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July 10, 2019

**VIA UPS and email**

Maine Department of Environmental Protection  
Board of Environmental Protection  
Gerald D. Reid, Commissioner  
17 State House Station  
28 Tyson Drive  
Augusta, Maine 04333-0017

RE: APPLICATIONS OF NORDIC AQUAFARMS, INC.  
MEPDES Permit #ME0002771; Natural Resources Protection Act;  
Site Location Of Development Act; and Air Emissions Licenses

Dear Commissioner Reid and Board of Environmental Protection:

Enclosed please find a Petition to Intervene On Behalf Of Upstream Watch in regard to the above referenced applications.

Yours sincerely,



David J. Perkins

/lk

Enclosure

cc: client

Joanna B. Tourangeau, Esq. (via email: [JTourangeau@dwmlaw.com](mailto:JTourangeau@dwmlaw.com))

Kim Ervin Tucker, Esq. (via email: [k.ervintucker@gmail.com](mailto:k.ervintucker@gmail.com))

Ruth Burke (via email: [ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov))

Peggy Bensinger (via email: [Peggy.Bensinger@maine.gov](mailto:Peggy.Bensinger@maine.gov))

Beth Callahan (via email: [Beth.Callahan@maine.gov](mailto:Beth.Callahan@maine.gov))

Carol DiBello (via email: [Carol.DiBello@maine.gov](mailto:Carol.DiBello@maine.gov))

Lauren Paker (via email: [Lauren.Paker@maine.gov](mailto:Lauren.Paker@maine.gov))

STATE OF MAINE  
COMMISSIONER OF ENVIRONMENTAL PROTECTION  
BOARD OF ENVIRONMENTAL PROTECTION

IN RE: APPLICATIONS OF NORDIC AQUAFARMS, INC.

MEPDES Permit #ME0002771

NATURAL RESOURCES PROTECTION ACT

SITE LOCATION OF DEVELOPMENT ACT

AIR EMISSIONS LICENSES

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PETITION TO INTERVENE

ON BEHALF OF

UPSTREAM WATCH

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Upstream Watch, a non-profit corporation formed under the laws of the State of Maine with a principal office and place of business in Belfast, Maine (“Upstream”), petitions to intervene as a party in the application or applications filed with the Department of Environmental Protection (“DEP”) by Nordic Aquafarms, Inc. (“Nordic” or “Applicant”), now under the jurisdiction of the Board of Environmental Protection (“BEP”, or the “Board”) in connection with the Applicant’s plan to construct and operate a salmon fish breeding, maturation and processing plant on land of or adjacent to the Belfast Water District and adjacent to the Little River (the “Project”).

Upstream seeks leave to intervene pursuant to 5 M.R.S Sec. 9054 and the Department of Environmental Protection Rules Chapter 3, RULES CONCERNING THE CONDUCT OF LICENSING HEARINGS, Section 11, Subsection A, **Intervention**.

In support of this Petition, Upstream states the following:

1. Upstream is a not-for-profit, tax-exempt corporation dedicated to the restoration of Maine Mid-Coast rivers and streams to their natural state, the removal of dams and restoration of fish passages and habitat, especially (at this time) the Little River in Belfast, through a program of scientific inquiry, advocacy, education and, when necessary, legal defense. Upstream has members from Belfast and the surrounding and nearby towns. Its members include people who live proximate to the proposed Project. Members of Upstream who reside next to or near the Project include Jeffrey Mabee and Judith Grace (290 Northport Ave, Belfast), Larry Theye (286 Northport Ave, Belfast), Sid and Martha Block (67 Perkins Road, Northport), Amy and Jim Grant (67 Perkins Road, Belfast), Stanley Chan (299 Congress Street, Belfast), Erica Schleuter (294 Congress Street, Belfast), and Daniel and Elizabeth Hebert (296 Northport Ave, Northport).
2. Upstream has members who enjoy the Little River, the forested land beside the Little River, the hiking trails along the river, fishing in the Little River, and who enjoy the many benefits of Penobscot Bay, including swimming, boating, fishing and its many aesthetic values, all of which are threatened by the Project.
3. Upstream includes members who live and farm adjacent to the site of the Project and whose lives and farming activities include the raising of sheep, alpacas and other animals and the farming of mussels and harvesting of lobsters all of which will be disturbed and impaired by the proposed project, and its noise, traffic and pollution.
4. Members of Upstream have never been contacted by Nordic to discuss the project and thus have limited information about the impact of the Project on their neighborhood and the natural resources they enjoy with other citizens of Maine.

5. Jurisdictional Objection: Upstream Watch asserts that the Applicant fails to demonstrate “title, right or interest” to the land necessary for use of the permits for which it applied. Specifically, the Applicant proposes to place three pipes across U.S. Route 1, across land of Richard and Janet Eckrote to the Eckrote boundary at the highwater line near Penobscot Bay and then across intertidal land owned by Jeffrey Mabee and Judith Grace which land is burdened by a Conservation Easement in favor of Upstream Watch. The Applicant lacks the legal right to use the Eckrote property and the intertidal land for its industrial pipes, for the following reasons:

(i) The Applicant has demonstrated no right, interest or title in the intertidal zone.

The intertidal land is not owned by Richard and Janet Eckrote, so the Applicant has no legal right to cross the intertidal land based on an agreement with Richard and Janet Eckrote. The Applicant has no rights of any kind to use the intertidal land owned by Jeffrey Mabee and Judith Grace. Accordingly, the Applicant fails to demonstrate that it has the legal right to construct the pipes in the intertidal property. An Affidavit by Surveyor Donald Richards detailing the ownership of the intertidal land is attached hereto as Exhibit A.

(ii) The Placement of the pipes in the Intertidal Zone is Prohibited by the Conservation Easement Deed benefitting Upstream Watch.

The intertidal property is burdened by a Conservation Easement recorded at Book 4367, Page 273 of the Waldo County Registry of Deeds. The Conservation Easement requires that the intertidal property owned by Jeffrey Mabee and Judith Grace be preserved “...in perpetuity as open space and free from structures of any sort, especially any principal or accessory structures erected, constructed or otherwise located in furtherance of any commercial or industrial purposes” and to be preserved “in its natural condition.” A true copy of the Conservation Easement is attached hereto as Exhibit B.



(iii) The Applicant's Proposed Use of the Eckrote Property violates the Covenant in the Chain of Title Restricting the Use of the Eckrote Property to Residential Uses.

The chain of title of the land of Richard and Janet Eckrote contains the following restrictive covenant: "The lot or parcel of land herein described is conveyed to Fred R. Poor with the understanding that it is to be used for residential purposes only and that no business for profit is to be conducted there unless agreed to by Harriet L. Hartley, her heirs and assigns." See Deed from Harriet Hartley to Fred R. Poor dated January 25, 1946 recorded in Book 452, Page 205 of the Waldo County Registry of Deeds. Accordingly, the Applicant's right of access for its industrial pipes from U.S. Route 1, over the Eckrote property, to the high-water line of Penobscot Bay is prohibited by the terms of the above referenced deed.

(iv). The Applicant has not demonstrated any right to pass under U.S. Route 1 with its industrial pipes.

The Applicant has not demonstrated that it has the legal right to pass under U.S. Route 1 with its industrial pipes.

Should the Board see fit to grant Intervenor Party status to Upstream Watch, Upstream Watch intends to request an adjudicatory hearing on the issue of title, right or interest, as a resolution of this threshold issue could obviate the need for the dedication of possibly unnecessary but certainly burdensome staff time and days of hearings to resolve the substantive issues presented by the Applicant's permit applications, and thus is in the interest of administrative economy.

6. Additional Concerns and Objections of Upstream:

Specific concerns and objections of Upstream about the Project include, but are not limited to:

- a. Interference with the ability and likelihood of the City of Belfast, and/or the Belfast Water Bureau, alone or in conjunction with others, to remove the two dams and restore Little River to its natural state.
- b. Delay in the City of Belfast's compliance with the finding and recommendation issued to it in 2015 to repair or remove the upper dam which has been determined by the dam inspectors and by the U.S Army Corps of Engineers in 1979, and appears to the naked eye, to be unsafe, and is therefore a threat to the safety of those persons living downstream of that dam, and presents a danger to life, property, and human health of Upstream members.
- c. Increased noise and increased truck traffic from the Project disturbing people living in the neighborhood and their livestock.
- d. Increased noise and increased traffic from the project disturbing or destroying natural habitat of rare and/or protected species that currently live adjacent to the Project.
- e. Deposition of process waste into Penobscot Bay, polluting the Bay with nitrogen, phosphorus, thermal change and other unknown and as yet undisclosed chemicals and substances and impairing the farming of mussels and harvesting of lobsters, and fouling beaches where members, neighbors, the school children at Drinkwater Beach adjacent to their school, and their families swim.

- f. Creation of “useable products” from process waste without disclosure of the content of that waste.
- g. Undisclosed management of storm water from over forty acres of impervious surface.
- h. Undisclosed management of air discharged from the process building.
- i. Undisclosed management of the bio-medical waste generated by the Project
- j. The destruction of many acres of virgin, or very old, forests when reasonable, viable and prudent alternatives to such destruction exist.
- k. Loss of animal habitat.
- l. Loss of public benefits associated with walking trails and the natural beauty of the Little River.
- m. Failure to provide for removal of the buildings and all land and ocean structures associated with the salmon farm in the event the project is not financially viable.

7. Statutory Basis for Upstream’s Objections:

Consideration of the foregoing is required by:

- n. The Clean Air Act, 42 U.S.C. 7401, et seq. and State companion statutes and regulations
- o. The Clean Water Act, 33 U.S.C. 1251 et seq. and State companion statutes and regulations
- p. Maine State Regulations Chapter 38, Section 413, Waste Discharge Licenses
- q. Maine State Regulations Chapter 7 Part 10, Concentrated Animal Feed Operations
- r. Maine Statutes Title 38, Chapter 3, Site Location of Development

- s. Maine Statutes Title 38, Chapter 3, Wetlands
  - t. Maine Statutes Title 38, Chapter 3 Natural Resources Protection Act
  - u. Maine Statutes Title 38, Chapter 3, Water Withdrawal
  - v. Maine Pollution Control Law, 38 M.R.S. Sec. 481-489e.
8. Contact for Upstream Watch is Amy Grant, President, 67 Perkins Road, Belfast, Maine 04915 and David J. Perkins, Esq., Perkins Law, PA, 32 Pleasant Street, Portland, Maine 04101.
9. Upstream is willing and able and prepared to participate in this Hearing as a Full Party, has retained an attorney and experts who have been studying the Project and are prepared to present expert testimony. Those experts include but are not limited to:
- a. Surveyor
  - b. Title searcher
  - c. Dam safety expert
  - d. Hydrologist
  - e. Chemist
  - f. Microbiologist
  - g. Cartographer
  - h. Human epidemiologist
  - i. Piscine epidemiologist
  - j. Audiologist
  - k. Air pollution engineer
  - l. Soil erosion control expert

10. The forgoing experts are standing by ready to present their reports and to testify, as the exigencies of the case suggest may be necessary.

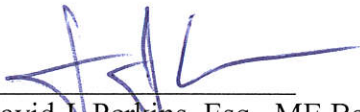
11. Upstream and its members will be “substantially and directly affected by the proceeding” and are therefore entitled to intervene as a party in this matter.

FOR THE ABOVE REASONS: Upstream requests that this Petition for Intervention be GRANTED.

Dated at Belfast, Maine, this 10<sup>th</sup> day of July, 2019.

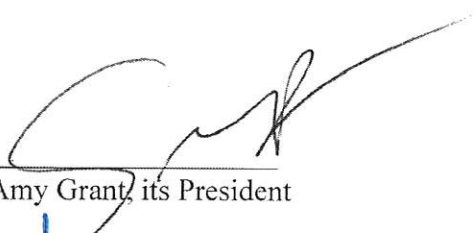
Respectfully Submitted,  
UPSTREAM WATCH

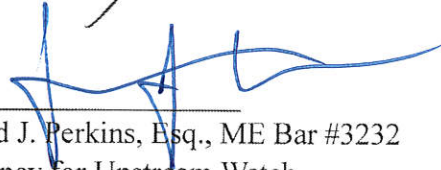
By: signature on next page  
Amy Grant, its President

  
David J. Perkins, Esq., ME Bar #3232  
Attorney for Upstream Watch

Perkins Law, P.A.  
32 Pleasant Street  
Portland, ME 04101

By:

  
Amy Grant, its President

  
David J. Perkins, Esq., ME Bar #3232  
Attorney for Upstream Watch

Perkins Law, P.A.  
32 Pleasant Street  
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STATE OF MAINE  
COMMISSIONER OF ENVIRONMENTAL PROTECTION  
BOARD OF ENVIRONMENTAL PROTECTION



IN RE: APPLICATIONS OF NORDIC AQUAFARMS, INC.

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SITE LOCATION OF DEVELOPMENT ACT

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AFFIDAVIT OF DONALD RICHARDS

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UPON OATH, I, Donald Richards, based on my own personal knowledge and based upon information which I believe to be true, state as follows:

1. I am a resident of Rockport, Maine residing at 56 Kimberly Drive, Rockport, Maine 04856. I am a licensed surveyor (P.L.S. 1209) in the State of Maine. I have testified frequently as an expert in Maine Courts as an expert on survey and access and boundary disputes. This affidavit is made based on my review of the title records at the Waldo County Registry of Deeds and other materials including maps and tax records and my personal knowledge.
2. I have had opportunity to review deeds and materials pertaining to the ownership limits of the various properties at the Little River neighborhood in Belfast and Northport with particular attention to the location of the pipeline proposed by Nordic Aquafarms.
3. The pipeline is proposed to cross the property of Richard and Janet Eckrote but a review of the deeds indicates there are two points which are problematic for the applicant, Nordic Aquafarms. The Eckrotes' predecessor in title did not acquire the shore and the flats adjoining their property, they are included in the deed to Mabee and Grace, and there is a restriction on the Eckrotes' property from a previous deed which prohibits commercial use. I will elaborate upon each issue.



4. Richard and Janet Eckrote acquired their property under a probate deed from the Estate of Phyllis J. Poor. My research indicates that Phyllis Poor acquired title through a deed to Fred R. Poor from Harriet Hartley dated January 25, 1946 as recorded in Book 452, Page 205 of the Waldo County Registry of Deeds. That deed to Fred R. Poor described the southeasterly boundary of the property as running, "Easterly and Northeasterly along high-water mark of Penobscot Bay...". That language clearly bounds the land conveyed at the high-water mark and excludes the lands between the high-water mark and the low water mark of Penobscot Bay so Phyllis Poor did not have shore or intertidal rights to convey under that deed.
5. To clarify, the shore is the land between the ordinary low stage and ordinary high stage of the water or all the ground between the ordinary high water mark and low water mark.<sup>1</sup> This area is also known as flats, intertidal zone, foreshore, beach, or the beachfront area.<sup>2</sup> It may be sold separately from the upland and may be excluded from a sale of the upland by appropriate wording. The deed to Fred R. Poor ran easterly and northeasterly along high-water mark of Penobscot Bay thereby excluding the shore and flats or the land between the high-water mark and the low water mark which was retained by Harriet L. Hartley in that conveyance. While Fred R. Poor owned to the high-water mark, Harriet L. Hartley continued to own the land between Fred R. Poor at high water mark and Penobscot Bay at low water mark. By the use of the very specific and clear language used in that deed of conveyance and subsequent conveyances it must be concluded that it was her intention to retain the intertidal land between land of Fred R. Poor and the bay.
6. As I traced the record title back to discern who owned the shore and the flats it became obvious that they belong to Jeffrey R. Mabee and Judith B. Grace under their deed from Heather O. Smith dated May 15, 1991 as recorded in Book 1221, Page 347 of the Waldo County Registry of Deeds. That deed describes their land as bounded, "northerly by land of Fred R. Poor", which terminated at the high-water mark and, "Easterly by Penobscot Bay", which description necessarily includes the shore and the flats in front of the Eckrote property and northerly to the extent of the Fred R. Poor tract. That deed excluded the land conveyed to Theye which also terminates at the high-water mark. The wording in the deed to Larry D. Theye and Betty Becker-Theye dated June 29, 1992 as

<sup>1</sup> Proctor v. Hinkley, 462 A.2d 465 (Me. 1983); Hodgdon v. Campbell, 411 A.2d 667 (Me. 1980); Sinford v. Watts, 123 Me. 230, 122 A. 573 (1923); McLellan v. McFadden, 114 Me. 242 (1915); Dunton v. Parker, 97 Me. 461 (1903); Proctor v. Railroad Co., 96 Me. 458 (1902); Abbott v. Treat, 78 Me. 121 (1886); Montgomery v. Reed, 69 Me. 510 (1879); Littlefield v. Littlefield, 28 Me. 180 (1848); Hodge v. Boothby, 48 Me. 68 (1861 Me.). In Lapish v. Bangor Bank, 8 Me. 85 (1831), the court adopted the following definition:

The sea shore must be understood to be the margin of the sea, in its usual and ordinary state. Thus when the tide is out, low water mark is the margin of the sea, and when the sea is full, the margin is high water mark. The sea shore is, therefore, all the ground between ordinary high-water mark and low water mark.

*Id.* at 89-90. See also, Storer v. Freeman, 6 Mass. 435, 4 Am.Dec. 155 (1810)

<sup>2</sup> Bell v. Town Of Wells, 557 A.2d 168, 57 U.S.L.W. 2590 (Me. 1989). For the definition of beach see Littlefield v. Littlefield, 28 Me. 180 (1848) See also, Me. Rev. St. Ann. tit., 12, § 572

recorded in Book 1303, Page 184 states that their boundary runs from an iron pin 39 feet more or less, "to the high water mark of Penobscot Bay; thence turning and running northeasterly along said high water mark three hundred thirty three (333) feet, more or less, to an iron pipe". Again, that wording in the Theye deed, carried forward from the creation of the lot in 1964, left the land between the high-water mark and the low water mark in the ownership of the Mabee and Grace predecessors in title.

7. The deed to Mabee and Grace also states that the premises were conveyed, "Together with our right, title and interest in and to that portion of the premises which lies between high and low water mark commonly designated as the flats". The Mabee and Grace tract is the residual property of Harriet L. Hartley less the land of Theye. Harriet L. Hartley clearly owned the shore and flats between the properties of Fred R. Poor (which includes the land now of Eckrote and land now of Theye) and Penobscot Bay. That land was included in the description of the deed to Mabee and Grace.
  
8. It should be noted that while the deed to Phyllis J. Poor (Bk. 1228, Pg 346) calls for the boundary at the shore to run "Easterly and Northeasterly along high water mark of Penobscot Bay...", the description in the deed from the Estate of Phyllis J. Poor to Richard and Janet Eckrote dated October 15, 2012 and recorded in Book 3697, Page 5 of the Waldo County Registry of Deeds has been altered to read, "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..." which would suggest that the estate was conveying the shore and flats adjoining the Eckrote property. This is clearly erroneous. The new description was based on an August 31, 2012 survey by Good Deeds, Inc. It may be that the unrecorded survey was erroneous or that the scrivener of the description was careless or uninformed but the Estate of Phyllis J. Poor did not own the shore and flats adjoining her property under her deed. The court has made it clear that in matters of real estate you cannot convey that which you do not own.<sup>3</sup> The deed to Eckrote creates a color of title<sup>4</sup> which in reality is only a semblance of a title based on a defective description. That erroneous change in the description did not increase the land area that Phyllis J. Poor could rightfully convey to the Eckrotes. Her estate could not convey land owned by Jeffrey R. Mabee and Judith B. Grace. Furthermore, the court has held that the simple

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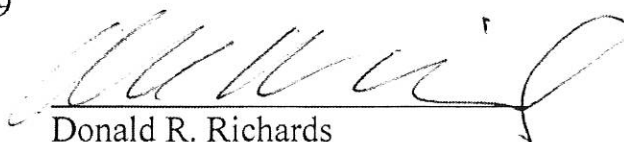
<sup>3</sup> **Calthorpe v. Abrahamson**, 441 A.2d 284, 287 (Me. 1982) (*A grantor can convey effectively by deed only that real property which he owns. See May v. Labbe*, 114 Me. 374, 96 A. 502 (1916); 6 U. Thompson, Commentaries on the Modern Law of Real Property § 2935 (1962).); **Dorman v. Bates Mfg. Co.**, 82 Me. 438, 448 (1890) (*One cannot convey what he does not own. One cannot convey land, nor create an easement in it unless he owns it. An attempt to do so may render him liable on the covenants in his deed; but neither the land nor the easement will pass.*); **Eaton v. Town of Wells**, 2000 ME 176 (*a person can convey only what is conveyed into them. See May v. Labbe*, 114 Me. 374, 380 (1916) (*However much they may have intended to convey, they conveyed no more than the deeds properly construed conveyed.*))

<sup>4</sup> **Wallingford Fruit House v. MacPherson**, 386 A.2d 332 (Me. 1978) ("*Color of title*" has been defined to be that which in appearance is title, but which in reality is no title. *Wright v. Mattison*, 59 U.S. 50, 56, 15 L. Ed. 280 (1855).)

recording of the deed would not diminish the ownership of Mabee and Grace who had no actual notice of the error<sup>5</sup>.

9. The same deed cited above to Fred R. Poor from Harriet Hartley contains the following wording: "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 and that no business for profit is to be conducted there unless agreed to by Harriet L. Hartley, her heirs or assigns". That clause was undoubtedly inserted in the deed to protect the remaining land of Hartley, now owned by the Theyes and Mabee and Grace. It is my understanding that a restriction, easement or encumbrance rooted in language specifying the inclusion of heirs and assigns runs with the land<sup>6</sup> even if not reiterated in the subsequent deeds and in this instance Larry Theye and Betty Becker-Theye and Jeffrey Mabee and Judith Grace are assigns under the deeds of Harriet Hartley.

DATED: July 10, 2019



Donald R. Richards


STATE OF MAINE

KNOX, ss.

July 10, 2019

Then personally appeared the above-named, Donald Richards, who swore that the foregoing statements by him are true, based upon his personal knowledge, information and belief, and based upon information and belief, he believes such information to be true.

Before me,



Notary Public/Attorney at Law  
Printed Name: Donald J. Perkins

<sup>5</sup> **Roberts v. Richards, 84 Me. 1, 6 (1891)** (*While such a deed recorded is evidence of the extent of the grantee's claim, the registration is constructive notice only to those who would claim under the same grantor. Tilton v. Hunter, 24 Maine 29; Spofford v. Weston, 29 Maine 145; Roberts v. Bourne, 23 Maine, 165, 169; Veazie v. Parker, 23 Maine, 170; Little v. Megquier, 2 Maine, 178. Said Wilde, J.: "To hold the proprietors of land to take notice of the records of deeds to determine whether some stranger has without right made conveyance of their land, would be a most dangerous doctrine and cannot be sustained with any color of reason or authority."* Bates v. Norcross, 14 Pick. 224.)

<sup>6</sup> Appurtenant easements, created to benefit land, run with the land even though not specifically cited in subsequent deeds. The easement attaches to the land and belongs to the property. (**Cole v. Bradbury 86 Me. 380 (1894); Dority v. Dunning, 76 Me. 381 (1886)**) This principle has been codified in Me. Rev. St. Ann. tit. 33 § 773 which states:

In a conveyance of real estate all rights, easements, privileges and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary shall be stated in the deed.

**DONALD R. RICHARDS, P.L.S., L.F.**  
QUALIFICATIONS AS A SURVEYOR AND LAND CONSULTANT  
June 2019

**EDUCATION**

B. S. General Forestry with Surveying Option, University of Maine, Orono - December 1975

**PROFESSIONAL LICENSES & CERTIFICATIONS**

Licensed Professional Land Surveyor, Maine 1979 – to present PLS 1209

Licensed Forester, Maine 1976 - Present LF 113

Certified in Municipal Code Enforcement - Shoreland Zoning 1992 - 1995

**PROFESSIONAL AFFILIATIONS**

Maine Society of Land Surveyors

President Midcoast Chapter M.S.L.S. 1983 - 1986

Vice-president Midcoast Chapter M.S.L.S 1990 - 1992

National Society of Professional Surveyors

**AWARDS**

Named **SURVEYOR OF THE YEAR** by the Maine Society of Land Surveyors (Jan. 1997)

**PROFESSIONAL & TECHNICAL WRITINGS & PRESENTATIONS**

**Principles And Procedures For The Location Of Boundaries In Maine** - By Richards & Hermansen - Maine State Bar Association, MSBA Practice Series (2006).

**Maine Roads & Easements** - By Hermansen & Richards - **Maine Law Review** Vol. 48, No. 2. 1996 This article was quoted as an authoritative treatise by the Maine Supreme Court in *Amodeo v. Francis* 681 A2d. 462 (Me. 1996); *Glidden v. Belden* 684 A2d. 1306 (Me. 1996); and *Anchor v. Manter*, 1998 ME 152. It was also cited in Federal District Court 1-99CV112 *Maritimes v. 16.66 Ac.* and by the Montana Supreme Court in *Loomis v. Luraski*, 2001 MT 223. This article has been republished by the Maine State Bar Association in the MSBA Practice Series (2003).

**Maine Principles Of Ownership Along Water Boundaries** - By Hermansen & Richards - **Maine Law Review** Vol. 47, No. 1 1995. This article was quoted as an authoritative treatise by the Maine Supreme Court in *Snyder v. Haagen*, 679 A2d. 510 (Me. 1996) and *Lawton v. Richmond*, 1997 ME 34. This treatise has been revised and republished by the Maine Bar Association in the MSBA Practice Series (2007)

**Real Estate Institute of the Maine Bar Association: Property Boundaries**, September 13, 2014; **Research Beyond the Title**, September 13, 2014 **Maine Boundaries Along Water – Riparian and Littoral Issues** –May 21, 2010

**A Surveyor's Consideration of Roads and Ways** - Presentation at a seminar entitled **Roads, Byroads, Highways & Byways**, a 2 day seminar cosponsored by the Univ. of New Hampshire and the New Hampshire Land Surveyor's Association, March 16 - 17, 2005

**The Use of Extrinsic Evidence As An Aid To The Interpretation of Deeds And Their Descriptions** - By Richards & Hermansen - **Journal of Surveying Engineering** (American Society of Civil Engineers, Surveying Engineering Division) November 1995, Vol. 121, No. 4. This article has also been published in a revised form in the **Nova Scotian Surveyor**, Fall 2004, No 172. and **Bearings**, the Publication of the Maine Society of Land Surveyors.

**Alternate Dispute Resolution - Helping your Client To Resolve Disputes Without Litigation** Panel Seminar Presented to:

- Maine Society Of Land Surveyors September, October and November 1996
- American Congress On Surveying and Mapping in Baltimore, Maryland in March 1998

**Legal Research And Maine Boundary Law** Seminar presented to The Maine Society of Land Surveyors including 7 ½ hours of instructional time. February 1 & 2, 2002.

**Practical Problems In Riparian Boundaries For The State Of Maine** Seminar presentation to the Maine Society of Land Surveyors, October 1997.

**Rethinking Survey Measurements and Data Reduction** - Seminar on Least Squares Analysis of Survey Measurements - With Dr. Ray Hintz of the University of Maine, Dept. of Surveying Engineering

- Delivered to Maine Society Of Land Surveyors in December 1992 & February 1993.
- Delivered at Roger Williams University to the Rhode Island Society of Professional Land Surveyors in March 1994

**Some Implications Of the Doctrine of Practical Location For The Land Surveyor In Maine** Copyright 1990 Published in "BEARINGS" the Journal of the Maine Society of Land Surveyors, in the spring of 1991.

**The Free Chapel and One Rod of Land Equal Distance Around It** a review of Perkins v. Aldrich (77 Me. 96 (1885)) and the principles of boundary retracement set forth in that case. Published in "BEARINGS" (Journal of the Maine Society of Land Surveyors) July/August 1991.

## **TRAINING AND QUALIFICATIONS IN PHOTOGRAMMETRY AND PHOTO INTERPRETATION**

Course for B. S. Degree in Forestry:

### **Photogrammetry And Remote Sensing –**

University of Maine 1975, Department of Forestry

Text: **INTERPRETATION OF AERIAL PHOTOGRAPHS**

T. Eugene Avery ; Burgess Pub. Co. 1970

Subject matter included:

The history of photography, photogrammetry and photo interpretation.

Orientation and study of aerial photographs, object recognition, features, photo interpretation equipment, stereoscopes, stereo viewing.

Geometry of the aerial photograph including scale, displacement and measuring heights of displaced objects.

Stereoscopic parallax, shadow heights and areas.

Mapping from aerial photographs and aerial photo mosaics.

Remote sensing techniques.

Agricultural and land use patterns and Forestry uses of aerial photography



Landforms, and physiographic features  
Engineering applications  
Urban-industrial patterns

Continuing Education Course:

**Air Photo Interpretation For Boundary Evidence**

A two day course by the University of New Hampshire, August 13-14, 1982 with Donald Wilson and Kurt N. Olson instructing.

Topics and lab exercises included:

Types and uses of photography, films and scales

Fundamentals of photo interpretation

Use of photo interpretation aids and making measurements on photos

Applications of remote sensing for surveying and mapping

Tree and object identification

Application of photo interpretation to surveying

Use of aerial photography in the evaluation of boundary evidence and as court exhibits.

Photo interpretation for land managers and land planners

Use Of Photos And Photo Interpretation In Routine Work for 35 years:

Aerial photo interpretation is a routine procedure and application in the practice of surveying, land consulting and forestry. The office of Richards, Cranston and Chapman, LLC. has an extensive photo library covering much of Knox County Maine and utilizes photos from State of Maine GIS and other government agencies . Frequent use of photos has been made in the last 35 years of professional practice.

Given voir dire exam on qualifications to view, interpret and utilize aerial photos as an expert witness in the case of Erickson v. Alholm RE - 01- 018 2001 at Lincoln County Superior Court.

**EXPERT WITNESS QUALIFICATION**

Qualified as expert witness in the following cases:

Reiner v. Johnson, ROC-89-CV-169

Putnam v. Ames, Knox 92-CV-34

Harding v. Town of Waldo

Hansen v. Weller, Knox RE-04-028

Grace v. Sears, Hancock RE-10-034

Edwards v. Blackman et. al., Knox RE-11-51

Granger v. MacLean, Kennebec RE-2014-44

Johnson v. Witham, ROC-90-CV-119

Lewis v. Maine Coast Artists, Knox CV-96-116

Erickson v. Alholm Lincoln RE - 01- 018

Flaherty v. Muther Cumberland RE-08-98

Beveridge v. Beverage, Knox RE-10-10

Ashtonbrooke v. Wake, Cumberland RE-2012-301

**WORK EXPERIENCE**

Richards, Cranston & Chapman, LLC 2014 - Present

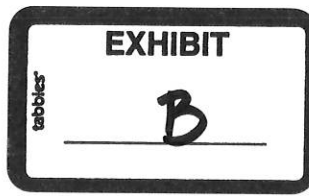
Richards, Cranston & Chapman, Inc. 1996 - 2013

Richards & Cranston 1981 - 1996

Richards & Associates 1980 - 1981

O. H. Tripp Engineering 1979 with Edward W. Coffin R.L.S.

Land & Forestry Consultants - Canaan, N.H. 1976 - 79 with Blynn D. Merrill R.L.S. & Christopher Rollins R.L.S.



Receipt # 140778 WALDO SS: RECEIVED VOL 4367 PG 273  
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ATTEST: Stacy L Grant, Waldo Co Registry of Deeds

## CONSERVATION EASEMENT DEED

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

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

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

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

### COVENANTS, TERMS, CONDITIONS, AND RESTRICTIONS

#### A. PURPOSE

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

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



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

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

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

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

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

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

and, no alteration of the topography in any manner.

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

#### **B. HOLDER'S RIGHTS**

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

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

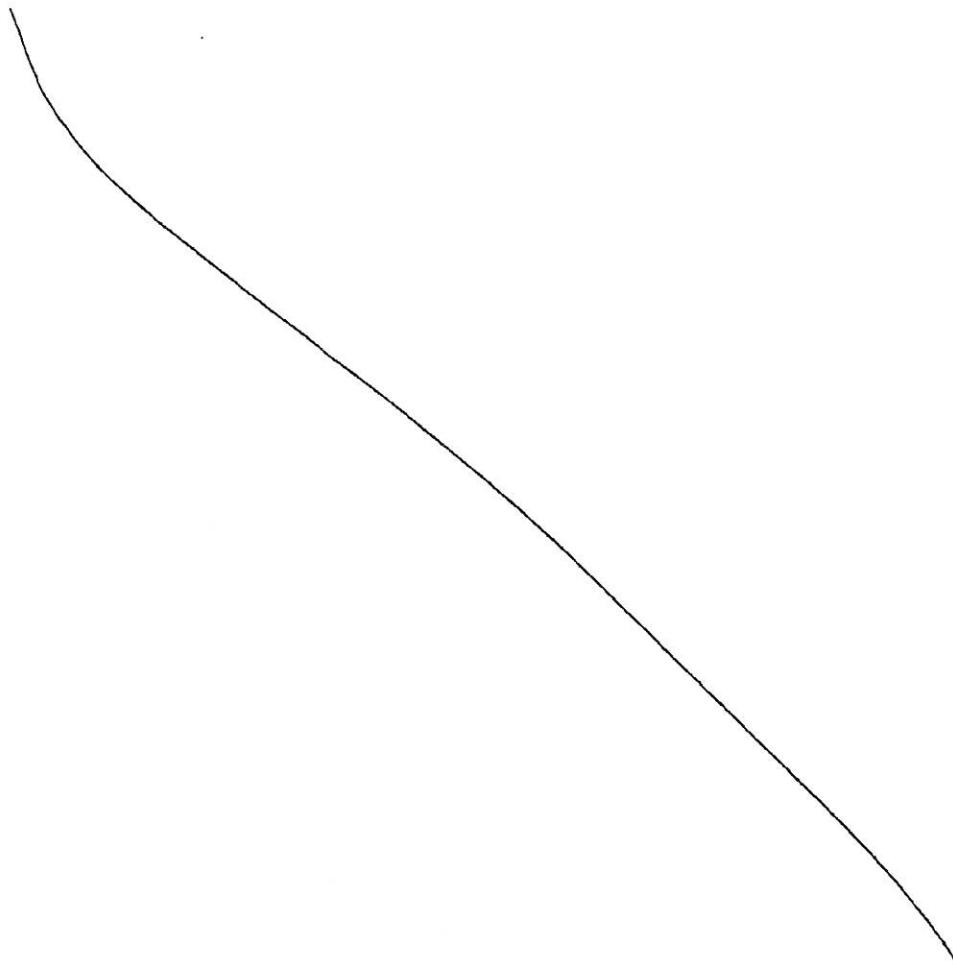
4. The right to enforce by means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

### **C. GRANTORS' RESERVED RIGHTS**

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

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

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#### D. GENERAL PROVISIONS

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

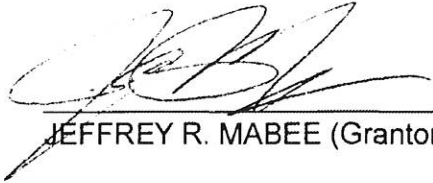
Act at Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-C, inclusive, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the conservation purposes of this Easement shall govern.

**E. HABENDUM**


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

**GRANTORS' SIGNATURES**

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

  
JEFFREY R. MABEE (Grantor)


JEFFREY R. MABEE  
[Grantor's Printed Name]

  
JUDITH B. GRACE (Grantor)

Judith B. Grace  
[Grantor's Printed Name]

STATE OF MAINE  
COUNTY OF WALDO

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

  
NOTARY PUBLIC

Paul C. Dooody  
[ Notary's Printed Name]

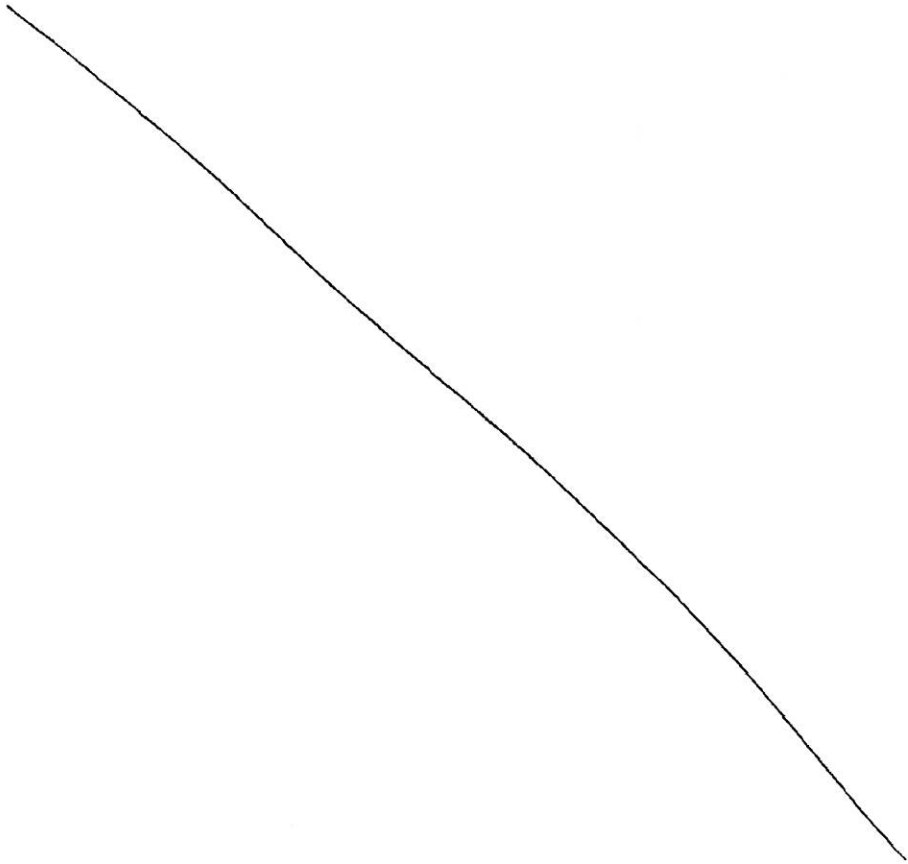
MY COMMISSION EXPIRES:

May 31, 2023






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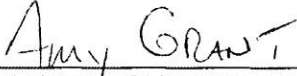


**HOLDER'S ACKNOWLEDGEMENT**

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



\_\_\_\_\_  
AMY GRANT



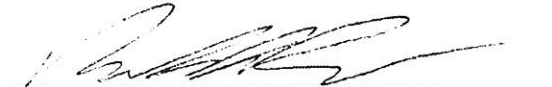

[Printed Name of Holder's Authorized Representative]

Title: President of UPSTREAM WATCH

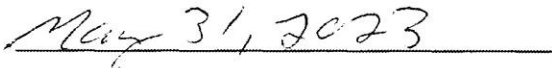
STATE OF MAINE  
COUNTY OF WALDO

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

Before me,

  
\_\_\_\_\_  
Notary Public  
\_\_\_\_\_  
[Printed Name of Notary]

My commission expires:

  
\_\_\_\_\_  
May 31, 2023

## EXHIBIT A

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

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

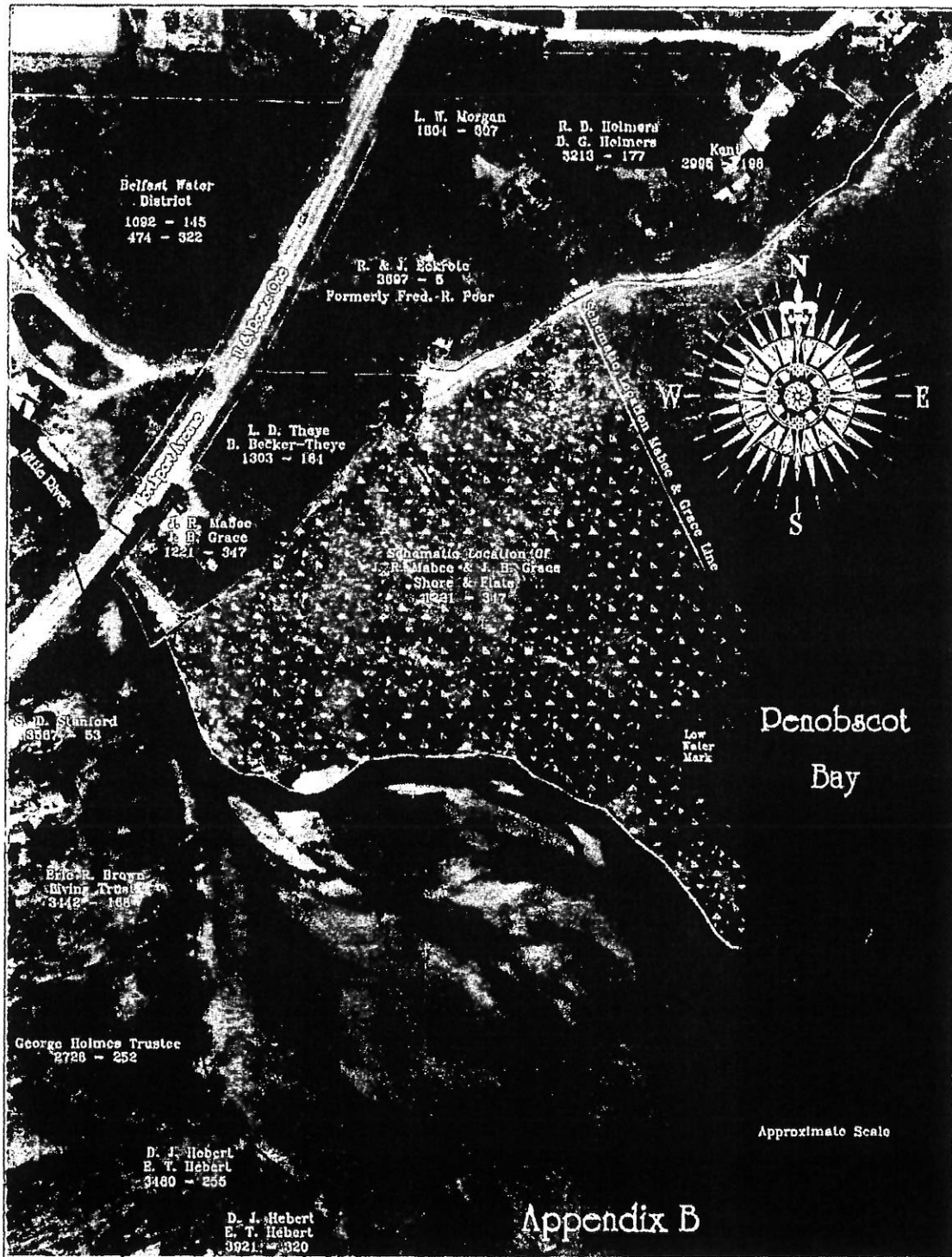
- 1) Genevieve Hargrave to Arthur & Harriet L. Hartley dated July 27, 1934 as recorded in Book 386, Page 453 of the Waldo County Registry of Deeds;
- 2) Harriet L. Hartley to William P. Butler and Pauline H. Butler dated September 22, 1950 as recorded in Book 474, Page 387.

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

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

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

EXHIBIT B



POOR ORIGINAL

Appendix B