

DATE: November 5, 2012

## COUNCIL COMMUNICATION

**INITIATED BY:** The Durham Conservation Commission

**AGENDA ITEM:** **PRESENTATION AND PUBLIC HEARING: REQUEST BY THE DURHAM CONSERVATION COMMISSION THAT THE TOWN OF DURHAM ACCEPT FEE TITLE TO 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 U.S. NATURAL RESOURCES CONSERVATION SERVICE, AND THAT THE TOWN COUNCIL 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

**PRESENTED BY:** Gregg Caporossi, The Trust for Public Land  
Jeremy Lougee, Natural Resources Conservation Service  
Todd I. Selig, Administrator

**AGENDA DESCRIPTION:**

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, voted at its October 15, 2012 meeting to set a date for a public hearing on a request 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 proposal passed unanimously.

The boundaries of the 176-acre Sprucewood Forest 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.

Note: The property under consideration is sometimes referred to as the Oyster River Forest (for example, on some maps).

## **The Proposal**

For a history of the project and Proposal details, please refer to the Council Communication dated October 15, 2012 and accompanying documents.

The Proposal entails ownership of the property by the Town of Durham, subject to an easement held by the U.S. Natural Resources Conservation Service (NRCS) through its Wetlands Reserve Program (WRP). NRCS would manage a portion of the property for New England cottontail habitat and mitigate impacts to degraded wetlands and streams. NRCS would also provide majority funding for the project and become responsible for all costs related to NE cottontail habitat management, wetland restoration, and monitoring of the easement.

On October 3, 2012, after a duly noticed site walk was held on the Sprucewood Forest property, the Conservation Commission held a public hearing related to the expenditure of monies from the Conservation Fund in support of this Proposal. 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 U.S. Natural Resources Conservation Service.

On November 1, the Town received word that a survey of the property had just been completed. Previous discussions have referred to an acreage estimated from GIS mapping and Town of Durham tax maps. The survey shows that the property covers approximately 172 acres ("172± acres"). Motions associated with this agenda item reflect the revised acreage.

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.*

## **The Oyster River Initiative**

As noted in the October 15th Council Communication, the Sprucewood Forest conservation project would complement the pending Amber Acres Farm conservation project 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, which refers to those two projects together as the "Oyster River Initiative," and was recently launched by the projects' nonprofit land conservation partners, The Trust for Public Land and the Southeast Land Trust of New Hampshire.

### **Boundary line adjustment**

As noted in the Council Communication dated October 15, 2012, 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 scheduled for the Planning Board meeting to be held on November 14. The Town of Durham is a co-applicant with The Trust for Public Land.

### **Public access: passive recreation**

Also noted in the October 15th Council Communication, 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.

### **Forestry management**

The Durham Conservation Commission may develop a stewardship plan for the property, as it has done for four other Town properties to date. In conjunction with NRCS, it may recommend forestry management to promote conservation values, as noted in the attached NRCS letter to new landowners subject to Wetlands Reserve Program easements.

### **Formal presentation**

Gregg Caporossi of The Trust for Public Land will attend Monday night's Council meeting, as will Jeremy Lougee, representing NRCS. They will provide a brief presentation and answer questions.

### **SUPPORTING DOCUMENTS**

A number of documents were provided to the Council and public in the October 15, 2012 packet. Additional supporting documents are included in this packet. Most of these may also be downloaded from the Conservation Commission website at <[http://www.ci.durham.nh.us/boc\\_conservation/sprucewood-forest-conservation-project](http://www.ci.durham.nh.us/boc_conservation/sprucewood-forest-conservation-project)>:

- 1) Letters of general support for the Sprucewood Forest project from:
  - a) Thomas Lee, Associate Professor, Forest Ecology, UNH
  - b) Tom Kelly, Chief Sustainability Officer, UNH
  
- 2) Letters to Rick Ellsmore, NH State Conservationist, in support of a request for funding for the Sprucewood Forest project via the Wetlands Resource Mitigation program from:
  - a) Roger Krussman, NH State Director, The Trust for Public Land
  - b) Paul Chamberlin, Associate Vice President for Facilities, UNH
  - c) Cory Riley, Manager, Great Bay National Estuarine Research Reserve
  - d) Dea Brickner-Wood, Great Bay Coordinator, Great Bay Resource Protection Partnership
  - e) David Houghton, Vice President for conservation programs, National Wildlife Refuge Association
  - f) Rachel Rouillard, Director, Piscataqua Region Estuaries Partnership (PREP)
  - g) Brian Hart, Director, Southeast Land Trust of New Hampshire (SELTNH)
  
- 3) Maps showing:
  - a) Sprucewood Forest sited within the “Coastal Conservation Focus Areas from the Land Conservation Plan for New Hampshire's Coastal Watersheds”
  - b) aerial detail of Sprucewood Forest and Amber Acres Farm
  - c) Sprucewood Forest and Amber Acres Farm sited among public and private conservation lands in Durham and neighboring communities
  
- 4) Minutes from the February 1, 2010 Town Council meeting reflecting Public Comments in support of the Sprucewood Forest project. *NOTE: At that point in time, the proposal for Sprucewood Forest project had a different configuration, potentially involving the then-Town-owned Grange. Many comments remain relevant to the 2012 proposal. No public hearing was held, nor required, on the project in that configuration. Public comments referred to a request that the Town Council indicate support for a grant application.*
  
- 5) Sample letter from the Natural Resources Conservation Service to new landowners of property subject to WRP easements that indicates responsibilities of NRCS and of the new landowner; the Town of Durham will receive such a letter.
  
- 6) Purchase and sale agreement (“Contract”) between The Trust for Public Land and the Town of Durham (draft as of October 31, 2012)

**LEGAL AUTHORITY:**

(1) RSA 36-A:4 and 5; and (2) 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, as was the purchase and sale agreement between The Trust for Public Land and the Town of Durham.

**FINANCIAL DETAILS:**

Described in the "Budget" sent as part of the September 24, 2012 update from The Trust for Public Land to Administrator Todd Selig and included in the Council Packet dated October 15, 2012 (line item labeled "Town of Durham Conservation Fund").

**SUGGESTED ACTION OR RECOMMENDATIONS:**

**MOTION #1:**

*The Durham Town Council hereby OPENS the public hearing on the request by the Conservation Commission that the Town of Durham accept fee title to the 172±-acre property known as Sprucewood Forest, subject to an easement owned by the U.S. Natural Resources Conservation Service, and that the Town Council 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 to bring the matter to closure?*

**MOTION #2:**

*The Durham Town Council hereby CLOSES the public hearing on the request by the Conservation Commission that the Town of Durham accept fee title to the 172±-acre property known as Sprucewood Forest, subject to an easement owned by the U.S. Natural Resources Conservation Service, and that the Town Council 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 to bring the matter to closure?*

**MOTION #3:**

*The Durham Town Council hereby APPROVES the request by the Conservation Commission that the Town of Durham accept fee title to the 172±-acre property known as Sprucewood Forest, subject to an easement owned by the U.S. Natural Resources Conservation Service, and that the Town Council 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 to bring the matter to closure.*