**Open Space Management Plan**

**V. Property Management Policies**

Town-wide property Management Policies

Open spaces owned by the Town of Cape Elizabeth are intended for the benefit and enjoyment of all citizens and visitors. Town policy is to impose as few restrictions on use of these properties as possible, consistent with the need to maintain user safety, minimize conflicting uses, protect the natural features and generally exercise proactive stewardship of a valuable and enduring Town asset. When using town open space, members of the public should respect the rights of abutting private property owners and stay on town open space.

1. Existing Ordinances, State laws and Regulations

These management policies supplement existing federal, state, and local laws. Highlights of existing laws are noted below in association with the policy to which they most closely relate. Open space users are responsible for abiding by all applicable laws.

2. Trail Conditions

Greenbelt trails are used by almost everyone who visits the Town's open spaces. Many trails are heavily impacted by foot traffic, bicycles and, in some places, snowmobiles and horses. Accordingly, virtually all open space maintenance efforts will be directed to the upkeep and improvement of the trail system. The Town of Cape Elizabeth will make all reasonable effort to maintain the greenbelt trail system within budget limits, however, trail users are obligated to use common sense and avoid trails when natural conditions make them treacherous.

**Trail maintenance goal.** Greenbelt trails will be established and maintained primarily as minimally improved pathways. Typical trail widths will be 4 to 6 feet wide with a minimum vertical clearance of 8 feet. On wooded trails where snowmobiles operate, curved trail sections may be wider.

Almost all trail surfaces will be the existing soil or grassy vegetation that is mowed periodically. Bark mulch, gravel and similar materials may be applied when the use of the trail degrades the trail surface. Water bars, shallow swales or drainage pipe may be employed for erosion control purposes.

Boardwalks, bridges and other structures will be constructed to carry trails over water or protect native soils and vegetation. On trails where snowmobiles are permitted, structures will be wide enough to accommodate snowmobile and rider at a time. Any manner of trail improvement will extend only so far to provide trail users with a rustic, enjoyable experience while minimizing impact on the natural environment. Further, such improvements will not limit handicapped access to any greater degree than otherwise is limited by topography and other natural features. For example, when boardwalks or bridges are constructed, the ends will include ramps or will merge at grade to the adjacent trail surface.

In order to preserve trail surface stability and manage trail maintenance costs, the Conservation Commission may restrict use or close a trail for a season or during wet conditions. Notification of a closed trail will be posted at the trail and on the town website.

3. Signage

All Green Belt trails constructed and maintained by the Conservation Commission are marked at regular intervals with 4 by 5 inch metal signs as seen below.

Larger 8 by 12 inch versions of these signs were also placed at major trail heads, in an attempt to make the location of trail systems easier to find. The Conservation Commission will also review the greenbelt trail system and identify major trailhead locations where prominent 4’ x 8’ trail signs, similar to the Winnick Woods sign, should be installed. All town greenbelt signs should adhere to a consistent design and prominently state that the trail is provided by the Town of Cape Elizabeth in order to educate the public about the Town Greenbelt system.

Recently the Commission funded a project to map all of the Green Belt trails with a GPS system. This information is currently being downloaded into a format that will allow maps of the trails to be created. The use of these maps will be two fold. First, the plan is to place copies of the maps at the head of the individual trail systems and at significant intersections to help the public navigate the trials in the field. Secondly, the public will be able to view copies of these trail maps, accompanied by a brief narrative, electronically at the towns public website at www.capeelizabeth.org

In addition, the public is asked to follow and respect any additional trail signage that may be posted on individual trails, such as signs asking recreational bikers to dismount over wet areas of the trail, or signs prohibiting the use of motorized vehicles on the trail system. Destroying, damaging or removing signs, kiosks or any other structure or improvement placed on Town Open Space by the Town's employees or authorized agents is prohibited under Sec. 12-1-6 of the Miscellaneous Offenses Ordinance.

**Miscellaneous Offenses, Sec. 12-1-6. Defacing, Injuring Public Property**. No person shall mark or write on any public building, nor on any fence not his own nor any sidewalk, nor any other public place in this Town.

Trail users should remember that the Cape Elizabeth Greenbelt is a multi-user trail system, including but not limited to hiking, biking, horseback riding, skiing and hunting, and proceed accordingly and with consideration of all users.

4. Hours of Operation

All town open spaces, except for Fort Williams, are open at all hours for the enjoyment of the public. From the hours of sunset to sunrise, trail users shall limit activities to the quiet enjoyment of the trails.

5. Encroachments

 The Town of Cape Elizabeth strives to be a good neighbor in its efforts to maintain and enhance the public’s use and enjoyment of the Town’s Open Space and Greenbelt Trails. The town wishes to protect the public interest in public property, now and for future generations, and has a fiduciary

 responsibility to protect these assets. The Town’s public property rights shall be respected in the same spirit as those of private property owners.

 The Town of Cape Elizabeth owns over 1000 acres of land within the Town. The goal of the Encroachment Policy is to protect town owned land for the benefit and enjoyment of public use, for its’ own use, and within the context of local ordinances, deed restrictions, and usage easements which the Town has purchased or been granted.

**Encroachment defined.** An encroachment is an alteration of Town property by a private party without the permission of the Town. “Private Use Encroachments Onto Municipal Property” or encroachments may include, but are not limited to:

1. Placement of structures; buildings, fences, landscape objects, play equipment

2. Placement of yard and leaf waste

3. Placement of household trash

4. Planting of trees and vegetation

5. Removal of trees and vegetation

6. Unauthorized clearing, mowing, landscaping

**Encroachment prevention.** No alteration of town property or use for private purpose without the express permission of the Town should occur. In order to preserve the integrity of municipal property boundaries, the Conservation Commission shall review the boundaries of selected town owned open space annually with the goal to verify all open space boundaries every ten years. The Conservation Commission may include professional surveyors in this review, especially where boundary locations are uncertain or an encroachment is suspected.

Proactively, the Town and the Conservation Commission may utilize the following techniques to avoid encroachments:

1. Public education

2. Improved posting of Town owned property signs

3. Posting of “Limits of Town property” signs

4. Enhanced definition of Greenbelt Trails (stonedust paths, signs)

5. Installation of low cost barriers (split rail fencing, turnpike style fencing, low boulders, plantings)

6. Avoid ownership of small strips of land from developers unless they are access to other Open Space or Greenbelt Trails

7. Encourage developers to visually mark open space to be donated to the Town owned property (install fencing, etc.)

**When encroachments occur.** Encroachments may be reported by a member of the public or by a town employee or official. When a potential encroachment has been identified, the following process shall be used:

1. Confirm encroachment. Following a complaint or report of a possible encroachment, the Town Manager shall be notified. The encroachment shall be inspected and, if deemed necessary, a professional surveyor will be retained to confirm the property boundary and prepare a sketch showing the extent of the encroachment. When applicable, the deed for the property shall be reviewed for restrictions.

2. Identify party causing encroachment. The Town Manager shall attempt to identify who has caused the encroachment and initiate contact. If the responsible party cannot be determined, the Town may take action to remedy the encroachment under #3 below. If the party can be identified, the Town Manager shall initiate contact and seek voluntary cooperation to remove, repair or replace as necessary.

3. Enforcement. If the Town Manager is unable to obtain voluntary cooperation, legal advice may be sought and all legal remedies available to a property owner may be undertaken by the Town. Remedies may include but are not limited to removal of structures, replanting of vegetation, installation of fencing or other visually prominent property, and boundary markers, and efforts to recover costs. Appeal of the Town Manager’s determination that an encroachment has occurred shall be made to the Town Council.

6. Vegetation damage and removal

Greenbelt trails are primarily located in naturally vegetated areas, and often adjacent to sensitive natural resources such as wetlands and ponds. No vegetation should be removed on town owned open space without the permission of the Town, except for blockages to town trails.

Vegetation will be removed to maintain greenbelt trails. Volunteers are encouraged to partner with the Town to remove vegetation with the intent to maintain trails. In addition, volunteers may remove vegetative barriers across existing trails, such as fallen trees and branches, only where the trail is located, without permission.

The Town also encourages and participates in programs to discourage and remove invasive species. The Town has participated for several years in a regional purple loosestrife eradication program. Volunteers have requested and received permission to remove bittersweet on town open space, especially where it is threatening the health of trees.

7. Rubbish, Litter, Sewerage and Animal refuse

The Town of Cape Elizabeth has a Carry-in, Carry-out policy. No person shall dump, deposit or leave any bottles, broken glass, paper, boxes, cans, rubbish, waste or garbage or other trash in any open space areas. Persons must, upon departing, carry out all residual items, waste or trash.

If any domestic animal, dog, horse or other animal brought onto open space defecates on or near open space, the person or persons accompanying the animal are responsible for the immediate removal and appropriate disposal of the feces off the open space. In naturally wooded areas, animal waste may be left in the open space as long as it is at least 5’ from a greenbelt trail. If the Conservation Commission determines that an undesirable amount of animal waste is accumulating in an area, it may restore the policy of complete removal of animal waste from town open space.

No person shall deposit waste water, sewage or effluent from sinks, portable toilets, holding tanks or other plumbing fixtures directly upon or into the surface of the ground or into surface water within an open space area.

The following town ordinance may require some clarification to be consistent with the animal waste removal policy on town owned open space.

**Health and Sanitation Ordinance, Sec. 11-3-12. Consent to dispose of waste**. No person shall throw, place, deposit or permit any person under his control or employ to throw, place, or deposit any putrid substance, human or animal excretion, dead animal, night soil, filth of any kind, garbage, rubbish, refuse piles, old lumber, or any unwholesome material in or upon any vacant lot, alley, lane, sidewalk or street, beach, harbor, pond, or stream, or upon any private lot or public grounds within the Town of Cape Elizabeth without the consent of the town health officer or his duly authorized representative.

8. Work Alterations/Improvements to Public Land

 Any proposed improvement to town open space, not including infrastructure improvements funded by the Town Council, must be reviewed by the Conservation Commission. Individuals or groups that wish to make improvements to town trails or open space shall first meet with the Conservation Commission and describe the proposed improvements. The Conservation Commission will conduct a field visit of the improvement area, and may request plans or other materials confirming the proposed work. The Conservation Commission will also supervise the improvements.

 Any work that falls within existing policies and plans approved by the Town Council may be approved by the Conservation Commission. Proposed improvements that exceed the scope of the Conservation Commission’s role as steward of the Greenbelt system shall be forwarded to the Town Council with the Conservation Commission’s recommendation.

9. Hunting, Fishing, and Trapping

Hunting, fishing and trapping in Town open space areas is allowed in accordance with all Town and State laws and regulations. The Town has obtained legal advice that it does not have the authority to prohibit hunting on town owned land. Hunting, fishing and trapping is regulated by the State of Maine. Adherence to all state laws and regulations shall be the responsibility of the persons who wish to engage in hunting, fishing, or trapping on Town open space.

**State Laws.**A complete summary of state law is not provided here, however, the following general hunting provisions1 should be noted:

•”The hunting, possession, transporting of any species of wild animal or wild bird, or parts thereof, for which an open hunting season is not specifically provided, and except as provided in the fish and wildlife laws, is unlawful.”

•”Wild birds and wild animals may not be hunted from 1/2 hour after sunset until 1/2 hour before sunrise the following day. Exceptions: migratory bird, turkey, raccoon and coyote.”

•Shooting within 100 yards of a dwelling is unlawful.

•Tree hunting stands on private property may not be erected without the permission of the property owner. The hunting platform must include the name of the owner on the stand and steps may only be strapped onto the tree.

1 State of Maine Hunting and Trapping 2009-2011 Laws and Rules

In accordance with state law, the Town does assert its right as a property owner to require that no hunting stand or trap be installed on town open space without obtaining the permission of the property owner. Tree stands shall include the name of the owner on the tree stand. Permission to erect a tree stand will be granted in conformance with the following:

1. The tree stand must be installed in conformance with state law;

2. The tree stand must be installed a minimum of 100 yards from any residential dwelling; and

3. The tree stand must be installed a minimum of 100 yards from any Town of Cape Elizabeth trail marked with greenbelt trail signs.

Use of firearms in Cape Elizabeth is limited by the Firearms Ordinance as follows:

**Firearms Ordinance, Sec. 9-1-1. Prohibition of Discharge of Firearms**. The discharge of firearms, air rifles or pistols is prohibited in all areas of Town excepting the salt marshes, property owned by the Spurwink Rod and Gun Club, and property under federal jurisdiction, and excepting the use of such weapons at military exercises or in the lawful defense of person, family or property of any individual or entity. Use of rifles except on target ranges authorized by the Police Department is prohibited within all areas of the Town.

**Federal Laws.** On federal land, discharge of firearms is allowed. In addition, discharge of firearms on land located below the low water mark of coastal lands is allowed.

10. Camping

No camping is allowed on town owned open space without the written permission of the Town. A camping permit is required.

**Miscellanous Offenses, Article II. Camping on Public Property. [Adopted eff. 10/13/71, under R. S. 1964, T. 30, Sec. 2151.]**

**Sec. 12-2-1. Permit Required.** No person shall sleep, tent, camp or be housed in a camper, trailer or other mobile home upon any property owned by the Town of Cape Elizabeth after sunset or before sunrise except in accordance with a permit issued by the Chief of Police upon conditions sufficient to assure that adequate water and sanitary facilities will be preserved, that the normal use of the town property will not be disrupted, that the peace and property of any abutters will not be disturbed, and that any liability which the Town might incur has been waived; such permit may be summarily revoked by the Chief of Police, or his duly authorized agent, upon the violation of any of the conditions recited therein.

11. Horses

Cape Elizabeth has a long standing history of horse ownership and horse related activities. In the past, horses provided transportation, either by carrying a rider or by pulling wagons, buggies and sleighs. Horses also assisted farmers in plowing fields, pulling logs and pulling wagon or sled loads of natural resources, such as seaweed to farm fields, as well as commercial goods.

Today, horses in Cape Elizabeth are primarily kept for pleasure activities as such as horseback riding and pulling holiday sleighs. Today, there are approximately 130 horses owned and boarded in Cape Elizabeth. The majority of these are boarded at 4 farms.

Horses are allowed on greenbelt trails. Due to the extreme sensitivity of a horse’s nature and its inherent unpredictability, all other trail and open space users shall heed all warnings and requests from horse riders, whether mounted or on foot. Dogs must be restrained in the vicinity of horses. Horse manure must be removed, but may be moved to a distance of not less than 5’ from any greenbelt trail in naturally wooded areas.

12. Pets

The state leash law is enforced throughout the community. All dogs must be leashed on groomed Town property unless specifically marked. (from town website).

In natural open space areas, greenbelt trail users who are accompanied by their pets must maintain control of their animals at all times so as to prevent their harassing or otherwise interfering with wildlife or other users. With the above restrictions, dogs are allowed off-leash in open space areas. The Town Dog Ordinance, Sec. 7-1-7, may need to be amended for clarification and consistency with this policy.

**Dogs Ordinance, Sec. 7-1-7 Dogs to be Restrained on Municipal Property**. Any dog within the boundaries of a groomed and/or regularly maintained municipal property including, but not limited to, Fort Williams Park, public roads, municipal sidewalks and athletic fields, will be walked on a leash or tether at all times. The person accompanying the dog in these situations is required to collect any feces dropped by the animal and dispose of same in an area where it will not likely be encountered by any persons. The Cape Elizabeth Poor Farm, Lions' Field excluding the Little League field, and a 20+- acre portion of Fort Williams Park Southerly of Humphreys Road (the road fronting the Parks Maintenance Building) and extending along a line to the rear of the long garages at the rear of Officers Row buildings, (but excluding the fields immediately south of Portland Head Light and in front of Battery Blair) are not considered to be groomed and/or regularly maintained for purposes of this ordinance.

Pet waste deposited on or in the immediate vicinity of trails and on other areas where people are likely to walk must be removed by whoever accompanies the animal. In naturally wooded areas, animal waste may be left as long as it is at least 5’ from any greenbelt trail. The Conservation Commission may prohibit leaving animal waste in any open space where undesirable accumulation of animal waste occurs.

13. Motorized Vehicles

No motorized vehicles may operate on Town open space except:

· snowmobiles in Gull Crest Park and the Town Farm

· vehicles performing authorized construction and maintenance work

· emergency service vehicles

14. Fires and Alcohol

In accordance with State Law, open burning anywhere in Town is allowed only upon issuance of an Open Burn Permit. Complete information related to burn permits can be found in the Fire Department section of the Town website ([www.capeelizabeth.com](http://www.capeelizabeth.com/)).

Alcohol may not be consumed on Town open space.

15. Social Gatherings/weddings

Individuals or groups desiring to schedule weddings, or events ( which are not just for use of the trails) which include an assembly of more than 20 persons on town open space, not including Fort Williams Park, should meet with the Conservation Commission to obtain permission. Information regarding the date and time of the event, number of attendees, any structures, tables, chairs, etc intended to be used and parking arrangements should be included in the request.

16. Closure of Open Space

The Town reserves the right to close open space areas to the public for the purpose of protecting environmental quality or during public safety emergencies.

Property Management Policies for specific parcels

**Fort Williams Park**

The Fort Williams Advisory Commission is a 7 member volunteer board appointed by the Town Council to supervise and provide advice to the Town Council regarding all facets of Fort Williams Park. Fort Williams Park is the premier town-owned open space in Cape Elizabeth and is therefore included in the inventory section of this plan. Fort Williams Park, however, is exempted from any of the management provisions of this plan in deference to the organizational structure already established for the park.

**Preserves**

Some of the land owned by the Town has been acquired due to its unsuitability for development due to natural constraints. Most common are wetland areas. In some cases, the wetness of the area, its lack of connectivity to the existing greenbelt trail system and/or its value as wildlife habitat support the designation as a “preserve.” Preserve areas are valuable elements to the open space system of the town, but pedestrian activity and access is not encouraged. The town’s intent in these areas is essentially to leave the land in its natural state. Designation as a preserve does not preclude future construction of trails in a preserve area as the greenbelt trail network expands.

At this time, the following town lands are proposed as a town preserve:

1. Holan Preserve

2. Ferne Peddy Preserve

3. Eastfield Preserve

4. Highland Preserve

5. Alewife Cove Preserve