

DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NORDIC AQUAFARMS INC.) Application for Air Emission, Site Location
Belfast and Northport) of Development, Natural Resources
Waldo County, Maine) Protection Act, and Maine Pollutant
) Discharge Elimination System/Waste
L-28319-26-A-N) Discharge Licenses
L-28319-TG-B-N)
L-28319-4E-C-N)
L-28319-L6-D-N)
L-28319-TW-E-N)
W-009200-6F-A-N)

**UPSTREAM WATCH’S PETITION FOR
REVOCATION OF NORDIC AQUAFARMS INC.’S PERMITS**

I. INTRODUCTION

This case is now before the Board of Environmental Protection (“BEP”) on remand from the Maine Supreme Court, acting as the Law Court, Docket No. BCD-2022-48¹, and from the Maine Superior Court, Business & Consumer Court, Docket No. BCD-APP-2021-009², for BEP to “determine the impact, if any, of [the Law Court’s decision in] *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79 (“*Mabee*”),” on the BEP’s approval of Nordic Aquafarms Inc.’s (“Nordic”) permit applications. Consistent with the Law Court’s May 10, 2023, Order of

¹ Order of Remand (May 10, 2023), *reconsideration denied*, Order Denying [Board of Environmental Protection] Motion for Reconsideration (June 29, 2023). For the convenience of the court, true copies are attached hereto as Exhibit 1.

² Business & Consumer Court, Order of Remand (May 15, 2023)(Murphy, J.). For the convenience of the court, a true copy is attached hereto as Exhibit 2. The 80B appeal as Docket No. BCD-APP-2021-009 before the Business & Consumer Court comprises two 80B appeals against Respondent, the State of Maine, Board of Environmental Protection (the “Board”), one transferred from the Kennebec County Superior Court and consolidated by Order issued November 13, 2021, by the Waldo County Superior Court: *Upstream Watch v. Board of Environmental Protection*, Kennebec County Superior Court, Docket No. AP-2020-49, and *Jeffrey Mabee, Judith Grace, The Maine Lobstering Union, Wayne Canning, David Black and The Friend of The Harriet L. Hartley Conservation Area*, Waldo County Superior Court, Docket No. AP-2020-05.

Remand, the BEP may “determine its scope of proceedings on remand including whether it will take additional evidence.” *See* Exhibit 2 (Business & Consumer Court, Order of Remand (May 15, 2023)). In the bright light of *Mabee*, the BEP should determine that: (i) Nordic failed to demonstrate that it had title, right or interest (“TRI”) to the land needed to execute its proposed development, (ii) that Nordic’s application should have been returned to it, and (3) the permits should not have been granted and are revoked.

The BEP cannot simply suspend the permits based on claims by Nordic that are not supported by the record. The BEP cannot suspend permits indefinitely based on conjecture that Belfast may someday convince a Court to terminate or amend the conservation easement which prohibits Nordic’s use of the intertidal land for its industrial pipes. The existing record clearly has insufficient evidence of TRI, which compels the revocation of the issued permits.

Maine law requires that Nordic maintain TRI throughout the appeal period that followed the issuance of the Nordic permits. Given that Nordic has never had the required TRI, the Nordic permits need to be revoked.³

II. HISTORY OF THE CASE

1. On May 17, 2019, Nordic Aquafarms Inc. submitted four consolidated applications for permits under the Maine Pollution Discharge Elimination Act (“MPDES”), combined with a permit under the Maine Wastewater Discharge Act, a permit under the Maine

³ The BEP misstated Maine law when it argued to the Law Court that the issue of TRI ends for all purposes when the BEP grants the permits to Nordic, even when there is an appeal of the permits. The application processing period does not end when the permit is approved, and an appeal is filed. In *Madore v. Maine Land Use Regulation Commission*, 1998 ME 178, ¶ 17, 715 A.2d 157, the Law Court, discussing the justiciability of a proceeding, held: “A litigant must possess a present right, title, or interest in the regulated land which confers lawful power to use that land or control its use when invoking the jurisdiction of the court *and throughout any period of appellate review.*” (emphasis supplied). Given that the Law Court has determined that Nordic lacks TRI in the intertidal land, Nordic’s permits are clearly invalid, *as a matter of law*.

Clean Air Act, a permit under the Site Location of Development Act (“SLODA”) and a permit under the Natural Resources Protection Act (“NRPA”).

2. Pursuant to Department Rules, 06-096 C.M.R. Chapter 2, Section 11(D), “[p]rior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department’s satisfaction sufficient title, right or interest (TRI) in all of the property that is proposed for development or use. An applicant must maintain sufficient TRI throughout the entire application processing period.” Evidence of TRI may include deeds, easements, option agreements, and any other such evidence the Department deems acceptable to demonstrate sufficient TRI.
3. Intervenor, Upstream Watch, demonstrated to the BEP that the Eckrotes’ upland is restricted against commercial or industrial development, the Eckrotes’ don’t own the intertidal land, and the conservation easement blocks access. Acting Chairman Duchesne replied that only the courts can determine matters of title so the BEP would accept Nordic’s proffered “Agreement” from the Eckrotes purporting to grant to Nordic easements across the Eckrotes’ land. On June 13, 2019, the Department determined the above Nordic permit applications to be “complete for processing” and that, “with respect to the intertidal portion of the property proposed for use, the Department finds that the deeds and other submissions, including NAF’s option to purchase an easement over the Eckrote property,” submitted by Nordic demonstrated a “sufficient showing of TRI for the Department to process and take action on the pending applications.”
4. Nordic’s sole demonstration of TRI was an agreement by Mr. and Mrs. Eckrote (“the Eckrotes”), owners of land across Route 1 from the proposed development, to convey to Nordic an easement through the Eckrotes’ upland from Route 1 to the high water line of

Penobscot Bay, in which easement Nordic might install its industrial pipes through upland areas of the Eckrotes' land to but not through the intertidal land between the Eckrotes' upland and Penobscot Bay. This agreement ignored the use restriction that burdened the Eckrotes' upland since 1946.

5. The Eckrotes knew, or should have known, that since 1946, their upland property was burdened by a restriction limiting it to residential uses and "no business for profit is to be conducted there," as it was clear from the Waldo County Land Records, Book 452, Page 205 (deed).
6. The Eckrotes knew, or should have known, that they didn't own the intertidal land between their upland and Penobscot Bay as early as 2012, because the land was surveyed at that time in connection with a conveyance of that land from the Estate of Mrs. Eckrote's late mother to Mr. and Mrs. Eckrote and *the survey showed the Eckrotes' eastern property line at the high water line of Penobscot Bay*. This survey for the "Phyllis J. Poor Estate" shows a "Mailing Address" for the Estate as "Richard and Janet Eckrote, 42 Grandview Avenue, Lincoln Park, New Jersey 07035".
7. Nordic knew, or should have known, before it filed its applications that the Eckrotes' land was burdened by a restriction and that the Eckrotes didn't own the intertidal land. Nordic commissioned three (3) surveys of the intertidal land between the Eckrotes' upland and Penobscot Bay, and none of them showed ownership in the Eckrotes. One, dated October 15, 2018, prepared by Clark G. Staples, P.L.S. of Good Deeds, cautioned that the advice of an attorney was warranted regarding the intertidal land, another, by Jim Dorsky of Gartley & Dorsky dated November 14, 2018 (VI), revised May 14, 2019, showed ownership in "heirs of Harriet J. Hartley," partial interest and "Nordic Aquafarms, Inc."

partial interest. A third by the same surveyor, revision date July 24, 2020, following a discussion with Nordic's lawyer, showed "Ownership unclear" and referred to a note.

That note provided:

- A. Reference is made to a deed from Ernest and Marjory Bell to John and Catherine Grady recorded [in the WCRD at] Book 621, Page 288, dated May 18, 1964. This deed contains a description of upland property. If the presumption that the flats were conveyed with the upland holds, then the area labeled Ownership Unclear in front of the Schweikerts' property would be owned by the Schweikerts. If that presumption does not hold, the area in front of the Schweikerts labeled Ownership Unclear would currently be owned by Jeffery Mabee and Judith Grace.
- B. An attorney should be consulted to help determine what rights may have been conferred to the Eckrotes in the intertidal zone by the apparent historic use of the shore as evidenced by the two sets of steps leading to the shore.

None of the surveys, prepared by a surveyor commissioned by Nordic, could confirm Nordic's representation to the BEP that the intertidal land between the Eckrotes' upland and Penobscot Bay was owned by the Eckrotes, as claimed by Nordic and the Eckrotes in the Nordic permit applications. *See* October 15, 2018, prepared by Clark G. Staples, P.L.S. of Good Deeds, and Gartley & Dorsky dated November 14, 2018 (VI), revisions May 14, 2019, and July 24, 2020, surveys.

In addition, on April 29, 2019, Jeffrey Mabee and Judith Grace encumbered the intertidal land, including the intertidal land between the Eckrotes' land and Penobscot Bay, with a Conservation Easement that prohibited the pipeline use contemplated by Nordic and the Eckrotes. This Conservation Easement was not mentioned in the Nordic statement of TRI in their application filed on May 17, 2019. Despite this knowledge, the Eckrotes attempted to sell or lease an easement on or through that land, upland and intertidal land, to Nordic. True copies of the Conservation Easement and Assignment recorded in the WCRD at Book 4367, Page 273 and Book 4435, Page 444, are attached as Exhibit 3.

8. By a 16-page “Motion to Dismiss” dated July 12, 2019, accompanied by numerous exhibits, Intervenors presented evidence to BEP that the Eckrotes were barred from allowing an industrial use in and on their upland due to a land use restriction and that the Eckrotes did not own the intertidal land below their upland. Therefore, Nordic had not, and could not, demonstrate TRI as required by the statute. On August 23, 2019, the Presiding Officer denied the Motion. *See* Second Procedural Order (Aug. 23, 2019).
9. Intervenors then asked that TRI be included in the list of topics for the Hearing on the Nordic applications. On November 1, 2019, the Presiding Officer denied the request. The Presiding Officer noted the Board’s awareness of the dispute and pending litigation “over ownership of the intertidal lands where portions of Nordic’s proposed pipeline would be located...” The Presiding Officer stated that the Board would “not hear testimony on [TRI] at the hearing. The issue is better suited to written evidence and argument than to live testimony and cross-examination.” *See* Third Procedural Order (Nov. 1, 2019) ¶ 1(D).
10. On November 4, 2019, Intervenors appealed that ruling to the full Board which heard the appeal by “written evidence and argument” on November 8, 2019. The Board denied Intervenors’ appeal. “Following oral argument on the matter of TRI, the Board voted 4-0 in favor of a motion to deny the appeal of the intervenors...and uphold the Presiding Officer’s ruling that TRI will not be an issue for oral testimony and cross-examination at the hearing. It was noted that the issue could be addressed through written submissions.” *See* Fourth Procedural Order (Nov. 8, 2019) ¶ 1(G).
11. On January 8, 2020, Intervenors renewed their Motion to Dismiss based upon proceedings that had occurred in the United States District Court, District of Maine,

concerning the same matter. On January 31, 2020, the Presiding Officer denied Intervenor's renewed appeal. *See* Ninth Procedural Order (Jan. 31, 2020).

12. On February 4, 2020, Intervenor's renewed their Motion to Dismiss and requested an adjudicatory hearing on the topic of TRI, as it was jurisdictional in nature and needed to be resolved prior to beginning the Hearing on substantive issues. On March 2, 2020, the Presiding Officer denied Intervenor's request. *See* Twelfth Procedural Order (Mar. 2, 2020).
13. Following the February 2020 Hearing, the Board scheduled an April 9, 2020 Board meeting "at which oral argument will be heard on MGL's (Intervenor's) motions to dismiss Nordic's applications for lack of title, right or interest (TRI) and to conduct an adjudicatory hearing on the issue of TRI." *See* Thirteenth Procedural Order (Mar. 16, 2020) at 4. That hearing was rescheduled for April 16, 2020, remotely due to Covid-19. *See id.* and Fourteenth Procedural Order (Apr. 3, 2020). The record of issued Procedural Orders, One through the Twenty-Third, contain no evidence that the TRI adjudicatory hearing was ever held.
14. The Maine Supreme Judicial Court, sitting as the Law Court, is competent to adjudicate issues of title and it did so regarding the Eckrotes' land on which Nordic attempted to show TRI. *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79.
15. In *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79, decided February 16, 2023, the Law Court ruled that the Eckrotes' upland is burdened by a valid restriction against any non-residential use. That restriction precludes installation of industrial pipes. That was clear from the land records since 1946. Because of that restriction Nordic could

not install its industrial pipes through the Eckrotes' land from Route 1 to the high water mark of the Penobscot Bay.

16. In addition, the Law Court ruled that the Eckrotes never owned any intertidal land between the Eckrotes' upland and Penobscot Bay. Because the Eckrotes did not own any intertidal land, they could not give Nordic any right to install its industrial pipes through the intertidal land between the Eckrotes' upland and into Penobscot Bay. *Mabee*, 2023 ME 15.
17. Upstream Watch and others attempted to demonstrate to the BEP and DEP prior to, and at the permit hearings, all of the forgoing and attempted to place in the record the surveys by Good Deeds/Staples and Dorsky, and did place into the record the 1946 Hartley-to-Poor deed revealing the restrictive covenant and the Eckrotes' lack of ownership of the intertidal land in question, but any such demonstration was consistently disallowed by the Presiding Officer.
18. The ruling by the Law Court establishes that from May 17, 2019, when Nordic filed its applications, each of which required a demonstration of TRI, to and through November 19, 2020, when the permits were awarded to Nordic by BEP, the residential restriction was in place, the Eckrotes did not own the intertidal land and Nordic lacked TRI in violation of DEP Rule, 06-096 C.M.R. Chapter 2, Section 11(D).
19. Nordic never demonstrated TRI as to any of their permits, nor could Nordic demonstrate TRI because, as the Law Court ruled in *Mabee*, Nordic's alleged sources of TRI did not exist.
20. Together, by withholding the 1946 Hartley-to-Poor deed containing the restriction, and the three surveys showing that the Eckrotes did not own the intertidal land, the Eckrotes

and Nordic deliberately deceived the BEP and DEP regarding ownership of the land in question and its availability for Nordic's use as proposed.

21. Nordic's lack of honesty regarding TRI and the unnecessary burden placed on State resources thereby, provides ample ground for revocation of Nordic's permits under 38 M.R.S. § 342(11-B) and 06-096 C.M.R. Chapter 2, Section 25. 06-096 C.M.R. Chapter 2, Section 11(E)(1) provides that each application include the signature of the application, or the applicant's duly authorized officer or agent, under the following Certification:

I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware there are significant civil and criminal penalties for submitting false information, including the possibility of fine and imprisonment.

The Nordic application includes a Certification signed by a lawyer from Drummond Woodsum, so understandably, the BEP felt it could rely on it. Lawyers are bound by Rule 3.3 Of the Rules of Professional Conduct; Candor Toward the Tribunal: (a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer...(3) offer evidence that the lawyer knows to be false.

III. EMINENT DOMAIN

To support Nordic, the City of Belfast used its power of eminent domain to attempt to "take" the land that the Eckrotes did not own to try to give Nordic the required TRI. That matter is presently in litigation, as the use of eminent domain to benefit a business such as Nordic under

the facts of this case violates both the Maine Constitution and the United States Constitution. Regardless of the outcome of the eminent domain lawsuit, the attempted “taking” of the Mabee-Grace intertidal land by eminent domain two (2) years after the permit was issued does not constitute a demonstration of TRI at the time of the application. 06-096 C.M.R. Chapter 2, Section 11(D) states: “An applicant must maintain sufficient title, right or interest throughout the entire application process period.” In a statute or regulation, all words have meaning, and the legislative body intended what it wrote. Furthermore, the eminent domain taking fails to provide competent evidence of TRI, because the taking did not terminate or amend the Conservation Easement which prohibits Nordic from installing its pipes in the intertidal land.

IV. LEGAL AUTHORITY

1. STATUTORY AUTHORITY

a. MPDES

- i) 38 M.R.S. § 413(1) **Waste discharge licenses. License Required.** “No person may directly or indirectly discharge or cause to be discharged any pollutant without first obtaining a license therefor from the department.”
- ii) 38 M.R.S. §413(1-A) **License required for surface wastewater disposal systems.** “No person may install, operate or maintain a surface wastewater disposal system without first obtaining a license therefor from the department, ...”

2. THE REGULATIONS SAY:

a. MPDES

- i) The department regulations, 06-096, Chapter 521 provides:
- ii) “**Summary**”. This rule describes procedures and requirements for applying for a waste discharge license (or a “permit”). This rule is in addition to and supplements the basic procedures in chapter 2 for all applications filed with the department. The content of this rule is largely taken from federal regulations, and most references in terms are in the context of the Code of Federal Regulations. To aid the reader, a citation to the appropriate federal regulation is shown in each section of this rule.
- iii) Section 1. **References to federal regulations and definitions.** Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 1988, as they appear in volume 40 of the Code of

Federal Regulations (CFR). Definitions for terms used in this rule may be found in Chapter 520.

- iv) Section 2. **Applicability of Chapter 2.** Unless specified differently in this rule, the requirements of Chapter 2 of the department's rules, "Rules Concerning The Processing of Applications", applies to waste discharge license applications. In the event of inconsistencies with Chapter 2 of the department's rules, waste discharge license applications will be processed under the procedures set forth in this chapter.
- v) Section 3. **Permit application required.** [See 40 CFR 124.3].

(a)(1) Any person who requires a permit under the UIC, or NPDES programs shall complete, sign, and submit to the department an application for each permit required under 38 MRSA., Section 413 (UIC and NPDES)....

(a)(2) The department shall not begin the processing of a permit until the applicant has fully complied with the application requirements for that permit. See Chapter 543 (UIC) and this chapter (NPDES).

- vi) Section 4. **Application for a permit.** [See 40 CFR 122.21].
 - (a) Duty to apply. Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, ...shall submit a complete application...to the Department in accordance with this section and Chapters 2 and 522.
 - (e) Completeness. The Department shall not issue a permit before receiving a complete application pursuant to Chapters 2 and 522... An application for a permit is complete when the Department receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application for any other permit for the same facility or activity.
 - (i) Information requirements. All applicants for NPDES permits shall provide the following information to the Department, using the application form provided by the Department (additional information required of applicants is set forth in paragraphs (g) through (k) of this section).

Chapter 2: Rule Concerning the Processing of Applications and other Administrative Matters.

2. Scope of Rule.

- A. General Scope. This rule applies to processing of license applications... This rule applies in the absence of procedural requirements imposed by statute or rule. Where other specific procedural requirements apply, those requirements control.

3. APPLICATION REQUIREMENTS

- A. **General requirements.** Application forms must be developed by the Commissioner and must require the information the Commissioner deems necessary to make findings required for each license....

- B. ***

A determination that an application is accepted as complete for processing is based on staff's determination that the application fee has been paid pursuant to section 12 of this

rule, that sufficient title, right or interest has been demonstrated pursuant to section 11(D), and that the application form is properly filled out and information is provided for each of the items required by the forms. It is not a review of the sufficiency of that information and does not preclude the Department from requesting additional information during processing or denying the application for failure to provide information necessary for the processing of that application.

D. Title, right or interest. Prior to acceptance of an application as complete for processing and applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period. Methods of proving title, right or interest include, but are not limited to, the following:

- 1) When the applicant owns the property, a copy of the deed to the property must be supplied;
- 2) When the applicant has a lease or easement on the property, a copy of the lease or easement must be supplied. The lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required. If the project requires a submerged lands lease from the state, evidence must be supplied that the lease has been issued, or that an application is pending;
- 3) When the applicant has an option to buy or lease the property, a copy of the option agreement must be supplied. The option agreement must be sufficient, as determined by the Department, to give rights to title, or a leasehold or easement of sufficient duration and terms to permit the proposed construction and use of the property including closure and post closure care, where required.
- 4) When the applicant has eminent domain power over the property, evidence must be supplied as to the ability and intent to use the eminent domain power to acquire sufficient title, right or interest to the site of the proposed development or use;

F. Burden of Proof and Governing Law. An applicant for a license has the burden of proof to affirmatively demonstrate to the department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all license applications...are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing. For those matters that are not disputed, the applicant shall present sufficient evidence that the licensing criteria are satisfied. For those matters relating to licensing criteria that are disputed by evidence the Department determines is credible, the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied.

The department's "General **Application** for Waste Discharge License (WDL)/Maine Pollutant Discharge Elimination System (NPDES) permit, requires, at question 9, "Proof of Title, Right or Interest (TRI) in the property in which the treatment system and outfall pipes and structures are or will be located. *See* 06-096 C.M.R. Chapter 2 of the department's rules for TRI criteria."

4. THE RULES PERTAINING TO STATUTORY AND REGULATORY INTERPRETATION SAY:

- a. “Shall” indicates a mandatory duty or requirement. “May” is permissive. Note 1 M.R.S. § 71(9-A) “Shall; must; may. “Shall” and “must” are terms of equal weight that indicate a mandatory duty, action or requirement. “May” indicates authorization for permission to act.”

Because this language was created by the Maine state legislature it should resolve the meaning of those three terms used in Maine. This means that the applicant’s demonstration of TRI must occur at the time the application is filed. The timing is mandated by the regulation. There is no exception.

- a. Ordinary meaning Canon. “Words are to be understood in their ordinary, everyday meanings – unless the context indicates that they bear a technical sense.” *Scalia and Garner: Reading Law: The Interpretation of Legal Texts* (West, 2012)(“Scalia and Garner”). Also see 1 M.R.S. § 72(3) “General Rule. Words and phrases shall be construed according to the common meaning of the language. Technical words and phrases and such as have peculiar meaning convey such technical or peculiar meaning.”
- b. Rule to avoid surplusage. If possible, every word in every provision should be given effect. None should be ignored, and none should needlessly be given interpretation that causes it to duplicate another provision or to have no consequence. *Scalia and Garner*. Legislation is a purposive act and judges should construe statutes to execute that legislative purpose.
- c. Surplusage Canon. If possible, every word and every provision is to be given effect (*verba cum effectu sunt accipienda*. *Scalia and Garner*).
- d. Absurdity doctrine. A provision may be either disregarded or judicially be corrected as an error (when the correction is textually simple) if failing to do

so would result in a disposition that no reasonable person could approve.

Scalia and Garner.

Even if the mandatory language were not clear, allowing compliance many years after the application was filed makes a mockery of the requirement.

THE MAINE ATTORNEY GENERAL CLAIMS:

- e. The Maine Atty. Gen. has two interpretations of Chapter 2, Section 11(D) which reads: “Prior to acceptance of an application for processing, an applicant shall demonstrate to the Department’s satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout the entire application processing period.

The first Attorney General interpretation is that “sufficient” TRI must be shown by the applicant before the Department can accept an application for processing, but that once the department accepts an application for processing, TRI is irrelevant and no longer of consequence.

The second interpretation is that “sufficient” TRI must be shown until the Department awards a permit to the applicant but once the permit is awarded, TRI is irrelevant and of no consequence.

A further position of the Attorney General is that the Department is the sole arbiter of what is “sufficient” TRI.

The final position of the Attorney General is that even if Nordic failed to demonstrate TRI prior to the acceptance of the application, if Nordic can on some unknown day in the future show TRI as a result of the Belfast eminent domain taking, then again, TRI is irrelevant.

5. THE INTERPRETATION OF TRI BY THE ATTORNEY GENERAL IS FLAWED BECAUSE:

Chapter 521 Department Rules at Sections 3 and 4 state that the applicant “shall”, submit a complete application and the department “shall” not issue a permit before receiving a complete application pursuant to Chapter 2. The term “Shall” is mandatory, not permissive.

Nordic submitted to the Department an agreement to lease to Nordic an easement over land owned by Mr. and Mrs. Eckrote. The Department knew that Upstream had offered proof that the Eckrotes did not own the property and that ownership of the Eckrotes’ property was being litigated elsewhere. At the Attorney General’s urging the Department found the agreement to be a sufficient demonstration of TRI. In so doing the Chairman of the Board remarked that the BEP had no authority to determine title. Title would be determined by the Superior Court. The Department did not request from Nordic a Certificate of Title or a Policy of Title Insurance, either of which would have made it clear that Nordic’s claim of TRI was false and neither of which would have delayed processing of the application. The Attorney General’s position encourages false filings and deliberate fabrication of TRI. Effectively the Attorney General’s position eliminates the need for an applicant to demonstrate TRI at all. A phony document will do it. The legislature is presumed to have intended to create the laws it wrote. If possible, every word in every provision should be given effect. None should be ignored, and none should needlessly be given interpretation that causes it to duplicate another provision or to have no consequence. *Scalia and Garner*. The Attorney General’s position that the legislature intended a meaningless requirement is not credible.

The Attorney General’s second position, that TRI becomes irrelevant once a permit is issued is equally flawed. When a false document is presented as a demonstration of TRI, and that document is challenged, it is simply not possible to litigate the challenge to the document before

the permit is issued. The administrative agency will be well on its way to permit issuance at the time a quiet title lawsuit could be filed and the administrative process will always be completed before the court can try a quiet title case. This interpretation makes TRI a meaningless requirement.

Another position of the Attorney General is that the Department is the sole arbiter of what is “sufficient” TRI. In the case at bar, Nordic presented a document agreeing to grant Nordic passage across land the grantor did not own. The Department knew that Upstream had challenged Nordic on the ownership issue and was litigating the matter in the Superior court. Nordic claimed it could cross the Eckrotes’ upland, cross the Eckrotes’ intertidal land and ignore the conservation easement. The Chairman of the Board said the BEP had no jurisdiction to hear a title issue but rather it had to be heard by a court of jurisdiction competent to try such matters. The Law Court is such a court. The Law Court found the Eckrotes’ upland was burdened by a use restriction barring Nordic’s proposed use, the Eckrotes did not own the intertidal land so they could not lease it to Nordic, and the conservation easement was valid and short of a judicial determination Nordic could not violate the conservation easement. TRI never existed.

Thus, Nordic has a false document that served as a basis for processing the application and affirmation of that falsehood provided by the Law Court. Without the false document there is no application and there are no permits. It is the Attorney General’s position that once the Department is fooled, the Department stays fooled even though the Law Court ruling provides evidence that TRI never existed and never could have existed. The Department’s finding that a false document provided “sufficient” TRI must stand. Such a result favors falsehood over truth and makes a mockery of the administrative/legal process.

The Attorney General's final position is that even if Nordic did not have TRI at the time they filed their application and did not have TRI at any time during the application process, if Nordic could possibly gain TRI at some point in the future by virtue of the Belfast eminent domain taking, the regulation is satisfied. Nowhere in the regulation does it say that an applicant may show TRI at any time at its leisure well after the permit process is concluded. The plain language of the regulation that says the applicant has to demonstrate TRI at the time of its application and maintain TRI throughout the entire permit application process.

There is no evidence in the record showing that the City of Belfast and Nordic have any reasonable prospect of terminating the Conservation Easement that prohibits Nordic from installing its pipes in the intertidal land. 1 M.R.S. § 816 prohibits the City of Belfast from condemning land use for fishing. The intertidal land is used for fishing by the public. 33 M.R.S. § 477-A(2)(B) prohibits Nordic and/or the City of Belfast from terminating or amending the Conservation Easement without a court first determining that the termination or amendment does not violate the purposes expressed by the Conservation Easement. There is no evidence in the record showing that the City of Belfast and Nordic can demonstrate that installing industrial pipes discharging 7 million gallons of effluent a day is consistent with the purposes of the Conservation Easement.


V. CONCLUSION

06-096 C.M.R. Chapter 2, Section 11(D) provides: **Title, right or interest.** Prior to acceptance of an application as complete for processing, an applicant shall demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use. An applicant must maintain sufficient title, right or interest throughout


the entire application processing period. Nordic has never demonstrated TRI. Nordic presently does not have TRI to maintain its permits.

Upstream Watch respectfully requests that the BEP notice and schedule an adjudicatory hearing regarding the Law Court's remand order in *Mabee*, that the BEP allow the interested parties to be heard, and that the issued permits to Nordic be revoked for the reasons set forth above.

Dated: July 7, 2023



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Attorneys for Upstream Watch

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket Nos. BCD-22-48
Wal-22-299

Upstream Watch et al.

v.

Board of Environmental Protection

Jeffrey R. Mabee et al.

v.

Department of Agriculture,
Conservation and Forestry et al.

ORDER OF REMAND

In *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79 (“*Mabee I*”), we ruled on various issues regarding title ownership and a conservation easement over property relevant to an aquaculture project located in Belfast, Maine. That project required the issuance of various governmental approvals that have been challenged in pending appeals, including *Mabee v. Department of Agriculture, Conservation and Forestry et al.*, Docket No. Wal-22-299 (*Mabee II*) (Rule 80C appeal relating to submerged lands and dredging leases issued by the Bureau of Parks and Land (BPL)) and *Upstream Watch v. Board of*

Environmental Protection, Docket No. BCD-22-48 (“*Upstream Watch*”) (Rule 80C appeal relating to various permits issued by the Board of Environmental Protection (BEP)).

With regard to the impact, if any, that our ruling in *Mabee I* has on those approvals and two aforementioned appeals now pending before us, parties have filed the following motions:

- In *Mabee II* the BPL has filed a motion to dismiss the appeal as moot. Nordic Aquafarms, Inc. (Nordic) does not object. Appellants Jeffrey R. Mabee et al. (*Mabee*) appear not to object, but Mabee has also filed a motion for judgment as a matter of law asking us to vacate the BPL’s approval of Nordic’s application for submerged lands and dredging leases. The BPL and Nordic oppose Mabee’s motion.
- In *Upstream Watch*, Appellant Upstream Watch (Upstream) has filed a “Motion To Reverse the BEP’s Decision on TRI and to Remand,” and Mabee has filed a motion for judgment asking us to vacate the BEP’s orders granting Nordic various permits. Nordic opposes both motions. The BEP has not filed a response to either.

The BPL’s motion in *Mabee II* contends that Mabee’s appeal should be dismissed as moot because our decision deprives Nordic of the right, title, and interest necessary to support the issuance of the leases approved by the BPL.

The BPL motion states that, as a result of our *Mabee I* decision, the BPL will not issue the leases it approved, but the BPL contends that the approval should not be vacated. Mabee responds by contending that for us merely to dismiss Mabee's appeal would leave the BPL lease approvals in place, whereas they should be vacated.

Under the doctrine of primary jurisdiction, "courts should avoid ruling, on appeal, on matters committed by law to the decision-making authority of an administrative agency before the administrative agency has first had an opportunity to review and decide the facts on the merits of the matter at issue." *Christian Fellowship & Renewal Ctr. v. Town of Limington*, 2006 ME 44, ¶ 40, 896 A.2d 287, 298. When, as here, it is unclear whether an approval challenged on appeal would have been issued given intervening circumstances, the appropriate response is to remand the matter to the agency that issued the approval to make that determination. *Cf. Hannum v. Board of Environmental Protection*, 2003 ME 123 ¶17 (remanding to the BEP where the Court could not ascertain from the BEP decision whether the BEP would have reached a different conclusion in the absence of a finding that the Court found unsupported by evidence in the record).

We therefore remand these two appeals to the Superior Court in turn to remand the matters to the BPL and the BEP so that the agencies may determine

the impact, if any, of *Mabee I* on the challenged approvals. The agencies may choose to make their determinations on the existing administrative records or expand the records to include materials such as a referenced subsequent conveyance after the exercise of eminent domain power that Nordic suggests should result in no change to the viability of the approvals. We leave to the BPL and the BEP to determine the scope of the proceedings on remand.

We do not retain jurisdiction, nor should the Superior Court or the Business and Consumer Court. Maine Rule of Civil Procedure 80C(m); *see Penkul v. Town of Lebanon*, 2016 ME 16, ¶ 6 n. 4, 136 A.3d 88 (“This case highlights the confusion that may be generated when the trial court purports to ‘retain jurisdiction’ after remanding a matter to a government decision maker. The clearer practice is for the court to enter a final judgment remanding the matter.”) Upon the issuance of the agencies’ determinations on remand regarding the viability of the approvals, any party is free to raise in a new appeal any argument raised previously and any new argument arising from the agency proceedings on remand.

It is therefore ORDERED:

1. The case of *Mabee v. Department of Agriculture, Conservation and Forestry et al.*, Docket No. Wal-22-299 is hereby remanded to the Superior Court, with an instruction to remand the case to the Department of Agriculture,

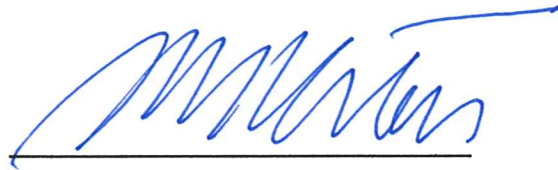
Conservation and Forestry, Bureau of Parks and Lands, for further proceedings consistent with this Order.

2. The case of *Upstream Watch v. Board of Environmental Protection*, Docket No. BCD-22-48 is hereby remanded to the Business and Consumer Court, with an instruction to remand the case to the Board of Environmental Protection for further proceedings consistent with this Order.

3. All pending motions are dismissed without prejudice.

Dated: May 10, 2023

For the Court, all members concurring

A handwritten signature in blue ink, appearing to be 'M. M. M.', is written over a horizontal line.

RECEIVED
MAY 11 2023
Clerk's Office
Maine Supreme Judicial Court

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. BCD-22-48

Upstream Watch et al.

v.

**ORDER DENYING MOTION FOR
RECONSIDERATION**

Board of Environmental Protection

The Board of Environmental Protection has filed a motion to reconsider the Court's Order of Remand of May 10, 2023, and to stay the effect of the order. The panel that participated in this appeal has carefully considered the Board's arguments in the motion for reconsideration.

The motion is DENIED.

Dated: June 29, 2023

For the Court,

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JUN 29 2023
Clerk's Office
Maine Supreme Judicial Court



Associate Justice

STATE OF MAINE
CUMBERLAND, ss

BUSINESS & CONSUMER COURT
LOCATION: PORTLAND
DOCKET NO. BCD-APP-2021-009

JEFFREY MABEE, et al.,

Petitioners,

v.

BOARD OF ENVIRONMENTAL
PROTECTION,

Respondent.

UPSTREAM WATCH,

Petitioner,

v.

BOARD OF ENVIRONMENTAL
PROTECTION,

Respondent.

ORDER OF REMAND

On May 10, 2023, the Law Court issued an Order remanding this matter to the Business and Consumer Court with an instruction to remand to the Board of Environmental Protection (“BEP”) so that the BEP may decide whether the Law Court’s decision in *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79, affects the approval of Nordic Aquafarms, Inc.’s permit applications, the subject of this litigation.

With this matter now before it, this Court hereby remands the matter to the BEP. The Court instructs the BEP to determine the impact, if any, of the Law Court’s decision in *Mabee*, 2023 ME 15, 290 A.3d 79, on the BEP’s approval of Nordic Aquafarms, Inc.’s permit

applications. Consistent with the Law Court's May 10 Order, the BEP may determine its scope of proceedings on remand including whether it will take additional evidence. This Court does not retain jurisdiction of this matter.

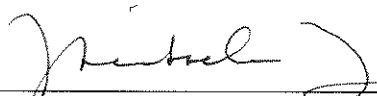
The entry is:

The matter is REMANDED to the Board of Environmental Protection to determine the impact, if any, of *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, 290 A.3d 79 on the challenged approvals. This Order constitutes a final judgment.

The clerk is directed to incorporate this Order on the docket by reference. M.R. Civ P. 79(a).

Date:

5/15/23



**M. Michaela Murphy, Justice
Business & Consumer Court**

Entered on the docket: 05/15/2023



ATTEST. Stacy L Grant, Waldo Co Registry of Deeds

CONSERVATION EASEMENT DEED

KNOW ALL PERSONS BY THESE PRESENTS, the Grantors, JEFFREY R. MABEE and JUDITH B. GRACE, of the Town of Belfast, County of Waldo and State of Maine, (mailing address: 290 Northport Avenue, Belfast, Maine 04915), in consideration of the gifts of others and an absolute and unconditional gift, do grant to the Holder, UPSTREAM WATCH, a Maine Nonprofit Corporation, situated in the City of Belfast, County of Waldo and State of Maine, (mailing address: 67 Perkins Road, Belfast, Maine 04915), and the Holder's successors and/or assigns, with Quitclaim Covenants, in perpetuity, this Conservation Easement pursuant to 33 M.R.S. §§ 476–479-C, inclusive, as amended, over, through, under and across a certain parcel of land, referred to hereinafter as the "Protected Property," described on EXHIBIT A, and shown on a plot plan attached hereto as Exhibit B, both appended hereto and made a part hereof. This Conservation Easement applies to the Protected Property only. Nothing herein shall be construed to impose any obligation, restriction, or other encumbrance on any real property not expressly made a part of the Protected Property.

WHEREAS, Grantors are the owners in fee simple of certain real property located in the City of Belfast, Waldo County, Maine, described in a deed located in the Waldo County Registry of Deeds at Book 1221, Page 347, which includes certain rights to intertidal zone lands, described on EXHIBIT A and shown on EXHIBIT B, and referred to herein as the "Protected Property";

WHEREAS, Grantors desire to convey to the Holder a conservation easement placing certain limitations and affirmative obligations on the Protected Property for the protection of: wetlands; intertidal lands and biota; scenic, resource, environmental, marine and natural habitat; and other values for the commons, in order that the Protected Property shall remain substantially in its natural condition forever;

WHEREAS, Holder is a Maine registered nonprofit corporation qualified to hold conservation easements pursuant to 33 M.R.S. § 476(2)B.

COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

A. PURPOSE

THE PURPOSE, CONDITION AND INTENT OF THIS EASEMENT IS TO:

- 1. Preserve the Protected Property in perpetuity as open space and free from structures of any sort, especially any principal or accessory structures erected, constructed or otherwise located in furtherance of any commercial or industrial purpose.**

2. Preserve the Protected Property in its natural condition. The term "natural condition" as referenced in this paragraph and other portions of this Conservation Easement shall mean the condition of the Protected Property as it exists at the time of execution of this Conservation Easement, or other changes that may occur to the Protected Property related to restoration of the adjacent Little River as a natural fishway.
3. Provide a significant public benefit by protecting and preserving, in perpetuity, the Protected Property in its present and historic, primarily undeveloped, natural condition.

NO THIRD PARTY ENFORCEMENT. Grantors and Holder, and their successors and assigns in title to the land described are the only persons or entities having the right to enforce the provisions of this easement. There shall be no persons or entities having a third-party right of enforcement of the terms and conditions hereof.

LIMITATION OF LIABILITY. This Conservation Easement is given for passive recreational use and for fishing, fowling and navigation as provided by Maine law and the Holder shall be protected from liability in accordance with title 14 M.R.S. § 159-A. as set forth therein, neither Grantors nor Holder shall assume or have a duty of care to keep the Easement area safe for entry or use by others for the recreational activities permitted hereunder, or to give warning to persons entering for such purposes of any hazardous condition, use, structure or activity on the property of the Grantors, or to assume or incur liability for any injury or harm to person or to property caused by any act of other persons. To the maximum extent possible, it is the intent of this term and condition to provide to Grantor and Holder the protections of the statute.

COVENANT TO RUN WITH THE LAND. In furtherance of the same purpose Grantors hereby encumber the same Protected Property with a Covenant to run with the land that the land on which the above Conservation Easement is hereby conveyed shall be and is restricted against any commercial or industrial use or uses accessory to such commercial or industrial uses.

PROHIBITED USES. Any activity on or use of the Protected Property inconsistent with the Purposes of this Conservation Easement and not reserved as a right of Grantors is prohibited. These restrictions shall run with the land and be binding on Grantors' heirs, successors, administrators, assigns, lessees, or other occupiers and users. The following uses by Grantors, their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on the Protected Property.

1. **General.** There shall be no filling, flooding, excavating, mining or drilling; no removal of natural materials; no dumping of materials;

and, no alteration of the topography in any manner.

2. **Waters and Wetlands.** In addition to the General restrictions above, there shall be no draining, dredging, damming or impounding; no changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters; and, no other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended.
3. **Trees/Vegetation.** There shall be no clearing, burning, cutting or destroying of trees or vegetation, except as expressly authorized in the Reserved Rights; there shall be no planting or introduction of non-native or exotic species of trees or vegetation.
4. **Activities.** No industrial activities, commercial activities, residential activities, or agricultural activities (including livestock grazing) shall be undertaken or allowed.
5. **Structures.** There shall be no construction, erection, or placement of buildings, billboards, or any other structures, nor any additions to existing structures.
6. **Other Prohibitions.** Any other use of, or activity on, the Protected Property which is or may become inconsistent with the purposes of this grant, the preservation of the Protected Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.

B. HOLDER'S RIGHTS

To accomplish the Purpose of this Conservation Easement, Grantors, their successors and assigns hereby grant and convey the following rights to the Holder.

1. To preserve and protect the Conservation Values of the Property, including enforcing the terms of this Conservation Easement in order to assure the protected property remains in its "natural condition," defined herein, in perpetuity.
2. To enter upon the property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement.
3. To prevent any activity on or use of the property that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement.

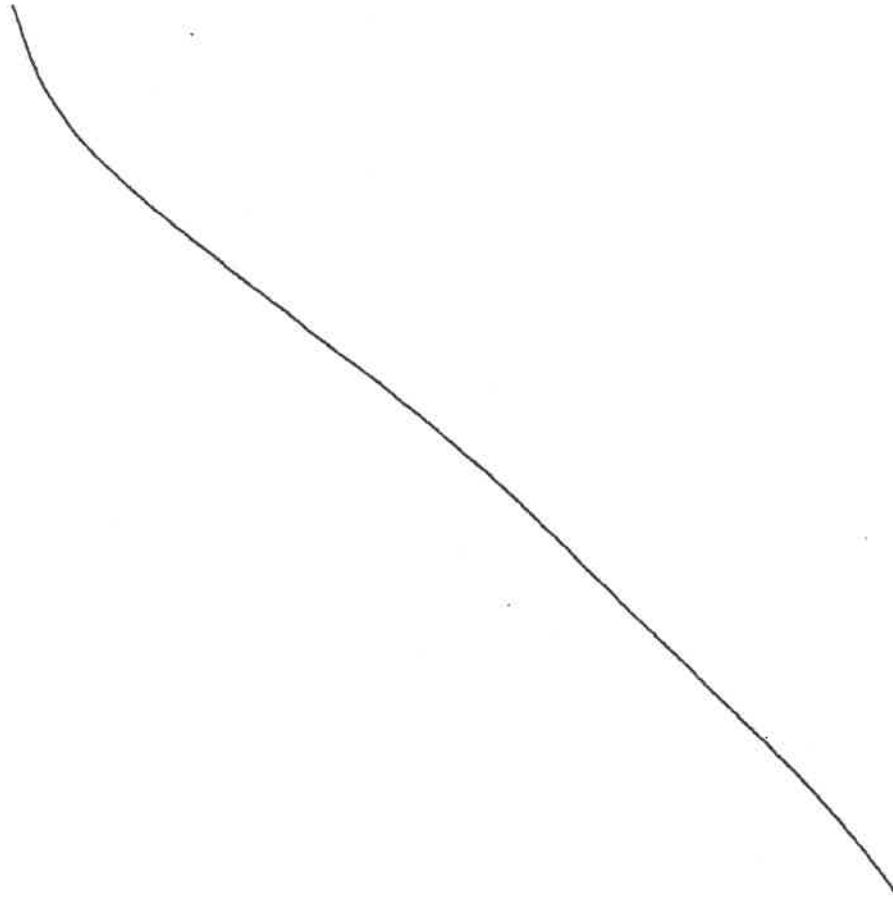
4. The right to enforce by means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

C. GRANTORS' RESERVED RIGHTS

Notwithstanding the foregoing Restrictions, Grantors reserve for Grantors, their heirs, successors, administrators, and assigns the following Reserved Rights, which may be exercised upon providing prior written notice to Holder, except where expressly provided otherwise:

1. **Landscape Management.** Landscaping by the Grantors to prevent severe erosion or damage to the Protected Property or portions thereof, or significant detriment to existing or permitted uses, is allowed, provided that such landscaping is generally consistent with preserving the natural condition of the Protected Property.
2. **Recreation.** Grantors reserve the right to engage in any outdoor, non-commercial recreational activities, including hunting (excluding planting or burning) and fishing, with cumulatively very small impacts, and which are consistent with the continuing natural condition of the Protected Property. No written notice required.
3. **Vegetation, Debris, and Exotic Species Removal.** Grantors reserve the right to engage in the removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and removal of non-native or exotic plant or animal species.
4. **Collateral.** Grantors have the right to use the Protected Property as collateral to secure the repayment of debt, provided that any lien or other rights granted for such purpose, regardless of date, are subordinate to Holder's rights under this Conservation Easement. Under no circumstances may Holder's rights be extinguished or otherwise affected by the recording, foreclosure or any other action taken concerning any subsequent lien or other interest in the Protected Property.
5. **Other Reserved Rights.** Grantors reserve the right to engage in all acts or uses not prohibited by the Restrictions, and which are not inconsistent with the conservation purposes of this grant, the preservation of the Protected Property in its natural condition, and the protection of its environmental systems.

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D. GENERAL PROVISIONS

1. **Rights of Access and Entry.** Holder and its successors and assigns shall have the right to enter and go upon the Protected Property for purposes of inspection, and to take actions necessary to verify compliance with the Restrictions. Holder shall also have the rights of visual access and view, and to enter and go upon the Protected Property for purposes of making scientific or educational observations and studies, and taking samples, in such a manner as will not disturb the quiet enjoyment of the Protected Property by Grantors. No right of access or entry by the general public to any portion of the Protected Property is conveyed by this Conservation Easement.
2. **Events Beyond the Grantors' Control.** Nothing herein shall be construed to authorize the Holder to institute any proceedings against Grantors for any changes to the Protected Property caused by acts of God or circumstances beyond Grantors' control such as earthquake, fire, flood, storm, war, civil disturbance, strike, the unauthorized acts of third parties, or similar causes.
3. **Obligations of Ownership.** Grantors are responsible for any real estate taxes, assessments, fees, or charges levied upon the Protected Property. Grantors shall keep the Protected Property free of any liens or other encumbrances for obligations incurred by Grantors. Holder shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantors of the obligation to comply with federal, state or local laws, regulations and permits which may apply to the exercise of the Reserved Rights.
4. **Assignment.** This Conservation Easement is transferable, but only to an entity that satisfies the requirements of 33 M.R.S. §476(2) as amended (or successor provisions thereof), and that as a condition of transfer, agrees to uphold the conservation purposes of this grant.
5. **Controlling Law and Interpretation.** The interpretation and performance of this Easement shall be governed by the laws of the State of Maine. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the conservation purposes of this Easement and the policy and purpose of the Maine Conservation Easement

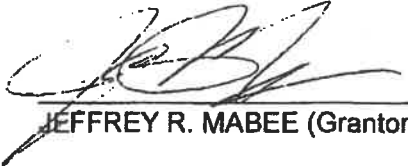
Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement shall govern.

E. HABENDUM

TO HAVE AND TO HOLD the said Conservation Easement unto the said Holder, and its successors and assigns forever.


GRANTORS' SIGNATURES

IN WITNESS WHEREOF, Grantors JEFFREY R. MABEE and JUDITH B. GRACE have caused this Conservation Easement Deed to be executed by their hands this 2nd day of April, 2019, granting a Conservation Easement to UPSTREAM WATCH, in the Protected Property described in Exhibit A and shown on Exhibit B of this instrument.



JEFFREY R. MABEE (Grantor)

JEFFREY R. MABEE
[Grantor's Printed Name]



JUDITH B. GRACE (Grantor)

Judith B. Grace
[Grantor's Printed Name]

STATE OF MAINE
COUNTY OF WALDO

PERSONALLY APPEARED THE ABOVE-NAMED JEFREY R. MABEE AND JUDITH B. GRACE AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING CONSERVATION EASEMENT INSTRUMENT TO BE THEIR FEE ACTS AND DEEDS.



NOTARY PUBLIC

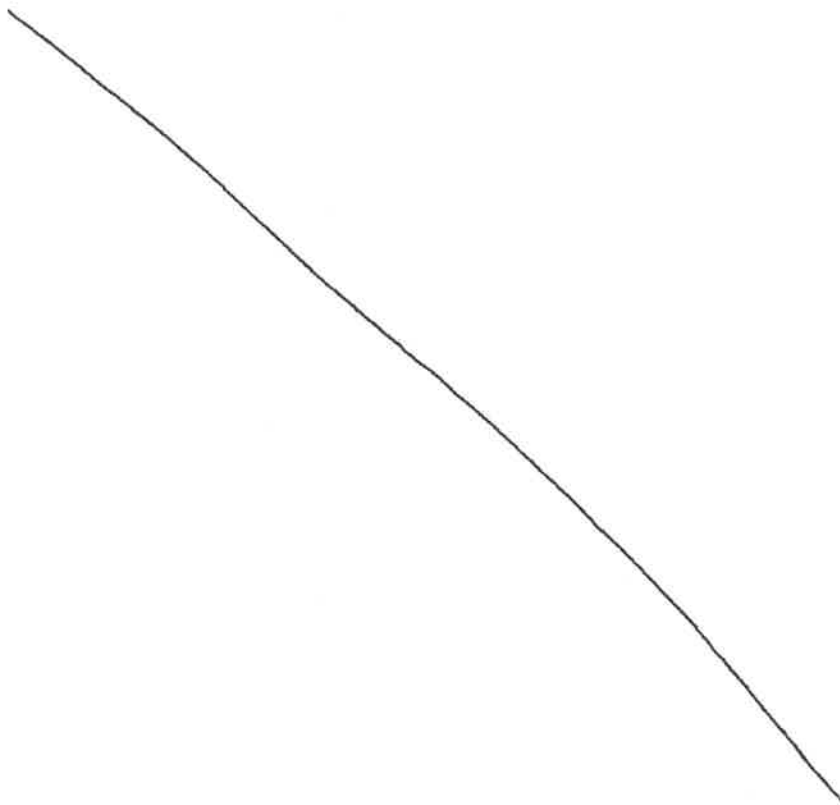
Paul C. Dooly
[Notary's Printed Name]

MY COMMISSION EXPIRES:

May 31, 2023

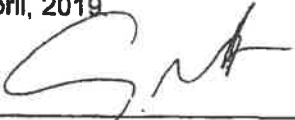


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HOLDER'S ACKNOWLEDGEMENT

The above and foregoing Conservation Easement was authorized to be accepted by **UPSTREAM WATCH** and **UPSTREAM WATCH** does hereby accept the foregoing Conservation Easement, by and through **AMY GRANT**, its President, this 29 day of April, 2019.



AMY GRANT

Amy Grant
[Printed Name of Holder's Authorized Representative]
Title: President of UPSTREAM WATCH

STATE OF MAINE
COUNTY OF WALDO

On this 29 day of April, 2019, personally appeared **AMY GRANT**, President of **UPSTREAM WATCH** and duly authorized representative of the above-named Conservation Easement Holder of **UPSTREAM WATCH**, a Maine Non-profit Corporation, and acknowledged acceptance of the foregoing Conservation Easement instrument to be her free act and deed in her capacity and **UPSTREAM WATCH** President, and the free act and deed of **UPSTREAM WATCH**.

Before me,



Notary Public

Paul C Doady
[Printed Name of Notary]

My commission expires:

May 31, 2023



EXHIBIT A

The shore and flats rights appurtenant to the land described in deed from Heather O. Smith to Jeffrey R. Mabee and Judith B. Grace dated May 15, 1991 as recorded in Book 1221, Page 347 of the Waldo County Registry of Deeds which shore and flats area is bounded and described as follows: Northerly by land formerly of Adonirom Moody, and W. L. West, Easterly by Penobscot Bay, southerly by Little River and northwesterly by land formerly of Fred R. Poor, and westerly by land formerly of John Joseph Grady and Catherine E. Grady and the upland of land of Jeffrey R. Mabee and Judith B. Grace said shore and flats to include that intertidal area extending westerly along Little River to Northport Avenue also known as U.S. Route One.

Reference is made to title and ownership of Harriet L. Hartley by the following deeds:

- 1) Genevieve Hargrave to Arthur & Harriet L. Hartley dated July 27, 1934 as recorded in Book 386, Page 453 of the Waldo County Registry of Deeds;
- 2) Harriet L. Hartley to William P. Butler and Pauline H. Butler dated September 22, 1950 as recorded in Book 474, Page 387.

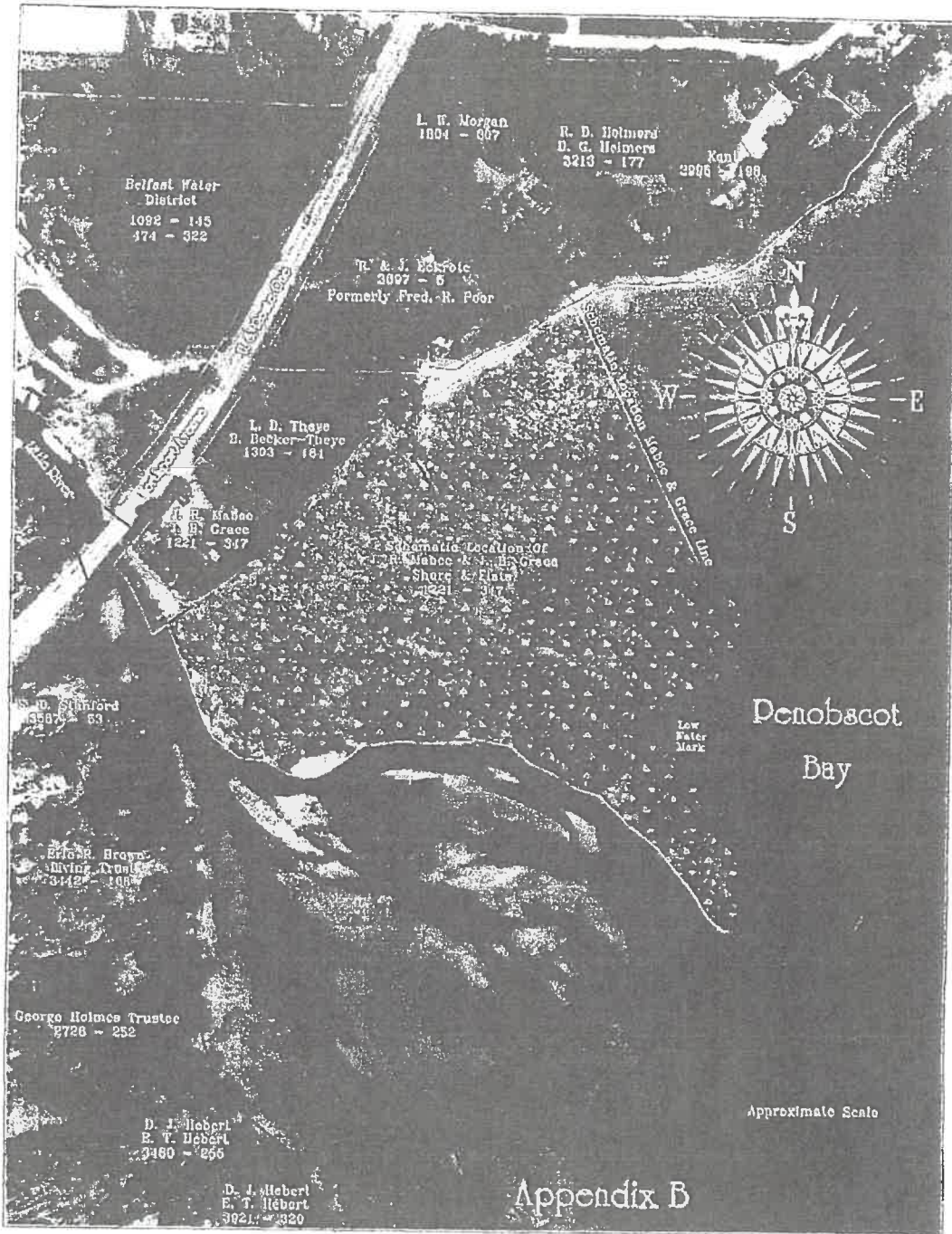
Reference is also made to the deed conveyed out of the land of Hartley:

Harriet L. Hartley to Fred R. Poor dated January 25, 1946 as recorded in Book 452, Page 205 of the Waldo County Registry of deeds.

Reference is also made to the deed of Ernest J. Bell and Marjorie N. Bell to John Joseph Grady and Catherine Grady dated May 18, 1964 as recorded in Book 621, Page 288 of the Waldo County Registry of Deeds.

I HEREBY AFFIRM THAT THIS DOCUMENT IS A TRUE CERTIFIED COPY OF THE DOCUMENT RECORDED IN THE LAND RECORDS OF WALDO COUNTY, MAINE. BOOK 4367 PAGE 273
 DATE: 04/29/2019 NUMBER OF PAGES 12
 ATTEST: *Stacy J. Grant* REGISTER OF DEEDS

EXHIBIT B




POOR ORIGINAL

**ASSIGNMENT OF
CONSERVATION EASEMENT**

UPSTREAM WATCH, a Maine nonprofit corporation with a mailing address of 67 Perkins Road, Belfast, Maine 04915), grants to the **FRIENDS OF THE HARRIET L. HARTLEY CONSERVATION AREA**, a Maine nonprofit corporation with a mailing address of P.O. Box 465, Belfast, Maine 04915, all its rights, title and interest as Holder of a Conservation Easement given to Grantor herein by **JEFFREY R. MABEE and JUDITH B. GRACE**, dated April 29, 2019, and recorded at the Waldo County Registry of Deeds in Book 4367, Page 273.

IN WITNESS WHEREOF, UPSTREAM WATCH has caused these presents to be signed and sealed in their corporate name and behalf by Amy Grant, its President, hereunto duly authorized, this 4 day of November, 2019.

UPSTREAM WATCH


By: AMY GRANT
Its: PRESIDENT

STATE OF MAINE
COUNTY OF WALDO

November 4, 2019.

Then personally appeared the above-named Amy Grant and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity.

Before me,


Notary Public/Attorney at Law



Printed name **Alison M. Applegate**

Notary Public, State of Maine
My Commission Expires June 13, 2020

My commission expires: _____

Receipt # 145033 WALDO SS: RECEIVED



VOL 4435 PG 344

Instr # 2019-10856

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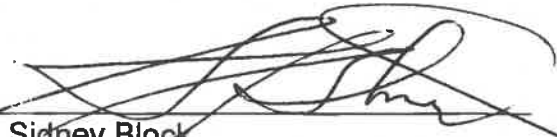
2 Pages

ATTEST Stacy L Grant, Waldo Co Registry of Deeds

HOLDER ACCEPTANCE

The above and foregoing Conservation Easement was authorized to be accepted by **Friends of the Harriet L. Hartley Conservation Area**, as Holder, and the said Holder does hereby accept the foregoing Conservation Easement and related consideration obligations to the Grantors, by and through Sidney Block, its President, hereunto duly authorized, this 5th day of November, 2019.

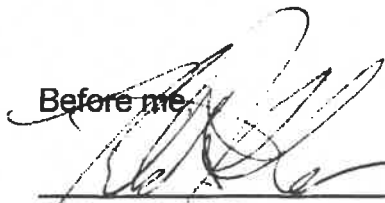
Friends of the Harriet L. Hartley Conservation Area


by: Sidney Block
Its President

STATE OF MAINE
COUNTY OF WALDO

Date: November 5th, 2019

Personally appeared Sidney R. Block, President, and authorized representative of the above-named Holder, **FRIENDS OF THE HARRIET L. HARTLEY CONSERVATION AREA**, and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said corporation.

Before me

~~Notary Public~~ / Attorney at Law #6969 (Maine)
Kimberly J. Ervin Tucker Esq.
Printed name
My commission expires: _____