

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

Notice of Issuance of the
Designation Report for the South Boston Designated Port Area (DPA) Boundary

In accordance with applicable regulations at 301 CMR 25.00, public notice is hereby given of the Office of Coastal Zone Management's (CZM) issuance of the South Boston Designated Port Area boundary designation report. CZM shall consider written comments relative to the designation report. Comments must be received by 5:00pm on March 9, 2018 (30 days after publication of this notice in the *Environmental Monitor*). Comments should be addressed to:

Office of Coastal Zone Management
Attn: Lisa Berry Engler
251 Causeway Street, Suite 800
Boston MA 02114-2136

CZM will convene a public hearing on the DPA boundary designation report on February 26, 2018 at 6 p.m. The meeting will be held at:

EDIC - Raymond L. Flynn Marine Park
22 Drydock Avenue, 3rd Floor Conference Room
Boston, MA 02210
(parking available at Central Parking Garage, 12 Drydock Avenue)

Copies of the state DPA boundary regulations (301 CMR 25.00) can be obtained at the State Bookstore, Room 116, State House, Boston, MA 02133, or electronically at:
www.mass.gov/files/documents/2016/08/w1/301-cmr-25.pdf

Notification Date: February 7, 2018

Boundary Review of the South Boston Designated Port Area, Boston, MA

**Executive Office of Energy and Environmental Affairs
Office of Coastal Zone Management
February 7, 2018**

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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 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 met with major concerns and 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

DPA's 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 without significant detriment to the capacity of DPAs to accommodate water-dependent industrial use in the future.

After the establishment of the DPA policy and the physical boundaries of the DPAs in 1978, 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 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 upland 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.

III. SOUTH BOSTON BOUNDARY REVIEW PROCESS

Since the South Boston DPA boundary was originally established in 1978 (Figure 1), there has not been a boundary review, using the designation standards found at 301 CMR 25.04 or otherwise, to determine if the current South Boston DPA boundary should remain as currently established or whether it should be modified.

In June of 2017 the owner and developer of the site of the former Edison Power Plant, located along the southern bank of the Reserved Channel within the South Boston DPA at 776 Summer Street, formally requested that CZM initiate a review of the area under their ownership. In keeping with ongoing efforts to modernize and update DPA boundaries, CZM accepted the request, expanding the review area to include the entire portion of the South Boston DPA located south of

the Reserved Channel between Summer Street and the easterly edge of Conley Terminal, consisting of 13 parcels. The review area excludes the portion of the DPA located north of the Reserved Channel in South Boston's Seaport District and the Raymond L. Flynn Marine Park. Further, the review area consists of DPA lands including all parcels, roads, rights-of-way, railways and parcels within the DPA boundary review area but excludes DPA waters, consisting of the entire watershed of the DPA.

CZM issued a notice of intent to review which was published in the Environmental Monitor on July 12, 2017. A public meeting was held on July 25, 2017 in Boston, and the formal 30-day public comment period closed on August 11, 2017.

CZM's evaluation took into account the context of the entire area under review as a cohesive, operational unit with common uses, interests and regional impact. The watershed of the Reserved Channel is a shared resource and given its importance to the active water-dependent industry and DPA infrastructure on both sides of the channel, the DPA watershed including the Reserved Channel was not included in the review area. CZM's review employed this holistic perspective while undertaking the boundary review.

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, 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 and City and state agencies. CZM considered all comments in the context of the policy and regulatory framework that guides the 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.

Notice of this designation report, a public hearing, and a 30-day public comment period was included in the February 7, 2018 Environmental Monitor, published in a local newspaper of general circulation and distributed to those identified in 301 CMR 25.06(5). 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.

IV. SOUTH BOSTON DPA

The South Boston DPA is an important driver for the Boston area, eastern Massachusetts, and greater New England economies, providing an important location for a high concentration of water-dependent industrial uses. The South Boston DPA includes a portion of South Boston's Seaport district along Northern Avenue including Commonwealth Pier and the Fish Pier, the majority of the Raymond L. Flynn Memorial Marine Park, the Raymond L. Flynn Cruiseport Terminal, the Reserved Channel, and the Paul W. Conley Container Terminal. These areas of active marine industry include a wide variety of water-dependent industrial, general industrial, supporting commercial, and water-dependent industrial compatible uses which provide direct economic and other significant benefits to the city, state, and region.

The South Boston DPA encompasses portions of the Port of Boston, the oldest continuously active major port in the Western Hemisphere. The Port of Boston is the region's major seaport handling

more than 13 million metric tons of containerized and bulk cargo per year. More than 1,600 companies use the Port to import and export goods, and support 50,000 jobs annually. The Port contributes more than \$4.6 billion to the local, regional, and national economies.

The Reserved Channel, a narrow but very active watersheet serving the Port of Boston, is located within the South Boston DPA and serves marine industry on both sides of the channel. The Paul J. Conley Container Terminal (Conley Terminal), New England's largest full service container terminal with the only deepwater access in the Port of Boston, and the Raymond L. Flynn Black Falcon Cruiseport (Flynn Cruiseport) are each located on the Reserved Channel and owned and operated by Massport. The Conley Terminal, on the south side of the Reserved Channel, supports over 1,600 businesses throughout New England with the import/export of raw materials and finished products. Proving its importance to the region, the Conley Terminal has seen three record-setting years of increases in total freight volume processed. The Flynn Cruiseport, located on the north side of the Reserved Channel, receives more than 150 deep draft cruise ships each year as well as foreign and domestic naval and public vessels. The Flynn Cruiseport and the Conley Terminal together support over 7,000 jobs in industries that have seen significant growth in recent years. The north side of the Reserved Channel also houses a docking area for the Thompson Island's Outward Bound vessel and the City of Boston's Harbormaster. The south side of the Reserved Channel is dominated by the Conley Terminal with two existing deep water berths plus one in development) with landside support services. The Boston Harbor Lobsterman's Cooperative, an MBTA Bus Terminal, an MBTA emergency power plant, the decommissioned Boston Edison L Street Power Station, and Massport's recently completed Thomas J. Butler Memorial Park are also located on the south side of the Reserved Channel in the South Boston DPA.

Public investment totaling an estimated \$850 million is underway or planned in the area of the Reserved Channel with the explicit purpose of ensuring the long-term viability of the Port of Boston as the center of water dependent industry for Boston and the region. The U.S. Army Corps of Engineers (USACE), with state support, is in the process of completing the Boston Harbor maintenance dredge project (to be completed in early 2018). This project is dredging Boston Harbor to previously permitted depths to maintain suitability for vessel traffic of the current size and frequency. The state is also partnering with the USACE and other federal agencies to implement the Boston Harbor Deep Draft Navigation Improvement project, which includes the deepening of Boston Harbor and its approaches to a depth that will support the new Post-Panamax container ships. The Boston Harbor Deep Draft Navigation Improvement project responds to trends in the global shipping industry and will allow Boston Harbor to continue to be competitive with other major ports along the east coast including the Port of New York/New Jersey. As a condition of the federal navigation improvement project, Massport is investing in the modernization of the Conley Terminal to accommodate larger container ships as well as improve and expand the landside terminal and transportation facilities. Massport is also planning to expand onto adjacent property formerly owned by Coastal Oil to add an additional deepwater berth (Berth 10) that will have capacity to support the new Post-Panamax vessels. Other improvements to the Conley Terminal include the procurement and installation of larger ship to shore (STS) cranes, changes in vehicle routing, streamlined security measures and maintenance of existing Berths. These efforts will increase terminal capacity and efficiency at a time when Conley Terminal is seeing three years of record high container activity.

In September of 2017, Massport opened the Thomas J. Butler Dedicated Freight Corridor. The new haul road diverts approximately 900 trucks per day from local streets, buffers South Boston

residents from truck noise and creates a more streamlined entry point into Conley Terminal. The haul road and Thomas J. Butler Memorial Park are the result of many years of planning and discussions with local South Boston residents. Massport implemented these two projects to ensure the viability of Conley Terminal for the long-term by buffering potentially conflicting terminal operations from adjacent residential land uses and by creating a more efficient connection between water-based shipment and land-based transportation networks necessary for global shipping operations. Prior to the development and operation of the Dedicated Freight Corridor, trucks and other vehicles serving freight receiving and distribution from Conley Terminal would exit the port facility onto East 1st Street in South Boston and generally head west on East 1st Street which runs along the existing residential neighborhood, then turn north onto Summer Street to connect to the Interstate 90 or the South Boston Bypass to Interstate 93. Given the volume and frequency of truck and other traffic, significant concerns were expressed by the residents, elected officials and others regarding the impacts of the operations of Conley Terminal on the neighborhood. The Thomas J. Butler Dedicated Freight Corridor and Memorial Park were significant investments for a long-term solution to a growing challenge of maintaining and growing a major port operation and avoiding and minimizing impacts on local residents and businesses.

V. 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. For this DPA review, CZM defined three planning units, forming coherent areas with groups of parcels that are delineated by shared physical, geographical, and land use characteristics, as described below and shown in Figure 3.

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 uses 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.

The portion of the South Boston DPA under review encompasses the area located along the south side of the Reserved Channel, specifically extending from the western edge of Summer Street to the eastern edge of the Conley Terminal and excluding the DPA watershed. This boundary review will also include an area of the Conley Terminal which is under active use and management as a water dependent industrial use but is not currently included within the South Boston DPA boundary (Figure 2). At the request of Massport, the area located between Day Boulevard and the current southern boundary of the South Boston DPA will be included in the South Boston DPA boundary review.

Within the area under review, a major defining feature is Massport's Dedicated Freight Corridor, or "haul road". The haul road bisects the portion of the South Boston DPA south of the Reserved Channel into two functionally distinct planning units: Haul Road North planning unit and Haul Road South planning unit (Figure 3). The third planning unit subject to this boundary review is comprised of the area north of Day Boulevard. This land is functionally connected to the Conley Terminal but not included in the South Boston DPA boundary: Day Boulevard planning unit (Figure 3).

Haul Road North Planning Unit

The Haul Road North planning unit comprises 112 acres and includes the existing DPA area extending from (and including) Summer Street to the eastern edge of Conley Terminal and from the southern boundary of the Reserved Channel to the southern edge of the right-of-way for the new haul road (Figure 3). The area is functionally and geographically distinct as it begins at the western edge of the area requested for review, ends at the eastern edge of Conley Terminal and is bounded by the Reserved Channel to the north and the right-of-way for the haul road to the south. The Haul Road North planning unit is located directly across the Reserved Channel from Massport's active Flynn Cruiseport. The Haul Road North planning unit is exclusively owned and operated by Massport although a small area is subject to a lease agreement with the Boston Harbor Lobstermen's Cooperative.

Although portions of the Haul Road North planning unit are not actively in use for their licensed water dependent industrial uses, the planning unit is dominated by water dependent industrial uses (97%). For those areas not actively in use for water dependent industrial activity, Massport's master planning anticipates the expansion of DPA uses in the near future. The western most portion of this planning unit includes two parcels under Massport ownership which were previously part of the former Edison Power Plant property but were separated by the construction of Massport's haul road. These parcels are characterized by developed shorelines with bulkheads, fenders, dolphins, a concrete pier, and a thermal barrier. The parcel which directly abuts Summer Street includes the entrance to the new haul road and the portion of the haul road which crosses the small inlet off the Reserved Channel. The parcel also includes a small upland area with a short pedestrian walkway with seating and parking area that was used by employees of the former Edison Power Plant. The second of the parcels that was separated from the former Boston Edison Power Plant property by the haul road is located directly east and north of the haul road. This parcel is currently vacant but slated for use by Massport in the near future to store truck chassis and support other Conley Terminal operations. A portion of the next parcel in the planning unit, previously owned by the MBTA, is leased by Massport to the Boston Harbor Lobstermen's Cooperative. The Cooperative membership currently includes approximately 24 boats. The land area leased by the Cooperative includes structures for storage, maintenance, and cleaning of equipment, parking areas, a concrete pier, and a

granite seawall which supports a network of floats. The right of way for the haul road extends across the southern portion of these parcels and passes through a security check point to the south of the Lobstermen's Cooperative. A sound dampening wall lies along the southern edge of the haul road right of way and serves as the southernmost extent of Conley Terminal operations. The next parcels in this planning unit, including two discontinued roadway segments (Farragut and O Streets), are undergoing remediation activities as a result of the previous oil terminal use under ownership of White Fuel Oil and Coastal Oil. The land area is lacking in buildings or structures and the shoreline is generally developed with bulkheads, piers and rip rap that, in some cases, have fallen into disrepair. However, upon the completion of the remediation work and regulatory review, the new deepwater Berth 10 and expanded container yard will restore the former maritime terminal along this portion of the Reserved Channel. Shoreline infrastructure will include a pile-supported concrete wharf with berthing fenders and mooring fixtures. The easternmost section of the Haul Road North planning unit is comprised of the active Conley Terminal. The shoreline in this area includes two container vessel berths in active use (Berths 11 and 12) and two not in active use (Berths 14 and 15) along its northern shoreline which abut the Reserved Channel and a concrete pier along its northeastern shoreline. The area is generally flat and devoid of structures except small industrial buildings which house terminal-related office space. Containers to be loaded onto vessels or trucks are stacked along the length of the terminal with areas for parking of vehicles and maintenance interspersed.

Haul Road South Planning Unit

The Haul Road South planning unit comprises 25 acres and extends from Summer Street to the eastern terminus of the Thomas J. Butler Memorial Park (Figure 3). This planning unit is geographically defined by the western edge of the review area and the eastern extent of the park. It is further defined as the area to the south of the haul road and to the north of East 1st Street. This planning unit borders a residential neighborhood located along the south side of East 1st Street. The planning unit is comprised entirely of non-water dependent industrial uses (100%).

Water-dependent industrial uses have not been consistently supported in this planning unit for more than ten years. The largest parcel in this planning unit is the site of the former Edison Power Station which was decommissioned in 2007. This parcel includes the structural remains of the former power plant including brick buildings, turbine halls, smoke stacks, and areas of pervious pavement. Although the shoreline of this parcel is well developed with bulkheads, water access to the shore is severely restricted due to the haul road, the low height of the bridge span, and the requisite security protection measures surrounding the new haul road. Two other parcels in this planning unit include an MBTA-owned emergency power plant and an MBTA bus yard and depot. Because these parcels are bifurcated from the Reserved Channel by the haul road, they do not have access to the shoreline. The remaining land area in this planning unit is comprised of the Thomas J. Butler Memorial Park which opened in the summer of 2017. This linear park, created to buffer the residential neighborhood located along East 1st Street from the industrial activities of the Conley Terminal, runs along East 1st Street from the former Edison Power Station site to Farragut Road. This parcel has no shoreline nor access to the shoreline. An Article 97 conservation restriction permanently protects the Thomas J. Butler Memorial Park as open space.

Day Boulevard Planning Unit

The Day Boulevard planning unit, comprising 28 acres, is not currently included in the South Boston DPA. However, the area has been included in the DPA boundary review at the request of Massport. The planning unit is located to the north of Shore Road and Day Boulevard and east of

the intersection of East 1st Street and Farragut Road. This planning unit is located directly to the south of the current DPA boundary where it crosses Conley Terminal. The southern boundary of the Day Boulevard planning unit is functionally defined by the concrete wall which separates Conley Terminal from the DCR Castle Island park and Day Boulevard. Although this planning unit is not directly connected to DPA watersheet, it is functionally connected and is currently operated as part of Conley Terminal which lies along the Reserved Channel. As described above, Conley Terminal includes a well-developed bulkheaded shoreline with concrete piers and berths for container vessels as well as cranes for loading and unloading. It also includes administrative offices, equipment maintenance facilities, and inbound truck gates. The Day Boulevard planning unit is generally devoid of structures and is comprised entirely of water dependent industrial uses (100%).

VI. CZM REVIEW

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). These criteria include whether any area within a DPA: 1) has been subject to a designation decision within the previous five years; 2) contained active water-dependent industrial use throughout the previous five years; 3) was requested for exclusion from review by the City or other municipal body; and 4) is entirely bounded by existing DPA lands and/or waters. If a planning unit meets any of these criteria, that area is not eligible for further review and the second step of the review process is not applied. For these ineligible planning units, the DPA boundary does not change. If a planning unit is not disqualified from review by any of these review criteria standards, it is eligible for review and proceeds to the second step of the review process.

The second step of the 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)). The designation standards for waters include two criteria governing suitability to accommodate water-dependent industrial use. The designation standards for waters require that the water area 1) must include or be contiguous with other DPA waters that include both a navigable channel with a design depth of at least 20 feet deep and a substantially developed shoreline which creates a functional connection to a land area meeting the standards of 301 CMR 25.04(2); and 2) must be of a configuration, size, and location appropriate for direct utilization of the water. Waters must exhibit both criteria to remain in the DPA. 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 pursuant to 301 CMR 25.04(2). The four physical suitability criteria require that a planning unit 1) include a substantially developed shoreline which creates a functional connection to a waterway; 2) lie in close proximity to road or rail links and water and sewer facilities; 3) exhibit a topography that is conducive to industrial use; and 4) exhibit a use character that is predominantly industrial in nature or reasonably capable of becoming so. As with the designation standards for water, 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 criterion, the DPA boundary does not change in that area. Or in the case of areas reviewed that are currently outside a DPA boundary but that exhibit all four of the physical suitability criterion, the DPA

boundary would change to include the area. If a planning unit lacks one of more of the physical suitability criterion, it is removed from the DPA boundary.

VII. ELIGIBILITY REVIEW

Based on the eligibility for review standards at 301 CMR 25.03(2)(a) through (d), certain areas within the DPA are not eligible for review if they meet any of the four criteria.

For the first criterion, CZM has determined that no portion of the South Boston DPA has been the subject of a designation decision under 301 CMR 25.03(5) within the previous five years. Therefore, the three planning units within the DPA area under review (Figure 2) are eligible for review based on 301 CMR 25.03(2)(a).

The criterion at 301 CMR 25.03(2)(b) states that any area that consisted primarily of water-dependent industrial use throughout the last five years is not eligible for review. As indicated in the regulations, 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. For this criterion, CZM considered first, whether water-dependent industrial use had occurred throughout the previous five years; and second, whether the water-dependent industrial use, if present, was the primary use for a given planning unit. Based on the review, this criterion held true for one of the planning units in the review area: the Haul Road North planning unit. The Haul Road North planning unit is comprised of primarily water-dependent industrial uses. In this planning unit, 97% of the area is in active water-dependent industrial use and has been so throughout the last five years. Therefore, this area does not meet the criterion for eligibility for review pursuant to 301 CMR 25.03(2)(b) and is not further analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. The boundary of the South Boston DPA will not change in the area of the Haul Road North planning unit.

Pursuant to 301 CMR 25.03(2)(c), areas recommended for exclusion by the City or municipal body shall not be eligible for review. When making their request for boundary review of the South Boston DPA, the owner and developer of the former Edison Power Plant requested the DPA review encompass the 776 Summer Street parcel. In its acceptance and initiation of the review, CZM expanded the review area to include the entire DPA area south of the Reserved Channel. Additionally, Massport requested that an area of Conley Terminal not currently within the DPA boundary also be included in the boundary review. The City of Boston did not request areas for exclusion. Only the areas requested by the owner and developer, included by CZM, or requested by Massport (Figure 2) were considered for eligibility. Therefore, the areas subject to this review (Figure 2) are eligible for review based on the criterion 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 removed from the DPA. Although this DPA boundary review excludes the watershed, it includes the roads within and surrounding the DPA. Thus, no such isolated area is under review, and this scenario is avoided. Therefore, the criterion at 301 CMR 25.03(2)(d) is not met in the South Boston DPA boundary review.

The Haul Road South and Day Boulevard planning units meet all of the eligibility criteria for review (Figure 4) and are therefore subject to the designation criteria and analysis for inclusion in the South Boston DPA described below.

VIII. DESIGNATION CRITERIA AND ANALYSIS

The DPA regulations direct that 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). The following contains a synopsis of CZM's analysis and findings of each planning unit's conformance with the four designation criteria in 301 CMR 25.04(2). The next section of this report concludes with a summary of the planning units' conformance and CZM's recommendation for continued inclusion in the DPA.

Haul Road South Planning Unit

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 Haul Road South planning unit includes a small portion of filled tidelands with bulkheads and infrastructure to allow for the berthing of vessels or withdrawal/discharge of water. However, although the shoreline in this area is well developed, water access from the Reserved Channel to this shoreline is severely restricted due to the haul road and the low height of the bridge span as well as security measures established to protect critical truck access to Conley Terminal. Although the shoreline is developed with infrastructure it is effectively detached from the Reserved Channel by the haul road. The haul road functionally separates the planning area from the adjacent lands with developed shoreline and from the navigable waterway. Therefore, this area does not possess nor is it contiguous with a substantially developed shoreline which establishes a functional connection with a DPA watersheet. Based on this, CZM finds that the Haul Road South planning unit does not meet this criterion.

The second criterion for determining suitability of a land area for 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 supporting general industrial use. The Haul Road South planning unit is primarily served by East 1st Street and Summer Street. Summer Street is a main public road that links the area to the Massachusetts Turnpike and other major regional routes. East 1st Street is one lane in each direction and lies adjacent to a dense residential area. Prior to the completion of the haul road, East 1st Street served as the transportation route for trucks accessing Conley Terminal, therefore, CZM's assessment is that East 1st and Summer Streets 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 that support general industrial use. Therefore, CZM finds that the Haul Road South planning unit meets the criterion 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 (301 CMR 25.04(2)(c)). The Haul Road South planning unit generally consists of filled tidelands and other

nearshore lands which are low-lying and flat. Based on this, CZM concludes that the topography of the Haul Road South planning unit is generally conducive to industrial use, and therefore meets the criterion 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 (301 CMR 25.04(2)(d)). CZM's review determined that the area in the Haul Road South planning unit is comprised largely of industrial uses except for the Thomas J. Butler Memorial Park. The former Edison Power Station, the MBTA emergency power plant and the MBTA bus depot, all exhibit an industrial use character. However, the Thomas J. Butler Memorial Park, although generally devoid of structures, is protected through Article 97 as conservation land and could only be converted to industrial use by an act of state legislature. As the park was intentionally developed to serve as a buffer between the water-dependent industrial uses of Conley Terminal and the residential neighborhood; the conversion back to industrial use is not reasonable foreseeable. The Thomas J, Butler Memorial Park extends linearly along approximately half of the southern boundary of the Haul Road South planning unit. The park although not large in area, occupies a significant portion of the Haul Road South planning unit and creates a clear connection to the residential neighborhood and public park on the southern side of East 1st Street. CZM finds that although some of the uses in the Haul Road South planning unit are industrial in nature or largely compatible with activities characteristic of a water-dependent industry, the presence of the Thomas J. Butler Memorial park as a recreational use and buffer to adjacent industrial uses would create inherent conflicts or be destabilized if commingled with industrial activity; therefore, CZM concludes that the Haul Road South planning area does not meet the criterion as required by 301 CMR 25.04(2)(d).

Day Boulevard Planning Unit

Pursuant to 301 CMR 25.04(2)(a), any area to remain in or be included 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. Although the Day Boulevard planning unit does not include a shoreline, it is contiguous with the Haul Road North planning unit. The entire shoreline of the Haul Road North planning unit is developed. It includes bulkheads, piers and berths with supporting infrastructure to assist in the loading and unloading of container ships. Based on these facts, CZM concludes that the Day Boulevard planning unit meets this criterion.

The second 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 Day Boulevard planning unit is served by the haul road which provides a direct link to Summer Street which connects to the Massachusetts Turnpike and other major regional routes. The haul road is a dedicated roadway for truck traffic generated by the Conley Terminal. The area is served by both city water and sewer services that support general industrial use. Therefore, CZM finds that the Day Boulevard 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 (301 CMR 25.04(2)(c)). The Day Boulevard planning unit is devoid of elevational changes. The land area is low-lying and flat and contiguous with the Haul Road North planning unit. Based on this, CZM finds that the topography of the Day Boulevard planning unit is generally conducive to industrial use, and therefore meets the criteria of 301 CMR 25.04(2)(c).

Finally, to remain or be included 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. 301 CMR 25.04(2)(d). The Day Boulevard planning unit is devoid of structures and currently exhibits a use character that is entirely industrial. CZM concludes that the uses in this planning unit are compatible with activities characteristic of water-dependent industry because it is currently operating as a portion of the active water dependent industrial Conley Terminal. Therefore, CZM finds that the Day Boulevard planning unit meets the use character criterion as required by 301 CMR 25.04(2)(d).

IX. CONCLUSIONS AND RECOMMENDATIONS

The DPA regulations direct that 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 all of the criteria governing suitability to accommodate water-dependent industrial use, as appropriate to the harbor in question.

Because the Haul Road North planning unit did not meet the eligibility criterion for review pursuant to 301 CMR 25.03(2)(b) as it has been in active water-dependent industrial use over the past five years, it was not analyzed for substantial conformance with the criteria governing physical suitability to accommodate water-dependent industrial use. CZM concludes that the Haul Road North planning unit will remain in the DPA.

The Haul Road South planning unit is eligible for review and CZM's analysis determined that while this area is in substantial conformance with the physical suitability criteria for possessing a topography that is conducive to industrial use and for being within reasonable proximity to established road/rail links and sewer/water facilities, the land area does not possess and is not contiguous with a substantially developed shoreline with a functional connection to DPA waters, nor does it exhibit a use character that is predominantly industrial. The presence of the haul road and the bridge span serves to isolate the Haul Road South planning unit both in actual physical constraints, in terms of height under the haul road bridge, but also in terms of security measures which would preclude regular vessel passage under the haul road bridge. CZM concludes that the Haul Road South planning unit, as well as the portion of East 1st and Summer Streets in this planning unit, shall be removed from the South Boston DPA.

CZM analysis indicates that the land in the Day Boulevard planning unit is in substantial conformance with all the physical suitability criteria in 301 CMR 25.04. Therefore, CZM concludes that the Day Boulevard planning unit will be included within the South Boston DPA.

With the removal of the Haul Road South planning unit and the inclusion of the Day Boulevard planning unit, the total area of the South Boston DPA subject to this review increases from 137 acres to 140 acres.

Pursuant to this review, a revised South Boston DPA boundary reflecting the findings of this Boundary Review Report is shown on the attached maps, Figure 5 and Figure 6.

X. FIGURES

Figures referenced in the report are included in the following pages.



Figure 1 – Current South Boston Designated Port Area boundary map

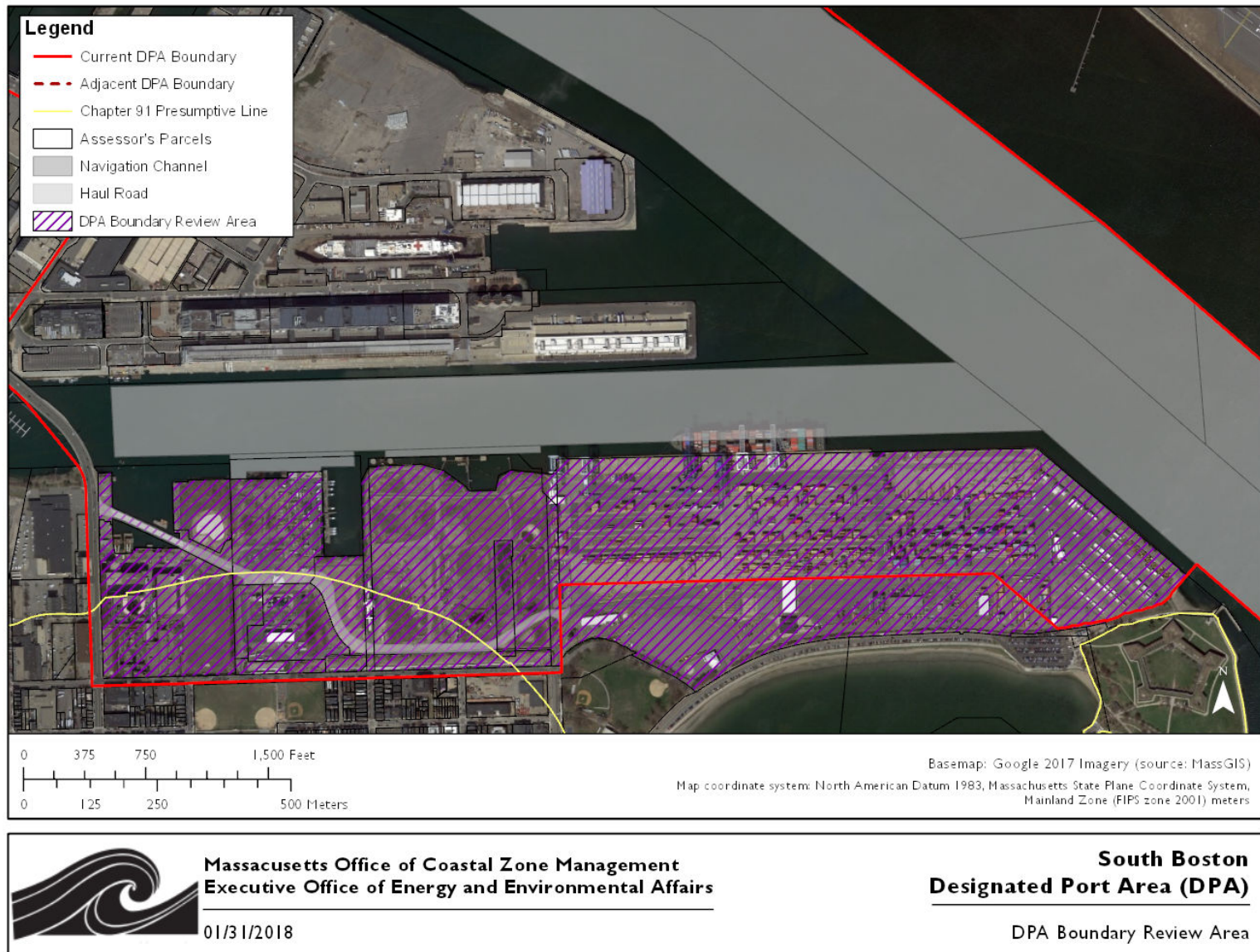


Figure 2 – South Boston DPA Boundary Review Area



Figure 3 – Planning units within the South Boston DPA boundary review

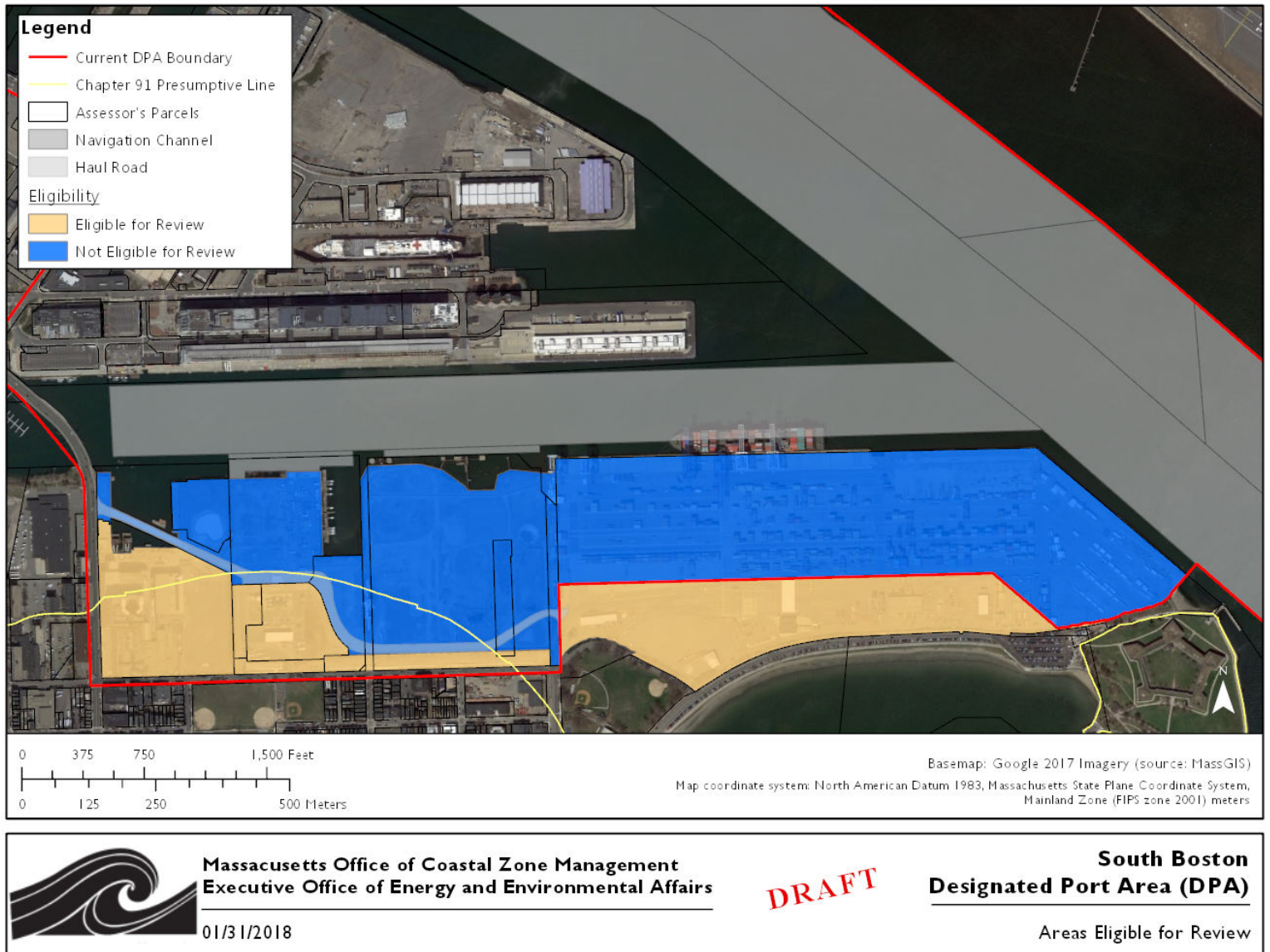


Figure 4 – Planning units eligible for review

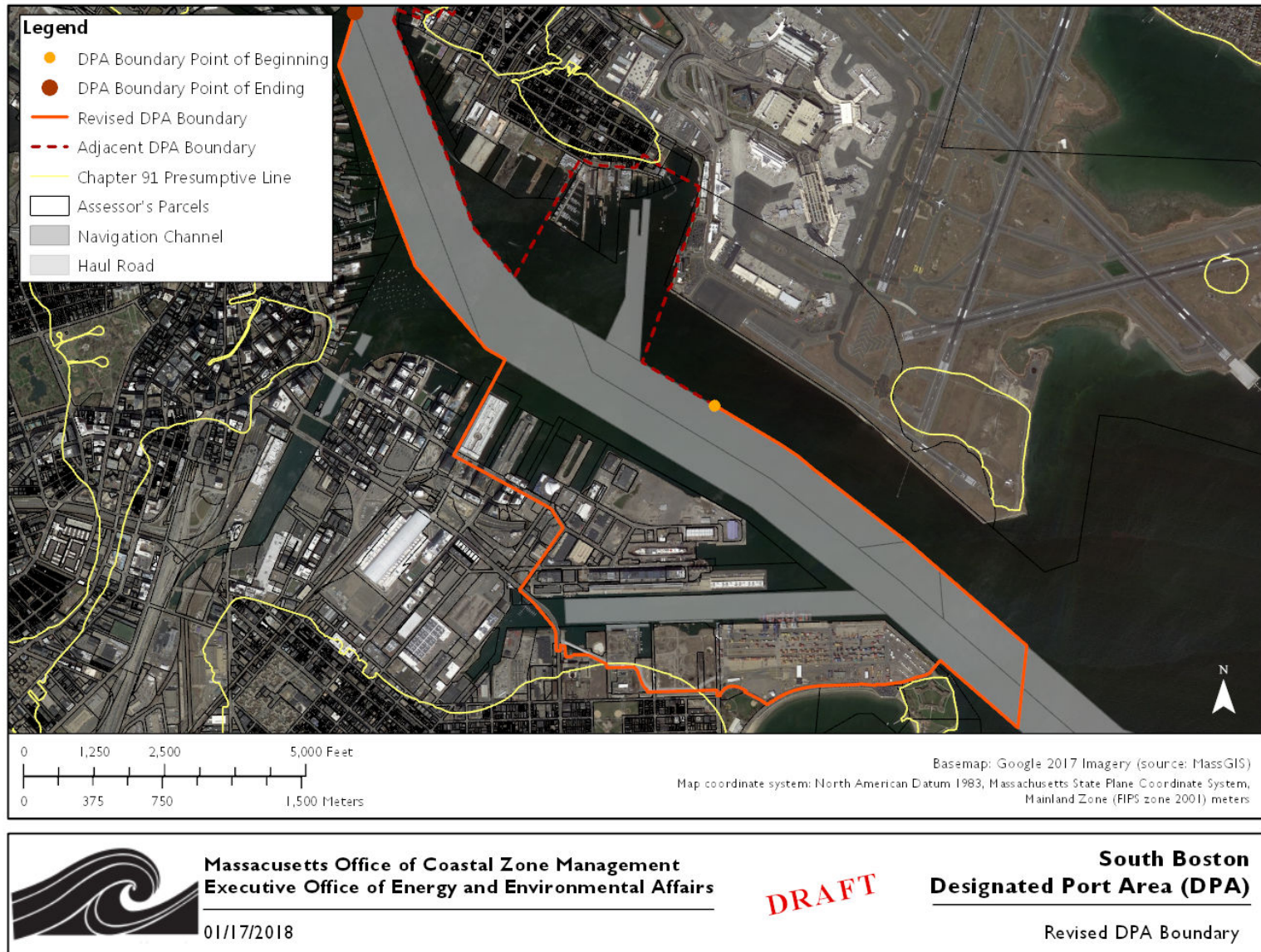


Figure 5 – Revised South Boston DPA boundary map



Figure 6 – Revised South Boston DPA boundary map for DPA boundary review area