

# Open Space Protection Programs – Funding and Tools



REPORT TO THE BETHLEHEM TOWN BOARD

Prepared By:

TOWN OF BETHLEHEM CITIZEN'S ADVISORY COMMITTEE ON CONSERVATION  
(CACC)

October 18, 2006

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LETTER FROM THE CACC CHAIRMAN

October 4, 2006

Dear Supervisor Egan and Town Councilmen:

The Citizens Advisory Committee on Conservation (CACC) is pleased to forward this informational report on **Open Space Protection Programs - Funding and Tools** to Supervisor Egan and members of the Town Board. Since the Town Board created the CACC in January of 2006, the committee has spent a substantial amount of time researching and collecting information about open space funding. After many months of working on the report, the CACC is looking forward to releasing this report to the public at large for their information and use.

Drafting and refining the report has been a careful and methodical process driven by many exchanges of ideas and facts as well as cautions and concerns. The funding methods, sources and allocation techniques make up a comprehensive set of tools that may be used to preserve open space in Bethlehem. They are not exclusive of each other and each has appropriate applications that should be further evaluated.

As an advisory committee, CACC has welcomed the challenge to gather open space funding information for the Town and is prepared to assist in the next steps in the process, should the Town decide to move forward. Development of an Open Space Plan will define and prioritize conservation priorities in the Town of Bethlehem and will enhance any opportunities to secure funding from available sources. Equally important is development of a public education and outreach program to inform and identify landowners willing to participate in programs to preserve open space or those interested in conservation of their properties.

Respectfully submitted,

John Smolinsky  
Chairman  
Citizen's Advisory Committee on Conservation

## SECTION I: EXECUTIVE SUMMARY



### **A. COMPREHENSIVE PLAN FRAMEWORK**

In August 2005, the Town of Bethlehem adopted its first ever Comprehensive Plan (Comp Plan, Plan) after eighteen (18) months of community deliberation about the Town's future. It also adopted substantial amendments to its Zoning Law and Subdivision Regulations. The CACC recognizes that its work is framed by the policies, goals, objectives, and recommendations of the Comp Plan. The Plan provides clear guidance with regard to open space protection issues. It established that Town residents support initiatives to encourage open space protection. It provides many new tools and incentives to encourage implementation of open space and natural resource protection projects. It also established that Town residents are concerned about the increasing burden of public services that has been exacerbated by extraordinary residential growth. And, it establishes and respects the concerns of many large landowners that restrictions and regulations can adversely affect the economic value and use of their land. While there is a strong desire to move forward with open space protection programs, it is framed by guiding principles that consider environmental sustainability, respect for the rights of landowners, and the need for fiscal responsibility. The framework of the Comp Plan can very much be summed up in the following goal:

*“Work with willing landowners to conserve quality open spaces throughout the Town and create a network of open lands to provide wildlife habitat and potential recreational trail corridors”*

### **B. TOWN BOARD DIRECTION**

One of the primary recommendations of the Comp Plan was that the Town Board should form a Citizen's Advisory Committee on Conservation (CACC) as an advisory committee that could be tasked by the Town Board to:

- explore conservation projects and opportunities to work with willing landowners ... to assist them in maintaining the undeveloped status of their properties; and
- “... assist with longer term activities at the Town Board's request such as exploring funding opportunities for open space protection programs, working to develop a Farmland and Open Space Protection Program, and, subject to further consensus building and Town Board direction, developing an inventory of open space and farmland resources.”

The Town Board authorized the formation of the CACC at its January 25, 2006 meeting and appointed eleven (11) residents of the Town as its initial members. On March 8<sup>th</sup>, 2006 the Town Board charged the CACC with two tasks including the subject of this report, identifying programs and methods that could assist the Town in funding open space protection. In approaching this task, the CACC developed a work program to draft a document to provide the Town Board with:

- An overview of programs and sources of funding for open space protection;
- An overview of techniques for the preservation and management of open space; and
- Recommendations of best approaches and next steps.

### C. REPORT OVERVIEW

This report presents an overview of funding methods, programs and sources for the implementation of open space preservation programs. The report includes only those funding sources, methods and techniques that the CACC believes are applicable to the Town. It also includes landowner initiatives that may not involve direct activity of Town government but which could be part of an open space educational package provided to interested landowners. The CACC realizes that many of these funding mechanisms and tools have consequences, not all of which are readily identifiable. In this vein, the CACC has made its best attempt to list advantages and disadvantages to the Town as viewed from the Town government perspective. While the purpose of this report is to provide information about programs, tools and methods that the Town can utilize to fund and achieve its open space goals, the CACC recognizes the importance of the landowner perspective in this regard. Because the Comp Plan identifies the critical role of "willing landowners" in the open space protection arena, it is acknowledged that the effect of open space initiatives on landowners should be considered should the Town elect to develop an open space plan.

### D. SOURCES OF FUNDS – MUNICIPAL

There are several common ways to fund open space protection projects using local municipal funding sources:

- **Appropriation of General Funds:** Municipalities may appropriate revenues derived from local property taxes to acquire interests in open lands as part of the local budgeting process.
- **Issuance of General Obligation Bonds:** The most popular source of funding for land purchases, general obligation bonds are debt incurred by a municipality to finance large public capital projects. General obligation bonds are backed by the "full faith and credit" of the issuer meaning that the government entity is obligated to repay the debt.
- **Real Estate Transfer Tax:** A real estate transfer tax is a levy on property sales, typically a small percentage of the purchase price. Transfer taxes may be used to acquire land directly or to cover financing costs on bonds. There is currently no general New York State enabling legislation that permits municipalities to impose transfer taxes, so a municipality must first seek passage of specific enabling legislation from the state legislature.
- **Sales and Hospitality Taxes:** Sales and hospitality taxes are levies on retail sales imposed by states and local governments. Sales and lodging taxes may be broad-based or targeted to a specific budgetary purpose. A municipality has the authority, to allocate its share of county-derived sales tax revenue to a devoted purpose such as open space protection programs.
- **Private Donations:** Municipalities could develop a voluntary fund supported by private donations dedicated to financing an open space protection program.
- **Park Land Set-Asides or Fees:** The Town of Bethlehem already employs an approach, as allowed under State law, for providing parkland as part of the development approval process.

### E. SOURCES OF FUNDS – STATE AND FEDERAL

In addition to local funding sources, there are also State and federal government programs that provide funds open space protection including the following:

- **New York State Environmental Protection Fund (EPF):** Created in 1993, the EPF provides funds for, among other things, the acquisition and protection of open space.
- **Clean Water State Revolving Fund (CWSRF):** Administered by the State Environmental Facilities Corporation (EFC) and DEC, the program provides loan funds to finance water quality improvement projects.
- **U.S. Department of Interior, Land and Water Conservation Fund (LWCF):** Provides funding for land acquisition and outdoor recreation.
- **Farm Security and Rural Investment Act ("Farm bill"):** This federal program provides direct funding to landowners who are willing to participate. The Town can play a role in this process by helping to promote awareness of the program to Town property owners.

#### F. CONSERVATION METHODS, FORMS AND OWNERSHIP

The most ideal form of land conservation might reside with the voluntary commitment of a private property to the permanent or long-term conservation of their property as undeveloped open space. However, land conservation can take many forms in addition to private ownership and stewardship. Some of the methods, forms and ownership alternatives include the following:

- **Municipal Ownership:** A municipality may purchase a property and assume full legal responsibility for all costs of maintaining, insuring and policing/protecting the property.
- **Not-For Profit Land Trusts:** Land conservation organizations, or land trusts, are non-profit organizations that actively work to conserve land by acquiring title or an easement in land for conservation or by its stewardship of such land or easements.
- **Purchase of Development Rights (PDR) or Conservation Easements:** A municipality can purchase the development rights to a property. The right to develop land is assigned a dollar value and the property owner receives a cash payment for that right. In exchange, to protect open space resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites, and scenic views, the landowner places a deed restriction, in perpetuity, on their property. This deed restriction is also called a conservation easement.
- **Lease of Development Rights (LDR) or Conservation Easements:** A lease of development rights ("LDR") program is one in which a municipality acquires the development rights of a parcel for a limited period of years rather than in perpetuity. The property owner receives preferential tax treatment and a short-term conservation easement is placed on the property.
- **Transfer of Development Rights (TDR):** Transfer of development rights (TDR) programs allow landowners to transfer the right to develop one area of land to a different area of land within the same municipality or a neighboring municipality.

#### G. REGULATORY METHODS

Municipalities may also use regulatory tools through zoning and other land use regulations to encourage open space protections. Examples of such regulatory methods include the following:

- **Conservation and Average Density Design Subdivisions:** Conservation subdivision design standards utilize incentives to encourage clustered development that can result in permanently preserved open space within a new development site. Average density design subdivision standards encourage creativity and context sensitive design by offering relief from minimum lot size requirements.
- **Natural Resource Zoning:** Natural resource zoning can be used to limit development in areas such as prime farmland, aquifer recharge areas or wildlife habitat. It can also provide appropriate setbacks from steep slopes, streambeds and wetland areas.
- **Official Maps:** New York State Law allows communities to identify desired future street corridors, drainage systems, and park locations on an official map.
- **Lands of Conservation Interests Map:** A map that inventories a community's farmland, open space and natural resources.

## H. NEXT STEPS

The funding sources, methods and techniques listed in this report can be used individually, or in any combination to suit a community's particular open space protection needs. It should be noted that in many cases additional actions might often be required by the Town to make them feasible. Some of the open space protection tools require matching funds or are loans, which must be repaid. With any property acquisition or in the situation of trails/bike paths, there will be maintenance costs and other costs for patrolling, insuring and structural costs related to signage and fences where necessary. It is hoped that the Town Board will evaluate each of the funding methods, sources and allocation techniques in light of current and future protection opportunities that may arise to find the best funding source for a particular opportunity. The CACC is ready and willing to assist the Town Board in effecting any next steps the Town determines to be appropriate. Should the Town Board desire to pursue any of the programs and tools identified in this report, the CACC believes that the Town Board should also consider the development of a Town of Bethlehem Open Space Plan that would include a public education and outreach program to identify landowners willing or interested in conservation of their property.

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## SECTION II: PREFACE



### TOWN OF BETHLEHEM COMPREHENSIVE PLAN FRAMEWORK FOR OPEN SPACE PROTECTION

#### A. BACKGROUND

In August 2005, the Town of Bethlehem adopted its first ever Comprehensive Plan (hereinafter, the Plan) after eighteen (18) months of community deliberation about the Town's future. Simultaneously with adoption of the Comp Plan, the Town adopted major amendments to its Zoning Law and Subdivision Regulations in order to implement many of the Plan's recommendations. In August 2006, the Town adopted a second set of amendments to the Zoning Law and Subdivision Regulations to further implement the Plan.

One of the priority (Tier 1) recommendations of the Plan was to establish a Citizen's Advisory Committee on Conservation (CACC) that would operate as a non-regulatory advisory

committee to undertake conservation related projects at the direction of the Town Board. In January 2006, the Town Board established the CACC and in March 2006, it directed the CACC to undertake two tasks including the preparation of this report and assistance in developing an integrated pedestrian and trail network in the Slingerlands area.

The members of the CACC recognize that its work in this regard is framed by the policies, goals, objectives, and recommendations of the Plan. Towards this end, this preface is provided to frame the contents of this report within the context of the Plan. That is, to identify the principal direction provided by the Plan related to open space protection in the Town of Bethlehem.

## B. THE COMPREHENSIVE PLAN EXECUTIVE SUMMARY

The comprehensive planning process and the voluminous documentation prepared as part of the process stimulated a wealth of ideas, perspectives and opinions. As the planning process culminated, there was clear consensus between the Bethlehem Planning Advisory Committee (BPAC, the Town appointed committee that lead the process) and ultimately the Town Board on many ideas and recommendations for immediate implementation. These items are embodied in the future vision for the Town, the guiding principles developed to guide decision making, the goals and objectives of the Plan, and the Tier 1 recommendations for implementation of the Plan which are as summarized in the Plan's Executive Summary. Many other topics were the subject of discussion and debate and did not achieve the same level of consensus. These items are also very important to Town residents and are generally grouped together as Tier II recommendations that require more focused consideration and consensus building for future Town Board implementation. There are also Tier III recommendations summarized in the Plan that are considered as ongoing administrative and operating functions of the Town government.

To avoid any misconception about the relative status of a specific Plan recommendation, an Executive Summary was prepared and identified as the ultimate source of clarification regarding Plan recommendations. In this regard, the following language is included in the Plan's Executive Summary:

*"In the event of any perceived ambiguity in any of the recommendations as presented throughout the plan, the construction of the plan will be guided by the intent expressed in this Executive Summary"*

While the Executive Summary clearly serves an important role in clarifying the intent of the Plan, the Plan is much more than just the Executive Summary. There is far more detailed discussion of its contents throughout the body of the Plan and its related Appendices. When considering issues included in the Executive Summary, the entire Plan should be reviewed and considered as it provides significantly more depth and detail.

## C. THE FUTURE VISION

The Plan achieved broad consensus about the development of the Town over the next ten or fifteen years. In doing so, it was clear that not all individual interests could be accommodated through its recommendations. It was also understood that the Plan would be a living document and that would be reevaluated from time to time to address changing circumstances. The recommendations of the Plan do direct the community toward an overall vision to which most residents of Bethlehem have agreed. It was crafted with the intent of achieving **balance**: balance between urban, suburban, and rural perspectives; balance between the need for economic growth, tax base expansion and diversification and stewardship of finite land and

environmental resources; and, balance between the short-term and long-term health, safety, and welfare of the community. The vision statement is as follows:

*"In the Year 2020, the Town of Bethlehem is a community of attractive residential neighborhoods, vibrant hamlets, successful mixed-use commercial centers, modern industrial facilities, and productive rural lands. These are well connected by regional highways and local streets, adequately serviced by public transportation, and linked by a network of sidewalks and trails. Situated at the heart of the Capital District, Bethlehem offers convenient access to all that the region has to offer. It is recognized for the excellence of its schools, the quality of its public safety and community services, the abundance of its recreational opportunities, the productivity of its local businesses, ten miles of Hudson River waterfront, and the beauty and health of its natural environment. This exceptional quality of life contributes to the economic growth and prosperity of the Town and the region, assuring that the community can continue to meet the increasingly diverse needs and expectations of its residents in a fiscally sustainable manner."*

#### D. GUIDING PRINCIPLES

The Comp Plan also provided a set of Guiding Principles to assist the community as it takes steps to achieve its future vision. These principles should be considered in all decision-making as the comprehensive plan is implemented. With regard to open space protection, the following guiding principles should be considered:

- **Environmental Sustainability** – meeting the needs of the present without compromising the ability of our community to meet its needs in the future. Specifically, this involves managing the Town's natural resources for the benefit of current and future generations.
- **Fiscal Responsibility** – balance between the desire and need for public investments and services, and the ability to pay for these in a fair and responsible manner.
- **Respect of Property Owners' Rights** - recognition that Bethlehem is a diverse community that includes both densely developed areas as well as expanses of relatively undeveloped rural lands. While the Plan is not a source of legally protected property rights, the Town recognizes and respects that property owners have rights regarding their property. The Town has, and will continue to consider the rights of all landowners in meeting its obligations to all residents as the Town implements the recommendations of the Plan.

#### E. COMMUNITY GOALS

To achieve the Town's future vision, multiple goals were established to implement the Plan. The goals address a variety of issues and those related to open space protection include the following:

- **Achieve a balanced tax base.** As the community continues to grow, the cost of providing services (such as schools, recreation, etc.) for new residential development will also grow. To preserve fiscal responsibility while sustaining or enhancing services to meet changing desires or needs, it is important to ensure that the community

maintains a balance of residential development, commercial and industrial development, and open space.

- **Expand public, private or non-profit active and passive recreational resources** and community services available in the Town to meet the growing and changing demand for these amenities.
- **Manage and protect significant environmental systems** such as stream corridors and associated ravines, steep slopes, wetland systems, and in particular, the Town's Hudson River waterfront. Enhance public access to, and understanding of, these resources.
- Promote commercial and industrial growth in specifically designated locations. **Encourage the reuse or redevelopment of existing sites and buildings as an alternative to development on "greenfield" locations.** Create opportunities for increasing the value of underutilized commercial areas by focusing higher density development, and providing design guidelines and standards where appropriate, in these areas.
- **Recognize the Town's significant cultural, historic, and natural resources** (such as farm land, forest land, or mineral deposits). Develop mechanisms for protecting and enhancing these for future generations. Communicate the value of these resources to individuals and to the community.
- **Utilize flexible land use regulations and creative land development techniques to retain the economic value of rural land.** These techniques can also help conserve distinguishing features of the rural landscape and maintain rural lifestyles when development occurs.
- **Work with willing landowners to conserve quality open spaces** throughout the Town and create a network of open lands to provide wildlife habitat and potential recreational trail corridors.

## F. PLAN PRIORITIES

The priorities of the Plan were summarized in the Executive Summary and organized related to both the level of priority and the timing of implementation. The following is an overview of Plan priorities related to open space protection.

1. **Immediate Action:** The immediate action recommended and simultaneously implemented was the amendment to the Town's Zoning Law and Subdivision Regulations. Among the features of the amendments related to open space protection were the following:
  - **Rural District:** The southern half of the Town and much of the Hudson River corridor remains rural in character. The Comp Plan strives to provide options for rural landowners so that rural lifestyles and economic opportunity can be maintained over the long-term. With an eye towards preserving and protecting the economic value of rural lands, a new rural district was established that permitted a wide continuum of uses. Although primarily characterized as a residential district, the Rural District permits many small-scale commercial uses and home based occupations.
  - **Riverfront Rural:** Public participation and input in the planning process demonstrated a prevailing land conservation perspective among property owners east of Rt. 144

below Van Wies Point. This district provides for very low-density residential development (1 dwelling unit per 5 acres) and limited non-residential development.

- **Density versus Lot Size:** The amended regulations provide flexibility in subdivision design by focusing more on the number of dwelling units per acre rather than minimum lot size per dwelling unit. This can assist in encouraging development clustering and various forms of conservation subdivision design.
- **Conservation Subdivision Design:** The addition of conservation subdivision design creates a tool to encourage flexible subdivision design and density incentives to encourage conservation of land within new subdivisions. In further describing this tool and the use of Incentive Zoning, the Plan further indicates that:

*“It is important to recognize that there is no automatic right for the public to have access to open lands created from conservation subdivisions. When the land remains in private ownership, even under a conservation easement, all of the rights of land ownership except the right to further develop the property remain. This includes the right to prevent trespassing. The Town cannot compel a private landowner to allow public access on their land. However, the Town can purchase the right for public access and/or offer incentives to the landowner for allowing public access through open lands.”*

- **Incentive Zoning:** The zoning law provides for density incentives related to open space protection (the use of conservation subdivision design) and for other negotiated public benefits (trails, affordable housing, utility ROW, road corridor, etc.) resulting from the development. Incentive zoning is applicable only to residentially zoned land parcels for which there is an application for conservation subdivision design or multifamily housing development. Incentive zoning could also be used to provide public access to protected open space for the development of pedestrian or recreational pathways.
  - **Supplemental Zoning Regulations for Grading, Erosion, and Sediment Control, and Lots Bordering Streams:** New regulations were adopted to protect stream corridors, wetlands, steep slopes and flood plains.
2. **Priority Actions / Tier 1 Recommendations:** These are the primary recommendations of the Plan related to open space protection for which there was broad consensus and an accompanying near term implementation action item.
- **Create an Official Map:** In accordance with Town Law §270, the Town should develop an Official Map that shows the location of existing and proposed streets and other public facilities. The development of an official map would allow the Town to reserve future corridors and prevent the corridors from being consumed by development. The Comp Plan identifies several key corridors that might be included on an official map and recognizes that all of these will require further study before a decision about whether or not to include them is made.
  - **Develop a Local Waterfront Revitalization Plan (LWRP):** The Town successfully applied for funding from the New York State Department of State to assist in the development of an LWRP for the riverfront area. The LWRP will provide more clarity about future growth and land use preferences in the riverfront area.
  - **Establish a Citizens Advisory Committee on Conservation (CACC):** The Comp Plan empowers the Town Board to appoint an advisory committee to explore conservation projects and opportunities with willing landowners, as identified by the Town Board.

The Town Board was encouraged to appoint members to the CACC who are broadly representative of the various neighborhoods and hamlets of the Town. After much public debate, the CACC was recommended as an advisory not regulatory body. The Plan identified the development of an integrated pedestrian network in the Slingerlands area and the exploration of funding opportunities for open space protection programs as potential immediate tasks that the Town Board could direct CACC to undertake.

- **Identify locations for infill development and redevelopment activities** and encourage the use of such locations as an alternative to greenfield development. Specific underutilized sites like the Glenmont (Ames) Plaza in Glenmont, the former Blue Cross building in Slingerlands, and the former Daisytek building on West Yard Road near Feura Bush were identified as potential redevelopment sites.
3. **Mid-Term Actions / Tier II Recommendations:** There were many other issues discussed for which full community consensus could not be established during the planning process. Hence, the Tier II recommendations relate to important community topics that emerged during the development of the Plan but for which more focused consideration and consensus building is required for future Town Board implementation. The following Tier II recommendations are relevant to open space protection:
- Consider adopting local right to farm and right to practice forestry laws and encourage participation in Agricultural Districts.
  - Consider developing a Town recreational trail system and funding mechanisms.
  - Consider a town-wide referendum to create funding for land acquisition and preservation of open space and parkland.
  - Consider developing an inventory of farmland, open space, recreational uses and natural resources.
  - Consider creating a farm and open space protection program including the purchase of development rights and the use of conservation easements.
  - Conduct a town-wide inventory of historic and cultural resources.
4. **Ongoing Actions / Tier III Recommendations:** The final series of recommendations relate more generally to Town governance, programming and day-to-day operations. Several of these recommendations are related to open space protection:
- Maintain and enhance pedestrian connections within and between neighborhoods, recreation facilities, and hamlet centers.
  - Prepare for and comply with the new Phase II Stormwater Management Regulations.
  - Initiate a “buy local” program and develop an agricultural economic strategy.
  - Provide adequate bicycle facilities and establish a signed system of routes throughout the Town.
  - Establish a Park Master Plan coordinated with community growth projections.

## G. COMMUNITY SURVEY

An important element of the Plan was the gathering of opinions from Town residents and property owners related to major issues. In October 2004, survey questionnaires were mailed

to a random sample of 1,600 property owners and registered voters in the Town. Over 700 completed survey questionnaires were returned and tabulated. The response rate, more than forty-four percent (44%), is generally recognized as exceptional.

Approximately seventy percent (70%) of respondents felt that the quality of life in Bethlehem is better than in other places. However, nearly forty-four percent (44%) felt that the Town's quality of life was being negatively influenced by growth related issues. Respondents cited traffic and congestion, the rate of residential growth and the loss of open land and undeveloped land as important problems facing the Town.

Among the major themes that emerged from the survey related to open space protection were the following:

- The importance of a sense of place. Respondents cited the importance of providing sidewalks and promoting walkable, mixed use neighborhoods.
- Using the built environment and improving existing infrastructure before building new infrastructure.
- Looking for opportunities for pedestrian and open space improvements within the developed and more densely populated areas of Town.
- A desire to have the Town work to lower overall property taxes.
- The general desire to protect natural areas and open lands, a willingness to use taxpayer dollars for open space protection, and a strong desire for leveraging the Town and taxpayer investment with outside funding sources.

## H. FARM AND RURAL LANDS SURVEY

In addition to the community wide survey, a survey was developed and sent to approximately 330 property owners who owned seven (7) acres or more according to Town assessment data. The purpose of this survey was to more clearly understand the future of the rural areas in Bethlehem. Approximately 151 completed survey questionnaires were returned to Town Hall and tabulated by Town staff. The response rate was again excellent with over forty-five percent (45%) of surveys returned. The following are some relevant highlights of the survey results:

Fifty-six percent (56%) of respondents expressed an interest in either selling their development rights or learning more about the possibility, which suggests a need for increased education about the options available to property owners. Forty-four percent (44%) would not consider selling development rights to their property.

Fifty-one percent (51%) of the respondents stated they would favor the Town investing in conservation easement or purchase of development rights programs, whether or not they as landowners would participate. Approximately twenty-five (25%) would not participate in such programs.

Over twenty-one percent (21%) of the respondents hope to keep their land undeveloped but not managed to produce income over the next ten (10) years. Thirteen percent (13%) will still be managing their land as woodlands, for mining, or as fish/wildlife habitat. Nearly twenty-nine percent (29%) percent anticipate that they will still be farming, will sell or rent land for someone else to farm, have a member of the family continue farming or sell development rights and continue farming.

## I. THE PLAN'S CONSIDERATION OF LANDOWNER ISSUES AND CONCERNS

A recurring theme throughout the comprehensive planning process was the impact that implementation of the plan would have on the rights of landowners. The imposition of restrictions and regulatory policies that might adversely affect land value and property uses as well as the process of obtaining building rights were identified as significant concerns. As the final plan and land use regulations evolved, the Bethlehem Planning Advisory Committee (BPAC), which led the planning process, and the Town Administration demonstrated sensitivity to this perspective in framing their final recommendations. This is manifested throughout the entire Comp Plan and the amended land use regulations as evidenced by the following examples:

- The guiding principle of **respect for property owner rights** makes it perfectly clear that the Town will continue to recognize the rights of all landowners in implementing the Comp Plan.
- The goal **work with willing landowners to conserve quality open spaces** clearly indicates both the Town's desire and intention to protect open space and natural resources as well as the need for a parcel's owner to be willing to participate in the process.
- The creation of new zoning districts that permit a wide range of uses in rural areas of Town contribute to achieving the Comp Plan goal to **utilize flexible land use regulations and creative land development techniques to retain the economic value of rural land**.
- In discussing the Tier II recommendation "**consider a town-wide referendum to create funding for land acquisition and preservation of open space and parkland**", the Plan affirms the need to fairly compensate landowners if the community desired to conserve certain lands as permanently protected open space. Further, it goes on to say that in all cases, participation in such initiatives by landowners must be strictly voluntary.
- The Plan recommended the development of a methodology to enable landowners to more easily divide their lands and create building lots. This resulted in the **Land Division** provisions of the Subdivision Regulations which allows an administrative (Department of Economic Development and Planning) approval of up to four (4) lots from a parent parcel over a ten (10) year period.
- The Plan recognizes the Town's significant cultural, historic and natural resources including farm land, forest land and mineral deposits, and establishes the goal to **develop mechanisms for protecting and enhancing these for future generations**. This clearly indicates the Town's intent to assist willing landowners in maintaining the economic value of farms and rural lands as significant community assets. However, it also recognizes the reality that agribusiness is difficult to preserve and is no longer a widely chosen profession.
- The financial burden on landowners to pay for public services is also prominently addressed in the Plan. The guiding principle of **fiscal responsibility** clearly establishes the need to be cognizant of the burden placed on taxpayers and the need to balance the desire for new or expanded public services with the need and financial feasibility to pay for them in a fair and responsible manner.
- The Plan goal to **achieve a balanced tax base** is a direct approach to relieving the taxpayer's burden by encouraging development that is more taxpayer friendly than

traditional residential subdivision development, which in many cases contributes to an increased demand for public services.

## J. CONCLUSION

The Town's Comprehensive Plan provides clear and abundant guidance with regard to open space protection. It clearly establishes that an overwhelming majority of Town residents support initiatives to encourage open space protection. It provides a plethora of new tools and incentives to encourage implementation of projects that foster open space and natural resource protection in conjunction with willing property owners. It also establishes that Town residents are concerned about the increasing burden of public services that has been exacerbated by the Town's extraordinary residential growth. Also, it establishes and respects the concerns of many property owners that restrictions and regulations can adversely affect the economic value and use of their land. While there is a strong desire to move forward with open space protection programs, the Plan is guided by respect for the rights of landowners and the need for fiscal responsibility. When the discussion gets to the parcel level, the need for the property owner to be willing to participate is an essential ingredient. The framework of the Comp Plan can very much be summed up in the previously identified Plan goal:

*“Work with willing landowners to conserve quality open spaces throughout the Town and create a network of open lands to provide wildlife habitat and potential recreational trail corridors”*

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## SECTION III. INTRODUCTION



### A. TOWN CHARGE TO THE CITIZEN'S ADVISORY COMMITTEE ON CONSERVATION

Throughout the comprehensive planning process, it became apparent that the conservation of open space was a priority with both residents who owned undeveloped land and those who did not. As a Tier 1 Recommendation, a Citizen's Advisory Committee on Conservation (CACC) was to be formed and tasked by the Town Board to:

- explore conservation projects and opportunities to work with willing landowners who desired avenues to assist them in maintaining the undeveloped status of their properties; and
- ... assist with longer term activities at the Town Board's request such as exploring funding opportunities for open space protection programs, working to develop a Farmland and Open Space Protection Program, and, subject to further consensus building and Town Board direction, developing an inventory of open space and farmland resources.

To this end, at its January 25, 2006 meeting, the Town Board authorized the formation of the CACC and appointed eleven (11) residents of the Town as its initial members. At its March 8<sup>th</sup>, 2006 meeting, the Town Board charged the CACC with two tasks including the subject of this report, identifying programs and methods that could assist the Town in funding open space protection. Subsequently, the CACC agreed at its May 8, 2006 meeting to draft a document to provide the Town Board with:

- An overview of programs and sources of funding for open space protection, some of which utilize Town of Bethlehem sources (Bethlehem tax dollars) and others, which utilize outside sources (State and federal tax dollars and private/not-for-profit organization funds).
- An overview of techniques for the preservation of open space once acquired. These include but are not limited to outright purchase of undeveloped lands from willing landowners, the purchase or lease of development rights and conservation easements and other tools.
- Recommendations of best approaches and next steps given the current fiscal climate within the State of New York and Bethlehem itself.

## **B. REPORT PERSPECTIVE**

In the following pages, the CACC will present an inventory of available funding methods, sources and allocation techniques for the implementation of open space preservation programs. This inventory includes only those funding sources, methods and techniques that the CACC believes are within the realm of accessibility and possibility for the Town to pursue as options; the inventory does not include funding sources, methods and techniques that the CACC found not applicable or available to the Town. However, the report includes landowner initiatives that may not involve direct activity of Town government but which could be part of an open space educational package provided to Town landowners. Clearly, interested landowners will benefit from information about the full range of open space protection opportunities available in Bethlehem. Finally, the CACC will propose next steps to be considered by the Board as a follow-up.

The CACC realizes that many of these funding mechanisms and tools have consequences, not all of which are readily identifiable. In the following pages, the CACC has made its best attempt to list advantages and disadvantages to the Town. The advantages and disadvantages are typical, but are not necessarily universal or absolute. They are intended to be viewed from the Town government perspective and they assume Town funding would support projects in which willing landowners participate.

## **C. POTENTIAL EFFECTS ON LANDOWNERS**

While the purpose of this report is to provide information about programs, tools and methods that the Town can utilize to fund and achieve its open space goals, the CACC recognizes the importance of the landowner perspective in this regard. Because the Comp Plan identifies the critical role of “willing landowners” in the open space protection arena, it is acknowledged that the effect of open space initiatives would be considered in great length should the Town elect to develop an open space plan. It is both premature and well beyond the scope of this report to consider the potential impacts that open space funding programs might have on individual Town landowners. Yet, it goes without saying that individual landowners must carefully consider the potential financial and legal consequences of a prospective choice to conserve their land. Of equal importance is to better understand the continuum of landowners and their readiness to embrace various open space preservation options. The landowner with property passed down for many generations has certain needs and interests, while the speculative landowner might have very different concerns. This report provides information relevant to the variety of landowners currently owning land in the Town of Bethlehem.

## SECTION IV: SOURCES OF FUNDS – MUNICIPAL



In most situations where a landowner desires to participate in conservation of his/her property, funding will be required to provide consideration to the seller. Below are several common ways to acquire these funds for working with willing landowners in the preservation of open space using local (Town) sources.

### **A. APPROPRIATION OF TOWN FUNDS**

Localities may appropriate revenues derived from local property taxes to acquire interests in open lands or for its management and maintenance of acquired lands as part of the local budgeting process. Such appropriations are not subject to a permissive or mandatory referendum. Municipalities have been delegated the authority to assess and collect real property taxes under the New York State Real Property Tax Law. Property taxes are levies on the value of real estate. Local real property tax revenues may be expended for any valid local purpose under any of the many state statutes that delegate programmatic authority to municipalities, such as the General Municipal Law.

Municipalities may also ask their voters, via referendum, to approve a multi-year appropriation of a specified increase in the local property tax rate for the purpose of acquiring interests in open lands. For example, in 1997 voters in Greenburgh, Westchester County, NY, approved the creation of a multi-year property tax increase of one half of one percent (0.5%) to be deposited in a capital reserve fund and used for the acquisition of interests in open lands.

#### *Advantages to Town of Appropriation of Town Funds:*

- a. Does not always require referendum and could be expedient.
- b. May not result in tax increase if funds are re-allocated from existing accounts (but does require Town Board approval).
- c. Multi-year appropriations, once secured, are available quickly and amounts available more certain.

#### *Disadvantages to Town Appropriation of Town Funds:*

- a. Appropriations can cause a tax increase if funds are *not* allocated from existing accounts.
- b. Seeking voters' approval via referenda or other means, if chosen, can be cumbersome and time-consuming. They also can fail.
- c. Municipality must expend public dollars to purchase the property.
- d. Multi year appropriations may take time to accrue a sufficient fund for substantial purchases.

### **B. MUNICIPAL GENERAL OBLIGATION BONDS**

General obligation bonds are the most popular source of funding for land purchases. Bonds are essentially debt incurred by cities, states and other public entities to finance large public projects. The issuer agrees to repay the amount borrowed plus interest over a specified term – typically twenty (20) to thirty (30) years. General obligation bonds are backed by the “full faith

and credit” of the issuer. This means that the government entity is obligated to re-allocate revenues or to take whatever action is within its power to repay the debt.

In New York State, no State legislative approval is required for municipalities to enact bonds or property tax changes. Almost half of other states limit issuance of bonds through constitutional or statutory requirements.

Approximately eighty-nine percent (89%) of all open space bond referenda proposed in New York State were approved by voters between 1998 and 2004. This is higher than the national average of seventy-five percent (75%). In 2005, four New York State municipalities considered bond acts for preserving open space in 2005 as identified in Table 1 below.

**TABLE 1.: 2005 OPEN SPACE BOND REFERENDA**

<b>New York State Municipality (Population)</b>	<b>Action</b>	<b>Amount</b>
Beekman, Dutchess County (11,433)	<b>Passed</b> bond to buy land or conservation easements for farmland preservation	\$3 million
North Salem, Westchester County (5,173)	<b>Passed</b> bond to buy land or conservation easements for farmland preservation	\$2 million
Putnam County (95,745)	<b>Did not pass</b> bond for the protection of water quality of rivers, lakes and streams; natural land and open space acquisition; development rights to farms; and environmentally sensitive areas	Proposed amount was \$20 million
Yorktown, Westchester County (36,318)	<b>Passed</b> bond to purchase open space	\$5 million

***Advantages to Town of Municipal General Obligation Bonds:***

1. Bonds allow programs to commit large sums to open space preservation.
2. Bonds distribute the cost of acquisition over time.
3. Referendum provides voter support (or refusal).

***Disadvantages to Town of Municipal General Obligation Bonds:***

1. Interest paid on bonds increases the overall cost of the program (although municipal interest costs are relatively low given the tax exempt nature of the debt).
2. Bonds require careful coordination between identifying land purchase targets and bond enactment timeline; otherwise, there is potential for increased interest expense.
3. A referendum is required to authorize a bond purchase unless the period of repayment is less than 5 years; a referendum requires time and expenses to put an item on the ballot; and,

4. If the bond interest is not paid out of existing revenue, it might require an increase in local taxes for repayment.

### C. REAL ESTATE TRANSFER TAX (COMMUNITY PRESERVATION ACT)

A real estate transfer tax is a levy on property sales. It is typically a small percentage of the purchase price. Transfer taxes may be used to acquire land directly or to cover financing costs on bonds. Transfer taxes ensure that the level of funding is tied to development activity—funding increases when the real estate market is hot and drops off when the market cools.

There is no general New York State enabling legislation that permits municipalities to impose transfer taxes, so a municipality must first seek passage of specific enabling legislation from the state legislature pursuant to Municipal Home Rule Law Section 40. Under this provision, the chief executive officer of a municipality with the concurrence of a majority of the local legislature, or the local legislature itself by a two-thirds vote, may request that the state legislature pass a bill authorizing the imposition of a real estate transfer tax in that specific municipality. The request must state that a “necessity” exists for the revenues to be derived by the transfer tax and must present the facts demonstrating that necessity.

Once approved by the state legislature, the transfer tax must then be approved by local voters through a local referendum. The Towns of East Hampton, Riverhead, Shelter Island, Southampton and Southold (the “East End Towns”) successfully solicited, and the State legislature enacted, a state bill to impose a real estate transfer tax that funds the acquisition of open space on the eastern end of Long Island.

In New York State, the proposed Community Preservation Act, if enacted, would give Bethlehem and other communities the option to use the real estate transfer tax to preserve natural areas, working farms, and historic treasures, using sources they choose, such as a real estate transfer fee of two percent (2%) or less, without expressly requesting that the state legislature pass a bill authorizing the fee in that specific municipality.

In the Town of Warwick, Orange County, voters will be asked in November 2006 to consider a real estate transfer tax of three quarters of one percent (0.75%) that would be paid by the buyer. This one-time tax would apply to any purchase of houses in excess of \$100,000 and land in excess of \$50,000. If approved, this tax could net the Town about \$700,000 annually to continue to support the Town’s purchase of development rights (PDR) program approved in 1999.

#### *Advantages to Town of the Real Estate Transfer Tax:*

1. Would provide a funding stream that would not burden the entire population, only those involved in real estate transactions.

#### *Disadvantages to Town of the Real Estate Transfer Tax:*

1. Community Preservation Act has not been approved by the Legislature, and doesn’t appear as an option in the near future. Thus a municipality must seek town-specific enabling legislation from the NYS Legislature.
2. Can be controversial, and is actively opposed by the Realtors.
3. Funding stream is cyclical, depending upon the real estate market.
4. May increase the cost of housing.

5. Requires referendum even after passage of enabling legislation; referendum requires time and effort to put an item on the ballot.
6. Places burden on new property owner.

#### **D. SALES AND HOSPITALITY TAXES**

Sales and hospitality taxes are levies on retail sales imposed by states, local governments and special districts. Sales and hospitality taxes may be broad-based or targeted to a particular item. State constitutions and laws dictate whether local governments have the authority to levy such taxes. Albany County does have such an authority, and allocates sales tax revenues to municipalities as prescribed by law. The Town of Bethlehem, in turn, has the authority, if it chooses to exercise it, to allocate its share of county-derived sales tax revenue to devote to open space protection programs.

##### ***Advantages to Town of Sales and Hospitality Tax:***

1. In general, taxes provide a regular stream of revenue.
2. Because of the demographics of Albany County and the fact that many of the area's largest retail sales areas are outside of the Town, dollars spent outside the Town generate revenues back to the Town.

##### ***Disadvantages to Town of Sales and Hospitality Tax:***

1. Taxes are unpopular.
2. Raising or levying new taxes requires well-organized campaigns to generate and sustain public support.
3. Sales and property taxes are regressive and tend to fall disproportionately on lower-income people.

#### **E. LOCAL (PRIVATE) DONATIONS**

Municipalities could develop a voluntary fund dedicated to finance open space protection plans. These donations would be voluntary, and donations would be tax-deductible to the extent allowed by law. In addition, the municipality could designate a working group, to devise fund-raising events, create publicity, and manage the fund.

As an alternative, gifts and donations of land, in fee or easement, can be made to qualified not-for-profit organizations. Gifts of funds for acquisition of lands can also be made, and can be targeted to specific acquisition proposals. Some private foundations have been particularly active and important in land conservation in New York State. Foundation funding may continue to be an important source of conservation funds in the future.

On August 3, 2006, Congress approved an expansion of the federal conservation tax incentive for conservation easement donations occurring in 2006 and 2007. On August 17, the President signed it into law. The new law:

- Raises the deduction a landowner can take for donating a conservation easement from thirty percent (30%) to fifty (50%) of their income in any year;
- Allows qualifying farmers and ranchers to deduct up to 100% of their income; and
- Extends the carry-forward period for a donor to take tax deductions for a voluntary conservation agreement from five (5) to fifteen (15) years.

*Advantages to Town of Local Private Donations:*

1. Would not require an increase in taxes.
2. Could be used as an adjunct to leverage other funding streams.

*Disadvantages to Town of Local Private Donations:*

1. Funding streams would be unpredictable.
2. Amounts raised might not alone support the cost of land or easements.
3. Raising private funds is highly labor-intensive and very competitive.
4. Town may have additional costs for maintenance and liability.
5. Amounts raised would typically not be substantial.

**F. PARK SET ASIDES OR FEES**

The Town of Bethlehem already employs an approach, as allowed under State law, for providing parkland as part of the development approval process. The Town has Parkland Reservation standards that require that specific amounts of parkland be set-aside for the public's use as part of proposed residential developments requiring subdivisions or site plan approval. Alternatively, the Town may ask for specific fees in lieu of parkland, up to \$1,550 per single-family detached dwelling, which then go into an earmarked fund for public parkland purchase or park improvements. Currently, the Town generally requires the payment of fees in lieu of land. Although it might be a less likely alternative, the Town could ask for parkland in appropriate cases where the criteria are met.

*Advantages to Town of Park Set-Asides or Fees:*

1. A cost-free or low-cost approach to preserving open space.
2. Does not require referendum or public vote; thus, can be accomplished sooner.
3. Can be effective in developing an integrated trail network.
4. Can be coordinated with other open space preservation efforts.
5. Can preserve or create open space within new developments.

*Disadvantages to Town of Park Set-Asides or Fees:*

1. Funding and protection are dependent upon development, which can be unpredictable.
2. Open space preservation options are restricted to parkland.
3. May be opposed by developer and realtor groups.
4. May not preserve large tracts of intact land or priority lands.
5. May increase or encourage fragmentation of natural areas.
6. The quality of set-asides may not always be high.
7. Set-asides are localized and only those who reside in a development might have access to, and use of the set aside.

## SECTION V: SOURCES OF FUNDS – STATE AND FEDERAL



In situations where a landowner desires to participate in a conservation program there are also external funding sources available. Some of these include State and federal government grants, which provide funds for the acquisition of priority projects; some provide funds towards protection plans or protection projects. Some of these programs provide funds to the municipality, while in other programs detailed herein, the funding goes directly to the landowner willing to solicit these funds. Further, there are organizations, which are private non-profit organizations, which acquire easements or stewardship of either private or public lands.

### **A. NEW YORK STATE ENVIRONMENTAL PROTECTION FUND (EPF)**

The New York State Legislature, in 1993, created the State Environmental Protection Fund (EPF), which among several other environmental purposes provides funds for the acquisition of priority projects identified in the New York State Open Space Conservation Plan (the Plan). The EPF was funded in New York State Fiscal Year 2006-2007 at \$225 million annually, and provided \$50 million for State-level land acquisitions identified in the Open Space Conservation Plan. Another \$23 million was earmarked for farmland protection and \$5 million for the Hudson River Estuary Program. Under existing law, approximately \$125 million of state revenues are automatically deposited into the EPF each year. Ninety percent (90%) of these revenues (\$112 million per year) are derived from a portion of the state's Real Estate Transfer Tax.

The EPF also provides funds for several other open space-related activities promoted in the Plan, including a State Farmland Protection Program (FPP) administered by the State Department of Agriculture and Markets, the Municipal Parks and Historic Preservation Grants Program administered by the Office of Parks, Recreation and Historic Preservation (OPRHP), State land stewardship, local waterfront revitalization grants, the implementation of the Hudson River Estuary Action Plan, Biodiversity Stewardship, and local open space and land use planning assistance.

Potential State land conservation projects undergo a review process from identification to completion, including determinations (in the following order) of whether:

- the parcel is within a Priority Project area;
- the project meets Category Definition and minimum subcategory qualifications;
- the project is vulnerable to conversion to inappropriate use or meets a critical program; and
- other methods do not provide protection, such as voluntary programs or land use protections.

If a project meets all these criteria, then further determinations are made based on location, availability, easement possibility, cost vs. value, human benefits, advice from the State Land Acquisition Advisory Council (SLAAC), and other factors.

Other revenue streams dedicated to the EPF include sources such as income from the sale of surplus state lands, the leasing of underwater State-owned lands, and New York's "open

space” license plates. EPF funds are used for a variety of purposes, including farmland and open space protection, parks projects and solid waste management, among others.

### **1. Farmland Protection Program**

New York State’s Farmland Protection Program was enacted in 1992 as part of the Agricultural Protection Act. The program encourages counties and Towns to work with farmers to promote local initiatives that help maintain the economic viability of agriculture and protect the industry’s land base. Under this program, funds are available to develop county agricultural and farmland protection plans and implement farmland protection projects. Since the enactment of the Agricultural Protection Act, more than 49 counties (including Albany County) have received planning grants to develop agricultural and farmland protection plans.

New York’s Farmland Protection Program (FPP) was first funded in 1996. Funds for the Purchase of Development Rights (PDR) program have been allocated from the EPF and the open space account of the Clean Water/ Clean Air Bond Act. However, as funds from the Clean Water/Clean Air Bond Act have been committed, the State’s EPF budget is currently the only funding source for the PDR program.

Since the inception of New York State’s Farmland Protection Program, the State has awarded nearly \$68 million to counties and towns for protecting 28,000 acres of farmland on over 136 farms in 15 counties. In each grant round, requests have far exceeded the available funding. For example, in 2004 requests totaling nearly \$86 million competed for \$12.6 million in funding. Based on widespread interest in this program around the State, funding requests are expected to increase.

Under EPF, funding for conservation easements is limited to seventy-five percent (75%) of the difference between the appraised market and farm values of a property. While some landowners are willing to accept less than 100% of the value of their development rights, others are not. Where they are not, municipalities and not-for-profit land trusts may make up the difference. The recent preservation of Indian Ladder Farms in New Scotland was the result of a partnership approach between the State, the Open Space Institute, the Mohawk Hudson Land Conservancy and the Town of New Scotland.

### **2. Hudson River Estuary Program**

Established in 1996, the Hudson River Estuary Program (HREP) has three primary objectives: conserving natural resources, promoting use and enjoyment of the River, and addressing pollution. Depending on Action Plan priorities, which are periodically re-evaluated, grant funds are available to meet these objectives, with open space planning, inventory, and acquisition an element of the 2006-2007 grant cycle.

Planning grants typically involve mapping and assessing open lands, establishing acquisition priorities, and listing strategies for conservation. Funding amounts for acquisition range from \$10,000 to \$100,000 and priority is given to lands located on or in sight of the Hudson River and its tidal tributaries. However, any property in the Hudson River watershed will be considered. Priority is given to projects that conserve scenery, habitat, landscape character, and/or provide for wildlife-related recreation and Hudson River access.

HREP grants require matching funds and state assistance may fund up to 75% of approved eligible project costs. Program boundaries include the Hudson River Estuary, from the Troy dam south to the Verrazano Narrows, and the surrounding watershed, also known as the Hudson River Valley. The Town may reside within the HREP program boundaries, and may thus be eligible for HREP funding although it is currently unclear how much of the Town could be considered in the priority estuary/buffer area.

***Advantages to Town of EPF/FPP/HREP:***

1. State funding for open space and farmland protection is increasing. It is now \$100 million, or half of the \$200 million total appropriation for 2006-2007.
2. EPF would provide protection of priority lands in perpetuity at no cost to local taxpayers (local matches are required for FPP/HREP land acquisition grants).
3. Land acquired via FPP remains on the tax rolls if only development rights are purchased.
4. Protected farmland maintains a viable industry that contributes to the local economy.

***Disadvantages to Town of EPF/FPP/HREP:***

1. Funding can fluctuate depending on State's fiscal situation.
2. Funding applications are complex and funding decisions can take a long time.
3. Process is very competitive for a limited amount of funds.
4. For EPF/HREP, lands must have "priority" ecological or environmental value; e.g., in Bethlehem the Five Rivers buffer area and the Hudson River Estuary area are eligible.
5. Land acquired via EPF would come off the local tax rolls.
6. Given Bethlehem's higher than average land cost per acre, it is less likely that it would be competitive for FPP grant funding than other areas of the State.
7. To be most successful, requires critical mass of farms to maintain the infrastructure to support an agricultural economy.

**B. CLEAN WATER STATE REVOLVING FUND (CWSRF)**

The Clean Water State Revolving Fund (CWSRF), administered by the State Environmental Facilities Corporation (EFC) and DEC, was created in 1987. An amendment to the Clean Water Act enabled states to establish loan funds to finance water quality improvement projects, including traditional wastewater treatment facilities, programs that reduce nonpoint sources of pollution such as land acquisition, and projects identified in Comprehensive Conservation and Management Plans approved by the U.S. Environmental Protection Agency. In New York, these include the Long Island Sound, NY/NJ Harbor and Peconic Bay Estuaries.

In the past, the City of Rye in Westchester County used a \$3.1 million CWSRF short-term, zero-interest loan to acquire and protect crucial land in the Long Island Sound Estuary. This land acquisition, recommended in the Comprehensive Conservation and Management Plan for the Long Island Sound, will protect water quality and preserve and improve the waterfront, tributaries and wetlands within the City.

The CWSRF's low interest rate financing can save a substantial amount on project costs and can provide a significant new source of funding for the protection of locally important open space resources that improve water quality. However, increased use of the CWSRF by qualified land trusts and conservation organizations could increase the competitiveness of accessing funding.

***Advantages to Town of CWSRF:***

1. Low interest rate financing saves on project costs.

***Disadvantages to Town of CWSRF:***

1. Competition for funds is increasing.
2. Funding limited to water-quality-related open space projects.
3. This is a loan, which must be repaid.

**C. FEDERAL LAND AND WATER CONSERVATION FUND (LWCF)**

Since 1965, New York's bond act funds for acquisition of land and development of outdoor recreation facilities have been coupled with monies allocated to the states by the U.S. Department of the Interior from the Land and Water Conservation Fund (LWCF) for land acquisition and development for outdoor recreation. Since 1965, New York State has received more than \$201 million from this fund. In Federal Fiscal Year 2007, a total of \$25 million is proposed to acquire seventeen (17) tracts in the United States. None have been proposed for New York State.

Under the provisions for the administration of the LWCF, the state or municipality must provide a 50/50 match against the federal funds. States also have the option of passing the federal funds through to local governments and not-for-profits on a matching basis. In this way, the federal program provides an incentive to the states, local governments and others to establish a source of funds with which to match the federal dollars.

New York and other states are required to develop and maintain a State Comprehensive Outdoor Recreation Plan (SCORP). This policy and assessment document and New York's Open Space Planning Guide provide the guidance for the allocation of LWCF monies. Revenues from federal offshore oil and gas leasing, up to a maximum of \$900 million, are credited to the LWCF account. Demand for LWCF funding continues to be high. This fund is currently being accessed by the County of Albany for the preservation of the rail corridor between the Port of Albany and Voorheesville.

***Advantages to Town of LWCF:***

1. Land purchased becomes part of National Forest System, and is preserved in perpetuity.

***Disadvantages to Town of LWCF:***

1. Requires 50/50 match from localities.
2. Competition for funds is high.
3. Must meet National Forest system objectives.
4. In some cases, the removal of land from the tax rolls might result in a reduction in net revenues to the Town.
5. Application process can be complicated.

#### D. FEDERAL FARM SECURITY AND RURAL INVESTMENT ACT

The Farm Security and Rural Investment Act ("Farm bill") was passed by Congress in May 2002. The monies obtained through these programs go directly to the landowner who is willing to participate in the program, not to the municipality. The Town can play a role in this process by helping to promote awareness of the program to Town property owners. Several sections provide funding beneficial to New York State's open space program. Below are examples of such federal programs:

- *The Wetlands Reserve Program (WRP)* was added to the Farm Bill in 1990 and also reauthorized under the 1995 and 2002 farm bills. The WRP provides financial incentives and technical assistance for the restoration and protection of wetlands. There are three contract options available to landowners: permanent easement, 30-year easement, or restoration agreement. For permanent easements, 100% of all eligible costs and the appraised agricultural value of the land are paid. For 30-year easements, 50-75% of eligible costs and the appraised land value are paid. On restoration agreements, no easement is purchased, but 75% of restoration costs are paid by the Natural Resource Conservation Service (NRCS) and the landowner agrees to maintain compatible practices for 15 years.
- *Environmental Quality Incentives Program (EQIP)* was established in the 1996 Farm Bill to provide a voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and related natural resources. In the 2002 Federal Farm Security and Rural Investment Act reauthorization, EQIP has been funded at \$9 million.
- *Conservation Security Program (CSP)*. The 2002 Federal Farm Bill establishes this new program for fiscal years 2003 through 2007 to reward stewardship and provide an incentive for addressing additional resource concerns on agricultural working lands.
- *Conservation Reservation Enhancement Program (CREP)*. The goal of CREP is to encourage farmers in their efforts to reduce the amount of nutrients and sediments entering priority waters and public wellhead areas. CREP participants place environmentally sensitive land near streams, lakes, water bodies and public wellhead areas into a protective vegetative cover for a period of 10-15 years. In return, farmers are paid annual rental payments and reimbursed for establishing recognized conservation practices. Enrollment for this program is on a "rolling" basis.
- *Conservation Reservation Program (CRP)*. The goal of the CRP is similar to that of the CREP, except that the focus of the funding is to address soil erosion. In addition, the enrollment period is limited. In Albany County, CRP has issues some 30 contracts to address soil erosion covering 500 acres of land.

##### ***Advantages to Town of Farm Bill Funds:***

1. Can protect or improve quality of public water supplies.
2. Establishes and increases wildlife and aquatic habitat.

##### ***Disadvantages to Town of Farm Bill Funds:***

1. Protected lands may or may not meet Town's priority criteria for preservation of open space.

**SECTION VI: CONSERVATION METHODS, FORMS AND OWNERSHIP ALTERNATIVES**



From the public's standpoint, the most ideal form of land conservation resides with the private property owner who voluntarily commits to the permanent or long-term conservation of their property in an undeveloped or limited development state. From a governmental and taxpayer perspective, this might be the optimum method to achieve a community's open space goals and objectives with minimal public investment. The private property owner might operate an agricultural operation, conservancy, private recreation facility or simply reside on the property. This report identifies many of the tools and programs that might be available to encourage private property owners to conserve land. Land conservation can take many forms in addition to private ownership and stewardship. The following are some of the methods, forms and ownership alternatives that exist.

**A. PURCHASE/OWNERSHIP OF PROPERTY BY TOWN**

When a municipality purchases a property, it acquires the full legal title to the parcel. To do so, of course, the municipality pays the willing landowner the full market value of the property or a negotiated lesser amount and makes this payment at the time of acquisition. The municipality also assumes full legal responsibility for, and all costs of maintaining, insuring and policing/protecting the property. Such acquired open lands are an asset on the books of the local government and are removed fully from the property tax rolls.

*Advantages to Town of Purchase/Ownership of Property by Town:*

1. Land remains at the disposal of the municipality for a variety of uses.
2. Land is an asset on the books of the local government.
3. Land protection is usually permanent, so long as Town retains property and agrees to do so.

*Disadvantages to Town of Purchase/Ownership of Property by Town:*

1. Property comes off the tax rolls.
2. The municipality must expend public dollars to maintain, insure, patrol and protect the property.
3. Outright purchase of the property might increase the Town's liability.
4. Land can be sold, although parkland is subject to legislative approval.

**B. NOT-FOR-PROFIT LAND TRUSTS**

Land conservation organizations, or land trusts, are non-profit organizations that actively work to conserve land by undertaking or assisting in acquiring land for conservation by acquiring easements, or by its stewardship of such land or easements. Land trusts work with willing landowners who are interested in protecting their undeveloped properties. Land trusts often work cooperatively with government agencies by acquiring or managing land, researching open space needs and priorities, or assisting in the development of open space plans. While many frequently work cooperatively and with high standards, care should be

taken to be sure that no impropriety or conflict of interest exists between the private organization and the Town.

Local and regional land trusts (including, but not limited to, the Mohawk-Hudson Land Conservancy, Open Space Institute, Scenic Hudson and The Nature Conservancy), organized as charitable organizations under federal tax laws, are directly involved in conserving land for its natural, recreational, scenic, historical and productive values. Land trusts may purchase land for permanent protection, or they may use one of several other methods, including but not limited to: accepting donations of land or funds, accepting a bequest, or accepting the donation of a conservation easement, which permanently limits the type and scope of development and in some cases the activities that can take place on that land. In some instances, land trusts also purchase conservation easements. There can be tax advantages to a willing landowner, who should consult with their tax professional regarding same. Additionally, as this is a serious legal obligation, it would be in the best interest of an interested party to consult with a legal professional regarding the loss of their property rights and encumbrances on activities, which may occur under this option.

There are currently several preserved land trust sites in Bethlehem. The land trusts operating in the area tend to have priority preservation policies and general areas within which they would like to direct future preservation efforts. This provides an opportunity to coordinate Town and land trust efforts for maximum effectiveness and potential cost savings.

***Advantages to Town of Land Trusts:***

1. May be closely tied to the communities in which they operate.
2. Can accept, hold, and maintain lands with conservation values.
3. As private organizations, land trusts can be more flexible and creative than public agencies and can act more quickly.

***Disadvantages to Town of Land Trusts:***

1. Land trusts usually have broader service areas than one municipality, and thus need to address land protection issues through their service areas to remain viable.
2. Some smaller land trusts that have a local focus have limited funds and staff.
3. Properties acquired via "fee simple" are removed from tax rolls.
4. Criteria of some trusts may not be congruent with those of a municipality.
5. Conservation easements, if used, require monitoring.

**C. PURCHASE OF DEVELOPMENT RIGHTS (PDR) & PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS (PACE)**

A conservation easement is a deed restriction a landowner voluntarily places on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. They are used by willing landowners ("grantors") to authorize a qualified conservation organization or public agency ("grantee") to monitor and enforce the restrictions set forth in the agreement. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They may cover an entire parcel or portions of a property. The willing landowner usually works with the prospective grantee to decide which activities should be limited to protect specific resources. Agricultural conservation easements, for example, are designed to keep land available for farming.

A variation of this easement could include a “mutual use agreement,” where a willing landowner grants access over or through his or her property to enhance or accommodate uses granted through an easement. This access could be in exchange for money or it could be in exchange for maintenance. The arrangement would allow both uses to co-exist. These easements should be reviewed with legal counsel to assure full understanding by the landowner prior to its execution.

In general, agricultural conservation easements limit subdivision, non-farm development and other uses that are inconsistent with commercial agriculture. Some easements allow lots to be reserved for family members. Typically, these lots must be small (one to two acres is common) and located on the least productive soils. Agricultural conservation easements often permit commercial development related to the farm operation and the construction of farm buildings. Most do not restrict farming practices, although some grantees ask landowners to implement soil and water conservation plans. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.

Most agricultural conservation easements are permanent. Term easements (see below) impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. An agricultural conservation easement can be modified or terminated by a court of law if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain proceedings, result in higher easement values. However, the Agricultural Districts law may limit eminent domain in agricultural districts.

Generally, PDR programs target a specific area of a municipality that qualifies for participation in the program, depending on program goals. Landowners in this area may voluntarily submit applications for sale of their development rights and these applications are evaluated based on a rating system developed for that purpose. For instance, size of parcel, productivity, location and other factors would be considered. Often, PDR programs try to preserve a “critical mass” of land. Because preserved lands can and do attract development at their edges, it is important to have zoning in place that minimizes this potential and provides appropriate setbacks and buffers.

A handful of counties and Towns in New York have developed PDR programs to augment State Farmland Protection and open space protection funds, including Dutchess and Saratoga counties, the Towns of Warwick and Wilton and the City of Saratoga Springs, among others. The Town of Wilton has a joint PDR program with The Nature Conservancy. Scenic Hudson has a PDR program that is preserving a critical mass of farmland along the Hudson River.

Donated agricultural conservation easements that meet Internal Revenue Code section 170 (h) criteria are treated as charitable gifts. Donors can deduct the value of the easement up to 30 percent of their adjusted gross income in the year of the gift. Corporations are limited to a 10-percent deduction. Easement donations in excess of the annual limit can be applied toward federal income taxes for the next five years, subject to the same stipulations.

Individuals interested in tax reduction information should contact a tax professional to advise them specifically. Generally speaking, New York state tax codes direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers

property taxes on restricted parcels if the land is not already enrolled in a differential assessment program (and, sometimes, even if it is already enrolled). Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry, rather than its “highest and best” use, which is generally for residential, commercial or industrial development. The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. However, as federal estate tax thresholds increase, there may be less incentive from an estate tax perspective.

Recent changes to federal estate tax law, enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, expanded an estate tax incentive for landowners to grant conservation easements. The new law removes geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code. Executors can elect to exclude forty percent (40%) percent of the value of land subject to a donated qualified conservation easement from the taxable estate. This exclusion is limited to \$500,000. The full benefit offered by the new law is available for easements that reduce the fair market value of a property by at least thirty percent (30%) percent. Smaller deductions are available for easements that reduce property value by less than thirty percent (30%). By reducing nonfarm development land values, conservation easements may help farmers and ranchers transfer their operations to the next generation.

New York State landowners whose land is restricted by a donated conservation easement also receive an annual, refundable state income tax credit equal to 25% of the combined town, county, and school taxes paid on the land during the previous tax year.

The Conservation Easement Tax Credit recognizes the ongoing public benefits provided by privately owned land that is permanently protected by a conservation easement. It helps landowners bear the annual costs of providing these public benefits by offering a state income tax credit for an equivalent portion of the property taxes paid on the protected land.

New York land trusts report that the lack of property tax relief is the single greatest barrier to easement donations. The Conservation Easement Tax Credit lowers that barrier. The Conservation Easement Tax Credit is the first program of its kind in the nation, providing not only tax relief, but also an incentive for landowners to annually recognize and abide by the terms of their easements.

The Conservation Easement Tax Credit's greatest impact will be on landowners such as farmers and retirees who have modest incomes and are unlikely to benefit significantly from existing tax deductions. It will provide them with an incentive to make a gift of perpetually conserved land that they otherwise could not afford to make. However, this is not true of farmers who make the majority of their income from farming, as they get a school tax credit from NYS for the full amount of school taxes paid

***Advantages to Town of PDR/PACE/Tax Credits:***

1. Flexible, and can be tailored to meet the needs of individual farmers and unique properties.
2. Results in no revenue loss to municipalities or schools – if the assessment doesn't change.

*Disadvantages to Town of PDR/PACE/Tax Credits:*

1. Monitoring and enforcing conservation easements requires a serious commitment on the part of the easement holder, as it requires an investment of time and resources.
2. Demand for programs outstrips availability of funds.
3. PDR/PACE process can be time consuming.
4. May result in revenue loss to municipalities or schools if assessment is lowered and there is not a concomitant reduction in the cost of public services attributable to the property.

**D. LEASE OF DEVELOPMENT RIGHTS (LDR) & TERM CONSERVATION EASEMENTS (TCE)**

A lease of development rights ("LDR") program is one in which a municipality acquires the development rights of a parcel for a period of years rather than in perpetuity. In exchange for restricting development on his or her property and using best management practices, the landowner receives preferential tax treatment in the form of further reduced property taxes (beyond the reduction already allowed for farm operations and open space), and/or a yearly rental payment. A benefit to the Town of this approach is that it is a stopgap measure that can help slow the loss of farmland and open space until permanent protection can be obtained.

A benefit to the landowner is that he or she retains the possibility of developing the land in the future and thus maintains the property's long-term equity value. The Town could use its municipal authority to issue installment sale obligations, which is discussed further in section V-A. above.

To date, no community in the state has enacted an LDR program where lease payments are made to the landowner for not developing land. However, at least two communities (including Clifton Park) have created TCE programs where, in exchange for preferential tax treatment, a landowner agrees to restrict development on his or her property by entering into a conservation easement with the municipality for a specified period of years.

*Advantages to Town of LDR/TCE:*

1. Less expensive than outright purchase or purchase of development rights of property.
2. Property remains on the tax rolls of the Town, albeit assessed for a reduced amount.

*Disadvantages to Town of LDR/TCE:*

1. Does not preserve land in perpetuity.

**E. TRANSFER OF DEVELOPMENT RIGHTS (TDR)**

Transfer of development rights (TDR) programs allow willing landowners to transfer the right to develop one area of land to a different area of land within the same municipality or a neighboring municipality. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services. TDR can also be used to protect other types of open space. The area of land where the rights originate is called the "sending" area. When the rights are transferred from a sending area, the land is restricted

with a permanent conservation easement. The area of land to which the rights are transferred is called the "receiving" area.

Buying these rights generally allows a developer to build within the receiving area at a higher density than ordinarily permitted by the base zoning. Rights are bought and sold on the open market. Receiving areas in Bethlehem, for example, could be any new area the Town might want to plan for development along the riverfront as part of the upcoming LWRP process, as was discussed in the Town's comprehensive plan or any of the new hamlets already planned and zoned. Other receiving areas could be areas adjacent to or within Delmar, Glenmont or Selkirk that might be appropriate to upzone (i.e., increase density).

TDR programs are based on the concept that property owners have a bundle of different rights, including the right to use land, lease, sell and bequeath it, construct buildings on it and mine it, subject to reasonable local land use regulations. Some or all of these rights can be transferred or sold to another person. When a landowner sells property, generally all the rights are transferred to the buyer. TDR programs enable landowners to separate and sell the right to develop land from their other property rights. TDR is most suitable in places where large blocks of land remain in farm or open space use and where there are significant growth pressures. In communities with a fragmented agricultural land base, it is difficult to find a viable sending area. Jurisdictions also must be able to identify receiving areas that can accommodate the development to be transferred out of the farming or open space area. The receiving areas must have the physical capacity and infrastructure to absorb new units, and residents of those areas must be willing to accept higher density development. Often, residents of potential receiving areas must be persuaded that the benefits of protecting farmland or open space outweigh the costs of living in a more compact neighborhood programs because they involve the private market. Alternatively, TDR sending areas could consist of entirely new planned hamlets, where opposition would be minimal.

Most TDR transactions are between private landowners and developers. Local governments generally do not have to raise taxes or borrow funds to implement TDR. Some jurisdictions have established TDR banks to facilitate the start-up of TDR programs. A TDR bank can buy development rights with revolving public funds and sell the rights to private landowners, using revenues to purchase additional rights. A TDR bank can also make up the difference between appraised farm/open space and development values of property if market offers for TDRs are inadequate.

TDR programs generally require significant downzoning of sending areas so that landowners will be motivated to sell rather than use their development rights on-site. TDR programs are fairly complex to develop but low-cost and with great potential for effectiveness.

Recently, the New York Planning Federation received a grant from the Schenectady Foundation to help the Town of Glenville and Village of Scotia develop a TDR program.

***Advantages to Town of TDR:***

1. TDR promotes orderly growth by concentrating development in areas with adequate public services.
2. TDR programs can accomplish multiple goals, including farmland protection, protection of environmentally sensitive areas, the development of compact urban areas, the promotion of downtown commercial growth and the preservation of historic landmarks.

*Disadvantages to Town of TDR:*

1. TDR programs are technically complicated and require a significant investment of time and staff resources to implement.
  2. May increase Town liability and maintenance costs.
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**SECTION VII: REGULATORY METHODS, MATCHING AREAS OF CONSERVATION INTEREST WITH DEVELOPMENT OPTIONS**



The CACC respects the community's desire to enhance the Town's attractiveness by minimizing unplanned and haphazard development and by placing a high value on open space protection. Towards this end, the Town has already taken important regulatory steps by amending its Zoning Law and Subdivision Regulations in both 2005 and 2006. Of the methods outlined in this section, the Town has already enacted average density and conservation design regulations, voluntary tools that can be utilized by a subdivision applicant. The Town has also adopted several forms of mandatory natural resource zoning tools as identified in paragraph B below.

The use of regulatory methods to conserve open space is naturally controversial. The potential conflict between the rights of an individual property owner and the interests of the community at large is an issue facing many communities like Bethlehem that are coping with significant growth pressures. While regulatory methods can be effective in mitigating the negative impacts of excessive development, they can also limit a property's development potential and potentially affect its market value. As outlined in the Preface to this report, the use of regulatory methods to protect open space in the Town of Bethlehem is shaped by its comprehensive plan, which emphasizes the importance of balancing a variety of interests in considering this important topic.

**A. CONSERVATION AND AVERAGE DENSITY SUBDIVISION DESIGN**

With the 2005 and 2006 amendments to the Town Zoning Law and Subdivision Regulations, the Town also has established two new voluntary tools to encourage open space protection and open space sensitive design. Conservation Subdivision standards encourage clustered development that could result in additional permanently preserved open space of forty percent (40%) or greater of the project site. While this open space would normally be private, the Town offers an incentive for the provision of public trails, recreation or waterfront. Average Density Subdivision standards encourage creativity and context sensitive design in furthering the Town's Comprehensive Plan's objectives of protecting natural and open lands and organizing the open space parcels into a continuous open space system. Unlike Conservation Subdivision, Average Density Subdivision does not offer density incentives but rather offers flexibility to developers by providing relief from minimum lot size requirements.

*Advantages to Town of Conservation and Average Density Design Subdivisions as part of development proposals:*

1. A cost-free or low-cost approach to preserving open space.
2. Does not require referendum or public vote.

3. Can be effective in developing an integrated network or open space.
4. Can be coordinated with other open space preservation efforts.
5. Is done on a willing basis by the developer.

***Disadvantages to Town of Conservation and Average Density Design Subdivisions as part of development proposals:***

1. Protection is dependent upon development, which can be unpredictable.
2. Use is voluntary and may not be development approach chosen by developer.
3. May not preserve large tracts of intact land or priority lands.
4. May increase or encourage fragmentation of open space.
5. Conserved land may become a public burden if not properly maintained by a private owner.

**B. NATURAL RESOURCE ZONING (SET-ASIDES)**

In amending its Zoning Law and Subdivision regulations in 2005 and 2006, the Town established new land use tools that, among other things:

- a) Encourage the set aside of open space within new subdivisions;
- b) Provide for larger-lot (2 acre) zoning in areas deemed appropriate;
- c) Regulate erosion, sediment control, steep slopes and lots bordering streams; and,
- d) Exclude constrained lands in calculating maximum development density.

Often, zoning and subdivision codes can define “constrained lands” which are generally not buildable and consist of wetlands, steep slopes, flood plains, and open bodies of water, including streams, lakes and ponds. The Bethlehem Zoning Law defines and uses “constrained lands” to define undevelopable land on a site and is used in conjunction with the applicable density requirement to determine appropriate development for that site. The “set-asides” can include constrained lands in which a commitment is made to protect or deed the land to a municipality or some other entity.

Natural resource zoning can also be used to limit development in areas such as prime farmland, aquifer recharge areas or wildlife habitat. Natural resource zoning can take several forms, including large-lot zoning, such as ten (10) acre lot minimums (intended to keep impervious surfaces to a minimum in an important watershed area.), or a twenty-five (25) acre minimum (to keep farmland in production). More effective and less land-consumptive is a density-standard approach, in which one dwelling is allowed for a given number of acres and the grouping of dwellings. This is the approach manifested in the Town’s recent zoning amendments.

This type of zoning can be applied as part of a conventional zone or an overlay, where boundaries follow natural features rather than lot lines. Overlay zones impose additional standards on top of those already in place. Flood hazard zones are one example of such an overlay. Some communities have also used “scenic” overlay standards. “Free-floating” standards in the zoning and subdivision ordinances can extend protection to open spaces and natural resources that may be scattered over a wide area. For example, a community may

issue a standard that prohibits clear-cutting along all streams and slopes of fifteen percent (15%) or greater that applies community-wide.

***Advantages to Town of Natural Resource Zoning:***

1. Can preserve critical habitat administratively.
2. Does not require a large up-front dollar investment to protect open space.
3. Is uniformly applicable throughout the municipality.

***Disadvantages to Town of Natural Resource Zoning:***

1. Can restrict development, and would thus be unpopular among developers and realtors, and others.

**C. OFFICIAL MAPS**

New York State Town Law §270 allows communities to identify desired future street corridors, drainage systems, and park locations on an official map. Currently only one community in the Capital Region, Niskayuna, uses such a map, and only for siting street layouts. Adopting such a map gives a community, in effect, the “right of first refusal” to purchase an identified road or infrastructure corridor, either prior to or when the site is proposed for development. Alternatively, if the identified site is part of a residential subdivision proposal in a community that has adopted a local parkland reservation law, the community may request that the site be set aside by the developer. The development of an Official Map is a Tier I recommendation of the Comp Plan although its clear intent is for the purpose of protecting future road corridors, not open space protection.

***Advantages to Town of Official Maps:***

1. Can be used to supplement an open space plan.
2. Provides certainty to developers and others of locations of proposed parkland sites.
3. Facilitates linking of trails community-wide.
4. Does not require a large up-front dollar investment to protect open space.

***Disadvantages to Town of Official Maps:***

1. Can depress values of private property, thus also reducing tax revenues.
2. Can restrict development, and would thus be unpopular among developers and realtors, and others.

**D. LANDS OF CONSERVATION INTEREST MAP**

The Implementation and Action Plan of the Comp Plan raised the consideration of an inventory of the Town's farmland, open space and natural resources through the creation of a mapping tool, sometimes referred to as a lands of conservation interest map. The use of such a map was a controversial topic during the comprehensive planning process. Because there was not consensus among Town residents that this would be beneficial, it was not recommended for immediate implementation but rather for further consideration at a later date. The use of an involuntary inventory tool for open space protection conflicts with the Comp Plan's deference to willing landowners in the development of a Town-wide open space network. Consequently, the development of such a map would require further outreach to landowners, research, public input, consensus building and development of new Town policy.

***Advantages to Town of Lands of Conservation Interest Map:***

1. Can be used to supplement an open space plan.
2. Provides certainty to developers and others of locations of proposed areas of conservation interest.
3. Facilitates linking of open space and natural resource assets Town-wide.
4. Does not require a large up-front dollar investment to protect open space.

***Disadvantages to Town of Lands of Conservation Interest Map:***

1. Can restrict a property's development potential, which may be unpopular among affected property owners, developers and realtors.
2. Requires significant financial investment to develop the map.
3. In some cases, the value and market appeal of a property might be diminished.

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**SECTION VIII: NEXT STEPS**



The funding sources, methods and techniques listed in this report can be used individually, or in any combination to suit the Town's particular open space protection needs. For example, these could include:

- Implementation of the required process to issue an open space bond;
- Adopting real estate transfer taxes that fund the payments on a bond enacted to purchase open space;
- Using Town appropriations, such as those generated through the re-allocation of existing budgeted funds, bond proceeds, or dedicated taxes to leverage other funds or enhance capital raised through local donations to a dedicated capital fund for the purchase of open space;
- Dedicating a portion of increased tax revenues from new business parks to stewardship/maintenance of created set-asides (as is being done currently on Route 9W in Greene County); or
- Any other combination.

Using a hybrid approach carries the advantages of being potentially less costly than outright bonding or purchase of open space; it may not require tax increases; and is flexible in that it can be adapted to fit various situations. The hybrid approach does, however, carry the disadvantages of being more complicated than individual approaches; it may require a longer time to effect than single approaches; and precedents to gauge the success or failure of a particular approach may not exist. Alternatively, the Town could elect not to attempt to develop any type of dedicated funding mechanism or employ any tools for open space preservation.

While it is true that an acre of land developed into residential properties generates more tax revenue than an acre of farmland or open space, farmland and open space require less infrastructure expenditures compared to residential areas. According to an August 2004 study

of sixty-seven (67) communities (including eleven in New York State) by the Farmland Information Center, working farmland and open land cost municipalities a median of \$0.36 per dollar of tax revenue raised compared to about \$1.15 per dollar raised for residential areas. Taking no action to preserve farmlands and open space intact could thus lead to a drain on municipal revenues or tax increases if no action is taken to preserve these areas and they are subsequently developed into residential subdivisions.

Although taking no action would be the least costly of all approaches in the short run, and would require no additional allocation of tax revenues, it would not preserve open space; would result in many opportunities to preserve open space being lost; and it could be politically unpopular. Additionally, in the long run, taking no action would likely cost communities more due to the increased service costs to schools and communities resulting from increased residential development.

It should be noted with the majority of the methods listed above there are additional actions, which may be required by the Town to make them feasible. Some require matching funds or are loans, which must be repaid. Further, with any type of property acquisition or in the situation of trails/bike paths, there will be maintenance costs and other costs of patrolling, insuring and structural costs for signage and fences where necessary. Some of the above-methods include the development of grant applications, which is time consuming and not without its own costs.

It is hoped that the Town Board will evaluate each of the funding methods, sources and allocation techniques in light of current and future protection opportunities that may arise to find the best funding source for a particular opportunity. The CACC is ready and willing to assist the Town Board in effecting any next steps the Town determines to be appropriate. Should the Town Board desire to pursue any of the programs and tools identified in this report, the CACC believes that it should consider the development of a Town of Bethlehem Open Space Plan that would include a public education and outreach program to identify landowners willing or interested in conservation of their property.

#### **DEVELOPMENT OF A TOWN OF BETHLEHEM OPEN SPACE PLAN AND ENCOURAGING THE PARTICIPATION OF LANDOWNERS**

To be successful, the process of developing an open space plan should foster the participation of interested landowners and the public at large. The landowner and community surveys conducted during the development of the Comp Plan should be reviewed and if necessary, supplemented to gather public and landowner input. Methods of encouraging the participation of Town landowners could include, among others, the following:

- Organizing public meetings and workshops that feature speakers from a variety of agricultural, land conservation, regulatory and other related organizations who help to educate landowners and the general public about the various funding mechanisms; and
- Allowing those landowners who express interest in conservation of their property to be placed on a listing, that includes their names, addresses and parcels (utilizing tax map numbers), together with a brief description of what the parcel contains (habitat for flora and fauna, a historic structure or water-way for example) that makes it a priority for conservation.

The active involvement of property owners early in the planning process can provide a number of benefits by:

- Identifying landowners interested in conserving their open space;
- Identifying landowners who may be considering selling undeveloped property; and
- Identifying “unwilling” landowners who do not want to be contacted regarding the Town’s or other conservation group’s interest in acquiring open space (similar to a “do not call” list).

CACC’s investigation into various funding and leveraging programs disclosed a consistent next step if any funding program is to be pursued, the development of an open space plan that protects the rights of landowners. While not a strict requirement, the existence of an open space plan would greatly enhance the likelihood of success in attracting funding from an external source. Such a plan would clearly show a community’s formal interest in planning for and implementing open space preservation programs. In addition, an open space plan would clearly affirm a community’s consensus on priorities that may not otherwise be evident in the absence of such a plan.

CACC did not venture into a plan design, but acknowledged the open space preservation guidance of the 2005 Bethlehem Comprehensive Plan and discussed some typical elements of an open space plan. These could include, among other things, the following:

- A vision statement;
- Definitions;
- A delineation of the benefits of and needs for open space preservation;
- Maps, including depictions of open space types and categories;
- Prioritization and resource valuation criteria and data;
- Cost estimates to preserve open space;
- Discussion in detail of methods and scenarios for financing open space preservation (e.g., an expansion of methods listed in this document);
- Delineation of conservation priorities; and
- An action plan for conservation.

CACC has compiled examples of selection criteria from other open space programs; such criteria could also be used to prioritize potential acquisitions. The draft list of criteria for selecting and prioritizing open space acquisitions was compiled from several lists of criteria used by the State and several other organizations and is attached as Appendix A. The criteria are not listed in any order of priority and as a whole represent the fundamental considerations necessary to make decisions regarding protection or acquisition of open space, working landscapes, and lands considered to be valuable in Bethlehem. The criteria are a valuable tool for decision makers to help them decide how to spend available funds; they are useful guidance to landowners willing to consider selling or otherwise protecting lands that meet the criteria and; for the developers, such criteria help identify areas of conservation interest which is useful information when designing a project or preparing an impact statement. After review and refinement and public input, such a list could be incorporated in a Town Open Space Plan. The draft list is an illustration of what types of criteria are considered by other programs.

**APPENDIX A. CRITERIA FOR ESTABLISHING LAND PRESERVATION PRIORITIES**



Land preservation is a multi-faceted process that typically involves a variety of funding sources and land development strategies. Critical to the preservation effort is a reasoned approach to the selection of land to be preserved. Not all land is worthy of preservation, and resources for preservation are usually limited, and the competition for them is usually keen. Consequently the allocation of financial and human resources to the preservation effort needs to be done carefully and prudently.

Below is a table that summarizes the land preservation criteria used by three conservancy organizations and one New York State agency. When faced with a conservation opportunity, these organizations will typically evaluate the land against these criteria, deciding whether or not to proceed with the conservation effort. The original lists are from the NYS Open Space Conservation Plan, The Open Space Institute, the Mohawk Hudson Land Conservancy, and the Rensselaer-Taconic Land Conservancy. This list is presented for illustrative purposes and is in alphabetical order.

Should the Town decide to fund a land preservation effort and actively promote land preservation at the planning stages of a development project, the land features and other considerations described below represent the typical elements of an Open Space Protection Plan. Such a plan explains to the public how tax dollars for preservation might be spent; highlights for others land to be preserved when designing a conservation subdivision; and helps guide the conservation effort when parcels become available for acquisition. Table 2, which follows, provides examples of criteria that can be utilized by a community to prioritize its land conservation priorities.

**TABLE 2. EXAMPLES OF CRITERIA TO ESTABLISH PRESERVATION PRIORITIES**

<b>LAND FEATURE CRITERIA</b>
<p><i>Historical/Archaeological/Cultural</i></p> <ul style="list-style-type: none"> <li>• Property containing structures of historic, cultural, architectural significance or containing archaeological sites of important former activity;</li> <li>• Property associated with historical uses of natural resources including fishing, hunting, and trapping.</li> </ul>
<p><i>Natural Resources</i></p> <ul style="list-style-type: none"> <li>• Geological-unique landforms or valuable mineralogical features; significant karst or glacial features;</li> <li>• Hydrological-wetlands, shoreline, aquifer, spring, stream, river, pond, lake, waterfall, floodplain, marsh, bog, fen, or hydrological resource of significance;</li> <li>• Forest/Meadow-mature forest or characteristic succession growth woods or meadow;</li> </ul>

<b>LAND FEATURE CRITERIA</b>
<p><i>Natural Resources, continued</i></p> <ul style="list-style-type: none"> <li>• Habitat-important ecological habitat for plant, animal, or insect life; corridor or migratory function for wildlife; contains rare, threatened, or endangered species of community types; exemplary ecosystem and significant biodiversity.</li> </ul>
<p><i>Recreational/Educational/Scientific</i></p> <ul style="list-style-type: none"> <li>• Property being used or has the potential to be used for recreational, educational, or scientific purposes;</li> <li>• Lands contain exemplary ecosystems, or habitats, which offer important educational or recreational opportunities.</li> </ul>
<p><i>Scenic and Aesthetic</i></p> <ul style="list-style-type: none"> <li>• Appealing view onto property from prominent locations, recreational area, road, or waterway;</li> <li>• View shed from property encompassing body of water, valley, mountains, or extended tract of agricultural land;</li> <li>• Property containing natural features with aesthetic appeal, e.g. waterfalls, ravines.</li> </ul>
<p><i>Stream Corridors</i></p> <ul style="list-style-type: none"> <li>• Land provides public access to streams and creation of streamside trails;</li> <li>• Contributes to the protection of water resources;</li> <li>• Protects important aquatic and terrestrial habitats.</li> </ul>
<p><i>Trail Corridors</i></p> <ul style="list-style-type: none"> <li>• Land that guarantees long term access to trails;</li> <li>• Land that extends or links existing trails;</li> <li>• Land that provides for new trail networks;</li> <li>• Trail provides a buffer from conflicting land use.</li> </ul>
<p><i>Working landscapes (Agriculture and Forestry)</i></p> <ul style="list-style-type: none"> <li>• Property currently in productive agricultural or forestry use or has such potential;</li> <li>• Property has high quality agricultural soils present in size and configuration useful for agricultural purposes.</li> </ul>
<b>OTHER CRITERIA</b>
<p><i>Access</i></p> <ul style="list-style-type: none"> <li>• Enhances public access to waterways and water bodies;</li> </ul>

**LAND FEATURE CRITERIA**

*Access, continued*

- Enhances access to State/Town holdings, including but not limited to Parks, Wildlife Management Areas, Reforestation Areas, Multiple-use Areas, and Forest Preserve Lands.

*Local/Community Support*

- Previous protection efforts resulted in only partial protection of a given area for which full protection is justified.

*Location*

- Property located adjacent to other preserved or likely-to-be-preserved tracts of land;
- Property located in an area targeted for preservation;
- Property whose preservation would set an important precedent or serve as a model for conservation development, subdivision design;
- Property located in community not currently being served by existing preservation efforts;
- Property buffering agricultural lands, wetlands, wildlife habitats, woodlands, or other sensitive areas;
- Property that is one of few remaining preservable parcels in a locality.

*Threat to Site*

**APPENDIX B: SOURCES/MORE INFORMATION**



Albany County Agricultural and Farmland Protection Board and Agricultural and Farmland Protection Plan Working Group, Albany County Agricultural and Farmland Protection Plan, January 2004.

American Farmland Trust, Farmland Information Center, Fact Sheet on the Cost of Community Services, Northampton MA, August 2004.

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