

CAPE ELIZABETH TOWN COUNCIL MINUTES
Regular Meeting # 9-2011
Cape Elizabeth Town Hall
Monday, June 13, 2011
7:30 p.m.

Roll Call by the Town Clerk

Present Absent

David S. Sherman, Jr., Chair	Term Expires	12/2011	X	dsherman@dwmlaw.com
Frank J. Governali	Term Expires	12/2013	X	frank.governali@capeelizabeth.org
Caitlin R. Jordan	Term Expires	12/2013	X	caitlin.jordan@capeelizabeth.org
Sara W. Lennon	Term Expires	12/2012	X	slennon@maine.rr.com
Jessica L. Sullivan	Term Expires	12/2012	X	jsullivan08@maine.rr.com
Anne E. Swift-Kayatta	Term Expires	12/2011	X	aeskay@maine.rr.com
James T. Walsh	Term Expires	12/2012	X	jim.walsh@capeelizabeth.org
Michael K. McGovern, Town Manager			X	
Debra M. Lane, Town Clerk			X	

The Pledge of Allegiance to the Flag

Town Council Reports and Correspondence

Councilor Walsh announced the Town of Cape Elizabeth has received the Best Practice Award presented by the Greater Portland Council of Governments for the Town Council's Communication Strategy.

Councilor Sullivan thanked Jim Huebener, Memorial Day Parade Chair and participants in the Memorial Day parade.

Chair Sherman thanked the organizers of Family Fun Day and congratulated the 2011 graduates of Cape Elizabeth High School.

Councilor Swift-Kayatta thanked the Thomas Memorial Library Trustees, the Study Committee and Jay Scherma for their continued work. Recently meetings were held to brainstorm on ideas for architectural plans and thoughts regarding a new library layout.

Citizen Opportunity for Discussion of Items Not on the Agenda

Herbert Dennison, 63 Spurwink Avenue

Mr. Dennison asked the Town Council to take into consideration the citizens votes (citizens voted down fees) when they vote on fees at Fort Williams.

Town Manager's Report

Manager McGovern thanked Debra Lane, Town Clerk and the election staff for their work on the May 10 election. Congratulations to Senator Dill. Thank you to Public Works for their work on preparing the parks and grounds for the community, and events such as Family Fun Day and the Memorial Day parade. Thank you to Michael Jordan for donating the materials and Nick Tammaro for fixing the lawn in the front of Town Hall.

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Mr. McGovern gave an overview of the results of the 2010 Census. The presentation looked at how Cape Elizabeth's population has changed and how the town compares with other communities. A copy of the report is also online at www.capeelizabeth.com.

Review of Minutes of May 9, 2011 Meeting

Councilor Swift-Kayatta recused herself from voting on the minutes; she was absent from the meeting.

Moved by Jessica L. Sullivan and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council approves the minutes of Meeting #8-2011 held May 9, 2011 as presented.
(6 yes) (0 no)

Item #98-2011

Public Hearing: The Local Buzz Liquor License Application

Chair Sherman opened the public hearing to public comments at 7:55 p.m.

Jamie Wagner, The Local Buzz

The Local Buzz is requesting to add spirits to the current malt and vinous license.

After hearing no further comments the hearing was closed at 7:57 p.m.

Moved by Sara W. Lennon and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council approves the new malt, vinous and spirituous liquor license and special amusement permit as presented for The Local Buzz, 333 Ocean House Road.
(7 yes) (0 no)

Item 99-2011

Public Comment: The Good Table Renewal Liquor License Application

Chair Sherman opened the item to public comments. After hearing no comments Chair Sherman asked for a motion.

Moved by Sara W. Lennon and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council approves the renewal malt, vinous and spirituous liquor license as presented for The Good Table, 527 Ocean House Road.
(7 yes) (0 no)

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon to take Item #95-2011 off the table from the May 9, 2011 meeting.

Item# 95-2011 Town Center Plan Update and Map

Intro - Councilor Sullivan

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council acknowledges receipt of the Town Center review and sets for a future workshop the recommendations not yet implemented in the 1993 report of the Town Center Planning Committee.

(7 yes) (0 no)

Item# 100-2011 Bond Refinancing

Intro – Manager McGovern introduced Item ##100 and 101.

Public Comment None

Moved by Anne E. Swift-Kayatta and Seconded James T. Walsh

Ordered the Cape Elizabeth Town Council authorizes the issuance of up to \$1,910,000 of General Obligation Refunding Bonds as follows:

(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH, MAINE
TOWN COUNCIL VOTE AUTHORIZING THE ISSUANCE OF
UP TO \$1,910,000 OF GENERAL OBLIGATION REFUNDING BONDS**

WHEREAS, the Town has outstanding certain 2001 General Obligation bonds (the “2001 Bonds”) which were issued to pay the costs of construction and improvement of Town Center Public Safety buildings, improvements to school playgrounds, acquisition of and renovation of the Community Center and land acquisition; and

WHEREAS, the 2001 Bonds maturing in the years 2012 to 2021, in the principal amount of \$1,910,000 (the “Callable Bonds”) are subject to early redemption on or after April 5, 2011; and

WHEREAS, it appears that refunding of the outstanding 2001 Bonds would result in a significant net present cash flow savings to the Town and that it is, therefore, advisable to issue bonds of the town to refund the outstanding 2001 Bonds.

NOW, THEREFORE, it is

VOTED: That pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide for the refunding of the outstanding 2001 Bonds and the costs and expenses related thereto, including interest to the redemption date and call premium, if any, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$1,910,000 in principal amount.

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VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell bonds of the Town in the aggregate principal amount not to exceed \$1,910,000, such bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk.

VOTED: That the form, maturity, interest rates and other details of said bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have their respective final maturity not later than the respective final maturity for the Callable Bonds and shall not be inconsistent with the provisions hereof. Such bonds may be issued as callable bonds, at the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the proceeds of such bonds shall be used to pay the principal, interest and call premium on the Callable Bonds.

VOTED: That the Chairman of the Town Council, the Treasurer and Clerk, and other proper officials of the Town be, and hereby are, authorized and empowered in its name and on its behalf, to do or cause to be done all such acts and things as may be deemed necessary or desirable in order to effect the issue and delivery of said bonds and notes hereinbefore authorized in the foregoing resolutions.

VOTED: That the Town covenants and certifies that no part of the proceeds of the issue and sale of the notes and bonds authorized to be issued by the foregoing resolutions (including any notes and bonds in renewal thereof) shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause such notes or bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

VOTED: That the notes and bonds authorized by this Bond resolution may, if so determined by the Treasurer, be combined with any other notes or bonds duly authorized by the Town of Cape Elizabeth and together issued as a single bond issue in the aggregate amount of the notes and bonds so issued.

VOTED: That said bonds are hereby designated "qualified tax exempt obligations" under Section 265(b)(2) of the Code.

VOTED: That the Treasurer of the Town be authorized to covenant on behalf of the Town and for the benefit of the holders of the notes and bonds, that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes and bonds will remain exempt from federal income taxes.

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Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council votes to take #102-2011 out of order.

(7 yes) (0 no)

Item # 102-2011 Proposed Partnership with Cape Elizabeth Land Trust

Moved by Anne E. Swift-Kayatta and Seconded by Jessica L. Sullivan

Ordered the Cape Elizabeth Town Council enters executive session pursuant to 1MRSA §405 6 C to discuss land acquisition/disposition issues at 8:14 p.m.

(7 yes) (0 no)

Moved by Frank J. Governali and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council exits executive session and reenters public session at 8:35 p.m.

(7 yes) (0 no)

Chair Sherman opened the item for public comments.

William Enman, 58 Spurwink Avenue

Mr. Enman commented that “all property that goes into the Land Trust taxes go up.”

Chris Franklin, Executive Director of the Cape Elizabeth Land Trust

Mr. Franklin spoke in support of the partnership with the town.

James Shaffer, 650 Shore Road

Mr. Shaffer supports the town’s contribution to the purchase of the property. He will volunteer on the new property.

Ogden Williams, 5 Beach Bluff Terrace

Mr. Williams supports the purchase of the property and the town’s contribution.

Ingrid Stressenger, 82 Fowler Road and 4th Grade Teacher at Pond Cove.

Mrs. Stressenger supports the town’s contribution to enhance the partnership with CELT and the schools and education.

Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council does hereby allocate \$150,000 from the Land Acquisition Fund and \$200,000 from the proposed bond anticipated to be authorized in Item # 101-2011, with the funds to be placed in an account committed for a partnership with the Cape Elizabeth Land Trust (CELT) for CELT’s planned acquisition of 63 +/- acres of land known as Robinson Woods II. The total municipal donation of \$350,000 may be expended by the Town Manager at the time the property is acquired provided the Town of Cape Elizabeth receives a public access easement in a form acceptable to the Town Attorney and the Town Council and provided that all other funds needed by CELT for the acquisition are obtained. If the property is not acquired in conformance with the May 2011 purchase and sale agreement between CELT and the Robinson Family, LLC, the \$350,000 shall become unassigned within the Town of Cape Elizabeth Land Acquisition Fund. In addition, the Town Council respectfully requests the Cape Elizabeth Land Trust to work with the town to explore alternatives to move the Shore Road path inward into Robinson Woods I.

(7 yes) (0 no)

Item # 101-2011 Bond Resolution for Land Acquisition

Public Comment None

Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council authorizes the following expenditure of up to \$200,000 for land acquisition and the issuance of up to \$200,000 in bonds to finance such expenditure.
(7 yes) (0 no)

**TOWN OF CAPE ELIZABETH, MAINE
TOWN COUNCIL VOTE AUTHORIZING EXPENDITURE OF UP TO \$200,000
FOR LAND ACQUISITION TO PRESERVE OPEN SPACE
AND THE ISSUANCE OF UP TO \$200,000 IN BONDS
TO FINANCE SUCH EXPENDITURE**

VOTED: That the Cape Elizabeth Town Council hereby authorizes the expenditure of the sum of \$200,000 for land acquisition to preserve open space.

VOTED: Pursuant to the provisions of Section 5772 of Title 30-A of the Maine Revised Statutes and all other authority thereto enabling, and in order to provide funds for the project authorized by the foregoing vote, the Town Council of the Town of Cape Elizabeth hereby authorizes the Treasurer to borrow on behalf of the Town up to \$200,000 in principal amount.

VOTED: That in order to effect the borrowing heretofore authorized, the Treasurer be and hereby is authorized to prepare, issue and sell notes or bonds of the Town in the aggregate principal amount not to exceed \$200,000, such notes or bonds to be signed by the Treasurer, countersigned by the Chairman of the Town Council and attested by the Town Clerk.

VOTED: The form, maturity, interest rate and other details of said notes or bonds shall be as determined by the Treasurer and the Chairman of the Town Council by their execution thereof, but shall have a final maturity not later than 20 years from date of issuance, and shall not be inconsistent with the provisions hereof. Such notes or bonds and any notes issued in anticipation thereof may be issued as callable notes or bonds in the discretion of the Treasurer and Chairman of the Town Council.

VOTED: That the Treasurer and the Chairman of the Town Council are hereby authorized on behalf of the Town to borrow money in anticipation of the issuance of said notes or bonds by the issuance and sale of notes and renewal notes in anticipation thereof, such notes and renewal notes to be in such form, have such maturity and bear interest at such rate as may be approved by the Treasurer and Chairman of the Town Council by their execution thereof.

VOTED: That the Chairman of the Town Council, the Treasurer and Clerk, and other proper officials of the Town be, and hereby are, authorized and empowered in its name and on its behalf, to do or cause to be done all such acts and things as may be deemed necessary or desirable in order to effect the issue and delivery of said bonds and notes hereinbefore authorized in the foregoing resolutions.

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VOTED: That the Town covenants and certifies that no part of the proceeds of the issue and sale of the notes and bonds authorized to be issued by the foregoing resolutions (including any notes and bonds in renewal thereof) shall be used, directly or indirectly, to acquire any securities or obligations, the acquisition of which would cause such notes or bonds to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code").

VOTED: That the Treasurer of the Town be authorized to covenant on behalf of the Town and for the benefit of the holders of the notes and bonds, that the Town will take whatever steps, and refrain from taking any action, as may be necessary or appropriate to ensure that interest on the notes and bonds will remain exempt from federal income taxes.

VOTED: That said notes and bonds are hereby designated "qualified tax exempt obligations" under Section 265(b)(2) of the Code.

VOTED: That this Bond Resolution shall constitute the Town's official declaration of intent for purposes of Section 1.150 of the Internal Revenue Regulations, and to the extent that any costs of the projects are paid by the Town from the general fund or other fund, such payments may be reimbursed from the proceeds of said notes or bonds.

VOTED: That the notes and bonds authorized by this Bond Resolution may, if so determined by the Treasurer, be combined with any other notes or bonds duly authorized by the Town of Cape Elizabeth and together issued as a single bond issue in the aggregate amount of the notes and bonds so authorized.

VOTED: That the investment earnings on the proceeds of the borrowed funds, if any, and the excess proceeds of the borrowing, if any, be and hereby are appropriated for the following purposes, such proceeds to be held and applied in the following order of priority:

1. To any costs of the projects in excess of the principal amount of the bonds or notes issued therefor;
2. In accordance with applicable terms and provisions of the Arbitrage and Use of Proceeds Certificate delivered in connection with the sale of the bonds or notes including, to the extent permitted thereunder, to the Town's Land Acquisition Fund.

Item # 103-2011 Report from Fort Williams Advisory Commission

Intro – Manager McGovern

Chair Sherman opened the item for public comments.

Peter Eastman, 24 Woodland Road

Mr. Eastman clarified the "trolley" reference is not the cable car type.

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Jeanne McGurn, Maine Tour Connection, 96 Ocean Street, South Portland
Ms McGurn said the town will be “discriminating” against those who choose to ride a motor coach.

“Help keep tourism in Maine strong, do not charge fees.”

Michael Foy, Intercruises, 111 Commercial Street, Portland
Intercruises organizes trips for cruise ships. Mr. Foy provided information on the average number of trips to Fort Williams Park.

William Enman, 58 Spurwink Avenue
Mr. Enman said “the voters have voted, no fees what so ever.”

Moved by Anne E. Swift-Kayatta and Seconded by James T. Walsh
Ordered the Cape Elizabeth Town Council acknowledges receipt of the report from the Fort Williams Advisory Commission regarding fees for tour buses and trolleys and sets the item to workshop. The workshop date to be determined.
(7 yes) (0 no)

Item # 104-2011 Ordinance Committee Growth Areas Recommendation

Intro – Councilor Walsh, Chair Ordinance Committee

Chair Sherman opened the item to public comments.

Peter Eastman, 24 Woodland Road, Turkey Hill Farm
Mr. Eastman is representing Turkey Hill Farm and available for questions.

Moved by James T. Walsh and Seconded by Anne E. Swift-Kayatta
Ordered the Cape Elizabeth Town Council hereby refers to the Planning Board a recommendation from the Ordinance Committee to remove Turkey Hill Farm (R03-20) and the Loveitt heirs parcel (R01-2) as growth areas.
(7 yes) (0 no)

Moved by James T. Walsh and Seconded by Anne E. Swift-Kayatta
Ordered the Town Council hereby amends the charge to the Future Open Space Preservation Committee to 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 their 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. The committee is also authorized to meet through December 31, 2012 which is an extension from April 8, 2012.
(7 yes) (0 no)

Moved by James T. Walsh and Seconded by Sara W. Lennon
Ordered the Cape Elizabeth Town Council acknowledges receipt of the Ordinance Committee report regarding the “Statements of Agreement.”
(7 yes) (0 no)

Statements of Agreement

1. Not all development is sprawl.¹
2. Compact growth, with clustering of homes and permanent open space preservation requirements, uses less land.
3. Cape Elizabeth is a suburb, with rural character² in some areas, and a town center.
4. Some farmland and woodlands may be included in Growth Areas.
5. Providing municipal services to properly planned compact development usually costs less than providing municipal services to sprawl development.
6. The Town should be proactive in planning for development that may occur.
7. The current growth management/zoning structure has had generally good results, but needs fine-tuning in the current environment. Note the number of new units expected during the Comprehensive Plan planning period has been recalculated from the 2007 estimates and the Town Council should revise those numbers to expect a lower amount of growth anticipated.
8. Town growth areas should include the RC (infill) and the Town Center.
9. In general, growth areas should not include the “signature” or premier areas that embody community character. The Town Center could be considered a signature area and is considered a growth area.
10. Growth areas should be designated based on the following factors:
 - a. Proximity to infrastructure such as but not limited to: public sewer, existing neighborhoods, public open space and pedestrian facilities.
 - b. Generally should not include “prime farmland,” as shown on the state agricultural soils inventory included on the agricultural resources map in the Comprehensive Plan, but may include farmland.
 - c. Should not include significant natural resources such as but not limited to:
 - RP1 wetlands,
 - RP1 wetland buffers,
 - RP3 100-year floodplains,
 - moderate or high value wildlife habitats as mapped by the Maine Department of Inland Fisheries and Wildlife (these areas are already included in the RP1 and RP1 buffer)
 - Coastal high hazard areas (already included in the 75’ Shoreland Zoning no-build setback)

d. Growth areas may include RP2 wetlands, floodplain (as long as no new buildings are proposed in the floodplain), wildlife habitat areas where some disturbance still preserves wildlife habitat values.

11. The Town should not adopt agricultural zoning for farmland areas that restricts uses of the land to agriculture.

¹ Sprawl is a type of development that is auto-dependent, low-density and not related to planned growth strategies.

² Practice Community Character article

Item # 105-2011 Appointments Committee Recommendation

Intro – Councilor Sullivan, Chair Appointments Committee

Moved by Councilor Jessica L. Sullivan and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council approves the recommendation of the Appointments Committee to approve the following board recommendations, terms effective immediately.

(7 yes) (0 no)

Planning Board

Josef Chalot 12 Channel View Road Unexpired term to December 31, 2011

Trustees of the Thomas Memorial Library

Lee Ruddy 1 Birchwood Road Unexpired Term to December 31, 2012

Item # 106-2011 Maine House of Representatives District 121 Vacancy

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council requests Governor Paul LePage to schedule a special election to fill the vacant District 121 seat in the Maine House of Representatives and that the communication to Governor LePage recommend he choose November 8, 2011 as the date for the special election.

(7 yes) (0 no)

Item # 107-2011 Proposed Revised FY 2011 Budget Appropriations

Intro – Manager McGovern

Moved by Frank J. Governali and Seconded by James T. Walsh

Ordered the Cape Elizabeth Town Council approves the proposed revised fiscal year 2011 appropriations as presented.

(7 yes) (0 no)

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Account	Department	Original	Revised	Difference	Explanation
130	Town Council	\$ 500	\$ 3,000	\$ 2,500	Growth Projection Study
135	Legal and Audit	\$ 53,000	\$ 75,000	\$ 22,000	Addt Legal Fees
410	Human Services	\$ 45,485	\$ 55,000	\$ 9,515	General Assistance Program
610	Town Hall	\$ 25,300	\$ 26,300	\$ 1,000	Heat
615	Library Building	\$ 25,340	\$ 30,000	\$ 4,660	Heat
620	Town Center Fire Station	\$ 15,775	\$ 18,000	\$ 2,225	Heat
710	Intergovernmental Assessments	\$ 967,351	\$ 968,416	\$ 1,065	MMA and GPCOG Dues
		\$ 1,132,751	\$ 1,175,716		
	Increase			\$ 42,965	
170	Employee Benefits	\$ 944,361	\$ 901,396	\$ (42,965)	Health Insurance
	Decrease		\$ (42,965)		

Item # 108-2011 Proposed FY 2011 Designated Fund Balances

Intro – Manager McGovern

Moved by Frank J. Governali and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council approves the proposed fiscal year 2011 designated fund balances as presented.

(7 yes) (0 no)

1102001	Telephone System	50,000	
1102016	Records Preservation	3,677	
1202011	GIS Improvements	19,741	
2104002	Police Department Donations	10,528	
3102039	Public Works Pavement Markings	17,625	
3202004	Recycling Promotion	4,140	
5104001	Library Project	46,845	
5205053	Family Fun Day	2,000	
6404114	Greenbelt Trails	6,519	
6452019	Fort Williams Park Tree Planting	10,000	
6602010	Tree Planting	3,132	
7154004	Police Cruiser Replacement	5,000	
7154009	Roadway and Drainage Repairs	306,064	Includes \$222,839 Per Budget
7154013	Sidewalk Improvements	4,258	
7154111	Town Hall Structural Repairs	32,176	
7154114	Election Equipment	16,000	
7154117	Revaluation	13,363	
7154143	Public Works Building Repairs	10,500	
7155225	Municipal Energy Projects	6,700	
7155226	Shore Road Path	161,000	
7155232	Fort Williams Park Master Plan	40,000	
7155233	Future Open Space Study Committee	25,000	
	Fire Dept Breathing Apparatus	11,500	
7254227	Fuel Donation Account	826	
	Pool Boiler as Part of School Boiler Project	40,000	
	Budgeted Use of Undesignated Surplus	350,000	
		1,196,594	
	Rescue Unit Purchase	164,000	

Item # 109-2011 Mutual Aid Agreement

Moved by James T. Walsh and Seconded by Caitlin R. Jordan

Ordered the Cape Elizabeth Town Council approves a new fire mutual aid agreement with the Town of Scarborough as presented.

(7 yes) (0 no)

See attachment.

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TOWN OF CAPE ELIZABETH
AND
TOWN OF SCARBOROUGH**

WHEREAS, the Town of Cape Elizabeth is a municipality under the laws of the State of Maine with a principal location at 320 Ocean House Road, Cape Elizabeth, Maine 04107 (“Cape Elizabeth”);

WHEREAS, the Town of Scarborough is a municipality under the laws of the State of Maine with a principal location at 259 Route One, Scarborough, Maine 04074 (“Scarborough”);

WHEREAS, the purpose of this Memorandum of Understanding (“MOU”) is to address mutual fire aid between Scarborough and Cape Elizabeth.

NOW THEREFORE, Cape Elizabeth and Scarborough hereby agree as follows:

1. Definitions:

Emergency – Any incident, human-caused or natural, that requires responsive action to protect life, property or environment.

Emergency Response – Activities that address the short-term, direct effects of an incident of emergency. Response includes immediate actions to save lives, protect property, and meet basic human needs. Response also includes the execution of emergency operations plans and of mitigation activities designed to limit loss of life, personnel injury, property damage and other unfavorable outcomes.

Emergency Response Equipment – Emergency response organization’s vehicles, tools and supplies as well as municipal vehicles and equipment which may be used in an emergency response.

Emergency Response Organization – Any organization approved by a state, county or local governmental organization to provide emergency response.

Emergency Response Personnel – Persons who are members in good standing of an emergency response organization, and who are trained and certified to provide specified emergency services, or who are under the supervision of a trained and certified person.

Fire Department – An emergency response organization with the responsibility of the protection of LIFE (First Priority), the preservation of PROPERTY (Second Priority) and the ENVIRONMENT (Third Priority).

Incident Command System – A standard, on-scene, all hazards incident management system already in use by firefighters, law enforcement, hazardous material teams, rescuers and emergency medical teams. The ICS has been established by the NIMS (as defined below) as the standardized incident organizational structure for the management of all incidents.

Mutual Aid Emergency – Any emergency which is beyond the capabilities of the local emergency response organizations to resolve, or which by normal protocol requires the assistance of emergency response organizations based outside the town, municipality or locale in which the emergency occurs.

National Incident Management System (NIMS) – A comprehensive national approach to incident management utilizing best practices that have been developed over the years.

Unified Command – A command structure in which the ranking members from multiple emergency response organizations and/or jurisdictions jointly determine objectives, plans and priorities, and then work together to execute them.

2. On an annual basis (prior to June 30th of each year) the Fire Chiefs of Scarborough and Cape Elizabeth will review the terms of this MOU and report in writing to each other regarding any recommended revisions, changes, additions or deletions to said terms.
3. The Scarborough and Cape Elizabeth Fire Departments shall assist each other as necessary in times of emergency, or in times of disaster by sending equipment and emergency response personnel at request, or by holding equipment or emergency response personnel in a standby status at request, to the extent that, in the opinion of the sending Fire Chief, Fire Chief's designee, or person in charge, such equipment or personnel can be spared when a call for assistance is received.
4. Any request for assistance shall be made by the incident commander at the scene of an emergency or by the dispatch centers based on the location of the incident.
5. Command at an incident shall be structured in accordance with the Incident Command System (ICS) of the National Incident Management System (NIMS), and that if the emergency/disaster is multi-jurisdictional, a Unified Command will be employed when practical.
6. When any personnel or equipment are sent under the terms of this agreement, the ranking officer of the requested organization shall report to the requesting organization's incident commander. Emergency responders will respond with full turnout gear and personal protective equipment consistent with accepted practices

of their respective disciplines. Orders by the incident commander will be given to the visiting ranking officer, his/her designee or person in charge who will then give orders to his/her personnel and then remain in communication with the incident commander. The visiting personnel may be under the direct control of an officer of the requesting organization. The visiting ranking officer, his/her designee or person in charge shall have the right and responsibility to ensure that visiting personnel are asked to perform only those tasks or operations that are consistent with their training, and in accordance with their home protocols and accepted safe practices. Such personnel shall remain under the control of Command until the organization requesting assistance releases said personnel and equipment, or until said personnel and equipment are recalled by the organization providing assistance. Such personnel and equipment shall be released as soon as is reasonably possible and returned to the sending organization.

7. Assisting emergency response organizations under this MOU shall operate in accordance with their home district protocols and/or guidelines, and each emergency response person will operate according to the protocols and/or guidelines of his/her own organization, and within the scope of his/her own training and certification, or under the supervision of a person with the appropriate training and certification. In no event shall visiting personnel be required to perform in a way inconsistent with their home protocols and/or guidelines, or inconsistent with accepted safe practices.
8. It is further agreed that there will be no compensation for providing any mutual aid described in this MOU, unless other contractual agreements for services exist

and/or become established; however, where a party or parties responsible for causing the emergency are liable for coverage of expenses, coverage of such expenses may be pursued from such parties. It is further agreed that during prolonged operations emergency response organizations receiving assistance may provide assisting organizations with fuel and lubricants or reimbursement for said items.

9. Subject to the limitations and immunities provided in the Maine Tort Claims Act, Cape Elizabeth and Scarborough agree to be responsible for their own personnel and equipment and agree to indemnify, protect, and save harmless each other, in the absence of the other's negligence or misconduct, from any and all claims, demands, and liability for loss, damage, injury, or any other casualty to their own personnel and/or equipment.
10. Cape Elizabeth and Scarborough may terminate their participation under this MOU in their discretion and for their convenience upon no less than three (3) months' prior written notice to the other municipality;
11. This MOU constitutes the entire agreement between Cape Elizabeth and Scarborough with regard to the mutual aid described herein. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement and the parties agree to meet and negotiate a new clause, section or provision. Amendments to this MOU shall be in writing and executed by both Cape Elizabeth and Scarborough. Cape Elizabeth and Scarborough each represent that they have the authority to enter into this memorandum of understanding and that it

is being executed by it's duly authorized representatives. This MOU shall be governed solely by the laws of the State of Maine.

Seen and Agreed to this ____ day of _____, 2011.

WITNESS

Colette Matheson

TOWN OF SCARBOROUGH

Thomas J. Hall

Thomas J. Hall, Town Manager

WITNESS

TOWN OF CAPE ELIZABETH

Michael K. McGovern, Town Manager

Item # 110-2011 County Hazard Mitigation Plan

Moved by Anne E. Swift-Kayatta and Seconded by Sara W. Lennon

Ordered the Cape Elizabeth Town Council adopts a new Cumberland County Hazard Mitigation Plan as presented.

(7 yes) (0 no)

Note: Due to the length of the document it is not attached to the minutes.

Citizen Opportunity for Discussion of Items Not on the Agenda None

Adjournment

Moved by Frank J. Governali and Seconded by Anne E. Swift-Kayatta

Ordered the Cape Elizabeth Town Council adjourns at 9:55 p.m.

(7 yes) (0 no)

Respectfully Submitted,

Debra M. Lane, Town Clerk