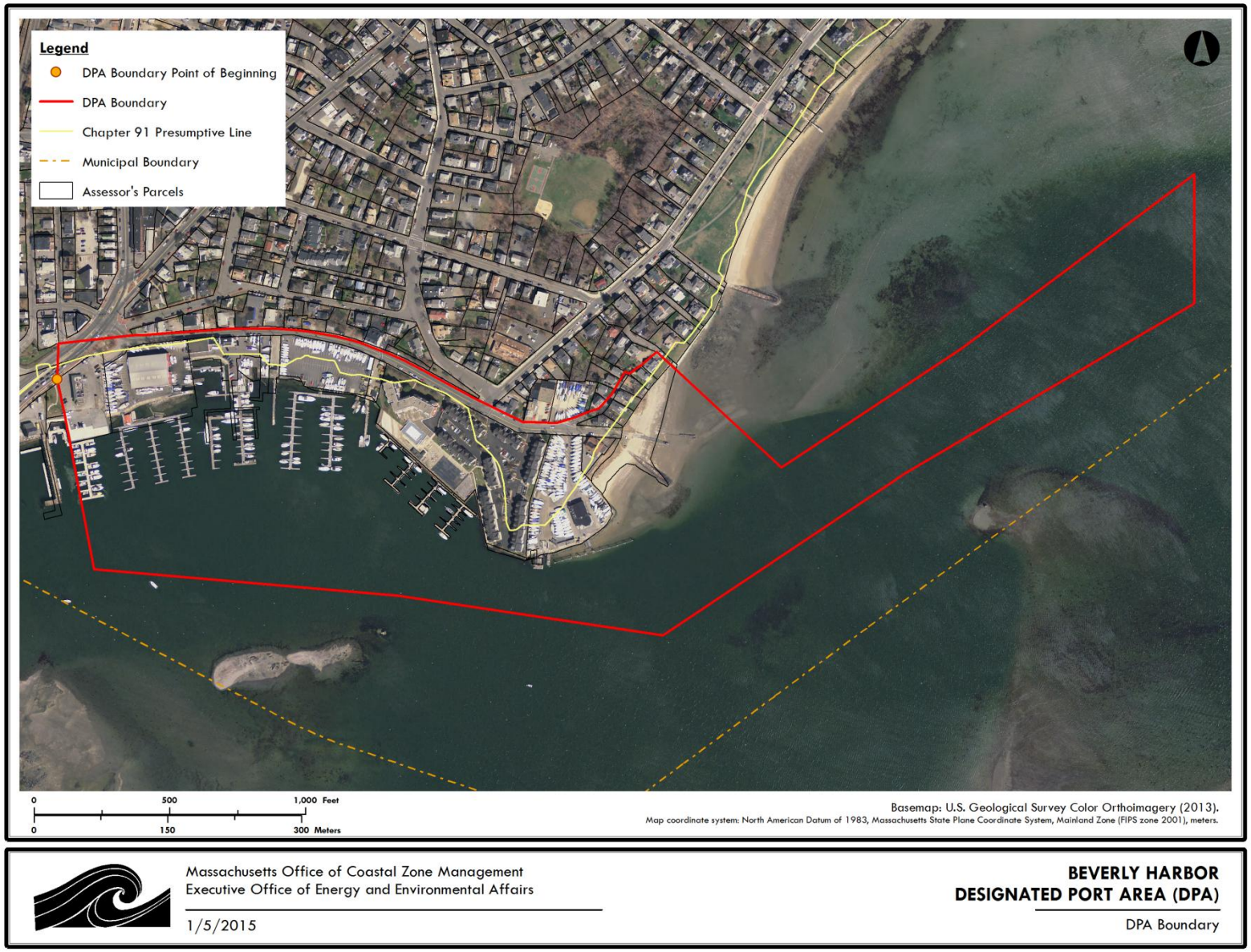


Figure 1: Current Beverly Harbor DPA boundary map

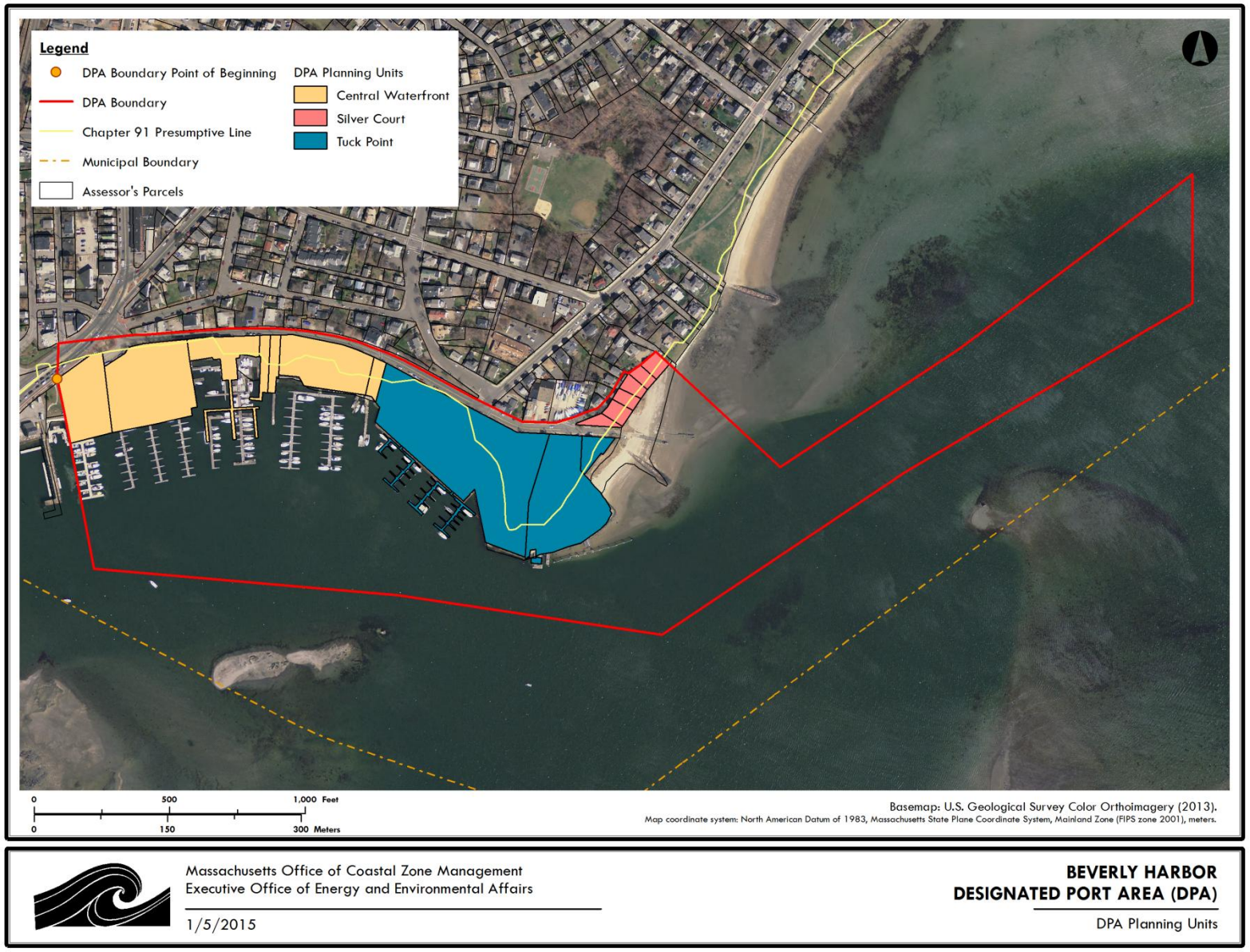


Figure 2: Planning units within the Beverly Harbor DPA boundary review