Designation Decision for the Chelsea Creek Designated Port Area Boston, MA

Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
September 6, 2022

I. INTRODUCTION

Pursuant to the Designated Port Area (DPA) regulations at 301 CMR 25.00, today as Director of the Office of Coastal Zone Management (CZM), I hereby issue this designation decision for the boundary review of the Chelsea Creek DPA. This decision affirms the findings and proposed DPA boundary modifications in CZM's May 23, 2022 designation report, *Boundary Review of the Chelsea Creek Designated Port Area, East Boston, MA* ("boundary review designation report"), and its issuance concludes the boundary review process, as described below.

In March of 2021, four property owners submitted a formal request to CZM to review specific portions of the Chelsea Creek DPA boundary in East Boston. CZM accepted the request, expanding the review to include the entire land area between the Chelsea Street Bridge and the Boston/Revere municipal boundary, consisting of all DPA lands including all parcels, roads, rights of way, and parcels within the DPA boundary review area but excluding the adjacent watersheet of the DPA.

CZM issued a notice of intent to review this portion of the Chelsea Creek DPA boundary, which was published in the *Environmental Monitor* on September 22, 2021, the *Boston Globe* on September 23, 2021, and *El Mundo* on September 23, 2021. CZM held a virtual public hearing on October 13, 2021 and the public comment period ended on October 22, 2021.

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

A detailed boundary review designation report was issued on May 23, 2022 which concluded that the DPA boundary should be modified. Pursuant to 301 CMR 25.03(4), the commencement of a 30-day comment period on the boundary review designation report was noticed in the June 8, 2022 *Environmental Monitor*, the June 4, 2022 *Boston Globe*, and the June 2, 2022 *El Mundo.* A public hearing was held on June 14, 2022. CZM received oral testimony from three individuals at the public hearing and eight comments letters on the designation report during the public comment period.

This designation decision summarizes and responds to concerns and matters that were raised by commenters on the boundary review designation report, and following careful consideration and analysis, formally designates the modified DPA boundary for Chelsea Creek. On behalf of CZM, I want to thank those who participated in the boundary review process and acknowledge the valuable input provided which informed the designation decision issued today.

II. SUMMARY OF BOUNDARY REVIEW DESIGNATION REPORT

As detailed in the May 23, 2022 boundary review designation report, CZM defined three planning units within the Chelsea Creek DPA review area that formed coherent areas comprised of groups of parcels that are defined and delineated by shared physical, geographical, and land use characteristics. These planning units were sized and configured in a manner that allowed for consideration of relevant factors affecting overall suitability of the area to accommodate current and future water-dependent industrial use.

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

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

Based on the eligibility criteria at 301 CMR 25.03(2), none of the planning units within the Chelsea Creek DPA under review were found to be ineligible for review. Therefore, all three planning units progressed to the second step of the review process and were further analyzed for substantial conformance with the criteria governing suitability to accommodate water-dependent industrial use.

CZM analyzed the three planning units in the review area to determine whether they would remain in the DPA pursuant to 301 CMR 25.04(2). The DPA regulations direct that an area of land shall be included or remain in a DPA *if and only if* CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use. As detailed in the designation report, CZM determined that the North and South planning units are in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use. Therefore, CZM concluded that the North and South planning units should remain in the Chelsea Creek DPA.

As detailed in the boundary review designation report, CZM determined that the Central planning unit is in substantial conformance with the physical suitability criteria for possessing a topography that is conducive to industrial use, being within reasonable proximity to established road links and sewer/water facilities that support general industrial use, and for exhibiting a use character that is predominately industrial or reasonably capable of becoming so (301 CMR 25.04(2)(b)(c)(d)). However, in the boundary review designation report, CZM determined that direct access to the shoreline and the DPA waters is restricted due to the presence and location of the MBTA at-grade railroad right of way property in the Central planning unit. In the Central planning unit, the MBTA right of way is the only property with a direct connection to the shoreline, and the presence of a freight rail easement on this property precludes it from being used for water-dependent industrial use. Properties located inland of the MBTA right of way would require an easement and an at, below, or above-grade crossing to access the shoreline and DPA waters. As noted in the boundary review designation report, the significantly shoaled in tidal flats along the shoreline may contribute to challenges for the development of current or future water-dependent industrial use within this planning unit. Based on the combined presence of the MBTA property and the resulting restricted access between properties suitable for water-dependent industrial use and the watersheet with the physical challenges associated with accessing the watersheet in this location, CZM finds that the Central planning unit does not meet the criterion for a substantially developed shoreline that provides a functional connection with DPA water area. As a result, CZM concludes that the DPA boundary will be modified in the region of the Central planning unit, such that the Central planning unit as well as the adjacent section of Route 1A/McClellan Highway shall be removed from the Chelsea Creek DPA.

III. RESPONSE TO COMMENTS ON THE BOUNDARY REVIEW DESIGNATION REPORT

Three oral and eight written comments were received on the boundary review designation report both expressing support for the proposed modifications to the Chelsea Creek DPA boundary and raising concerns with the proposed modifications to remove any area from the DPA. The topics raised included perceived fragmentation of the DPA as a result of the proposed modification, existing shoreline conditions, functional connection to DPA waters, and the delineation of the Central and South planning units.

Two commenters noted that the shoreline conditions of all three planning units share similar characteristics, including partially unimproved areas along the shore and a portion of the DPA watersheet that has shoaled in over time, and therefore suggest that none of the units meet the criterion for a functional connection to the DPA waters. While the boundary review designation report finds that the shoreline of the Central planning unit with shoaled in tidal flats may contribute to challenges for water-dependent industrial use, these factors alone do not preclude the planning unit from having a functional connection to the DPA waters because dredging and shoreline improvements are permittable activities in DPAs. The presence of the MBTA-owned, at-grade railroad right of way is an additional factor that, in combination with physical challenges associated with accessing the watersheet in this planning unit, prevents this planning unit from having a functional connection to the DPA waters of Chelsea Creek. The North planning unit has a different physical configuration from the Central planning unit and has a functional connection to DPA waters due to the grade change that allows for access over the MBTA owned right of way property for water-dependent industrial uses to and from the shoreline and the parcel seaward of the right of way. This functional connection is supported by the existing roadway at Boardman Street which extends over the MBTA right of way. By contrast, there is no established crossing of the right of way in the Central planning unit, such that parcels landward of the right of way are entirely separated from the DPA waters of Chelsea Creek. With the consideration of the MBTA railroad property, physical configuration of the parcels, and other contributing factors, the Central planning unit does not meet the criterion for having a functional connection to DPA waters.

Most commenters expressed support for DPAs generally, the DPA Program and the importance of protecting portions of the shoreline for maritime industries. One commenter noted that redevelopment of areas removed from DPAs should be targeted for water dependent industrial uses, which further highlights this commenter's interest in preserving DPA lands. Another commenter stated that they strongly support active maritime uses along the waterfront and believe that the future of the working ports in Boston and the Commonwealth depends on determining how waterfront areas can be consolidated to more efficiently and effectively serve future maritime uses. In this same comment, the commenter expressed concerns regarding fragmentation of the DPA as a result of the removal of the Central planning unit. In the process of delineating planning units, each unit is defined so that it may singularly support water-dependent industrial uses considering the potential needs and requirements of water-dependent industry including connection to the waterfront, lay down space, and connection to utilities and transportation networks. Because CZM applies review criteria to

groups of parcels - planning units - in the DPA boundary review process, areas remaining in a DPA possess the criteria to support water dependent industrial activity.

In a comment letter, the Boston Planning Development Agency (BPDA) requested that CZM review the location of the southern boundary between the South and Central planning units to ensure that the location was logical given the parcel boundaries in that location. In the designation report, the southern limit of the Central planning unit was determined to be coterminous with the functional limit of the properties within the planning unit. Based on the City of Boston Assessors map, discussion with and written comments from the BPDA, CZM determined that the delineation of the southern limit of the Central planning unit is more appropriately placed at the southern boundary of the MBTA property. Therefore, with this decision, CZM adjusts the southern boundary of the Central planning unit to align with the northern boundary of parcel number 0100437100. This increase of 0.74 acres does not change the evaluation of eligibility of the planning units for review nor does it affect the conclusions of the review overall, and is reflected in the updated DPA map.

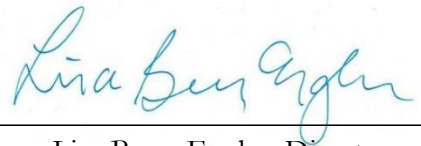
Two commenters suggested, without providing supporting data, that the at-grade railroad right of way is not an insurmountable barrier to creating a functional connection to the DPA waters. CZM disagrees with this comment because the right of way creates unique physical and functional limitations in the Central planning unit that are sufficient to prevent a functional connection to the water when viewed in combination with other challenges. The right of way borders the DPA waters of Chelsea Creek along the entirety of the Central planning unit, such that no area of the Central planning unit otherwise available for water-dependent industrial use has direct access to DPA waters. Commenters reference the presence of the right of way in the North planning unit. However, where the right of way property runs through the North planning unit a grade change facilitates access over the right of way property at the existing Boardman Street to a parcel seaward of the right of way. The grade change in the North planning unit provides opportunity for direct access to and from the shoreline over the railroad right of way, whereas water-dependent industrial uses on the Central planning unit would need to obtain and construct new mechanisms to cross the right of way MBTA property and access the watersheet consistent with the existing freight easement. The requirement for water dependent industrial uses in the Central planning unit to cross the railroad right of way in order to create a functional connection to the DPA waters is a significant additional burden that water-dependent industrial users would need to overcome that sets it apart from the situation in the North planning unit, in addition to other challenges that apply in the Central planning unit. In considering the combination of factors for the shoreline in the Central planning unit - including the physical and functional challenges created by the railroad right of way and the significant shoaling of the adjacent waters – CZM determined that in total these factors result in a suite of shoreline characteristics that do not meet the standard for a developed shoreline. For these reasons, CZM affirms the conclusions of the designation report that the Central planning unit does not meet the criteria for a functional connection to DPA waters. An area of land reviewed under 301 CMR 25.00 shall be included or remain in a DPA if and only if CZM finds that the area is in substantial conformance with each of the four criteria governing suitability to accommodate water-dependent industrial use at 301 CMR 25.04(2)(a) through (d). As concluded in the designation report, because the Central planning unit

does not meet the criterion for a developed shoreline which creates a functional connection to DPA waters, it shall be removed from the DPA and the DPA boundary will be changed in that area.

IV. DESIGNATION DECISION

In conclusion, effective today, I affirm the findings and proposed boundary modifications in the May 23, 2022 Boundary Review of the Chelsea Creek Designated Port Area, Boston, MA designation report and hereby determine that, pursuant to 301 CMR 25.03(5), the Chelsea Creek DPA boundary shall be modified, such that the Central planning unit will be excluded. As each DPA boundary review is based upon the particular characteristics of the areas of land or water under review, the conclusions of this decision are unique to the portions of the Chelsea Creek DPA subject to this boundary review.

The resulting total area of the Chelsea Creek DPA subject to this review decreases from 509.7 acres to 486.26 acres. The new boundary of the Chelsea Creek DPA is depicted on the attached map, described in the attached boundary description, and available in electronic format from CZM.



Lisa Berry Engler, Director

Massachusetts Office of Coastal Zone Management
251 Causeway Street, Suite 800
Boston, MA 02114
https://www.mass.gov/orgs/massachusetts-office-of-coastal-zone-management

Chelsea Creek

Designated Port Area (DPA)

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



Municipal Boundary
Point of Beginning
Point of Ending
Designated Port Area Boundary
Assessor Parcels
Adjacent DPA Boundary
Chapter 91 Presumptive Line

N

Basemap: 2021 MassGIS Aerial Imagery
Map coordinate system: North American Datum of 1983, Massachusetts State Plane Coordinate System, Mainland Zone (FIPS zone 2001), meters.

0 500 1,000 1,500 2,000 Feet

September 2022

Chelsea Creek Designated Port Area

An area of land and water within Boston Harbor and proximate to Chelsea Creek, located in the municipalities of (East) Boston, Chelsea, and Revere in the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point formed by the intersection of the northerly line of the federal navigation channel (shown as "CHELSEA RIVER LOWER REACH PROJECT DEPTH 38 FEET (see note)" on National Oceanographic and Atmospheric Administration [NOAA] Chart #13272[i]) and the westerly line of the Andrew P. McArdle Bascule Bridge in the municipality of Boston;

Thence northerly along the westerly line of the Andrew P. McArdle Bascule Bridge and continuing along the westerly line of Pearl Street to the intersection of the westerly line of said street and the northerly line of Marginal Street in the municipality of Chelsea;

Thence easterly and northeasterly along the northerly line of Marginal Street to the intersection of said line and the westerly line of Eastern Avenue;

Thence northerly along the westerly line of Eastern Avenue to the intersection of said line and the westerly projection of the southerly line of Parcel 50-7[ii];

Thence easterly along the westerly projection of the southerly line of Parcel 50-7[ii] and continuing along the southerly line of said parcel to the westerly shoreline of Chelsea Creek;

Thence generally northeasterly along the western shoreline of Chelsea Creek to the intersection of said shoreline and the easternmost corner of Parcel 77-5[ii];

Thence northeasterly along the northwesterly line of the now or formerly Massachusetts Bay Transportation Authority (MBTA) railroad corridor to the intersection of said line and the northeasterly line of Railroad Street in the municipality of Revere;

Thence southeasterly along the northeasterly line of Railroad Street to the intersection of the southeasterly projection of said line and the southeasterly line of Massachusetts Route 1A (Lee Burbank Highway/William F. McClellan Highway);

Thence southwesterly along the southeasterly line of Massachusetts Route 1A (Lee Burbank Highway/William F. McClellan Highway) to the intersection of said line and the westerly corner of Parcel 0102279000[iii] at approximate coordinates 71o0'46.5"W, 42o33'29.3"N, NAD83 in the municipality of Boston;

Thence westerly by a straight line to the intersection of said line and the southernmost corner of Parcel 0101663000[iii];

Thence northwesterly along the southwesterly line of Boardman Street to the intersection of said line and the northerly corner of Parcel 0101665000[iii];

Thence westerly by a straight line to the intersection of said line and the easterly corner of Parcel 0100435005[iii];

Thence generally southwesterly along the southwestern shoreline[iv] of Chelsea Creek to the intersection of said shoreline and the northerly corner of Parcel 0100436001[iii];

Thence generally southwesterly along the northwest border of Parcel 0100436001 to the northern most corner of Parcel 0100437100[iii];

Thence southeasterly along the northeasterly line of Parcel 0100437100[iii] to the intersection of said line and the easternly corner of said Parcel;

Thence easterly by a straight line crossing Massachusetts Route 1A (Lee Burbank Highway/William F. McClellan Highway) to the intersection of said line and approximate coordinates 71o1'8.7"W, 42o23'9.9"N, NAD83;

Thence southwesterly by a straight line crossing Addison Street to the intersection of said line and the southeastern line of Massachusetts Route 1A (Lee Burbank Highway/William F. McClellan Highway);

Thence southwesterly along the southeastern line of Massachusetts Route 1A (Lee Burbank Highway/William F. McClellan Highway) to the intersection of said line and the westerly corner of Parcel 0100512001[iii];

Thence southwesterly along the southeasterly line of Saratoga Street to the intersection of said line and the northwesterly line of Chelsea Street at approximate location 71o1'38"W, 42o22'48", NAD83;

Thence northeasterly along the northwesterly line of Chelsea Street to the intersection of said line and the southerly line of East Eagle Street;

Thence westerly along the southerly line of East Eagle Street to the intersection of said line and the southerly projection of the westerly line of Condor Street;

Thence northerly along the easterly line of Parcel 0100312000[iii] to the intersection of said line and the northeasterly corner of said Parcel;

Thence northerly by a straight line to the intersection of said line and the southerly line of Parcel 0103711001[iii] at approximate coordinates 71o1'44.1"W, 44o22'57.5", NAD83.

Thence easterly along the southerly line of Parcel 0103711001[iii] to the southeasterly corner of said parcel;

Thence northerly along the easterly line of Parcel 0103711001[iii] to the intersection of said line and the shoreline[iv];

Thence northwesterly, northerly, westerly, southerly, and westerly along the shoreline[iv] to the intersection of said shoreline and the westerly line of Parcel 0103711000[iii];

Thence southerly along the westerly line of Parcel 0103711000[iii] to the intersection of the southerly projection of said line and the southerly line of Condor Street;

Thence westerly along the southerly line of Condor Street to the intersection of said line and the northeasterly corner of Parcel 0103586000[iii];

Thence northerly by a straight line to the intersection of the said line and the southeast corner of Parcel 0103680000[iii];

Thence northerly along the westerly line of Meridian Street to the point of ending coincident with the point of beginning on the Chelsea Creek Designated Port Area Boundary, located on the westerly line of the Andrew P. McArdle Bascule Bridge at the intersection of the easterly line of Parcel 0103680001[iii] and the southerly line of the federal navigation channel[i] (shown as "CHELSEA RIVER LOWER REACH PROJECT DEPTH 38 FEET (see note)" on National Oceanographic and Atmospheric Administration [NOAA] Chart #13272[i]).

The above described Chelsea Creek Designated Port Area is shown generally on a plan entitled: "Chelsea Creek Designated Port Area (DPA)," Scale: 1" = 1,050' +/-, Prepared by: Massachusetts Office of Coastal Zone Management, 251 Causeway Street, Suite 800, Boston, MA 02114, Date: September 2022.

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

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[i] U.S. Department of Commerce (DOC), National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), Office of Coast Survey (OCS). Boston Inner Harbor [nautical chart]. 55th ed. 1:10,000 Chart #13272. Washington, D.C.: DOC, NOAA, NOS, OCS, Nov. 2019.

[ii] The City of Chelsea Assessor's parcel data were extracted from the Massachusetts Office of Geographic Information (MassGIS) Level 3 Assessors' Parcels data layer. The data were last updated for Chelsea in 2022 and were accessed August 21, 2022 from the MassGIS website (https://www.mass.gov/info-details/massgis-data-property-tax-parcels). Please note: These data

were used for planning purposes only and should not be used for, and are not intended for, survey and engineering purposes. The data do not take the place of a legal survey or other primary source documentation.

[iii] The City of Boston Assessor's parcel data were last updated July 2020 and were accessed August 21, 2022, from the MassGIS website (https://www.mass.gov/info-details/massgis-data-property-tax-parcels). Please note: These data were used for planning purposes only and should not be used for, and are not intended for, survey and engineering purposes. The data do not take the place of a legal survey or other primary source documentation.

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