

**Supplemental Answers to Frequently Asked Questions  
Environmental Investigation and Land Purchase  
Simeone-Caouette Property, Stow and Maple Streets, Acton, Massachusetts  
October 17, 2010**

*Note to Town Residents:* By a document dated October 4, 2010 (copy attached), the Selectmen answered a number of Frequently Asked Questions concerning the environmental investigation and proposed land purchase of the Simeone-Caouette Property, Stow and Maple Streets, Acton, Massachusetts. Since that time, more questions have been asked and more information has become available, leading the Selectmen to issue the following Supplemental Answers to Frequently Asked Questions.

**Property's Location and Surroundings**

*For those of us who may be unfamiliar with the Simeone-Caouette Property, can you provide an aerial photo or map showing the property and its surroundings?*

Yes, the attached Google Earth aerial photograph provides a birds' eye view showing the farm, the area of the old factory in the southeastern corner of the Property, and the surrounding neighborhood.

**Special Town Meeting Appropriation Articles**

*The Selectmen have now proposed two Special Town Meeting appropriation articles concerning this transaction. Can you explain why we are being asked to vote on two articles and why they have different voting requirements (majority versus two-thirds vote)?*

Yes. One Special Town Meeting warrant article would appropriate \$170,000 toward the purchase price of the Property. By statute, G.L. c. 40, § 14, this article requires a two-thirds vote because this is a new appropriation of general revenue funds to be used to purchase real property. The other article would appropriate additional funds for environmental testing, remediation and related transaction costs. This is a standard appropriation article and requires a majority vote.

Here's why there are two articles:

The acquisition of the Simeone-Caouette Property was unanimously approved by Annual Town Meeting in 2010. Under Article 24 of the Acton 2010 Annual Town Meeting, the Town appropriated up to one million dollars of Community Preservation Act ("CPA") funds to purchase the Property at that time.

After that Town Meeting, the Town discovered through its due diligence (a) environmental issues related to the Property, and (b) the Property contains less acreage than originally anticipated because of issues related to the delineation of lot lines in the Mill Pond (i.e. the property line did not encompass the entire Mill

Pond but rather extended only to the middle of Mill Pond). As a result, the Town commissioned a supplemental appraisal of the Property which found the value to be less than one million dollars, the Sellers' minimum sale price under the Chapter 61A process pursuant to which the Town has the right to purchase the Property.

Under the CPA, G.L. c. 44B, § 5(f), "no ... real property, or interest therein, shall be acquired by any ... town [using CPA funds] for a price exceeding the value of the property as determined by such ... town through procedures customarily accepted by the appraising profession as valid." Based on the updated appraisal for the Town, the Community Preservation Committee has now recommended that the maximum amount of CPA funds that can be used for the purchase of this Property is \$830,000. The Town is being asked to appropriate the balance of the purchase price (\$170,000) from non-CPA funds. The remainder of the original \$1 million appropriation of CPA funds (\$170,000) will be returned to the CPA Open Space Fund for future use as may be recommended by the Community Preservation Committee and approved by Town Meeting.

In addition, Town Meeting is being asked to appropriate from the general fund an amount sufficient to address environmental testing, remediation and related transaction costs associated with the Property. Subject to any updates at the Town Meeting, the appropriations from general revenues that will be requested at the October 25, 2010 Special Town Meetings are as follows:

<b>Cost</b>	<b>Previously Appropriated from CPA Funds</b>	<b>To be Appropriated from the General Fund</b>	<b>Total</b>
Purchase Price	\$830,000	\$170,000	\$1,000,000
Environmental Remediation	\$0	\$200,000	\$200,000
Environmental Testing	\$0	\$34,000	\$34,000
P&S Extensions	\$0	\$22,500	\$22,500
<b>Total</b>	<b>\$830,000</b>	<b>\$426,500</b>	<b>\$1,256,500</b>

*Has the Town done any additional environmental testing since the previous Answers to Frequently Asked Questions on October 4, 2010, and what do those new tests show?*

Yes, the Town's Licensed Site Professional ("LSP") has caused 20 new shallow soil samples to be collected from a variety of locations on the Property and analyzed for the presence of lead and arsenic – metals identified as contaminants of concern at the Site. The results of these samples generally indicate that:

- Samples collected in agricultural field area (13 samples) are all below DEP’s regulatory “S-1” soil standards;<sup>1</sup> and
- Samples collected within the former factory building footprint areas are generally above DEP’s regulatory standards for either lead, PAHs and/or arsenic. Samples from the small out-building location at the former factory area had 200 mg/kg arsenic.<sup>2</sup> High lead concentrations were detected next to the L-shaped building footprint and in upper (western) portion of the main building respectively.

Given these new results, the Town’s LSP caused a qualified laboratory to conduct another round of “TCLP” analysis on the contaminated soil from the Site. As with the first such test previously performed, the laboratory results again indicated that the material is not characteristically hazardous.

*Do these new test results help the Town’s LSP to further refine his estimate of the costs the Town will incur to remove and dispose of the contaminated soils at a suitable off-site location?*

Yes. The permanent remedy is expected to consist of the excavation from the Site and off-site disposal of approximately 810 tons of contaminated soil with concentrations greater than MCP S-1 Standards for PAH, arsenic and lead. The Town’s LSP estimates that this work will cost approximately \$130,000. A more refined estimate of the probable cost of the work will be determined after the Town’s LSP develops a specific remedial plan and related documentation in accordance with the Massachusetts Contingency Plan (“MCP”) and after the Town issues a public bid specification under the required public procurement process to engage a remedial contractor. The Town is asking Town Meeting to appropriate up to \$200,000 at the Special Town Meeting in anticipation of these costs.

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<sup>1</sup> Category S-1 soils “are associated with the highest potential for exposure” (310 CMR 40.0933(2)), and are therefore the strictest soil standards. Under 310 CMR 40.0933, “Soil shall be classified as category S-1 if either:

- (a) the soil of concern is accessible, pursuant to 310 CMR 40.0933(4)(c)1., and either:
  1. the soil is currently used for growing fruits or vegetables for human consumption, or if it is reasonably foreseeable that the soil may be put to such use; or
  2. a child’s frequency or intensity of use is considered to be high pursuant to 310 CMR 40.0933(4)(a) and (b); or
  3. an adult’s frequency and intensity of use are both considered to be high pursuant to 310 CMR 40.0933(4)(a) and (b); or
- (b) the soil is potentially accessible, pursuant to 310 CMR 40.0933(4)(c)2., and a child’s frequency and intensity of use are both considered to be high pursuant to 310 CMR 40.0933(4)(a) and (b).

<sup>2</sup> As with other areas on the Site, to temporarily limit access in areas of the Site affected by elevated arsenic concentrations (above 40 ppm in shallow soils), the Town has installed temporary fencing around those areas as an Immediate Response Action under the DEP’s environmental regulations.

*I have heard that if the Town “owns the property, it owns the problem” when it comes to environmental matters. What steps is the Town taking to protect itself (and its taxpayers) from the risk of future liability associated with environmental issues at the site?*

As the Selectmen have stated in the original answers to the FAQs, there is a risk that – despite appropriate due diligence investigations having been undertaken – additional problems may be discovered and the Town’s potential financial exposure may increase in the future. Based on the investigations performed to date and the advice of the Town’s environmental professionals, the Selectmen consider the latter risk to be small compared to the significant environmental benefits of preserving this important open space resource for future generations.

In the event the Town were to acquire the Property, the Town believes that it should be considered an “eligible person” entitled to certain liability protections under Massachusetts environmental law, G.L. c. 21E.<sup>3</sup> Nonetheless, in an effort to further protect against these risks of liability, the Selectmen have authorized the Town Manager, in consultation with Town Counsel, to activate the following three additional strategies:

- The Town has filed an Application to the Massachusetts Attorney General’s Office to Enter into a Brownfields Covenant Not to Sue Agreement pursuant to M.G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00 with respect to the Simeone-Caouette land transaction. This application is pending (copy attached, without exhibits). If approved, this Covenant can provide protection for the Town against a variety of potential liabilities under state environmental law.<sup>4</sup>

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<sup>3</sup> Under c. 21E, § 2, an “Eligible person” is defined as “an owner or operator of a site or a portion thereof from or at which there is or has been a release of oil or hazardous material who: (i) would be liable under this chapter solely pursuant to clause (1) of paragraph (a) of section 5 [i.e. as the current owner or operator]; and (ii) did not cause or contribute to the release of oil or hazardous material from or at the site and did not own or operate the site at the time of the release.” Under c. 21E, § 5C, “An eligible person shall be exempt from liability to the commonwealth or to any other person for contribution, response action costs or property damage pursuant to this chapter or for property damage under the common law, except for liability arising under a contract, for any release of oil or hazardous material at the site or portion of a site owned or operated by said eligible person, as delineated in a waste site cleanup activity opinion, for which a permanent solution or remedy operation status exists and is maintained or has been achieved and maintained in accordance with such opinion,” provided that certain specific requirements are met and provided that such opinion meets the standard of care as defined in c. 21E, § 2.

<sup>4</sup> The Town’s application broadly seeks all applicable liability relief pursuant to M.G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.00 including without limitation:

- Liability relief from any claims by the Commonwealth for contribution, response action costs or property damage pursuant to M.G.L. c. 21E or the common law;
- Liability relief for any claims for natural resources damages provided the Secretary of Energy and Environmental Affairs agrees to become a signatory to the Covenant Not to Sue Agreement; and
- Liability relief from any claims by any affected Third Parties for claims for contribution,

- Town Counsel is drafting for consideration by the Selectmen a proposed cooperative “order of taking” in an effort to effectuate a liability exemption afforded to a government entity pursuant to the federal superfund statute, 42 USC § 9601(35)(A)(ii). This order would be subject to review by the Sellers, their counsel and the Selectmen.
- The Town has requested a quote for an environmental insurance policy for the Property providing similar coverage (and subject to similar exemptions) as the environmental insurance policy which the Town purchased when it acquired the abutting Assabet River Rail Trail property. The Town is also seeking the maximum state subsidy for a portion of the potential premium for the policy. The quote is expected in the near future.

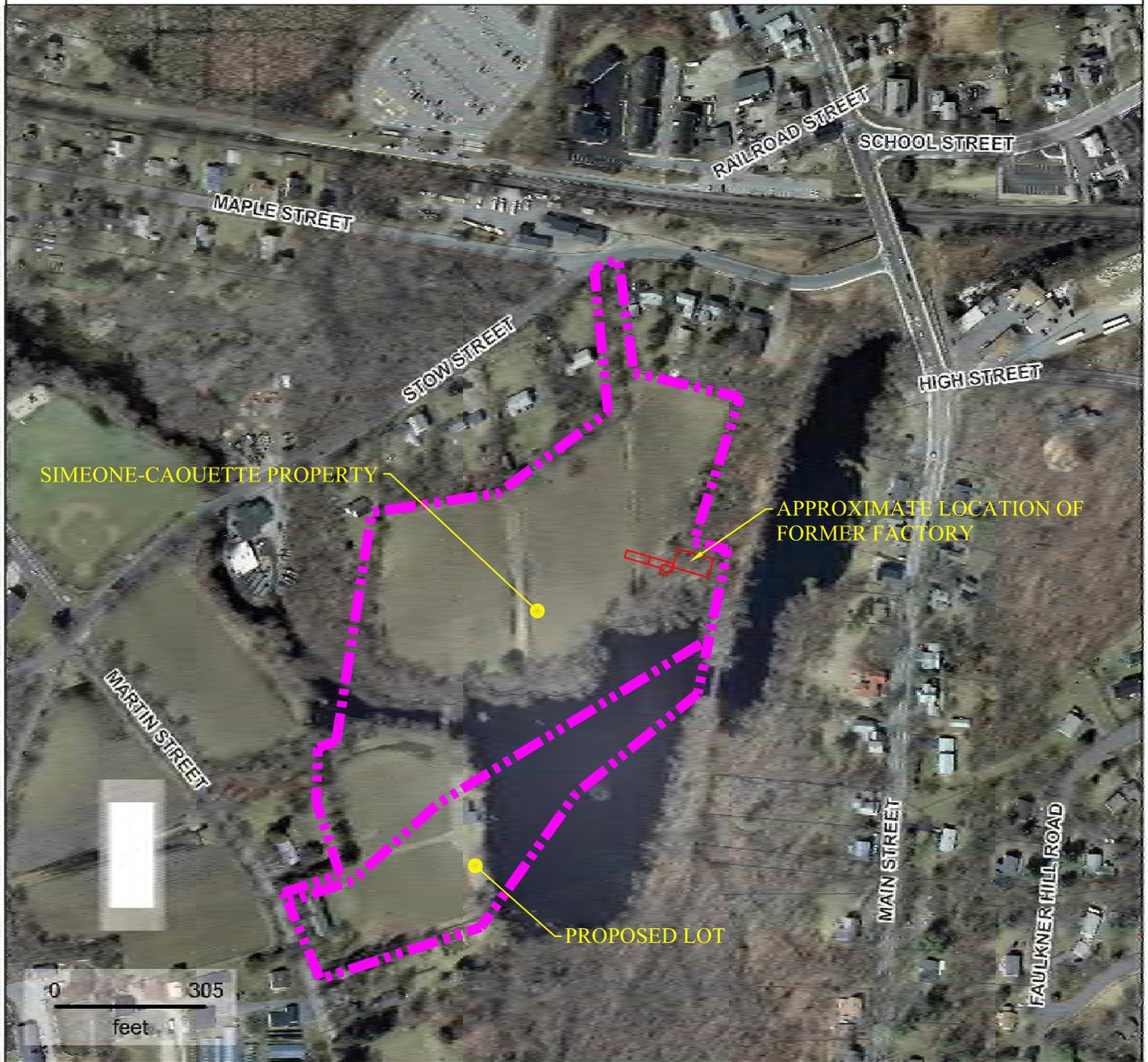
None of these strategies is completely “bullet-proof,” but alone or together they constitute appropriate measures for the Town to explore in connection with this transaction.

*How will future uses of the Property be determined?*

In the original responses to Frequently Asked Questions (pages 8-10), the Selectmen provided a variety of information about potential future uses of the Property – including the important focus on preserving the land in agricultural use and developing a Conservation Restriction as previously authorized by Town Meeting. In subsequent open meetings of the Board, the Selectmen have further committed that, if the Town goes forward with the purchase of the Property, the Selectmen will engage in an open, public process to develop the terms and conditions of the Conservation Restriction and the permissible future uses of the Property to be covered by the Conservation Restriction. The goal of this process would be to identify appropriate uses of the Property and any necessary measures to protect public health and safety.

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response action costs or property damage pursuant to M.G.L. c. 21E or the common law.



**Property Information**

Property ID  
Location



**MAP FOR REFERENCE ONLY  
NOT A LEGAL DOCUMENT**

This data set/map is for planning purposes only and should not be used for larger scale analysis. The Town of Acton shall not be held liable for any use of the data or images shown on this map, nor is any warranty of accuracy expressed. All uses of this data set/map are subject to field verification.

