

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, s.s.

Superior Court Department  
of the Trial Court  
Civil Action No. \_\_\_\_\_

\_\_\_\_\_  
)  
CONSERVATION LAW FOUNDATION, on behalf of itself )  
and its adversely affected members; and )  
BRADLEY M. CAMPBELL, CAROL RENEE GREGORY, )  
GORDON HALL, PRISCILLA M. BROOKS, DAVID LURIE, )  
KARL SEE, ERICA A. FULLER, KIRSTIE L. PECCI, LARA G. )  
DEROSE, EDWARD T. GOODWIN, CAROL A. GOODWIN, )  
JAMIE GOODWIN, and PAREESA CHARMCHI, residents of )  
the COMMONWEALTH OF MASSACHUSETTS )

Plaintiffs,

v.

)  
MATTHEW A. BEATON, in his official capacity as )  
SECRETARY OF THE EXECUTIVE OFFICE OF ENERGY )  
AND ENVIRONMENTAL AFFAIRS, and )  
MARTIN SUUBERG, in his official capacity as )  
COMMISSIONER OF THE MASSACHUSETTS )  
DEPARTMENT OF ENVIRONMENTAL PROTECTION )

Defendants.

**COMPLAINT**

**INTRODUCTORY STATEMENT**

1. This is a civil action in the nature of a declaratory judgment pursuant to G.L. c. 231A, §§ 1 & 2; a declaratory and equitable action pursuant to G.L. c. 214, § 7A; and petitions in the nature of writs of mandamus pursuant to G.L. c. 249, § 5. Plaintiffs challenge specified actions of Matthew A. Beaton in his official capacity as Secretary (the “Secretary”) of the Executive Office of Energy and Environmental Affairs of the Commonwealth of Massachusetts (“EOEEA”) and Martin Suuberg in his official capacity as Commissioner (the “Commissioner”) of the

Massachusetts Department of Environmental Protection (“MassDEP”). Specifically, this action concerns the Commissioner’s deference to and the Secretary’s approval of the Downtown Waterfront District Municipal Harbor Plan (“Downtown Waterfront MHP”) on April 30, 2018. In addition to declaratory relief and relief in the nature of mandamus, Plaintiffs seek injunctive relief as necessary to prevent damage to the environment and irreparable harm to Plaintiffs in connection with the challenged and connected agency actions.

2. Plaintiff Conservation Law Foundation (“CLF”), in its own right, on behalf of its adversely affected members, and on behalf of thirteen identified Massachusetts-domiciled citizens asserts that the Secretary’s approval of the Downtown Waterfront MHP was a statutorily unauthorized *ultra vires* action, usurping the Commissioner’s exclusive authority and responsibility over all aspects of the licensing process set forth in the Massachusetts Public Waterfront Act, G.L. c. 91 (“Public Waterfront Act”), §§ 14 & 18. Those sections implement the Commonwealth’s fiduciary duties with respect to establishing the terms and conditions of all public and private development on Massachusetts tidelands. The Secretary’s and the Commissioner’s actions are contrary to law, in violation of the Commonwealth’s solemn public trust responsibilities, and improperly impair former and current tidelands, which are protected natural resources of the Commonwealth.

3. Plaintiffs request that this Court hold: (i) that the municipal harbor planning regulations, 301 Mass. Code Regs. 23.00 (“MHP Regulations”), and the subsections of the public waterways regulations, 310 Mass. Code Regs. 9.00 (“Waterways Regulations”), that purport to give the Secretary authority to determine the public purposes as well as the required minimum public benefits associated with the licensing of nonwater-dependent development of tidelands in the Commonwealth, 310 Mass. Code Regs. 9.34(2)(b), are null and void by virtue of being *ultra vires*; (ii) alternatively, if such regulations are not held to be *ultra vires*, that the Secretary’s approval of

the development regulations contained in the Downtown Waterfront MHP is null and void by virtue of violating the Massachusetts Administrative Procedure Act, G. L. c. 30A (“APA”), for his failure to follow required regulation promulgation requirements; (iii) alternatively, if such regulations are not *ultra vires* and were properly promulgated, that the Secretary’s action approving new regulatory development standards for the Downtown Waterfront MHP area does not advance public rights and interests in the tidelands in that planning area with comparable or greater effectiveness than the minimum public rights and interests protected by the Waterways Regulations, thereby constituting damage to the environment for purposes of G.L. c. 214, § 7A; and (iv) that the Secretary’s action approving the Downtown Waterfront MHP improperly fails to follow the regulatory procedures and substantive requirements for approval of municipal harbor plans set out in the MHP Regulations.

4. Plaintiffs further request that the Court: (i) enjoin the Commissioner from granting a Public Waterfront Act license under section 18 of the Act or taking any other action with regard to any project based in whole or in part on the Secretary’s approval of the Downtown Waterfront MHP; (ii) issue an order in the nature of a writ of mandamus directing the Commissioner to vacate and withdraw 310 Mass. Code Regs. 9.34(2) and any other related municipal harbor planning provisions from the Waterways Regulations that bind the free exercise of his trust discretion in a Public Waterfront Act licensing proceeding; (iii) alternatively, issue an order in the nature of a writ of mandamus directing the Secretary to comply with the Massachusetts APA when engaging in rulemaking as part of his approval under 301 Mass. Code Regs. 23.05(c) & (d) of substitute regulatory provisions through a municipal harbor plan; and (iv) take such other legal and equitable action as the Court deems proper in order to ensure that the Commonwealth’s public trust interests

in the public tidelands covered by the Downtown Waterfront MHP are fully and properly protected from impairment and damage and that Plaintiff's interests are protected.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to G.L. 231A, §§ 1 & 2; G.L. c. 214, § 1; G.L. c. 214, § 7A; and G.L. c. 249, § 5.

6. Pursuant to G.L. c. 214, § 7A, CLF and at least ten Massachusetts-domiciled individuals notified the Commissioner and the Secretary of the environmental damage and natural resource impairment alleged herein by certified mail on June 20, 2018, 21 days prior to filing this Complaint. Attached as **Exhibit A** is a true and correct copy of said notice letter. CLF has not received a response to that notice.

7. Venue is appropriate in this Court pursuant to G.L. 231A, § 2; G.L. c. 214, § 1; G.L. c. 214, § 7A; and G.L. c. 249, § 5.

### **PARTIES**

8. Plaintiff CLF is a Massachusetts not-for-profit corporation with principal offices located at 62 Summer Street, Boston, Massachusetts. CLF brings this action in its own right, on behalf of its adversely affected members, and on behalf of the individual Massachusetts-domiciled citizens identified herein:

- i. Bradley M. Campbell
- ii. Carol Renee Gregory
- iii. Gordon Hall
- iv. Priscilla M. Brooks
- v. David Lurie
- vi. Karl See

- vii. Erica A. Fuller
- viii. Kirstie L. Pecci
- ix. Lara G. DeRose
- x. Edward T. Goodwin
- xi. Carol A. Goodwin
- xii. Jamie Goodwin
- xiii. Pareesa Charmchi

9. CLF, its adversely affected members, and the identified Massachusetts-domiciled citizens are collectively referred to as “Plaintiffs.”

10. CLF was incorporated and has been dedicated to and actively engaged as an organization and on behalf of its members in matters relating to the public trust doctrine in Massachusetts, Article 97 of the Massachusetts Constitution, or the Public Waterfront Act for all of its 50-year history. Since at least 1979, CLF has worked extensively on public tidelands issues in Massachusetts through direct participation in proposed public waterfront legislation, public waterfront rulemaking proceedings, commenting on numerous municipal harbor plans and Public Waterfront Act licenses in Boston Harbor and throughout Massachusetts, attending and participating in public hearings and comment periods on municipal harbor plans, participating as an *amicus curiae* in Massachusetts court proceedings concerning Article 97 and the Public Waterfront Act, and commenting on tidelands licensing decisions that CLF and its members considered to be contrary to law or regulation. Protecting the public’s tidelands rights is a core component of CLF’s corporate purposes.

11. CLF has also had a 35-year involvement and corporate investment in cleaning up Boston Harbor and improving the access to and use and enjoyment of a restored Boston Harbor for its

members and others. CLF was the lead plaintiff in the federal court matter of *Conservation Law Foundation v. Metropolitan District Commission, et al.*, Civil Action No. 83-1614 (later consolidated with *United States v. Metropolitan District Commission, et al.*, Civil Action No. 85-0489) and in the federal court matter of *Conservation Law Foundation v. Boston Water and Sewer Commission*, Civil Action No. 10-10250. In each of these cases, CLF made sustained corporate investments ensuring the reduction of municipal, industrial, and stormwater pollution into Boston Harbor and its tributaries. The public waters, tidelands, and waterfront at issue in this matter were substantially improved for the benefit and use of CLF's members, *inter alia*, by those actions.

12. CLF participated on behalf of itself and its adversely affected members in commenting on the Downtown Waterfront MHP and filed a petition for reconsideration of the Secretary's decision approving the Downtown Waterfront MHP, which was summarily rejected by the Secretary.

13. Because of the significant departures by the Secretary in his approval of the Downtown Waterfront MHP from numerous precedents created by previous Secretaries in their reviews and approvals of prior municipal harbor plans, and to prevent significant damage to the resources of the foreshore that CLF has worked diligently and for decades to enhance for its members' use and enjoyment, CLF has had to make significant new investments of staff and resources to challenge the Secretary's and Commissioner's actions, including the resources associated with filing and pursuing this matter in court. As a result of the Secretary's and the Commissioner's unlawful actions, CLF's ability to pursue its mission has been adversely affected by the need to redirect resources away from its other core advocacy and educational efforts to challenge the Commissioner's and Secretary's actions here.

14. Because of the precedent set by the Secretary's approval of the Downtown Waterfront MHP, CLF will continue to be adversely affected by being forced to continue to expend additional

staff and resources, and direct time and resources away from its core advocacy and educational efforts to challenge the Secretary's actions, in order to protect the public's trust rights in tidelands by challenging illegal use of the municipal harbor planning process in Boston and throughout the Commonwealth, unless the Court grants the relief requested herein and clarifies the respective duties and authorities of the Secretary and the Commissioner.

15. CLF files this action in its own right because of the injuries it has and will continue to sustain to its corporate purposes and other corporate program priorities. It also files this action on behalf of its adversely affected members, who join and support CLF and who support CLF bringing this action to advance their direct personal interests in expanded public access to and use of the public waterfront by ensuring the protection of the public's trust rights in tidelands in Boston Harbor as required by the Public Waterfront Act.

16. Many of CLF's members intensively use and enjoy the public tidelands in and around Boston Harbor for recreation, sightseeing, fishing, and other uses. The public tidelands in and around Boston Harbor provide CLF's members with access to Boston Harbor that they otherwise would not have. CLF's members specifically use and enjoy the public tidelands in the area covered by the Downtown Waterfront MHP and are directly adversely affected by the Secretary's approval of structures and uses on these tidelands that impair their ability to exercise their use and access rights in violation of the Public Waterfront Act. CLF's members rely on the Public Waterfront Act, and the Commissioner's mandatory duties under the Act, to protect their interests and public trust rights, and are harmed by the Commissioner's abrogation of his duties and the resulting loss of Public Waterfront Act protections and impairment of the public waterfront. The injuries suffered by CLF's members are different in kind and degree than injuries suffered by the general public.

17. CLF as a corporation and on behalf of its adversely affected members has standing to bring this action.

18. The identified Massachusetts-domiciled citizens and Massachusetts corporation also have standing by virtue of their Massachusetts residence to enforce the public duties owed to them and the public by the Commissioner and the Secretary through mandamus pursuant to the public rights doctrine.

19. The identified Massachusetts-domiciled citizens have standing to seek declaratory and injunctive relief under the authority of G.L. c. 214, § 7A to abate damage to the environment that is occurring and will continue to occur as a result of the Secretary's approval of the Downtown Waterfront MHP, having waited at least 21 days after serving their notice of intent to sue on the Secretary and the Commissioner.

20. The interests of CLF, its adversely affected members, and the identified Massachusetts-domiciled citizens are within the zone of interests of the Public Waterfront Act, the Massachusetts APA, and other relevant statutes applicable here.

21. Defendant Matthew A. Beaton is the Secretary of the EOEEA. He is sued in his official capacity.

22. Defendant Martin Suuberg is the Commissioner of MassDEP. He is sued in his official capacity.

23. The Commissioner and the Secretary are collectively referred to as "Defendants."

24. Defendants have a mandatory and affirmative duty to CLF, to CLF's members, to the identified Massachusetts-domiciled citizens, and to the public to carry out their public trust obligations secured by Article 97 of the Massachusetts Constitution and the Public Waterfront Act.



25. Defendant Secretary Beaton also has a mandatory and affirmative duty to CLF, to CLF's members, to the identified Massachusetts-domiciled citizens, and to the public to ensure that his rulemaking actions properly and fully conform to the requirements set forth in the Massachusetts APA and in his own MHP regulations.

26. Defendants' failure to exercise, or alternatively, failure to properly exercise those mandatory public duties directly and irreparably harms CLF, CLF's members, the identified Massachusetts-domiciled citizens, and the public.

## **LEGAL BACKGROUND**

### **Public Waterfront Act and Waterways Regulations**

27. Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts guarantees, *inter alia*, the people of Massachusetts their right to the conservation, development, and utilization of water and other natural resources, including public tidelands. Mass. Const. art. XCVII.

28. Article 97's public tidelands protections have been legislatively embodied in the Public Waterfront Act. The General Court enacted the Public Waterfront Act and MassDEP promulgated the implementing Waterways Regulations in order to ensure that any development of public tidelands achieves a proper public purpose and additionally, with respect to nonwater-dependent projects on tidelands, to ensure that the public benefits outweigh the public detriments of a project. With respect to private developments on Commonwealth tidelands, the Waterways Regulations further prescribe that any private advantages associated with development on those tidelands are merely incidental to achieving a project's public purposes on those affected tidelands.

29. The major purpose of the Public Waterfront Act and the Waterways Regulations is preventing unreasonable damage to or impairment of current and former public tidelands and the public's protected interests and rights in those tidelands.

30. Section 14 of the Public Waterfront Act provides in pertinent part: “[e]xcept as provided in section eighteen [of the Public Waterfront Act], no structures or fill may be licensed on private tidelands or commonwealth tidelands unless such structures or fill are necessary to accommodate a water dependent use . . . .” G.L. c. 91, § 14.

31. Section 18 of the Public Waterfront Act provides in pertinent part as follows:

No structures or fill for nonwater dependent uses of tidelands . . . may be licensed unless a written determination by [MassDEP] is made following a public hearing that said structures or fill shall serve a proper public purpose and that said purpose shall provide a greater public benefit than public detriment to the rights of the public in said lands . . . .

*Id.* § 18.

32. Except for so-called “landlocked tidelands,” the Public Waterfront Act gives MassDEP the sole statutory power and responsibility to make licensing decisions defining what constitutes proper public purposes, properly balancing public benefits and public detriments in connection with tidelands development, and ensuring private advantages associated with Commonwealth tidelands development are incidental. *Id.*

33. Pursuant to its authority under section 18 of the Public Waterfront Act, MassDEP promulgated the Waterways Regulations, which are found at 310 Mass. Code Regs. 9.01–9.56.

34. MassDEP's Waterways Regulations provide explicit and extensive regulatory standards for the licensing of any fill or structures on tidelands. The Waterways Regulations specify that the regulatory requirements contained in the Waterways Regulations, including the prescribed

numerical, dimensional, and other development standards, are the *minimum* requirements applicable to such development on tidelands. 310 Mass. Code Regs. 9.51 & 9.52.

35. The statutory objectives served by the Waterways Regulations include ensuring that the proposed fill or structures serve proper public purposes, that public benefits outweigh public detriments, and that private advantages are merely incidental to public purposes for Commonwealth tidelands development, as required by the Public Waterfront Act.

36. Fundamental to and repeatedly embedded in the Waterways Regulations is the principle that “[a] nonwater-dependent use project that includes fill or structures on any tidelands shall not unreasonably diminish the capacity of such lands to accommodate water-dependent use.” *Id.* at 9.51.

37. With an exception set out in paragraphs 44–50 below, there is a conclusive presumption in the Waterways Regulations that the minimum requirements for preserving capacity for water-dependent uses on tidelands development sites cannot be met if, *inter alia*:

- i. a new nonwater-dependent building is located within the minimum regulatory 25-foot “water-dependent use zone” from the end of a pier or wharf, 310 Mass. Code Regs. 9.51(3)(c)(2);
- ii. a new nonwater-dependent building occupies more than 50% of the tidelands within the project site landward of the project shoreline, *id.* at 9.51(3)(d); or
- iii. a new nonwater-dependent building exceeds 55 feet in height within 100 feet of the current or former high water mark or exceeds the prescribed height limits further landward of that 100 foot line, *id.* at 9.51(e).

38. With the Downtown Waterfront MHP, the Secretary has approved substitute regulations setting alternative use limitations and numerical development regulatory standards for the Hook Wharf and Harbor Garage sites in the planning area, as well as setting alternative maximum height standards for all other buildings in the planning area that significantly exceed the prescribed development regulatory standards in the Waterways Regulations.

39. The entire area covered by the Downtown Waterfront MHP is comprised of current or former tidelands. Portions of the Downtown Waterfront MHP are current or former Commonwealth tidelands, including roughly one-third of the Hook Wharf site. The remainder are private tidelands. At the City of Boston's request, the Secretary adopted the Commonwealth tidelands requirements related to activation for public use in 310 Mass. Code Regs. 9.53(2)(b) for all exterior private tideland areas planned for public access proposed in the Downtown Waterfront MHP area.

40. The public has maximum trust interests in proposed developments involving Commonwealth tidelands, which are lands that are currently or were formerly below the mean low water line.

41. The Waterways Regulations provide significant additional limitations and mandatory requirements for nonwater-dependent developments that are located on Commonwealth tidelands to ensure that private projects serve a public purpose and that the public benefits being secured are commensurate with the public's heightened trust interests in those tidelands.

42. To accomplish these objectives, the Waterways Regulations require that such nonwater-dependent projects "shall attract and maintain substantial public activity *on the site* on a year-round basis." *Id.* at 9.53(2) (emphasis added). The minimum regulatory requirements to meet this standard include providing at least one facility promoting water-based activity such as "ferries,

cruise ships, water shuttles, public landings and swimming/fishing areas, excursion/charter/rental docks, and community sailing centers,” *id.* at 9.53(2)(a), and providing “exterior open spaces for active or passive public recreation, [such as] parks, plazas, and observation areas,” which “shall include related pedestrian amenities such as lighting and seating facilities, . . . [and] children’s play areas.” *Id.* at 9.53(2)(b).

43. Any decision authorizing nonwater-dependent projects on Commonwealth tidelands, such as portions of the Hook Wharf site, also must “ensure[] that private advantages of use are not primary but merely incidental to the achievement of public purposes.” 310 Mass. Code Regs. 9.53.

### **The Municipal Harbor Planning Process**

44. The Waterways Regulations provide that a municipal harbor planning process can be used to set alternative regulatory standards authorizing deviations from the regulatory standards set forth in the Waterways Regulations. 310 Mass. Code Regs. 9.34(2). The municipal harbor planning process is initiated by a municipality. 301 Mass. Code Regs. 23.00.

45. If the Secretary approves a municipal harbor plan submitted by a municipality that modifies the Waterways Regulations’ use limitation or numerical development standards, those modified regulatory standards bind and diminish MassDEP’s licensing discretion, as MassDEP “shall . . . apply” the Secretary’s alternative use limitations and numerical standards in the municipal harbor plan as a substitute for the respective limitations set forth in the Waterways Regulations. 310 Mass. Code Regs. 9.34(2)(b)(1).

46. MassDEP has no jurisdictional authority over a municipal harbor plan and no discretion to reject or modify a project during MassDEP’s section 18 waterways licensing process as long as it conforms to the Secretary’s approved substitute municipal harbor plan use limitation or numerical regulations. Under the municipal harbor plan regulations, the Secretary is empowered to override

the Commissioner if there is an alternative regulatory standards recommendation that the Commissioner does not agree with. 301 Mass. Code Regs. 23.08(2).

47. The Secretary's approval must ensure that any municipal harbor plan is consistent with various enforceable coastal zone program policies and management principles, 301 Mass. Code Regs. 23.05(1), including:

- i. 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, and
- ii. Public Access Management Principal #1 – Improve public access to coastal recreation facilities and alleviate auto traffic and parking problems through improvements in public transportation.

48. The Secretary can only approve a municipal harbor plan with alternative use limitations and numerical standards if the Secretary determines that the plan:

- i. “specifies alternative setback distances and other requirements which ensure that new buildings of 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,” 310 Mass. Code Regs. 9.51(3)(c);
- ii. “specifies alternative site coverage ratios and other requirements which 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,” *id.* at 9.51(3)(d);

- iii. “specifies alternative height limits and other requirements which ensure that, in general, such buildings for nonwater-dependent use will be relatively modest in size, in order that wind, shadow, and other conditions of ground level environment will be conducive to water-dependent activity and public access associated therewith,” *id.* at 9.51(3)(e); and
- iv. “specifies alternative requirements for public outdoor recreational facilities that will establish *the project site* as a year-round locus of public activity in a comparable and highly effective manner.” *Id.* at 9.53(2)(b)2 (emphasis added).

49. The Public Waterfront Act does not delegate, authorize, or empower any government entity apart from MassDEP to make regulations or licensing determinations related to achieving the purposes of sections 14 and 18 of the Public Waterfront Act.

50. The Secretary’s municipal harbor plan process and his approval of the Downtown Waterfront MHP are intended to and act directly as a regulatory amendment of the use limitations and numerical standards otherwise applicable to MassDEP’s section 18 licensing decisions set forth in the Waterways Regulations. Through these alternative Downtown Waterfront MHP regulations, the Secretary overrides the Waterways Regulations and MassDEP’s licensing discretion and jurisdictional authority within the MHP planning area.

## FACTS

### **The Downtown Waterfront Municipal Harbor Plan**

51. The Downtown Waterfront MHP covers about 42 acres of flowed and filled tidelands on the waterfront in Downtown Boston running along Atlantic Avenue and the Rose Kennedy Greenway. The area is bounded to the north by Christopher Columbus Park and to the south by the Evelyn Moakley Bridge.

52. The Downtown Waterfront MHP creates significant new regulatory development standards for two parcels in particular: the Hook Wharf and Harbor Garage sites. Under the Downtown Waterfront MHP, the Secretary's substitute regulatory development provisions allow a 305-foot-tall tower to be built on the Hook Wharf site and a 600-foot-tall tower to be built on the Harbor Garage site.

53. Under the Waterways Regulations, the maximum allowable height on the Hook Wharf site is 55 feet and the maximum height on the Harbor Garage site ranges from 55 feet to 155 feet.

54. The Greenway District Planning Study Use and Development Guidelines and Overlay District Zoning Code, developed through an extensive public process that concluded in 2010, specifically addressed building height issues in the planning area covered by the Downtown Waterfront MHP and specifies that structure heights on the Harbor Garage site should not exceed 200 feet and that structure heights on the Hook Wharf site should not exceed 175 feet.

55. The Secretary acknowledged the existence of these height guidelines in his decision but failed to provide any discussion in his approval of why he ignored them.

56. The current Harbor Garage structure is a nonconforming structure and use under the Waterways Regulations, permitted to exist as a noncompliant structure under the Regulations' amnesty provision at 310 Mass. Code Regs. 9.28.



57. The Downtown Waterfront MHP also contains area-wide regulatory height substitutions for all new or expanded buildings for nonwater-dependent use, allowing for up to 30 additional feet as necessary to accommodate the relocation of building mechanicals from existing buildings to the roof or to an upper floor above current or future base flood.

### **The Downtown Waterfront Municipal Harbor Plan Process**

58. In March 2013, the Boston Redevelopment Authority (predecessor to the Boston Planning and Development Authority, or “BPDA”) launched its Downtown Waterfront and Greenway District Zoning Planning Initiative at a public meeting.

59. The Boston Municipal Harbor Planning Advisory Committee (“Boston MHP Advisory Committee”), established under the municipal harbor plan regulations to inform the BPDA in developing the Downtown Waterfront MHP, convened on April 24, 2013 for the first of a series of public meetings that would occur from April 2013 to October 2016.

60. On July 31, 2013, the City of Boston submitted to the Commonwealth a Request for a Notice to Proceed for the Downtown Waterfront MHP, pursuant to 301 Mass. Code Regs. 23.03. Attached as **Exhibit B** is a true and correct copy of the request.

61. After a 30-day public comment period on the City of Boston’s Request, the Office of Coastal Zone Management issued a Notice to Proceed on October 3, 2013. Attached as **Exhibit C** is a true and correct copy of the notice.

62. The municipal harbor plan regulations require that a final municipal harbor plan be filed with the Secretary no later than 30 months after issuance of the Notice to Proceed, or on or about April 3, 2016. 301 Mass. Code Regs. 23.04(1). The Downtown Waterfront MHP was filed significantly after 30 months.

63. The City of Boston released its first draft of the Downtown Waterfront MHP on July 20, 2016 and submitted the Downtown Waterfront MHP to EOEEA on March 15, 2017, more than eleven months after the final regulatory deadline for filing the municipal harbor plan. Notwithstanding the express terms of his own regulations and without discussion, the Secretary accepted Boston's late filing. Attached as **Exhibit D** is a true and correct copy of the filed plan.

64. The Office of Coastal Zone Management published a Notice of Public Hearing and Submission in the March 22, 2017 edition of the *Environmental Monitor*, announcing a public hearing on the Downtown Waterfront MHP for April 2017 and opening a 30-day public comment period, during which CLF submitted extensive comments on behalf of itself and its members. Attached as **Exhibit E** is a true and correct copy of said filed comments.

65. The municipal harbor plan regulations require the active participation of the Boston MHP Advisory Committee in the post-public comment consultation process. Following the close of the 2017 public comment period, the BDPA and others held meetings to discuss matters within the Downtown Waterfront MHP for approximately nine months with no consultations with the constituted public advisory committee.

66. Following a series of private meetings with and conversations between the New England Aquarium, the owner of the Harbor Garage property, BPDA, and possibly the Secretary's office, BDPA submitted a supplemental filing on February 16, 2018, that made significant changes to the plan. The Boston MHP Advisory Committee was not provided any opportunity to review or debate the merits of the supplemental plan. This supplement was filed almost two years after the regulatory filing deadline. Attached as **Exhibit F** is a true and correct copy of said supplemental filing.

67. EOEEA opened a 45-day supplemental public comment period, during which CLF submitted comments on the supplement on behalf of itself and its members. Attached as **Exhibit G** is a true and correct copy of said filed comments.

68. On April 30, 2018, MassDEP submitted to the Secretary its Recommendation for Approval of the Downtown Waterfront MHP. In it, MassDEP notes that “[t]he 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 recommendation letter also states that, “[i]n 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.” MassDEPs’ Recommendation for Approval is not judicially reviewable. Attached as **Exhibit H** is a true and correct copy of said MassDEP recommendation letter.

69. Secretary Beaton published his decision approving the Downtown Waterfront MHP on April 30, 2018. Attached as **Exhibit I** is a true and correct copy of the Secretary’s approval decision.

70. On behalf of itself and its members, CLF filed a timely petition for reconsideration of the decision with the Secretary pursuant to the MHP Regulations, 301 Mass. Code Regs. 23.04(5), on May 21, 2018. Attached as **Exhibit J** is a true and correct copy of said petition.

71. The Secretary denied CLF’s petition for reconsideration on June 11, 2018. Attached as **Exhibit K** is a true and correct copy of the Secretary’s denial.

72. As described above in paragraph 6, on June 20, 2018, CLF delivered to the Secretary and the Commissioner a Notice of Damage to the Environment pursuant to G.L. c. 214, § 7A.

### **The Secretary's Approval of the Downtown Waterfront MHP**

73. The entire area covered by the Downtown Waterfront MHP lies on current or former tidelands. The 305-foot and 600-foot building envelopes approved by the Downtown Waterfront MHP for the Hook Wharf and Harbor Garage sites are for nonwater-dependent uses and structures on tidelands.

74. Accordingly, in approving the Downtown Waterfront MHP, the MHP Regulations obligated the Secretary to determine and demonstrate that the substitute regulatory provisions in the Downtown Waterfront MHP met the Public Waterfront Act regulatory requirements with “comparable or greater effectiveness.” 301 Mass. Code Regs. 23.05(2)(d).

75. Contrary to these obligations, the Secretary approved alternative regulatory standards applicable to structures or uses within the Downtown Waterfront MHP area that are not comparably effective to the standards in the Waterways Regulations, including:

- i. authorizing a water-dependent use zone (“WUZ”) at the Hook Wharf site that is only a maximum depth of 12 feet, instead of the Waterways Regulations minimum WUZ of 25 feet for a project site that is not on a pier or wharf or that is at the end of a pier or wharf;
- ii. authorizing a private nonwater-dependent structure and use at the Hook Wharf site that occupies 70% of the project site instead of the Waterways Regulations maximum structural footprint of 50% of the project site, a 40% expansion of the maximum allowable footprint;
- iii. authorizing a private nonwater-dependent structure and use at the Hook Wharf site that is 305 feet tall, more than five times the Waterways

Regulations maximum allowable height of 55 feet for new buildings within 100 feet landward of the high water mark;

- iv. authorizing a private nonwater-dependent structure and use at the Harbor Garage site that is 600 feet tall, four to five times the Waterways Regulations maximum allowable heights, which are 55 feet on the waterside of the project site up to a maximum of 155 feet on the Atlantic Avenue side of the project site; and
- v. authorizing a nonwater-dependent structure at the Harbor Garage site with a massing that may range between 9.5 and 10.5 million cubic feet instead of the MassDEP regulatory maximum massing of approximately 3.4 million cubic feet.

76. The Secretary's approval of the Downtown Waterfront MHP provides no reasoned analysis with respect to the critical regulatory test that his alternative regulatory measures meet the objectives of the Waterways Regulations and the Public Waterfront Act with "comparable or greater effectiveness."

77. Among the improper factors the Secretary relied on in reaching his decision were: (i) the footprint of the current non-conforming Harbor Garage building; (ii) the arbitrary determination by the City of Boston of the adequacy of the specified offsetting mitigation measures; (iii) the purportedly constrained nature of the Hook Wharf site, which in fact has historically supported numerous uses and structures; and (iv) the "number of buildings" between 550 and 600 feet tall that are on the other side of the Greenway corridor in the Financial District and other parts of the city where the heights of the buildings are aligned with the character of their respective districts.

78. The sole public benefits required by the Secretary in return for the extraordinary private development advantages and profits the future developers in this planning area will receive by virtue of the alternative tidelands development regulations he approved are:

- i. \$3.9 million for a waterfront park and water transportation gateway at the Chart House parking lot if such facilities are feasible;
- ii. \$10 million to go toward the costs of the potential New England Aquarium Blueway if it is built by the New England Aquarium; and
- iii. \$500,000 for open space and waterfront activation elements of the Fort Point Channel.

79. The Secretary's approval of the Downtown Waterfront MHP establishes a non-governmental entity called the "Downtown Municipal Harbor Plan Operations Board" to oversee and direct the disbursement of the offset funds described above. If certain milestones and targets are not met, the Board may redirect the funds to other open space, waterfront, and watersheet activation projects as contained in the Public Realm Plan or as identified through subsequent public process. The Board's decisions are not subject to judicial review and there is no requirement that the offset funds ever be spent.

80. Beyond the quantified offset funds, the Downtown Waterfront MHP, in fact, does not specify what public benefits the public will ultimately receive, where they might be ultimately located, or when they might ultimately materialize.

81. Contrary to the Public Waterfront Act and the Waterways Regulations, the Secretary did not discuss and certainly provided no demonstration that private advantages are not the primary purpose of the substitute regulatory provisions he approved for the Hook Wharf site, that the value of the public benefits being approved is in any way proportional to the significant economic value

of the private advantages being conferred by the Secretary's substitute tidelands development regulations, or that he has achieved the purposes of the Waterways Regulations with comparable or greater effectiveness.

82. There is no analysis showing how the Secretary calculated that the arbitrary public benefit offsets he required were commensurate with the significant public detriments associated with development variances he granted.

83. Upon information and belief, the private advantages being conferred by the Secretary's action approving the Downtown Waterfront MHP substitute regulations for the Hook Wharf site substantially exceed the monetary value of the public benefits being required by the Secretary.

84. Rather than demonstrating how his approval of the Downtown Waterfront MHP was consistent with CZM's Public Access Management Principle #1 as required by the MHP Regulations, the Secretary failed to address the additional transportation burdens that would be imposed by the development he authorized in the Downtown Waterfront MHP, pushing those off to a later date and different processes.

85. The Harbor Garage project site is in close proximity to Boston's iconic Custom House Tower, which is registered in the National Register of Historic Places and designated as a Boston Landmark by the Boston Landmark Commission. The 600-foot development envelope approved by the Secretary on the Harbor Garage site will block views of the Custom House Tower, including views from the waterfront and the water.

86. Rather than demonstrating how his approval of the Downtown Waterfront MHP was consistent with CZM's Protected Areas Policy #3 as required by the MHP Regulations by ensuring that the MHP "respect[ed] the preservation intent of the designation and that potential adverse effects are minimized," the Secretary did not even address the issue.

87. The Secretary's action approving nonwater-dependent uses and structures in the Downtown Waterfront MHP unreasonably diminishes the capacity of the Downtown Waterfront MHP area to accommodate the public water-dependent uses which CLF's members rely on and actively take advantage of and significantly impairs the primary public trust purposes of those public tidelands as a natural resource of the Commonwealth.

88. The Secretary's approval of the new use limitations and numerical standards in the Downtown Waterfront MHP substitutes new development regulations for the existing Waterways Regulations without providing the due process protections and filing protocols required by the Massachusetts APA, particularly the right of judicial review.

## COUNT I

### **Declaratory Judgment, G.L. c. 231A, §§ 1 & 2**

89. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

90. There is an actual controversy between the parties as to their respective rights and duties and in particular as to the legality of MassDEP's delegation of its statutory obligation to determine proper public purposes and other Public Waterfront Act requirements to the Secretary and his municipal harbor planning process.

91. MassDEP's delegation of its exclusive statutory responsibility to exercise all public trust duties associated with the terms and conditions of licensing under the Public Waterfront Act for development of a nonwater-dependent project on tidelands to the Secretary without retaining approval oversight and control over the outcome is *ultra vires* and exceeds MassDEP's statutory authority.



92. No other permit, approval, or condition can correct the Secretary's unlawfully delegated decision to approve alternative regulations for the use limitations and numerical standards contained in the Waterways Regulations.

93. CLF and its adversely affected members have exhausted their administrative remedies.

94. The errors of law committed by the Commissioner in making this unlawful delegation harm the rights and interests of the public, including Plaintiffs' rights and interests in their use and enjoyment of public tidelands.

95. A declaratory judgement is necessary to protect the public interest and the rights and interests of Plaintiffs.

## COUNT II

### **Declaratory Judgment re Illegal Rulemaking, G.L. c. 30A**

96. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

97. The alternative use limitations and numerical standards approved in the Downtown Waterfront MHP by the Secretary are intended to and function as new regulations in that they have general and future effect for all Public Waterfront Act licensing proceedings and decisions involving water- and nonwater-dependent development activities in the area covered by the Downtown Waterfront MHP.

98. The Downtown Waterfront MHP as approved by the Secretary constitutes the adoption of new policies and rules with respect to public tidelands development that substantially alter the rights and interests of regulated parties, Plaintiffs, and the general public. They were not adopted following the protocol set out in the Public Waterfront Act. G.L. c. 91, § 18.

99. The Secretary's approval of the new use limitations and numerical standards in the Downtown Waterfront MHP under the auspices of 301 Mass. Code Regs. 23.00 constitutes a

formal rulemaking applicable to and binding for all Public Waterfront Act licensing within the area of the Downtown Waterfront MHP.

100. The alternative use limitations and numerical standards in the Downtown Waterfront MHP as approved by the Secretary were not promulgated in a manner consistent with the Massachusetts APA with respect to notice and comment on the proposed action, preparation of a small business report, publishing in the Massachusetts Register, providing a fiscal statement, or making provision for any right of appeal or judicial review.

101. Any rulemaking undertaken by any agency in Massachusetts that is not promulgated in compliance with the provisions of the Massachusetts APA is null and void.

102. The Secretary's approval of the Downtown Waterfront MHP is null and void and must be vacated as an improper rulemaking.

103. A declaratory judgement is necessary to protect the public interest and the rights and interests of Plaintiffs.

### **COUNT III**

#### **Declaratory Judgement re Illegal MHP Approval Process**

104. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

105. The Secretary erred and violated the law by failing to terminate the Downtown Waterfront MHP process on or before April 3, 2017, or 30 months after issuance of the Notice to Proceed, as required by the Secretary's MHP Regulations.

106. The Secretary further erred and violated the law by approving the Downtown Waterfront MHP without making required consistency determinations with respect to Protected Areas Policy #3 or Public Access Management Principal #1.

107. The Secretary further erred and violated the law by failing to require the City of Boston to demonstrate that the offsets identified in the Downtown Waterfront MHP promoted the objectives of the Waterways Regulations they replaced with comparable or greater effectiveness and by failing to require the City of Boston to demonstrate that the private advantages being conferred at the Hook Wharf site pursuant to the Downtown Waterfront MHP were incidental to the public purposes being accomplished.

108. The Secretary further erred and violated the law by not engaging or requiring the City of Boston to engage the duly appointed Boston MHP Advisory Committee in the substantive discussions that led to revisions to the Downtown Waterfront MHP between the close of the BDPA 2017 public comment period and the filing of the 2018 Supplemental Downtown Waterfront MHP.

109. A declaratory judgement is necessary to protect the public interest and the rights and interests of Plaintiffs.

#### **COUNT IV**

##### **Environmental Damage, G.L. c. 214, § 7A**

110. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

111. The major purpose of the Public Waterfront Act is preventing damage to or impairment of the public rights and protected interests in natural resources, namely, current and former public tidelands.

112. G.L. c. 214, § 7A, provides that ten people domiciled in Massachusetts have the right to bring an action in court seeking declaratory and injunctive relief to prevent damage to the environment. “Damage to the environment” includes “destruction, damage or impairment . . . to

any of the natural resources of the commonwealth,” such as “seashores, dunes, wetlands, open spaces, natural areas, parks or historic districts or sites.” G.L. c. 214, § 7A.

113. Plaintiffs comprise more than ten persons domiciled in Massachusetts.

114. Current and former tidelands are natural resources of the Commonwealth. The Supreme Judicial Court, in *Boston Waterfront Development Corporation v. Commonwealth*, 378 Mass. 629, 630, 393 N.E.2d 356, 357 (1979), identified the shore as “one of the Commonwealth’s most precious natural resources.”

115. Protection of public tidelands from destruction, damage, or impairment is within the scope of G.L. c. 214, § 7A.

116. The Public Waterfront Act provides the licensing mechanism by which public tidelands are protected and through which Plaintiffs’ rights of access and use of such tidelands are ensured. Such rights of access and use are protected from improper impairment under the terms of the Public Waterfront Act by the oversight and expertise of MassDEP and by the availability of administrative and judicial review of all aspects of any MassDEP section 18 licensing decision to any aggrieved party.

117. The Public Waterfront Act requires that development on public tidelands be dedicated only to supporting proper public purposes. To achieve such proper public purposes, the public benefits of the proposed uses must outweigh the public detriments and on Commonwealth tidelands, private benefits can only be incidental to the public purpose of the development.

118. The Commissioner’s and the Secretary’s failure to ensure that the development newly authorized under the Downtown Waterfront MHP fully protects those public interests and primarily promotes public purposes on tidelands destroys, damages, and impairs those public natural resources of the Commonwealth.

119. The approved use limitations and numerical standard substitute regulations under the Downtown Waterfront MHP on the Hook Wharf and Harbor Garage sites damage and impair the public tidelands encompassed within that planning area in the ways heretofore alleged including, *inter alia*, by failing to ensure that appropriate public purposes, not private advantages, are primarily served by the approved regulation changes applicable to the Hook Wharf site in the Downtown Waterfront MHP and that the public benefits being achieved in the entire planning area outweigh the public detriments associated with the substitute MHP regulations.

120. The alternative and substitute regulatory tidelands development standards approved in the Downtown Waterfront MHP do not achieve the objectives of the Waterways Regulations with comparable or greater effectiveness resulting in an impairment of the public tidelands protected by those regulations.

121. The approved substitutions under the Downtown Waterfront MHP on the Hook Wharf and Harbor Garage sites damage and impair those public tidelands by authorizing structures and uses of these tidelands that MassDEP would otherwise prohibit under the Public Waterfront Act and the Waterways Regulations.

122. Such damage to and impairment of the public tidelands constitute violations of sections 14 and 18 of the Public Waterfront Act, which provide that all nonwater-dependent development of public tidelands is prohibited unless MassDEP takes a proper and judicially-reviewable licensing action and determines that the proposed development primarily serves proper public purposes, that the public benefits must outweigh the public detriments, and that the private advantages conferred at the Hook Wharf site are incidental.

123. Contrary to law, MassDEP cannot exercise its trust obligations and duties to Plaintiffs and the public under the Public Waterfront Act because MassDEP has improperly foreclosed its ability

to make its own independent licensing determinations under the Downtown Waterfront MHP approved by the Secretary as required by the Public Waterfront Act.

124. The damage and impairment of natural resources of the Commonwealth as a result of the Secretary's approval of the Downtown Waterfront MHP and the Commissioner's failure to exercise his exclusive statutory responsibilities and duties to Plaintiffs has not been offset by any compensating or meaningful public tidelands protections to ensure that proper public purposes are being served, that the public benefits accomplished exceed the public detriments imposed on tidelands, and that private advantages are only an incidental consideration in the approval.

125. An unauthorized approval of nonwater-dependent uses of and structures on tidelands that fail to achieve proper public purposes is one of the harms intended to be prevented by the Public Waterfront Act.

126. Plaintiffs have no opportunity to seek appropriate relief from the regulatory measures approved in the Downtown Waterfront MHP under the provisions of the Waterways Regulations, the MHP Regulations, or in any future appeal of a Public Waterfront Act license for a project in the covered area that is developed in accordance with the terms of the Secretary's approval.

127. Without this Court's intervention pursuant to G.L. c. 214, § 7A, Plaintiffs will continue to be irreparably harmed. The harm to CLF, its members, and the identified Massachusetts-domiciled citizens outweighs the harm to EOEEA and MassDEP.

#### **COUNT IV**

#### **Mandamus, G.L. c. 249, § 5**

128. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

129. Under the Public Waterfront Act, the Commissioner owes a mandatory statutory public duty under the Public Waterfront Act to the public, to CLF, and to CLF's members to ensure that proper public purposes are achieved in any approval or licensing of a nonwater-dependent structure on or use of tidelands.

130. Under the Public Waterfront Act, the Commissioner owes a mandatory statutory public duty to the public, to CLF, and to CLF's members to ensure that the public benefits achieved by a proposed structure on or use of tidelands outweigh the public detriments associated with the structure or use.

131. Under the Public Waterfront Act, the Commissioner owes a mandatory statutory public duty to the public, to CLF, and to CLF's members to ensure that the private advantages associated with any structure on or use of Commonwealth tidelands on the Hook Wharf site are only incidental to the public purposes being realized.

132. Under the Public Waterfront Act, the Commissioner has an exclusive, mandatory public duty and responsibility to determine the terms and conditions of all licensing decisions implementing sections 14 and 18 of the Public Waterfront Act.

133. The Commissioner has failed and continues to fail to carry out these public duties by unlawfully delegating them to the Secretary and the Office of Coastal Zone Management in the Secretary's executive office and by agreeing to be bound by the Secretary's decisions pursuant to that unlawful delegation, even if the Commissioner disagrees with the Secretary's decision.

134. Such delegation prevents the Commissioner from carrying out his mandatory statutory public duties under sections 14 and 18 of the Public Waterfront Act to the public, to CLF, and to CLF's members with respect to the approval and licensing of structures and uses on tidelands in the area covered by a Secretarially-approved municipal harbor plan.

135. In the context of the approved Downtown Waterfront MHP, the failure by the Commissioner to carry out his mandatory statutory duties has resulted in the loss of public trust tidelands property to private use and control and the corresponding loss of significant public benefits that Plaintiffs use and depend on.

136. There is no other available remedy to protect Plaintiffs' rights or to compel appropriate action by the Commissioner to conform the municipal harbor planning procedures in the Waterways Regulations to the Public Waterfront Act's basic legal and due process requirements.

137. Without issuance of a writ of mandamus to the Commissioner to execute his responsibilities and duties under the Public Waterfront Act, Plaintiffs will continue to be irreparably harmed.

138. Without issuance of a writ of mandamus to the Commissioner, there will be a failure of justice and a loss of the use and enjoyment of public tidelands to which Plaintiffs have a constitutionally-recognized right under Article 97 of the Massachusetts Constitution and a statutorily-protected right under the Public Waterfront Act.

## **COUNT V**

### **Mandamus, G.L. c. 249, § 5**

139. Plaintiffs incorporate the allegations contained in the above paragraphs as though fully set forth herein.

140. Alternatively, if this court holds that the Secretary has the legal authority to approve the Downtown Waterfront MHP and bind all future MassDEP Public Waterfront Act licensing in the Downtown Waterfront MHP area, which Plaintiffs contend he does not, the Secretary still has a clear and unequivocal statutory public duty to Plaintiffs and to the public to comply with the Massachusetts Administrative Procedure Act, G.L. c. 30A, when promulgating regulations governing public tidelands development.



141. The Secretary's approval of the alternative use limitations and numerical standard regulations in the Downtown Waterfront MHP for the otherwise applicable Waterways Regulations use limitations and numerical standards constitutes a formal rulemaking applicable to and binding on all future Public Waterfront Act licensing within the area of the Downtown Waterfront MHP.

142. The Secretary did not promulgate the regulatory aspects of his approval of the Downtown Waterfront MHP in a manner consistent with the Massachusetts APA with respect to the protocols for notice and comment on the proposed action, preparation of a small business report, publishing in the Massachusetts Register, providing a fiscal statement, or providing notice or making provision for any right of appeal or judicial review of the new regulations.

143. The Secretary's failure to comply with the Massachusetts APA has resulted in public trust property being illegally converted to private use and control and the loss of significant public benefits that Plaintiffs use and depend on, without the required public process and ability to obtain judicial review of his rulemaking actions.

144. Because the Secretary did not comply with the Massachusetts APA when approving the Downtown Waterfront MHP, there is no available remedy to protect Plaintiffs' or any other aggrieved person's rights to seek judicial review of the Secretary's action.

145. Without issuance of a writ of mandamus to the Secretary to comply with the Massachusetts APA when engaging in rulemaking as part of his MHP approval process, Plaintiffs and the public will continue to be irreparably harmed.

146. Without issuance of a writ of mandamus to the Secretary to comply with the Massachusetts APA when engaging in rulemaking as part of his MHP approval process, there will be a failure of justice and a loss of the use and enjoyment of public tidelands to which Plaintiffs and the public

have a constitutionally-recognized right under Article 97 of the Massachusetts Constitution and a statutorily-protected right under the Public Waterfront Act.

### **RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray that this Court:

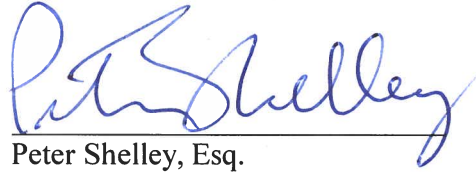
- 1) Enter a judgement declaring 310 Mass. Code Regs. § 9.34(2)(b) and the related sections of the Waterways Regulations identified there null and void on the basis that Commissioner Suuberg lacks authority to delegate matters within MassDEP's exclusive licensing jurisdiction under the Public Waterfront Act or to agree that MassDEP will be bound in its licensing actions under section 18 of the Public Waterfront Act to alternative regulatory provisions established in a municipal harbor planning process controlled by the Secretary;
- 2) Enter a judgement declaring that Secretary Beaton's approval of the Downtown Waterfront MHP is null and void and vacated to the extent that it alters in any respect the use limitations or numerical standards in the Waterways Regulations otherwise applicable to the Downtown Waterfront MHP area, or that otherwise circumvents MassDEP's independent exercise of its fiduciary duties under the Public Waterfront Act in licensing projects on tidelands within the Downtown Waterfront MHP area;
- 3) Enjoin Commissioner Suuberg from undertaking any Public Waterfront Act licensing with respect to any development within the area covered by the Downtown Waterfront MHP, or any other municipal harbor plan that applies the substitute and alternative regulatory provisions modifying the Waterways Regulations;
- 4) Alternatively, enter a judgment declaring Secretary Beaton's approval of the Downtown Waterfront MHP to be null and void for failure to provide and follow appropriate Massachusetts Administrative Procedure Act procedures;

- 5) Alternatively, enter a judgment declaring Secretary Beaton's approval of the Downtown Water MHP to be null and void for failure to follow the required procedures in the MHP Regulations, for failure to demonstrate the basis for his consistency determinations, and for his failure to demonstrate that private advantages associated with the tidelands development use limitations and numerical standards he approved for the Hook Wharf site were merely incidental to the larger public purpose and benefits being achieved;
- 6) Issue a writ of mandamus directing Commissioner Suuberg to immediately execute his responsibilities and public duties under the Public Waterfront Act by vacating and removing 310 Mass. Code Regs. 9.34(2)(b) and any other related municipal harbor planning provisions from the Waterways Regulations that constrain his future licensing discretion and responsibilities;
- 7) Alternatively, issue a writ of mandamus directing Secretary Beaton to revoke his approval of the Downtown Waterfront MHP and comply with the Massachusetts APA when engaging in a formal rulemaking with respect to public tidelands development that substantially alters the rights and interests of regulated parties as well as Plaintiffs and the general public;
- 8) Grant Plaintiffs their costs and fees; and
- 9) Grant such other relief as may be just and equitable.

Respectfully submitted,

**Conservation Law Foundation**  
**Massachusetts Citizens**

By their attorneys,



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*With the assistance of:*

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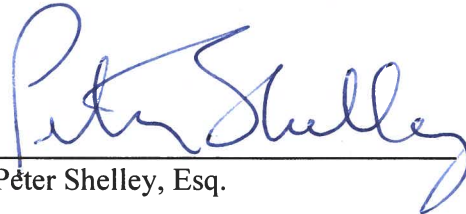
Harvard Law School

July 11, 2018

**CERTIFICATE OF SERVICE**

I, Peter Shelley, hereby certify that I have on this day served this Complaint upon the defendants by mailing true and correct copies of the Complaint by first-class certified mail with return receipt to all Defendants and the Massachusetts Office of the Attorney General at their ordinary places of business.

Signed under the pains and penalties of perjury this 11th day of July, 2018.

  
Peter Shelley, Esq.