

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
Civil Action No. 10-0802-H

SANJOY MAHAJAN, et al.)
Plaintiffs)
v.)
MASSACHUSETTS DEPARTMENT OF)
ENVIRONMENTAL PROTECTION, and)
BOSTON REDEVELOPMENT AUTHORITY)
Defendants)

**DEFENDANT BOSTON REDEVELOPMENT AUTHORITY'S
SUPPLEMENTAL ARGUMENT IN SUPPORT OF ITS
CROSS-MOTION FOR JUDGMENT ON THE PLEADINGS**

NOW COMES Defendant Boston Redevelopment Authority ("BRA") to file this supplemental argument, pursuant to the Court's leave granted at oral argument on December 1, 2010.

The DEP Decision was Correct as a Matter of Law and the Chapter 91 License Included a Condition EOEEA Required Under Article 97.

Plaintiffs asserted in Court that the DEP failed to enforce the EOEEA policy regarding Article 97. To the contrary, the DEP specifically found that "a portion of the project site is legally protected park land open to recreational use by the general public." Record, p. 598. The DEP noted EOEEA required an additional condition on the Chapter 91 license, specifically that the BRA would place planters on the boundary line to delineate the parkland area. Record, p. 598, n. 15. This condition was the result of correspondence between EOEEA and the BRA. Record, pp. 1292-1294. The DEP concluded that if this condition was met, "the project causes no detriment to the public

interest protected by the Division of Conservation Services as described in 310 CMR 9.31(3)(b).”

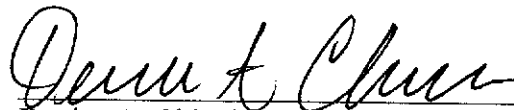
Accordingly, Plaintiffs’ argument that Article 97 requires the denial of the Chapter 91 license is without merit, and this Court should grant the BRA’s Motion for Judgment on the Pleadings.

Respectfully submitted,

Boston Redevelopment Authority

By its counsel

December 6, 2010



Denise A. Chicoine (BBO # 564152)
Edward S. Englander (BBO #154540)
ROSENBERG, SCHAPIRO, ENGLANDER
CHICOINE & LEGGETT, P.C.
44 School Street, Suite 800
Boston, MA 02108
Tel. (617) 723-7440