



The Honorable Deval Patrick  
Office of the Governor  
State House  
Beacon Street, Boston, MA 02133

February 13, 2009

Good day Governor Patrick;

I met you recently for the bill signing in your office regarding the improvements in the Recreational Trail regulations. When former Rep. Kathleen Teahan mentioned the lawsuit against the MBTA in East Bridgewater, it became apparent that you were not aware of that suit. Though you are undoubtedly busy, that stunned me. Did you know that there are more rail trail projects underway in Mass. than anywhere else in the U.S.? And that for the most part, they connect village centers and where people live, work and play?

When we met, I promised this letter to you and your new Secretary of Transportation -- James A. Aloisi, Jr. about that lawsuit and some of the institutional problems involved in building out the network of non-motorized pathways throughout the state. I should also point out that a variation of this letter was sent to former Sec. Cohen, only a few days before he left. I'm sure that letter went unnoticed, so here it is now—right to the top man.

**1. First, we'll take a look at the 161C and 40/54A programs.** These govern the sale of [and construction near] former railroad corridors. These programs are broken and need to be looked into. They have not been reviewed since their inception many years ago and there is scant evidence that they have ever saved an inch of corridor. In fact, these programs are little more than speed bumps in the path of bad development across the state.

For example, the poster-child of the poor performance of this program can be found in Springfield where almost \$100,000 of MassHighway Department planning and design money was being spent to develop the proposed Highland Division Rail Trail, a non-motorized transportation trail—a rail trail—in an urban area.

During the extensive trail planning process, the railroad reported — as was required by the 161C program — that a sale of a short stretch of the corridor was imminent and asked whether the state [EOT] had any interest in using their first right of refusal to buy the corridor, thus blocking the sale to the adjacent landowner and preserving the integrity of the corridor.

During their standard canvassing process, EOT heard cries of anguish from the city, the regional planning agency and several other state agencies to not allow the sale, EOT allowed the corridor to be sold off. Amazingly, this happened not once, but twice over the period of a couple of years.

Yes Governor, we had a situation where agencies were working against one another. One arm of the transportation secretariat allowed the sale of a corridor that another arm of the same agency was spending money to assist the community in developing as a non-motorized trail. This now leaves the City of Springfield with the odious task of reassembling the corridor through draconian means like Eminent Domain.

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Here's another example of the broken program. More recently EOT sat and quietly watched as a high school principal, who lives in Hardwick, Mass. purchased a section of former railroad corridor that ran behind his house. This effectively blocked a future trail that would have connected a village center to the town's elementary school—this would have been the ultimate "Safe Route to School".

If the state was serious in developing a network of pathways that allow people to traverse neighborhoods and access transportation related nodes, like schools, in both origin and destinations, this would not be happening. Period. What makes this example even more egregious is that this corridor is the alignment of the Mass Central Rail Trail as this corridor that shows up in several state planning documents as the most important corridor to protect in the state.

These, and other, examples of tolerance for this negligent wasting of the cultural heritage of the Commonwealth led to the creation of a private-sector, last stop entity, specifically set up to block the sale of corridors to adjacent landowners. The Central Highlands Conservancy, LLC, partnering with local land trusts, was created to fill the vacuum where the state lacked the courage and/or competence to do the right thing. See <http://www.chc-llc.org> for further information.

**2. Another problem in the 161C program.** The premise of this program is to preserve this railroad network for future generations. It has been compromised because the utility industry actually now owns more miles of former railroad corridor in the state, than the private railroads themselves and the utilities are exempt from the program! This is a key flaw because, putting it gently, the utility industry does not have an exemplary track record in defending these valuable corridors or even making them available for public use. The utilities just need to be integrated into the 161C program. Simple and clean, if it was a former railroad corridor, it needs to be protected.

**3. The Transportation Enhancements program in Massachusetts has been broken for many years.** This is common knowledge around the U.S. More recently there are so few projects entering the pipeline so to speak, that it has become a major embarrassment to the state. So much so that Mass Highway has let out a contract to review the program and develop a plan to improve it. This sounds good until you realize that it has taken over 18 months and couple of starts and stops to even get the contract out the door. Even at that it is a two year --\$750,000 contract so we won't have any action taken to correct the flawed program for at least three years. The staff managing the program knows how to fix this. They have been to many national conferences on this subject and they know what to do. What is missing is institutional courage to do the right thing.

Sadly the primary reason why these enhancements projects are so hard to get built in Massachusetts is because the program has been set up is to directly compete against road and bridge projects. This is different from the enhancements programs in virtually every other state where a strong commitment to the strongly suggested federal 10% set aside-- is kept. [10% of the federal transportation monies flowing into a state are set aside for use in 13 categories of enhancements projects.] The fix for this program will become obvious in the \$750K study over the next few years. [People in the know, already know what the report will say.] There is no commitment in Massachusetts to hold to ANY set aside for the only projects that reintroduce bikes and pedestrians back into the urban core.

**4. The Recreational Trail Program [RTP]-- another flawed program.** Massachusetts was apportioned \$1.3 million by the Federal Government for the FY 2008 Rec. Trail Program [RTP]. EOT, who has the responsibility of programming the RTP funding level, programmed only \$600,000, or just 45% of what the

Feds said was available. This year, DCR [and MassHwy] accepted over 60 applications for funding requesting \$1.7 million and awarded 26 entities with \$600,000 in grants. \$1.1 was given back to the federal government.

I remember a letter from your office that asked the Mass. Rec Trail Advisory Board for DCR [MARTAB] to fund six projects in the Essex County area that didn't rank high enough for MARTAB to fund. You were apparently unaware that we were given only half the money available from the Feds. We'd love to fund those projects mentioned. Just instruct EOT to give DCR –all the money that is available.

The track record of this program, spending less than half of what is available to spend, puts Massachusetts at a dismal 50<sup>th</sup> place in comparison with all the other states where an 84% spending rate is the average. This is another embarrassment for Massachusetts transportation delivery of Federal funds.

**5. Having to repeatedly call in the cavalry (so to speak)** Over the past few years, there were several of instances of behind the scenes impasses between state agencies and state vs. federal agencies that have required various members of the Massachusetts congressional delegation to referee and tear down absurd paper barriers. These barriers, candidly, do not exist in the 49 other states. It is apparent to several groups building inter-city, transportation themed trails, that either getting their congressman or congresswoman to host a meeting and broker a solution, or to get a high-profile letter-writing campaign underway, is the only way to move these projects forward. Simply put, this process is diabolical illustrating that the transportation delivery in Massachusetts is broken.

**6. Another couple of examples of institutional cowardice in Massachusetts.** Since the *Rowley vs. Mass. Electric* case a few years ago, there were at least a couple of suits that are "me too" in nature. The towns of East Bridgewater and Newton both have suits filed by adjacent land owners against the MBTA using the premise of the Rowley case as a rationale. This doesn't have to be. The "T" is failing to defend their land in a successful way. If the state transit agency can't defend their own land in urban core areas, then all the talk of smart growth is merely "talking the talk" and not "walking the walk".

A similar theme demonstrating the lack institutional courage involves DEP's "crack" Environmental Crime Strike Force. One of the most egregious environmental crimes in western Mass in the past few years took place in Williamsburg, Massachusetts. Here you'll find that the litigants in the Rowley case, who received parts of the former railroad corridor from the utility thought it meant they could cut down the forest right to the edge of the Mill River.

This crime, in clear violation of the Rivers Act, has not been really addressed by DEP. Since that Rowley vs. Mass. Electric case was promoted by radical property rights activists one might think that DEP is afraid of them and only writes huff and puff letters, but there has been no real follow up as yet. This is a poor example of the DEP protecting the environment. Here's the flurry of letters. <http://no-revisionist-history.org/envirocrimeinwburg.html>

Given that bicycles and pedestrians are the indicator species of life in a community, and given that you've set the Commonwealth on a new and sustainable course for the new century, one can only hope that your administration will commit to making certain that wider, faster, straighter roads are not the only recipe on the horizon for the residents of Massachusetts.

As mentioned said earlier, there are more rail trail projects underway in Mass than anywhere else in the U.S. The majority of these projects connect village centers, schools, and residential neighborhoods. They are an important key to any talk about smart growth, yet these projects seem to be a poor step-child in the grand scheme of things.

Thanks for the opportunity to comment. The next page will have my Top 10 ways for you to make a difference in these efforts.

Best regards,



Craig Della Penna

Cc. James Aloisi, Jr. Secretary of EOT