

AGENDA ITEM: **#7C**

DATE: October 15, 2012

COUNCIL COMMUNICATION

INITIATED BY: The Durham Conservation Commission

AGENDA ITEM: SHALL THE TOWN COUNCIL, UPON RECOMMENDATION OF THE ADMINISTRATOR, SCHEDULE A PUBLIC HEARING FOR MONDAY, NOVEMBER 5, 2012 ON A REQUEST BY THE DURHAM CONSERVATION COMMISSION FOR THE TOWN OF DURHAM TO ACCEPT FEE TITLE IN A 176-ACRE PROPERTY LOCATED ALONG MILL AND PACKERS FALLS ROADS KNOWN AS SPRUCEWOOD FOREST (TAX MAP 13, LOTS 14-2 AND 6-3), SUBJECT TO AN EASEMENT OWNED BY THE USDA NATURAL RESOURCE CONSERVATION SERVICE, AND TO AUTHORIZE THE ADMINISTRATOR TO SIGN A PURCHASE AND SALE AGREEMENT AND OTHER RELATED DOCUMENTS WITH THE TRUST FOR PUBLIC LAND ON BEHALF OF THE TOWN?

CC PREPARED BY: Robin Mower, Councilor
Gregg Caporossi, The Trust for Public Land

PRESENTED BY: Gregg Caporossi, The Trust for Public Land
Todd I. Selig, Administrator

AGENDA DESCRIPTION:

The Council is in receipt of a letter dated October 8, 2012 from the Conservation Commission requesting that the Town accept legal interest in the property known as the Sprucewood Forest (also attached to this Communication). The boundaries of the property include Mill Road to the south and southeast and the UNH College Woods to the northeast, and on the west it abuts the Spruce Hole Conservation Area off Packers Falls Road.

On October 3, 2012 a duly noticed site walk was held on the Sprucewood Forest property. That evening the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. Three members of the public spoke strongly in favor of the project. No members of

the public spoke against it. The Commission subsequently deliberated and reaffirmed that this project has been its *highest priority* for the past few years, primarily for the protection afforded to two public water sources: the Oyster River and the Spruce Hole Aquifer. It then voted unanimously to appropriate \$375,000 from the Conservation Fund and to request authorization from the Town Council to accept legal interest in the property in the form of fee title, subject to an easement owned by the USDA Natural Resource Conservation Service.

As prescribed by the Town's "Guidelines for Acquiring Legal Interest in Conservation/Open Space Land," the Town Council, with the recommendation of the Town Administrator, shall schedule the proposal for discussion at a regular meeting and determine whether to move the project forward to public hearing.

The Administrator recommends the expenditure of \$375,000 for the acquisition of the restricted fee title, weighed against the broader tax implications and various other municipal priorities faced by the community at this time.

Note: The property under consideration is sometimes referred to as the Oyster River Forest.

Brief history

Efforts to protect this 176-acre combination of woodlands and open fields began more than three years ago, since which time the Durham Conservation Commission has worked in partnership with The Trust for Public Land (TPL). In 2010 the Council voted to support a grant application submitted by TPL on behalf of Durham to the Coastal and Estuarine Land Conservation Program (CELCP). Subsequently, the budget for that federal program fell significantly shorter than anticipated. As a result, despite its high national ranking, the grant was not approved. Since then, TPL has sought – and found – other funding sources. Despite the change in funding strategy, the goals for the project remain the same.

The proposal

The proposal entails ownership of the property by the Town Durham, subject to an easement held by the U.S. Natural Resource Conservation Service (NRCS), which has expressed strong interest in the property for New England cottontail habitat restoration through its Wetlands Reserve Program (WRP). Indeed, NRCS would provide majority funding for the project and would become responsible for all costs related to NE cottontail habitat restoration and monitoring of the easement.

The Town would manage the Sprucewood Forest property in a manner consistent with its goals – as open space and for wildlife habitat, recreational use, and water quality protection. If conserved under the easement, the property would help protect

two current or future public water supplies, the Oyster River (a current public water supply and tributary to the Great Bay) and the Spruce Hole Aquifer (a future public water supply). The project would complement the Amber Acres property, conservation of which is underway, by providing over a mile and a half of protection along both sides of the Oyster River. The complementary nature of the two projects is underscored through a cooperative private fundraising campaign (the "Oyster River Initiative") recently launched by the projects' nonprofit land conservation partners, The Trust for Public Land and the Southeast Land Trust of New Hampshire.

For decades the UNH/Durham Water System has considered the Spruce Hole Aquifer as a prime potential public water source. Approximately 54.8 acres of the Sprucewood Forest property sit atop the aquifer. This aquifer protection would complement the approximately 35.6 acres of aquifer protection afforded by the Town-owned Spruce Hole Conservation Area consisting of two parcels shown on Durham Tax Map 13: Lots 13-1 and 13-5. Regarding Lot 13-5, in the 1989 Annual Report for the Town of Durham Council Chair Donald Sumner wrote:

Acquisition of a 27.7-acre parcel of land in the Mill Road-Packers Falls Road area adjacent to the Town-owned Spruce Hole Bog was considered to be of utmost importance to protect a natural aquifer existing in that area. The aquifer was identified as a potential source for up to 1/2 million gallons of water per day by Dufresne-Henry, an engineering firm retained to study our water problems.

Negotiations between the Town and the owner of the land were unsuccessful so the Council voted to acquire the property through eminent domain action. The sum of \$430,000 was voted by the Council to secure the property and a final price will be established upon completion of the eminent domain proceedings.

Dr. Thomas Ballestero, a hydrologist and water resources engineer at the University of New Hampshire, was hired by the Town in the 1990s to study "the sand and gravel formation that contains the Spruce Hole Bog in order to more clearly delineate the hydrogeology of the system and the ecology of the bog." (A final report was issued in 2000 as "Final Report for Hydrogeologic Studies of the Spruce Hole Bog Sand and Gravel Formation," co-authored by UNH professor Thomas D. Lee. The report notes, "The Spruce Hole Bog appears to be insulated from the groundwater below by all of the dead and decomposed peat at its base" and includes a section titled "Biological Studies at Spruce Hole Bog" as Appendix 9.) This research work provided a basis of understanding that groundwater withdrawal from the Spruce Hole Aquifer would be unlikely to negatively affect the hydrology of the Spruce Hole Bog, which was designated a National Natural Landmark in 1972.

In 2010, Dr. Ballestero provided a letter of support to the Town Council for the Conservation Commission's request to seek grant funding to support the permanent conservation of the Sprucewood Forest property. On October 1, 2012, he commented in a phone conversation about the Sprucewood Forest project, "I can think of no town in New Hampshire that would have the kind of water security that Durham would have if it protects this resource."

On October 1, 2012 representatives from Underwood Engineers, Inc. and Emery & Garrett Groundwater, Inc. gave a presentation to the Town Council titled "Development of a New Public Water Supply Well with Artificial Recharge—Spruce Hole Aquifer." They commented that Durham is lucky to have the Spruce Hole Aquifer as a potential public water supply. Presentation slides note:

- The well site and the majority of the aquifer are on properties owned [and/or] controlled by the Town of Durham
- The groundwater recharge area surrounding Production Well DWP-PW2 is mostly undeveloped and provides a high level of protection to the quality of groundwater resources.

The Sprucewood Forest project would enhance these benefits by providing Durham with ownership rights to substantially more of the land around and adjacent to the aquifer. This would enable the Town to ensure that the well is kept free of contaminants—keeping the costs of water treatment affordable while protecting a critical water supply source for current and future residents and the University.

Public access for Sprucewood Forest would include low-impact recreational uses, such as birding, fishing, hiking, and cross-country skiing. The property provides easy access from an abandoned forest road and affords significant opportunity for trails on the property itself and as part of a network of trails on nearby properties.

Boundary line adjustment

The Sprucewood Forest project consists of two existing lots of record with two different owners: (1) Map 13, Lot 14-2 owned by Sprucewood Retirement Trust and (2) that portion of Map 13, Lot 6-3 south of the Oyster River and approximately 47 +/- acres, owned by the Chet Tecce, Jr. Revocable Living Trust. Lot 14-2 in its entirety and only that portion of Lot 6-3 located south of the Oyster River would be included in the project. An application for a boundary line adjustment on Lot 6-2 is expected to be presented to the Planning Board in November. The Town of Durham may want to consider being a co-applicant with the Trust for Public Land.

Formal presentation

Gregg Caporossi of The Trust for Public Land will attend Monday night's Council meeting but will not make a presentation until the Public Hearing. Jeremy Lougee, representing NRCS, will also be present on Monday night.

SUPPORTING DOCUMENTS

Accompanying this Council Communication please find supporting documents that may also be downloaded from the Conservation Commission website at <http://www.ci.durham.nh.us/boc_conservation/sprucewood-forest-conservation-project>:

- 1) Letter to the Durham Town Council from the Durham Conservation Commission, dated October 8, 2012, requesting that the Town accept legal interest in the property known as the Sprucewood Forest
- 2) Letter to Administrator Todd Selig from The Trust for Public Land, dated September 24, 2012. This letter incorporates other documents:
 - a) Summary of Ecological Benefits
 - b) Budget (showing land acquisition and program cost and sources of public and private revenues)
 - c) Maps titled "Aerial View of Oyster River Forest" and "Sprucewood Forest Aquatic Features"
 - c) Wetlands Reserve Program Easement, "Warranty Easement Deed in Perpetuity," including Exhibit D - Water Uses and Water Rights
- 3) Documents provided by the Natural Resources Conservation Service
 - a) Separate preliminary habitat restoration *plans* for New England cottontail rabbit for the Sprucewoods and Tecce parcels
 - b) A map showing the proposed habitat restoration areas
- 4) Press release for the Oyster River Initiative, a cooperative private fundraising campaign between The Trust for Public Land and Southeast Land Trust of New Hampshire
- 5) Map provided by the Strafford Regional Planning Commission titled "Sprucewood Forest Project Drinking Water Protection Map"
- 6) Durham Tax Map 13; Lots 14-2 and 6-3 each marked with a star
- 7) Opinion of Thomas P. Ballestero in the Matter of the Spruce Hole Formation (dated February 1, 2010 and submitted to the Durham Town Council)
- 8) Town of Durham "Guidelines for Acquiring Legal Interest in Conservation / Open Space Land" (May 19, 2008; formerly titled "Policy for Acquiring Legal Interest in Conservation/Open Space Land," dated May 3, 2004)

COMMENTS ON SUPPORTING DOCUMENTS

NRCS Wetlands Reserve Program easements are non-negotiable and between NRCS and the current landowners. However, it should be emphasized that (1) the Durham Conservation Commission carefully reviewed the easement language and met twice with NRCS to discuss the easement terms and restoration plans to ensure that all of the Town’s conservation objectives would be fulfilled by the easement; and (2) David Cedarholm, the Town Engineer, was an active participant in drafting Exhibit D – Water Uses and Water Rights, which the Commission also reviewed.

The question before the Town Council is to determine whether the Town of Durham shall take title to the land *subject to the recorded easement held by NRCS*. Note that because the deeds will be identical for the two parcels except for the names of the properties, only one (with blanks for name placeholders) is provided.

The appraisal was commissioned by NRCS to determine the purchase price that it would pay to the current landowners for the easement and therefore is not presented for Council review.

NRCS will be providing for the public hearing a statement of its financial responsibility for restoration and monitoring activities.

LEGAL AUTHORITY:

RSA 36-A:4 and 5

Town of Durham “Guidelines for Acquiring Legal Interest in Conservation/Open Space Land” (May 19, 2008; formerly titled “Policy for Acquiring Legal Interest in Conservation/Open Space Land,” dated May 3, 2004)

LEGAL OPINION:

The NRCS Wetland Reserve Program Warranty Easement Deed was forwarded to Town Attorney Laura Spector-Morgan for review. The purchase and sale agreement between the Trust for Public Land and the Town of Durham for the fee title will also be reviewed and opinions made available for the Council’s review prior to the public hearing.

FINANCIAL DETAILS:

Described in the "Budget" sent as part of the September 24, 2012 letter from the Trust for Public Land to Administrator Todd Selig. (See line item labeled "Town of Durham Conservation Fund.")

SUGGESTED ACTION OR RECOMMENDATIONS:

MOTION:

The Durham Town Council does hereby, upon recommendation of the Town Administrator, schedule a Public Hearing for Monday, November 5, 2012 on a recommendation by the Durham Conservation Commission for the Town of Durham to accept legal interest in approximately 176 acres of property known as the Sprucewood Forest (Tax Map 13, Lots 14-2 and 6-3) in the form of fee title and authorize the Town Administrator to sign an agreement and other related documents with The Trust for Public Land regarding said interest.