

William S. Kelly, Esq.

**KELLY & ASSOCIATES, LLC**  
**ATTORNEYS**  
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October 20, 2021

Daniel Gabriele  
24 Limerock Street  
Camden, ME 04843

RE: Unlawful cutting of trees and ornamentals and trespass onto Town Landing Property.

Dear Mr. Gabriele:

I am writing to you in my capacity as the Camden Town Attorney. This letter and the attached Consent Agreement address the unauthorized tree cutting, limbing and removal of ornamental bushes and trees which occurred on or about September 28, 2021, on property owned by the Town of Camden. This land is within the Shoreland Zone as it is adjacent to Camden Harbor and the spillway of the Megunticook River, at the point that it empties into Camden Harbor.

The tree cutting, limbing and removal of ornamental Lilac bushes and trees and was investigated by the Camden Tree Warden. He has determined that 7 trees (some of which were substantial Lilacs) were entirely removed at the base of each. Additionally, of the remaining trees, 8 of them had limbs removed and he estimates that 70 +/- limbs were removed. I enclose the before and after photographs which demonstrate the substantial amount of cutting that was done. I also enclose the Inventory of trees and limbs removed, dated 10/5/21. It is remarkable that you simply left all the cuttings on the ground, as much of it was falling into the water putting boats/motors in the Harbor in harm's way. You will see a cost of pick up and removal of the trees, limbs and bushes in the amount of \$ 532.20.

The Camden Shade Tree Removal Ordinance (Chapter VI-10 of the Miscellaneous Ordinances) prohibits the removal of trees located on public property without written permission from the Camden Tree Warden, which may be approved after one has applied in writing to the Tree Warden. The Ordinance provides for a penalty of \$ 500 for each tree removed and a penalty of \$ 250 of for each tree that has been limbed or pruned without permission of the Tree Warden. Thus, the penalties under the Shade Tree Ordinance for your actions are \$ 3,500 (7 x \$ 500) for tree removal and the pruning/limbing penalties are \$ 2,000 (8 x \$ 250), for a total of \$ 5,500 under that Ordinance.

The Shoreland Zoning Ordinance penalties apply as well. Cutting within 75 feet of a costal wetland is prohibited. The penalties pursuant to the Camden Zoning Ordinance and 30-A MRS

4452 range from \$ 100 to \$ 2,500 per day for each violation. The cutting has been done, and the daily violations will continue until replacement is accomplished as described below. A notice of violation will be issued if we cannot resolve this matter by way of the attached Consent Agreement, and penalties shall apply to each day after you receive the Notice of Violation. However, for the purposes of imposing a penalty at this time to be reached by agreement, a \$2,000 penalty is referenced in the attached Consent Agreement; this amount is entirely for settlement purposes and will increase in the event that a Notice of Violation is issued.

The Town has hired Johnson Arboriculture, LLC to review the site and develop a Restoration Plan to replace trees and ornamental plantings that have been removed and pruned by you. It will be necessary for you to pay for that expert evaluation and remedial plantings. That cost will include re-planting of a like-number of trees and ornamental Lilacs.

It is remarkable that you undertook this activity in light of the recent well-publicized case of cutting of Town public trees on Atlantic Avenue, which similarly took place adjacent to a stream that also terminates at Camden Harbor. Just last month a Consent Agreement was reached for those violations, resulting in the requirement of a penalty of over \$ 24,000 plus the reimbursement for the design, installation and oversight of a planting Restoration Plan, plus reimbursement for fines and penalties levied against the Town by the State of Maine.

Please be advised that the Town must also report your unlawful cutting to the Maine Department of Environmental Protection, and you will be responsible to reimburse the Town for any penalties and costs for remedial action as may be ordered by the Maine DEP.

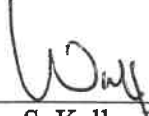
I attach a draft Consent Agreement for your review, in which your actions are treated consistently with the recent violations on Atlantic Avenue, except that you have not been fined an additional \$ 5,000 for trespass, due to prior minimal maintenance that you or others have done in this area; that is not to say that your actions are excused, as you have clearly violated the two ordinances described above.

If you are not willing to enter into the Consent Agreement, the Town will be required to proceed with Ordinance and Land Use Violations as authorized by the Town Ordinances and 30-A MRS § 4452.

Thank you for your consideration.

Sincerely,

KELLY & ASSOCIATES, LLC

  
\_\_\_\_\_  
William S. Kelly, Esq.

Cc: Town Manager

**CONSENT AGREEMENT**

**TOWN OF CAMDEN, MAINE AND DANIEL GABRIELE**

Consent Agreement made this     day of October, 2021 by and between The Town of Camden, Maine, with a principal place of business at 29 Elm Street Camden, Maine (“Camden”) and Daniel Gabriele (“Gabriele”), 24 Limerock Street, Camden, Maine.

Whereas Gabriele has trespassed onto adjacent real property owned by the Town of Camden, as described in a deed recorded in Book 250 Page 151, and other source deeds, as recorded in the Knox County Registry of Deeds, and depicted on Tax Map 120 Lot 293;

Whereas Gabriele has violated the terms of the Camden Zoning Ordinance, including but not limited to the Shoreland Zoning Ordinance, by the cutting of bushes, trees and removal of limbs of trees located on real property Owned by the Town of Camden, in violation of the Camden Shade Tree Removal Ordinance; said property is more particularly known as the Camden Public Landing, as depicted on said Tax Map 120 Lot 293;

Whereas the Town of Camden Select Board is authorized to enter into this Consent Agreement under its statutory and the Camden Charter’s executive authority and under the provisions of the Article V, Section 7 of the Zoning Ordinance of the Camden of Camden; and

Whereas the parties enter into this Consent Agreement (“CA”) in order to fully resolve the trespass and cutting violations of the Camden Zoning Ordinance and Shoreland Zoning Ordinance, for said unlawful trespass and cutting of bushes, trees and limbs.

Now therefore, for valuable consideration, Camden and Gabriele hereby agree and covenant to resolve the trespass and land use violations as follows, to wit:

- 1.) Gabriele hereby takes full responsibility for his unlawful cutting of bushes, trees and limbs
- 2.) Gabriele shall take all measures necessary as promulgated in the CA to resolve these violations and trespass issues.
- 3.) Gabriele agrees to pay all reasonable attorney, arborist and professional services fees as they relate to resolution and full remediation of these violations, within ten days of being invoiced by Camden.
- 4.) Gabriele shall also pay all fees, costs and/or penalties associated with the after-the-fact required Maine Department of Environmental Protection (MDEP) NRPA permitting for work that was done on Camden property adjacent to a natural resource and for the restoration of such area as approved by the Town of Camden and the MDEP, within ten days of being invoiced by Camden.

- 5.) Gabriele shall pay for all costs associated with the design, installation and oversight of a Restoration Plan to return the Camden property to the condition that it was in prior to the cutting and trespass, which said Restoration Plan that shall be approved by the Camden Select Board upon the advice of an Arborist retained by Camden; said Plan must be also be satisfactory to the MDEP. Gabriele shall pay any ongoing costs for the replacement of any tree or plant material that may not survive the initial planting for a period of 1.5 years after planting.
- 6.) Gabriele shall pay all the penalties provided for under the Public Tree Policy Ordinance for the removal and/or pruning of Public Trees and flowering shrubs that occurred on Camden property. Specifically, it has been determined by the Camden Tree Warden, by Report dated 10-12-21, that 4 trees, 3 flowering shrubs were entirely removed, and that 8 of the remaining trees were pruned/limbed by Gabriele. Penalties provided for under the Public Tree Ordinance specify \$500 for each tree removed and \$250 for each tree pruned/limbed without the approval of the Public Tree Warden. For the purposes of this Consent Agreement, the removal of flowering shrubs shall be treated as being removal of a tree. The Town expended clean up efforts for the cuttings and trees to a value of \$ 532.20, as itemized in the Tree Warden's Report. Therefore, the Total penalties under the Public Tree Policy Ordinance shall be \$ 532.20, plus \$ 3,500 (7 x \$ 500) for tree removal and \$ 2,000 (8 x \$ 250) for tree pruning/limbing, for a total penalty under this Ordinance of \$ 6,032.20.
- 7.) Gabriele has violated the Camden Shoreland Zoning Ordinance. Penalties are as provided in state law (30-A MRS 4452) and the Camden of Camden's Zoning Ordinance, and may be assessed in the amount of \$100 to \$2,500 per day per violation of the Camden's Zoning Ordinance and Building Code. Specifically, the violations are of Article X, Performance Standards, Part 1, section 1. (14) by removing natural vegetation within 75' of the Normal High Water Line of the coastal wetland. For the purposes of these violations, it is agreed to, that the violations occurred on or about September 30, 2021. Total penalties under this section of the Zoning Ordinance are hereby agreed to be \$ 2,000.
- 8.) Should Gabriele violate the terms and conditions of this framework for the CA, Camden shall pursue formal action in District Court for both the land use and ordinance violations and the common law and statutory trespass claims; Camden shall not file any form of Court action on these matters so long as Gabriele is in compliance with the terms and conditions of this CA.

10.) The penalties for violations of the Public Tree Ordinance and the Shoreland Zoning Ordinance shall be paid to the Town in the Total amount of \$ 8,032.20 upon the date of execution of this CA.

11.) There are no other terms, conditions or agreements other than those expressed herein this CA; this is an integrated agreement.

12.) Any dispute regarding the terms or conditions of this CA shall be resolved in the Knox County District Court, Rockland, Maine.

13.) This CA is binding upon the heirs, assigns and successors in interest of the parties.

The parties have hereto set their hands and seals this \_\_\_\_\_ day of October, 2021.

**TOWN OF CAMDEN, MAINE**

**DANIEL GABRIELE**

\_\_\_\_\_  
BY: Audra Caler, Town Manager  
Duly Authorized by Camden Select Board

\_\_\_\_\_



## Camden Public Works

To: Audra Caler  
From: David St Laurent Director/Road commissioner Town of Camden  
Date: 10/12/2021  
Subject: Inventory of trees and limbs removed from the public landing.

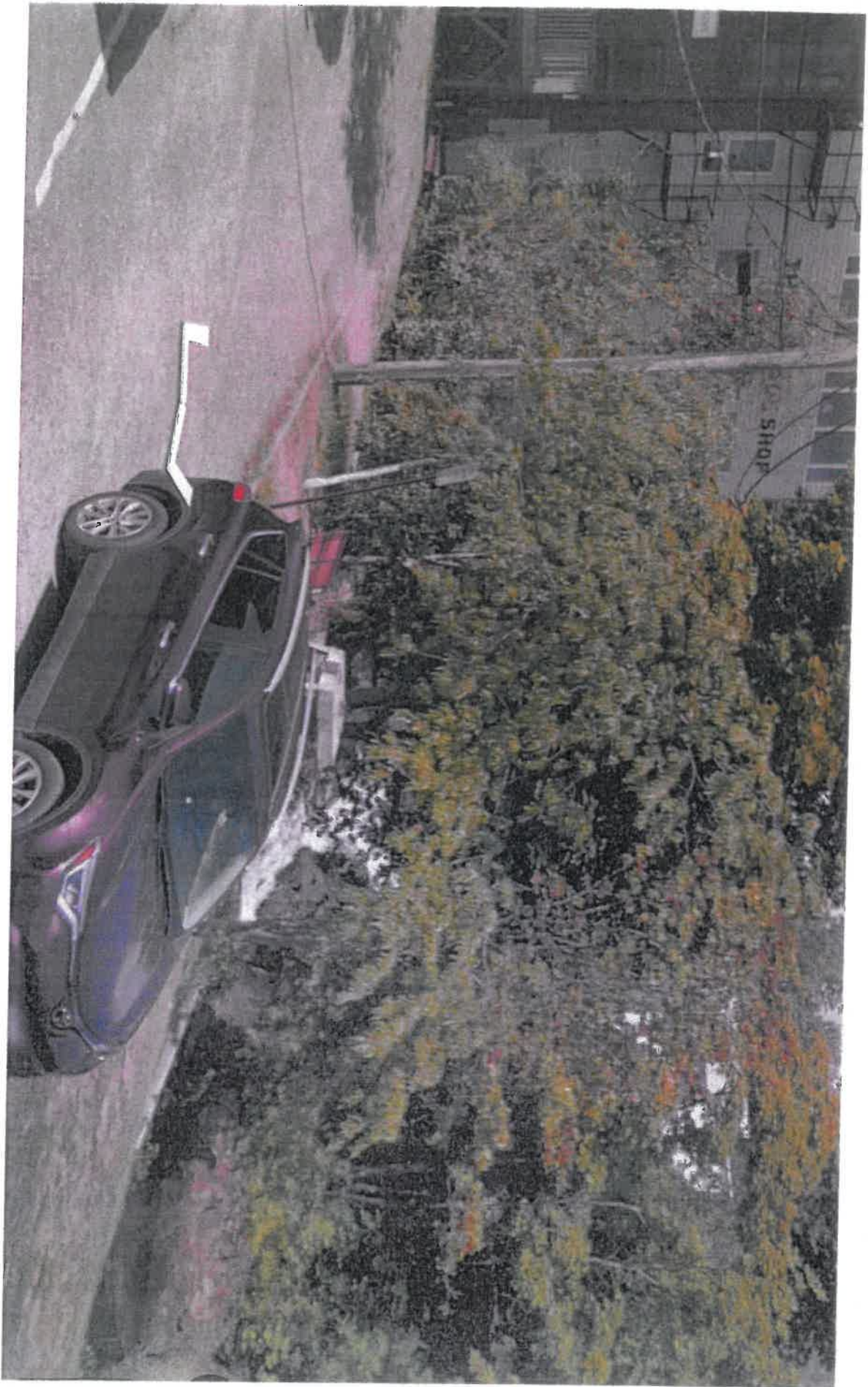
As requested, below is an inventory of the trees and limbs that were removed from the public landing. The inventory area is outlined in the accompanying document. The tree inventory was conducted starting from the South East Side facing the Montgomery Dam. For each tree a photo was taken to identify the subject being evaluated.

1. Japanese Lilac 6 limbs removed
2. Cherry tree 10 limbs removed
3. Hawthorne Whole tree removed (3 main leaders)
4. Norway Maple 8 limbs removed
5. Lilac tree/bush 19 limbs removed
6. Honeysuckle Whole tree removed (4 main leaders) Flowering shrub
7. Honeysuckle Whole tree removed (7 main leaders) Flowering shrub
8. Honeysuckle Whole tree removed (3 mail leaders) Flowering shrub
9. Norway Maple Whole tree removed
10. Mountain Ash 3 limbs removed
11. Alder 9 limbs removed
12. Alder Whole tree removed
13. Lilac tree/bush 4 Limbs removed
14. Elm 11 Limbs removed
15. Norway Maple Whole tree removed

- Total number of trees removed (4), flowering shrubs removed (3)
- Total number of trees limbed (8) (Number of limbs removed + or - 70)

The brush and limbs that were cut and thrown at the base of the river were picked up and removed then taken to the transfer station. The total brush and limb pick up time was 2 hours and utilized 3 public works employees. The labored rate is \$47 per hour ( $\$47 \times 9 \text{ hours} = \$423$ ). Transfer Station disposal for 3 loads of brush and limbs was \$9.20. The use of the one-ton truck is \$50 per hour ( $\$50 \times 2 = \$100$ ).

- Grand total for clean up \$532.20
- ❖ Map of area and before and after photos are on separate document: (Public landing tree inventory area 10\_5\_21)







**TREE CARE**

Preservation ♦ Artistic/safety pruning  
Cabling/bracing ♦ Removals  
Planting ♦ Fertilizing  
Tree protection during construction  
Vistas, trails, selective thinning  
Tree appraisals ♦ Consultations

**URBAN FORESTRY**

Tree maintenance ♦ Planting  
Municipal project management  
Shoreland zoning issues  
Inventories ♦ Management plans  
Workshops/training programs  
Proposal/grant writing ♦ Consulting

*Nancy Caudle-Johnson*  
*Douglas N. Johnson, Arborist*

Maine licensed ♦ Insured ♦ ISA certified

TREEKEEPERS™

October 11, 2021

*Since 1994 . . . committed to  
preserving and protecting Maine's  
beautiful trees & treescapes!*

Attn: Dave St. Laurent  
Town of Camden  
P.O. Box 1207  
Camden, ME 04843

**PROJECT LOCATION:**

**ESTIMATE**

Mouth of Megunticook River at Camden Public Landing - adjacent to historic bell and picnic table overlooking Montgomery dam, waterfalls, and harbor - west side of river.

**PROJECT DESCRIPTION:**

Restoration pruning and fertilizing of vandalized town owned trees illegally cut in shoreland zone, including mitigation measures to deter soil compaction and bank erosion.

- 1) Repair cuts by vandals in the following seven trees:
  - a) Japanese lilac.
  - b) Norway maple.
  - c) Black cherry
  - d) Norway maple.
  - e) Lilac.
  - f) Multi-stemmed shrub by deck (Village Shop).
  - g) Elm by upper deck (Once a Tree).
- 2) Apply artificial bark to branch stubs of above black cherry (1-c) to deter desiccation and promote resprouting in Spring.
- 3) Cut triple trunk of hawthorn tree (removed by vandals) close to ground to deter tripping by pedestrians.
- 4) Fertilize and aerate area between Japanese lilac and tall lilac to alleviate compacted conditions and give butchered trees a boost.

- 5) Apply high grade wood chips between Japanese lilac and tall lilac to deter soil compaction and bank erosion.

TOTAL ESTIMATE:

\$1,055. + \$150 high grade wood chips,  
\$90 fertilizer, & \$40 artificial bark

**TERMS:** Estimate firm if approved within 30 days. Payment due 10 days from date of invoice; service charge of 1.5% (18%/annum) on balances over 30 days. *Note: With the exception of required deposits, prepayments are not accepted - we will invoice after project is completed.* Estimate prepared by Nancy Caudle-Johnson, Operations Officer. Pricing of re-estimates, changes, and/or add-ons valid only if authorized by Operations Officer.

*Payment.* Client agrees to pay costs, including reasonable attorney's fees, required to collect payment.

*Re-estimates:* We reserve the right to charge a fee for re-estimates of the same project.

*Changes:* Our crew does not have the authority to make changes to the scope of work. Changes or alterations to the approved project must be requested by contacting our office, and may necessitate a revised project estimate and rescheduling.

*Add-ons:* Our crew does not have the authority to make add-ons to the scope of work. Add-ons must be approved by our office and will be done only if our schedule permits. Add-ons will be added to the project cost and invoiced with the project, and client agrees to be responsible for the additional charges for add-ons.

*Dump Fees:* Estimated dump fees are approximate. Client agrees to pay actual fees as invoiced.

*Property Lines.* Client asserts that tree(s) and/or shrub(s) outlined in this project grow entirely within boundaries of the client's property, and that client has obtained signed permission from abutter(s) for work on tree(s) and/or shrub(s) which: grow on a property line shared with an abutter, grow on a neighboring property, and/or when TREEKEEPERS needs to enter a neighboring property to do the work. Client is responsible for knowing location of client's property boundaries and lines; this is not the responsibility of TREEKEEPERS LLC. Client indemnifies TREEKEEPERS LLC from any errors based on inaccurate information supplied to us by the client.

*Underground Utilities - Dig Safe:* Client is responsible for locating and accurately marking - in advance of our work - any and all buried utilities, including water, septic, cable, electrical, phone, etc. Client indemnifies TREEKEEPERS LLC from any errors because client failed to do so.

*Applicable Ordinances:* Client is responsible for researching ordinances (local, state, and otherwise) which may apply to the project, and for obtaining and paying for any and all required permits. Client indemnifies TREEKEEPERS LLC from any errors regarding obtaining permits. An extra charge will apply if client requests our assistance with permitting.

*Shoreland Zone:* Client is responsible for contacting Code Enforcement Officer and obtaining permission to do a project within a shoreland zone. Approval of the CEO must be relayed to us prior to project start. An extra charge will apply if our company meets with CEO or assists with this process.

*Vistas:* Vista work is limited to *only* the specific items listed in this estimate's Project Description.

*Cables/Braces:* TREEKEEPERS LLC employs best arboricultural practices when installing cables and braces (rods); however, cables and braces may fail due to age, changes in tree structure, and when subjected to severe weather events and, therefore, cannot be guaranteed. It is recommended that supplemental support systems be periodically inspected by an arborist for wear, corrosion, degradation of hardware, and damage to the tree. The inspection should include the system's overall condition, position, cable tension, and the tree's structural integrity. TREEKEEPERS LLC recommends inspections annually and after major storm events. Initiating and scheduling inspections is the responsibility of the client. Please contact us if you would like to schedule an inspection.

*Equipment:* Client use of TREEKEEPERS' equipment left on site during project is strictly prohibited.

*Site Safety:* Client, client's family, guests, and pets are prohibited from entering the Restricted Work Zone during arboricultural operations.

### **ISA TREE RISK ASSESSMENT QUALIFIED ARBORIST**

**Sr. arborist Douglas N. Johnson was Maine's first ISA Tree Risk Assessment Qualified arborist.**

### **LICENSED ARBORISTS**

Four members of our team, including owners Nancy Caudle-Johnson and Douglas N. Johnson, are licensed Maine First Class Landscape Arborists; three are licensed Utility Arborists; and Sr. Arborist Douglas N. Johnson is also an ISA (International Society of Arboriculture) Certified Arborist.

### **ORGANIC TREATMENTS FOR INSECTS/DISEASES**

We use organic controls exclusively. TREEKEEPERS LLC is a licensed Maine Commercial Applicator and has three licensed Commercial Pesticide Applicators on staff.

**TREES ARE HAND CLIMBED ONLY**

This is kindest for the environment (reducing air pollution and keeping heavy equipment off sensitive landscapes and tree roots), and we believe the finest results are achieved when arborists are literally in touch with the trees.

**SAFETY**

Employees are certified in First Aid and CPR.

**INSURANCE**

Our company and employees are covered by liability, workers compensation, and vehicle insurance.

APPROVED: *(please sign and return one copy)*

\_\_\_\_\_ for Town of Camden

\_\_\_\_\_ Date

Thank you for choosing TREEKEEPERS.

*Proudly - caring for and preserving Maine's trees for twenty-seven years -- 1994-2021.*

Hello Dave--

Some ideas for Spring 2022 planting -- several (four or five) single-stemmed shadblows (Amelanchiers) - single stemmed, with an understory of seven to nine winterberry shrubs. Both selections are native, attractive, of high wildlife value, and are found along Maine rivers. It would be worth confirming the planting suggestions with Rebecca Jacobs, Director, Knox-Lincoln Soil & Water Conservation District.

Doug Johnson



**CERTIFICATION**  
In Erosion Control Practices  
presented to:

**Douglas Johnson**

For successful completion of requirements of the  
Erosion and Sediment Control Certification Program

Expiration Date: 12/31/2024 No. 3634