



TOWN OF CAPE ELIZABETH

PUBLIC WORKS DEPARTMENT

10 COOPER DRIVE
CAPE ELIZABETH, MAINE 04107

ROBERT C. MALLEY
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To: Matthew Sturgis, Town Manager

From: Robert C. Malley, Director of Public Works *RM*

Date: September 30, 2019

Re: Hemlock Hill Road Drainage Project - Consideration & Acceptance of Drainage Easements

For almost 20 years, the town has been working to address drainage issues at the end of Hemlock Hill Road. Hemlock Hill Road was constructed in phases starting in 1963 and ending in 1975. It was not constructed with any formal infrastructure to control stormwater runoff. For many years stormwater has simply sheet flowed down to the end of the street onto private property. Over that time period remedial steps have been taken to mitigate the stormwater runoff issues but they have not been totally successful and have only offered marginal relief for what has been a long standing problem.

In 2010, the town hired the firm of AMEC Earth & Environmental to undertake a stormwater feasibility study for the Oakhurst/Hemlock Hill neighborhood. No work was initiated until 2015 when it was determined that additional comprehensive engineering services were needed to address worsening runoff conditions at the end of Hemlock Hill Road. The town enlisted the services of a consulting engineer (Sebago Technics) to develop construction documents and provide construction administration-related services. Improvements were intended to take place during the 2016 construction seasons, but some unforeseen challenges were encountered with siting the proposed outfall of the drainage system that delayed the project.

Funds were approved in the FY 2020 budget to install a drainage system the end of the road and the project. This effort required us to acquire drainage easements from two affected property owners along with the proposed purchase of a parcel from an adjacent property owner that is the primary repository for a majority of the current stormwater runoff.

Attached are two easement deeds that were prepared by Tom Leahy, our Town Attorney. They have been signed and notarized by the property owners and are now ready for consideration and acceptance by the Town Council.

DRAINAGE EASEMENT

BENJAMIN F. BRANCH and RIAN M. BRANCH, individuals from the town of Cape Elizabeth, Cumberland County, State of Maine, (“**Grantors**”), owners of the real property and improvements more particularly described in the Deed (as defined herein) (“**Grantors’ Property**”) for consideration paid to its full satisfaction from the **TOWN OF CAPE ELIZABETH**, a municipal body, corporate and politic with a principal office at, and a mailing address of, 325 Ocean House Road, Cape Elizabeth, Maine 04107 (“**Grantee**”), do hereby give, grant, bargain and confirm unto Grantee, its successors and assigns, a non-exclusive, perpetual easement to construct, install, inspect, maintain and replace storm water drainage infrastructure, including, but not limited to, pipes, pumps, culverts and catch basins (collectively, the “**Drainage Infrastructure**”), and to drain stormwater into, on, over, through and across, so much of Grantors’ Property located at Hemlock Hill Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, as described on **EXHIBIT A** attached hereto and as shown on Plan entitled “Third Amended Subdivision of Hemlock Hill Subdivision, Lot 1 and Lot 2, Hemlock Hill Road, Cape Elizabeth, Maine for Town of Cape Elizabeth” by Sebago Technics Inc., dated August 15, 2019 and recorded in the Cumberland County Registry of Deeds in Plan Book 219, Page 400 (the “**Easement Area**”), subject to the terms and conditions set forth herein.

Grantee shall have flowage rights for the storm water runoff to travel from the easement area set forth in **EXHIBIT A**, in a general southerly direction to the receiving area on land on Oakhurst Road to be acquired by the Grantee from Judith H. Bennett and Peter W. Bennett as Trustees of the Judith H. Bennett Trust u/d/t dated October 27, 2000.

Grantee shall have the right to enter upon and disturb the Easement Area, only to the extent necessary to construct, install, inspect, maintain and replace the Drainage Infrastructure, including the stockpiling of earth and construction materials; provided, however, Grantee agrees to restore the Easement Area and the Grantors’ Property, including any disrupted pavement, lawns, shrubs or trees to their condition prior to installation of the Drainage Infrastructure by Grantee to the extent reasonably possible.

Grantee shall promptly pay when due the entire cost of all work done by Grantee, its agents and assigns that affects the Drainage Infrastructure and shall keep the Easement Area free of all liens for labor or materials arising from its exercise of its rights hereunder.

Grantors hereby reserve for themselves and their successors and assigns, as the case may be, the right to use the Easement Area and the lands of the Grantors adjacent to the Easement Area for any use and purpose which does not in any way interfere with the use of said Easement Area by the Grantee in the exercise of the easement rights herein granted.

By acceptance of this grant, the Town of Cape Elizabeth covenants and agrees to the terms set forth herein.

Reference may be made to Deed from Cheryl A. Higgins to Benjamin F. Branch and Rian M. Branch dated May 25, 2012, recorded in the Cumberland County Registry of Deeds in Book 29618, Page 305 (the "**Deed**").

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Benjamin F. Branch and Rian M. Branch have executed this instrument this 27 day of September, 2019.

Man & Staples
Witness

[Signature]
Benjamin F. Branch

Man & Staples
Witness

[Signature]
Rian M. Branch

STATE OF MAINE
CUMBERLAND, SS.

September 27, 2019

Then personally appeared the above-named Benjamin F. Branch and Rian M. Branch, and acknowledged the foregoing instrument to be their free act and deed.

Before me,

Janet Staples
Notary Public/Maine Attorney at Law

Janet L Staples
Printed Name
My commission expires:

**JANET L. STAPLES
NOTARY PUBLIC
State of Maine
My Commission Expires
November 8, 2025**

EXHIBIT A

Easement Area (Legal Description)

A certain easement over land on the southerly side of Hemlock Hill Road, in the Town of Cape Elizabeth, County of Cumberland, State of Maine bounded and described as follows:

Beginning at the easterly terminus of the public section of Hemlock Hill Road at land now or formerly of Maureen M. Clancy as described in a deed recorded at the Cumberland County Registry of Deeds in Book 18558, Page 219, being Lot 2 as shown on the below referenced plan and the northerly sideline of land now or formerly of Benjamin & Rian Branch as described in a deed recorded at the Cumberland County Registry of Deeds in Book 29618, Page 305, being Lot 1 as shown on the below referenced plan;

Thence S 81°45'00" E, along the dividing line of Lot 1 and Lot 2, a distance of 138.65 feet;

Thence S 09°47'00" W, along the dividing line of Lot 1 and Lot 2, a distance of 19.88 feet;

Thence N 81°45'00" W, through Lot 1 a distance of 60.25 feet;

Thence N 09°47'00" E, through Lot 1, a distance of 15.00 feet;

Thence N 81°45'00" W, through Lot 1, a distance of 78.34 feet;

Thence N 09°03'00" E, thorough Lot 1, a distance of 4.88 feet to the Point of Beginning.

Containing approximately 1,580 Square Feet.

The above bearings refer to Magnetic, 1946.

Reference is made to a plan entitled "Third Amended Subdivision of Hemlock Hill Subdivision, Lot 1 and Lot 2, Hemlock Hill Road, Cape Elizabeth, Maine for Town of Cape Elizabeth" by Sebago Technics Inc., dated August 15, 2019 and recorded in the Cumberland County Registry of Deeds in Plan Book 219, Page 400.

DRAINAGE EASEMENT

MAUREEN M. CLANCY, an individual from the town of Cape Elizabeth, Cumberland County, State of Maine, (“Grantor”), owner of the real property and improvements more particularly described in the Deed (as defined herein) (“Grantor’s Property”) for consideration paid to its full satisfaction from the **TOWN OF CAPE ELIZABETH**, a municipal body, corporate and politic with a principal office at, and a mailing address of, 325 Ocean House Road, Cape Elizabeth, Maine 04107 (“Grantee”), do hereby give, grant, bargain and confirm unto Grantee, its successors and assigns, a non-exclusive, perpetual easement to construct, install, inspect, maintain and replace storm water drainage infrastructure, including, but not limited to, pipes, pumps, culverts and catch basins (collectively, the “**Drainage Infrastructure**”), and to drain stormwater into, on, over, through and across, so much of Grantor’s Property located at Hemlock Hill Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, as described on **EXHIBIT A** attached hereto and as shown on Plan entitled “Third Amended Subdivision of Hemlock Hill Subdivision, Lot 1 and Lot 2, Hemlock Hill Road, Cape Elizabeth, Maine for Town of Cape Elizabeth” by Sebago Technics Inc., dated August 15, 2019 and recorded in the Cumberland County Registry of Deeds in Plan Book 219, Page 400 (the “**Easement Area**”), subject to the terms and conditions set forth herein.

Grantee shall have the right to enter upon and disturb the Easement Area, only to the extent necessary to construct, install, inspect, maintain and replace the Drainage Infrastructure, including the stockpiling of earth and construction materials; provided, however, Grantee agrees to restore the Easement Area and the Grantor’s Property, including any disrupted pavement, lawns, shrubs or trees to their condition prior to installation of the Drainage Infrastructure by Grantee to the extent reasonably possible.

Grantee shall promptly pay when due the entire cost of all work done by Grantee, its agents and assigns that affects the Drainage Infrastructure and shall keep the Easement Area free of all liens for labor or materials arising from its exercise of its rights hereunder.

Grantor hereby reserves to herself and her successors and assigns, as the case may be, the right to use the Easement Area and the lands of the Grantor adjacent to the Easement Area for any use and purpose which does not in any way interfere with the use of said Easement Area by the Grantee in the exercise of the easement rights herein granted.

By acceptance of this grant, the Town of Cape Elizabeth covenants and agrees to the terms set forth herein.

Reference may be made to Deed from Fitzpatrick Associates, Inc. to Maureen M. Clancy dated December 10, 2002, recorded in the Cumberland County Registry of Deeds in Book 18558, Page 219 (the “**Deed**”).

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Maureen M. Clancy has executed this instrument this 26 day of Sept., 2019.

[Signature]
Witness

[Signature]
Maureen M. Clancy
9/26, 2019

STATE OF MAINE
CUMBERLAND, SS.

Then personally appeared the above-named Maureen M. Clancy and acknowledged the foregoing instrument to be her free act and deed.

Before me,

[Signature]
Notary Public/Maine Attorney at Law

Teresa D Olsen
Printed Name Notary Public, Maine
My commission expires October 11, 2025

EXHIBIT A

Easement Area (Legal Description)

A certain easement over land at the easterly terminus of Hemlock Hill Road, in the Town of Cape Elizabeth, County of Cumberland, State of Maine bounded and described as follows:

Beginning at the easterly terminus of the public section of Hemlock Hill Road at land now or formerly of Maureen M. Clancy as described in a deed recorded at the Cumberland County Registry of Deeds in Book 18558, Page 219, being Lot 2 as shown on the below referenced plan and the northerly sideline of land now or formerly of Benjamin & Rian Branch as described in a deed recorded at the Cumberland County Registry of Deeds in Book 29618, Page 305, being Lot 1 as shown on the below referenced plan;

Thence N 09°03'00" E, along the terminus of Hemlock Hill Road, a distance of 31.01 feet;

Thence S 70°42'53" E, through Lot 2, a distance of 140.93 feet;

Thence S 09°47'00" W, through Lot 2, a distance of 4.03 feet to the northeasterly corner of Lot 1;

Thence N 81°45'00" W, along Lot 1, a distance of 138.65 feet to the Point of Beginning.

Containing approximately 2,429 Square Feet.

The above bearings refer to Magnetic, 1946.

Reference is made to a plan entitled "Third Amended Subdivision of Hemlock Hill Subdivision, Lot 1 and Lot 2, Hemlock Hill Road, Cape Elizabeth, Maine for Town of Cape Elizabeth" by Sebago Technics Inc., dated August 15, 2019 and recorded in the Cumberland County Registry of Deeds in Plan Book 219, Page 400.

