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Admitted to Practice:
State of Maine
State of Florida
District of Columbia

United States Supreme Court
U.S. Circuit Court First Circuit
U.S. District Court Northern District of Florida
U.S. District Court Middle District of Florida
U.S. District Court District of Maine

October 10, 2023

Kristin M. Collins, Esquire
Sigmund D. Schutz, Esquire
Preti Flaherty
45 Memorial Circle
P.O. Box 1058
Augusta, ME 02332-1058

RE: Remand and Vacatur of 8-12-2021 Condemnation Order

Dear Attorneys Collins and Schutz:

Pursuant to Justice Murray's 9-29-2023 Remand Order in RE-2021-007 (the eminent domain case), the 8-12-2023 Condemnation Order has now been remanded to the Belfast City Council "to consider the new clarifications and determinations provided by the Law Court's resolution of *Mabee I* and decide whether to alter, amend, or vacate its condemnation decision in light of the new circumstances." (9-29-2023 Remand Order, p. 10). I am writing regarding the actions the City must undertake at the earliest possible time to mitigate the on-going damages caused by the City's 2021 ultra vires condemnation order -- *damages that are continuing to accrue*.

While the ultra vires 8-12-2021 Condemnation Order remains in place, Jeffrey R. Mabee and Judith B. Grace ("Mabee-Grace") cannot sell their Little River property because of the diminishment in the value of their property caused by: (i) the threat of adjacent development contemplated by the City's taking of Mabee-Grace's intertidal land adjacent to Belfast Tax Map 29, Lot 36 ("Lot 36"), *including land outside the City's municipal boundaries*, for the purpose of allowing Nordic Aquafarms Inc. ("Nordic") to bury industrial seawater intake and wastewater discharge pipes in the environmentally fragile estuary owned by Mabee-Grace, in violation of the Conservation Easement held by the Friends of the Harriet L. Hartley Conservation Area ("Friends"); and (ii) the threat of industrial development on upland Lot 36, in violation of the "residential purposes only" servitude, that has been judicially determined to be *binding on the City and Nordic* as successors of Fred R. Poor, and enforceable by Friends (*Mabee I*, ¶58-61, n. 13; 9-29-2023 Remand Order, p. 4-8, 10).

This diminution in value constitutes an ongoing taking of Mabee-Grace's fee simple absolute property interests conveyed by their 1991 deed. Consequently, because Mabee and Grace's damages from this taking were, and are, caused by the City's ill-founded and unlawful condemnation, undertaken primarily for Nordic's benefit, the costs of compensating Mabee-Grace and Friends for those damages will ultimately be borne by the City and its taxpayers. Thus, on

remand, time is of the essence *for all of our respective clients* to expeditiously resolve the harm caused by the improper use of eminent domain.

The independent damage claims in the eminent domain case (Docket No. RE-2021-007) are currently stayed. But the actual and special damages my clients are suffering continue to accrue each and every day that the 8-12-2021 Condemnation Order -- and the spurious deeds and easement executed and recorded in furtherance of the scheme to use eminent domain to take Mabee-Grace's and Friends' property and property rights for Nordic's benefit -- are not corrected, nullified and/or vacated. The longer the harm continues, the greater the damage to my clients and the greater the cost ultimately borne by Belfast's taxpayers. This is contrary to all of our respective clients' interests. Accordingly, ***immediate vacatur*** by the Belfast City Council of the 8-12-2021 Condemnation Order is required to return title to Mabee-Grace's intertidal land adjacent to Lot 36, *especially the portion of their intertidal land outside the Belfast municipal boundaries*, and to remove the on-going slander of their title.

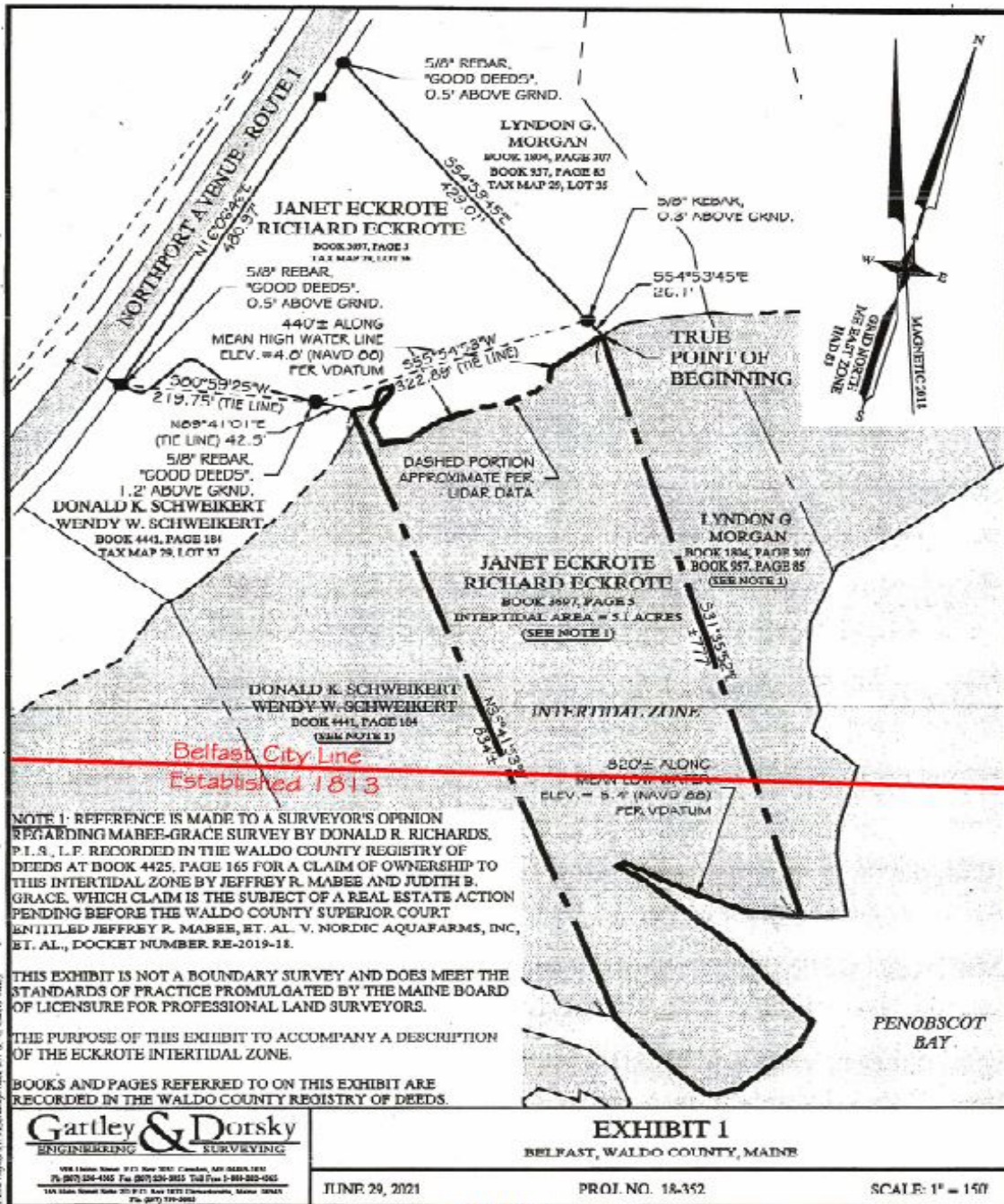
Summary of the Legal and Factual Errors Requiring Correction on Remand

A summary of the legal and factual errors in the City's 8-12-2021 Condemnation Order, identified in the recent court rulings, including the City's false statements, might prove helpful as the Belfast City Council evaluates how to proceed on remand.

- A. ***The deed description in the 6-23-2021 Eckrotes-to-City deed*** (WCRD Book 4679, Page 157): (i) altered the description of the property conveyed by the Eckrotes to include the intertidal land adjacent to that parcel, in direct contravention of every prior deed in the Eckrotes' chain of title, including the 10-15-2012 deed (as clarified by the unrecorded 8-31-2012 Good Deeds survey prepared by Gusta Ronson, P.L.S.); and (ii) purported to release the "residential purposes only" servitude which was binding on the Eckrotes as successors of Fred R. Poor. These deed provisions are in direct conflict with the Law Court's determinations in *Mabee I* that: (i) the intertidal lands adjacent to Lot 36 were never owned by the Eckrotes or their predecessors in interest back to 1946; and (ii) the "residential purposes only" servitude *runs with the land and is binding on successors of Fred R. Poor* (which includes the Eckrotes, the City, and Nordic). *See, Mabee I*, ¶ 58, n. 13.
- B. ***The 8-12-2021 Condemnation Order***: (i) falsely asserts that the 6-23-2021 Eckrotes-to-City deed conveyed the 5.1 acre "Intertidal Zone," depicted on attached Exhibit 1, to the City of Belfast; (ii) falsely included "intertidal land of Morgan" as a monument, although the Law Court has determined that Lyndon Morgan, as a successor of Fred R. Poor, was never conveyed any intertidal land and that Mabee-Grace own the intertidal land on which Morgan's parcel fronts; (iii) falsely included "intertidal land of Schweikert" as a monument, although the Superior Court (in the vacated 10-28-2021 judgment in RE-2019-18) and the Law Court, in *Mabee I*, have determined that the Schweikerts and their predecessors in interest were never conveyed any intertidal land and that Mabee-Grace own the intertidal land on which the Schweikerts' parcel fronts;¹ (iv) illegally includes intertidal land outside the municipal boundaries of the City of Belfast; and (v) falsely asserts that the intertidal land adjacent to Lot 36 is not used for fishing, in the absence of any record evidence supporting this specious claim.

¹ In June 2021, Nordic also had filed Stipulated facts, on the Schweikerts' behalf in RE-2019-18, that conceded that the Schweikerts' eastern (waterside) boundary was the high-water mark of Penobscot Bay pursuant to the deeds.

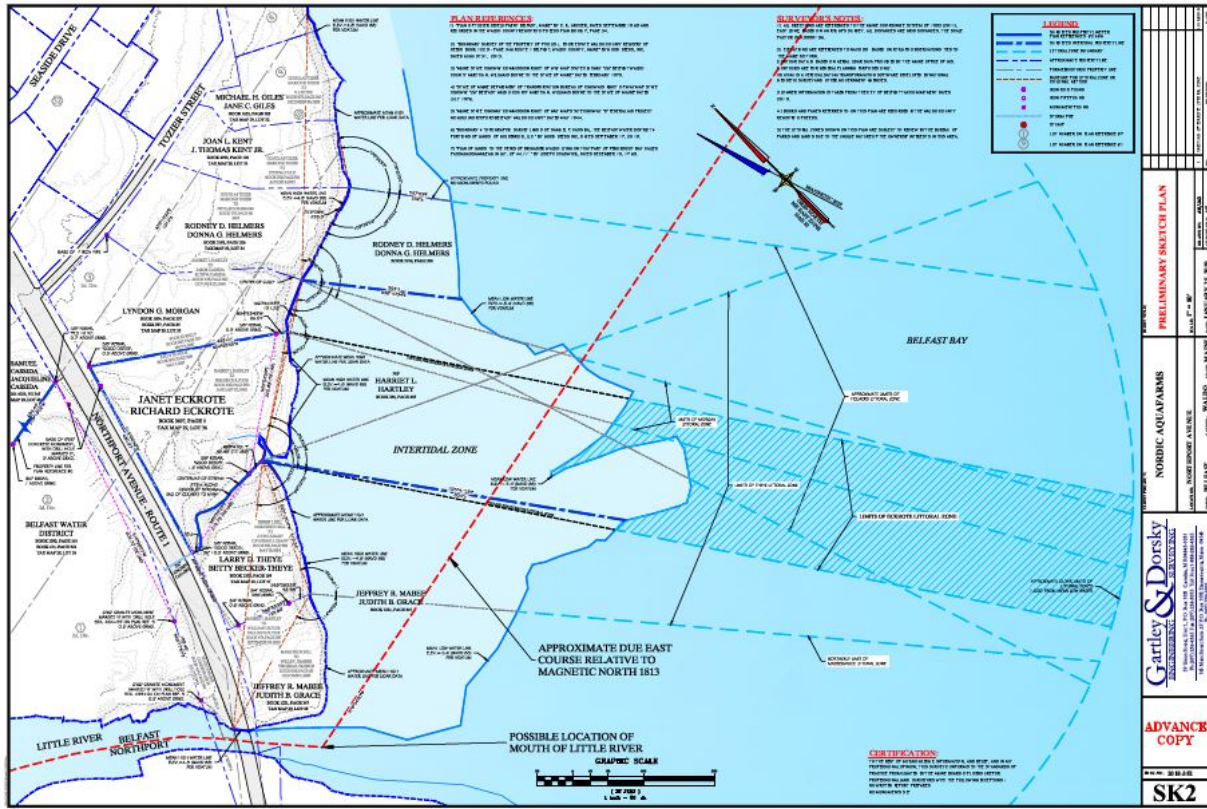
C. *The City cannot take land outside its municipal boundaries.* Regarding the intertidal land outside the Belfast municipal boundaries, that the City has purported to take by use of eminent domain, the legal description of the property taken from Mabee-Grace by the City of Belfast in Schedule A of the 8-12-2021 Condemnation Order, drafted by James Dorsky, P.L.S., is based on fundamental errors of law, that have already been determined by the Law Court in *Mabee I* (¶¶ 34-35, n. 8 & 9), and the Superior Court in the 9-29-2023 Remand Order. Aggrieved property owners Mabee-Grace’s undersigned counsel advised the City Council of the error in the Dorsky placement of the municipal boundary before noon on 8-12-2021 – submitting the corrected version of Exhibit 1 (below) to the City Council prior to their vote to adopt the Condemnation Order on 8-12-2021.



Gartley & Dorsky
 ENGINEERING SURVEYING
 141 Main Street, Suite 205, Belfast, Maine 04911
 Tel: 207-334-4445 Fax: 207-334-2855 Toll Free: 1-800-333-0542
 141 Main Street, Suite 205, P.O. Box 1877, Ellsworth, Maine 04829
 Tel: 207-777-2822

EXHIBIT 1
 BELFAST, WALDO COUNTY, MAINE
 JUN 29, 2021
 PROJ. NO. 18-352
 SCALE: 1" = 150'

In addition, Surveyor Dorsky’s location of the Belfast City boundaries in the condemnation order was, and is, contradicted by *Surveyor Dorsky’s* 1-25-2019 survey prepared by Surveyor Dorsky for Nordic (attached below). Surveyor Dorsky’s 1-25-2019 survey used the proper location of the mouth of the Little River and plainly includes the same location of the Belfast municipal boundary as that which Dorsky later identified as Surveyor Richards’ location of the Belfast municipal boundary on the 7-24-2020 Dorsky survey, used as the basis of the 8-12-2021 Condemnation Order (Schedule D, ¶ 8; WCRD Book 4693, Page 320) (attached below on page 5).



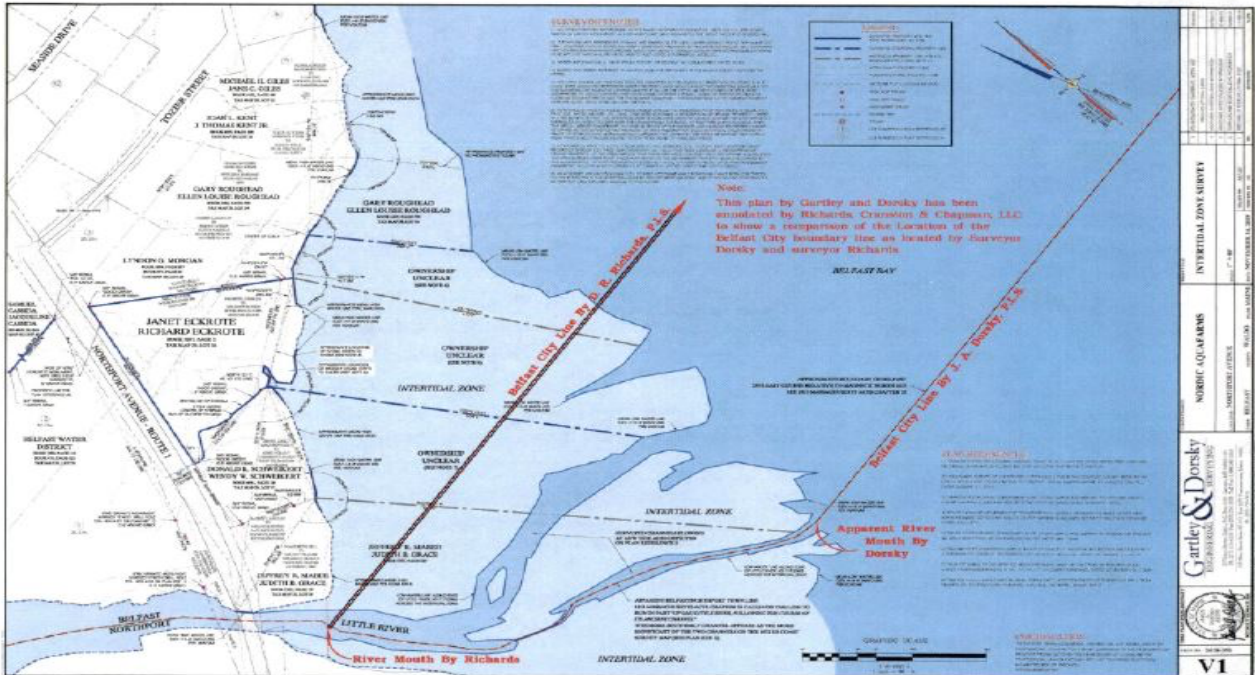
Citing *Mabee I*, ¶¶ 34-36 and n. 8 & 9,² the 9-29-2023 Remand Order determined that: “the City’s reliance on Gartley & Dorsky’s now defunct [7-24-2020] survey in its

² Notably, the Law Court stated as follows in footnotes 8 and 9 of the *Mabee I* decision:

8 Nordic’s surveyor asserted at trial that the “mouth of a brook” is “basically where the flowing water body . . . enters the receiving water body,” and, therefore, the mouth of a brook moves with the ebb and flow of the tide. Applying this construction of the term to deed language is impractical in at least two respects. First, it is dependent on the presence of flowing water in the brook, which may not, in fact, be present. *See* 38 M.R.S. § 480-B(9) (listing the characteristics of a “channel” within the definition of “brook”). Second, regardless of where the bodies of water meet, the iron bolt referenced in the deed would not have moved with each ebb and flow of the tide. Although immaterial to our analysis because we find the deed language clear, *Mabee* and Grace’s surveyor’s definition of “mouth of a brook” was similar to the statutory definition discussed above. He testified that there is a clear distinction between the mouth of the brook and the bay, and he located the mouth of the brook at the high-water mark.

9 Again, although the extrinsic evidence in the record is immaterial, we observe that all the surveyors—including the Eckrotes’ surveyor in 2012 and Nordic’s surveyor before he changed his position to one that was favorable to Nordic—read the Hartley-to-Poor deed as excluding the intertidal land. Also, the Hartley-to-

condemnation order generate a serious question as to whether the City misidentified its municipal boundary in the order and, as a result, mistakenly condemned and took a segment of land that lies outside of its municipal boundaries.” (9-29-2023 Remand Order, p. 5).



The “now defunct” 7-24-2020 Dorsky survey depicts both the proper location of the relevant Belfast municipal boundary (the Richards’ line – which Dorsky’s 1-25-2019 survey also included as you can see above) and the improper location (Dorsky’s 7-24-2020 revised line) relied on by the City Council and incorporated in Schedule A and EXHIBIT 1 and Schedule D, ¶ 9, of the 8-12-2021 Condemnation Order.

In August of 2021, the City Council regrettably ignored the overwhelming evidence in its possession regarding the proper location of the Belfast municipal boundary and, instead -- presumably on advice of its legal counsel at that time (Bill Kelly, Esq.) and Nordic’s legal counsel and surveyor (Dorsky) -- proceeded to declare it had taken Mabee-Grace’s intertidal land adjacent to Lot 36, *including intertidal lands outside the Belfast municipal boundaries*. After *Mabee I* and the 9-29-2023 Remand Order, there is no justification for the City to continue to claim ownership in intertidal land that is outside Belfast’s municipal boundaries or to condemn any of the intertidal land for a use inconsistent with the enforceable Conservation Easement held by Friends. To do so would evidence an unwillingness to accept the Law Court’s ownership determinations

Cassida deed, conveying a portion of Hartley’s property only months after the Hartley-to-Poor conveyance, used strikingly different language to make clear that the intertidal land was included in that conveyance. *See supra* ¶¶ 8, 11.

in *Mabee I*, as well as a reckless disregard for the truth regarding the lawful limits of the City's eminent domain powers.³ See, *Mabee I*, ¶¶ 59-61.

- D. ***The 9-3-2021 City-to-Nordic easement was executed by the City in the absence of any legal capacity to do so***, after the City had conveyed its right, title, and interest in Lot 36 to Nordic Aquafarms Inc. on or about 8-23-2021. At the time the City purported to execute the City-to-Nordic easement, on September 3, 2021, the City had already conveyed Lot 36 to Nordic, pursuant to the 7-15-2021 City-to-Nordic deed and the express terms in the 7-9-2021 City-Nordic Purchase and Sale Agreement. Further, the 9-3-2021 City-to-Nordic easement: (i) falsely purports to grant Nordic the right to conduct for-profit business on Lot 36 in violation of the “residential purposes only” servitude on this parcel – a servitude that, as determined by the Law Court in *Mabee I*, is binding on the City and Nordic as successors of Poor and which the 9-29-2023 Remand Order determined Friends has a right to enforce; and (ii) falsely purports to grant Nordic the right to dredge and engage in industrial development of the intertidal land adjacent to Lot 36, in violation of the 4-29-2019 Conservation Easement that *Mabee I* determined is enforceable by Friends as holder, and the 3-2-2022 Stipulated Judgment in RE-2021-007 determined was not amended or terminated by the City's 8-12-2021 Condemnation Order.
- E. ***There is Fishing, But No Public Purpose or Exigency***. The 8-12-2021 Condemnation Order is unlawful because it serves a private, corporate interest, not a public interest or purpose. The 8-12-2021 Condemnation Order purports to take intertidal lands that are used by the public for fishing in order to facilitate commercial and industrial development of this land by a for-profit private corporation. The City was, and is, prohibited from condemning land used for fishing for these purposes, pursuant to 1 M.R.S. § 816(a)-(c). But under the City's conveyance of Lot 36 to Nordic (on or before 8-23-2021), and the ultra vires and legally infirm 9-3-2021 City-to-Nordic easement, Nordic is claiming the right to use Lot 36 for industrial development, either as a consequence of Nordic's ownership in fee of Lot 36, pursuant to the 7-15-2021 City-to-Nordic Deed, or pursuant to the express terms of the 9-3-2021 City-to-Nordic easement.

Suggesting that Lot 36 can be used as a park is nonsensical and demonstrably false, *as a matter of law* -- belied by the unambiguous words in the contracts, deeds and easement between the City and Nordic, as well as common sense. To access this upland lot from an existing trail on the west side of Route 1, the public would need to cross Route 1, in an area of that interstate highway that has a 50-mph speed limit, and sashay by Nordic's industrial pipes and pumphouse to get a view of, or access to, Penobscot Bay. No right for such access across Lot 36 has been reserved for the public in the 7-15-2021 City-to-Nordic deed or the 9-3-2021 City-to-Nordic easement. Rather, Nordic has the unfettered right to exclude the public from Lot 36 under both the 7-15-2021 City-to-Nordic deed and 9-3-2021 City-to-Nordic easement.

³ *Colquhoun v. Webber*, 684 A.2d 405, 409 (Me. 1996) ((1) there was a publication of a slanderous statement disparaging claimant's title; (2) the statement was false; (3) the statement was made with malice or made with reckless disregard of its falsity; and (4) the statement caused actual or special damages. See, e.g., *First Sec. Bank of Utah, N.A. v. Banberry Crossing*, 780 P.2d 1253, 1256–57 (Utah 1989). See also *Fischer v. Bar Harbor Banking & Trust Co.*, 673 F.Supp. 622, 626 (D.Me.1987) (to establish slander of title claim “plaintiff must prove ‘falsity’ ‘publication,’ ‘malice’ and ‘special damages’ ”); *Prosser and Keeton on The Law of Torts* § 128 (5th ed. 1984) (stating that elements of cause of action are falsity, publication, malice and special damages).).

There was never a need, *or municipal plan*, for a park on Lot 36 or the adjacent intertidal land. First, there is, already, a City park along the Bay just to the north of this area, which has parking, restroom facilities, benches and pathways, and does *not* require people to cross Route 1 on a dangerous crest of a hill, while dodging 50-mph traffic without a crosswalk. Second, the public has always had access to the intertidal land adjacent to Lots 38, 37, 36 and 35 for fishing, fowling and navigation, pursuant to the Colonial Ordinance of 1641-47; and, since 2019, have had access to this intertidal land for more expanded recreational uses pursuant to the permissive easement granted by Friends.

Thus, there was no need to take the intertidal land adjacent to Lot 36 for use as a park – *it already was being used as a public-trust doctrine public park!* If the City’s primary motivation for taking Mabee-Grace’s intertidal land adjacent to Lot 36 is really to use the intertidal land adjacent to Lot 36 “as a park,” then immediate vacatur of the 8-12-2021 Condemnation Order to restore Mabee-Grace’s title in the intertidal land adjacent to Lot 36 will not impede achieving the goal of public access to this intertidal area. That intertidal land will *still be accessible to the public to use pursuant to the Colonial Ordinance of 1641-1647 and the permissive easement granted by Friends to the public for use of the Conservation Area for additional recreational uses of this land.*

And, finally, no matter how beneficial a park on the intertidal land adjacent to Lot 36 might be, the City cannot take land outside its boundaries for the purpose of creating such a park. Period.

It is time for the City to rectify the above-referenced errors without further delay, and thereby to mitigate the damages my clients continue to suffer as a result of the City’s use of eminent domain to take land for Nordic’s use and benefit that the City had no lawful authority to take.

Costs Imposed on Taxpayers to Benefit Nordic. In addition to the issues described above, the City Council should consider the costs imposed on Belfast taxpayers that have been, and will continue to be, incurred as a result of the City Council’s efforts to condemn property and to provide easements to Nordic to facilitate a project for which Nordic does not have, and cannot obtain, sufficient right, title or interest in all land necessary for construction as proposed. Since Nordic’s submerged lands lease and dredging lease from the DACF Bureau of Parks and Lands has been *rescinded* on remand, and its 2020 NRPA, SLODA and Air permits and licenses have been suspended by the Commissioner of DEP, there is no basis for asserting the existence of an exigency justifying the taking of any of Mabee-Grace’s intertidal land, especially the portion of their intertidal land that is outside the municipal boundaries of the City of Belfast.

Allowing Nordic to Evade Property Taxes: In addition to the damages the 8-12-2021 Condemnation Order is continuing to inflict on my clients, for which Belfast taxpayers or the City’s MMA insurer will ultimately be liable, the City’s repeated false assertions that the City -- *and not Nordic* -- owns Lot 36 has resulted in Nordic failing to pay property taxes on Lot 36 for more than two (2) years. The City is still falsely exempting this property from property taxes under the subterfuge that this is municipal property. It is not.

Similarly, Nordic is not paying any property taxes on the Waterfront Parcel on the western side of Route 1, although, on March 11, 2022, the Belfast Water District (“BWD”) conveyed to Nordic rights to use and industrially develop the Waterfront Parcel. Specifically, Nordic was conveyed all

meaningful use and industrial development rights in, on, and under the so-called “Waterfront Parcel” along the Little River, by the Belfast Water District in the 3-11-2022 BWD-to-Nordic deed (WCRD Book 4776, Page 210). The conveyance of those rights was in the form of a sweeping and legally-suspect easement – *drafted by Nordic’s counsel* – and granted to Nordic by BWD’s Superintendent Keith Pooler (apparently without prior approval by the BWD Board and/or the Belfast City Council).



The City and BWD obtained approval for the sale of BWD “water resource property” from the Public Utility Commission (“PUC”) in June 2018, based, in part, on a representation that the sale to Nordic would result in the indirect benefit to the public of the “Waterfront Parcel” being acquired by the City to “maintain” and “preserve” the public walking trails on the Waterfront Parcel for the public’s benefit and use *in perpetuity*. That avowed purpose is completely undermined by the last-minute addition of the BWD-to-Nordic easement in the 3-11-2023 BWD-to-Nordic deed.

In Schedule D of the 8-12-2021 Condemnation Order, “perpetual preservation of the Waterfront Parcel,” for “permanent public uses,” was touted by the City Council as part of the grounds creating the “exigency” for taking Mabee-Grace’s property (WCRD Book 4693, Page 317-319). However, the lopsided terms in the subsequently-executed BWD-to-Nordic easement, drafted by Nordic’s counsel on 3-11-2022, strip the Waterfront Parcel of all protections against industrial development and attempt to give Nordic the right to unrestricted development of the Waterfront Parcel.

By its unambiguous (albeit unlawful) terms, the BWD-to-Nordic easement *runs with the land* burdening all of this environmentally sensitive land within the “Waterfront Parcel,” and binds BWD’s “successors and assigns” (including the City of Belfast) to agree to future amendments to the easement demanded by Nordic.

This BWD-to-Nordic easement was inserted into the draft BWD-to-Nordic deed on the day of the closing of the sale of the BWD property to Nordic, on March 11, 2022. The deed containing this easement was executed late in the day on 3-11-2022, and recorded in the Waldo County Registry of Deeds (“WCRD”), by *Nordic’s counsel*, on 3-14-2022. On that same day (March 14, 2022), the

City paid \$100,000 in taxpayer funds to BWD ostensibly for the Nordic-easement-encumbered Waterfront Parcel and the City Manager executed the BWD-to-City deed for the Waterfront Parcel. I have been provided no evidence that the City Manager or Belfast City Council were advised about the contents of the BWD-to-Nordic easement prior to the City Manager executing the BWD-to-City deed on 3-14-2022.

By design, under the express terms in the 3-11-2022 BWD-to-Nordic deed, that deed and the easement to Nordic were executed *prior to the City purchasing the Waterfront Parcel.*⁴ As a consequence, the City took the Waterfront Parcel subject to the easement granting Nordic all rights to use and develop this land, although there is no mention of the BWD-to-Nordic easement in the BWD-to-City deed for the Waterfront Parcel (WCRD Book 4776, Page 270).

Documents I have obtained, to date, pursuant to FOAA reveal that the Belfast City Council never reviewed or approved the final version of the BWD-to-Nordic deed containing the inequitable easement terms, unfairly tilted in Nordic's favor, or the BWD-to-City deed (omitting any reference to the BWD-to-Nordic easement), prior to the City Manager executing the BWD-to-City deed – seemingly exceeding the City Manager's authority under Article VI, Section (6)(b)(7) of the Belfast City Charter.

Neither the 3-11-2022 BWD-to-Nordic deed nor the “permanent easement” reserve the public's right to use the walking trails on the Waterfront Parcel in perpetuity. Rather, Nordic is granted the right to:

“construct, drill, install, maintain, repair, and remove piping, wells, or other equipment of water extraction; withdraw and use ground or surface water; make connections with the conduits or piping at the boundaries of the Waterfront Parcel; conduct surveying and monitoring activities; seed, mulch, revegetate, and maintain vegetative buffers; construct, maintain and ensure effective functioning of ditches, culverts, bridges, dips, water turnouts, and other stormwater runoff control installations; restore streams or wetlands; replace or remove culverts; excavate, perform earth work, and change the existing surface grade of the Waterfront Parcel as is reasonably necessary for any of these purposes; trim, cut down, and/or remove bushes, grass, crops, trees and any other vegetation, to such extent as is necessary for any of these purposes; inspect (including by third party governmental inspectors) all of the foregoing; and undertake all other activities or impose property restrictions deemed necessary to facilitate the construction, fixtures and appurtenances. Grantor shall consent to installation of a pump house should Grantee in its sole discretion, determine one is needed to obtain necessary quality of quantity of intake; said pump house shall occupy a footprint no greater than is needed, based on industry standard, and Grantor shall incur no cost or expense related to or arising from the consent, installation or existence of such pump house.

⁴ The 3-11-2022 BCD-to-Nordic deed states in relevant part:

TOGETHER WITH an easement (the “Easement”) described below over, on and under the Waterfront Parcel, as described and defined below (which Waterfront Parcel will be conveyed by Grantor to the City of Belfast, by deed to be recorded subsequent to this conveyance), which easement is granted by Grantor [BCD] in favor of Grantee [Nordic], together with its successors and assigns, to benefit the above-described parcel and the real estate owned by Grantee . . .

These Easement Rights are intended to, and will be exercised in order to, satisfy those conditions of approval more fully set forth in the following permits issued to Grantee: . . .

To the extent that the Easement Rights may need to be further supplemented, amended, or altered based on the permits listed above, amendments thereto or additional permit requirements, whether now existing or hereafter arising, Grantor, its successors and assigns [i.e. the City of Belfast], agrees to grant Grantee the right to further amend the Easement Rights as may be reasonably necessary to comply with the requirements thereof, and Grantor, and its successors and/or assigns, by its acceptance and recording hereof in the WCRD, shall grant such further rights to Grantee [Nordic] as may be necessary *or convenient* to accomplish the same, and Grantor, its successors and assigns, agree that it shall promptly execute and deliver unto Grantee instruments evidencing or consenting to the amendment hereof as may be reasonably requested by Grantee. [emphasis supplied]

Thus, Nordic was granted the right to build another (third!) pump house on the Waterfront Parcel, through the easement granted by BWD. More importantly, Nordic can exclude *anyone* from this land, in its sole discretion. In sum, the City's taxpayers paid \$100,000 to BWD for land that Nordic obtained the rights to develop with industrial infrastructure, including a third pump house, where the public had (for many years) previously had the right to use the Parcel for walking trails -- until BWD granted Nordic the 3-11-2022 easement. Again, this land -- which the BWD appears to have conveyed to Nordic all the rights to use and industrially development (if this easement is legal) -- is exempt from property taxes under the guise of "municipal" ownership.

The public benefits of this costly acquisition of the Waterfront Parcel, after this land was burdened by an extraordinary easement, are negligible at best. It appears that Belfast taxpayers paid \$100,000 to obtain fewer rights than they had before the transactions undertaken by the City, BWD, and Nordic in March 2022. Moreover, both the easement and the deeds transferring ownership of the BWD's land to Nordic and the City fail to acknowledge that the adjacent 12.5 acre parcel (labeled as "Additional Parcel" Exhibit A of the 1-30-2018 Options and Purchase Agreement between the City, Nordic and BWD, reproduced above), on which Nordic proposes to construct buildings has a restriction on it that runs with the land, with a reversionary interest, all of which currently prohibit the construction of the type of structures and disturbance that is central to Nordic's project plan.

Insertion of that easement on the Waterfront Parcel was the ultimate bait-and-switch to effectively nullify the purported public purposes, related to the City's acquisition of the Waterfront Parcel, for this transaction. The question remains: *Did the Belfast City Council approve the City Manager executing a deed for the Waterfront Parcel and paying \$100,000 for that acquisition, knowing that the Waterfront Parcel was subject to the BWD-to-Nordic easement?*

The multitude of legal infirmities discussed above expose the fundamental impropriety of the Nordic Project as proposed. It is time for the Belfast City Council to acknowledge these legal impediments to the Nordic project and abandon its inexplicable obsession with pushing this project without regard for the law, deed restrictions, or constitutionally protected property rights of citizens of Belfast (including Mabee-Grace who have been contributing members of Belfast's citizenry for more than 40 years).

Scope of the Remand

In the 9-29-2023 Remand Order, the Superior Court limited the scope of the remand to addressing the Law Court’s determinations in *Mabee I* on the 8-12-2021 Condemnation Order, and deciding whether to alter, amend, or vacate the 8-12-2021 Condemnation Order based on the resolution of matters of law in the *Mabee I* decision. The Superior Court noted several specific problems with the City’s 2021 eminent domain taking exposed by the *Mabee I* decision, noting that: (i) the “alleged title defects” referenced in the 8-12-2021 Condemnation Order were not “alleged” defects but “actual ‘title defects’ – [because] the intertidal zone condemned by the City was always owned by Mabee and Grace, rather than the Eckrotes, and the alleged residential purpose restriction over the condemned upland is enforceable by Mabee, Grace, and Friends” (9-29-2023 Remand Order, pp. 3-4); (ii) the order of condemnation used a Gartley & Dorsky survey that incorrectly indicated the intertidal land was owned by the Eckrotes and failed to identify Friends as the owner of the conservation easement; (iii) the Gartley & Dorsky plan was created with the misunderstanding that the location of the “mouth of a river or stream” moves with the tide, instead of being a fixed point, which may have resulted in “inaccuracies in the City’s identification of the boundaries of the land that it takes through the condemnation order” (9-29-2023 Remand Order, p. 4); and (iv) the order of condemnation fails to identify Friends as having a conservation easement which includes the right to enforce the “residential purposes only” restriction on upland Lot 36.

If the City wishes to redo its eminent domain taking, the existing 8-12-2021 Condemnation Order should first be vacated and title to all of the intertidal land adjacent to Lot 36 returned to Mabee-Grace; thus, minimizing the on-going harm to Mabee-Grace and Friends, and the expense to Belfast taxpayers resulting from the City’s unlawful 8-12-2021 Condemnation Order.

Specific Relief Requested Relating to the 8-12-2021 Condemnation Order

First, property owners Jeffrey R. Mabee and Judith B. Grace (“Mabee-Grace”) and Conservation Easement holder Friends of the Harriet L. Hartley Conservation Easement (“Friends”) seek immediate action by the Belfast City Council to restore their respective property rights in accordance with the Law Court’s 2-16-2023 Decision in *Mabee v. Nordic Aquafarms Inc.*, 2023 ME 15, 290 A.3d 79 (*Mabee I*), and the 9-29-2023 Order of Remand by the Waldo County Superior Court in RE-2021-007 (“9-29-2023 Remand Order”).

Second, my clients request that they, and all parties in RE-2021-007, receive prior, timely and adequate advance notice of any actions by the Belfast City Council on this remand. Notice should be provided by email and letter to me and counsel for Upstream Watch, as well as the public. Further, consistent with the spirit and letter of the Maine Freedom of Access Act, all meetings relating to the remand should be conducted in open, public meetings and ***not in Executive Sessions***. There is no legitimate basis for discussions regarding this remand to occur behind closed doors.

Third, in addition to correcting the 8-12-2021 Condemnation Order, as part of the remand regarding the condemnation, the Belfast City Council must correct the deed description in the 6-23-2021 Eckrotes-to-City deed and nullify the ultra vires 9-3-2021 easement granted to Nordic Aquafarms Inc., which expressly authorizes Nordic to engage in activities on upland Lot 36 and the intertidal land adjacent to Lot 36 that would violate: (i) the “residential purposes only” servitude on upland Lot 36, which *Mabee I* determined is *binding* on the City and Nordic as *successors of Fred R. Poor*, and that the 9-29-2023 Remand Order determined is enforceable by Friends; and (ii) the protections

and prohibitions in the 4-29-2019 Conservation Easement that *Mabee I* determined is valid and enforceable, and the 3-2-2022 Stipulated Judgment in RE-2021-007 determined was not amended or terminated by the 8-12-2021 Condemnation Order.

Finally, the City needs to acknowledge that Nordic Aquafarms Inc. owns Lot 36 and require Nordic to record the 7-15-2021 City-to-Nordic deed in the Waldo County Registry of Deeds and pay the City of Belfast all past-due and current property taxes on that parcel back to 8-23-2021.

Please advise at your earliest convenience when we can memorialize the above-referenced actions into instruments to *jointly* present to the City Council **at its next regularly scheduled public meeting on October 17, 2023.**

Sincerely,



Kimberly J. Ervin Tucker
ME Bar No. 6969
Counsel to Mabee and Grace
And Friends