

Commentary on McGintee/Goelet Agreements

The two agreements seem to be mutually and internally contradictory on several points:

- 1 The agreements seems to be intended to abolish public access but also says the town must follow the law, which requires public access.
- 2 Cartwright Island does not seem to be include in the definition of the Full Estate in the easement agreement, either by tax map number or map image of the Full Estate. This appears to contradict the Goelet's representation in the management agreement that they have “full title” to the Sanctuary.
- 3 The public access language has loopholes the Town Board could use to fix the illegal public access denial without terminating the easement. The language prevents the Town from “providing” or “granting” public access. But nothing in the language prevents the town from allowing public access by doing nothing. Nothing prevents the Town from recognizing the law, or a pre-existing public access right under the law with respect to the foreshore or beach or Island. Indeed the town has an obligation to do so under the agreement, since it must manage the Sanctuary “in accordance with the law.” Nothing requires the Town to put up no access signs. Nothing prevents them from taking down no access signs – which are contrary to law – since the agreement provides that the Town must manage the Sanctuary “in accordance with the law.”

(Note, the management agreement gives the Town responsibility for proper signage. Current signage would likely be considered a “public nuisance” under NYS Office of General Counsel guidance on public trust enforcement.)

Also, their appears to be procedural irregularities:

- The East Hampton Natural Resources Department normally reviews all Town conservation easement agreements before they are signed. However, Larry Penny, then-Director of the department, has told me neither he not anyone else in the department were allowed to review the agreement before or after it was signed.

- Also, the Sanctuary management agreement calls for the Town to conduct “on-site visits” and “monitoring efforts” regarding “site activity and species productivity rates” to be detailed in annual reports. However, Mr. Penny says his department, including himself and other scientists, were banned from access to Gardiner’s and Cartwright Islands around 2007, and never did any such reports. Natural Resources has not visited the islands in years, and it seems the required annual reports have never been done.

These irregularities make it appear the McGintee/Goelet Sanctuary agreement is a sham with respect to the Sanctuary, to sole purpose of which was to abolish the pre-existing public right to access and the public ownership status of Cartwright Island, and attempt to establish a Goelet ownership claim.

However, if before the agreement the Town did not own Cartwright, and the Goelets did not own it, then it seems unlikely that an agreement between the two could create legitimate ownership.

Even if private ownership were created, which seems unlikely and indeed impossible with respect to public foreshore, all the many users of the Island would have established a prescriptive easement in favor of the public access right simultaneously.

Either way, it seems the public must have a right to access the Cartwright Island and shore.