

To: Town of Cape Elizabeth Conservation Committee  
From: Cape Elizabeth Land Trust  
Date: 12 February 2019

Subject: Cross Hill easement monitoring

Members of a CELT-Town of Cape Elizabeth Conservation Committee joint monitoring team have identified a number of likely infringements to the conservation easement on the Cross Hill property, owned by the Town of Cape Elizabeth. Included with this memo are a copy of the original easement agreement and a document cross-referencing observed potential infringements with relevant sections of the easement agreement.

The land trust and town representatives identified 24 abutting properties with probable encroachments onto town land, with an additional 6 abutting properties with potential encroachments requiring further examination. CELT has continued photodocumenting the extent of encroachment onto Town land for our monitoring records and will share this with the Town upon completion. Acknowledging the Town has requested additional evidence, we have ascertained that the Cross Hill property was appropriately and legally surveyed at the time of closing, and that based off of the observations and records of the monitoring team members, enough information is available to begin joint efforts towards abutter outreach.

Our general recommendation (following Land Trust Alliance best practices) for dealing with observed minor violations to easements is to assume landowner misunderstanding of property boundaries and open a friendly and informative line of discussion about approved and restricted land uses on conserved lands through an in-person visit and informal conversation. We believe this affords a valuable opportunity to build landowner relationships and improve lines of communication, and believe these visits are likely to lead to cessation of the encroaching activities without further action. We suggest visiting all landowners within a three-month period, beginning in late March or after snowmelt, to better demonstrate the property boundaries using the existing surveying pins.

The easement agreement acknowledges that CELT has no responsibility or right to control, maintain, or keep up the protected property (Bk 15318, pg. 069, §9). Since the easement stipulates that the Grantor (the Town) will indemnify CELT from claims of damages which arise from Grantor's breach of any lawful duty of Grantor to control, maintain, or keep up the property, the responsibilities for mitigation fall, at least in some part, to the Grantor.

We are eager to assist the Town—our partners in conservation—in resolving these probable infringements speedily, effectively, and with no loss in goodwill from abutting neighbors. As such, for this occasion, we are happy to coordinate with and accompany a designated Conservation Committee representative on outreach trips to abutting neighbors. We hope to continue a working conversation with the Town on mitigation strategies over the coming months and look forward to working together towards resolving these minor violations and protecting the conservation value of the Cross Hill property.

Best,

Christian Schorn, Stewardship Manager  
Cape Elizabeth Land Trust  
330 Ocean House Road  
Cape Elizabeth, ME 04107