Appendices

A. Town of Stow Open Space Ranking Criteria

B. Freedom's Way Landscape Inventory, Stow Reconnaisance Report: List of Areas Identified

C. Accessibility Inventory and Recommendations

D. Comments submitted on Draft Plan by Public Agencies

- Commonwealth of Massachusetts, Division of Conservation Services – September 2007
- Stow Board of Selectmen
- Stow Planning Board
- Metropolitan Area Planning Commission – January 2008

E. Commonwealth of Massachusetts, Department of Food and Agriculture - Agricultural Land Mitigation Policy and Executive Order 193 – November 2001

F. Commonwealth of Massachusetts, Executive Office of Environmental Affairs – EOEA Article 97 Land Disposition Policy – February 1998

G. Opinion of the Attorney General 1973 – Article 97 Public Land Protection, Massachusetts Constitution

APPENDIX A

Evaluation Criteria for Ranking Parcels – Stow Open Space Committee

What is the Weighted Criteria Ranking System?

About a decade ago, the Stow Board of Selectmen (BOS) appointed a Open Space Prioritization Committee to help provide greater insight as to the lands in Stow most deserving of protection. Of primary interest were those properties enrolled in the preferential tax assessment programs - Chapter 61(forestry), 61A (agriculture), and 61B (open space/recreation) - as by statute the Town was granted a Right of First Refusal when these lands were proposed to be sold for development. The Open Space Prioritization Committee was asked to develop a tool to allow the community to better assess the relative importance of a given property as a Right of First Refusal arose, to enable the Town to direct its limited resources most effectively.

To accomplish that utility, the Committee developed a weighted criteria ranking system. Under this framework, points were awarded based on attributes of a property, such as habitat significance, quality of agricultural soils, scenic qualities, historical significance, linkage with existing conserved lands, development potential, and others. The weighted criteria ranking system was then used to evaluate and rank many of the properties enrolled in the chapter programs considered to be of greatest significance to the Town. Results of that exercise matched well with the community's intuitive sense of importance - validating the function of this tool. Several other communities have since employed Stow's weighted criteria system for their own use in evaluating the relative importance of specific properties. It remains a powerful tool that can be used more extensively to expand the number of parcels in Stow that have been ranked:

	Criterion for Open Space Land Evaluation	**Points Available**
1	Water Resources	**20**
	a. Site is in an aquifer zone (1977 IEP Study)	6
	b. Site is in a recharge zone (1977 IEP Study)	6
	c. Site enhances public access to water	4
	d. Preservation would contribute to protecting quality of adjacent water bodies (lakes, rivers, streams)	4
2	Agriculture	**15**
	a. Site is currently productive or has been in production within 3 years	10
	b. Site contains prime soil types	5
3	Scenic Views	**9**
	a. There is a scenic view into the site	4
	b. There is a scenic view from inside the site	3
	c. There is a scenic view across the site	2

4	Public Open Space (Fields and Forests)	**7**
	a. Site is in current OSRP	3
	b. Site is in an area underserved by conservation land	2
	c. Site will improve passive recreation opportunities	2
5	Species habitat	**8**
	a. Site is of known wildlife corridor significance	3
	b. Diversity of vegetation	2
	c. Contains uncommon flora and fauna	3
6	Preserves Town Character	**9**
	a. Features that have historically contributed to Stow's identity: farmland, fields, stone walls, architectural qualities of residential, accessory and farm buildings on site.	4
	b. Preservation would contribute to land use diversity in the area or neighborhood in which it is located (e.g. where land use change has begun to homogenize character that was formerly diverse	2
	c. Site is located on or visible from narrow winding town road(s), whether public or private ways or is traversed by or runs alongside dirt roads, cart paths, ancient ways	1
	NOTE: A maximum of 2 points total can be earned from 6d, 6e, or 6f	
	d. Preservation would contribute to maintaining the rural open space attributes of "outlying" Stow	2
	e. Presevation would contribute to retaining natural breaks between the towns' more densely developed core and rural elements along the edge.	2
	f. Preservation would or could contribute to the town's supply of civic open space areas in or near existing village center.	2
7	Links and Corridors	**9**
	a. Contiguous or near existing protected land	5
	b. Contributes to linkage with existing trails, paths, ancient ways, railroad beds, horse trails, etc.	2
	c. Acquisition would achieve consistency with town and SCORP plan in effect at the time acquisition is considered	2
8	Natural Resources	**6**
	a. Site contains water bodies (streams, ponds) and/or vegetated wetlands	4
	b. Site contains unique geologic features	2

9	Historic Preservation	**6**
	a. Site contains locally significant historic landmarks, buildings, or other features, where locally significant is recorded by the Stow Historical Society or other nonprofit	3
	b. On or eligible for property listed on the national/state register	2
	c. Site contains significant archeological resources	1
10	Municipal use	**4**
	a. Location near town center, existing services	2
	b. Development suitability	1
	c. Access to/from major road	1
11	Active Recreation	**3**
	a. Site has capacity for one or more identified recreation facilities (ballfields, ice rink, gym, pool, tennis courts, etc)	1
	b. Site contains existing developed facilities that respond to an active recreation needs	1
	c. Site is in an are of town disproportionately underserved by parks and recreation facilities	1
12	Affordable housing	**2**
	a. Site is located in an established neighborhood near town center or is within one mile of a public school facility	1
	b. Site has few or no development constraints, making affordable housing development feasible	1
13	Elderly housing	**2**
	a. Site is located near community services	1
	b. Development suitability is strong, site can support high density development	1
14	Liability	**25**
	a. Hazardous waste contamination is known	-10
	b. Hazardous waste contamination is likely based on land use history and practices	-10
	c. Estimated cost of clean up is known	5
	d. Hazardous waste contamination is unlikely	25
	e. To the extent that they are knowns, planned or probable uses of the site will expose the town to high insurance liability	-5

15	Development Potential/Impact	**25**
	500 developable acres will get the maximum of 25 points, each developable acre gets 0.05 points	
	Total	

Appendix B – Freedom's Way Landscape Inventory

Stow Reconnaisance Report: List of Areas Identified by the Town of Stow

APPENDIX: HERITAGE LANDSCAPES IDENTIFIED BY COMMUNITY

This list was generated by local participants at the Heritage Landscape Identification Meeting held in Stow on April 12, 2006 and the follow-up fieldwork on May 11, 2006. **There are undoubtedly other heritage landscapes that were not identified at the HLI meeting noted above.** The chart has two columns, the names and locations of resources are in the first; notes about resources are in the second.

Landscapes are grouped by land use category. Abbreviations used are listed below.

APR = Agricultural Preservation Restriction

CR = Conservation Restriction

LHD = Local Historic District

NR = National Register

PR = Preservation Restriction

* = Priority Landscape

+ = Part of a Priority Landscape

Agriculture

Apple Barn

Great Rd.

Stone building at the Center School used for storing apples on the Peter Larsen property before land was acquired for the school.

Applefield Farm

727 Great Rd. - Vegetable and flowers. Farm stand selling local products.

Carver Hill Orchard

Brookside Ave.

Lord family farm since the 1850s. Orchard and vegetable farm with cider mill, farm store, hiking trails.

Derby Orchard

438 Great Rd.- Orchard and farm stand with 23 varieties of apples, cider and peaches.

Honey Pot Hill

144 Sudbury Rd. - Apple orchard as well as pears and blueberries. Farm store selling products (apples, cider, etc.) and pick-your-own fruit. Sunflower display in summer is of note. Whitman House built in 1810.

One Stack Farm

441 Great Rd.- Apple orchard with 12 varieties of apples, some peaches, cider made on-site.

Packard Farm

90 Packard Rd.- The Packard House at 90 Packard Rd. sits on this 47-acre site. More than 100 years ago apple orchards lined Packard Rd. on both sides. Now houses line the road. This farm is under 61A.

Orchard Hill Farm

Rockbottom Rd. In Gleasondale. Was a mill farm that produced food for mill workers. Located on esker above Assabet River.

Pilot Grove Farm

76 Crescent St. - Northern edge of Lower Village. The Federal farmhouse was constructed in 1808 (barn

demolished). Today it is a sheep farm today.

Red Acre Farm

253 Red Acre Rd. - Northern edge of Lower Village. The farmhouse was built after 1856 and became the summer house of Harriet Bird in 1902. Later she turned it into a haven for overworked and abused horses. More recently a medical research facility and hearing dog center were part of the operation.

Shelburne Farm

106 West Acton Rd. - Was known as the Old Elm Farm with house Federal/Greek Revival house built in ca. 1800. Apple orchards since the early 1900s. There is a conservation restriction on 48.3 acres of this orchard. Farm animals, hay rides, picnic areas, and The Apple Shop.

Small Farm

184 Gleasondale Rd. - On Route 62, farm stand and pick-your-own flowers, herbs and vegetables.

Nurseries

Two nurseries, Stow Branch Nursery and Village Nursery, serve the town.

Archaeological

Conant's Sawmill Site

Archaeological site in Town Forest. The foundation of a sawmill that operated from the mid 1660s to 1830.

Native American Sites

Various locations - 26 ancient sites have been documented in Stow.

Burial Grounds and Cemeteries

Brookside Cemetery

Gleasondale Rd. - Established in 1864 at the intersection of Gleasondale and Box Mill Roads. 5.7 acres.

Hillside Cemetery

Crescent St.- Established in 1812. Small burial ground of about 1.5 acres.

Lower Village Cemetery +Pompositticut Rd.- Oldest cemetery. Laid out in 1683. 3.5 acres.

Small Pox Cemetery

Lakewood & Sudbury Rds. - Graves of those who died in the 1840'sfrom small pox.

Civic

Gleasondale *

Stow's industrial village with Gleason houses, workers houses, boarding house, mill farm (now a horse farm), mill and dam. First mill and dam built prior to 1750. In 1813 the Rock Bottom Cotton and Woolen Mill established at Randall's Mill, hence the industrial village first known as Rock Bottom. Name change in 1898 to honor mid 19th century mill owners Benjamin Gleason and Samuel Dale.

Lower Village *

Great Road - The original town center laid out in the 1680s on Great Road (now Route 117) at Red Acre, White Pond, Samuel Prescott and Pompositticut Roads. Now the commercial center. Historic houses such as Hosmer's Folly and the Minister's Manse. The first meeting house was established here.

Upper Village

Also known as Stow Center or Town Center. Became the town center with Upper Common when the meetinghouse was relocated here in order to be more centrally located within Stow's borders. Site of the fourth First Parish Church in 1827 which burned and was replaced with current First Parish Church (1848). Also site of Town Hall (1848).

Industrial

Blacksmith Shop*

Great Rd. - Located on the former Peter Larsen property, the building was moved from Maynard in 1914 and became a blacksmith shop here. Larsen kept it open into the 1950s thus it is the last blacksmith shop that was operated in Stow.

Box Mill Dam & Pond

At Carver Hill. Dam dates to 1850.

Gleasondale Mill & Dam +

In industrial village of Gleasondale. The Greek Revival mill was constructed in 1854 and the dam and canal in 1883.

Lake Boon Dam +

Built for the Assabet Mill in Maynard about 1850. Height increased in 1870's.

Institutional / Military

Center School

403 Great Rd. - Built in 1954 on property of Peter Larsen whose stone apple barn and blacksmith shop remain on the property. The Colonial Revival style school houses Grades 3-6.

Churches

First Parish (1848), the former Gleasondale Methodist-Episcopal Church (1898, 4 Marlboro Road), St. Isidore's Catholic Church (1961, 429 Great Rd.), Union Church (1905, 317 Great Road).

Fort Devens Annex

Sudbury, State & White Pond Rds.

The Annex was taken in 1942 from lands in Stow, Sudbury and Maynard. Of 2300 acres 2,½ is in Stow. It was in active military use from World War II until 1995. Now operated by U.S. Fish and Wildlife as the Assabet River National Wildlife Refuge. Many historic farms were on the property taken, some of which still stand. Also, archeological sites.

Hale School

55 Hartley Rd. - 16.6 acres. Built in 1964. Expanded in late 1990's.

John Kettell Monument

Off Maple Street. One of two earliest recorded settlers.

Matthew Boone Monument

Off Barton Rd. Boon, one of the two earliest recorded settlers, who was killed by Indians in 1676 during King Philip's War.

Pompositticut School

511 Great Rd.- A modern school building housing Grades K-2. Built in 1968.

Randall Library

19 Crescent St. - Built in 1892 in the Richardsonian Romanesque style. It was a gift from the estate of John Witt Randall by his sister, Belinda Randall. Historical Room donated in 1926 by Whitney family. There is a 1975 addition.

Stow Town Hall

Great Rd. & Crescent St. At Stow Center near the Upper Common. Greek Revival building constructed in 1848 with addition in 1895. Now used for meeting space and several town offices. The new town building (1989) is across Great Road from this town hall.

West School

Harvard Rd. - Built in 1825 on the foundation of a ca. 1739 school which was the first at this location. The brick one-room school house now is the Stow West School Museum, administered by the Stow Historical Commission.

Miscellaneous

Cairn

74 West Acton Rd.- At Shelburne Farm. According to the Historical Commission this stone cairn dates to 1640.

Stone Walls

Along roads and in woods and fields.

Natural

Herons' Nests

Part of the Delaney Project.

Open Space /Parks

Assabet Wildlife Refuge

See Ft. Devens Annex. (Known locally as the "ammunition dump.") Refuge established in 1999.

Butternut Country Club

115 Wheeler Rd. - Public golf course operated by three generations of the Page family. It was built on an old farm that grew butternut squash.

Flagg Hill Conservation Area

West Acton Rd. - 286 acres in Stow and Boxborough protected through purchase by the two towns in 1998. Has trails, vernal pools, critical habitat and wildlife.

Lions Club Field

Great Rd. at Hudson Rd.

Lower Village Common +

First town center when laid out in 1680s.

Marble Hill Conservation Area

Taylor Rd. - Town owned property of 249 acres adjacent to the Pompositticut School with parking there or on Taylor Road (north end of property). Trails. Native American archeological sites have been identified.

Pine Bluffs Recreation Area +

Sudbury Road - Town-owned 35 acres on eastern shore of Lake Boon with town beach and recreation area established in 1971 from the Parker farm and cottage rental properties. Trails

Pilot Grove Hill

Public and private ownership of land on hill. Landmark reputed to have been used historically for sighting by ships coming into Boston Harbor.

Stowaway Golf Course

White Pond Rd. - 9-hole public golf course since 1960's. Formerly Assabet Country Club in the 1920's.

Stow Acres Country Club

58 Randall Rd. - Golf course (with two 18-hole courses) and historic Randall House built by John Randall, prominent Boston physician made his home in Boston and maintained the property with ca. 1800 Georgian style country retreat. It passed through generations of Randalls to Belinda Randall, sister of John Witt Randall who died intestate. Belinda gave money to many local causes in her family's name. Circa 1920, the Randall property was purchased by Charles M. Cox, a wealthy grain merchant from Boston, who established a golf course here open to African Americans, who were unable to play elsewhere due to segregation practices. First known as Mapledale, this course hosted the first national black men's championship in 1926. Expanded to 36-holes in 1954 by Page brothers of Waltham. The clubhouse (the old Randall house) has been extensively renovated.

Town Forest

Bradley Ln. - Also known as Gardner Hill Land (324acres) purchased by the town in 1968. Near Lower Village. Was part of the C.D. Fletcher estate. Elizabeth Brook forms the northern edge. The foundation of Conant's Mill, a sawmill, is within the Town Forest as is Little Bog Trail.

Wedgewood Pines Country Club

215 Harvard Rd.- Private country club with golf course, swimming pool, large clubhouse. 154 acres. Opened in 1996.

Residential

Boaz Brown House

172 Harvard Rd.

NR First Period Thematic Nomination. One of the oldest houses in Stow, built before 1699. Brown farmed this property and ran a tavern for some time. By the mid 18 th century it was part of a 143-acre farm. In 1764 the farm was sold to Stephen Stow.

Cottage Neighborhood +

Cottage neighborhoods around Lake Boon built from 1880's to 1930's are now being stressed by development and mansionization. See Lake Boon Priority Landscape.

Hapgood House

76 Treaty Elm Ln. - NR First Period Thematic nomination. The house was constructed of ca. 1726 for Hezekiah Hapgood.

Hosmer's Folly +

4 Red Acre Rd. - The Rufus Hosmer House was built in Lower Village in ca. 1789 in the Federal style. See Lower Village Priority Landscape

Lake Boon Neighborhood *

Located in southeast corner of Stow, Lake Boon was originally a small pond. Amory Maynard of the Assabet Mill in what was to become Maynard purchased rights in mid century to make a larger pond, which was done by building a dam at Bailey's Brook. This was later raised and the mill pond expanded. After the use of waterpower was discontinued, by 1900, the lake became a summer resort area. Transportation was provided by two train lines, a trolley and a steam boat from Maynard.

Minister's Manse +

9 Red Acre Rd. - A house was constructed for the first minister in 1686. This house, usually identified as the Minister's Manse is possibly somewhat later. See Lower Village Priority Landscape.

Randall-Hale House +

6 Sudbury Rd. - NR. This ca. 1710 house was built by Abraham Randall in Gleasondale. It displays First Period construction with Georgian detail. A large New England barn is on the opposite side of Sudbury Road at the intersection with Gleasondale Road.

Whitney Homestead

485 Great Rd. - Built in ca. 1843 in the Greek Revival style it shows signs of Victorian updating. It has served as a nursing home as well as a single family residence.

Whitney House

27 Whitney Rd. - Part of Whitney Homestead land. Built ca. 1760.

Walcott-Whitney House

137 Tuttle Lane.- NR First Period Thematic nomination. First Period construction with Georgian details built in ca. 1725.

Transportation

Assabet River Rail Trail

Planned trail along the Marlborough Branch Railroad line that was in operation from 1850 to 1980.

Maple Street

In the western part of town from Bolton northeast to Old Bolton Road. Scenic qualities.

Minuteman AirField

302 Boxboro Rd. - Airport established in 1963 with its first building housing the locally known restaurant constructed in 1968. Airport was opened to the public in 1969.

Red Acre Road +

Extends from Great Road at Lower Village north to Acton. Scenic qualities. Built in 1802.

Track Road

A road on private property that is part of the old railroad bed of the Marlborough Branch Railroad. Recreational easement negotiated and signed with Town of Stow and property owner of Track Road and Crowe Island for planned Assabet River Rail Trail.

Trolley Waiting Station

Great Rd. - Stone structure built in 1916 on the Concord, Maynard and Hudson Electric Railway route.

Tuttle Lane

Picturesque country road branching northwest off of Red Acre Road.

Walcott Street

In the southwest corner of Stow running from Hudson north to Hudson Road.

Whitman Street

Rural north-south road between Gleasondale Road on the north and Boon/Sudbury Road

on the south.

Waterbodies

Assabet River *

Flows through the southeastern part of Stow from Hudson to Maynard. View of Assabet from Sudbury Road Bridge. The Assabet River originates in Westborough and flows north and then northeast for 32 miles to its confluence with the Concord River. Crowe Island is a land form that juts into the Assabet, most is privately owned. It is reached by Track Rd. Assabet River once was known as Elizabeth River, the English version of the Nipmuc name for the river. The name, Assabet, also a version of this name became the name in ca. 1850 and means in Algonquin "the place where materials for making fishnets grow." The current flow is largely processed sewage.

Delaney Project

Includes the herons' nests. The Delaney Multiple Purpose Complex of the SuAsCo Watershed Project was established in 1968 by the U.S. Soil Conservation Service to control flooding from Elizabeth Brook, through the purchase of rights to store 4,000 acre-feet of water along the brook above Delaney Pond in northwest Stow, Bolton and Harvard. The 22-foot Campbell dam was constructed as a flood control project to hold back the waters feeding the Elizabeth brook which are reported to be able to make a 12 inch difference in the Assabet River water level in Maynard during a 100-year storm.

Elizabeth Brook

Tributary of the Assabet River entering the river from the north. At one time this brook was known as Assabet Brook. At the same time the Assabet River was known as the Elizabeth River which is the English version of the Nipmuc name for the river.

Fletcher's Pond

Fed by Elizabeth Brook. A former mill pond.

Heath Hen Meadow Brook

Heath Hen Meadow Brook runs from Boxborough to Ft. Pond Brook in Acton. The brook flows through Shelburne Woodland, purchased by the town in 1997.

Lake Boon +

A Great Pond that straddles Hudson-Stow line. Once a millpond for the mills in Maynard, it is also referred to as Boon's Pond. Primary land use around perimeter is now residential with many former summer cottages. Lake has three sections connected by the Narrows and connected to the Assabet River by Bailey's Brook. Named after Matthew Boon who explored area in 1660s and was killed in King Philip's War in 1676.

Minister's Pond

North of Great Road at Stow Center. Flows south to Elizabeth Brook by manmade drainage stream built by an enterprising minister. The change created additional pasture land.

Sandy Brook

Tributary of the Assabet River.

Appendix C - ADA - Self Assessment

Program Accessibility - Facility Inventories & Transition Plans

The Stow Parks & Recreation Department and Conservation Commission make every effort to accommodate people with disabilities, physically and programmatically. The Section 504 Self-Evaluation of Stow's park, recreation and conservation land indicate that relatively few accommodations exist to provide full access to these areas for people with disabilities. The evaluation results are shown along with a transition plan for corrective action, if any.

Four of Stow's most popular park and recreational destinations are identified as the highest priority for providing universal access. The Town Forest and Memorial Field, as well as the Town Beach and Pine Bluff, offer the best opportunities to access to a full range of outdoor activities – nature study/walking, horse and bike riding, swimming, and active recreational programs. In addition, because these sites are grouped in two locations, the Town could make efficient use of design and construction funds for parking and access to improve accessibility to four destinations. Finally, the state-owned Delaney Complex also offers a great potential to provide universal access to the popular site. Relatively modest changes to the parking area and initial access to the walking paths could open the facility to use by many disabled visitors.

Section 504: Administrative Requirements

• The Town 504 Coordinator is Craig Martin, Building Inspector.

• The Personnel By-Law and Grievance Procedure is included in the Appendix to this Plan.

• Stow Town jobs are always advertised without discrimination as to age, sex, marital status, race, color, creed, national origin, handicap, veteran status, or political affiliation.

Facility name	**Town Forest (Gardner Hill Land) and Memorial Field**		
Owner/Manager	Conservation Commission and Parks & Recreation		
Location	Bradley lane		
Acreage	326		
Activity	Hiking, horseback riding, skiing, fishing, mountain biking, dog walking, active recreation		
Site Amenities	Parking area, bulletin board, emergency call box		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access from parking lot to main trails and playing field	Construct handicapped accessible gate from parking lot to trails and playing field	Hire design consultant with CPA funds in 2009	Conservation Commission; Parks and Rec; CPC
No compliant parking	Modify public parking area to include handicap spaces	Hire design consultant with CPA funds in 2009	Conservation Commission; Parks and Rec; CPC
Trails are inaccessible due to slope/grades and surfaces	Design and construct an accessible trail system on major trunk trails	Hire design consultant with CPA funds in 2009	Conservation Commission ; CPC
Note: The parking area serves both the Town Forest and Memorial Field. New handicapped parking			

spaces could serve both locations.

Facility name	Pine Bluff and Town Beach		
Owner/Manager	Town of Stow, Recreation Department		
Location	Off Sudbury Road		
Acreage	31		
Activity	Swimming, picnics, recreation		
Site Amenities	Beach, playground, playning fields, bathroom, parking lot		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access to beach and water	Construct handicapped accessible trail / drive from parking lot to beach	Hire design consultant with CPA funds in 2010	Parks and Rec; CPC
No compliant parking	Modify public parking area to include handicap spaces	Hire design consultant with CPA funds in 2010	Parks and Rec; CPC
No compliant bathrooms	Renovate existing or construct new accessible bathroom facilities	Hire design consultant with CPA funds in 2010	Parks and Rec; CPC

Facility name	Delaney Complex		
Owner/Manager	MassWildlife		
Location	Harvard Road		
Acreage	170		
Activity	Hiking, horseback riding, skiing, fishing, mountain biking, dog walking, paddling		
Site Amenities	Parking area, bulletin board, boat launch		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access from parking lot to main trails	Construct handicapped accessible gate from parking lot to trails	Request MassWildlife to modify entrance	MassWildlife
No compliant parking	Modify public parking area to include handicap spaces	Request MassWildlife to modify parking	MassWildlife
Note: MassWildlife manages the property, but it is owned by DCR for flood control purposes. Corrective action will require coordination between the two EOEEA agencies.			

Facility name	Flagg Hill (North W. Acton Rd entrance)		
Owner/Manager	Stow Conservation Commission		
Location	West Acton Road		
Acreage	243		
Activity	Hiking		
Site Amenities	Unpaved parking area		
Transition Plan			
Barrier to Access	Corrective Action	Scheduled Change	Authority
No universal access paths	None planned		

Facility name	Flagg Hill (South W. Acton Rd entrance)		
Owner/Manager	Stow Conservation Commission		
Location	West Acton Road		
Acreage	243		
Activity	Hiking		
Site Amenities	Unpaved parking area		
Transition Plan			
Barrier to Access	Corrective Action	Scheduled Change	Authority
No universal access paths	None planned		

Facility name	Flagg Hill (Boxborough entrance)		
Owner/Manager	Boxborough Conservation Commission		
Location			
Acreage	243		
Activity	Hiking		
Site Amenities			
Transition Plan			
Barrier to Access	Corrective Action	Scheduled Change	Authority
No universal access paths	None planned		

Facility name	Marble Hill Natural Area & Pompo Fields
Owner/Manager	Stow Conservation Commission, Elementary School
Location	Great Road

Acreage	249		
Activity	Hiking, active recreation		
Site Amenities	Parking lot, exercise course, playing fields		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access paths	None planned		

Facility name	**Captain Sargent Farm (Babricki Land)**		
Owner/Manager	Stow Conservation Commission		
Location	West Acton Road		
Acreage	153		
Activity	Hiking, agriculture		
Site Amenities	Parking lot		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access paths	None planned		

Facility name	**Heath Hen Meadow Woodlands**		
Owner/Manager	Stow Conservation Commission		
Location	West Acton Road		
Acreage	38		
Activity	Hiking, cross country skiing		
Site Amenities	Parking lot		
Transition Plan			
Barrier to Access	**Corrective Action**	**Scheduled Change**	**Authority**
No universal access paths	None planned		

APPENDIX D

Comments Submitted by Public Agencies

The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Deval Patrick
GOVERNOR

Timothy Murray
LIEUTENANT GOVERNOR

Ian Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181

September 25, 2007

Bob Wilber
Open Space and Recreation Plan Committee
Stow Town Building
380 Great Road
Stow, MA 01775

Re: Open Space and Recreation Plan

Dear Mr. ~~Wilber~~: Bob

Thank you for submitting the draft Open Space and Recreation Plan for Stow to this office for review and compliance with the current Open Space and Recreation Plan Requirements. This plan was particularly thorough and has been conditionally approved through September 2012. Conditional approval will allow the town to participate in DCS grant rounds through September 2012, and a grant award may be offered to the town. However, no final grant payments will be made until the plan is completed.

Once the following items are addressed, your plan will receive final approval:

1. Population Characteristics – please include information on population density, family income, and industries.
2. Section 5 – this section should start with a paragraph describing why open space protection is so important. Also, a matrix of all town-owned recreation and conservation lands with columns on ownership, management agency, current use, condition, recreation potential, the type of grant (if any) used to purchase or renovate the land, public access, zoning, and degree of protection must be included.
3. Analysis of Needs – the Community Needs should include information on the SCORP (www.mass.gov/envir/dcs/global/publications.htm).
4. Letter of Review from the Chief Municipal Officer, Regional Planning Agency, and Planning Board are needed.
5. Maps – the Unique Features and Action Plan maps are missing.
6. ADA/Section 504 – This is a three-part report on municipal property under the jurisdiction of the conservation commission or park commission, and is described in the Planner's Workbook. It includes information on administrative and employment practices for the town as well. Administrative information includes formal designation of an ADA coordinator, a grievance procedure for the general public and a review of the town's employment practices. Information on employment practices can be shortened considerably if the town's ADA coordinator will send a letter stating that the town's employment practices are consistent with the ADA.

Congratulations on a great draft plan! Please contact me at (617) 626-1171 or melissa.cryan@state.ma.us if you have any questions or concerns, and I look forward to reviewing your final plan.

Sincerely,

Melissa Cryan
Grants Manager

cc: Board of Selectmen
Conservation Commission
Recreation Department

RECEIVED

SEP 2 9 2007

TOWN OF STOW
CONSERVATION COMMISSION

Town of Stow
BOARD OF SELECTMEN
Stow Town Building
380 Great Road
Stow, Massachusetts 01775
(978) 897-4515 selectmen@stow-ma.gov Fax (978) 897-4631

Kathy Sferra
Chair, Open Space Committee
Stow Town Building
380 Great Road
Stow, MA 01775

Dear Kathy:

Thank you for providing copies of the new Open Space and Recreation Plan to the Selectman. We have reviewed the document. It contains a wealth of information and sound recommendations for land management in Stow. As such, the Plan will be an important resource for many boards and committees, and especially for the new Land Use Task Force.

I understand that the Executive Office of Energy and Environmental Affairs has given conditional approval of the plan. As a result, the town will be able to compete for grants through 2012.

The plan reflects a great deal of hard work. We extend our appreciation to you and the other members of the team who contributed to the project.

Sincerely,

Tom Ruggeri

Stow Board of Selectman

NOV-18-2006 03:49PM FROM-MASS AUDUBON +1 781 259 1040 T-372 P.001/003 F-958

Planning Board
380 Great Road
Stow, MA 01775
Tel: 978-897-5098
Fax: 978-897-2321

Town of Stow

Memo

To: Open Space Committee

From: Planning Board

Date: November 2, 2006

Re: Draft Open Space and Recreation Plan

At its meeting of October 17, 2006, the Planning Board reviewed the Short Term Action Items and Five Year Action Plan listed in the Draft Open Space and Recreation Plan. Please note that the Planning Board's recommendations listed below also apply to the Actions listed in Section 7.

The Stow Open Lands Map and Table titled "Land Protected by Conservation Restrictions and Agricultural Preservation Restrictions" should show the Golf Course Conservation Restriction areas, the State Forest and the trail connection from Lanes End and Great Road.

Short Term and Five Year Action Plan

Page 96 – 8th Action item: Members noted that this Action item should speak to all types of municipal uses rather than only conservation, and agreed to recommend an amendment to the last sentence of this action item to read as follows:
~~Lands that are important for conservation should be transferred to the control of Conservation Commission~~. Lands that are deemed important to the Town should be transferred to the appropriate Town Board for control.

***Page 96, 9th Acton item*:** Members are concerned about the need to offset other needs such as affordable housing and agreed to recommend an amendment to this action item to read as follows:
Ensure that any proposals to modify zoning to promote economic development, affordable housing or compact development ~~either~~ will ~~result in a reduction of overall density or are density neutral with regard to Stow's overall buildout~~ minimize density.

Page 97, 10th Action Item – Members are concerned that a planned conservation development plan is not the best option in all cases and agreed to recommend an amendment to this action item to read as follows:

~~Consider an overlay zone~~ Shape proposed developments in the southwest quadrant of Stow that ~~requires planned conservation development with~~ supports a land conservation 'master Plan' for the open space designed to foster such linkages.

Page 97, 12th Action Item – Members noted that Stow currently has a Phased Growth bylaw and is concerned that case law does not support any further restriction. Therefore, the Planning Board recommends this action item be deleted.

Page 98, 1st Action Item – Members discussed the fact that this action item is consistent with the Board's current policy. However, it is not legal to mandate a Special Permit. Therefore, the Board agreed to recommend an amendment to this action item to read as follows:

~~Consider adoption of a bylaw that would provide for~~ Continue the Planning Board's policy to encourage submittal of ~~an open space development plan ("cluster" or~~ planned conservation development (PCD) plan) for all developments ~~of greater than 5 units (including AN), with the Planning Board given the discretion to determine whether a PCD or conventional plan should be developed, given~~ provided that the site conditions are appropriate.

Page 98, 2nd Action Item – Members noted that it is current policy to require that conveyances and payment of due diligence costs are borne by the developer. Members also agreed that this action item is more appropriate for an amendment to Rules and Regulations rather than the Zoning Bylaw and agreed to recommend amendment to this action item to read as follows:

Amend ~~zoning bylaws~~ rules and regulations to make clear that the order of preference for the set aside of open space and ~~revise regulations to~~ address time of these conveyances, and that payment of due diligence costs (survey, title etc.) shall be the responsibility of ~~by~~ the applicant.

Page 98, 5th Action Item – Members agreed that the Planning Board should be removed from the list of responsible parties.

Page 98, 6th Action Item – Although the Members are concerned about monitoring and enforcement, it was agreed to recommend an amendment to this action item to read as follows:

~~Identify scenic roads~~ Support and adopt a Scenic Roads Preservation General Bylaw that limits alteration of trees and stonewalls along the Town's scenic roadways.

Members also agreed to recommend that the Planning Board be removed form the list of responsible parties and that the Board of Selectmen be designated as the lead.

Page 98, 8th Action Item – Members agreed to recommend an amendment to this action item to read as follows:

~~Consider bylaw that requires~~ - Encourage PCD development when parcels identified as a priority are proposed for development.

Page 98, Insert new Action Item between the 9th and 10th action items. Members agreed to add a new action item to read as follows:

Identify important water surface resources. – Responsibility: Conservation Commission

Page 98, 11th Action Item – Members agreed to recommend that this action item be listed as two separate action items to read as follows:

Map important wildlife corridors and connections between protected areas. – Responsibility: Conservation Commission

Adopt a Wildlife Habitat Corridor Overlay Zoning District. – Responsibility: Planning Board

Page 98, 13th Action Item – Members are not sure what this means? Staffing? Consultant?

Page 98, 14th Action item – Members agreed that this action item (Transfer of Development Rights) should be a low priority at this time. Such a bylaw is not feasible unless and until the Town identifies an appropriate receiving area with infrastructure in place.

Metropolitan Area Planning Council
60 Temple Place, Boston, Massachusetts 02111 617-451-2770 fax 617-482-7185 www.mapc.org
Serving 101 cities and towns in metropolitan Boston

January 9, 2008

Kathy Sferra, Chair
Stow Open Space Committee
Stow Conservation Commission
Town Hall
Stow, MA 01775

Dear Ms. Sferra:

The Metropolitan Area Planning Council has reviewed the Stow Open Space and Recreation Plan dated July 2007- Final Draft. The plan is well-written and thorough and appears to meet the guidelines of the Division of Conservation Services. I am pleased to see that Stows' participation in MAGIC is noted and that the plan takes into consideration the many inter-community and regional open space initiatives in the subregion.

This thorough plan should serve the Town well as it continues to protect open space in the future.

Thank you for the opportunity to review this plan.

Sincerely,

Marc D. Draisen
Executive Director

Cc: Melissa Cryan, Division of Conservation Services
Donna Jacobs, MAPC Representative, Town of Stow

Richard A. Dimino, *President* Gordon Feltman, *Vice President* Grace S. Shepard, *Treasurer* Jay Ash, *Secretary*
Marc D. Draisen, *Executive Director*

APPENDIX E

Executive Order 193 and Agricultural Land Mitigation Policy

General Laws of the Commonwealth of Massachusetts
Mass. Executive Order #193
By His Excellency EDWARD J. KING
Governor
PRESERVATION OF STATE OWNED AGRICULTURAL LAND

Preamble

Agricultural land In Massachusetts is a finite natural resource that is threatened by competing land use pressure.

The natural resource qualities associated with agricultural land make state owned agricultural land an irreplaceable economic and environmental asset when utilized for food production. This land is part of the "common wealth" of Massachusetts citizens, and the wise use and conservation of state-owned agricultural land is of broad public value. As the loss of private agricultural land in the Commonwealth continues, the state-owned land will play an increasingly important role for the state's remaining farmers and young people who wish to enter farming. As the state-owned agricultural land decline in productivity and efficient utilization, so does the maximum return of benefit to the citizens, of the Commonwealth.

Furthermore, the loss of agricultural land has had a detrimental affect upon environment quality. Agricultural land reduces flooding by effectively absorbing precipitation, while replenishing critical ground water supplies. The open characteristic and natural vegetation of agricultural land helps purify the air; enhances wildlife habitat; provides for recreation; and maintains the landscape's aesthetic and historic quality. Therefore, it is essential to ensure that the Commonwealth's agricultural land remains available for present and future generations.

WHEREAS, the Commonwealth seeks to preserve the productive agricultural land base on which the Massachusetts agricultural industry and the people of the Commonwealth depend; and

WHEREAS, state acquisition programs administered by the Department of Environmental Affairs, pursuant to G.L.c. 132 A, secs 11A-11E and G.L.c. 184 secs 31-33, promote the preservation of private agricultural land; and

WHEREAS, it is the policy of the Executive Department of the Commonwealth of Massachusetts to protect, through the administration of current programs and laws, the Commonwealth's agricultural land base from irreversible conversion to uses which result in its loss as an essential food production and environmental resource;

NOW THEREFORE, I, Edward J. King, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth, do hereby order and direct all relevant state agencies to seek to mitigate against the conversion of state-owned agricultural land and adopt
the policies herewith:

1. State funds and federal grants administered by the state shall not be used to encourage the conversion of agricultural land to other uses when feasible alternatives are available.

2. State Agency actions shall encourage the protection of state-owned agricultural land by mitigating against the conversion of state-owned land to non-agricultural uses, and by promoting soil and water conservation practices.

3. The Secretary of Environmental Affairs shall identify state-owned land suitable for agricultural use according to the following criteria:

a. the presence of soil types capable of supporting or contributing to present or potential commercial agriculture

b. current and historic use for agriculture, and

c. absence of non-farm development.

4. State Agencies controlling state-owned land suitable for agricultural use shall coordinate agricultural land management policv with the Executive Office of Environmental Affairs. In managing said land, State Agencies shall be encouraged to allow for use on a multiple year basis for forage and food crops.

5. Surplus state-owned land, identified as suitable for agriculture by the Secretary of Environmental Affairs, shall remain available for agriculture when compatible with state agency objectives.

6. For purposes of this Executive Order, "agricultural land" shall be defined as land classified Prime, Unique, or of State and Local Importance by the USDA Soil Conservation Service, as well as land characterized by active agricultural use.

7. For the purposes of this Executive Order, "state-owned land" shall be defined as:

a. all land under the custody or control of a state agency,

b. all lands purchased in whole or in part with state funds or federal funds administered by the state.

Given at the Executive Chamber in Boston this 19th day of March in the year of our Lord one thousand nine hundred and eighty one and of the Independence of the United States of American two-hundred and five

Edward J. King Governor, Commonwealth of Massachusetts

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF FOOD AND AGRICULTURE
LANCASTER FIELD OFFICE
142 OLD COMMON ROAD, LANCASTER, MA 01523 (508) 792-7711 FAX: (978) 365-2131

JANE SWIFT
Governor

BOB DURAND
Secretary

JONATHAN L. HEALY
Commissioner

AGRICULTURAL LAND MITIGATION POLICY

I. INTRODUCTION & STATEMENT OF POLICY

Article 97 of the Massachusetts Constitution guarantees the right of residents of the Commonwealth to the conservation, development and utilization of agricultural land. Protection of this right is declared to be a public purpose by Article 97. Pursuant to this mandate, therefore, it is the mission of the Executive Office of Environmental Affairs ("EOEA") and the Department of Food and Agriculture (the "Department"), as restated herein, to protect, preserve and enhance agricultural land, and its capacity to benefit and sustain the citizens of the Commonwealth, as a finite natural resource.

This mission has been accomplished, and shall continue to be accomplished, in part, by discouraging the conversion of viable units of agricultural land to non-agricultural uses. Further, by way of its Mitigation Policy, the Department requires that one acre of agricultural land of comparable or greater agricultural viability be permanently protected for future agricultural use, for every acre of agricultural land so converted, in the manner described herein or by use of an alternative mitigative tool described below.

II. POLICY BACKGROUND & IMPLEMENTATION

Agricultural land has become a ready target for non-agricultural development as a result of its adaptability and physical characteristics. Such development is subject to review and certification under the Massachusetts Environmental Policy Act ("MEPA"). In addition, EOEA has designated agricultural land as a critical natural resource. As with other critical natural resources in the Commonwealth (e.g. wetlands, floodplains), a concerted effort has been and shall continue to be made by the Commonwealth to avoid the loss of agricultural land as a result of non-agricultural development. Where avoidance is not possible, Department policy requires mitigation for the loss of agricultural land in the manner described in Section III.

The Commonwealth of Massachusetts for many years has actively promoted the preservation of agricultural land. Through the Agricultural Preservation Restriction ("APR") Program the Commonwealth invests significant funds, on a regular basis, to protect critical farmland resources by purchasing rights in agricultural land.

In addition, Executive Order 193 complements the APR Program as a protective tool through which state agencies are directed to avoid and to mitigate against the conversion of state-owned agricultural lands. In this regard, the Order states the policy that: "State Agency actions shall encourage the protection of state-owned agricultural land by mitigating against the conversion of state-owned land to non-agricultural uses…". The Order further provides, as a separate policy not restricted to state-owned agricultural land, that: "State funds and federal grants administered by the state shall not be used to encourage the conversion of agricultural land to other uses when feasible alternatives are available."

III. MITIGATION OPTIONS

Compensation for the loss of agricultural land resulting from conversion to non-agricultural uses may be accomplished in one or a combination of the following ways, upon consultation with the Department and approval by the Commissioner. A Financial Contribution shall be utilized only in circumstances when On-site and Off-site mitigation are not feasible. The following order of preference shall be followed:

"On-site Mitigation": The permanent protection, through the granting of an APR to the Commonwealth, on any contiguous agricultural land of equal or greater size, soil quality and agricultural viability to the agricultural land being lost to conversion, as determined by the Department and approved by the Commissioner.

"Off-site Mitigation": The permanent protection, through the granting of an APR to the Commonwealth, on a parcel of agricultural land of equal or greater size, soil quality and agricultural viability to the agricultural land being lost to conversion, as determined by the Department and approved by the Commissioner. Where feasible, the permanently protected piece of land shall be located either in the community within which the agricultural land being converted is located or within a contiguous city or town.

"Financial Contribution": For each acre of agricultural land being converted, a contribution of $10,000.00 per acre shall be made to the Commonwealth's APR Program, or to a qualified nonprofit farmland preservation organization or municipal farmland preservation program for the purpose of assisting the Commonwealth in permanently protecting agricultural land of equal or greater size and agricultural viability to the agricultural land being lost to conversion, as determined by the Department and approved by the Commissioner.

Agricultural Land Mitigation Policy page 3

DEFINTIONS

"Agricultural Land": Land comprised of soils which are classified as Prime, Unique, or of State and Local Importance by the USDA Natural Resources Conservation Service, including land currently in active agricultural use, or suitable for active agricultural use, or land which has been in agricultural use within the 15 year time period prior to conversion.

"Agriculture": Agriculture as defined within the Massachusetts General Laws.

"Viable Unit": A parcel of agricultural land that is 5 acres or larger in size, or if fewer than 5 acres, a parcel that significantly contributes to the agricultural character of the community.

For additional information, kindly contact the Massachusetts Department of Food & Agriculture, 142 Old Common Road, Lancaster, MA 01523 (508) 792-7712.

Dated: November 30, 2001

Jonathan L. Healy, Commissioner

APPENDIX F

EOEA Article 97 Land Disposition Policy

EOEA ARTICLE 97 LAND DISPOSITION POLICY
FEBRUARY 19, 1998

I. Statement of Policy
It is the policy of EOEA and its agencies to protect, preserve and enhance all open space areas covered by Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEA and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions. Exceptions shall be governed by the conditions included in this policy. This policy supersedes all previous EOEA Article 97 land disposition policies. An Article 97 land disposition is defined as: a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

II. Conditions for Disposition Exceptions
EOEA and its agencies shall not support an Article 97 land disposition unless EOEA and its agencies determine that exceptional circumstances exist. A determination of "exceptional circumstances" is subject to all of the following conditions being met: all other options to avoid the Article 97 disposition have been explored and no feasible and substantially equivalent alternatives exist (monetary considerations notwithstanding); Note: The purpose of evaluating alternatives is to avoid using/affecting Article 97 land to the extent feasible. To that end, the scope of alternatives under consideration shall be commensurate with the type and size of the proposed disposition of Article 97 land, and must be performed by the proponent of the disposition to the satisfaction of EOEA and its agencies. The scope of alternatives extends to any sites that were available at the time the proponent of the Article 97 disposition first notified the controlling agency of the Article 97 land, and which can be reasonably obtained: (a) within the appropriate market area for private proponents, state, and/or regional entities ; or (b) within the appropriate city/town for municipal proponents. the disposition of the subject parcel and its proposed use do not destroy or threaten a unique or significant resource (e.g., significant habitat, rare or unusual terrain, or areas of significant public recreation), as determined by EOEA and its agencies; as part of the disposition, real estate of equal or greater fair market value or value in use of proposed use, whichever is greater, and significantly greater resource value as determined by EOEA and its agencies, are granted to the disposing agency or its designee, so that the mission and legal mandate of EOEA and its agencies and the constitutional rights of the citizens of Massachusetts are protected and enhanced; the minimum acreage necessary for the proposed use is proposed for disposition and, to the maximum extent possible, the resources of the parcel proposed

for disposition continue to be protected; the disposition serves an Article 97 purpose or another public purpose without detracting from the mission, plans, policies and mandates of EOEA and its appropriate department or division; and 6. the disposition of a parcel is not contrary to the express wishes of the person(s) who donated or sold the parcel or interests therein to the Commonwealth.

III. Procedures for Disposition
Although legislation can be enacted to dispose of Article 97 land without the consent of an EOEA agency, it is the policy of EOEA to minimize such occurrences. To that end, and to ensure coordination, EOEA agencies shall: develop an internal review process for any potential Article 97 land disposition to ensure that, at a minimum, the conditions in Section II above are met; develop, through the Interagency Lands Committee, a joint listing of all requests, regardless of their status, for the disposition of Article 97 land; notify the Interagency Lands Committee of any changes to the Article 97 land disposition list; monitor all legislation that disposes of Article 97 land, and communicate with legislative sponsors regarding their intent; recommend to the Secretary that the Governor veto any legislation that disposes of Article 97 land, the purchase, improvement, or maintenance of which involved state funds, on and for which the EOEA agency has not been consulted and received documentation (including information on title, survey, appraisal, and a MEPA review, all at the proponent's expense); 6. obtain the concurrence of the Secretary of EOEA for any proposed Article 97 land disposition decision prior to finalizing said decision; if recommending an Article 97 disposition, attach to all Article 97 legislative recommendations and TR-1 forms a justification of the disposition and an explanation of how it complies with this policy, signed by the EOEA agency head; ensure that any conditions approved by EOEA and its agencies to any Article 97 land disposition are incorporated within the surplus declaration statement submitted to and published by DCPO as required by G.L. c. 7, ss. 40F and 40F½ and throughout the disposition process, and if such conditions are not incorporated in said statement throughout the disposition process, the EOEA agency head shall recommend to the Secretary that the Governor veto any resulting legislation; recommend to the Secretary that the Governor veto legislation that disposes of Article 97 land of which the agency disapproves; and ensure that any Article 97 land disposition is authorized by enacted legislation and approved by all municipal, state and federal agencies, authorities, or other governmental bodies so required and empowered by law prior to conveyance.

IV. Applicability of This Policy To Municipalities To comply with this policy, municipalities that seek to dispose of any Article 97 land must: obtain a unanimous vote of the municipal Conservation Commission that the Article 97 land is surplus to municipal, conservation, and open space needs; obtain a unanimous vote of the municipal Park Commission if the land proposed for disposition is park land; obtain a two-thirds Town Meeting or City Council vote in support of the disposition; obtain two-thirds vote of the legislature in support of the disposition, as required under the state constitution; comply with all requirements of the Self-Help, Urban Self-Help, Land and Water Conservation Fund, and any other applicable funding sources; and comply with the EOEA Article 97 Land Disposition Policy. After the effective date of this policy, any municipality that proposes, advocates, supports or completes a disposition of Article 97 land without also following the terms of this policy, regardless of whether or not state funds were used in the acquisition of the Article 97 land, shall not be eligible for grants offered by EOEA or

its agencies until the municipality has complied with this policy. Compliance with this policy by municipalities shall be determined by the EOEA Secretary, based on recommendations by the EOEA Interagency Lands Committee.

APPENDIX G

Opinion of the Attorney General 1973

Article 97 Public Land Protection, Massachusetts Constitution

ARTICLE 97 - PUBLIC LAND PROTECTION

MASSACHUSETTS CONSTITUTION

Opinion of the Attorney General 1973

The House of Representatives, by H. 6085, has addressed to me several questions regarding Article 97 of the Articles of Amendment to the Constitution of Massachusetts. Establishing the right to a clean environment for the citizens of Massachusetts, Article 97 was submitted to the voters on the November 1972 ballot and was approved. The questions of the House go to the provision in the Article requiring that acts concerning the disposition of, or certain changes in, the use of certain public lands be approved by a two-third roll-call vote of each branch of the General Court.

Specifically, your questions are as follows:

1. Do the provisions of the last paragraph of Article XCVII of the Articles of the Amendments to the Constitution requiring a two thirds vote by each branch of the general court, before a change can be made in the use or disposition of land and easements acquired for a purpose described in said Article, apply to all land and easements held for such a purpose, regardless of the date of acquisition, or in the alternative, do they apply only to land and easements acquired for such purposes after the effective date of said Article of Amendments?

2. Does the disposition or change of use of land held for park purposes require a two thirds vote, to be taken by the yeas and nays of each branch of the general court, as provided in Article XCVII of the Articles of the Amendments of the Constitution, or would a majority vote of each branch be sufficient for approval?

3. Do the words "natural resources" as used in the first paragraph of Article XCVII of the Articles of the Amendments to the Constitution include ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish of every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal underground and surface waters; minerals and natural deposits, as formerly set out in the definition of the words "natural resources" in paragraph two of section one of chapter twenty-one of the General Laws?

4. Do the provisions of the fourth paragraph of Article XCVII of the Articles of the Amendments to the Constitution apply to any or all of the following means of disposition or change in use of land held for a public purpose: conveyance of land; long-term lease for inconsistent use; short-term lease, two years or less, for an inconsistent use; the granting or giving of an easement for an inconsistent use; or any agency action with regard to land under its control if an inconsistent use?

The proposed amendment to the Constitution as agreed to by the majority of the members of the Senate and the House of Representatives, in joint session, on August 5, 1969, and again on May 12, 1971, and became part of the Constitution by approval by the voters at the state election next following, on November 7, 1972. The full text of Article 97 is as follows:

Art. XCVII. Article XLIX of the Amendments to the Constitution is hereby annulled and the following is adopted in place thereof: The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefore, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Land and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court. (emphasis inserted)

1. The first question of the House of Representatives asks, in effect, whether the two-thirds roll-call vote requirement is retroactive, to be applied to lands and easements acquired prior to the effective date of Article 97, November 7, 1972. For the reasons below, I answer in the affirmative.

The General Court did not purpose this Amendment nor was it approved by the voting public without a sense of history nor void of a purpose worthy of a constitutional amendment. Examination of our constitutional history firmly establishes that the two-thirds roll-call vote requirement applies to public lands wherever taken or required.

Specifically, Article 97 annuls Article 49, in effect since November 5, 1918. Under that Article the General Court was empowered to provide for the taking or acquisition of lands, easements and interests therein "for the purpose of securing and promoting the proper conservation, development, utilization and control" (of) "agricultural mineral, forest, water and other natural resources of the commonwealth". Although inclusion of the word "air" in this catalog as it appears in Article 97 may take this new article slightly broader than the supplanted Article 49 as to purposes for which the General Court may provide for the taking or acquisition of land, it is clear that land taken or acquired under the earlier Article over nearly fifty years is now to be subjected to the two-thirds vote requirement for changes in use or other dispositions. Indeed all land whenever taken or acquired is now subject to the new voting requirement. The original draftsmen of our Constitution prudently included in Article 10 of the Declaration of Rights a broad constitutional basis for the taking of private land to be applied to public uses, without limitation on what are "public uses". By way of acts of the Legislature as well as through generous gifts of many of our citizens, the Commonwealth and our cities and towns have acquired parkland and reservations of which we can be justly proud. To claim that Article 97 does not give the same care and protection to, all these existing public lands as for lands acquired by the foresight of future legislators or the generosity of future citizens would ignore public purposes deemed important in our laws since the beginning of our commonwealth.

Moreover, if this amendment were only prospective in effect, it would be virtually meaningless. In our Commonwealth, with a life commencing in the early 1600's and already cramped for land, it is most unlikely that the General Court and the voters would choose to protect only those acres hereafter added to the many thousands already held for public purposes. The comment of our Supreme Judicial Court concerning the earlier Article 49 is here applicable. It must be presumed that the convention proposed and the people approved and ratified the Forty-ninth Amendment

with reference to the practical affairs of mankind and not as a mere theoretical announcement."**Opinion of the Justices**, 237 Mass. 598,608.

2. In its second question the House asks, in effect, whether the two-thirds roll-call vote requirement applies to land held for park purposes, as the term "park" is generally understood. My answer is in the affirmative, for the reasons below.

One major purpose of Article 97 is to secure that the people shall have "the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment." The fulfillment of these rights is uniquely carried out by parkland acquisition. As the Supreme Judicial Court has declared.

"The healthful and civilizing influence of parks in or near congested areas of population is of more than local interest and becomes a concern of the State under modern conditions. It relates not only to the public health in its narrow sense, but to broader considerations of exercise, refreshment and enjoyment "**Higginson v. Treasurer and School House Commissioners of Boston**, 212 Mass. 583, 590; see also **Higginson v. Inhabitants of Nahant**, 11 Allen 530, 536.

A second major purpose of Article 97 is "the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest water, air and other natural resources". Parkland protection can afford not only the conservation of forests, water and air but also a means of utilizing these resources in harmony with their conservation. Parkland can undeniably be said to be acquired for the purposes in Article 97 and is thus subject to the two-thirds roll-call requirement.

This question as to parks raises a further practical matter in regard to implementing Article 97 which warrants further discussion. The reasons the Legislature employs to explain its actions can be of countless levels of specificity or generality and land might conceivably be acquired for general recreation purposes or for explicit uses such as the playing of baseball, the flying of kites, for evening strolls or for Sunday afternoon concerts. Undoubtedly to the average man, such land would serve as a park but at an even more legalistic level it clearly can also be observed that such land was acquired, in the language of Article 97, because it was a "resource" which could best be "utilized" and "developed" by being "conserved" within a park. But it is not surprising that most land taken or acquired for public use is acquired under the specific terms of statutes which may not match verbatim the more general terms found in Article 10 of the Declaration of Rights of the Constitution or in Articles 39, 43, 49, 51 and 97 of the Amendments. Land originally acquired for limited or specified public purposes is thus not to be excluded from the operation of the two-thirds roll-call vote requirement for lack of express invocation of the more general purposes of Article 97. Rather the scope of the Amendment is to be very broadly construed, not only because of the greater broadness in "public purpose", changed from "public uses" appearing in Article 49, but also because Article 97 establishes that the protection to be afforded by the Amendment is not only of uses but of certain express rights of the people.

3. The third question of the House asks, in effect, how the words "natural resources", as appearing in Article 97, are to be defined.

Several statutes offer assistance to the General Court, all without limiting what are "natural resources". General Laws Ch. 21, defines "natural resources", for the purposes of Department of Natural Resources jurisdiction, as including "ocean, shellfish and inland fisheries; wild birds, including song and insectivorous birds; wild mammals and game; sea and fresh water fish or every description; forests and all uncultivated flora, together with public shade and ornamental trees and shrubs; land, soil and soil resources, lakes, ponds, streams, coastal, underground and surface waters; minerals and natural deposits".

In addition, G.L. Ch. 12, 11D, establishing a Division of Environmental Protection in my Department, uses the words "natural resources" in such a way as to include air, water, rivers, streams, flood plains, lakes, ponds, or other surface or subsurface water resources and "seashores, dunes, marine resources, wetlands, open spaces, natural areas, parks or historic districts or sites". General Laws Ch. 214, 10A, the so-called citizen-suit statute, contains a recitation substantially identical. To these lists Article 97 would add only "agricultural" resources.

It is safe to say, as a consequence, that the term "natural resources" should be taken to signify at least these catalogued items as a minimum. Public lands taken or acquired to conserve, develop or utilize any of these resources are thus subject to Article 97.

It is aparent that the General Court has never sought to apply any limitation to the term "natural resources" but instead has viewed the term as an evolving one which should be expanded according to the needs of the time and the term was originally inserted in our Constitution for just that reason. See **Debate of the Constitutional Convention** 1917-1918, p. 595. The resources enumerated above should, therefore, be regarded as examples of and not delimiting what are "natural resources".

4. The fourth question of the House requires a determination of the scope of activities which is intended by the words: "shall not be used for other purposes or otherwise disposed of".

The term "disposed" has never developed a precise legal meaning. As the Supreme Court has noted, "The word is **nomen generalissimum**, and standing by itself, without qualification, has no technical signification." **Phelps vs. Harris**, 101 U.S. 370, 381 (1880). The Supreme Court has indicated, however, that "disposition" may include a lease. **U.S. v. Gratiot**, 39 U.S. 526 (1840). Other cases on unrelated subjects suggest that in Massachusetts the word "dispose" can include all forms of transfer no matter how compete or incomplete. **Rogers v. Goodwin**, 2 Mass. 475s; **Woodbridge v. Jones**, 183 Mass. 549; **Lord v. Smith**, 293 Mass. 555.

In this absence of precise legal meaning, **Webster's Third New International Dictionary** is helpful. "Dispose of" is defined as "to transfer into new hands or to the control of someone else". A change in physical or legal control would thus prove to be controlling.

I, therefore, conclude that the "dispositions" for which a two-thirds roll-call vote of each branch of the General Court is required to include: transfers of legal or physical control between agencies of government, between political subdivisions, and between levels of government, of lands easements, and interests therein originally taken or acquired for the purposes stated in Article 97, and transfers from public ownership to private. Outright conveyance, takings by eminent domain, long-term and short-term leases of whatever length, the granting or taking of easements and all means of transfer or change of legal or physical control are thereby covered, without limitation and without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes.

This interpretation affords a more objective test, and is more easily applied, than "used for other purposes". Under Article 97 that standard must be applied by the Legislature, however, in circumstances which cannot be characterized as a disposition - that is, when a transfer or change in physical or legal control does not occur. Within any agency or political subdivision any land, easement or interest therein, if originally taken or acquired for the purposes stated in Article 97, may not be "used for other purposes" without the requisite two-thirds roll-call vote of each branch of the General Court.

It may be helpful to note how Article 97 is to be read with the so-called doctrine of "prior public use", application of which also turns on changes in use. That doctrine holds that "public lands devoted to one public use cannot be diverted to another inconsistent public use without plain and

explicit legislation authorizing the diversion". **Robbins v. Department of Public Works**, 355 Mass. 328, 330 and cases there cited.

The doctrine of "prior public use" is derived from many early cases which establish its applicability to transfers between corporations granted limited powers of the Commonwealth, such as eminent domain, and authority over water and railroad easement; e.g., **Old Colony Railroad Company v. Framingham Water Company**, 154 Mass. 561; **Boston Water Power Company v. Boston and Worcester Railroad Corporation**, 23 Pick. 360; **Boston and Main Railroad v. Lowell and Lawrence Railroad Company**, 124 Mass. 368; **Eastern Railroad Company v. Boston and Main Railroad** , 111 Mass. 125, and **Housatonic Railroad Company v. Lee and Hudson Railroad Company**, 118 Mass. 391. The doctrine was also applied at an early date to transfers between such corporations and municipalities and counties; e.g., **Boston and Albany Railroad Company v. City Council of Cambridge**, 166 Mass 224 (eminent domain taking of railroad land), **Eldridge v. County Commissioners of Norfolk**, 185 Mass. 186 (eminent domain taking of railroad easement), **West Boston Bridge v. County Commissioners of Middlesex**, 10 Pick. 270 (eminent domain taking of turnpike land), and Inhabitants of **Springfield v. Connecticut River Railroad Co.**, Cush. 63 (eminent domain taking of a public way).

The doctrine of "prior public use" has in more modern times been applied to the following transfers between governmental agencies or political subdivisions; a) a transfer between state agencies, **Robbins v. Department of Public Works**, 355 Mass. 328 (eminent domain taking of Metropolitan District Commission wetlands), b) transfers between a state agency and a special state authority, **Commonwealth v. Massaachusetts Turnpike Authority**, 346 Mass. 250 (eminent domain taking of M DC land) and see **Loschi v. Massachusetts Port Authority**, 354 Mass. 53 (eminent domain taking of parkland), c) a transfer between a special state commission and special state authority, **Gould v. Greylock Reservation Commission**, 350 Mass. 410 (lease of portions of Mount Greylock), d) transfers between municipalities, **City of Boston v. Inhabitants of Brookline**, 156 Mass. 172 (eminent domain taking of a water easement) and **Inhabitants of Quincy v. City of Boston**, 148 Mass. 389 (eminent domain taking of a public way), e) transfers between state agencies and municipalities, **Town of Brookline v. Metropolitan District Commission**, 357 Mass. 435 (eminent domain taking of parkland) and **City of Boston v. Massachusetts Port Authority**, 356 Mass. 741 (eminent domain taking of a park), f) a transfer between a special state authority and a municipality, **Appleton v. Massachusetts Parking Authority**, 340 Mass. 303 (1960) (eminent domain, Boston Common), g) a transfer between a state agency and a county, **Abbot v. Commissioners of the County of Dukes County**, 357 Mass. 784 (Department of Natural Resources grant of navigation easement), and h) transfers between counties and municipalities, **Town of Neddham v. County Commissioners of Norfolk**, 324 Mass. 293 (eminent domain taking of common and park lands) and Inhabitants of **Easthampton v. County Commissioners of Hampshire**, 154 Mass. 424 (eminent domain taking of school lot).

The doctrine has also been applied to the following changes of use of public lands within governmental agencies or within political subdivisions: a) intra agency uses, **Sacco v. Department of Public Works**, 352 Mass. 670 (filling a portion of Great Pond), b) intra municipality uses, **Higginson v. Treasurer and School House Commissioners of Boston,** 212 Mass. 583 (erecting a building on a public park), and see **Kean v. Stetson,** 5 Pick. 492 (road built adjoining river), and c) intra country uses, **Bauer v. Mitchell**, 247 Mass. 522 (discharging sewage upon school land). The doctrine may also possibly reach de facto changes in use : e.g., **Pilgrim Real Estate Inc. v. Superintendent of Police of Boston**, 330 Mass. 250 (parking of cars on park area) and may be available to protect reservation land held by charitable corporations; e.g., **Trustees of Reservations v. Town of Stockbridge**, 348 Mass. 511 (eminent domain).

In addition to these extensions of the doctrine, special statutory protections, codifying the doctrine of "prior public use", are afforded local parkland and commons by G.L. c. 45 and public

cemeteries by G.L. c. 114 / 1,7, 41. As to changes in use of public lands held by municipalities or counties, generally, see G.L. c. 40,/15A and G.L. c. 214/ 3(11).

This is the background against which Article 97 was approved. The doctrine of "prior public use" requires legislative action, by majority vote, to divert land from one public use to another inconsistent public use. As the cases discussed above indicate, the doctrine requires an act of Legislature regardless whether the land in question is held by the Commonwealth, its agencies, special authorities and commissions, political subdivisions or certain corporations granted powers of the sovereign. And the doctrine applies regardless whether the public use for which the land in question is held in a conservation purpose.

As to all such changes in use previously covered by the doctrine of "prior public use" the new Article 97 will only change the requisite vote of the Legislature from majority to two thirds. Article 97 is designed to supplement, not supplant, the doctrine of "prior public use".

Article 97 will be of special significance, though, where the doctrine of "prior public use" has not yet been applied. For instance, legislation and two thirds roll-call vote of the Legislature will now for the first time be required even when a transfer of land or easement between government agencies, between political subdivisions, or between levels of government is made with no change in the use of the land, and even where a transfer is from public control to private.

Whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use", or both, it is recommended that the legislation meet the high standard of specificity set by the Supreme Judicial Court in a case involving the doctrine of "prior public use".

"We think it is essential to the expression of plain and explicit authority to divert (public lands) to a new and inconsistent public use that the Legislature identify the land and that there appear in the legislation not only a statement of the new use but a statement or recital showing in some way legislative awareness of the existing public use. In short, the legislation should express not merely the public will for the new use but its willingness to surrender or forego the existing use". (Footnote omitted). **Robbins v. Department of Public Works**, 355 Mass. 328,331.

Each piece of legislation which may be subject to Article 97 should, in addition, be drawn so as to identify the parties to any planned disposition of the land.

Conclusions

Article 97 of the Amendments to the Massachusetts Constitution establishes the right of the people to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic and esthetic qualities of their environment. The protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is declared to be a public purpose. Lands, easements and interests therein taken or acquired for such public purposes are not to be disposed of or used for other purposes except by two-thirds roll-call vote of both the Massachusetts Senate and House of Representatives.

Answering the questions of the House of Representatives I advise that the two-thirds roll-call vote requirement of Article 97 applies to all lands, easements and interests therein **whenever** taken or acquired for Article 97 conservation, development or utilization purposes, even prior to the effective date of Article 97, November 7, 1972. The Amendment applies to land, easements and interests therein held by the Commonwealth, or any of its agencies or political subdivisions, such as cities, towns and counties.

I advise that "natural resources" given protection under Article 97 would include at the very least, without limitation: air, water, wetlands, rivers, streams, lakes, ponds, coastal, underground and surface waters, flood plains, seashores, dunes, marine resources, ocean, shellfish and inland

fisheries, wild birds including song and insectivorous birds, wild mammals and game, sea and fresh water fish of every description, forests and all uncultivated flora, together with public shade and ornamental trees and shrubs, land, soil and soil resources, minerals and natural deposits, agricultural resources, open spaces, natural areas and parks and historic districts or sites.

I advise that Article 97 requires two-thirds roll-call vote of the Massachusetts Senate and House of Representatives for all transfers between agencies of government and between political subdivisions of lands, easements or interests therein originally taken or acquired for Article 97 purposes, and transfers of such land, easements or interests therein from one level of government to another, or from public ownership to private. This is so without regard to whether the transfer be for the same or different uses or consistent or inconsistent purposes. I so advise because such transfers are "dispositions" under the terms of the new Amendment, and because "disposition" includes any change of legal or physical control, including but not limited to outright conveyance, eminent domain takings, long and short-term leases of whatever length and the granting or taking of easements.

I also advise that intra-agency changes in uses of land from Article 97 purposes, although they are not "dispositions", are similarly subject to the two-thirds roll-call vote requirement.

Read against the background of the existing doctrine of "prior public use", Article 97 will thus for the first time require legislation and a special vote of the legislature even where a transfer of land between governmental agencies, between political subdivisions or between levels of government results in no change in the use of land, and even where a transfer is made from public control to private. I suggest that whether legislation pending before the General Court is subject to Article 97, or the doctrine of "prior public use", or both, the very highest standard of specificity should be required of the draftsman to assure that legislation clearly identifies the locus, the present public uses of the land, the new uses contemplated, if any, and the parties to any contemplated "disposition" of the land.

In short, Article 97 seeks to prevent government from ill-considered misuse or other disposition of public lands and interests held for conservation, development or utilization of natural resources. If land is misused, a portion of the public's natural resources may be forever lost, and no less than by outright transfer. Article 97 thus provides a new range of protection for public lands far beyond existing law and much to the benefit of our natural resources and to the credit of our citizens.