

STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
Docket No. BELSC-RE-2021-007

JEFFREY R. MABEE, et al.,)
)
 Plaintiffs,)
)
 v.)
)
CITY OF BELFAST, MAINE,)
et al.,)
)
 Defendants.)
)
 _____)

**SECOND AFFIDAVIT OF
JEFFREY R. MABEE**

(Title to Real Estate Involved)

I, Jeffrey R. Mabee, being first duly sworn, based upon my personal knowledge, information and belief, deposes and states as follows:

1. I am a resident of Belfast, Maine over the age of 18 and competent to testify to the matters stated in this affidavit.

2. I am filing this Affidavit in both my individual capacity as well as my capacity as a member of the Board of the Friends of the Harriet L. Hartley Conservation Easement, described in more detail below.

3. I, along with my wife, Judith B. Grace, are Plaintiffs in this matter.

4. My wife and I are the owners, as joint tenants, of real property described in relevant part in the deed from Heather O. Smith dated May 31, 1991, and recorded in the Waldo County Registry of Deeds at Book 1221, Page 347, as follows:

Northerly by land of Fred R. Poor; Easterly by Penobscot Bay; Southerly by Little River and Westerly by the Atlantic Highway so-called.

EXCEPTING therefrom, however, a certain lot or parcel of land conveyed to John Joseph Grady et ux by Ernest J. Bell and Marjorie N. Bell by deed dated

May 18, 1964 and recorded in the Waldo County Registry of Deeds in Book 621 at Page 288

5. The upland parcel described in this deed has a street address of 290 Northport Avenue, Belfast, Maine 04915, designated as Belfast Tax Map 29, Lot 38.

6. This parcel has been improved by a residential home and other structures since prior to 1924.

7. One of our predecessors in interest is Harriet L. Hartley, pursuant to the Deed from Genevieve Hargrave to Arthur Hartley and Harriet L. Hartley, as joint tenants, dated August 27, 1934 (WCRD Book, 386, Page 453).

8. After Arthur's death on February 10, 1935, Harriet L. Hartley was the sole owner of a vast tract of land, which included, but was not limited to, the upland lots currently designated as Belfast Tax Map 29, Lots 38, 37, 36, 35, 34, 33, 32 and 31, and the intertidal land on which those lots front.

9. In January of 1946, Harriet L. Hartley conveyed a portion of the property she owned to Fred R. Poor, but retained the intertidal land on which that parcel fronts -- terminating the eastern waterside boundary at the high water mark of Penobscot Bay -- severing the intertidal flats from the upland lot and retaining the intertidal land as part of her dominant retained estate.

10. In the January 25, 1946 Hartley-to-Poor deed, recorded in the Waldo County Registry of Deeds at Book 452, Page 205, Harriet L. Hartley as included language restricting the use of the parcel stating in relevant part:

The lot or parcel or 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. [WCRD Book 452, Page 206]

11. My wife and I are assigns of Harriet L. Hartley because we own a portion of the dominant estate retained by Harriet L. Hartley in 1946.

12. The portion of the parcel conveyed to Fred R. Poor by Harriet L. Hartley in 1946 and currently designated as Belfast Tax Map 29, Lot 36 (with a street address of 282 Northport Avenue, Belfast, Maine 04915), has had a residential home and other structures on it since the 1880s.

13. We have always known that our property included title to the intertidal land on which our property fronts, and, since we bought our property, my wife and I have used the intertidal land around the Little River in both directions for fishing, bird watching, navigation (including walking our dog when we had one) and recreation.

14. However, it was not until an analysis of the relevant deeds was conducted by experts retained by Upstream Watch in April of 2019, that we understood that our title included ownership of the intertidal land on which our lot (Belfast Tax Map 29, Lot 38), and Lots 37, 36 and most of 35 front.

15. After learning of the extent of our ownership, we placed all of our intertidal land under the protection of a Conservation Easement, recorded on April 29, 2019, recorded in the Waldo County of Deeds at Book 4367, Page 273.

16. Initially, Upstream Watch was named as the Holder of that Conservation Easement.

17. I am also the Registered Agent for, and a member of the Board of, the Friends of the Harriet L. Hartley Conservation Area (“Friends”), 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. The mailing address for Friends is: P.O. Box 465, Belfast, Maine 04915.

18. In November of 2019, Upstream Watch assigned the Conservation Easement established by my wife and me on April 29, 2019, to the Friends of the Harriet L. Hartley Conservation Area as the Holder (Waldo County Registry of Deeds at Book 4435, Page 344).

19. Friends now holds the Conservation Easement which includes all of the intertidal land from the Little River to the North and East on which Tax Map 29, Lots 38, 37, 36 and most of 35 front.

20. The boundaries of the Harriet L. Hartley Conservation Area are described in Schedules A and B to the Conservation Easement (recorded in the Waldo County Registry of Deeds at Book 4367, Page 273) and is shown on the survey plan prepared by Donald R. Richards, P.L.S., L.F., recorded in the Waldo County Registry of Deeds at Book 24, Page 54.

21. The boundaries of all of our Little River property is shown on the survey plan prepared by Donald R. Richards, P.L.S., L.F., recorded in the Waldo County Registry of Deeds at Book 24, Page 34.

22. My wife and I, and Friends are Plaintiffs and/or Petitioners in the following cases pending the Waldo County Superior Court and the Business and Consumer Docket:

- a. *Jeffrey R. Mabee, et al. v. Nordic Aquafarms, Inc.*, No. WALSC-RE-2019-18;
- b. *Jeffrey R. Mabee, et al. v. DACF, Bureau of Parks and Lands, et al.*, No. WALSC-AP-2020-04;
- c. *Jeffrey R. Mabee, et al. v. Board of Environmental Protection, et al.*, No. BCD-APP-2021-0009 (formerly WALSC-AP-2020-05); and
- d. *Jeffrey R. Mabee, et al. v. City of Belfast and Nordic Aquafarms, Inc.*, No. RE-2019-18.

23. My wife and I, and Friends were also Petitioners in *Jeffrey R. Mabee, et al. v. Board of Environmental Protection, et al.*, No. WALSC-AP-2020-03) a case filed pursuant to

M.R. Civ. P. 80B previously pending, but dismissed on jurisdictional grounds, in the Waldo County Superior Court.

24. All of the above actions have been necessary to file and prosecute, to defend the property and property rights we and Friends have and hold from unlawful taking and use by Nordic Aquafarms, Inc. (“NAF” and “Nordic”), the for-profit business entity which continues to attempt to take a portion of our intertidal land for its commercial and industrial development – now aided by the City of Belfast.

25. Nordic has continued to attempt to take this intertidal land, which is currently used for fishing, to place three industrial pipes into Penobscot Bay at all times since 2018.

26. The exorbitant and burdensome litigation costs of participating in this litigation has imposed a significant emotional and financial burden and hardship on my wife and I.

27. We have been assisted in paying for the litigation costs associated with defending our intertidal property in the above-referenced litigation by the members of the Friends of the Harriet L. Hartley Conservation Area and Upstream Watch, as well as through grants that Friends has obtained to help in our joint efforts to protect the fragile but fertile estuary area near the Little River and Penobscot Bay.

28. Costs that we personally and Friends have had to pay, to date, resulting from Nordic’s effort to take our intertidal land and prevent us from enforcing the negative easement burdening Lot 36 and 35, in the 1946 deed from Harriet L. Hartley to Fred R. Poor (Janet Eckrotes’ grandfather and the Eckrotes predecessor in interest) have exceeded \$300,000.

29. After going to trial in WALSC-RE-2019-18, Nordic and the City of Belfast implemented a plan to take our property and property rights as Hartley assigns, as well as the

Hartley assigns who own Lots 35, 34, 33, 32 and 31, through an unconstitutional use of eminent domain.

30. According to City Manager Erin Herbig's recent Affidavit, Nordic proposed this scheme in March, 2021, to the City.

31. The purpose of this scheme is detailed in the Fourth Amendment to the Evaluations Agreement and Options and Purchase Agreement, dated April 21, 2021.

32. Specifically, the City's purpose it to "clear title defects" – a euphemism for taking the intertidal land on which Lot 36 fronts that we own and over which Friends holds the Conservation Easement, and property rights of the Hartley assigns, to facilitate Nordic placing its industrial pipes across Lot 36 (in violation of the 1946 negative easement in the Hartley-to-Poor deed) and in the intertidal land on which it fronts (in contravention of the 2019 Conservation Easement).

33. In my capacity as a citizen of Belfast, Maine, co-owner of the property described in my deed referenced above, and as a member of the Board of the non-profit corporation that is the Holder of the Conservation Easement that established the Harriet L. Hartley Conservation Area, I can attest to the fact it would impose a significant and undue financial hardship on my wife and me and/or Friends to be required to provide security to obtain a preliminary injunction to preserve the status quo.

34. Nordic will not incur any unreasonable and/or additional costs by the imposition of a preliminary injunction. Indeed, Nordic on September 9, 2021, advised the Bureau of Parks and Lands that they were not requesting that the BPL issue leases to Nordic (which are still being challenged by Plaintiffs in WALSC-AP-2020-04) because Nordic has not requested or obtained building permits yet (See, September 9, 2021 email from Joanna Tourangeau to BPL, forwarding

the 9-3-2021 City Easement, attached to this Affidavit as Exhibit A and to the Second Tucker Affidavit As Exhibit J).

35. Further, any small delay in Nordic proceeding will not prejudice Nordic, which has been on notice of our property claims and our Conservation Easement since May 1, 2019.

36. Neither Friends nor my wife and I should not be required to pay security to obtain a Preliminary injunction to maintain the *status quo* to allow this Court time to resolve the pending title claims in RE-2019-18 and the claims for violation of constitutional and statutory rights in RE-2021-007.

37. Nordic's and the City's attempt to evade and potentially nullify the Court's judgment after trial in RE-2019-18, by hastily taking our property and property rights should not be grounds to impose additional cost burdens on Friends on my wife and me to simply preserve the *status quo* and prevent further violation of our constitutional and statutory rights.

38. Friends and my wife and I will be irreparably injured if Nordic and the City are allowed to alter any upland or the intertidal land on which Lot 36 fronts until the our constitutional and statutory claims are resolved.

39. Because violation of our constitutional and statutory rights at issue in this case would constitute per se irreparable injuries for which no remedy at law would fully vindicate, we believe that good cause exists for the Court to waive the requirement to pay security to obtain the requested preliminary injunction.


40. Finally, Friends has a right and responsibility to enforce the Conservation Area, which would be violated if Nordic and/or the City were permitted to intertidal land on which Lot 36 front in any of the ways that the City's September 3, 2021 Easement would authorize Nordic to do.

41. All of the “Necessary Project Rights” identified in the 9-3-2021 City-to-NAF Easement and the Fourth Amendment would be violated to express prohibitions in the Conservation Easement.

42. Because the Attorney General’s Office has advised the City and Nordic, twice since August 9, 2021, that the City cannot amend or terminate the conservation easement on this intertidal land by simply taking the land by eminent domain, the City and Nordic are on notice that they cannot engage in the activities detailed in the Easement unless and until the City obtains a Court Order to do so, pursuant to the process mandated in 33 M.R.S. § 477-A(2)(B) and § 478, there is good cause not to require Friends or my wife and me to pay security to enjoin Nordic and the City from engaging in any actions that are prohibited by the Conservation Easement in the absence of a Court order amending or terminating that Conservation Easement and/or determining that my wife and I did not have the necessary title, right and interest in the intertidal land on which Lot 36 fronts when the Conservation Easement was created in April of 2019, despite our good faith belief that we did when we imposed our Conservation Easement after using due diligence to have our ownership professionally determined and ascertained.

Further, Affiant sayeth naught.

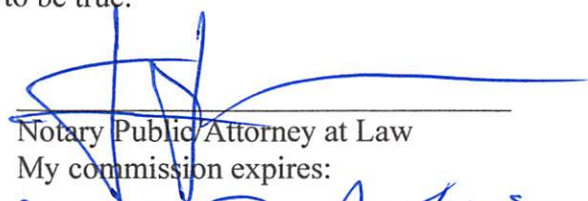
Dated: September 28, 2021



Jeffrey R. Mabee

STATE OF MAINE
COUNTY OF WAUDO, ss.

Personally appeared before me on this 28th day of September 2021, the above-named Jeffrey R. Mabee, who after being duly sworn, made oath that the foregoing statements made by him are true, based upon his personal knowledge, information and belief, and so far as upon information and belief, he believes the information to be true.



Notary Public/Attorney at Law
My commission expires:
David J. Perkins

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