

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Conservation Committee
DATE: August 21, 2019
SUBJECT: Sahrbeck Greenbelt license

Last year, the Conservation Committee began working with Bruce Sahrbeck to reopen a casual trail that had been closed on his property located at 15 Silva Drive. The trail is a popular link between the town's Winnick Woods property and CELT's Dyer Hutchinson easement to the north and the Town's Cross Hill open space to the south.

Representatives of the Conservation Committee and town staff walked the trail with the Sahrbeck family on December 5, 2018, when there was general agreement to pursue a license agreement. The agreement allows the town to manage greenbelt trails for the benefit of the public and formally shelters the property owner from liability. The license can be terminated with a 30-day notice by either party.

At the August 13, 2019 meeting, the Conservation Committee unanimously voted to recommend that the Town Council approve the license.

This is the second license agreement expanding the town greenbelt. The first license was provided by the Canterbury on the Cape Condominium Association and approved in December, 2016.

License # 2

TRAIL LICENSE AGREEMENT

This license is made by and between the Town of Cape Elizabeth, hereinafter called "Licensee," by its (duly authorized agent), and Bruce Sahrbeck, owner of 15 Silva Drive in Cape Elizabeth, hereinafter called "Licensor."

It is mutually agreed by and between the parties, in consideration of, and under, the terms and conditions set forth below that the Licensor grants Licensee the use of the licensed parcel for the sole purpose of the licensed activity as both are described below.

The lands subject to this agreement are shown on Exhibit A annexed to this document and are described as a biking trail that cuts through the Licensor's property near the eastern portion of the parcel at 15 Silva Drive connecting already existing trail. See Exhibit A.

The terms, conditions, and covenants agreed to are:

1. **TERM:** The term of this agreement shall be until such time as permission is revoked or surrendered.
2. **SPECIAL TERMS, CONDITIONS & UNDERSTANDINGS:** This license shall be subject to the following terms and conditions:
 - a. The trails authorized by this license will be designated as part of the Cape Elizabeth trails system.
 - b. The Licensor authorizes that the trail be shown on a town trail map, but may request that it be removed from the town trail map at any time during the existence of this license.
 - c. Pursuant to Title 14, M.R.S.A. Section 159-A, Licensor shall not "Assume responsibility or incur liability for any injury to person or property. . ."
3. **ACTIVITIES:** The activities permitted to be engaged in by members of the general public, on lands of the Licensor, under this license, shall consist of walking, hiking, jogging, cross country skiing, snowshoeing and bicycling, and no others except as expressly permitted by Licensor. Motorized activities, except for those associated with maintenance of the property, are strictly prohibited.
4. **MAINTENANCE:** In addition to the activities permitted under (3) above, employees, agents and volunteers authorized by the Town of Cape

Elizabeth may carry on reasonable and necessary trail maintenance activities, including but not limited to clearing of brush, grading, and removal of any trash or rubbish which shall appear within the licensed area. Licensee shall remove any and all equipment and personal property, which may have been placed upon the premises promptly upon termination of the license, and shall clean and restore the site to the satisfaction of the Licensor. No trail shall be paved, graveled or hard-surfaced without the express written consent of the Licensor, although dirt fill, wood chips or crushed stone for drainage may be used to improve the trail surface where deemed necessary.

5. **NON-EXCLUSIVITY**: This license shall not be exclusive. The Licensor reserves the right to use, or allow others to use, any part of the licensed area provided such use does not unreasonably interfere with the privileges hereby authorized to Licensee.
6. **ASSIGNMENT**: This license is issued to the Licensee herein named, and is not assignable or transferable.
7. **LIMITATION OF USE**: The following activities are expressly not permitted on the trails subject to this license or any other lands of Licensor, under this license. Licensee agrees to take all reasonable measures necessary to prevent any of the following by the public (unless Licensor should line through and initial the exceptions):
 - a. Any use of snowmobiles, all-terrain vehicles, motorbikes, or any other motorized means of transportation, except to assist with maintenance.
 - b. Hunting, or carrying of firearms other than by law enforcement officers.
 - c. Parking and use of cars or trucks other than in designated parking areas.
 - d. Entry by any otherwise unauthorized person on any portion of lands of Licensor other than the trails as depicted on Exhibit "A", including but not limited to, entry into any buildings on lands of Licensor. Licensor shall have no obligation to provide toilet or shelter facilities to any person using the trails under this license.
8. **SUITABILITY OF PREMISES**: Acceptance of this license by Licensee shall be prima facia evidence that Licensee accepts the suitability of the premises for their purposes, and the use thereof by Licensee shall attest such suitability.
9. **BUILDINGS AND STRUCTURES**: No buildings or structures shall be erected upon the premises, other than those specifically authorized.

10. HERBICIDES: Licensee shall not use herbicides, other pesticides, growth inhibitors, or other toxic chemicals on the licensed parcel.
11. VEGETATION: No living trees having a diameter of more than six (6.0"), measured 1' above the ground, may be cut without the express written consent of Licensor.
12. TERMINATION: The Licensor reserves the right to cancel this license at any time if the Licensee does not carry out conditions above. In addition, the Licensor may without cause cancel this license, or alter the area with thirty (30) days written notice to the Licensee.
13. PREVIOUS AGREEMENTS: This writing supersedes and takes precedence over all other agreements written or oral, regarding the subject matter of this license and it is intended by the parties hereto as the final, complete, and exclusive expression of their agreement.

We agree to the terms of this agreement.

Signed:

Licensor: Bruce Sahrbeck
(duly authorized agent of property owner)

Date 8/5/19

Print Name Bruce Sahrbeck

Licensee _____
(duly authorized agent of Cape Elizabeth)

Date _____

Print Name _____

I witnessed the signing of this agreement.

Signature Linda J Winter

Date 08/05/2019

Print Name Linda J Winter

Notary Statement

We agree to the terms of this License Agreement.

Signed:

Licensor Bruce Sahrbeck
(duly authorized agent of property owner)

Date 8/5/19

Licensee _____
(duly authorized agent of Cape Elizabeth)

Date _____

In the STATE OF MAINE,
CUMBERLAND COUNTY)

§ At _____, in said county, this _____ day of _____ A.D.,
20 __, the Licensor or his/her agent _____ and the
Licensee's agent _____ personally appeared and
agreed to be bound by the terms of the foregoing instrument.

Before me,

Notary Public _____

State of Maine, County of Cumberland
Signed before me on this 5th day
of August, 2019 by Bruce J. Sahrbeck
Notary Public Teresa D. Olson

Teresa D Olsen
Notary Public, Maine
My Commission Expires October 11, 2025

Maine Revised Statutes: Landowner Liability Act

Title 14 §159-A.

LIMITED LIABILITY FOR RECREATIONAL OR HARVESTING ACTIVITIES

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted.

[2005, c. 375, §1 (AMD).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting. [2009, c. 156, §1 (AMD).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use.

[2003, c. 509, §1 (NEW).]

[2009, c. 156, §1 (AMD) .]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

[1995, c. 566, §1 (AMD) .]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

A. Extend any assurance that the premises are safe for those purposes; [1979, c. 253, §2 (NEW) .]

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or [1979, c. 253, §2 (NEW) .]

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person.

[2007, c. 260, §1 (AMD).]

[2007, c. 260, §1 (AMD) .]

4. Limitations on section. This section does not limit the liability that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity; [1979, c. 253, §2 (NEW) .]

B. For an injury suffered in any case where permission to pursue any recreational or harvesting

activities was granted for a consideration other than the consideration, if any, paid to the following:

- (1) The landowner or the landowner's agent by the State; or
- (2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or [1995, c. 566, §1 (AMD).]

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [1995, c. 566, §1 (AMD).]

[1995, c. 566, §1 (AMD) .]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[1993, c. 622, §1 (AMD) .]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[1995, c. 566, §1 (AMD) .]

SECTION HISTORY

1979, c. 253, §2 (NEW). 1979, c. 514, §1 (AMD). 1979, c. 663, §75 (AMD). 1983, c. 297, §2 (AMD). 1985, c. 762, §25 (AMD). 1993, c. 622, §1 (AMD). 1995, c. 566, §1 (AMD). 2001, c. 113, §2 (AMD). 2003, c. 509, §1 (AMD). 2005, c. 375, §1 (AMD). 2007, c. 260, §1 (AMD). 2009, c. 156, §1 (AMD).

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Sahrbeck Trail License
Exhibit A

