

February 26, 2009

His Excellency Deval L. Patrick
Governor of the Commonwealth
Room 360, State House
Boston, MA 02133

Dear Governor Patrick:

We are heartened that passage of the federal stimulus legislation will bring much needed, job-creating revenue and opportunities to the Commonwealth. Given the long list of projects and the critical, but still limited, resources we will be receiving, we urge that projects be selected that not only create jobs, but also support smart growth and environmental restoration and protection. This crisis is an opportunity to recast our development decisions and patterns so that we are truly creating win/win outcomes.

Specifically, we are writing to express concerns about a number of the Permitting Task Force recommendations. We understand that the task forces worked very diligently, but the need for quickly developing recommendations resulted in very limited outreach beyond agency staff.

We recognize that for Massachusetts to take advantage of the stimulus funding, it must ensure that permitting decisions happen quickly. And, while we have been assured that the administration wants projects to go forward expeditiously without compromising environmental protection, a number of the recommendations do not seem consistent with achieving that goal.

In addition, we are concerned that any corners cut now to accommodate quickly getting shovels in the ground will be viewed as accepted procedure if there is a second round of stimulus funding, or even business as usual going forward. There will be pressure to continue to circumvent important components of the process that by their nature take a longer time, *e.g.*, public comment periods and appeals of permit decisions.

We offer the following comments on the Permit Task Force recommendations:

1. We agree that permit appeals should be decided in an expeditious fashion. However, the Task Force's recommendation that projects be allowed to proceed while an administrative appeal is pending is not the same as "expeditiously settling" an appeal. If adopted, this would make permit decisions virtually unreviewable. There is no question that knowing a permit can be appealed results in better permits and more comprehensive agency decisions. If a project is allowed to move forward with land clearing, grading, and construction while an administrative appeal is pending, a single permit writer essentially has the last word. If a permit is not upheld, or if its terms are modified in the appeal process, in many cases the environmental damage will already have been done. The pressure on a judge to uphold the permit as written will be great given that these

projects are stimulus projects and the lack of any effective remedy after the fact will undercut judicial review.

We support additional state agency staff to review projects. We also support better coordination between the various permitting agencies and prioritization for projects funded through the federal stimulus package. We hope that these two steps will go a long way to ensuring that permitting happens quickly and that major issues can be identified up front.

2. We strongly disagree with the recommendation that all judicial appeals be referred to the Permit Session of Land Court. Under existing law, the Superior Court can refer a case to the Land Court. If it chooses not to, the Superior Court is equipped to expedite cases and could put any appeal on an accelerated track.

3. For projects that receive expedited permitting where mitigation is necessary, we urge that required mitigation be expedited as well. Experience has shown that unless mitigation proceeds on track with project development there is a real danger it will fall off the table. It also makes sense to mitigate environmental damage as it occurs or in advance of its occurrence.

4. Exempting from permitting or waiving individual permit conditions upon an agency finding of no “significant environmental damage” (not defined), giving responsibility to registered engineers to certify that generic conditions were met, and random compliance audits of such certifications (although there is no mention of additional compliance staff) will not provide adequate environmental protection. “Permits by rule” is a one size fits all approach that does not adequately take into account site or resource-specific conditions. While “permits by rule” may work for simple projects, MassDEP will likely spend more time developing the rules/best management practices rather than analyzing and conditioning individual permits. We believe that the agencies can shift experienced staff to stimulus project review in the short term and issue timely individual permits that protect the environment.

5. The report says that MassDEP will explore other reforms including reduced public comment periods. We would urge that public involvement and comment not be curtailed. It is important that the public supports these projects and has ample time to comment, particularly on any new or significant expansion projects. **Taxpayer dollars are being used and Massachusetts should not send a signal that public engagement is being discouraged.** We recommend widespread dissemination (perhaps web-based) of project details to facilitate public review and comment.

We know the administration agrees that transparency about how the funds are used and oversight of spending will be critical – the lessons of the Big Dig should inform the use of these funds.

To that end, we recommend several actions that will ensure that the funds are being used wisely and that environmental protections are not being sacrificed. MassDEP and the

Department of Fish and Game both will need additional staff in order to expedite permitting. Experienced permit writers should handle these projects—they have both the institutional knowledge of similar project conditions and the environmental expertise. Second, enforceable permit conditions are critical to hold project proponents accountable. Exemptions from permitting or self-certifications seriously hinder such efforts. Finally, in addition to Jeffrey Simon who will oversee spending, the administration should consider an independent ombudsman who would oversee the expedited environmental permitting and serve as the point person for concerns about how projects are being selected and permitted

Thank you for your leadership during this fiscal crisis and for the opportunity to share our views.

Sincerely,

George Bachrach, President
Environmental League of Massachusetts

Laura Johnson, President
Mass Audubon

Peter Shelley, Vice President and Director, Massachusetts Advocacy Center
Conservation Law Foundation

Robert L. Zimmerman, Jr., Executive Director
Charles River Watershed Association