

# **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.*

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## **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.

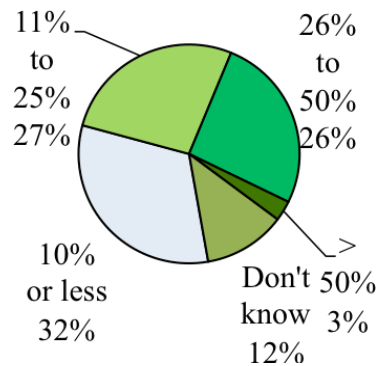
FOSP established a Survey subcommittee chaired by Jessica Sullivan and including Chris Franklin and Frank Governali, with John Greene attending as an interested member. The subcommittee met four times to discuss the purpose and content of the survey, meet with the consultant, develop and finally recommend 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 benefiting 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 FOSS (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.

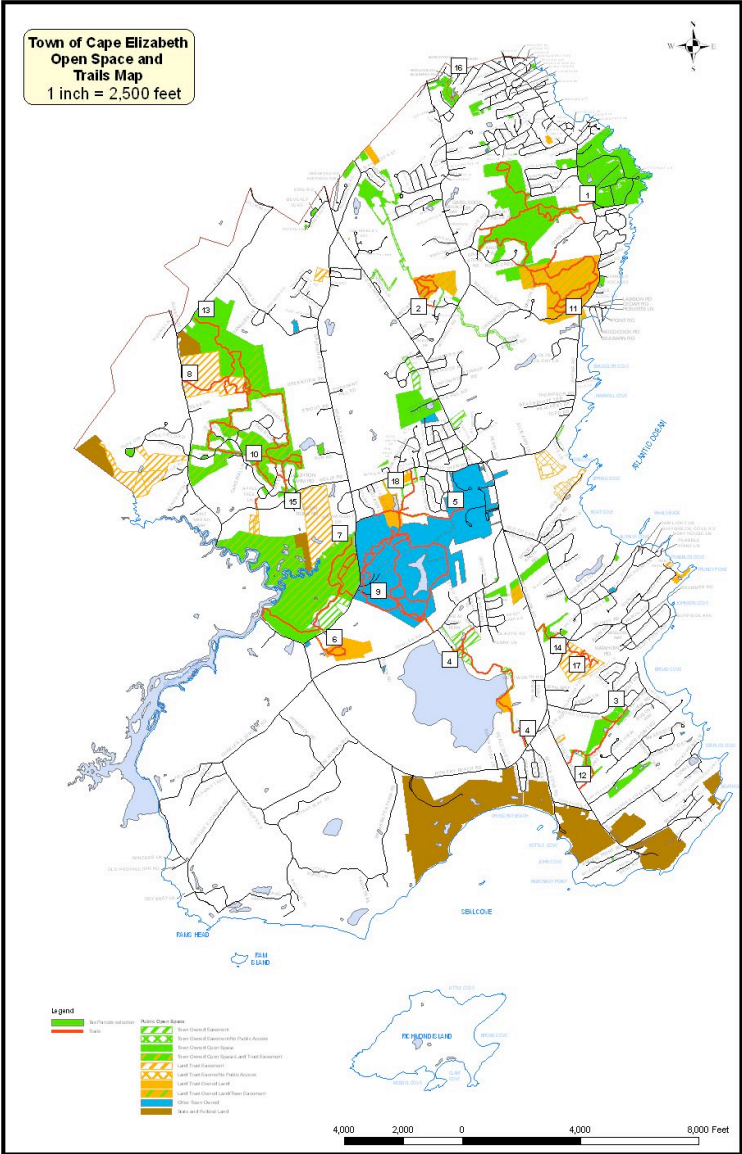
#### **Resources**

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 Town of Cape Elizabeth Trails and Open Space



Map

# 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 - Vegetables, 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) Seaway Farm - Silliman 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 - Dave Rd.

6) Cranly Rooster Farm - Young Ln.

20) Journey's End Farm - Two Lights Rd.

**Youth growers, farm camp, community events**

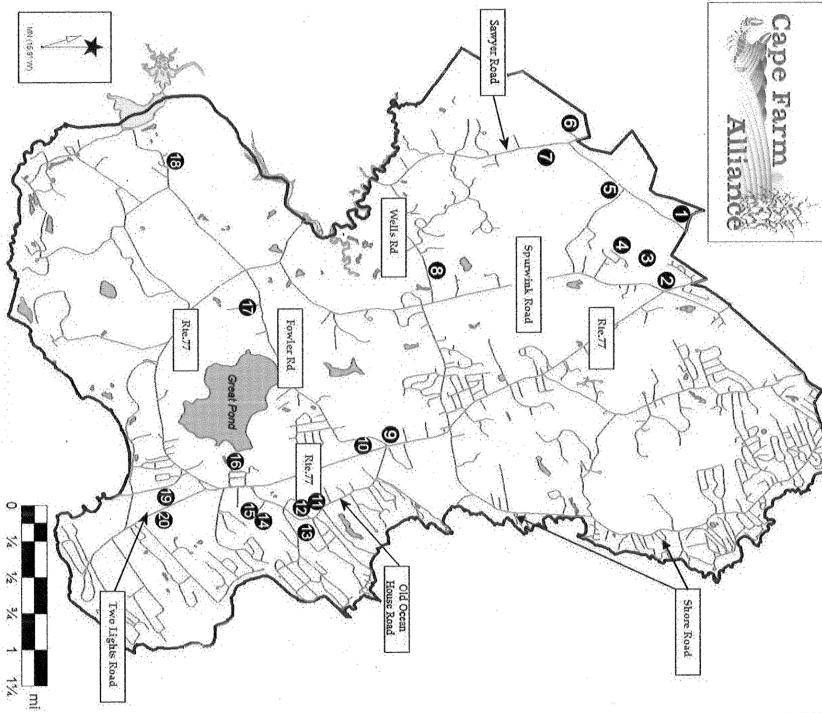
14) Turkey Hill Farm - Old Ocean House Rd.

**Christmas Tree - Nursery**

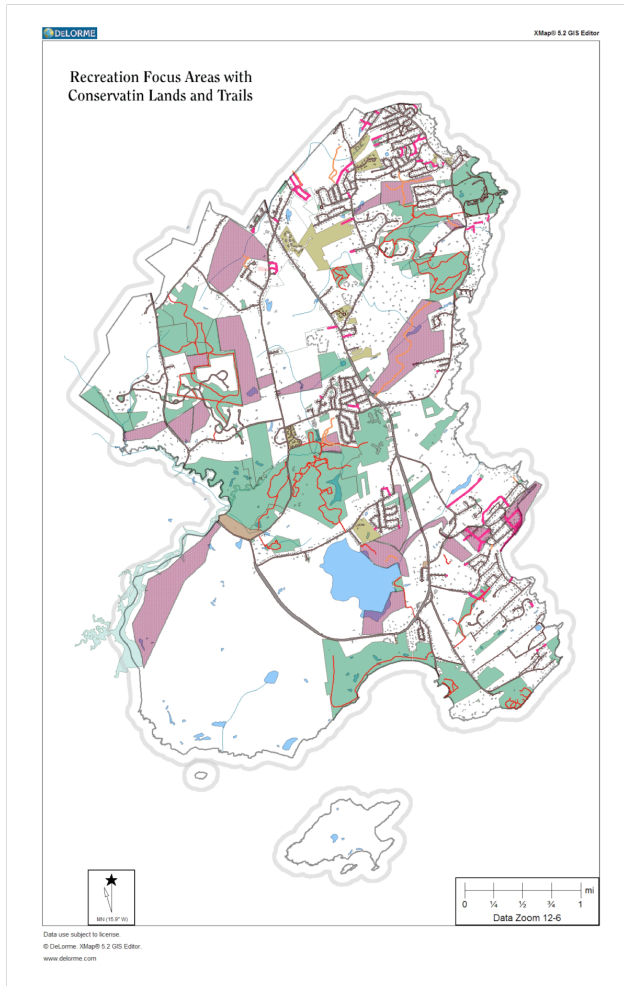
7) Old Farm Christmas Tree Place - Sawyer Rd.

15) Origins Fruit - Old Ocean House Rd.

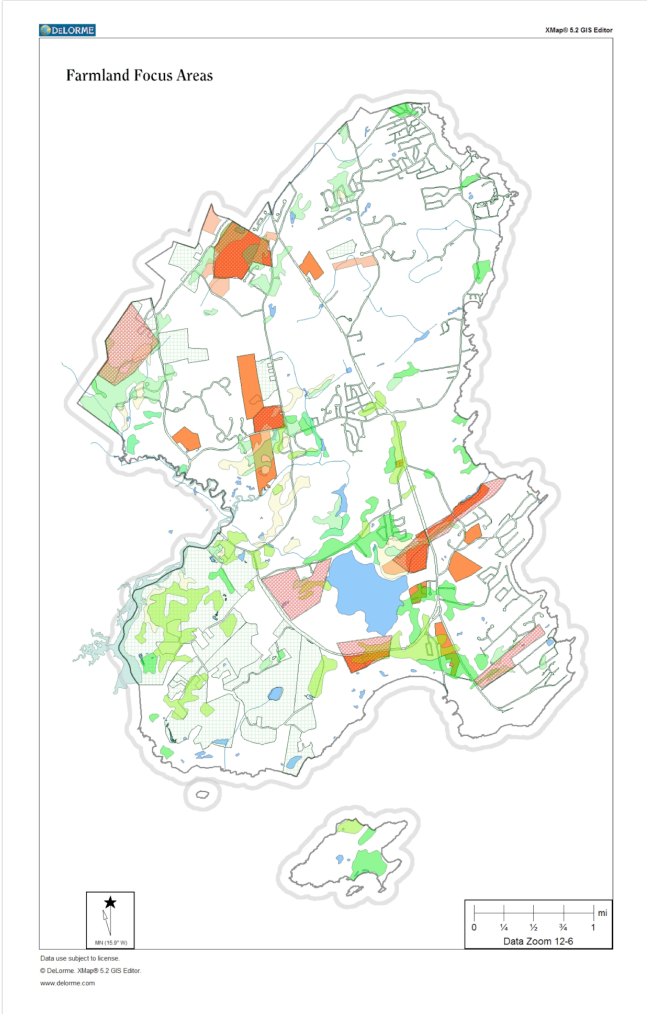
[www.capeelizabethfarms.com](http://www.capeelizabethfarms.com)



# Appendix 4 Cape Elizabeth Land Trust Strategic Plan Excerpts

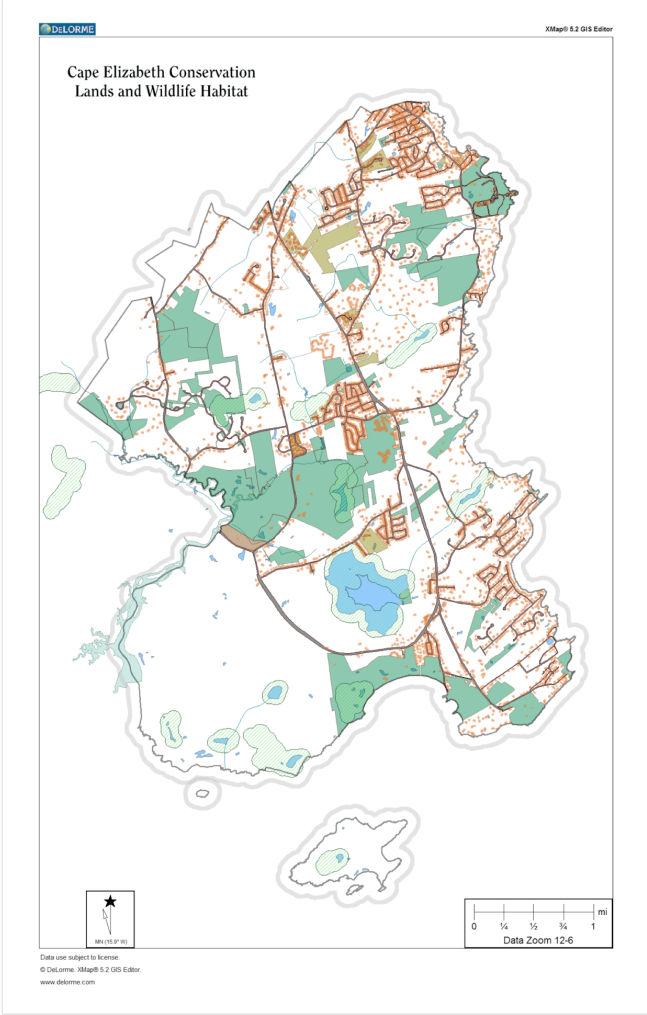


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**Appendix A: Land Protection Criteria**

**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 protection projects provide demonstrable public benefit (as 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**

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

**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,

Hiroshi Dolliver  
Meeting secretary



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

## 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			