



October 9, 2020

Brian Golden, Director
Boston Planning and Development Agency
One City Hall Square
Boston, MA 02201

Via E-mail

Re: The Pinnacle at Central Wharf - Project Notification Form

Dear Director Golden:

The New England Aquarium writes to comment on the Project Notification Form (“PNF”) submitted to the Boston Planning and Development Agency (the “BPDA”) by RHDC 70 East India LLC / The Chiofaro Company (the “Developer”) for the Pinnacle at Central Wharf (the “Project”). The Aquarium is one of Boston’s most treasured institutions, serves as a leading advocate for our blue planet, and has been an anchoring pioneer and steward of Central Wharf for over half a century. We are an abutter to the Project, a water dependent use and a designated Special Public Destination Facility on Central Wharf, and an institutional member of the Impact Advisory Group established for the Project. We find the PNF and the Developer’s presentations in its public meetings to be fundamentally inadequate and unsatisfactory by the standards expected under Article 80. The Aquarium requests that the BPDA require the Developer to withdraw and resubmit (for a new review and comment period) a properly informative PNF, substantially revised in form and substance, to be consistent with that customarily expected of a project of this scope and scale.

As you are aware, we wrote last week to you and EEA Secretary Theoharides concerning the relationship of the Project’s Article 80 and MEPA reviews to the Design & Use Standards called for in the Downtown Waterfront Municipal Harbor Plan (“MHP”) and the Secretary’s Decision. Our rationale for that comment and this one is the same. There, we focused on the short-circuiting of the process set out in the MHP; here, on the substance of the shortcomings. The Project fails to live up to the fundamental promise of the MHP: that extraordinary relief from zoning and Chapter 91 development restrictions might be warranted in exchange for a first-class, transformed public realm. Instead of delivering such a public realm, the Project adds little in the way of improvements while significantly and permanently harming existing public open spaces.

We write to express our deep concerns with the Project and the PNF, to confirm that the Aquarium has no agreement in place with the Developer to support the Project, and to request that the PNF be withdrawn until the necessary and appropriate district-wide planning is

substantially complete to ensure that Central Wharf and the Downtown Waterfront promote accessibility, inclusivity, and climate resilience as first principles. A project sitting on an elevated podium whose vast size will make adjacent open spaces windswept and shadow-covered is by definition not accessible. A project whose primary components are luxury residential and high-end office uses is by definition not inclusive. A project that elevates a massive tower just feet from the water's edge in a low-lying floodplain is by definition not resilient. No amount of tweaking around the edges can cure these fatal flaws. The Developer should withdraw the PNF and go back to the drawing board.

* * *

Throughout the MHP process that began in 2013, the Aquarium has stated (including in its written comments) that it could not comment on the appropriateness of proposed substitute height provisions until a specific project proposal for the Harbor Garage was put forth, noting that the realization of a transformed public realm must be a key component of any specific development proposal. Now that the Aquarium has seen the proposal, we find that it fails to deliver on this fundamental promise of the MHP and we cannot support it. It significantly burdens the public interest without providing adequate or commensurate benefits, evidences an utter disregard for impacts on public realm and critical open spaces, spills over its site boundaries and relies on others' property to enliven the public realm its own site plan ignores, and pays scant attention to the critical issues of inclusivity and climate resilience. The Developer tellingly touts "addition by subtraction" as the Project's primary public benefit, and suggests that the only alternative to the deteriorating garage is the Project as proposed. We do not accept the premise that removal of the existing garage provides a "benefit" that justifies imposing such significant costs and long-term detriment to the Aquarium and its environs, the neighborhood, and the greater Boston community.

The Aquarium has no agreement of any sort in place with the Developer. The Aquarium engaged in dialogue with the Developer during the MHP process to prepare a list of protective provisions that would need to be in place to address construction period impacts and certain operational impacts to parking associated with any proposal for the redevelopment of the Harbor Garage site. Identification of those terms, as noted above, did not and does not constitute acceptance of any specific project and certainly not the project currently proposed. The Secretary's Decision on the MHP requires that a legally binding Agreement between the Developer, the Aquarium, and the City covering these matters be in place before the substitute height provisions can be applied to the Harbor Garage site. No such Agreement is in place, nor does the Aquarium see any basis for engaging in dialogue regarding such Agreement when the Project proposal is fundamentally flawed and the necessary planning has not yet taken place.

The Aquarium has consistently stated that protection of its interests as the Special Public Destination Facility for the Downtown Waterfront and the interests of all in a transformed public realm must be realized *before* the Aquarium can support any specific project proposal. These interests must be protected in a comprehensive district-wide plan for the Downtown Waterfront that addresses inclusivity, accessibility, and climate resilience, which the Developer's proposal must embrace and implement. Indeed, the Secretary's Decision requires the BPDA to engage the community in the development of Design and Use Standards for the Downtown Waterfront "to coincide with and inform the MEPA and Article 80 processes" for the Harbor Garage site. The Design and Use Standards planning process, expected to take at least six months, has not yet

begun. By definition, the PNF was not “informed” by the Design and Use Standards. The City’s Climate Ready Downtown planning document has not yet been released. In the absence of a comprehensive plan to address the priorities of accessibility, inclusivity, and resilience on a district-wide basis, a project of this scale and scope should not be allowed to proceed.

Given the Developer’s failure to address accessibility, inclusivity, and resilience, the lack of district-wide design guidelines, and the inadequacy of the impact analysis in the PNF, the Developer should withdraw the PNF and go back to the drawing board. Doing so will allow the BPDA time to develop the Design and Use Standards for the entire downtown planning area that are mandated in the MHP to inform this Article 80 process. Doing so will permit the community the opportunity to identify its near-, medium-, and long-term priorities as called for in the MHP, incorporating the recent learning on equity, open space, and climate in which we are all engaged. Doing so will let the Developer hear and redesign its proposal to respond to community priorities and the very pressing concerns around equity and climate that *must* shape the redevelopment and adaptation of our beloved city. Commencing an Article 80 process in advance of this important work is premature.

* * *

The Aquarium has prepared both a Narrative Appendix and a Technical Appendix to this letter that further detail both the basis for its fundamental opposition to the Project and its specific critiques of the shortcomings of the PNF.

The Narrative Appendix (Appendix I) describes the foundation for the Aquarium’s objections to the Project.

First, the narrative details the Aquarium’s prior participation in the MHP process, making clear that (a) the Aquarium has always reserved its rights to comment on a particular project proposal when put forth and (b) the Aquarium relied on future planning processes to adequately protect both the Aquarium’s interests and those of the broader community in the Downtown Waterfront public realm. Those planning processes are not complete, and the Project clearly has not been designed to reflect community priorities.

Second, the narrative addresses the balance of benefits offered and burdens imposed by the Project. The Project utilizes public land to accommodate its underground garage and other Project elements, introduces a new access point onto Atlantic Avenue that conflicts with pedestrian, vehicular, and bicycle traffic, turns a public way into its driveway, and relies on its neighbors’ land to implement climate change solutions and other ‘public benefits’. The PNF misleadingly adopts certain elements of the Aquarium’s Blueway vision as its own, with the Developer taking credit for the Aquarium’s proposed living shoreline and implying it has the capacity to deliver that vision as part of the Project when it does not. The Project permanently burdens the public by creating substantial wind and shadow impacts on Central Wharf and the Rose Kennedy Greenway — two areas where, with the help of many over a long period of time, significant public funds have been spent to create welcoming pedestrian gathering spaces that have become key destination points for City residents and visitors alike. The Project has not remotely demonstrated that its public benefits outweigh its burdens, a prerequisite for the zoning relief and Chapter 91 waterways license the Project is seeking.

Third, the narrative contrasts the Project’s supposed consideration of accessibility, inclusivity, and resilience, with the reality that the massing, uses, and siting of the Project are antithetical to these principles. Additional design refinement will not change the fundamental nature of the Project: it is an inaccessible, exclusive tower, sited in one of the most climate vulnerable areas of Boston. The Project’s failure to design for these key principles underscores the need to engage in proper district-wide, community-based planning *before* proceeding with development at this site.

The Technical Appendix (Appendix II) contains a detailed critique of the inadequacies of the PNF including specific aspects that must be evaluated in any subsequent submissions by the Developer. The PNF is markedly inadequate, particularly for a project of this scale at this location. It contains inaccurate, misleading, and incomplete information, and astonishingly little detail on nearly every piece of a Project that will impact the public as significantly as this one inevitably will. The limited concrete information that it does disclose ranges from underwhelming to deeply disappointing.

The significant PNF shortcomings outlined in the Technical Appendix include:

- A. the Project’s approach to climate resilience;
- B. the Project’s environmental impacts including wind and shadow;
- C. the Project’s compliance with design guidelines for the Harborpark District and the Greenway District established through planning studies and zoning;
- D. the Project’s compliance with the criteria and standards associated with Planned Developments Areas;
- E. the ability of the Developer to construct both the Project infrastructure and the Project’s purported public benefits within the bounds of the Project site;
- F. the Project’s construction period impacts; and
- G. the Project’s transportation and access impacts.

* * *

As longstanding stewards of Central Wharf and an immediate neighbor of the proposed Project, the Aquarium is alarmed by the threat this Project poses to our City, our waterfront, our neighborhood, and our institution. The Project’s public benefits pale in comparison to its detrimental impacts on the public realm. The Aquarium educates and inspires others to take action to protect the blue planet. The Project’s approach to climate change is thus of fundamental concern. The Developer’s wholly inadequate PNF lays bare its failure to treat these critical items as priorities, revealing the urgent need to engage in a comprehensive planning exercise to ensure that adequate protections for accessibility, inclusivity, and resilience are in place for the district as a whole.

The Aquarium has an alternative vision for this critical location: a waterfront development that acknowledges that climate resiliency cannot wait and supports community-wide solutions to common problems instead of only protecting private interests; a waterfront development that is accessible and welcoming to all visitors instead of one that caters to only the wealthy; and a waterfront development that is thoughtfully planned through an inclusive, transparent, and robust process of community engagement instead of one that is being needlessly rushed through. Put simply, our vision is a “waterfront for all.”

The Developer should withdraw the PNF while the BPDA engages the community and the stakeholders in the district-wide planning effort addressing the public realm and climate resiliency that the MHP requires. Based on the Request for Proposals issued by the City, we are hopeful that the development of the Design and Use Standards will be a robust community process that gets to many of the issues at the heart of the Aquarium's concerns. Only once the resulting standards are substantially complete will it be possible for the community to evaluate project proposals at this critical location. Any redesigned and resubmitted proposal from the Developer must be put forth in an accurate and informative filing depicting a significantly improved design that more effectively addresses accessibility, inclusivity, and climate resilience for this critical section of the downtown waterfront. The Project as presently conceived does not rise to the moment. Boston deserves and must receive better at Central Wharf.

We appreciate the opportunity to comment and value the BPDA's role in helping protect the quality of our urban areas, our open spaces, and our waterfront. As always, my staff, our advisors, and I are available to meet with you, your staff or others to discuss the concerns raised in this letter.

Respectfully submitted,



Vikki N. Spruill
President and CEO

cc.

Mayor Martin J. Walsh
Priscilla Rojas, BPDA Board Chair
Jonathan Greeley, BPDA
Lauren Shurtleff, BPDA
Ebony DaRosa, BPDA
Richard McGuinness, BPDA
Elizabeth Stifel, Boston Civic Design Commission
Christopher Cook, Boston Environment Department
Gregory Rooney, Boston Transportation Department
City Councilor Lydia Edwards
City Councilor Edward Flynn
City Councilor Annissa Essaibi George
City Councilor Michael Flaherty
City Councilor Julia Mejia
City Councilor Michelle Wu
John Romano, Mayor's Office of Neighborhood Services
Senator Joseph Boncore
Representative Aaron Michlewitz
Alexander Strycky, MEPA
Commissioner Martin Suuberg, MassDEP
Daniel Padien, Waterways/Chapter 91 Program Chief, MassDEP

Eric Worrall, Northeast Regional Director, MassDEP
Director Lisa Engler, Coastal Zone Management (CZM)
Secretary Kathleen Theoharides, Executive Office of Energy and Environmental Affairs
Undersecretary Daniel Sieger, EOEEA

Enclosures:

Appendix I: Narrative Appendix
Appendix II: Technical Appendix
Attachment: Letter to Secretary Theoharides re: MEPA EOEEA No. 16247

APPENDIX I – NARRATIVE APPENDIX

I. The Aquarium is Fundamentally Opposed to the Project Because the Principles of the Municipal Harbor Plan Are Not Met.

For perspective with respect to these comments, we must stress that the Project is an enormous threat to, and will have an irreversible negative impact on, the Downtown Waterfront District, the Central Wharf, the Aquarium, and its neighbors. It is the wrong project proposed for the wrong location at the wrong time. The PNF boasts that the Project takes advantage of its central location to support a “user friendly” waterfront by providing access, creating open space, and offering uses to support both objectives. Unfortunately, the Project actually would accomplish none of that. Instead, it would block access from the Greenway and establish such an enormously oppressive and exclusive presence that it would leave no room for these laudable goals.

The Aquarium is not merely a spectator to all that Central Wharf offers. With the support and leadership of the BPDA, we have been activating this once-run down section of the Boston waterfront since opening our doors in 1969. For more than fifty years, we have been a beloved New England destination that draws people to Boston Harbor. Today, we have more than 17,000 members supporting a facility that attracts more than 1.3 million visitors who come to Central Wharf annually to enjoy our exhibits, the Simons Theatre, the Harborwalk and the New England Aquarium Whale Watch. Key to all that we do are our 20,000 animals, which require daily round the clock care and are paramount to our concerns about the Project. We are proud of the leadership role we have played with our neighbors to create what is perhaps Boston’s most treasured outdoor waterfront destination. To that end, we certainly agree that the Project site offers tremendous potential to take advantage of and to build on what has been created since the days of urban renewal. These goals, known and shared by the BPDA, only reinforce the need to get this right at this critical waterfront location – the most significant half mile of waterfront in the City.

As a member of the Advisory Committee for the Downtown Waterfront MHP, the Aquarium participated in the planning process that substituted an alternative Project site height allowance (of 600’), representing a four-fold increase over what would be allowed under the baseline state Chapter 91 standards (up to 150’), in exchange for certain offsets. During the MHP planning process, the Aquarium also engaged in discussions with the BPDA, the Executive Office of Energy and Environmental Affairs, and the Developer regarding what protective provisions would need to be in place to ensure that: (a) the Aquarium would be indemnified against construction-related revenue losses; and (b) adequate parking would be provided during construction and operation for Aquarium’s visitors.¹ The substitute Project site height

¹ The provisions identified reflect the necessary minimum that must be in place on these two narrow issues, but do not address all construction period impacts nor the myriad operational impacts on the Aquarium.

allowances of the MHP cannot be applied unless a legally binding agreement among the Aquarium, the Developer and the City addressing these protective provisions is in place.²

Throughout the MHP planning process, the Aquarium repeatedly emphasized that two fundamental principles were necessary preconditions to its support of *any* development on the Harbor Garage site: (1) protection of the Aquarium as a water dependent facility and a premiere waterfront public destination; and (2) realization of a transformed public realm along Boston's downtown waterfront.³

In November 2016, as a member of the MHP Advisory Committee, we wrote to make it clear to BPDA staff that:

Until the City's proposed design and use standards (under MHP § 3.2.1) are sufficiently developed, the Aquarium (and, again, presumably other stakeholders) cannot have confidence that the vision of the Aquarium's master plan or correspondingly transformative public realm elements throughout the planning area can and will be realized, timely or at all.

As to the substitute height provisions, the Aquarium has consistently stated that the appropriateness of those substitutions could not be evaluated in the absence of a specific project proposal from the Developer:

[W]e are unable at this time to review or evaluate the potential Harbor Garage project implications for issues important to us and other stakeholders such as wind, shadow, parking, traffic congestion, and access to the downtown waterfront. As a result, the Aquarium refrains from comment about the appropriateness of the height substitution or the acceptability of a project at or near the maximum height and density allowed by the MHP. [Proceeding without a developed design] makes it difficult, if not impossible, to assess whether the proposed offsets and any project impact mitigation measures may

² In addition, the validity of the MHP itself (including the substitute height provision for the Project site) is currently under judicial review. See Memorandum of Decision and Order on Defendants' Motion to Dismiss dated October 17, 2019, Suffolk Superior Court Case Nos. 1884CV02132, 1884CV02144. ("It ... is plausible that the 600-foot height limitation imposed on the Garage Property by the Downtown MHP violates the Secretary's legal obligation under the MHP Regulations to ensure that the MHP "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...." [] Such violations can constitute "damage to the environment" for purposes of Section 7A, and, therefore, trigger an immediate right to relief.")

³ "At all times, the Aquarium will insist that its interests as a water-dependent use and the planning area's primary Special Public Destination Facility must be respected and that the interests of all in a transformed public realm throughout the planning area must be realized. All of these are necessary before the Aquarium will be able to decide whether it supports the current development team's vision for the Harbor Garage project." New England Aquarium to Secretary Matthew Beaton *re* Boston Downtown Waterfront Municipal Harbor Plan (February 16 Supplemental Information), dated April 9, 2018.

cumulatively outweigh the detriments from a potential Harbor Garage project significantly larger than that allowed under Chapter 91's baseline standards.⁴

Now that the Aquarium has seen the Developer's proposal for the Pinnacle at Central Wharf, it is clear that neither of the conditions precedent for our support are satisfied. With respect to the first principle, not only does the Project fail to protect the Aquarium, it poses a direct threat to the ability of the public to find, let alone experience, our indoor exhibits and enjoy our outdoor campus. With respect to the second principle, the Project clearly treats the public realm as an afterthought rather than the central design priority that it must be for this site, reflecting the fact that it has been conceived in the absence of a district-wide approach to key collective challenges including climate change, sea level rise, privatization of the waterfront and the protection and enhancement of urban gathering spaces. The PNF makes clear that the Project offsets and mitigation measures do not come anywhere close to outweighing the detriments to the public interest, including those protected by Chapter 91 and the Public Trust Doctrine. The Aquarium has no choice but to voice its strong opposition and to identify the incurable flaws in the Project.

The Aquarium is not against any project at this site, it is against this Project. There is not and never has been any agreement between the Developer and the Aquarium to support the Project. Finally, the Aquarium understands that some might take the view that any project, including the proposed Project, is preferable to existing site conditions at the Property. But this is a false dichotomy; the Developer can and must do better.

II. The Project's Burdens on the Public Substantially Outweigh its Benefits.

We believe the Project approach is fatally flawed. The Developer is asking a great deal from the City, the public, and its neighbors, while providing very little in direct benefit in return. The Project requires zoning relief, a waterways license under M.G.L. ch. 91, and a Public Benefit Determination under the Massachusetts Environmental Policy Act – each of which require that the public benefits must outweigh the burdens.

The Developer asks the City for substantial zoning relief, including a more than 250% height increase (of 430 feet for a total Project height of 600 feet) and a more than doubling of the Floor Area Ratio (FAR) over what would be allowed as of right (for a total Project gross floor area of 865,000 square feet).⁵ While the MHP's substitute height provisions for the Project site have been incorporated into the City's zoning, access to the maximum substitutions is not "as of right." The Developer must still request zoning relief in order to take advantage of them, either in the form of a Planned Development Area (PDA) designation from the Boston Zoning Commission or, failing that, receipt of a variance from the Zoning Board of Appeal. PDAs are permitted under Boston Zoning Code Article 42A within the Downtown Waterfront Subdistrict

⁴ Id.

⁵ Boston Zoning Code Article 42A establishes baseline dimensional requirements for the Project site as a maximum FAR of 4, and a maximum height of one hundred fifty-five (155) feet. The Developer proposes to create 865,000 square feet of development reaching a height of 600 feet.

for limited purposes and under limited circumstances. Under Article 80, Section 80C-4, a PDA plan shall not be approved unless “on balance, *nothing in such plan will be injurious to the neighborhood or otherwise detrimental to the public welfare, weighing all the benefits and burdens*” (emphasis added). The Project will also require a Chapter 91 license from the Department of Environmental Protection and a Public Benefit Determination from the Secretary of Energy and Environmental Affairs. Each of these requires that the Project “*provide a greater public benefit than public detriment to the rights of the public [in tidelands.]*” M.G.L. c.91 § 18.⁶ The Developer has not remotely demonstrated that the public benefits of the Project outweigh the public burdens. Nor has it justified the extraordinary zoning relief requested.

The Developer describes the Project’s primary public benefit as the removal of the Harbor Garage. While removing the garage is a worthwhile objective, replacing it with an exclusive tower that will permanently harm the public realm experience in this critical location and intensify existing climate challenges for its neighbors is simply the wrong path forward. The Developer’s framing has created a false dichotomy, and it is one that the Aquarium refuses to accept. Whatever replaces the garage will be present for a very long time. The City has the responsibility to take the time to get Central Wharf right, rather than approving a project whose principle public benefit is limited to “addition by subtraction.”

Similarly, the Developer has created a false narrative with respect to the Project’s next purported public benefit, its \$10 million dollar contribution to the Blueway. The PNF repeatedly mentions the Aquarium’s Blueway concept, and it incorporates diagrams purporting to illustrate our vision, showing both parties’ sites. The collective impression is of a partnership formed to advance the Project proposal. This could not be further from the truth. In fact, the Aquarium’s Blueway is an evolving concept that is informed and updated by the rapidly changing thinking on climate, resiliency, and the critical role of open space in our cities. Given this ongoing evolution, the Aquarium repeatedly requested that the Developer’s filing accurately portray the interaction between its Project and *existing* site conditions at the Aquarium property. Unfortunately, the Developer instead presented misleading images that imply a partnership and a shared vision. Furthermore, both the PNF and the Developer’s public presentations have misleadingly implied that the Project will substantially subsidize the Blueway. In reality, the proposed financial contribution is a small fraction of what will be required to bring this evolving vision to fruition. The Developer has taken inappropriate liberties in suggesting the Project will be “seamlessly integrated” with the Blueway.

The remainder of the meager public benefits outlined by the Developer consist primarily of financial contributions to future off-site efforts by others, adhering to the legally required lot

⁶ The Project is subject to review under the Massachusetts Environmental Policy Act (MEPA) and the Developer recently filed an Environmental Notification Form (ENF), a necessary precondition to filing for a Chapter 91 license. Given the Commonwealth’s significant interest in Central Wharf and its pivotal role in permitting the Project, the Article 80 and MEPA processes should both be paused until the required district wide planning has been completed. Indeed, in the Certificate of the Secretary on the Developer’s ENF for the prior iteration of the Project, the Secretary “strongly encourage[d] the Proponent to continue to coordinate review of this project” by joining the MEPA and Article 80 processes. To proceed otherwise would frustrate the goal of an “efficient and informed public review of the project” identified by the Secretary. (ENF Certificate, EOEEA No. 14411, July 17, 2009.)

coverage maximum, and leaving the balance of the site open for ‘movable site furniture, planting elements, and opportunities for public art’ (while also, as noted below, using adjacent land to achieve several key Project elements). The public burdens, on the other hand, are substantial and irreversible.

The Developer asks the public to accept significant and irreversible negative wind and shadow impacts caused by the disproportionate height and density of the Project’s monolithic tower. These impacts will be felt deeply by the Aquarium’s patrons and the public in the open spaces on Central Wharf and along the Rose Kennedy Greenway, permanently devaluing the decades of substantial public investment made in those spaces. They will also be felt along the entire waterfront itself, significantly detracting from the public’s ability to enjoy the tidelands and reversing the concept of stepped back building heights that counteracts the privatization of the waterfront. In addition, the Developer’s isolated elevation of its own site in the face of sea level rise stands to exacerbate the impact of storm events on neighboring public and private lands, including those of the Aquarium.

The Developer asks its neighbors to shoulder the construction period and operational burden imposed by the Project. The Aquarium and Central Wharf are going to be directly impacted by dust, noise, vibration, air pollution and traffic during the construction phase of the Project. The Aquarium is an extremely sensitive receptor, given its animal population, its outdoor and indoor exhibits and infrastructure, the number of people it draws, and the fact that it is surrounded on three sides by water. Our outdoor exhibits featuring harbor seals and sea lions as well as the visitors attending those exhibits would be significantly impacted by construction dust, noise, and vibration. Certain animal populations within the building, such as the penguins, are highly sensitive to such impacts as they may be felt inside the building. The health and safety of our animals, visitors, and employees, and the stability of our infrastructure must be paramount. Beyond the construction phase, there will be significant operational phase impacts to the Aquarium. It appears that the families with children walking to the Aquarium along Atlantic Avenue in front of the Project will have to cross an unsignalized mid-block parking garage entrance in order to pass by the Project, creating a constant source of conflict and danger. And, as noted previously, the experience of visitors on the plaza will be harmed by wind and shadow impacts from the Project.

The Developer asks the public and its neighbors to both provide the land for and to implement the envisioned public benefits. Indeed, fundamental aspects of the Project, including transition areas to achieve grade modifications, access to the garage, and key garage elements are all outside of the Developer’s property line, including on property that is publicly owned with no explanation as to the public process to be followed to evaluate the disposition of this property. The Project can neither stand on its own merits nor fit within its own property boundaries. The PNF and the public presentations have included design renderings that obscure this essential fact. None of the Developer’s images reflect that the proposed Project tower is in fact 50% taller than the adjacent Harbor Towers, and that it is massively out of scale for the setting. Nor do they accurately convey the disjunction between the Project’s elevated plinth and the lower surrounding land on all sides – an abrupt shift facilitated by ramps at grades up to 8% that would render the contemplated signature public space fragmented and uninviting. These images furthermore take great liberties by suggesting that the Greenway, portions of East India Row, and

the existing park area between 255 State Street and the Project site are part of the Project's proposed open space.

The 42-acre Downtown Waterfront District includes what has the potential to be the most visible and accessible half mile of waterfront in the entire City of Boston. This half mile connects the publicly created Greenway to the publicly cleaned Harbor. Its singular importance in connecting the City to the Sea gave rise to the overarching themes in the MHP that require developers and the public to think holistically about opportunities to improve the public realm, water transportation and inclusive activation of the waterfront. Central Wharf offers a once-in-a-generation opportunity for an inviting, accessible public realm that connects the Greenway and Boston Harbor at a critical portion of our downtown waterfront. The Aquarium has been deeply disappointed to see that the Project is either incompatible with or does very little to advance five of the BPDA's six stated goals for the Downtown Waterfront that formed the foundation of the MHP process. The Project does not promote water transportation, impedes waterfront wayfinding, negatively impacts the pedestrian experience in critical open spaces, fails to engage with its surroundings on climate resiliency, and directly violates the Greenway District Planning Study Wharf District Guidelines. If the Developer had taken this opportunity to fashion a transformational project that was guided by these goals and provided significant corresponding public benefits, there might be a path forward. However, the Project fails to even attempt to look at this area in a way that puts the City and the public first. Instead, the Developer has designed something that will detract from the goals of increasing public access, inclusivity and districtwide resiliency.

The public and the BPDA must decide whether the irreversible damage to the public realm in and around the Project site is balanced out by the purported public benefits. From the Aquarium's perspective, the answer is no.

III. The Project Fails on Accessibility, Inclusivity, and Climate Resiliency. Absent a District-wide Plan Assuring Protection of These Priorities, A Project of this Scale and Scope Should Not be Allowed to Go Forward.

Even if supplemented by additional analysis and design development, the Project proposes an unacceptable vision for Central Wharf. The Project treats the public realm and the significant impacts of shadow and wind on the pedestrian experience as an afterthought rather than a fundamental design priority. The Project proposes high end office and luxury residential uses, which are by their very nature are not welcoming or inclusive. The Project takes a myopic view of climate realities, designing a single-site solution (inadequate at that) to protect private investment that would deflect impacts onto abutting properties.

The past few years have brought us new climate data and a corresponding evolution of thinking in resilient design principles. The past few months have brought us a new understanding of the value of the public realm and open space in our cities and the vital importance of these spaces for public health. Recent events have focused our collective attention on systemic racism, and the historic real estate development practices that excluded communities of color from desirable locations. The confluence of these three factors creates an urgent need for

a comprehensive plan to preserve, protect, and enhance our downtown waterfront, where the public realm and climate resiliency overlap. As noted below, development of such a plan was explicitly called for in the Secretary's approval of the MHP, in order to "inform the MEPA and Article 80 processes" for proposed projects.

As owner of one of the key sites in the Downtown Waterfront area and an active participant in the MHP process, the Developer has an obligation to contribute to the development of the required plan before putting forth a site specific proposal. In the absence of such a plan, a project of this scale and scope that relies on the MHP substitute provisions and fails to adequately address either of these priorities neither can nor should be allowed to go forward.

Accessibility: The Project Treats the Public Realm as an Afterthought

Central Wharf is the place where the heart of the financial district meets the harbor in a potentially public and celebratory way. It is distinct in its sequential open spaces that move from the Greenway to the grove, to the Aquarium plaza, and then to the Harborwalk and shoreline. It is a local, regional, and national draw, and a place where people of all ages and from all racial and socio-economic backgrounds are welcomed and have access to a truly unique and inclusive experience. As the Boston Civic Design Commission has pointed out, Central Wharf offers the City the chance to create a truly compelling "central" public waterfront space similar to those seen in Seattle and Toronto. At Central Wharf, such a reimagining would also significantly leverage the public investment in the creation of the Rose Kennedy Greenway. This is an opportunity that cannot be missed.

Instead, the Developer has put forth a vision that, stripped of all its rhetorical excess, is simple: one of Downtown Boston's tallest towers, on top of an elevated platform of the sort rejected since the 1950s' and 1960s' dehumanizing urban renewal projects.

The Developer proclaims that its project "in many ways represent[s] a model waterfront project for this unique urban context" based on the open space created by the removal of the garage now covering nearly the entire site. While the Project has complied with Chapter 91's mandate to keep half of its site open to the sky, portions of it are taken over by the need for transitions of grade and parking entries which make the public realm experience suboptimal for this site. Other than meeting this minimum open space requirement, the Developer's specific proposals for its site are limited to only:

- sidewalk reconstruction (and, where possible, widening);
- ramps up to the elevated platform (as required by ADA);
- planting elements and "opportunities for public art;"
- street lighting improvements (where necessary); and
- bicycle storage facilities and "movable site furniture."

Furthermore, the Project will create significant negative impacts on the pedestrian experience in the public realm for visitors to the Greenway, Central Wharf, and the Aquarium.

The scale of the tower is directly in conflict with creating a pedestrian friendly environment adjacent to it, with a massive building base ranging from a minimum of 120' to

215'. This massiveness is compounded by the overtly tall mullions reaching to these heights directly from the ground. (In some ways being next to the building on the plaza is similar to standing next to Hancock Tower along Clarendon Street in the Back Bay, but not as iconic.)

The shadow and wind impacts of this building will also be quite severe on the pedestrian environment around the tower. The Developer has included in the PNF a shadow study of just one day (Oct 23) which does very little to convey the true impact of a project of such scale and magnitude. In reality, significant areas of both the Greenway and the Harbor would be in the shadow of the proposed tower for more than a few hours of the day even during the summer. This would impact the outdoor comfort of Aquarium patrons using the plaza and the Harborwalk during the times when these spaces are most utilized by visitors and the community.

The proposed 600 ft tower would not only cast these public circulation areas in deep shadow, it would potentially engulf them in a wind tunnel, one block or less away from the water's edge. This would hamper the ability to travel comfortably on the public way and potentially disrupt the pedestrian circulation. An area that is highly wind swept and dark during almost all parts of the day becomes uninviting to the pedestrian. Moreover, the proposed 600 ft. tower casts a deep shadow on the adjacent properties during the winter months, which would be whipped by both a wind shear (downdraught effect) caused by the proposed tower and by strong gusts of wind from the Harbor. This would cause a substantial impact on the lived public experience especially on pedestrian movements.

Furthermore, for spaces like the waterfront where significant pedestrian activity is expected given the surrounding waterfront activation uses and the nearby public destinations, stand-alone shadow and wind studies do not adequately describe the real impacts experienced by people. Instead, a composite analysis such as a universal thermal comfort index is required to measure the as-felt comfort of people as a combined result of shadows, wind, solar radiation, reradiation, humidity, etc. The Developer needs to provide such a comprehensive outdoor thermal comfort analysis. This analysis should also consider the usage times of the context programs, such as the Aquarium and harbor tours which happens to be predominant during the afternoon and evening hours where the building will cast significant shadows where pedestrians are expected to congregate along the northern and eastern portion of the building.

Inclusivity: A Tower Comprised of Luxury Residential and High-End Office Uses is Exclusive By Design

At the most recent Article 80 public meeting for this Project, we heard many echo the Aquarium's concerns about overloading Central Wharf with exclusive uses not open to Boston's diverse communities. We listened to a representative of a nearby affordable building say her community had been isolated by the elevated highway for 50 years, and her neighbors did not want to be cut off again by an exclusive tower. We heard people of color say inclusivity is not about whether the doors of a building are open to them, but about what the uses and tenants are inside. We heard some say that a commitment to equity is not window dressing, that it must be built into the very concept of the building. We listened to another say that in a time of a housing / affordability / livability crisis in the City of Boston, a project that is unaffordable is by definition not inclusive. We heard City Councilor Julia Mejia talk about breaking down barriers,

seizing the moment in this time of public dialogue, and building intentionally with community in mind.

The themes that have emerged from these community discussions suggest the Developer should reflect community priorities and identify bold uses for the building, both at the ground floor / publicly accessible levels and in the interior office and residential spaces that change who this building is for. Community suggestions included setting aside commercial office space at far below market rent for non-profits serving communities of color, committing to meeting affordable housing requirements on-site, and incorporating creative publicly accessible ground floor uses that do not require payment for goods and services. A project of this size seeking substantial permitting relief needs to incorporate these considerations into the building concept itself.

The project described in the PNF addresses none of these concerns. Instead, in response to these concerns, we heard the Developer ask the community at the public meeting for suggested modifications to “flip the script” on diversity and inclusion. While the Aquarium is in listening and learning mode on these important issues, we’re certain this is about more than changing the narrative. No amount of tinkering around the edges can transform a luxury residential and high-end office project that is *intentionally exclusive* into an inclusive one.

Furthermore, even the spaces within the Project that are required under Chapter 91 to be open to the public are not particularly welcoming. Given the density of development, a substantial amount of the ground floor is dedicated to elevator lobbies, leaving very little space for Facilities of Public Accommodation that support the public spaces outside. Even these uses are characterized as high-end restaurants and, coupled with the scale of the massing, this Project will exclude a diverse section of the population from accessing the waterfront.

Climate Resilience: A New Massive Tower on the Water’s Edge is by Definition Not Climate Resilient Development

Central Wharf, home to the Project site, is uniquely vulnerable to the impacts of climate change. Long Wharf and Central Wharf represent an urban coastal low point where water currently comes ashore during major storm events. It is also an area identified as a near-term flood path for the downtown waterfront area in Climate Ready Boston. Solutions to this vulnerability must be collaborative, incorporating a district-wide perspective upon the climate resiliency measures that all agree are needed, and avoiding merely deflecting impacts from the Project site onto adjacent properties. The Developer must also specifically demonstrate how this can be achieved. No amount of creative writing will replace the need to apply science to this site and to the entire area as we consider the challenges of climate change, sea level rise and the need for resiliency.

The construction of a new massive tower at the water’s edge is by definition not climate resilient development. Ultimately, public funds will have to be spent on a comprehensive district-wide approach to adapt the existing waterfront to sea level rise, and the construction of this Project will certainly increase that public burden. The Project claims to be a climate resilience catalyst, but the PNF devotes just three of 563 pages to this topic, barely referencing the City’s Climate Ready Boston Plan. The Developer proposes a simplistic plan for its own site

of elevating its base elevation by four feet, an approach not even adequate under projected sea level rise flood elevations. And, while the Developer appears to propose various living shoreline improvements east of its site on property it does not own, a careful read of the PNF reveals that it is committed to no more than “coordinat[ing] with abutters to explore measures to install a ‘living shoreline’ [landward] of the existing seawall.”

As proposed, the resiliency strategies raise unresolved questions, lack the district-level coordination that is required both for resiliency and flooding efforts generally and as articulated in planning studies like Climate Ready Boston, create significant barriers and impediments that degrade the urban fabric and experience around it, and could potentially cause harm to surrounding buildings, open spaces, and public infrastructure. Coordination across multiple properties and public rights of way is important in order to develop integrated solutions that serve multiple aims and multiple landholders and the public in beneficial ways, and minimize negative impacts to any one property, landholder, or the public

The proposal creates an elevated podium that is removed from the public realm, creates an isolated base separate from surrounding streets and the proposed Blueway, and then privatizes it as outdoor seating for a waterfront restaurant. The proposal creates vertical barriers on three sides--creating unnecessary separation from the street. It creates a wall along the proposed Blueway, and then separates the elevated podium from the streets and public realm at the lower, existing level. This in fact divides up what is already a tight urban space and makes it feel more cramped, less public, less accessible. It also creates a steep edge along the waterfront and potentially forecloses more thoughtful district-wide approaches.

In contrast, an integrated resiliency approach would allow for seamless integration of flood control measures across multiple properties and rights of way, eliminating the types of vertical barriers proposed here, and instead using comprehensive grading solutions to create continuous flood control and public realm solutions that protect all stakeholders and improve the experience of the walking and biking public.

The Project Cannot Proceed in the Absence of a District Wide Approach to These Priorities

If recent experience has taught us anything about city planning, it’s that we need to work together to confront existential threats. Climate change is one such threat. The past few months have exposed our vulnerability to another such threat and shown us that availability of open space and associated air quality health benefits are directly linked to a community’s ability to combat a pandemic. As Boston Harbor Now’s Kathy Abbot recently opined in *The Boston Globe*,

This moment of tabula rasa in parks and the city as a whole has suddenly and dramatically clarified something critical for moving forward: We have to stop thinking about parks as one-off, leftover spaces amid development. [] Prioritizing, rethinking, and climate-proofing public open spaces are no longer just nice ideas. This need is as

*great a threat to our public health and economy as the current pandemic. It should be clear to all by now that these spaces make our city thrive and support our public health.*⁷

Recognizing that building climate resiliency and preserving and enhancing public open space are challenges that must *by necessity* be addressed at a district wide level, the Secretary made the development of such a district wide plan a condition of his MHP approval. The BPDA is required to “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” (emphasis added). These Design and Use Standards must be based on community consensus about design priorities, must protect and enhance public open space, the Harborwalk, and the public realm, and must establish a district-wide approach to climate resilience. While the Secretary anticipated that the BPDA would be developing such a plan for the downtown district in the near term as “one of the next areas of focus”, that BPDA has only just issued a Request for Proposals and the planning process has not yet begun. And the City’s long awaited Climate Ready Downtown plan has not yet been released.

As the Secretary affirmed in 2018, the development of such a district wide plan is a central offsetting measure designed to mitigate the public realm impacts of the substitute height provisions of the MHP. Without such a plan in place, a project designed to take advantage of these substitution provisions *cannot proceed*. Both the MHP and common sense dictate that the district wide planning must precede site specific project proposal and evaluation. Even putting aside the requirements of the MHP, it would be foolhardy to proceed with a project so out of scale and that stands to impose such a massive impact on its surroundings before district-wide protective provisions that incorporate the latest science, data, and thinking are in place.

This process is about determining the future of the downtown waterfront. Our urban waterfront must be more resilient, more accessible, and more inviting as a public gathering place than it currently is. An integrated approach to rethinking this resource in a manner that leverages the current planning and guidance documents, incorporates the latest climate science data, and that treats the community and public realm as more than an afterthought is the only feasible path forward. But the Project proposal instead offers only an isolated, massive tower, set in a diminished and privatized public realm, and out of scale with its waterfront location. The absence of engagement with neighbors and other stakeholders during the planning and design process is evidenced by the lack of attention paid to these critical issues.

* * *

Given the inaccuracies and inadequacies of the PNF, the fundamental imbalance of benefits and burdens associated with the Project, the failure to design for accessibility, inclusion, and climate resiliency, and the lack of district-wide planning on these critical issues, the Developer should withdraw the PNF and go back to the drawing board.

⁷ The Boston Globe, May 4, 2020. “[The] status quo practices for land-use planning need to be shifted. Instead of inserting small, isolated green spaces into new development as required by regulation while continuing to rely on some of the city’s most historic and heavily used parks to meet community needs, leaders need to prioritize creating the next new system of world-class contiguous paths, parks, and public spaces.”

APPENDIX II – TECHNICAL APPENDIX

COMMENTS ON PNF AND AREAS REQUIRING ADDITIONAL REVIEW

The following are a few of the critical areas that must be examined in further detail in a revised and resubmitted PNF.

A. Approach to Climate Resiliency

1. A key component of our mission at the Aquarium is to educate and inspire others to take action to protect the blue planet. We conduct rigorous research to find solutions to ocean threats. We carry out all of our work with an eye toward a changing climate. Climate change is at the heart of our concerns with the proposed Project. The PNF is so vague on this threshold aspect of the Project that we are unable to evaluate it. Because this is the case, the Developer should revise and resubmit the PNF.

What little information is provided suggests the Developer has picked and chosen favorable thresholds when it comes to the simplest of potential resiliency measures, elevating the building's ground floor. The Project proposes a plinth elevation of 21 feet above Boston City Base (BCB), with a base height of 21.5 feet at the water's edge. The City's "Climate Ready Boston" plan for Downtown, anticipating a sea level rise of 40 inches by 2070 and a 1% storm, however, calls for a height of 22.96 feet above BCB. (§ 2.2.8, § 2.5.1.1, § 2.5.1.2).

2. The PNF also fails to provide sufficient information to assess the strengths and weaknesses of most aspects of its climate change resilience approaches. It does not provide design criteria or specifications for the proposed flood protection measures. Nor does the PNF explain how the Project would advance district-scale coastal flood resilience, including tie-ins with adjacent property owners. And the PNF's suggestion for a living shoreline not only lacks detail, but requires the use of adjacent properties not owned or controlled by the Developer. Similar claims of creating a "Porch" for "the city and the region" likewise rely on the uses of others' land. The coordination and integration required for the climate resiliency proposal as outlined conceptually in the PNF has not been completed and is critical to its success as a resilience measure and a meaningful social and ecological asset.
3. The Project's stormwater strategy is similarly lacking. (§ 2.5.2). The Developer gives no specific information regarding the location and type of any contemplated stormwater management system. And it notes that "the co-occurrence of precipitation with high tide or coastal flood events (that) can exacerbate flooding as stormwater cannot leave outfalls and may back up on normally dry land." We interpret this language as an admission that such events would result in flooding neighboring properties.

4. The Project has not demonstrated how it complies with the key existing climate planning standards and guidelines:
 - a. *Climate Ready Boston Final Report (2016)* – The Report identifies Central Wharf as a low-lying area exposed to high-probability storm events and the Downtown as an area that calls for holistic flood protection solutions. The Project’s self-isolation approach ignores these realities and does not engage in any way on a district-scale protection plan.
 - b. *Downtown Boston Municipal Harbor Plan (2017/2018)* – The Plan suggests the Downtown Waterfront should serve as the City’s first Flood Resiliency District, “with property owners collectively evaluating risks of future sea level rise, district wide measures that can be implemented to reduce the risk and potential future damage, as well as funding mechanisms for area-wide infrastructure enhancements. Measures to consider could include offshore storm surge barriers and wave attenuators to break up wave action; armoring and fender systems at the ends of piers and wharves; and the elevation and utilization of waterfront plazas and Harborwalk as a heightened seawall that can protect the district from inundation while continuing to provide public waterfront access.” The Project does not reflect the cooperative approach recommended in the Plan.
 - c. *Climate Action Plan Update (2019)* – The Update suggests that open space can serve as protective infrastructure in coastal areas and flood zones. The Project’s on-site open space does not appear designed to serve that function.
 - d. *Downtown Neighborhood Guide: Climate Ready Downtown* – While the full Climate Ready Downtown plan has yet to be released, the Neighborhood Guide acknowledges that the Project locus will be exposed to significant flooding resulting in significant economic losses. The Guide emphasizes that near term protection is needed and that district-scale adaptation is essential. The Project makes no attempt to engage in district-scale adaptation.
 - e. *Coastal Flood Resilience Design Guidelines (2019)* – The Guidelines call for district-scale strategies including waterfront parks, vegetated berms, Harborwalk barriers and raised roadways, and identify a series of landscape adaptation strategies. These design considerations do not appear to be incorporated in the Project.
 - f. *Green Ribbon Commission – Expanding Boston’s Capacity to Build Coastal Resilience Infrastructure (2020)* – The Report suggests that the current site-by-site approach to incorporating climate resiliency measures “does not provide the necessary level of consistency or predictability to effectively advance coastal protection at the district-scale.”

The Developer should be required to significantly revise its climate resiliency concept and advance its design in consultation with its abutters who stand to be directly and substantially impacted by its proposal. The Developer must demonstrate how the Project will comply with the design standards identified in prior planning efforts and set out in the forthcoming Climate Ready Downtown.

B. Wind and Shadow Impacts

1. Despite the extensive, multi-year development of the Project, the fact that this Project is designed as one of the largest and tallest buildings ever constructed in Boston, and that it is proposed to be located directly adjacent to the waterfront in an area of some of the most significant high pedestrian activity in the City, the Developer did not bother conducting a wind study before preparing the PNF (§ 2.2.2). Assessing wind impacts is fundamental to the review of the Project. Minimization of wind impacts is a key requirement of the design and environmental standards applicable in both the Greenway Overlay District and the Downtown Waterfront Subdistrict that govern the Project site. Delaying this essential analysis indicates a serious lack of concern for the actual pedestrian experience at the ground level in this area with significant pedestrian activity.
2. The PNF evidences a similar disregard for shadow impacts on the pedestrian experience. The single diagram included in the PNF (Figure 2-21) evaluates shadow on only one date (October 23), but even this analysis shows significant net new shadow over existing conditions in many public realm areas, including parts of the Greenway and Central Wharf (§ 2.2.1). Deferring this analysis to the DPIR reveals that the Developer is treating shadow, like wind, as an afterthought rather than a fundamental design consideration.

As a practical matter, the fact that the main pedestrian congregating areas on Central Wharf are north of the Project means that shadow impacts are an important factor, since those spaces will be in shadow as the sun moves from east to west throughout the day. This is a particular issue for the Aquarium as our visitors make extensive use of Central Wharf's open spaces both in the summer and shoulder seasons. The areas where pedestrian congregate in the late afternoon and early evening for Aquarium programming and nearby Harbor tours will experience significant shadow impacts from the Project.

3. The Aquarium has commissioned a shadow study which shows that the impacts to Central Wharf, the adjacent public realm and Boston Harbor are significant. Key areas of public circulation and pedestrian activity will be cast in deep shadow. Pedestrians will be discouraged from congregating in the outdoor plaza and traversing the public ways by both the deep shadows and the significant wind conditions.

Given the Aquarium's designation as the primary Special Public Destination Facility in the Downtown Waterfront District, its status as one of New England's top tourist attractions, and its renown as a world-famous cultural/educational/environmental research institution, we feel strongly that special consideration should be given to the Project's wind and shadow impacts on the Aquarium visitor. The Project should be designed to deliver an overall environmental comfort factor as respects wind and shadow that protects and enhances the location as a signature Boston pedestrian destination.

Because time of year is relevant to both Project impacts and the number of pedestrians who experience those impacts, we request that the Developer evaluate wind and shadow impacts

during the peak visiting periods of February, April and December school vacation weeks as well as the summer visitor peak of the months of June through August. A composite analysis such as a universal thermal comfort index is required to measure the as-felt comfort of people as a combined result of shadows, wind, solar radiation, reradiation, humidity, etc.

C. Compliance with Design Guidelines for Greenway District, Harborpark District

1. The Project appears to be designed in direct contravention of design guidelines for the area. The Developer should be required to demonstrate how the Project will comply with the Urban Design Guidelines for the Harborpark District, including the requirements that projects shall “reinforce the traditional pattern, height and massing of the urban waterfront” and that building elements shall “generally step down in height towards the water’s edge.” (Section 42A-8).
2. The Developer should be required to demonstrate how the Project will comply with the Use and Development Guidelines established by the Greenway District Planning Study. This study specifically calls out the Project site and notes the responsibility of the Developer to protect the Greenway from excessive wind and shadow, recommending a height limit of 200 feet for the Project site.⁸ The Developer should be required to demonstrate how the Project will comply with the design guidelines established in the Code for the Greenway Overlay District, including the requirement that “exterior proportions, scale, [and] massing ... are compatible with the observable historical and architectural character of other buildings in the area ... in a manner consistent with ... the Greenway District Planning Study.” (Section 49A-7).

The Developer should be required to detail the Project’s compliance with all design criteria and guidelines applicable to the Project Site, the Harborpark District, and the Greenway District so that the public may evaluate whether the numerous deviations are justified by the Project’s supposed benefits.

D. Compliance with Planned Development Area Criteria and Standards

The PNF’s discussion of Zoning and Regulatory Controls provides only the most cursory overview (§ 1.5). As noted previously, the Project will require significant zoning relief and the PNF states the Developer intends to accomplish that relief through a PDA designation.

⁸ See Greenway District Planning Study Use and Development Guidelines (2010) at p. 20:

The Boston Harbor Garage site presents a richness of possibility, boasting proximity to the harbor, adjacency to the New England Aquarium and the hub of tourist activity, and frontage along some of the “greenest” parts of the Greenway. These and other advantages also bring with them certain responsibilities, including enhancing waterfront visibility and access, responding to the urgent need for publicly accessible and active edges, and protecting the Greenway from excessive shadow or wind effects. A height limit of 200’ at this location, in conjunction with a varied building profile, can provide the porosity necessary to ensure that the same east-west visual access to the water inherent in most other Wharf District parcels. Ground floor uses should complement the nearby destinations and should enhance enjoyment of both the water and the Greenway.

PDA's are allowed within the Downtown Waterfront Subdistrict only for limited purposes and must meet certain standards. The Developer has not identified which of the PDA purposes established for the Downtown Waterfront Subdistrict the Project is designed to serve (Section 42A-116B of the Code). The Developer has not identified how the Project will meet the design and environmental standards established for PDA's, including the requirement to minimize shadows on parkland and open space and to avoid excessive and uncomfortable wind conditions (Section 42A-16G). The Developer has not identified how it will demonstrate compliance with the general standards for PDA's, including the requirement that a Project conform to the planning in place for the area, and the requirement that the benefits of the Project outweigh the burdens (Section 80C-4). The Developer has not identified how it meets the BPDA's PDA Policy Guidance for Developers requiring that a Project provide "significant mitigation and public benefits for the immediate area and surrounding neighborhood" (BPDA Policy Memorandum, August 14, 2014).

The Developer should be required to affirmatively demonstrate compliance with all applicable PDA criteria and standards so that the public may weigh in on whether the specific height and density relief sought through the PDA mechanism is warranted by the Project.

E. Site Control

1. Several images in the PNF reveal that several Project elements (both above and below ground) are located not on land owned by the Developer but instead on public land or land privately held by other parties.
2. The Developer must confirm the agreements in place to use these areas or revise the Project accordingly. For example, a portion of the garage infrastructure appears to be located beneath East India Row (Fig. 2-14) and the PNF makes reference to the need to make use of this off-site area to "accommodate the proposed resiliency improvements." (§ 1.6.3). There is also confusion about how the underground garage will be accessed and the process to be taken to obtain the necessary approvals to obtain access from the adjacent public ways. We note that the site's boundary with Atlantic Avenue is also the limit of the state highway in that location and that the sidewalk treatment, the use of the surface street system, and the accommodation of pedestrians and bicyclists in this corridor were all addressed as a part of the "Surface Transportation Action Forum," an extensive public outreach and permitting process that was completed as a part of the Central Artery/Tunnel Project
3. The Developer must provide similar clarity with respect to the envisioned public benefits, including the 'Porch' and the living shoreline which clearly require the use of land of others. How would the Project design and associated public benefits change if the Project is confined to Project site itself?

The Developer should be required to provide a clear explanation of the self-contained and spill-over alternatives, so that the public may evaluate whether what is being asked of the public and the abutters is justified by the supposed benefits. The Developer should be

required to provide clear renderings showing the Project’s on-site proposal in the context of existing conditions off-site, rather than alongside future off-site conditions that may or may not materialize.

F. Construction Period Impacts

The Aquarium and Central Wharf are going to be directly impacted by dust, noise, vibration, air pollution and traffic during the construction phase of the Project. The Aquarium is an extremely sensitive receptor, given its animal population, its outdoor and indoor exhibits and infrastructure, the number of people it draws, and the fact that it is surrounded on three sides by water. Our outdoor exhibits featuring harbor seals and sea lions as well as the visitors attending those exhibits would be significantly impacted by construction dust, noise, and vibration. Certain animal populations within the building, such as the penguins, are highly sensitive to such impacts as they may be felt inside the building. The health and safety of our animals, visitors, and employees, and the stability of our infrastructure must be paramount. The Developer should be required to identify how it will prevent and mitigate construction and operation period impacts.

The Developer should be required to conduct a noise and vibration assessment to analyze the potential impacts that may occur during construction and the subsequent occupancy/operation of the Project.

G. Transportation

1. Overall Concerns - There are numerous deficiencies in the PNF Transportation Analysis (§ 2.1) which both underestimate the transportation impacts of the Project and impede the public’s ability to properly evaluate the Project. The PNF’s trip generation calculations do not follow accepted standards. They are thus understated by thousands of weekday trips. The base parking ratios used in the analysis are substantially below the applicable Boston Transportation Department (“BTD”) guidelines. Contrary to the appropriate methodology, traffic analyses were calculated while omitting multiple other significant development projects for the area. The resulting calculations included in the PNF are therefore wrong. And perhaps most appallingly, the PNF contains almost no concrete information on transportation mitigation, instead deferring any discussion of mitigation to the Transportation Access Plan Agreement (“TAPA”). The TAPA is a document negotiated with the Boston Transportation Department outside of the Article 80 public review and comment process, and provides no forum for public discussion. Refusing to engage with the public on mitigation measures for such a substantial Project flies in the face of the fundamental transparency goals of the Large Project Review process.
2. Existing Conditions – Base traffic volume data was collected in late June of 2018. This data set likely underestimates actual average conditions because area colleges and universities are out of session and commuters are taking summer vacations. In addition, the seasonal adjustment (comparison of June traffic volumes to traffic volumes under “average-month” conditions) was not completed in accordance with MassDOT standards.

(§ 2.1.2.5). Finally, the existing crash data analysis does not reflect that certain nearby locations (Cross Street and Surface Artery north of Fulton Street, and Atlantic Avenue and Purchase Street south of Summer Street) are designated by MassDOT as high pedestrian crash cluster locations for 2007-2016. (§ 2.1.2.5).

The Developer should collect baseline data that more properly reflects year-round conditions in the city and should enhance its crash analysis to identify causes and develop solutions.

3. Future No-Build Condition – The PNF improperly establishes the horizon year as 2026. The horizon year should be 2027, in accordance with the MassDOT standard of seven years from the date of publication. (§ 2.1.3). It appears that the South Station Expansion Project, now under construction, was not included in the assessment, and as such the future condition traffic volumes may be understated and transit analysis may not reflect the correct ridership and capacity. (§ 2.1.3.2). Impacts associated with the alternative plans that are being advanced for reestablishing the use or replacement of the Northern Avenue Bridge were not included in the future conditions analysis, a discrepancy which results in an underestimation of traffic volumes and impacts to the Atlantic Avenue corridor. Future traffic volumes also fail to account for at least four background projects in the study area (15-19 Congress, 250 Franklin Street, One Post Office Square and 155 Portland Street).

Traffic volume networks were not provided for the background development projects that were identified and backup data was not provided to support the background traffic growth rate that was used. (§ 2.1.3.1).

The Developer must be asked to address these issues and to correct these background assumptions so that build and no-build conditions can be properly compared.

4. Future Build Condition – The PNF underestimates the build condition traffic volumes because the trip calculations were performed using average trip rates rather than regression equations, which are the accepted standard. As a result, the base trips calculations for the Project may be understated by more than 2,900 vehicle trips per average weekday. (§ 2.1.4.6). Trip calculations to substantiate traffic associated with public and private parking at the Project site were not provided. Nor were the trips associated with the public and private parking that will be displaced from the Project site accounted for.

The Developer must correct these build condition assumptions so that build and no-build conditions can be properly compared.

5. Parking Program – With respect to off-street parking, the Developer represents that it will reduce the parking capacity of the Project site from 1,475 spaces to 1,100 spaces while simultaneously adding over 864,000 square feet of new uses that will generate their own parking demand. The Developer has not provided a clear accounting of the minimum

number of spaces that would be required to support this level of development under Article 26 of the Code, nor why it has chosen to apply a proposed parking ratio to its development uses that is less than that contained within the applicable BTD guidelines. (§ 1.5.4, § 2.1.4.2). The Developer apparently intends to utilize shared parking to address the mismatch between the development size and the parking capacity, but has provided no explanation of how it intends to implement shared parking among the various parking users, nor how it estimated the shared parking occupancy (§ 2.1.4.3). The Developer has not provided a clear explanation for how the needs of non-Project users including Aquarium visitors and staff and Harbor Towers residents will be met. The Developer has attempted to justify the proposed reduction in public parking by stating that parking demands in the downtown neighborhoods are declining, but has provided no basis for that statement. Finally, the traffic and parking analysis fails to account for the impact on the surrounding area traffic due to the proposed reduction in parking on the Project site. An overall reduction in site parking could lead to could create more queuing and vehicle circulation as drivers search for alternative parking locations, addition to existing congestion.

The Developer must provide a clear accounting of base parking requirements relative to proposed parking and how spaces will be allocated among uses so that the public may evaluate whether the Project is appropriately sized in relation to the proposed parking capacity.

6. Capacity Analysis – The intersection capacity analysis was not performed with the appropriate methodology. It should have been performed using the 2000 Highway Capacity Manual methodology as required by MassDOT, rather than the Synchro traffic operations analysis model. (§ 2.1.5). Even using the incorrect methodology, the capacity analysis indicates that vehicle queues will cause backups creating problematic conditions on Atlantic Avenue (for northbound traffic) and East India Row (backing up into the proposed parking garage), and will most certainly introduce conflict with important and large pedestrian and bicycle flows. This analysis suggest the proposed ingress/egress locations and flows may be improperly designed. Vehicle queue diagrams are needed to properly assess the impacts on access and circulation that will result from queue spill-back through study area intersections. The transit capacity analysis should include the South Station Expansion project and should substantiate the trips assigned to the Blue Line. (§ 2.1.6). The capacity analysis should also include an assessment of pedestrian capacities.

Given the proximity of the Project site to the Aquarium and the particular travel patterns generated by Aquarium visitors, the Developer should prepare a capacity analysis that includes Aquarium peak visitation (school vacation weeks in February, April and December, summer months of June, July, and August).

The Developer must revise the capacity analysis to properly evaluate the capacities of the transit, pedestrian, and traffic networks to accommodate the Project.

7. Transportation Mitigation – The PNF gives short shrift to transportation mitigation, identifying only general goals with few specifics. The PNF suggests that appropriate mitigation measures will be determined as part of the TAPA process with BTDA, but doing so avoids a fundamental part of this process. The TAPA process is not open to public comment and provides no forum for public discussion of mitigation measures. Deferring discussion of transportation mitigation to the TAPA for a project of this size with such significant transportation impacts is wholly inappropriate.

To identify just one area where mitigation will certainly be required, the PNF does not address how traffic congestion exiting from the underground garage onto Atlantic Avenue will be addressed, particularly in the peak hours, and how existing peak hour Atlantic Ave congestion may be further exacerbated by the Project's proposed increase in commercial use. As the BPDA is aware, peak hour egress from underground garages onto roadways that already experience baseline peak hour backup is a significant issue in the City. This condition is a major source of congestion at numerous locations near the Project site, including Purchase Street (125 High Street and International Place), Congress Street (Atlantic Wharf), International Place (97 Purchase Street). A police detail is often required to navigate the conflicts created by such conditions.

Significantly, families visiting the Aquarium with their children travelling along Atlantic Avenue will be forced by the proposed design to navigate an unsignalized parking garage entrance/exit mid-block. This sort of situation is bound to create tension and conflicts at an unexpected location for these pedestrians, many of whom might not be anticipating the need to keep their children in close check in the middle of a block that is otherwise a pedestrian sidewalk.

The Developer must identify the specific mitigation measures it intends to provide for public review and comment during the Article 80 process, rather than defer all discussion to the TAPA.



October 9, 2020

Kathleen Theoharides, Secretary
Executive Office of Energy and Environmental Affairs
100 Cambridge St., Suite 900
Boston, MA 02114

Via E-mail

Re: The Pinnacle at Central Wharf – Environmental Notification Form - EOEEA No. 16247

Dear Secretary Theoharides:

The New England Aquarium writes to comment on the Environmental Notification Form (“ENF”) submitted to the Massachusetts Environmental Policy Act Office (“MEPA”) by RHDC 70 East India LLC /The Chiofaro Company (the “Developer”) for the Pinnacle at Central Wharf (the “Project”). The Aquarium is one of Boston’s most treasured institutions, serves as a leading advocate for our blue planet, and has been an anchoring pioneer and steward of Central Wharf for over half a century. We are an abutter to the Project, a water dependent use and the designated Special Public Destination Facility on the downtown waterfront. We find the ENF and the Developer’s presentations in its consultation session (and related public proceedings and filings) to be fundamentally inadequate by the standards expected under MEPA and the Downtown Waterfront Municipal Harbor Plan (“MHP”). The ENF is so flawed and so disconnected from the broader needs of the downtown waterfront that it is premature to even try to prepare a scope for an EIR for the Project.

The Project as presented in the ENF fails in three key respects. First, the Project does not meet the requirements of the MHP, which defines whether it can be licensed under Chapter 91. Second, the Project cannot reasonably support a Section 61 Finding, as there are feasible alternatives that would avoid the substantial impacts the Project would cause (and which it cannot practicably minimize or mitigate). Third, as we noted in our letter to you last week, the district-wide Design and Use Standards called for in the MHP to “inform” the MEPA process for the Project have not yet been developed. Given these fundamental inadequacies, the Aquarium requests that MEPA either require the Developer to withdraw its ENF or issue a certificate requiring wholesale revision of the project concept and design. In addition, any MEPA certificate establishing a scope for further review must require a robust alternatives analysis (as

further described below) and set a review schedule that provides for substantial completion of the Design and Use Standards prior to DEIR submission.¹

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To receive a public benefit determination under MEPA and a Chapter 91 license from MassDEP, the Developer must demonstrate that the Project “provide[s] a greater public benefit than public detriment to the rights of the public [in tidelands.]” M.G.L. c.91 § 18. The MHP offered, as its essential balance of public detriments and benefits, an expanded building envelope in exchange for a first-class, transformed public realm. Such a transformed public realm must take a world-class approach to climate resilience and public accessibility that can benefit and be a matter of pride for all Bostonians and the region. The Project fails to live up to this fundamental promise of the MHP.

Instead of delivering such a public realm, the Project would add little in the way of improvements while significantly and permanently harming existing public open spaces. The Developer touts “addition by subtraction” as the Project’s primary public benefit. While the existing garage is certainly not the highest and best use for the site, its removal is not a public benefit if what replaces it is equally inappropriate for the site. The Developer’s filings misleadingly imply that the Aquarium’s Blueway vision will be achieved as the Project’s secondary public benefit. The Developer attempts to take credit for the Aquarium’s proposed living shoreline, implying that it has the unilateral right to deliver that vision as part of the Project when it does not and suggesting that the funds it offers would bring that vision to fruition when in reality they are a small fraction of what would be needed.

The Project’s public detriments are significant. The Project would utilize public land to accommodate its underground garage and other Project elements, introduce a new access point onto Atlantic Avenue that conflicts with pedestrian, vehicular, and bicycle traffic, turn a public way into its driveway, and rely on its neighbors’ land to implement climate change solutions and other ‘public benefits.’ Within its site boundaries, the Project would offer only an elevated plaza available for programming without any identified commitment or funding for the actual programming. The Project would permanently burden the public by creating substantial wind and shadow impacts on Central Wharf and the Rose Kennedy Greenway — two areas where, with the help of many over a long period of time, significant public funds have been spent to

¹ It is worth noting that in the past EOEEA has taken similar approaches on the Boston Waterfront when project proposals have not met expectations or the necessary level of planning has not yet been achieved. In the Seaport, Secretary Coxe requested the withdrawal from MEPA review of the initial proposal for the redevelopment of Fan Pier (EOEA No. 4426). The subsequent proposal (EOEA No. 12083) included a substantially redesigned project with much better public realm planning. In East Boston, Secretary Durand required “divergence from the originally anticipated process” for several properties within the East Boston Waterfront District that needed more planning before permitting, even as the MHP itself moved forward. *Secretary’s Decision on East Boston Waterfront District Municipal Harbor Plan* (July 15, 2002) pg. 9. The City agreed, despite its original intent to push forward all of the projects in the district, to undertake the additional planning work, which resulted in increased attention to public trust resources in the water, at the shoreline, and on land.

create welcoming pedestrian gathering spaces that have become key destination points for Bostonians and visitors alike. The Developer has not remotely offered or demonstrated that the Project's public benefits would outweigh its burdens.

With respect to impacts on the public realm and the way those impacts are felt by the public traversing the tidelands, it is worth noting that what the Developer has proposed vastly exceeds what would be permitted under the baseline Chapter 91 regulations. Under the Chapter 91 regulations, the Secretary may approve substitute height provisions in an MHP in a manner that ensures that "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." 310 CMR 9.51(3)(e). Just as this size of the Project as proposed is not "relatively modest," nor are its impacts on the public realm. The tradeoffs the Developer asks the public to accept must be made apparent through a thorough MEPA analysis.

As submitted, the ENF describes a project that cannot meet the promise of the MHP, unless its shortcomings are redressed by the City's future work on the Design & Use Standards and then corrected by appropriately detailed conditions of the Developer's MEPA certificate, Chapter 91 Written Determination, and other relevant permits, licenses, and other approvals and the necessary Section 61 Findings. As the Developer has failed to rise to the occasion, the Design & Use Standards promised by the Secretary's 2018 Decision may constitute the only means by which the Aquarium (the district's "premier" Special Public Destination Facility, an "important" water-dependent use, an abutter, and an MHP and Impact Advisory Group member) and others throughout the impacted community can judge the thus-far obscured public benefits against the indisputably obvious public detriments.

The Developer should be required to withdraw the ENF and submit a new filing that meets the requirements of the MHP, responds to the community priorities identified in the upcoming Design & Use Standards planning process, and then demonstrates that the revised project's benefits outweigh its burdens with respect to the public's rights in tidelands.

* * *

One issue in particular requires especial attention in your certificate on this ENF or (if it's withdrawn) the eventual scope for any future project on this site: the alternatives analysis.

As you know, "[t]he alternatives analysis is the heart of the EIR and should therefore be particularly thorough and thoughtful." *MEPA Review*, Massachusetts Environmental Law (MCLE 5th edition 20__) §23.5.3(d) "Practice Note." The alternatives analysis must consider any reasonable or feasible alternative identified by commenters (like us). *Allen vs. Boston Redevelopment Authority*, 450 Mass. 242, 259 (2007) (vacating Secretary's MEPA Certificate that failed to insist on analysis of alternatives identified in comment letter of environmental group); *see also* 301 CMR 11.07(f)1 (requiring EIR to include description and analysis of "all feasible alternatives, including *but not limited to* those indicated in the Scope" [emphasis added]).

Here, there are at least three reasonable alternatives to the proposal. All need to be described and analyzed in sufficient detail to determine whether they avoid environmental impacts that the Project would cause or contribute to.

First, as always, is the no-build alternative. *See* 301 CMR 11.07(f)2. But here, unlike in most instances, the no-build alternative is presumptively feasible, as the Developer's distinct investment-backed expectations were informed by projected revenue from the existing garage. Other than its site coverage, it is hard to see any way in which its impacts even approach those of the proposed tower; it is for the Developer to demonstrate either (a) why maintaining the existing garage isn't economically feasible, or (b) how impacts from the Project can be minimized and mitigated to a level comparable to those from the garage.

Second, and rather unusually, there is basis in the public record to believe a second alternative – potentially, a substantially smaller version of the proposal – may also be feasible. A little background is in order: early in the MHP process, the Developer proposed a two tower, 1.3MM sf mixed use project. The BPDA (then the BRA) engaged an outside firm to conduct market research on likely investor return expectations for a project like that then proposed for the Harbor Garage site. In a pair of reports presented to the MHP Advisory Committee, the results of this research were laid out in static spreadsheets, albeit presenting several scenarios for sensitivity analysis.

These public record documents enable further analysis, based on the Developer's stipulated (land acquisition and below-grade parking development) cost basis, which remain unchanged, and the BPDA's advisor's professional judgment on the then-relevant, market-based, targeted unlevered returns necessary to obtain commercial debt financing. In the EIR, the Developer may provide new information or describe changed circumstances relevant to financing conditions (although there is little reason to doubt that this project will remain comparatively situated as it was), assuming the developer then undertakes a transparent and straightforward feasibility analysis. Given the BPDA's consultant's reports, it seems almost certain that a project barely more than half the size of the proposal is feasible.

And, finally, there is the Chapter 91-compliant alternative. In assessing the feasibility of this alternative, note that the Developer acquired (on December 14, 2007) the project site, well before the BPDA began (on July 31, 2013) the municipal harbor planning process. Here, the Developer's distinct investment-backed expectations cannot reasonably have projected any capital appreciation or revenue enhancement from further development above and beyond that set by Chapter 91's baseline standards and the 1991 Harborpark Plan. The Developer's assessment of this alternative therefore appropriately presumes that it has realized a return of and on its original capital investment.

Each of these alternatives should be described and analyzed in detail in a resubmitted ENF or the Draft EIR, as required by the regulations and applicable caselaw when, as here, raised in the comments of an informed and interested stakeholder.

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The Aquarium has reviewed both the ENF and the parallel Project Notification Form filed with the BPDA, which are based on the same project information. We have prepared a detailed comment letter to the BPDA on the Project Notification Form, which includes both a Narrative Appendix and a Technical Appendix that further detail both the basis for our fundamental opposition to the Project and our specific critiques of the shortcomings of the Developer's filings. The Technical Appendix contains an in-depth critique of the inadequacies of the project filings, including specific aspects that must be evaluated and questions that must be addressed in any subsequent submissions by the Developer. Topics covered include environmental impacts, compliance with existing planning documents, and transportation impacts, among others relevant to MEPA analysis.

Those critiques, which are attached here, are incorporated into this letter as the Aquarium's comments on the ENF, to be addressed in a resubmitted ENF (after withdrawal and revision) and the scope for any Environmental Impact Reports that follow.

We appreciate the opportunity to comment and value the MEPA's role in helping protect the quality of our environment. As always, my staff, our advisors, and I are available to meet with you, your staff or others to discuss the concerns raised in this letter.

Respectfully submitted,



Vikki N. Spruill
President and CEO

cc.

Undersecretary Daniel Sieger, EOEEA
Director Tori Kim, MEPA
Alexander Strysky, MEPA
Commissioner Martin Suuberg, MassDEP
Daniel Padien, Waterways/Chapter 91 Program Chief, MassDEP
Eric Worrall, Northeast Regional Director, MassDEP
Director Lisa Engler, Coastal Zone Management (CZM)
Mayor Martin J. Walsh
Director Brian Golden, BPDA
Jonathan Greeley, BPDA
Lauren Shurtleff, BPDA
Ebony DaRosa, BPDA
Richard McGuinness, BPDA
City Councilor Lydia Edwards
City Councilor Edward Flynn
City Councilor Annissa Essaibi George
City Councilor Michael Flaherty

City Councilor Julia Mejia
City Councilor Michelle Wu
John Romano, Mayor's Office of Neighborhood Services
Senator Joseph Boncore
Representative Aaron Michlewitz

Enclosures:

Letter to BPDA Director Golden re Pinnacle at Central Wharf
Appendix I: Narrative Appendix
Appendix II: Technical Appendix