

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT  
CIVIL ACTION NO: 21-0991 C

CITY OF QUINCY and the QUINCY  
CONSERVATION COMMISSION,

Plaintiffs,

v.

MASSACHUSETTS DEPARTMENT OF  
ENVIRONMENTAL PROTECTION  
and THE CITY OF BOSTON PUBLIC  
WORKS DEPARTMENT,

Defendants.

COMPLAINT

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2021 APR 30 A 9:52  
MICHAEL JOSEPH DOROVAN  
CLERK / MAGISTRATE

The City of Quincy and the Quincy Conservation Commission bring this action under G.L. c. 30A, § 14, seeking judicial review of a Final Decision of the Massachusetts Department of Environmental Protection following an adjudicatory proceeding before the Office of Appeals and Dispute Resolution. The case concerns the application of the Wetlands Protection Act, G.L. c. 131, § 40 (the "WPA"), and its implementing regulations at 310 CMR 10.00 et seq. (the "Regulations"), to the City of Boston Public Works Department's plans to construct a new bridge between Moon Island in Quincy and Long Island in Boston to replace the bridge that was demolished in 2015 due to public safety concerns. The new bridge is proposed to be constructed by placing a new roadway superstructure on the existing concrete support piers that have demonstrated deterioration from Alkali-Silica Reaction ("ASR") and Freeze-Thaw ("F-T") conditions by inundation in salt water and exposure to the marine environment for approximately 70 years. The new superstructure will be vulnerable to predicted sea level rise.

## PARTIES

1. Plaintiff City of Quincy is a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts having a principal office located at 1305 Hancock Street, Quincy, Massachusetts 02169. The City of Quincy is a “political subdivision of the Commonwealth.”

2. Plaintiff Quincy Conservation Commission (the “QCC”) is a duly organized conservation commission under the laws of the Commonwealth of Massachusetts having a principal office located at 1305 Hancock Street, Quincy, Massachusetts 02169. The QCC is a “political subdivision of the Commonwealth.” The QCC and the City of Quincy are hereinafter referred to as “Quincy.”

3. Defendant Massachusetts Department of Environmental Protection (“MassDEP”) is an administrative agency of the Executive Office of Environmental Affairs of the Commonwealth of Massachusetts, having its principal office in Boston, Massachusetts.

4. Defendant City of Boston Public Works Department (“BPW”) is an agency of the City of Boston (“Boston”), which is a municipal corporation duly formed under the laws of the Commonwealth of Massachusetts.

5. The City of Boston and the BPW have their principal place of business at One City Hall Square, Boston, Massachusetts 02201.

## JURISDICTION

6. This Court has jurisdiction over this matter pursuant to G.L. c. 212, § 4, and G.L. c. 30A, §14. Venue in this Court is proper pursuant to G.L. c. 30A, § 14(1)(b) and (c).

## FACTUAL BACKGROUND OF THE LONG ISLAND BRIDGE

### **A. The Construction of the Original Long Island Bridge**

7. The City of Boston constructed a bridge over Boston Harbor from Moon Island in Quincy to Long Island in Boston in or about 1951. The bridge consisted of a steel superstructure supporting the roadway, and the superstructure was supported by fifteen concrete and granite block piers that sit on top of buried timber wood piles. Thirteen of the piers are planted on the bottom of Boston Harbor and two sit in the tidelands of the two islands. Seven of the thirteen piers are located within the City of Quincy.

8. The original 1951 Long Island Bridge provided direct vehicular access to Long Island and replaced decades of ferry service from mainland Boston to Long Island.

9. Over its extended life, the original bridge experienced significant deterioration due to poor maintenance, exposure to salt water, and extreme weather events.

10. In 2002, under the guidance of Mayor Thomas Menino, Boston prepared a Long Island Access Plan that concluded that the condition of the bridge and piers were too deteriorated for the structure to provide a long-term solution for safe access to Long Island.

11. At that time, Mayor Menino endorsed a change from bridge-based access to a water-dependent access to Long Island by ferry.

12. On September 9, 2013, the Massachusetts Department of Transportation (“MassDOT”) issued its Underwater Operation Team Routine Underwater Inspection Report (the “MassDOT Underwater Inspection Report”) after it conducted an inspection of the concrete piers which supported the original Long Island Bridge.

13. In the MassDOT Underwater Inspection Report, the agency documented the numerous ways the piers had been damaged over time.

14. MassDOT rated the piers a 4 (out of 10) with pointing (3) and settlement (4) being issues of concern.

15. The pointing issue was prevalent throughout the piers and the settlement issue was largely prevalent in the top three tiers of the cement blocks of each pier. Some blocks were missing completely, while other were present but cracked.

16. The low settlement rank of 4 indicated that the pointing issue was relatively severe and/or the underlying piles and the cap had begun to shift.

17. The MassDOT Underwater Inspection Report did not assess the deteriorating conditions of the concrete in the piers which were exposed to salt water for 62 years.

18. All of these observation from MassDOT in 2013 were made before the piers were impacted by demolition blasting in 2015.

#### **B. Demolition of the Original Long Island Bridge**

19. In 2015, Boston executed the demolition of the roadway span of the Long Island Bridge on an emergency basis.

20. As part of the project, BPW relocated certain utilities that had been on the original Long Island Bridge into submerged utility channels running from Moon Island to Long Island.

21. In October 2015, BPW executed the demolition of the superstructure of the bridge, leaving the original concrete piers in place.

22. The demolition of the superstructure involved the placement and detonation of explosives to separate spans of the superstructure and drop them onto barges to be hauled away.

#### **C. Plans for the Reconstruction of the Long Island Bridge**

23. Boston is proposing to install a new bridge span to accommodate two lanes of traffic and associated infrastructure on top of the existing concrete piers even though they are deteriorated by ASR and F-T conditions due to saltwater inundation and exposure in the marine environment.

24. Though two of the existing piers will be removed, Boston is proposing to use the remaining original piers that have been continuously exposed to the marine environment for approximately 70 years as the support structure for the new span of the Long Island Bridge deck.

25. While Boston provided some limited examination of the soils on the shorelines for the piers that will be on shallow footings, Boston did not examine the buried timber piers that would support the concrete piers to determine the piers' structural integrity.

**D. The Concrete Piers for the Original Long Island Bridge are Deteriorating and Boston's Proposed Remedial Measures will not be Sufficient.**

26. Boston only performed a limited analysis of the structural integrity of the existing concrete piers, but the study was not comprehensive and did not include sufficient investigation of the piers below the mean low water line.

27. The limited concrete pier testing conducted by Boston shows significant ASR and F-T aggressive damage, expansion, cracking, gaps, and erosion.

28. Boston plans to perform some repair and replacement of certain blocks in the piers where the concrete is deteriorating, but Boston is only proposing to complete that work using limpets.

29. Limpets are open-topped watertight boxlike structures that attach and seal to the side wall of the bridge pier to provide a dry environment for rehabilitation work. Unlike cofferdams, which are temporary boxlike structures that surround the entire bridge pier, limpets do not anchor to the seafloor and thus do not provide access to sections of the pier that are completely submerged under the mean low water line.

30. Relying on the use of limpets will reduce the amount of wetlands impacts from the proposed rehabilitation of the concrete piers by reducing disturbance to the harbor bottom, but this

mitigation method will not result in a comprehensive rehabilitation of the piers that would warrant using the same structures for a new bridge that is supposed to have a useful life of 75 years.

**E. Moon Island Road, the Sole Access Road to the Long Island Bridge, is in Disrepair.**

31. Moon Island Road, which is located within the Quincy city limits, is also deteriorating and will require significant improvements to handle increased traffic if the bridge is reconstructed.

32. As Moon Island Road provides the only mainland access to the proposed Long Island Bridge, improvements to Moon Island Road are a necessary part of the overall Long Island Bridge project.

33. Moon Island Road is showing significant signs of slope failure on the north side of the road in multiple locations, with one lane of the road blocked off with barriers due to severe embankment failure.

34. There is an abandoned 136-year-old 11 x 11-foot brick-lined sewer tunnel just below the roadway surface of Moon Island Road which runs for over one mile under the roadway which may impact the roadway's loading capacity.

**WETLANDS PERMITTING AND PROCEDURAL HISTORY FOR THE NEW BRIDGE**

35. In May 2018, Boston filed two Notices of Intent ("NOIs") for the bridge project, one in Boston with the Boston Conservation Commission ("BCC"), and one in Quincy with the QCC.

36. The BCC approved the segment of the bridge in Boston in an Order of Conditions ("Boston OOC") dated June 8, 2018.

37. The City of Quincy appealed the Boston OOC to MassDEP's Northeast Regional Office ("MassDEP/NERO") on June 19, 2018, seeking a Denial Superseding Order of Conditions ("SOC").

38. The QCC denied the segment of the bridge located in Quincy under the WPA, the Regulations, and the Quincy Wetland Ordinance (the “Ordinance”), on September 25, 2018 (the “Denial OOC”).

39. Like Quincy, Boston filed a request for a Superseding Order of Conditions from MassDEP/NERO to appeal the Denial OOC issued by the QCC.

40. MassDEP/NERO heard the two SOC requests together.

41. MassDEP/NERO issued two requests for information to Boston and held a meeting at the regional office building in lieu of a site visit.

42. MassDEP/NERO issued two SOCs (the “Boston SOC” and the “Quincy SOC”) approving BPW’s proposed reconstruction of the Long Island Bridge in both jurisdictions.

43. The City of Quincy filed a request for an adjudicatory hearing on the Boston SOC.

44. The City of Quincy and the QCC filed a request for an adjudicatory hearing on the Quincy SOC.

45. MassDEP’s Office of Appeals and Dispute Resolution (“OADR”) consolidated the requests for adjudicatory hearings into one proceeding, In the Matter of the City of Boston Public Works Department, OADR Docket Nos. WET-2019-031 & 022.

46. Timothy Jones, the Presiding Officer for the consolidated matters (the “Presiding Officer”), issued a Recommended Final Decision that addressed issues in both appeals.

47. MassDEP Commissioner Martin Suuberg adopted the Presiding Officer’s Recommended Final Decision and issued the Final Decision on March 31, 2021. A copy of the Final Decision is attached hereto as **Exhibit A** together with the Recommended Final Decision.

48. Quincy now seeks judicial review of the Final Decision under G.L. c. 30A, § 14.

## DEFICIENCIES IN MASSDEP'S FINAL DECISION

### **A. The Presiding Officer's Ruling that Quincy Did Not Have Standing to Pursue the Boston SOC was in Error.**

49. The Presiding Officer ruled that Quincy made "insufficient assertions for standing because [the assertions were] based on hypothetical injuries unsupported by any credible evidence."

50. However, the Presiding Officer denied Quincy's request for discovery to perform certain limited testing to obtain additional evidence to demonstrate its concerns about the condition of the concrete in the piers that would support Quincy's claims of injury.

51. The Presiding Officer's finding that the City of Quincy did not have standing to seek an appeal of the Boston SOC was arbitrary given that he also concluded that Quincy (particularly the QCC) clearly had standing in the Quincy SOC appeals based on the portion of the bridge located in Quincy's jurisdictional waters.

52. The Final Decision found that Quincy did not have standing to seek an appeal of the Boston SOC even though the *same* structure under the *same* design and structural constraints and subject to the *same* conditions under the WPA and Regulations will continue into Boston's jurisdictional waters.

53. This ruling that Quincy only has standing in one jurisdiction to seek review of the bridge's compliance with the WPA and Regulations for a bridge project that spans two jurisdictional areas is completely arbitrary because the lack of conditions or restrictions imposed on the bridge as a whole may have a direct impact on wetlands resource areas and interests in Quincy.

54. Quincy provided evidence of impacts to wetland resource areas owned by Quincy, including several coastal beaches and marshlands.

55. The Presiding Officer deemed these impacts were too remote to support standing as a person aggrieved and denied Quincy's request for leave to present additional information



describing how Quincy is significantly and substantively impacted by the proposed reconstruction of the Long Island Bridge.

56. Despite the impact that the significant deficiencies in BPW's proposed construction methodology will have on protected wetlands resource areas, the Presiding Officer ruled that Quincy did not have standing to pursue an adjudicatory hearing on the Boston SOC.

57. These rulings by the Presiding Officer were in error.

**B. The Presiding Officer's Ruling that Quincy Failed to State a Claim Upon Which Relief Can Be Granted in the Boston SOC and Quincy SOC Appeals was in Error.**

58. Quincy's primary complaint in the appeals to OADR focused on the ability of the aging piers to safely support the new bridge for its entire design life and the lack of information provided by Boston to support a finding that the piers were structurally sound, or alternatively that Boston has a sufficient plan for rehabilitating the piers that did not cause detrimental impacts to wetlands resource areas.

59. Quincy sought to address this lack of information through the adjudication hearing process by requesting leave to conduct discovery in its Pre-Hearing Statement that would include limited physical sampling from the piers and timber piles, but the Presiding Officer denied Quincy the opportunity to conduct this further investigation of the site conditions.

60. Quincy also raised concerns that the BPW's proposed use of limpets instead of cofferdams during new bridge construction would not adequately address the underlying structural problems with the concrete piers.

61. Through its expert engineering consultants, Tighe & Bond, Inc. ("Tighe & Bond"), and Dr. David Gress, Ph.D., Quincy put forward information in the record that challenged Boston's proposed limpet method as insufficient to complete the full scale of the repairs that would be required for the reuse of the piers.

62. Though the matter did not proceed to a full adjudicatory hearing, there were significant materials in the record from the SOC proceeding presenting an evaluation of the existing concrete piers and the methods for assessing and repairing them, including Tighe & Bond's June 6, 2018 and August 21, 2018 Memoranda, and Dr. Gress' September 3, 2018 Long Island Bridge Concrete Report.

63. Quincy also enclosed a copy of Dr. Gress's Long Island Bridge Concrete Report with its Pre-Hearing Statement.

64. Quincy's expert engineering consultants also advocated for the use of a cofferdam system, which would allow fully in-dry conditions for inspection of the all portions of the concrete and the timber piles, and for concrete and stone rehabilitation work.

65. Boston's proposed use of limpets instead of cofferdams does not allow for more extensive evaluation (before or during construction) of the concrete piers and timber piles, nor for sufficient access during the required repairs and replacement of the piers.

66. The use of limpets will result in avoidable impacts to protected wetland resources and interests without mitigation.

67. Cofferdams are the only method that allows the full extent of the piers and timber piles to be tested and rehabilitated.

68. The Final Decision approves the use of limpets during repairs of the concrete piers instead of cofferdams, which will result in avoidable impacts to land under ocean and other protected wetland interests.

69. Cofferdams are the best management practice that allows the full extent of the piers to be assessed, tested, and rehabilitated.

70. The Presiding Officer dismissed Quincy's concerns about the scope of necessary repair work as a "preference," but the gravamen of the Quincy SOC appeal was that the use of cofferdams instead of limpets was a reasoned position based on the fact that limpets would be woefully inadequate to reach the depths necessary to perform truly rehabilitative work to restore the piers to a condition that can handle the burden of another 75 years in the harsh open salt water conditions of Boston Harbor, and that cofferdams were necessary to do so.

71. Even though the Presiding Officer credited Quincy's claim that the deficiencies in BPW's proposed construction methodology may result in impacts to resource areas protected by the WPA (including land under ocean, marine fisheries, and land containing shellfish), the Presiding Officer nonetheless ruled that Quincy failed to state a claim because he determined that "none of [the concerns articulated by Quincy] arise to a claim under the Wetlands Regulations or the Wetlands Act."

72. This ruling was in error and prejudiced Quincy's substantial rights to pursue a full adjudicatory hearing on its serious allegations about the potential impact the project will have on critical wetland resource areas.

73. As discussed below, as a result of the Presiding Officer's ruling that Quincy did not establish a claim upon which relief can be granted, Quincy was also denied the opportunity to conduct discovery into the insufficient information in Boston's NOIs and supporting materials concerning the conditions of the piers.

74. Thus, the Presiding Officer prejudiced Quincy's substantial rights based on rulings made on unlawful procedure.

75. The Presiding Officer also ruled that Quincy failed to state a claim because its allegations that "Moon Island Road ... is in desperate need of repair, and that significant portions of

Moon Island Road are very proximate to” protected wetlands resource areas of coastal beach, coastal bank, and land containing shellfish, and land subject to coastal storm flowage, was inadequate because the allegations failed to specifically identify what aspect of the project will contravene a specific wetlands performance standard.

76. The Presiding Officer’s approach to this issue leaves Quincy without recourse to demand proper conditions to govern the work for this project. Given its condition and status as the lone access road to the new bridge, Boston is undoubtedly going to need to repair Moon Island Road. Through the adjudicatory hearing process, Quincy tried to get the Presiding Officer to direct Boston to address that portion of the work and its cumulative impact on wetland resource areas, but he refused since Boston had not included work on Moon Island Road in its NOI.

77. These rulings by the Presiding Officer were in error.

**C. The Presiding Officer’s Dismissal of the Adjudicatory Proceeding without a Hearing and Without Granting Quincy an Opportunity to Conduct Discovery to Inspect the Piers Was an Abuse of Discretion.**

78. The Final Decision is an abuse of discretion because it approved Boston’s approach to executing the work for the construction of the new bridge without imposing conditions or reviewing sufficient information needed to ensure that the reconstruction plan will provide a safe bridge that will be able to enjoy 75 years of useful life.

79. In the adjudicatory hearing process, Quincy requested that the Presiding Officer exercise his discretion to allow Quincy to undertake discovery or alternatively to impose an obligation on Boston to undertake a thorough investigation into the condition of the concrete piers and timber piles to obtain a full understanding of the existing site conditions and the appropriate course of action for all necessary remedial work.

80. Despite the information in the record from Dr. Gress’s Long Island Bridge Concrete Report regarding the deterioration in the concrete piers and the observations from Tighe & Bond

about the need for more extensive repair procedures, the Presiding Officer denied Quincy's request for leave to conduct limited discovery targeted at the condition of the piers and the timber piles.

81. With this decision, the Presiding Officer severely limited Quincy's ability to demonstrate the true condition of the concrete piers and timber piles.

82. A proper and sufficient investigation of the condition of the concrete piers and timber piles would require a more extensive investigation below the mean low water line and in the harbor bottom.

83. By rejecting the basis for Quincy's Notice of Claim and ruling that Quincy failed to state a claim upon which relief may be granted—while also denying Quincy the opportunity to undertake discovery that would yield evidence of the full nature and extent of the work required to rehabilitate or replace the aging pier structures—the Presiding Officer foreclosed the opportunity to have Quincy's experts testify on the nature and extent of the degradation of the concrete piers and timber piles.

84. In refusing Quincy's request for leave to conduct limited discovery targeted at the condition of the piers and the timber piles, the Presiding Officer severely limited Quincy's ability to demonstrate the true condition of the concrete piers and timber piles.

85. The refusal to permit Quincy to conduct certain targeted discovery activities was particularly egregious given the procedural posture of the matters, in which Boston refused to entertain the QCC's and the City of Quincy's repeated request for additional information about the structural integrity of the piers during the QCC's hearings on Boston's NOI.

86. The Final Decision refused to consider the importance of this additional work and was arbitrarily limited to the project "as proposed." The Presiding Officer did not consider Quincy's evidence on the need for additional testing of the concrete piers in order to determine the scope of

repair and replacement of the piers, and the resulting increase in the total impacts on land under ocean and the wetland interests of protection of fisheries, land containing shellfish, wildlife habitat, and prevention of pollution protected under the WPA.

87. Without the opportunity to conduct discovery, and even more basic without the opportunity to get to the hearing stage of the adjudicatory proceeding, Quincy was deprived the full and fair opportunity to present its concerns about the deficient scope of work proposed by Boston.

**D. The Final Decision Failed to Consider the Impact of Sea Level Rise on the Long Island Bridge.**

88. The Final Decision does not address the impacts of predicted Sea Level Rise on the bridge project which is proposed to have a 75-year life until about 2095.

89. Boston did not use its own projections in the City of Boston's Climate Consensus Project, which predicts considerable sea level rise by 2100, ranging from a minimum of 2.4 feet to a maximum of 10.5 feet.

90. Sea level rise at this rate will submerge the bridge deck and the pier caps.

91. Despite advocacy from Quincy, the Final Decision does not direct the applicant to consider the worst-case Sea Level Rise through the projected useful life of the new bridge, which must be evaluated for structural concerns, protection of wetland resources, storm damage prevention, and prevention of pollution.

92. The Final Decision approves a bridge design that does not adequately address the impacts of predicted Sea Level Rise which will submerge the bridge deck and pier caps. As such, the design does not adequately address the interest of storm damage prevention.

**E. The Presiding Officer's Determination that the Construction of a New Span of the Long Island Bridge Constitutes Redevelopment under the WPA and Regulations was Arbitrary and Capricious.**

93. The Presiding Officer wrote: "The Wetlands Regulations define a redevelopment project for the purpose of compliance with the stormwater management standards as (a) 'maintenance and improvement of existing roadways including widening less than a single lane, adding shoulders, corrective substandard intersections, improving existing drainage systems, and repaving' .... 310 Code Mass. Regs. 10.04 (defining Redevelopment)."

94. In a June 6, 2018, memorandum prepared by Quincy's engineering consultant, Tighe & Bond, Inc., Quincy asked BPW to "[p]rovide design justification for the approach roadway and bridge deck cross-sections and their ability to meet current and future multi-modal transportation needs ... which could identify the need for a wider crosssection for the bridge." In a response letter dated July 13, 2018, BPW responded that "[t]he information requested in this paragraph is not within the purview of the Quincy Conservation Commission's review."

95. Yet, the dimensions of the bridge span are relevant to determine the extent to which the project is properly characterized as redevelopment and thereby eligible to comply with lesser stormwater management standards under 310 CMR 10.05(6)(k)7.

96. Regardless of whether Boston decided to widen the bridge span, the construction of two full traffic lanes as associated infrastructure is significantly more than mere maintenance and improvement of a roadway under the definition of redevelopment in the Regulations.

97. The new bridge's stormwater management system is not eligible for approval as a redevelopment project. The bridge has not existed for over four years. The new bridge is not redevelopment under 310 CMR 10.04 and the Stormwater Standards.

98. The Presiding Officer's decision allowing the project to qualify as redevelopment was arbitrary and capricious.

**CLAIMS FOR RELIEF**

**COUNT I**

**M.G.L. c. 30A, § 14(7)(c)**

99. Quincy re-alleges and incorporates by reference herein the allegations of Paragraphs 1 - 97 as if they were restated in full.

100. The Final Decision was flawed and based on errors of law.

101. Quincy's substantial rights to seek review of the Long Island Bridge project have been prejudiced because the Presiding Officer made an error of law in his decision that Quincy lacked standing to take an appeal of the portion of the Long Island Bridge project located in Boston's jurisdictional waters.

102. The Presiding Officer committed an error of law by ruling that Quincy did not have standing to pursue the appeal of the Boston SOC.

103. The Presiding Officer also committed an error of law by ruling that Quincy failed to state a claim upon which relief may be granted. Quincy's allegations present serious impacts to wetlands resource areas protected under the WPA.

**COUNT II**

**M.G.L. c. 30A, § 14(7)(d)**

104. Quincy re-alleges and incorporates by reference herein the allegations of Paragraphs 1 - 102 as if they were restated in full.

105. Quincy's rights to obtain relief through the adjudicatory hearing process were prejudiced because the Presiding Officer reached this decision without giving Quincy the opportunity to pursue certain targeted discovery activities, which resulted in the decision being reached upon unlawful procedure.



106. In its filings in the adjudicatory hearing, including its Pre-Hearing Statement, Quincy sought leave to conduct additional testing of the old concrete piers and timbers to compensate for the lack of testing performed by Boston.

107. This additional testing was critical to determining whether the project would be able to proceed with the very limited amount of pier repair work Boston had planned.

108. Denying Quincy the opportunity to conduct any discovery and physical inspection of the piers violated, among other things, the requirement in 310 CMR 1.01(12)(a)(3) that:

A party should also allow entry onto designated land or examination of other property in the possession and control of that party, by agreement at a reasonable place and time, for the purpose of inspection and performing incidental procedures relevant to the issues to be decided in the adjudicatory appeal by measures including, without limitation, surveying, sampling and photographing the property or any designated object or operation thereon.

109. By refusing to allow Quincy leave to take further discovery, including the proposed limited testing of the piers and timber piles, the Presiding Officer violated the requirement of M.G.L. 30A, § 10, that “[i]n conducting adjudicatory proceedings, as defined in this chapter agencies shall afford all parties an opportunity for a full and fair hearing.” The Presiding Officer’s decision to dismiss the adjudicatory hearing at the Motion to Dismiss stage without granting Quincy the opportunity to conduct this discovery and obtain the information that the QCC had ruled was lacking in the original NOI submittals denied Quincy the opportunity to present its case.

110. As a result, the Final Decision was “made upon unlawful procedure,” which is proscribed by M.G.L. c. 30A, § 14(7)(d).

### **COUNT III**

#### **M.G.L. c. 30A, § 14(g)**

111. Quincy re-alleges and incorporates by reference herein the allegations of Paragraphs 1 - 109 as if they were restated in full.

112. The Final Decision sustaining the two Superseding Orders of Conditions and allowing the project to go forward was arbitrary and capricious, constituted an abuse of discretion, and was otherwise not in accordance with law.

113. The Presiding Officer's decision sustaining the Superseding Orders of Conditions is therefore arbitrary, capricious, and not in accordance with law.

### **PRAYERS FOR RELIEF**

WHEREFORE, Quincy requests that this Honorable Court grant the following relief:

1. Find that the Final Decision was based on an error of law and/or upon an unlawful procedure and/or was arbitrary and capricious;
2. Reverse MassDEP's approval of the two Superseding Orders of Condition;
3. Remand this matter for further proceedings to investigate the condition of the aging piers to determine whether Boston's proposed scope of work – and its limited plan for the repair and rehabilitation of the piers – will be sufficient for the support of a new bridge for a 75-year life span; whether the repair methods proposed by Boston that do not require any work to be performed in the dry below the mean low water mark will be sufficient to maintain safe conditions for the construction of the Long Island Bridge; whether the proposed project without this additional investigation complies with performance standards for work in wetlands resource areas; and whether the proposed project is adequately designed for projected Sea Level Rise; and
4. Grant plaintiff such other and further relief as the court deems proper.

Respectfully submitted,

**CITY OF QUINCY AND QUINCY  
CONSERVATION COMMISSION**

By its attorneys,



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Date: April 30, 2021