

**SEWER INTERCEPTOR ACCESS, STORMWATER,
DRAINAGE LINE EASEMENT, POND
AND DAM EASEMENT**

NATHAN H. SMITH and **ELEANOR HIND SMITH** (collectively “Grantor” or “Grantors”) with a mailing address of 212 Capisic Street, City of Portland, County of Cumberland and State of Maine for one dollar and other good and valuable consideration hereby grant to the **CITY OF PORTLAND**, a body corporate and politic (the “City”) with offices at 389 Congress Street, Portland, County of Cumberland and State of Maine, an easement for the following described purposes in, on, under, and over a portion of the property located at 212 Capisic Street, Portland, Maine more particularly described in a deed recorded in the Cumberland County Registry of Deeds in Book 31379, Page 326 (the “Property”) affecting those portions of the Property described in Exhibit A as the “Easement Area”, the “Road Access Area” and the “Interceptor Access Area”, and depicted on a Plan, a reduced copy of which is attached hereto as Exhibit B, entitled “Capisic Pond & Dam Easement Area Plan including access to The Fore River Interceptor” dated August 19, 2015 (the “Plan”). The purpose of this easement is to grant the City the following rights:

A. The right to access and maintain the 16 foot wide “Interceptor Access Area” to the Fore River Interceptor Sewer Right of Way in the location shown on the Plan, including without limitation, the right to trim, cut down and remove trees (preserving large trees where reasonably possible), bushes, and other vegetation, to remove debris and to alter and regrade the contours of said Interceptor Access Area to such extent as is reasonably necessary or appropriate for any of the purposes set forth herein;

B. The right to access, maintain, replace, repair, and install or connect any appurtenances or fixtures to the existing subsurface stormwater and sewer lines that run through the Easement Area; and

C. The right to access, maintain and operate that portion of Capisic Pond and the City-owned dam at Capisic Pond, both of which are located within the Easement Area as shown on the Plan, including, without limitation, the right to maintain, replace, repair, and remove the existing dam and utility structures, install or connect any appurtenances or fixtures thereto, to control the flow of the dam, and to dredge, excavate, and re-vegetate the pond as the City deems appropriate and necessary.

The rights granted herein are for access by City employees, workers, sub-contractors, vehicles and equipment and not for and expressly excluding any public access. The access and

other rights herein granted are subject to the following terms and conditions to which the City by acceptance of this easement agrees:

- a. that access from Capisic Street to the Interceptor Access Area and the Easement Area will be on, under, through, across and over the portion of the existing paved driveway which is labelled "Road Access Area" on the Plan;
- b. that upon completion of any Pond restoration the City will re-pave the paved portion of the Road Access Area and in particular will raise the level of the pond side of the driveway so that, in the City's reasonable judgment, it is approximately level with the upland side, and restore and re-vegetate any adjacent areas to, in the City's reasonable judgment, the approximate condition they were in prior to such pond restoration;
- c. except in cases of emergency, to provide thirty (30) days advance notice to Grantor of any heavy equipment entry;
- d. to make reasonable efforts to minimize the frequency, duration and disruptive effect of any maintenance, repair or re-construction activities and to allow reasonable access to the Grantor's Property during such activities;
- e. in the event of grading or heavy equipment damage to the Interceptor Access Area by the City or its contractors to loam and re-seed the area as reasonably necessary in order to maintain a grass cover;
- f. to repair any damage to Grantor's Property arising from the City's exercise of the City's rights hereunder;
- g. to be responsible for any personal injury to Grantor or any third parties arising from the City's, or its contractors', exercise of the City's rights hereunder, such responsibility being subject to and limited by the defenses, immunities and limitations of liability available to the City under the Maine Tort Claims Act, 14 M.R.S.A. § 8101 et seq;
- h. to require any contractors of the City entering onto the Property with heavy equipment to list Grantor as an additional insured (in addition to the City) in their comprehensive general liability policies, provided that such coverage is generally available;
- i. to maintain the structural integrity of the Road Access Area and underlying embankment and repair and restore the same to the extent of any damages caused by heavy equipment use or pond erosion caused by the exercise of the City's rights granted hereunder;

j. lawfully dispose of any dredged or excavated materials at the City's expense; and

k. to limit, to the extent the City reasonably determines possible, damage to or removal of any of the large trees during the exercise of the City's rights hereunder

These covenants are intended to benefit the Grantors and their successors and assigns.

EXCEPTING and RESERVING to the Grantor the right to access and use the Pond and other portions of the Easement Area, the Road Access Area and the Interceptor Access Area for all lawful purposes, but only as will not interfere in any material way with the use thereof by the City, its successors and assigns for the purposes above mentioned, provided that no building or any kind of permanent structure that would impede vehicle access to and across the Easement Area, the Road Access Area and the Interceptor Access Area shall be erected on the Easement Area, the Road Access Area and the Interceptor Access Area by the Grantor, their successors or assigns. Provided, however, that Grantor reserves the right to place a gate at the Interceptor Access Area so long as Grantor provides the City a key, if locked, and provided that the opening of the gate is no less than sixteen feet.

Grantor further reserves the right to place at the dam a residential scale device (consisting primarily of a small water intake pipe and generator) to generate electricity with hydropower, provided that prior to installing such a device, Grantor will obtain the City's written approval. Grantor, for itself, its successors and assigns acknowledges and agrees that its right to install and use such a device is subject and subordinate to all of the City's rights hereunder, including without limitation, the City's right to control the flow of and to remove the dam; and Grantor, for itself, its successors and assigns agrees to release and hold the City harmless for any and all claims, losses, or damages arising out of the loss of the use of such a device due to the City's exercise of its rights under this easement.

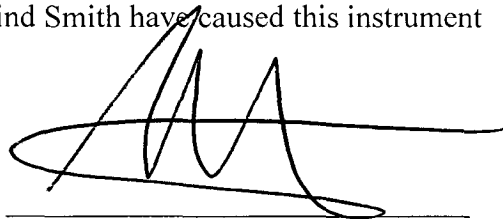
The terms "Grantor" or "Grantors" wherever used in this instrument shall mean: 'Grantor and their successors and assigns.'

In witness whereof Nathan H. Smith and Eleanor Hind Smith have caused this instrument to be executed this 4th day of September, 2015.

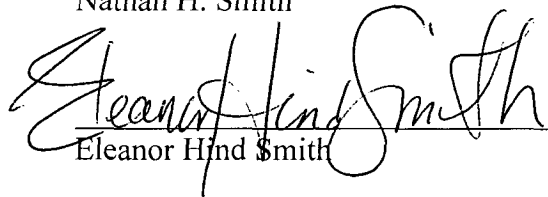
WITNESS:

Zabatha J. Berube

Zabatha J. Berube



Nathan H. Smith



Eleanor Hind Smith

STATE OF MAINE
COUNTY OF CUMBERLAND

On September 4, 2015 personally appeared the above named Nathan H. Smith and acknowledged the foregoing instrument to be his free act and deed.

Tabatha J. Berube
Notary Public
Printed Name:
My commission expires:

STATE OF MAINE
COUNTY OF CUMBERLAND

TABATHA J. BERUBE
Notary Public, Maine
My Commission Expires January 14, 2018

On September 4, 2015 personally appeared the above named Eleanor Hind Smith and acknowledged the foregoing instrument to be her free act and deed.

Tabatha J. Berube
Notary Public
Printed Name:
My commission expires:

TABATHA J. BERUBE
Notary Public, Maine
My Commission Expires January 14, 2018

Exhibit A

Easement Area

A certain easement across lands situated on the southwesterly side of Capisic Street in the City of Portland, County of Cumberland, and State of Maine, bounded and described as follows:

Beginning at a point in the southwesterly street line of Capisic Street, said point being located twenty-one and seven hundredths feet (21.07') southeasterly from the northeasterly corner of land now or formerly of Linda J. Albert as described in Book 31654 Page 61;

Thence S 59° 32' 46" E one hundred thirty-four and thirty-one hundredths feet (134.31') along said southwesterly street line of Capisic Street to an angle point in said street line;

Thence S 54° 51' 46" E twenty and ninety-seven hundredths feet (20.97') along said southwesterly street line of Capisic Street to land now or formerly of Stephen R. Aronson and Susan E. Dent as described in Book 16752 Page 228;

Thence S 4° 18' 32" W one hundred thirty-nine and forty-one hundredths feet (139.41') along said land now or formerly of Aronson and Dent to a point;

Thence S 4° 32' 03" E twenty-five and zero hundredths feet (25.00') along said land now or formerly of Aronson and Dent to a point;

Thence S 13° 08' 15" W forty-six and ninety-nine hundredths feet (46.99') along other land of said Aronson and Dent as described in Book 20505 Page 268 to a point;

Thence S 39° 19' 29" W one hundred seventy-nine and sixty-two hundredths feet (179.62') along said other land of Aronson and Dent to a point;

Thence N 50° 40' 31" W five and zero hundredths feet (5.00'+/-), more or less, along said other land of Aronson and Dent to the center of the Capisic Pond Outlet;

Thence southwesterly along said other land of Aronson and Dent and along said Capisic Pond Outlet **twenty-five and one-half feet (25.5' +/-), more or less,** to Capisic Brook and land now or formerly of said Aronson and Dent as described in Book 16752 Page 228;

Thence southwesterly along said land of Aronson and Dent (Book 16752 Page 228) and along said Capisic Brook **seventy-three feet (73' +/-), more or less,** to the northeasterly edge of a 50-foot-wide right-of-way for the Fore River Interceptor Sewer;

Thence N 38° 05' 18" W sixty-one and twenty-nine hundredths feet (61.29' +/-), more or less, through land of the Grantor and along said northeasterly edge of said Fore River Interceptor Sewer right-of-way to a point on or near a 12-inch-diameter oak tree;

Thence N 62° 31' 49" E thirty-four and eighty-four hundredths feet (34.84') through land of the Grantor and along a 16-foot-wide Interceptor Access Area to be conveyed herein to a point;

Thence N 52° 42' 44" E thirty-six and three hundredths feet (36.03') through land of the Grantor and along said 16-foot-wide Interceptor Access Area to a point;

Thence N 63° 42' 14" E seventy-four and forty-seven hundredths feet (74.47') through land of the Grantor and along said 16-foot-wide Interceptor Access Area to a point at or near a chain link fence;

Thence N 35° 08' 26" E fifty-six and sixty-five hundredths feet (56.65') through land of the Grantor and along or near said chain link fence along said 16-foot-wide Interceptor Access Area to a point;

Thence N 2° 42' 19" W eighty-seven and twelve hundredths feet (87.12') through land of the Grantor and along or near said chain link fence along said 16-foot-wide Interceptor Access Area to a point;

Thence N 41° 32' 43" W eighty-nine and ninety-four hundredths feet (89.94') through land of the Grantor and along said 16-foot-wide Interceptor Access Area to a 20-foot-wide Road Access Area to be conveyed herein;

Thence N 3° 23' 14" E one hundred twenty-one and eighteen hundredths feet (121.18') through land of the Grantor and along said 20-foot-wide Road Access Area to a point;

Thence N 12° 06' 14" E forty-one and eighty-four hundredths feet (41.84') through land of the Grantor and along said 20-foot-wide Road Access Area to the southwesterly street line of said Capisic Street and **the Point of Beginning**.

Said Easement Area contains approximately 41,677 square feet.

Road Access Area

A certain easement across lands situated on the southwesterly side of Capisic Street in the City of Portland, County of Cumberland, and State of Maine, bounded and described as follows:

Beginning at a point in the southwesterly street line of Capisic Street, said point being the northeasterly corner of land now or formerly of Linda J. Albert as described in Book 31654 Page 61;

Thence S 59° 32' 46" E twenty-one and seven hundredths feet (21.07') along said southwesterly street line of Capisic Street to a point;

Thence S 12° 06' 14" W forty-one and eighty-four hundredths feet (41.84') through land of the Grantor and along an Easement Area also to be conveyed herein to a point;

Thence S 3° 23' 14" W one hundred twenty-one and eighteen hundredths feet (121.18') through land of the Grantor and along said Easement Area to an Interceptor Access Area to be conveyed herein;

Thence S 48° 27' 17" W sixteen and zero hundredths feet (16.00') through land of the Grantor and along said Interceptor Access Area to a point;

Thence N 41° 32' 43" W twelve and twenty-eight hundredths feet (12.28') through land of the Grantor to a point in the Grantor's paved driveway;

Thence N 3° 23' 14" E nineteen and thirty-one hundredths feet (19.31') to the southeasterly corner of said land now or formerly of Albert, said corner being marked by a 5/8 inch diameter iron rebar;

Thence continuing N 3° 23' 14" E one hundred six and zero hundredths feet (106.00') along said land now or formerly of Albert to a point near a 5/8 inch iron rebar;

Thence N 12° 06' 14" E fifty and zero hundredths feet (50.00') to the southwesterly street line of said Capisic Street and **the Point of Beginning.**

Said Road Access Area contains approximately 3482 square feet.

Interceptor Access Area

A certain easement across lands situated on the southwesterly side of Capisic Street in the City of Portland, County of Cumberland, and State of Maine, bounded and described as follows:

Commencing at the southeasterly corner of land now or formerly of Linda J. Albert as described in Book 31654 Page 61, said corner being marked by a 5/8 inch diameter iron rebar;

Thence S 3° 23' 14" W nineteen and thirty-one hundredths feet (19.31') on an extension of the easterly boundary line of said land now or formerly of Albert, through land of the Grantor and along a Road Access Area to be conveyed herein to a point in the Grantor's paved driveway;

Thence S 41° 32' 43" E twelve and twenty-eight hundredths feet (12.28') through land of the Grantor and along said Road Access Area to **the Point of Beginning;**

Thence N 48° 27' 17" E sixteen and zero hundredths feet (16.00') through land of the Grantor and along said Road Access Area to an Easement Area to be conveyed herein;

Thence S 41° 32' 43" E eighty-nine and ninety-four hundredths feet (89.94') through land of the Grantor and along said Easement Area to a point on or near a chain link fence;

Thence S 2° 42' 19" E eighty-seven and twelve hundredths feet (87.12') through land of the Grantor, along said Easement Area and along or near a chain link fence to a point;

Thence S 35° 08' 26" W fifty-six and sixty-five hundredths feet (56.65') through land of the Grantor, along said Easement Area and along or near a chain link fence to a point;

Thence S 63° 42' 14" W seventy-four and forty-seven hundredths feet (74.47') through land of the Grantor and along said Easement Area to a point;

Thence S 52° 42' 44" W thirty-six and three hundredths feet (36.03') through land of the Grantor and along said Easement Area to a point;

Thence S 62° 31' 49" W thirty-four and eighty-four hundredths feet (34.84') through land of the Grantor and along said Easement Area to a point on or near a 12-inch diameter oak tree and the northeasterly edge of a 50-foot-wide right-of-way for the Fore River Interceptor Sewer;

Thence N 38° 05' 18" W twenty-seven and sixty hundredths feet (27.60') through land of the Grantor and along said Fore River Interceptor Sewer right-of-way to a point;

Thence S 85° 00' 19" E twenty and seventy-four hundredths feet (20.74') through land of the Grantor to a point;

Thence N 62° 31' 49" E twenty-one and five hundredths feet (21.05') through land of the Grantor to a point;

Thence N 52° 42' 44" E thirty-six and nineteen hundredths feet (36.19') through land of the Grantor to a point;

Thence N 63° 42' 14" E seventy-one and ninety-four hundredths feet (71.94') through land of the Grantor to a point;

Thence N 35° 08' 26" E forty-seven and ten hundredths feet (47.10') through land of the Grantor to a point;

Thence N 2° 42' 19" W seventy-six and zero hundredths feet (76.00') through land of the Grantor to a point;

Thence N 41° 32' 43" W eighty-four and thirty hundredths feet (84.30') through land of the Grantor to said Road Access Area and **the Point of Beginning.**

Said Interceptor Access Area contains approximately 5930 square feet.

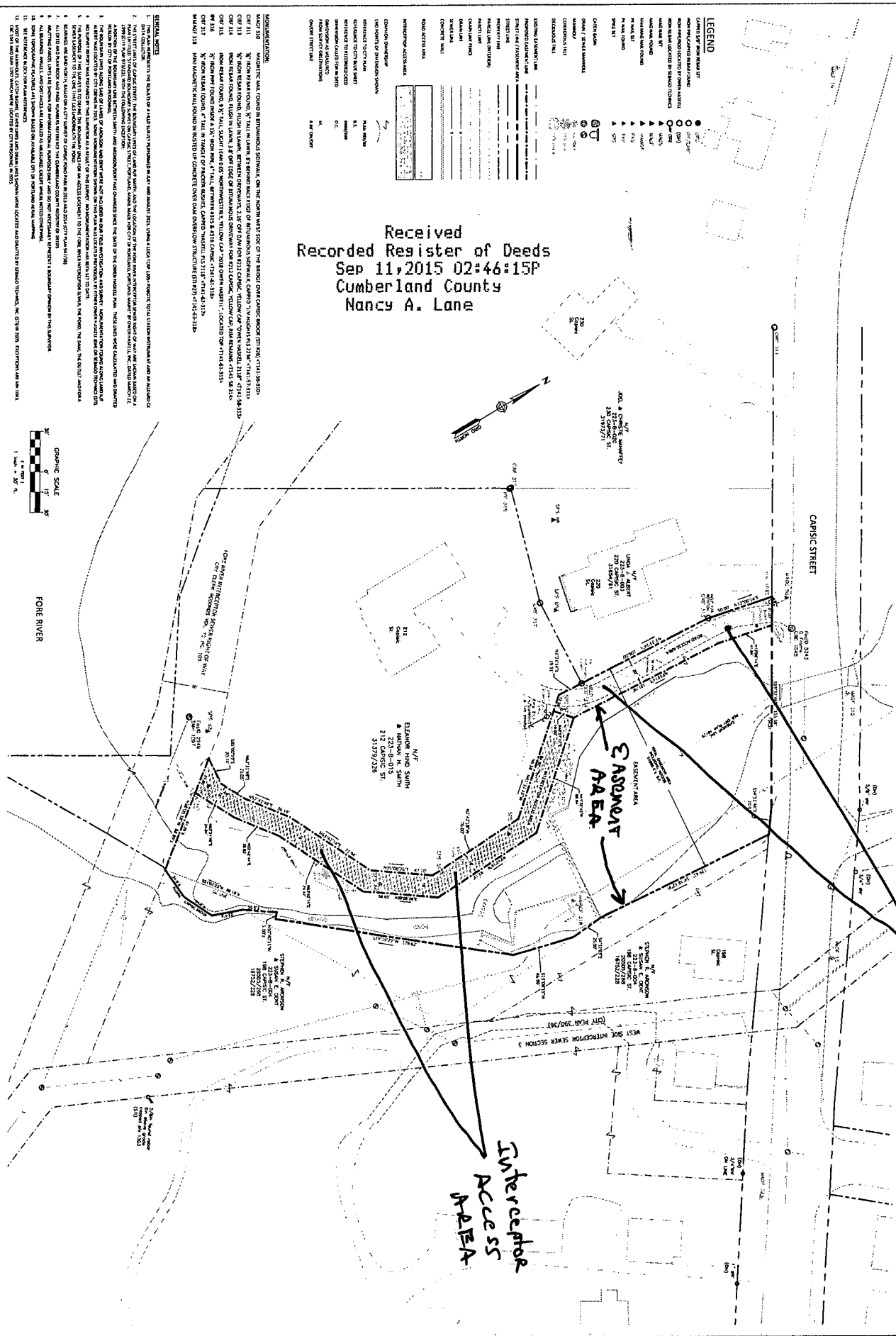
All deed book and page numbers reference the Cumberland County Registry of Deeds. All bearings are Grid North.

The Grantor's property interest was acquired by the following deed recorded at the Cumberland County Registry of Deeds: Book 31379 Page 326.

This deed description is based on a plan entitled "Capisic Pond & Dam Easement Area Plan Including Access to the Fore River Interceptor" by the City of Portland Public Services Department Engineering Section, dated August 2015 and filed in the City Engineer's Archives Vault (Plan 881/47).

EXHIBIT B

Received
Recorded Register of Deeds
Sep 11, 2015 02:46:15P
Cumberland County
Nancy A. Lane



CAPICUS POND & DAM
EASEMENT AREA PLAN
INCLUDING ACCESS TO
THE FORE RIVER INTERCEPTOR
ACROSS LAND N/F ELEANOR & NATHAN SMITH
212 CASICUS STREET

CITY OF PORTLAND, MAINE
PUBLIC SERVICES DEPARTMENT
ENGINEERING DIVISION

DESIGNED BY: W & S SCOTT
DRAWN BY: L. SOLOV
SCALE: 1" = 20'
DATE: AUG. 18, 2015

REFERENCES:
VALLEY PLANS
973/22, 973/31, 947/3-A, 636/4, 481/9
PROJECT FIELD BOOK:
T 1411 PP 56-64
OTHER FIELD BOOKS:
S 243 PP 12-13, 15-16
T 1533 PP 14-16, 23

FOR STEPHEN W. ANDERSON & SUSAN E. SCOTT
ENR & FORMES & SCOTT'S FORMER
198 CASICUS ST., DATED MAY 22, 2002
BY MAINE BOUNDARY CONSULTANTS

City ID 2013 Drawing Name: Capic_Pond_Dam_2015.dwg
City ID 2013 Survey Database: Capic_Pond_Dam_2015.DB
CADD ADJUSTMENT: CAPICAND2015.ADJ
Other CAD: Capicus Park Misc ID: 2014.dwg (CCA)
88312-2 - 11.dwg W&S ROW Plan.dwg (D H)
W&S Capicus Access Area 2009.dwg (WWS)
CAPICUS INTERCEPTOR 2011.dwg (WWS) (3.1.1)

BLUES SHEETS: CAPICUS ST.
1 & 1 SHEETS: 406: 8-07
TAX MAP: 223