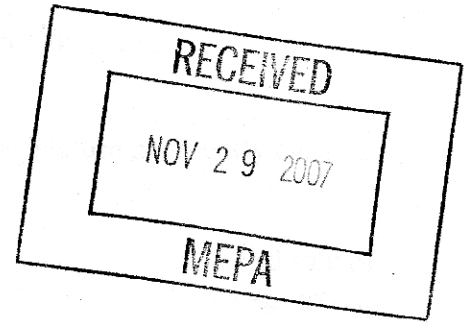




# CONSERVATION LAW FOUNDATION

November 28, 2007



Secretary Ian A. Bowles  
Executive Office of Energy and Environmental Affairs  
100 Cambridge Street, Suite 900  
Boston, MA 02114

ATTN: MEPA Office, Ann Canady

Re: Massachusetts DCR – Sale of Blue Hill Parkland  
to The Hart Family Limited Partnership,  
EEA No. 14115

Dear Secretary Bowles:

An Environmental Notification Form has been filed by the above-referenced Partnership describing the proposed sale of over three wooded acres of the Blue Hills Reservation to the Partnership to be paved for a 400 car parking lot serving the Partnership's private business. As you know, the Supreme Judicial Court has set forth explicit limits to the Legislature's transfer or surrender of public assets as follows:

“ . . . Where the Commonwealth has proposed the transfer of land from one public use to another, [1] the legislation must be explicit concerning the land involved; [2] it must acknowledge the interest being surrendered; . . . [3] it must recognize the public use to which the land is to be put as a result of the transfer. Similar principles properly apply to any relinquishment or surrender of a public interest in real estate.

A further and significant limitation on legislative action in the disposition of a public asset is that [4] the action must be for a valid public purpose, and, [5] where there may be benefits to private parties, those private benefits must not be primary but merely incidental to the achievement of the public purpose. ‘The paramount test should be whether the expenditure confers a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and

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theoretical benefit,' and whether the 'aspects of private advantage . . . are reasonably incidental to carrying out a public purpose in a way which is within the discretion of the Legislature to choose.'" (numbering added)

Opinions of the Justices to the Senate, 383 Mass. 895, 905 (1981)

These limitations were explicitly recognized and accepted by the Legislature in recently enacted HB-4324.

We do not believe there is any rationale by which it can be said that this proposed sale of Blue Hill Reservation Parkland to a private partnership for its environmentally-damaging private business purposes satisfies those limitations or that the Section 61 finding can be made. This transaction is patently to serve only private interests and subverts public purposes.

Very truly yours,



Peter Shelley



John A. Pike