

# **Future Open Space Preservation Committee (FOSP) Final Report**



**November, 2012**

## **Future Open Space Preservation Committee**

John Greene, Chair, Cape Farm Alliance representative  
Richard Bauman, Conservation Commission representative  
Wayne Brooking, Citizen  
Craig Cooper, Citizen  
Chris Franklin, Cape Elizabeth Land Trust representative  
Frank Governali, Town Council representative  
Caitlin Jordan, Town Council representative  
Carol Anne Jordan, Planning Board representative  
Bo Norris, Citizen  
Jessica Sullivan, Town Council representative

### Staff:

Maureen O'Meara, Town Planner

### Consultants

Charles Lawton, Planning Decisions, Inc.  
MaryEllen FitzGerald, Critical Insights, Inc.

*Cover: Town Farm, Spurwink Ave. The Town Farm (150+ acres) was donated to the Town of Cape Elizabeth "for the benefit of the Poor" by Thomas Jordan in 1825. Much of the Town Farm is wetland and subject to RP zoning. In 1994, the Town shifted "the*

*benefit of the Poor” requirement to the Thomas Jordan Trust fund by purchasing the Town Farm as open space for \$650,000, funded by a bond issue. In 2000, the Town granted a 50- year conservation easement over the Town Farm to the Cape Elizabeth Land Trust.*

## **Future Open Space Preservation Committee Final Report Executive Summary**

The Cape Elizabeth Town Council appointed an 11 member committee and charged it with a series of tasks to quantify town open space needs and thoroughly examine ways to meet those needs. The Future Open Space Preservation Committee met 30 times, including 9 meetings by 2 subcommittees and a public forum.

FOSP posted all meeting agendas and meeting materials on the town website and provided an opportunity for public comment at every meeting. Updates on the committee's progress were posted on the town website and published in the Cape Courier. The committee also conducted a telephone survey to gauge public support for open space and methods for future preservation.

The recommendations of the committee are included in each section and also on the following summary page. Generally, the committee recognizes that the Town of Cape Elizabeth currently is using a wide range of regulatory and non-regulatory tools and that these tools have meaningfully expanded the availability of public open space for Cape Elizabeth residents. Residents are happy with the perceived amount of open space and continue to support open space efforts, but are cautious about new expenditures.

Open space is important and we recommend that open space efforts continue. FOSP recommends that future open space preservation efforts be coordinated by the Cape Elizabeth Conservation Commission. The commission will then provide recommendations to the Town Council. (See recommendation #5 or Step 6 of the report)

The FOSP committee thanks the Town Council for providing the resources used to conduct the studies summarized in this report and looks forward to the next steps in open space preservation in Cape Elizabeth.

## Summary of Recommendations

1. FOSP recommends that the town continue to educate the public about the current amount of open space. The survey indicates that residents continue to value open space, value good stewardship of these assets, and support open space planning. The survey responses parallel the 2007 Comprehensive Plan survey.
2. FOSP recommends that open space preservation continue, as it is a strongly valued community goal. This fiscal analysis, however, does not support the preservation of open space purely from an avoidance of increased municipal costs at this time.
3. FOSP recommends that the ongoing open space efforts include a public participation component.
4. FOSP recommends that the open space definition be referenced, when appropriate, as part of the open space preservation process. Open space is defined as “Land and water areas, either public or private, maintained in an essentially undeveloped state (which may include athletic fields) for use as active or passive recreation, wildlife habitat, agriculture, or preservation.
5. FOSP recommends that the Conservation Commission duties and authority be revised as necessary to task it with primary responsibility for preparing and submitting open space evaluation and preservation recommendations to the Town Council. Conservation Commission membership should be increased to 9 to improve its capacity to perform its expanded duties.
6. FOSP recommends that the use of restrictive zoning as a tool not be expanded. Existing Resource Protection (RP) zoning districts work well to protect wildlife habitats and sensitive natural areas and should be maintained. New restrictive zoning, such as an agricultural zone, however, should not be created.
7. FOSP recommends that the current regulations promoting clustering be retained. More work should be done to investigate the potential for increasing the amount of open space that is preserved while maintaining the density allowed that makes this a desirable option for property owners. More emphasis should also be put on preserving contiguous open space and connectors and less on open space as buffer strips.

8. FOSP recommends that the town retain the current TDR regulations. The Planning Board should be tasked with reviewing the TDR sending areas map to align it with Open Space criteria priorities.
9. FOSP recommends that fee ownership purchases continue.
10. FOSP recommends that acceptance of easement donations and easement purchases be encouraged for lands that meet open space goals.
11. FOSP recommends continued acceptance of donated land that meets open space goals.
12. FOSP recommends that tax acquired land continue to be evaluated for public open space designation.
13. FOSP recommends that the Buy/Restrict/Sell technique be used at appropriate opportunities.
14. FOSP recommends that partnerships continue to be established to preserve open space.
15. FOSP recommends that open space property owners be provided with information regarding State Tax Reduction programs.
16. FOSP recommends that the Town Council consider implementing a Pennies for Open Space policy to fund the land acquisition fund.
17. FOSP recommends that the Town Council consider a bond issue to fund open space acquisition.
18. FOSP supports a local option real estate transfer tax concept, but only recommends action if state law allows it.
19. FOSP recommends that the Town retain the current open space impact fee structure.
20. FOSP recommends that grants be sought at appropriate opportunities.
21. FOSP recommends that the review of growth areas be referred to the Planning Board as part of the resumption of the Planning Board's comprehensive plan implementation work. The Planning Board's comprehensive planning implementation work should include public

outreach about the benefits of open space zoning. The Planning Board should also recommend ordinance amendments that make preservation of agricultural land a higher open space priority when preserving open space as part of new development.

## **Information Collection**

*Step 1* of the charge from the Town Council to the FOSP Committee is:

FOSP shall coordinate with the Cape Farm Alliance (CFA) and the Cape Elizabeth Land Trust (CELT) and solicit from them any information, inventories, etc. regarding future open space preservation priorities.

The FOSP Committee includes member representatives from the Cape Farm Alliance (Chair John Greene) and the Cape Elizabeth Land Trust (Chris Franklin). FOSP solicited information from both groups. At the April 8, 2011 meeting, Chris Franklin provided a review of the strategic plan from the Cape Elizabeth Land Trust, which included various maps and overlays. John Greene provided an overview of the Cape Farm Alliance, the 2008 Cape Elizabeth Farms Report and CFA's active farm list. FOSP also reviewed the inventory of town open space with existing greenbelt trails and potential trail connections.

Appendix 1: Cape Farm Alliance (CFA) Map

Appendix 2: Cape Elizabeth Land Trust (CELT) maps

## **Public Opinion Survey**

*Step 2* of the charge from the Town Council to the FOSP Committee is:

FOSP shall supervise a professional, statistically relevant telephone survey of town residents identifying priorities for open space preservation and preferred methods of funding.

The Town retained the firm Critical Insights to conduct a public opinion survey. Critical Insights had conducted the Comprehensive Plan Survey in 2005 and an opinion survey for the Cape Elizabeth Land Trust.

FOSP established a Survey subcommittee chaired by Jessica Sullivan and including Chris Franklin and Frank Governali, with John Greene attending as an interested member. The subcommittee met four times to discuss the purpose and content of the survey, meet with the consultant, develop and finally recommend a draft survey for the FOSP Committee to approve. The FOSP committee approved the survey on April 25, 2012. The telephone survey was administered

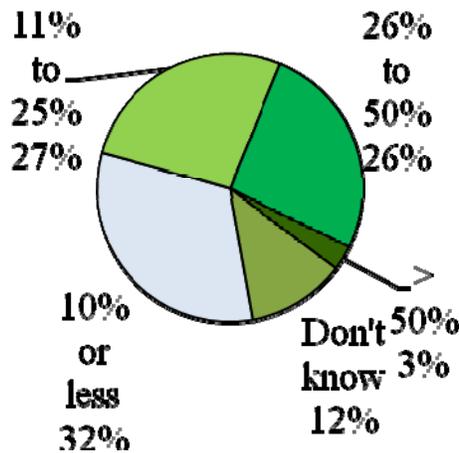
to 400 respondents, at least 10% of which are by cell phone. Respondents are also balanced for age and gender.

The survey was released in the field in May, 2012 and results of the survey were reported to the FOSP Committee at the June 27, 2012 meeting. The survey results report is included in the Appendix.

The general conclusions of the survey are as follows:

- Satisfaction. When asked about level of satisfaction with living in Cape Elizabeth, a strong majority (6-10) are “very satisfied.” Satisfaction runs through all aspects of town activities, from a good quality of life and good place for families to the school system, and open space. Residents are overwhelmingly “satisfied” (8-in-10 “satisfied” with 56% “very satisfied”) with the amount of open space in Cape Elizabeth.

- Knowledge of Open Space. Respondents were asked “what percentage of land do you think is legally protected open space.” Not including state and federal lands, 11% is permanently protected. Thirty-two percent answered 10% or less, twenty-seven percent answered 11% - 25%, and twenty-six percent answered 26% -50%.



- Need for More Open Space. Fifty-seven percent of respondents do not think that Cape Elizabeth needs more open space. Only about a third of the residents surveyed think that Cape Elizabeth needs to protect more open space. Among the respondents who would like the Town to have more open space, the most commonly mentioned reasons include wanting to get as much as possible (33%), that it's important for preserving what is already there (25%), and that unprotected land will be subject to development (22%). Nearly all the

respondents who say that there is no need for more protected space indicate that they are satisfied with the amount of open space that is already preserved.

- Types of Open Space. Respondents were also asked the importance of protecting several different types of open space. Fully 6-in-10 rate open space for passive recreation (e.g., hiking, walking), salt/fresh water access and scenic viewpoints as “very important.” A majority rate protecting forests/woodlands, wildlife habitat and farmlands as “very important.” Almost half (48%) rate places of historical/unique value as “very important.”

- Open Space Plan. Most respondents (85%) think it is important or very important to have a plan for preserving open space.

- Open Space Potential Goals. When asked to rate the importance of a series of goals for the Town, a majority claim that it is “very important” to protect farmlands, wetlands/ponds/wooded areas and preserving rural character. Just under one-half (46%) rate school improvements as “very important” and 4-10 cite maintaining the current existing tax rate as “very important.” This question was also asked when preparing the 2007 Comprehensive Plan and the responses parallel the earlier survey responses.

- Future Open Space Preservation Efforts. About one half surveyed agree that in order to preserve open space, the Town should increase the use of current planning and land use regulations; a quarter are neutral to this option and 1-7 disagree. Just over one-third (36%) agree that the Town should incrementally increase spending for land and easements. One third disagree with either an incremental tax increase or shifting funds from any other municipal expenditure to support open space preservation. About one-third is neutral.

- Open Space Funding. Two-thirds of respondents were not supportive of any tax increase. One third of respondents said they would be supportive of an incremental property tax increase of \$1 per month, or \$12 annually. Respondents were more likely to support moving existing dollars rather than increase taxes, with about 4-in-10 suggesting that moving dollars to support farmland protection, street/road improvements, protection of wildlife habitat and preserving open space is appropriate.

**Recommendation:** FOSP recommends that the town continue to educate the public about the current amount of open space. The survey indicates that residents continue to value open space, value good stewardship of these assets, and support open space planning. The survey responses parallel the 2007 Comprehensive Plan survey.

## Appendix 3: Public Opinion Survey Report

## **Cost Benefit Analysis**

*Step 3* of the charge from the Town Council to the FOSP Committee is:

FOSP shall prepare for the Town Manager's approval a Request for Proposals (RFP) for a consultant to:

Conduct an analysis of the costs and benefits to the town budget of development versus retention of open space. The analysis should draw on state and national resources to conduct this study. The objective is to determine the cost and benefits to taxpayers of housing growth versus the preservation of undeveloped land.

FOSP shall then review and make recommendations regarding the consultant's report.

### Design of Study and Consultant Selection

FOSP created the Cost Benefit Analysis Subcommittee, chaired by Chris Franklin and including Richard Bauman, Craig Cooper, Frank Governali and Jessica Sullivan. The subcommittee prepared a Request for proposals draft, which they recommended to the full committee for approval. FOSP approved the RFP on June 1, 2011 and authorized the subcommittee to review proposals, conduct interviews and recommend a consultant to the FOSP Committee.

The subcommittee met four times. At the June 29, 2011 meeting, the subcommittee reviewed 2 proposals and discussed the project with Chuck Lawton of Planning Decisions, who attended the meeting. The other firm declined to attend the interview. At the July 13, 2011 meeting, the FOSP Analysis Subcommittee recommended that Planning Decisions, Inc. be retained to conduct the Cost Benefit Analysis and the FOSP Committee voted to select Planning Decisions that night as well.

### Fiscal Impact of Open Space Analysis

Chuck Lawton met with the FOSP Committee four times, beginning on August 17, 2011. At each meeting, he presented the results of his data collection and analysis. The final report was presented to the committee in November. The full analysis is appended to this report and a summary follows.

#### *Purpose*

The purpose of the Fiscal Impact Analysis is “to determine the cost and benefits to taxpayers of housing growth versus the preservation of undeveloped land” in the Town of Cape Elizabeth. In particular, the report addresses five specific “neighborhood types” that represent different development alternatives drawn from existing housing developments currently present in the town:

- an old, compact neighborhood alternative;
- a traditional, large-lot subdivision alternative;
- a clustered subdivision alternative;
- a traditional condominium complex alternative; and
- a condominium complex with added open space alternative.

The questions motivating the report are:

1. What would be the fiscal impact on the town (both additional revenues earned and additional costs incurred) if any one of the five neighborhood types noted above were developed on the town’s remaining developable land?
2. What would be the fiscal impact if the same level were preserved as open space? and
3. Comparing the two, what would be the benefit-cost ratio of preserving the open space in question?

### *Methodology*

The Fiscal Impact Analysis encompassed four tasks:

1. Review of community impact studies conducted for two earlier developments - the Dominicus Crossing (now Cross Hill neighborhood) study dated May 4, 1996, and the Leighton Farm Subdivision study dated December 20, 2002.
2. Collect and analyze fiscal data taken from town records and census sources and housing and population data taken from town assessment records, census data and interviews with local real estate professionals;
3. Interview town officials regarding the town’s current capacity to provide services and the likely impact of additional residential

development of the types noted above on the cost to maintain the current level of service now provided by the town.

4. Prepare estimates of future municipal costs based on various combinations of additional residential development and additional preservation of open space.

Mr. Lawton determined amount of land in Cape Elizabeth that was vacant (3,165 acres) and land with a building (5,965 acres). He then distributed the parcels by land use type. This land collectively generates tax revenue that supports municipal services.

He collected information on ten years of town budgets to generate an average amount of the budget that is allocated to each municipal service category. As is typical for all Maine communities, the largest expense is the school department.

### *Conclusions*

Mr. Lawton also interviewed all departments to determine what would trigger cost increases. Generally, he learned that most departments could absorb some new increase in service demand within existing budgets and staff levels. As the report states:

The central point to be drawn from the financial analysis presented above is that municipal spending is not linked in any simple formulaic way to number of households in the community. It is, rather, the result of departmental managers adjusting their human and capital resources to the changing needs of the community and the constraints of their budgets.

Where municipal departments have capacity to absorb new development within the existing budget, new development would actually reduce the per unit cost of delivering services. Therefore, in the short term, there was no fiscal savings identified in electing to preserve open space instead of allowing new development.

The analysis further examined any significant differences in the costs of different types of development. The report concludes “ While they [development types] do vary considerably in geographic layout and demographic composition, these differences are likely to create significant fiscal impacts only as they push population and household numbers to the point where they tax [burden] the current staffing and facility capabilities

of the town as a whole.” The chart below compares different development scenarios.

**Table 4: Application of Each Development Alternative to 1,600 Acres**

Full Development	Old Compact Neighborhood	Traditional Subdivision	Clustered Subdivision	Condo	Condo w/ Extra Open Space
Developable land	1,600	1,600	1,600	1,600	1,600
New Open Space	108	354	994	788	0
New HH	3,056	557	684	2,531	5,061
New Taxable Value (\$1,000)	\$1,722,360	\$343,391	\$434,523	\$591,674	\$1,183,348
Town HH Total	6,672	4,173	4,300	6,147	8,677

Sources: Census and Assessing data as listed in Appendix One.

At some point of adding new development, however, costs will increase. The 2010 U.S. Census reports that Cape Elizabeth has 3,616 households. The Fiscal Impact Analysis estimates:

At least from this sample, it is clear that both municipal (all but education) employment and payroll seem to jump to a new plateau somewhere at 3,000 households, then again between 3,600 households and 4,300 households and then again, somewhere between 16,000 and 19,000 households. Education employment and payroll, in contrast, seems to hit some economy of scale beyond 4,300 households.

**Recommendation:** FOSP recommends that open space preservation continue as it is a strongly valued community goal. This fiscal analysis, however, does not support the preservation of open space purely from an avoidance of increased municipal costs at this time.

Appendix 4: Cost Benefit Analysis

## Public Forum

*Step 4* of the charge from the Town Council to the FOSP Committee is:

FOSP shall conduct a public workshop with the CFA and CELT focusing on actions that both protect open space and promote sustainable farming, without constraining farmers' opportunities and infringing on private property rights.

The FOSP Committee elected to broaden this charge to include all members of the public. FOSP made a special effort to reach out to CFA and CELT members by sending them an invitation, which was emailed by their committee representatives to their memberships. In addition, a press release was sent to all the local newspapers and also posted on the town website.

The public forum was held on March 7, 2012 at 7:00 p.m. in the Town Hall. Members of the committee presented different elements of the committee charge, draft Range of Tools and Open Space Priority Criteria using a powerpoint presentation.

The bulk of the public forum was devoted to public comment. Eleven members of the public attended the forum and a meeting summary is included in this report. Some of the comments included:

- Including sports fields as an open space priority;
- Incorporating open space/village green concept into the Library project;
- Inquiring how the tools would be used to preserve agricultural assets;
- Liaising with the state in managing invasive plants at Crescent Beach;
- Questioning how the town process for applying open space criteria will work;
- Questioning funding, such as a land bond;
- Expressing disfavor for a key parcels list approach;

The forum ended with questions about the upcoming telephone survey. Attendees asked about opportunities for input if they are not called and the committee agreed that additional opportunities will be available as the open space planning work continues.

**Recommendation:** FOSP recommends that the ongoing open space efforts include a public participation component.

Appendix 5: Public Forum Summary  
Appendix 6: Powerpoint presentation

## Open Space Definition

*Step 5* of the charge from the Town Council to the FOSP Committee is:

FOSP shall develop “rural areas” and “open space” definitions for the Town of Cape Elizabeth. The committee shall consider (1) state law, (2) farmers’ flexibility in using land on a long term basis, (3) the impact on other significant land owners, and (4) residents’ priority in protecting rural areas.

In preparation for developing a definition for “rural areas” and “open space,” the committee reviewed 9 sample definitions of rural areas and 26 definitions of open space.

The committee first developed a definition of open space. Its goal was to develop a definition that is broad enough to encompass a range of open space types and is as follows:

**Open space:** Land and water areas, either public or private, maintained in an essentially undeveloped state (which may include athletic fields) for use as active or passive recreation, wildlife habitat, agriculture, or preservation.

The committee also discussed a definition of rural areas. The review included the definition of rural areas in the state comprehensive plan rule. Most rural definitions relate to federal programs for rural economic development, rural health, and the U.S. Census. These definitions include a numerical density calculation that is incompatible with Cape Elizabeth’s “rural character.” After review and discussion, the committee questioned the need for a rural areas definition and recommended to the Town Council that no rural areas definition be established in their July 26, 2011 Status Report to the Town Council. Their recommendation was accepted.

**Recommendation:** FOSP recommends that the open space definition be referenced, when appropriate, as part of the open space preservation process. Open space is defined as “Land and water areas, either public or private, maintained in an essentially undeveloped state (which may include athletic fields) for use as active or passive recreation, wildlife habitat, agriculture, or preservation.

## Open Space Preservation Process

*Step 6* of the charge from the Town Council to the FOSP Committee is:

FOSP shall recommend a process/mechanism for evaluating open space opportunities and proactive acquisition identification, including but not limited to identifying criteria for open space priorities and a party or parties responsible for making open space recommendations to the Town Council.

The FOSP Committee spent considerable time reviewing existing town open space, and land with significant agricultural activities, wildlife habitat, land with greenbelt trail connection potential and large undeveloped lots. The committee attempted to create a “key parcels list.” Ultimately, the committee recommended that a defined process for ongoing open space evaluation and preservation is preferable to a static list of property, much of which is privately owned.

### Open Space Criteria

The committee also reviewed open space criteria used in other communities and by the Cape Elizabeth Land Trust. From this research, a matrix of common elements was assembled. Open space elements significant in Cape Elizabeth were also added to the list of elements from the matrix. Committee members then voted on the highest priority criteria. (See criteria in Proposed Open Space Evaluation and Preservation Program below)

In the review of open space criteria used elsewhere, it was noted that some communities established criteria that essentially made it possible for any land in the community to be eligible for open space preservation. Other communities attempted a more rigorous prioritization that would focus preservation efforts on the most important areas. The committee discussed the two approaches and decided to create a list that emphasized priorities rather than all-inclusiveness.

### Mechanism for Evaluating Open Space

The committee noted that the Town Council preference has been to assign tasks to existing committees rather than to create a new committee. The committee then evaluated the suitability of the Conservation Commission for performing the open space evaluation and preservation work.

### Conservation Commission Current Status

The Conservation Commission is currently a 7 member volunteer board appointed by the Town Council for staggered 3-year terms. Chapter 4, of the Boards and Commissions Ordinance, establishes the Conservation Commission as follows:

**Article V. Conservation Commission.**

**Sec. 4-5-1. Establishment.** The Cape Elizabeth Conservation Commission, established by vote of the Town Council on April 26, 1971, shall be governed by and shall exercise and perform such rights, powers and duties as may be conferred or imposed under the provisions of the Maine Revised Statutes Annotated (including 30 M.R.S.A., Sec. 3851), local ordinance and regulations thereunder, and as the same may from time to time hereafter be amended.

**Sec. 4-5-2. Membership.** The commission shall be comprised of seven (7) members, residents of the town appointed by the Town Council, who shall serve without compensation for staggered three(3) year terms. Any vacancy shall be filled by appointment by the Town Council for the duration of the unexpired term. [Amended 3/12/90, Eff. 4/11/90].

The responsibilities of the Conservation Commission are laid out in greater detail in the Management of Greenbelt and Open Space Management Plan adopted by the Town Council May 14, 2012.

The Conservation Commission is an advisory 7-member board appointed by the Town Council. It is the steward of the greenbelt trail system and provides advice to the Town Council on all Town open space, except for Fort Williams Park. The Conservation Commission prepares, for Town Council consideration, policy documents, and recommended updates for the greenbelt plan and for master plans for other open space/conservation lands. Annually, the Conservation Commission reviews the condition of greenbelt trails and identifies needed improvements. It recommends to the Town Manager funding needs for the acquisition and stewardship of open space.

All volunteer efforts to alter greenbelt trails or open space are reviewed by the Conservation Commission. The Conservation Commission undertakes many maintenance and construction improvement projects on greenbelt trails. Activities that fall within policies already adopted by the Town Council may be approved by the Conservation Commission. Project proposals that are not within previously approved Town Council policies are reviewed by the

Conservation Commission, which then provides a recommendation for Town Council consideration.

The Conservation Commission also responds to Town Council requests for recommendations.

In practice, the Conservation Commission has previously undertaken the following:

1. Prepares the Town Greenbelt Plan, which includes recommendations for extensions of the Greenbelt Trail network and open space preservation;
2. Identifies and recommends additions to town open space;
3. Meets with property owners who would like to donate or sell property as open space to the town;
4. Evaluates potential land acquisition in relation to town open space goals; and
5. Provides recommendations to the Town Council for open space acquisition and maintenance.

#### Proposed Open Space Evaluation and Preservation Program

FOSP recommends that the Conservation Commission be charged with developing and administering a standard program for identifying, evaluating and recommending additions to the Town's inventory of preserved open spaces. This program would be structured to include the following elements and include, at each stage, updates to the Town Manager.

##### *Identification and Evaluation*

The Conservation Commission is to periodically undertake a review of existing open space and consider areas or specific parcels that may be desirable additions. The commission will focus on land that meets one or more of the following open space criteria, but may consider other parcels.

##### *Open Space Evaluation Criteria*

The commission shall evaluate the merits of potential additions to Town open space. It may also refine the criteria in response to changing circumstances.

**1. Agriculture**

Undeveloped lands used for agriculture.

**2. Greenbelt trails and recreation areas**

Land identified in the 2001 Greenbelt Plan.

**3. Wildlife Habitat**

Undeveloped lands that provide a habitat for wildlife as identified by State of Maine data such as the Beginning with Habitat information and field verified.

**4. Other**

Significantly scenic, cultural and/or unique properties identified by the Town Council using a public process.

The identification process should include a public participation component that invites suggestions and input all members of the public and stakeholder groups. If specific parcels held in private ownership are under consideration, the Conservation Commission shall endeavor to meet with the property owner prior to making a recommendation.

*Recommendation*

At the completion of its evaluation, the Conservation Commission will forward its open space recommendations to the Town Council. The commission is expected to support its recommendations by documenting how the recommended parcels meet the evaluation criteria and include any other contributing factors.

The Town Council, in accordance with Town Charter, shall make all final decisions regarding town open space preservation.

**Recommendation:** FOSP recommends that the Conservation Commission duties and authority be revised as necessary to task it with primary responsibility for preparing and submitting open space evaluation and preservation recommendations to the Town Council. Conservation Commission membership should be increased to 9 to improve its capacity to perform its expanded duties.

## Range of Open Space Preservation Tools

*Step 7* of the charge from the Town Council to FOSP included the following:

FOSP shall develop a range of tools and approaches to preserve/protect/enhance critical parcels. These tools should be expansive and include innovative approaches that have been successfully employed nationwide, including zoning, outright land purchases, elimination of incentives for development in critical parcels, methods by which land can be purchased in private/public partnerships, and any other creative approaches other towns have taken. At the same time, all of the approaches that are considered and recommended have to avoid infringement on personal property rights.

### *Zoning related tools*

1. Restrictive zoning. This term covers types of zoning that essentially prohibit development of private property due to profound public safety concerns. Restrictive zoning can be applied without compensating the property owner for loss of value to their property. This type of zoning includes floodplains and wetlands, and may also apply to minimum lot sizes where septic systems will be used.

An agricultural zone could be considered in this category. This type of zoning district limits uses to agriculture and typically carries a minimum lot size of 25+ acres per lot.

Examples: RP1, RP3 Zoning in Cape Elizabeth, Agricultural Zone in Auburn

Benefits: The benefit is that the public is protected from health and safety risks if these properties are developed and the land remains in private ownership. This type of zoning has been challenged in court and found an acceptable use of the police power.

In the case of the agricultural zone, it is imperative that the zoning be clearly supported by a comprehensive plan. Provisions for an opt out may also be needed to survive a court challenge.

Limitations: Any use of restrictive zoning must be accompanied by an analysis of a potential takings claim. If a municipality deprives a private property owner of all practical use of their property, it can be responsible for

paying the landowner for the value of the land prior to the zoning, plus damages and attorneys fees.

In the case of an agricultural zone, the minimum lot size needs to be set at a large enough size to support farming. This size usually results in significantly reducing what a property owner can do with his/her land, and consequently reducing the value of the land. In these circumstances, it is politically difficult to adopt an agricultural zone.

**Recommendation:** FOSP recommends that the use of restrictive zoning as a tool not be expanded. Existing Resource Protection (RP) zoning districts work well to protect wildlife habitats and sensitive natural areas and should be maintained. New restrictive zoning, such as an agricultural zone, however, should not be created.

2. Clustering. Known as Open Space Zoning in Cape Elizabeth, this is a regulation that requires that a portion of the land proposed for development be set aside as permanently protected open space. Because the amount of development otherwise allowed on the lot still occurs, or even increases, the development is “clustered” on one portion of the lot.

Examples: Open Space Zoning/RB District in Cape Elizabeth, Conservation Subdivisions

Benefits: Because the ability to develop the land is preserved, there is little threat that a takings claim will be made by the property owner. Land is preserved without incurring the cost of purchasing property from the owner. The property owner who wants to develop his/her property also has an incentive to choose this type of development [rather than a development plan that does not set aside open space] because even a slight increase in density creates profit and clustering can save infrastructure costs. Developers also use the preserved open space in their marketing of the development. Municipalities can save an estimated 10+ % in delivering services to clustered developments compared to traditional developments and clustered developments typically have more amenities such as sidewalks and greenbelt trails.

Through clustering, the Cape Elizabeth Planning Board has approved new development that added 330 acres of open space to the town open space total of 1100 acres.

Limitations: It is important that the open space to be preserved meets the town’s open space goals, in particular by preserving sensitive areas such as

wetlands, linking to town-wide open space, providing public access and laying out open space in a large, contiguous parcel rather than minimal value buffer strips. Clustering may also push a greater intensity of development closer to abutters. Effort should be made to make the preserved open space more accessible to abutters and the general public.

**Recommendation:** FOSP recommends that the current regulations promoting clustering be retained. More work should be done to investigate the potential for increasing the amount of open space that is preserved while maintaining the density allowed that makes this a desirable option for property owners. More emphasis should also be put on preserving contiguous open space and connectors and less on open space as buffer strips.

3. Transfer of Development Rights (TDR). TDR is the movement of the right to develop one property to another property. The first (“sending”) property is subject to a permanent easement that prohibits future development and the second (“receiving”) property can develop at a higher density than otherwise allowed.

Example: Cape Elizabeth TDR provisions (Sec. 19-7-3)

Benefits: This option again allows preservation of open space without expenditure of public funds. Typically, a developer would purchase the development rights from a property owner and transfer them to another property intended for development. TDR provides a mechanism for a property owner to receive a financial return on their property without developing the property. It also encourages clustering of development rather than spreading it out over multiple parcels, which allows the Town to save costs in delivering services.

The Comprehensive Plan includes a recommendation to establish a bonus for TDR sales from agricultural land.

88. *Create a Transfer of Development Rights Agricultural Bonus that increases the number of development units transferred from farm fields by one-third.*

Limitations: TDR has only been used in “superheated” real estate markets or where a TDR landbank has been established and funded. It is not likely this tool will be used more than once, given the need to have a willing seller of TDR rights and willing buyer available at the same time and able

to agree on a price. TDR rights sell for less money than the property owner can receive by outright sale of the property.

**Recommendation:** FOSP recommends that the town retain the current TDR regulations. The Planning Board should be tasked with reviewing the TDR sending areas map to align it with Open Space criteria priorities.

#### *Acquisition Tools*

4. Fee Ownership. This is purchase of the land from the property owner by the Town, Land Trust or other conservation entity. In order for the land to be preserved as open space, restrictions must then be placed on the deed to preclude development. From 1988-2009, the Town of Cape Elizabeth has spent \$1,675,000 to purchase open space and another \$415,000 in contributions toward Land Trust purchases.

Example: Town Farm

Benefits: Ownership provides for complete control to prevent development of the property.

Limitations: Ownership without conservation restrictions leaves the land vulnerable to development by current or future property owners. Purchase is often not an option due to lack of funding.

**Recommendation:** FOSP recommends that fee ownership purchases continue.

5. Easement. A conservation easement restricts the right to develop the property, subject to the terms of the easement, and maintains ownership of the land with the property owner. Pedestrian easements allow public access to a specified location on the property, while again leaving fee ownership to the property owner. Easements are typically permanent, but can also be for limited duration.

Examples: Arlington Lane Easement, Gull Crest Fowler Rd Connector Pedestrian Easement

Benefits: Conservation easements can be less expensive to purchase than fee ownership of the property. Property owners may also be more willing to sell or donate a conservation easement as long as they retain ownership. A benefit to the landowner is that the landowner retains ownership. Limited term easements may be easier to obtain from a property owner who does not want to make a permanent commitment.

**Limitations:** The terms of any conservation easement should be carefully reviewed to make sure you are getting what you expect. For example, many conservation easements allow timber harvesting, which may be inconsistent with the goal of preserving a naturally vegetated area. Also, conservation easements do not convey public access unless specified in the terms. Limited term easements protect property for a specific period, after which a new easement will need to be obtained in order to preserve the open space.

**Recommendation:** FOSP recommends that acceptance of easement donations and easement purchases be encouraged for lands that meet open space goals..

6. Donation. Some property owners feel strongly that they do not want their land developed and donate the land to the Town or the Land Trust with conservation restrictions in the deed. Some donations are motivated by the tax benefits associated with the donation, which can vary depending on the conservation restrictions imposed.

Examples: Winnick Woods, Ferne Peddy lot

**Benefits:** Land donation allows for expansion of open space without incurring purchase costs.

**Limitations:** The recipient of the donation may need to be flexible about how the land is conveyed in order to maximize tax benefits for the donor. For example, the Town received the donation of Winnick Woods over a 3 year period to maximize the tax benefits to the donor. The terms of the donation should also be reviewed to make sure that there are public benefits, like public access, included in the donation. Sometimes the land offered does not fit within Town open space goals and sometimes the donation results in a decrease in the tax base. The Town may also assume costs for legal fees and surveying.

**Recommendation:** FOSP recommends continued acceptance of donated land that meets open space goals.

7. Tax acquired. The Town assesses taxes to property owners based on the value of their property and the amount needed to provide services. Failure to pay taxes initiates a 3-year process that culminates in the town assuming ownership of property for failure to pay taxes. Property owners

will sometimes choose to let the Town take for taxes property that is not buildable.

Examples: Ocean View Rd and Forest Rd lots

Benefits: Often, these lots are wetlands or otherwise severely encumbered, prohibiting development. Town ownership eliminates potential challenges by the property owner to allow the lot to be developed and often consolidates ownership by the Town of sensitive natural areas, without the need to purchase the property.

Limitations: The process to assume ownership of tax acquired land is time-consuming for the Town Clerk's office and may also include legal fees. This land may not fit with the Town's open space goals, although it is often located immediately adjacent to existing neighborhoods. If the land is buildable, the town may choose to sell it and it may be developed. There is also a small reduction in taxes collected.

**Recommendation:** FOSP recommends that tax acquired land continue to be evaluated for public open space designation.

8. Buy/Restrict/Sell. When a property is available for sale, it can be purchased by the Town. The open space value of the property can be removed from the property and then the property can be resold. A more specific example would be purchasing a lot adjacent to public open space, adding a pedestrian easement to a section of the lot to create an access point to the adjacent public open space, and then selling the lot with the easement on the property.

Benefits: This approach can dramatically reduce the costs of acquisition by reselling the land and still advance open space goals.

Limitations: There is a risk that the property will not sell for the anticipated value once the easement is in place. There are also the typical costs of real estate transfers that will likely not be recouped by the resale.

**Recommendation:** FOSP recommends that the Buy/Restrict/Sell technique be used at appropriate opportunities.

#### *Other Tools*

9. Partnerships. The Town may pool resources with the Land Trust, a property owner, or other entity to effect land conservation.

Examples: Fort Williams Park, Robinson Woods

Benefits: The Town may advance open space preservation goals without shouldering the entire financial and administrative burden. In some cases, large acquisitions would be impossible without a joint effort.

Limitations: The needs of partners must be accommodated and reconciled with Town goals. For example, Town acquisition of Fort Williams Park from the federal government included restrictions on changes to the Parade Ground. Sometimes, a partner's goals increase costs, including but not limited to staff time and attorneys fees.

**Recommendation:** FOSP recommends that partnerships continue to be established to preserve open space.

10. Reduced Taxation. There are tax programs available that allow property owners of open space to reduce their tax burden. These may include assessing property at current use value instead of highest and best use, enrollment in state open space, tree growth or agriculture programs, or establishment of deed restrictions on property.

Example: State of Maine's Open Space, Tree Growth and Agriculture Tax Programs

Benefits: All of these tax programs work to reduce the base value of property upon which taxes are assessed based on a standard tax rate. Once the property value is reduced, subsequent taxes are automatically lower without further action by the property owner.

Limitations: Because these programs focus on the value of the land, taxes will still increase as the tax rate increases. The equal application of tax rates across different land uses is restricted by state constitution so there is no legal means to adopt a different tax rate for open space. Most of these options also require the land owner to agree to temporary or permanent limitations on the use of their property.

**Recommendation:** The FOSP Committee recommends that open space property owners be provided with information regarding State Tax Reduction programs.

*Tools that are not recommended*

FOSP reviewed a wide range of tools that have been used nationally, but for a variety of reasons would not be suitable in Cape Elizabeth and are therefore not recommended. These tools are listed below.

- Increased Density Purchase. This is an option that could be added to the Zoning Ordinance that allows a property owner to purchase additional development rights to add to their property. The density rights would be purchased from the Town and the funds would be used to purchase open space.

**Benefits:** This option is similar to the TDR program, except you do not need to have a willing seller and willing buyer find themselves at the right moment and negotiate a price they can both accept. The Town would establish the program so there is predictability for property owners, enhancing the chances that the program would be used. This approach also generates open space funds from the private sector rather than from tax payers.

**Limitations:** This program assumes that developments will be allowed at greater density than the base zoning in a community where developments at the base density are very controversial. It would also require amendments to the Zoning Ordinance and administration of the program by Town staff.

- Limited Development. The Town would purchase an open space lot and then develop part of the lot and retain a portion as open space. Alternately, the town could sell a portion of the lot to a developer and keep a portion as open space.

**Benefits:** This approach can dramatically reduce or completely fund the purchase of land for open space preservation.

**Limitations:** The Town would need to fund purchase of the land, plus soft costs to obtain development approval. There is a risk, like any development, that the profit from the development may not be as high as estimated. Probably the biggest obstacle, however, are the political pressures and public resistance to the Town acting as a proponent of development, even if the long-term goal is open space preservation. If this tool is successfully used, there could also be a backlash that damages support for future open space funding.

## Financial Resources

*Step 8* of the charge from the Town Council to the FOSP Committee is:

FOSP shall prepare, for Town Council discussion, an evaluation of the financial resources necessary to achieve the strategic conservation priorities identified. Financial resources may include, but are not limited to, funding by town taxpayers, individual donations (land or dollars), donations and grants through CELT as well as State and Federal conservation funding programs.

FOSP conducted a review of financial tools used nationally and selected the tools below for more serious consideration. Below is a summary of possible financial tools:

1. Pennies for Open Space. This would be a commitment by the Town Council to add one cent to each year's tax commitment and dedicate that revenue to open space preservation. If one cent was added to the FY 2012 tax rate, a total of \$16,530 dollars in revenue would have been generated at cost of \$3.18 per median home (valued at \$318,600). If a nickel was added, \$82,652.00 would have been raised at a cost of \$15.93 per median home.

As a reference, the town budget currently includes a land acquisition account. No funds have been budgeted to this account in the last five years. Monies have been placed in this account in the past from selected land sales, open space impact fees, etc.

Benefits: The town has complete authority to implement this and then choose how funds are spent.

Limitations: An increase in the tax rate is a fundamental basis for assembling each year's budget and adding to that rate will make the budget process incrementally more challenging.

**Recommendation:** FOSP recommends that the Town Council consider implementing a Pennies for Open Space policy to fund the land acquisition fund.

2. Authorize Bond Issue. Borrowing to finance capital improvements is a routine municipal financing practice. It allows communities to spread out

the cost of expensive but necessary public improvements. The Town has borrowed using bonds to purchase open space in the past. This approach would authorize bonding for an open space purchase without first identifying the property to be purchased. Once the property is chosen, bonds would be issued for the amount of borrowing already authorized.

Example: Town of Falmouth, Town of Scarborough

Benefits: This funding allows for advance authorization of an open space acquisition fund, which allows the town to rapidly respond to open space opportunities. Authorized bond funds are not issued until a specific purchase is approved.

Limitations: Bond issues raise the same concerns with increasing costs on municipal taxpayers as any other type of public financing. Public support for open space funding can also be greater when there is a specific parcel under consideration instead of a more general open space fund.

**Recommendation:** FOSP recommends that the Town Council consider a bond issue to fund open space acquisition.

Appendix 7: Projection of costs of 2 million dollar open space bond

3. Local Option Real Estate Transfer Tax. The state and county currently collect a tax on each transfer of real estate at a rate of \$4.40 per 1,000 of the value of the transfer. A local option would allow municipalities to add to that transfer tax an amount that could be dedicated to open space preservation. This technique is used in other states, but efforts to authorize it in Maine have been unsuccessful.

Benefits: This is a guaranteed revenue stream that could be allowed to accumulate.

Limitations: It would require a change in state law at a time where new taxation has no support and would encounter the same resistance from county government as experienced previously.

**Recommendation:** FOSP supports a local option real estate transfer tax concept, but only recommends action if state law allows it.

4. Open Space Impact Fee. This fee is imposed on new development to pay for the cost of new services or facilities that will be needed by the development. Two U. S. Supreme Court decisions have established strict

parameters for impact fees. Fees must be based on a calculation that logically ties the fee amount to the impact from the development. Fees cannot be used to fund a backlog of needs and must be returned to the developer if they are not spent within a specified time period, usually 10 years.

Example: Cape Elizabeth Open Space Impact Fee (Sec. 16-3-1(q))

Benefits: In Cape Elizabeth, the impact fee was adopted to replace an open space donation requirement in the Subdivision Ordinance that was legally vulnerable to challenge. The open space impact fee allowed the town to continue its practice of setting aside land as part of development review. The fee is “paid” with a land donation. Lately, the Planning Board has opted to assess the fee instead of a land donation where the potential land did not fit within the town’s open space goals. The impact fee structure provides for the town to maintain the amount of open space per capita regardless of the level of new development.

The current open space impact fee in Cape Elizabeth is \$6,729 dollars or 14,767 sq. ft. per lot/unit.

Limitations: Impact fees cannot be set at an amount higher than the impact from new development. They also cannot be used to increase an existing community standard. The fee is only assessed on new subdivisions.

**Recommendation:** FOSP recommends that the Town retain the current open space impact fee structure.

5. Grants. State and federal governments and private foundations make funding available to preserve open space. The amount of funds available fluctuates, but is usually very competitive. Most grant funding requires a substantial cash match from the grant recipient.

Benefits: This can be a significant source of funding on a project by project basis. Grants can make it possible to double or triple the amount of funds available to purchase open space.

Limitations: Grant funding also typically includes conservation requirements, some of which may be inconsistent with Town open space goals. Even with grant funding, cash matching funds are almost always required.

**Recommendation:** FOSP recommends that grants be sought at appropriate opportunities.

*Tools considered and not recommended*

FOSP reviewed a wide range of financial tools that have been used nationally, but for a variety of reasons would not be suitable in Cape Elizabeth and therefore not recommended. The more significant tools are listed below.

- Promoting Economic Viability of Agriculture Fund (PEVA). This is a potential new program established in the local budget intended to enhance the economic of farming in Cape. Existing farms may apply annually for a grant equal to the property tax they pay on the excess land used for farming.

Benefits: This program is targeted to existing farms and provides a grant with no reporting requirements to farmers.

Limitations: The grant program relies on an approved list of existing farms. FOSP used a farm list provided by the Cape Farm Alliance. Some land that could potentially be considered a farm was not on the list, often because the private property owner did not want to be on a list. When the Comprehensive Plan Committee assembled a list of farms, issues about what can be considered a farm arose. Should areas that have previously been farmed but not currently cultivated (outside of a normal resting field rotation) be included? If so, how long should a field not in active cultivation be farmland? Should “prime farmland soils” or “soils of state significance” be included? All of these questions would become significant and have to be equitably addressed as a basis for refund of taxes. It will also proportionally increase the overall town tax rate to pay for the fund, which is what happens to fund any town service.

- Local Open Space Fee. This fee is different from an impact fee in that there is no requirement that the amount of the fee relate to a proportional impact on open space. Fees are paid by users. Short of establishing a fee and collection method for town open spaces, the fee could be piggybacked onto another fee that already exists. For example, the Building Permit fee, which is set at \$10.00 per \$1,000 of building value, includes \$3 per 1,000 that is directed into a town infrastructure fund.

Benefits: This is a technique that collects small amounts over time than could eventually accumulate into meaningful financial support for open space preservation.

Limitations: Any new fee faces opposition and Cape Elizabeth has rejected fees for trash bags and parking at Fort Williams Park. The amount of funds generated will likely be very small and a suitable fee will need to be identified to “piggyback” this fee onto. Finally, depending on the fee used, the burden for paying for open space will likely fall disproportionately from those benefitting from the open space.

## Growth Areas Review

*Step 9* of the charge from the Town Council to the FOSP Committee is:

FOSP as part of its work shall include a thorough review of growth areas, including a review of the definition of growth areas, and the areas designated as growth areas within the context of expected growth, all within its review of open space. This review shall include a meeting or meetings where public comment is solicited at the determination of the Future Open Space Preservation Committee.

This charge was referred to FOSP after the committee had begun its work.

What is a growth area?

Growth areas is a term originating in the state Comprehensive Plan statutes and rule.

Growth Management Act (30-A M.R.S.A. §§ 4312 - 4350). **Chapter 208, Comprehensive Plan Rule Criteria**

**Growth area:** "Growth area" means an area that is designated in a community's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combinations of those types of development and related infrastructure, and into which most development projected over 10 years is directed.

Growth areas are locations where expected development can best be accommodated by a town while still preserving community character. State law requires that a comprehensive plan must identify growth and rural areas. Failure to adopt a comprehensive plan that is consistent with state goals may jeopardize a municipality's authority to adopt land use regulations such as a zoning ordinance. FOSP noted areas where development had occurred outside of growth areas and that the development was not consistent with preserving community character.

Cape Elizabeth "growth areas"

In Cape Elizabeth, growth areas are zoned RB, RC and Town Center. The RC zone is designated an infill growth area. The Town Center is a designated growth area due to its function as the primary commercial area of town. Of the three districts, the RB District includes the greatest amount of vacant land, which is where most new development locates.

FOSP focused their review on the RB District. The committee reviewed aerial photos of all properties in the RB, and a map showing the RB zones and agricultural resources identified in the Comprehensive Plan. About 7% of the Cape Elizabeth is zoned RB. FOSP determined that very little agricultural land is located in the RB District.

#### Review of growth area changes

If land in the RB is rezoned to remove it from the growth area, then the land would likely be placed in the RA District. Development can and does occur in the RA District. FOSP compared the zoning requirements in the RA, RB and RC districts. The committee also reviewed how the same type of development changes depending on which zoning district it is located in and whether the development is designed to be compact or traditional. Compact development tends to save more public open space and save it in larger contiguous parcels. A majority of committee members expressed support for the clustering requirements mandatory in the RB district. They noted that one-third of the open space currently owned by the Town was obtained through development review and clustering.

FOSP discussed the option of eliminating or reducing the amount of RB zoned lands. The committee reviewed the state comprehensive plan law that requires that growth areas be designated to accommodate anticipated growth. It was noted that little growth is expected in Cape Elizabeth. Growth areas identified in the 1993 Comprehensive Plan continue to have capacity to accept anticipated growth through 2020, so no additional growth areas were designated in the 2007 Comprehensive Plan. The town could eliminate some RB areas as long as sufficient land remains to accommodate anticipated growth. FOSP members were concerned, however, that property owners in the RB would not support a rezoning. In addition, because the RB District includes mandatory open space requirements, leaving land zoned RB supports the town open space preservation goals.

Committee members generally agreed that agricultural land should be preserved, but that the private property rights of agricultural property owners must also be preserved. Committee members noted that if agricultural land is located in the RB District, it may have better odds of being preserved as open space due to the mandatory open space provisions in the RB District. The same open space provisions are optional in the RA District.

#### Solicitation of growth area comments

FOSP discussed growth areas in depth at the June 27, 2012 and August 15, 2012 meetings. Growth areas appeared as an item on the meeting agenda and the agenda and meeting materials for all meetings were posted on the town website. Following the June 27th meeting, the discussion was tabled in order to allow more public comment at the following meeting. In advance of the August 15th meeting, an invitation was emailed to all members of the Cape Farm Alliance and the Cape Elizabeth Land Trust, and an article was published in the Cape Courier and town website announcing the growth areas discussion on August 15th. Letters were received from one resident prior to the June meeting and two residents attended the August meeting but did not make any comments.

**Recommendation:** FOSP recommends that the review of growth areas be referred to the Planning Board as part of the resumption of the Planning Board's comprehensive plan implementation work. The Planning Board's comprehensive planning implementation work should include public outreach about the benefits of open space zoning. The Planning Board should also recommend ordinance amendments that make preservation of agricultural land a higher open space priority when preserving open space as part of new development.

## Appendices

1. Town Council charge to FOSP (March 12, 2012)
2. Town Greenbelt and Open Space Map
3. Cape Farm Alliance Map
4. Cape Elizabeth Land Trust Strategic Plan Excerpts
5. Public Opinion Survey
6. Cost Benefit Analysis
7. Public Forum Summary
8. Public Forum Powerpoint presentation
9. Projection of costs of 2 million dollar open space bond

## **Appendix 1 Town Council Charge**

### **Future Open Space Preservation Committee (FOSP)**

(Approved by the Town Council December 13, 2010 and Revised June 13, 2011,  
and March 12, 2012)

#### **Introduction**

The Cape Elizabeth Town Council has decided that the Recreation and Open Space chapter recommendations of the Comprehensive Plan should be implemented before further implementation of the Land Use Chapter. In order to implement these recommendations using a public process that (1) is consistent with the Town Council Communication Strategy, (2) incorporates the Cape Farm Alliance and the Cape Elizabeth Land Trust and (3) respects private property rights, the Town Council is creating the Future Open Space Preservation Committee (FOSP).

#### **Committee Structure**

The Future Open Space Preservation Committee (FOSP) shall consist of ten members. The Town Council, following a recommendation from the Appointments Committee, shall appoint three citizens that shall be broadly representative of the entire community. The Town Council shall designate two Town Councilors and a member of the Ordinance Committee to serve on the committee. The Conservation Commission and Planning Board shall each designate one person representative of their bodies to serve on the committee. The Town Council also requests the Cape Farm Alliance and Cape Elizabeth Land Trust to designate one representative from each of their organizations to serve on the committee. The committee shall appoint its own chair and secretary. The Town Manager shall designate a principal staff person for the committee. It is also anticipated that a consultant specializing in public survey and open space funding will be retained by the Town for specific projects that will be used by the committee.

#### **Committee Charge**

1. FOSP shall coordinate with the Cape Farm Alliance (CFA) and the Cape Elizabeth Land Trust (CELT) and solicit from them any information, inventories, etc. regarding future open space preservation priorities.

2. FOSP shall supervise a professional, statistically relevant telephone survey of town residents identifying priorities for open space preservation and preferred methods of funding.
3. FOSP shall prepare for the Town Manager's approval a Request for Proposals (RFP) for a consultant to:

Conduct an analysis of the costs and benefits to the town budget of development versus retention of open space. The analysis should draw on state and national resources to conduct this study. The objective is to determine the cost and benefits to taxpayers of housing growth versus the preservation of undeveloped land.

FOSP shall then review and make recommendations regarding the consultant's report.

4. FOSP shall conduct a public workshop with the CFA and CELT focusing on actions that both protect open space and promote sustainable farming, without constraining farmers' opportunities and infringing on private property rights.
5. FOSP shall develop "rural areas" and "open space" definitions for the Town of Cape Elizabeth. The committee shall consider (1) state law, (2) farmers' flexibility in using land on a long term basis, (3) the impact on other significant land owners, and (4) residents' priority in protecting rural areas.
6. FOSP shall recommend a process/mechanism for evaluating open space opportunities and proactive acquisition identification, including but not limited to identifying criteria for open space priorities and a party or parties responsible for making open space recommendations to the Town Council.
7. FOSP shall develop a range of tools and approaches to preserve/protect/enhance critical parcels. These tools should be expansive and include innovative approaches that have been successfully employed nationwide, including zoning, outright land purchases, elimination of incentives for development in critical parcels, methods by which land can be purchases in private/public partnerships, and any other creative approaches other towns have taken. At the same time, all of the approaches that are considered and recommended have to avoid infringement on personal property rights.

8. FOSP shall prepare, for Town Council discussion, an evaluation of the financial resources necessary to achieve the strategic conservation priorities identified. Financial resources may include, but are not limited to, funding by town taxpayers, individual donations (land or dollars), donations and grants through CELT as well as State and Federal conservation funding programs.
9. FOSP as part of its work shall include a thorough review of growth areas, including a review of the definition of growth areas, and the areas designated as growth areas within the context of expected growth, all within its review of open space. This review shall include a meeting or meetings where public comment is solicited at the determination of the Future Open Space Preservation Committee.
10. FOSP shall prepare a final report summarizing its work and submit it to the Town Council.

### **Resources**

The Town Council authorizes funding of \$25,000 for the cost/benefit/funding consultant and other miscellaneous committee expenses including the cost of the public opinion survey

### **Completion of FOSP work**

All work of the committee shall be completed by December, 31, 2012. A progress report shall be provided to the Town Council six months after the committee begins to meet. In addition, FOSP is encouraged to provide recommendations to the Town Council as individual items are completed.

## Appendix 2



## Appendix 3 Cape Farm Alliance Map



### The Farms of Cape Elizabeth

#### Farm Stands - Vegetables, Seedlings, Berries

- 11) Alewife's Brook Farm - Old Ocean House Rd.
- 8) William H. Jordan Farm - Wells Rd.
- 19) Maxwell's Farm - Two Lights Rd. (Strawberries Only)

#### Farm Stands - Herbs, Flowers, Seedlings

- 9) The Farm - Ocean House Rd.
- 5) Dun-Roamin' Farm - Sawyer Rd.

#### Farms - Vegetable, Flowers

- 3) Maxwell's Farm - Spurwink Rd.
- 15) Old Ocean House Farms - Old Ocean House Rd.
- 16) L & A Farm - Davis Point
- 17) Green Spark Farm - Fowler Rd.

#### Lobster - Clams

- 11) Alewife's Brook Farm - Old Ocean House Rd.

#### Equestrian Centers

- 1) Searway Farm - Stillman Rd.
- 2) Walnut Hill Equestrian Ctr - Ocean House Rd.
- 10) Shady Oak Farm - Fowler Rd.
- 12) Branbury Hill Farm - Old Ocean House Rd.
- 18) Spurwink Farm - Fowler Rd.

#### Beef - Poultry - Eggs

- 4) Down Home Farm - Dawe Rd.
- 6) Cranby Rooster Farm - Young Ln.
- 20) Journey's End Farm - Two Lights Rd.

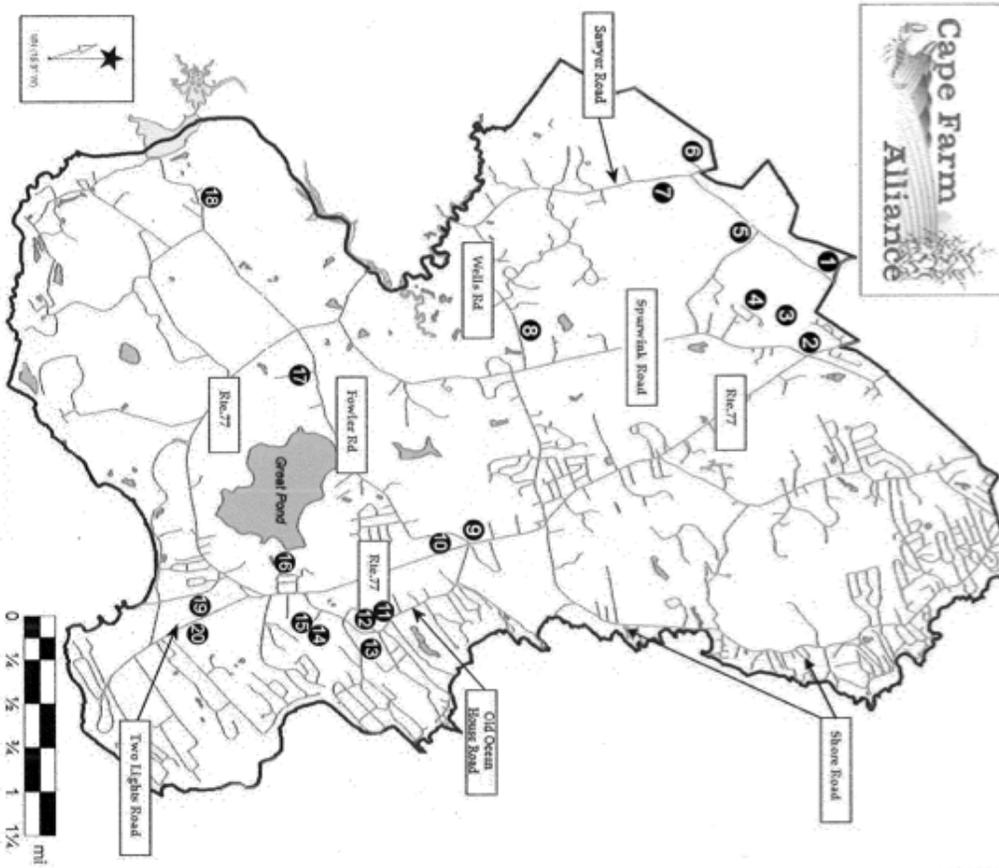
#### Youth growers, farm camp, community events

- 14) Turkey Hill Farm - Old Ocean House Rd.

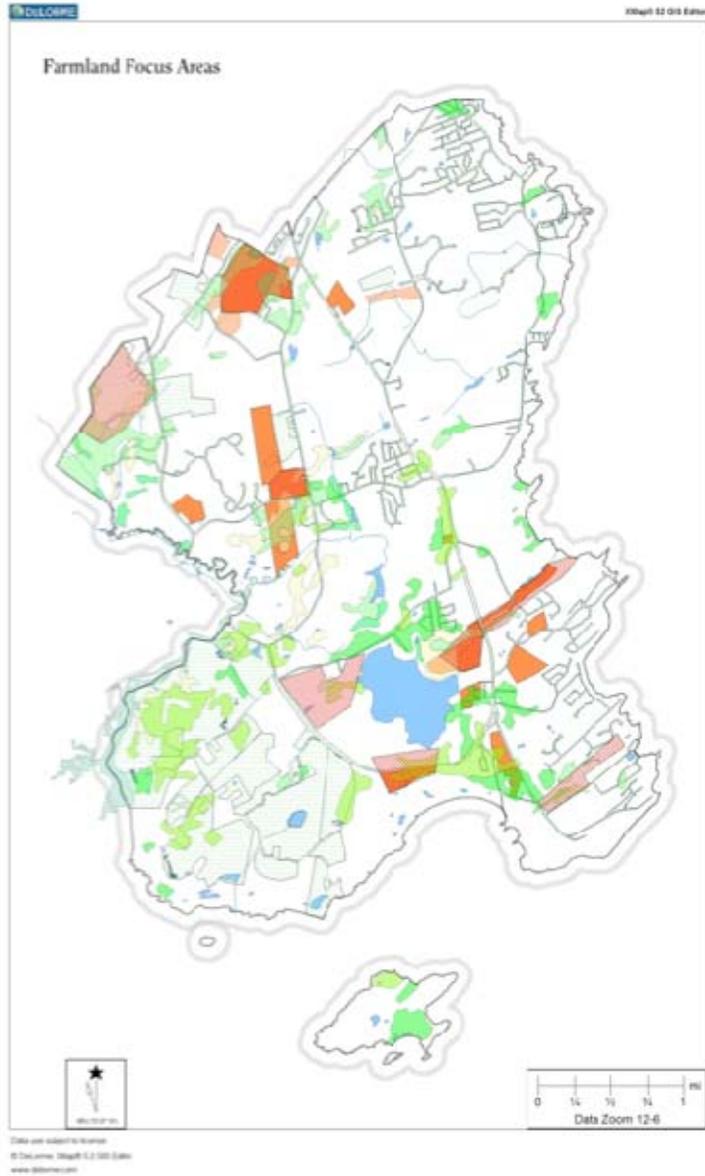
#### Christmas Tree - Nursery

- 7) Old Farm Christmas Tree Place - Sawyer Rd.
- 15) Origins Fruit - Old Ocean House Rd.

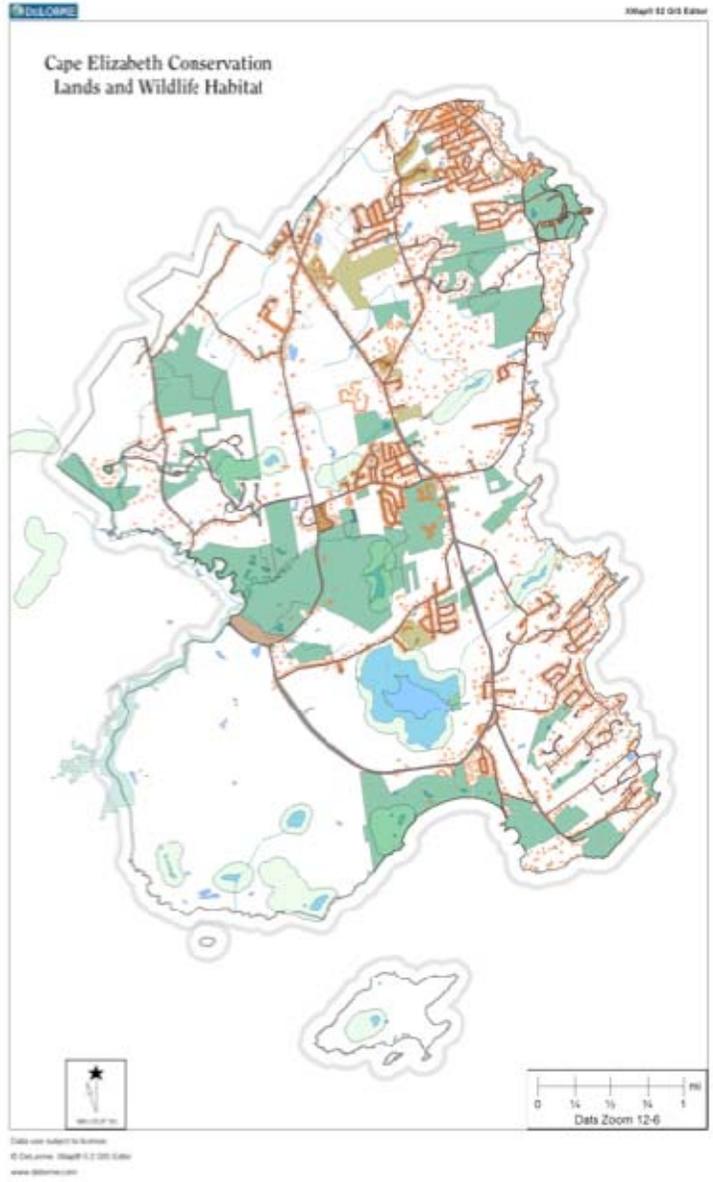
[www.capeelizabethfarms.com](http://www.capeelizabethfarms.com)











## **Appendix A: Land Protection Criteria**

### **Land Acquisition Criteria**

As a non-profit 501(c)(3) corporation the Cape Elizabeth Land Trust is recognized as a qualified holder of conservation lands. To ensure that our land preservation projects provide demonstrable public benefits not required by law, we have developed the following guidelines and criteria for the acquisition of conservation easements or fee interests in land parcels:

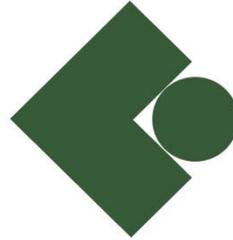
**Projects for consideration must meet at least one of the following criteria:**

- Ecological importance
- Visual attractiveness
- Public access
- Suitability for passive recreation
- Relation to Greenbelt
- Preservation of working farms
- 

**In addition to the above criteria the following guidelines are offered for clarification of the process CELT uses to approve projects under consideration.**

- An authorized family member or representative must willingly put each project forth for consideration.
- The project must entail some form of qualified public benefit.
- All projects will be reviewed by the CELT Lands Committee
- Projects recommended by the Lands Committee will be then forwarded to the organization's Board of Directors.
- CELT will refrain from offering specific legal and/or financial planning advice. Information regarding the tax consequences of land donation/preservation should to be determined by an independent source.
- A recent property appraisal is needed to validate the stated value of a parcel (if seeking a tax deduction).

**Appendix 5**  
**Public Opinion Survey**



**CRITICAL INSIGHTS**  
RESEARCH FOR PRECISE PRAGMATIC DIRECTION

# **Resident Survey of Attitudes Toward Open Space**

## **Summary Report of Findings**

**Prepared for:**  
**The Town of Cape Elizabeth**

**May 2012**

Focus Groups • Surveys • Public Opinion Polling

120 Exchange Street, Portland, Maine 04101

Telephone: 207-772-4011 • Fax: 207-772-7027

[www.criticalinsights.com](http://www.criticalinsights.com)



# **Introduction & Methodology**



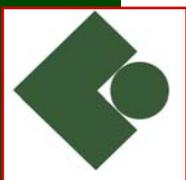
# Background

- The Future Open Space Planning Committee of the Town of Cape Elizabeth was charged with assessing the attitudes, preferences and perspectives of the citizenry regarding open space issues and priorities. As a component of this effort, the FOSP Committee retained Critical Insights to conduct a benchmark population-based research effort regarding open space planning issues.
- The overall goal of this research effort was to assess the attitudes and perspectives of a representative group of citizens regarding open space planning issues, as well as to gauge their preferences and priorities regarding open space funding mechanisms.
- It is of particular relevance that this effort yields a profile of these priorities, demands and expectations that is statistically projectable to the citizenry as a whole, in that results will be used to guide decision-making by the Town's FOSP Committee and associated governing entities.



# Informational Objectives

- The overall objective of the research is to assess and evaluate current attitudes towards zoning land use, development and preservation as well as documenting preference for funding mechanisms, and provide insight into the demands and preferences of various subgroups of the resident population.
- Specific objectives include the following:
  - Gauge perspectives on growth and assess concerns and sensitivities related to the historical and projected growth of the Town;
  - Analyze the willingness and tolerance of citizens to fund open space preservation through various sources of funding;
  - Develop a sense of the priorities and underlying values for open space, particularly in light of prevailing economic and cost-level considerations; and
  - Provide actionable insights and recommendations that will assist and inform the Town in effective and responsive planning.



# Methodological Overview

Number of respondents	Dates Research Conducted	Error Margin		Refusal Rate	Length of Interview
		90%	95%		
400	May 3rd to 20th, 2012	+/- 4.1	+/- 4.9	8%	15 minutes

- The survey instrument for the study was developed by Critical Insights in collaboration with the FOSP Committee of the Town of Cape Elizabeth.
- Interviews were conducted by telephone with adults in the Town of Cape Elizabeth from the Critical Insights Information Center using the company's thirty-station computer assisted telephone interviewing (CATI) system.
- To assure accurate data capture and quality, a proportion of interviews was verified with callbacks within 24 hours of the actual interview.
- Initial refusal rates were 8% overall, indicating a high level of engagement in the topic area and an indication that the sample was not tainted by non-response error.
- Data were statistically balanced according to relevant gender and age dimensions to be reflective of the demographic make-up of the Town of Cape Elizabeth; a summary of the demographic profile of the sample appears at the end of this report.
  - The results presented in this report are based on statistically weighted data.



# Respondent Qualifications

Sample selection was accomplished through randomly selecting respondents from lists provided by a computer-generated random digit dialing (RDD) method sourced from the Town of Cape Elizabeth zip code; In addition, 10% of the final sample reflected “cell phone-only” households.

In order to qualify for inclusion in the survey, a respondent must:

1. Be at least 18 years old;
2. Reside in the Town of Cape Elizabeth; and
3. Not be employed or have any affiliation with the Town Council, Future Open Space Committee or School Board of Cape Elizabeth, a market research firm, the media or an advertising agency.



# **Report of Findings**



*Satisfaction with  
Living in Cape Elizabeth*



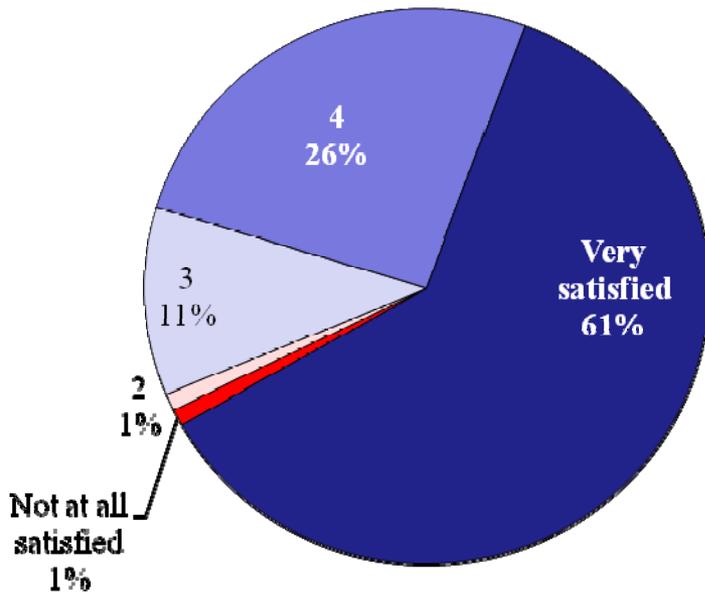
# Satisfaction with Living in Cape Elizabeth

- When asked to rate their level of satisfaction with living in the Town of Cape Elizabeth, nearly 9-in-10 residents polled (87%) indicate that they are at least somewhat satisfied.
- Indeed, a strong majority (6-in-10) are “very satisfied” with living in the Town.
  - Satisfaction is highest among residents in the mid-range household income categories (\$50,000-\$100,000), with fully three-fourths “very satisfied.”
- Satisfaction is most closely associated with the quality of life in Cape Elizabeth – that it’s a good place to raise a family as well as the school system.

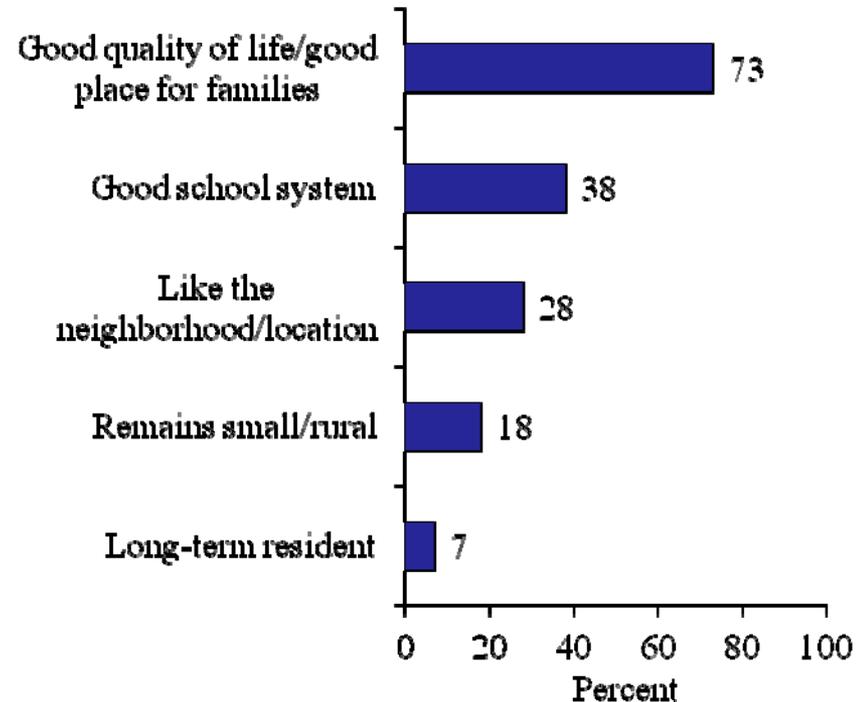


# Satisfaction with Living in Cape Elizabeth

*Overall, how satisfied are you with living in Cape Elizabeth? Please use a five-point scale where a 1 means “not at all satisfied” and a 5 means “very satisfied.”*



*Why do you say that?  
(SATISFIED WITH LIVING IN CAPE ELIZABETH)*



Base: Respondents satisfied with living in Cape Elizabeth (4 or 5 on a 5-point rating scale): n=350



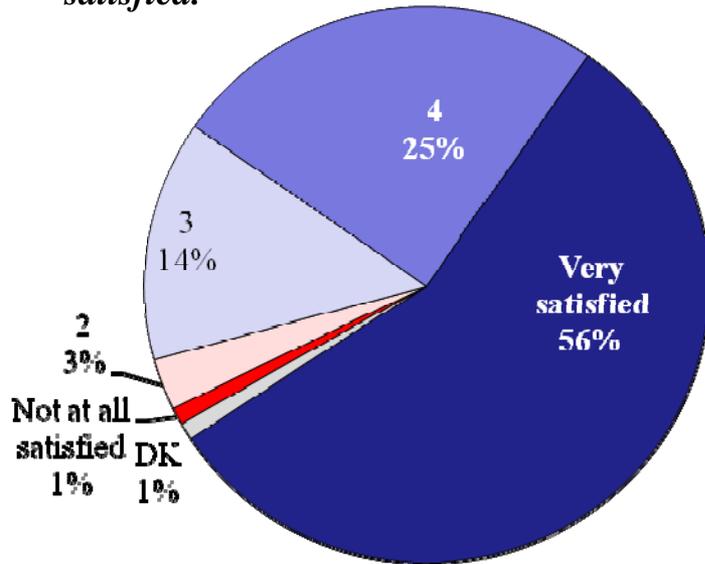
# Satisfaction with the Amount of Open Space in Cape Elizabeth

- In terms of respondents' views on the amount of open space in Cape Elizabeth, 8-in-10 residents polled are satisfied (56% “very satisfied”), with few (4%) dissatisfied.
  - Satisfaction with the amount of open space in Cape Elizabeth is highest among newer Town residents (10 years or less), with almost two-thirds (65%) “very satisfied.”
- The most commonly given reasons for being satisfied with the amount of open space in Cape Elizabeth surround the trails, beaches and parks that are available to residents.

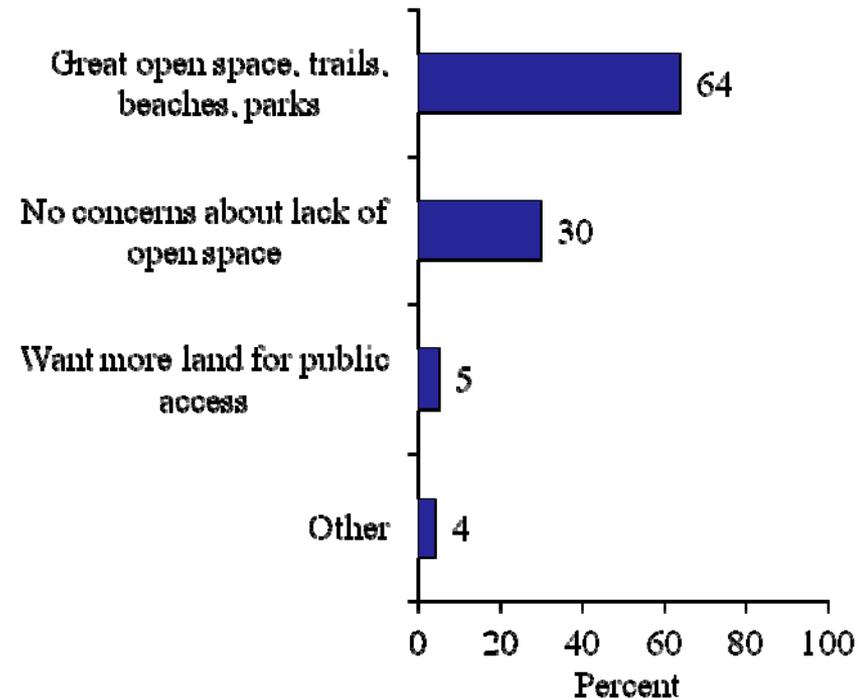


# Satisfaction with the Amount of Open Space in Cape Elizabeth

*And overall, how satisfied are you with the amount of open space in Cape Elizabeth? Please use a five-point scale where a 1 means “not at all satisfied” and a 5 means “very satisfied.”*



*Why do you say that?  
(SATISFIED WITH THE AMOUNT OF OPEN SPACE)*



Base: Respondents satisfied with the amount of open space in Cape Elizabeth (4 or 5 on a 5-point rating scale): n=325

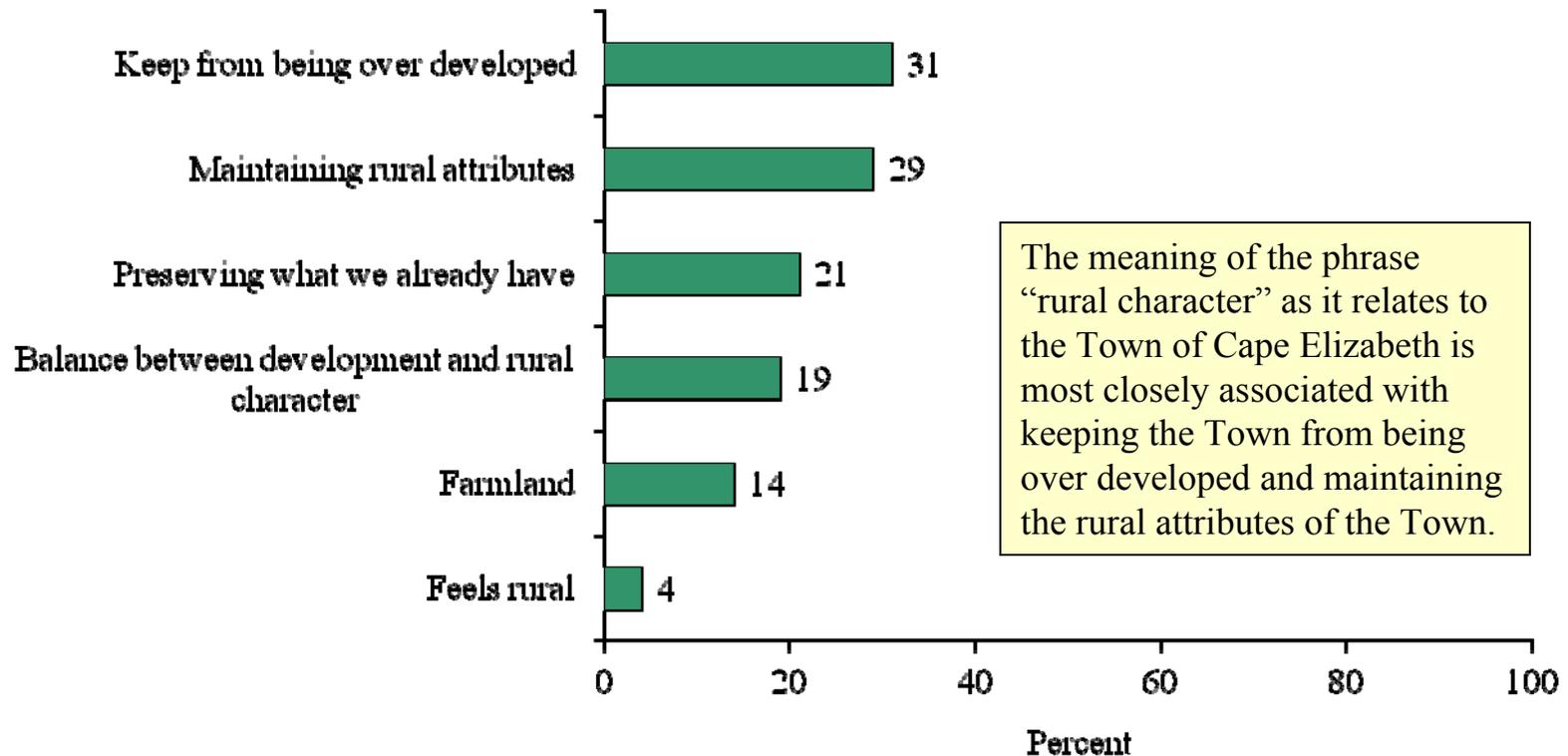


*Attitudes Toward Open Space in  
Cape Elizabeth*



# Preserving the Rural Character of Cape Elizabeth

*Often we make references to “preserving the rural character of the town.” When thinking about preserving the rural character of Cape Elizabeth, what does this statement mean to you?*

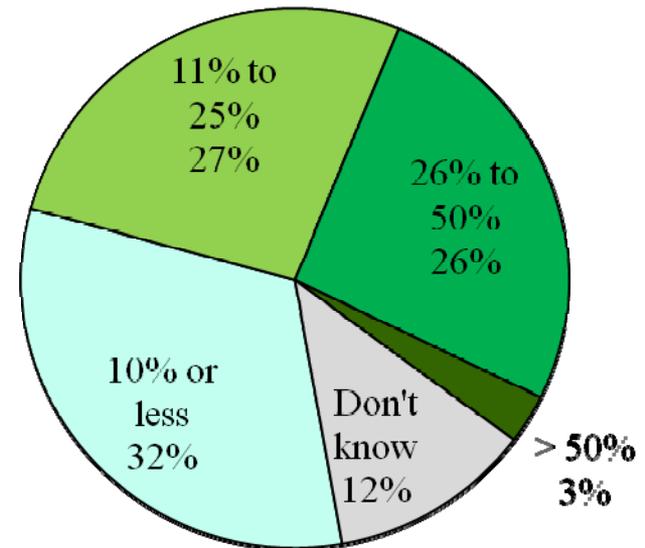




# Amount of Legally Protected Open Space in Cape Elizabeth

*There are approximately 9,000 acres of land in Cape Elizabeth. Within that footprint, what percentage of land do you think is legally protected open space?*

Overall, about a third of the Cape Elizabeth residents surveyed estimate that 10% or less of the land in Cape Elizabeth is legally protected open space. On average, respondents estimate the percentage of protected land at 22%.





# Need for More Protected Open Space

- Only about a third of the residents surveyed think that Cape Elizabeth needs to protect more open space, compared to almost 6-in-10 who claim that the Town does not need more open space.
- Among the respondents who would like the Town to have more open space, the most commonly mentioned reasons include wanting to get as much as possible (33%), that it's important for preserving what is already there (25%) and that unprotected land will be subject to development (22%).
- Conversely, nearly all of the respondents who say that there is no need for more protected space indicate that they are satisfied with the amount of open space that is already preserved.



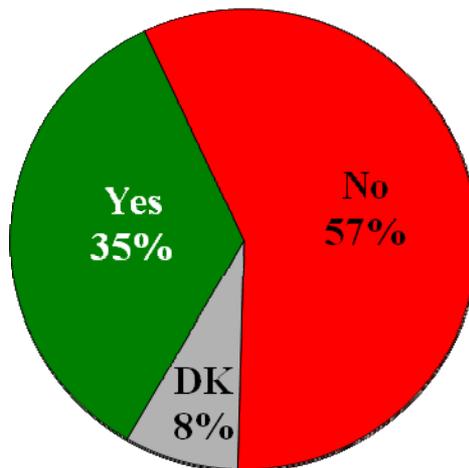
# Need for More Protected Open Space

*Does Cape Elizabeth need more protected open space for uses such as farms, forests, recreational space, scenic vistas and wildlife habitat?*

*Why do you say Cape Elizabeth needs more open space?*

We want as much as we can get	33%
Important for preserving what we have	25%
Unprotected land will be developed	22%
Open space adds to the value of our community	16%
Farming/farmland is important	12%

Base: Respondents who say Cape Elizabeth needs more open space: n=139



*Why do you say Cape Elizabeth does not need more open space?*

Satisfied with what we have	94%
Need more development	5%
Taxes go up	3%
Other	2%
Don't know	1%

Base: Respondents who say Cape Elizabeth does not need more open space: n=230



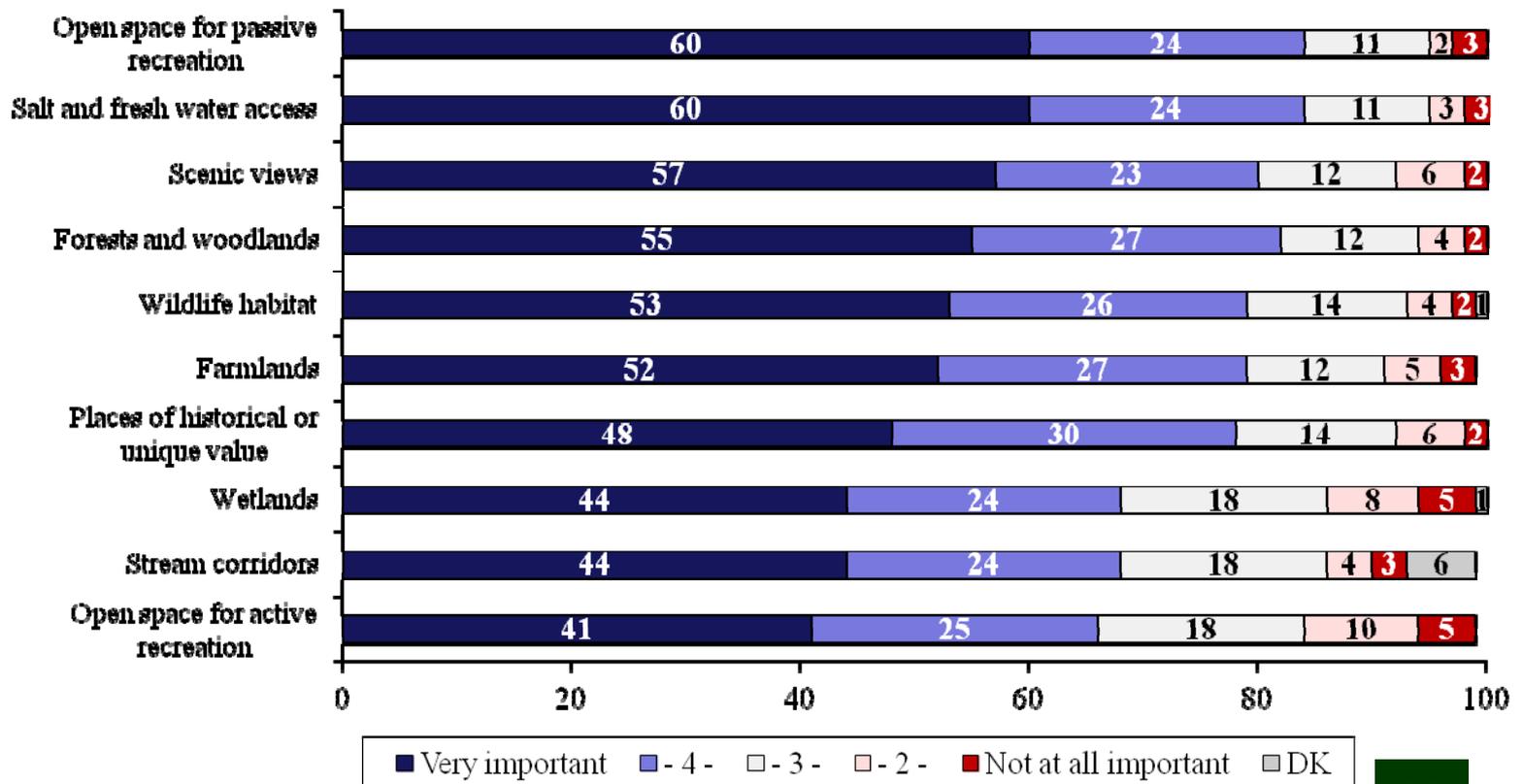
# Importance of Protecting Different Types of Land

- Respondents were also asked to rate the importance of protecting several different types of land within the Town.
- Most notably, fully 6-in-10 rate protecting open space for passive recreation (e.g., hiking, walking), salt/fresh water access and scenic viewpoints as “very important.”
  - Still, a majority rate protecting forests/woodlands, wildlife habitat and farmlands as “very important” as well. Almost half (48%) rate places of historical/unique value as “very important.”
- Of somewhat lesser importance to respondents (about 4-in-10 rate “very important”) are preserving wetlands, stream corridors and open space for active recreation (e.g., ball parks, sports fields).



# Importance of Protecting Different Types of Land

*Using a scale of 1-5 where 1 means “not at all important” and 5 means “very important,” how important is it to you for Cape Elizabeth to protect:*





*Views Toward Open Space  
Planning and Town Priorities*



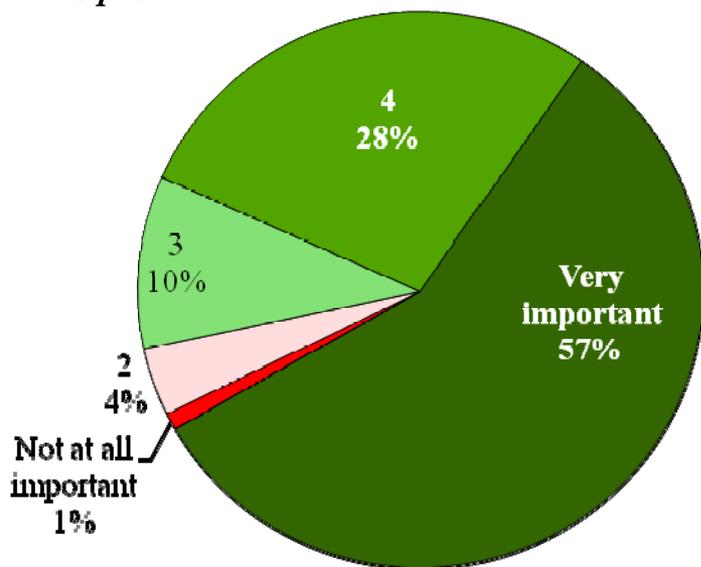
# Importance of Plan for Open Space

- It is not surprising that most respondents to the survey think it is at least somewhat important for the Town to have a plan for preserving its open space, with nearly 6-in-10 (57%) stating that it is “very important” to have an open space plan.
  - Again, shorter term residents (10 years or less) are more likely to cite the importance of open space planning.
- Among respondents who view having an open space plan as important, a majority say that it’s needed to preserve what they have, while about 4-in-10 suggest that a plan would provide a framework for future and ongoing direction.

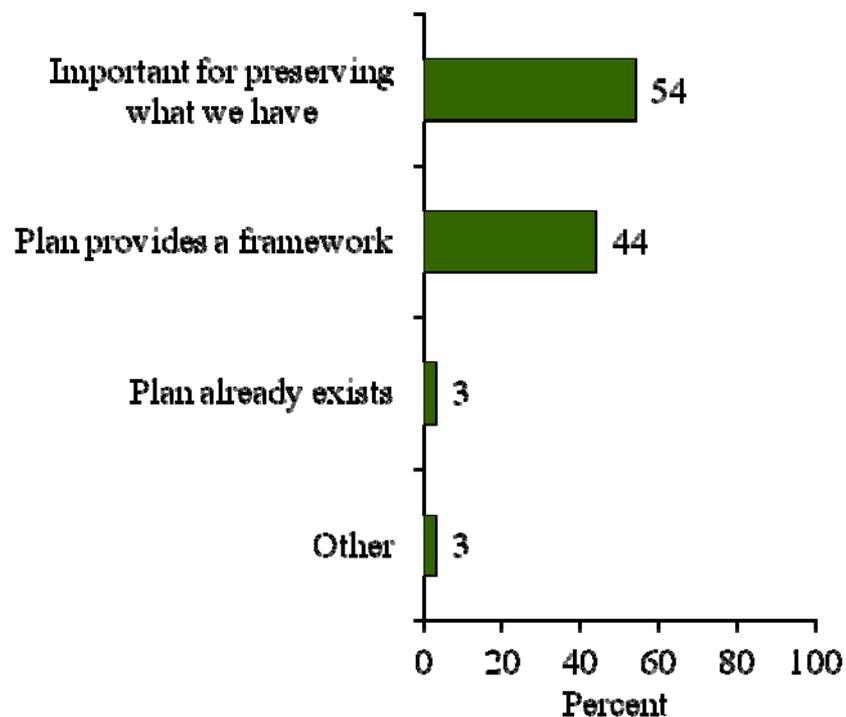


# Importance of Plan for Open Space

*How important is it to you for Cape Elizabeth to have a plan for preserving its open space which includes farms, forests, recreational space, scenic vistas and wildlife habitat? Please use a five-point scale where a 1 means “not at all important” and a 5 means “very important.”*



*Why do you say that?  
(IMPORTANT TO HAVE OPEN SPACE PLAN)*



Base: Respondents who say it is important to have an open space plan in Cape Elizabeth (4 or 5 on a 5-point rating scale): n=340



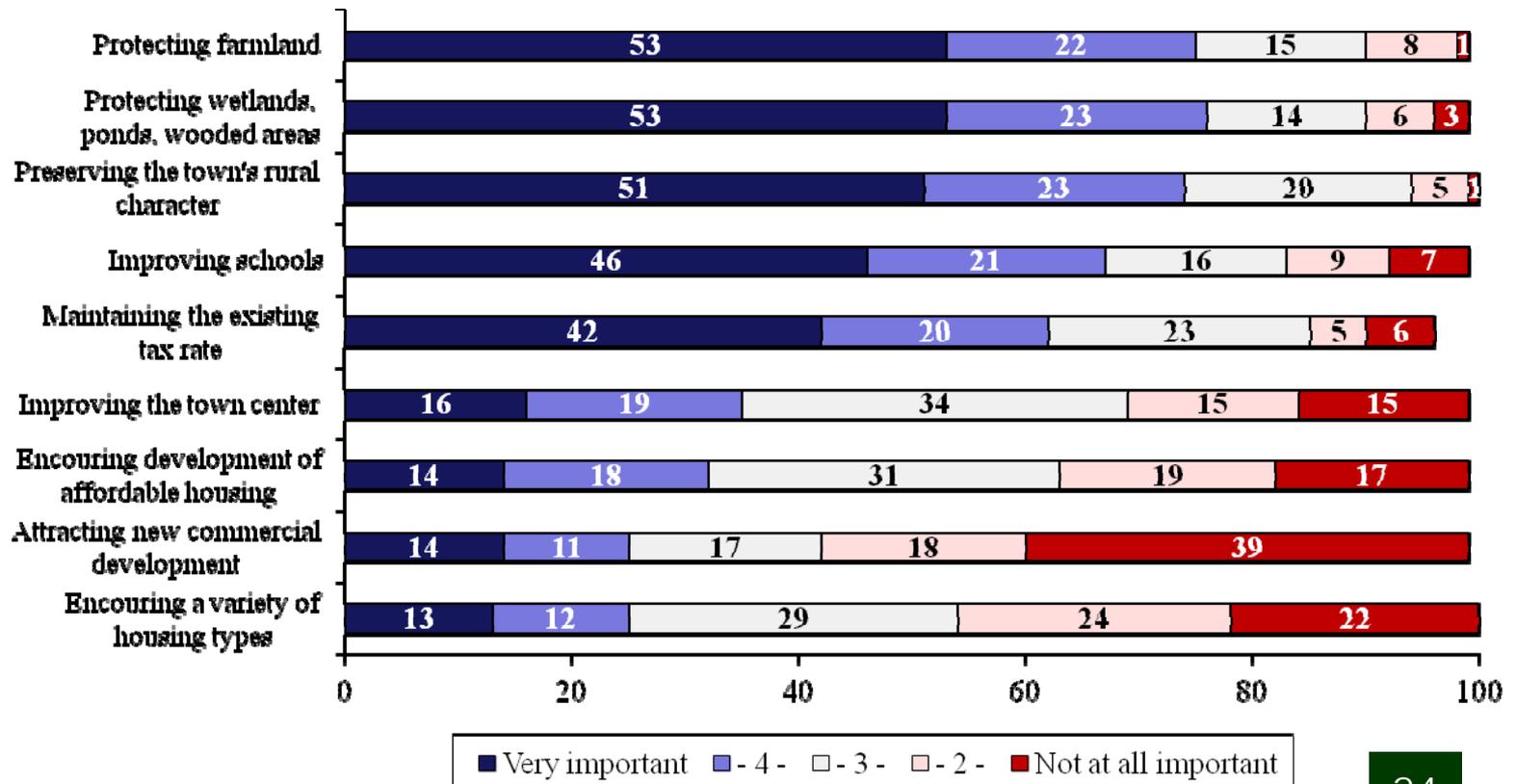
# Potential Goals for Cape Elizabeth in the Next 5-10 Years

- When respondents to the survey were asked to rate the importance of a series of goals for the Town over the next 5-10 years, a majority claim that it is “very important” to protect farmlands, wetlands/ponds/wooded areas and preserving the Town’s rural character. Just under half (46%) rate school improvements as “very important” and 4-in-10 cite maintaining the current existing tax rate as “very important.”
  - Women, respondents older than 65 years of age and respondents from the less affluent household income categories (< \$100,000 per year) are much more likely to cite the importance of protecting wetlands/ponds/wooded areas.
  - Not surprisingly, respondents from the lowest household income bracket (< \$50,000 per year) are most likely to state that encouraging affordable housing is important.
- Items of substantially less importance include improving the town center, encouraging affordable housing development, attracting new commercial development and encouraging a variety of housing types.
  - Notably, fully 4-in-10 respondents view the notion of attracting new commercial development as “not at all important.”



# Potential Goals for Cape Elizabeth in the Next 5-10 Years

*I am going to read some potential goals for the Town of Cape Elizabeth over the next 5-10 years. Please rate each of the goals in their importance to you, where 1 means “not at all important” and 5 means “very important.”*





*Solutions for  
Preserving Open Space and  
Funding Town Projects*



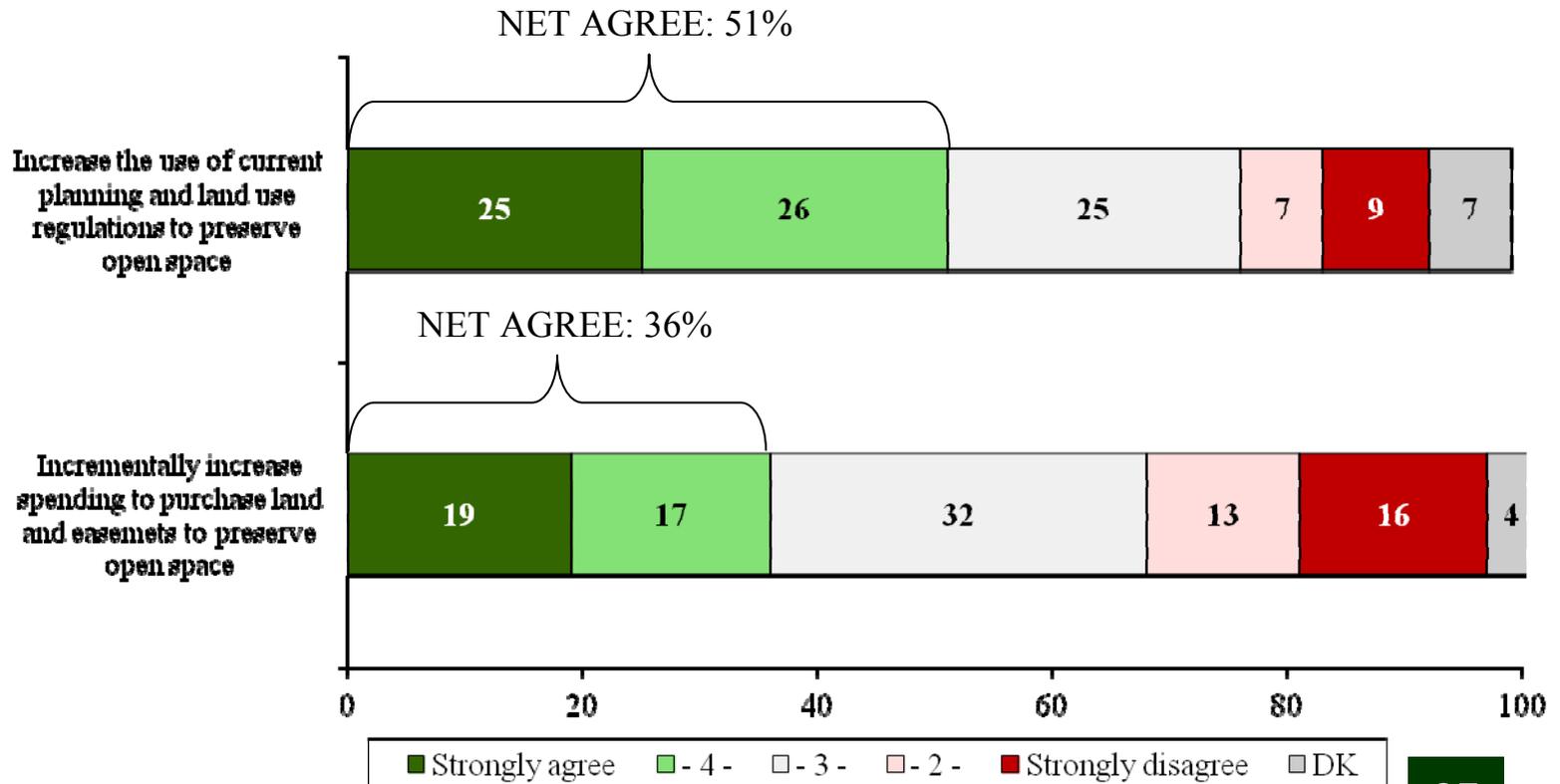
# Views Toward Ways of Preserving Open Space

- Overall, about half of the Town residents surveyed agree that in order to preserve open space in Cape Elizabeth, the Town should increase the use of current planning and land use regulations; a quarter are neutral toward this option, while about 1-in-7 disagree.
- Just over a third of Town respondents (36%) agree that the Town should incrementally increase spending to purchase land and easements, though 3-in-10 disagree with this option for preserving open space (and another third are neutral).



# Views Toward Ways of Preserving Open Space

*Using a scale of 1-5, with 1 meaning “strongly disagree” and 5 meaning “strongly agree,” please tell me whether you agree or disagree with each of the following statements. In order to preserve open space, the Town of Cape Elizabeth should . . .*





# Funding of Town Projects

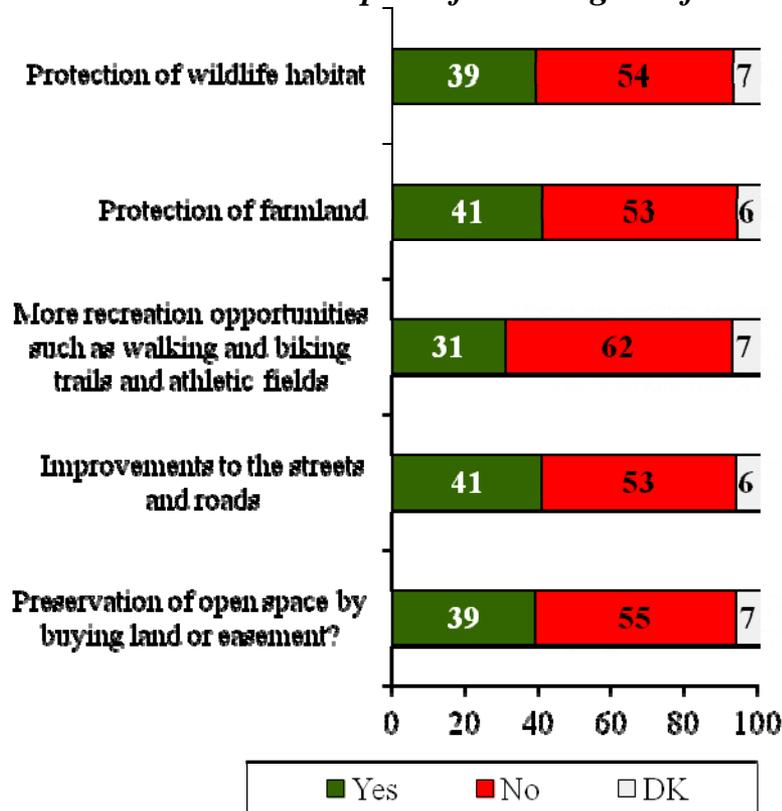
- In order to fund some different town projects, respondents to the survey were asked whether the Town should either move existing dollars from another part of the budget to fund the project, or whether the Town should increase taxes for funding.
- Across all of the projects mentioned on the survey, fewer than half felt that either moving existing dollars or increasing taxes should be considered.
- Respondents were more likely to support moving existing dollars rather than increase taxes, with about 4-in-10 suggesting that moving dollars to support farmland protection, street/road improvements, protection of wildlife habitat and preserving open space is appropriate.
  - Only about 3-in-10 respondents are supportive of raising taxes for any of the Town projects.



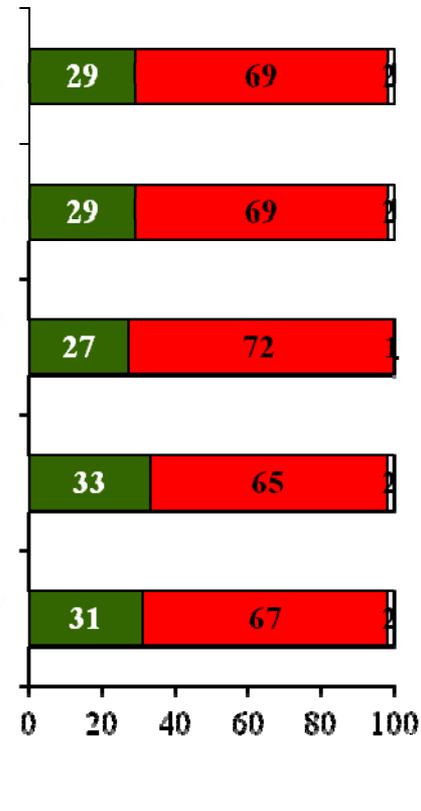
# Funding of Town Projects

*Should the Town consider . . .*

*. . . moving existing dollars from another part of the budget to fund:*



*. . . increasing taxes for:*





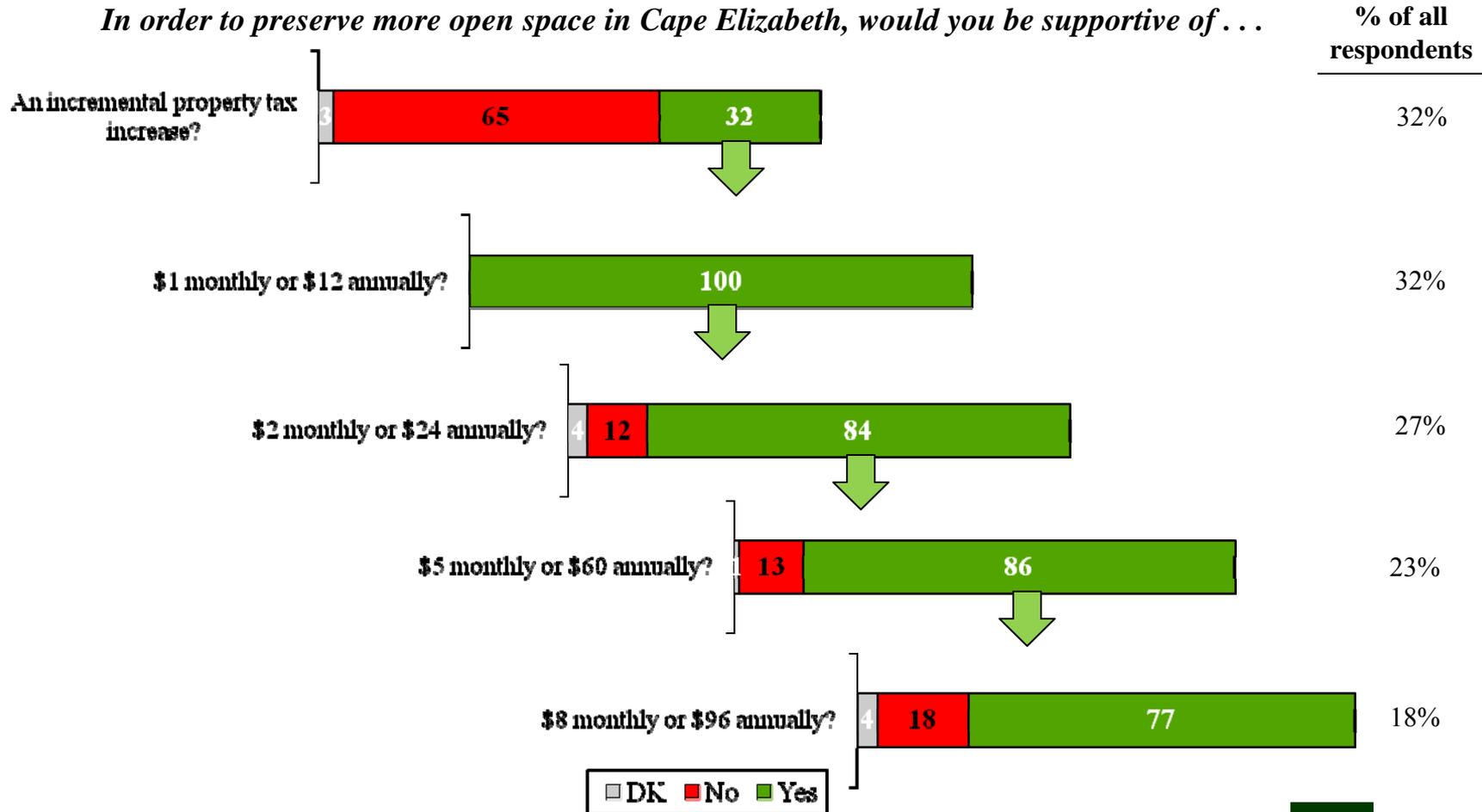
# Support for Increased Spending to Preserve Open Space

- Town residents who participated in the survey were asked whether they would be supportive of an incremental property tax increase in order to preserve more open space in the Town and if so, how much of an increase they would be likely to support.
- Notably, about a third of respondents said that they would be supportive of an incremental property tax increase of \$1 per month, or \$12 annually.
- It is also worth considering that among the subset of residents who are willing to support an incremental increase in property taxes (which is most likely to be comprised of respondents between 45 and 64 years of age, women and those with a grad school level education), a majority are willing to pay up to \$8 per month or \$96 annually (which represents about 1-in-5 residents surveyed overall).



# Support for Increased Spending to Preserve Open Space

*In order to preserve more open space in Cape Elizabeth, would you be supportive of . . .*

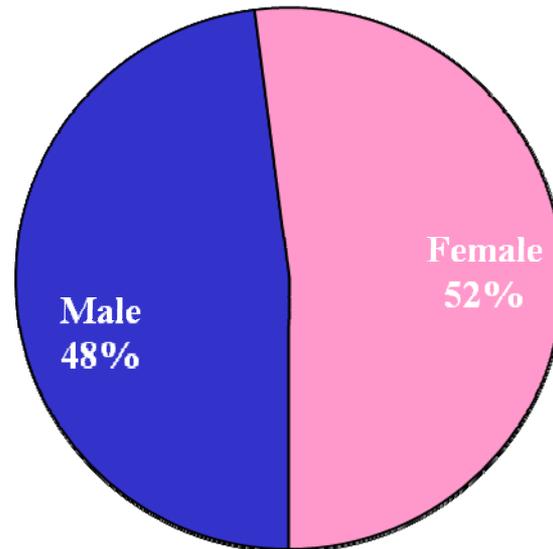




# *Respondent Profile*



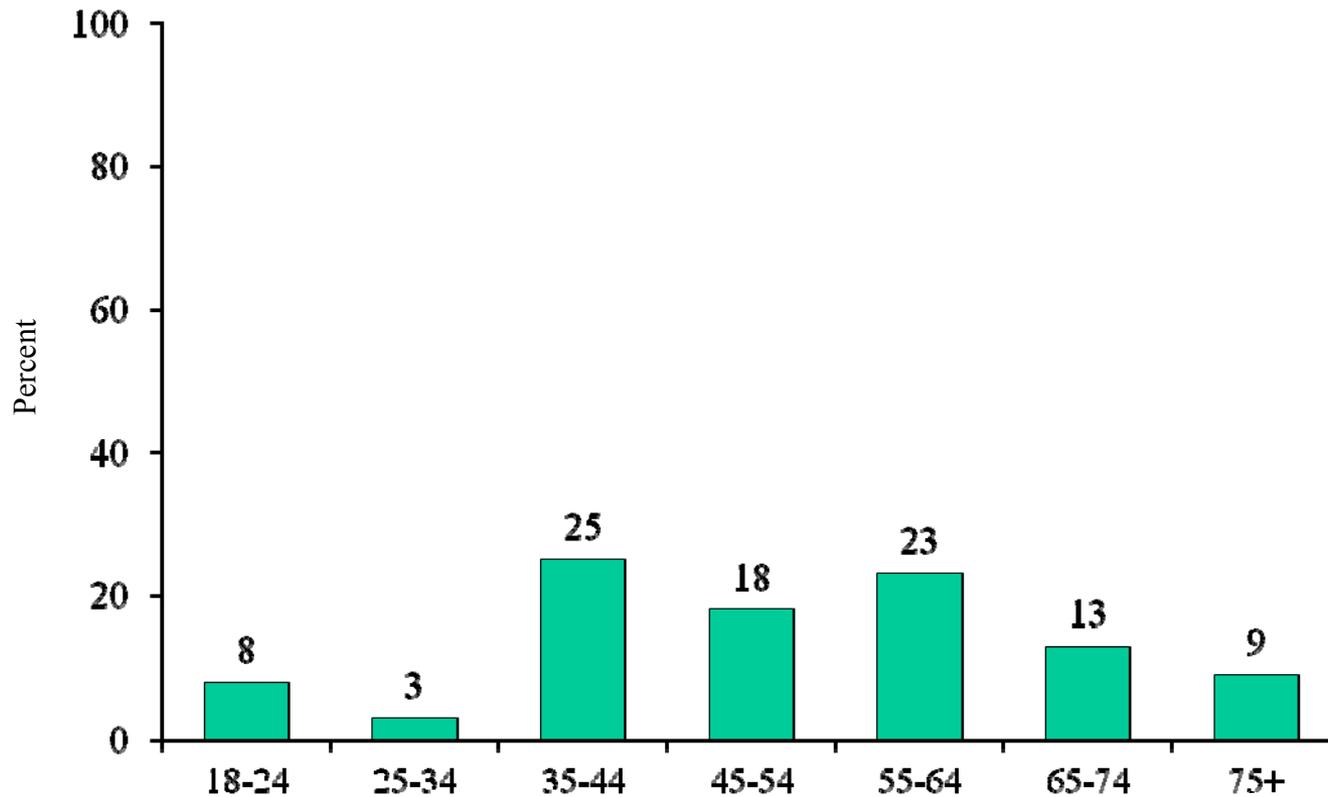
# Gender





# Age

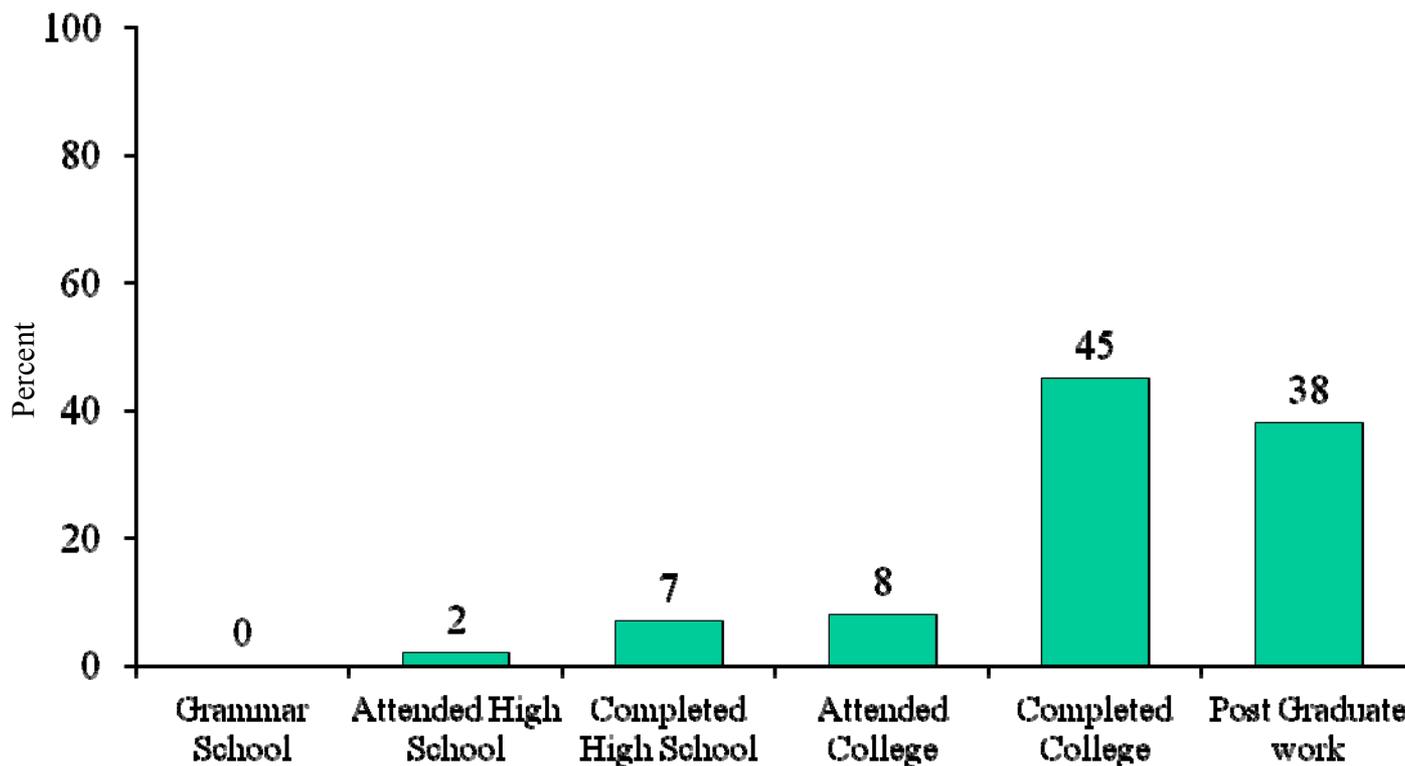
*In which of the following age categories do you belong?*





# Education

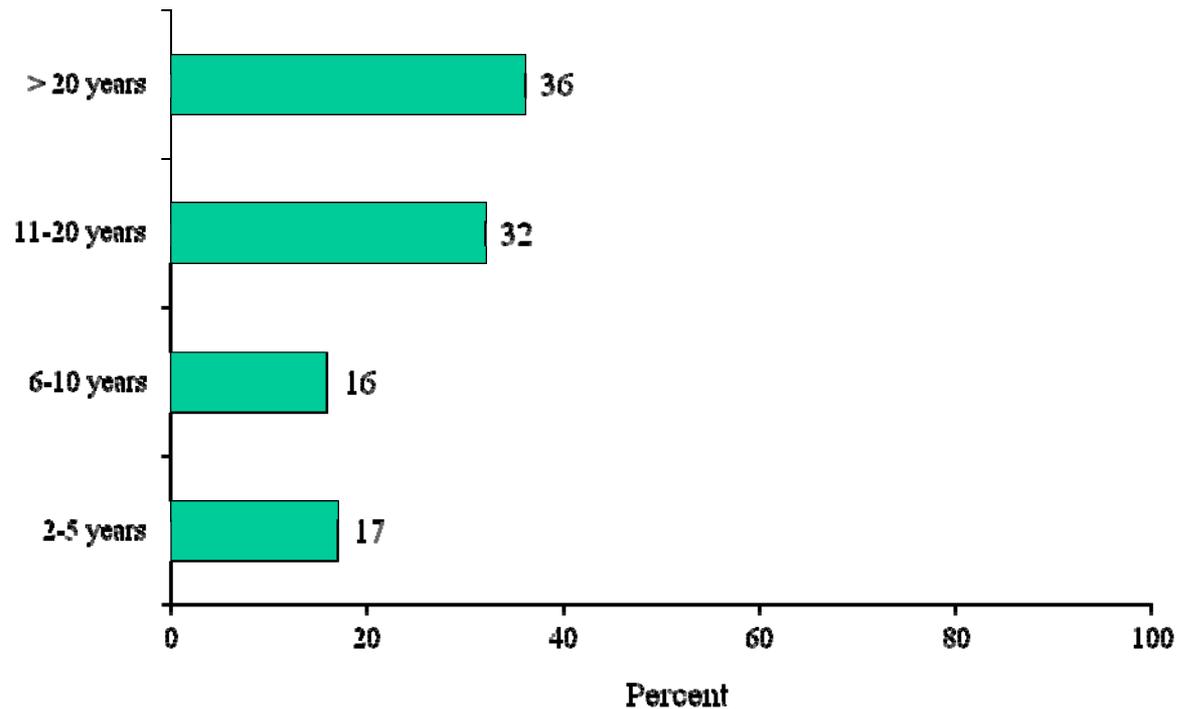
*What is the last grade of school you completed?*





# Years Lived in Cape Elizabeth

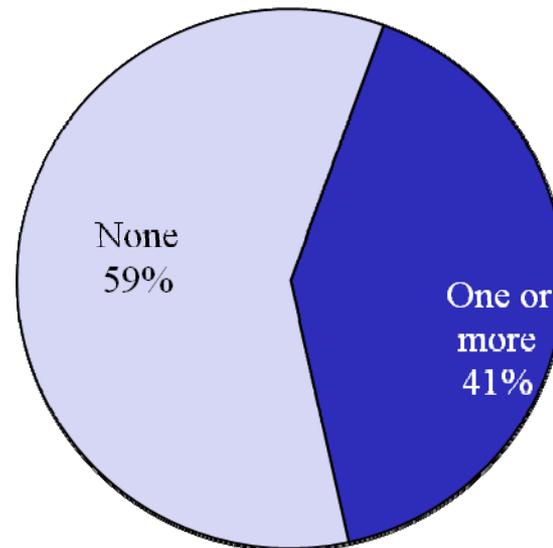
*How long have you lived in Cape Elizabeth?*





# Presence of Children in the Home

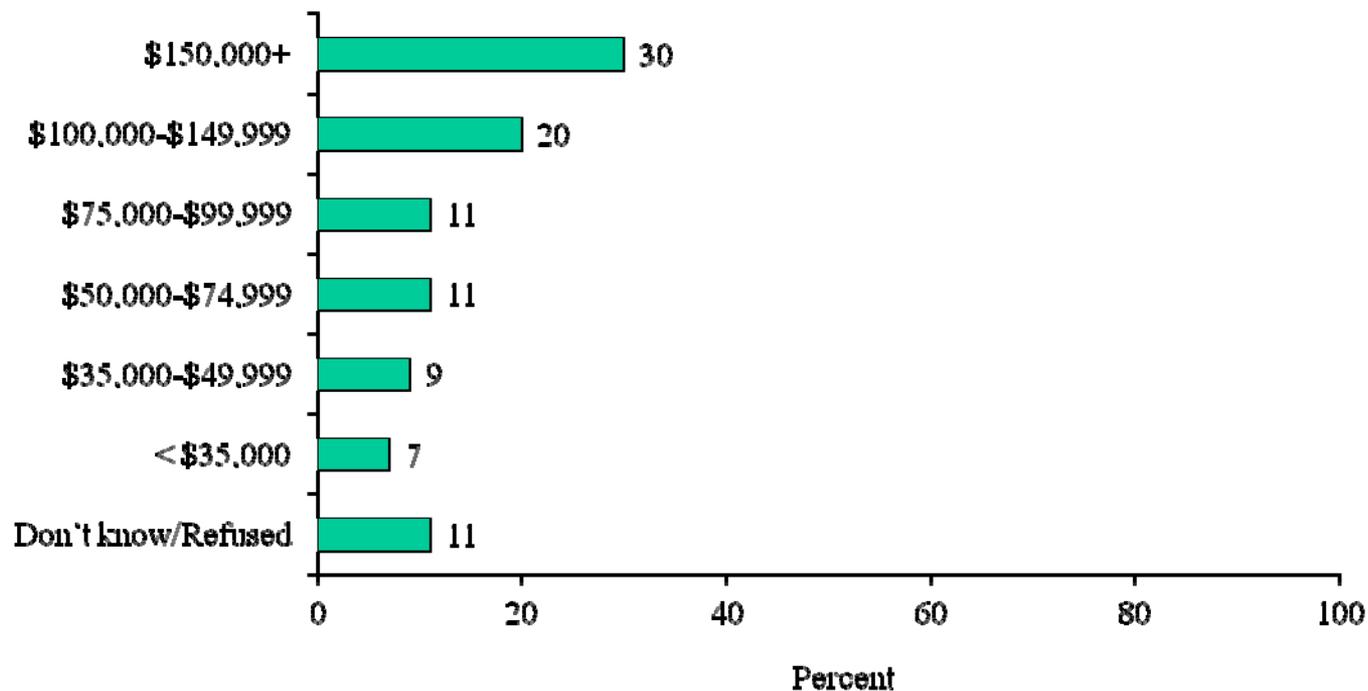
*How many children under the age of 18 do you have living at home?*





# Household Income

*And finally, what was your total household income before taxes last year?*



**Appendix 6**  
**Cost Benefit Analysis**



# *Project Report*

## **Open Space Cost/Benefit Analysis**

**Presented To:**  
**Future Open Space Preservation Committee**  
**Town of Cape Elizabeth**  
**320 Ocean House Road**  
**Cape Elizabeth, Maine 04107**

**Presented By:**  
**Planning Decisions, Inc.**  
**477 Congress Street, Suite 1005**  
**Portland, Maine 04101-3406**

**December 23, 2011**

## **Table of Contents**

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<b>Purpose and Approach.....</b>	<b>p. 2</b>
<b>1. Setting the Geographic &amp; Fiscal Context.....</b>	<b>p. 4</b>
<b>2. Projecting Forward.....</b>	<b>p. 14</b>
<b>Appendix One: Neighborhood Types.....</b>	<b>p. 17</b>
<b>Appendix Two: Interviews.....</b>	<b>p. 26</b>

## **Purpose and Approach**

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The purpose of this report is to “determine the cost and benefits to taxpayers of housing growth versus the preservation of undeveloped land” in the Town of Cape Elizabeth.<sup>1</sup> In particular, the report addresses four specific “neighborhood types” that represent different development alternatives drawn from existing housing developments currently present in the town:

1. an old, compact neighborhood alternative;
2. a traditional , large-lot subdivision alternative;
3. a clustered subdivision alternative;
4. a traditional condominium complex alternative; and
5. a condominium complex with added open space alternative. <sup>2</sup>

The questions motivating this report are, in essence, three:

1. What would be the fiscal impact on the town (both additional revenues earned and additional costs incurred) if any one of the five neighborhood types noted above were developed on the town’s remaining developable land?
2. What would be the fiscal impact if the same land were preserved as open space? and
3. Comparing the two, what would be the benefit-cost ratio of preserving the open space in question?

In order to answer these questions, Planning Decisions, Inc. (PDI) undertook four tasks:

1. We reviewed community impact studies conducted for two earlier developments – the Dominicus Crossing study dated May 4, 1996 and the Leighton Farm Subdivision study dated December 20, 2002;
2. We gathered and analyzed a wide variety of fiscal data taken from town records and census sources and a wide variety of housing and population data taken from town assessment records, census data and interviews with local real estate professionals;

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<sup>1</sup> Request for Bids, Town of Cape Elizabeth, Open Space Cost/Benefit Analysis for the Future Open Space Preservation Committee (FOSP), June 3, 2011, p. 1.

<sup>2</sup> See Appendix One for maps and descriptions of the neighborhood types.

3. We interviewed a range of town officials regarding the town's current capacity to provide services and the likely impact of additional residential development of the types noted above on the cost to maintain the current level of service now provided by the town.
4. We prepared estimates of future municipal costs based on various combinations of additional residential development and additional preservation of open space.

Together, the development alternatives described and the likely fiscal impacts of various combinations of these alternatives as they are spread over the amount of developable land remaining in Cape Elizabeth will provide citizens and town officials a means for evaluating the various "develop versus preserve" opportunities that will emerge over the years.

This report is organized in two sections:

1. **Setting the Geographic and Fiscal Context:** an examination of the amount of land in Cape Elizabeth for which the develop-preserve choice might apply and of recent fiscal and demographic trends in Cape Elizabeth;
2. **Projecting Forward:** an examination of the likely fiscal consequences of the five categories of potential new residential development and suggestions for applying the analysis to development and land use choices that will present themselves to the citizens of Cape Elizabeth in the future.

## 1. Setting the Geographic and Fiscal Context

Understanding the fiscal consequences of additional residential development compared to additional open space requires an understanding of two basic starting points:

- a. the *geographic context* – the volume of land potentially available for residential development or alternatively for preservation as open space; and
- b. the *fiscal context* – the current level of municipal services provided in Cape Elizabeth, the Town’s current utilization of capacity (staffing, building, vehicles, equipment, land) to provide such services, and the demographic, cultural and economic forces that drive the demand for such services. This fiscal context, in turn, is further divided into three elements—demographic elements, financial elements and management elements.

The purpose of this section of the report is to build that understanding by examining the volume and location of potentially developable land within the town and the demographic and fiscal trends in Cape Elizabeth over the past decade with an eye to establishing a baseline from which to make future projections.

### *a. the geographic context*

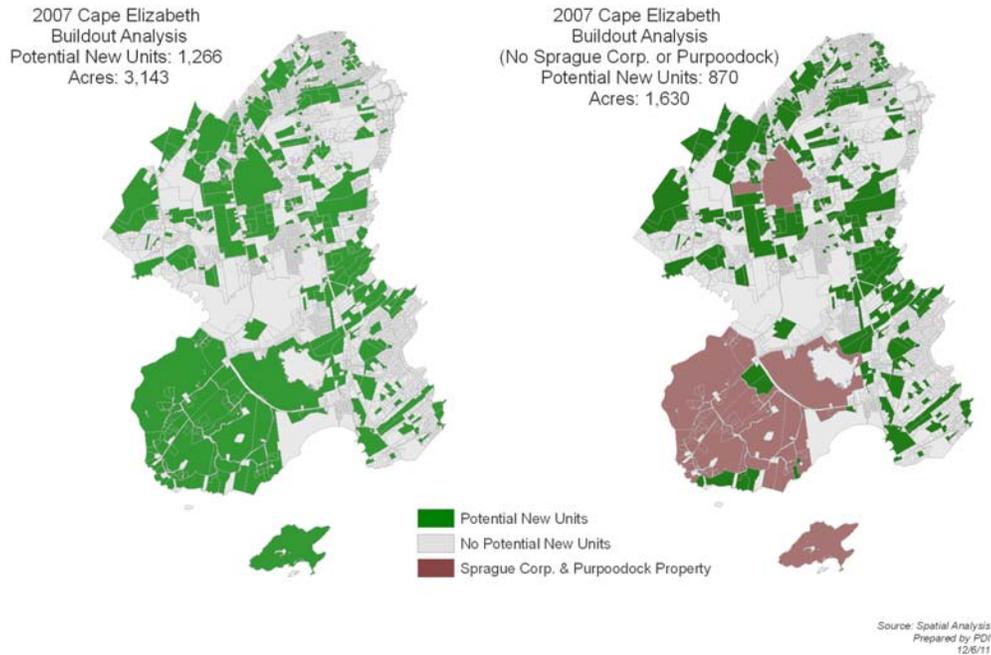
As part of its 2007 Comprehensive Plan, the town conducted a build-out analysis.<sup>3</sup> Based on the town’s existing zoning ordinance, the physical characteristics of undeveloped land, and a variety of development efficiency ratios applied to different portions of that land, the analysis concluded “that approximately 1,300 new housing units could potentially be accommodated on the remaining undeveloped land in Cape Elizabeth.”<sup>4</sup> Excluding land owned by the Sprague Corporation and the Purpoodock Golf Course, that number fell to 870 potential new dwelling units. The 1,300 housing-unit estimate encompasses approximately 3,100 acres, and the 870 unit estimate covers approximately 1,600 acres. Figure 1 below indicates the locations of this land.

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<sup>3</sup> Town of Cape Elizabeth Comprehensive Plan 2007, p. 147.

<sup>4</sup> *Ibid.*

• **Figure 1: Location of Potential Development/Preservation Choices**



Sources: Town of Cape Elizabeth Comprehensive Plan 2007 and assessor's database.

It is important to note here that the reason for estimating the amount of potentially developable land in Cape Elizabeth is not to suggest that it all could or should be developed or preserved, but rather to set the opportunity cost context of the develop-preserve choice. Suppose, for example, that the first developer to bring a proposal after the build-out analysis had been completed presented a 30-unit development on a particular 100-acre site. Then suppose that the parcel was conserved as open space. Under these conditions, the preservation would probably divert residential development to some other 100-acre parcel, thus, at least immediately, producing no significant fiscal impact. On the other hand, suppose a developer—20 years in the future—proposed the same 30-unit development on the last available piece of land suitable for development. Under those conditions, preservation of that land as open space would undeniably prevent whatever the fiscal consequences might be of developing the land as house lots. Indeed, the Comprehensive Plan explicitly recognized this fact by reducing its projection of new housing units beginning in 2018 because of “the reduced amount of developable land available, and the

increasing difficulty in developing the remaining parcels.”<sup>5</sup>

In short, the geographic context of the public policy choice helps define the fiscal context. If land preserved represents a small percentage of developable land, the fiscal impact of preservation will be relatively small, at least in terms of present value, because those consequences will not be felt until other land is developed or preserved. As the quantity of land to be preserved grows relative to the quantity of developable land available, the fiscal impact of a preservation choice will be greater because the fiscal consequences of that preservation will be experienced sooner. In the end, therefore, the true consequences of open space preservation cannot be determined on a parcel-by-parcel basis. It can, rather, be estimated only in the context of its ultimate outcome. If the first 100 acres preserved proves to be the only land preserved, its impact will be relatively small. If, on the other hand, it is simply the first piece of what ultimately becomes 1,000 preserved acres, its impact will be significant – not in and of itself, but as part of a larger total whose impact can be determined only in the distant future.

*b. The Fiscal Context*

*1. demographic elements*

Demand for municipal services is driven by people, property and regulations. More people and more property lead to increased demand for police and fire protection, education, maintenance and repair of public infrastructure, general government, recreation etc. At the same time, changes in the age, family composition and location of people and the types and locations of property affect the types and relative distribution of municipal services demanded. Finally, changes in regulatory requirements—such as rules governing groundwater runoff or the educational requirements of Emergency Medical Technicians—also change the demand for municipal services. Table 1 illustrates the basic demographic facts that have affected the Town of Cape Elizabeth over the past decade.

**Table 1: Selected Demographic Changes in Cape Elizabeth, 2000 & 2010**

<b>Item</b>	<b>2000</b>	<b>2010</b>	<b>Change</b>	<b>% Change</b>
Population, total	9,068	9,015	-53	-0.6%
Population 0-4	470	390	-80	-17.0%
Population 5-19	2,079	2,006	-73	-3.5%
total school enrollment	1,736	1,695	-41	-2.4%
Population 20-64	5,072	5,169	97	1.9%
Population 65+	1,447	1,450	3	0.2%

<sup>5</sup> *Ibid.*

Housing Units (HU)	3,724	3,963	239	6.4%
Occupied HU = Households	3,488	3,616	128	3.7%

Sources: U.S. Bureau of the Census, 2000 Decennial Census and 2010 Decennial Census; school enrollment from Cape Elizabeth School Department.

While Cape Elizabeth has experienced very little overall population change, it has seen a substantial demographic shift from younger population groups to middle-aged population groups, and a resultant increase in the number of households. In addition, its growth in housing units has substantially outpaced its growth in households thus leaving a far larger stock of vacant housing units in 2010 than in 2000. This fact is important because it will affect the nature and volume of new construction likely to occur over the coming decade. Table 2 highlights these characteristics of the housing stock.

**Table 2: Selected Housing Changes in Cape Elizabeth, 2000 & 2010**

Item	2000	2010	Change	% Change
Housing Units (HU)	3,724	3,963	239	6.4%
Occupied HU = Households	3,488	3,616	128	3.7%
Vacant	236	347	111	47.0%
Vacant, for rent	38	42	4	10.5%
Vacant, for sale only	8	32	24	300.0%
Vacant, rented or sold	27	26	-1	-3.7%
For seasonal, recreational, or occasional use	140	193	53	37.9%
All other vacant	23	54	31	134.8%
Vacant excluding seasonal	96	154	58	60.4%

Sources: U.S. Bureau of the Census, 2000 Decennial Census and 2010 Decennial Census.

Between 2000 and 2010, the number of housing units (HU) in Cape Elizabeth increased nearly twice as much (+239) as the number of households (HH) (+128). Excluding units held for seasonal, recreational or occasional use, the number of vacant housing units increased by 58 over the decade, rising to 154. Depending on the housing preferences of potential future buyers (size, age, lot size, etc.) and the price flexibility of current owners, this overhang of vacant homes could have a substantial impact on the demand for construction of new housing units in Cape Elizabeth over the coming decade.

## *2. financial elements*

The other side of the fiscal context is the amount Cape Elizabeth actually spent on municipal services over the recent past. Table Three presents those data as gathered from various town annual financial reports and adjusted to ease

presentation and clarify categories.<sup>6</sup>

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<sup>6</sup> Town of Cape Elizabeth Annual Financial Report, June 30, 2001 through June 30, 2011. Figures are presented for FY2003 because reporting practices prior to that period make comparison with later years less accurate. Data reported by function were adjusted to take employee benefits from the "Other Expenditures and Transfers" category and put them in each major functional category to present a more accurate picture of the actual cost of each function. The balance of the "Other" category was included in "General Government." Debt Service and Capital Improvement is listed as a three year trailing average in order to smooth large annual variations, and, for 2011, includes the new category "Facilities." The one-time expenditure for bond refinancing in FY2010 is excluded. In order to incorporate the effects of inflation, actual reported figures are deflated to their 2003 values using the Consumer Price Index.

**Table 3: Inflation-Adjusted Expenditures by Function  
Cape Elizabeth, FY2003 & FY2011**

<b>Function</b>	<b>FY 2003</b>	<b>FY 2011</b>	<b>Change</b>	<b>% Change</b>
Education	\$14,568,738	\$15,946,742	\$1,378,004	9.5%
Culture, Parks & Human Services	\$1,493,723	\$1,631,940	\$138,217	9.3%
General Government	\$1,309,952	\$1,346,483	\$36,531	2.8%
Public Safety	\$1,600,690	\$1,697,450	\$96,760	6.0%
Public Works	\$1,464,232	\$1,588,650	\$124,418	8.5%
Debt Service & Capital Improvement	\$2,475,468	\$1,520,912	-\$954,557	-38.6%
Intergovernmental	\$782,596	\$798,799	\$16,203	2.1%
<b>Total</b>	<b>\$23,695,399</b>	<b>\$24,530,975</b>	<b>\$835,575</b>	<b>3.5%</b>

Sources: See footnote #6 above.

In order to present these expenditure totals in a way more relevant to potential future residential development, Table 4 divides the FY03 expenditure totals by the estimated number of households in 2002 and the FY11 expenditure totals by the number of households reported in the 2010 Census. It is important to note here that the expenditure totals for Education and Culture, Parks & Human Services are included unaltered. The other figures are discounted by 3% to reflect that portion of the other governmental functions serving the non-residential property and activities in the town. Since these properties account for 3% of the town's total assessed tax base, PDI, in consultation with town officials, decided to allocate a portion of expenditures to these properties in proportion to their share of the town's tax base. This adjustment simply highlights the fact that the primary driver of demand for municipal services in Cape Elizabeth is the number, location and demographic characteristics of its residents.

**Table 4: Inflation-Adjusted Expenditures per Household  
by Function Cape Elizabeth, FY2003 & FY2011**

<b>Function</b>	<b>FY 2003</b>	<b>FY 2011</b>	<b>Change</b>	<b>% Change</b>
Education	\$4,138	\$4,410	\$272	6.6%
Culture, Parks & Human Services	\$424	\$451	\$27	6.4%
General Government	\$361	\$361	\$0	0.1%
Public Safety	\$441	\$455	\$14	3.3%
Public Works	\$403	\$426	\$23	5.6%
Debt Service & Capital Improvement	\$682	\$408	-\$274	-40.2%

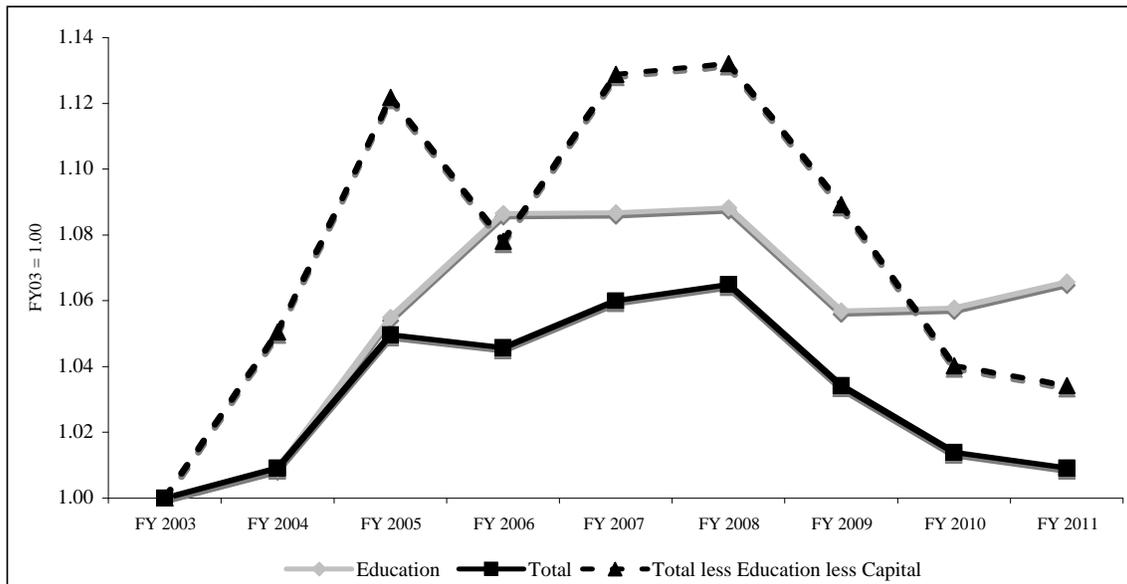
Intergovernmental	\$216	\$214	-\$1	-0.6%
Total	\$6,665	\$6,726	\$61	0.9%
Total less Education & Debt Service, Capital Improvement	\$1,845	\$1,908	\$63	3.4%

Sources: See footnote #6 above plus Census data for household numbers.

The most striking fact evident in Table 4 is how little overall costs per household changed over the period in spite of the demographic shifts reflected in Tables 1 and 2. Total inflation-adjusted municipal spending per household increased less than one percent over the eight-year period. The \$272 per household increase in cost for education was largely offset by the \$272 per household decrease in costs for debt service and capital improvements. Eliminating these two items, the increase per household for all other services was \$63, an increase of 3.4%.

This small overall change, however, masks increases and subsequent decreases that occurred during the period. This is evident in Figure 2 that depicts an index of inflation adjusted spending per household using FY 2003 as a baseline.

**Figure 2: Index of Inflation Adjusted Spending per Household for Selected Functions  
Cape Elizabeth, FY 2003 to FY 2011, FY 2003 = 1.00**



Sources: See footnote #6 above plus Census data for household numbers.

Between FY03 and FY06, inflation-adjusted education spending (the gray line) rose 8%, held that level for two more years before dropping to 6% over the FY03 level in FY09 and FY10 and then rising to 7% over the FY03 level in FY11. Total spending less education and debt service and capital spending (the dotted line) was even more volatile, rising to 13% above the FY03 level before falling back to 3% over the FY03 level. Total spending (the black line) reflected this volatility

although in a less exaggerated way, rising to 7% above the FY03 level in FY08 before falling to just 1% above the FY03 level in FY11.

### *3. management elements*

The central point to be drawn from the financial analysis presented above is that municipal spending is not linked in any simple formulaic way to number of households in the community. It is, rather, the result of departmental managers adjusting their human and capital resources to the changing needs of the community and the constraints of their budgets. This service management orientation was evident in all of the interviews conducted with town program managers as part of this project.<sup>7</sup> Several themes emerged illustrating forces other than simple number of people or households driving the demand for municipal services, thus creating the need for management flexibility in meeting them:

✓ *The nature of the need for service has changed*

For the police, the nature of crime has changed. More credit card fraud, identity theft, online commercial transactions and increased thefts have changed the type of police service provided and changed the measure of service from response time to an accident to speed of prosecution for a crime. There is increased need for investigative, detective work.

Similar changes are evident in Public Works where the primary job used to be snow plowing but over time has become maintenance of fields, trimming trees, clearing catch basins and generally maintaining a wider range of public infrastructure. Similarly, in Parks and Recreation, the changing nature of the population has resulted in changing programs and a wider range of on-call instructors.

✓ *Regulations have increased the complexity of service*

For rescue services provided by the Fire Department, the increased credentialing required for first responders along with the hours required at hospitals for post rescue debriefing has made it increasingly difficult to attract volunteers. For Public Works, increasing regulation regarding stormwater runoff has increased the complexity of maintenance operations and added significant training time for staff.

✓ *Employees must be cross trained to serve multiple purposes*

Public works mechanics also drive snow routes. A police officer does part-time

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<sup>7</sup> For a list of interviews, see Appendix Two below.

detective work. Parks & Recreation employees are program planners and managers; actual programming is provided by on-call instructors.

✓ *Regional cooperation increases flexibility*

Public Works can borrow a vehicle from South Portland on an “as available” basis. Fire and police services can draw on neighboring forces as needed. Animal control, dispatch, the tactical unit and the regional crime lab all are provided through regional cooperative services. Interlibrary loan services extend the value of a library now limited by a “buy a new book, discard an old one” policy dictated by the constraints of the current building.

The other theme to emerge from interviews with Department Heads was the general (with several notable exceptions) adequacy of the town’s current physical asset base. The school buildings and fields are adequate to meet current and likely future demand. In fact, presuming a relatively even distribution across all grades, the school system could absorb 200 more students. The fire and police stations are relatively new, provide adequate space for staff and are well positioned to respond to calls anywhere in the community. Public works has adequate building space, the sewage treatment plant is at 67% capacity, the transfer station is open four days per week and waste is hauled five times per week. Regular replacement schedules for vehicles will allow fire, police and public works to maintain current fleets. The Community Center, school buildings, athletic fields have capacity to serve more people (recognizing that fuller scheduling will mean less convenient times for some activities).

The major exceptions to the adequacy of capital facilities are the library and the transportation portion of community services. As noted above, the current library operates 45 hours per week (above the standard for comparable communities) and has no room for additional acquisitions. Any additional residential development would mean diminished library service on a per-person or per-household basis. In particular, additional families with young children would find serious limitations in the library’s ability to provide additional programming for their needs. Similarly, even as enrollment in the school system has declined, ridership on the town busses has increased. If this higher proportion of students taking the bus continued in an environment of increased residential development, the transportation service would have to add an extra bus (or busses) and additional route drivers.

*4. neighborhood differences*

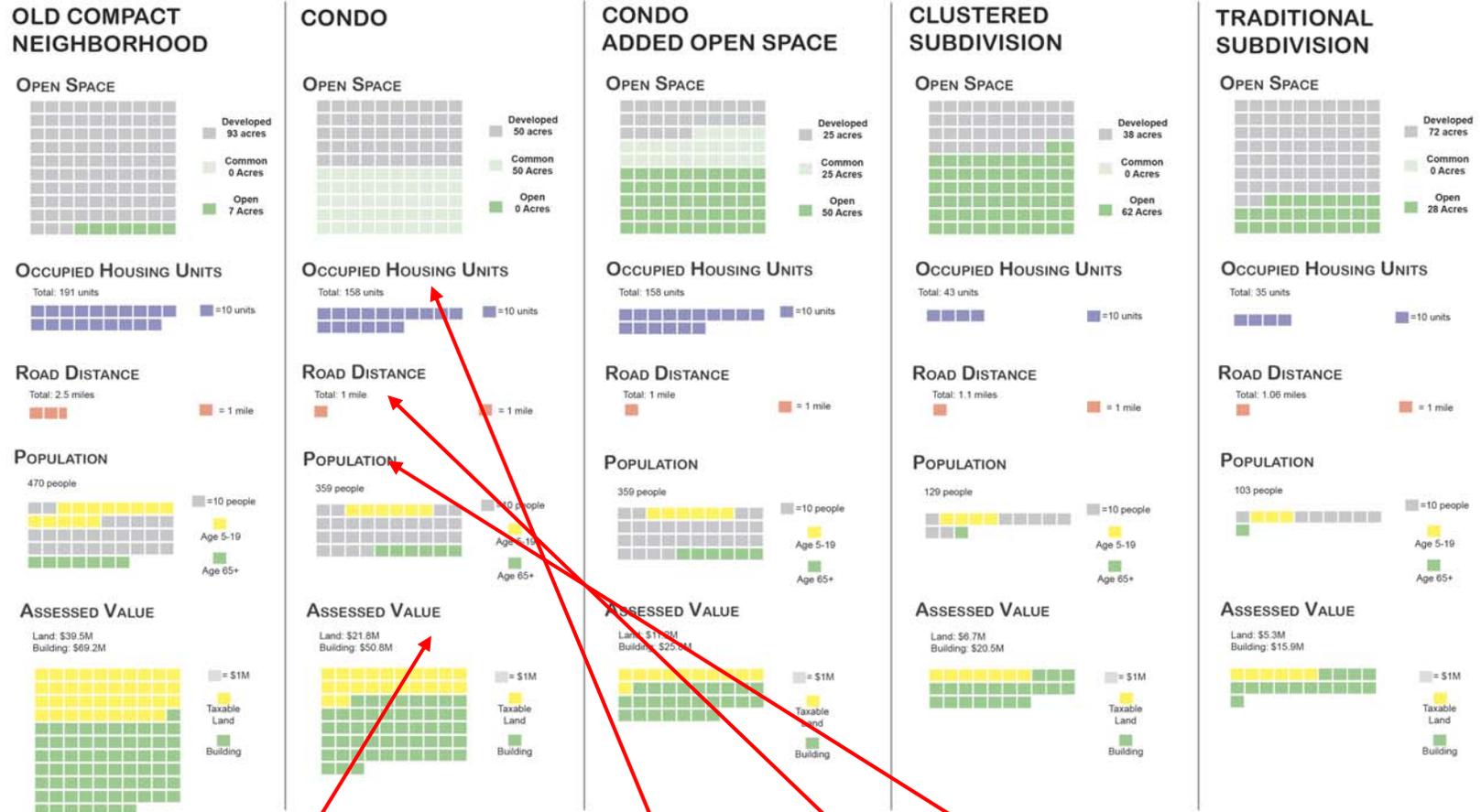
In addition to seeking to compare the cost of developing versus preserving land, this report also seeks to identify any significant differences in the cost of varying **types** of development. Appendix One presents maps, census data and assessing

data describing the characteristics of each of these neighborhood types. While they do vary considerably in geographic layout and demographic composition, these differences are likely to create significant fiscal impacts only as they push population and household numbers to the point where they tax the current staffing and facility capacities of the town as a whole. One more condominium development would probably create more demand for rescue services than an equivalent number of units developed in the old compact neighborhood model because of its higher proportion of elderly occupants. Conversely, one more clustered subdivision would probably bring in more school age children than an equivalent number of units in an old compact neighborhood or traditional subdivision, at least given the current demographic composition of these developments.

On a one-by-one, step-by-step basis, however, the specific type of development is less important to the delivery of municipal services than the overall number of units. On a case-by-case basis, each departmental manager said, in effect, "I would integrate the new unit(s) into my current capacity, rearrange schedules, assignments and staffing patterns and do my best to maintain current service levels." In short, no single type of residential development by itself would push the cost of services over a tipping point that would drive marginal costs over the current average cost per household. Therefore PDI standardized each neighborhood type to a 100-acre standard or template using the demographic and valuation data listed in the Appendix. Figure 3 presents this comparison in a visual way.

Figure 3: Characteristics of Neighborhood Type by 100-acre Standard

# DEVELOPMENT ALTERNATIVES (EXPANDED TO 100-ACRE STANDARD)



Sources: Census and Assessing data as listed in Appendix One.

To be redone, doubling the number of occupied housing units, the road distance, the population and the assessed value to reflect the fact that two condo developments would fit on 100 acres.

Table 4 lists the hypothetical extreme of each neighborhood prototype applied to the approximately 1,600 acres of land available for development.

**Table 4: Application of Each Development Alternative to 1,600 Acres**

Full Development	Old Compact Neighborhood	Traditional Subdivision	Clustered Subdivision	Condo	Condo w/ Extra Open Space
Developable land	1,600	1,600	1,600	1,600	1,600
New Open Space	108	354	994	788	0
New HH	3,056	557	684	2,531	5,061
New Taxable Value (\$1,000)	\$1,722,360	\$343,391	\$434,523	\$591,674	\$1,183,348
Town HH Total	6,672	4,173	4,300	6,147	8,677

Sources: Census and Assessing data as listed in Appendix One.

Table 4 obviously represents an extreme—indeed, three of the five exceed the maximum buildout described in the 2007 Comprehensive Plan—but this extreme is precisely the basis from which the fiscal impact of the develop-preserve choice must be made. The marginal cost of any additional development today is likely to be less than the current average cost per household, and the marginal saving of additional open space preservation is likely to be insignificant within the overall total of 1,600 acres available for development. The fiscal impact of the develop-preserve choice can be understood only in the context of the “end-game” of development for the town. For this reason, it is necessary to examine the likely future cost of development over a substantial range of new residential development to see where significant new jumps in capital facilities and staffing may be required and how much open space would have to be preserved to prevent the town from having to incur these additional expenses. This analysis is undertaken in the following section.

## 2. Projecting Forward

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In preparing this report, PDI reviewed two prior residential impact studies – the Dominicus Crossing report and the Leighton Farm report.<sup>8</sup> Both reports provide useful background information and helpful examples of how the fiscal impacts of development have been estimated in Cape Elizabeth. However, both are different from this open space analysis in two fundamental ways:

1. First, both were analyses of specific proposals for specific homes in specific locations whereas this report deals with the broader policy question of potential develop or preserve choices that may in the future arise in any of the 1,600 acres of potentially developable land in town; and
2. Second, both employed average cost calculations projected forward to estimate fiscal impacts. Both used neighboring homes to estimate likely future enrollment and existing average per pupil costs to project education expenses. Both used existing calls per home, public works expenditures per housing unit, solid waste generation and recreation expenditures per household as the basis for projecting forward the likely costs of the specific new residential housing units proposed.

Given the data and commentary presented in the *fiscal context* section above, however, it is clear that simple extension of existing average costs per household is not likely to provide the best estimate of the fiscal impact of additional residential development in Cape Elizabeth over the full extent of the land available for development. As is evident in Figure 2 above, inflation adjusted spending per household tended to rise over the earlier part of the past decade in large part because of higher capital expenditures than have been evident in recent years. The central fiscal question facing the Town of Cape Elizabeth, therefore, is, “At what level of additional residential development is the town likely to encounter a steep increase in cost per household because that level of development pushes town service providers beyond the capacities of their current staffing patterns, capital facilities and management flexibility.

One way to estimate such a threshold is to examine spending patterns for generally similar but slightly larger municipalities to which Cape Elizabeth might look, if not for guidance, at least experience. Table 5 presents such a comparison.

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<sup>8</sup> Planning Decisions, Inc. Community Impact Analysis – Dominicus Crossing, May 4, 1996.  
Planning Decisions, Inc. Fiscal Impact of the Leighton Farm Subdivision, December 20, 2002.

**Table 5: Demographic and Fiscal Comparisons, Selected Towns**

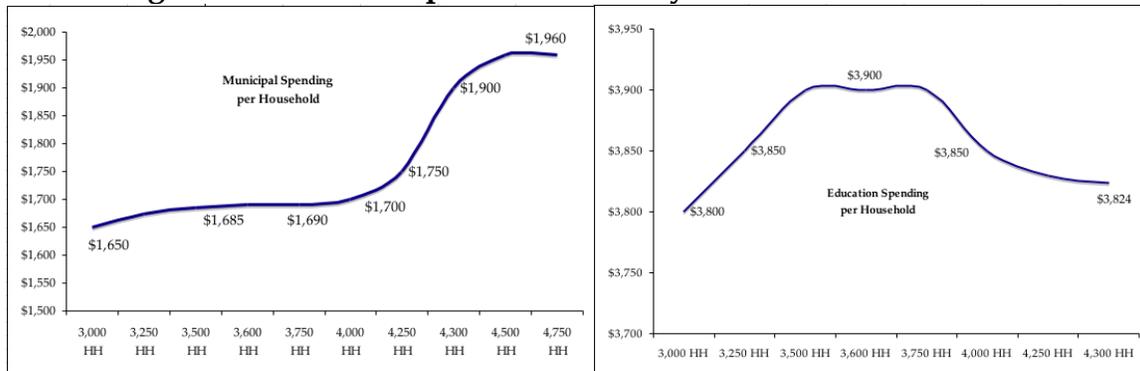
Measure	Gray	Cape Elizabeth	Falmouth	Gorham	Scarborough
2010 Population	7,761	9,015	11,185	16,381	18,919
2010 Households	3,156	3,616	4,334	5,719	7,506
2010 Enrollment	n.a.	1,696	2,101	2,652	3,304
FTE Employment per 1,000 HH					
Municipal	11.4	16.3	19.6	19.9	27.6
Education	n.a.	76.3	81.0	78.0	76.7
Total Payroll per 1,000 HH					
Municipal	\$1,366	\$1,694	\$1,977	\$1,935	\$2,986
Education	n.a.	\$3,891	\$3,824	\$3,157	\$3,222

Sources: Census of Population and Census Bureau Annual Survey of Public Employment and Payroll. <http://www.census.gov/govs/apes/>.

At least from this sample, it is clear that both municipal (all but education) employment and payroll seem to jump to a new plateau somewhere between 3,000 households, between 3,600 households and 4,300 households and then again, somewhere between 16,000 and 19,000 households. Education employment and payroll, in contrast, seems to hit some economy of scale beyond 4,300 households.

These totals combined with the conclusions of the interviews with Cape Elizabeth’s department heads point to a roughly S-shaped fiscal cost curve something like the hypothetical curve represented in Figure 4 below and an inverted U curve for educational costs per household over the range of households from 3,000 to 4,300.

**Figure 4: Fiscal Cost per Household by Number of Households**



Sources: Census of Population and Census Bureau Annual Survey of Public Employment and Payroll. <http://www.census.gov/govs/apes/>.

For municipal (non-educational) costs, inter-municipal data and interviews with town departmental managers suggest that Cape Elizabeth is currently operating along the flat part of the S curve and is likely to see stable or gradually increasing average costs per household for its next 200 to 400 households. Somewhere in

the 4,000 household range it is likely to begin to experience more sharply accelerating per household costs as the current physical and staffing capacities reach their limits.

For education costs, Cape Elizabeth faces a position of excess capacity where additional residential development is likely to reduce per household costs. Assuming an ability to accommodate an additional 200 students and assuming the current student-per-household ratio of 0.47 implies a capacity to absorb an additional 426 residential units with no material increase in overall educational costs and a declining cost-per-household ratio.

All of this analysis underlies the conclusion that it is useful from a fiscal standpoint to think of the develop-preserve choice less on a case-by-case basis than on a final target basis. If Cape Elizabeth can acquire sufficient open space or so arrange its residential development as to limit the number of households to less than roughly 4,200 it is likely to avoid a spike in cost per household—a movement of marginal cost per household up the S curve—resulting from the need to move staffing up to a higher level to maintain service standards and to increase capital facilities.

The exact shape and location of the S curve cannot be determined precisely outside a particular situation. Clearly, the nature of future development, as is evident in the 100-acre prototypes prepared for each neighborhood type, will have different overall effects on the ultimate number of households in Cape Elizabeth. For example, consider the Cluster Subdivision build-out development alternative in column 4 of Table 4 above: 1,600 acres developed into 994 acres of open space and 684 housing units. Suppose the town acquired an additional 300 acres of open space thus reducing the number of housing units developed by 128 units and thus reducing the total number of housing units in the town from 4,300 to 4,128. Suppose further that the total per household cost of providing services in the 4,100 housing-unit range was \$6,500, slightly less than the \$6,700 figure today.

Suppose further that the total per household cost of providing services to 4,300 households was \$8,000—substantially up the S curve, reflecting the crossing of a capacity threshold. Accepting these suppositions, the fiscal savings from the open space purchase would be \$8,000 per household or just over \$1.0 million for the 128 houses. If the 300 acres could be obtained for less than \$1.0 million, then the purchase could be said to have produced a fiscal cost savings.

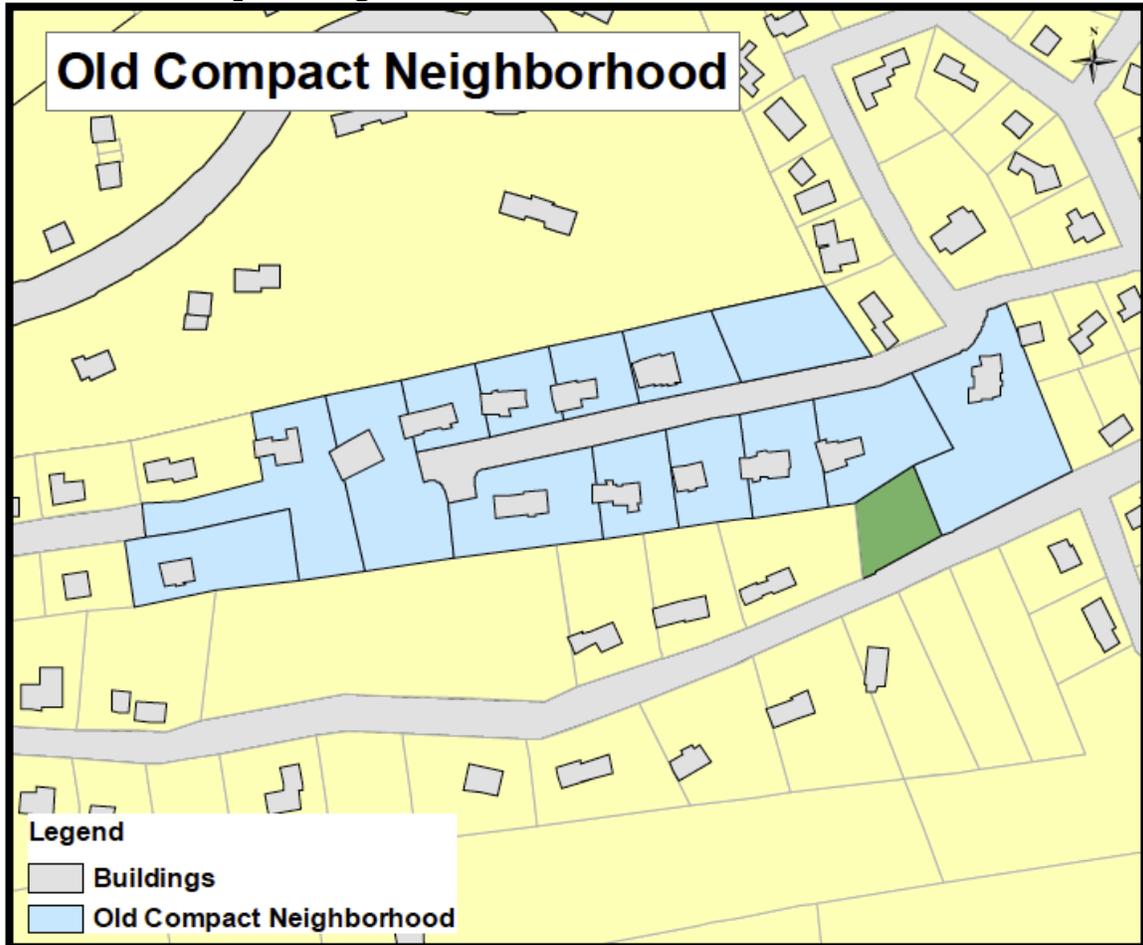
However, these “savings” do not take into account the lost revenue of the 128 units not developed. Presuming an assessed value of \$635,00 per unit and a tax rate of \$15.18 per thousand, the 128 units not developed represent lost revenue of

approximately \$1.2 million. In this light, the open space acquisition clearly does not pay for itself.

The central conclusion of this analysis is not that there is a “correct” fiscal impact number to be applied to each develop-preserve choice that becomes available. It is, rather, that the develop-preserve choice must always be seen in the context of the overall total number of households in the community and where that number stands along the S-shaped cost per household curve at any given point in time.

## Appendix One: Neighborhood Types

### 1. Old Compact Neighborhood.



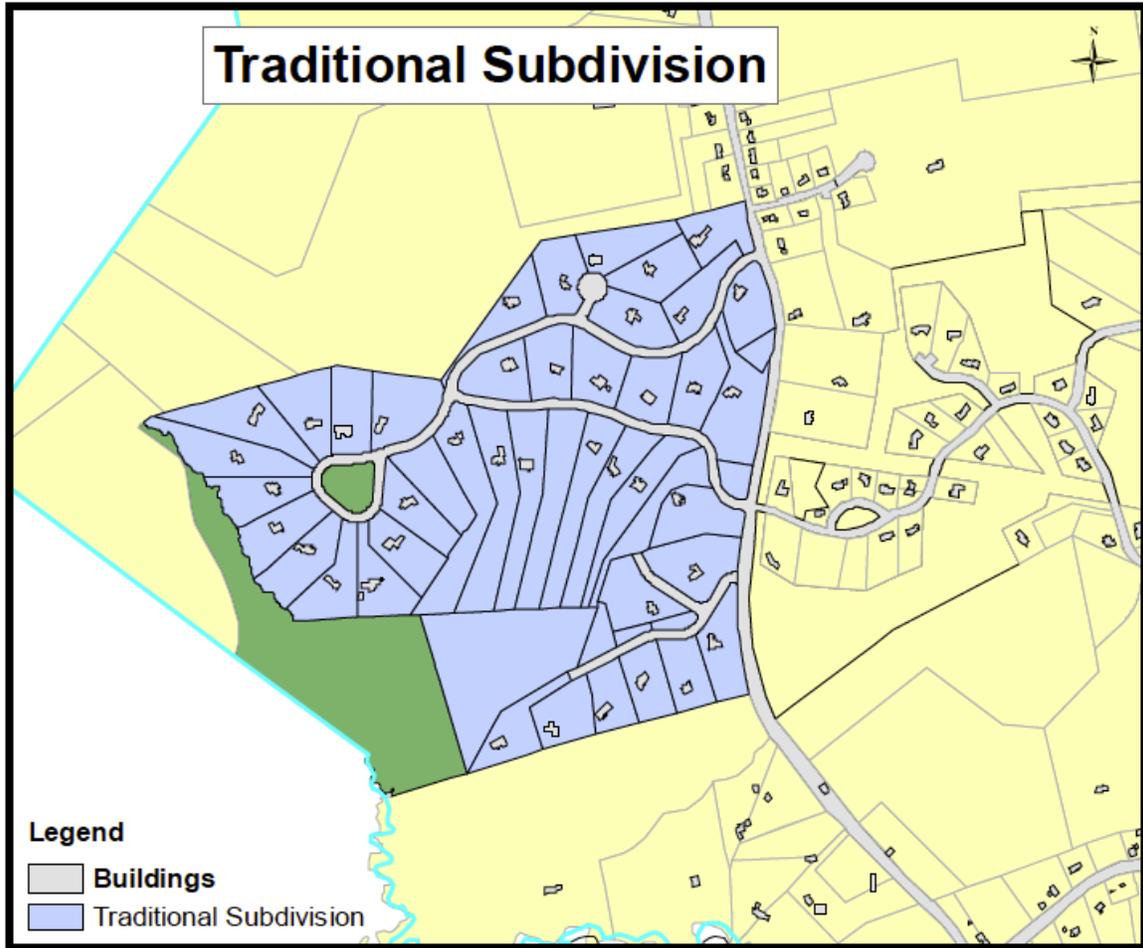
Census Data	2000 Census Block 37.01/1018	2010 Census Block 37.01/1018
Total Housing Units (HU)	15	172
Occupied Housing Units (HH)	14	154
Population Total	38	379
Population/HH	2.71	2.46
% Pop 0-19	34%	30%
% Pop 65+	16%	14%

Source: Bureau of the Census, 2000 and 2010.

2011 Assessing Data	Old Compact Neighborhood		
	Developed	Exempt	Total
Totals			
acres	5.4	0.4	5.8
parcels	13	1	14
dwelling units (DU)	13	0	11
land value	\$2,113,400	\$163,600	\$2,277,000
building value	\$4,696,500		\$3,987,300
total value	\$6,809,900	\$163,600	\$6,264,300
road distance (feet)			763
Average per acre			
dwelling units (DU)	2.42		1.91
open space			0.07
land value	\$393,557	\$419,487	\$395,313
building value	\$874,581		\$692,240
total value	\$1,268,138	\$419,487	\$1,087,552
road distance (feet)			132
Average per DU			
acres	0.41		0.52
land value	\$162,569		\$207,000
building value	\$361,269		\$362,482
total value	\$523,838		\$569,482
road distance (feet)			69

Source: Town of Cape Elizabeth assessor's database and Annual Report, 2011.

## 2. Traditional Subdivision



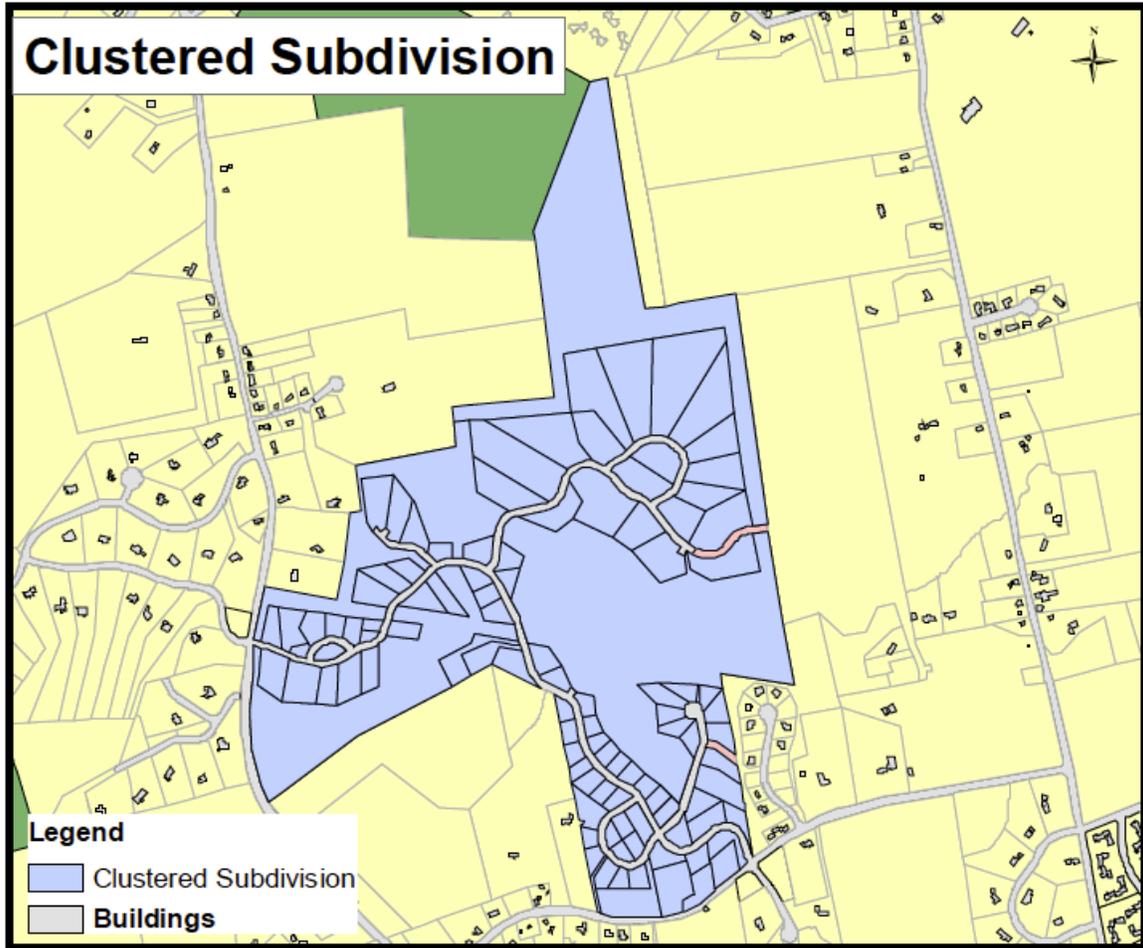
Census Data	2000 Census Block 37.02/3002-03	2010 Census Block 37.02/2004-05
Total Housing Units (HU)	60	68
Occupied Housing Units (HH)	59	66
Population Total	206	195
Population/HH	3.49	2.95
% Pop 0-19	40%	31%
% Pop 65+	2%	8%

Source: Bureau of the Census, 2000 and 2010.

2011 Assessing Data Use Characteristic	Traditional Subdivision			
	Developed	Developable	Open	Total
Totals				
acres	90.6	7.8	28	126.4
parcels	41	3	2	46
dwelling units (DU)	41	0	0	41
land value	\$6,224,300	\$31,407	\$293,132	\$6,548,839
building value	\$18,473,500			\$18,473,500
total value	\$24,697,800	\$31,407	\$293,132	\$25,022,339
road distance (feet)				7,061
<b>Average per acre</b>				
dwelling units (DU)	0.45			0.32
open space				0.22
land value	\$68,731	\$10,469	\$0	\$51,819
building value	\$203,992			\$146,174
total value	\$272,723	\$10,469	\$0	\$197,993
road distance (feet)				56
<b>Average per DU</b>				
acres	2.21			3.08
land value	\$151,812			\$159,728
building value	\$450,573			\$450,573
total value	\$602,385			\$610,301
road distance (feet)				172

Source: Town of Cape Elizabeth assessor's database and Annual Report, 2011.

### 3. Clustered Subdivision.



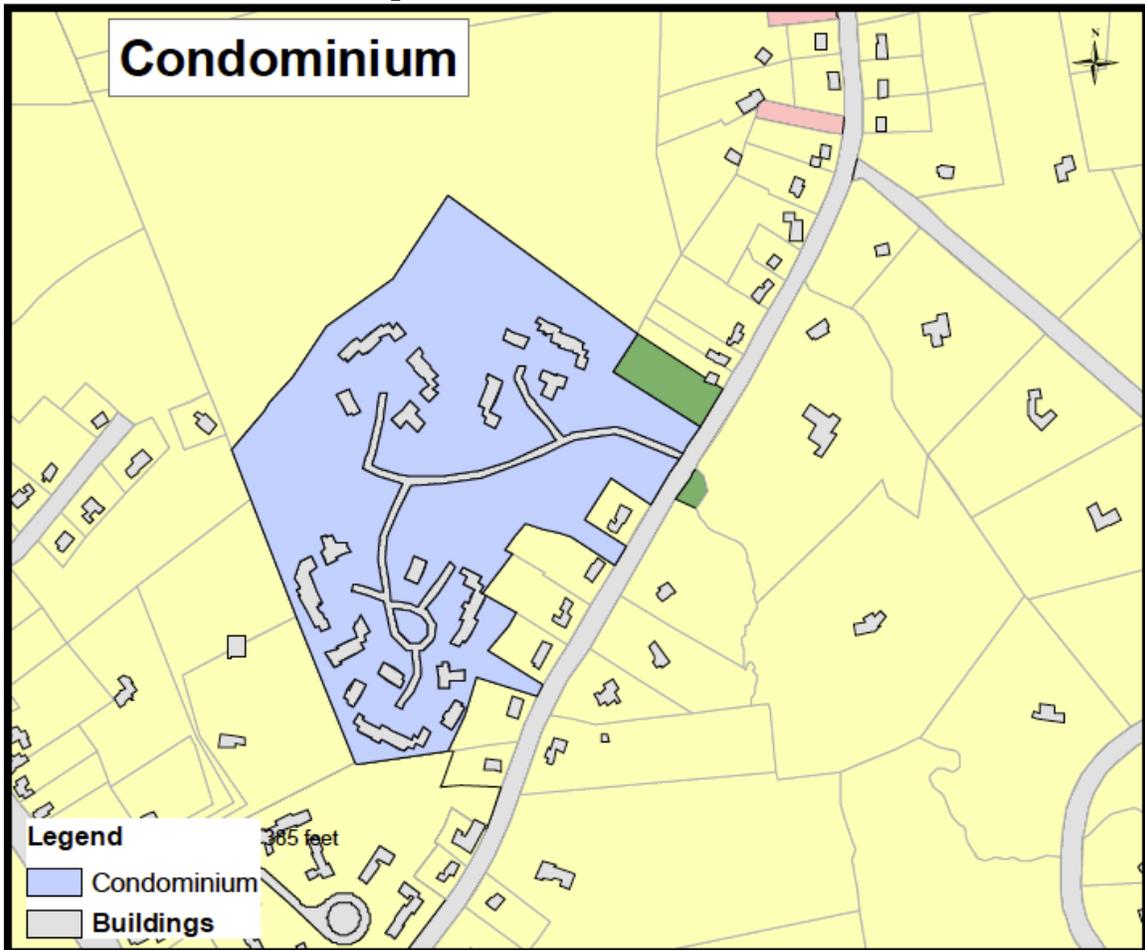
Census Data	2000 Census Block 37.02/3001, 04	2010 Census Block 37.02/2006, 10
Total Housing Units (HU)	66	162
Occupied Housing Units (HH)	62	156
Population Total	163	469
Population/HH	2.63	3.01
% Pop 0-19	29%	37%
% Pop 65+	19%	11%

Source: Bureau of the Census, 2000 and 2010.

2011 Assessing Data Use Characteristic	Clustered Subdivision			
	Developed	Developable	Open	Total
Totals				
acres	67	17	137	220
parcels	81	13	8	102
dwelling units (DU)	81	0	0	81
land value	\$12,729,900	\$2,030,500	\$190,900	\$14,951,300
building value	\$38,831,100			\$38,831,100
total value	\$51,561,000	\$2,030,500	\$190,900	\$53,782,400
road distance (feet)				12,738
<b>Average per acre</b>				
dwelling units (DU)	1.22			0.37
open space				
land value	\$191,398	\$120,935	\$1,398	\$68,084
building value	\$583,839			\$176,827
total value	\$775,237	\$120,935	\$1,398	\$244,911
road distance (feet)				58
<b>Average per DU</b>				
acres	0.82			2.71
land value	\$157,159			\$184,584
building value	\$479,396			\$479,396
total value	\$636,556			\$663,980
road distance (feet)				157

Source: Town of Cape Elizabeth assessor's database and Annual Report, 2011.

#### 4. Condominium Complex.



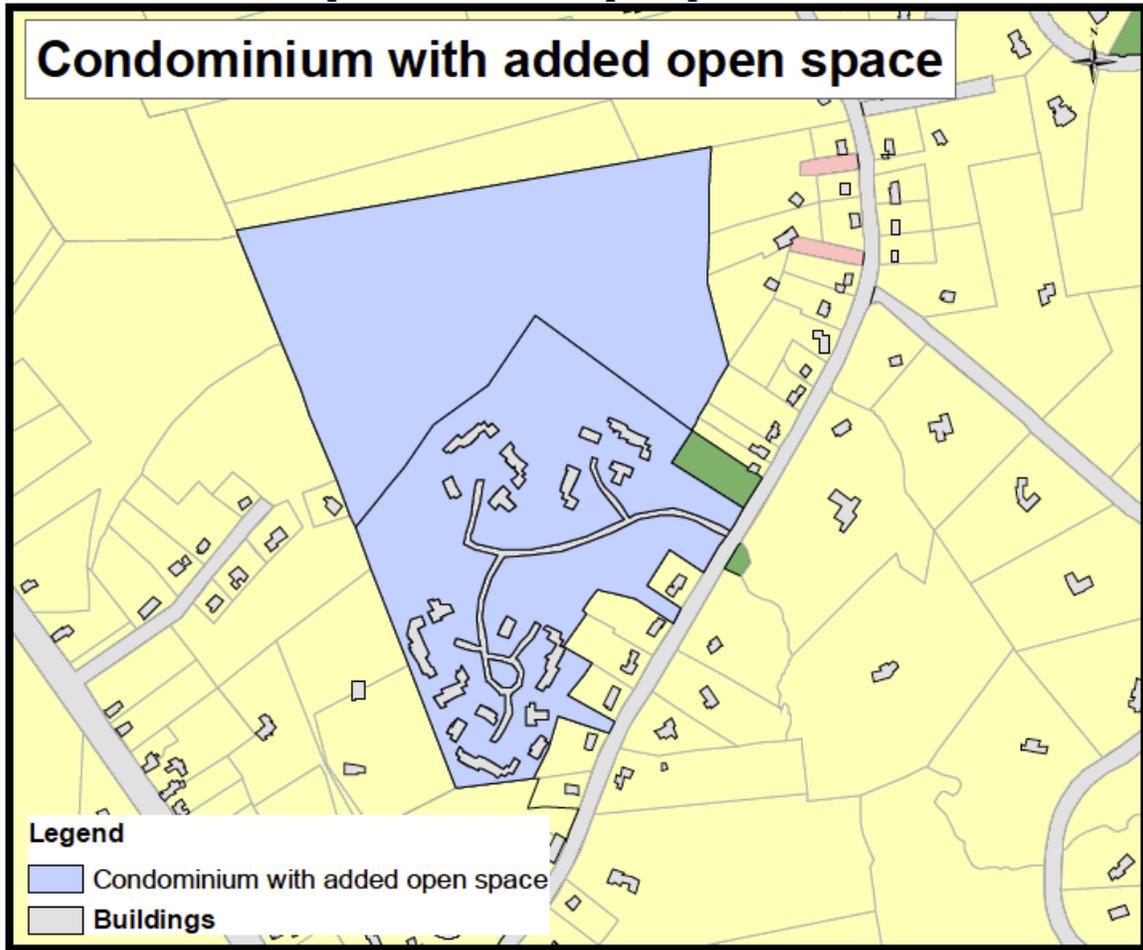
Census Data	2000 Census Block 37.01/2016	2010 Census Block 37.01/2016
Total Housing Units (HU)	22	345
Occupied Housing Units (HH)	21	318
Population Total	49	722
Population/HH	2.33	2.27
% Pop 0-19	53%	21%
% Pop 65+	6%	16%

Source: Bureau of the Census, 2000 and 2010.

2011 Assessing Data	Condominium Complex		
Use Characteristic	Developed	Exempt	Total
Totals			
acres	21.2	0	21.2
parcels	66	0	66
dwelling units (DU)	66	0	66
land value	\$4,620,000	\$0	\$4,620,000
building value	\$10,760,200	n.a.	\$10,760,200
total value	\$15,380,200	\$0	\$15,380,200
road distance (feet)			2,197
Average per acre			
dwelling units (DU)	3.12		3.12
open space			
land value	\$218,233	\$0	\$218,233
building value	\$508,276		\$508,276
total value	\$726,509	\$0	\$726,509
road distance (feet)			53
Average per DU			
acres	0.32		0.32
land value	\$70,000		\$70,000
building value	\$163,033		\$163,033
total value	\$233,033		\$233,033
road distance (feet)			33

Source: Town of Cape Elizabeth assessor's database and Annual Report, 2011.

5. Condominium Complex with Added Open Space



Census Data	2000 Census Block 37.01/2016	2010 Census Block 37.01/2016
Total Housing Units (HU)	22	345
Occupied Housing Units (HH)	21	318
Population Total	49	722
Population/HH	2.33	2.27
% Pop 0-19	53%	21%
% Pop 65+	6%	16%

Source: Bureau of the Census, 2000 and 2010.

<b>2011 Assessing Data</b>	<b>Condominium Complex with added Open Space</b>		
Use Characteristic	Developed	Exempt	Total
Totals			
acres	21.2	20.56	41.7
parcels	66	0	66
dwelling units (DU)	66	0	66
land value	\$4,620,000	\$51,400	\$4,671,400
building value	\$10,760,200		\$10,760,200
total value	\$15,380,200	\$51,400	\$15,431,600
road distance (feet)			2,197
<b>Average per acre</b>			
dwelling units (DU)	3.12		1.58
open space			0.49
land value	\$218,233	\$2,500	\$111,943
building value	\$508,276		\$257,853
total value	\$726,509	\$2,500	\$369,796
road distance (feet)			53
<b>Average per DU</b>			
acres	0.32		0.63
land value	\$70,000		\$70,779
building value	\$163,033		\$163,033
total value	\$233,033		\$233,812
road distance (feet)			33

Source: Town of Cape Elizabeth assessor's database and Annual Report,

## Appendix Two: Interviews

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Name	Position	date
Michael McGovern	Town Manager	July 28 and September 27
Matthew Sturgis	Tax Assessor	July 29 and September 27
Pauline Aportia	Business Manager	September 21 and October 20
Peter Gleeson	Fire/Rescue Chief	September 27
Neil Williams	Police Chief	October 13
Robert Malley	Director, Public Works Department	September 30
Jay Sherma	Library Director	September 23
Meredith Nadeau	Superintendent of Schools	October 20
Maureen O'Meara	Town Planner	monthly
Janet Hoskin	Director, Cape Elizabeth Community Services	October 25

**Appendix 7**  
**Public Forum Summary**

TOWN OF CAPE ELIZABETH  
FUTURE OPEN SPACE PLANNING COMMITTEE  
PUBLIC FORUM

March 7, 2012

7:00 pm Town Hall

The members of the Future Open Space Planning Committee presented an overview of the work they have done to date. They spoke about the committee charge, the draft Range of Tools they have chosen to accomplish the goal of open space preservation and the Open Space Priority Criteria for preservation.

During the public comment period, the first comment came from Tony Owens. He thanked the committee, and praised the process and tonight's presentation. He questioned the lack of priorities for sports fields for organized sports.

Mr. Franklin said they are having a survey, and that will be one of the questions. The committee is looking at open space as a whole and that sports fields are not a priority.

Mr. Governali added that nothing the committee has done precludes sports fields. Louise Sullivan then asked about the center of Town. She noted that the Town is building a new library and feels it is a good opportunity to look at the redesign of the Town Center. She wants to see the community tie its projects together. She would like to see a Town green in the center of town.

Jessica Sullivan said she likes the concept and feels it could merit consideration.

Mr. Governali said the idea would be part of the Town Center Plan.

Mr. Greene said that the committee could decide to say they support the idea of a Town Center Green.

Mr. Norris said the committee is working on a vision for the Town as a whole.

Penny Jordan noted that agriculture is a priority of the committee. How do they plan to employ the tools in order to preserve this as an agricultural asset?

Mr. Franklin said the tools would allow the Town to be more proactive in preserving open space.

Mr. Greene said they were not going to use restrictive zoning, but would cooperate with the landowner to achieve their goals.

Mr. Governali added that they have tried to develop a process so when an opportunity occurs they will have a method to work with.

Red Sullivan of Two Lights Road spoke about a parcel of open space that he says is a mess. It is state park land. It is filled with dead trees, brambles and bittersweet. It is wasted space. He would like to see some liaison between the Town and the State to survey how to improve the area.

Mr. Greene replied that the management to open spaces is being addressed by Jessica Sullivan's committee.

Jessica Sullivan said the open space management plan addresses property owned by the Town, not the State.

Ms. O'Meara said the Town does reach out to the State on an ad hoc basis, but she will defer to Councilor Governali on this one. She also noted that some of the land in question may be there for wildlife preservation. There is probably some opportunity for partnering with the State and maximizing the uses of that space for humans and wildlife.

Jessica Sullivan said she is willing to look into this, and feels that the logical step is to contact the park ranger and the Conservation Commission.

Tony Owens questioned whether there would be someone in the Planning Office or on the Town Council to manage these criteria proactively. Or is it going to be allocated to the Land Trust?

Mr. Governali feels that is a very good question. He thinks it is the most logical to have a public body that is responsible for being the contact.

Penny Jordan thinks we should engage the Cape Elizabeth Land in collaboration with planning.

Mr. Governali suggested that it be the office of Planning and Open Space Management.

Chris Franklin noted that Falmouth and Scarborough both have a contact person or department for the process. Falmouth even has a volunteer "open space ombudsman".

Sarah Lennon asked how do they see the funding coming for this process.

Chris Franklin said a pre-approved bond seems to be the best way to go. It is essentially a line of credit for the Town to use as the need arises.

Frank Strout commended the committee for its work. He thinks the range of tools needs to be open and he is not in favor of a list of key parcels. He also noted that the Farm Alliance has been approached by some people who are looking to find land to farm. So the committee should look at land as possible to be farmed, not only what is currently being farmed. He is also in favor of bonding as a tool to have money available for open space.

Rich Carlson asked if a list of key parcels has been generated.

John Greene said there was a first cut of a list, not even a draft, and the group has decided that this is not a good path to take. They plan to recommend that the Council amend their charge to eliminate the production of such a list.

Chris Franklin said they started to put the parcels on the map and when they looked at all the priorities, the map took up the majority of the town.

Rich Carlson noted that the tools are zoning by nature. Are we infringing on private property rights.

Carol Anne Jordan said that zoning was not a way they want to go. They want to leave the zoning out of consideration. The tools are more to do with financing, not zoning.

John Greene noted that the charge to the committee was to respect property rights. Penny Jordan is happy to see that cluster development is part of the range of tools. She is a proponent of bonding because there is a need to have funds available to be proactive. She also thinks the Town would be very progressive if they would adopt the Maine Farmland Trust approach. And she likes the transfer of development rights as an innovative tool. She complimented the committee and thinks they have done an excellent job.

Mr. Governali agrees that bonding is a good idea.

Mr. Norris is concerned that there is a limit to the residents' generosity. For example the library will indicate the Town's willingness to fund a bond.

Mr. Governali noted that there are many demands on the Town priorities. Louise Sullivan asked about the survey.

Ms. O'Meara replied that it will be a telephone survey. A discussion about the statistics of the survey and the methodology followed.

Mr. Governali said he did not think they should put too much emphasis on the survey. It is used as a guideline and there will be other opportunities for the residents to comment in forums such as this one.

Jessica Sullivan added that one of the results of this work will be a process for any landowner to contact and work with the Town to preserve open space on their land.

Respectfully submitted,

Hiromi Dolliver  
Meeting secretary

**Appendix 8**  
**Public Forum Presentation**



Future Open Space  
Preservation Committee  
(FOSP)  
Public Forum

March 6, 2012

# FOSP's Creation

Implement Rec & Open Space chapter of Comp Plan ahead of Land Use chapter:

- Use a public process

- Consistent with the Town Council Communication Strategy

- Incorporate the Cape Farm Alliance and the Cape Elizabeth Land Trust

- Respects private property rights

# FOSP Committee Charge #1

- Coordinate with CFA & CELT  
&
- Solicit Information, inventories, etc. regarding future open space preservation priorities

# FOSP Committee Charge #2

## Survey

Supervise a survey of town residents identifying priorities for specific parcels for open space preservation and preferred methods of funding

# FOSP Committee Charge #3

## Cost of Community Services

Determine the cost and benefits to taxpayers of housing growth versus the preservation of undeveloped land, using external consultant.

# FOSP Committee Charge #4

## Conduct a public workshop

With the CFA and CELT, focus on actions that both protect open space and promote sustainable farming, without constraining farmers' opportunities and infringing on private property rights.

# FOSP Committee Charge #5

Define:

- **Rural Areas:** deleted from charge
- **Open Space:** Land and water areas, whether public or private, maintained in an essentially undeveloped state for use as active or passive recreation areas, resource protection, agriculture, or preservation.

# FOSP Committee Charge #6

**“Identify specific key parcels of land in town that are of the highest priority”**

*Request to Town Council to Replace this charge with one focusing on the long term execution and administration of FOSP Recommendations.*

# FOSP Committee Charge #7

- Develop a range of tools and approaches to preserve/protect/enhance critical parcels . . .
- . . . all of the approaches that are considered and recommended have to avoid infringement on personal property rights.

# FOSP Committee Charges 8 - 10

- Evaluate the financial resources necessary to achieve the strategic conservation priorities identified.
- Review Growth Area definition and location, within the context of expected growth; seek public input.
- Produce summary report for TC.

# Range of Tools

# 1. Restrictive Zoning

- Essentially prohibits development of private property due to profound public safety concerns without compensating the landowner for the loss of value to their property
- Examples include Cape wetlands zoning, floodplain zoning
- Benefits include protecting public health and safety/ Limitations include potential takings of private land.
- **Recommendation:** Do not expand use of this tool

## 2. Clustering

- Requires that a portion of land to be developed is set aside as permanently protected open space and development is “clustered” on a portion of the lot.
- An example is the Cape Open Space Zoning/RB regulations.
- Benefits include preserving open space without a public purchase and protecting private property rights. Limitation is greater density next to some abutters.
- **Recommendation: Retain clustering**

# 3. Open Space Impact Fee

- Fee is charged for new development based on the amount of open space already owned for public use. Fee is used to acquire more open space.
- Example is the Cape Open Space Impact Fee
- Benefits include proportional method of increasing open space as development occurs. Limitation is that fee cannot be higher than community standard of open space.
- **Recommendation: Retain fee**

## 4. Transfer of Development Rights

- Moves the right to develop land to another parcel of land with preservation of the first parcel.
- Cape TDR provisions
- Benefits allow preservation of land without expenditure of public funds with limitation that “receiving” parcel is developed more densely and rarely used tool.
- **Recommendation:** Retain TDR regulations

## 5. Fee Ownership

- This is the classic purchase of land from a private property owner and then restricting development of the land.
- An example is the Town Farm.
- Benefit is land is completely controlled with limitation that restrictions should be placed on the parcel to permanently preclude development and funding is needed for purchase.
- **Recommendation:** Continue to purchase open space

## 6. Easement

- Where the right to develop the property is removed without changing property ownership.
- An example is the Fowler Rd connector easement.
- Benefit is easement may be less expensive to purchase and property owner retains ownership with limitation that easement terms may not protect property or provide public access.
- **Recommendation:** Continue easement purchases and donations.

# 7. Donation

- When a property owner does not want his/her land developed and donates the land with conservation restrictions.
- An example is Winnick Woods.
- Benefit is cost savings in acquiring open space with limitation that conservation restrictions allow public access and flexibility to maximize tax benefits.
- **Recommendation:** Continue donation of land for public open space

## 8. Tax Acquired land

- Assumption of land ownership by the town for failure to pay taxes over 3 years and then retaining the land as open space.
- An example are the Forest Rd lots.
- Benefit is public ownership of lots that are often unsuitable for development (wetlands) with limitation that acquisition process is time-consuming for Town Clerk and land may not be conveniently located for open space.
- **Recommendation:** Tax acquired land should continue to be evaluated for open space.

## 9. Buy / Restrict / Sell

- Purchase of a property significant for open space, removal of the development value and then resale of the lot.
- Example is Scarborough Beach
- Benefit is acquisition costs can be reduced with resale with limitation that property may not resell for anticipated amount and transfer costs.
- **Recommendation:** Use tool when appropriate.

# 10. Partnerships

- The Town may pool resources with others for open space conservation.
- Example is Fort Williams Park, Robinson Woods
- Benefit is advancing open space goals without shouldering the entire financial burden with limitation that partners needs must also be accommodated and may add costs.
- **Recommendation:** Partnerships should continue to be established.

# 11. Grants

- When the state and federal government and private foundations offer funding for open space preservation.
- Example is Robinson Woods
- Benefit is this can be a significant source of funding with limitation that grants often require matching funds.
- **Recommendation:** Grants should be sought at appropriate opportunities.

# 12. Reduced Taxation

- Tax programs that reduce the tax burden of private property owners of open space.
- Example is State of Maine's Open Space, Tree Growth and Agriculture Tax Programs
- Benefit is these programs reduce the base value of land upon which the tax rate is applied, resulting in a smaller tax amount with limitation that taxes will still increase as the tax rate increases and usually require restrictions on the property.
- **Recommendation:** More information on these programs should be provided to property owners.

# Open Space Priority Criteria

# Process to establish Open Space Criteria

- Survey open space criteria in 10 communities
- Matrix of common/unique elements
- Decision to use criteria to focus priorities rather than encompass all opportunities
- Committee lists criteria and votes priorities
- Effort to tighten specificity of criteria/decision to leave criteria broad

# 1. Agriculture

- Undeveloped lands used for agriculture

## 2. Greenbelt Trails and recreation areas

- Land identified in the 2001 Greenbelt Plan

# 3. Wildlife Habitat

- Undeveloped lands that provide a habitat for wildlife as identified by State of Maine data such as the Beginning with Habitat information and field verified.

# 4. Other

- Significantly scenic, cultural and/or unique properties identified by the Town Council using a public process.

# Public Comment

- Do you agree with the Range of Tools to be used?
- Should our open space priorities be focused or broad ranging?
- Should we create a list of specific key parcels?

# Next Steps

- Monthly meetings open to public
- Materials on town website: [www.capeelizabeth.com](http://www.capeelizabeth.com)
- Public Opinion survey March/ April
- Committee work deadline December 2012

## Appendix 9 Hypothetical 5 million dollar bond impact

	Int Rate	Principal	Interest	Total	Total Valuation	Est Tax Rate for Bond	Median Home Value	Cost for Median Home
2014	3.75%	\$ 250,000	\$ 187,500	\$ 437,500	\$ 1,645,672,572	0.27	\$ 314,000	\$ 83.48
2015	3.75%	\$ 250,000	\$ 178,125	\$ 428,125	\$ 1,662,211,857	0.26	\$ 314,000	\$ 80.87
2016	3.75%	\$ 250,000	\$ 168,750	\$ 418,750	\$ 1,678,751,142	0.25	\$ 314,000	\$ 78.32
2017	3.75%	\$ 250,000	\$ 159,375	\$ 409,375	\$ 1,695,290,427	0.24	\$ 314,000	\$ 75.82
2018	3.75%	\$ 250,000	\$ 150,000	\$ 400,000	\$ 1,711,829,712	0.23	\$ 314,000	\$ 73.37
2019	3.75%	\$ 250,000	\$ 140,625	\$ 390,625	\$ 1,728,368,997	0.23	\$ 314,000	\$ 70.97
2020	3.75%	\$ 250,000	\$ 131,250	\$ 381,250	\$ 1,744,908,282	0.22	\$ 314,000	\$ 68.61
2021	3.75%	\$ 250,000	\$ 121,875	\$ 371,875	\$ 1,761,447,567	0.21	\$ 314,000	\$ 66.29
2022	3.75%	\$ 250,000	\$ 112,500	\$ 362,500	\$ 1,777,986,852	0.20	\$ 314,000	\$ 64.02
2023	3.75%	\$ 250,000	\$ 103,125	\$ 353,125	\$ 1,794,526,137	0.20	\$ 314,000	\$ 61.79
2024	3.75%	\$ 250,000	\$ 93,750	\$ 343,750	\$ 1,811,065,422	0.19	\$ 314,000	\$ 59.60
2025	3.75%	\$ 250,000	\$ 84,375	\$ 334,375	\$ 1,827,604,707	0.18	\$ 314,000	\$ 57.45
2026	3.75%	\$ 250,000	\$ 75,000	\$ 325,000	\$ 1,844,143,992	0.18	\$ 314,000	\$ 55.34
2027	3.75%	\$ 250,000	\$ 65,625	\$ 315,625	\$ 1,860,683,277	0.17	\$ 314,000	\$ 53.26
2028	3.75%	\$ 250,000	\$ 56,250	\$ 306,250	\$ 1,877,222,562	0.16	\$ 314,000	\$ 51.23
2029	3.75%	\$ 250,000	\$ 46,875	\$ 296,875	\$ 1,893,761,847	0.16	\$ 314,000	\$ 49.22
2030	3.75%	\$ 250,000	\$ 37,500	\$ 287,500	\$ 1,910,301,132	0.15	\$ 314,000	\$ 47.26
2031	3.75%	\$ 250,000	\$ 28,125	\$ 278,125	\$ 1,926,840,417	0.14	\$ 314,000	\$ 45.32
2032	3.75%	\$ 250,000	\$ 18,750	\$ 268,750	\$ 1,943,379,702	0.14	\$ 314,000	\$ 43.42
2033	3.75%	\$ 250,000	\$ 9,375	\$ 259,375	\$ 1,959,918,987	0.13	\$ 314,000	\$ 41.55
		\$ 5,000,000	\$ 1,968,750	\$ 6,968,750	Est. 1% Growth			