

**Land Use Task Force
Town of Stow, Mass.**

Final Report

July, 2009



The Board of Selectmen established the Land Use Task Force in 2008 to “conduct a thorough analysis of land in Stow and report back to Town Meeting.” We are a research and education body. Our purpose is to gather information, get the facts straight, and describe the possibilities and liabilities of various options in the future. That said, the Land Use Task Force is comprised of citizens with a variety of perspectives on land use issues and needs in Stow.

Over the last 16 months, our work included an analysis of town-owned land, including parcels with no restrictions and those held by the Conservation Commission. We developed a process for the town to use for responding effectively to land coming out of Chapter 61 restrictions and reviewed it with Town Council and the Board of Selectmen. Finally, we developed a list of needs and uses for future town land and defined priorities for these uses under different scenarios.

The result of this committee’s work is included in this report. This report was first presented in outline form to the 2009 Annual Town Meeting. The report closes with recommendations for the town’s approach to various land use decisions in the future. An appendix contains various supporting and related documents.

It is our sincere wish that the efforts of this committee will lead to an improved understanding of land resources, land restrictions and needs for everyone in the town. As voters in Stow, we all need to understand what the likely and realistic options are when considering future land decisions for various town needs.

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Introduction to Town-Owned Land Section

In the Fall of 2008, the Land-Use Task Force held a Public Forum on Town-Owned Land. The goal of the forum was to identify Town-owned land to educate the participants on the two categories of these lands.

The first category, unprotected Town-owned land contains:

- Parcels that were purchased by the Town.
- Parcels that have been donated to the Town (some restricted for specific purposes and some with no restriction).
- Parcels taken by the Town for unpaid back taxes.

The second category, protected or conserved Town-owned land contains:

- Parcels that are extraordinary difficult to convert to other uses and their conversion would require addition approval from local and/or State and/or Federal Agencies.

Town-Owned Unprotected Land

As part of its charge, the Land Use Task Force completed a comprehensive analysis of Town-owned land. This land can be divided into two categories, unprotected or general municipal land and conservation or protected land.

The inventory of unprotected land consists of 48 parcels totaling approximately 150 acres. These lands have been acquired by the Town in various ways:

- Purchased outright
- Taken for unpaid back taxes
- Donated with restrictions
- Donated without restrictions
- From developers as part of the permitting process with the Planning Board (generally storm water management areas).

The Land Use Task Force evaluated each unprotected parcel for its potential to be developed to meet Town needs. We excluded from our evaluation parcels that are restricted to a specific use, e.g. cemetery, recreation fields or fully developed, e.g. Police Station.

GIS mapping was used to examine the floodplains, topography, wetlands, etc. of 48 parcels. Of these 48 parcels, 42 are 4 acres or less and 6 are greater than 4 acres in size. Many parcels were screened from further consideration as it was clear that they had no development potential, due to various constraints (lack of frontage, size, slopes and wetlands).

The Land Use Task Force conducted site visits to 13 parcels identified as having potential for municipal needs. As a result of these site visits, 5 parcels were eliminated from further consideration and 6 parcels were identified as having limited potential for a small municipal use, such as affordable housing. It is recommended that these 6 parcels be further evaluated by the Stow Municipal Affordable Housing Trust. These six parcels include the following:

R04-0170 1.9 acres Harvard Road
U08-0120 0.30 acres Gleasondale Road
U01-0410 1.3 acres Sudbury Road
U10-0140 0.6 acres Crescent Street
R06-0690 0.9 acres Harvard Road
R06-0710 0.9 acres Harvard Road

The two largest parcels were further evaluated by an Engineering Consultant to determine their potential. The first parcel, Map R-9 – Parcel 92 consists of 11 acres; the Westerly portion of Pompositticut School land with access onto Harvard Road. This parcel lies within a Natural Heritage Endangered Species Program (NHESP) – priority habitat for State-Protected Rare Species. It is unknown at this time which species this habitat polygon encompasses or the habitat requirements and further consultation with NHESP would be required to determine this. Although an NHESP designation does not preclude work and possibly development of this parcel, it could be a limiting factor and additional permitting (beyond the local level) would be required. In addition, the parcel contains wetlands, and a professional wetland delineation would be required to determine the extent of wetlands on the site. An adjacent privately owned parcel might be able to be acquired and added to the

parcel to increase the developable area. The extent of the permissible development will depend on successful resolution of these wetland and rare species issues.

The second large parcel, Map U-7 – Parcel 34-2, consists of 28 acres, known as the Kane property. This parcel is bordered to the north and east by the Assabet River and to the west and south by residential lots on Gleasondale Road. The access points to this parcel have site constraints and uses of this parcel are limited by extensive floodplain and wetland areas. An alternative access to the parcel via the abutting property to the south, Parcel 34, could potentially avoid some of the wetlands and floodplain issues, if an easement could be obtained which would gain access to the upland portion of the parcel. Uses requiring construction of a building, parking and septic system are not feasible due to the limited upland area with present access through the floodplain. The soils and proximity to the Assabet River (recharge) would make this parcel a potential site for a public water supply. It is recommended that due to this parcel's proximity to the mill in Gleasondale, its historic land use should be reviewed, if considered for a drinking water supply. The DEP permitting process would require substantial testing to assure that drinking water qualities could be met. Some limited recreational uses may be possible on this parcel. See Site Feasibility Study by PLACES Site Consultants, Inc., dated November 19, 2008, for a more detailed description of these two parcels.

Town-Owned Land Under Conservation Protection

The Town of Stow currently has approximately 1200 acres of land that are owned by the Town and under the care, custody and control of the Stow Conservation Commission, also known as “conservation land.” This land has been acquired by the town in a variety of ways. Some of the ways that land becomes conservation land include:

- Land purchased by Town Meeting for conservation purposes using a variety of funding sources including Community Preservation Funds, State and Federal Grant funds, or municipal bonding;
- Land purchased by the Conservation Commission using funds in the Town’s Conservation Fund;
- Land donated as a charitable gift by a conservation-minded landowner, or by a developer as part of the municipal permitting process; and
- Town owned land (for example, land taken for back taxes) that is subsequently transferred to the control of the Conservation Commission by the Board of Selectmen and Town Meeting.

The Land Use Task Force had as one of the items in its charge to look at the Town’s conservation land holdings and determine whether some of this land might be available to meet the Town’s long term needs for land for a wide variety of municipal uses. In order to carry out this charge, the Land Use Task Force gathered relevant documents including Mass. General Laws Chapter 40, Section 8C and Section 15A, Article 97 of the Massachusetts Constitution, the Commonwealth’s Article 97 policy, and a 1973 Opinion of the Attorney General on the use of conservation land for other purposes. The LUTF also consulted with Town Counsel and sponsored a forum at which Town Counsel reviewed the requirements for the use of conservation land for other purposes. Much of the information presented in this report comes from that forum, and a DVD of the forum has been made available as an Appendix to this report.

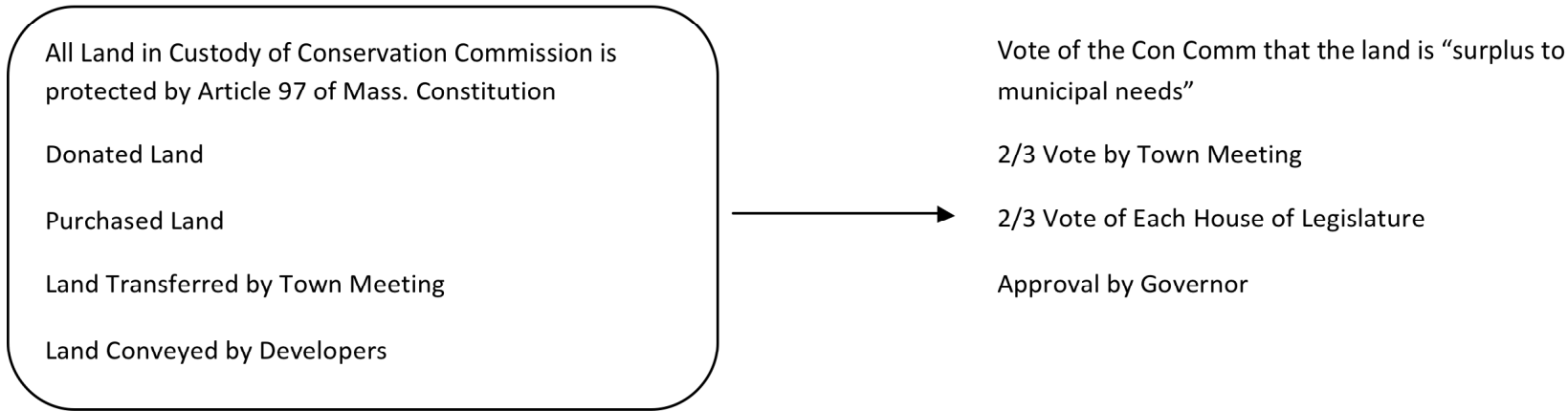
Findings on Conservation Land

- There are strong legal protections for conservation land in Massachusetts. All land controlled by the Conservation Commission is subject to Article 97 of the Massachusetts Constitution. Article 97 reads in part:

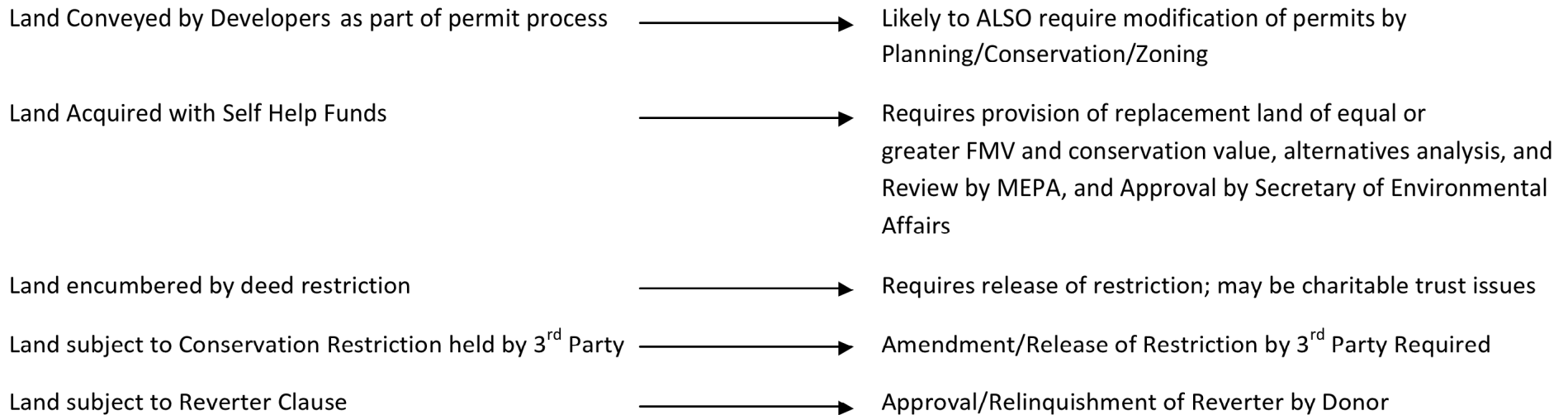
The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air, and other natural resources is hereby declared to be a public purpose....In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, 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. Lands 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.

- Taken together, Article 97 and MGL Chapter 40 specify that the use of conservation land for other purposes requires approval by the Conservation Commission, a 2/3 vote of Town Meeting, a 2/3 vote of each branch of the Legislature and approval by the Governor.
- Use of conservation land for other purposes is called a “disposition” of conservation land. A “disposition” includes any transfer or conveyance of ownership or other interests (e.g. easement, lease, deed), change in physical or legal control, or a change of use.
- The requirements of Article 97 are minimum requirements that apply to all parcels that are held as conservation land. In addition, depending on how a parcel was acquired, there may be *additional* requirements to use the parcel for another purpose.
 - A change in use of land acquired through the permitting process will also likely require approval by the permitting board(s) and a formal modification of the decision that set aside the land. It is likely that a public hearing would be required prior to modification of the decision by the permitting board (s) and residents of the development (along with the public) would be given an opportunity to provide input on this change of use.
 - A change in use of land acquired with state or federal grant funds will also trigger requirements of the grant – for example, it is standard procedure for the town to sign a grant agreement when it receives “Self Help” funds that specifies that the town understands that use of the grant-funded land for another purpose will necessitate the provision of replacement land of equal or greater fair market value and conservation utility; in addition, the town is required to demonstrate that there is no feasible alternative, and state MEPA review and approval by the Secretary of Environment and Energy for the Commonwealth is required. Many of the town’s largest holdings – Captain Sargent, Marble Hill, Flagg Hill, and Gardner Hill were acquired with assistance from state and federal funds.
 - Any land that is subject to either a deed restriction or Conservation Restriction will require a release of the restriction by the holder of the restriction. Release or amendment of conservation restrictions will also require approval by the state Executive Office of Environment and Energy.
 - Depending on the wording of the deed there may be charitable trust issues that will need to be reviewed by Town Counsel and/or the Attorney General.
- In the Appendix to this report is information from the recently completed Stow Open Space and Recreation Plan that includes detail on many of the parcels of conservation land in Stow and what restrictions apply to these parcels, based on information that was available to the Stow Open Space Committee.
- In summary, the use of town-owned conservation land for other purposes, while not impossible, is exceedingly difficult and time-consuming, and made purposefully so by a variety of legal mechanisms that are designed to assure that, once conserved, land will remain dedicated to this purpose. In a town such as Stow, it will be difficult to demonstrate that there are no feasible alternatives to the use of conservation land in most cases, given the large amount of open land still available in town.

Disposition of Conservation Land



IN ADDITION ONE OR MORE OF THE FOLLOWING MAY APPLY:



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.

Process for Land Coming Out of Chapter 61 Protection

A key issue for the Town has historically been how to decide promptly whether to exercise or assign its rights of first refusal of Chapter 61 lands when they become available. With guidance from our liaison to the Board of Selectmen, it was decided that producing a guideline or schedule for the Town to follow would simplify and expedite the decision process and be the most productive means to address Chapter 61 lands.

Note: The initial charge to the Land Use Task Force from the Board of Selectmen included instructions to complete a comprehensive analysis of all lands in the town of Stow. The analysis was to include information regarding ownership, physical characteristics, maps, appraisals, surveys, deeds and any restrictions on the property. This analysis was quite appropriate for town-owned land and a survey of these lands is included elsewhere in this report. However, after initial research it became clear to the members of the Task Force that completing the same level of scrutiny for privately-held parcels presented some issues that were not easy to resolve. First, the sheer number of parcels that either contain greater than 5 acres or are classified under Chapter 61 programs makes it difficult to complete a thorough analysis. Second, without physical access to the parcels, the group would be limited to inferring information about topographical and environmental features from maps and state GIS data. Lastly and most significantly, private landowners could object to such information about their lands being compiled and distributed in a public document. For these reasons, the Task Force members decided to change our focus on privately-held lands to focus on the Chapter 61 process alone.

Background on the Chapter 61 Programs

Most landowners classify their lands in Chapters 61 (Forestland), 61A (Agricultural) and 61B (Open Space) to manage their land appropriately and take advantage of reduced property taxes. As development increases in suburban towns such as Stow, taxes rise to cover the costs of expanded town services. Without the protection of the Chapter 61 programs, increased taxes could force some landowners to sell their property. Thus many of the remaining undeveloped parcels in Stow are a direct result of the reduced annual property tax bills these programs allow. In exchange for this tax relief, the landowner agrees to offer the Town the opportunity to buy the land or assign its right of first refusal to a conservation group when the land is proposed to be sold for development to residential, commercial or industrial purposes or converted by the landowner to these uses. The landowner must give notice of intent to sell or convert in a specific manner defined by statute. After proper notice is given, the town has the right to match a *bona fide* offer to purchase the land within a 120-day option period, or in the case of conversion, to purchase the land at full and fair market value to be determined by an impartial appraisal.

Chapter 61 provisions differ from conservation restrictions and should not be confused with permanently protected land. Chapter 61 classification runs for a ten-year period and allow for voluntary removal of property from the program at any time, though the owner may be subject to a penalty tax if a change of use is involved. At the end of ten years, the owner may either file an application for recertification or withdraw the property from classification. If withdrawal is chosen, the landowner does not pay any penalties unless the land is converted from forestry to another use. Neither does a landowner pay any penalties if he or she withdraws and then convert the land to another use covered by one of the other two Chapter 61 classifications—61A or 61B. The right of first refusal by the Town extends a full year after the property leaves the Chapter program

Town of Stow Chapter 61 Process and Guidelines

The purpose of the guidelines proposed by the LUTF (and accepted by the Board of Selectmen at their meeting in November 2008) is to make sure that potential Town stakeholders have enough clear, factual information about parcels to determine early in the process whether there may be interest in acquiring the land for one or more municipal uses. If interest is present, a working group will be formed to investigate the possibilities and prepare one or more proposals for presentation in public hearings and consideration at a Town Meeting. The hope is that by clearly defining the necessary steps and timelines, the working group will be able to make best use of the short 120 day period to give full consideration to potential land uses and funding options. The key features of the plan are:

- outlining the requirements for proper notice to the Town
- clear definition of when the 120-day option period begins and ends
- formation of a standing Study/Evaluation group on call to begin Chapter 61 land evaluation when notice is given
- definition of a process to involve the public and interested groups in the evaluation and decisions

The guideline and a flow chart of the process adopted by the Board of Selectmen is included in its entirety with this report.

Town of Stow

Chapter 61 Review Process Guidelines

Whereas the Town of Stow ("Town") encourages owners of open lands used for forestry, farming or recreation to enroll their property in the Chapter 61, 61A and 61B preferential tax programs in order to help maintain these lands in their current use, but in doing so, forgoes tax revenue that would otherwise be generated by these lands; and

Whereas owners of land enrolled in these programs are required to grant the Town a 120-day assignable right of first refusal in the event that these lands are proposed to be sold or converted for other uses; and

Whereas the Town has the ability to exercise its right of first refusal on land sold for, or converted to, another use within one year of leaving Chapter 61, 61A and 61B; and

Whereas the Town has ongoing needs for land for municipal purposes including conservation land and finds it in the Town's best interest to give full consideration to the opportunity presented by withdrawal of land from these programs, to gather information from relevant boards and staff, and to determine whether the Town should exercise or assign its right of first refusal;

Whereas the Town has formed a "Study/Evaluation Group", composed of the professional staff of the Stow Planning Board, Stow Board of Selectmen, Stow Conservation Commission, Board of Assessors, Stow Board of Health, and the Chairs or designees Stow Open Space Committee and Stow Agricultural Commission (to assist the Town in evaluating parcels and completing the right of first refusal process.

Therefore the Board of Selectmen adopts these Chapter 61 Guidelines to set forth a clear process by which the Town will review and respond to notices of conversion and sale of lands in Chapters 61, 61A and 61B and determine whether to exercise, assign or waive its right of first refusal on these lands. These guidelines and procedures are adopted solely for the purposes of coordinating local review. Failure to adhere to these guidelines and procedures shall not affect any rights that the Town has under MGL Chapters 61, 61A and 61B, nor shall they affect any rights of the landowner.

Note: For the purposes of this document, the following items that are required by statute are noted in italic type. This is not an exact replication of the wording of the statute. Other items are adopted as part of this set of guidelines. The statute should always be consulted for exact wording.

A. Right of First Refusal

Within 120 days of the landowner's mailing (not receipt) of a proper notice, the Town must either:

- 1. Act to exercise its option to purchase (to meet a bona fide purchase offer or, in the case of intended conversion by the landowner, an option to purchase at full and fair market value), recorded at the Registry of Deeds and by certified mail notification to the landowner,*
- 2. Assign its rights to a non-profit conservation organization or the Commonwealth or any of its political subdivisions, recorded at the Registry of Deeds, or*
- 3. Notify the property owner that it does not intend to exercise its right of first refusal.*
- 4. Failure to record either the notice of exercise (and notification of the landowner) or the notice of assignment within 120 days is considered conclusive evidence that the Town will not exercise its right of first refusal.*

B. Requirements for Notice by Property Owner

- 1. The 120-day right of first refusal time period begins with a notice of the landowner's intent to sell or convert a parcel for commercial, industrial or residential use. This notice must be sent by certified mail or hand delivered to the Town of Stow Board of Selectmen, in addition to the Planning Board, Board of Assessors and Conservation Commission, and to the State Forester. This notice must include the following:*
 - a. A statement of intent to sell or convert,*
 - b. A statement of proposed use of the land,*
 - c. The location and acreage of land as shown on a map drawn at the scale of the Town's Assessor's maps*
 - d. The name, address and telephone number of the landowner,*
 - e. In the case of an intent to sell, a certified copy of an executed purchase and sale agreement specifying the purchase price and all terms and conditions of the proposed sale, which is limited only to the property classified under the Chapter, and must be a bona fide offer,*
 - f. The purchase and sale agreement must be a bona fide offer, defined as a good faith offer not dependent upon potential changes to current zoning or conditions or contingencies relating to the potential for, or the potential extent of, subdivision of the property for residential use or the potential for, or the potential extent of, development of the property for industrial or commercial use, made by a party unaffiliated with the landowner for a fixed consideration payable upon delivery of the deed,*
 - g. Any additional agreements or a statement of any additional consideration for any contiguous land under the same ownership, and not classified under the Chapter, but sold or to be sold contemporaneously with the proposed sale,*
 - h. A notarized affidavit that the landowner has mailed or delivered the notice will be conclusive evidence that the notice has been mailed in the manner and at the time specified,*
 - i. In the case of an intent to convert the land to other use, the landowner must also notify the Town of the landowner's attorney, if any.*

C. Procedure for Review of Notices and Evaluation of Properties

1. Within three days of receipt of a proper Notice from a landowner, the Board of Selectmen's office will ascertain that Notice, with the required information, was also properly transmitted to the Planning Board, Board of Assessors and Conservation Commission. Within this same period, copies of the Notice will be provided by the Board of Selectmen's Office to members of the Study/Evaluation Group and to the Town Clerk, the Community Preservation Committee, Historic Commission, Stow Municipal Affordable Housing Trust, Stow Conservation Trust, and any other relevant boards and town officials. A cover letter shall indicate the date of a Joint Boards meeting to be scheduled within three weeks of the receipt of the Notice. The Board of Selectmen's office will provide a copy of the Notice and relevant information to Town Counsel for review.
2. The Board of Selectmen's office will also determine the final day of the 120-day period in consultation with Town Counsel and attempt to seek confirmation from the landowner or his/her representative regarding this date.
3. The Board of Selectmen will consult with Town Counsel to review the notice, including the purchase and sale agreement, and determine whether the purchase and sale agreement is deemed a bona fide offer and whether the Town is being given the same opportunity as the buyer with regard to the terms of the agreement. Ideally this determination will be made within five (5) days of receipt of the Notice.
4. *If the Notice is determined to be insufficient, the Board of Selectmen will immediately, but, in no event, in no later than 30 days from receipt of the Notice, transmit a letter via certified mail notifying the landowner in writing that the proper notice has not been given and informing him/her that the 120-day time period pursuant to the statute has not begun.* A copy of this letter will be provided to the Planning Board, Board of Assessors and Conservation Commission and other boards/officials in Paragraph C(1). Unless or until there is agreement with the landowner that the notice is deficient or the offer is not bona fide, the Town's review process should continue.
5. The Board of Selectmen shall request that the Study/Evaluation Committee gather information on the property to determine its recreational, agricultural, forestry and/or conservation values and provide a preliminary report to the Board of Selectmen and Town Administrator within five (5) working days. An analysis of the location of the property relative to other protected lands shall be performed along with an environmental assessment. A determination will be made whether the property contains any unique geological or other environmental features, important soils, a drinking water source, or historical attributes. Zoning and subdivision control regulations will be examined to assess the impact of the potential development on town services.
6. The Board of Selectmen shall hold a Joint Boards meeting, inviting all relevant municipal boards and committees. At that meeting, the information gathered by the Study/Evaluation Committee shall be presented and all boards and committees shall be given the opportunity to present any additional information that may be relevant to the parcel and indicate their potential interest in pursuing exercise of the Town's right of first refusal and the potential of the property to meet the town's needs for land.

7. At the conclusion of the Joint Boards meeting, the Board of Selectmen shall determine whether or not there is interest in proceeding with further evaluation of the property. At that time, if there is no interest, the Board may execute a waiver of the Town's right of first refusal (see D.3 below). If there is interest in further evaluation, the Board shall request that the Town Administrator appoint a Working Group to conduct further evaluation of the property and bring one or more proposals for the use of the property and the funding for the acquisition to the Board of Selectmen. The membership of the Working Group will likely include members of the Study/Evaluation group but shall be as broad as needed to include all parties with an interest in pursuing acquisition of the property. The working group shall complete any necessary evaluations of the land's suitability for intended uses. The group may request funds to cover costs of the evaluations from public or private sources as they deem necessary.
8. At the conclusion, of the Joint Boards meeting, The Board of Selectmen shall meet and if they decide to continue the process., they shall also schedule and give notice of a public hearing for the purpose of receiving comments on the importance of the property to the Town, its conservation significance and/or potential for use to serve municipal needs and for receiving a report from the Working Group. Ideally, the public hearing will be scheduled by Day 60 of the review process. In those cases where there is a proposed conversion of the land but no sale, the determination of sale price may take as long as 90 days, at which point the public hearing will be scheduled (see section C (7)). *Notice of the hearing is required to be given in accordance with M.G.L. Ch. 39, Section 23B (Open Meeting Law).* The Board of Selectmen will also notify the Planning Board, Conservation Commission, Open Space Committee and Board of Assessors, and (the other boards and organizations listed in paragraph C (1)). *The option to exercise the right of first refusal may only occur after a public hearing and an affirmative vote of the Board of Selectmen.*

At the public hearing, the Board of Selectmen will afford interested boards, organizations and individuals the right to comment. If there continues to be interest in pursuing acquisition of the property for municipal uses or in assigning the right of first refusal to a non-profit conservation organization or to the Commonwealth or one of its political subdivisions, the Board of Selectmen may continue the public hearing as needed to allow time to present a more specific proposal for consideration by the Board.

9. *If the landowner is converting the property, and the Town is interested in exercising an option to purchase the land at fair market value, the Town will hire a qualified independent appraiser, and obtain the appraisal within 30 days of receiving the notice to convert. If the landowner contests the appraisal, the landowner may hire a qualified independent appraiser and obtain an appraisal within 60 days of the notice to convert. If the Town and the landowner cannot agree on an appraised value, then the two parties will jointly hire a third appraiser and obtain an appraisal within 90 days of the notice to convert. The price of the third appraisal will prevail if there is a sale, but at anytime the landowner may withdraw his or her notice to convert. Upon agreement of a sales price, the Town will have 120 days to exercise its option.*

D. Decision by the Town of Stow

Based on input at the public hearing and further research as warranted, the Board of Selectmen will close the hearing and determine whether to pursue the opportunity to exercise the right of first refusal and for what purposes. The Board of Selectmen must choose one of four courses of action:

1. If the Board of Selectmen agrees to bring the option to exercise to a Town Meeting vote, the Board of Selectmen shall:

- *Schedule a Town Meeting for the purpose of appropriating funds to purchase the property, place a warrant article on the town warrant for this purpose, and schedule a debt exclusion vote (if necessary) for the purpose of authorizing expenditure of funds. The town meeting must be scheduled within the statutory 120-day period, unless an extension of this deadline is agreed to in writing between the parties.*
- Record the notice to exercise the option at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.
- Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to exercise its option.
- The Town must take title to *the property must occur within 90 days of the Town's decision to exercise its right of first refusal, unless otherwise* extended by written agreement of the parties.

2. If the Board of Selectmen desires to assign its right of first refusal to a qualified land trust/conservation agency, the Board of Selectmen shall:

- *At a public hearing during the 120-day period, vote to assign its right of refusal to the non-profit organization, setting forth any terms and conditions of the assignment. [Note: the non-profit conservation organization or the Commonwealth or any of its political subdivisions must conserve at least 70% of the property in a use consistent with one of the three Chapters, (forestry, agriculture or recreation) or no less a percentage conserved than proposed by the developer whose offer gave rise to the assignment, whichever is greater, but may be permitted to undertake a limited development on the balance of the property. The Board of Selectmen may place conditions on this use; for example the number of lots in the limited development can be specified.]*
- *Record the notice to exercise at the Registry of Deeds as part of an affidavit of a notary public during the 120-day period.*
- *Notify the landowner by certified mail during the 120-day period, at the address specified in the landowner's notice, of the Town's intent to assign its option to a non-profit conservation organization, stating the name and address of the non-profit organization and the terms and conditions of the assignment.*
- The assignee must take title to the property *within 90 days of the Town's decision to assign its right of first refusal, unless otherwise* extended by written agreement of the parties.

3. If the Town decides to forgo its right of first refusal, the Board of Selectmen should:

- Examine wisdom of recording a limited waiver of its rights at the Registry of Deeds. Any waiver of the Town's rights should be specific to the proposed purchase terms so that if the sale falls through and a new proposal comes forth, the 120-day clock will begin again.
- The Town shall use as much of the 120-day period as is necessary to properly evaluate the property and the potential of exercising or assigning the right of first refusal. It is possible that the Town may decide that it cannot afford to purchase the property, but any such choice should be thoroughly discussed and researched before making such a

determination. Where there is consensus on the absence of conservation value or where the Town has negotiated a signed agreement with the landowner and/or developer that meets the municipal needs with regard to the property, the town may choose not to exercise its right. Any such negotiations, however, should occur in consultation with the boards/committees entitled to notice by statute.

4. *The Town can fail to act within the required 120-day period (and any extensions thereof), in which case the Town will be deemed to have failed to exercise its right of first refusal.*

Analysis of Needs and Priorities for Town Land Use

Another major area of our work was to provide an analysis of the priorities of various potential land uses. To do this, we had to define a set of likely town uses or needs for land.

We considered the following potential uses (in alphabetical order):

- Affordable housing
- Agricultural
- Community center/senior center
- Fire/Police/Highway
- Library
- Municipal parking
- Open space
- Recreation
- Schools
- Town offices
- Well/septic

Process for Creating a Prioritized List to Guide Future Land Use Decisions

The challenge of this part of our work was that this had to be done without considering specific pieces of land, although the size, characteristics and location of any piece of land will have a significant influence on its suitability for any particular use. Specifically, we found that priorities would be influenced by the nature of the parcel (land location, size and characteristics (flat, wet, agricultural, etc.), and by timing. Under timing, there are certain priority needs that will change over time as the town moves towards build-out, for example, land for well/septic. However, we want to emphasize, that this prioritization of potential town land needs is not intended to replace the town's Master Plan.

In determining priority needs for town land use, the committee:

- Used different scenarios to assess priorities/sequence of needs
- Reviewed priority needs with various town boards and departments.
- Reviewed results of previous efforts (MLUC) and Open Space and Recreation Plan
 - Considered Master Plan survey responses

Results

High priority land uses:

- Agricultural

- Affordable housing (tie)
- Community Center (tie)
- Open space

These four uses rose to the top of the priority list as we sought to preserve the town's character while supporting evolving needs as we move toward build out. Stow's history as a community that embraces agriculture and the preservation of open space, coupled with an ability to attract residents from all walks of life have been and will continue to be important characteristics for the Town.

While the reality is that any of these priorities will be influenced by the nature of the parcel of land, these uses should take priority as the Town evaluates land use and/or acquisition decisions in the future.

Only certain land will ever be suited to agricultural use. This makes it particularly important to preserve or re-purpose such land for this use. This could be done by acquiring an agricultural restriction on land use, enabling the property to remain in private hands. In a few cases it may make sense for the town to acquire the land and lease it for agricultural use.

Land needed for affordable housing and community center were tied in our committee's rankings. Whether a given parcel is eligible for affordable housing or a community center is likely to depend on parcel size and location. Land for affordable housing can be scattered around town and in fairly small parcels. Some form of community center or senior center is clearly desired as the town grows. It will likely need a medium to large, flat and buildable lot, but it could be located in many areas of town.

Land for open space can be almost any size and any condition depending on how it relates to other land in town.

Medium priority land uses:

- Municipal parking (tie)
- Town offices (tie)
- Well/septic
- School

These medium priority potential land uses come in direct proportion to Town growth. As the Town grows in size, the need for additional Town services (and the subsequent need for additional administration staff) the need for additional Town office space, enhanced Town infrastructure and additional capacity on our schools will become pressing. Parcel size, cost and location, however, will influence suitability of land for these uses.

Land needed for municipal parking and town offices were tied in our rankings. Land for parking is only relevant for a certain location so it is highly specific should the opportunity arise.

Land for well/septic is needed depending on how the Master Plan develops and how we develop certain areas of town. Only certain kinds of land can be put to this use.

Land for a school receives attention on this list in spite of the fact that we are currently building a school. This is because eventually another school will be needed and a school requires a large parcel with relatively specific conditions. Land suitable for a future school may be the single most difficult piece of property to find given requirements for location and the large parcel necessary. Increased cost of land in the future, particularly buildable land, may severely restrict the town's options for a school building. The town should look to opportunities to secure such a parcel. One such opportunity could come in conjunction with some future large residential development when negotiations with the developer could set aside a portion of the total area under development for a future school site.

Low priority land uses (at present):

- Library
- Recreation (tie)
- Public safety: Fire/Police/Highway (tie)

While land may be needed for these uses in time, for the next several years, the needs here appear to be low compared to others.. Specifically:

- We are completing a new set of fields on the old Snow property
- Representatives for library and public safety expressed a view that near term needs could be addressed through improvements on their present sites.

Land needed for recreation and public safety were tied in our rankings.

General Recommendations

First Recommendation: Maintain a long range, systemic vision when facing land use decisions.

There will be many land use decisions facing the town in the next few years. Decisions should not be done only on a project specific basis, but rather by putting all decisions within the context of the long-range strategic vision for the Town. In the near term, we strongly encourage the Board of Selectmen and other interested parties to consider both the soon-to-be released Master Plan and the information on priority needs from this committee as the town moves toward build-out. In particular, the town will need to be prepared to respond to changes in large currently underdeveloped parcels and should begin to evaluate their potential to meet town needs while considering their contribution to Stow's rural character.

Second Recommendation: Use of Chapter 61 Guidelines

The Task Force recommends strongly that the Town continue to follow the guidelines accepted by the Board of Selectmen in 2008 for consideration of exercise or assignment of Chapter 61 lands.

Third Recommendation: The Town should establish a dedicated fund comprised of Chapter 61 taxes for Municipal Land Acquisition.

As was outlined in another section of this report, Chapter 61 landowners commit to keeping their land as farmland, forestland or open space for a specified period of time in exchange for reduction in property taxes. If a landowner changes the use of the land in classification to one not covered by one of the three Chapter programs within that time frame, certain penalty taxes may apply. Conveyance taxes are meant to levy a significant financial penalty for lands removed from classification in the early years of an agreement. Roll-back taxes are imposed later and look back over five years from the time of conversion. They represent the difference between what the landowner paid in taxes under the program and what would have been paid had the land been taxed at its fair market value, plus interest.

Currently, when these taxes apply, they are paid to the Town and go into its General Fund. A growing number of towns in the Commonwealth have created dedicated funds where some or all of these taxes are placed and held separate from general funds. Some towns dedicate all the funds to special uses, for example acquisition or management of conservation lands. It is worth noting that establishing this type of fund requires special legislation from the Commonwealth.

The Land Use Task Force recommends that the Town of Stow create a special fund for conveyance and roll-back taxes. This fund should be dedicated to acquisition of land for one or more of the eleven municipal purposes as outlined earlier in this report, or other municipal needs that may arise. We suggest that the Board of Selectmen instruct the Town Administrator to research and prepare a proposal with input from Town departments and boards. Issues to be considered are whether all or a part of these taxes be placed in the fund, and whether the funds should be used at the discretion of the Selectmen or any portion be restricted to specific uses.

Fourth Recommendation: Investigation of Housing on Town Parcels

In the course of examining town-owned parcels, two sizable parcels and six small parcels were identified that have potential to be developed into one or two units of affordable housing. Most would require some variance from established zoning, acquisition of adjacent parcels that are currently privately-owned, or re-purposing of land that is controlled by another town department. Besides being a productive use of currently underused property, dispersing

affordable housing in smaller developments across the town is consistent with affordable housing strategies developed by Stow. LUTF encourages the groups advocating housing in town to explore these parcels fully in advance of consideration of any new acquisitions.

Fifth Recommendation: Evaluating Two Existing Town-Owned Parcels

Before purchasing additional land for one of the eleven Municipal needs identified within this report; the following two parcels should be evaluated for their ability to meet these needs.

Map R9-Parcel 92 The westerly portion of the Pompositticut School parcel with access from Harvard Road.

Map U7&U8-Parcel 34-2 The former Kane land on Gleasondale Road.

A Site Feasibility Study providing additional information on these two parcels is contained within this report.

Sixth Recommendation: Negotiating with Developers

There should be a formal and ongoing representation of municipal needs in development negotiations. This may be accomplished in part through the review process suggested in Recommendation #7. Other processes have been used in the past (e.g., Villages of Stow Negotiating Committee). The Board of Selectman should continue to work with the Planning Board, Zoning Board of Appeals and Conservation Commission to explore additional ways to advance how we negotiate with developers.

Seventh Recommendation: Working with Town Boards and Committees on Land Needs

The Planning Board of the Town Of Stow should adopt the sample form developed by this Committee to solicit input from various Town Boards and Committees when a parcel of land is proposed for development. The purpose of this form is to ensure that all Boards and Committees consider Municipal land needs that might be appropriate for any given parcel prior to the Public Hearing process.

A sample of this form is contained in the Appendix of this report.

The Zoning Board of Appeals of the Town of Stow should develop a similar form to solicit the same information from Town Boards and Committees with regard to 40B Applications.