

**East Boston Designated Port Area (DPA)
Boundary Review**

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

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I. INTRODUCTION

In 1972, Congress passed the Coastal Zone Management Act (CZMA), which established 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, 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, articulating 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 (DPAs) 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.

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 coordination with the East Boston Municipal Harbor Plan (MHP) developed by the Boston Redevelopment Authority (BRA), CZM gave notice in the *Environmental Monitor* on December 7, 2001, that a review of the East Boston DPA boundary was being initiated. A 60-day public comment period was initiated, and a public hearing was held at the Harborside Community Center on January 7, 2002. Oral testimony was taken at the hearing, and eight comment letters were received prior to the close of the public comment period on February 7, 2002.

Within the context of the ongoing review, three property owners informally requested that their properties be removed from the DPA.

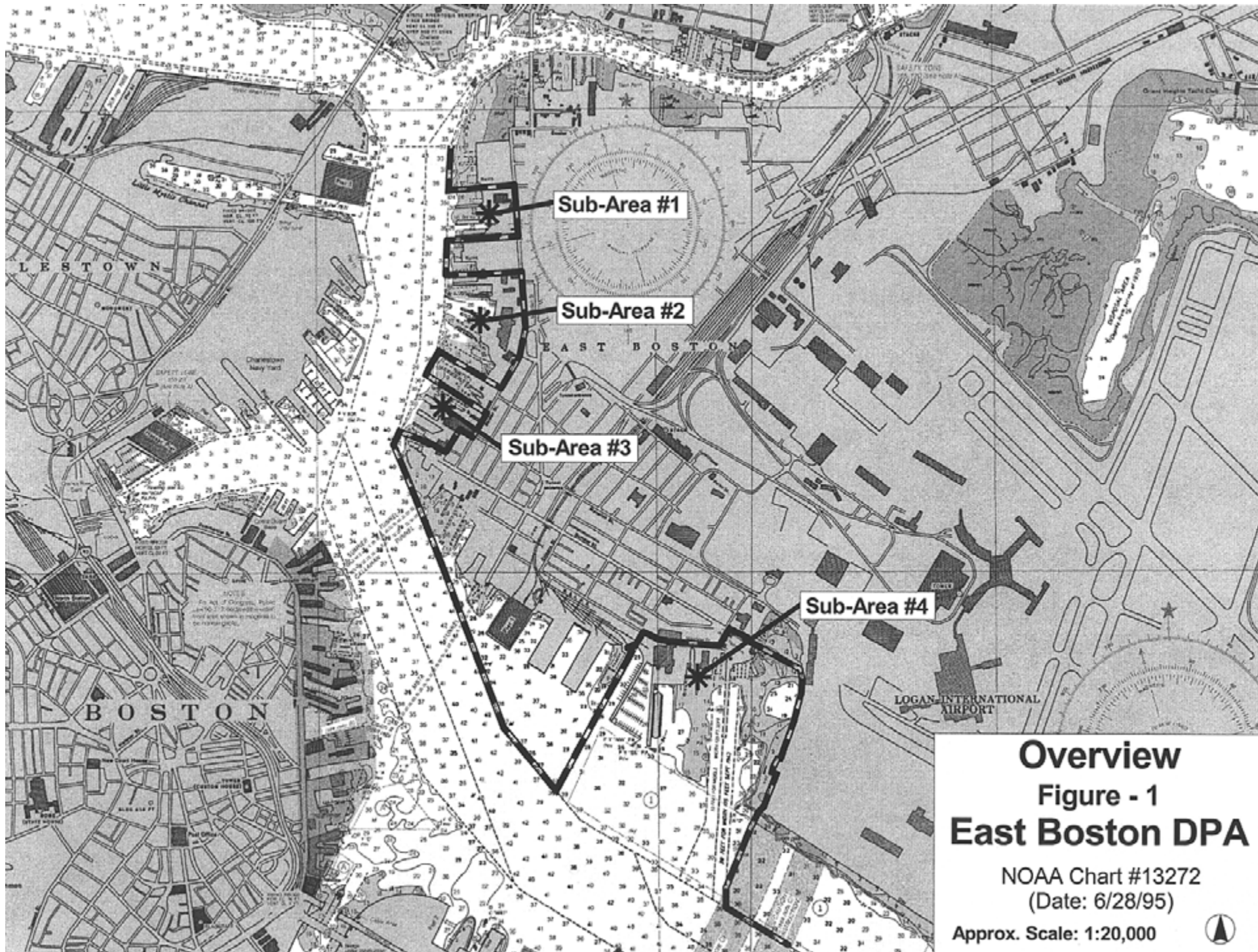
<u>Owner</u>	<u>Property</u>
New Street Realty Trust	4-26 New Street
Joseph Messina	80 Border Street
J. Ricupero & M. Merullo	170-180 Border Street

See **Figure 1** for an overview of the current configuration of the East Boston DPA.

A. 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 on a parcel by parcel basis; to evaluate the DPA properties in accordance with the Designation Standards; and last, to discuss CZM's conclusions and recommendations for the configuration of the DPA. 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 within 60 days from the close of public comment, pursuant to 301 CMR 25.03(4) and (5).

Throughout the course of this boundary review study, CZM received extensive formal and informal comment from DPA property owners, the public, elected representatives, businesses, citizens, environmental advocacy groups, and City and state agencies. CZM has carefully considered all comments, regardless of when they were 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 of, 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.



Overview
Figure - 1
East Boston DPA

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

Approx. Scale: 1:20,000



II. THE DPA PROGRAM

A. 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. These uses contribute to the Commonwealth's and, indeed, the region's maritime economy. As discussed in detail below, the water-dependent industrial category includes a broad range of uses. Through the integrated application of the related Municipal Harbor Plan regulations and Chapter 91 Waterways regulations, comprehensive planning can be achieved. 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 uses 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 with DPA uses 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 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 reasonably continuous basis, for a substantial period time; or*
 2. *has been or will be discontinued voluntarily by the user*
- (c) *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.*

Section IV addresses the eligibility for review of each individual parcel within the East Boston DPA.

Designation Standards

The DPA boundary regulations stipulate that an area shall be included or remain in a DPA 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 EAST BOSTON DPA AREA-WIDE ATTRIBUTES

A. Port History of East Boston

Officially incorporated into the City of Boston by charter in 1822, East Boston has long been of great importance to the region from a historical, agricultural, maritime, recreational and industrial perspective. The role of the waterfront in this history demonstrates the need for careful planning of this valuable resource in the future.

The geography of East Boston evolved through the continuous filling around five separate islands, used by the original settlers for farming and grazing. In colonial days, the islands flourished as an important location for commerce. East Boston played a significant role in the American Revolution as the site of the first British naval attack in the late 1700s. In the early 1800s, residents of East Boston enjoyed recreation opportunities available at the Jeffries Point Yacht Club, the first chartered yacht club on the East Coast. In 1833, the East Boston Company provided residents with a direct connection to downtown Boston with the establishment of a steam ferry service from Maverick Square to Rowe's Wharf.

The East Boston waterfront has been at the forefront of the Boston shipping industry for the past 200 years. In the mid-1800s, East Boston's shipbuilding and servicing industries along its waterfront made Boston one of the leading ports in the United States. The construction of a railroad terminal near Maverick Square by the Eastern Railroad Company advanced trade through rail access to the shipyards. The Donald McKay shipyard was renowned for its construction of the Clipperships. In the late 1800s, East Boston was still a prominent shipbuilding area and produced the first steel hulled sailing ships and iron steamships in America. This industry attracted many immigrants, making East Boston a rival port of entry with Ellis Island in New York City.

Although the waterfront creates a well-suited location for both commercial waterfront businesses and marine industry, the shipping industry in East Boston declined in the early 1900s due to the changes in transportation and newer marine industry related technologies. When railroad transport became a less viable option due to space restrictions associated with track use, truck and automobile transportation became increasingly important. The marine industrial uses currently located on the East Boston waterfront—barge and water transportation services, construction staging areas, tugboat operators, small vessel supply and repair, marine construction and welding—are critically important businesses that support other, large-scale maritime activities throughout Boston Harbor.

B. Current Attributes of the East Boston DPA

The DPA areas subject to review are located on the East Boston waterfront, along Border and New Streets. As shown in **Figure 1**, the East Boston DPA is comprised of four sub-areas. As shown in **Figure 2**, DPA sub-areas 1, 2, and 3 are the subject of this review. The table below provides a general description of each sub-area.

Table 1: DPA Sub-Areas

Sub Area	General Use Characteristics	Parcels	Acreage
One (334-404 Border St.)	Fully committed to marine industrial use	7	15
Two (120-282 Border St.)	Primarily supporting DPA (commercial), small marine construction company	10	33
Three (4 New St.-102 Border St.)	Mixed use-marine industrial, non-marine related industrial, commercial, vacant industrial	6	15
TOTAL		23	66 Acres (land & water)

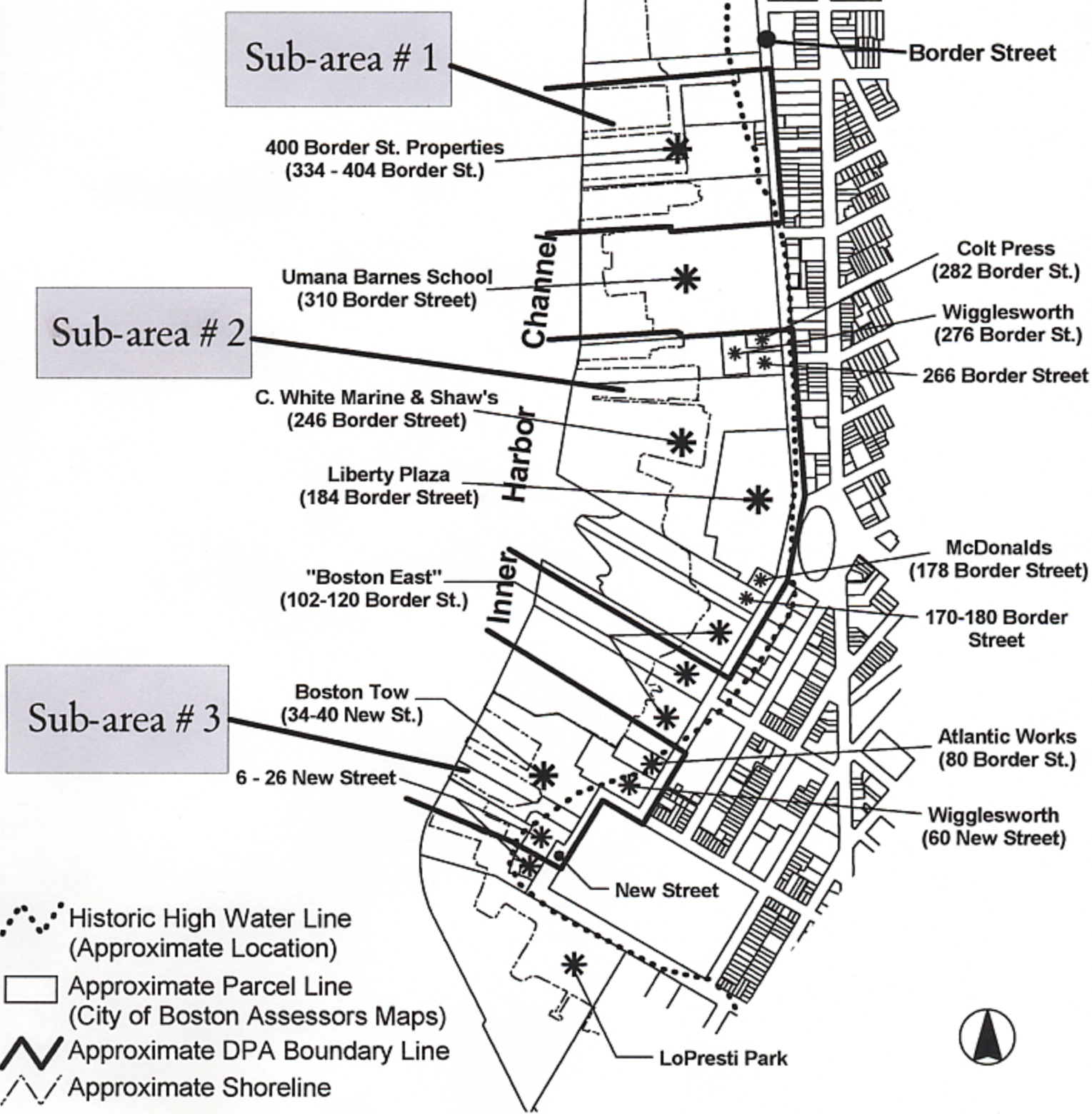
As limited backland space is common to all parcels in this DPA, large port operations, such as container terminals, breakbulk and car carrier terminals, are not located in this area. The smaller supporting operations needed to keep the port and other important aspects of the Boston Harbor marine infrastructure functioning are located in this DPA. These supporting uses include marine construction, tug boat operations, vessel repair, fishing and boating supply stores, etc.

Truck and Rail Access

The East Boston Inner Harbor Waterfront was once served by an active regional rail network that transported goods from the piers currently owned by Massport to the north and northwest over Chelsea Creek. Today these rail lines and associated rights-of-way are no longer in service. Currently, the southern end of the right-of-way is being converted to a bicycle and pedestrian Greenway that will connect Massport's Pier One development to Maverick Square, and portions of the railroad north of Neptune Road/Bennington Street are being evaluated for future uses, such as an Urban Ring and/or a truck access road. (Boston Redevelopment Authority, *East Boston Waterfront District Municipal Harbor Plan*, March 2002).

With its island origins, East Boston is connected directly to surrounding areas by bridges and harbor tunnels, including the McArdle and Chelsea Street bridges, the Sumner/Callahan, and Ted Williams Tunnels. The McClellan Highway (Route 1A) Saratoga Street and Bennington Street are direct land connections to Revere and points north. Several major transportation routes, such as I-90, I-93, Route 1, Route 2 and Route 3 are readily accessible. Designated truck routes exist on the Lee Burbank/McClellan Highways, the Ted Williams Tunnel, and the East Boston Expressway (I-90), both of which connect to I-93. Access to the Border and New Street

East Boston DPA Figure - 2



sub-sections of the East Boston DPA is provided through local streets such as Border, Maverick, and Meridian Streets. See **Figure 3**.

Topography

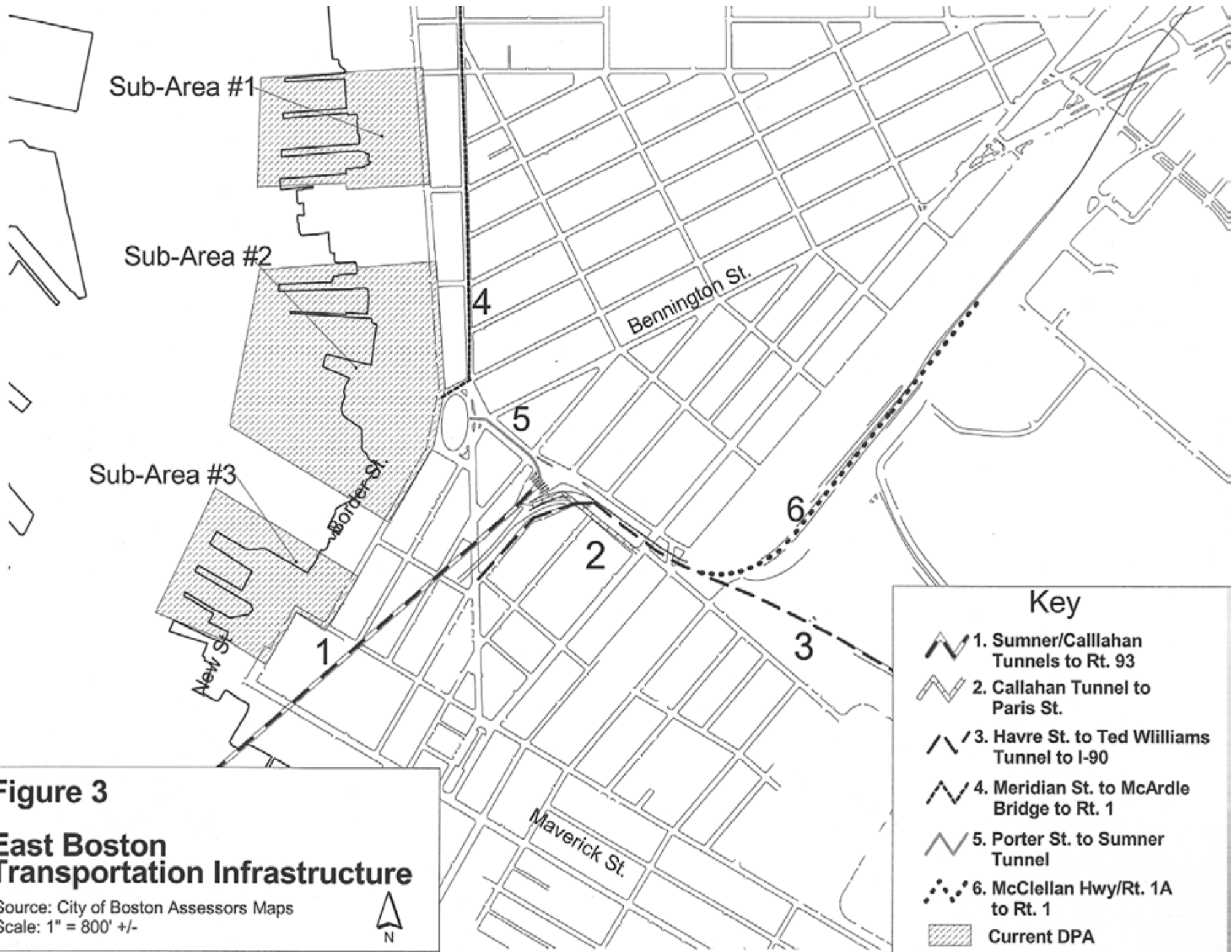
Based on a review of topographic maps for the East Boston waterfront¹, the topography of these three sub-areas of the East Boston DPA typifies a highly urbanized waterfront that, beginning in the early 1800s, has been altered significantly to accommodate maritime industry through the filling of tidelands, the installation of bulkheads, and the construction of numerous pile-supported structures. Elevations in the northerly section of the DPA range from approximately 24 NAVD88 (North American Vertical Datum, 1988) along Border Street to 10 NAVD88 along the seaward edge; in the central section of the DPA the elevations range from approximately 18 NAVD88 along Border Street sloping to 6 NAVD88 along the unarmored shoreline; and in the southerly section from 14 NAVD88 along New and Border Streets to 10 NAVD88, along the altered shoreline. Generally, the upland portions of all three DPA land areas are located vertically at approximately elevation 10 NAVD88, and relief that can be characterized as flat to moderate². Although steeper local relief can be found in discrete areas of the DPA (e.g., elevations at portions of 334-400 Border Street range from 10 NAVD88 in the center of the site to 24 NAVD88 at the street), the topography of these areas could be modified, if necessary, to accommodate the individual needs of a maritime industry.

Water and Sewer

Based on a review of utility information and maps provided by the Boston Water and Sewer Commission, both water and sewer services are available on Border and New Streets. As discussed above, the East Boston DPA has little of the backland space typically required to support the more intense industrial uses seen in other Boston Harbor DPAs such as the Mystic River or South Boston. Indeed, in recent history this DPA has been home to smaller-scale marine related industries and businesses (tug operators, marine suppliers, warehouses, etc) that are characterized by low water and sewer use. There are currently seven active water-dependent use parcels and five parcels with various DPA supporting/general industrial uses in the East Boston DPA. The presence of these marine and general industrial uses demonstrates clearly that the existing water and sewer infrastructure is capable of supporting maritime industrial uses.

¹ Source: Topographic maps for the city of Boston obtained from the Boston Water and Sewer Commission.

² Relief is typically classified as: Flat (slopes ranging from 0 to 3%); Moderate (slopes ranging from 3% to 8%) and Steep (> 8%). See, Guidelines for Soil & Water Conservation in Urbanizing Areas of Massachusetts, U.S. Department of Agriculture, Soil Conservation Service, Amherst, MA. October 1977.



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. 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 projects 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 depths to maneuver ships, as well as the deepening of several berths. All areas were dredged to –40 feet Mean Lower Low Water (MLLW) except for the Chelsea Creek Channel which was dredged to –38 MLLW. This work is largely complete, with only small, isolated areas in need of further dredging.

The channel depths in the East Boston DPA are generally comparable to overall Boston Harbor depths. The main ship channel which encompasses the waterside of East Boston DPA sub-areas 1-3 is between –38 to -42 MLLW, with areas outside of the main channel varying in depths from –2 to –25 MLLW³. Water depths at specific properties within the East Boston DPA will be discussed in more detail below. This DPA supports smaller port-related businesses, ships using the channel between Charlestown and East Boston are generally large vessels en route to fuel oil terminals in Chelsea Creek or the autoport on the Mystic River.

³ All water depths referenced in this report are from National Oceanic and Atmospheric Administration (NOAA) Chart #13272, dated 6/28/95. See Figure 1 for an overview of this chart.

IV. ELIGIBILITY REVIEW

A. Parcels Not Eligible for Review

As described above, pursuant to 301 CMR 25.03 (2), certain DPA areas are not eligible for review. When applying the criteria to the 23 parcels located in the East Boston DPA, the following are not eligible for review:

Address	DPA	Reason For Ineligibility
400 Border Street	Sub-area 1	Currently in marine industrial use (Westerbeke Marine and Industrial Supplies)
404 Border Street	Sub-area 1	Currently in marine industrial use (Bay State Towing, Boston Tow and Transportation)
366 Border Street	Sub-area 1	Currently in marine industrial use (Boston Tow and Transportation)
362 Border Street	Sub-area 1	Currently in marine industrial use (Boston Tow and Transportation)
334 Border Street	Sub-area 1	Currently in marine industrial use (Boston Forging & Welding)
246 Border Street	Sub-area 2	Currently in marine industrial use (C. White Marine Construction)
40 New Street	Sub-area 3	Currently in marine industrial use (Boston Tow & Transportation)
34 New Street	Sub-area 3	Currently in marine industrial use (Boston Tow & Transportation)

Descriptions of these ineligible sites are provided below in order to accurately depict uses occurring throughout the three sub-sections of East Boston DPA currently under review.

Sub-Area 1

400 Border Street Properties

Five parcels of land and waterfront are collectively referred to as the 400 Border Street Properties, owned by various groups or individuals associated with Boston Towing and Transportation Company (BTT). These parcels include: 334-336, 362, 366, 400, and 404 Border Street and are located on the site of the former General Ship yard. These parcels are located in the northernmost section of the East Boston DPA, between the Umana Barnes School and the East Boston Shore Plaza apartments, with the Boston Inner Harbor to the west.

The first property, 334-336 Border Street, is the southernmost of the 400 Border Street properties. Boston Forging and Welding, a steel and metal fabrication company that has operated on this parcel since 1998 after moving from the South Boston Fish Pier, utilizes this property on a tenancy-at-will basis. A small commercial company called

Wovensteel sublets space from Boston Forging, where it produces ornamental metal to service a commercial and residential market. The parcel contains a large steel warehouse and approximately 2.6 acres of unpaved land that is primarily used for trucking and storage space by both Boston Forging and Welding and by BTT. A section of this open space is also frequently used for construction staging at different times of the year. The waterfront section of this parcel is heavily utilized by BTT tugs and other marine construction machinery. The pier space on this parcel is intact and although utilized by BTT, some vessels requesting service from Boston Forging and Welding dock here as well. The owners of Boston Forging and Welding are interested in more pier space for their marine-related business transactions.

The property directly to the north, 362 Border Street, is a 2.8-acre vacant parcel of land that is used as storage space by all of the 400 Border Street property users, but primarily for trucking and marine construction storage space by BTT. There is also approximately 1 acre of watersheet associated with this parcel, including intact pier space used by BTT tugs.

A smaller 1,200 square foot parcel of land, 366 Border Street, lies to the east of the 400 Border Street property. A three-story residential dwelling, once used for living quarters for navy personnel, was demolished leaving the land vacant aside from a smaller shed built in its place. This parcel is currently being used for industrial storage by BTT.

The parcel officially recognized as 400 Border Street is approximately 1.6 acres with some water access. A large concrete 69,000 square foot, three-story building is located on the property and is utilized by Westerbeke, a marine supply company. This company specializes in marine retail and is noted for the manufacture of fishing nets. Currently, Westerbeke services vessels on site (waterfront pier space is available for this purpose), and provides certification of boating equipment.

The last parcel comprising the 400 Border Street complex is the 404 Border Street parcel. This large 5.4-acre parcel of land contains the largest section of watersheet, 3.1 acres, on the entire complex. The pier space on this parcel is intact and is utilized by Bay State Towing as well as BTT for the berthing of tugs and other marine construction machinery.

Sub-Area 2

246 Border Street –C. White Marine Inc.

This property is leased to C. White Marine Inc. (CWM) under a tenancy-at-will agreement. CWM specializes in marine construction and handles marine-related projects such as marine docking facilities and wharf rehabilitation. CWM's operations are located directly west of (behind) Liberty Plaza, abutting the 170 Border Street property to the south and the 276 Border Street property (Wigglesworth warehouse) to the north. This waterfront parcel has been fully utilized by C. White Marine since 1994 as a base of operations for its marine construction business. As business has expanded, CWM now

operates off of all the useable pier space on this property. Desiring more space, CWM has petitioned the owner for permission to make improvements to existing piers. The waterfront area has been recently fenced off by CWM to deter vandalism.

Sub-Area 3

34-40 New Street properties – Boston Tow and Transportation

This property, owned by BTT since the 1950s, serves as the company's base of operations in the Boston Harbor area. The waterfront parcel is situated between the 4-26 New Street properties to the south, the City's vacant Boston East parcels to the north. The Wigglesworth Machinery building directly abuts (and is connected to) the BTT office to the east of the property. A large, open brick warehouse building (ceiling height is approximately 30 feet) is located adjacent to the office, on the southeast corner of the property. This warehouse space is mainly used for equipment repair and storage. Marine construction machinery and employee vehicles consume the greatest portion of the parking lot. Most of the property is made up of large operable pier space that extends south into the 4-26 New Street watersheet. All pier space is heavily utilized by BTT tugs, barge tugs, and marine equipment. According to BTT management, approximately 90% of the ships calling the Port of Boston are guided through the Inner Harbor by BTT tugs, therefore representing an active marine industrial use in this DPA.

B. Parcels Eligible for Review

The following parcels are eligible for review pursuant to 301 CMR 25.03 (2).

Sub-Area 2

102 & 120 Border Street--Boston East

These two City-owned properties are zoned Waterfront Commercial and comprise approximately 2.5 acres of land and 8 acres of watersheet. Approximately thirty percent of the combined land area of the two parcels is located within the DPA. Only the land area within the DPA is under review at this time. Vacant since approximately 1965; the 102 Border Street parcel was occupied by a drydock and ship building/repair facility from the 1800s through 1950. The 120 Border Street parcel was formerly the site of a lumber factory and coal company from 1900 through 1927, and other commercial ventures from 1927 through 1950. The parcels became City of Boston property through foreclosure in the 1970s.

The site can be generally characterized as significantly deteriorated with abandoned piers, pilings, marine railways and bulkheads extending into the harbor. Water depths on this site are between -14 to -17 MLLW. Broken concrete slabs, rebar, weeds, broken glass, and debris dominate the upland portion of the site.

170-180 Border Street

These adjacent parcels are zoned separately for commercial and industrial use, and are located in a Waterfront Commercial zone. This property, totaling 1.7 acres, is located adjacent to a McDonalds restaurant to the north, the vacant Boston East parcels to the south, commercial/industrial buildings to the east, and by derelict piles along the waterfront to the west. Water depths are approximately –26 MLLW on the area of the site nearest the channel. An abandoned one-story 11,700 square foot industrial warehouse with an overhead crane and a small office are located in the existing building. The last use on this site occurred in 1991 when the property was owned and used by Clean Industries, an environmental cleanup business. The current owners have expressed an interest in renovating the site.

184 Border Street-Liberty Plaza

This parcel is zoned Waterfront Commercial by the City of Boston. It is bordered to the north by Shaw’s Supermarket, to the west by C. White Marine Construction Company, to the east by Central Square, and to the south by a vacant industrial building and a McDonalds restaurant. The Liberty Plaza site has been a retail complex since the 1950s, and has been the primary retail commerce center for East Boston dating back to the mid 1800s. Businesses currently located here include:

- Papa Gino’s Pizza
- CVS Pharmacy
- Kappy’s Liquors
- A.J. Wright
- Golden Bowl Restaurant
- Radio Shack
- Strawberries
- Blockbuster Video

The buildings located in Liberty Plaza are typical of modern retail stores with approximate floor to ceiling heights of 11 to 13 feet. The total floor area associated with the above listed uses is 62,435 square feet. Large tractor-trailers access this site and make regular deliveries. The adjacent waterfront parcel (located behind the retail stores listed above) supports a marine industrial use, substantial pier and wharf infrastructure, and public access to the shoreline.

266 Border Street

This 16,086 square foot property is located to the north of the Shaw's supermarket, to the east of 276 Border Street (Wigglesworth warehouse), and south of 282 Border Street. The property is zoned Waterfront Commercial and includes a large 4-story brick, flat-roofed building, typical of a late 1800s/early 1900s warehouse structure with loading docks located on the north side of the building. Floor to ceiling heights are approximately 11 to 13 feet. Historically, the building was used as a paint-manufacturing warehouse. Current uses within the building are commercial, including a laundromat, a gift-wrapping service, and rental space used by local musicians. There is no shoreline associated with this site, however, the abutting site (276 Border Street) has a shoreline substantially developed with wharves and piers, and water depths of approximately -18 MLLW.

276 Border Street

This 19,000 square foot property abutting the Inner Harbor is located north of the Shaw's Supermarket and west of both 266 and 282 Border Street. The lot and 13,000 square foot warehouse are owned and used by Wigglesworth Machinery for storage of large equipment associated with the 60 Border Street operation. Access from Border Street is provided via the Shaw's parking lot. The waterfront associated with this parcel is comprised of a dilapidated concrete/asphalt pier extending approximately 322 feet into the harbor. Water depths in the area nearest the federal channel are approximately 18 feet below MLLW. Large truck access is available to the site⁴.

282 Border Street

This 9,825 square foot property is located adjacent to the 266 Border Street property, and is comprised of a 1-story industrial building with little paved land area. The building was once used as a printing shop for Colt Press. Although the parcel was recently auctioned, little information is readily available regarding this transaction. There is no shoreline associated with this site, although it abuts 276 Border Street, which has access to the shoreline and wharves.

Sub-Area 3

4-26 New Street

The parcels at 4-26 New Street (New Street site) are located in opposite the intersection of New and Sumner Streets. The properties lie adjacent to the City of Boston's Lo Presti Park to the south, the Boston Housing Authority's Maverick Gardens housing development to the east, Boston Towing and Transportation to the north, and the Boston Inner Harbor to the west. The New Street site consists of 3 multi-story industrial buildings including one 9 story, one 5 story and one 3 story building. The total land area

⁴ CZM field observation 1/5/02.

of the site, including submerged lands, is approximately 171,000, with the upland area comprising approximately 86,000 square feet. Built in the late 1800s and early 1900s, these industrial buildings were used for manufacturing and storage purposes. These three brick buildings support approximately 157,000 square feet of floor space, generally have interior floor to ceiling heights of 13 feet, and have 8 loading docks. When the nine-story building was constructed in the early 1900s, it was connected to the five-story building via a ramp through the interior. Small trucks and panel-vans can access this site via Border, Maverick, and Sumner Streets. The waterside portion of the site, approximately 86,000 square feet, consists of three dilapidated piers and wharves. Granite seawalls, generally in a state of disrepair, run parallel to the shore. Water depths on this site range from -13 MLLW to -18 MLLW.

This property is zoned by the City of Boston as a Waterfront Services subdistrict. The buildings are approximately 15% occupied, and current tenants include a software company, Harvard University, and Tower Records. Approximately 44% of this site is located in the East Boston DPA, sub-section three. The southernmost DPA boundary line bisects the five and the nine-story building, extending landward along a former pier line to the easterly side line of New Street.

60 Border Street – Wigglesworth Machinery

60 Border Street is zoned Waterfront Commercial by the City of Boston, and is located between the BTT warehouse and the 80 Border Street Atlantic Works Building. This 52,464 square foot parcel of land has an approximately 120-foot shoreline and is comprised of the Wigglesworth Machinery building and approximately 10 parking spaces. The owners of the property, Wigglesworth Machinery Company, occupy the building's warehouse space and offices. This business involves the reconditioning used large machinery, and has been in business since 1928.

The majority of operations in this large 2-3-story brick building take place in the 3-story lofted-ceiling warehouse. On the north side of the building, a small 1-story concrete and wood addition was built in the 1950s as a machinery showroom. The company also owns a waterfront parcel with a large steel-sided warehouse at 276 Border Street, behind the Shaw's Supermarket in Liberty Plaza, which the company currently uses for storage.

80 Border Street

80 Border Street, zoned Waterfront Commercial by the City of Boston, is located between Wigglesworth Machinery Company to the south, a vacant City of Boston parcel to the north and west, and an active industrial building to the east. The area of the site is approximately 22,000 square feet. The building was originally used for the construction of clipperships, as were many of the sites along this stretch of shoreline. The building still displays the "Atlantic Works" sign that was painted into the brickwork during this era. The existing four-story brick industrial building was built in the early 1900s. From the 1950s until the 1990s, it was used by Super Electronics, an electronics repair

company that serviced and overhauled Navy ships. During this time, the building was also used for storage of Navy ship materials during their stay in Boston. Other uses that have occurred in the building include a mattress factory, florist distribution business, paper products storage, telephone answering products (sales and service), and boiler and machinery storage. Although the site has approximately 60 feet of shoreline, it appears from City assessor's maps that the adjacent tideland area is owned by the City of Boston.

The building has floor to ceiling heights of 11 to 14 feet, a freight elevator with a 3,500 lb. capacity, and off-street parking for 20 cars. Water depths adjacent to this site appear to be in the -2 to- 9-foot MLLW range. The building is presently 75%-80% occupied, with businesses including the following: Corolla Contracting Roofing, John Daniels Removal Service, Super Electronics Realty Trust, Shining Sea Foundation, SCS Environmental Services, Design Collaborative Group, East Boston Artists Group, Techna-Print USA, and several small storage uses. Trucks up to 40 feet in length can access this site⁵.

⁵ Personal communication with J. Messina, owner of the 80 Border Street property.

V. APPLICATION OF SUITABILITY CRITERIA

Following a careful review of the DPA attributes as described above, CZM determines that the DPA as currently configured is in substantial conformance with the suitability criteria set forth in the DPA regulations. Nothing in the analysis of the property's characteristics, individually and in the context of the DPA as a whole, suggest that the DPA boundary should be drawn to exclude any of the current DPA properties. The basic findings in this regard 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 MLLW and an actual depth of between –40 to- 42 MLLW. While several of the DPA waterfront parcels currently do not have functioning access to the federal channel, only minor dredging would be required in order to restore a working connection.

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 contributed over \$20 million to the \$60 million Boston Harbor Navigation Improvement Project, improving the federal channel in Boston Harbor, including the Inner Harbor channel, for the specific purpose of improving the capability of the channel to support the maneuvering and berthing of maritime industrial traffic. The Inner Harbor channel currently supports diverse vessel traffic, ranging from liquefied natural gas carriers, car carriers, ore ships, ocean-going barges, and oil tankers.

25.04(2)(a) – The shoreline has been substantially developed in order to establish a functional connection with a navigable waterway. The facilities along the East Boston shore are functional in that they either currently support the maritime industrial activities of the DPA, or they have the capacity to do so through renovation.

25.04 (2)(b)1. – The land area is adjacent to and served by roadways leading to major arterial routes.

25.04 (2)(b)2. – As evidenced by its current and recent industrial history, the land area contains water and sewer facilities capable of supporting the type of general industrial use that has historically occurred in this area.

25.04 (2)(c). – As a function of its nature as filled tidelands, the land area is essentially flat and entirely free of topographic restrictions to industrial use.

25.04 (2)(d)1 and 2 – The East Boston DPA land area consists primarily of a mixture of industrial/commercial uses and is reasonably capable of becoming predominantly industrial because it does not contain:

- A dense concentration of non-industrial buildings which could not be removed or converted with relative ease, to industrial use; or
- A dense concentration of residential, commercial, recreational, or other uses that would be unavoidably destabilized if commingled with industrial activity.

VI. BOUNDARY DELINEATION

Section 25.05 of the DPA regulations (301 CMR 25.00) designates CZM as the state agency responsible for interpreting DPA maps. Further, in accordance with 301 CMR 25.05(2), Boundary Delineation states that:

Except as otherwise deemed appropriate by the Director, DPA boundaries shall coincide to the maximum practicable extent with roadways, property lines, or other physical or legal landmarks that are generally permanent and can be ascertained with relative ease through field observation or inspection of scaled maps available from municipalities or other government sources. Notwithstanding any other provision of 301 CMR 25.00, CZM may make minor adjustments of an existing DPA boundary to facilitate its identification in relation to such physical or legal landmarks, provided however that such adjustments generally should not result in a net reduction in the total area of the DPA. Unless otherwise specified in a designation decision issued pursuant to 301 CMR 25.00, any public or private way serving as the boundary of a DPA shall be included in its entirety.

A. 4-26 New Street

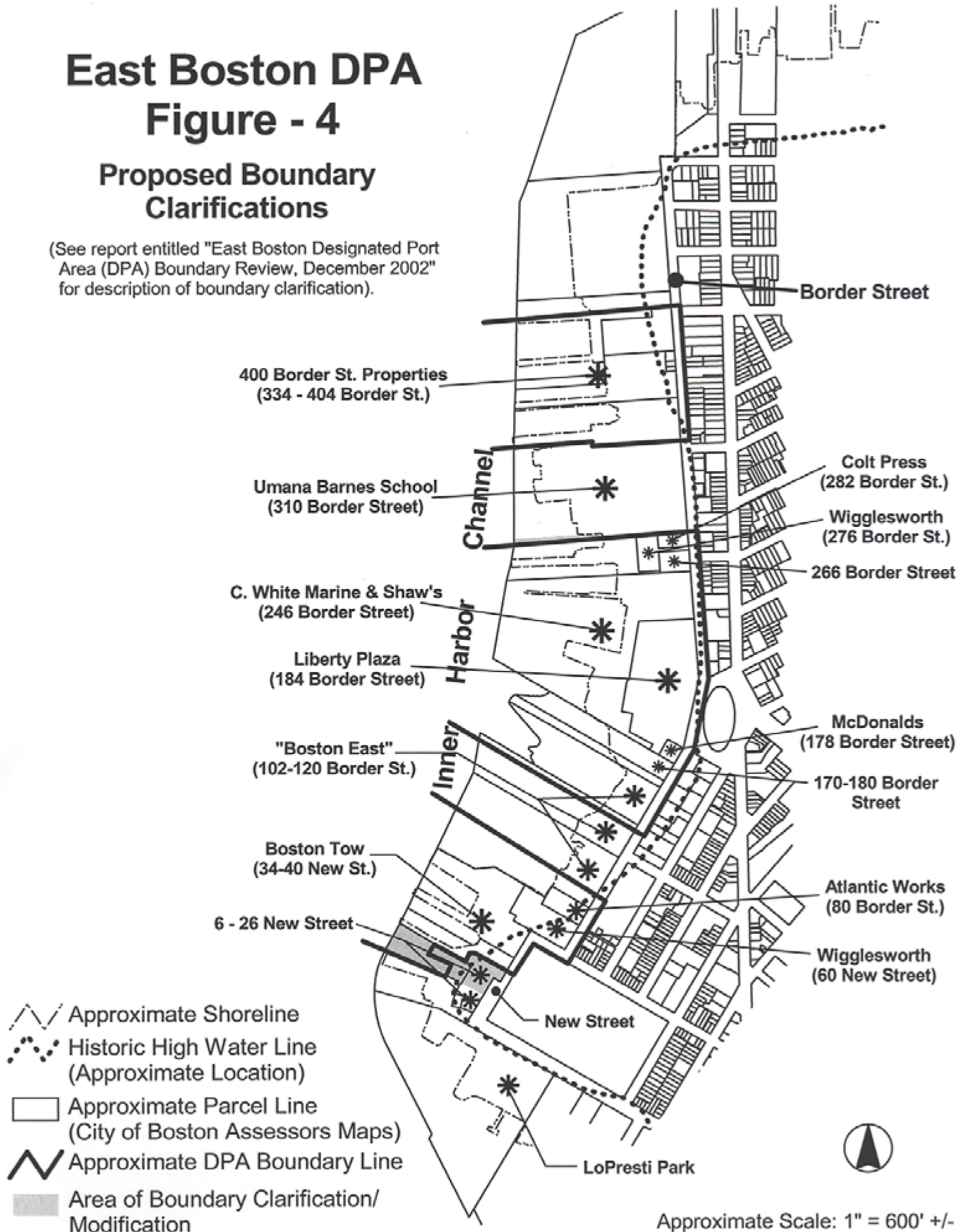
The New Street Realty Trust requested a Determination of Applicability (“determination”) from the Department of Environmental Protection (DEP) on July 10, 2002. A formal determination was issued by DEP on September 12, 2002. The determination states that DEP “accepts as accurate the locus of the Historic High water Mark located on a Plan entitled 4-26 New Street: determination of Applicability Plan in Boston Massachusetts: East Boston District, Suffolk County, dated June 6, 2002. Drawn by Gunther Engineering, Sumner Street, Boston.”

As discussed above, the 4-26 New Street properties are located only partially within sub-area three of the East Boston DPA, with the landward projection of the DPA boundary line bisecting two of the buildings. As shown on the CZM’s 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 or legal landmarks. DEP’s recent findings with regard to the location of the Historic High Water Mark indicate that only 20,000 square feet +/- of upland area within the DPA is also within the jurisdiction of Chapter 91. These facts, combined with the location of the site at the edge of the DPA, lead CZM to conclude that the boundary should be adjusted to the configuration shown in **Figure 4**. Specifically, CZM recommends that the line coincide with the northern property line separating 26 New Street from 34 New Street as shown on a City of Boston Assessor’s map, and on the east-facing waterside of the site, the DPA boundary should coincide with the project shoreline as defined by the Chapter 91 regulations at 310 CMR 9.02. In order to maintain the watersheet for maritime industrial uses, and to minimize the impacts of non-water-dependent uses in the DPA, CZM recommends that the waterside portions of the site remain within the DPA. The 4-26 New Street site is further discussed in the Conclusions and Recommendations Section.

East Boston DPA Figure - 4

Proposed Boundary Clarifications

(See report entitled "East Boston Designated Port Area (DPA) Boundary Review, December 2002" for description of boundary clarification).



B. 310 Border Street-The Umana Barnes School

310 Border Street (the Umana Barnes School) is located adjacent to 276 Border Street, the Wigglesworth warehouse, near the northerly edge of DPA sub-area #2. As shown on CZM's boundary maps for the East Boston DPA, the landward component of the northerly DPA boundary line is not coincident with a property line or other permanent ascertainable feature and encompasses approximately 10,000 square feet of school property. Based on the findings of this report, CZM recommends that, as shown on **Figure 4**, the northerly DPA boundary be modified to exclude the school property and to be coincident with the common property line at 310 Border Street (Umana Barnes School) and 276 Border Street, as depicted on the City of Boston's Assessor's Maps.

VII. APPLICATION OF CZM PROGRAM POLICIES

The CZM Program Plan establishes program policies which embody coastal policy for the Commonwealth of Massachusetts. Recognition of these statements as Massachusetts coastal policy is formalized in Memoranda of Understanding between CZM and state environmental agencies. Projects subject to federal consistency review must be consistent with CZM program policies. CZM enforces its program policies through existing Massachusetts statutes and their implementing regulations. CZM management principles are published as guidance to proponents of activities in the Coastal Zone and represent the preferred policy direction of CZM. The *Port and Harbor Infrastructure* section of the Program Plan contains the following DPA related policies:

Ports Policy #3: Preserve and enhance the capacity of Designated Port Areas (DPAs) 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.

Ports Management Principle #1: Encourage, through technical and financial assistance, expansion of water-dependent uses in designated ports and developed harbors, re-development of urban waterfronts, and expansion of visual access.

A. 4-26 New Street

The New Street Realty Trust has indicated that it will pursue water-dependent industrial uses for the watershed portion of the site that will remain in the DPA and the water-dependent use zone (WDUZ) as delineated at 310 CMR 9.51(3)(c). In a letter dated November 25, 2002 from Jamy B. Buchanan, counsel for The New Street Realty Trust, to CZM Director Tom Skinner, the Trust committed to the implementation of certain significant improvements for the purpose of attracting a marine-industrial use on the DPA portion of the site. These improvements include the following:

1. Removal or restoration of all piles on-site (DPA and non-DPA portions of the site);
2. Site-wide reconstruction of deteriorated sections of the bulkhead;
3. Design of a project to include a permanent vehicle access route from New or Sumner Street to the WDUZ and DPA. The Trust should demonstrate during licensing how such an access route will be provided, protected, and guaranteed on the site.

As it is difficult to determine exactly what type of marine industrial use will locate on this site, the Trust has also committed to significant upgrades to the existing infrastructure in the form of one of the following options:

1. Construction of a permanent pile supported pier in the DPA; or
2. Installation of floating docks capable of berthing vessels of a type and size common to marine industrial use.

Prior to issuing a Chapter 91 license for any portion of the site that includes non-water-dependent activities, DEP must receive confirmation from CZM that the project conforms with CZM program polices. Specifically, 310 CMR 9.54 (Consistency with Coastal Zone Management Policies) states, in part:

Nonwater-dependent use projects located in the coastal zone shall be consistent with all polices of the Massachusetts Coastal Zone Management Program...In applying this standard, the Department shall consider any written statement submitted by the Coastal Zone Management Office...

It is CZM's understanding that a Chapter 91 license application for the 4-26 New Street site will include the above referenced infrastructure improvements to the DPA and non-DPA portions of the site. The Trust's stated intention to reconstruct the DPA side of the site for marine industrial use, and to rehabilitate the entirety of the site through pile removal/restoration and bulkhead repair are in keeping with CZM policies that encourage the expansion of water-dependent industrial uses in designated ports and developed harbors, as well as re-development of urban waterfronts. In a further effort to apply and implement these policies, CZM will look to the Chapter 91 license to include reference to several DEP policies which can be used to protect on-site and neighboring DPA uses. Further, the Trust is encouraged to seek consultation from a marine industrial operator regarding technical specifications for the pile-supported pier or floating docks that will be installed on the DPA portion of the watershed. The resulting upgrades must be sufficient to support marine industrial uses.

In recent Chapter 91 licenses for non-water-dependent use projects in DPAs or near marine industrial uses, DEP has, through special license conditions, sought to create a buffer between these uses and the incoming residential uses. These conditions included such things as the requirement for language in lease forms or deeds describing the existence of nearby water-dependent industrial facilities and associated noise, odors, etc. as listed above under 310 CMR 9.51. Other conditions found in such licenses include a requirement for the licensee to construct the residential units with glazed windows or other noise dampening specifications that ensure interior noise levels do not exceed a specified maximum decibel level. CZM will advocate for similar conditions to be attached to a Chapter 91 license for the 4-26 New Street site.

CZM understands that the New Street Realty Trust may pursue the construction of a recreational marina and/or reconstruction of a pier over previously authorized pile supported structures or pile fields in the non-DPA portion of the site. This work, in addition to any other work requiring a federal permit (including the removal of piles, rehabilitation of the bulkhead, construction of pier), will trigger CZM federal consistency, whereby the proponent must demonstrate that the proposed project is

consistent with CZM's program polices. CZM will review proposed plans for the site to ensure that the use does not interfere with a) activities in the nearby federal navigation channel, or b) activities in the adjacent DPA, both on and offsite. The New Street Realty Trust owners have indicated that they will pursue water-dependent industrial uses in the DPA and WDUZ portions of the site. Chapter 91 at 310 CMR 9.12(b), lists several water-dependent uses that may be appropriate on this site.

B. 310 Border Street-The Umana Barnes School

As a result of this boundary review, no part of the Umana Barnes School will be located within the East Boston DPA. The School continues to be located within the coastal zone, and future projects on this site will be evaluated for consistency with CZM Program Policies.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Based on the findings of this report, CZM concludes that the DPA as currently configured is in substantial conformance with the designation standards at 301 CMR 25.04, and that the DPA serves the interest of the Commonwealth as stated in the *Purpose* of the regulations at 301 CMR 25.01(2). Based on the findings of this report, however, CZM recommends that the boundary be modified in the manner discussed above, and as shown in **Figure 4**, to exclude the upland portion of the properties located at 4-26 New Street, and the Umana Barnes School in its entirety.