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May 8, 2013

*(by hand)*

Honorable Linda Giles  
Court Room 306  
Suffolk County Courthouse  
Three Pemberton Square  
Boston, MA 02108

**Re: Mahajan v. DEP, Superior Court Civil No. SUCV2010-0802-H**

**Plaintiffs' Request for Leave to File a Reply Brief**

Dear Judge Giles:

Plaintiffs, pursuant to Rule 9A(a)(3), request leave to file a reply brief. As grounds, plaintiffs state the following.

In the BRA's Opposition to Plaintiffs' Motion to Amend Complaint—in the pending 9A package of which the proposed reply would also be a part—the BRA makes numerous material, factual allegations that, contrary to Rule 9A(a)(4), are neither apparent on the record nor are supported by affidavit. Plaintiffs wish to point out these allegations and to explain why they are not relevant or, if relevant, not accurate.

Furthermore, the DEP and the BRA oppositions state that it is too late to bring to the attention of the court two material documents from state and federal archives that are the grounds for the amended complaint. These documents are:

1. the agreement executed on September 13, 1984 between the BRA and DEM (the legal predecessor to DCR) in which the BRA agreed to record a 99-year easement for public open-space use on its title to Long Wharf (the agreement is Attachment G in Plaintiffs' Opposition to the BRA's Motion to Dismiss, which the BRA filed with the court on May 3rd as part of its 9A package).
2. the boundary map from the National Park Service showing that the entire seaward end of Long Wharf, including the project site, is protected by Section 6(f) of the federal

Land and Water Conservation Fund Act against conversion from public outdoor recreation, and is thus also protected by Article 97 (the map is Attachment H in Plaintiffs' Opposition to the BRA's Motion to Dismiss).

The defendants state that plaintiffs should have found and introduced these documents long ago. However, the actual issue is the BRA's failure to disclose these documents. Plaintiffs' proposed reply brief would explain when and why the BRA should have disclosed the documents.

Plaintiffs' proposed reply brief would also serve as a sur-reply to the BRA's Reply to Plaintiffs' Opposition to the BRA's Motion to Dismiss. (On May 3, the BRA, contrary to Rule 9A(a)(3), filed its reply without leave of the court.) The BRA's reply is nearly identical to the BRA's Opposition to Plaintiffs' Motion to Amend Complaint, but it has attachments to which plaintiffs would also refer.

Respectfully submitted,

Plaintiffs, *Pro Se*

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