

CONOMO POINT TRANSITION FREQUENTLY ASKED QUESTIONS

Prepared for Annual Town Meeting, May 2, 2011

- **Why can't the Town continue to lease all of Conomo Point as it always has?**

Pursuant to regulations of the Massachusetts Department of Environmental Protection, when property is held by a single owner, the total combined calculated wastewater flow of all the septic systems on that property must be limited to less than 10,000 gallons per day, unless the property owner obtains a Groundwater Discharge Permit pursuant to 314 CMR 5.00, the State Groundwater Permitting Program. There is no such limitation when each property is held in separate ownership. The total combined calculated flow for Conomo Point is approximately 30,000 gallons per day.

As part of the settlement of litigation between the Town and the DEP in the 1990's, the Town agreed in a consent decree that it would bring the Conomo Point area into compliance with DEP's regulations. According to the DEP, compliance can be achieved by limiting the Town's ownership to an area that has less than 10,000 gallons per day of calculated wastewater flow or by the Town attempting to obtain a Groundwater Discharge Permit (an option also discussed in the consent decree). The Town, working with DEP, has determined that it is not feasible, due to the severe site constraints, such as lack of suitable soil and sufficient area to support a leaching facility at the Point, for a Groundwater Discharge Permit to be issued. Therefore, the Board recommends limiting the Town's ownership to an area that has less than 10,000 gallons per day of calculated wastewater flow, since that is the only viable option.

- **Why not just extend the sewer line to Conomo Point?**

The public sewer cannot be extended to Conomo Point. The current sewer service area is far removed from Conomo Point, and it is not feasible, from an engineering or cost perspective, to extend the sewer line such a great distance. Moreover, the Town's ability to extend the sewer is limited by the Intermunicipal Agreement with Gloucester and capacity limitations at the Gloucester Wastewater Treatment Facility.

As such, individual property owners or leaseholders will be required to find on-site wastewater solutions that comply with Title 5 of the State Environmental Code. Due to poor site conditions at Conomo Point, including restrictive soil, shallow depth to bedrock, etc., the most likely scenario for obtaining Title 5 compliance will be by installation of tight tanks. However, innovative and alternative systems, including drip irrigation, may also be possible in some areas.

- **The Town voted in 1999 that the property North of Robbins Island Road shall be retained for public use upon expiration of the current leases. Why are we being asked to reconsider what was already decided?**

At the 1997 Annual Town Meeting, it was voted (Article 25) to direct the Conomo Point Planning Committee to develop a plan to retain part of Conomo Point for waterfront access and to sell other parts. A plan to allow the sale of properties South of Robbins Island Road is complete and the 2011

Annual Town Meeting will be asked to enact zoning necessary to subdivide the southern area on the path to fulfilling that plan. The Selectmen and the Committee are currently studying options for North of Robbins Island Road, to determine where the most desirable waterfront areas exist and what areas are more amenable for continued residential use.

The Selectmen will likely recommend to Town Meeting in the future that the 1999 vote should be revisited with respect to long-term occupancy in part of the northern area. For the time-being, both the Selectmen and the Committee have recommended the approval of short-term bridge leases for all areas at the Point. This makes good fiscal sense because the Town will continue to benefit from rent and tax revenue from these properties, while at the same time, it can plan for the development of increased public access in the near future.

- **Can the Town continue to lease properties North of Robbins Island Road that are not needed for increased public access?**

Yes, so long as the total combined calculated wastewater flow of all properties owned by the Town is less than 10,000 gallons per day (wastewater flow for regulatory purposes is calculated by multiplying the number of total bedrooms by 110 – the maximum allowed scenario for continued Town ownership is therefore 90 bedrooms; for example, 45 two-bedroom homes).

- **What kind of increased public access is being proposed for the area North of Robbins Island Road?**

The Board of Selectmen and Conomo Point Planning Committee are recommending a phased-in approach to Public Access Development. This will help the Town match public access development to public access needs. The very first phase will include improvement to public areas that already exist along the waterfront, with improved and additional parking areas.

- **How can we feel comfortable that selling any property at Conomo Point will not create increased infrastructure costs, i.e. schools, roads, public safety, beyond the expected sale and tax revenue?**

In planning for transition of the property from Town ownership to individual ownership, the Selectmen have discussed a number of legal mechanisms to ensure that the transfer of ownership does not change the character of property usage at the Point. Included among these mechanisms are a zoning bylaw, reinforced by deed restrictions, limiting use of most of the properties to seasonal residential occupancy only, with the only exceptions being those properties that are currently authorized for year-round use. In fact, with respect to the Southern Conomo Point Area, there are only seven year-round homes in the plan and it is the intent of the Selectmen to require a phasing out of year-round use in the seasonal cottage sub-district as current occupants transfer their interests.

The following five points pertain to “bridge leases”. The Selectmen and the Conomo Point Planning Committee support short-term bridge leases of five years or less for all properties the Point. Bridge leases will allow time for determining the final future status of properties at the Point, which may include long-term leases, sales, or assumption by the Town.

- **What are Bridge Leases and why do we need them?**

At the Annual Town Meeting of May 1997, the Town voted not to renew any of the current leases which expire at the end of this year. However, entering into bridge leases will allow the Town to maintain and increase the current revenue stream after December 31, 2011. Due to the number of legal requirements that must be met in order to prepare the property for sale or long-term lease, it is not possible to sell or enter into new long-term leases for any of the properties prior to the end of this year. That means that, without bridge leases, current occupants would be required to vacate the property by December 31, 2011. The Selectmen have determined that the current occupants should be offered short-term leases to allow continued occupancy while the transition process is taking place.

- **How will rents for Bridge Leases be determined?**

There are two articles on the warrant for the upcoming Annual Town Meeting that will address this issue. First, the voters will be asked to approve a bylaw establishing a procedure for the creation of bridge leases. This bylaw will require that the Selectmen obtain “fair market rental value” for the properties. To accomplish this, the voters will be asked to appropriate a sum of money for the Town to hire an appraiser to determine the fair market rental value of each portion of the property that will be bridge leased. The appraiser will be certified by the State and will be required to use standard appraisal methods to ensure that the Town is receiving the fair market rental value for the property.

- **What is the length of the Bridge Leases?**

Voters at Town Meeting will be asked to authorize the Selectmen to enter into bridge leases of five years or less. It is the intent of the Selectmen to have all bridge leases be for one year terms, with options for up to four one year renewals. It is expected that bridge leases will be terminable at any time upon a determination that the property is ready for sale or long-term lease. Although the Selectmen are asking the Town to authorize bridge leases for up to five years, through our discussions with officials at the Department of Environmental Protection, it is expected that the septic issue will have to be resolved in a shorter period of time. Therefore, we do not expect the bridge leases to last for five years.

- **Can properties be sold under a Bridge Lease?**

No. The Town Meeting is voting to authorize the Selectmen to enter into short-term leases. If the Town wishes to sell all or any portion of its property, a subsequent Town Meeting authorization will be required.

- **How do bridge leases fit into DEP’s calculated wastewater flow limitations?**

Since resolution of the litigation in the 1990’s, the DEP has agreed not to enforce the calculated wastewater flow limitation at Conomo Point until after expiration of the current leases. The Selectmen have recently discussed plans for transition of the property and officials at DEP have agreed not to enforce the calculated wastewater flow limitation at Conomo Point during the bridge lease period, provided that the Town makes progress towards limiting the future calculated flow of property it owns to less than 10,000 gallons per day.

- **How will property values be determined for property sold South of Robbins Island Road?**

As with bridge leases, the Selectmen intend to seek authorization, at a future Town Meeting, to sell portions of the property South of Robbins Island Road at “fair market value”. Fair market value will be determined by a State-certified appraiser using standard appraisal methods to ensure that the Town is receives the fair market rental value for the property. It is expected that a future Town Meeting will enact a bylaw to accomplish this objective.

- **Why is the Town seeking an exemption from Chapter 30B?**

In order to give the Selectmen the greatest flexibility to ensure that the best interests of the Town are served, Town Meeting authorized a petition to the State Legislature seeking an exemption to Chapter 30B at a Special Town Meeting held in November of 2010 to allow a right of first refusal for Conomo Point tenants. The leases currently in effect do contain a provision granting the tenants a right of first refusal if the Town votes to sell any or all of its property at Conomo Point during the lease term.

However, Town Counsel has opined that the right of first refusal provision in the lease is not enforceable in light of the State’s public bidding laws, Chapter 30B. Pursuant to Chapter 30B, the Town would be required to solicit competitive, sealed bids from the general public using an advertisement process. The Selectmen have determined that it may be in the best interests of the Town to honor the rights of first refusal in the current leases, even though the Town is not legally required to do so. Any transaction that is made under the auspices of the exemption to Chapter 30B will involve an appraiser who is certified by the State and who will be required to use standard appraisal methods to ensure that the Town is receiving the fair market value for the property.

- **Is the Town being asked to sell any portion of the Conomo Point Property at the upcoming Town Meeting?**

No. At this Town Meeting, the voters are being asked to approve preliminary planning steps which will enable the Town to prepare portions of the property South of Robbins Island Road for sale. No portion of the property can be sold, however, without a subsequent Town Meeting vote.

- **Can the Town be forced to construct water and sewer lines out to Conomo Point if continued occupancy of the property at the Point is allowed in some fashion?**

No. Since that infrastructure would require an appropriation from Town Meeting, the Town Meeting would have to agree to such construction. Also, the Intermunicipal Agreement with the City of Gloucester for the Town's sewer service would need to be expanded, requiring both a Town Meeting and a City Council approval. Further, the State Legislature has in the past enacted Special Legislation that allows the Town to limit connection to its sewer system.

- **What do the first three articles on the May 2, 2011 Annual Town Meeting Warrant seek to accomplish?**

- *Article 1 amends the Town Zoning bylaw to establish a Southern Conomo Point Zoning District.* By vote of the May ATM in 2008, the Selectmen engaged the services of The Horsley Witten Group to plan all aspects of a sub-division, South of Robbins Island Road. This zoning bylaw amendment establishes a zoning district South of Robbins Island Road generally according to the current configuration of leased properties. This amendment is necessary in order for the Planning Board to consider the sub-division application.
- *Article 2 amends the general bylaws of the Town to establish a procedure for sale or lease of property at Conomo Point.* In the Fall of 2010, Town Meeting voted that procedures must be developed and codified in the Town bylaws for any further leasing or sale of property at Conomo Point if the right of first refusal is offered to current leaseholders. This article specifically addresses the processes for creating bridge leases (term of five years or less) with sale and long term lease procedures reserved for future use. This article does not provide actual authority to lease (that is the purpose of Article 3).
- *Article 3 actually authorizes the Selectmen to negotiate (short term) bridge leases for all properties at Conomo Point.* Entering into bridge leases will allow the Town to maintain and increase the lease revenue from Conomo Point in the short term. This interim period will also allow time to plan for potential sale, lease or retaining of property. The bridge leases will be prepared in accordance with the bylaw created by Article 2.