



March 4, 2021  
20051-01

Maureen O'Meara, Town Planner  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, ME 04107

**RE: Greenbelt Boardwalk Improvements Permitting Assistance**

Dear Maureen:

Following up on your recent request, Sebago Technics, Inc. (Sebago) is pleased to submit for the Conservation Committee's (Committee) consideration this proposal to provide professional services related to the permitting of several boardwalk improvements sections on four properties within the Town of Cape Elizabeth. The Committee is in the process of planning for volunteer work on the trail boardwalks and would like to obtain all necessary state and federal permitting for these projects, preferably for construction in summer/fall 2021. Having assisted the Committee before with permitting trail work and being very familiar with the Maine Department of Environmental Protection (DEP) and U.S. Army Corps of Engineers (ACOE) permitting requirements, Sebago is well-positioned to assist with this stage of the project work.

**Project Understanding**

The Conservation Commission is pursuing new boardwalk improvements on several open space parcels in the Town. The overall trail network infrastructure and boardwalk conditions and needs have been well-documented in the 2020 Greenbelt Infrastructure Assessment report as prepared by FB Environmental Associates. The information contained in this report will be the basis for our permitting information and supporting documentation.

According to the information in the tables presented below that you have provided us, the Conservation Committee will be improving these trail segments by replacing boardwalks in places where the existing condition of the boardwalk is deficient and installing new boardwalk in other locations where no boardwalk exists. The areas of new boardwalk will be covering areas of soft, wet, and often muddy trail conditions that worsen and widen over time due to extensive use, avoidance actions by those people using the trails, and the creation of short spurs off the main trail from users diverging from the main trail path to avoid these wet areas. The replacement and installation of new boardwalk section will resolve these issues while maintaining the trail's original environmental footprint.

The boardwalk being proposed will be 30-inches wide and feature longitudinally placed wooden boards on intermittent supporting wooden supports. The four properties that the Committee is interested in pursuing State and Federal permits are Stonegate, Cross Hill, Winnock Woods, and the Gull Crest. As the DEP and the ACOE issue permits based on individual properties, each property will need to be addressed separately. We understand that you will be handling the local permitting needs of these properties with

the Planning Board. In general, it appears that the Committee is requesting fairly modest impacts, so our approach with both the DEP and the ACOE would be to minimize the extent of the construction while emphasizing the mitigation value that the new boardwalk sections will provide and emphasizing the recreational benefits of the Greenbelt system that have been realized and expanded during the pandemic.

**Stonegate: 121 Linear Feet of New Boardwalk**

Stonegate	Total proposed	Existing	New	Lat	Long
Boardwalks	2-19	54.00	53' 8" x 1' 7" Widen t to 2' 6"	43.61712	-70.224890
	2-35	8.00	7' 7" x 4' same	43.620320	-70.21994
	2-40	34.00	33' 8" x 1' 3" Widen to 2' 6"	43.62208	-70.224780
Trails	2-32	25.00	0 25' x 2' 6"	43.619600	-70.218910

Source: Town of Cape Elizabeth Town Planner

This open space was created when the **Stonegate** development was constructed. The DEP Site Location of Development (aka "Site Law") permit that you provided was dated in 1986 which not only pre-dates the enactment of the DEP's Natural Resource Protection Act (NRPA) permitting in the mid 1990's, but also pre-dates the ACOE's methodology for delineating wetlands, so there may be an opportunity to request that these subdivision construction related impacts be considered grandfathered and therefore not jurisdictional for the purposes of calculating the total cumulative area of past and proposed wetland impacts.

More research would need to be done to be able to support this assertion, but since the DEP allows for a 4,300 square foot impact to typical freshwater wetlands to occur before requiring an NRPA permit, there may be an opportunity to go under that jurisdictional threshold if the original subdivision related impacts do not need to be considered. The amount of total wetland impact would then be based on the open space boardwalks that have been constructed to date along with the new boardwalk area being proposed. Should that number not exceed 4,300 square feet, the Committee may be able to utilize the NRPA exemption and not need to apply for a wetland related permit. Some documentation, perhaps through a letter to the file or a minor modification, would need to be provided to the DEP to address the project's Site Law permit.

The ACOE has in the past allowed a boardwalk to move forward with little permitting needs by considering it to be elevated above the wetland and calculating the wetland impacts to only be the supporting structure of the boardwalk. The low profile of the proposed boardwalk may make this interpretation not possible. The ACOE may also consider the original subdivision construction impacts to be grandfathered which would allow the permitting of the boardwalk section to likely follow under the Maine General Permit's Self-Verification abbreviated format which allows freshwater wetland impacts of up to 15,000 square feet.

**Cross Hill & Winnock Woods: 165 Linear Feet of New Boardwalk**

<b>Cross Hill/Winnock Woods</b>		Total proposed	Existing	New	Lat	Long
Boardwalks	1-73	14.00	14' x 2'	14' x 30"	43.60012	-70.262390
	1-99	18.00	6' 4" x 4'	18' x2' 6"	43.597160	-70.25624
	1-87	60.00	22' x1'3"	add 60' 10" x2'6"	43.60851	-70.262030
	1-90	8.00	4' x 1' 6"	replace to 8' x30"	43.603500	-70.257780
Trails	1-97	50.00		0 50' x 2'6"	43.60007	-70.253940
	1-86	14.00		0 14' 2'6"	43.596980	-70.252670

Source: Town of Cape Elizabeth Town Planner

The Site Law permit for **Cross Hill** was dated in 1997 and referenced 1.54 acres (67,000+/- square feet) of wetland impacts which is well over the 15,000 square foot wetland impact threshold at which point compensation is applied. Technically, any further impacts beyond the orinally permitted amounts would be combined with the past impacts and automatically trigger additional compensation. While there are mitigation steps such as restoration, enhancement, and conservation available to compensate for wetland impacts, these steps are rarely taken now due to the complexities associated with gettingt these steps approved and then to later prove that the related field changes have performed as expected once these steps are implemented. Typically compensation for project related wetland impacts is now provided by the payment of an In Lieu fee which currently in Cumberland County is \$5.45/square foot or \$545/100 square feet of wetland impact.

Given the nature of the limited impacts and the mitigating aspect of proposed boardwalk improvements, we would argue that compensation for the Committee's boardwalk project is not appropriate. The DEP may accept a letter to the file be prepared which would offset the need for a permit and allow the DEP to request that the current impact be included in permitting for any future project in the open space or be able to waive the project to a NRPA Tier 1 level and not require the Town to pay an In Lieu fee. Again, the Site Law permit for the property would also need to be addressed in some manner. The process to permit this boardwalk will need to be reviewed with the DEP to determine the path forward.

The ACOE permitting for this project may also need to consider the original subdivision construction impacts, however, again due to the limited scope of the boardwalk improvements and the mitigating benefits of the project, we would argue that the permitting of the boardwalk section should be allowed to proceed under the Maine General Permit's Self-Verification process. As with the DEP permitting, the actual ACOE permitting process will need to be resolved through a discussion with the ACOE.

**Winnock Woods** is the only property under consideration that does not have a DEP Site Law permit which means that all of the impacts to date have been created by the Town and do not have the potential to be affected by previous development activities by other parties. The information you provided indicated that there was a 2,060 square foot impact that was approved by the Planning Board in July of 2006 which would have been under the DEP 4,300 square foot exemption, so it would likely not have required a DEP NRPA permit at that time.

In January of 2015, there was another 2,600 square foot wetland impact that was submitted under a DEP NRPA Permit-by-Rule for activities near a vernal pool. This impact, when compared with the July 2006 impact of 2,060 square feet, would put the total impact over the 4,300 square foot threshold for

the need to receive a DEP NRPA permit, however historically, impacts that can be permitted under a permit-by-rule process have not counted against the property's overall wetland impact. If this stipulation can be applied to the Winnock Woods property, then the Committee's proposed impacts would likely not exceed 4,300 square feet so no DEP permitting may be required. Again, this process and determination would need to be sorted out with the DEP.

The ACOE permitting will also benefit from not being complicated by the past wetland impacts caused by development completed by other entities. While we may need to acknowledge and include the past 2006 impacts if they were not permitted by the ACOE, we expect that this property will be able to permit the Committee's boardwalk project under the Maine General Permit's Self-Verification format.

**Gull Crest: 1,285 Linear Feet of New Boardwalk**

<b>Gull Crest</b>		<b>Total Proposed</b>	<b>Existing</b>	<b>New</b>	<b>Lat</b>	<b>Long</b>
<b>Boardwalks</b>	<b>1-36</b>	<b>172.00</b>	<b>171' 10"</b>	<b>Same</b>	<b>43.588800</b>	<b>-70.23439</b>
	<b>1-38</b>	<b>924.00</b>	<b>923' 9"</b>	<b>Widen from 2' to 30"</b>	<b>43.58858</b>	<b>-70.23371</b>
	<b>1-39</b>	<b>28.00</b>	<b>27' 4"</b>	<b>28', Wden from 10" to 30"</b>	<b>43.58596</b>	<b>-70.23338</b>
	<b>1-40</b>	<b>10.00</b>	<b>9' 5"</b>	<b>10', widen from 10" to 30"</b>	<b>43.58589</b>	<b>-70.233700</b>
	<b>1-41</b>	<b>12.00</b>	<b>11' 5"</b>	<b>12' widen from 10" to 30"</b>	<b>43.58574</b>	<b>-70.23385</b>
<b>ext.</b>	<b>1-45</b>	<b>100.00</b>	<b>206', 3"</b>	<b>add 100'</b>	<b>43.58169</b>	<b>-70.235930</b>
<b>Trails</b>	<b>1-31</b>	<b>38.00</b>	<b>0</b>	<b>38'</b>	<b>43.588630</b>	<b>-70.237880</b>

Source: Town of Cape Elizabeth Town Planner

The **Gull Crest** property will require additional research to determine the permitting needs of the property's boardwalk. The original Public Works Department and recreational fields development did impact an area of wetlands and, since that time, boardwalks have been added and permitted incrementally over the past 20 years. This past work will need to be evaluated prior to discussing the impacts with the DEP and ACOE. While we envision that the scope of the boardwalk improvements would limit the permitting scrutiny and allow for a lessened approach to permitting, the actual permit application to be filed with the DEP and ACOE will not be known until the evaluation can be completed and discussions with the DEP and ACOE are held.

We understand that the Gull Crest property has the lowest priority of the overall boardwalk project and we may work more aggressively toward the resolve of the other properties so as to not allow this property's permitting to slow down the progress of the other properties' permitting.

### **Project Scope**

Sebago will address the following items as our Scope of Services:

1. Sebago Technics will utilize the 2020 Greenbelt Infrastructure Assessment report as prepared by FB Environmental Associates as a basis for our wetlands related permitting efforts.
2. Exhibits will be generated using the 2020 Greenbelt Infrastructure Assessment report. We do not anticipate conducting field work in order to complete the permitting required for this boardwalk improvement program.
3. We will review the project goals and scope with representatives of the U.S. Army Corps of Engineers and the Maine Department of Environmental Protection so that permits from regulatory bodies can be assessed and submitted as required. Each property will need to be evaluated and permitted for its specific characteristics and impacts.

- (a) *State Permitting* - For the DEP's Natural Resource Protection Act (NRPA) permit, a full NRPA individual permit may technically be required in some instances due to the proximity of the boardwalk near a Wetland of Special Significance (WOSS) by the DEP's definition. If that were the case, we anticipate requesting, on the Town's behalf, that the full NRPA individual permit requirement be waived to an NRPA Tier 1 permit level. This action would be consistent with past municipal trail and projects with minimal environmental impacts and concerns.

We will then prepare an NRPA Tier 1 permit and coordinate with the DEP through the permit review. Ideally, the project would be able to avoid the DEP permitting process by staying under the 4,300 square foot wetland impact exemption or by convincing the DEP that a letter to the file summarizing the proposed boardwalk project would be appropriate given the scale of the project. For the properties which have a Site Law permit, Sebago will work with the DEP to arrive at the method under which the Site Law would be addressed. Our initial request will suggest that the boardwalk information be compiled and submitted for a letter to the file rather than an actual permit modification which would acknowledge the boardwalk project and lessen the DEP's effort to allow the project to go forward.

Also, as part of the DEP permitting effort, coordination may likely be necessary with Maine Department of Inland Fish & Wildlife (IF&W) and the Maine Historical Preservation Commission (MHPC). In the previous Cape Elizabeth projects, IF&W has expressed concerns due to the New England Cottontail Rabbit habitat degradation. Sebago will be able to address the habitat issues raised by IF&W as the scope of the project would have minimal impact on the rabbit habitat and, would actually be beneficial by eliminating unwanted widening of trail impacts and spurs from the main trail path that would increase the impacts to the surrounding low shrub vegetation which is important to preserving potential habitat.

- (b) *Federal Permitting* - For the USACE permit, the USACE does not have an adjacency jurisdiction so activities outside of wetland limits which are not actively impacting the wetlands are not regulated by the USACE. We anticipate needing to prepare

and file Self-Verification applications on potentially each property which would entail notifying the MHPC and the State's Indian tribes. We do not anticipate that the proposed wetland impacts would require a stringent federal permitting process, however, past impacts on the properties that have not been permitted through the Federal level may complicate the ACOE process.

4. Sebago will work with you and the Committee to keep you informed of our progress with our dealings with the State and Federal regulatory agencies and receive input as the permitting process advances.

### **Exclusions and Assumptions**

The following items are excluded from Sebago's scope or will be completed under the following assumptions. Should any of these items be necessary as the project evolves or should any part of this process not be in keeping with our assumptions, we would be pleased to provide the Committee with a proposal for the additional/altered services.

1. No field investigation, survey, or determination of the various parcels' existing conditions or property limits.
2. Application fees, project advertising expenses, and peer review costs are excluded and will be paid by the Town.
3. The Town Staff will compile the local Resource Protection applications and address the permitting of these improvements with the Cape Elizabeth Planning Board.
4. It is assumed that Maine DEP NRPA Tier 1 permit will ultimately be required by the DEP and that an individual NRPA permit will not apply. Similarly, we anticipate Site Law permit changes will be processed as a minor modification and not require extensive review of past practices.
5. Our proposal does not include hydrogeological studies, high intensity soils surveys, environmental studies/evaluation, wildlife studies, archeological studies, hazardous waste assessments or other studies/evaluations not specifically identified in our Scope of Services.

### **Compensation**

While we believe that we may be able to resolve the DEP and ACOE permitting needs in an abbreviated fashion with an associated lower permitting services cost, the actual permitting needs of each property involve unique variables which will not be resolved until we can share an evaluation of each property's situation with the regulatory authorities and, reach a permitting solution to allow the project to go forward. We have been quite successful with this approach on several past Town projects and we are confident that this approach will be successful with this proposed boardwalk project. Given the extent of the unknowns at this stage, Sebago recommends that the Committee budget an amount of **\$8,000** for our professional services as described previously on a time and materials basis inclusive of reimbursable expenses.

Hourly rates and project costs will follow the Schedule of Hourly Rates and Charges as contained in the current Engineering Services agreement between the Town and Sebago. You will be invoiced on a monthly basis for services performed during that period.

**Schedule**

We understand that the Committee has volunteers lined up and would like to construct the work in the summer/fall time frame. Toward that schedule and assuming that the Committee approves this proposal at their upcoming March meeting, we would prepare an evaluation of each property's conditions and provide a summary email documenting our evaluation of the properties to the DEP and the ACOE by the end of March 2021. Assuming that DEP/ACOE provides us with timely feedback, we will endeavor to have a draft of the permitting documents prepared by the mid-April to late April timeframe with a beginning of May 2021 submission goal.

Depending on the permitting decisions made by the ACOE and the DEP, we are hopeful that this schedule will provide us with some abbreviated review opportunities by the regulatory agencies so that the boardwalk project improvements can begin after a brief review and approval process. We will warn the Committee that, although both agencies have been very responsive to our initial email summaries in the past, their agencies are subject to a heavy permitting workload and limited staff availability so projects can be slowed through the permitting process. As we noted earlier, we understand that the Gull Crest project work has the lowest priority and may either pull back our efforts or allow the regulatory agencies to pull back on their efforts in order to focus on the higher priority properties.

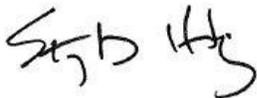
**Terms and Conditions**

The terms and conditions of this project will follow the Terms and Conditions of the current Engineering Master Services Agreement between the Town and Sebago.

We thank the Committee for requesting that Sebago assist them during the permitting stage of this project. Please do not hesitate to contact me directly should there be any questions or comments regarding our proposed services.

Sincerely,

SEBAGO TECHNICS, INC.



Stephen D. Harding, P.E.  
Town Engineer

SDH:fn

**ACCEPTED and AUTHORIZED**  
**(Sebago Technics, Project Number: 20051-01)**

By: \_\_\_\_\_

Representing: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_