August 7, 2024

By Email (as available) and By Priority Mail

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Re: *Proposed New Professional Sports and Live Entertainment Complex at White Fund Property in Franklin Park, Boston, MA (the Proposed Project); Notice of Required State Permits, Approvals, Licenses and/or Leases; Notice of Massachusetts Environmental Policy Act (MEPA) Office and Massachusetts Historical Commission (MHC) Jurisdiction*

Dear Secretary of The Commonwealth Galvin, Secretary Tepper, Secretary Tibbits-Nutt, Commissioner Arrigo, Chairperson Glynn, General Manager Eng, Highway Administrator Gulliver, MHC Chair-Designee Rosenberry, MHC Director Simon, and MEPA Director Kim:

Introduction

Based on the current information provided to the public and various City of Boston regulatory agencies, the current proposal for the Proposed Project, which involves the 95% demolition of the existing stadium, and redevelopment and new construction of a complex within the 14-acre area owned by the Trustees of the George Robert White Fund in the City of Boston's Franklin Park, has failed to comply with numerous legal obligations requiring permits, approvals, licenses and/or leases from one or more State agencies and appropriate notice, review, analysis and consultations required by State regulations under MEPA and MHC. Compliance with such permitting obligations, and MEPA and MHC review and analysis are essential to ensure that projects are adequately studied to identify, understand and correctly quantify impacts, describe all permits and approvals needed, any interests in State land being transferred, develop alternatives and avoid, minimize and mitigate environmental impacts and impacts on historical resources. Based on public statements of the proponents of the Proposed Project and reporting in The Boston Globe, the proponents apparently do *not* plan: to file applications for the required State permits, approvals, licenses and/or leases for the Proposed Project; to file an Environmental Notification Form (ENF) and as applicable one or more draft and final Environmental Impact Review (EIR) submissions with the MEPA Office for the Proposed Project; and to notify and consult with MHC with respect to the Proposed Project.

Such legal obligations, permits, approvals, licenses, leases and/or other permissions and reviews not yet sought or granted for the Proposed Project, but required based on the information provided to date, include but are not limited to:

(1) seeking and obtaining one or more Department of Conservation and Recreation (DCR) parkways direct or indirect access permit(s) (DCR Parkways Permits) pursuant to 302 CMR 11.08 (the DCR Parkway Access Regulations),

(2) seeking and obtaining one or more Massachusetts Department of Transportation (MassDOT) direct or indirect vehicular access permit(s) (MassDOT Highways Permits) pursuant to 700 CMR 13.01 and 13.02 (the MassDOT Regulations),

(3) seeking and obtaining a legal right to use Massachusetts Bay Transportation Authority (MBTA) property for at least 30 years at one or more Orange Line stations pursuant to the MassDOT Regulations and other applicable law,

(4) the preparation and filing of an ENF and as applicable an EIR with the MEPA Office pursuant to M.G.L. c.30, Sections 61 et seq. (including without limitation the Environmental Justice Amendments thereto, the MEPA Statute) and 301 CMR 11.00 et seq. (the MEPA Regulations), and

(5) the notification of and engagement in consultations with the MHC pursuant to M.G.L. c.9, Sections 26 through 27C (the MHC Statute) and 950 CMR 71.00 et seq. (the MHC Regulations).

Earlier this year, a group of 20 public citizens and the Emerald Necklace Conservancy, a 501(c)(3) non-profit with a mission to support the Olmsted Emerald Necklace parks and recreation land and users, filed a legal complaint in Suffolk Superior Court to enforce the obligations of the City of Boston as trustee of the White Trust Fund property in Franklin Park, and of the Proposed Project professional team investor group Boston Unity Soccer Partners, LLC (BUSP), to comply with public trust law and with Amendment Article 97 of the Massachusetts Constitution, which protects public recreation lands of long standing. That case is ongoing. This letter will not repeat the basis for that active lawsuit, but will focus on the separate specific failures of the Proposed Project to comply with statues and regulations that require State permitting and approvals, MEPA review, MHC review and consultations and other State-level processes and reviews not yet sought or performed.

State Approvals / Permits / Licenses Required for the Proposed Project and Resulting in MEPA and MHC Jurisdiction

1. **Use of DCR Parkways and a State Highway Requiring State Approvals/Permits:** The key regional access roads by which Franklin Park and the Project site are reached are DCR parkways, including without limitation the Arborway through and including the intersection with Franklin Park's Circuit Drive and Massachusetts Highway 203, locally signed as Morton Street. Both the Arborway and Massachusetts Highway 203 abut Franklin Park according to the DCR assets map, a copy of which is attached as Exhibit **A**. In addition, pursuant to M.G.L. c.92B, Section 11, DCR owns in fee and/or leases property within Franklin Park immediately adjacent to the Proposed Project, which DCR property is used for the Franklin Park Zoo, managed by Zoo New England. Certain DCR Parkways Permits and MassDOT Highway Permits, respectively, apply by the terms of the applicable Regulations to *indirect* as well as direct access to and direct alteration of DCR parkways and MassDOT highways. The on-the-ground circumstances for the Proposed Project match the triggers in one or more of 302 CMR 11.08(1)(a)2 and 11.08(1)(d) for one or more DCR Parkways Permits and in 700 CMR 13.01 and 13.02 for one or more MassDOT Highways Permits. As further detailed below, BUSP has also publicly acknowledged that it intends to use MBTA bus lanes at one or more Orange Line stations, which appears to constitute "Use of MassDOT Property" under 700 CMR 13.01.

2. **Level of Use, Transportation Impacts of 11,000 Users**: In materials filed by BUSP with the Boston Planning and Development Authority (BPDA) pursuant to Article 80 of the Boston Zoning Code, BUSP has publicly acknowledged that the bulk of the 11,000

soccer fans for each game and live entertainment spectators will come to and from the new Stadium by some combination of private vehicles, ride share vehicles, transit stop shuttle buses connection with the Orange Line and large tour-bus-scale buses connecting with *multiple, remote, unidentified parking lots*.

3. **Underestimation of Transportation Impacts: Exceedance of Regulatory Thresholds Under MEPA**: The Proposed Project has improperly claimed in its filings with the BPDA that professional soccer games will generate only "1,770" new vehicle trips, based on unsupportable assumptions and inappropriate analogies. As further detailed below, if just one or two of these assumptions or analogies partially or fully fail, it is evident that at least 3,000 new vehicle trips will be generated by the Proposed Project. This requires a DCR Parkways Permit pursuant to the definition of "Substantial Increase in or Impact on Traffic" at 302 CMR 11.02, one or more MassDOT Highways Permit(s) pursuant to 700 CMR 13.01 and the definitions of "Substantial Increase in or Impact on Traffic" and "Vehicular Access Permit" at 700 CMR 13.02, and trips a mandatory EIR threshold under the MEPA Regulations at 301 CMR 11.03(6)(a)6. It is also apparent that one or more DCR parkways will be used by taxis and ride share vehicles to bring event-goers to the Proposed Project site, triggering an independent requirement for a DCR Parkways Permit.

4. **The Proposed Project employs numerous unsupportable assumptions to provide estimates below 3,000 new vehicle trips**: The proposal claims that it will create a number of remote parking lots for soccer fans and other event-goers, *in unspecified locations*. This aspect of the proposal in and of itself also likely requires one or more State permits, approvals, licenses and/or leases, and therefore MEPA and MHC review: The creation or use of a mere 150 parking spaces for sports fans or other live entertainment visitors' use plus 1,000 new vehicle trips on DCR parkways, or 2,000 or more new trips on DCR parkways, each cross other regulatory thresholds under the DCR Parkway Access Regulations and the MEPA Regulations. See 302 CMR 11.02 and 11.08(1)(a) and 301 CMR 11.03(6)(b) 12 and 13. The public filings for the Proposed Project admit there will be at least 1,770 new vehicle trips caused by the Proposed Project and estimate at least dozens of full-sized tourist-bus trips will be needed to ferry spectators between remote parking lots and the Proposed Project. It is not plausible that fewer than 150 parking spaces will be needed to serve the Proposed Project when dozens of full-sized bus trips are required to remote lots. Even using the proposal's estimate of 2.8 event-goers in each motor vehicle, 1,770 new vehicle trips generated by the Proposed Project would require at least 632 parking spaces. The equivalent analysis also applies with respect to MassDOT regulations and the need for one or more MassDOT Highways Permit(s) and thus MEPA and MHC review.

Proposed Project Trip Generation Exceeded for State Approvals / Permits / Licenses and for MEPA Review; Proposed Use of MBTA Property Also Triggers MEPA and MHC Jurisdiction

5. Significant failings in the transportation submissions for the Proposed Project include the following:

   A. **Use of MBTA / MassDOT Property**: Proposed Project filings with the BPDA assume that private shuttle buses will use restricted MBTA bus lanes at each of the Jackson Square and Forest Hills Orange Line Stations – which requires MBTA approval as contemplated by 700 CMR 13.01, could easily interfere with MBTA's own already-challenged operations, including but not limited to busing during track maintenance or during Orange Line emergencies, and as the proposed use by BUSP-contracted buses would need to continue for 30 years to match the term, which should be treated as either another State Approval creating MEPA and MHC jurisdiction, or a grant of an interest in State property, also creating MEPA and MHC jurisdiction.

   B. **Impacts on Franklin Park Zoo/DCR Property**: Traffic to and from Proposed Project events will undoubtedly have an impact on the Franklin Park Zoo, which is DCR property under M.G.L. c.92B, Section 11, and accordingly a further, independent source of DCR Parkways Permit jurisdiction and thus MEPA and MHC jurisdiction.

   C. **Use of any State parking lot**: To the extent any satellite parking lot is owned by a State agency, the required 30-year lease of or use rights in such satellite lot (to match the City's 30-year lease of the Proposed Project site to BUSP) would constitute the transfer of an interest in State land, and would be an independent source of both MEPA and MHC jurisdiction.

   D. **Undisclosed satellite parking lots create illegal project segmentation**: As satellite parking lots are necessarily part of the Proposed Project as framed by BUSP, all such satellite lots must be disclosed *now* to DCR, MassDOT, MEPA and MHC in order to prevent illegal project segmentation. To our knowledge no such disclosure has occurred.

   D. **Traffic signal timing changes**: Traffic signal timing changes will almost certainly be required on one or more DCR parkways and/or on Morton Street, a State highway, which is yet another independent source of DCR Parkways Permit jurisdiction and MassDOT Highways Permit jurisdiction and thus MEPA and MHC jurisdiction.

   E. **Transit Use Assumptions are not realistic or supportable based on recent BPDA approvals for other projects**: The transit mode splits used for the Proposed Project in BPDA filings that reduce trip generation to 1,770 are unsupported and unrealistic. The initial Proposed Project filing with the BPDA included a traffic report referencing a transit mode split survey done for Fenway Park, a very different location and context for a number of reasons, and does not supply a copy of the survey.

F. **Direct Comparison of Projects Proves Unrealistic Transit Mode Split**: The 5400-seat Fenway Theater project from 2019 also references a traffic study which relies on Fenway Park survey data, but which showed much lower transit use despite its superior proximity and access to transit compared to the Proposed Project:

	Fenway Theater (2019)	**Proposed Project**
Reference	PNF page 5-11	PNF page 4-12
Venue Capacity	5,400	11,000
Private Motor Vehicles	**47.1%** (**63.4%** with ride shares)	**45%**
Ride Share Vehicles	**16.3%**	---- (mode not broken out from private motor vehicles)
Public Transit	**23.3%**	**40%**
Walk	**12.8%** (**13.3%** with bicycles)	**15%**
Bicycle	0.5%	---- (mode not broken out from walking)

If the Fenway Theater / Fenway Park mode split accepted by the BPDA is employed for the Proposed Project, **then the total number of vehicle trips generated by the Proposed Project is at least 2,491, exceeding 2,000 vehicle trips and thus requiring a DCR Parkways Permit, a MassDOT Highways Permit, an ENF and potential EIR under MEPA, and MHC review and consultations.**

G. **Geography and Assumptions for Transportation for Fenway Park Area and Franklin Park Are Vastly Different:** The geographic and transit realities for the Proposed Project and Fenway Theater / Fenway Park are radically different. Using Fenway Park assumptions is clearly inappropriate for the Proposed Project:

Fenway Park Walk to Rail Transit – <u>Inside</u> Normative Walk-Shed Standards	**Proposed Project Walk to Rail Transit- <u>Outside</u> Normative Walk-Shed Standards**
0.1 mile (Lansdowne Station Framingham / Worcester Commuter Rail Line)	**0.75 mile** (Stony Brook Orange Line)

0.33 mile (Kenmore Square – B, C and D Green Line branches)	**1.0 mile** (Green Street Orange Line)
0.4 mile (Fenway Station on Green Line D branch from Riverside)	**1.3 miles** (Jackson Square Orange Line)
---	**1.5 miles** (Forest Hills Orange Line)

H. **Walking Distance assumptions for the Proposed Project do not follow standard "walk-shed" distances in transportation planning practice, are ill-suited for night events, and conflict with Proposed Project bus traffic:** None of the Orange Line stops proposed by the Proposed Project are considered "walkable" under the ½ mile distance limit under current traffic engineering best practices to determine walkability. And unlike Fenway Park, all of those Orange Line stops require walking longer, more complicated routes, with varied elevation, often in residential neighborhoods and within Franklin Park. The transit-and-walking mode to and from the Proposed Project will be especially difficult for evening and night games and events. Moreover, the walking routes between the Orange Line and the Proposed Project in Franklin Park directly conflict with the Proposed Project's planned bus routes at key intersections in residential neighborhoods, risking hours of gridlock, pedestrian-vehicle conflicts and emergency response delays. **It is very doubtful that nearly 17% *more* Proposed Project event-goers will use public transit as compared with Fenway Park or Fenway Theater patrons.**

I. **Other unrealistic assumptions by Proposed Project**:

i The assumption that ride share vehicles and personally owned motor vehicles *combined* will be 18% *less* for the Proposed Project than at Fenway Theater and Fenway Park is not credible or supported.

ii A vehicle occupancy rate of 2.8 event-goers per vehicle is not typical of or credible for use with ride share vehicles. Typically, only a back seat is available for ride share paying passengers, and ride share vehicles are commonly assigned a vehicle occupancy rate of not more than 2.0. Breaking out ride share vehicles and using a credible vehicle occupancy rate for ride share vehicles further increases vehicle trip generation for the Proposed Project above 2,491 trips.

J. **Later Proposed Project submissions reduced bus trips but did not also increase vehicle trips accordingly**: In supplemental filings with the BPDA or one or more neighborhood groups, in response to public upset over the number of Proposed Project bus trips through these Environmental Justice neighborhoods, BUSP reduced the number of one-way transit stop shuttle bus trips from 55 to 22 and reduced the

number of one-way remote parking lot bus trips from 89 to 50, but failed to increase the number of private and ride share vehicles to account for event attendees left stranded by such reduced bus service. **By itself, that late change by the Proposed Project would be expected to increase the number of vehicle trips by another 1,285 from 2,491 to 3776, well above the MEPA threshold for a *mandatory* EIR.**

K. **Later Proposed Project supplemental filings reduced the walking plus bicycling mode by 5% without shifting those trips to another mode**: Later supplemental filings for the Proposed Project with the BPDA or neighborhood groups reduced the walking plus biking mode split from 15% in total to 10% in total, **without also shifting 1,640 such trips to the already unrealistic assumptions for transit mode use, or more likely shifting those trips to the motor vehicle / ride share mode**.

L. **Properly analyzed, it is likely that Proposed Project trip generation will exceed *4,000*, a crushing new load for the DCR parkways, Morton Street / Highway 203, and streets in residential Environmental Justice neighborhoods to absorb.**

Protected Historic Public Landmarks Will Be Demolished and Materially Adversely Affected by Proposed Project

6. The Proposed Project intends to all-but-totally demolish the existing White Fund Stadium and to reconstruct in its place a new professional soccer stadium and for-profit live events venue with 11,000 seats together with professional team offices, press facilities, luxury boxes, one or more bars and restaurants and other stores or commerce.

7. *The existing White Fund Stadium* in Franklin Park is listed on MHC's Massachusetts Cultural Resource Information System (MACRIS) as eligible for listing on the National Register of Historic Places, and *thus is included as a State Register Property as defined in the MHC Regulations at 950 CMR 11.03, and entitled by law to the protections of the MHC Statute and the MHC Regulations, including but not limited to those at 950 CMR 71.04, prior to any demolition of any part of the existing Stadium.*

8. The Proposed Project is located on 14 acres of land owned by the Trustees of the George Robert White Fund, a public charitable trust for the benefit of the residents of Boston (the White Fund Property).

9. The White Fund Property is completely surrounded by Franklin Park, the last and one of the greatest of the urban parks designed by Frederick Law Olmsted. Recently, Mayor Michelle Wu referred to Franklin Park in video-recorded comments broadcast by WBUR as the "Mona Lisa of Olmsted Parks."

10. Franklin Park is listed on the National Register of Historic Places and thus Franklin Park is automatically also listed on the State Register and as such is a State Register Property

entitled by law to the protections of the MHC Statute and the MHC Regulations including, but not limited to those at 950 CMR 71.04, prior to any demolition of any part of the existing Stadium or other commencement of any portion of the Proposed Project. *It is difficult to imagine how the Proposed Project will not have a material adverse impact on both the White Fund Property and Franklin Park, both of which are protected by the MHC Statute and the MHC Regulations.*

11. Olmsted designed this area of Franklin Park, adjacent to residential neighborhoods, as "The Playstead," an area for school and community recreation. According to Professor Ethan Carr, among others, The Playstead was *not* designed to be a professional sports venue.

12. Because the White Fund Property is entirely surrounded by Franklin Park, *it is impossible* for Proposed Project demolition and construction vehicles, new underground utility lines for the Proposed Project, soccer team service vehicles (team officials' vehicles, press vehicles, beer trucks, food trucks, retail trucks, etc.), emergency vehicles and soccer or live entertainment fans *to access the Proposed Project site without using and impacting a large portion of Franklin Park, a State Register Property entitled to the protections of the MHC Statute and the MHC Regulations.*

13. The professional soccer games and live for-profit concerts will impact not merely the 14 acres of the White Fund Property, but the use, access and enjoyment and program planning for all of Franklin Park, including operations and animals at and visitors to the Franklin Park Zoo, the Golf Course, and other facilities for three out of every four Saturdays from the end of March until the beginning of November for at least the proposed 30-year duration of a lease from the White Fund Trust / City of Boston to BUSP. That is 75% of the Saturdays in the warmer weather months. In addition, practice games will impact 75% of the Fridays during the same months. Each game continues not merely for the 2-3 hours of regulation play, but for the 2+ hours before and after when fans are arriving and departing. All told, professional soccer game use of Franklin Park will continue for approximately 7 hours each Saturday with home games, and likely approximately 6 hours of each Friday for pre-home-game practices. The traffic, noise, lights, litter, law enforcement, public security, and medical emergency impacts, as well as competing user conflicts, on the Franklin Park Zoo, on Franklin Park as a whole, and on the surrounding Environmental Justice neighborhoods of Roxbury, Dorchester, Jamaica Plain and Mattapan will be incalculable.

14. Additional for-profit live entertainment at the Proposed Project (live professional touring concerts, commercial events, etc.) will expand the extent and duration of the material, adverse impacts on the Franklin Park Zoo, the Golf Course, Franklin Park and the surrounding Environmental Justice neighborhoods.

15. Existing community events, cultural festivals, music festivals and amateur athletic events previously using portions of the Park in or around the existing Stadium on Saturdays will

necessarily be pushed into the remaining open Saturdays or into Sundays, further usurping and degrading public use of Franklin Park as a public park.

Material Harm to the Environment and to Abutting Environmental Justice Communities from the Proposed Project;
Failure to Comply with Federal Grant Terms / Restrictions

16. Likewise, it is difficult to imagine how the Proposed Project will not have material, adverse impacts on the environment of the Commonwealth and especially on the environment of the long-abused and long-neglected Environmental Justice communities around Franklin Park.

17. On at least two occasions, the City of Boston sought and obtained Federal Land and Water Conservation Fund (LWCF) funding to restore and improve the various park lanes, ways, paths and drives within Franklin Park. Copies of such LWCF grant funding papers are attached as Exhibit **B**. As such, all of the lanes, drives, paths and ways within Franklin Park, including those providing all of the access to the Proposed Project, are protected as purely park ways by the grant terms of the LWCF funding. The City of Boston Streets List itself categorizes all of the lanes, drives and ways within this area of Franklin Park as "Park roads." These protections have been disregarded by the Proposed Project proponents. The proposal suggests employing many park areas, park elements and park ways for the benefit of the Proposed Project, which is impermissible due to land use restrictions placed on the land and accepted by the City of Boston at the time of acceptance of those LWCF grant funds.

18. Until just a few short weeks ago, the White Fund Property was zoned Open Space – Recreation by the City of Boston, and had been so zoned for decades. Nevertheless, the City acting through its Zoning Commission re-zoned the Proposed Project site for a "Stadium," including professional sports games, live concerts, and liquor and food service, without complying with Amendment Article 97 of the Massachusetts Constitution.

19. Absent full compliance with all applicable law, including without limitation Article 97 of the Massachusetts Constitution, such purported re-zoning of the Proposed Project site was beyond the authority and power of the City of Boston and is a legal nullity.

20. While Judge Sarah Ellis in her March, 2024 decision denied a preliminary injunction in the Superior Court action, she nevertheless **found in that decision that the current Stadium and the White Fund Property on which it sits is public recreation land** dating back to at least 1947-49.

21. The Supreme Judicial Court in Smith v. City of Westfield, 478 Mass. 49 (2017) already held that ballfields and a tot lot, as long-standing public recreation land, were protected by Article 97 of the Massachusetts Constitution. A copy of that 2017 SJC decision is

attached as Exhibit **C**. As in the City of Westfield case, Boston obtained and used LWCF funding for the surrounding area of Franklin Park, including the drives and ways providing access to the Proposed Project site. According to the 1947 Deed for the White Fund Property and a 1996 report of the Boston Finance Commission, the City of Boston also accepted a total of some $1.26 million in White Fund trust income for the sale of the White Fund Property to the White Fund Trustees and the construction of the current Stadium for public recreational use (equal to over $17 million in current dollars), which is the public trust fund equivalent of restricted LWCF funding. **Accordingly, given the terms and restrictions of the LWCF funding and the terms of the George Robert White Trust income funding accepted by the City of Boston, the current Stadium and the White Fund Property, and all access thereto, are protected by Article 97, just as the ballfields and tot lot were protected by Article 97 in the City of Westfield.**

22. Moreover, Massachusetts land use and zoning law holds that "access is use." The City would need to rezone all of the areas of Franklin Park surrounding the Proposed Project to Stadium use in order for the unavoidable use of Franklin Park for access to the Proposed Project to be lawful. The City of Boston is prohibited from rezoning the portion of Franklin Park surrounding the Proposed Project, however, without first complying with the terms of LWCF grant funding, and Amendment Article 97 of the Massachusetts Constitution, which requires a 2/3 roll-call vote of the legislature before a public park can used for access to the Proposed Project.

23. This Proposed Project is located in a portion of Franklin Park which is surrounded by and serves multiple Environmental Justice communities including Roxbury, Dorchester, Jamaica Plain and Mattapan. Attached as Exhibit **D** are graphics illustrating the extent and nature of the multiple Environmental Justice communities that will be impacted by the Proposed Project. Franklin Park serves as the equivalent of the Boston Common and the Public Garden for Roxbury, Dorchester, Jamaica Plain and Mattapan. Residents of these densely-populated Environmental Justice neighborhoods have at least as great, or perhaps an even greater need for green space and public recreation land as do residents of less urban or more wealthy areas. **This Proposed Project would construct a new, larger, professional sports facility and for-profit entertainment venue in the public park that serves some of the poorest, most racially-diverse, most non-English-speaking, most environmentally deprived neighborhoods in the entire Commonwealth, without complying with the DCR Parkway Access Regulations, MassDOT Regulations, MEPA requirements (including Environmental Justice requirements under the MEPA Statute and Regulations), and MHC requirements.**

24. As is graphically shown in the attached copy of a Boston Globe article dated August 1, 2024, Franklin Park provides critical cooling for, and to mitigate the urban heat island impacts of climate change on, the surrounding Environmental Justice neighborhoods of Boston, and beyond. See Exhibit **E**. **It is difficult to imagine how the Proposed Project within Franklin Park and use of Franklin Park would not detract from the current, cooling benefits of the Park on multiple Environmental Justice**

communities, and beyond, subjecting these Environmental Justice communities to new environmental harms and burdens.

Public Subsidy of Private Enterprise Through a Public-Private Partnership

25. The City of Boston has publicly stated that it intends to invest approximately $50 million in General Obligation Bond financing from the City of Boston's School Department Budget for its portion of the Proposed Project, while the private investor group has publicly stated it intends to invest another approximately $50 million in private funds for the Proposed Project. According to Professor Andrew Zimbalist of Smith College, however, in an article recently published online in Commonwealth Beacon, quality high school stadiums can and have been built for $8 million to $20 million – indeed the current Stadium was when its costs are rendered in current dollars, which means $30 million of the City's $50 million public funding likely constitutes a public subsidy of a for-profit professional sports and live entertainment venue. A copy of Professor Zimbalist's article is attached as Exhibit **F**. This Proposed Project did not develop or review alternatives, a requirement of MEPA and of Constitution Amendment Article 97, and to our knowledge these questions have not been asked or considered in a robust public discussion to date.

Conclusion and Next Steps for State Review of Proposed Project

The Proposed Project and its related impacts have not undergone the required State regulatory scrutiny, scrutiny of the use of interests in State land, MEPA review or MHC review and consultations. The Proposed Project has not provided a credible or final transportation plan or disclosed numerous remote parking lots and routes thereto which necessarily form a part of a Proposed Project under Massachusetts law.

It is essential that the Proposed Project, indeed any proposal of this scale, nature and location - particularly one located immediately adjacent to multiple, highly-populated, Environmental Justice Communities, as shown in Exhibit D - be required to comply with all applicable law and experience meaningful, detailed review by all applicable State agencies, including among others the expanded processes required by the Environmental Justice Amendments to the MEPA Statute and Regulations, and the MHC Statute and Regulations. The information provided thus far regarding the Proposed Project is incomplete and in the case of transportation impacts at least is based on unrealistic assumptions and inappropriate analogies. In analyzing even the partial information provided, as demonstrated above, multiple Massachusetts statutes and regulations apply on their face. We have addressed our concerns, in detail, to you as the core group of officials responsible for the fair and systematic enforcement of the relevant statutes and regulations, including but not limited to the DCR Parkways Access Regulations, the MassDOT Regulations, the MEPA Statute and Regulations and the MHC Statute and Regulations. These apply with equal if not greater vigor to public projects and public-private partnership projects such as the Proposed Project as they do to purely private

development. We urge you to require the proponents of the Proposed Project promptly to comply with all applicable State law.

On behalf of the residents of Boston, the many citizens of the Commonwealth who care deeply about the protection of the environment, and especially the Environmental Justice communities of Roxbury, Dorchester, Jamaica Plain and Mattapan surrounding White Stadium and Franklin Park, we are confident that with the information provided in this letter the Commonwealth will take swift and appropriate steps and actions for the enforcement of DCR Access Permit Regulations, the MassDOT Regulations, the MEPA Statute (including the Environmental Justice Act amendments thereto), the MEPA Regulations, LWCF grant funding terms and restrictions, the MHC Statute and MHC Regulations, and Amendment Article 97 of the Massachusetts Constitution, to ensure the rights of the residents of the Commonwealth and the City of Boston.

We are available, willing and ready to meet to discuss the concerns raised above at your earliest opportunity and request one or more in-person meetings with you by August 31, 2024 to confirm and understand the Commonwealth's proactive next steps to submit the Proposed Project to the applicable required regulatory and review processes.

Sincerely yours,

Louis Elisa, president of
The Garrison-Trotter Neighborhood Association

Karen Mauney-Brodek, president of
The Emerald Necklace Conservancy, a
Massachusetts charitable corporation
The Emerald Necklace Conservancy

Attachments: Exhibit A: DCR Assets Map screenshot Showing Parkways and Franklin Park Zoo Locations
Exhibit B: LWCF grant funding papers for elements of Franklin Park (#25-00-246 as amended [1978-1983] and #25-00-339 [1986])
Exhibit C: Copy of Smith v. City of Westfield, 478 Mass. 49 (2017)
Exhibit D: Graphics Showing Multiple Environmental Justice Communities in the Immediate Vicinity of the Proposed Project

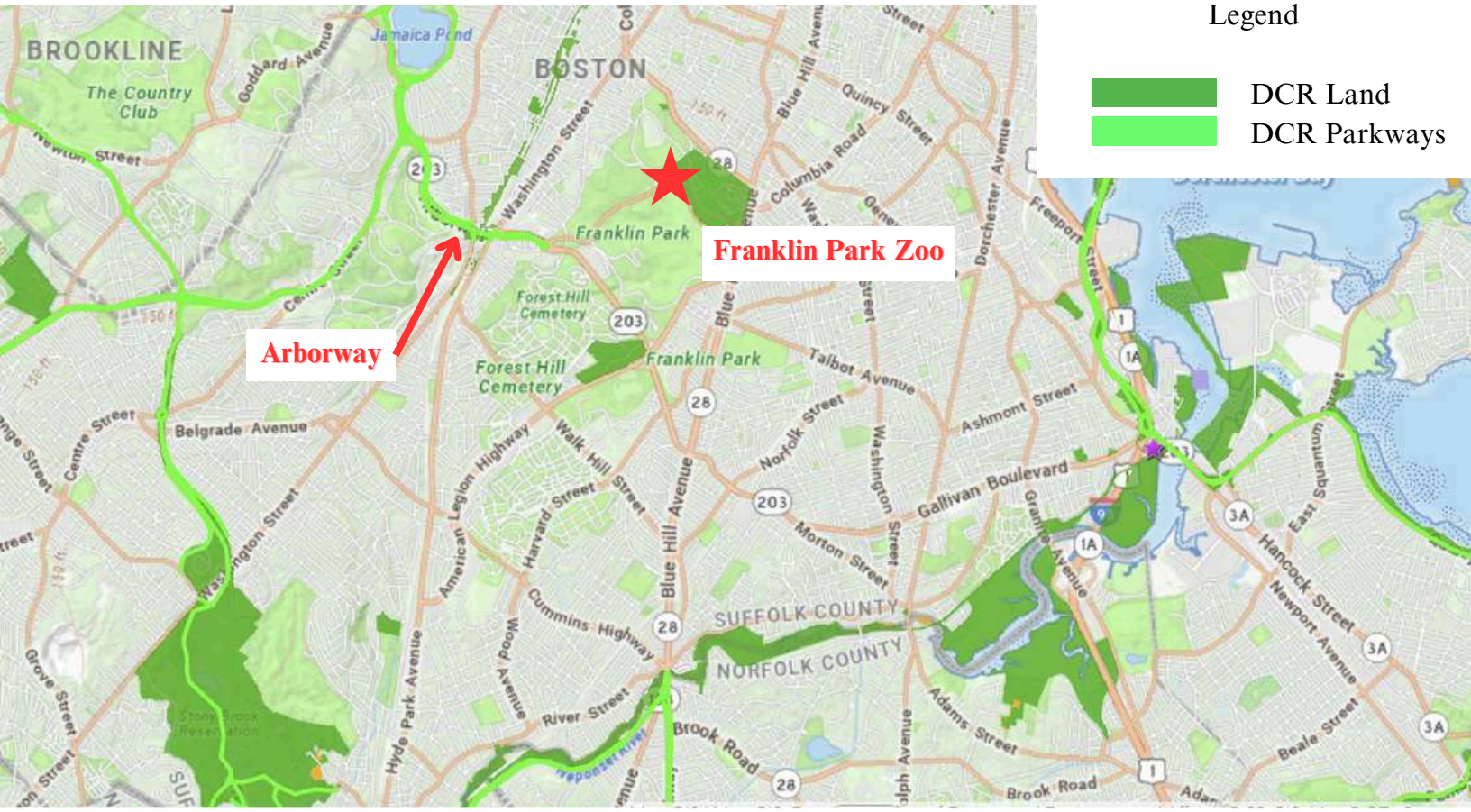
Exhibit E: Copy of article from August 1, 2024 Boston Globe showing that Franklin Park ameliorates urban island impacts on adjacent neighborhoods

Exhibit F: Professor Andrew Zimbalist article from Commonwealth Beacon

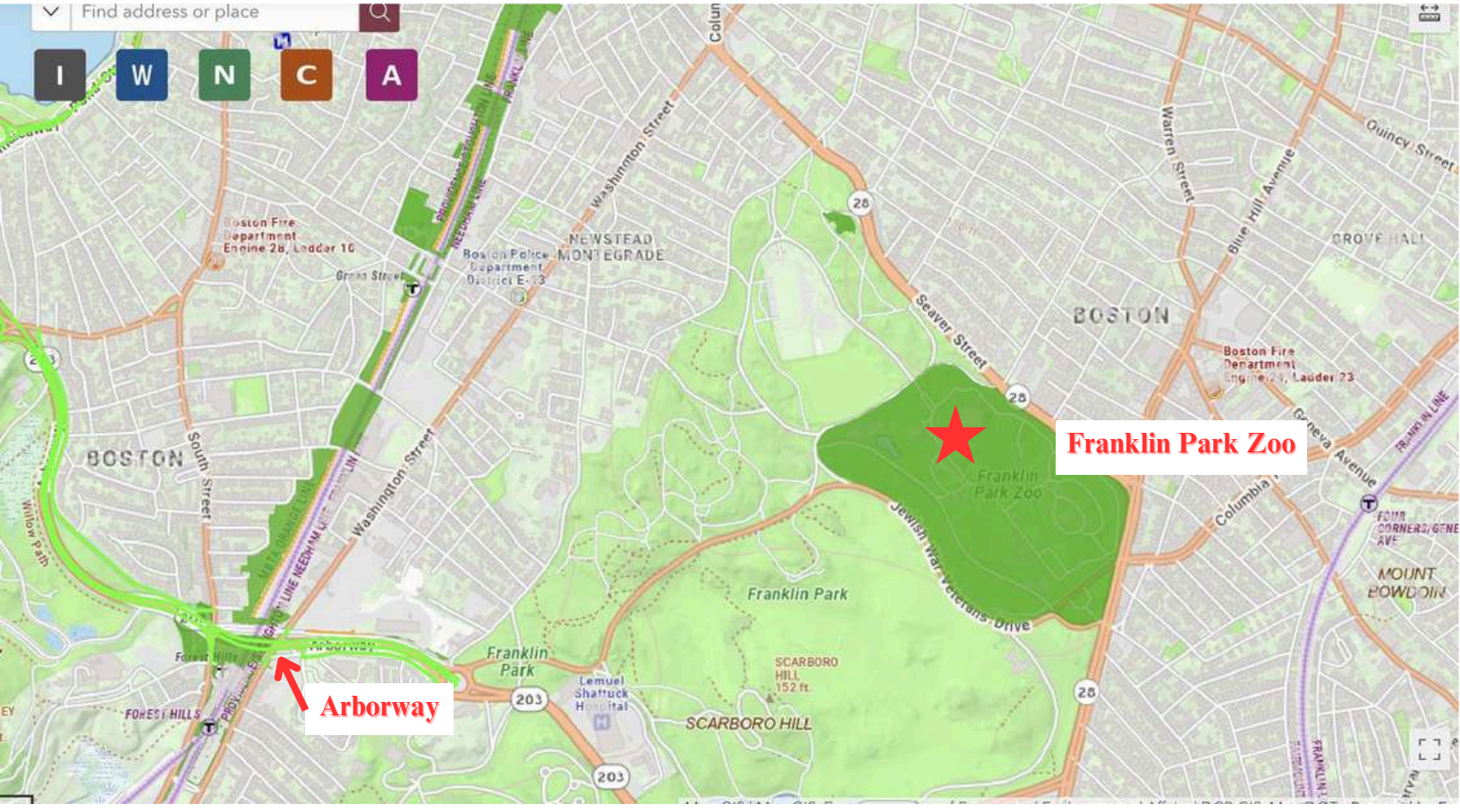
Cc: Hon. Maura Healey, Governor of The Commonwealth of Massachusetts
Hon. Andrea Campbell, Attorney General of The Commonwealth of Massachusetts
Hon. Michelle Wu, Mayor of the City of Boston and Chairperson and Trustee of The George Robert White Fund of the City of Boston
Ruthzee Louijeune, Boston City Council President and Trustee of The George Robert White Fund Trust of the City of Boston
Maureen Joyce, Boston City Auditor and Trustee of The George Robert White Fund Trust of the City of Boston
James E. Rooney, President and CEO of the Boston Chamber of Commerce and Trustee of The George Robert White Fund Trust of the City of Boston
Hannah L. Kilson, President of the Boston Bar Association and Trustee of The George Robert White Fund Trust of the City of Boston
City of Boston Finance Commission
Adam Cedarbaum, Esq., Corporation Counsel of the City of Boston
Michael Firestone, Esq., Director of Policy of the City of Boston
Boston Parks Commission
Boston Landmarks Commission, attn.: Chair, and Executive Director
Boston Preservation Alliance
Boston Unity Soccer Partners, LLP, attn. Jennifer Epstein, Manager
Massachusetts Audubon, attn. David J. O'Neill, President
Massachusetts Land Trust Coalition, attn.: Robb Johnson, President
Environmental League of Massachusetts, attn.: Elizabeth Turnbull Henry, President

EXHIBIT A:

DCR Assets Map screenshot Showing Parkways & Franklin Park Zoo Locations



DCR Asset Map - Boston, Brookline and Milton



DCR Asset Map - Franklin Park and surroundings

EXHIBIT B:

LCWF grant funding papers for elements of Franklin Park (#25-00-246 as amended [1978-1983] and #25-00-339 [1986]

UNITED STATES DEPARTMENT OF THE INTERIOR
Bureau of Outdoor Recreation
Land and Water Conservation Fund Project Agreement

State	Massachusetts	Project Number	25-00 246

Project Title: Franklin Park

Project Period: Date of approval to 6/30/83

Project Scope (Description of Project)

This project shall consist of the design, construction and construction supervision of Franklin Park by the City of Boston, County of Suffolk to include site preparation construction of walkways, trails, roadways, gates, landscaping, boatdock, and installation of benches and signs.

Project Stage Covered by this Agreement

Entire Stage

Project Cost

/ Total Cost	$	400,000
/ Fund Support		~~50~~ %
Fund Amount	$	200,000
Cost of this Stage	$	400,000
Assistance this Stage	$	200,000

The following attachments are hereby incorporated into this agreement:

1. General Provisions (Dated, December, 1965)
2. Project Proposal
3. _____
4. _____

POSTED
Date SEP 29 1978
By _____

18 OR 8-92
(Rev. April 1974)

The United States of America, represented by the Director, Bureau of Outdoor Recreation, United States Department of the Interior, and the State named above (hereinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances attached hereto and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United States' share of the costs of the above project stage, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:
Section 8.2d and D.4 of the General Provisions dated December, 1965 are not binding upon this project unless the matching funds used require compliance with the Davis-Bacon Act.
This Agreement is subject to the Clause, dated July 1, 1975, which outlines responsibilities pursuant to the Clean Air and Water Acts.
Pre-agreement costs of the type listed in 670.1.3B(2) of the Grants-in-aid Manual incurred from 6/30/77 to date of the project approval shall be allowable under this agreement.
The State agrees to turn over to the City of Boston all funds granted hereunder.
Any reference to the Bureau of Outdoor Recreation (BOR) contained in the agreement, or in any attachments incorpotated thereto, shall hereinafter be considered a reference to the Heritage Conservation and Recreation Service (HCRS).

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

THE UNITED STATES OF AMERICA

By _____ (Signature)

Chief, Grants Division

(Title)

Bureau of Outdoor Recreation
United States Department of the Interior

Date 9/22/78

STATE

Massachusetts

(State)

By _____ (Signature)

Evelyn F. Murphy

(Name)

State Liaison Officer

(Title)

UNITED STATES
DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

STATE ~~Massachusetts~~

Project Amendment No. 25-00246.1

AMENDMENT TO PROJECT AGREEMENT
(OMB No. 1024-0033, 09/30/84)

THIS AMENDMENT To Project Agreement No. 25-00246 is hereby made and agreed upon by the United States of America, acting through the Director of the National Park Service and by the State of **Massachusetts** pursuant to the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964).

The State and the United States, in mutual consideration of the promises made herein and in the agreement of which this is an amendment, do promise as follows:

That the above mentioned agreement is amended by adding the following:

Delete the boatdock from the project scope.

In all other respects the agreement of which this is an amendment, and the plans and specifications relevant thereto, shall remain in full force and effect. In witness whereof the parties hereto have executed this amendment as of the date entered below.

THE UNITED STATES OF AMERICA

By _____
(Signature)

OUTDOOR RECREATION PLANNER
(Title)

National Park Service
United States Department of
the Interior

Date 02 MAR 1984

STATE

Massachusetts
(State)

By _____
(Signature)

James S. Hoyte
(Name)

State Liaison Officer
(Title)

NPS 10-902a
(7-81)

POSTED
Date 3-8-84
By _____


CITY OF BOSTON PARK DEPARTMENT
GENERAL PLAN
OF
FRANKLIN PARK
WEST ROXBURY, MASS.
WALNUT AVE.
SIGOURNEY
HAROLD ST.
PARK VIEW AVE.
HUMBOLDT AVE.
ELM HILL AVE.
MAPLE ST.
FOREST HILLS
MORTON
THE WILDERNESS
OVERLOOK
PIERPONT
THE PLAYSTEAD
BASEBALL DIAMONDS
PLAYSTEAD
CIRCUIT
DRIVE
ELLICOTTDALE
SCHOOLMASTER HILL
DAIRY
SCARBORO HILL
GOLF
COURSE
BIRD HOUSE
ELEPHANT HOUSE
LION HOUSE
GOLF HOUSE
ABBOTSWOOD
REFECTORY
GREENHOUSES
COMM. OF MASS.
AMERICAN
LEGION
HIGHWAY
BLUE HILL
COLUMBIA RD.
GLENWAY ST.

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
Land and Water Conservation Fund Project Agreement
(OMB No. 1024-0033, 09/80/84)

State Massachusetts | Project Number 25-00339

Project Title Franklin Park, Phase II

Project Period: Date of Approval 12/31/86 | Project Stage Covered by this Agreement: Entire

Project Scope (Description of Project)

This project will consist of the design, construction and construction supervision of walkways, vehicular controls and landscaping of Franklin Park in the City Of Boston, County of Suffolk

Project Cost	
Total Cost	$ 500,000.00
Fund Support not to exceed 50%	
Fund Amount	$ 250,000.00
Cost of this Stage	$ 500,000.00
Assistance this Stage	$ 250,000.00

The following are hereby incorporated into this agreement:

1. General Provisions (LWCF Manual)
2. Project Application and Attachments.
3. _____
4. _____

NPS 10-902
(7-81)

POSTED
Date 9-30-13
By [illegible]

The United States of America, represented by the Director, National Park Service, United States Department of the Interior, and the State named above (herinafter referred to as the State), mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964), the provisions and conditions of the Land and Water Conservation Fund Grants Manual, and with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances attached hereto or retained by the State and hereby made a part hereof.

The United States hereby promises, in consideration of the promises made by the State herein, to obligate to the State the amount of money referred to above, and to tender to the State that portion of the obligation which is required to pay the United States' share of the costs of the above project stage, based upon the above percentage of assistance. The State hereby promises, in consideration of the promises made by the United States herein, to execute the project described above in accordance with the terms of this agreement.

The following special project terms and conditions were added to this agreement before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this agreement as of the date entered below.

THE UNITED STATES OF AMERICA

By William E. Pitzgerald

(Signature)

National Park Service
United States Department
of the Interior

2 7 SEP 1983

Date

STATE

Massachusetts

By

(Signature)

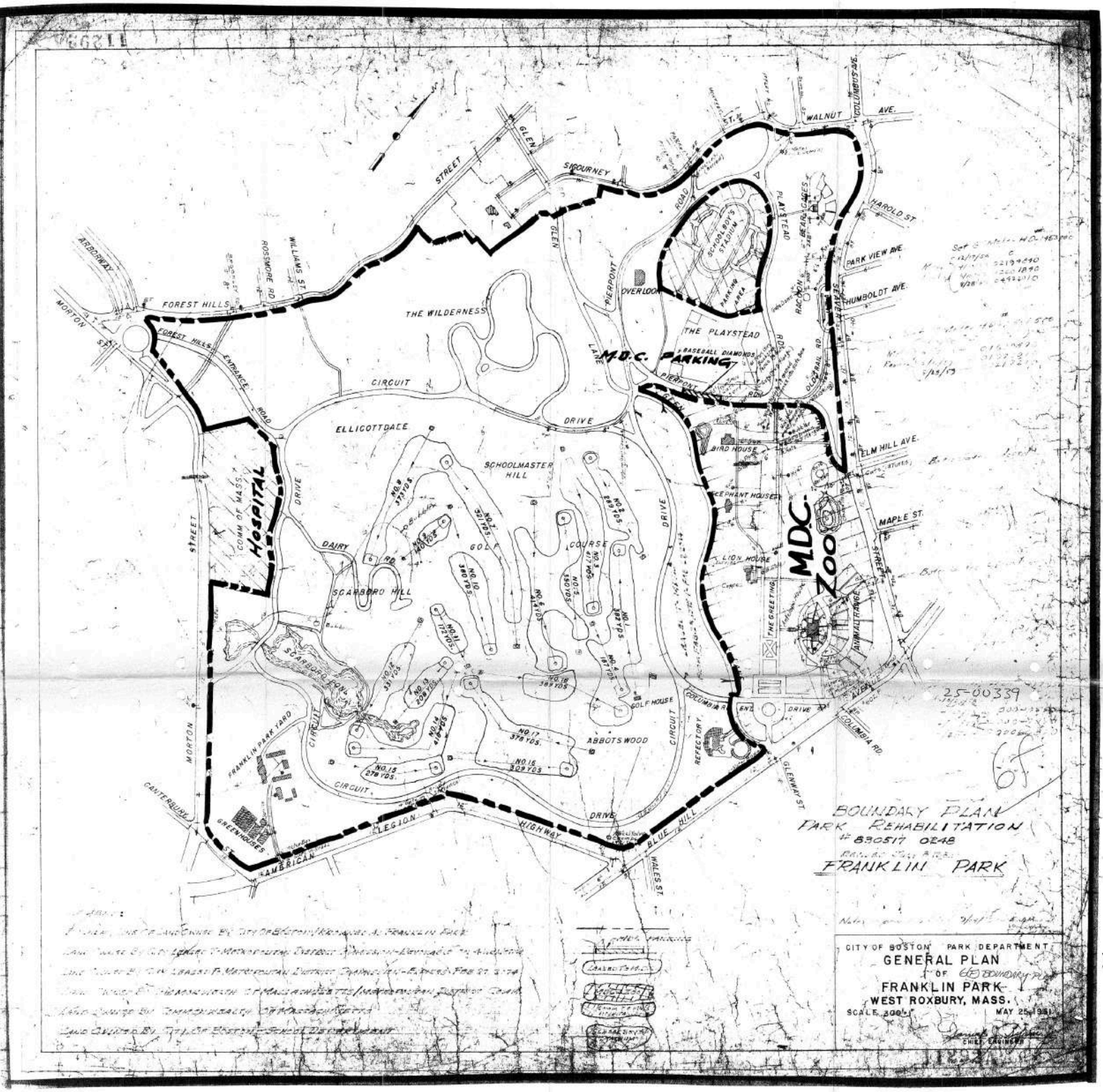
James S. Hoyte

(Name)

State Liaison Officer

(Title)

NPS 10-902
(7-81)



BOUNDARY PLAN
PARK REHABILITATION
#830517 0248
FRANKLIN PARK

CITY OF BOSTON PARK DEPARTMENT
GENERAL PLAN
OF BOUNDARY PLAN
FRANKLIN PARK
WEST ROXBURY, MASS.
SCALE 200' = 1" MAY 25, 1951
CHIEF ENGINEER

25-00339

EXHIBIT C:

Copy of Smith v. City of Westfield, 478 Mass. 49 (2017)

478 Mass. 49 (2017)

VIRGINIA B. SMITH & others[1]

v.

CITY OF WESTFIELD & others. [2]

SJC-12243.

Supreme Judicial Court of Massachusetts, Hampden.

April 6, 2017.
October 2, 2017.

Civil action commenced in the Superior Court Department on April 27, 2012.

The case was heard by Daniel A. Ford, J.

After review by the Appeals Court, the Supreme Judicial Court granted leave to obtain further appellate review.

Thomas A. Kenefick, III (Mary Patryn also present) for the plaintiffs.

Seth Schofield, Assistant Attorney General, for the Commonwealth.

50 *50 Anthony I. Wilson (John T. Liebel also present) for city of Westfield.

The following submitted briefs for amici curiae:

Luke H. Legere & Gregor I. McGregor for Massachusetts Association of Conservation Commissions, Inc.

Edward J. DeWitt for Association to Preserve Cape Cod, Inc.

Sanjoy Mahajan, pro se.

Phelps T. Turner for Conservation Law Foundation.

Jeffrey R. Porter & Colin G. Van Dyke for Trustees of Reservations & others.

Present: GANTS, C.J., LENK, HINES, GAZIANO, LOWY, & BUDD, JJ.[3]

Municipal Corporations, Parks, Use of municipal property. *Parks and Parkways. Constitutional Law,* Taking of property. *Due Process of Law,* Taking of property.

This court concluded that parkland protected by art. 97 of the Amendments to the Massachusetts Constitution includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority; therefore, this court vacated the judgment in favor of the defendant city in proceedings brought by residents challenging the city's commencement of a school construction project at a municipal playground without having obtained a two-thirds vote of the General Court as required by art. 97, and remanded the matter for the issuance of a judgment converting a preliminary injunction into a permanent injunction, where, in the totality of the circumstances, the city, with clear and unequivocal intent, had dedicated the playground as a public park, and certainly did so upon its acceptance of Federal conservation funds to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the United States Secretary of the Interior. [55-64]

GANTS, C.J.

Article 97 of the Amendments to the Massachusetts Constitution, approved by the Legislature and ratified by the voters in 1972, provides that "[l]ands and easements taken or acquired" for conservation purposes "shall not be used for other purposes or otherwise disposed of" without the approval of a two-thirds roll call vote of each branch of the Legislature. The issue on appeal is whether a proposed change in use of municipal parkland may be governed by art. 97 where the land was not taken by eminent domain and where there is no restriction recorded in the registry of deeds that limits its use to conservation or recreational purposes. We conclude that there are circumstances where municipal parkland may be protected by art. 97 without any such recorded restriction, provided the land has been dedicated as a public park. A city or town dedicates land as a public park where there is a clear and unequivocal intent to dedicate the land permanently as a public park and where the public accepts such use by actually using the land as a public park. Because the municipal land at issue in this case has been dedicated as a public park, we conclude that it is protected by art. 97.[4]

Background. The subject of this appeal is a parcel of property owned by the city of Westfield (city), known as the John A. Sullivan Memorial Playground or Cross Street Playground (the parcel or Cross Street Playground), on which the city seeks to build an elementary school. The parcel contains 5.3 acres of land and includes two little league baseball fields and a playground. Because the parcel's history is at the center of the parties' dispute in this case, we recount it in some detail.

51 *51 The parcel has served as a public playground for more than sixty years. The city obtained title to the parcel in 1939 through an action to foreclose a tax lien for nonpayment of taxes. In 1946, the city planning board recommended that the land be used for a "new playground," and referred the matter to the mayor. The city council voted in 1948 to turn over "full charge and control" of the property to the playground commission, and in 1949 to transfer funds to the commission to cover costs of "work to be done on Cross [Street] Playground." In November, 1957, the city council passed an ordinance formally naming the playground the "John A. Sullivan Memorial Playground."[5] The mayor approved the ordinance early in 1958. Despite the name formally given, the parcel eventually came to be commonly known as the "Cross Street Playground."

In 1979, working in cooperation with the State government, the city applied for and received a grant from the Federal government (as well as matching funds from the State) to rehabilitate several of its playgrounds, including the Cross Street Playground. The Federal conservation funds that the city received were made available by the Land and Water Conservation Fund Act of 1965 (act). See Pub. L. No. 88-578, 78 Stat. 900 (1964), codified as 16 U.S.C. § 4601-8 (1976).[6] The purpose of the act is to assure "outdoor recreation resources" for "all American people of present and future generations" by enabling "all levels of government and private interests to take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such

resources for the benefit and enjoyment of the American people." 16 U.S.C. § 4601 (1976). Grant money distributed pursuant to the act is known as LWCF funding.

The act imposed several key requirements on States seeking LWCF funding in support of local park projects. First, it required States to develop a "comprehensive
52 statewide outdoor recreation plan" (SCORP) setting forth, among other information, the State's *52 evaluation of its need for outdoor recreation resources and designating the State agency that would represent the State in the LWCF funding process. *Id.* at § 4601-8(d).[7] The act also mandated that "[n]o property acquired or developed with assistance under this section shall ... be converted to other than public outdoor recreation uses" without the approval of the United States Secretary of the Interior (Secretary). *Id.* at § 4601-8(f)(3). Further, the act stated that "the Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location." *Id.* The grant agreement for rehabilitation of the Cross Street Playground indicates that the grant was expressly conditioned on compliance with the act. Therefore, by accepting the Federal monies under the act, the city forfeited the ability to convert any part of the Cross Street Playground to a use other than public outdoor recreation unilaterally; such a conversion could only proceed with the approval of the Secretary. The 2006 Massachusetts SCORP states explicitly that "[l]and acquired or developed with [LWCF] funds become[s] protected under the Massachusetts Constitution (Article 97) and [F]ederal regulations — and cannot be converted from intended use without permission" from the National Park Service and Executive Office of Energy and Environmental Affairs. See Massachusetts Outdoors 2006: Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Environmental Affairs 4, http://www.mass.gov/eea/docs/eea/dcs/massoutdoor2006.pdf [https://perma.cc/T3D7-4EKN]. See also Massachusetts Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Energy and Environmental Affairs 2 (2012), http://www.mass.gov/eea/docs/eea/dcs/scorp-2012-final.pdf [https://perma.cc/F4D6-W4MS] (describing land funded by LWCF as protected under art. 97).[8] The restrictions imposed by the act on the
53 management of land acquired or *53 developed with LWCF funding remain in full effect over the Cross Street Playground. See 54 U.S.C. § 200305(f)(3) (2012 & Supp. II).

In 2009, a report on a survey of the city's parks and open space conducted by the Department of Conservation and Recreation, the Pioneer Valley planning commission, and the Franklin Regional council of governments included a map that identifies the Cross Street Playground as "permanently protected open space." A year later, the city's mayor endorsed an open space plan which noted that, although not all public land is "permanently committed for conservation purposes," Cross Street Playground was public land with a "full" degree of protection and "active" recreation potential.

On August 18, 2011, the city council voted to transfer the entire Cross Street Playground from the city's parks and recreation department to its school department for the purpose of constructing a new elementary school on the land. In 2012, the city began a demolition process that included taking down century-old trees and removing a portion of the playground. The plaintiffs, a group of city residents, commenced this action in April, 2012, naming the city and city council as defendants, as well as the mayor and city councillors in their official capacities. The plaintiffs sought a restraining order to halt the construction project under G. L. c. 214, § 7A, and G. L. c. 40, § 53.[9] In addition, the plaintiffs sought relief in the nature of mandamus under G. L. c. 249, § 5, requesting that the court order the defendants to comply with art. 97 of the Massachusetts Constitution prior to any construction or operation of a new school on any part of the Cross Street Playground.

A Superior Court judge issued a temporary restraining order to halt construction of the school on the Cross Street Playground in September, 2012, and later granted the
54 plaintiffs' motion for a preliminary injunction. In issuing the injunction, the judge agreed with the defendants that "the failure to build a new public school *54 would have an adverse impact on the residents of the city, specifically the children, who are currently learning in outdated and decaying schools." But the judge made clear that she was "not prohibiting the construction of a new school"; she was "merely ordering the [c]ity to comply with the law before it proceeds."

The parties later submitted cross motions for the entry of judgment based on an agreed statement of facts, essentially asking the court to decide whether the preliminary injunction should be made permanent or vacated. By this stage of the litigation, the parties had stipulated that the only question for decision was whether the Cross Street Playground was protected by art. 97. Another Superior Court judge concluded that the Supreme Judicial Court in *Mahajan* v. *Department of Envtl. Protection,* 464 Mass. 604, 615 (2013), "decided that a parcel of land acquires Article 97 protection only when the land is specifically designated for Article 97 purposes by a recorded instrument." Because there was no recorded instrument designating that the Cross Street Playground was to be used as a playground or for any other recreational purpose, the judge concluded that the parcel was not protected by art. 97. Consequently, he vacated the preliminary injunction and ordered judgment to enter for the defendants.

The plaintiffs appealed, and the Appeals Court affirmed the judgment. *Smith* v. *Westfield,* 90 Mass. App. Ct. 80, 81 (2016). The Appeals Court agreed with the motion judge that land is protected by art. 97 only where it was taken or acquired for conservation or another purpose set forth in art. 97, or where "the land is specifically designated for art. 97 purposes by deed or other recorded restriction." *Id.* at 82. Justice Milkey, in a concurrence, agreed that the Supreme Judicial Court opinions in *Selectmen of Hanson* v. *Lindsay,* 444 Mass. 502, 506-509 (2005), and *Mahajan,* 464 Mass. at 615-616, "appear to say" that, where land was taken or acquired for non-art. 97 purposes, it will only be subject to art. 97 "where the restricted use has been recorded on the deed, e.g., through a conservation restriction." *Smith,* 90 Mass. App. Ct. at 86 (Milkey, J., concurring). But Justice Milkey invited this court to "revisit such precedent," *id.* at 84, declaring, "Nothing in the language or purpose of art. 97 suggests that its application should turn on whether the underlying deed provides record notice that the land has been committed to an art. 97 use." *Id.* at 87. He
55 concluded, "The overriding point of art. 97 is to insulate dedicated parkland from short-term political pressures. I *55 fear that the effect of *Hanson* and *Mahajan* is to rob art. 97 of its intended force with regard to a great deal of dedicated parkland across the Commonwealth." *Id.* at 88. We allowed the plaintiff's application for further appellate review.

Discussion. Article 97 provides, among other things, that "[t]he people shall have the right to clean air and water ... and the natural, scenic, historic, and esthetic qualities of their environment." It declares a "public purpose" in "the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources." *Id.* It grants the Legislature the power "to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes." *Id.* And, most importantly for purposes of this appeal, it provides: "Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court." *Id.*[10]

The issue on appeal requires us to interpret the meaning of art. 97 to determine whether the Cross Street Playground is protected land under art. 97 that may be used
56 for another purpose — here, *56 the purpose of building a public school — only by obtaining the approval by a two-thirds vote of each branch of the Legislature. We do not interpret art. 97 on a clean slate. We have recognized that the language of art. 97 is "relatively imprecise" and that its provisions must be interpreted "in light of the practical consequences that would result from ... an expansive application, as well as the ability of a narrower interpretation to serve adequately the stated goals of art. 97." *Mahajan,* 464 Mass. at 614-615. We also have recognized that land may be protected by art. 97 where it was neither taken by eminent domain nor acquired for any of the purposes set forth in art. 97 provided that, after the taking or acquisition, it "was designated for those purposes in a manner sufficient to invoke the protection of art. 97." See *id.* at 615. Therefore, to resolve the issue in this case, we must first determine what it means to "designate" land for an art. 97 purpose in a manner sufficient to invoke art. 97 protection, and then determine whether the Cross Street Playground was so designated.[11]

We do not agree with the motion judge and the Appeals Court that we have already concluded in our opinions in *Selectmen of Hanson* and *Mahajan* that the only way to designate land for art. 97 purposes is through a deed or recorded conservation restriction, although we acknowledge that there is language in those opinions that

invites this inference.[12]

In *Mahajan,* 464 Mass. at 608, 612, 615 n.15, the issue on appeal was whether a plaza area surrounding an open-air pavilion at the eastern end of Long Wharf in Boston that was identified as a park "was `taken' for art. 97 purposes." The parcel was a small part of the land taken by eminent domain in 1970 by the Boston
57 Redevelopment Authority (BRA) as part of the 1964 Downtown Waterfront-Faneuil Hall urban renewal plan. *Id.* at 606-607. We *57 recognized that one of the fifteen "planning objectives" under that plan was "[t]o provide public ways, parks and plazas which encourage the pedestrian to enjoy the harbor and its activities," *id.* at 608 n.7, but we determined that the "overarching purpose" for which the land was taken was to eliminate "decadent, substandard or blighted open conditions." *Id.* at 612, quoting G. L. c. 121B, § 45. We declared that land is not taken for art. 97 purposes simply because it "incidentally" promotes conservation, or because it "simply displays some attributes of art. 97 land generally," or because "a comprehensive urban renewal plan may identify, among other objectives, some objectives that are consistent with art. 97 purposes." *Id.* at 613-614, 618. We concluded that, "[g]iven the overarching purpose of the 1964 urban renewal plan to eliminate urban blight through the comprehensive redevelopment of the waterfront area, including its revitalization through the development of mixed uses and amenities, it cannot be said that the retention of certain open spaces, like the project site, is sufficiently indicative of an art. 97 purpose as to trigger a two-thirds vote of the Legislature should the BRA wish to slightly revise the use of certain spaces in a manner consistent with the objectives of the original urban renewal plan." *Id.* at 618.

Nevertheless, we recognized that land taken by eminent domain specifically for art. 97 purposes could fall under the provision's protections "where an urban renewal plan accompanying a taking clearly demonstrates a specific intent to reserve particular, well-defined areas of that taking for art. 97 purposes." *Id.* at 619. And we recognized that, "[u]nder certain circumstances not present here, the ultimate use to which the land is put may provide the best evidence of the purposes of the taking, notwithstanding the language of the original order of taking or accompanying urban renewal plan." *Id.* at 620.

In *Selectmen of Hanson,* 444 Mass. at 504-505, the issue was not whether a parcel of land had been taken for art. 97 purposes (it was not), but whether a town meeting vote was sufficient by itself to transform a town's general corporate property into conservation land protected by art. 97. The town had acquired the property through a tax taking in 1957 and held it as general corporate property that could be disposed of in any manner authorized by law. *Id.* at 504. In 1971, the town at its annual meeting voted "to accept for conservation purposes, a deed, or deeds to" the parcel, but the property was never actually placed under the custody and control of the
58 conservation commission. *58*Id.* at 504, 506. Rather, the property remained under the control of the board of selectmen, which was authorized to execute a deed imposing a conservation restriction on the property but never did.[13]*Id.* at 506, 508. In 1998, the town sold the property at a public auction to the defendant, but in 2002 commenced an action seeking a declaration that the sale was invalid and void because the land was subject to art. 97 and the sale had not been approved by a two-thirds vote of each branch of the Legislature. *Id.* at 503. We rejected the town's claim, reasoning that the 1971 vote "merely expressed the town's interest in dedicating the locus to conservation purposes," and that subsequently the town took "*no* further action" to achieve that goal. *Id.* at 508. In these circumstances, we declared that "an instrument creating such a property restriction had to be filed with the registry of deeds in order for the town's interest to prevail over that of any subsequent bona fide purchaser for value." *Id.* at 505.

In the circumstances presented in *Selectmen of Hanson,* where the town intended to designate land for conservation purposes by executing a deed with a conservation restriction but never did, it is true, as we said in *Mahajan,* 464 Mass. at 616, that "the town had to deed the land to itself for conservation purposes — or record an equivalent restriction on the deed — in order for art. 97 to apply to subsequent dispositions or use for other purposes." But this should not be understood to mean that, in *all* circumstances, the only way that land not taken or acquired for an art. 97 purpose may become protected by art. 97 is through a recorded deed restriction. To understand the other ways that land may be "designated" for conservation purposes "in a manner sufficient to invoke the protection of art. 97," see *Mahajan,* 464 Mass. at 615, we need to examine two related common-law doctrines: the dedication of land for public use and prior public use. See *id.* at 616 ("the spirit of art. 97 is derived from the related doctrine of `prior public use'").

59 Under our common law, where developers on private land built roads that were dedicated to the use of the public, the land on *59 which those roads were built became "subject to the easement of a public way" where "the intent to dedicate [is] made manifest by the unequivocal declarations or acts of the owner" and where the dedication is accepted by the public. *Hayden* v. *Stone,* 112 Mass. 346, 349 (1873). "No specific length of time is necessary; the acts of the parties to the dedication when once established complete it." *Id.* See *Longley* v. *Worcester,* 304 Mass. 580, 588 (1939) ("The owner's acts and declarations should be deliberate, unequivocal and decisive, manifesting a clear intention permanently to abandon his property to the specific public use"). Similarly, where a developer in Wareham bought a large tract of land to sell building lots for residences, and private businesses, and reserved open space for "parks, squares, groves and shore fronts," the open space was subject to an easement for public use upon proof that the owner "had dedicated the use of these lands to the public" and that the public had accepted the dedication through use of the open space. *Attorney Gen.* v. *Onset Bay Grove Ass'n,* 221 Mass. 342, 347-348 (1915) (*Onset Bay Grove Ass'n*). See *Attorney Gen.* v. *Abbott,* 154 Mass. 323, 326-329 (1891). The dedication "may spring from oral declarations or statements by the dedicator, or by those authorized to act in his behalf, made to persons with whom he deals and who rely upon them; or it may consist of declarations addressed directly to the public." *Onset Bay Grove Ass'n, supra* at 348. "It also may be manifested by the owner's acts from which such an intention can be inferred." *Id.*

A city or town that owns land in its proprietary capacity and uses the land for a park may also dedicate the parkland to the use of the public. "A municipality may dedicate land owned by it to a particular public purpose provided there is nothing in the terms and conditions by which it was acquired or the purposes for which it is held preventing it from doing so, ... and upon completion of the dedication it becomes irrevocable" (citation omitted). *Lowell* v. *Boston,* 322 Mass. 709, 730 (1948). "The general public for whose benefit a use in the land was established by an owner obtains an interest in the land in the nature of an easement." *Id.* This court applied the public dedication doctrine in holding that, even though title to the Boston Common and the Public Garden "vested in fee simple in the town free from any trust," the city did not possess title to this parkland "free from any restriction, for it is plain that the town has dedicated the Common and the Public Garden to the use of the public as a public park." *Id.* at 729-730. "The title to the Common and the Public Garden is in the city; the beneficial use is in the public." *Id.* at 735.

60 *60 The "general public" that has obtained an "interest in the land in the nature of an easement," *id.* at 730, is not simply the residents of the particular city or town that owns the parkland. See *Higginson* v. *Treasurer & Sch. House Comm'rs of Boston,* 212 Mass. 583, 589 (1912). This court in *Higginson* declared:

> "[T]he dominant aim in the establishment of public parks appears to be the common good of mankind rather than the special gain or private benefit of a particular city or town. The healthful and civilizing influence of parks in and near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to public health in its narrow sense, but to broader considerations of exercise, refreshment and enjoyment."

Id. at 590.

Because the general public has an interest in parkland owned by a city or town, ultimate authority over a public park rests with the Legislature, not with the municipality. See *Lowell,* 322 Mass. at 730. "The rights of the public in such an easement are subject to the paramount authority of the General Court which may limit, suspend or terminate the easement." *Id.* As stated in *Lowell,* 322 Mass. at 730, quoting *Wright* v. *Walcott,* 238 Mass. 432, 435 (1921):

> "Land acquired by a city or town by eminent domain or through expenditure of public funds, held strictly for public uses as a park and not subject to the terms of any gift, devise, grant, bequest or other trust or condition, is under the control of the General Court.... The power of the General Court in this

> regard is supreme over that of the city or town."

Because the Legislature has "paramount authority" over public parks, dedicated parkland cannot be sold or devoted to another public use without the approval of the Legislature. "The rule that public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation authorizing the diversion is now firmly established in our law." *Robbins* v. *Department of Pub. Works,* 355 Mass. 328, 330 (1969). See *Higginson,* 212 Mass. at 591 ("Land
61 appropriated to one public use cannot be diverted to another inconsistent public use without plain and explicit legislation to that end"). This *61 "rule," known as the doctrine of "prior public use," *Mahajan,* 464 Mass. at 616, is not limited to parkland. See, e.g., *Boston & Albany R.R.* v. *City Council of Cambridge,* 166 Mass. 224, 225 (1896); *Old Colony R.R.* v. *Framingham Water Co.,* 153 Mass. 561, 563 (1891); *Boston Water Power Co.* v. *Boston & W.R. Corp.,* 23 Pick. 360, 398 (1839). But it is applied more "stringently" where a public agency or municipality seeks to encroach upon a park. *Robbins, supra* at 330 ("In furtherance of the policy of the Commonwealth to keep parklands inviolate the rule has been stringently applied to legislation which would result in encroachment on them"); *Gould* v. *Greylock Reservation Comm'n,* 350 Mass. 410, 419 (1966), quoting *Higginson,* 212 Mass. at 591-592 ("The policy of the Commonwealth has been to add to the common law inviolability of parks express prohibition against encroachment"). Three years before the ratification of art. 97, this court declared in *Robbins, supra* at 331:

> "We think it is essential to the expression of plain and explicit authority to divert parklands, Great Ponds, reservations and kindred areas to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forgo the existing use."

The meaning of the provision in art. 97 at issue in this case — "Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court" — must be understood in this common-law context. Cf. *Industrial Fin. Corp.* v. *State Tax Comm'n,* 367 Mass. 360, 364 (1975), quoting *Hanlon* v. *Rollins,* 286 Mass. 444, 447 (1934) (where meaning of statute is not plain from its language, we look to intent of Legislature "ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated"). The consequence of art. 97's ratification was that "plain and explicit legislation authorizing the diversion" of public parkland
62 under the prior public use doctrine, *62 which previously could be enacted by a bare majority of the Legislature, now required a two-thirds vote of each branch. See *Robbins, supra* at 330. See also Legislative Research Council, Report Relative to the Preservation of the Natural Environment, 1971 House Doc. No. 5301. In *Opinion of the Justices,* 383 Mass. 895, 918 (1981), we made clear that art. 97 applied to *all* property that was taken or acquired for art. 97 purposes, including property taken or acquired before its ratification in 1972. "To claim that new Article 97 does not give the same care and protection for all these existing public lands as for lands acquired by the foresight of future legislators or the generosity of future citizens would ignore public purposes deemed important in our laws since the beginning of our Commonwealth." *Id.,* quoting Rep. A.G., Pub. Doc. No. 12, at 139, 141 (1973).

There is no reason to believe that art. 97 was intended by the Legislature or the voters to diminish the scope of parkland that had been protected under the common law by the prior public use doctrine or the doctrine of public dedication. Such an interpretation would suggest that voters were hoodwinked into thinking they were expanding the protection of such lands by replacing art. 49 of the Amendments to the Massachusetts Constitution with art. 97 when, in fact, they were actually reducing the protection already afforded these lands under the common law.[14] See *Bates* v. *Director of Office of Campaign & Fin.,* 436 Mass. 144, 173-174 (2002), quoting *Boston Elevated Ry.* v. *Commonwealth,* 310 Mass. 528, 548 (1942) ("We will not impute to the voters who enacted the clean elections law an `intention to pass an ineffective statute'"). Therefore, we conclude that parkland protected by art. 97 includes land dedicated by municipalities as public parks that, under the prior public use doctrine, cannot be sold or devoted to another public use without plain and explicit legislative authority. See *Mahajan,* 464 Mass. at 615 (art. 97 protects land "designated" for art.
63 97 purposes "in a manner sufficient to invoke the *63 protection of art. 97").

Given this conclusion, we turn to the question whether the Cross Street Playground was dedicated by the city as a public park such that the transfer of its use from a park to a school would require legislative approval under the prior public use doctrine and, thus, under art. 97. Under our common law, land is dedicated to the public as a public park when the landowner's intent to do so is clear and unequivocal, and when the public accepts such use by actually using the land as a public park. See *Longley,* 304 Mass. at 587-588; *Onset Bay Grove Ass'n,* 221 Mass. at 347-348; *Hayden,* 112 Mass. at 349. There are various ways to manifest a clear and unequivocal intent. See e.g., *Onset Bay Grove Ass'n,* 221 Mass. at 348-349 (dedication found based on association's plan, sales statements, and repeated declarations that its open spaces "should never be encroached upon"). The recording of a deed or a conservation restriction is one way of manifesting such intent but it is not the only way. For instance, it was "plain" to this court that the Boston Common and Public Garden had been dedicated as a public park without there being any deed or conservation restriction declaring the land to be a public park. See *Lowell,* 322 Mass. at 729-730.

The clear and unequivocal intent to dedicate public land as a public park must be more than simply an intent to use public land as a park temporarily or until a better use has emerged or ripened. See *Longley,* 304 Mass. at 588 (requiring "a clear intention permanently to abandon his property to the specific public use"). Rather, the intent must be to use the land permanently as a public park, because the consequence of a dedication is that "[t]he general public for whose benefit a use in the land was established... obtains an interest in the land in the nature of an easement," *Lowell,* 322 Mass. at 730, and "upon completion of the dedication it becomes irrevocable." *Id.*

The plaza area on Long Wharf in *Mahajan,* although identified as a park, failed to meet this standard because there was not proof of a clear and unequivocal intent by the BRA to make the plaza permanently a public park. The urban renewal plan accompanying the taking did not reflect a specific intent to reserve that land forever as a public park but instead left open the possibility of revising the use of such open space if doing so would better accomplish the objectives of the urban renewal plan.
64 *Mahajan,* 464 Mass. at 618-619. The parcel in *Selectmen of Hanson,* although accepted for conservation purposes by town meeting, failed to meet *64 this standard both because there was no clear and unequivocal intent to dedicate the land permanently as conservation land where the town never actually transferred control of the land to the conservation commission and never acted to impose any restriction on the land, and where the land was never actually used by the public as conservation land. *Selectmen of Hanson,* 444 Mass. at 506-508.

The Cross Street Playground, however, *was* dedicated as a public park by the city under this standard, and therefore is protected under the prior public use doctrine and art. 97. We need not determine whether it would have been enough to meet the clear and unequivocal intent standard that the land had been used as a public park for more than sixty years, or that control of the land had been turned over to the playground commission, or that an ordinance was passed naming the parcel. Although we consider the totality of the circumstances, the determinative factor here was the acceptance by the city of Federal conservation funds under the act to rehabilitate the playground with the statutory proviso that, by doing so, the city surrendered all ability to convert the playground to a use other than public outdoor recreation without the approval of the Secretary. See 16 U.S.C. § 4601-8(f)(3). Regardless of whether the parcel had been dedicated earlier as a public park, it became so dedicated once the city accepted Federal funds pursuant to this condition. It is significant that this understanding was shared by the Executive Office of Energy and Environmental Affairs, whose 2006 SCORP stated that land developed with LWCF funds became protected under art. 97.

Conclusion. Because we conclude that the Cross Street Playground is protected by art. 97 of the Amendments to the Massachusetts Constitution, the judgment in favor of the defendants is vacated. Where the parties have agreed that, if the land is so protected, judgment should enter for the plaintiffs converting the preliminary injunction

into a permanent injunction, we remand the case to the Superior Court for the issuance of such a judgment consistent with this opinion.

So ordered.

[1] Twenty-four individuals residing in Westfield and Holyoke.

[2] The city council of Westfield and the mayor of Westfield.

[3] Justice Hines participated in the deliberation on this case prior to her retirement.

[4] We acknowledge the amicus briefs submitted by the Attorney General on behalf of the Commonwealth; the Association to Preserve Cape Cod, Inc.; the Massachusetts Association of Conservation Commissions, Inc.; Sanjoy Mahajan; the Conservation Law Foundation; and the Trustees of the Reservation, Massachusetts Audubon Society and Massachusetts Land Trust Coalition.

[5] The ordinance declared that the "parcel of land heretofore designated as a public playground, beginning at a point in the Westerly line of Cross Street," would be "hereafter known as the JOHN A. SULLIVAN MEMORIAL PLAYGROUND."

[6] The relevant provision of the Land and Water Conservation Fund Act of 1965 is presently codified at 54 U.S.C. § 200305 (2012 & Supp. II). However, in this opinion we refer to the provision in effect at the time of the grant application in question, 16 U.S.C. § 4601-8 (1976).

[7] In Massachusetts, the Land and Water Conservation Fund program is administered through the Executive Office of Energy and Environmental Affairs. See Massachusetts Statewide Comprehensive Outdoor Recreation Plan, Executive Office of Energy and Energy and Environmental Affairs 1 (2012), http://www.mass.gov/eea/docs/eea/dcs/scorp-2012-final.pdf [https://perma.cc/F4D6-W4MS]

[8] The record does not reflect how the Massachusetts comprehensive Statewide outdoor recreation plan (SCORP) in effect at the time of the 1979 grant application characterized the status of the Cross Street Playground.

[9] Under G. L. c. 214, § 7A, the Superior Court may determine whether damage to the environment is about to occur and restrain the person who is about to cause it, provided that the damage about to be caused constitutes a violation of a statute, ordinance, by-law or regulation, the major purpose of which is to prevent or minimize damage to the environment. "General Laws c. 40, § 53, provides a mechanism for taxpayers to enforce laws relating to the expenditure of tax money by a local government." See *LeClair* v. *Norwell,* 430 Mass. 328, 332 (1999).

[10] The full text of art. 97 of the Amendments to the Massachusetts Constitution annuls art. 49 of the Amendments to the Massachusetts Constitution and then provides:

"The people shall have the right to clean air and water; freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

"The general court shall have the power to enact legislation necessary or expedient to protect such rights.

"In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

"Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court."

[11] The city did not challenge the plaintiffs' assertion below that the use of Cross Street Playground fell within the range of environmental purposes contemplated by art. 97.

[12] We note that these prior decisions refer to two different procedures by which a city might designate a property as parkland. First, we said a city might record a conservation restriction pursuant to G. L. c. 184, § 31. See *Selectmen of Hanson* v. *Lindsay,* 444 Mass. 502, 506-507 (2005). Second, we suggested that a city might "deed the land to itself for conservation purposes." See *Mahajan* v. *Department of Envtl. Protection,* 464 Mass 604, 616 (2013). This distinction is not relevant to this case, where it is undisputed that there is no recorded restriction on the use of the Cross Street Playground. For the sake of simplicity, we shall characterize both procedures as "recorded deed restrictions" on the use of property when referring to these decisions.

[13] "`A conservation restriction means a right, either in perpetuity or for a specified number of years, whether or not stated in the form of a restriction, easement, covenant or condition, *in any deed, will or other instrument* executed by or on behalf of the owner of the land or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming or forest use ...' (emphasis added)." *Selectmen of Hanson* v. *Lindsay,* 444 Mass. 502, 507 (2005), quoting G. L. c. 184, § 31.

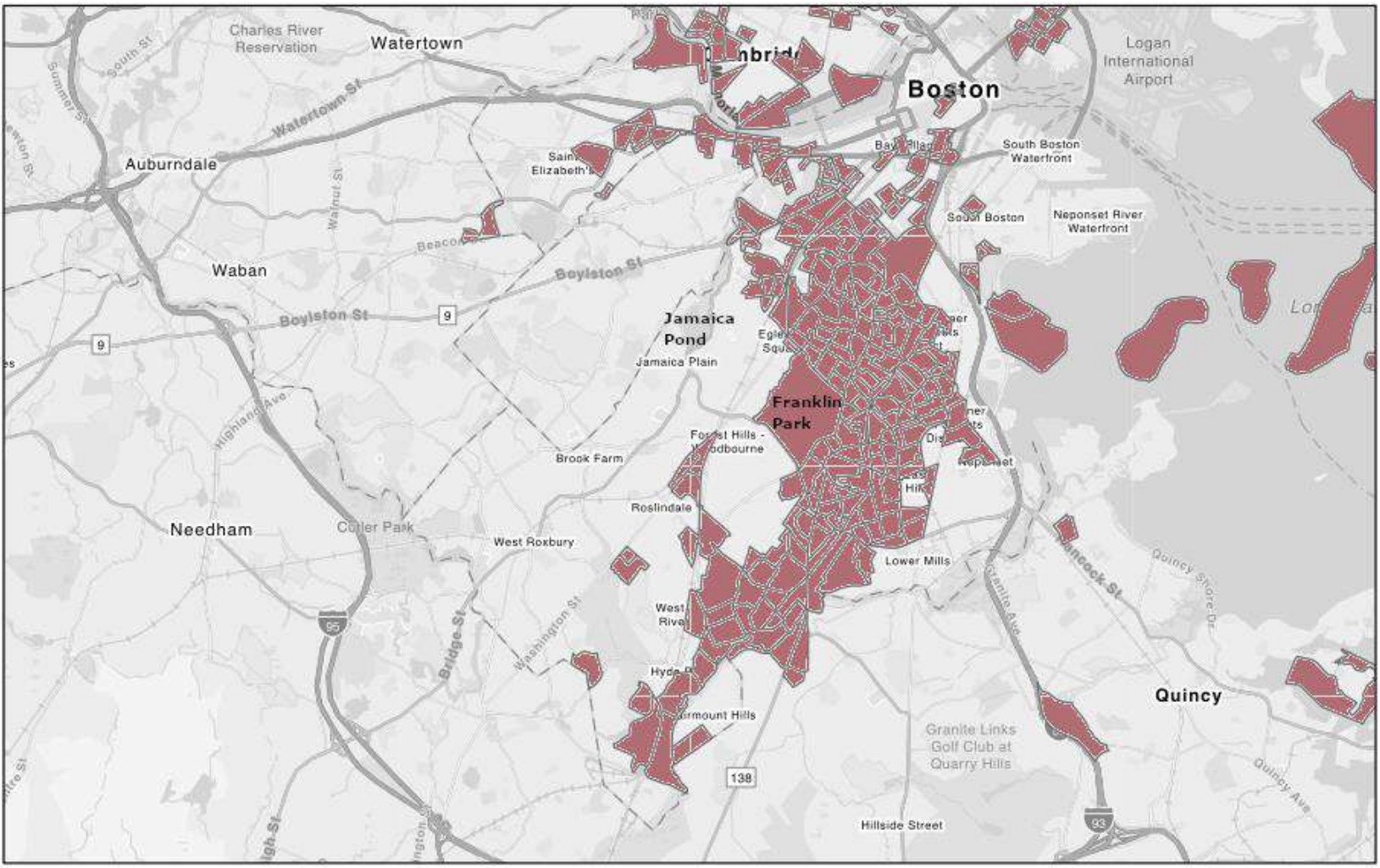
[14] Article 49, which was annulled by art. 97, see note 10, *supra,* provided:

"The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the commonwealth are public uses, and the general court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor."

EXHIBIT D:

Graphics Showing Multiple Environmental Justice Communities in the Immediate Vicinity of the Proposed Project

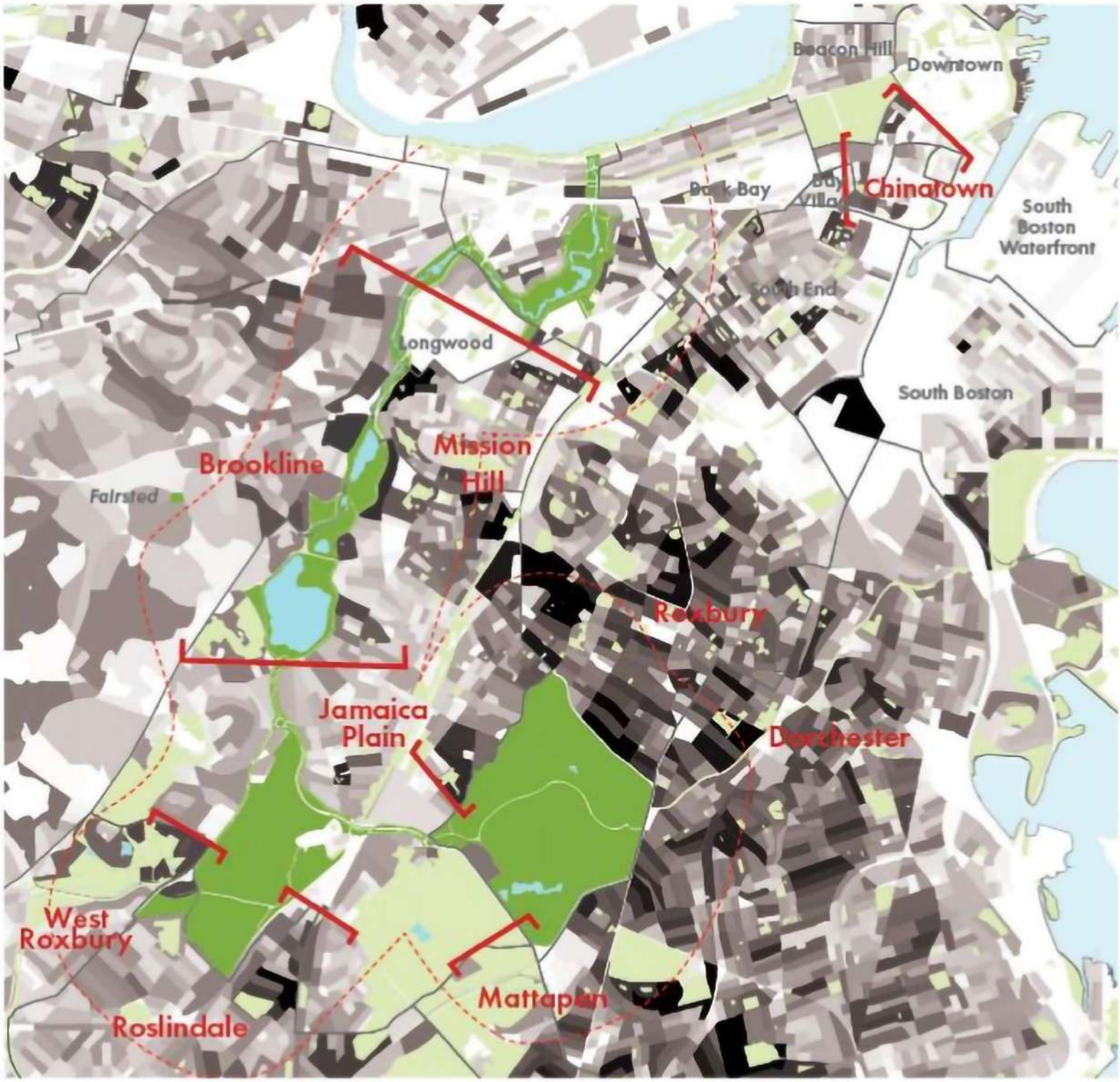
Environmental Justice



Source: https://ejscreen.epa.gov/mapper/

BLACK, INDIGENOUS, PEOPLE OF COLOR + CHILDREN + ELDERLY

Children <18, Elderly >65



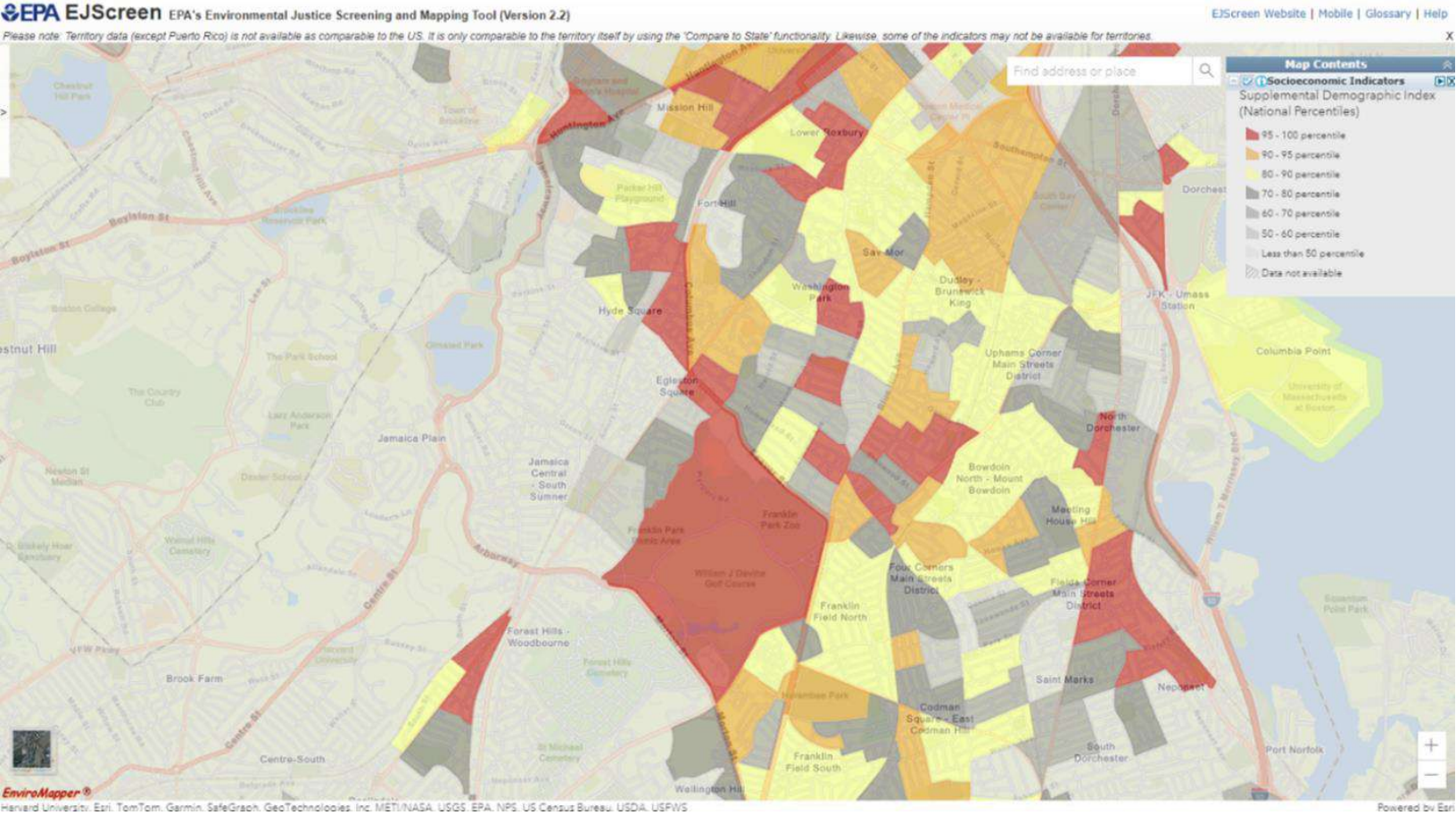

EPA EJScreen EPA's Environmental Justice Screening and Mapping Tool (Version 2.2)
EJScreen Website | Mobile | Glossary | Help
Please note: Territory data (except Puerto Rico) is not available as comparable to the US. It is only comparable to the territory itself by using the 'Compare to State' functionality. Likewise, some of the indicators may not be available for territories.
Find address or place
Map Contents
Socioeconomic Indicators
Supplemental Demographic Index (National Percentiles)
95 - 100 percentile
90 - 95 percentile
80 - 90 percentile
70 - 80 percentile
60 - 70 percentile
50 - 60 percentile
Less than 50 percentile
Data not available
Mission Hill
Lower Roxbury
Fort Hill
Sav-Mor
Washington Park
Dudley - Brunswick King
Hyde Square
Egleston Square
Uphams Corner Main Streets District
JFK - Umass Station
Columbia Point
North Dorchester
Jamaica Plain
Jamaica Central - South Sumner
Bowdoin North - Mount Bowdoin
Meeting House Hill
Franklin Park Zoo
Franklin Field North
Four Corners Main Streets District
Fields Corner Main Streets District
Forest Hills - Woodbourne
Brook Farm
Saint Marks
Codman Square - East Codman Hill
Franklin Field South
South Dorchester
Port Norfolk
Centre-South
Wellington Hill
EnviroMapper
Harvard University, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, USFWS
Powered by Esri

EXHIBIT E:

Copy of article from August 1, 2024 Boston Globe showing that Franklin Park ameliorates urban heat island impacts on adjacent neighborhoods

Map: The temperature can vary a lot depending where you are in Boston. Here's where it's the hottest, and why.

By Yoohyun Jung Globe Staff,Updated August 1, 2024, 12:07 p.m.

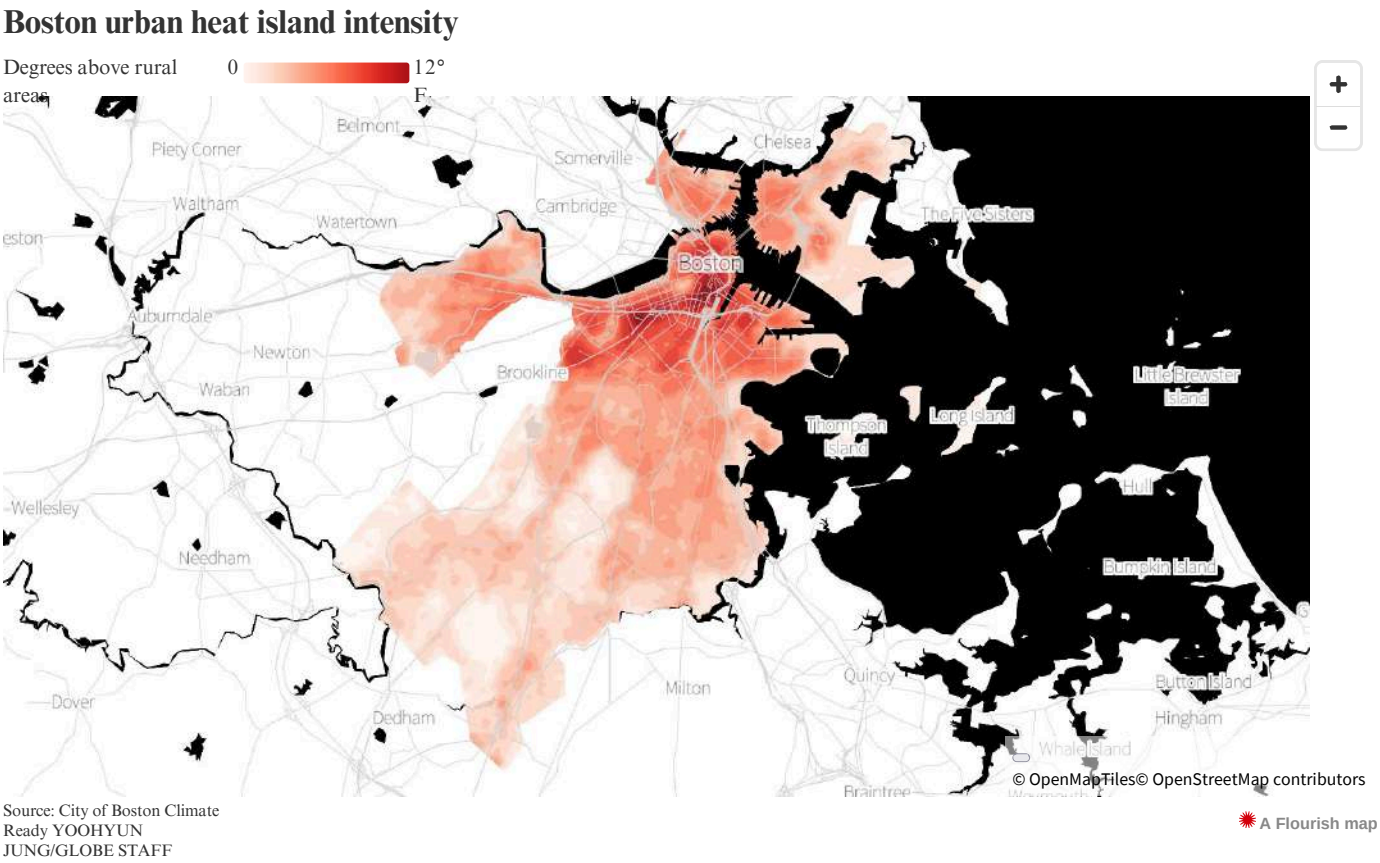
Boston-07/21/22- A woman covers from the hot sun as she walks through the Chinatown Gateway that spans Beach Street. People in Chinatown are coping with the heat in different ways as a heat wave hits the Boston area. With it's lack of trees and heat radiating off the surrounding buildings, Chinatown is one of the hotter areas in the city. John Tlumacki/Globe Staff (metro)JOHN TLUMACKI/GLOBE STAFF

In yet another smothering heatwave this summer, Boston is forecast to exceed 90 degrees Thursday. But depending on where in the city, the actual temperature can vary by 12 or more degrees, data show.

The impact of heat is much worse in more densely developed parts of the city with more pavement or dark roofs exposed to the sun, according to the city's analysis of the "urban heat island effect," which is when highly urbanized areas experience worse heat than outlying areas. The future likely holds more hot days with the changing climate.

"Over time, as we're seeing increased heat, [people]will experience a greater risk to extreme heat, particularly folks that spend a lot of time in these urban heat island areas," said Zoe Davis, a project coordinator for the city of Boston's climate resilience program.

The map below, generated by city scientists using modeled temperature data, shows the difference in heat between the more rural and green areas, and urban concrete jungles. Some of the worst affected areas include parts of downtown crossing, Chinatown, and the area directly north of the reflecting pool at the Christian Science Plaza.



Source: City of Boston Climate Ready YOOHYUN JUNG/GLOBE STAFF

The data show that Franklin Park is 14 degrees Fahrenheit cooler than the heat island near the reflecting pool.

The stark difference is mostly due to the built environment, like the roadways and roofs that soak up the heat, Davis explained. “They typically don’t allow the penetration of air and water to cool the surface,” she explained.

“Conversely, elements like trees and other vegetation, through the process of transpiration, can support cooling,” she said.

As for what this means for residents who live and work in urban heat islands now, Davis said it’s important for them to know how to escape heat and access resources, such as the city’s cooling centers. Find shades, like trees, and stay hydrated.

Yoohyun Jung can be reached at y.jung@globe.com.

EXHIBIT F:

Professor Arthur Zimbalist article from Commonwealth Beacon

CommonWealth BEACON

OPINION

A professional soccer stadium in Franklin Park is a bad deal for Boston

The city's $50 million commitment amounts to a huge subsidy to a for-profit sports team

by ANDREW ZIMBALIST
June 15, 2024

THERE IS A plan afoot to convert a part of Boston's historic Franklin Park into a commercialized space to host the forthcoming, privately-owned Boston National Women's Soccer League (NWSL) team. The plan would grant a 30-year lease of public property to a professional for-profit sports team; build dedicated private facilities like offices, corporate box suites, restaurants and shops; and displace Boston Public School students and the general public from the publicly- owned White Stadium for 20 professional soccer games and 20 practices each year, including on the majority of warm-weather Saturdays.

White Stadium has been held in trust for over 74 years for the beneficiaries of the White Fund Trust — the residents of Boston. A citizens' lawsuit alleges that the proposed redevelopment of the stadium by Boston Unity Soccer Partners, LLC (the ownership group of the new NWSL team, or BUSP), violates both the terms of the White Trust Fund and Article 97 of the Massachusetts Constitution by transferring public recreation land to private use without the required state regulatory, legislative, and judicial review.

Neighbors have also expressed concerns about inadequate parking, noise, trash, traffic, security, and how the soccer team's use of the stadium would limit the public's ability to enjoy the park. But in evaluating the proposal, we should also ask: Is it a good financial deal for Boston?

Although full details haven't been released to the public and the financing plan appears to be incomplete, the White Stadium project will place a substantial financial burden on the City of Boston. The city intends to spend $50 million on its portion of the project: the East Grandstand, which will include Boston Public Schools athletics facilities; a new grass field; and an 8-lane track.

It is illogical for Boston to be on the hook for $50 million. A brand new high school soccer and football stadium should cost between $5 million and $20 million, depending on the specifications.

Consider the City of Lowell's ongoing $8 million renovation to the city's historic 6,000-seat Cawley Stadium, which has a similar footprint to White Stadium. The renovation includes a $2.9 million turf field; $4.3 million to construct an athletic training center for Lowell students; and $1 million to expand the track.

It is difficult to avoid the conclusion that Boston taxpayers are subsidizing a professional sports stadium on public recreation land in Franklin Park to the tune of $30 million or more, at a time when municipal revenues are under strain.

Also, beware: Stadium construction budgets are legendary for experiencing massive cost overruns. After political approval is attained, bells and whistles get added to the plan. Unforeseen bottlenecks pop up. Prices rise. The cost of the nation's first professional women's soccer stadium, in Kansas City, rose from $70 million to $120 million by the time construction was complete.

The limited plans that have been released publicly leave many unanswered questions. Who will pay for construction cost overruns? How much will it cost the city to operate and maintain an overbuilt professional-grade East Grandstand?

When non-soccer commercial events like musical concerts are held at White Stadium, who will receive the ticket and concessions revenue? Who will get the revenue from advertising and signage at the facility? Will BUSP pay property taxes or PILOT payments to the city? How much rent will BUSP pay?

BUSP's May 2024 filing claims that there will be 500 jobs generated during construction and another 300 permanent jobs to operate the stadium and its appendages. Consider first the construction jobs. If the city spent its $50 million on road improvement, school additions, or a cultural facility, it too would generate jobs in the short run. The problem is that the city would incur $50 million in debt that it would have to service going forward. That debt service leaves fewer funds for other projects or it requires higher taxes, either of which would deter job growth.

Consider next the projected 300 permanent jobs. Really? What jobs? Field maintenance, ushers, ticket takers, team front office? These jobs would occur wherever the new team played in greater Boston. Moreover, as has been shown by one scholarly study after another, when citizens spend $100 at a sporting event, it is $100 they don't have to spend at local restaurants, bars, movie theaters, bowling alleys, and so on. This spending by itself does not generate new jobs, it just transfers them from some parts of the city's economy to another, the soccer team.

The biggest question, though, is why does Greater Boston need two professional soccer stadiums? All but one of the US professional women's soccer teams currently share their stadium with a professional men's team.

I have long been an avid supporter of women's sports and women's soccer in particular. I believe that Boston should host a professional women's soccer team. But there are many good — indeed better — stadium options. There's Nickerson Field at Boston University. There's the soccer facility at Boston College. There's Harvard Stadium. And there's the most advantageous and rational outcome: for the NWSL team and the New England Revolution to share a field.

The Krafts have been trying for a decade to build a soccer-only stadium for the Revolution. They seem to have found a location for a stadium in Everett. The Krafts, as they did at Gillette Stadium, have a plan to privately finance the new facility. Wouldn't the NWSL team be better off playing in a new, fully professional and modern stadium than in a hybrid one in Franklin Park?

Sure, there would be some details to arrange with regard to scheduling of games and cost/revenue sharing, but the challenges here would be far fewer and more manageable than those at Franklin Park.

It's time to go back to the drawing
board.

Andrew Zimbalist is the Robert A. Woods Professor Emeritus of Economics at Smith College. He has published 28 books and dozens of articles, and consulted widely in the sports industry.