

Theberge, Therese

From: Kim Ervin Tucker <k.ervintucker@gmail.com>
Sent: Friday, February 7, 2020 2:23 PM
To: Bertocci, Cynthia S; Bensinger, Peggy
Cc: Joanna B. Tourangeau; Burke, Ruth A; Peter Tischbein; Erik Heim; Marianne Naess; Ed Cotter; Jacki Cassida; Elizabeth M. Ransom; Kim Ervin Tucker; Eleanor Daniels; Donna Broderick; Mike Lannan; Northport Village Corporation; Barry A. Costa-Pierce; Charles Tilburg; cbyron@une.edu; Don Perkins; Diane Hunt Braybrook; Lawrence Reichard; Jensen, Laura; Boak, Scott; DEP, Nordic Aqua Farms; Wood, Gregg; Martin, Kevin; Ostrowski, Kevin; Brewer, Angela D; Kristin Racine
Subject: Site Visit
Attachments: NAF Richards' FINAL Lot Devlpmt Sketches - B 7-29-2019.pdf; PRMS Fig. 1-9.pdf

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All:

This communication is to acknowledge that Jeffrey Mabee and Judith Grace consent to the site walk by the new board members and BEP-DEP-AG staff on their intertidal land and request that the new members be properly briefed — with relevant materials — prior to the site visit on the TRI issues in the intertidal area. In addition, as counsel for the Holder of the recorded Conservation Easement on the intertidal land that the new Board members will be touring, *the Friends of the Harriet L. Hartley Conservation Area*, I also extend the Holder's consent at this time for the site visit on this land.

Ms. Bensinger and Bertocci, can you clarify if — prior to that site visit — these new members will be provided the prior-filed objections and responses relating to TRI, so that these new members understand that Intervenors Mabee and Grace have objected to the BEP exercising jurisdiction and proceeding with the permitting process in the absence of NAF having administrative standing to seek permits for this land and the Board lacking jurisdiction to grant any permits to use this land since the applicant lacks a cognizable expectation to use the land in the manner proposed.

Specifically, please advise if the new members have received:

1. The prior objections and response including exhibits;
2. The *Ferris v. Hargrave* judgment;
3. The renewed objection relating to the 12-24-2019 Amendment of the NAF-Eckrote Easement (option);
4. The August 31, 2012 Good Deeds survey showing the waterside boundary ending “along high water”;
5. The April 2, 2018 Good Deeds survey warning NAF that the Eckrotes lacked the ability to grant an easement below their high water mark;
6. The April 29, 2019 Conservation Easement to preserve this intertidal land in its natural condition;
7. The November 5, 2019 Assignment of the Conservation Easement from Upstream Watch to Friends of the Harriet L. Hartley Conservation Area;
8. The November 2019 survey and related report by Donald R. Richards; and

9. The 12-20-2019 and 1-24-2020 Superior Court Orders denying NAF's special motions to dismiss on all grounds except striking the injunctive claim seeking to stop NAF from making false claims of sufficient TRI to permitting agencies.

Since TRI will be an issue these members must decide, even though we have been denied the due process hearing to raise these issues directly with them with appropriate witnesses, we request if they have not received this information that they be provided it to read for themselves prior to the site visit.

If you do not have copies of any of the documents above, please advise me and I will forward them to you.

I am attaching the sketches from Donald Richards for the new members' use so that they can orient themselves to the evolution of the deeds and the nature of these claims. We request that they be provided these sketches prior to the site visit since Intervenor Mabee and Grace, the Lobstering Representatives, and the Holder of the conservation Easement are waiving our right to be present for this site visit and granting permission to tour this property. This opportunity for the new members to see this area in person is important, but will be an opportunity squandered if they do not understand the ownership and jurisdictional issues related to this area while they are there on the ground.

We also ask that they be provided with a copy of the Phase II Mallinckrodt chart showing where the mercury is known to be present and the levels of buried mercury in the sediment found by the Court's experts in this area (attached below). Exiting Board members have seen this chart before and it is imperative that the new members have the same level of information for next week's hearing.

Thank you for your consideration and attention to these requests for clarification of the level of information the new members have received prior to the site visit, and your assistance in disseminating the important information listed above prior to that site visit.

Kim Ervin Tucker (P: 202-841-5439)

Begin forwarded message:

From: Kristin Racine <KRacine@curtisthaxter.com>
Subject: RE: Nordic: Resubmitted Rebuttal Testimony- Merrill
Date: February 7, 2020 at 10:07:31 AM EST
To: "Joanna B. Tourangeau" <JTourangeau@dwmlaw.com>, "Burke, Ruth A" <Ruth.A.Burke@maine.gov>, Peter Tischbein <peter.tischbein@usace.army.mil>, Erik Heim <Erik.heim@nordicaquafarms.com>, Marianne Naess <mn@nordicaquafarms.com>, Ed Cotter <ec@nordicaquafarms.com>, 'Jacki Cassida' <jc@nordicaquafarms.com>, "Elizabeth M. Ransom" <elizabeth.ransom@ransomenv.com>, 'Kim Ervin Tucker' <k.ervintucker@gmail.com>, Eleanor Daniels <ellie@greenstore.com>, Donna Broderick <d_l_broderick@hotmail.com>, 'Mike Lannan' <mlannan@techenv.com>, Northport Village Corporation <nvcmaine@gmail.com>, "Barry A. Costa-Pierce" <bcostapierce@une.edu>, Charles Tilburg <ctilburg@une.edu>, "cbyron@une.edu" <cbyron@une.edu>, 'Don Perkins' <don@gmri.org>, Diane Hunt Braybrook <dbraybrook@yahoo.com>, Lawrence Reichard <lreichard@gmail.com>, "Bertocci, Cynthia S" <Cynthia.S.Bertocci@maine.gov>, "Bensinger, Peggy" <Peggy.Bensinger@maine.gov>, "Jensen, Laura" <Laura.Jensen@maine.gov>, "Boak, Scott" <Scott.Boak@maine.gov>, "DEP, Nordic Aqua Farms" <NordicAquaFarms.DEP@maine.gov>, "Wood, Gregg" <Gregg.Wood@maine.gov>, "Martin, Kevin" <Kevin.Martin@maine.gov>, "Ostrowski, Kevin" <Kevin.Ostrowski@maine.gov>, "Brewer, Angela D" <angela.d.brewer@maine.gov>

Good morning:

As a follow up to yesterday's conference, Upstream/NVC waives its right to attend the potential site walk by new Board Members on Monday, February 10.

Regards,

Kristin

Kristin M. Racine, Esq.
kracine@curtisthaxter.com

CURTIS THAXTER
 ATTORNEYS AT LAW

One Canal Plaza, Suite 1000, Portland, ME 04101
 P.O. Box 7320, Portland, ME 04112-7320
 TEL: 207-774-9000, Ext. 234
 FAX: 207-775-0612
www.curtisthaxter.com

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Any statements in this communication regarding tax matters are not intended to be used, and may not be used, by any recipient for the purpose of avoiding Internal Revenue Service (IRS) penalties.

From: Joanna B. Tourangeau <JTourangeau@dwmlaw.com>

Sent: Friday, February 7, 2020 9:48 AM

To: 'Burke, Ruth A' <Ruth.A.Burke@maine.gov>; Peter Tischbein <peter.tischbein@usace.army.mil>; Erik Heim <Erik.heim@nordicaquafarms.com>; Marianne Naess <mn@nordicaquafarms.com>; Ed Cotter <ec@nordicaquafarms.com>; 'Jacki Cassida' <jc@nordicaquafarms.com>; Elizabeth M. Ransom <elizabeth.ransom@ransomenv.com>; 'Kim Ervin Tucker' <k.ervintucker@gmail.com>; Kristin Racine <KRacine@curtisthaxter.com>; Eleanor Daniels <ellie@greenstore.com>; Donna Broderick <dl_broderick@hotmail.com>; 'Mike Lannan' <mlannan@techenvironment.com>; Northport Village Corporation <nvcmaine@gmail.com>; Barry A. Costa-Pierce <bcostapierce@une.edu>; Charles Tilburg <ctilburg@une.edu>; 'cbyron@une.edu' <cbyron@une.edu>; 'Don Perkins' <don@gmri.org>; Diane Hunt Braybrook <dbraybrook@yahoo.com>; Lawrence Reichard <lreichard@gmail.com>; Bertocci, Cynthia S <Cynthia.S.Bertocci@maine.gov>; Bensinger, Peggy <Peggy.Bensinger@maine.gov>; Jensen, Laura <Laura.Jensen@maine.gov>; Boak, Scott <Scott.Boak@maine.gov>; DEP, Nordic Aqua Farms <NordicAquaFarms.DEP@maine.gov>; Wood, Gregg <Gregg.Wood@maine.gov>; Martin, Kevin <Kevin.Martin@maine.gov>; Ostrowski, Kevin <Kevin.Ostrowski@maine.gov>; Brewer, Angela D <angela.d.brewer@maine.gov>

Subject: Nordic: Resubmitted Rebuttal Testimony- Merrill

Good morning:

Attached please find resubmitted testimony of Dr. Merrill. This resubmission contains no changes other than removal of Dr. Keleher from the signature page. Dr. Keleher is not available to testify at the hearing. I am not yet in possession of the original signature page but plan to bring it, and 15 copies, to the hearings.

Nordic notified project property owners with whom Nordic executed land contracts containing notice provisions, of the potential site walk by new Board Members on Monday, February 10.

Please do not hesitate to let me know if there are any questions.

Best,
Joanna

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Chronology of Lot Development
At
Little River, Belfast, Maine
1934 - 1991

This set of sketches depicts the development of certain lots at the Little River area of Belfast. The purpose is to show how the lots were created and what was included in the lots with explanatory notes.

Sketch One shows the current Belfast tax map configuration with lots annotated to show the names of current owners.

Sketch Two shows the extent of the Harriet Hartley property situated easterly of Northport Avenue (U. S. Route 1) in 1946 and the first parcel she created in 1946 and sold off to Fred R. Poor.

Sketch Three shows the second parcel Harriet Hartley created in 1946 and sold to Sam M. Cassida

Sketch Four shows the remaining land of Harriet Hartley which she sold to William P. & Pauline H. Butler in 1950.

Sketch Five shows the location of the last lot created by then owner Ernest J. and Marjorie N. Bell which was conveyed to John Joseph & Catherine Grady. That lot was later conveyed to Larry D. Theye and Betty Becker Theye in 1992.

Sketch six shows the location of the Winston C. Ferris parcel which was subsequently conveyed to Jeffrey R. Mabee and Judith B. Grace. The subsequent development of the Ekrote, Morgan and Helmers lots and other lots to the north were created over a series of conveyances from Fred R. Poor and successors in interest to Sam M. Cassida. The development and reconfiguration of those parcels did not affect the ownership, boundaries, title or rights of the Mabee - Grace property.

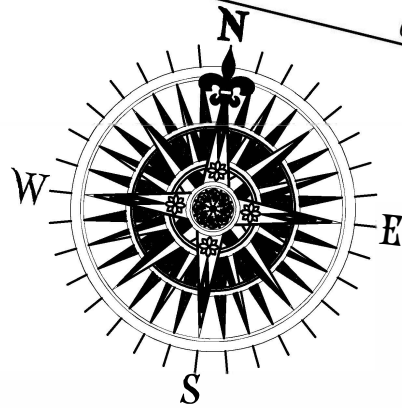
Additional notes and annotations are provided on the various pages.

Any land owned by Harriet L. Hartley west of Northport Avenue or U. S. Route 1 was not considered for this study.

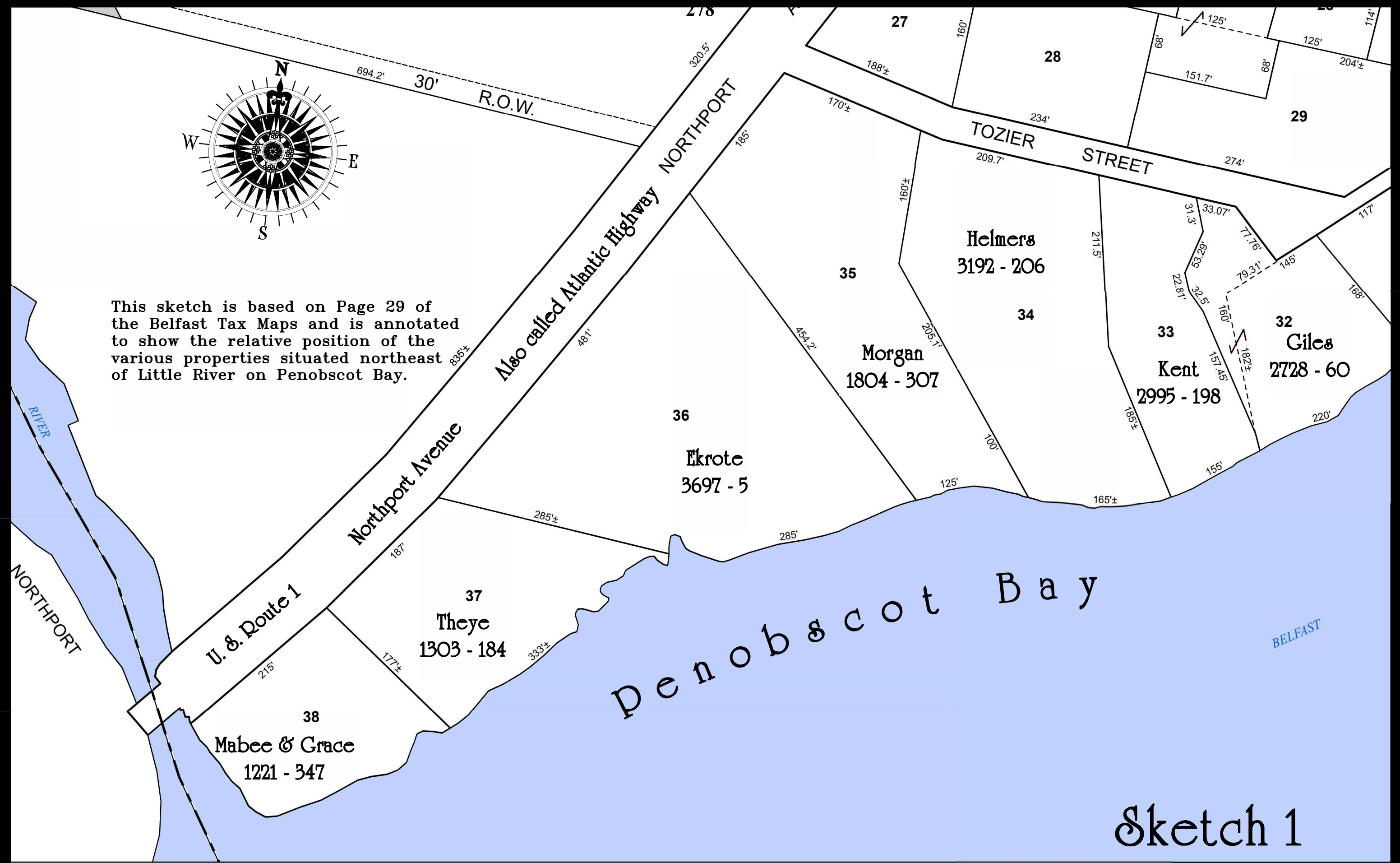
This illustrated compilation of sketches is based in part on government documents including tax maps, Maine GIS photos, contours and parcel configurations and deeds and plans of record but does not constitute a boundary survey. The North Arrow shown on the sketches as taken from the tax map is True North.

This Document of Annotated Sketches Was Prepared For
Upstream Watch
And
Jeffrey R. Mabee and Judith B. Grace
By
Richards, Cranston & Chapman, LLC
Rockport, Maine

July 29, 2019

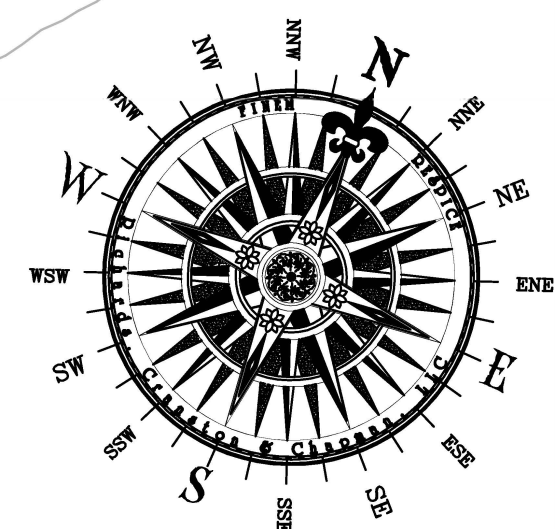
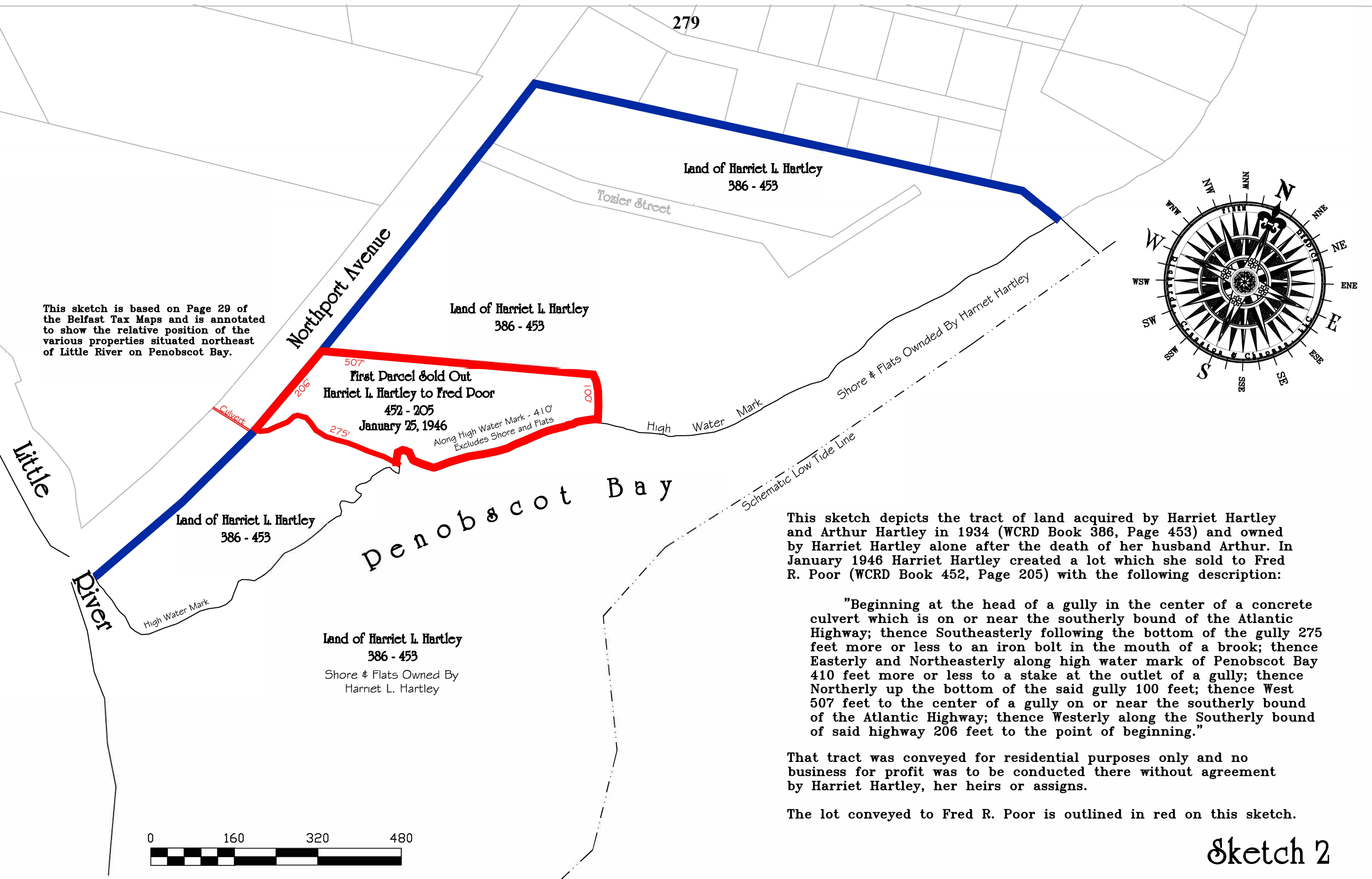


This sketch is based on Page 29 of the Belfast Tax Maps and is annotated to show the relative position of the various properties situated northeast of Little River on Penobscot Bay.



Sketch 1

This sketch is based on Page 29 of the Belfast Tax Maps and is annotated to show the relative position of the various properties situated northeast of Little River on Penobscot Bay.



This sketch depicts the tract of land acquired by Harriet Hartley and Arthur Hartley in 1934 (WCRD Book 386, Page 453) and owned by Harriet Hartley alone after the death of her husband Arthur. In January 1946 Harriet Hartley created a lot which she sold to Fred R. Poor (WCRD Book 452, Page 205) with the following description:

"Beginning at the head of a gully in the center of a concrete culvert which is on or near the southerly bound of the Atlantic Highway; thence Southeasterly following the bottom of the gully 275 feet more or less to an iron bolt in the mouth of a brook; thence Easterly and Northeasterly along high water mark of Penobscot Bay 410 feet more or less to a stake at the outlet of a gully; thence Northerly up the bottom of the said gully 100 feet; thence West 507 feet to the center of a gully on or near the southerly bound of the Atlantic Highway; thence Westerly along the Southerly bound of said highway 206 feet to the point of beginning."

That tract was conveyed for residential purposes only and no business for profit was to be conducted there without agreement by Harriet Hartley, her heirs or assigns.

The lot conveyed to Fred R. Poor is outlined in red on this sketch.



Sketch 2

This sketch is based on Page 29 of the Belfast Tax Maps and is annotated to show the relative position of the various properties situated northeast of Little River on Penobscot Bay.

Little River

281

Harriet Hartley to Sam M. Cassida
438 - 497
October 25, 1946

Tozier Street

Northport Avenue

Second Parcel Sold Out
Harriet Hartley to Sam M. Cassida
438 - 497
October 25, 1946

First Parcel Sold Out
Harriet L. Hartley to Fred Poor
452 - 205
January 25, 1946

Culvert

Westerly by the Atlantic Highway

Harriet L. Hartley
To
Wm. & Pauline Butler
474 - 387

Northerly by land of Fred R. Poor

penobscot Bay

High Water Mark

"Also conveying whatever right title or interest I may have in and to the land between high and low water mark of Penobscot Bay in front of the above described lot"

Schematic Low Tide Line

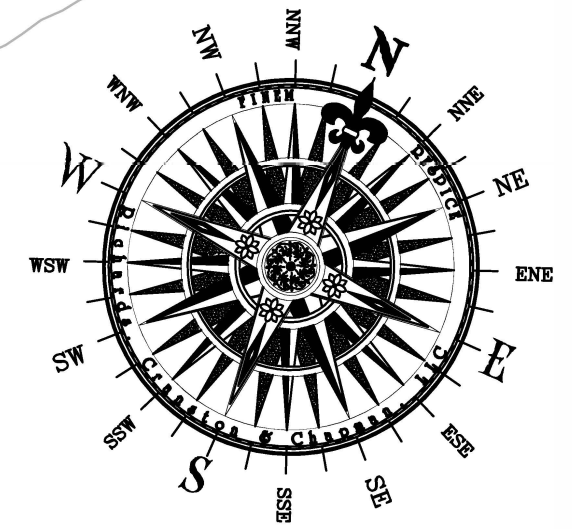
Easterly by Penobscot Bay

Harriet L. Hartley
To
Wm. & Pauline Butler
474 - 387

Shore & Flats Conveyed to
Wm. & Pauline Butler

Southerly by
Little River

High Water Mark



In September of 1950 Harriet L. Hartley sold the remainder of her land to William P. & Pauline H. Butler (WCRD Book 474, Page 387).

That tract was bounded and described as follows:

"Northerly by land of Fred R. Poor; easterly by Penobscot Bay; southerly by Little River and westerly by the Atlantic Highway, so-called."

The lot conveyed to William P. & Pauline H. Butler is outlined in Green on this sketch.



Sketch 4

Second Parcel Sold Out
Harriet Hartley to Sam M. Cassida
438 - 497
October 25, 1946

This sketch is based on Page 29 of the Belfast Tax Maps and is annotated to show the relative position of the various properties situated northeast of Little River on Penobscot Bay.

Northport Avenue

507'
206'
100'
First Parcel Sold Out
Harriet L. Hartley to Fred Door
452 - 205
January 25, 1946
Along High Water Mark - 410'
Excludes Shore and Flats

E. J. & M. N. Bell
To
Jn. Jos. & C. Grady
621 - 288
May 18, 1964
Later Land of Theye

Wm. & Pauline Butler
To
E. J. & M. N. Bell
587 - 100
May 13, 1961

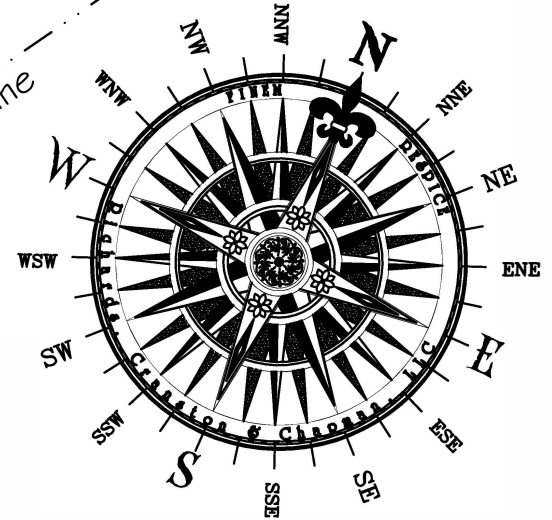
Wm. & Pauline Butler
To
E. J. & M. N. Bell
587 - 100
May 13, 1961

Shore & Flats Conveyed to
E. J. & M. N. Bell

High Water Mark

"Also conveying whatever right title or interest I may have in and to the land between high and low water mark of Penobscot Bay in front of the above described lot"

Schematic Low Tide Line



In May of 1961 William P. & Pauline H. Butler sold their property to Ernest J. and Marjorie N. Bell (WCRD Book 587, Page 100). In May of 1964 Ernest J. and Marjorie N. Bell created a lot which they sold to John Joseph and Catherine Grady (WCRD Book 621, Page 288). That lot extended to the high water mark but did not include the shore and the flats in front of the lot which was retained by the Bells. The outline of the Grady lot is depicted in blue on this sketch. The Grady lot was transferred by various conveyances to Larry D. Theye and Betty Becker-Theye who own it today.

The outline of the remaining land of Ernest J. and Marjorie N. Bell is depicted in green on this sketch.

That remaining land of Bell was transferred by various conveyances to Winston C. Ferris. The description in the intervening conveyances and to Winston C. Ferris are as follows:

"Northerly by land of Fred R. Poor; easterly by Penobscot Bay; southerly by Little River and westerly by the Atlantic Highway, so-called."

The descriptions excepted the land conveyed to John Joseph Grady and Catherine Grady by Ernest J. and Marjorie N. Bell by deed dated May 18, 1964 and recorded in the Waldo County Registry of Deeds in Book 621, Page 288.



Little River

Westerly by the Atlantic Highway

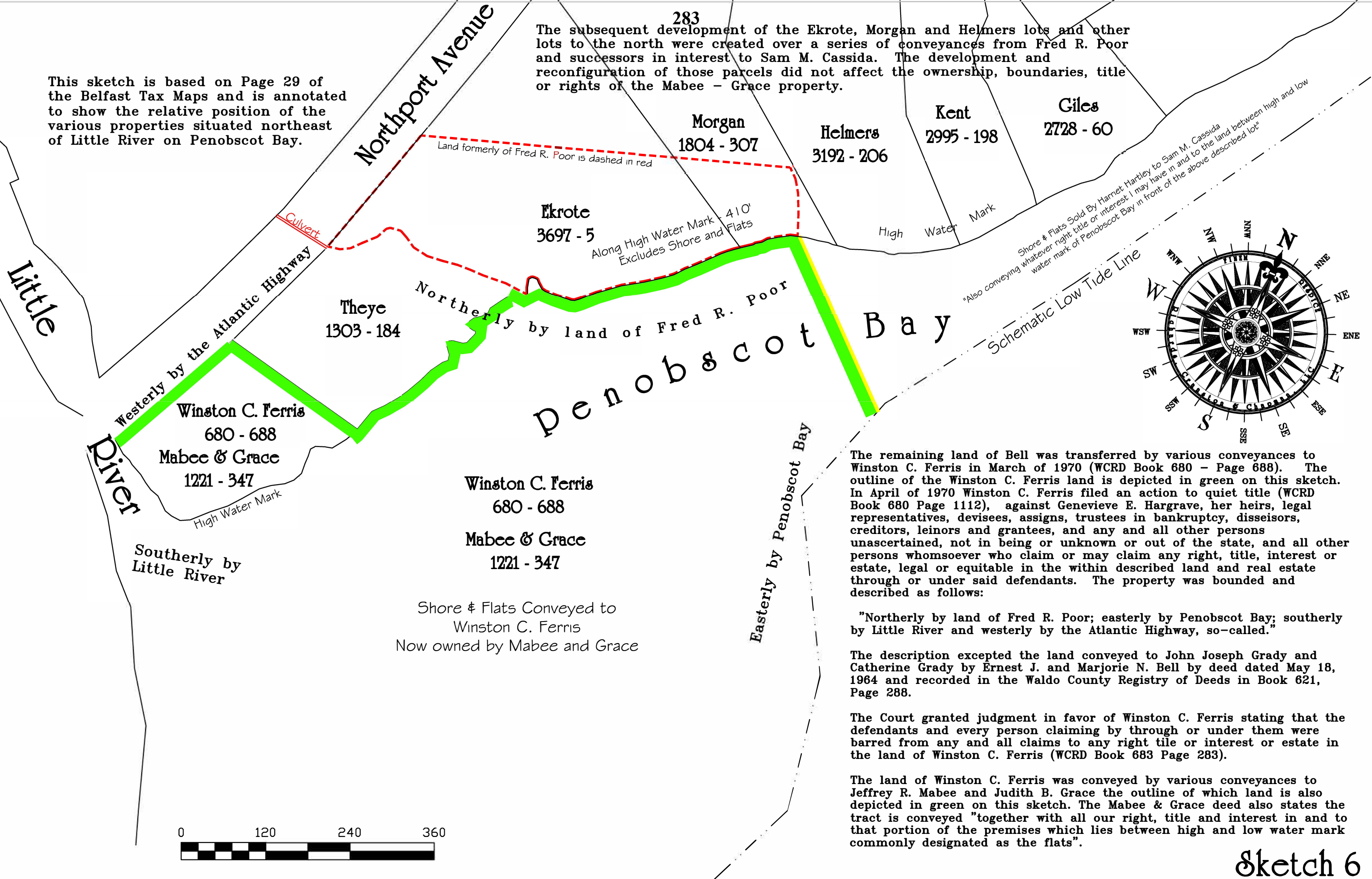
Southerly by Little River

Penobscot Bay

Easterly by Penobscot Bay

This sketch is based on Page 29 of the Belfast Tax Maps and is annotated to show the relative position of the various properties situated northeast of Little River on Penobscot Bay.

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The subsequent development of the Ekrote, Morgan and Helmers lots and other lots to the north were created over a series of conveyances from Fred R. Poor and successors in interest to Sam M. Cassida. The development and reconfiguration of those parcels did not affect the ownership, boundaries, title or rights of the Mabee - Grace property.



Theye
1303 - 184

Winston C. Ferris
680 - 688
Mabee & Grace
1221 - 347

Winston C. Ferris
680 - 688
Mabee & Grace
1221 - 347

Morgan
1804 - 307

Helmers
3192 - 206

Kent
2995 - 198

Giles
2728 - 60

Ekrote
3697 - 5

Northerly by land of Fred R. Poor

Shore & Flats Conveyed to
Winston C. Ferris
Now owned by Mabee and Grace

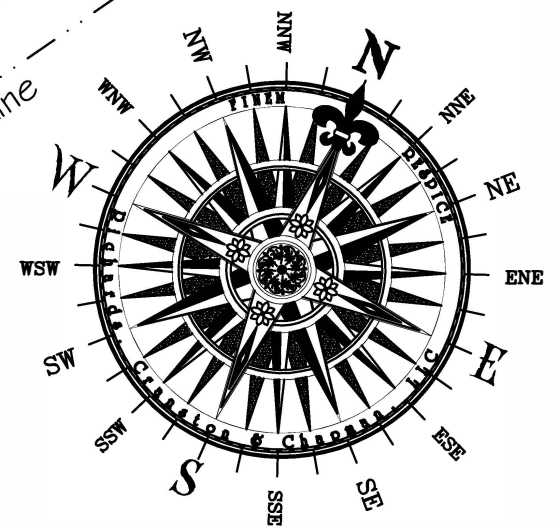
The remaining land of Bell was transferred by various conveyances to Winston C. Ferris in March of 1970 (WCRD Book 680 - Page 688). The outline of the Winston C. Ferris land is depicted in green on this sketch. In April of 1970 Winston C. Ferris filed an action to quiet title (WCRD Book 680 Page 1112), against Genevieve E. Hargrave, her heirs, legal representatives, devisees, assigns, trustees in bankruptcy, disseisors, creditors, leinors and grantees, and any and all other persons unascertained, not in being or unknown or out of the state, and all other persons whomsoever who claim or may claim any right, title, interest or estate, legal or equitable in the within described land and real estate through or under said defendants. The property was bounded and described as follows:

"Northerly by land of Fred R. Poor; easterly by Penobscot Bay; southerly by Little River and westerly by the Atlantic Highway, so-called."

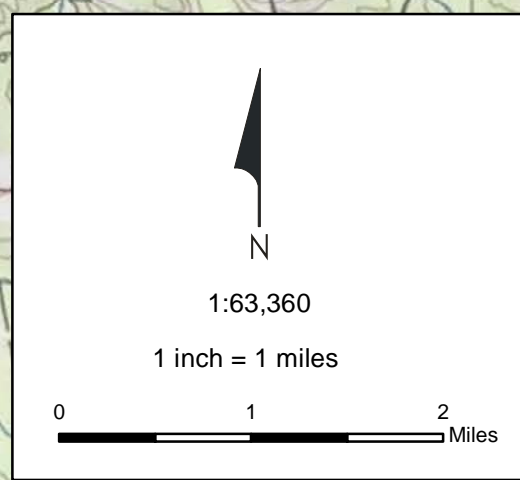
The description excepted the land conveyed to John Joseph Grady and Catherine Grady by Ernest J. and Marjorie N. Bell by deed dated May 18, 1964 and recorded in the Waldo County Registry of Deeds in Book 621, Page 288.

The Court granted judgment in favor of Winston C. Ferris stating that the defendants and every person claiming by through or under them were barred from any and all claims to any right tile or interest or estate in the land of Winston C. Ferris (WCRD Book 683 Page 283).

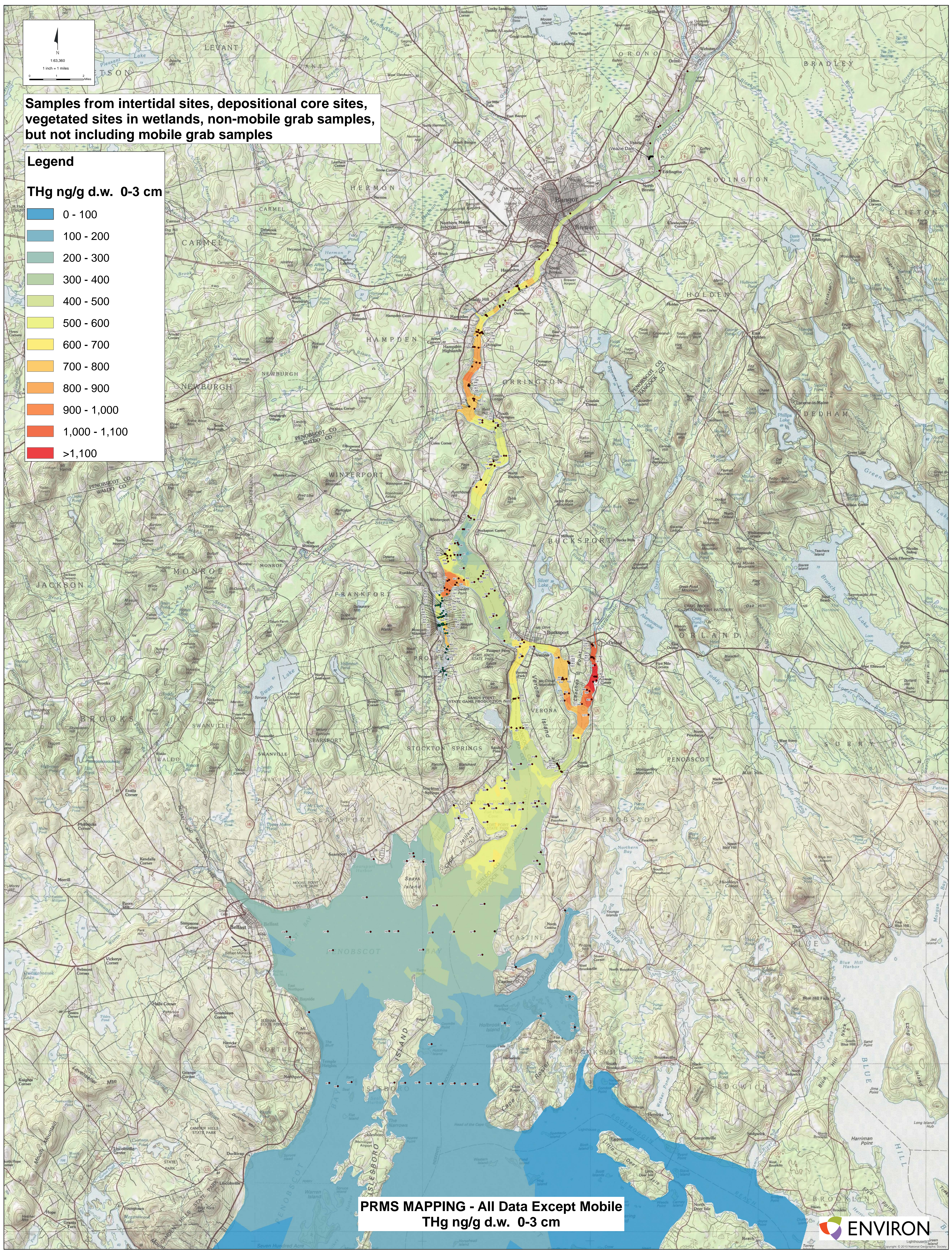
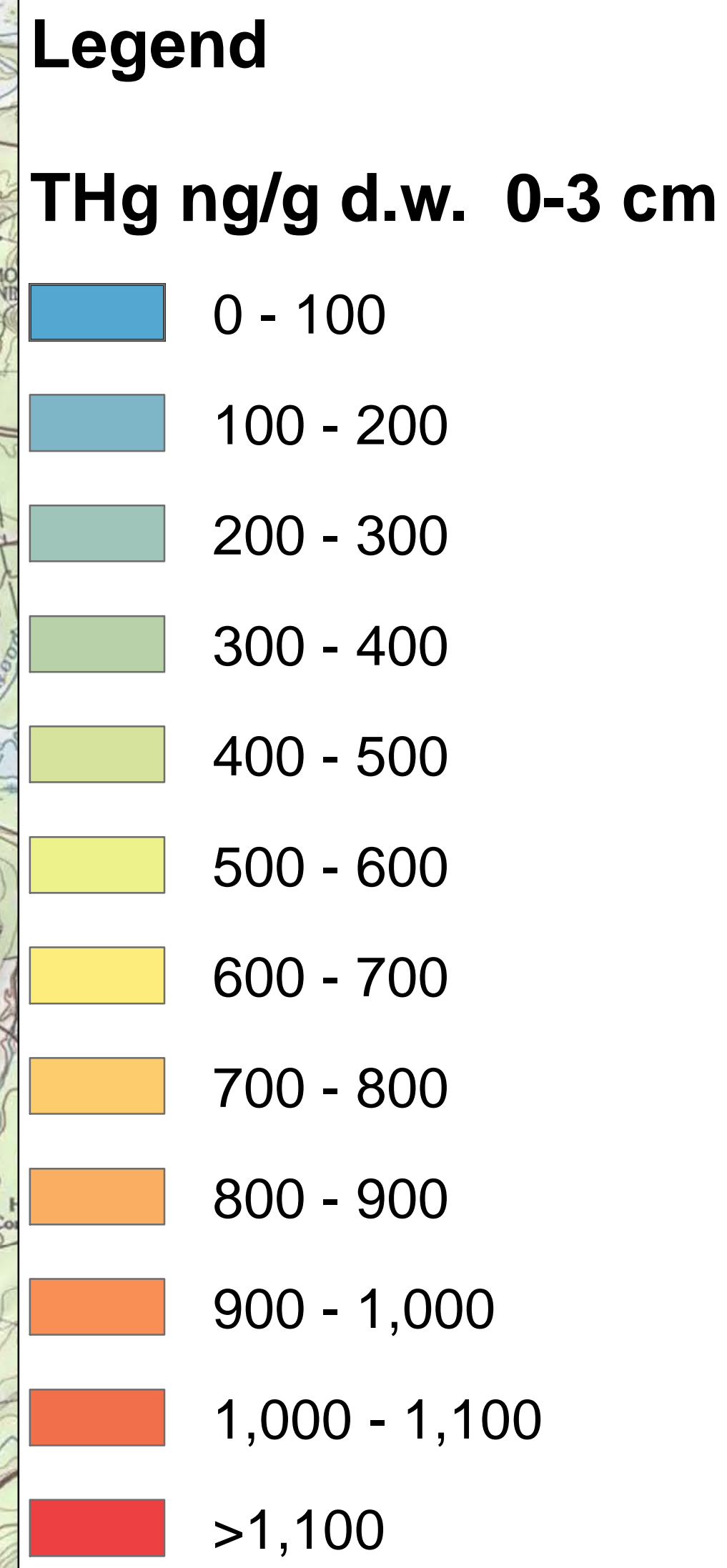
The land of Winston C. Ferris was conveyed by various conveyances to Jeffrey R. Mabee and Judith B. Grace the outline of which land is also depicted in green on this sketch. The Mabee & Grace deed also states the tract is conveyed "together with all our right, title and interest in and to that portion of the premises which lies between high and low water mark commonly designated as the flats".



Sketch 6



Samples from intertidal sites, depositional core sites, vegetated sites in wetlands, non-mobile grab samples, but not including mobile grab samples



PRMS MAPPING - All Data Except Mobile
THg ng/g d.w. 0-3 cm

