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Executive Office of Energy and Environmental Affairs

***Notice of availability of the Secretary's Decision
on the City of Boston's Request for Approval of the
Downtown Waterfront District Municipal Harbor Plan***

Pursuant to 301 CMR 23.00, on April 30, the Secretary issued a written decision on the City of Boston's proposed Downtown Waterfront District Municipal Harbor Plan. Notice of availability of the Decision was previously noticed in the April 25, 2018 *Environmental Monitor*.

The Decision follows this notice and is available on the [Public Notices](#) portion of EEA's Office of Coastal Zone Management website.

<https://www.mass.gov/service-details/czm-public-notice>

Notification Date: May 9, 2018

**DECISION ON THE CITY OF BOSTON'S
REQUEST FOR APPROVAL
OF THE
DOWNTOWN WATERFRONT DISTRICT MUNICIPAL HARBOR PLAN
PURSUANT TO 301 CMR 23.00**

April 30, 2018

**Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
Matthew A. Beaton, Secretary**

I. INTRODUCTION

Today, as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs (EEA), I am approving, in part, subject to the modifications and conditions noted below, the City of Boston's ("City") Downtown Waterfront District Municipal Harbor Plan and Public Realm Activation Plan ("Plan") dated March 2017. This Decision presents an overview of the Plan including supplemental information submitted on February 16, 2018 and findings on how it complies with the standards for approval set forth in the Municipal Harbor Planning regulations at 301 CMR 23.00. The geographic scope of the Plan includes 26 parcels, encompasses approximately 42 acres and extends along the Downtown Waterfront from and including Long Wharf to the Evelyn Moakley Bridge (Seaport Boulevard). The planning area is bounded to the west by the Rose Kennedy Greenway and to the east by the Inner Harbor and the Fort Point Channel (Figure 1). The Plan builds on prior planning initiatives that cover the area, including the Harborpark Plan: City of Boston Municipal Harbor Plan (1991), the Inner Harbor Passenger Water Transportation Plan (2000), the Fort Point Channel Watersheet Activation Plan (2002), the City of Boston Open Space Plan 2015-2021, the Greenway District Planning Study Use and Development Guidelines and Overlay District Zoning Code, and the ongoing work under the Climate Ready Boston initiative. Described below, the Plan defines six goals which will be advanced through improvements within the study area and proposes substitute provisions to specific Chapter 91 standards along with offsetting measures for two specific sites within the planning area that are slated for redevelopment: the Harbor Garage site and the Hook Wharf site (Figure 2) along with an area-wide substitution related to climate resilience measures. My approval of the Plan, with the terms, stipulations and conditions contained herein, does not, and should not be construed to serve as an authorization or approval of a specific project. As described below, redevelopment projects identified in the Plan are subject to regulatory and other reviews that have not yet begun.

Pursuant to the review procedures at 301 CMR 23.00, in August 2013, the City submitted its Request for a Notice to Proceed, and following a public comment period, the Office of Coastal Zone Management (CZM) issued a Notice to Proceed on October 3, 2013. From 2013 to 2016, the City convened 40 public meetings of its Advisory Committee to inform the Boston Planning and Development Agency (BPDA) in the development of the Plan. In July 2016, the City released a draft of the Plan for public review and comment. The Plan was submitted by the City to EEA on March 15, 2017. CZM published a notice of public hearing and 30-day opportunity to comment in the *Environmental Monitor* dated March 22, 2017. Oral testimony was accepted at a public hearing held at

the Boston Harbor Hotel on April 3, 2017. I received 41 individual comment letters plus 872 form letters within the public comment period which closed on April 21, 2017. The consultation period, which included five extensions, ended on April 9, 2018. The Municipal Harbor Planning review and consultation process, led by EEA and CZM, included consultation among CZM, the Department of Environmental Protection (DEP), the BPDA, and stakeholders. During the consultation period, there were also facilitated discussions between the New England Aquarium and the developer of the Harbor Garage property. Discussions resulted in agreements in principle for compensation of construction-related Aquarium visitor and event revenue losses and other matters. Supplemental information relating to these agreements as well as clarification on Chapter 91 substitutions and offsets was submitted by the City on February 16, 2018. While not required by the regulations, the supplemental information filing was made available for a 45-day public comment period by EEA/CZM, to provide for additional public and stakeholder review and input. Following this subsequent public comment period, I received 69 comment letters relating to the supplemental information. In addition to the comment letters, I received 864 form letters in support of the development proposed for the Harbor Garage site as well as a petition signed by 458 citizens in opposition to the Plan.

During the public comment periods, I received comments from local business owners, Boston Harbor advocacy groups, and residents living within and adjacent to the Harbor planning area. Generally, comments received agreed on the need for a cohesive planning approach that will guide the future of this area of Boston's waterfront. Specific issues highlighted in these letters expressed the need to create welcoming and accessible public space, expand water transportation and recreational boating opportunities, support the financial viability of the New England Aquarium, and address climate resiliency. Some comments expressed frustration with the duration of the BPDA's planning process and others had concerns about the role of the Municipal Harbor Plan Advisory Committee in the development of the City's final Plan and supplemental information. The majority of comments received addressed the proposed Chapter 91 substitutions and proposed offsets for the Harbor Garage and Hook Wharf sites. The scale of the height substitute provision requested for the Harbor Garage property was a common concern, with related concerns for traffic and parking impacts on the area. Although many supported the redevelopment of the Harbor garage site, comments from residents in the Harbor Towers development were mostly opposed to the proposed Harbor Garage development. Comments relating to the Hook Wharf site questioned the

appropriateness of the height and open space substitutions being requested and several expressed concerns about residential uses over flowed tidelands.

Comments received on the City's supplemental filing and the original Plan from March 2017, as well as those received at various points throughout the City's planning process, were directed at the City's stakeholder process, and more than a few shared the concern that while the City held a large number of meetings, they did not feel that stakeholder input was well reflected in the City's drafts and final Plan. There was also notable disappointment regarding the lack of engagement by the BPDA with its Advisory Committee between the time of the last committee meeting in October 2016 and submittal of the Plan in March 2017 and the time supplemental information filing was made in February 2018 following the consultation period. The Municipal Harbor planning process is intended to provide for robust opportunities for input and interaction with stakeholders and the general public during the development of the plan and their participation and input are critically important to help shape a Municipal Harbor Plan, especially since many elements of a plan will affect the public realm and interests. I strongly encourage the BPDA to evaluate how the role of, and interaction with, the Advisory Committee and the incorporation of stakeholder input can be improved in future Municipal Harbor Planning processes. I also urge the BPDA to engage stakeholders as part of upcoming Article 80 and other regulatory procedures related to the proposed developments addressed in the Plan.

Municipal Harbor Plans vary depending on the municipality and the planning area. In the case of the proposed Downtown Waterfront District Municipal Harbor Plan, the BPDA sought to balance an overarching vision for a critical stretch of Boston's waterfront, while incorporating development-specific guidelines for two specific sites at the Harbor Garage and Hook Wharf sites. Although Municipal Harbor Plans can include a wide array of local planning goals and actions as well as site-specific design guidelines for proposed developments, state review and approval of Municipal Harbor Plans under 301 CMR 23.00 is primarily limited to the formal evaluation and authorization of proposed substitute and amplification provisions to specific standards of the Chapter 91 Waterways Regulations. As such, the process of reviewing and approving Municipal Harbor Plans does not consider all elements of proposed development(s) such as traffic, parking, water and wastewater, or energy efficiency—these matters are the subject of other jurisdictions, authorities and reviews. The concerns raised by many about how proposed development in the planning area may affect an already busy roadway network are issues that will be addressed through subsequent review processes. Project proponents will be required to measure and assess future

traffic impacts and mitigate for them both through state review with the Massachusetts Environmental Policy Act (MEPA) office and the City's Article 80 review processes. Comments regarding the proposed Chapter 91 substitutions and offsets proposed for the Harbor Garage and Hook Wharf properties in the Plan and supplemental information filing were carefully considered in the review and analysis of the Plan and discussion of these comments is contained in the analysis section of this Decision.

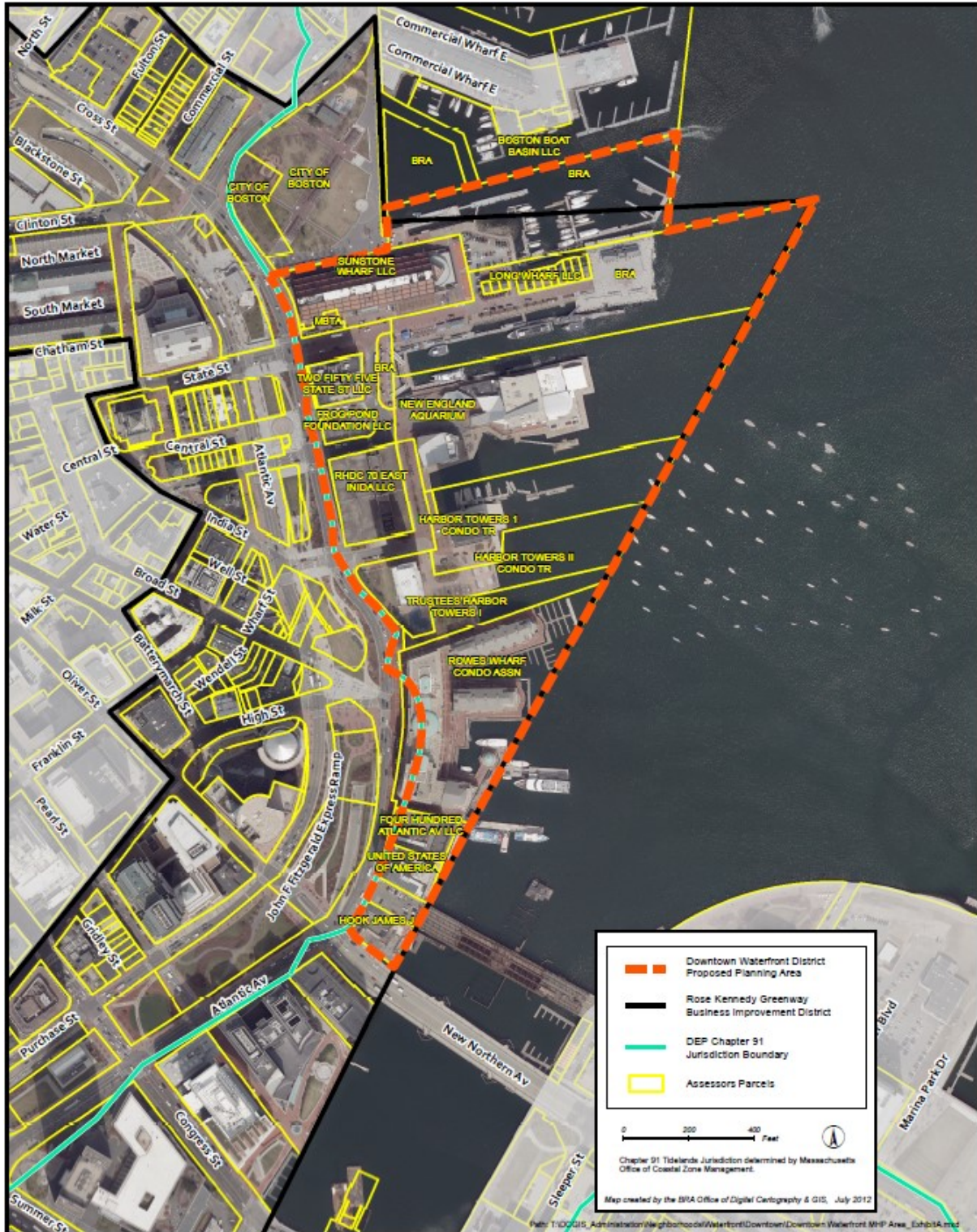


Figure 1. City of Boston Downtown Waterfront District Municipal Harbor Planning Area



Figure 2. Downtown Waterfront District Municipal Harbor Plan Redevelopment Parcels

II. PLAN CONTENT

The planning area encompassed by the Plan includes almost half a mile of Boston's Downtown waterfront extending from and including Long Wharf to the Evelyn Moakley Bridge/Seaport Boulevard (Figure 1). The area lies between popular and highly programmed public space, the Rose Kennedy Greenway to the west, and the busy Inner Harbor watershed to the east. The area includes approximately 42.1 acres in 26 parcels where approximately half the planning area (21.9 acres) is filled tidelands and the other 20.2 acres is flowed Commonwealth Tidelands (Figure 3). The inland border of the planning area follows the boundary of Chapter 91 jurisdiction which is primarily coincident with Atlantic Avenue. As such, the entire planning area is within Chapter 91 jurisdiction. The eastern boundary of the planning area is coincident with the waterside boundary of the 26 City of Boston defined parcels. The planning area does not include any land or water within a Designated Port Area (DPA); however, it includes multiple areas of commercial and recreational boat use at Long Wharf, Central Wharf, Rowes Wharf, and India Wharf. Uses within the planning area are a mix of hotel, residential, office, parking, mixed uses, and publicly accessible space. Prominent features along this area of shoreline include the water-dependent New England Aquarium (Aquarium), the Long Wharf park and water transportation area, the Marriot Long Wharf Hotel, and Rowes Wharf.

The Plan seeks to further advance and implement previous planning efforts, including the Harborpark Plan: City of Boston Municipal Harbor Plan (1991), the Inner Harbor Passenger Water Transportation Plan (2000), the Fort Point Channel Watersheet Activation Plan (2002), the City of Boston Open Space Plan 2015-2021, the Greenway District Planning Study Use and Development Guidelines and Overlay District Zoning Code (2010), and the ongoing work on Climate Ready Boston. It also accounts for and builds on improvements made within the Downtown Waterfront District since the 1991 Harbor Park Plan, such as the completion of the Central Artery/Tunnel Project, the construction of the Rose Kennedy Greenway, the Boston Harbor Cleanup Project, the BPDA's water infrastructure improvements at Long Wharf, the expansion at the New England Aquarium, enhancements to the Harborwalk, and others.

As stated in the BPDA's Request for Notice to Proceed (July 31, 2013) and reiterated in the Plan, the City has six goals for this plan and planning process: 1) Continue to develop the district as an active, mixed-use area that is an integral part of Boston's economy; 2) Promote access to Boston Harbor, the Harbor Islands and water transportation; 3) Improve waterfront wayfinding and open space connections; 4) Enhance open space resources and the public realm; 5) Create a climate

resilient waterfront, and 6) Implement the Greenway District Planning Study Wharf District Guidelines. These six overarching themes acknowledge the need to encourage and grow the Downtown Waterfront as an active, welcoming, and climate-resilient space for many user groups including future business, current and future residents, and visitors from Massachusetts and beyond. These overarching themes are clearly integrated into the actions set forth by the City in the Plan. The Plan implements these goals by thinking holistically about opportunities to improve the public realm, water transportation, and activation of the waterfront while proposing provisions that would allow for redevelopment of specific parcels within the planning area.

A key component of the Plan is the Downtown Waterfront Public Realm and Watersheet Activation Plan (“Public Realm Plan”). The Public Realm Plan was a result of discussions with stakeholders, property owners, the Municipal Harbor Plan Advisory Committee, and the City. It sought to better understand ways to enhance the public realm in the planning area and focused on improving and strengthening access to open space; increasing the continuity of the Harborwalk and associated open space along the entire length of the planning area; and improving connections to areas to the north and to the south. A primary focus of the BPDA was to create ways to make the Harborwalk a seamless linear public access system. In order to facilitate this goal and acknowledge the distinct character of the planning area, the Public Realm Plan was divided into four sub-districts: Northern Avenue, Rowes Wharf and India Row, Long and Central Wharves, and the watersheet. The Northern Avenue sub-district is an important gateway from the east and south. Opportunities to improve connections to and from this sub-district rely on the planned renovation or replacement of the Northern Avenue Bridge and facilitating pedestrian connections along the western side of the Fort Point Channel in the vicinity of the Moakley Bridge. The Rowes Wharf/India Row section of the planning area includes a narrow section of public realm. Opportunities for improvement to this sub-district focus on enhancing existing connections by adding programming, lighting, or signage to draw visitors in and along as well as improvements to accessibility in the area between the Hook Wharf site and the US Coast Guard building. The Long Wharf and Central Wharf sub-district is the most active portion of the planning area with visitors attracted to the Aquarium, water transportation terminals, Boston Harbor Islands Pavilion, and other public amenities on the Greenway. The Public Realm Plan suggested improvements to this sub-district in the form of better utilizing and managing the space for the many uses and visitors. Integrating City visions for the area with plans under development by the Aquarium and the owners of the Harbor Garage site will ensure the area reaches its full potential. The last sub-district according to the Public Realm Plan is

the watershed. With the realization of the Boston Harbor cleanup, the Public Realm Plan emphasizes the enjoyment of the harbor, and well-planned and positioned water transit facilities as well as increasing opportunities for recreational boaters to enjoy Boston by water are the priorities for this area. The Public Realm Plan calls out three themes to be implemented in the Downtown Waterfront District: connectivity, legibility, and activation and programming and contains a suite of recommended actions and projects for each of the sub-districts which serve as an excellent roadmap for ongoing work to enhance public access and activation. These themes are reflected in the Plan through the nature and extent of specific offsets and amplifications.

In the last few years, the City has made important strides to better understand how climate change will affect the City by identifying the potential impacts of climate change, outlining mitigation goals, and incorporating adaptation opportunities into city planning. The City has developed and is implementing its Climate Action Plan, last updated in 2014, which requires that all city planning processes include an analysis of effects of climate change, and new buildings must advance the City's goal of reducing CO2 emissions from large buildings and institutions 14 percent by 2020. The Climate Ready Boston initiative is a significant enterprise to understand vulnerabilities and risk and to develop resilient solutions for buildings, infrastructure, environmental systems, and residents. Under Climate Ready Boston, the City is working to identify applicable resilient design measures and practices for vulnerable locations and develop an implementation plan that prioritizes solutions based upon costs and benefits. New buildings over 50,000 square feet are also subject to the City's Green Building Zoning Code Article.

In the context of these broader planning efforts, the City has proposed substitute provisions and offsetting measures specific to two redevelopment project sites: the Harbor Garage and the Hook Wharf sites (Figure 2). Through its local process, the City has developed the Plan and offsetting mitigation measures in a framework that the City has determined to be the most appropriate for this area of the waterfront. The Plan seeks substitute provisions for Chapter 91 standards for the Harbor Garage site specific to: building height; and substitute provisions for the Hook Wharf site specific to: building height, lot coverage, reconfigured Water-Dependent Use Zone, and Facilities of Private Tenancy over flowed tidelands.

As a general approach, the Municipal Harbor Plan process is meant to take a broad view that incorporates local goals and objectives for a harbor and translates them into a plan and implementable strategy for a specific region of the harbor in question. Depending on municipal priorities, timing of proposed developments, geographic constraints, and other factors, the process

manifests itself in different ways, focusing on different areas and extents for the plans—from an entire harbor to a district or neighborhood and, in some cases, a smaller subset of parcels. The plans also vary in their scopes, sometimes laying out detailed development standards and other times looking to establish general building maximums to allow for flexibility in future developments.

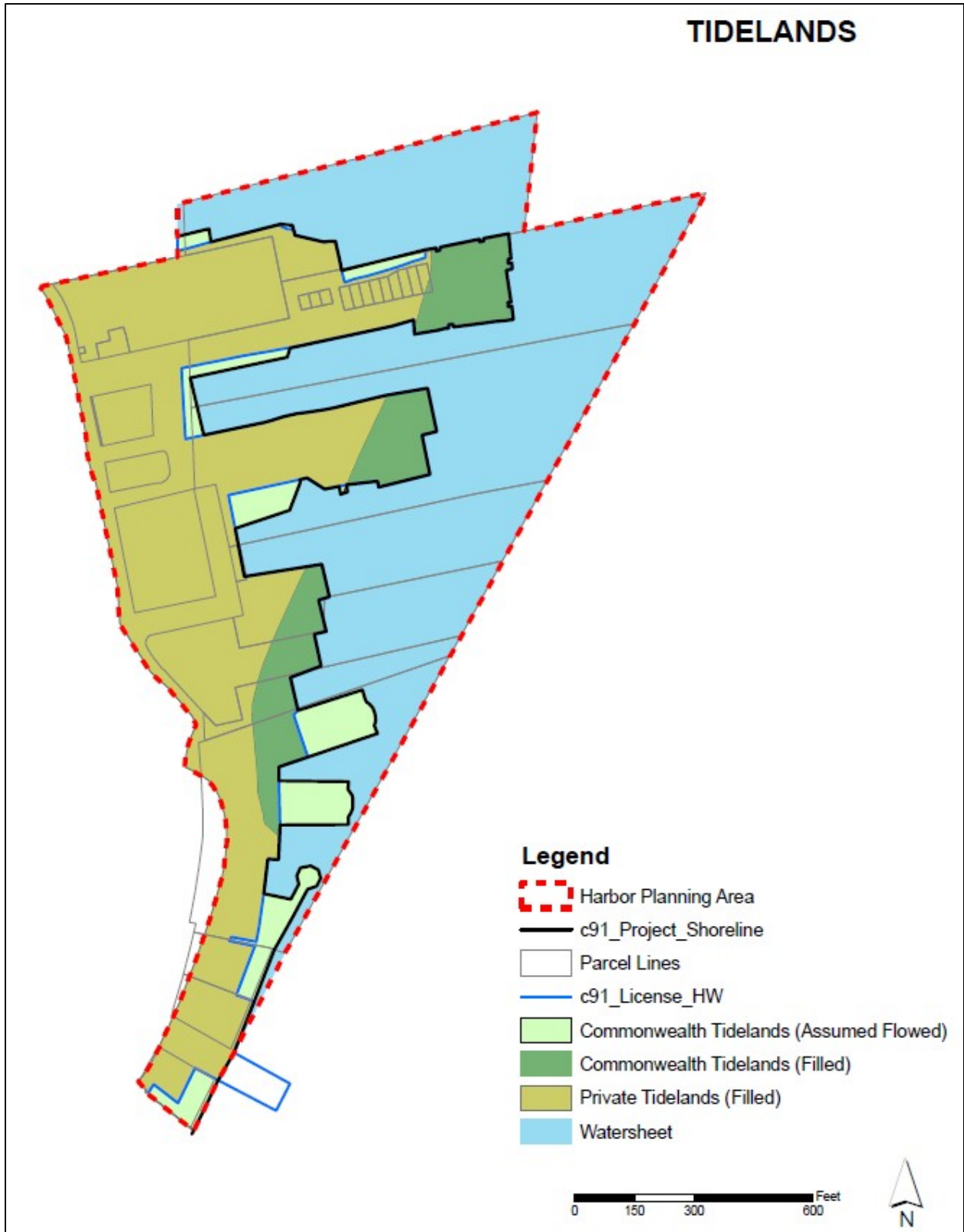


Figure 3. Downtown Waterfront District Chapter 91 Jurisdictional Tidelands

III. STANDARDS FOR APPROVAL

As noted previously, my approval today is bounded by the authority and standards as contained in 301 CMR 23.00 et seq. (Review and Approval of Municipal Harbor Plans) and is applicable only to those elements of the Chapter 91 Waterways regulations that are specifically noted in this Decision. This Decision does not supersede or stand for separate regulatory review requirements for any activity.

A. Consistency with CZM Program Policies and Management Principles

The federally-approved CZM Program Plan establishes 20 enforceable program policies and nine management principles which embody coastal policy for the Commonwealth of Massachusetts. The following is a brief summary of the Policies and Management Principles applicable to the Plan area:

- Water Quality Policy #1 – Ensure that point source discharges in or affecting the coastal zone are consistent with federally approved state effluent limitations and water quality standards.
- Water Quality Policy #2 – Ensure that non-point pollution controls promote the attainment of state surface water quality standards in the coastal zone.
- Habitat Policy #2 – Restore degraded or former wetland resources in coastal areas and ensure that activities in coastal areas do not further wetland degradation but instead take advantage of opportunities to engage in wetland restoration.
- Protected Areas Policy #3 – Ensure that proposed developments in or near designated or registered historic districts or sites respect the preservation intent of the designation and that potential adverse effects are minimized.
- Coastal Hazards Policy #1 – Preserve, protect, restore, and enhance the beneficial functions of storm damage prevention and flood control provided by natural coastal landforms, such as dunes, beaches, barrier beaches, coastal banks, land subject to coastal storm flowage, salt marshes, and land under the ocean.
- Coastal Hazards Policy #2 – Ensure construction in water bodies and contiguous land area will minimize interference with water circulation and sediment transport. Approve permits for flood or erosion control projects only when it has been determined that there will be no significant adverse effects on the project site or adjacent or downcoast areas.

- 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.
- Public Access Policy #1 – Ensure that developments proposed near existing public recreation sites minimize their adverse effects.
- Public Access Management Principal #1 – Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation. Link existing coastal recreation sites to each other or to nearby coastal inland facilities via trails for bicyclists, hikers, and equestrians, and via rivers for boaters.
- Public Access Management Principal #2 – Increase capacity of existing recreation areas by facilitating multiple use and by improving management, maintenance, and public support facilities. Resolve conflicting uses whenever possible through improved management rather than through exclusion of uses.
- Public Access Management Principal #3 – Provide technical assistance to developers of private recreational facilities and sites that increase public access to the shoreline.
- Public Access Management Principal #4 – Expand existing recreation facilities and acquire and develop new public areas for coastal recreational activities. Give highest priority to expansions or new acquisitions in regions of high need or limited site availability. Assure that both transportation access and the recreational facilities are compatible with social and environmental characteristics of surrounding communities.
- Energy Management Principle #1 – Encourage energy conservation and the use of alternative sources such as solar and wind power in order to assist in meeting the energy needs of the Commonwealth.

The Plan includes an assessment of how it is consistent with CZM Program Policies and Management Principles, and based on CZM's review, I conclude that it meets the intent of each relevant policy and, as required by 301 CMR 23.05(1), I find the Plan consistent with CZM policies.

B. Consistency with Tidelands Policy Objectives

As required by 301 CMR 23.05(2), I must also find that the Plan is consistent with state tidelands policy objectives and associated regulatory principles set forth in the Chapter 91 Waterways ("Waterways") regulations of DEP (310 CMR 9.00). As promulgated, the Waterways

regulations provide a uniform statewide framework for regulating tidelands projects. Municipal Harbor Plans and associated amendments provide cities and towns with an opportunity to propose modifications to these uniform standards through either the amplification of the discretionary requirements of the Waterways regulations and/or the adoption of provisions that, if approved, are intended to substitute for the minimum use limitations or numerical standards of 310 CMR 9.00 by DEP. The substitute provisions of Municipal Harbor Plans can reflect local planning goals in decisions involving the complex balancing of public rights in and private uses of tidelands, and in effect, serve as the basis for a DEP waiver of specific use limitations and numerical standards affecting nonwater-dependent use projects, provided that other requirements are in place to mitigate, compensate, or otherwise offset adverse effects on water-related public interests.

The Plan contains guidance that will have a direct bearing on DEP licensing decisions within the harbor planning area. Included in this guidance are provisions that are intended to substitute for certain minimum use limitation and numerical standards in the regulations. It is anticipated, however, that DEP will review any specific project proposals submitted for licensure in accordance with all applicable regulations and standards, consistent with its Chapter 91 authority. These provisions are each subject to the approval criteria under 301 CMR 23.05(2), as explained below.

Evaluation of Requested Substitute Provisions

The general framework for evaluating all proposed substitute provisions to the Waterways requirements is established in the Municipal Harbor Plan regulations at 301 CMR 23.05(2)(c) and 301 CMR 23.05(2)(d). The regulations, in effect, set forth a two-part standard that must be applied individually to each proposed substitution in order to ensure that the intent of the Waterways requirements with respect to public rights in tidelands is preserved.

For the first part, in accordance with 301 CMR 23.05(2)(c), there can be no waiver of a Waterways requirement unless the Secretary determines that the requested alternative requirements or limitations ensure that certain conditions—specifically applicable to each minimum use limitation or numerical standard—have been met. The second standard, as specified in 301 CMR 23.05(2)(d), requires that the municipality demonstrate that a proposed substitute provision will promote, with comparable or greater effectiveness, the appropriate state tidelands policy objective. A municipality may propose alternative use limitations or numerical standards that are less restrictive than the Waterways requirements as applied in individual cases, provided that the plan includes other

requirements that, considering the balance of effects on an area-wide basis, will mitigate, compensate for, or otherwise offset adverse effects on tidelands-related public interests.

For substitute provisions relative to the minimum use and numerical standards of 310 CMR 9.51(3)(a)–(e), any proposal must ensure that nonwater-dependent uses do not unreasonably diminish the capacity of tidelands to accommodate water-dependent uses. Similarly, substitute provisions for nonwater-dependent projects on Commonwealth Tidelands must promote public use and enjoyment of such lands to a degree that is fully commensurate with the proprietary rights of the Commonwealth therein, and which ensures that private advantages of use are not primary but merely incidental to the achievement of public purposes, as provided in 310 CMR 9.53.

Table 1 at the end of this section contains a summary of the substitute provisions and offsetting measures contained in the Plan and the supplemental information filing, as subject to and modified by this Decision.

Analysis of Requested Substitute Provisions – Harbor Garage

The City's Plan proposes a single substitute provision to the Chapter 91 Water Regulations specific to building height for the Harbor Garage redevelopment. The Harbor Garage building at 70 East India Row is a seven-story, 459,000 square foot structure that provides six levels of parking with ground floor retail and office space leased by the New England Aquarium and others. The garage also houses utilities and operational infrastructure for the adjacent Harbor Towers condominiums at 65 and 85 East India Row. The garage provides accessory parking for nearby water-dependent uses, including the New England Aquarium and Boston Harbor Cruises, and also for residences at Harbor Towers. Plans and designs for the potential redevelopment of the Harbor Garage are still under development, but for the purposes of its Plan, the City has proposed a building envelope providing maximum dimensions and general locational criteria to guide future review and permitting. The maximum height proposed for this site is 585 feet (ft) as measured to the highest occupied floor and the building footprint will not exceed 50 percent of the project site. The location of the building footprint will allow a significant component of the project's open space to the north and east of the project site to increase views from the Greenway to Boston Harbor and as a buffer to abutting development. The City has specified that the total floor area of the proposed structure shall not exceed 900,000 square feet, with a floor area ratio of 15.7, and building volume may range between 9,500,000 and 10,500,000 cubic feet.

The New England Aquarium is an important water-dependent use and a special public destination facility¹ within the planning area that directly abuts the proposed redevelopment. The Aquarium is a top attraction in the City, with over 1.3 million visitors a year, and provides year-round educational programming, conducts important marine research and science, and serves as a leader in marine animal conservation and ocean-based advocacy. The City's Plan contains important provisions to protect and promote the Aquarium. A key component of those provisions is the development of a memorandum of understanding, or other mutually agreed upon legally binding agreement, between the City, the Aquarium, and the Harbor Garage developer, which addresses reasonable compensation for construction-related Aquarium visitor and event revenue losses, parking, and other matters of mutual long-range interest. During the consultation period, there were facilitated discussions between the Aquarium and the Harbor Garage developer which resulted in agreement on specific points of a binding agreement. These points were outlined in the City's supplemental information filing on February 16, 2018 and are covered below in more detail.

Building Height – Harbor Garage

To approve any substitute provision to the height standard at 310 CMR 9.51(3)(e), I must first determine that the Plan specifies alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor planning area. The approval regulations focus on how a building's mass will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. Within this context, I must apply the "comparable or greater effectiveness" test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

Under the Waterways regulations heights shall not exceed 55 ft within 100 ft of the shoreline, stepping up one foot for every two feet landward of the project shoreline. The resulting height allowed within jurisdiction on the Harbor Garage site would range from 55 ft to 155 ft. The

¹ A special public destination facility is facility of public accommodation that enhances the destination value of the waterfront by serving significant community needs, attracting a broad range of people, or providing innovative amenities for public use.

Plan requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) that would allow non-water dependent buildings up to a height of 585 ft for the highest occupiable floor and 600 ft overall allowing 15 ft for mechanical and HVAC equipment and housing.

Many comments received expressed concern regarding the magnitude of the height substitution and questioned whether the proposed height is ‘modest in size’. Some comments stated the belief that the nature and character of Boston’s waterfront was threatened by the proposed building height.

The standard for additional building height holds that I must find that the proposed size be relative and modest in order that conditions of the ground level environment will be conducive to water-dependent activity and public access at and near the site, as appropriate for the harbor in question. In reviewing the Plan and the supplemental information submitted during the consultation period, I recognize that while the proposed building height is significantly greater than what would be allowed under the baseline Waterways requirements, within the setting of the entire City skyline which includes a variety of architecture with differing building heights, silhouettes, materials, the proposed height generally fits in context (Figure 4). This skyline reflects the City’s evolving history from its beginning as a primarily maritime-driven economy with warehouses, wharves and piers to the current economy which is supported by a compendium of industries and uses requiring different architecture. A number of buildings in Boston are 600 ft tall – and would likely be taller if not for the Federal Aviation Administration’s limitations. The two Harbor Tower buildings abutting the project site are 400 ft and just to the south and west of the planning area adjacent to the waterfront and the Greenway are several buildings between 550 and 600 ft. The effects of a building’s size are not driven solely by its height, and in many ways, building massing is just as important as height. A taller, thinner building may in fact have fewer impacts on the ground level environment than a shorter, wider building. In this case, based on many massing schemes developed by the BPDA during the planning process, a building envelope which incorporates a single, narrow tower on a wider podium may have similar or even less shadow than other configurations considered by the City. Accounting for the heights of other buildings of the Boston skyline including several adjacent to the waterfront, and considering that the planning area is the downtown waterfront of a major city, I believe that the proposed height is generally comparative in size and appropriate for the area of the harbor.

Potential effects from additional height are assessed at the pedestrian level with special attention to whether the ground level environment will be suitable for water-dependent activity and

associated public access. Shadow studies are conducted to measure any changes to the ground level conditions. Shadow impacts caused by increased building height, affecting the ground level environment, are mitigated with appropriate offsetting measures. Shadow studies, included with the Plan, provided an analysis of how the proposed building height for the Harbor Garage site would compare to baseline shadows if no substitute provisions for height were approved. For the purposes of this project, shadow impacts are based on the solar orientation on October 23rd when open space is still actively used and shadows are larger due to the position of the sun. Shadow studies conducted by the City highlighted areas in and around the Harbor Garage site which are relatively free from shadow (e.g., not under continuous one-hour shadow on October 23rd) under existing conditions. These areas include sections of Harborwalk at 408 and 400 Atlantic Avenue and Rows Wharf, the majority of Long Wharf, and the watersheet between Central Wharf and Long Wharf. As a key part of the City's Plan, the open spaces on Long Wharf seaward of the Marriot Long Wharf Hotel were designated as shadow prohibition zones.

Shadow studies were performed for many variations of building height, building placement, and building orientation on the Harbor Garage site and shadow impacts varied depending on the specific site layout and building configuration. While the City's studies demonstrated that there will be new shadow created by various building configurations and massing schemes, the Plan includes the requirement that any new building under the proposed height substitution must avoid new shadow on the shadow prohibition zone and shall be oriented to reasonably minimize net new shadow on other areas of the waterfront in the planning area and, described below, net new shadow impacts will be offset with new or significantly enhanced open space. Based on the many layouts analyzed, the Plan showed that it is possible to select a building massing scenario that limits net new shadow, minimizes shadow on the watersheet between Long Wharf and Central Wharf, and avoids shadow within the shadow prohibition zone on Long Wharf seaward of the Marriott Long Wharf. As described below, my finding with respect to this substitute provision is conditioned on the proposed building's conformance with the shadow requirements in the City's Plan.

In addition to shadow, wind is another part of the assessment of the effects of proposed height substitutions on the ground level environment. The analysis of changes to wind requires specific building massing and layouts in order to model how the structure affects wind dynamics. Pursuant to the City's Plan and its zoning code and Article 80 process all projects must meet applicable Boston wind standards, and wind studies are required to assess how a proposed project on the Harbor Garage site will impact wind conditions at the pedestrian level on and around the site.

The City will review the wind analysis for the proposed building design, massing and location to ensure that the proposed project will not cause ground-level ambient wind speeds to exceed the performance standards contained in the City's approved zoning codes, including Article 49A Greenway Overlay District pedestrian safety/comfort wind standards. As described below, my finding with respect to this substitute provision is conditioned on the proposed building's conformance with the City's wind standards.

Based on my review of the Plan and the shadow studies performed, it appears that there will be net new shadow cast by a project proposed on the Harbor Garage site. If net new shadow is created, it will affect a portion of the ground-level conditions. As part of my review, I must ensure that the plan includes requirements that, considering the balance of effects on an area-wide basis, will mitigate, compensate for, or otherwise offset adverse effects on water-related public interests.



Figure 4: Building Heights of Boston Skyline

Offsetting Measures for Building Height - Harbor Garage

In the Plan and its supplemental information filing, the City proposes several measures to offset the shadow impacts associated with the substitute provision for height as discussed above. The first measure is a contribution of \$300,000 from the Harbor Garage developer and \$100,000

from the City towards the development of Design and Use Standards that will guide development in the planning area from Long Wharf to India Wharf by establishing uniform requirements for the Harborwalk and other public open space.

In my review of the Plan and the City's supplemental information filing, through discussions with the City during the consultation process, and based on input and feedback from public comment, I am requiring a modification to the first proposed offset. I believe that the City's contribution of \$100,000 is sufficient to advance key elements of the planned work on Design and Use Standards that will enhance existing and proposed open space, as well as public amenities that will better activate the areas and create an improved sense of place for the downtown waterfront. Under this framework, the Design and Use Standards will advance the City's Public Realm Plan for the entire downtown planning area by (1) engaging in a public process to review its recommended actions and projects and developing consensus on near, medium, and longer term priorities; and (2) developing standards, specifications, and guidelines for the following: designs, features, and amenities of new and existing open space, green space, and landscaping; and wayfinding and signage for the Harbor Walk and pedestrian connections to and from the Greenway and other links identified in the Public Realm Plan; and (3) identifying opportunities for increasing resilience to flooding and storm surges under current and future condition through the enhancement of areas of the Harborwalk, open space, or other public zones or facilities through elevation and/or shoreline enhancements.

The Harbor Garage developer's contribution of \$300,000 will be directed instead to the planning, feasibility assessment, design, engineering, and permitting for a signature waterfront park and water transportation gateway on Long Wharf in the area of the current Chart House parking lot, owned by the BPDA. The conversion of the Chart House parking lot into new open space and other features that will enhance green space, the Harborwalk system and the gateway to the Boston Harbor Islands National Recreation Area was identified as a key element of the Public Realm Plan and prioritized as an offsetting measure in the City's Plan and the supplemental information filing. While the transformation of the Chart House parking lot into new open space is the primary focus of the City's offsetting measures for Hook Wharf as currently proposed, during the planning process, the concept of increasing the area's existing functions as a hub for water transportation connections to locations in Boston Harbor and the Harbor Islands was a recurrent theme. The National Park Service maintains a Harbor Park Pavilion on the Greenway which includes information and exhibitions on the Boston Harbor Islands (a unit of the National Park system)

which are accessed by passenger ferry boats from Long Wharf. Enhancing the connection from the Greenway down to Long Wharf and improving the functions, amenities and experience for Harbor Island visitors once at Long Wharf has been identified along with the open space as an important need for the planning area. I received comments both on the Plan and supplemental information strongly supporting the concept of an enhanced water transportation gateway on Long Wharf. In order to satisfy the Land and Water Conservation Fund grant requirement that Long Wharf remain as protected parkland in perpetuity, the proposed water transportation gateway would need to be reviewed and approved by the Land and Water Conservation Fund Stateside Coordinator.

Based on my review, I believe that the conversion of the Chart House parking lot to accommodate both new waterfront park and an improved water transportation gateway are not only equally important but also highly compatible and synergistic. As detailed further below, this \$300,000 offset will be placed in an escrow account to be managed and overseen by a Downtown Municipal Harbor Plan Operations Board (“Operations Board”), modelled after the Fort Point Operations Board established by the 2004 Decision on the City of Boston’s Fort Point Downtown Waterfront Phase 2 Municipal Harbor Plan.

The second and foundational offsetting measure for building height at the Harbor Garage site is the provision of \$10 million from the Harbor Garage developer towards the design and construction of public realm improvements for the New England Aquarium’s “Blueway”. A center piece of the Aquarium’s master plan, the Blueway is a public park that extends from the Rose Kennedy Greenway to the water’s edge at the far end of Central Wharf, an approximate two acre area. The Blueway will be designed to expand the public’s access to and views of the Boston waterfront, improving the public realm through transformative outdoor exhibits, open space, and activation features. Public comment letters received on the Plan and supplemental information filing strongly support the proposed Blueway offset and highlight the amenities and benefits that will be provided by the enhanced open space and waterfront activation.

As a condition of this approval, this proposed offset must be implemented in a way to ensure that the City will closely coordinate the timelines of the proposed Blueway vision and the proposed Harbor Garage project. Additionally, in order to ensure that the public benefits from a revitalized and expanded public realm on and around Central Wharf, the Aquarium must work to advance their capital campaign, planning, designing, permitting, and construction for the Blueway such that this offset will be implemented with timeframes that are closely synchronized with the Harbor Garage project. The offsetting monies shall be deposited into an escrow account to be

established for the purposes of managing the funds and ensuring that these resources are properly utilized for the Blueway and other plans, projects, and programming for public open space and activation of the Central Wharf and downtown planning area. The escrow account shall be directed and administered by a five member Downtown Municipal Harbor Plan Operations Board comprised of a representative from each of the following: EEA/CZM, DEP, BPDA, the Wharf District Council, and Boston Harbor Now. The Wharf District Council is a nonprofit neighborhood organization that represents the community on matters relating to planning, development, construction, programming events, and transportation in Wharf District, an area that extends from Christopher Columbus Park to Congress Street on Fort Point Channel. Boston Harbor Now is a nonprofit organization focused on increasing the quality, destination value, and overall awareness of Boston Harbor and its importance to the environmental, social, and economic health of the city and region. As detailed below in the Statement of Approval, to ensure that the offsetting measure of the Blueway and the enforceable implementation commitments described below are implemented in a timely and coordinated manner with the Harbor Garage redevelopment, the Operations Board shall coordinate with the Aquarium to establish a schedule for the Blueway with annual milestones and progress targets. The Operations Board shall also establish terms and procedures for overseeing and approving expenditures. Completion of the work supported by the offsetting funds shall be realized within five years of the first certificate of occupancy for the Harbor Garage project. The Aquarium must report annually to the Operations Board on progress towards implementing the Blueway, and if consistent and reasonable progress towards implementation of the milestones contained in the project schedule is not met, as determined by the Operations Board, the Board may redirect part or all of the offsetting funds to other waterfront public realm or water dependent improvements within the planning area at any time. If at the end of the five-year period following the first certificate of occupancy for the Harbor Garage development, there has not been substantial progress demonstrated and work complete on the Blueway, the Operations Board shall redirect funds to other open space, waterfront, and watershed activation projects as contained in the Public Realm Plan or identified through subsequent public process.

After my review and assessment and based on stipulations contained above and listed in the Statement of Approval section, I find that the proposed offsets, in sum, will serve to mitigate and compensate for the adverse effects of the significant height and the maximum net new shadow associated with the proposed height substitution for the Harbor Garage site. I note that while the maximum height is considerably greater than what would be allowed under the baseline Waterways

requirements, the proposed height fits within the context of adjacent and proximate buildings and within the entire City skyline, and the \$10 million for the Blueway represents the largest value of an offsetting measure to date and is commensurate with the requested height difference.

As was previously stated, the proposed substitute provision is for a maximum building height of 600 ft. The Municipal Harbor Plan process allows for a municipality to set maximum allowances for building envelopes relative to height, lot coverage and set-backs. It is not the intent of the Municipal Harbor Plan process to serve as an authorization or approval of a specific proposed development or to authorize any such project at this juncture to build to these maximum standards. In fact, it is anticipated and expected that through the subsequent MEPA and the City's Article 80 reviews, specific project proposals will be reviewed, assessed, and revised as necessary to conform to legal standards, comply with guidelines, and respond to concerns raised, and that such revised proposals could contemplate buildings of lower heights or configurations than otherwise allowed herein. It is also through these processes and the associated public comment, that development-specific concerns regarding traffic, safety, vehicular circulation, and parking will be more specifically addressed. I expect and recommend that the City welcome an open dialogue surrounding the specific dimensional details, including height, during the Article 80 approval process for the Harbor Garage site.

Approval of the substitute provision for building height proposed in the Plan requires that I find that the details and specifics of the alternative provisions together with the proposed offsetting measures will promote, with comparable or greater effectiveness, the applicable state tidelands policy objectives. As a result of my review, I agree that the proposed offset measures as modified by this Decision will provide significant amenities and benefits that will serve to enhance the public realm, the public's waterfront experience, and accommodate a range of water-dependent activities. I find that the requested substitute provision, coupled with the proposed offsetting measures, will not impair water-dependent activity and public access to the waterfront, and will appropriately serve to meet the objectives of 310 CMR 9.51(3)(d) and 310 CMR 9.51(3)(e). Therefore, I approve these substitutions and the corresponding offset measures subject to the conditions contained below in the Statement of Approval.

Open Space considerations – Harbor Garage

As presented in the City's Plan, the Harbor Garage site will meet the Chapter 91 requirements for 50 percent open space and no substitute provision is requested. In fact, the

redevelopment of the Harbor Garage site will reduce the current building footprint which is nearly 100 percent of the site by half, greatly enhancing open space and physical and visual connections to the waterfront. However, the City's Plan does include a clause that holds that "canopies, awnings, and covers that create a more comfortable environment for the public shall not be considered to reduce the calculated open space for Chapter 91 purposes." Under Chapter 91, the Commonwealth's interpretation is that open space means "clear to the sky," and in the calculation of building footprint (or lot coverage), building elements such as retractable roofs, glassed-in areas, canopies, balconies, awnings, and other temporary or permanent covers are included. Although the Plan did not explicitly request a substitute provision for lot coverage, I am requiring that any redevelopment comply with the 50 percent open space, clear to the sky, standard.

During the consultation period and detailed in the supplemental filing, several clarifications regarding the allocation of open space area were confirmed. I have reviewed the proposed siting considerations and agree that the objectives for supporting the Blueway connection, allowing for view corridors to and from the harbor, and buffering new development from existing buildings are important. Therefore, as a condition of this Decision, I am requiring that any redevelopment project on the Harbor Garage site must conform to specific parameters regarding the location and siting of the proposed structures on the lot. In order to advance the Blueway offset, at least 30 percent of the project site must be left as open space on the north side of the project site where it abuts Milk Street. The remainder of required open space (20 percent of the project site) shall be located on the east (Harbor) and south (East India Row) sides of the project site and distributed generally evenly in order to create a buffer between the proposed development and abutting properties. Open space on the Harbor Garage site shall be configured to maximize view corridors to and along the water, create wide pedestrian walkways, and minimize encroachment of structures on the waterfront. Open space shall integrate public activities with water-dependent uses such as water transportation and navigation, and prioritize public uses over and private uses. Open spaces shall be designed to facilitate year-round public uses and complement water-dependent uses as well as new civic, commercial, residential, hotel, and retail development.

The City's Plan contained a provision that if the Harbor Garage proponent acquired additional land area on which an existing structure is presently located, the footprint of the Harbor Garage project could be increased correspondingly if the existing structure is removed. The City's supplemental filing clarified that the only land area applicable for this provision is the site currently occupied by the Aquarium's IMAX theater, which is on a lot adjacent to the Harbor Garage site,

separated by a City right-of-way (also known as Old Atlantic Avenue and shown on City's assessor maps as extension of East India Row). Comments from the Aquarium indicate that they are willing to consider a sale provided a fair value is negotiated and further that the IMAX theater and Aquarium business and operational functions can be integrated into another building on/near the Aquarium campus. Removal of the IMAX and relocation of its functions would allow for greater access and views to the water and would advance the concept of the Blueway. DEP has indicated that a Chapter 91 license could define a project site as two discontinuous but adjacent lots separated by a single parcel of publicly owned land, which would not be included as a part of the project site, provided that the City maintains this connecting lot as open space for the term of any license issued. DEP's review for compliance with Waterways regulations would depend on the specifics of such an application. Therefore, if the developer of the Harbor Garage site reaches an agreement with the Aquarium to purchase and remove the IMAX theatre from its current location, the total lot and lot coverage values could be adjusted to incorporate the parcel/land area occupied by the IMAX, provided that the right-of-way remains under City ownership and control and is maintained as open space. However, any new structures or portions of structures planned as a result of this acquisition shall not exceed 55 ft in height and shall not exceed 50% lot coverage of the modified project site (baseline Chapter 91 standards). These parameters will help ensure the public realm and Blueway planned for the Harbor Garage site will enhance existing open space in and around Central Wharf and India Wharf.

Analysis of Requested Substitute Provisions – Hook Wharf

The City's Plan proposes four substitute provisions to the Chapter 91 Water Regulations for the Hook Wharf redevelopment for: building height, lot coverage, facilities of private tenancy over flowed tidelands, and for a reconfigured water-dependent use zone. The Hook Wharf site consists of about a half an acre of land and pier, with significant area over flowed tidelands. James Hook & Co., a wholesale and retail distributor of fresh seafood in Boston since 1925, currently occupies the site. In 2008, a fire destroyed the single-story building, and after the loss, Hook has been running operations out of a temporary, modular building. There is a pile-supported seawater pump and pump house seaward of the property. The property is located between the Evelyn Moakley and Old Northern Avenue Bridges, the two gateways from downtown Boston to the Fort Point Channel and South Boston Waterfront.

As with the Harbor Garage, the plans and designs for the Hook redevelopment are still under development, but under its Plan, the City is seeking a certain building envelope, siting provisions, and use allowances that would provide maximum dimensions and general locational criteria to guide future review and permitting. The maximum height proposed for this site is 285 feet as measured to the highest occupied floor, a building footprint that will not exceed 70 percent of the project site, residential uses (facilities of private tenancy) over flowed tidelands, and a reconfigured water-dependent use zone that would result in no net change of required area.

Building Height – Hook Wharf

As stated above, in my discussion of substitute provisions for the Harbor Garage site, to approve any substitute provision to the height standard at 310 CMR 9.51(3)(e), I must first determine that the Plan specifies alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor planning area. The approval regulations focus on how a building's mass will be experienced at the public open spaces on the project site, especially along the waterfront and key pathways leading thereto. Within this context, I must apply the "comparable or greater effectiveness" test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

Under the Waterways regulations heights shall not exceed 55 ft within 100 ft of the shoreline, stepping up one foot for every two feet landward of the project shoreline. The resulting height allowed within jurisdiction on the Hook Wharf site would be 55 ft. The Plan requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) that would allow non-water dependent buildings up to a height of 285 ft for the highest occupiable floor (and 305 ft. overall with mechanicals). The substitute provision provides for a podium and tower building design by allowing a tower with a maximum height of 305 ft on an area not to exceed 55 percent of the project site and allowing a podium height of not more than 55 ft on an additional building footprint of not more than 15 percent of the project site. The total floor area shall not exceed 275,000 sf. The building volume for the Hook Wharf site may range between 3.5 million and 4 million cubic ft.

As summarized above, the proposed building height is greater than what would be allowed under the baseline Waterways requirements. However, the proposed height is not out of character with other buildings in close proximity to the Hook Wharf site including: the neighboring Intercontinental Hotel and Atlantic Wharf. Therefore, I believe that considering the heights of other buildings in the area, the proposed height is in keeping with the context of and appropriate for the Downtown Waterfront District harbor planning area. Further, as detailed below I find that the proposed offsets adequately compensate for the proposed increase in height.

The standard for additional building height holds that I must find that the proposed size to be relative and modest such that conditions of the ground level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor in question. Impacts resulting from additional height are assessed at the pedestrian level, and shadow studies included as a part of the Plan provide an analysis of how the proposed building height would compare to baseline shadows without any substitutions for building height. In this way, any new shadow impacts associated with the proposed substitute provision can be identified and may be adequately mitigated with offsetting measures. Shadow studies assessing the substitute provision for height on the Hook Wharf site indicate net new shadow would be created. Areas of new shadow affect a small area of watershed and some areas of public sidewalks and plazas. This new shadow is relatively small due to the neighboring buildings which already envelope much of the area in shadow. Because the shadow studies assumed a podium/tower design for the site which may not be the final design, the final proposed project on the Hook Wharf site should reassess shadow studies.

In addition to shadow, the effects of proposed height substitutions on the ground level environment must be assessed for wind impacts. The analysis of changes to winds depends on having very specific building massing and layouts necessary to model how the structure affects wind dynamics. Pursuant to the City's Plan and its zoning code and Article 80 process all projects must meet applicable Boston wind standards, and wind studies are required to assess how a proposed project on the Harbor Garage site will impact wind conditions at the pedestrian level on and around the site. The City will review the wind analysis for the proposed building design, massing and location to ensure that the proposed project will not cause ground-level ambient wind speeds to exceed the performance standards contained in the City's approved zoning codes, including Article 49A Greenway Overlay District pedestrian safety/comfort wind standards. Described more fully below, my finding with respect to this substitute provision is conditioned on the proposed building's conformance with the City's wind standards.

Based on my review of the Plan and the shadow studies performed, it appears that there will likely be net new shadow cast by a project proposed on the Hook Wharf site. If net new shadow is created, it will affect a portion of the ground-level conditions. As part of my review, I must ensure that the plan includes requirements that, considering the balance of effects on an area-wide basis, will mitigate, compensate for, or otherwise offset adverse effects on water-related public interests.

The City has proposed a combination of measures in an offset framework for both the proposed lot coverage substitution and the height substitution. These offsetting measures and my analysis of their capacity to mitigate and compensate for any potential diminishment of water-dependent activity and public access to the waterfront from the proposed substitutions are described below.

Open Space/Lot Coverage – Hook Wharf

To approve any substitute provision to the open space and lot coverage standard at 310 CMR 9.51(3)(d), I must first determine that the Plan specifies alternative site coverage ratios and other requirements that ensure that, in general, buildings for nonwater-dependent use will be relatively condensed in footprint, in order that an amount of open space commensurate with that occupied by such buildings will be available to accommodate water-dependent activity and public access associated therewith, as appropriate for the area. My determination relative to whether or not this substitute provision promotes this tidelands policy with comparable or greater effectiveness is conducted in accordance with the regulatory guidance discussed below.

The Waterways regulations require at least one square foot of the project site be preserved as open space for every square foot of building containing nonwater-dependent uses on the project site, for a baseline of 50 percent open space. The Plan proposes a substitute provision to allow for lot coverage of up to 70 percent of the Hook Wharf site, resulting in at least 30 percent of the site being preserved as publicly accessible open space.

In considering the proposed substitute provision several site-specific factors were evaluated. First, is the relatively constrained nature of the existing site. The Hook Wharf site is framed on two sides by the intersection of two busy roadways (Seaport Boulevard and Atlantic Avenue). The third side of the site abuts the Northern Avenue right-of way-which connects to the abandoned Northern Avenue Bridge. The bridge is slated for a future use still to be determined by the City. The fourth side of the Hook Wharf property is bounded by the Fort Point Channel. This side of the Hook Wharf site (approximately one third of the site) is comprised of dilapidated piers that were

previously used to support the unloading of fish for the water-dependent Hook Lobster Company. Development opportunities on the Hook Wharf site are significantly constrained by these current abutting uses, the condition of the piers and the unknown future use of the Northern Avenue right-of-way and bridge. Also, in evaluating the proposed substitute provision, I must take into consideration the nature of the uses proposed on the first floor of the proposed project. As proposed by the City and to further activate the site, the entire first floor of the proposed site will be comprised of the water-dependent James Hook & Co. family lobster business and new Facilities of Public Accommodation. Additionally, the existing site does not currently provide public access along the Fort Point Channel due to safety concerns. The proposed development on the Hook Wharf site will be required to provide Harborwalk access along the entire length of the site's project shoreline, thereby providing a significant improvement to public access on the site and to the continuity of the Harborwalk along the Fort Point Channel.

Offsetting Measures for Building Height and Open Space/Lot Coverage – Hook Wharf

The City has proposed two offsets to mitigate for the impacts for the proposed height and lot coverage substitution in terms of shadow and other effects on public access and water-dependent activity associated with the lot coverage substitute provision at the Hook Wharf site. These offsetting measures and my analysis of their capacity to mitigate and compensate for any potential diminishment of water-dependent activity and public access to the waterfront from the proposed substitutions are described below.

The first offsetting measure proposed in the Plan is a commitment by the Hook Wharf site developer to fund \$100,000 for the City's creation of Design and Use Standards which will guide the development of the public realm within the planning area. As described above in the offset discussion for the Harbor Garage site, in my review of the Plan and the City's supplemental information filing, through discussions with the City during the consultation process, and based on input and feedback from public comment, I am requiring a modification to this first proposed offset such that the \$100,000 will be directed instead to the planning, feasibility assessment, design, engineering, and permitting for a signature waterfront park and water transportation gateway on Long Wharf in the area of the current Chart House parking lot, owned by the BPDA. As described further below, these funds will be placed in an escrow account to be managed and overseen by the Operations Board.

The second offset proposed to mitigate the impacts of increased height and lot coverage at the Hook Wharf site is \$3 million for the construction of a new waterfront park on Long Wharf. The proposed mitigation will convert the current Chart House parking lot area into signature waterfront open space totaling approximately one third of an acre. This open space will provide a place for passive recreation as well as a gathering area for visitors heading to the Harbor Islands and other points on the harbor. As discussed above, within the context of the City's planning process for the downtown waterfront planning area, the preservation and expansion of open space was identified as a primary goal, and the Chart House parking lot location was recognized as a priority area to realize this goal. While not directly adjacent to the Hook Wharf project area, given the severely limited opportunities for new open space in the planning area, the Chart House parking lot is sufficiently proximate to the site and will have significant benefits to enhance public access and waterfront activation within the relatively constrained planning area. The conversion of the Chart House parking lot into a signature waterfront park is consistent with and advances the City of Boston's Open Space Plan, the Public Realm Plan, and other planning frameworks, and will serve as a significant investment to the creation of new parkland on the waterfront.

In my review of the proposed offset I note that given general estimates of the cost to create a high-quality urban park², the proposed offset of \$3 million should be sufficient for the planning, design, engineering, and construction of the green space and park area. However, the site also needs substantial shoreline engineering and stabilization work, and I am concerned that without addressing the deteriorated shoreline conditions, investments in the park will be jeopardized by further erosion, flooding, and infrastructure impacts. Using general estimates of shoreline stabilization costs³, I am therefore increasing the offset by \$500,000 to ensure that there are adequate resources to complete the waterfront park and the necessary shoreline stabilization work to ensure the site is resilient to the impacts of waves and inundation.

As a condition of this approval, this proposed offset must be implemented in a way to ensure that the City will closely coordinate the timelines for the Chart House parking lot conversion into with the proposed Hook Wharf redevelopment. The offsetting monies shall be deposited into the escrow account, which shall be segregated from the account established for implementing offsetting measures for the Harbor Garage site, for the purposes of managing the funds and

² For example, cost estimates range from \$6-10 million per acre (Trust for Public Lands, 2008); \$3-9 million without soft costs (BPDA, 2016). Does not include land acquisition costs.

³ Relative Costs of Shoreline Stabilization Options (www.mass.gov/files/documents/2016/09/tm/cost-comparison-chart.pdf)

ensuring that these resources are properly utilized for the new park on Long Wharf, the water transportation gateway enhancements, and other plans, projects, and programming for public open space and activation of the downtown planning area. The escrow account shall be directed and administered by the Operations Board, and as detailed below in the Statement of Approval, to ensure that the offsetting measure is implemented in a timely and coordinated manner with the Hook Wharf redevelopment together with enforceable implementation commitments, the Operations Board shall establish a schedule and procedures for overseeing and approving expenditures, together with annual milestones and progress targets. Completion of the work supported by the offsetting funds shall be realized within five years of the first certificate of occupancy for the Hook Wharf project. The City must report annually to the Operations Board on progress towards implementing the waterfront park and water transportation gateway, and if consistent and reasonable progress towards implementation of the milestones contained in the project schedule is not met, as determined by the Operations Board, the Board may redirect part or all of offsetting funds to other waterfront public realm or water dependent improvements within the planning area at any time. If at the end of the five-year period following the first certificate of occupancy for the Hook Wharf redevelopment, there has not been substantial progress demonstrated and work complete, the Operations Board shall redirect funds to other open space, waterfront and watershed activation projects as contained in the Public Realm Plan, or identified through subsequent public process.

Comments received on the offset provisions for the Hook Wharf site expressed concern regarding the change in proposed offsets between the Plan and the supplemental information. The Plan originally proposed offsetting measures that included a Harborwalk connection along the western side of the Fort Point Channel from the Hook Site to 470 Atlantic Avenue. During the consultation process, EEA/CZM, BPDA, and DEP considered a variety of options to connect the Harborwalk under or over Seaport Boulevard. And while I recognize that a connection along the western side of the Fort Point Channel would be a benefit to pedestrians navigating the busy Seaport Boulevard intersection, implementing such a connection may not be feasible within the timeframe of the proposed substitutions or without additional analysis to assess structural and design considerations. Specifically, the clearance under the Seaport Boulevard bridge may not allow for an under-bridge connection especially when taking into account sea level rise projections; and an over bridge would be constrained by the height of trucks accessing Seaport Boulevard. In short, I believe that creating public open space at the Chart House parking lot is more valuable to improving

the public realm in the planning area than investing in a waterside connection that may not be feasible.

While a watersheet floating dock connection from the Hook Wharf site to the 470 Atlantic Avenue Harborwalk does not appear to be feasible, there is a significant need for improving the connection between the two sites. In the planning process and during consultation with the City, a range of options were examined including a span bridge walkway and a connection across Seaport Boulevard on Moakley Bridge where the Harborwalks would cross, both of which also were found to be impracticable. The best solution for making the Harborwalk connection is to have pedestrians cross Seaport Boulevard at the intersection with Atlantic Avenue. To enhance pedestrian safety and to improve the connection, this approach will require adequate wayfinding and signage and a wider pedestrian crossing zone with features such as enhanced marking/painting on street and possibly a raised crossing. As a condition of this Decision, I am requiring the City to work with developer and interested stakeholders on developing and implementing a plan to improve the Harborwalk connection between Hook Wharf and 470 Atlantic Avenue across Seaport Boulevard with significant enhancements for pedestrian safety and wayfinding.

In my analysis of the substitute provisions proposed for Hook Wharf by the City's Plan, I note that the site was the subject of a prior Municipal Harbor Plan and Secretary's Decision. While not the focus of any proposed substitute provisions or any future redevelopment plans, the 2004 Decision on the City of Boston's Fort Point Downtown Waterfront Phase 2 Municipal Harbor Plan includes within the Conditions of Approval section a provision affecting the Hook Wharf site. The 2004 condition states: "(1) [Facilities of Public Accommodation] FPAs and [Special Public Destination Facilities] SPDFs will help activate the Fort Point Channel waterfront, and further the goals articulated in the [Fort Point Channel Watersheet Activation Plan] FPCWAP for public use of this waterfront area. Recognizing the importance of ground level public space (exterior and interior) to the on-going activation of the Fort Point Channel waterfront, I am, therefore, requiring the following: ... (d) Should [James Hook & Co.] Hook Lobster - an existing water-dependent use located largely over flowed tidelands—seek at some time in the future voluntarily discontinue its water-dependent use and pursue development in the form of a nonwater-dependent use project, the entire interior ground level, less an area equal to that allowed by the Waterways Regulations for Upper Level Accessory Use (310 CMR 9.02), shall be occupied by an FPA(s) meeting the standards for a SPDF, as defined in this and other Boston Harbor MHP decisions".

I have carefully reviewed and evaluated this 2004 requirement, given the events that have occurred in the last 14 years and the implications of the stipulation. As noted previously, James Hook & Co. has been operating a wholesale and retail seafood operation at the site since about 1925. James Hook & Co. is considered an active water-dependent use. In 2008, a fire destroyed the building, and after the loss, Hook has been running operations out of a temporary, modular building. Hook has proposed to redevelop a portion of the site, while continuing the wholesale and retail seafood operations, by expanding their commercial businesses to include on-site restaurant facility(ies). These water-dependent uses and Facilities of Public Accommodation will be located on the ground floor. The redevelopment also includes non-water-dependent uses on upper floors. As this confluence of mixed uses does not appear to have been foreseen in the 2004 Decision and the fact that the water-dependent use will continue at the Hook Wharf site, I do not find that the specific condition described in the 2004 Decision—namely, that James Hook & Co. will “voluntarily discontinue its water-dependent use”—has been met. This is compounded by the fact that a fire demolished the Hook Lobster building, again making the proposed redevelopment not strictly “voluntary.”

Therefore, given the facts before me, acknowledging that the ground floor uses will be water-dependent and Facilities of Public Accommodation uses, that the redevelopment will allow for significant improvements to the current site where much of it is dilapidated and unsafe for public access, and that the spirit of the 2004 condition was the activation of the Fort Point Channel waterfront, I am allowing for the proposed ground floor uses (water-dependent use and Facilities of Public Accommodation, providing for permissible upper level accessory use), while requiring an one-time payment of \$500,000 to the Fort Point Operations Fund for programming and projects that advance open space and watershed activation elements of the Fort Point Channel. If James Hook & Co. ceases or substantially reduces its water-dependent operations at the site during the term of my Decision, I am requiring that the ground floor continue to be occupied by a similar combination of water-dependent uses and Facilities of Public Accommodations, or by Special Public Destination Facilities.

Approval of the substitute provisions for building height and lot coverage proposed in the Plan requires that I find that the details and specifics of the alternative provisions together with the proposed offsetting measures will promote, with comparable or greater effectiveness, the applicable state tidelands policy objectives. As a result of my review, I agree that the proposed offset measures will provide significant amenities and benefits that will serve to enhance the public realm, the

public's waterfront experience, and accommodate a range of water-dependent activities. I find that the requested substitute provisions, coupled with the proposed offsetting measures, will not impair water-dependent activity and public access to the waterfront, and will appropriately serve to meet the objectives of 310 CMR 9.51(3)(d) and 310 CMR 9.51(3)(e). Therefore, I approve these substitute provisions and the corresponding offset measures subject to the conditions contained below in the Statement of Approval.

Substitute Provisions for Facilities of Private Tenancy over Flowed Tidelands

To approve any substitute provision to the Facilities of Private Tenancy standard at 310 CMR 9.51(3)(b), I must determine that the Plan specifies alternative limitations and other requirements that ensure that, no significant privatization of waterfront areas immediately adjacent to the water dependent use zone will occur for nonwater-dependent purposes in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone, as appropriate for the area. My determination relative to whether this substitute provision promotes this tidelands policy with comparable or greater effectiveness is based on whether the City's Plan has adequately demonstrated that the proposed substitute provision to allow for Facilities of Private Tenancy over flowed tidelands on a portion of the Hook Wharf site will not adversely affect water-dependent uses and public access, enjoyment, and activation of the flowed tidelands.

Chapter 91 regulations prohibit Facilities of Private Tenancy on any pile-supported structures on flowed tidelands and at the ground level of any filled tidelands within 100 feet of a project shoreline. As such, the allowance of privatization of flowed tidelands is a very high bar—these are areas where the public rights and interests are greater than in filled tidelands. In fact, the only three sites where Facilities of Private Tenancy over flowed tidelands were approved were allowed by the original 1991 Boston Harborpark Plan⁴, and for two of these sites, no Facilities of Private Tenancy have been developed. To approve such a significant departure from the Waterways standard, a Plan must demonstrate requirements, alternative limitations, and offsetting measures such that privatization of the waterfront would not conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the area. Significant concern was raised in comments about this proposed substitute provision and the potential implications for privatization

⁴ In the 1991 Harborpark Plan, Facilities of Private Tenancy over flowed tidelands were approved at three locations: Battery Wharf; Tudor Wharf (Long Wharf); and Charlestown Navy Yard Pier 5. Of these three projects, only the Facilities of Private Tenancy at Battery Wharf have been built.

of the waterfront and the need for supporting and encouraging water-dependent uses and public access and activation.

Based on my review of the City's Plan and its supplemental information filing, I find the analysis and justification for the proposed substitute provision allowing the location of Facilities of Private Tenancy over flowed tidelands to be insufficient. The site contains both flowed and filled tidelands, with approximately 53 percent of filled and 47 percent of flowed. With a proposed footprint that includes a tower of no more than 55 percent of lot coverage (over a base podium of 70 percent), there is adequate space on the project site to locate Facilities of Private Tenancy over the filled tidelands portion, and as explained further in the next section on the Water-Dependent Use Zone, the flowed tidelands area of this site should be dedicated primarily to water-dependent uses, public access, and Facilities of Public Accommodations. For these reasons, I am denying the proposed substitute provision for Facilities of Private Tenancy over flowed tidelands at the Hook Wharf site.

Substitute Provisions for Water-Dependent Use Zone

To approve any substitute provision to the standard for Water-Dependent Use Zone at 310 CMR 9.51(3)(c), I must first determine that the Plan specifies alternate distances and other requirements that ensure new or expanded buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent use and public access associated therewith as appropriate for the area. Second, within the context of the Plan, the City must demonstrate that the substitute provision will meet this standard with comparable or greater effectiveness. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness is conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

In the Plan, the City requests a substitution to the Water-Dependent Use Zone requirement at 310 CMR 9.51(3)(c). The proposed Hook Wharf site may require the reconfiguration of the Water-Dependent Use Zone depending on the final proposed development. Irrespective of the exact site layout, any proposed development would maintain at least a width of 12 ft along the project shoreline. Besides the Harborwalk, the final site design will ensure potential restaurant uses do not encroach into these areas. Additionally, this reconfigured Water-Dependent Use Zone will include slips for water taxis and other boats, touch and go docking for public access, and docking

for dinghies and other small craft. The proposed reconfiguration will enhance pedestrian access where there currently is none and protects the shoreline for water-dependent uses.

As a result of my review, I find that the City has demonstrated that the proposed substitute provision ensures that the Water-Dependent Use Zone provided along the edge of the project shoreline will be devoted exclusively to water-dependent use and public access is sufficient, and I therefore approve this substitute provision. My approval of this substitution is conditioned that under no circumstances will there be a net loss of Water-Dependent Use Zone area as a result of reconfiguration.

Substitute Provision for Building Height – Area wide

The City's Plan includes a proposed substitute provision related to climate change resilience and preparedness which would allow additional height for existing buildings (excluding the proposed redevelopment sites for Harbor Garage and Hook Wharf) for up to additional two floors, not to exceed 30 feet above the existing building height, including mechanicals. The purpose is to allow for existing buildings to relocate HVAC and other building operational functions from ground or sub-ground floors to areas above current and future flood levels. The City's proposed substitution is stipulated such that no new structure shall exceed 200 feet in height for total building height, any ground level or below ground level mechanicals shall be relocated to an upper floor, or otherwise flood-proofed, all existing open space on the project site shall be publicly accessible, 100 percent of the interior ground floor area (minus upper level accessory uses as defined in 310 CMR 9.02) shall be Facilities of Public Accommodation or a water-dependent use, any new structure shall be oriented to minimize net new shadow and to avoid net new shadow on Long Wharf seaward of the Marriott, and any additional height shall be offset as described below. The Plan affirms that this additional building height is not "by right," and shall only accommodate projects that have received all other applicable federal, state, and local approvals.

Recent studies and analysis through the state's Boston Harbor Flood Risk Model which identified risk and depth of water resulting from storm surge-induced coastal flooding in the City under current and future sea level rise and storm surge have shown that many areas in Boston are vulnerable to inundation under current and future conditions. The string of coastal storms this winter have affirmed this, with areas of the downtown planning area experiencing coastal flooding of up to 2 ft. As previously discussed, there are several initiatives and efforts underway at to advance work to increase preparedness and resiliency, including the City's Climate Ready Boston initiative

and its district level plans, as well as planning and grants at the state level. The City is planning to advance the Climate Ready Boston initiative this summer by undertaking a neighborhood-level study of vulnerability, risk, and adaptation actions for the Downtown waterfront planning area.

I recognize that in addition to work by the public sector, there are actions that property owners, businesses, and organization can take to reduce their risk and vulnerability and increase resilience to flooding and other impacts. The proposed substitution to allow for an increase in height in order to support work by property owners to relocate heating, ventilation, air-conditioning, water systems, and other building mechanicals from flood-prone areas on the ground or sub-grade floors is one which I strongly support. In keeping with the approval standard for building height at 310 CMR 9.51(3)(e), I must determine that the Plan specifies alternative height limits and other requirements that ensure that, in general, new or expanded buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of the ground-level environment will be conducive to water-dependent activity and public access associated therewith, as appropriate for the harbor planning area. As stated above, in my discussion of height substitute provisions for the Harbor Garage site and Hook Wharf sites, within this context, I must apply the “comparable or greater effectiveness” test to determine whether the proposed substitution and offsetting measures will assure that the above objective is met. My determination relative to whether or not these provisions promote this tideland policy with comparable or greater effectiveness was conducted in accordance with the Municipal Harbor Plan regulatory guidance discussed in detail below.

Under the Waterways regulations, heights shall not exceed 55 feet (ft) within 100 ft of the shoreline, stepping up one foot for every two feet landward of the project shoreline. The Plan requests a substitution of the Waterways requirements at 310 CMR 9.51(3)(e) that would allow new structures on existing nonwater-dependent buildings. Under the City’s proposed substitute provision, these new structures could result in heights of up to additional two floors, not to exceed 30 feet above the existing building height and shall not exceed 200 ft. total. As summarized above, the proposed building height is greater than what would be allowed under the baseline Waterways requirements. In my review of the requested substitution, I am concerned that allowing for up to two additional floors for existing buildings in order to relocate mechanicals may be more than what would be necessary to achieve the objective at hand. However, recognizing that existing buildings with owner-occupied space, tenants, and/or residents generally will not have available space to relocate vulnerable building mechanical systems, allowing for these existing buildings to have a

modest amount of additional height to accommodate such reconfigurations is an important option to advancing resilience and preparedness within the planning area. DEP is currently evaluating how such a provision could be included and implemented in future revisions to the Waterways regulations.

As described above, the City has proposed restrictions on the area-wide height substitute provision. In order to ensure that such additional height is modest and will not result in impacts to the ground level environment that would not be conducive to water-dependent activity and associated public access, I am modifying the requested substitution with the following restrictions: (1) any additional height is limited only to moving mechanicals from existing buildings to the roof or to an upper floor above the City's planning target flood level, which is the one percent annual chance coastal flood event with 40 inches of sea level rise as established in City's Zoning Code Article 37, Green Buildings and the Climate Resiliency - Review Policy Update; (2) any additional height shall be limited to only that necessary to accommodate the additional space for the relocation of the building mechanicals; (3) the new height shall be no more than 30 ft above the current tallest occupied floor; (4) the new structure(s) on the existing building configured and set back from the sides so that it avoids if possible, and if not, minimizes net new shadow; and (5) notwithstanding stipulation #4, the new structure(s) shall avoid net new shadow on Long Wharf, seaward of the Marriott.

Offsetting Measures for Building Height – Area wide

The Plan does not propose specific offsets for this proposed substitute provision but indicates that the offsetting measures would be determined as part of the Chapter 91 licensing. In my analysis of the requested substitution and a commensurate offsetting measure, I have weighed a number of factors. Given the significance of increasing the planning area's resilience to current and future hazards, I believe that allowing strictly limited additional height for existing buildings in order to accommodate the relocation of building mechanicals from areas that are vulnerable to flood impacts is an important objective. As described above, I have included a suite of stipulations that would limit this height and would ensure that there will be no impacts to the ground level environment that would adversely affect water-dependent activity and associated public access on the ground level. The relocation of building mechanicals to roof or upper floors will require resources from property owners and will involve substantial work, likely operational downtimes, and other hardships. While I did consider a modest fee for any net new shadow, I believe that the

benefits and merits of the provision (i.e., increasing resilience to coastal flooding) are such that I would not want to disincentivize this type of resilience practice, and on balance, I believe that the requirements contained herein will suffice to promote the tidelands objective, and I therefore approve this substitute provision with the stipulations as detailed above.

Amplification for Activation of Commonwealth Tidelands for Public Use

As part of the Plan, the City requests an amplification to the standard for the Activation of Commonwealth Tidelands for Public Use at 310 CMR 9.53(2)(b) & (2)(c). This amplification requires that all exterior private tideland areas that are planned for public access shall be held to the public activation standard used for Commonwealth Tidelands.

The City's Plan proposes to implement the amplification of publicly accessible space in two ways. First the City will develop Design and Use Standards that will enhance existing and proposed open space, as well as public amenities that will better activate the areas and create an improved sense of place for the downtown waterfront. The Design and Use Standards will advance the City's Public Realm Plan by (1) engaging in a public process to review its recommended actions and projects and developing consensus on near, medium, and longer term priorities; and (2) developing standards, specifications, and guidelines for the following: designs, features, and amenities of new and existing open space, green space, and landscaping; and wayfinding and signage for the Harbor Walk and pedestrian connections to and from the Greenway and other links identified in the Public Realm Plan; and (3) identifying opportunities for increasing resilience to flooding and storm surges under current and future condition through the enhancement of areas of the Harborwalk, open space, or other public zones or facilities through elevation and/or shoreline enhancements.

This amplification also clarifies that the Aquarium is the primary Special Public Destination Facility and water-dependent use in the planning area and is therefore afforded additional protection against displacement by nonwater-dependent uses. For the purposes of protecting and promoting the Aquarium, the amplification for Activation of Commonwealth Tidelands will also be implemented through a legally binding agreement among the City, the developer for the Harbor Garage site, and the Aquarium. As detailed in the Statement of Approval section below, the agreement shall address an indemnity for the Aquarium against construction related visitor and event revenue loss and parking needs both during construction and for the long-term.

Comments received regarding this amplification supported the concept of protection the Aquarium. The Aquarium itself commented and provided more details relating to the content of the

future Memorandum of Understanding and the indemnity plan. The developer also commented to provide their perspective and details on the pending agreement. Comments from Harbor Towers questioned why similar protective measures were not being implemented for their residents. As a public water-dependent use and the Special Public Destination Facility for the planning area, the Aquarium is afforded protections under Chapter 91 regulations. Chapter 91 regulations prohibit nonwater-dependent uses from creating adverse impact or to disrupt those existing water-dependent uses. As a nonwater-dependent use with no public access or Facilities of Public Accommodation, Harbor Towers is not afforded these protections under Chapter 91 regulations.

The Harbor Towers has also submitted arguments urging me to condition this Decision on a requirement that a minimum number of parking spaces be made available in the proposed Harbor Garage for Harbor Tower resident use. The Harbor Towers argues that the Plan would otherwise authorize a use that is inconsistent with the public purposes—namely, residential development and accompanying accessory uses—for which the land was conveyed by the Commonwealth pursuant to Chapter 663 of the Acts of 1964. I do not construe the Plan as authorizing any uses that are inconsistent with public purposes; however, it is not my role to determine whether the “prior use” doctrine applies, such that special legislation may be required for this development to proceed. Rather, it is incumbent on the developer of the Harbor Garage site to comply with any common law or other legal requirements that may apply, including any contractual obligations to the City of Boston that may remain valid today. I strongly encourage representatives of Harbor Towers and the developer of the Harbor Garage site to engage in productive discussions, and I am optimistic that an agreement can be realized between the two entities regarding issues of common interest.

Amplification for Engineering and Construction Standards

As part of the Plan, the City requests an amplification to the standard for Engineering and Construction Standards (310 CMR 9.37(3)(c)). This amplification recognizes the increase risk of flooding and coastal storm impacts under rising sea levels and identifies the vulnerability of the public realm including the Harborwalk and public open spaces. The proposed amplification specifies that areas improved for public open space shall also be incrementally elevated, to improve resiliency, as feasible. The City is framing this work as a non-structural alternative to barriers and hardened structures. This amplification will be guided by the City’s Design and Use Standards which will recommend appropriate increases in elevation for public open spaces in the planning area.

Along with the provisions to allow existing buildings to elevate mechanicals out of flood risk areas, I strongly support measures to increase the resiliency of public parks, facilities, and amenities. The concept of raising elevation is an adaptation technique that should be evaluated in the assessment of strategies and actions to reduce risk and increase resilience. As discussed above, the City has made significant strides through its Climate Ready Boston initiative, and I understand that the downtown district is one of the next areas of focus for the City to take a higher resolution look at vulnerabilities, assess risk and impacts, identify and analyze actions and practices, and prioritize steps to advance the plan. I anticipate the Climate Ready Boston work for the downtown area will assess the benefits and the relative costs of elevating public realm areas. I further note that 310 CMR 9.37(3)(c) requires that projects with coastal or shoreline engineering structures must evaluate and DEP must require non-structural alternative where feasible, and I find this amplification to be consistent with and to advance this tidelands regulatory standard.

Table 1. Summary of substitute provisions and offsetting measures as modified by this Decision

Regulatory Provision	Chapter 91 Standard	Proposed Substitution	Approved Substitution	Approved Offsetting Measures
Harbor Garage site				
310 CMR 9.51(3)(e): Height Standards and Related Impacts on Public Use or Access	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow height up to 585 feet to highest occupiable floor (no more than 600 feet).	Maximum height of 585 feet to highest occupiable floor (no more than 600 feet) <ul style="list-style-type: none"> • Minimize net new shadow • Avoid new shadow on Long Wharf • Meet City code for wind conditions at ground level 	\$300,000 for planning, feasibility assessment, design, engineering and permitting for a signature waterfront park and water transportation gateway at Chart House parking lot (Long Wharf) \$10 million for design and construction of public realm improvements for the New England Aquarium Blueway
310 CMR 9.51(3)(d): Lot Coverage	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	None requested	<ul style="list-style-type: none"> • New open space on 50% site from current conditions • Lot coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings • Open space siting requirements apply 	N/A
Hook Wharf site				
310 CMR 9.51(3)(b): Facilities of Private Tenancy (FPTs)	Facilities of Private Tenancy shall not be located on any pile-supported structures on flowed tidelands; no significant privatization of waterfront areas immediately adjacent to the water-dependent use zone will occur for nonwater-dependent purposes, in order that such areas will be generally free of uses that conflict with, preempt, or otherwise discourage water-dependent activity or public use and enjoyment of the water-dependent use zone.	Allow upper floor Facilities of Private Tenancy over flowed tidelands on a portion of the Hook Wharf site	Denied <ul style="list-style-type: none"> • Facilities of Private Tenancy may be located over filled but not flowed tidelands. 	N/A

Regulatory Provision	Chapter 91 Standard	Proposed Substitution	Approved Substitution	Approved Offsetting Measures
310 CMR 9.51(3)(e): Height Standards and Related Impacts on Public Use or Access	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow height up to 285 feet to highest occupiable floor (no more than 305 feet)	Maximum height of 285 feet to highest occupiable floor (no more than 305 feet) <ul style="list-style-type: none"> Minimize net new shadow Meet City code for wind conditions at ground level 	\$3.6 million for planning, feasibility assessment, design, engineering, permitting and construction of a signature waterfront park at Chart House parking lot (Long Wharf) \$500,000 one-time payment to Fort Point Operations Fund for programming and projects that advance open space and watersheet activation elements of the Fort Point Channel
310 CMR 9.51(3)(d): Lot Coverage	At least one square foot of the project site at ground level (exclusive of areas lying seaward of a project shoreline) shall be preserved as open space for every square foot of tideland area within the combined footprint of buildings containing nonwater-dependent use on the project site.	Lot coverage shall not exceed 70 percent	Maximum lot coverage of 70% <ul style="list-style-type: none"> Lot coverage/building footprint includes elements such as retractable roofs, glassed-in areas, canopies, balconies, and awnings 	
310 CMR 9.51(3)(c): Water-Dependent Use Zone (WDUZ) setbacks	New or expanded buildings for nonwater-dependent use, and parking facilities at or above grade for any use, shall not be located within a water-dependent use zone; Plan may specify alternative setback distances and other requirements which ensure that new buildings for nonwater-dependent use are not constructed immediately adjacent to a project shoreline, in order that sufficient space along the water's edge will be devoted exclusively to water-dependent activity and public access.	Allow a reconfigured WDUZ that shall have an area that is equal to or greater than a compliant WDUZ, and in no case shall it be less than 12 feet	Reconfigured WDUZ allowed <ul style="list-style-type: none"> Maintain at least a 12 ft width along the waterfront Ensure potential restaurant uses do not encroach into WDUZ Reconfigured WDUZ to include slips for water taxi and other boating uses, free public touch-and-go docking, and docking for dinghies and small craft Enhance pedestrian access where there currently is none 	N/A

Regulatory Provision	Chapter 91 Standard	Proposed Substitution	Approved Substitution	Approved Offsetting Measures
Area-wide				
310 CMR 9.51(3)(e): Building Height	New or expanded buildings for nonwater-dependent use shall not exceed 55 feet in height if located over the water or within 100 feet landward of the high water mark; at greater landward distances, the height of such buildings shall not exceed 55 feet plus ½ foot for every additional foot of separation from the high water mark.	Allow additional building height of not more than 30 ft to accommodate the relocation of existing building mechanicals to roof or upper floors.	Maximum height of 30 ft <ul style="list-style-type: none"> • Limited to moving mechanicals from existing buildings to the roof or to an upper floor above current or future base flood elevation • any additional height limited to only that necessary to accommodate the relocation of the building mechanicals • new structure(s) on the existing building configured and set back from the sides so that it avoids if possible, and if not, minimizes net new shadow • avoid net new shadow on Long Wharf 	Relocation of vulnerable building mechanicals will increase the planning area’s resilience to current and future hazards; conditions will ensure that water-dependent activity and associated public access on the ground level will not be adversely affected

Baseline Requirements of the Municipal Harbor Plan

The Plan provides a set of requirements that are to be included in any development regardless of whether substitutions are needed. These requirements include a public access network (Harborwalk) that is at least twelve feet wide with no obstructions and amenities such as signage, seating, and lighting along the water's edge to be developed consistent with the City's Design and Use Standards.

Extended License Terms

The Plan does not include recommendations for additional public benefits that would be required if the Harbor Garage or Hook Wharf project proponents request an extended license term from DEP. However, upon completing my review and based on comments received, I am recommending that water transportation fees and other funds derived from extended licensing terms be directed to the development of a water transportation gateway at the proposed park in the current location of the Chart House parking lot. During the licensing process, DEP should closely coordinate with the City of Boston on the appropriateness of public benefits associated with a request for any extended term license.

C. Relationship To State Agency Interests

The Central Artery Tunnel (CA/T) Project, the extensive public infrastructure project completed in 2007, relocated the elevated Interstate 93 highway underground for the purposes of reducing traffic congestion, improving traffic flow, and eliminating aging infrastructure which effectively divided the City. The CA/T project required significant investment of public funding and resulted in a network of publicly owned assets including tunnels, ramps, and roadways. The alignment of a portion of the CA/T project extends beneath the planning area for Downtown Waterfront District Municipal Harbor Plan and specifically, within close proximity to the Hook Wharf site. As such, development on the Hook Wharf site must ensure that the CA/T project is not compromised by proposed building footings, foundations, or other subsurface activity. Close coordination with Massachusetts Department of Transportation (MassDOT) will be required as the design for the proposed Hook Wharf site is developed and finalized.

Additionally, MassDOT has begun work on a Feasibility Reassessment for the North South Rail Link Project to update the prior work on the potential project (Draft Environmental Impact Report, 2003) to determine if further technical and financial analysis is warranted. As with the CA/T

project, the alignment the North South Rail Link project extends beneath the planning area for Plan and specifically, within close proximity to the Hook Wharf site. Again, any potential development on the Hook Wharf site must be conducted in close coordination with MassDOT.

The Magenta Zone is an area along the waterfront of the Boston Inner Harbor and the Fort Point Channel designated in 1968 by Congress (PL 90-312) to be not a navigable water of the United States. Areas located within the Magenta Zone are not subject to the jurisdiction of the U.S. Army Corps of Engineers. The practical implication of this designation is that a greater degree of responsibility for the management of this watershed lies with the City of Boston. The majority of the geographic scope of the Plan is located within the Magenta Zone including the Harbor Garage site and the New England Aquarium and the surrounding waters of India and Long Wharfs. However, the Hook Wharf site (flowed and filled lands) are not included in the Magenta Zone and are therefore subject to Army Corps jurisdiction. Many of the proposed water transportation infrastructure and public amenities provided in the Plan are located within the Magenta Zone near Long Wharf and the Aquarium. Review and permitting of structures will be overseen by the City of Boston and DEP.

D. Implementation Strategies

Pursuant to 301 CMR 23.05(4), the Plan must include enforceable implementation commitments to ensure that, among other things, all measures will be taken in a timely and coordinated manner to offset the effect of any plan requirement less restrictive than that contained in 310 CMR 9.00.

The provisions of this Plan will be implemented through regulatory and environmental review provisions, through fiduciary mechanisms, and through additional stakeholder processes.

Provisions of the plan relating to minimizing shadow and wind impacts will be implemented through the City of Boston's Article 80 process. It is through this process that specific project proposals including building design, placement, and massing will be evaluated for shadow and wind impacts. Specifically, proposed projects at the Harbor Garage and Hook Wharf Site are required to avoid shadow impacts within shadow prohibition zones and minimize net new shadow as discussed in this Decision. Similarly, wind impacts of final building designs will be measured and mitigated during the City's Article 80 process according to the City's wind standards (Article 49A Greenway Overlay district pedestrian safety/comfort wind standards).

Through the MEPA review process, project proponents will be required to evaluate alternatives, assess environmental impacts associated with proposed projects, and demonstrate how potential impacts are to be avoided, minimized and mitigated. This process will inform the evolution of the proposed developments on the Harbor Garage and Hook Wharf sites by public and agency comments and MEPAs environmental review. As previously state, the proposed substitute provisions in this Plan represent building envelope maximums not final, approved designs.

DEP's Chapter 91 licensing process under the Waterways regulations will implement the portions of this plan associated with developing additional funding for water transportation improvements. Fees for the application of long-term licenses including those associated with the occupation of filled tidelands, waterfront activation, and water transportation mitigation will be directed to an account held in reserve for the implementation of specific offsets outlined in this Decision.

Lastly, the disbursement of offset funds as provided in this Decision will be overseen and directed by a Downtown Municipal Harbor Plan Operations Board as described elsewhere in this Decision. The Operations Board will be responsible for first, establishing a schedule with annual milestones and progress targets to ensure the timely and effective expenditure of offset funds as identified in this Plan before the close of the five year period (from receipt of the first certificate of occupancy). If milestones and targets are not met, the Operations Board may redirect funds to other open space, waterfront and watersheet activation projects as contained in the Public Realm Plan or as identified through subsequent public process. Based on the information provided in the Plan and as discussed above, implementation commitments include the approval through the City's Article 80 process which will require that proposed projects meet shadow and wind standards stated herein; assessment of licensing fees through DEP's Chapter 91 licensing; and the creation of and oversight by an Operations Board for the effective disbursement of offset funding as described in this Decision. With the identification of the implementation commitment discussed above, I believe no further commitments are warranted, and I find that this approval standard has been met.

IV. EFFECTIVE DATE AND TERM OF APPROVAL

This Decision shall take effect immediately upon issuance on April 30, 2018. As requested by the City of Boston, the Downtown Waterfront Municipal Harbor Plan Decision shall expire ten years from this effective date unless a renewal request is filed prior to that date in accordance with the procedural provisions of 301 CMR 23.06. No later than six months prior to such expiration date, in addition to the notice from the Secretary to the City required under 301 CMR 23.06(2)(b), the City shall notify the Secretary in writing of its intent to request a renewal and shall submit therewith a review of implementation experience relative to the promotion of state tidelands policy objectives.

V. STATEMENT OF APPROVAL

Based on the planning information and public comment submitted to me pursuant to 301 CMR 23.04 and evaluated herein pursuant to the standards set forth in 301 CMR 23.05, I hereby approve the City of Boston Downtown Waterfront District Municipal Harbor Plan and supplemental information filing according to the terms and obligations contained herein and subject to the following conditions:

1. With respect to Harbor Garage building height substitution and offsets, the following conditions apply:
 - The new building must comply with ground-level ambient wind speeds and performance standards contained in the City's approved zoning codes, including Article 49A Greenway Overlay District pedestrian safety/comfort wind standards.
 - The new building must minimize net new shadow and must avoid the City's designated shadow protection zone on Long Wharf.
 - The new building footprint must allow for at least 30 percent of the project site to be open space on the north side of the project site (Milk Street) and 20 percent of open space on the east (Harbor) and south (East India Row) sides of the project site and distributed generally evenly in order to create a buffer between the proposed development and abutting properties.
 - To support the preliminary stages of the waterfront park and water transportation gateway at the Chart House parking lot (planning, feasibility assessment, design, engineering and permitting), the developer of the Harbor Garage site will deposit \$300,000 to an escrow fund described below prior to the filing of an Environmental Notification Form with the MEPA Office.
 - To support the preliminary stages of the Blueway project (planning, feasibility assessment, design, engineering and permitting) the developer of the Harbor Garage site will deposit \$1 million (of the \$10 million offset) to an escrow fund described below within 14 days after the issuance of the Chapter 91 license.
 - The \$9 million balance of the offset shall be deposited to an escrow fund described below within 14 days after issuance of the first Certificate of Occupancy.

- All monetary contributions referenced above shall be made to an escrow fund established legally by the Harbor Garage developer for the purposes of ensuring that these resources are properly utilized for the Blueway and other plans, projects, and programming for public open space, activation, and resilience of the downtown planning area. The escrow account will be directed and administered by the Downtown Municipal Harbor Plan Operations Board as described above in Section III. The board will oversee operation and expenditures from the fund.
 - To ensure that offset contributions that will be held in escrow and managed by the Operations Board are implemented in a timely manner, said Board shall be created, members identified, and have held at least one public organizing meeting within 6 months of issuance of this Decision.
 - The Operations Board shall coordinate with the Aquarium to establish a schedule for the Blueway with annual milestones and progress targets. The Operations Board shall establish terms and procedures for overseeing and approving expenditures. Substantial progress on completion of the work supported by the offsetting funds must be realized within five years of the first certificate of occupancy for the Harbor Garage project.
 - The Aquarium must report annually to the Operations Board on progress towards implementation of the Blueway, and if consistent and reasonable progress towards implementation of the milestones contained in the project schedule is not met, as determined by the Operations Board, part or all of offsetting funds may be applied to other waterfront public realm or water dependent improvements within the planning area as directed by the Operations Board, and shall be so redirected at the conclusion of the five year period after the first certificate of occupancy for the Harbor Garage project.
2. The application of the substitutions and amplifications in the Plan for the Harbor Garage site requires that a legally binding agreement be signed by the developer for the Harbor Garage site, the Aquarium, and the City. This agreement must be in place and signed by all parties no later than 60 days following the effective date of the BPDA's Scoping Determination (per Boston's Zoning Code Article 80 process) for a proposed

development on the Harbor Garage site. The agreement shall include provisions which address the following principles:

- Interim Parking. During construction, the developer of the Harbor Garage site shall commit to provide parking within reasonable proximity to the Aquarium on weekends (500 spaces) and weekdays (250 spaces) and at a price point which does not exceed present circumstances.
 - Future Parking. The developer of the Harbor Garage site shall commit to providing parking in the same amounts and timing for the Aquarium in the proposed development.
 - Indemnification. The developer of the Harbor Garage site shall commit to ensure the viability of the Aquarium during construction of the proposed development. This commitment includes a \$30 million indemnification framework to cover loss of revenue over the estimated three-year construction period. Baseline revenue numbers will be based on 1.37 million guests per year for the three-year construction schedule. The first \$10 million shall be covered in whole. The next \$20 million shall be subject to claw-back from the developer based upon future Aquarium revenue increases above preconstruction revenue. The Aquarium will repay fifty percent of the revenue increases for a period of four years after the first Certificate of Occupancy for the Harbor Garage development. The final agreement must also include terms to address the event that construction exceeds the estimated three-year window. If final agreement on the terms of the MOU are not reached by the developer of the Harbor Garage property and the Aquarium, then the parties are required to engage in mediation, or if the parties so agree, to binding arbitration.
3. With respect to the Hook Wharf building height and open/space lot coverage substitutions and offsets, the following conditions apply:
- The proposed building must comply with ground-level ambient wind speeds and performance standards contained in the City's approved zoning codes, including Article 49A Greenway Overlay District pedestrian safety/comfort wind standards.
 - The new building must minimize net new shadow.

- To support the preliminary stages of the signature waterfront park and water transportation gateway at Chart House parking lot on Long Wharf, the developer of the Hook Wharf site will deposit \$100,000 to an escrow fund described below prior to the filing of an Environmental Notification Form with the MEPA Office.
- To support the further development of the signature waterfront park and water transportation gateway at Chart House parking lot on Long Wharf, the developer of the Hook Wharf site will deposit \$250,000 (of the \$3.6 million offset) to an escrow fund described below within 14 days after the issuance of the Chapter 91 license.
- The \$3.25 million balance of the offset shall be deposited to an escrow fund described below within 14 days after issuance of the first Certificate of Occupancy.
- All monetary contributions referenced above shall be made to an escrow fund established legally by the Hook Wharf developer for the purposes of ensuring that these resources are properly utilized for the Chart House waterfront park and transportation gateway and other plans, projects, and programming for public open space, activation, and resilience of the downtown planning area. The escrow account will be directed and administered by the Downtown Municipal Harbor Plan Operations Board as described above in Section III. The board will oversee operation and expenditures from the fund.
- To ensure that offset contributions that will be held in escrow and managed by the Operations Board are implemented in a timely manner, said Board shall be created, members identified, and have held at least one public organizing meeting within 3 months after the issuance of a Chapter 91 license.
- The Operations Board shall establish a schedule and procedures for overseeing and approving expenditures for the Chart House park with annual milestones and progress targets, and substantial progress on the completion of the work supported by the offsetting funds must be realized within five years of the first certificate of occupancy for the Hook Wharf project.

- The City must report annually to the Operations Board on progress towards implementation of the Chart House park, and if consistent and reasonable progress towards implementation of the milestones contained in the project schedule is not met, as determined by the Operations Board, part or all of offsetting funds may be applied to other waterfront public realm or water dependent improvements within the planning area as directed by the Operations Board, and shall be so redirected at the conclusion of the five year period after the first certificate of occupancy for the Hook Wharf project.
 - To address the requirement of the 2004 Decision on the City of Boston's Fort Point Downtown Waterfront Phase 2 Municipal Harbor Plan, the developer of the Hook Wharf site shall contribute \$500,000 to the Fort Point Channel Operations Fund for programming and projects that advance open space and watershed activation elements of the Fort Point Channel by the first Certificate of Occupancy of the Hook Wharf development. These funds shall be placed in the escrow account already established for the Fort Point Channel Operations Fund within 14 days after issuance of the first Certificate of Occupancy.
 - The City shall work with developer and interested stakeholders on developing and implementing a plan to improve the Harborwalk connection between Hook Wharf and 470 Atlantic Avenue across Seaport Boulevard with significant enhancements for pedestrian safety and wayfinding.
4. DEP shall require reasonable conditions and arrangements to ensure that off-site open space improvements and/or amenities are generally implemented concurrent with the associated development on tidelands.
 5. The BPDA shall develop the Design and Use Standards for the entire downtown planning area to coincide with and inform the MEPA and Article 80 processes for the proposed projects at the Harbor Garage site and the Hook Wharf site, whichever process is initiated first.
 6. With respect to the area-wide allowance for additional height for existing buildings, the following conditions apply:
 - any additional height is limited only to moving mechanicals from existing buildings to the roof or to an upper floor above future flood levels;

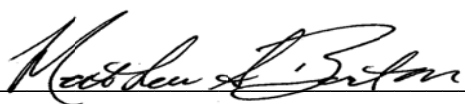
- any additional height shall be limited to only that necessary to accommodate the additional space for the relocation of the building mechanicals;
 - new height shall be no more than 30 ft above the current tallest occupied floor;
 - the new structure(s) on the existing building shall be configured and set back from the sides so that it avoids, if possible, and if not, minimizes net new shadow; and
 - the new structure(s) must avoid shadow on the City's designated shadow protection zone on Long Wharf.
7. In the application of substitutions and amplifications DEP shall refer to Section III, Table 1, and the following conditions listed above.
 8. The City shall prepare a final, approved City of Boston Downtown Waterfront District Municipal Harbor Plan ("Approved Plan") to include:
 - The Plan dated March, 2017;
 - Supplemental materials dated February 16, 2018 submitted during the consultation session; and
 - This Decision.

Copies of the final Approved Plan shall be provided to CZM and DEP's Waterways Program, kept on file at the City of Boston, and made available to the public through the City's website and/or copies at the public library. For Chapter 91 Waterways licensing purposes pursuant to 310 CMR 9.34(2), the Approved Plan shall not be construed to include any of the following:

1. Any subsequent addition, deletion, or other revision to the final Approved Plan Renewal and Amendment, except as may be authorized in writing by the Secretary as a modification unrelated to the approval standards of 301 CMR 23.05 or as a plan amendment in accordance with 301 CMR 23.06(1);
2. Any provision which, as applied to the project-specific circumstances of an individual license application, is determined by DEP to be inconsistent with the Waterways regulations at 310 CMR 9.00 or with any qualification, limitation, or condition stated in this Approval Decision.

This Decision and the Approved Plan do not supersede separate regulatory review requirements for any activity.

In a letter dated April 30, 2018, the DEP Waterways Program Chief has expressed support for approval of the Plan and stated that in accordance with the provisions of 310 CMR 9.34(2), DEP will require conformance with any applicable provisions of the approved Plan in the case of all waterways license applications submitted subsequent to the Plan's effective date. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the approved Plan.



Matthew A. Beaton
Secretary of Energy and Environmental Affairs

April 30, 2018

Date



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

April 30, 2018

Matthew A. Beaton, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge Street
Boston, MA 02114

RE: DEP Recommendation for the Approval of the City of Boston's Downtown Waterfront District
Municipal Harbor Plan, dated March 2017.

Dear Secretary Beaton:

The Department of Environmental Protection, Waterways Regulation Program ("the Department") has reviewed the City of Boston's Downtown Waterfront District Municipal Harbor Plan ("the Plan") dated March, 2017, and supplemental information dated February 16, 2018. The Department's staff has worked closely with the Massachusetts Office of Coastal Zone Management (CZM) and representatives of the City of Boston throughout the planning process and our comments have been addressed and incorporated into the Plan and supplemental information. The Department, therefore, recommends that you approve the Plan and make a finding that it is consistent with state tidelands policy objectives, as required by 301 CMR 23.05(3).

The Department will adopt as binding guidance in all License application review any Substitute Provisions contained in the Secretary's final Decision on the Plan. The Plan and supplemental information lay out Substitutions and Offsets that will adequately meet or exceed the protected interests pursuant to 310 CMR 9.00. The Substitutions contained in the Plan and supplemental information will modify the standards pursuant to: 310 CMR 9.51(3)(c), which governs allowable uses and setbacks in the Water-Dependent Use Zone (WDUZ); 310 CMR 9.51(3)(d), which governs the amount of pedestrian level open space on a Project Site; and 310 CMR 9.51(3)(e), which governs the allowable heights of nonwater-dependent buildings based on their distance from the high-water mark. The Plan and supplemental information also lay out amplifications pursuant to 310 CMR 9.53(2)(b) & (2)(c) for activation of Commonwealth Tidelands for Public Use and pursuant to 310 CMR 9.37(2)&(3) to incorporate climate resiliency into engineering and construction standards for the planning area. The

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

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Department has determined that the Plan establishes appropriate Offsets for each of the Substitute Provisions.

In accordance with the provisions of 310 CMR 9.34(2), the Department will require conformance with any applicable provision of the approved Plan for all waterways license applications submitted subsequent to the Plan's effective date and within the geographic scope of the Plan. It will apply as well to all pending applications for which no public hearing has occurred or where the required public comment period has not expired by the effective date of the Decision.

The Department looks forward to continuing its work with CZM and the representatives of the City of Boston in the implementation of this important planning effort. Should you have any questions in regard to the foregoing, please contact me at (617) 292-5615. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Ben Lynch", with a long horizontal flourish extending to the right.

Ben Lynch
Program Chief
Waterways Regulation Program

Cc: Brian Golden, City of Boston
Rich McGuinness, Boston Planning and Development Authority
Bruce Carlisle, CZM