

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NORDIC AQUAFARMS INC.	)	
Belfast	)	
Waldo County, Maine	)	
	)	NORDIC AQUAFARMS INC.
A-1146-71-A-N	)	RESPONSE TO UPSTREAM
L-28319-26-A-N	)	WATCH PETITION TO REVOKE
L-23819-TG-B-N	)	OR SUSPEND AND
L-28319-4 E-C-N	)	SUSPENSION REQUEST
L-28319-L6-D-N	)	
L-28319-TW-E-N	)	
W-009200-6F-A-N	)	

NORDIC AQUAFARMS INC. (“Nordic”), licensee in the above captioned matter, supports suspension of the above captioned permits (“Permits”) pursuant to 38 M.R.S. § 342 (11-B)(E) and Chapter 2 of the Department of Environmental Protection’s (“Department”) Rules Section 25 because of a change in circumstances. Consistent with these changed circumstances, Nordic respectfully requests that the Commissioner’s suspension of the Permits specify that all deadlines, terms and conditions are tolled pursuant to 38 M.R.S. § 342 (11-B)(F) and 06-096 C.M.R. ch. 2 §27(F) as discussed further herein. Nordic opposes any revocation of the Permits as requested in the Upstream Watch Petition to Revoke or Suspend (“Upstream Petition”). Nordic does not request a hearing and looks forward to a prompt Commissioner decision.<sup>1</sup>

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<sup>1</sup> Nordic notes that on March 22, 2023, Attorney Tucker filed numerous emails purporting to join and supplement the Upstream Petition. Department Rules do not allow such filings. 06-096 C.M.R. ch. 2 § 25(B). Should the Department review the substance of Attorney Tucker’s argument- that the Permits must be revoked because certain deed restrictions once held by the Maine Department of Transportation (MDOT) remain in effect- those arguments are without merit. MDOT makes no such claim here (or anywhere); Attorney Tucker does not represent and cannot speak for MDOT; and none of her clients claim (or could claim) to be successors-in-interest to MDOT’s former restrictions. Furthermore, the deed of vacation from MDOT removing those prior restrictions is part of the administrative record in her clients’ pending administrative appeals of the Permits and any arguments about those record materials cannot be raised for the first time here.

**I. Changed Circumstances Warrant Suspension of the Permits and Tolling of All Deadlines, Terms and Conditions Thereof.**

The Department properly found that Nordic established administrative standing to apply for and receive the Permits issued by the Board of Environmental Protection in November of 2020. The Department further found that Nordic's project, as approved, would comply with all applicable environmental statutes and regulations administered by the Department. No changed circumstance undoes any of these determinations. However, since then, judicial determinations and municipal eminent domain proceedings declared and clarified certain property rights in intertidal land and other lands on or affecting the Nordic project. Because the Law Court's recent decision resulted in the resuscitation of a judicial challenge to the municipal eminent domain proceeding now pending in Superior Court, and because the Law Court hasn't yet finally declared those property rights, and because project opponents continue to file new lawsuits alleging property use issues, changed circumstances warrant the suspension of permits and tolling of all the deadlines, terms and conditions contained therein, until those judicial proceedings come to an end.

With regard to the property rights recently declared by the Law Court, the Superior Court initially held that Upstream Watch, Mabee/Grace and their accompanying project opponents (together herein "Upstream") did not possess any interest in intertidal land or other lands on or affecting the Nordic project. Subsequently, Maine's highest court reversed that decision and found that Mabee/Grace owned the intertidal land and held a residential use restriction on certain upland under which Nordic's intake and outfall piping was proposed to be installed and which

installation the Department reviewed for compliance with relevant environmental laws in issuing the Permits.<sup>2</sup>

Prior to either of these judicial determinations of property rights, the City of Belfast (“City”) acquired the oceanfront upland across the street from the Nordic project and other public lands around the upper and lower reservoirs that the City obtained for a public park-which upland was formerly referred to as the Eckrote parcel. (Exhibit A) The City, in order to obtain the public benefits associated with an interconnected trail system and acres of land from the upper reservoir to the ocean as well as the benefits to the Belfast Water District and the City from the economic development and other benefits associated with the Nordic project, exercised its municipal eminent domain authority by taking the Mabee/Grace intertidal, the conservation easement associated with the portion of the Mabee/Grace intertidal adjacent to City owned land, and any use restriction impacting these lands.<sup>3</sup> (Exhibit B) The City granted Nordic (and recorded) a permanent easement and a construction easement for the project. (Exhibit C) Mabee/Grace appealed the City’s exercise of eminent domain to Superior Court, which dismissed the majority of claims and stayed certain other claims pending Law Court review of its

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<sup>2</sup> When the Department evaluates project compliance with environmental law and issued Permits specifying the environmental controls necessary for construction and operation to comply with those laws, it did not adjudicate or declare private property rights. The Department neither takes rights from Mabee/Grace, nor grants Nordic any property right to use lands owned by Mabee/Grace. To the contrary, the Department reviews the proposed project’s compliance with environmental laws, which is independent of, and not undone by, judicial determinations of private property rights.

<sup>3</sup> Importantly, title to property taken through eminent domain passes to the municipality immediately upon service of the order of condemnation and check or upon recordation of appropriate documents, whichever comes first. *Luce v. City of Portland*, 556 A.2d 656, 657–58 (Me. 1989). In circumstances where a conservation easement cannot be amended or terminated without a court order, *see* 33 M.R.S. § 477-A(2)(B), the property interest of the holder still transfers by eminent domain to the municipality, *see* 33 M.R.S. § 476(2)(A) (a municipality is a qualified “Holder” of a conservation easement), even where the fee ownership also transfers to the municipality by eminent domain, *see* 33 M.R.S. § 479(10) (allowing the holder of a conservation easement to also be the owner of the fee, without merger of the easement and the fee). In the pending eminent domain proceeding, there was no stay or preliminary injunction of the title transfer to the City—which transfer occurred as a matter of law. Accordingly, title lies with the City (just as the City is the holder of the conservation easement burdening the relevant intertidal zone) unless or until their eminent domain action is overturned.

prior title decision in Nordic's favor. (Exhibit D) Following the Law Court's recent declaration of the Mabee/Grace property rights, the Superior Court restarted action on the Mabee/Grace challenge to the City's exercise of eminent domain. (*Id.*) In other words, while the Permits fully evaluate and assure compliance with environmental law (subject, of course, to the still-pending appeals), final judicial resolution of the relevant property rights remains ongoing.

Although the Department cannot adjudicate private ownership rights, the extended passage of time impacts the Permits and the construction of the project. The extraordinarily extended time necessary to settle the relevant property ownership rights, weighs in favor of suspension of the Permits. The Law Court decision in the quiet title case came nearly four years after Mabee/Grace filed the initial complaint. A final decision by Maine's highest court on the City's eminent domain action as to the intertidal, use restrictions, and conservation easement, as well as on a new declaratory judgment action by Mabee/Grace (Exhibit E) ("Final Ownership Decision Date") is likely at least two years away.

During this interim period, it makes little sense to require Nordic to begin construction, which construction could be impacted by the outcome of certain still-pending judicial challenges. And yet, the Permits require construction within various deadlines, and compliance with various terms and conditions if the Commissioner does not act to suspend them, and toll the deadlines, terms and conditions contained therein, to address the current changed circumstances.

Specifically, the above captioned permits will expire unless Nordic begins construction. In order to begin construction, Nordic must comply with numerous submission and condition compliance requirements which the Department must review and process. Moreover, as the plethora of appeals to-date establishes (including an appeal of compliance with a standard air license condition allowing for extension), construction prior to the Final Ownership Decision Date

would doubtless result in numerous additional challenges both at the Department level and in court. None of that is in the interest of the parties, or of administrative or judicial economy.

This change in circumstances as to the status of judicially determined property rights and public eminent domain proceedings is precisely the sort of change in circumstances meriting suspension of the Permits and the timelines established there. Accordingly, although Nordic opposes revocation of the Permits, Nordic agrees that suspension of all the above captioned Permits is appropriate such that all deadlines, terms and conditions therein are tolled pursuant to 38 M.R.S. § 342 (11-B)(F) and 06-096 CMR ch. 2 §27(F).

## **II. Permits Revocation is Improper.**

The Law Court decided, in February of 2023, that the Eckrotes did not own the intertidal land that was the subject of Nordic's documentation of right, title and interest in the above captioned permitting proceedings. *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, \_\_\_ A.3d \_\_\_. Before that, the Superior Court found the opposite. None of these decisions undo the Department's finding that Nordic demonstrated administrative standing throughout the Department's processing of Nordic's applications for the Permits. In any event, both of these court decisions happened after issuance of the Permits.

### **A. Nordic made no misrepresentation to the Department and the Department was fully aware of and engaged with all Mabee/Grace claims regarding Nordic's lack of right, title and interest throughout the pendency of its proceedings on the Permits.**

Nordic made no misrepresentation to the Department regarding its administrative standing. Upstream concedes that the Department was well aware of all of the competing claims and arguments regarding Nordic's right, title and interest to obtain the Permits. Indeed, Paragraphs 11-16 and nearly a third of Upstream's "Petition to Revoke or Suspend Permits Issued to Nordic Aquafarms, Inc, on or about November 19, 2020" ("Upstream Petition") recite

the extensive Department review, prior to issuance of the Permits, of the facts Upstream now (again) claims warrant permit revocation. *See also* Upstream Petition Exhibits I, K, L, M, N, O & P. The simple fact remains- actual adjudication of property rights, title and interests (as continues to occur in these judicial actions), is not the same as the Department's evaluation of sufficient right, title and interest to establish administrative standing. Indeed, the Board has explained those very principles in its filings with the Law Court in the pending appeals of the underlying Permits, and the Department can not depart from those principles here.

Put simply, Chapter 2 Section 11 of the Department's Rules specifies what submissions are required to establish sufficient right, title and interest to support a completeness determination on an application- i.e. administrative standing. Administrative standing must be maintained throughout the Department's application processing period. 06-096 C.M.R. ch. 2 §11(D); *see also Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983)(administrative standing "is intended to prevent an applicant from wasting an administrative agency's time by applying for a permit that he would have no legally protected right to use."). "This period ends when the permit is issued." March 7, 2023 Letter from AAG Bensinger to the Law Court in Upstream's Appeal of the Permits at 1. The Department does not—and cannot—make a determination of actual property rights. A court decision, like that of the Law Court declaration regarding property rights, does not necessitate revocation of the Permits. "Occasionally a licensee may lose title to its property after obtaining a permit, perhaps through foreclosure or litigation, which may result in a project not being constructed. But that does not invalidate the permit." *Id.* at 1-2. If Nordic does not have actual property rights sufficient to construct its project, than it cannot do so even though the Permits document the

Department's determination of how that project can be implemented compliant with environmental law.

Upstream presents no change of circumstances warranting Commissioner revocation of the Permits. The Law Court declaration of property rights does not mean that Nordic misrepresented<sup>4</sup> right, title and interest to the Department and there is no flaw in the Permits or other changed circumstances that would merit revocation.<sup>5</sup> Instead, as discussed above, the appropriate Department action is suspension of the Permits while the judicial proceedings on the property interests remain pending and tolling of all associated deadlines, terms and conditions.

**B. The Law Court declaration of property rights does not impact Nordic's Easement from the City.**

As discussed above, the Law Court declared ownership of certain property rights contrary to Nordic. However, subsequent to initiation of that quiet title action, the City exercised eminent domain authority over that same property and granted Nordic an easement. (Exhibit C) That eminent domain action has not been set aside, and remains valid unless or until it is set aside by a Court. Nordic's easement from the City allows construction of the project reviewed and authorized by the Permits. Consequently, even if Nordic were required to maintain administrative standing during this post-Permit period, which it is not, then Nordic's easement from the City would meet the requirements of the Department's Rules in Chapter 2, Section 11(D)(2). Thus, there is no basis for revocation of the Permits.

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<sup>4</sup> Upstream's claims that Nordic made misrepresentations to the Department warranting revocation of the Permits borders on itself being a misrepresentation. The view (if accepted) would mean that up through the Superior Court's determinations, Upstream made misrepresentations to the Department. Judicial determinations that go one way (and then the other) do not retroactively create misrepresentations.

<sup>5</sup> The Department's administrative record on the Permits contains the documents Upstream claims Nordic wrongfully withheld.


However, as also discussed above, Nordic agrees that the Law Court's recent declaration of property rights, which restarted the pendency of proceedings challenging the City's exercise of eminent domain, constitute a change in circumstances warranting suspension of the Permits and tolling of all deadlines, terms and conditions of those Permits.

### CONCLUSION

Nordic supports suspension of the above captioned Permits and tolling of all associated deadlines, terms and conditions of those Permits. Furthermore, because dissolution of any suspension order on the Final Ownership Date may create confusion regarding the time remaining for compliance with Permit conditions, Nordic asks that the suspension order specify that if the City receives favorable decisions on the Final Ownership Decision Date, that all deadlines, terms and conditions in the Permits be calculated as if the Permits issued as of the Final Ownership Decision Date. Nordic also respectfully requests that the suspension order specify, for the sake of clarity, that the Permits remain transferrable during the suspension period and that the Commissioner may consider whether future circumstances warrant dissolution of the suspension order prior to the Final Ownership Decision Date. Nordic waives its right to a hearing on any such suspension of the Permits.

Dated: April 7, 2023

Respectfully submitted,



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Joanna B. Tourangeau  
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Portland, ME 04101  
(207) 772-1941  
[jtourangeau@dwmlaw.com](mailto:jtourangeau@dwmlaw.com)  
*Attorney for Nordic Aquafarms Inc.*



# **EXHIBIT A**

Receipt # 158294 WALDO SS: RECEIVED  
**VOL 4679 PG 157**  
 ERECORDED 07/16/2021 01:43:23 PM  
 3 Pages  
 Instr # 2021-7486  
 ATTEST: Stacy L Grant, Waldo Co Registry of Deeds

DLN# 1002140153457

QUITCLAIM DEED WITH COVENANT

**RICHARD ECKROTE** and **JANET ECKROTE**, individuals having a mailing address of 42 Grandview Avenue, Lincoln Park, New Jersey, 07035, (together, "Grantors"), for consideration paid, grant the **CITY OF BELFAST**, a municipal corporation having a mailing address of 131 Church Street, Belfast, Maine 04915, WITH QUITCLAIM COVENANT, a certain lot or parcel of land, together with the buildings and improvements thereon located on the easterly side of U.S. Route One in the City of Belfast, County of Waldo, and State of Maine, more particularly described as follows:

Real Estate Transfer Tax Paid

A certain lot or parcel of land, together with buildings thereon, situated in the City of Belfast, County of Waldo, State of Maine, more particularly bounded and described as follows:

Beginning at a 5/8" capped rebar set on the southeasterly line of Northport Ave. (U.S. Route One), in the center of a concrete culvert crossing said Northport Avenue, said rod marking the northwesterly corner of land formerly of Larry Theye and Betty Becker-Theye (reference Waldo County Registry of Deeds Book 1303, Page 184);

Thence N 31° 10' 24" E along said Northport Avenue a distance of four hundred eighty-one and three hundredths (481.03) feet to a 5/8" capped rebar set in the southwesterly corner of land now or formerly of Lyndon Morgan (for reference see deed recorded in the Waldo County Registry of Deeds in Book 1804, Page 307, parcel #1);

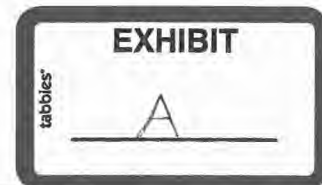
Thence S 39° 49' 26" E along land of said Morgan a distance of four hundred twenty-eight and ninety-seven hundredths (428.97) feet to an iron rod found;

Thence continuing S 39° 49' 26" E along land of said Morgan a distance of twenty-four (24) feet, more or less, to the high water mark of Penobscot Bay;

Thence generally southwesterly along said Bay a distance of four hundred twenty-five (425) feet, more or less, to a 5/8" capped rebar set in the end of a ditch marking land formerly of Larry Theye and Betty Becker-Theye, said rebar being located S 70° 54' 45" W a distance of three hundred twenty-two and ninety-one hundredths (322.91) feet from the last mentioned iron rod found and S 83° 52' 14" E a distance of two hundred nineteen and eighty-three (219.83) feet from the rebar at the point of beginning.

Thence northwesterly along the bottom of a ditch marking land now or formerly of Larry Theye and Betty Becker-Theye a distance of two hundred fifty (250) feet, more or less, to the point of beginning, containing 2.8 acres, more or less.

Meaning and intending to convey and hereby conveying the same premises described in a deed from William O. Poor to Phyllis J. Poor, dated July 1, 1991, recorded in the Waldo County Registry of Deeds in Book 1228, Page 346, and premises conveyed to said Phyllis and William Poor by deed from Frederick C. and Priscilla B. Kelly by deed recorded in said Registry in Book



957, Page 306. For further reference see deeds to William and Phyllis Poor from Frederick Poor recorded in Book 691, Page 44, and from Douglas and Marion Tozier recorded in Book 724, Page 415.

The description above is based on a survey entitled "Boundary Survey of the Property of Phyllis J. Poor Estate" dated August 31, 2012, oriented to magnetic north, August, 2012, by Good Deeds, Inc.

ALSO releasing all right, title and interest to any land located between the northeasterly bound of the premises above described and land now or formerly of Lyndon Morgan as described in Waldo County Registry of Deeds Book 1804, Page 307.

Being those same premises conveyed to the within Grantors by deed of R. Kenneth Lindell and Barbara Gray, co-personal representatives of the Estate of Phyllis J. Poor, dated October 15, 2012 and recorded in the Waldo County Registry of Deeds in Book 3697, Page 5.

ALSO releasing any right, title or interest Grantors may have to enforce that use restriction set forth in a certain deed from Harriet L. Hartley to Fred R. Poor dated January 25, 1946 and recorded in the Waldo County Registry of Deeds in Book 452, Page 205.

Further releasing to the Grantee all right, title and interest of the Grantor in and to the intertidal area adjacent to the premises described above.

[End of page. Execution page follows.]

IN WITNESS WHEREOF, we have set our hands and seals this 23<sup>rd</sup> day of June, 2021.

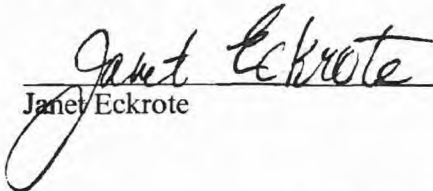
WITNESS:

\_\_\_\_\_



Richard Eckrote

\_\_\_\_\_



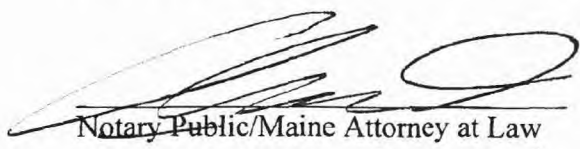
Janet Eckrote

STATE OF Maine  
COUNTY OF Waldo

June 23, 2021

Then personally appeared the above named Richard Eckrote and Janet Eckrote and acknowledged the foregoing instrument to be their free act and deed.

Before me,



Notary Public/Maine Attorney at Law

Print name: Andre Duchette

My commission expires: \_\_\_\_\_

# **EXHIBIT B**

## ORDER OF CONDEMNATION

**CITY OF BELFAST, MAINE**  
(23 MRS § 3021 et. seq. and 30-A MRS 3101)

**KNOW ALL PERSONS BY THESE PRESENTS:** The Notice of Intent to Condemn Real Property Interests to adopt this Condemnation Order has been seasonably and publicly posted by the City of Belfast, Maine, a duly chartered municipal corporation, with a principal place of business at Belfast City Hall, 131 Church Street, Belfast, ME 04915, as described herein, and additional notice via FEDEX mailings were provided to the following named persons and entities:

REGARDING THE INTERTIDAL ZONE AS DEPICTED AND DESCRIBED IN  
SCHEDULE A:

Jeffrey R. Mabee  
Judith B. Grace  
290 Northport Avenue  
Belfast, ME 04915-1219  
Tax Map 29 Lot 38  
Book 1221 Page 347

Friends of the Harriet L. Hartley Conservation Area  
c/o Jeffrey R. Mabee, Registered Agent  
PO Box 465  
Belfast, ME 04915  
Book 4435 Page 344

Elizabeth Cooper Rankin  
320 Dash Ave  
Media, PA 19063-1308

REGARDING THE RESIDENTIAL PURPOSES UNDERSTANDING AS DESCRIBED IN  
SCHEDULE B:

Jeffrey R. Mabee  
Judith B. Grace  
290 Northport Avenue  
Belfast, ME 04915-1219  
Tax Map 29 Lot 38  
Book 1221 Page 347

Peter A. Rasmussen



Adrienne R. Boissy  
46001 Mather Lane  
Chagrin Falls, OH 44022  
Tax Map 29 Lot 31  
Book 3525 Page 133

Michael H. Giles  
Jayne C. Giles  
15 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 32  
Book 2728 Page 60

J. Thomas Kent, Jr.  
Joan L. Kent  
11 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 33  
Book 2995 Page 198

Gary Roughead Revocable Living Trust  
u/a/d April 19, 2017  
8105 Great Run Lane  
Warrenton, VA 20186  
Tax Map 29 Lot 34  
Book 4576 Page 278

Lyndon W. Morgan  
1 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 35  
Book 1804 Page 307

Pursuant to and consistent with 1 MRS 816, 30-A MRS 3101, and 23 M.R.S.A. § 3021 et seq., the Belfast City Council, in their capacity as the Municipal Officers of the City of Belfast, Maine, gave seasonable notice of their intentions to Condemn and take by the process of Eminent Domain the fee interest in and to the right, title and interest of the Intertidal Zone of certain real property described in Schedule A and depicted on Exhibit 1 attached to Schedule A, and the intention to Condemn and take the interests in and to the Residential Purposes Understanding rights, to the extent they exist, as described in Schedule B, by having posted notices at least 7 days in advance in these public places: (i) the City of Belfast City Hall Building located at 131 Church Street, Belfast, ME 04915, (ii) the Official Website of the City of Belfast, and (iii) in the vicinity of 282 Northport Avenue, Belfast, Maine, which is depicted on Tax Map 29 Lot 36. The postings were completed on August 4, 2021.


A public hearing was conducted on August 12, 2021 by the Belfast City Council sitting at 131 Church Street, Belfast, Maine. Thereafter the Belfast City Council voted to approve this Condemnation and taking by Eminent Domain of the property rights described and depicted in Schedule A and Schedule B as attached hereto, and to pay Damages determined by the Belfast City Council to be just compensation, in consideration of the advice of a Maine Licensed Certified General Appraiser, in the amounts and to each property owner listed in Schedule C, attached hereto.

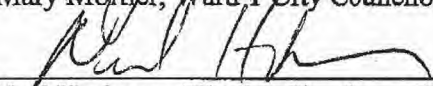
At the public hearing, the Belfast City Council adopted legislative findings as described in Schedule D, attached hereto, consistent with Eminent Domain authority to municipalities provided in 1 MRS 816, 23 MRS 3021 et seq., and 30-A MRS 3101, the public exigency, the inability to purchase property rights at fair market value, and the authority to take curative action for defective title, as the joint and several bases for condemnation.

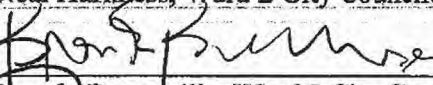
THEREFORE, The Municipal Officers, sitting as the Belfast City Council, and waiving the second reading as provided by the Belfast City Charter, hereby Resolve, Order and appropriate this Condemnation Order to take by Eminent Domain the real property interests described and depicted in Schedules A and B, from the property owners therein named, by unanimous vote on August 12, 2021.

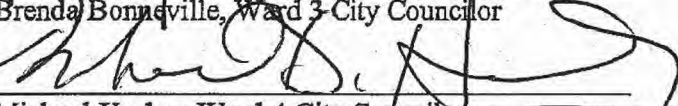
**RESOLVED, ORDERED AND APPROPRIATED**, this 12<sup>th</sup> day of August, 2021.

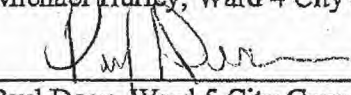
By the City Council of Belfast, Maine:

  
\_\_\_\_\_  
Mary Mortier, Ward 1 City Councilor

  
\_\_\_\_\_  
Neal Harkness, Ward 2 City Councilor

  
\_\_\_\_\_  
Brenda Bonneville, Ward 3 City Councilor

  
\_\_\_\_\_  
Michael Hurley, Ward 4 City Councilor

  
\_\_\_\_\_  
Paul Dean, Ward 5 City Councilor



**SCHEDULE A – CITY OF BELFAST CONDEMNATION ORDER**  
**INTERTIDAL ZONE DESCRIPTION**  
**TAX MAP 29 LOT 36**

The fee interest in real property which is hereby condemned and taken by the process of Eminent Domain by the City Council of the City of Belfast, is more particularly described as follows, to wit:

A certain lot or parcel of intertidal land located easterly of Route One (a.k.a. Northport Avenue) and on the westerly shore of Penobscot Bay in the City of Belfast, County of Waldo, State of Maine, shown as the 5.1 acre "Intertidal Zone" on attached Exhibit 1 on which it is referenced as owned by Janet and Richard Eckrote, and as subsequently conveyed to the City of Belfast in a deed recorded in Book 4679 Page 167 of the Waldo county Registry of Deeds, and said Intertidal being more particularly described as follows:

COMMENCING at a 5/8 inch rebar with survey cap stamped "GOOD DEEDS" found on the easterly right-of-way line of Route One at the most westerly corner of land of Lyndon G. Morgan as described in a deed recorded in Book 1804, Page 307 of the Waldo County Registry of Deeds.

THENCE S 54°53'45" E along said land of Morgan a distance of 429.01 feet to a 5/8 inch rebar found.

THENCE S 54°53'45" E along said land of Morgan a distance of 26.1 feet to the high water mark of Penobscot Bay and the **TRUE POINT OF BEGINNING**.

THENCE S 31°35'52" E along said intertidal land of Morgan a distance of 777 feet more or less to the low water mark of Penobscot Bay.

THENCE westerly, southeasterly, southwesterly, and northwesterly along said low water mark of Penobscot Bay a distance of 820 feet more or less to intertidal land of Donald K. Schweikert and Wendy W. Schweikert as described in a deed recorded in Book 4441, Page 184 of the Waldo County Registry of Deeds.

THENCE N 35°41'53" W along said intertidal land of Schweikert a distance of 834 feet more or less to the high water mark of Penobscot Bay at the mouth of a brook which is N 89°41'01" E a distance of 42.5 feet from a 5/8 inch rebar with survey cap stamped "GOOD DEEDS" found in the center of a gully which rebar is S 55°54'53" W a distance of 322.89 feet from said rebar found at said land of Morgan 26.1 feet from the high water mark of Penobscot Bay.

THENCE easterly and northeasterly along said high water mark of Penobscot Bay a distance of 440 feet more or less back to the True Point of Beginning.

MEANING and intending to describe 5.1 acres of the Intertidal Zone as shown on Exhibit 1 attached hereto.

The parcel described herein is the intertidal portion of that land conveyed from the Estate of Phyllis J. Poor to Janet and Richard Eckrote as described in a deed recorded in Book 3697, Page 5 of the Waldo County Registry of Deeds. See also Deed from Janet and Richard Eckrote to the City of Belfast as recorded in Book 4679 Page 157 of the Waldo County Registry of Deeds.

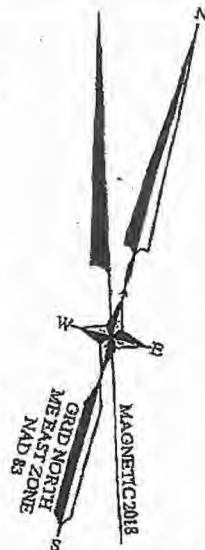
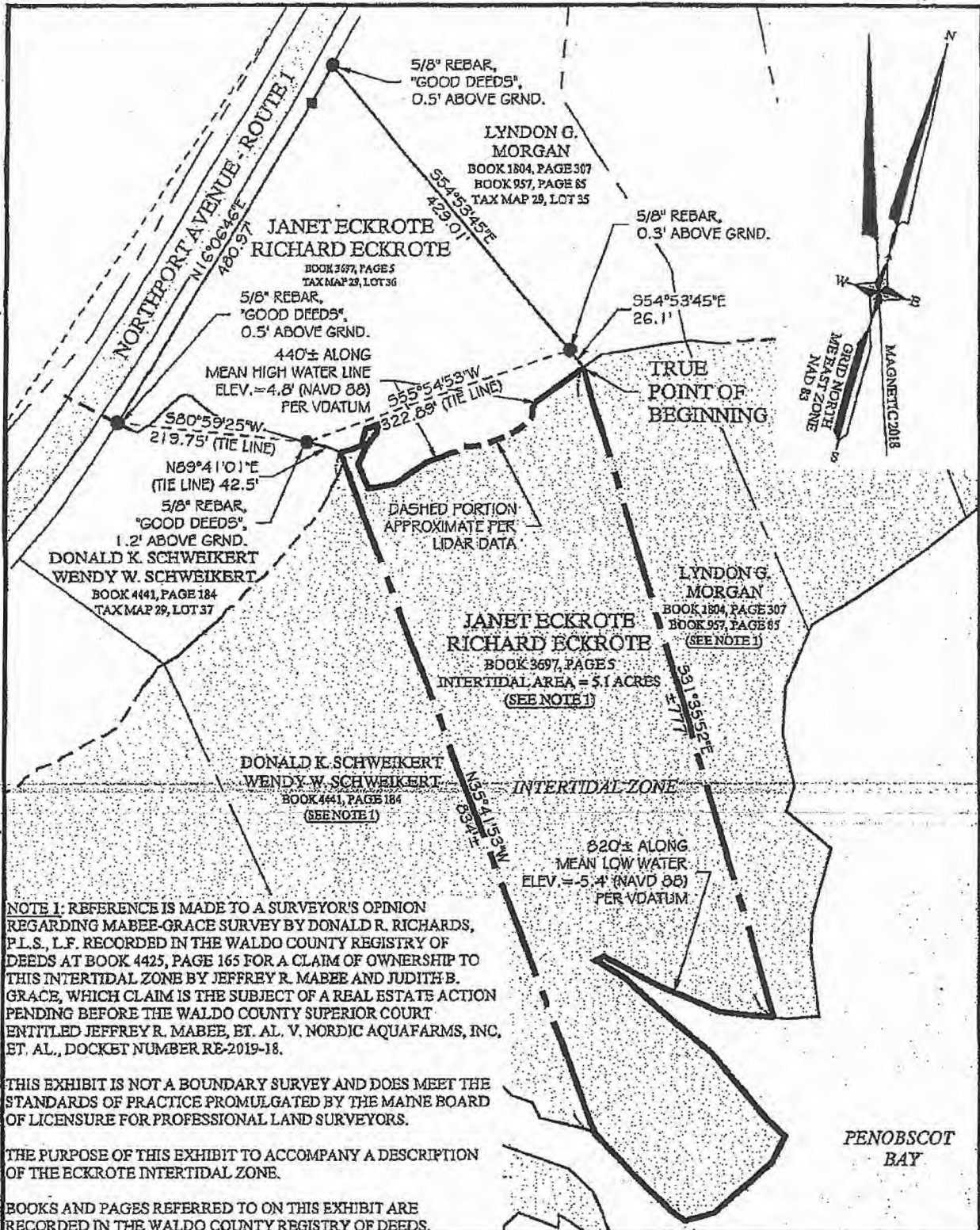
All directions are referenced to the Maine Coordinate System of 1983 (2011), East Zone. All distances are grid distances with a combined scale factor of 0.9999186.

The persons and entities from whom the Belfast City Council hereby Condemns and takes the real property interests described and depicted herein by the process of Eminent Domain, are as follows:

Jeffrey R. Mabee  
Judith B. Grace  
290 Northport Avenue  
Belfast, ME 04915-1219  
Tax Map 29 Lot 38  
Book 1221 Page 347

Friends of the Harriet L. Hartley Conservation Area  
c/o Jeffrey R. Mabee, Registered Agent  
PO Box 465  
Belfast, ME 04915  
Book 4435 Page 344

Elizabeth Cooper Rankin  
320 Dash Ave  
Media, PA 19063-1308



NOTE 1: REFERENCE IS MADE TO A SURVEYOR'S OPINION REGARDING MABEE-GRACE SURVEY BY DONALD R. RICHARDS, P.L.S., L.F. RECORDED IN THE WALDO COUNTY REGISTRY OF DEEDS AT BOOK 4425, PAGE 165 FOR A CLAIM OF OWNERSHIP TO THIS INTERTIDAL ZONE BY JEFFREY R. MABEE AND JUDITH B. GRACE, WHICH CLAIM IS THE SUBJECT OF A REAL ESTATE ACTION PENDING BEFORE THE WALDO COUNTY SUPERIOR COURT ENTITLED JEFFREY R. MABEE, ET. AL. V. NORDIC AQUAFARMS, INC. ET. AL., DOCKET NUMBER RE-2019-18.

THIS EXHIBIT IS NOT A BOUNDARY SURVEY AND DOES MEET THE STANDARDS OF PRACTICE PROMULGATED BY THE MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS.

THE PURPOSE OF THIS EXHIBIT TO ACCOMPANY A DESCRIPTION OF THE ECKROTE INTERTIDAL ZONE.

BOOKS AND PAGES REFERRED TO ON THIS EXHIBIT ARE RECORDED IN THE WALDO COUNTY REGISTRY OF DEEDS.

**Gartley & Dorsky**  
 ENGINEERING SURVEYING  
 518 Main Street P.O. Box 1021 Camden, ME 04843-3013  
 Tel (207) 236-4163 Fax (207) 236-3255 Toll Free 1-811-235-4163  
 146 Main Street Suite 2D P.O. Box 13722 Westbrook, ME 04091  
 Tel (207) 766-3003

**EXHIBIT 1**  
 BELFAST, WALDO COUNTY, MAINE

JUNE 29, 2021 PROJ. NO. 18-352 SCALE: 1" = 150'

**SCHEDULE B – CITY OF BELFAST CONDEMNATION ORDER**  
**RESIDENTIAL PURPOSES UNDERSTANDING**  
**TAX MAP 29 LOT 36**

The right, title, and interest herein referred to as the “Residential Purposes Understanding,” hereby Condemned by the Belfast City Council, is described in a Deed from Harriet L. Hartley to Fred R. Poor, dated June 19, 1946, and recorded in Book 452 Page 205 of the Waldo County Registry of deeds, and is more fully set forth as follows, to wit:

“The lot or parcel of land herein described is conveyed to Fred R. Poor with the understanding it is to be used for residential purposes only, that no business for profit is to be conducted there unless agreed to by Harriet L. Hartley, her heirs or assigns.”

The owners of parcels of land and Deed and Tax Map references for each alleged ownership interests that are possibly benefitted by said Residential Purposes Understanding, and therefore the list of parcels of land and current owners for whom said possible benefit is hereby condemned and taken by the process of Eminent Domain by the City of Belfast, are as follows:

1. Jeffrey R. Mabee  
Judith B. Grace  
290 Northport Avenue  
Belfast, ME 04915-1219  
Tax Map 29 Lot 38  
Book 1221 Page 347
  
2. Peter A. Rasmussen  
Adrienne R. Boissy  
46001 Mather Lane  
Chagrin Falls, OH 44022  
Tax Map 29 Lot 31  
Book 3525 Page 133
  
3. Michael H. Giles  
Jayne C. Giles  
15 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 32  
Book 2728 Page 60

4. J. Thomas Kent, Jr.  
Joan L. Kent  
11 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 33  
Book 2995 Page 198
  
5. Gary Roughhead Revocable Living Trust  
u/a/d April 19, 2017  
8105 Great Run Lane  
Warrenton, VA 20186  
Tax Map 29 Lot 34  
Book 4576 Page 278
  
6. Lyndon W. Morgan  
1 Tozier Street  
Belfast, ME 04915  
Tax Map 29 Lot 35  
Book 1804 Page 307

**SCHEDULE C: REASONABLE VALUATION DAMAGES TO BE PAID**

The following reasonable valuation amounts shall be paid to each person and entity for which alleged property rights and title defects have been herein condemned by the Belfast City Council:

REGARDING THE INTERTIDAL ZONE AS DEPICTED AND DESCRIBED IN

SCHEDULE A:

Reasonable Valuation Amount:

Jeffrey R. Mabee

\$ 4,000.00

Judith B. Grace

290 Northport Avenue

Belfast, ME 04915-1219

Tax Map 29 Lot 38

Book 1221 Page 347

Friends of the Harriet L. Hartley Conservation Area

\$ 36,000.00

c/o Jeffrey R. Mabee, Registered Agent

PO Box 465

Belfast, ME 04915

Book 4435 Page 344

Elizabeth Cooper Rankin

\$ 1,200.00

320 Dash Ave

Media, PA 19063-1308

REGARDING THE RESIDENTIAL PURPOSES UNDERSTANDING AS DESCRIBED IN  
SCHEDULE B:

Jeffrey R. Mabee \$ 500.00

Judith B. Grace

290 Northport Avenue

Belfast, ME 04915-1219

Tax Map 29 Lot 38

Book 1221 Page 347

Peter A. Rasmussen \$ 500.00

Adrienne R. Boissy

46001 Mather Lane

Chagrin Falls, OH 44022

Tax Map 29 Lot 31

Book 3525 Page 133

Michael H. Giles \$ 500.00

Jayne C. Giles

15 Tozier Street

Belfast, ME 04915

Tax Map 29 Lot 32

Book 2728 Page 60

J. Thomas Kent, Jr. \$ 500.00

Joan L. Kent

11 Tozier Street

Belfast, ME 04915

Tax Map 29 Lot 33

Book 2995 Page 198

Gary Roughead Revocable Living Trust

\$ 500.00

u/a/d April 19, 2017

8105 Great Run Lane

Warrenton, VA 20186

Tax Map 29 Lot 34

Book 4576 Page 278

Lyndon W. Morgan

\$ 500.00

1 Tozier Street

Belfast, ME 04915

Tax Map 29 Lot 35

Book 1804 Page 307



## **SCHEDULE D: OUTLINE OF CERTAIN LEGISLATIVE FINDINGS OF THE BELFAST CITY COUNCIL**

1. The City of Belfast (City) entered into an Options and Purchase Agreement and an Evaluation Agreement, both dated January 30, 2018, by and between the Belfast Water District (BWD) and Nordic Aquafarms Inc. (Nordic), which provide significant public benefits to the citizens of Belfast, the BWD, and the ratepayers of the BWD, as well as the broader economic benefits to Belfast and Waldo County stemming from the Nordic project and City ownership of the Waterfront Parcel containing the Little River Trail network. These agreements from January 30, 2018 have been amended through the Fourth Amendment To Evaluation Agreement and Options and Purchase Agreement, dated April 21, 2021 (Collectively, "Agreements"). The City Council hereby notes the recitations, facts and obligations of the parties in the Fourth Amendment To Evaluation Agreement and Options and Purchase Agreement as if fully set forth herein.

2. In April and again in October, 2018 the City Council and Belfast Planning Board conducted hearings and meetings, which resulted in the adoption of multiple land use and Comprehensive Plan amendments, which adopted the land use laws that allowed the Nordic project to proceed to application; all of which involved significant time and resources of City Staff, elected and appointed officials.

3. In 2018 and 2019 the City successfully defended a law suit challenging the adoption of the land use laws adopted that provided for the uses required for the Nordic project, at significant financial expense and City Staff time and resources.

4. On June 8, 2018 the Maine Public Utilities Commission (PUC), in Docket No. 2018-00043 authorized the sale of BWD land, including approximately 40 acres of waterfront land (Waterfront Parcel) on the Little River and Reservoir to the City, and the sale of the balance of the land to Nordic, pursuant to the Agreements. The PUC also approved the Water Supply Agreement by and between the BWD and Nordic. The PUC reviewed the following specific direct benefits asserted by the BWD which benefit both the BWD and its ratepayers, due to the purchase price money and substantial future water sale revenues, in approving the sale of land and the Water Supply Agreement:

- Upgrade its infrastructure;
- Keep rates as low as possible for ratepayers;

- Bring a third well on line;
- Move its headquarters and garage facilities to a more favorable location;
- Reduce chlorine costs;
- Potentially divest itself of lower dam, which the District considers to be a liability. (See, PUC Order, pg. 20)

The PUC also referenced the additional indirect benefits asserted by the BWD to benefit the BWD and its ratepayers, including “The City of Belfast maintaining the Little River Trail” and that the sale of land proceeds would “redound to the benefit of its ratepayers” as the BWD relocated its garage and headquarters and creation of jobs in the area. (See, Order, pg. 20.)

The PUC also referenced that the Town of Northport had voted, at a Special Town Meeting on April 25, 2018, to waive its rights to purchase the portion of BWD land located in Northport which was comprised of approximately 16 acres on the Little River Reservoir, which the BWD is obligated to sell to the City as a portion of the Waterfront Parcel. (See, Order, pg. 16.)

The PUC found that the sale of land to the City and Nordic was not adverse to the public interest and was not inconsistent with the interests of the utility’s ratepayers. (See, Order, pgs. 19 and 21).

The City Council notes with support the facts considered by the PUC in its findings, and the City Council finds they are consistent with the public benefits, public purposes and permanent public uses of the BWD and the City’s Waterfront Parcel on the Little River and Reservoir.

5. Prior to April 2019, which was 15 months after the Options to Purchase and Evaluations Agreements were executed in January 2018, no claim had been made to the Eckrotes by anyone claiming title to the intertidal area adjacent to Eckrote. (See for reference see Jeffery Mabee Letter to the Editor, Republican Journal, dated May 16, 2021, in which he states no knowledge of a claim of ownership until an Attorney from Upstream Watch so suggested; see deed creating conservation easement as recorded on April 29, 2019 in Book 4367 Page 273).

6. A lawsuit was commenced in 2019 which alleged title defects as to ownership in the Intertidal Zone of the Eckrote property. This litigation claims a defect in title to the Intertidal Zone immediately adjacent to the Eckrote land. This suit has created a substantial delay in the City acquisition and perpetual

preservation of the Waterfront Parcel and a delay in the BWD's ability to sell its land, purchase new facilities, commence the Water Supply Agreement revenues, begin planning infrastructure upgrades and maintenance with these proceeds. The closing among the BWD, the City and Nordic for the sale of land has been delayed pending resolution of the matter. The costs of new BWD facilities and new BWD infrastructure upgrades has risen dramatically in Belfast in the last three years.

7. On July 8, 2021 the City Council authorized the offer of fair market value, as determined by an independent Certified General Appraiser, to all who claimed or could claim, conflicting real property benefits described herein as the Residential Purposes Understanding as per Schedule B, and the ownership of the Intertidal Zone, described and depicted in Schedule A, hereto. This condemnation addressed those persons and entities which have refused to accept fair market value in return for a release of the alleged title defect real property rights in the Intertidal Zone and the Residential Purposes Understanding.

8. The City entered into a Purchase and Sale Agreement with Nordic Aquafarms Inc. on July 9, 2021, pursuant to and consistent with the Fourth Amendment, and the City has obtained a deed from Janet and Richard Eckrote for their property, and has obtained a Release Deed from Nordic Aquafarms Inc. for the release of possible title claims that certain Heirs of Harriet L. Hartley may have to the Intertidal Zone. These Deeds, which convey the upland and the intertidal area, are recorded in Book 4697 Page 157, and Book 4697 Page 160 of the Waldo County Registry of Deeds.

This is land located directly across Route 1 from the Waterfront Parcel and, with 500 feet along US Route One and 325 feet of Penobscot Bay shore frontage, as an extension of the Waterfront Parcel will secure over 40 acres of walking trails along the Little River Reservoir and Penobscot Bay. This will be a remarkable addition to the City's Parks, anchoring the City's most southerly public waterfront use and access for generations. The next closest public ocean access is located approximately 1.5 miles northerly at Belfast City Park.

All of this land including all of the shore frontage and intertidal area, consistent with the depictions on the Tax Maps of both the City of Belfast and the Town of Northport, and consistent with the James Dorsky survey entitled "Intertidal Zone Survey" revised through July 24, 2020, is located within the City of Belfast.

9. The property interests described in Schedules A and B are not used for agricultural, fishing or forestry or improved with residential homes, commercial or industrial buildings. No one resides in a dwelling house located on the property interests described in Schedule A and B.

10. The BWD is a public utility engaged in the generation and distribution of public water supply.

11. A component of the Nordic Project includes the generation and transmission of water treatment and discharge of highly filtered and treated sewer water through the underground pipes in the easement area described in Exhibit D to the July 9, 2021 Purchase and Sale Agreement.

12. Consistent with the facts in this matter, the direct and indirect public benefits and public purposes for both the City of Belfast and the BWD served by this condemnation are not prohibited, as referenced in 1 MRS 816(4) and 30-A MRS 3101.

13. The City will integrate the Waterfront Parcel trail and the Eckrote property to join significant permanent public uses and purposes in perpetuity as a passive recreation trail and combined park access to the former Eckrote (now City) upland, intertidal zone, and access to Penobscot Bay, with permanent public parking.

14. There exists public exigency sufficient to support this condemnation. The City has been unable to purchase rights to the alleged title defects from the parties in question. The exercise of eminent domain, which is done solely and exclusively in the City Councils' discretion, is necessary to clear ongoing alleged title defects to its land described in Schedules A and B and obtain the above recited public benefits for the City, the BWD, the BWD ratepayers, and the general public. The compensation amounts described in Schedule C are at fair market value and are reasonable.

15. The City Council hereby takes official notice of the public documents referenced herein and all other related documents available in the City of Belfast records and website, including the voluminous record of, and Permits issued by, the Belfast Planning Board.

# **EXHIBIT C**

ATTEST Stacy L Grant, Waldo Co Registry of Deeds

### EASEMENT

**City of Belfast**, a municipal corporation having an address of 131 Church Street, Belfast, Maine 04915 (the "Grantor"), for consideration paid, grants unto **Nordic Aquafarms, Inc.** a Delaware corporation having an address of c/o Nordic Aquafarms, 159 High Street, Belfast, Maine 04915 (the "Grantee"), its successors and assigns forever, a permanent easement for aquaculture piping installation, operation and maintenance and a temporary easement allowing construction on the Property (defined below), which shall be recorded with the Waldo County Registry of Deeds and described as follows:

#### PERMANENT EASEMENT

The perpetual right to enter upon land described as: the land granted and conveyed to the Grantor by deed of Richard Eckrote and Janet Eckrote, individuals with a mailing address of 42 Grandview Avenue, Lincoln Park, New Jersey, 07035, which deed is recorded at Book 4679 Page 157 of the Waldo County Registry of Deeds (the "Eckrote Deed"), the interests conveyed to the Grantor by Grantee by deed dated July 10, 2021, which deed is recorded at Book 4679 Page 160 of the Waldo County Registry of Deeds (the "Hartley Rights Deed"), and such rights related to the real property described in the Eckrote Deed and Hartley Rights Deed as may be acquired by the Grantor subsequent to the recording of those deeds and prior to the date hereof (such land and interests collectively may be referred to herein as the "Property") for the following purposes and together with additional rights as follows:

1. the right to install, operate, maintain, replace, upgrade and remove and undertake all other activities deemed necessary and reasonable to facilitate obtaining water from and discharging effluent into the Atlantic Ocean for its facility located adjacent to the Property with all necessary fixtures and appurtenances, including subsurface (and not overhead) electric or other energized control lines as required for the operation of the said conduit and/or piping, in the location approved by the Belfast Planning Board through by permits issued in December, 2020 as such may be amended or revised; and
2. the right to make connections with the conduits or piping at the boundaries of the Property; and
3. the right to trim, cut down, and/or remove bushes, grass, crops, trees or any other vegetation, to such extent as is necessary for any of these purposes in the reasonable judgment of Grantee; and
4. the right to change the existing surface grade of the Property as is reasonably necessary for any of these purposes; and
5. the right to enter on, alter and disturb the Property at any and all times for any of these purposes, upon reasonable written notice to the City of Belfast, which shall not be less than 48 hours, except in the case of an emergency.



6. Following the construction contemplated under the Temporary Construction Rights described below pursuant to existing permits issued by the City of Belfast, and prior to the commencement of any additional construction activities referenced above, the Grantee shall meet with the appropriate officials of the City of Belfast and provide topographical and engineering plans to depict the installation, maintenance and replacement of the activities described above, and Grantee shall take into consideration and implement such reasonable requests as the City of Belfast may make to coordinate such activities with the then current and future municipal use, public use and maintenance of the Property by the City of Belfast

The Grantor reserves for itself, its successors and assigns each and every use, development, or enjoyment of the Property for any purpose that does not unreasonably interfere with the rights granted to Grantee, its successors and assigns.; and further provided that none of the following improvements may be made by the Grantor without the prior written consent of the Grantee, which shall not be unreasonably withheld:

1. Grantor shall consent to installation of a pump house should Grantee, in its sole discretion, determine one is needed to obtain necessary quality or quantity of discharge or intake; said pump house shall occupy a footprint no greater than is needed, based on industry standards..

2. No earth shall be removed, no fill may be added, and no other change shall be made to the final designed surface grade of the Property without the written permission of Grantee, to the extent that such actions may unreasonably interfere with the uses granted to Grantee herein.

3. Grantor shall not disturb the soil or install any structures or improvements, impermeable surfaces, or any facilities beyond those typical for the information, safety and convenience of passive public recreation and municipal uses on the Property.

4. Grantor shall exercise reasonable efforts to maintain the existing cottage currently on the Property for the benefit of the public.

#### TEMPORARY CONSTRUCTION RIGHTS

The right, for the period of time beginning as of the date hereof and through the construction of the project in accordance with the approvals, permits and licenses as authorized by the Code and Planning Office of the City of Belfast, State of Maine, and U.S. Army Corps of Engineers as such authorizations may be modified or amended from time to time, to enter upon the Property for the purposes of completing the construction of Grantee's land-based aquaculture facility ("Project"). All approvals shall be obtained by the Grantee and at Grantee's expense. Grantee acknowledges that this Easement Deed does not serve to provide any permit, license or permission that falls within the jurisdiction of the Code and Planning Office or Belfast Planning Board, be they present permits issued or permits which must be sought in the future.

Said right may include, but is not limited to, necessary excavating, placing of fill material, dredging, curbing, loaming, seeding, paving, installation of structures such as piping, culverts and sedimentation and erosion control structures, removal of trees, shrubs, bushes and other growth, selective cutting, trimming, and other necessary incidental work in grading and revegetating and stabilizing said adjoining land, in addition to the temporary placement of utility poles including all related fixtures, overhead wires, guys, etc. in order to allow for Project construction in accordance with all governing regulations and other requirements of law.

The rights granted with respect to the Temporary Easement Area are:

The right to enter upon the Property to install piping and perform the work as set forth herein, subject to the conditions described above; provided that condition 6, above, is hereby deemed satisfied for all existing Permits issued by the Belfast Planning Board.

Said right may include, but is not limited to, necessary excavating, placing of fill material, dredging, curbing, loaming, seeding, paving, installation of structures such as piping, culverts and sedimentation and erosion control structures, removal of trees, shrubs, bushes and other growth, selective cutting, trimming, and other necessary incidental work in grading and revegetating and stabilizing said adjoining land, in addition to the placement of temporary construction installations, in the form of utility poles including all related fixtures, overhead wires, guys, etc. in order to allow for Project construction in accordance with all governing regulations and other requirements of law, any of which temporary construction installations shall be removed in an expeditious manner after completion of the temporary construction work.

The real property benefitted by this appurtenant easement shall be the real property owned or to be acquired by the Grantee located generally west of U.S. Route 1 acquired or to be acquired by the Grantee from Belfast Water District, Samuel Cassida and Goldenrod Properties, LLC.

[End of page. Execution page follows.]



IN WITNESS WHEREOF, the said City of Belfast, has caused this instrument to be executed under seal by Eric Sanders, its Mayor, thereunto duly authorized this 3rd day of September, 2021.

CITY OF BELFAST

By: E. Sanders  
Eric Sanders, Mayor

State of Maine  
County of Waldo

Date: 9/3, 2021

Personally appeared the above named Eric Sanders, duly authorized, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Belfast.

Before me, Wm  
Attorney/Notary Public

Print Name: WILLIAM S. KELLY  
My commission expires: ME BAR # 7077

# **EXHIBIT D**

STATE OF MAINE  
WALDO, SS.

SUPERIOR COURT  
DOCKET NO. RE-21-0007

JEFFREY R. MABEE, et al., )  
Plaintiffs/Petitioners )  
 )  
v. )  
 )  
CITY OF BELFAST )  
Defendant/Respondent )  
 )  
And )  
 )  
NORDIC AQUAFARMS, INC., )  
Intervenor/Defendant )

ORDER REGARDING  
CONFERENCE  
RELATING TO  
FUTURE  
PROCEEDINGS

The Law Court recently issued its Decision in the matter *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15, which addressed title issues relating to certain property directly relevant to that case as well as this pending matter. The Law Court also remanded that case to the trial court for further proceedings consistent with their opinion.<sup>1</sup>

In this pending matter, this Court had issued an Order dated May 5, 2022 which, in part, had stayed all proceedings pending the outcome of the Law Court's decision, which has now been issued. The May 5, 2022 Order also anticipated this Court scheduling a conference to address the future course of proceedings once the Law Court's Decision had been issued.

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<sup>1</sup> The Court is issuing a separate but virtually identical order in that case at the same time as this Order.



This Court had also previously approved, in this matter, a Stipulated Judgment and Dismissal Without Prejudice dated March 2, 2022 which focused primarily on a certain conservation easement relating to the relevant property and the involvement of the Attorney General with respect to that conservation easement. Depending upon the outcome of the Law Court decision in the case noted above, the further involvement of the Attorney General was anticipated with respect to the conservation easement at issue.

Accordingly, this Court now Orders the current parties and the Attorney General, or his designee, to attend a conference on April 28, 2023 at 9:00 a.m. to address the issuance of an appropriate order specifying the future course of proceedings. Counsel for the parties, and the Attorney General, or his designee, are further ordered to confer with each other in advance of the conference in an effort to prepare and submit a proposed Stipulated Order Specifying the Future Course of Proceedings for the Court's further consideration. If, after engaging in good faith efforts, the parties are unable to agree on a proposed stipulated order, each party and the Attorney General, or his designee shall, no later than five days before the scheduled conference, submit their own proposed Order Specifying the Future Course of Proceedings.

Any proposed stipulated order from the parties should address, at a minimum:

- the scope and timing of any discovery, if needed;
- the deadline for any formal intervention of any persons or entities not currently a party;
- the timing of briefs; and
- the need for any other pretrial proceedings and any deadline for requesting the same.

The Clerk is directed to incorporate this Order, by reference, in accordance with M.R. Civ. P. 79(a).

Date: 3/14/23

  
\_\_\_\_\_  
SUPERIOR COURT JUSTICE

# **EXHIBIT E**

**STATE OF MAINE**  
**Waldo, ss.**

**SUPERIOR COURT**  
**CIVIL ACTION**  
**Docket No. CV-2023-6**

**JEFFREY R. MABEE** and **JUDITH B. GRACE**, individually and as joint tenants of certain real property that abuts a portion of the Nordic Project on the Easterly side of U.S. Route One and as Members of FHLHCA;  
**MARTHA M. BLOCK**, individually as the fee simple owner of certain real property that abuts the Nordic-owned land formerly owned by the Belfast Water District on the Westerly side of U.S. Route One and as a Member of FHLHCA;  
**FRIENDS OF THE HARRIET L. HARTLEY CONSERVATION AREA**, a Maine Non-Profit Corporation,

**Plaintiffs,**

**v.**

**CITY OF BELFAST**, a Municipal Corporation and Body Politic in Waldo County, in the State of Maine,  
**NORDIC AQUAFARMS, INC.**, a Foreign Corporation registered in the State of Delaware,

**Defendants,**

**And,**

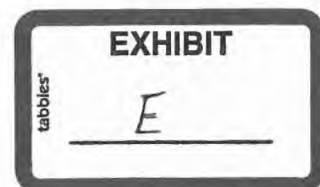
**STATE OF MAINE, DEPARTMENT OF TRANSPORTATION**, an agency of the State of Maine established by Title 23 of the Maine Revised Statutes,

**Interested Party.**

**PLAINTIFFS’  
FIRST AMENDED  
COMPLAINT  
FOR  
DECLARATORY  
AND  
INJUNCTIVE RELIEF**

*\*This Case Involves Real Estate\**

NOW COME the Plaintiffs, Jeffrey R. Mabee, Judith B. Grace, Martha M. Block, and Friends of the Harriet L. Hartley Conservation Area (“Friends” or “FHLHCA”), by and through their counsel Kimberly J. Ervin Tucker, for the purpose of jointly filing Plaintiffs’ First Amended Complaint for Declaratory Judgment and Injunctive Relief against the City of Belfast (“City” or “Belfast”) and Nordic Aquafarms, Inc. (“NAF” or “Nordic”). The State of Maine, Department of Transportation (“DOT”), is named herein as an Interested Party.



Plaintiffs jointly seek declaratory and injunctive relief to have: (i) a “Deed of Vacation” from the City of Belfast to Nordic Aquafarms, Inc., dated March 15, 2022, recorded on March 17, 2022, in the Waldo County Registry of Deeds (“WCRD”) at Book 4778, Page 35; and (ii) a “Deed of Vacation” from the Maine Department of Transportation to the City of Belfast, dated April 9, 2018, recorded on March 17, 2022, in the WCRD at Book 4778, Page 34, declared null and void *ab initio*. Plaintiffs also seek a corrective revision to the Belfast Comprehensive Plan and Zoning Ordinances and Zoning District Maps, as described more fully herein. In support of the declaratory and injunctive relief sought Plaintiffs state as follows:

## **I. INTRODUCTION**

1. This is a civil action in which the Plaintiffs jointly seek declaratory judgment and injunctive relief to nullify as void *ab initio* and *ultra vires* two deeds of vacation.

2. The subject deeds of vacation include: (a) a document titled “deed of vacation” executed by the City of Belfast (“City”) on March 15, 2022, to Nordic Aquafarms, Inc. (“Nordic”), recorded on March 17, 2022 in the Waldo County Registry of Deeds (“WCRD”) at Book 4778, Page 35; and (b) a document titled “deed of vacation” executed by the Commissioner of the Maine Department of Transportation (“DOT” or “MDOT”) on April 9, 2018, to the City of Belfast (“City” or “Belfast”), recorded by the City almost *four (4) years later* on March 17, 2022, in the WCRD at Book 4778, Page 34.

3. Both of these deeds of vacation were executed and recorded in the WCRD for the improper purpose of creating the illusion that Conditions and Restrictions on 12.5-acres of land in Belfast, Waldo County, Maine, imposed by the 1973 deed from the State of Maine, through its Governor and Council, to the City of Belfast, dated October 10, 1973 (WCRD Book 710, Page 1153; hereinafter “1973 State-to-City deed”), had been “vacated, released and extinguished.”



4. The 1973 State-to-City deed expressly stated that the Conditions and Restrictions *run with the land* and were *binding on the City of Belfast, its successors and assigns*.

5. Consequently, the 1973 Conditions and Restrictions were restated in: (a) the 1987 deed from the City of Belfast to the Belfast Water District (“BWD”) (WCRD Book 1092, Page 145; hereinafter “1987 City-to-BWD deed”); and (b) the deed from the Belfast Water District to Nordic, dated March 10, 2022 (hereinafter “BWD-to-Nordic deed” or “3-10-2022 BWD-to-Nordic deed”).

6. The Belfast Water District was conveyed the 12.5-acre parcel in 1987, by the City of Belfast, subject to the 1973 Conditions and Restrictions.

7. There is no recorded instrument in the WCRD indicating that the Belfast Water District was ever released from the Conditions and Restrictions in the 1973 State-to-City deed by a Governor’s Deed.

8. There is no recorded instrument in the WCRD indicating that the Belfast Water District was ever released from the Conditions and Restrictions restated in the 1987 City-to-BWD deed by the City of Belfast.

9. Appropriately, Nordic was conveyed the 12.5-Acre parcel, *subject to the 1973 Conditions and Restrictions*, in a deed from the Belfast Water District, dated March 10, 2022, recorded on March 14, 2022 in the WCRD at Book 4776, Page 210.

10. Specifically, the 3-10-2022 BWD-to-Nordic deed states in relevant part:

FURTHER SUBJECT TO the following:

2) The terms, conditions and restrictions set forth in the deed from the State of Maine to the City of Belfast Dated October 10, 1973 and recorded in said Registry in Book 710, Page 1153 and as restated in the deed from the City of Belfast to the Belfast Water District dated March 3, 1987 and recorded in said Registry in Book 1092, Page 145.

*See*, WCRD Book 4776, Page 221.

11. The 2018 and 2022 deeds of vacation were solicited, executed and/or recorded by the City of Belfast to facilitate Nordic obtaining permits, licenses and leases from local, State and federal regulators under false pretenses and in the absence of Nordic having the legal right and/or title, right or interest (standing) to develop the land proposed for development and use in the manner Nordic proposes.

12. As described more fully below, neither the Commissioner of the Department of Transportation, the Belfast City Manager, nor the City of Belfast as a body politic and corporate, had the statutory or common law authority to vacate, release or extinguish the Conditions and Restrictions created by the 1973 State-to-City deed, granted by the Governor and Council, by executing, delivering and/or recording the 2018 DOT-to-City or 2022 City-to-Nordic Deeds of Vacation.

13. As described more fully below, Plaintiffs have standing to seek declaratory and injunctive relief to nullify the *ultra vires* deeds of vacation as intended beneficiaries of the 1973 Conditions and Restrictions on the 12.5-acre parcel, who would suffer direct and indirect, particularized injuries and injuries-in-fact, that include pecuniary losses and damage to the use and enjoyment of their property.

## II. PARTIES

### Plaintiffs:

14. **Jeffrey R. Mabee** and **Judith B. Grace** are natural persons and residents of the City of Belfast, Waldo County, Maine.

15. Mabee and Grace have lived in Belfast, Maine for more than forty (40) years.

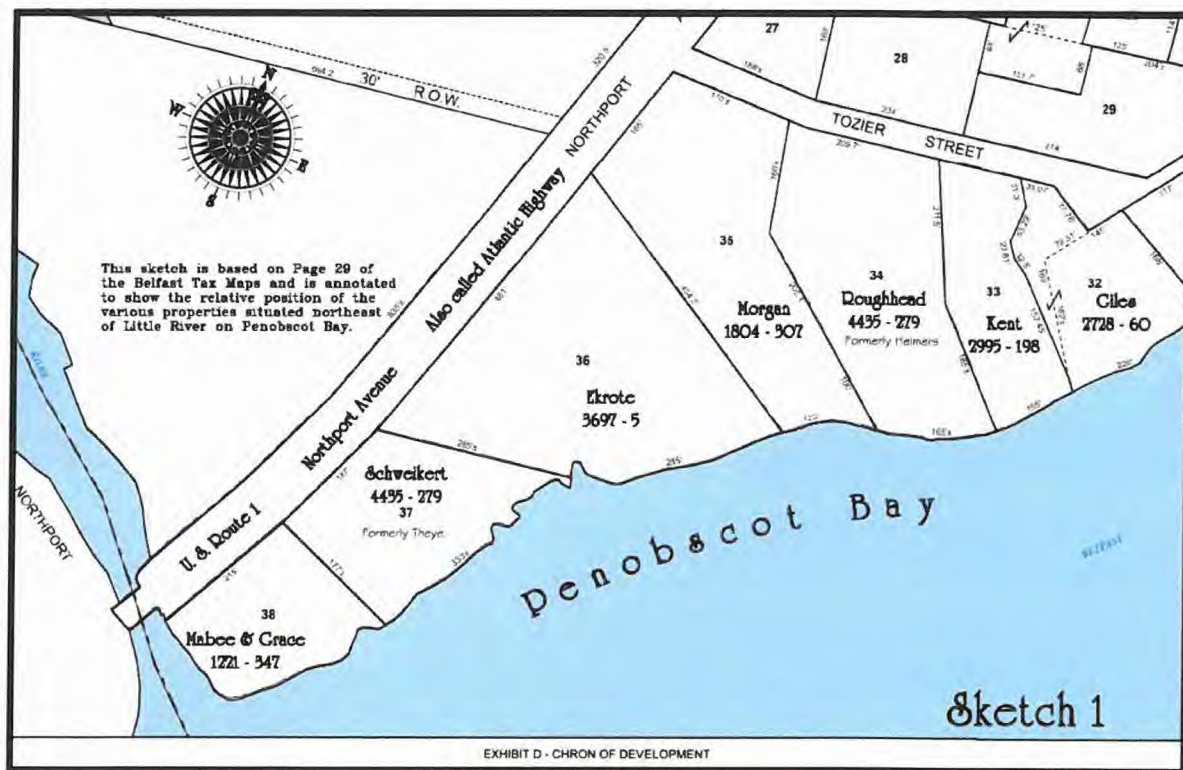
16. Mabee and Grace's property is located on the Easterly side of U.S. Route One and abuts the Nordic project area, as proposed.

17. The Southerly boundary of Mabee and Grace's property is the Little River.

18. Consequently, Mabee and Grace’s property includes intertidal land within the Little River watershed that would be adversely impacted by Nordic’s proposed violation of Conditions and Restrictions 4 and 5, imposed by the State of Maine for the “protection of a municipal watershed” referenced in the 1973 State-to-City deed (WCRD Book 710, Page 1153).

19. The upland portion of the Mabee-Grace parcel is known as The Little River Center, located at 290 Northport Avenue, Belfast, Waldo County, Maine, 04915, and is designated as Belfast Tax Map Page 29, Lot 38 (“Lot 38”).

20. Mabee and Grace are husband and wife and own the property located at Belfast Tax Map 29, Lot 38, in fee simple as joint tenants.



21. On February 16, 2023, Plaintiffs Mabee and Grace were judicially determined by the Maine Supreme Judicial Court sitting as the Law Court, to be the owners in fee simple absolute

of a piece or parcel of land described in the Waldo County Registry of Deeds, at Book 1221, Page 347. *Mabee v. Nordic Aquafarms, Inc.*, 2023 ME 15.

22. The Law Court determined that: “Mabee and Grace own the intertidal land abutting their own upland property and the intertidal land abutting the upland properties of the Schweikerts, the Eckrotes, and Morgan [Lots 37, 36 and 35]. Mabee and Grace’s property is outlined in the solid and dashed green lines in Figure 5.” *Mabee and Grace, et al. v. Nordic Aquafarms, Inc., et al.*, 2023 ME 15, ¶¶ 14 and 17.

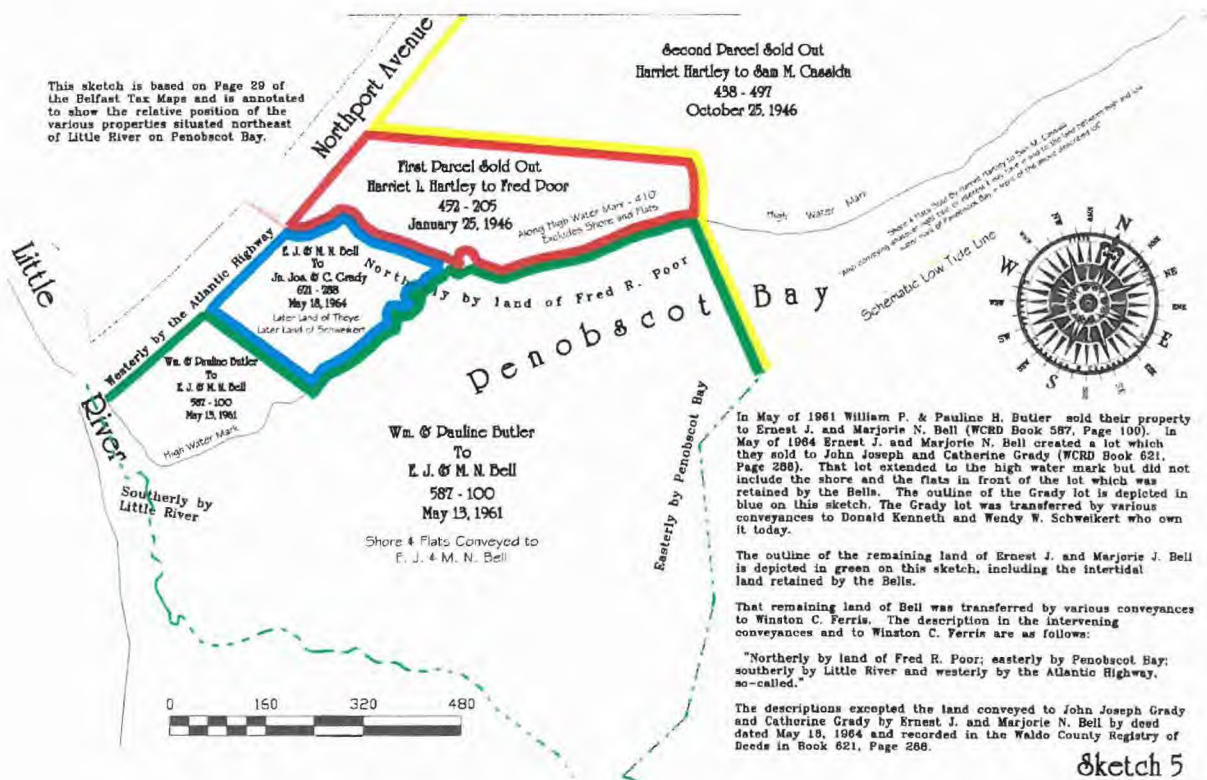


Figure 5

23. The Law Court also determined that Mabee and Grace hold an enforceable “residential purposes only” servitude, created by the 1946 Hartley-to-Poor deed, over upland Lot 36. *Mabee and Grace, et al. v. Nordic Aquafarms, Inc., et al.*, 2023 ME 15, ¶¶ 53-58.

24. The Law Court determined that: “the restriction to ‘residential purposes only,’ benefiting the holder of the land now owned by Mabee and Grace, runs with the land conveyed to Poor, binding Poor’s successors.” *Mabee and Grace, et al. v. Nordic Aquafarms, Inc., et al.*, 2023 ME 15, ¶ 58.

25. Poor’s successors include: William O. Poor, Phyllis J. Poor, the Estate of Phyllis J. Poor, Richard and Janet Eckrote, the City of Belfast and Nordic Aquafarms, Inc.

26. Mabee-Grace’s land is depicted in the survey plan prepared by Donald R. Richards, P.L.S., L.F. of Richards and Cranston, recorded in the WCRD at Book 24, Page 34.

27. The intertidal portion of Mabee-Grace’s property includes intertidal land located within the municipal boundaries of both Belfast and Northport, Waldo County, Maine. *Id.*

28. Mabee and Grace have suffered particularized injuries relating to the City’s false claims that Mabee-Grace’s assertion of their constitutionally-protected ownership interest in the intertidal land adjacent to Lot 36, and attempt to enforce the “residential purposes only” servitude on Lot 36, were preventing Nordic from proceeding with construction of its proposed land-based salmon factory in Belfast.

29. In 2021, the City falsely asserted that Plaintiffs Mabee and Grace’s assertion of their constitutionally-protected property interests in the intertidal land adjacent to Lot 36 and assertion of the right to enforce the “residential purposes only” servitude on upland Lot 36, created an “exigency” requiring Plaintiffs’ property and property rights be taken by eminent domain.

30. The City's intent in using eminent domain to "take" Mabee and Grace's property and property rights was for the purpose of facilitating construction of the Nordic's proposed industrial fish factory, by granting Nordic the right to use Mabee and Grace's intertidal land and upland Lot 36 to bury three industrial pipes necessary for seawater intake and wastewater discharge.

31. In July and August 2021, at the time that those false assertions about Mabee and Grace were made by the City and Nordic to justify the City's use of eminent domain to benefit Nordic, both the City and Nordic knew, *or should have known*, that the 12.5-acre parcel owned by BWD was still subject to Conditions and Restrictions in the 1973 State-to-Belfast and 1987 City-to-BWD deeds.

32. In July and August 2021, the BWD owned the 12.5-Acre parcel and had not been released by the State of Maine or the City of Belfast from the Conditions and Restrictions in the 1973 State-to-City deed or 1987 City-to-BWD deed.

33. Had the BWD, as a successor of the City, conveyed the 12.5-Acre parcel to Nordic in July or August 2021, that conveyance would have been subject to the Conditions and Restrictions in the 1973 State-to-City deed and 1987 City-to-BWD deed, and Nordic would have been prohibited from using the 12.5-Acre parcel to construct buildings, clear-cut the trees and/or fill the wetlands and brook.

34. Because the Conditions and Restrictions on the 12.5-acre parcel in 2021 would have prevented Nordic from altering this land from its natural condition and from constructing Building 1 or any other buildings and industrial infrastructure on this parcel, no exigency existed in August 2021 to justify the City using eminent domain to take Mabee-Grace's intertidal land adjacent to Lot 36 or their right to enforce the "residential purposes only" servitude on Lot 36.

35. Mabee and Grace were required to file litigation to challenge the City's use of eminent domain in Waldo County Superior Court, Docket No. RE-2021-007, in part because of the City's and Nordic's false claims relating to the 12.5-acre parcel and the City's misrepresentation that Nordic had a legal right or ability to develop and use this 12.5-acre parcel, as proposed.

36. Mabee and Grace are members of the Friends of the Harriet L. Hartley Conservation Area ("FHLHCA") and Jeffrey Mabee is on the Board of FHLHCA.

37. **Martha M. Block** is a natural person who owns a certain lot or parcel of land that abuts the proposed Nordic project area and the land formerly owned by the BWD on the Westerly side of U.S. Route One.

38. Plaintiff Block's parcel and home are located at 1485 Atlantic Highway, Northport, Waldo County, Maine 04849.

39. Plaintiff Block acquired her property in 2005, by deeds recorded in the WCRD at Book 2811, Page 324 and Book 3807, Page 344.

40. Plaintiff Block and her husband Sidney Block were drawn to the natural beauty and diversity of wildlife that exists along the Little River watershed, on which their home sits.

41. Plaintiff Block and her husband bought this property in part because the adjacent BWD land was subject to restrictions imposed to protect the watershed and adjacent mature forest that surrounds and supports the Little River's watershed.

42. Plaintiff Block's home is purported to be the oldest standing structure in Northport, Maine, and was built prior to 1805.

43. Historical records of the exact date of construction and history of this property were lost in a fire in Northport decades ago, that destroyed many of Northport's official Town records

and documents, but the home now owned by the Blocks is rumored to have originally been used as a stagecoach stop in the 1800s and the Blocks have unearthed the remnants of a circular stone driveway in front of the dwelling structure.

44. Plaintiff Block's property sits along the Little River and lower reservoir near U.S. Route One.

45. The municipal boundary between Belfast and Northport is roughly in the center of the reservoir formed by the lower dam, with the BWD (now Nordic) property on the Belfast (Northerly) side and Northport, including the Block property, on the Southerly side.

46. The forest, wetlands and brook on the 12.5-Acre parcel maintain the integrity of, and protect, the Little River watershed, the lower reservoir adjacent to the Block property, and adjacent wells on the Northport side, including a seasonal well on the Block property.

47. A plethora of wildlife inhabits and uses this watershed and reservoir, including: eagles, great blue heron, five to six varieties of ducks, mink, otter, deer, fox, a family of beavers, and many bird species, including bobolinks<sup>1</sup> which have been observed nesting on the BWD property acquired by Nordic.

48. Plaintiff Block would be directly adversely impacted by the violation of the Conditions and Restrictions on the 12.5-acre lot, which have been in place since 1973.

49. Destruction of the trees on the 12.5-acre lot would have a significant adverse impact on the Little River watershed, causing degradation of the Little River aquifer and pollution of the waters of the reservoir (on which the Block's home is located) and the Little River.

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<sup>1</sup> "Maine Audubon and Ag Allies announce new partnership to help grassland birds," Maine Audubon News & Notes, by Sally Stockwell (May 26, 2022).  
<https://maineaudubon.org/news/maine-audubon-and-ag-allies-announce-new-partnership-to-help-grassland-birds/>



50. During permitting proceedings in which Plaintiff Block attended and participated, Nordic has told State regulators it would take five (5) years to complete construction of the project, as proposed.

51. Nordic's proposed removal of the trees and wetlands from, and construction of the enormous Building 1 structure on, the 12.5-acre parcel would violate the express Conditions and Restrictions that this parcel is "subject to," pursuant to the 1973 State-to-City deed, 1987 City-to-BWD deed and 3-10-2022 BWD-to-Nordic deed (WCRD Book 4776, Page 221).

52. Violation by Nordic of the Conditions and Restrictions imposed on the 12.5-acre parcel would cause: dust, dirt, noise, and light pollution; destruction of wetlands; and pollution from run-off into the reservoir, the Little River and the watershed that would directly impact Plaintiff Block in a manner different and greater than the impacts borne by the public at large from such a violation.

53. In sum, violation by Nordic of the Conditions and Restrictions on the 12.5-acre parcel will "ruin the forever home" enjoyed by Plaintiff Block and her husband since 2005.

54. Plaintiff Block consulted with a realtor regarding the impact of the construction of the Nordic project, as proposed, on the value of Plaintiff Block's property, and Plaintiff Block was advised that the value of her property would diminish by at least twenty-five percent (25%) if Nordic's project were to be constructed as proposed.

55. Accordingly, Plaintiff Block has a direct and significant pecuniary interest in obtaining the declarations requested herein and an injunction enforcing the Conditions and Restrictions imposed by deed since 1973 on the 12.5-acre parcel.

56. Plaintiff Block is a member of the FHLHCA.

57. **Friends of the Harriet L. Hartley Conservation Area** (“Friends” or “FHLHCA”) is a non-profit corporation (T13-B) duly incorporated in the State of Maine on August 30, 2019, Charter No. 20200085ND, in Good Standing and with an office and principal place of business in the City of Belfast, Waldo County, Maine.

58. The mailing address for Friends is: P.O. Box 465, Belfast, Maine 04915.

59. Friends holds a Conservation Easement over the intertidal portion of Plaintiffs Mabee and Grace’s property, including all of the intertidal land on which Tax Map 29, Lots 38, 37, 36 and 35 front, pursuant to a conservation easement created by Mabee-Grace on April 29, 2019, recorded in the WCRD at Book 4367, Page 273, and an Assignment of that Conservation Easement from Upstream Watch, dated November 4, 2019, recorded in the WCRD at Book 4435, Page 344.

60. The Maine Supreme Judicial Court, sitting as the Law Court, determined in its February 16, 2023 Decision that Friends holds a valid and enforceable conservation easement on the intertidal land on which Lots 38, 37, 36 and 35 front, stating in relevant part:

Mabee and Grace created a conservation easement over their intertidal land.  
... Friends holds an enforceable conservation easement over the intertidal land. “  
*Mabee and Grace, et al. v. Nordic Aquafarms, Inc., et al.*, 2023 ME 15, ¶¶ 59, 61.

61. The boundaries of the Harriet L. Hartley Conservation Area are described in Schedules A and B to the Conservation Easement and shown on the survey plan prepared by Donald R. Richards, P.L.S., L.F., recorded in the WCRD at Book 24, Page 54.

62. The conservation easement applies to intertidal land within the municipal boundaries of both Belfast and Northport, Waldo County, Maine.

63. Friends' conservation easement includes the intertidal land along the southern boundary of Mabee and Grace's upland lot, along the Little River and within the Little River watershed.

64. Consequently, the Harriet L. Hartley Conservation Area, held by Friends, includes intertidal land within the Little River watershed that would be adversely impacted by Nordic's proposed violation of Conditions and Restrictions 4 and 5, imposed by the State of Maine for the "protection of a municipal water shed" referenced in the 1973 State-to-City deed (WCRD Book 710, Page 1153).

65. As the holder of the intertidal portion of the land now owned by Mabee and Grace, Friends holds an enforceable "residential purposes only" servitude, created by the 1946 Hartley-to-Poor deed, over upland Lot 36. *Mabee and Grace, et al. v. Nordic Aquafarms, Inc., et al.*, 2023 ME 15, ¶ 58.

66. A Stipulated Judgment in RE-2021-007, entered on March 2, 2022, determined that the City of Belfast had not and could not modify or terminate Friends' conservation easement by use of eminent domain. (Exhibit 10).

67. The Condemnation Order, entered by the City on August 12, 2021 and recorded by Clerk's Certificate on August 16, 2021, did not include a taking of Friends' right to enforce the "residential purposes only" servitude on upland Lot 36. See, Schedule B of the Condemnation Order (WCRD Book 4693, Page 304, at 313-314; Exhibit 11).

68. Friends membership includes real property owners who abut the proposed Nordic Project area, and would be adversely impacted by, and would suffer particularized injuries and injuries-in-fact from, violation of the Conditions and Restrictions imposed by the State of Maine in the 1973 State-to-City deed -- including Plaintiffs Mabee, Grace and Block.

69. Friends has a contractual and statutory obligation to protect the property on which it holds a conservation easement.

70. Friends' protection of the environmental integrity of the Conservation Area includes preservation and protection of the Little River watershed and maintaining the adjacent forest and upland surrounding the Little River watershed in its natural condition, because the integrity of the watershed and surrounding upland directly impacts the flora and fauna within the Conservation Area, the wildlife that frequents the Conservation Area, and the ecology of the Conservation Area ecosystem.

71. Friends has a statutory right, pursuant to 33 M.R.S. §478(1)(b), to bring this action because the acts and omissions of the Defendants affects the Conservation Area.

**Defendants:**

72. **The City of Belfast**, (hereinafter "City" or "Belfast") is a municipal corporation located in Waldo County, Maine, organized pursuant to the laws of the State of Maine.

73. The City was conveyed the 12.5-acre parcel by the State of Maine in 1973 for the express purpose of "protection of a municipal water shed." (WCRD Book 710, Page 1153).

74. The 12.5-acre parcel was conveyed to the City subject to conditions and restrictions, including a prohibition on any buildings on the parcel and a requirement that the parcel be "kept in its natural condition." *Id.*, at Restrictions 4 and 5.

75. The 1973 State-to-City deed expressly stated that the Conditions and Restrictions in the deed from the STATE OF MAINE, acting through the Governor and Council, "shall run with the land." *Id.*

76. The State's conveyance to the City of Belfast was subject to a reversionary clause that states in relevant part:

. . . [T]he STATE OF MAINE, acting through the Governor and Council, on recommendation of the Department of Transportation, under and pursuant to the provisions of 23 M.R.S.A. Section 61, . . . does hereby remise, release, bargain, sell and convey and forever quit-claim unto the ***CITY OF BELFAST, its successors and assigns***, a certain lot or parcel of land situated in Belfast ***for as long as the same shall be used for the protection of a municipal water shed by said Grantee***, . . .

WCRD Book 710, Page 1153 (emphasis supplied).

77. At all times since October 10, 1973, the City has known that the 12.5-acre parcel was subject to the Conditions and Restrictions in the conveyance of this parcel from the State of Maine.

78. In early 2018, just prior to the Belfast City Council's adoption of amended zoning ordinances and zoning district map changes to facilitate the Nordic project being built on the land owned by the Water District, including the 12.5-acre parcel, officials and counsel for the City of Belfast, working in concert with Nordic and its counsel, surreptitiously sought to obtain a release of the 1973 Conditions and Restrictions.

79. Beginning in February 2018, the City of Belfast, acting through Belfast City Attorney Bill Kelly, solicited a release of the Conditions and Restrictions from the Maine Department of Transportation.

80. Belfast City Attorney Kelly sent an email to Toni Kemmerle, then the in-house legal counsel for DOT, on February 21, 2018, with the Subject: "Belfast Nordic Aquafarms." (Exhibit 12).

81. Belfast City Attorney Kelly never acknowledged the environmental value of this land to the protection of the Little River watershed and did not advise DOT that the municipality of Northport (which Attorney Kelly also represented at that time) has numerous property owners who rely on the integrity of the Little River aquifer and watershed because they are on wells as their sole source of potable water (Exhibit 16).

82. Specifically, Belfast City Attorney Kelly stated in relevant part that:

TONI

... I am contacting you in my capacity as the City Attorney for Belfast.

I need to understand the DOT process for removing covenants from a 12.5 acre piece of land that has been optioned to be purchased by a Norwegian company called Nordic Aquafarms here in Belfast. I attach a detail of the tax map and the deeds in question; the land is currently owned by the Belfast Water District (Trustees appointed by the City Council), and the City of Belfast currently also enjoys the restrictive covenants you will see in the deeds. The State of Maine created them in 1973, and therefore appears to enjoy enforcement of those restrictions. (However, the restrictions are contained in a Release Deed from the State, so I have to think about that some more). Not sure why the restrictions are placed on the land, as it sits well off of Route 1 – I am guessing it was boilerplate in 1973? Maybe that was around the time of the billboard removal wars? ***For context, the Water District is selling this and other adjacent land to Nordic (about 40 acres), as the Water District has no need of the land - its water is sourced 10 miles away in Swanville and piped to Belfast.*** The Water District Land is hash- marked and the double hash mark parcel with yellow outline is what I understand to be the location of the 12.5 acre parcel in question.

This 12.5 acres parcel needs to be available for the phased development of a \$450,000,000 salmon farm, assuming the due diligence all goes according to plan. Closing in about 3 or 4 months (ish).

This project was the subject of a press conference in which Governor LePage spoke/attended about two weeks ago at the U Maine Hutchinson Center in Belfast.

***On the substantive side of things, this land is basically field and has no particular value for any purpose.*** It sits adjacent to the land owned by the Mathews Brothers window factory, an industrially zoned property on which sits [sic] the longest/largest (I believe) industrial building in the City.

So, not looking for any substantive answer today, although happy to hear any thoughts you have. Today I am just trying to get a rough sense of the DOT time line for review of this request and build it into our rather busy time line that has PUC review, zoning changes and due diligence pieces. ***This is a fantastic but time intensive project.***

Thanks for your time. Happy to talk by phone if that would be helpful.

Bill

Exhibit 12 (emphasis supplied).

83. The City's efforts to vacate, release and extinguish the Conditions and Restrictions on the 12.5-acre parcel were done without public notice or knowledge, and, on information and belief, no public vote of the City Council was made to authorize the solicitation of a release from the Department of Transportation.

84. At the request of Attorney Bill Kelly, acting as Belfast's City Attorney, a "Deed of Vacation," was executed by the Commissioner of MDOT on April 9, 2018 ("2018 DOT-to-City Deed of Vacation"), allegedly "releasing the CITY OF BELFAST" from the Conditions and Restrictions in the 1973 deed from the State of Maine, executed by the Governor and Counsel, on October 10, 1973.

85. The City of Belfast had conveyed all of its interest(s) in the 12.5-Acre parcel thirty-one (31) years prior to soliciting and obtaining the 2018 DOT-to-City Deed of Vacation.

86. The 2018 DOT-to-City Deed of Vacation did not release the City of Belfast's successors and assigns – *including the Belfast Water District* -- from the Conditions and Restrictions, according to the unambiguous and express terms of that deed.

87. The 2018 DOT-to-City Deed of Vacation did not release the Belfast Water District or its successors and assigns from the Conditions and Restrictions.

88. The 2018 DOT-to-City Deed of Vacation did not, and could not, state that it was releasing the restrictions retroactively to 1973.

89. The 2018 DOT-to-City Deed of Vacation did not expressly release the reversionary clause in the 1973 deed from the Governor and Council, according to the unambiguous and express terms of that deed.

90. The City amended its comprehensive plan, zoning ordinances and zoning district maps, on or about April 17, 2018, to incorporate the 12.5-acre parcel into the Route One South Business Zoning District.

91. The zoning amendments were undertaken by the City to benefit Nordic and facilitate the construction of the Nordic project, as proposed.

92. These zoning amendments were approved by the Belfast City Council on or about April 17, 2018, with knowledge of, and a knowing disregard for, the Conditions and Restrictions on the 12.5-acre parcel then owned by the Belfast Water District.

93. The City of Belfast did not release the Belfast Water District from the Conditions and Restrictions included in the 1987 City-to-BWD deed prior to adopting the zoning ordinance and map district changes on April 17, 2018.

94. The City of Belfast did not record the 4-9-2018 DOT-to-City Deed of Vacation prior to adopting the zoning ordinance and map district changes on April 17, 2018.

95. Later in 2018, after Staff Attorney Kevin Martin of the Department of Environmental Protection (“DEP”) orally expressed concerns to Nordic regarding the Conditions and Restrictions in the 1973 State-to-City and 1987 City-to-BWD deeds (Exhibits 13 (with attachment from Joanna Tourangeau to Kevin Martin) and 14 (with attachment from DOT to Kevin Martin)), Nordic’s counsel, Joanna Tourangeau, forwarded the unrecorded 4-9-2018 DOT Deed of Vacation to DEP, with an email to Attorney Martin stating in relevant part:

Attached is a copy of the Deed of Vacation the Maine DOT issued to the City of Belfast which extinguishes the “no build” restriction the Department noted in its deed research and review of the deed to the City from the State for the portion of the property delineated in Nordic’s Purchase and Sale Agreement with the City/BWD (the PnS”) as the “Additional Parcel.” You will note that while this deed is dated April of this year – it has not yet been recorded. Counsel for the City is holding the Deed of Vacation in escrow until such time as the transaction described in the PnS closes.

See Exhibit 13 attachment, Tourangeau email thread and attached unrecorded 2018 DOT-to-City Deed of Vacation.

96. The Department of Environmental Protection did not post this correspondence as an addendum to Nordic’s MEPDES application and/or Nordic’s supplemental “TRI” (title, right



or interest) documentation on its Major Projects website for the Nordic project in 2018, or at any time thereafter to present.<sup>2</sup>

97. On information and belief, during consideration of Nordic's MEPDES, SLODA, NRPA and Air permit and license applications, the staff and legal counsel to the Department of Environmental Protection ("Department" or "DEP") and the Board of Environmental Protection ("Board" or "BEP") at no time advised the Board of the Conditions and Restrictions on the 12.5-acre parcel in the recorded 1973 State-to-City and 1987 City-to-BWD deeds in any public meeting or hearing, or any written draft or final Decision.

98. On information and belief, during consideration of Nordic's applications to the Belfast Planning Board, in which Belfast City Attorney Kelly was tasked with advising the Planning Board as their legal counsel, Belfast City Attorney Kelly at no time advised the Belfast Planning Board of the Conditions and Restrictions on the 12.5-acre parcel in the recorded 1973 State-to-City and 1987 City-to-BWD deeds, or of the existence of the unrecorded 4-9-2018 DOT-to-City Deed of Vacation, in any public meeting or hearing, or any written draft or final Decision.

99. Prior to the conveyance of the BWD property, including the 12.5-acre parcel, to Nordic on 3-10-2022, the Waldo County Registry of Deeds has no recorded instrument from the City of Belfast or the State of Maine, through the Governor or MDOT Commissioner, releasing the Belfast Water District from the Conditions and Restrictions in the 1973 State-to-City Deed and 1987 City-to-BWD deed.

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<sup>2</sup> See, DEP Major Projects website for the Nordic Project, TRI Supplement:

<https://www.maine.gov/dep/ftp/projects/nordic/applications/TRI%20supplement/>

Nordic's MEPDES Application, the only application pending in 2018 in DEP:

[https://www.maine.gov/dep/ftp/projects/nordic/applications/MEPDES%20Permit%20Application\\_Final\\_Oct%2019,%202018.pdf](https://www.maine.gov/dep/ftp/projects/nordic/applications/MEPDES%20Permit%20Application_Final_Oct%2019,%202018.pdf)

100. The City has had no title, right or interest in the 12.5-acre parcel since 1987, when the City conveyed this parcel to the Belfast Water District (“BWD”), subject to the 1973 conditions and restrictions (WCRD Book 1092, Page 145).

101. On 3-10-2022, the BWD conveyed the Water District’s Little River property to Nordic (“BWD-to-Nordic deed”; WCRD Book 4776, Page 210).

102. The BWD land conveyed to Nordic on 3-10-2022 included the 12.5 acres conveyed by the 10-10-1973 deed from the State of Maine to the City.

103. The BWD conveyed the 12.5-acre parcel “SUBJECT TO” the Conditions and Restrictions in the 1973 State-to-City deed, and restated in the 1987 City-to-BWD deed.

104. On March 17, 2022, the City of Belfast recorded two documents in the Waldo County Registry of Deeds: (a) a document titled “Deed of Vacation,” executed by the Commissioner of DOT on April 9, 2018 (WCRD Book 4778, Page 34; hereinafter “4-9-2018 DOT-to-City Deed of Vacation”) (attached hereto and incorporated herein as Exhibit 9); and (b) a “Deed of Vacation,” executed by City Manager Erin Herbig, dated March 15, 2022, purporting to release Nordic from the Conditions and Restrictions on the 12.5-Acre parcel (WCRD at Book 4778, Page 35; Exhibit 8).

105. The document group/description for these documents on the online Registry of Deeds website for Waldo County was “RP / MISCELLANEOUS,” not “DEED.”

106. The **only** “Related” deed referenced for these documents on the WCRD online search was the 1973 State-to-City deed: “10/11/1973 Bk: 710 Pg: 1153.”

107. The 2022 City-to-Nordic “Deed of Vacation” does not identify the 2018 DOT-to-City Deed of Vacation as a “Related” deed; and the 2018 DOT-to-City Deed of Vacation does not identify the *simultaneously recorded* 2022 City-to-Nordic Deed of Vacation as a “Related” deed.

108. The 2022 City-to-Nordic “Deed of Vacation” states in relevant part that:

. . . [T]he CITY OF BELFAST, a body politic and corporate . . . releases to NORDIC AQUAFARMS, INC., a Delaware corporation with a principle place of business in Portland, Maine, . . . and does hereby forever vacate, release and extinguish each and every condition and restriction reserved on a parcel of land located on the westerly side of but not adjacent to U.S. Route 1 in the City of Belfast, County of Waldo and State of Maine, and further described as follows:

The property subject to this release is described in a Governor’s Deed from the State of Maine to the City of Belfast dated October 10, 1973 and recorded at the Waldo County Registry of Deeds in Book 710, Page 1153, and is shown on a plan entitled “Maine State Highway commissioner, Right of Way Map, State Highway “26”, Belfast, Waldo County, Martha N. Williams Boyne to the State of Maine” dated February 1970, Sheet No. 2 of 2, S.H.C. File No. 14-105A, on file at the Office of the Department of Transportation located in Augusta , Maine (the “Property”).

. . . The City of Belfast makes no representations or warranties with respect to the Property.

WCRD Book 4778, Page 35.

109. The City executed the 3-15-2022 City-to-Nordic Deed of Vacation in the absence of any legal interest in the 12.5-acre parcel or legal capacity in statute or common law to “vacate, release and extinguish” the Conditions and Restrictions on the 12.5-acre parcel.

110. The 3-15-2022 City-to-Nordic “Deed of Vacation” was executed and recorded by the City thirty-five (35) years after the City had conveyed its interests in this parcel to the BWD, and five (5) days *after* the BWD had conveyed the 12.5-acres parcel to Nordic subject to the Conditions and Restrictions.

111. The City executed the 3-15-2022 City-to-Nordic Deed of Vacation with malice and/or in knowing disregard for: (a) the protection of the Little River watershed; (b) the Conditions and Restrictions on the 12.5-acre parcel since 1973, that expressly “run with the land”; and (c) the City’s lack of a legal right or capacity to “vacate, release and extinguish” the Conditions and Restrictions on the 12.5-acre parcel, pursuant to statute or common law.

112. **Nordic Aquafarms, Inc.**, (hereinafter “Defendant NAF”, “NAF” or “Nordic”) is a Delaware corporation with offices in Belfast, Waldo County, Maine; Portland, Cumberland County, Maine; and Fredrikstad, Norway.

113. Nordic is a foreign business corporation (ME Charter No. 20180521 F), incorporated in the State of Delaware (DE Division of Corporations File No. 6601137).

114. Since 2017, Nordic has sought to obtain permits, licenses and leases from local, State and federal regulatory agencies for the purpose of constructing an industrial land-based aquaculture facility in Belfast, Waldo County, Maine.

115. Nordic’s project, as proposed, would clear-cut and denude the 12.5-acre parcel of its extensive mature tree growth, and fill extensive wetlands and a brook covering a significant portion of this parcel. *See*, Image below from engineering drawings submitted with and incorporated in Nordic’s 5-24-2019 SLODA Application to the Maine Department of Environmental Protection (see area marks in green).<sup>3</sup>

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<sup>3</sup> <https://www.maine.gov/dep/ftp/projects/nordic/applications/SLODA/Civil%20Engineering%20Drawings/006-CE110-18076.pdf>



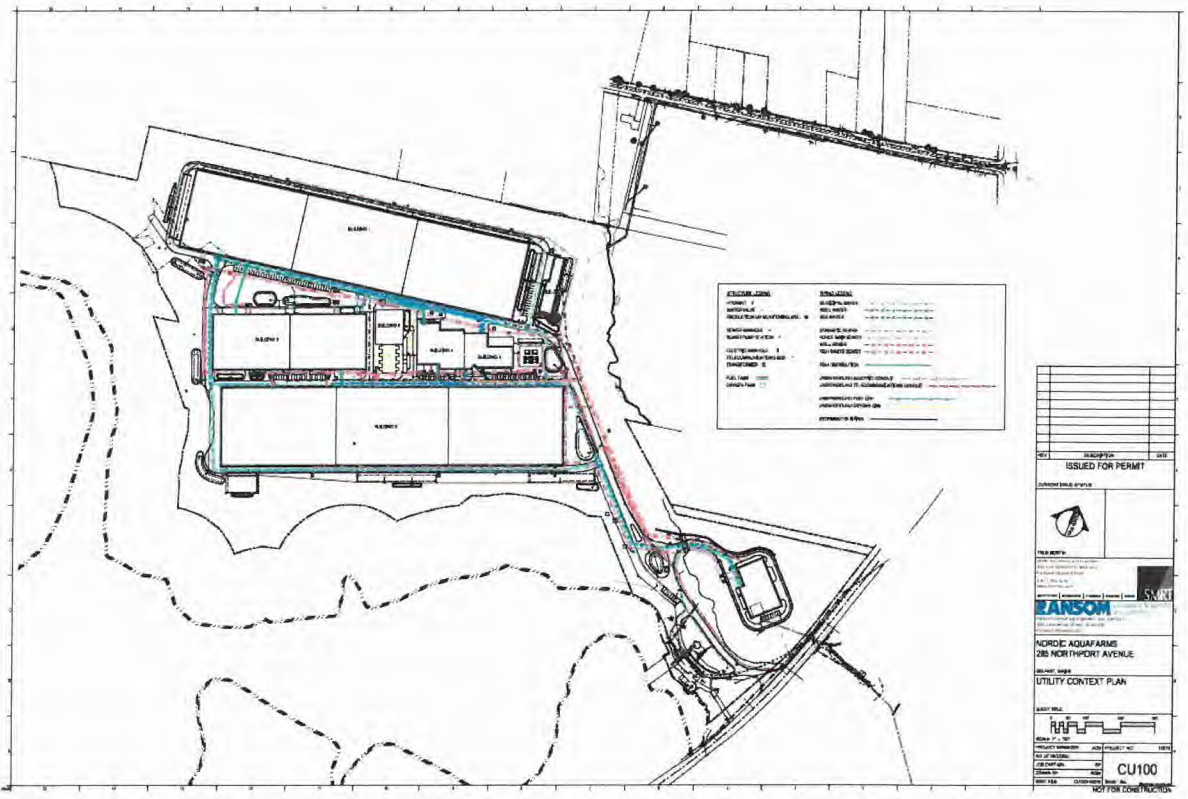


Image obtained from engineering drawings submitted with and incorporated in Nordie’s 5-24-2019 Site Location of Development Act (“SLODA”) Application to the Maine Department of Environmental Protection.<sup>4</sup>

118. Nordie and the City of Belfast, acting through Belfast City Attorney Kelly, worked in concert to obtain the Deed of Vacation from the Maine Department of Transportation on and before April 9, 2018, even though the City had conveyed all of its interest in the 12.5-acre parcel to the Belfast Water District in 1987.

119. In September 2018, Nordie was provided with a signed and sealed “Boundary & Topographic Survey of the Lands of Samuel F. Cassida, The Belfast Water District & Portion of Lands of Goldenrod LLC, that Nordie commissioned be done by Good Deeds.

<sup>4</sup> <https://www.maine.gov/dep/ftp/projects/nordie/applications/SLODA/Civil%20Engineering%20Drawings/037-CU100-18076.pdf>

120. A copy of the September 17, 2018 Good Deeds Survey Plan, prepared, signed and sealed by Clark Staples, P.L.S., was submitted by Nordic to the City and is attached hereto and incorporated herein as Exhibit 1.<sup>5/6</sup>

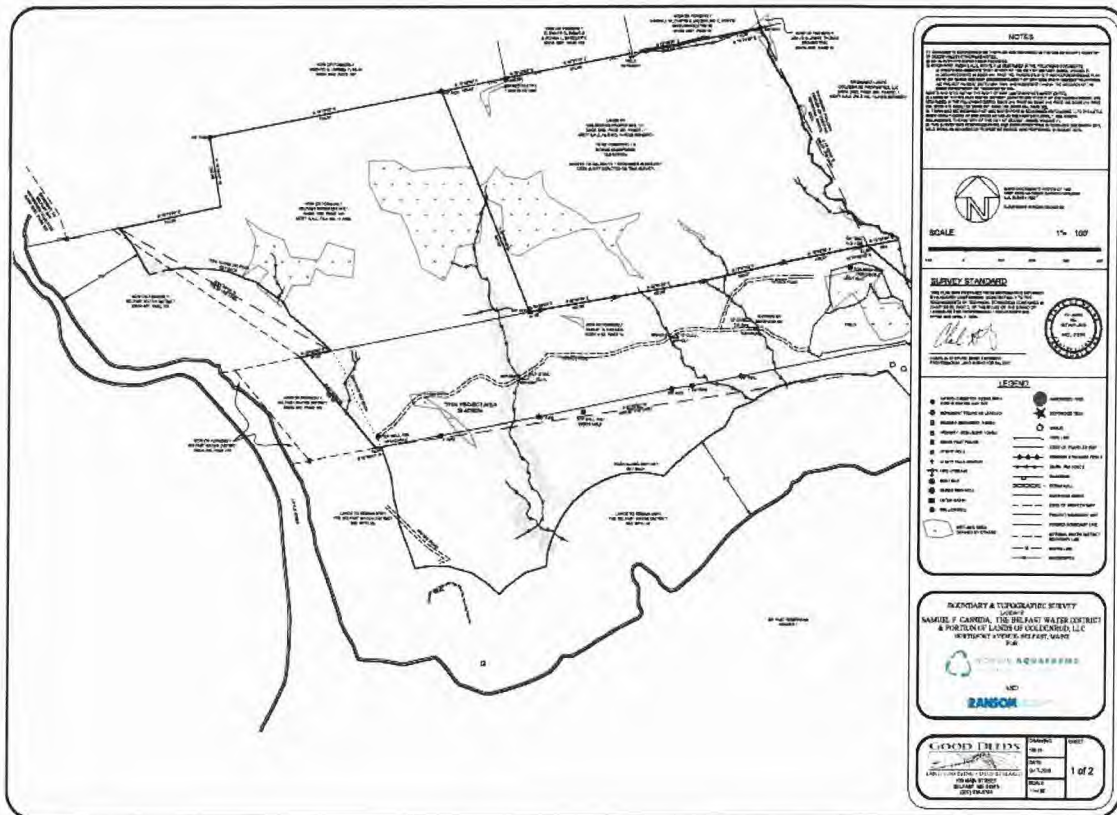


Image obtained from Nordic’s submissions to the Belfast Planning Board with Nordic’s application for local permits from the city of Belfast. The 12.5-acre parcel is highlighted in red.

121. The September 17, 2018 Good Deeds survey includes the 12.5-acre parcel and shows that wetlands cover a significant portion of the parcel, as well as a brook.

<sup>5</sup> <https://www.cityofbelfast.org/DocumentCenter/View/3004/Survey-1?bidId=>

<sup>6</sup> All exhibits referenced herein and/or listed on the Index attached hereto are incorporated by reference in this Complaint as though a part hereof.

122. The September 2018 Good Deeds Survey includes the 12.5-acre parcel and references the 1987 City-to-BWD deed, that contains reference to the Conditions and Restrictions on this parcel.

123. Nordic and the City knew prior to the City amending its zoning ordinances and zoning district maps that the Nordic project, as proposed, would violate the 1973 Conditions and Restrictions on the 12.5-acre parcel.

124. At all times since 2018 Nordic has asserted that it had “sufficient” title, right or interest to obtain and retain local, state and federal permits, licenses and leases necessary to construct and operate an industrial land-based salmon factory in Belfast, Waldo County, Maine on the land owned by the Belfast Water District (“BWD”).

125. At all times since 2018 Nordic’s assertions that it had “sufficient” title, right or interest to obtain and retain local, state and federal permits, licenses and leases necessary to construct and operate an industrial land-based salmon factory in Belfast, Waldo County, Maine on the land owned by the Belfast Water District (“BWD”), including the 12.5-acre parcel, were *false*.

126. Based on Nordic’s representations to local, state and federal regulatory agencies, Nordic obtained approvals from various local, state and federal agencies for permits and licenses that would authorize Nordic to place buildings on the 12.5-acre lot conveyed to the City of Belfast in 1973 by the State of Maine, and significantly alter this parcel from its natural condition.

127. In an effort to facilitate obtaining permits and licenses from the Maine Department of Environmental Protection, Nordic provided the unrecorded 4-9-2018 DOT Deed of Vacation to the Maine Department of Environmental Protection in November 2018 to create the false impression that the Conditions and Restrictions in the 1973 State-to-City deed had been vacated, released and extinguished.



128. At no time since 2018 did Nordic reveal to the Courts or local, state and federal regulatory agencies that 12.5-acres of the land on which Nordic proposed to construct its industrial land-based salmon factory were subject to Conditions and Restrictions that would prohibit any buildings being placed on this land and prohibit alteration of this land from its “natural condition” to protect the water shed.

129. Nordic and the City of Belfast failed to record the 4-9-2018 DOT-to-City Deed of Vacation in the Waldo County Registry of Deeds in order to: (a) conceal their *ultra vires* efforts to vacate, release and extinguish the Conditions and Restrictions on the 12.5-acre parcel; (b) create the false impression that the 1973 Conditions and Restrictions had been released; and (c) prevent abutting property owners and aggrieved parties from challenging the Nordic project, as proposed, based on the Conditions and Restrictions that have been in place since 1973.

**Party in Interest:**

130. The **Maine Department of Transportation**, an agency of the State of Maine established by Title 23 of the Maine Revised Statutes, through its Commissioner in 2018, executed the Deed of Vacation, to the City of Belfast, dated 4-9-2018, that is at issue in this action for declaratory and injunctive relief (Exhibit 9).

131. The State of Maine, through the Governor and Council, on recommendation of the Department of Transportation (“DOT”), was the Grantor of the 1973 deed to the City of Belfast for the 12.5-acre parcel (WCRD Book 710, Page 1153; Exhibit 3).

132. The State’s 1973 conveyance of the 12.5-acre parcel to the City of Belfast was subject to a reversionary clause that states:

. . . [T]he STATE OF MAINE, acting through the Governor and Council, on recommendation of the Department of Transportation, under and pursuant to the provisions of 23 M.R.S.A. Section 61, . . . does hereby remise, release, bargain, sell and convey and forever quit-claim unto the **CITY OF BELFAST, its**

*successors and assigns*, a certain lot or parcel of land situated in Belfast *for as long as the same shall be used for the protection of a municipal water shed by said Grantee, . . .*

WCRD Book 710, Page 1153 (emphasis supplied).

133. The State of Maine also made the conveyance subject to five (5) “restrictions which *shall run with the land*,” *Id.*, (emphasis supplied), including in relevant part:

- (4) No buildings will be permitted on the premises hereinabove described.
- (5) The land shall be kept in its natural condition; however, proper husbandry and maintenance of the forest produce [sic] existing thereon and such uses of said land that are consistent with the above purposes [protection of a municipal water shed] will be allowed.

(WCRD Book 710, Pages 1154).

134. On April 9, 2018, at the request of the City of Belfast – *made thirty-one (31) years after the City had conveyed its interest in the 12.5-acre parcel to the Belfast Water District* – the Commissioner of the **Department of Transportation** (David Bernhardt) executed a “Deed of Vacation” to the City of Belfast, allegedly “releasing the City of Belfast” from the conditions and restrictions in the 1973 quit-claim deed from the Governor and Council.

135. The 2018 DOT-to-City Deed of Vacation states that it is executed “under and pursuant to the provisions of 23 M.R.S. Section 61.”

136. Specifically, the 4-9-2018 DOT-to-City Deed of Vacation states in relevant part that:

. . . the **STATE OF MAINE, acting by and through the Commissioner of the Department of Transportation**, under and pursuant to the provisions of 23 M.R.S. Section 61, releases to the **CITY OF BELFAST**, a body politic and corporate . . . , does hereby forever *vacate, release and extinguish* each and every condition and restriction reserved on a parcel of land located on the westerly side of but not adjacent to U.S. Route 1 in the City of Belfast, County of Waldo and State of Maine, and further described as follows:

The property subject to this release is described in a Governor’s Deed from the State of Maine to the City of Belfast dated October 10, 1973 and recorded at the Waldo County Registry of Deeds in Book 710, Page 1153, and is shown on a plan entitled “Maine State Highway commissioner, Right of Way Map, State Highway “26”, Belfast, Waldo County,

Martha N. Williams Boyne to the State of Maine” dated February 1970, Sheet No. 2 of 2, S.H.C. File No. 14-105A, on file at the Office of the Department of Transportation located in Augusta, Maine (the “Property”).

This release applies solely to the Property above described and shall not constitute a release or waiver of the rights of the State of Maine with respect to any other property or interest. The State of Maine makes no representations or warranties with respect to the Property.

137. 23 M.R.S. § 61 states in relevant part that:

**§61. Vacation, sale or lease of acquired land**

**1. Land acquired may be vacated.** The Department of Transportation may vacate any land or part of land or rights in land which have been taken or acquired for transportation purposes by executing and recording a deed, and that action shall vest the title to the lands or rights so vacated *in the person in whom it was vested at the time of the taking, their heirs and assigns*. The value at the time of vacation may be pleaded in mitigation of damages in any proceeding on account of that taking.

**2. Land acquired may be sold.** The Governor, on recommendation of the department, may sell and convey on behalf of the State the interests of the State in property taken or acquired by purchase for transportation purposes and deemed no longer necessary for those purposes.

(emphasis supplied).

138. Chapter 7-5 of the DOT Right-of-Way Manual provides the process by which property acquired by DOT, deemed to be “excess” or “surplus” or no longer of need to the State of Maine for transportation purposes, is conveyed.

139. The version of Chapter 7 of the DOT Right-of Way Manual in effect when the 4-9-2018 DOT-to-City Deed of Vacation was executed was adopted in December 2015 (“2015 ROW Manual”), referenced and incorporated herein as Exhibit 15).<sup>7</sup>

140. Chapter 7, Section 7-5.01 of the 2015 DOT Right-of-Way Manual defined “Surplus property” as “real estate under the jurisdiction of MaineDOT, which is determined as not needed for transportation use.”

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<sup>7</sup> <https://www.maine.gov/mdot/rowmanual/docs/completedocument2015.pdf>

141. Chapter 7, Section 7-5.03, of the December 2015 DOT Right-of-Way Manual, established criteria and processes for making a “Surplus Property Determination and states in 7-5.03(2)(c) (External Clearances) that:

Federal, State and local agencies shall be afforded the opportunity to acquire real property interests considered for disposal when such real property interests have potential use for parks, conservation, recreation, or related purposes.

142. None of the processes or criteria in 7-5.03 for determining whether the State’s retained property interests in the 12.5-acre parcel were surplus and/or should be offered for use for parks, conservation, recreation or related purposes were followed by DOT prior to execution of the 4-9-2018 DOT-to-City Deed of Vacation by the DOT Commissioner.

143. Chapter 7, Section 7-5-04 of the 2015 DOT Right-of-Way Manual established the process for conveying surplus property.

144. Of relevance to this request for declaratory and injunctive relief, Section 7-5-04 of the 2015 DOT Right-of-Way Manual states in relevant part that:

**7-5.04 Process for Disposal of Surplus Property**

The steps presented below define the process of disposing of surplus property. The checklist on Form PM-4 will be used to record the date actions in the process are completed:

1. Surplus property may be offered to a municipality or a State agency for a public use at less than market value or at no cost. **The Governor’s Deed (see Section 7-5.05) will contain a reversionary clause that will prevent the subsequent private sale of the property.**

145. Pursuant to the 2015 version of Chapter 7, Section 7-5.04, applicable to disposal of surplus property in April 2018, even had a Governor’s Deed been used to grant “the City of Belfast” a release from the Conditions and Restrictions, that deed would have been required to contain a reversionary clause that prevented the private sale of the property – prohibiting the sale to Nordic.

146. Chapter 7, Section 7-5.05 of the 2015 DOT Right-of-Way Manual provided the process for “Conveyance of Surplus Property” in 2018.

147. Section 7-5.05 of the 2015 DOT Right-of-Way Manual states in relevant part that:

**7-5.05 Conveyance of Surplus Property**

Conveyance of excess real property will be either by Deed of Vacation or by Governor’s Deed. The Deed of Vacation is used to release property to the previous owner or the owner’s heirs or assigns. The Governor’s Deed is used to convey fee simple interest to any party other than from whom the property was obtained.

The Commissioner of Transportation signs the Deed of Vacation. The Governor signs the Governor’s Deed. . . .

148. The City of Belfast was not “*the previous owner or the owner’s heir or assign*” of the 12.5-acre parcel at the time the Department of Transportation acquired this parcel in 1968.

149. The “previous owner” of the 12.5-acre parcel was Martha N. Williams Boyne, who died in 1970.

150. Pursuant to 7-5.05 and 23 M.R.S. § 61(1), a Deed of Vacation signed by the Commissioner of DOT would only have been legally appropriate to convey the State’s retained interests in the 12.5-acre parcel to the heirs or assigns of Martha N. Williams Boyne.

151. Pursuant to 7-5.05 and 23 M.R.S. § 61(1) and (2), the Commissioner of DOT was not legally authorized to execute a Deed of Vacation to the City of Belfast to “vacate, release and extinguish” the Conditions and Restrictions imposed on the 12.5-acre parcel by the 1973 deed from the Governor and Council or eliminate the 1973 reversionary clause.

152. The 12.5-acre parcel was not acquired by DOT by an eminent domain “*taking*,” but was acquired by an arms-length transaction from Martha N. Williams Boyne for fair market price in 1968.

153. It is unclear whether DOT used federal funds to acquire the 12.5-acre parcel in 1968.

154. If federal funding was used as a source for acquiring the 12.5-acre parcel, the DOT failed to follow the process in the 2015 Right-of-Way Manual Chapter 7, Section 7-5.04(4), (5), and (6) for conveying the property rights retained by the State in 1973, as surplus property, through imposition of the reversionary clause and the Conditions and Restrictions.

155. It was contrary to the statutory requirements in 23 M.R.S. § 61 (1) and (2) to use a Deed of Vacation signed by the Commissioner of DOT to allegedly release the Restrictions imposed by a Governor's Deed, on the City of Belfast – a municipal corporation and body politic that was not the “previous owner” from which the DOT obtained the 12.5-acre parcel.

156. It was contrary to the requirements in Section 7-5.05 of the DOT Right-of-Way Manual to use a Deed of Vacation signed by the Commissioner of DOT to allegedly release the Restrictions imposed by a Governor's Deed, on the City of Belfast – a municipal corporation and body politic that was not the “person” from which the DOT obtained the 12.5-acre parcel.

157. It was contrary to the requirements in Section 7-5.05 of the 2015 DOT Right-of-Way Manual to grant any deed to the City of Belfast in April of 2018 that did not include a reversionary clause that prevented the sale of this parcel to a private party – including Nordic Aquafarms, Inc.

158. There is no record that the State of Maine, through a Governor's Deed, has released the City of Belfast, the Belfast Water District or Nordic Aquafarms, Inc. from the Conditions and Restrictions in the 1973 State-to-City Deed.

### **III. JURISDICTION AND VENUE**

159. This Court has jurisdiction over these proceedings under 4 M.R.S. § 105 and Maine's Declaratory Judgment statute, (M.R. Civ. P. 57 and 14 M.R.S.A. § 5951-5963), as well as under the Court's equitable authority.

160. Venue is proper in Waldo County, Maine, pursuant to 14 M.R.S. § 501, because: (a) the land in controversy is located in the City of Belfast, Waldo County, Maine, within the geographic jurisdictional boundaries of this Court; (b) the City of Belfast is a municipal corporation within Waldo County, Maine; (c) Plaintiffs Mabee, Grace and Block reside in Waldo County, Maine; and (d) Plaintiff Friends has its principal place of business in Belfast, Waldo County, Maine.

### **IV. FACTUAL ALLEGATIONS COMMON TO ALL COUNTS**

161. Plaintiffs incorporate Paragraphs 1 – 160 of this Complaint as though more fully set forth herein.

162. On 10-25-1968, Martha N. Williams Boyne conveyed land she owned in Belfast that fronts on U.S. Route 1 (Maine Hwy 26) to "the State of Maine, Department of Transportation" ("MDOT"), recorded at WCRD Book 671, Page 658.

163. A certified copy of this deed is attached hereto and incorporated herein as Exhibit 2.

164. On 10-10-1973, the State of Maine, through the "Governor and Council," on the recommendation of the Department of Transportation, conveyed 12.5 acres of the Boyne-to-State parcel to the City of Belfast (WCRD Book 710, Page 1153; "1973 State-to-City deed").

165. The 1973 State-to-City deed states in relevant part:

**KNOW ALL MEN BY THESE PRESENTS**

“That, the STATE OF MAINE, acting by and through the Governor and Council, on recommendation of the Department of Transportation, under and pursuant to the provisions of 23 M.R.S.A. Section 61, in consideration of ONE (\$1.00) Dollar and other valuable consideration paid by the CITY OF BELFAST, a body corporate and politic located at Belfast, County of Waldo and State of Maine, the receipt whereof it does hereby acknowledge, *does hereby remise, release, bargain, sell and convey and forever quit-claim unto the CITY OF BELFAST, its successors and assigns, a certain lot or parcel of land situated in Belfast for so long as the same shall be used for the protection of a municipal water shed by said Grantee*, said parcel being more particularly described as follows, to wit: . . .

**This conveyance is made subject to the following restrictions which shall run with the land**, to wit: . . .

**(4) No buildings will be permitted on the premises herein above described.**

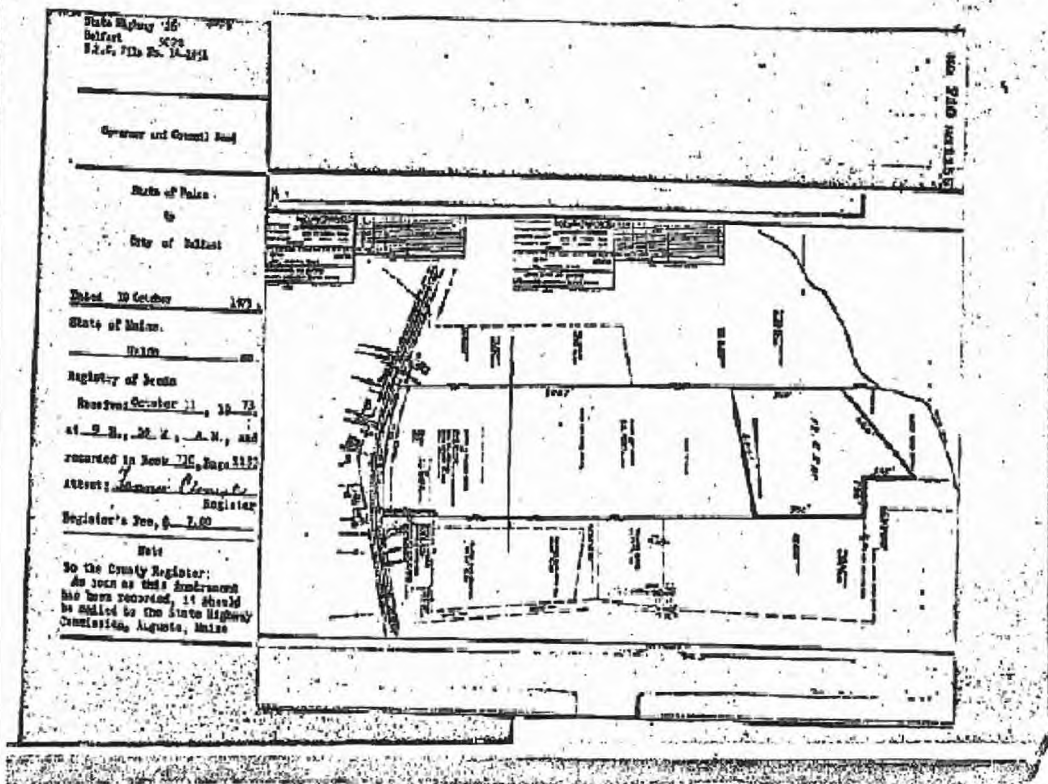
**(5) The land shall be kept in its natural condition**; however, proper husbandry and maintenance of the forest produce existing thereon and such uses of said land that are consistent with the above purpose will be allowed.

(emphasis supplied) (hereinafter "1973 State-to-City deed" and parcel referred to as "1973 Governor's conveyance" or "12.5-acre parcel"). .

166. A certified copy of this deed is attached hereto and incorporated herein as Exhibit 3.

167. A drawing at Book 710, Page 1156 shows the location of the parcel conveyed. The 12.5-acre parcel is highlighted in red. *Id.*





168. The stated purpose for the State's conveyance of this 12.5-acre parcel to the City of Belfast was "the protection of a municipal water shed." (See, e.g., WCRD Book 710, Page 1153).

169. The 1973 reversionary clause is a "fee simple determinable in land" or a "fee simple in land subject to a right of entry for condition broken."

170. Because the 1973 reversionary clause was created for a public purpose and was included in a deed grant to a political subdivision of the State, this reversionary clause is not subject to the rule of perpetuities, pursuant to 33 M.R.S. § 116(3)(a) and (b).

171. In 1987, the City of Belfast conveyed the 12.5-acre parcel, conveyed to the City by the 1973 State-to-City deed, to the Belfast Water District, by Quit Claim Deed, expressly stating in the City-to-BWD deed that the parcel was subject to the conditions and restrictions in the 1973 State-to-City deed. (WCRD Book 1092, Page 145; hereinafter “City-to-BWD deed” or “1987 City-to-BWD deed”).

172. The City-to-BWD deed states that: “Authorization for this deed was given Mar[ch] 3<sup>rd</sup>, 1987 by the Belfast City Council (WCRD Book 1092, Page 146).

173. A certified copy of the 1987 City-to-BWD deed is attached hereto and incorporated herein as Exhibit 4.

174. Page 2 of the attached survey, obtained on or about March 15, 2023 from the Maine Department of Transportation (“MDOT”) (attached herein as Exhibit 5), shows the location of the 12.5-acres of land conveyed to the City of Belfast by the State in 1973 in relation to the other BWD land and the Little River. *See also*, Options and Purchase Agreement, dated 1-30-2018, obtained from the City of Belfast website, attached hereto and incorporated herein as Exhibit 6, including the image on page 17 of that document depicting the 12.5-acre parcel as “Additional Parcel”.<sup>8</sup>

175. It is clear from a comparison of the MDOT survey (Exhibit 5, p. 2), the 2018 Good Deeds survey (Exhibit 1), and the image contained in the 1-30-2018 Options and Purchase Agreement (Exhibit 6), that the land on which Nordic has proposed to place its fish factory

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<sup>8</sup> <https://www.cityofbelfast.org/DocumentCenter/View/2176/options-and-purchase-agreement?bidId=>

buildings includes the 12.5 acres that are burdened by the Conditions and Restrictions in the 1973 deed from the State of Maine which expressly *run with the land*.

176. In February 2018, the City of Belfast and Nordic attempted to evade the Conditions and Restrictions on the 12.5-acre parcel by obtaining a release of the Conditions and Restrictions from the Maine Department of Transportation.

177. Belfast City Attorney Bill Kelly solicited that release from staff at the MDOT beginning on February 21, 2018 (Exhibit 12).

178. A Deed of Vacation, signed by the Commissioner of DOT (then David Berhardt), was executed on April 9, 2018 (“4-9-2018 DOT-to-City Deed of Vacation”; attached hereto and incorporated herein as Exhibit 9).

179. The 4-9-2018 DOT-to-City Deed of Vacation states in relevant part that:

. . . the **STATE OF MAINE, acting by and through the Commissioner of the Department of Transportation**, under and pursuant to the provisions of 23 M.R.S. Section 61, releases to the **CITY OF BELFAST**, a body politic and corporate having a mailing address of 131 Church Street, Belfast, ME 04915, does hereby forever *vacate, release and extinguish* each and every condition and restriction reserved on a parcel of land located on the westerly side of but not adjacent to U.S. Route 1 in the City of Belfast, County of Waldo and State of Maine, and further described as follows:

The property subject to this release is described in a Governor’s Deed from the State of Maine to the City of Belfast dated October 10, 1973 and recorded at the Waldo County Registry of Deeds in Book 710, Page 1153, and is shown on a plan entitled “Maine State Highway commissioner, Right of Way Map, State Highway “26”, Belfast, Waldo County, Martha N. Williams Boyne to the State of Maine” dated February 1970, Sheet No. 2 of 2, S.H.C. File No. 14-105A, on file at the Office of the Department of Transportation located in Augusta , Maine (the “Property”).

This release applies solely to the Property above described and shall not constitute a release or waiver of the rights of the State of Maine with respect to any other property or interest. The State of Maine makes no representations or warranties with respect to the Property.

(italics and bolding in original).

180. At the time that the City obtained the 4-9-2018 DOT-to-City Deed of Vacation, the City did not own the 12.5-acre parcel.

..

181. The City had conveyed its interest in the 12.5-acre parcel to the Belfast Water District approximately *thirty-one (31) years before* the City requested and obtained the 2018 Deed of Vacation from the Commissioner of the Maine Department of Transportation.

182. The City of Belfast did not record the 4-9-2018 DOT-to-City Deed of Vacation in the WCRD when the DOT delivered that instrument to the City in 2018.

183. On 3-10-2022 the BWD conveyed its land to Nordic along the Little River.

184. The land conveyed by the BWD to Nordic includes the 12.5-acre parcel that was conveyed by the 1973 State-to-City deed signed by the Governor and the 1987 City-to-BWD deed.

185. The BWD-to-Nordic deed was recorded on 3-14-2022 in the WCRD at Book 4776, Page 210.

186. That deed expressly states that the conveyance to Nordic is “subject to” “the terms, conditions and restrictions” in the 1973 State-to-City deed (See, Book 4776, Page 221).

187. Specifically, the BWD-to-Nordic deed states:

FURTHER SUBJECT TO the following:

2) The terms, conditions and restrictions set forth in the deed from the State of Maine to the City of Belfast Dated October 10, 1973 and recorded in said Registry in Book 710, Page 1153, and as restated in the deed from the City of Belfast to the Belfast Water District dated March 3, 1987 and recorded in said Registry in Book 1092, Page 145.

188. A certified copy of this deed is attached hereto and incorporated herein as Exhibit 7.

189. There are no documents recorded in the WCRD, executed prior to March 10, 2022 by the Governor of the State of Maine or the City of Belfast, releasing the Belfast Water District

from the Conditions and Restrictions in the 1973 State-to-City deed or the 1987 City-to-BWD deed.

190. On 3-17-2022 the document titled: “Deed of Vacation,” executed on 4-9-2018 by the Commissioner of DOT to the City of Belfast was recorded – almost four (4) years after this document had been executed and delivered to the City of Belfast. (WCRD Book 4778, Page 34).

191. On 3-17-2022 a document titled: “Deed of Vacation,” executed on 3-15-2022 by Erin Herbig, Belfast City Manager, to Nordic was recorded. (WCRD Book 4778, Page 35; hereinafter “2022 City-to-Nordic deed”).

192. The 2022 City-to-Nordic deed was executed *five days after* BWD conveyed its land to Nordic, *subject to the Conditions and Restrictions* in the 1973 State-to-City deed and 1987 City-to-BWD deed.

193. The 3-15-2022 City-to-Nordic “Deed of Vacation” states that the City:

“does hereby forever vacate, release and extinguish each and every condition and restriction reserved on a parcel of land located on the westerly side but not adjacent to U.S. Route 1 in the City of Belfast, County of Waldo and State of Maine, and further described as follows:

The property subject to this release is described in a Governor’s Deed from the State of Maine to the City of Belfast dated October 10, 1973 and recorded at the Waldo County Registry of Deeds in Book 710, Page 1153, and is shown on a plan entitled “Maine State Highway commissioner, Right of Way Map, State Highway “26”, Belfast, Waldo County, Martha N. Williams Boyne to the State of Maine” dated February 1970, Sheet No. 2 of 2, S.H.C. File no. 14-105A, on file at the Office of the Department of Transportation located in Augusta, Maine (the “Property”).

This release applies solely to the Property above described and shall not constitute a release or waiver of the rights of the City of Belfast with respect to any other property or interest. The City of Belfast makes no representations or warranties with respect to the Property.

194. A certified copy of this deed is attached hereto and incorporated herein as Exhibit 8.

195. At the time the City Manager executed the 2022 City-to-Nordic “Deed of Vacation,” the City had no legal capacity to release the Conditions and Restrictions imposed on this lot by the 1973 State-to-City deed from the Governor and Council, in which the City was the Grantee and the Grantor (State of Maine) expressly stated that the Conditions and Restrictions “shall run with the land.”

196. As a matter of law, the City has never had the legal capacity to release the Conditions and Restrictions imposed on this lot by the 1973 State-to-City deed in which the City was the Grantee and the Grantor (State of Maine) expressly stated that the Conditions and Restrictions “shall run with the land.”

197. As a matter of law, the 3-15-2022 City-to-Nordic “Deed of Vacation” is null and void *ab initio*.

198. On information and belief, the City of Belfast concealed the existence of the 1973 Conditions and Restrictions and the 4-9-2018 DOT-to-City Deed of Vacation from the Belfast Planning Board when the Planning Board considered Nordic’s applications for permits from the City of Belfast.

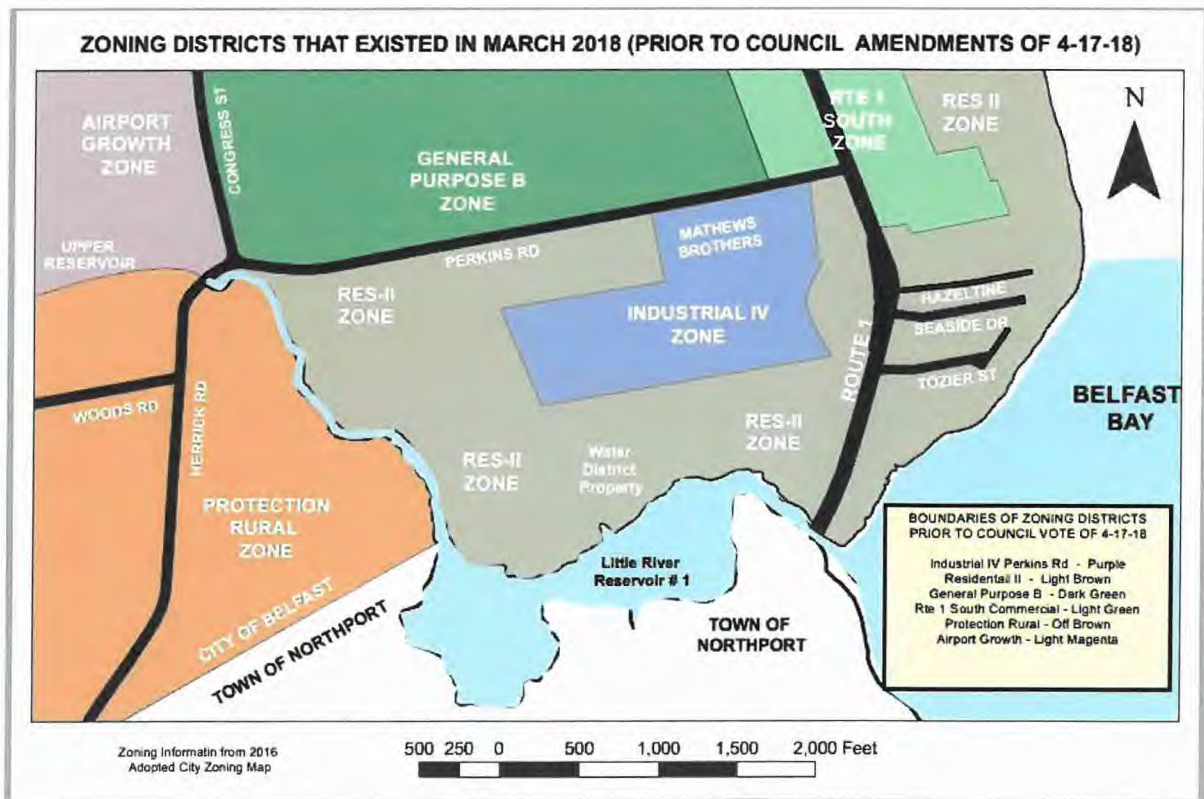
199. The Belfast Planning Board was advised on legal matters relating to the Nordic project by Belfast City Attorney Bill Kelly.

200. In April 2019 City Planner Wayne Marshall announced to the Belfast Planning Board, in a public meeting, that Attorney Bill Kelly’s fees were being reimbursed to the City of Belfast by Nordic Aquafarms, Inc.

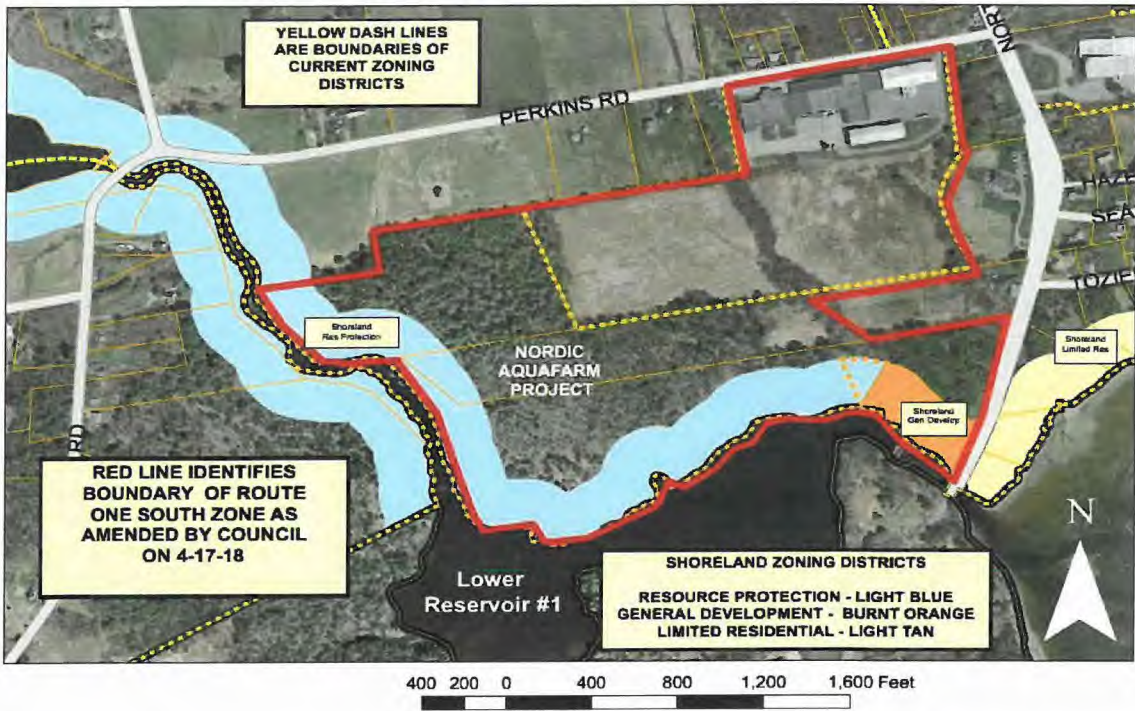
201. Beginning in 2017, officials within the City of Belfast and Nordic have undertaken extraordinary efforts to promote Nordic’s proposed land-based industrial salmon factory.

202. The City radically amended its Comprehensive Plan and Zoning Ordinances and zoning district maps in April 2018 to facilitate the Nordic Project being constructed on the BWD property along the Little River.

203. Despite the City having knowledge of the Conditions and Restrictions on the 12.5-acre parcel conveyed by the City to the BWD in 1987, the City included this 12.5-acre parcel in the revised and expanded “Route One South Business Park Zoning District.” See images below obtained from the City of Belfast website.

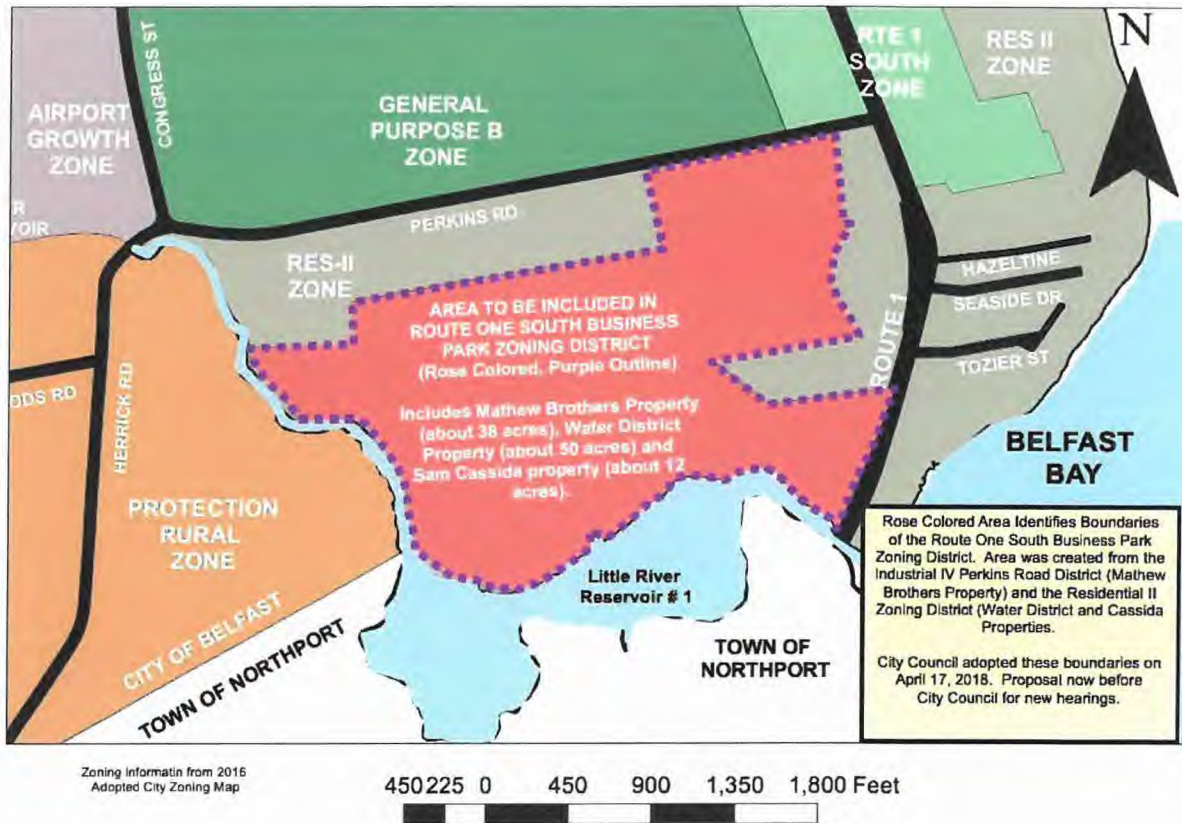


**AREA IN ROUTE ONE SOUTH BUSINESS PARK ZONE COUNCIL ADOPTED 4-17-18  
COUNCIL PUBLIC HEARINGS ON AMENDMENT 9/25 & 10/9/18**





**AMENDMENT TO OFFICIAL ZONING MAP ADOPTED BY CITY COUNCIL 4-17-18  
CITY COUNCIL PUBLIC HEARINGS ON AMENDMENTS - 9-25 & 10/9/18**



Images obtained from the City of Belfast website.<sup>9</sup>

<sup>9</sup> **Image 1** was obtained from the City of Belfast website, see Page 13 of Agenda Topic 10.A from the March 2, 2018 meeting of the Belfast Mayor and City Council, RE: “Nordic Aquafarm[s] Project – Proposed Ordinance & Land Use Plain Amendments:

<https://www.cityofbelfast.org/DocumentCenter/View/2033/Introduction-of-Ordinance-Amendments-20180306?bidId=>

See, also:

<https://www.cityofbelfast.org/DocumentCenter/View/2258/4---CC-Hearing---Sec-Read---10-9-18-Zoning-Mapsc?bidId=>

**Image 2** was obtained from “Overview of City Rezoning Process Nordic Aquafarms Project, Prepared on March 1, 2018, by Wayne Marshall, Director, Code & Planning for the City of Belfast, page 5:

<https://www.cityofbelfast.org/DocumentCenter/View/2029/Overview-of-City-of-Belfast-Rezoning-Process-for-Nordic-Aquafarms-20180301?bidId=>

See also:

<https://www.cityofbelfast.org/DocumentCenter/View/2258/4---CC-Hearing---Sec-Read---10-9-18-Zoning-Mapsc?bidId=>

**Image 3** is taken from City of Belfast website:

<https://www.cityofbelfast.org/DocumentCenter/View/2258/4---CC-Hearing---Sec-Read---10-9-18-Zoning-Mapsc?bidId=>

204. Since April 2019, Plaintiffs Mabee and Grace have asserted their ownership interest in the intertidal land on which Belfast Tax Map 29, Lots 38, 37, 36 and 35 front after a review of the chains of title of Lots 38, 37, 36 and 35 by an expert title searcher (the late Bruce Willow), and expert surveyor, Donald R. Richards, P.L.S., L.F.

205. On April 29, 2019, Plaintiffs Mabee and Grace placed all of their intertidal land under a conservation easement, created pursuant to 33 M.R.S. § 476, et seq., recorded in the WCRD at Book 3697, Page 273.

206. Plaintiff Friends was assigned this conservation easement on November 4, 2019, by an Assignment from Upstream Watch, recorded in the WCRD at Book 4435, Page 344.

207. Since 2018, Nordic has falsely claimed that it had title, right and interest to obtain local, state and federal permits licenses and leases from multiple regulatory entities, including the Belfast City Planning Board.

208. Since 2019, Plaintiffs have opposed these claims in each and every regulatory agency in which Nordic asserted these claims and in multiple lawsuits.

209. In July 2019, Plaintiffs filed a Declaratory Judgment action to quiet title in this Court, Docket No. RE-2019-18.

210. A bench trial was conducted in RE-2019-18 on June 22-24, 2021.

211. In an effort to nullify any adverse outcome in the state court title claims litigation, Nordic, its agents and counsel, concocted a scheme to take Plaintiffs' ownership interest in, and conservation easement on, the intertidal land on which Lot 36 fronts, as well as Plaintiffs Mabee and Grace's right to enforce the "residential purposes only" servitude on lot 36, by entering an *ultra vires* contract with the City of Belfast in which the City agreed to use its eminent domain

powers to take Plaintiffs' property and property rights – characterizing those constitutionally-protected property rights as “Alleged Title Defects.”

212. The contract between Nordic, the BWD and the City was titled: “FOURTH AMENDMENT TO EVALUATION AGREEMENT AND OPTIONS AND PURCHASE AGREEMENT” (hereinafter “the Fourth Amendment Agreement”).

213. This document is posted on the City's website relating to the Nordic project.<sup>10</sup>

214. Pursuant to the terms of the Fourth Amendment and the 7-9-2021 City-Nordic Purchase and Sale Agreement,<sup>11</sup> the City voted to use eminent domain on August 12, 2021, to take by condemnation: (a) the portion of Plaintiffs Mabee and Grace's Intertidal Property on which Belfast Tax Map 29, Lot 36 fronts (including the portion of that intertidal land that is outside the municipal boundaries of Belfast); (b) Plaintiff Friends' property rights as holder of the conservation easement on the intertidal land on which Lot 36 fronts; and (c) the right of the owners of Belfast Tax Map 29, Lots 38 (Mabee/Grace), 35, 34, 33, 32 and 31 to enforce 1946 deed restrictions that limit the use of upland Lot 36 “for residential purposes only” and prohibit for-profit business being conducted on this lot (the “residential purposes only” servitude).

215. The City of Belfast recorded a Clerk's Certificate and Condemnation Order purporting to take Mabee and Grace's title to the intertidal land on which Lot 36 fronts and their right to enforce the 1946 “residential purposes only” servitude on upland Lot 36 on August 16, 2021 (WCRD Book 4696, Page 304).

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<sup>10</sup> <https://www.cityofbelfast.org/366/Nordic-Aquafarms>

<https://www.cityofbelfast.org/DocumentCenter/View/4013/fourth-amendment-to-evaluation-agreement-and-options-and-purchase-agreement>

<sup>11</sup> <https://www.cityofbelfast.org/DocumentCenter/View/4309/20210709-Purchase-and-Sale-Agreement>

216. The City did not include Friends' right to enforce the "residential purposes only" servitude on Lot 36 in the Condemnation Order, Schedule B.

217. Friends still retains its right to enforce the "residential purposes only" servitude on upland Lot 36 as a holder of the land now owned by Mabee and Grace.

218. By including Friends in Schedule A of the Condemnation Order, the City asserted that it was taking Friends' conservation easement on the intertidal land adjacent to Lot 36 by eminent domain.

219. However, the 3-2-2022 Stipulated Judgment held that the City did not, and could not, modify or terminate Friends' conservation easement by use of eminent domain (Exhibit 10).

220. The stated purpose of the Fourth Amendment Agreement was using the City's eminent domain powers to "free" the land needed to bury Nordic's seawater intake and wastewater discharge pipes in upland Lot 36 and the adjacent intertidal land from "Alleged Title Defects."

221. The parties to the Fourth Amendment Agreement (BWD, the City and Nordic) all stated that freeing Lot 36 and the adjacent intertidal land from the "Alleged Title Defects" (a euphemism for Plaintiffs Mabee and Grace's ownership and property rights and Friends' conservation easement) was necessary for the parties to the Fourth Amendment to obtain the direct and indirect benefits of the Nordic project.

222. The Condemnation Order described the alleged "exigency" justifying the use of eminent domain in relevant part as follows:

14. *There exists public exigency sufficient to support this condemnation.* The City has been unable to purchase rights to alleged title defects from the parties in question. The exercise of eminent domain, which is done solely and exclusively in the City Councils' [sic] discretion, is necessary to clear ongoing alleged title defects to its land described in Schedules A and B and obtain the above recited public benefits for the City, the BWD, the BWD ratepayers, and the general public. The compensation amounts described in Schedule C are at fair market value and are reasonable.

Condemnation Order, recorded in the WCRD at Book 4693, Page 304, at Page 321 (emphasis supplied) (Exhibit 11).

223. On August 16, 2021, Plaintiffs and non-profit Upstream Watch filed a challenge to the City's use of eminent domain for the purposes of facilitating Nordic's use of upland Lot 36 (formerly owned by the Eckrotes) and the intertidal land on which Lot 36 fronts, owned by Plaintiffs and held under a valid and enforceable conservation easement by Friends (WALSC-RE-2021-007; WCRD Book 4693, Page 303).

224. RE-2021-007 is pending in this Court, but was stayed pending the outcome in the Law Court of the title claims appeal of RE-2019-18, issued by the Law Court on 2-16-2023

225. The deeds, documents and surveys attached to this Complaint, demonstrate that, as a matter of law, at no time since the Nordic project was proposed in 2017 could Nordic lawfully place its buildings on the 12.5-acre parcel subject to the 1973 conditions and restrictions, nor could Nordic alter this 12.5-acre portion of the BWD land from its "natural condition."

226. Accordingly, at no time since the Nordic project was proposed in 2017 could Nordic lawfully construct the project as proposed on this 12.5-acre parcel.

227. At no time since Plaintiffs asserted their ownership interest in the intertidal land adjacent to Lot 36 or their right to enforce the 1946 "residential purposes only" servitude on upland Lot 36, were the Plaintiffs the only reason that the Nordic project could not proceed – as Nordic and officials of the City of Belfast have repeatedly asserted.

228. Rather, this project could never lawfully be built where proposed on the westerly inland side of U.S. Route 1, pursuant to the Conditions and Restrictions imposed – *fifty (50) years ago* -- by the 1973 State-to-City deed from the Governor and Council on behalf of the State of Maine.

229. Nordic failed to reveal the Conditions and Restrictions on the 12.5-acre parcel – *that shall run with the land* – and which are expressly stated in the 1973 State-to-City deed, the 1987 City-to-BWD deed and the 2022 BWD-to-Nordic deed as a servitude that Nordic is “subject to” (WCRD Book 4776, Page 221), to any local, state or federal regulators or the courts – including the Law Court -- during Nordic’s efforts to obtain and retain permits, licenses and leases from various regulatory agencies.

230. With the exception of DEP, Nordic failed to file a copy of the unrecorded 4-9-2018 DOT-to-City Deed of Vacation in any local, state or federal regulatory agency or the courts – including the Law Court -- during Nordic’s efforts to obtain and retain permits, licenses and leases from various regulatory agencies.

231. Although DEP included a copy of the unrecorded 4-9-2018 DOT-to-City Deed of Vacation with Attorney Tourangeau’s email to DEP staff counsel Kevin Martin in the administrative record, filed in April 2021, in the 80C appeal of the November 2020 Board Orders granting Nordic’s applications for MEPDES, SLODA, NRPA and Air permits and licenses, that deed was never considered by the Board in its permit proceedings nor addressed by the Board in its draft and final Orders issued in November 2020.

232. Nordic improperly obtained permits and licenses from the City of Belfast and the Board of Environmental Protection that authorize Nordic to engage in activities on the 12.5-acre parcel (i.e. construct buildings and alter the parcel from its natural condition) that violate the Conditions and Restrictions in the 1973 State-to-City deed (WCRD Book 710, Page 1153).

233. Condemning Plaintiffs property and property rights will not, did not, and could not, result in the Nordic project proceeding or being built, as proposed, because Nordic has no lawful ability to construct its project on the 12.5-acres subject to the 1973 Conditions and Restrictions,

imposed by the State of Maine and included as binding conditions and restrictions in the 3-10-2022 BWD-to-Nordic deed.

234. As a consequence of Nordic's and the City's false statements regarding the viability of the Nordic project, as proposed *and permitted*, Plaintiffs' property and property rights have been placed in jeopardy and remain the subject of an unlawful, unconstitutional and unnecessary Condemnation Order.

235. Plaintiffs Mabee, Grace and Friends continue to suffer extraordinary and particularized injuries as a result of Nordic's attempts to take their property and property rights without exigency, justification or public purpose.

236. Plaintiffs Mabee, Grace, Block and Friends will suffer additional extraordinary and particularized injuries as a result of the City's and Nordic's attempts to "vacate, release and extinguish" the Conditions and Restrictions on the 12.5-acre parcel – attempts made by the City and Nordic in the absence of any lawful right or capacity to "vacate, release *or* extinguish" the Conditions and Restrictions on the 12.5-acre parcel, imposed by the 1973 State-to-City deed.

237. A declaration is needed stating that Nordic has no lawful right to build its project as proposed, or alter the 12.5-acre parcel from its natural condition, based on the Conditions and Restrictions on the 12.5-acres in the 1973 State-to-City deed, 1987 City-to-BWD deed and 2022 BWD-to-Nordic deed.

238. Plaintiffs have standing to seek such a declaration and related injunctive relief to protect and preserve their property and property interests based on the injuries-in-fact and particularized injuries enumerated above.

239. The basis for Plaintiffs' standing to invalidate the 2018 DOT-to-City Deed and Vacation and 3-15-2022 City-to-Nordic Deed of Vacation, as ultra vires and entered as a result of

acts and omissions by the Maine DOT and City of Belfast that exceeded their respective statutory, regulatory and legal authority.

## COUNT I

### DECLARATORY RELIEF

#### *The 3-15-2022 City-to-Nordic Deed of Vacation Must Be Declared Null and Void Ab Initio*

240. Plaintiffs incorporate paragraphs 1 – 239 of this Complaint as though more fully set forth herein.

241. As set forth above and incorporated herein, a controversy exists with respect to the validity of the 3-15-2022 City-to-Nordic Deed of Vacation, recorded in the WCRD at Book 4778, Page 35 and 4-9-2018 DOT-to-City Deed of Vacation, recorded in the WCRD at Book 4778, Page 34.

242. The 2022 City-to-Nordic Deed of Vacation was issued by the City of Belfast to facilitate an *ultra vires* nullification of Conditions and Restrictions imposed by the State of Maine in 1973 that run with the land encumbering a 12.5-acre parcel.

243. The City of Belfast was previously bound by these Conditions and Restrictions, as the Grantee of the conveyance of this 12.5-acres to the City of Belfast for the purpose of “protection of a municipal water shed” (WCRD Book 710, Page 1153).

244. The 4-9-2022 DOT Deed of Vacation was ineffective in releasing the City of Belfast, its successors and assigns, from the Conditions and Restrictions and reversionary clause in the 1973 State-to-City deed.

245. The Conditions and Restrictions and reversionary clause in the 1973 State-to-City deed, executed by the Governor and Council, could not be released by issuing a Deed of Vacation executed by the Commissioner of DOT to the City of Belfast, which was not the person from whom the State obtained the 12.5-acre parcel.



246. Attempting to use a Deed of Vacation, executed by the Commissioner of DOT, to vacate, release and extinguish the Conditions and Restrictions and reversionary clause in the 1973 State-to-City deed, executed by the Governor and Council, violated 23 M.R.S. § 61 and Chapter 7, Section 7-5.04 and 7-5.05 of the 2015 DOT Right-of-Way Manual.

247. The 4-9-2018 DOT-to-City Deed of Vacation was delivered to the City of Belfast thirty-one (31) years after the City of Belfast had conveyed its interest in the 12.5-acre parcel to the Belfast Water District.

248. The Commissioner of DOT had no statutory or common law authority to vacate, release or extinguish the Conditions and Restrictions or the Reversionary clause in the 1973 State-to-City deed by executing a Deed of Vacation to the City of Belfast.

249. Pursuant to 23 M.R.S. § 61 and Chapter 7 of the 2015 DOT Right-of-Way Manual, a Deed of Vacation signed by the Commissioner of DOT could not be used to vacate, release or extinguish Conditions and Restrictions, or a reversionary clause, in a Governor's deed.

250. The City of Belfast executed the 2022 Deed of Vacation (WCRD Book 4778, Page 35) to Nordic more than thirty-five (35) years after the City had conveyed all of its interest in this 12.5-acre parcel to the Belfast Water District (WCRD Book 1092, Page 145).

251. The Belfast Water District conveyed the 12.5-acre parcel to Nordic, subject to the 1973 Conditions and Restrictions, on 3-10-2022.

252. The City-to-Nordic Deed of Vacation did not and could not "vacate, release and extinguish" the Conditions and Restrictions on the 12.5-acre parcel, to which Nordic was SUBJECT TO pursuant to the plain meaning of the 3-10-2022 BWD-to-Nordic deed.

253. Nordic is bound by the Conditions and Restrictions and took this 12.5-acre parcel subject to those Conditions and Restrictions (WCRD Book 4776, Page 221).

WHEREFORE, the Plaintiffs pray that this Court enter a declaratory judgment, pursuant to M.R. Civ. P. 57, in favor of the Plaintiffs and against the Defendants, declaring that:

- A. The City was without the legal right or capacity to “forever vacate, release and extinguish” the conditions and restrictions imposed by the State of Maine in 1973, in the State-to-City deed recorded at WCRD Book 710, Page 1153, and included in the deed from the Belfast Water District to Nordic, dated March 10, 2022, recorded in the WCRD Book 4776, page 210.
- B. The 3-15-2022 Deed of Vacation, executed by City Manager Erin Herbig, recorded in the Waldo County Registry of Deeds at Book 4778, Page 35, is *ultra vires*, and null and void *ab initio*.
- C. The 3-15-2022 Deed of Vacation, executed by City Manager Erin Herbig, recorded in the Waldo County Registry of Deeds at Book 4778, Page 35, did not “vacate, release and extinguish” the conditions and restrictions in the 3-10-2022 BWD-to-Nordic Deed, the 1987 City-to BWD deed and the 1973 State-to-City deed.
- D. The Comprehensive Plan and Zoning Ordinances, adopted by the City of Belfast in April 2018, improperly expanded the permissible uses for the 12.5-acre parcel by including this parcel in the Route One South Business Park Zoning District, rather than designating this parcel for the limited uses required by the conditions and restrictions imposed by the 1973 State-to-City deed (WCRD Book 710, Page 1153), that run with the land.
- E. Nordic was conveyed the 12.5-acre lot by the Belfast Water District, subject to the conditions and restrictions in the 1973 State-to-City deed (WCRD Book 710, 1153 and Book 4776, Page 210), pursuant to the express grant in the March 10, 2022 BWD-to-Nordic deed (WCRD Book 4776, Page 210).
- F. Nordic cannot place any buildings on the 12.5-acre parcel and must keep this parcel in its natural condition.
- G. The 4-9-2018 Deed of Vacation, executed by the DOT Commissioner, recorded in the Waldo County Registry of Deeds at Book 4778, Page 34, is *ultra vires*, and null and void *ab initio*.
- H. Executing and delivering the 4-9-2018 DOT-to-City Deed of Vacation, exceeded the DOT Commissioner’s authority and violated 23 M.R.S. § 61(1) and (2) and Chapter 7 of the 2015 DOT Right-of-Way Manual.

## COUNT II

### EQUITABLE AND INJUNCTIVE RELIEF

*Nullification of the 2022 City-to-Nordic “Deed of Vacation”  
Nullification of the 2018 DOT-to-City “Deed of Vacation”  
Conforming the Belfast Zoning for 12.5-acre Parcel  
to Permitted Uses Under and Conditions and Restriction  
in the 3-10-2022 Deed from the  
Belfast Water District to Nordic Aquafarms, Inc.*

254. Plaintiffs incorporate paragraphs 1 – 253 and Declarations A-H of this Complaint as though more fully set forth herein.

WHEREFORE, Plaintiffs ask the Court to enter an injunction that:

A. Nullifies the 3-15-2022 “Deed of Vacation” from the City of Belfast to Nordic Aquafarms, Inc., and requires that deed be marked as “NULL AND VOID *AB INITIO*” in the Waldo County Registry of Deeds;

B. Prohibits Defendant Nordic from placing any building on the 12.5-acre parcel conveyed to the City by the State in 1973 (WCRD Book 710, Page 1153);

C. Requires Nordic to keep this 12.5-acre parcel in its natural condition;

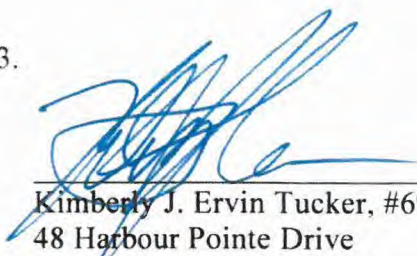
D. Prohibits Nordic from using any permit, license or lease that would authorize it to use the 12.5-acre parcel in a manner that would violate the conditions and restrictions in the 1973 State-to-City deed, that Nordic is “subject to” pursuant to the terms in the 3-10-2022 BWD-to-Nordic deed (WCRD Book 4776, Page 221).

E. Requires Defendant City to remove this 12.5-acre parcel from the Route One South Business Zoning District and modify its Comprehensive Plan and Zoning Ordinances relating to the 12.5-acre parcel to conform permissible uses of and on this parcel with the conditions and restrictions in the 1973 State-to-City deed, 1987 City-to-BWD deed and 2022 BWD-to-Nordic

deed – consistent with the purpose of the 1973 conveyance from the State: *protection of a municipal water shed.*

F. Nullifies the 4-9-2018 “Deed of Vacation” from the DOT Commissioner to the City of Belfast, and requires that deed be marked as “NULL AND VOID *AB INITIO*” in the Waldo County Registry of Deeds.

Respectfully submitted this 4<sup>th</sup> day of April, 2023.



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