

STATE OF MAINE  
WALDO, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. WALSC-RE-2021-

JEFFREY R. MABEE, JUDITH GRACE,	)	
THE FRIENDS OF THE HARRIET L.	)	
HARTLEY CONSERVATION AREA, and	)	<b>RULE 80B PETITION FOR REVIEW</b>
UPSTREAM WATCH,	)	<b>WITH INDEPENDENT CLAIMS FOR</b>
	)	<b>RELIEF INCLUDING COMPLAINT</b>
	)	<b>FOR DECLARATORY AND</b>
Petitioners/Plaintiffs,	)	<b>INJUNCTIVE RELIEF AND</b>
	)	<b>DAMAGES FOR CONSTITUTIONAL</b>
v.	)	<b>AND STATUTORY VIOLATIONS</b>
	)	
CITY OF BELFAST, MAINE,	)	
	)	(Title to Real Estate Involved)
Respondent/Defendant.	)	

NOW COME the Plaintiffs/Petitioners, Jeffrey R. Mabee and Judith B. Grace (“Mabee/Grace”), Friends of the Harriet L. Hartley Conservation Area (“Friends”), and Upstream Watch (“Upstream”) (Mabee/Grace and Friends referred to hereinafter collectively as “Plaintiffs”), by and through their respective counsel, and complain against the City of Belfast, Maine (“City” or “Belfast”) as follows:

**PARTIES**

1. Jeffrey R. Mabee and Judith B. Grace (“Mabee/Grace”) are husband and wife who reside in Belfast, County of Waldo, Maine, who own the fee simple title of the upland lot designated as Belfast Tax Map 29, Lot 38, which includes title to intertidal land situated in Belfast and Northport, Maine, on which Belfast Tax Map 29, Lots 38, 37, 36 and most of Lot 35 front – a portion of which (the intertidal portion on which Lot 36 fronts) the City has commenced to condemn and take pursuant the exercise of eminent domain.

2. The Friends of the Harriet L. Hartley Conservation Area (“Friends”) is a non-profit corporation formed under the laws of the State of Maine, who holds a conservation

easement on intertidal land situated in Belfast and Northport, Maine, on which Belfast Tax Map 29, Lots 38, 37, 36 and most of Lot 35 front – a portion of which the City has improperly taken pursuant its exercise of eminent domain.

3. Upstream Watch is a not-for-profit 26 U.S.C. § 501(c)(3) corporation registered to transact business in the State of Maine, having an office and principal place of business at 67 Perkins Road, Belfast, County of Waldo, Maine, which has standing in this matter based upon its interests in ensuring that: (i) eminent domain is not improperly used to defeat the conservation easement that Upstream and Plaintiffs Mabee/Grace created; (ii) the City’s bad faith eminent domain taking does not interfere with a timely decision being issued in the Phase 1 title trial which will cause tortious interference claims of Nordic against Upstream to be dismissed; (iii) the Little River, the Belfast Water District (“BWD”) park and its mature forest and walking trails, and the intertidal land owned by Mabee/Grace are protected from damage; and (iv) Upstream’s members are protected from damage to their property and the loss of the natural beauty and amenities of the BWD park and the use of this intertidal land for fishing, fowling and navigation as guaranteed by the Colonial Ordinance of 1641-47 and additional recreational uses permitted by the Conservation Easement

4. The City of Belfast (“Belfast” or “City”) is a municipality of the State of Maine and has taken final agency action to condemn a portion of the residential property that Plaintiffs Mabee and Grace assert that they own in fee simple and Friends holds pursuant to a Conservation Easement dated 4-29-2019, specifically the portion of Plaintiffs’ intertidal land on which Lot 36 fronts, as well and Plaintiffs Mabee and Grace’s right to enforce, as assigns, the “residential purposes only” understanding (i.e. negative easement) in the 1946 Hartley-to-Poor deed (Waldo County Registry of Deeds, Book 452, Page 205).

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction over these proceedings under the Maine Administrative Procedures Act and Rule 80B of the Maine Rules of Civil Procedure.

6. This Court also has jurisdiction over these proceedings under 4 M.R.S. § 105 and Maine's Declaratory Judgments Act statutes, (M.R. Civ. P. 57 and 14 M.R.S. §§ 5951-5963), as well as under the Court's equitable authority regarding statutory violations and violations of both the United States and Maine Constitutions, 1 M.R.S. §816, as well as the common law.

7. Venue is proper in Waldo County, Maine, pursuant to 4 M.R.S. § 501 and 23 M.R.S. § 3029, because the land in controversy is located in the City of Belfast, Waldo County, Maine, within the geographic jurisdictional boundaries of this Court and Plaintiffs Mabee/Grace, Plaintiff Friends, Plaintiff Upstream Watch and Defendant City have their respective principal place of residence or business in Waldo County.

## **FACTUAL ALLEGATIONS**

8. Plaintiffs Mabee/Grace acquired property located at 290 Northport Avenue, Belfast, Maine (the "Mabee/Grace Property") in 1991, by virtue of a warranty deed from Heather O. Smith, recorded in the Waldo County Registry of Deeds ("WCRD") at Book 1221, Page 347.

9. The Mabee/Grace Property includes the upland lot designated as Belfast Tax Map 29, Lot 38, and the intertidal land on which the upland lots designated as Belfast Tax Map 29, Lot 38 (Mabee/Grace), Lot 37 (now owned by the Schweikerts), Lot 36 (until recently owned by the Eckrotes now owned by the City), and most of Lot 35 (owned by Morgan) front.

10. The intertidal land owned by Plaintiffs Mabee/Grace is shown on the survey by Donald Richards, P.L.S., L.F., recorded in the WCRD at Book 24, Page 34, a true copy is attached hereto as Exhibit A.

11. The layout of the lots involved in this matter are shown on the Belfast Tax Map 29, a true copy of which is attached hereto as Exhibit B.

12. The City of Belfast now owns Lot 36, previously owned by the Eckrotes, as shown on Tax Map 29.

13. The intertidal land on which Belfast Tax Map 29, Lots 38, 37, 36 and 35 front is located within the municipal boundaries of both Belfast and Northport, Maine.

14. The intertidal land owned by Plaintiffs Mabee/Grace, including the intertidal land that is described in the City's eminent domain condemnation notice, is used by the adjacent upland owners and the public for fishing, as a matter of right pursuant to the Colonial Ordinance of 1641-47 and the public trust doctrine.

15. The land owned by Plaintiffs Mabee/Grace (which includes the intertidal land which the City has condemned) is improved with a residential home in which Plaintiffs Mabee and Grace reside roughly half of the year.

16. Beginning in 2017, Nordic Aquafarms, Inc. ("NAF") came to Belfast seeking to construct a land-based, RAS aquaculture salmon factory.

17. NAF proposed to build and operate its land-based salmon farm on three abutting parcels of land located in the City of Belfast, Maine, and presently owned by the Belfast Water District ("BWD"), Mathews Brothers Company, and Samuel Cassida.

18. The BWD property is located on the Little River, in Belfast and Northport, Maine, which is across U. S. Route 1 from the Mabee/Grace Property.

19. During the period October 2017 through January 30, 2018, non-public discussions involving Nordic's business plans and real property purchase matters were negotiated between Nordic, BWD and the City.

20. NAF proposed to purchase land owned by BWD on the Little River, in Belfast, Maine to build a salmon growing and processing industrial complex.

21. BWD stated in its October 26, 2018 Public Statement to Customers that its conditions for selling its Little River property to NAF were: (i) the sale of the property would have to generate enough money to allow the BWD to move its operations without any cost to BWD's customers; (ii) NAF would need to purchase a minimum of 100 million gallons of water annually at the same price every other BWD customer pays, and NAF would need to purchase that amount for an extended period of time; (iii) NAF would have to agree to continue public use of the walk-trail currently in use by the public on the BWD property; and (iv) the BWD would be allowed to retain ownership of the property where the Bayside Meter Vault sits.

22. Members of the Belfast City Council, acting in their individual and official capacities, have actively promoted the NAF project as a priority of the City since 2017.

23. NAF, the City, and the BWD's non-public discussions and negotiations resulted in three Agreements being signed on January 30, 2018, which included an Options and Purchase Agreement ("Options Agreement"), Evaluation Agreement, and Water Supply Purchase Agreement.

24. A true and accurate copy of the January 30, 2018 Options Agreement, Evaluation Agreement, and Water Supply Purchase Agreement, are attached hereto as Exhibits C-1, C-2 and C-3 (collectively, Exhibit C).

25. The January 30, 2018 Options Agreement requires that NAF pay BWD a total of \$45,000 (the "Options Consideration").

26. The Options Agreement sets the purchase price for NAF's purchase of BWD's land at \$1,059,000, less the Options Consideration.

27. Under the terms of the original Options Agreement, “the City of Belfast, if the Nordic sale is consummated, [would] purchase approximately forty acres of the BWD Land, located in both Belfast and Northport abutting the Little River and Little River Reservoir, the shoreland portion of which will be perpetually preserved as public conservation land for passive public recreational use, including a walking trail (“Waterfront Parcel,” and also in certain maps as “Resource Protection Shoreland District”).

28. The cost that the City agreed to pay BWD for the City’s purchase of the 40-acre “Waterfront Parcel” in the January 30, 2018, Options Agreement was \$100,000.

29. BWD currently grants access to this 40-acre Waterfront Parcel as a walking trail known as the “Little River Community Trail” and an information kiosk is on the BWD property with information about this walking trail.

30. The City’s proposed acquisition of the Waterfront Parcel from BWD, as part of the NAF-BWD-City land purchase detailed in the January 30, 2018 Options Agreement, would not provide Belfast residents and the public generally with any additional public recreational space or any additional walking trail(s) that they do not currently enjoy.

31. The public’s use of the existing walking trail located on the BWD property will be negatively impacted if the NAF-BWD-City deal is consummated, as a substantial portion of the mature pine forest will be cut down and replaced with the NAF plant that will be the size of Bath Iron Works.

32. NAF’s depiction of its proposed industrial plant is shown on Exhibit D.

33. The expenditure of \$100,000 of taxpayer funds by the City to acquire the 40-acre Waterfront parcel from BWD as part of the NAF-BWD-City deal is an additional \$100,000 expense imposed on taxpayers as a consequence of NAF’s proposed acquisition of the BWD

property if consummated – NAF did not contractually agree to preserve this existing walking trail as part of the January 30, 2018 agreements or the subsequent amendments of those agreements.

34. If NAF did not put its facility on the BWD property, there would be no necessity for the City to expend \$100,000 as contemplated in the January 30, 2018 Options Agreement and the BWD customers would not need to expend the ratepayer-borne costs of relocating the BWD facility from its existing Little River facility.

35. As proposed, NAF’s facility would require 6 million gallons a day of seawater from Penobscot Bay and 1.7 million gallons a day of fresh water and would discharge 7.7 million gallons a day of warm, brackish, nitrogen-rich wastewater into Penobscot Bay each day.

36. In order to secure all required local, State and federal leases, licenses and permits, necessary to construct and operate the NAF salmon farm, as designed and proposed, NAF needs access to Penobscot Bay for three industrial pipes (two 30” seawater intake pipes and one 36” outfall/wastewater discharge pipe).

37. As proposed by NAF, the two 30” intake pipes and the 36” discharge pipe, required for NAF’s seawater and wastewater requirements, would extend out almost a mile into Penobscot Bay.

38. In order to obtain permits for its project, NAF needed to demonstrate to the City of Belfast Planning Board, the DACF Bureau of Parks and Lands, and the Maine Department and Board of Environmental Protection that NAF has “sufficient” title, right or interest in all of the property for which it seeks a lease, license or permits, including permission to cross U.S. Route 1, one of the Residential II zoned properties on the waterside of U.S. Route 1, and the intertidal zone.

39. In early 2018, NAF retained Good Deeds surveyors to do a topographical survey of the waterside lot then owned by Richard and Janet Eckrote, located at 282 Northport Avenue, Belfast, Maine.

40. On April 2, 2018, NAF's surveyor, Good Deeds (Clark Staples, P.L.S.) advised NAF that the Estate of Phyllis J. Poor (the Eckrotes' predecessor in interest) likely could not grant NAF an easement beyond the high-water mark of this lot.

41. Surveyor Staples also alerted NAF to an error in the deed description in the October 15, 2012 deed from the Estate of Phyllis J. Poor to the Eckrotes, that altered the waterside boundary description from the 1991 deed to Phyllis J. Poor – changing it from “along high water mark of Penobscot Bay” (which are words of exclusion generally accepted to mean that the intertidal flats are severed from the upland lot, and the waterside boundary of the conveyed upland lot is at the high water mark) to “along said Bay” (which are words of inclusion under Maine case precedents that imply the flats are conveyed with the upland lot and ownership extends to the low water mark).

42. NAF has proposed three different routes into Penobscot Bay for its pipes since the Fall of 2018.

43. All routes for the pipes proposed by NAF have entered Penobscot Bay from Belfast Tax Map 29, Lot 36 (until recently owned by Richard and Janet Eckrote).

44. All routes proposed by NAF for laying pipes in the intertidal area are located within the municipal boundaries of both Belfast and Northport, Maine.

45. The City Council adopted amendments to the Zoning, Shoreland Zoning and Definitions ordinances, and the Comprehensive Plan, on April 17, 2018 and October 16, 2018,

that allowed NAF to develop its industrial plant in an area that was zoned to prevent industrial plants of the scope and size proposed by NAF.

46. Despite NAF's knowledge that the Eckrotes did not own the intertidal land on which their lot fronts and therefore could not grant NAF an easement to use the intertidal land on which Lot 36 fronts, on August 6, 2018, NAF obtained an option to purchase an easement from the Eckrotes, who acquired their lot from the Estate of Phyllis J. Poor on October 15, 2012. A true copy of the Option to Purchase is attached hereto as Exhibit E.

47. In October of 2018, the City finalized amendments to its Comprehensive Plan and various zoning ordinances to facilitate NAF's proposed project and NAF's acquisition of land from the BWD to construct and operate NAF's proposed industrial fish farm.

48. The amendments of the Belfast Ordinances included amending the permissible uses, requiring Planning Board approval, in the Residential II zoning area, applicable to the waterfront lots on the waterside of U.S. Route 1, to allow for the placement of "[s]ignificant water intake or water discharge/outfall pipes" on, over and through these residential lots. See, Section 102-382(12) of the Belfast Zoning Ordinance.

49. Prior to these 2018 amendments, such industrial accessory structures would not have been a permissible use within the Residential II Zone, with or without Planning Board approval, and the proposed industrial fish farm facility would not have been a permissible use on the BWD land under the 2009 Comprehensive Plan.

50. On October 16, 2018, the Zoning, Shoreland Zoning, and Definitions Ordinances, as well as the Significant Groundwater Well permitting ordinance as recommended by the Belfast Planning Board, were adopted by the City Council.

51. The primary purpose of the amendments made to the City ordinances and Comprehensive Plan, made by the City Council in 2018, was to benefit NAF specifically and the amendments were drafted to accommodate the NAF project as proposed.

52. On information and belief, NAF reimbursed the City for all of the legal fees the City paid to the counsel representing the City (the Law Offices of William Kelly, Esq.) in the litigation (*Daniels and Broderick v. City of Belfast, et al.*, Docket No. CV-2018-45) filed by abutting landowners who challenged these changes by the City to its Comprehensive Plan and zoning ordinances.

53. Since the January 30, 2018 Options Agreement was executed by NAF, BWD and the City, the Options Agreement between NAF, BWD and the City has been amended four times. A true and accurate copy of the Fourth Amendment is attached hereto as Exhibit F.

54. Under the arrangement negotiated by NAF, BWD and the City, memorialized in the “Fourth Amendment to Evaluations Agreement and the Options and Purchase Agreement (“Fourth Amendment”), the City agrees to “clear” an alleged cloud on the title to the intertidal land on which Lot 36 fronts (and the adjacent intertidal land) – created by Plaintiffs’ assertion of their ownership of this intertidal land, based on the deeds in their chain of title and the Eckrotes’ chain of title, as well as the prior quiet title judgment in *Ferris v. Hargrave*, recorded in the WCRD at Book 683, Page 283, in the pending declaratory judgment action (*Jeffrey R. Mabee, Judith B. Grace and Friends of the Harriet L. Hartley Conservation Area v. Nordic Aquafarms, Inc., et al.*, No. RE-2019-18 (the “Title Litigation”), pending before the Waldo County Superior Court).

55. This Court held a three-day trial on June 22, 23 and 24, 2021 for the purpose of resolving the title disputes that the City asserts is creating a “cloud” on the title.

56. During the June 22, 23 and 24, 2021, trial in the Title Litigation, the evidence submitted by the Plaintiffs proved that Plaintiffs Mabee/Grace own all of the intertidal land on which Belfast Tax Map 29, Lots 38, 37, 36 and most of 35 front.

57. Rather than awaiting the Court's judgment in the Title Litigation, the City and Nordic are attempting to take, in a preemptive manner, Plaintiffs' property rights that were the subject of the title trial by eminent domain, for the benefit of NAF, in advance of the Court determining ownership of the intertidal land and whether the "residential purposes only" understanding in the 1946 Hartley-to-Poor deed runs with the land for the benefit of Hartley's dominant retained estate and is enforceable by her successors in interest as Hartley assigns.

58. Although NAF, BWD and the City executed the Fourth Amendment on April 21, 2021, the City and NAF waited until the Title Litigation trial was underway to circumvent resolution of the title claims by the Court in favor of taking Plaintiffs' property by eminent domain.

59. The Eckrotes executed a deed conveying all their right, title and interest in Lot 36 to the City on June 23, 2021, without advising the Court or opposing parties prior to Janet Eckrote testifying about the Eckrotes' alleged ownership of this intertidal land, if not by deed, by a theory of boundary by acquiescence, on June 24, 2021.

60. The Fourth Amendment states in relevant part as follows:

WHEREAS, the parties would like to clear the Alleged Title Defects [that are the subject of the pending Declaratory Judgment Action filed by Plaintiffs (WALSC-RE-2019-18)] in order to facilitate acquisition of Necessary Project Rights (hereinafter defined) on or before the Closing Date as more specifically described below;

WHEREAS, the transactions contemplated in the Project Agreements will produce several direct and indirect benefits to the BWD and its ratepayers including direct benefits to the BWD allowing it to upgrade its infrastructure, keep its rates as low as possible, bring a third well on line,

move its headquarters and garage facilities to a more favorable location, reduce chlorine costs; and potentially divest itself of the Lower Dam, which the District considers to be a liability, as well as indirect benefits to the BWD and its ratepayers including creating jobs in the area, NAF investing up to \$500 million in the area; and the City maintaining the Little River Trail, thereby benefiting BWD and its customers over the life of said Project Agreements, which public benefits are discussed in Maine Public Utilities Order dated June 8, 2018, docket number 2018-00043;

WHEREAS, this Amendment, including the Necessary Project Rights described below and City action to clear title to the same (including be exercise of eminent domain), is for the benefit of all parties and is necessary for the Project and associated public benefits to the City and the BWD including those identified in the Project Agreements.

NOW THEREFORE, in consideration of One Dollar and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the parties agree as follows:

1. Necessary Project Rights. The additional project rights to be acquired by the City and NAF as part of or in addition to the Waterfront Parcel and the Realty in accordance with the Acquisition Agreement shall mean fee or easement rights sufficient for a perpetual subsurface easement for the purpose of constructing, grading, excavating, and performing earth work as may be necessary to construct, install and maintain such culverts, pipes, gaskets, pumps, valves and other equipment as required for the installation and maintenance thereof (the “Necessary Project Rights”) and any such additional rights as the City, in its sole discretion, deems necessary or desirable. The Necessary Project rights shall be acquired by NAF through the Eckrote P&S and any amendments thereto and through best reasonable efforts by the City to facilitate the transaction and thereby secure the associated public benefits to the City and the BWD as contemplated in the Project Agreements, *including, as necessary in the sole discretion of the City, through the exercise of its powers of eminent domain, and conveyed free of the Alleged Title Defects and any existing restrictions which might otherwise interfere with the rights described above.*

2. Locus of Necessary Project Rights. The location of the Necessary Project Rights described in Section 1 above shall mean the area of land defined as the Easement Area described in the Eckrote P&S, which, for the avoidance of doubt, shall include the portion of the intertidal area between the high water mark and low water mark of Penobscot Bay included therein or adjacent thereto and adjacent to NAF’s Submerged Lands Leases. . . .

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4. City Costs. NAF shall allow the City to offset for any condemnation award and the costs associated with the condemnation proceedings contemplated hereby from the water quality cost share, previously pledged to NAF from the City in Section 1A of the Evaluation Agreement, in an amount up to \$120,000 in order to facilitate City receipt of the public benefits flowing from the Project Agreements.

5. Additional Payment to BWD. At closing NAF shall pay BWD an additional \$222,000 in consideration of the mutual agreements expressed in the Acquisition Agreement, the conveyance to NAF by the City of the Necessary Project Rights, and the agreement by BWD that it shall vacate that portion of the Realty currently used as garages and storage sheds within the 90 day period following the Closing Date, with such portion of the Realty to be occupied by BWD under the lease described below to be limited to the current BWD office building and associated parking, and in order for the City and BWD to obtain public benefits flowing from the Project Agreements.

(emphasis supplied).

61. The City treats the avoidance of the imminent court judgment on Plaintiffs' pending claims in the Title Litigation as the "exigency" warranting the City's expedited taking of Plaintiffs' land through eminent domain and granting NAF the right to use this environmentally sensitive land for its industrial infrastructure.

62. On information and belief, based on the information contained in the Real Estate Transfer Tax Declaration (RETTD) filed by NAF's counsel on July 16, 2021, NAF paid \$650,000 to the Eckrotes for the purchase of the Eckrotes' property and has caused the Eckrotes' property to be deeded in the name of the City.

63. The June 23, 2021 deed from the Eckrotes to the City is recorded at Book 4679, Page 157 of the WCRD. A true copy of the deed is attached hereto as Exhibit G.

64. The "consideration" that the City agreed to provide as the quid-pro-quo for the transfer of title to the Eckrotes' property to the City is the City's agreement to use its eminent domain power to take Plaintiffs' intertidal land, and nullify the right to enforce the 1946 "Residential Purposes" understanding of all Hartley assigns, and then grant NAF an "easement" to bury its industrial pipes in Lot 36 and the intertidal land on which that property fronts.

65. The BWD property presently has many important public values, including a public walking trail along the Little River by and through a mature pine forest and an estuary and reservoir that provides habitat for wildlife.

66. The NAF project will result in a loss of important public values, including the destruction of the pine forest and negative impacts on the public's walking trail and the Lower Dam reservoir, as NAF's industrial plant will replace a critical section of the pine forest and NAF has reserved the possibility that it will use surface waters from the Lower Dam reservoir for a portion of its fresh water needs of roughly 1200 gallons per minute ("gpm").

67. Upon information and belief, as part of the January 30, 2018 Options Agreement, NAF has paid the BWD and City's legal costs, including the costs of William Kelly, Esq., who advised the Planning Board during the Planning Board's review of NAF's permit applications.

68. To protect their intertidal land, on April 29, 2019, Plaintiffs Mabee/Grace granted a conservation easement to Upstream Watch, which is recorded in the WCRD at Book 4367, Page 273. A true and accurate copy is attached hereto as Exhibit H (the "Conservation Easement").

69. The Conservation Easement was assigned by Upstream Watch to Friends on November 4, 2019, by assignment recorded in the WCRD at Book 4435, Page 344. A true and accurate copy of the Assignment of the Conservation Easement is attached hereto as Exhibit I.

70. Friends is the current holder of the Conservation Easement.

71. The purpose of the Conservation Easement is to protect the intertidal land from pollution (preserving this intertidal land in its natural condition), to protect wildlife, to preserve the public's right to use this intertidal land for fishing, fowling and navigation, and to give the public additional permissive rights of access and recreation on this intertidal land.

72. The Conservation Easement prohibits dredging and any commercial or industrial activities or the placement of commercial or industrial infrastructure on, over or under this

intertidal land, which would include NAF's proposed placement of its discharge and intake pipes in the intertidal land.

73. The City Attorney for the City, William Kelly, Esq., advised the City Planning Board, during its consideration of NAF's permit applications in the City, in August of 2019, that he had determined that NAF had demonstrated "*sufficient*" title, right or interest (a standard not in the City's ordinances as amended in 2018) in the intertidal land on which the Eckrotes' lot fronts to proceed in the City permitting process before the Planning Board, based on redacted versions of the Release deeds that blacked-out the Grantors' names, location and claimed relationship to Harriet L. Hartley.

74. The City Planning Board voted to proceed with consideration of NAF's permit application and determined that NAF had demonstrated "sufficient" title, right or interest in the intertidal land on which the Eckrotes' lot fronts, expressly based on this advice by City Attorney Kelly.

75. At the time that Attorney Kelly, whose private law firm represents the City, provided this advice to the City Planning Board, regarding NAF's administrative standing and the sufficiency of NAF's claim of "title, right or interest" in the intertidal land on, over and in which NAF seeks permits from the City, to place its industrial pipes in the intertidal land in which Plaintiffs claim ownership under their deeds, and property rights under the Conservation Easement: (a) the City had (upon information and belief) a deal with NAF to pay all of Mr. Kelly's fees associated with his work on the NAF project; (b) Mr. Kelly knew that title was disputed in a pending lawsuit (RE-2019-18) and that the "evidence" he relied on in making his conclusions was redacted by NAF and unsound; and (c) Mr. Kelly had a copy of the 1951 Hartley Probate file (submitted to him by Plaintiffs' counsel) which expressly stated, under oath,

that Harriet L. Hartley had sold all of her property in Maine during her lifetime, rendering her will “ineffective” and causing an intestacy . A true copy of the August 16, 2019 email of Attorney Kelly is attached as Exhibit J.

76. Upon information and belief, Attorney Kelly submits his invoices to the City and not NAF, but NAF pays and/or reimburses the City for all the attorneys’ fees and costs for which Attorney Kelly submits bills to the City.

77. As a result of this arrangement, the City and Attorney Kelly had a pecuniary interest in ensuring that the City Planning Board concluded that NAF had sufficient title, right or interest to proceed in the City Planning Board’s permitting process.

78. The City was aware of and was provided a copy of the Complaint in the pending Declaratory Judgment action to the Title Litigation that Plaintiffs Mabee/Grace filed in July of 2019, which includes a Count to enforce the Conservation Easement.

79. At no time did the City seek to intervene in the Title Litigation, pursuant to 33 M.R.S.A. § 478(2), although the title litigation affects the Conservation Easement.

80. On July 8, 2021, the City Council held a special meeting at which the City Council immediately went into a lengthy Executive Session.

81. When the City Council emerged from Executive Session, it unanimously voted to approve three motions during a six (6) minute public session, that authorized City officials to:

- (a) Authorizing the Mayor to sign the Eckrote Purchase and Sale Agreement by and between the City and Nordic Aquafarms, regarding the real estate identified on the City of Belfast Tax Map 29 as Lot 36;
- (b) Authorizing an Attorney for the City to make offers to purchase potential alleged or claimed interests in and to the intertidal area of the Eckrote property, as depicted in Exhibit C-1 to the Eckrote Purchase and Sale Agreement, to clear alleged title defects related to the Eckrote property’s intertidal area, from those persons and entities listed, and based on the opinions of value provided, on page 61 in the Charest Appraisal Services

Appraisal Report, prepared as of June 25, 2021, said sums to be offered in exchange for release deeds to the City from each person or entity so listed; and

- (c) Authorizing an Attorney for the City to make offers to purchase potential alleged or claimed interests in and to the “Residential Purposes” understanding language, as referenced in a deed from Harriet L. Hartley to Fred R. Poor in a deed recorded in Book 452 Page 205 of the Waldo County Registry of Deeds, to each real property owner of record who could claim or allege an interest in said “Residential Purposes” understanding, to include each Lot Owner(s) of real estate depicted on Tax Map 29, Lots 31, 32, 33, 34, 35 and 38, as further described on page 58 of the Charest Appraisal Report; the sum to be offered for each Lot shall be \$500, said sums to be offered in exchange for release deeds to the City of Belfast of said “Residential Purposes” restrictions.

82. None of the motions adopted a deadline of July 22, 2021, for a response by the property owners to the City Council’s authorized offers from the City.

83. NAF and the City entered into a Purchase and Sale Agreement with an effective date of July 9, 2021. A true and accurate copy of the Purchase and Sale Agreement is attached hereto as Exhibit K (“Purchase and Sale Agreement”).

84. The Purchase and Sale Agreement provides that: (a) the City shall deliver NAF two deeds for the Eckrotes’ former property, one of which conveys the Eckrote property to the City and one of which conveys the Eckrote property to NAF; (b) NAF deliver to the City a release deed conveying NAF’s rights in the intertidal land obtained from the so-called “Heirs of Harriet Hartley;” and (c) the City shall grant NAF easements in the intertidal land which is presently owned by Plaintiffs Mabee/Grace.

85. In announcing the July 9, 2021, Purchase and Sale Agreement, the Mayor of the City stated:

The City of Belfast is pleased to announce that it will acquire the Richard and Janette Eckrote waterfront property for the public benefit of all the people of Belfast, made possible in part through the generous cooperative act of Nordic Aquafarms and the Eckrote family. These 2.75 acres with 500 feet along Route

One and 325 feet of Penobscot Bay shore frontage will be a remarkable addition to City of Belfast's parks, anchoring public waterfront access far into the future. The next closest public access for Belfast people is 1.25 miles away at Belfast City Park. For this kind and remarkable gift we will always be grateful.

The Council action also includes steps in furtherance of the Fourth Amendment of the Options and Evaluations Agreements, signed in April of this year, between the City, Nordic Aquafarms and the Belfast Water District, in which the parties acknowledged the need to make efforts to clear the alleged title defects.

In its efforts to clear alleged title defects, the City will make offers, based on professional appraisal advice, to purchase alleged claims of interest in and to the Eckrote property, which includes the intertidal area. As soon as that is accomplished, the City will be thrilled to permanently secure the 40 acres of walking trails along the Little River Reservoir and the Eckrote property for perpetual public use and enjoyment.

A true and accurate copy of the July 9, 2021, Statement from the City Council is attached as Exhibit L.

86. On July 10, 2021, NAF executed a release deed to the City which released to the City all of NAF's right, title and interest in the both upland Lot 36 and the intertidal land on which Lot 36 fronts, arising from the release deeds from the so-called Heirs of Harriet Hartley (the "Nordic-to-City Release Deed"). A true copy of the Nordic-to-City Release Deed is attached hereto as Exhibit M.

87. On July 12, 2021, Plaintiff Jeffrey Mabee received three Federal Express packages from the Law Offices of William Kelly, containing:

- (i) An Offer letter from the City of Belfast to Friends, sent to Jeffrey Mabee as registered agent for Friends, and a check for \$36,000, for a Release Deed for all of Friends' right, title and interest in the intertidal land on which the Eckrotes' lot (Belfast Tax Map 29, Lot 36) fronts;
- (ii) An Offer letter from the City of Belfast to Plaintiffs Mabee and Grace, and a check for \$4,000, for a Release Deed for all of Mabee-Grace's right, title and interest in the intertidal land on which the Eckrotes' lot (Lot 36) fronts; and
- (iii) An Offer letter from the City of Belfast to Plaintiffs Mabee and Grace, and a check for \$ 500, for a Release Deed releasing Mabee-

Grace's right, as assigns through conveyance of Harriet L. Hartley, to enforce the "residential purposes only" "understanding" in the 1946 Hartley-to-Poor deed.

88. On information and belief, the owners of Belfast Tax Map 29, Lots 35, 34, 33, 32 and 31 also received offer letters with checks for \$500, from the City, seeking releases of those owners' rights, as assigns through conveyance of Harriet L. Hartley ("Hartley assigns"), to enforce the "residential purposes only" "understanding" in the 1946 Hartley-to-Poor deed.

89. In each of the Offer Letter packages, Attorney Kelly included: (i) a copy of the April 21, 2021 Fourth Amendment to the NAF-BWD-City Options Agreement; (ii) an unsealed and unsigned drawing by Gartley & Dorsky, dated June 29, 2021, labeled "Exhibit 1" highlighting the intertidal land on which Lot 36 fronts and stating that this is the area for which the City is seeking Release Deeds from Plaintiffs Mabee/Grace and Friends and stating that this parcel contains 5.1 acres of intertidal land; and (iii) an Appraisal by Charest, dated June 25, 2021.

90. The alleged authority for the offers, as stated in the Offer letters is: "The City is taking this action pursuant to the terms of the Fourth Amendment of the Options and Evaluations Agreement ("Fourth Amendment") as attached hereto in Exhibit 2." (*See* Affidavit of Kimberly J. Ervin Tucker filed in support of Plaintiffs' Motion for Preliminary Injunction Motion, Exhibits 7, 9 and 11, p. 1, last sentence of first paragraph, incorporated herein by reference).

91. The City's alleged justification for acquiring the intertidal land on which Lot 36 fronts, characterized by Attorney Kelly as "public purposes" or "public benefits" -- identified in the July 12, 2021, Offer letters from the City of Belfast, are:

- (i) "As you know, litigation regarding this Eckrote property is pending in Docket No. RE-2019-18 of the Waldo County, Maine Superior Court. This litigation involves alleged claims of title, which have served to delay the acquisition of nearby property ("Waterfront Parcel") referenced in the attached Fourth Amendment which the City of Belfast is seeking to

purchase, pursuant to the original Options and Evaluations agreements which were signed on January 30, 2018. There are significant public uses and purposes that the City wishes to pursue, which include the acquisition of approximately 40 acres of property on the Little River Reservoir (Waterfront Parcel) that are to be set aside for permanent public trail usage; these acquisitions will be enabled by clearing alleged title claims.

- (ii) The City’s public uses and purposes, and other public uses and purposes benefitting the Belfast Water District and its customers are being delayed and hampered by these litigation claims. These delays have impacted the public uses and purposes of the City of Belfast and the Belfast Water District, which is seeking to sell the Waterfront Parcel to the City of Belfast, and sell the remainder of its property to Nordic Aquafarms, Inc., as referenced in the attached Fourth Amendment and the underlying Agreement; and
- (iii) Additionally, the City of Belfast has executed a Purchase and Sale Agreement [dated July 9, 2021] to acquire both the upland and the intertidal zone depicted in Exhibit 1, this purchase will significantly expand public access and public uses of the upland and intertidal zone of the property to be purchased as depicted and the related public [sic] access and use of Penobscot Bay in general.
- (iv) This acquisition of this upland and intertidal zone will also significantly enhance and complement the public purposes and uses of the Waterfront Parcel, thus creating a combined public recreation area of substantial permanent benefit to the Community. This comes at a critical time when public access to the waterfront property and Penobscot Bay is dwindling and becoming more difficult to obtain.

92. On July 13, 2021, Attorney Kelly sent a letter, with four exhibits, to the Assistant Attorney General that represents the State in actions to enforce conservation easements, AAG Lauren Parker. A true copy of Attorney Kelly’s July 13, 2021, letter to AAG Parker is attached hereto as Exhibit N.

93. In the letter, Attorney Kelly asked that the Maine Office of the Attorney General (the “OAG”) confirm that the OAG will not “take the position that Court approval of the contemplated real estate transactions [by the City] was necessary pursuant to 33 M.R.S. § 477-A(2)(B).”

94. On August 9, 2021, AAG Parker responded to Attorney Kelly's July 13, 2021 letter, stating:

Dear William – I have received your letter dated July 13, 2021. Your correspondence arrived shortly before I left for vacation. As such, and due to several litigation deadlines, I have not yet read the entirety of your submission. I have read your letter, however, in which the City of Belfast asks that the Maine Office of the Attorney General (the OAG) confirm that the OAG will not “take the position that Court approval of the contemplated real estate transactions was necessary pursuant to 33 M.R.S. § 477-A(2)(B).” My initial reaction is as follows.

Title 33 M.R.S. § 477-A(2)(B) requires court approval to terminate a conservation easement. The Attorney General must be made a party in any such termination proceeding. 33 M.R.S. § 477-A(2)(B). As the City knows, the disputed property may be subject to a conservation easement. The validity of that conservation easement depends on resolution of the title dispute pending in Superior Court (Waldo County). If the Court determines that Jeffrey Mabee and Judith Grace own the disputed intertidal land, the conservation easement held by the Friends of Harriet L. Hartley Conservation Area would be valid and may not be terminated absent court approval. 33 M.R.S. § 477-A(2)(B). If you are aware of any contrary authority, please provide me with a copy of same for my consideration. Additionally, I cannot at this time confirm that the OAG would not bring an enforcement action pursuant to 33 M.R.S. § 478(1)(D)(4).

Regards,  
Lauren

A true copy of the August 9, 2021 email from AAG Parker to Attorney Kelly, forwarded by AAG Parker to NAF counsel David Kallin and Plaintiffs' Attorney Tucker, is attached hereto as Exhibit O.

95. On July 16, 2021, the Eckrotes-to-City deed was recorded in the Waldo County Registry of Deeds at Book 4679, Page 157.

96. On July 16, 2021, the Nordic-to-City Release Deed was recorded in the WCRD at Book 4679, Page 160.

97. The June 23, 2021, Eckrotes-to-City deed, the July 10, 2021 NAF-to-City deed, and the July 9, 2021 NAF-City Purchase and Sale Agreement were entered into by the Eckrotes, NAF and the City for the purpose of avoiding a judgment in the Title Litigation declaring that

Plaintiffs Mabee/Grace are the owners of the intertidal land on which the Eckrotes' lot (Lot 36) fronts.

98. Beginning prior to the April 21, 2021 negotiation and execution of the Fourth Amendment of the NAF-BWD, and City Options Agreement, agents of and/or counsel for NAF, BWD, and the City negotiated and agreed in private, without any public hearings or public vote of the City Council, that the City would "take" the intertidal land owned by Plaintiffs Mabee/Grace, and held by Plaintiff Friends pursuant to the Conservation Easement, as well as the Hartley assigns' respective rights to enforce the 1946 "Residential Purposes" understanding, through eminent domain for the purpose of the City granting Nordic the easements to lay its pipes within upland Lot 36 and the intertidal land owned by Plaintiffs Mabee/Grace on which Lot 36 fronts – defined in the Fourth Amendment as "Necessary Project Rights."

99. The Eckrotes, NAF, and the City agreed in private, without any public hearings or public vote of the City Council, to develop a narrative that NAF was acting in a charitable manner to gift valuable public space to the City.

100. In reality, the "public purposes" that the City describes in its July 12, 2021 Offer letters and July 9, 2021 public statement above were and are merely a pretext for the City abusing its eminent domain power to take Plaintiffs' intertidal land, currently used by the public for fishing, fowling and navigation, for the purpose of granting NAF easements from the City to use the intertidal land that NAF could not acquire from Plaintiffs.

101. The Fourth Amendment expressly states that the purpose for the City exercising its eminent domain powers to take Plaintiffs' intertidal land and the property rights of Plaintiffs and other Hartley assigns to enforce the 1946 "residential purposes" "understanding" (negative easement) is to benefit NAF, a for-profit business entity, by granting an easement to NAF that

would allow it to use upland Lot 36 and the intertidal land on which it fronts for commercial and industrial development – to place its industrial pipes into Penobscot Bay.

102. Without the easements to the intertidal land, NAF cannot proceed with its project, as its permits are conditioned upon NAF having easement rights to the intertidal land from the Eckrotes – easement rights that the Eckrotes did not grant to NAF in the August 6, 2018, Easement Option Agreement or the Amendment to that Agreement dated December 23, 2019; and easement rights that the Eckrotes could never grant to NAF because the Eckrotes do not own the intertidal land on which their lot fronts.

103. The City Council’s July 9, 2021, statement claims that “[t]he next closest public access for Belfast people [to Penobscot Bay] is 1.25 miles away at Belfast City Park” when the public already has access, through a permissive easement from Plaintiffs Mabee/Grace, to the intertidal land that comprises the Harriet L. Hartley Conservation Area, including the intertidal land on which Lot 36 fronts, from Plaintiffs Mabee/Grace’s upland lot (Lot 38), as well as use of two parking spaces on the waterside of Route 1 on Lot 38.

104. Plaintiffs Mabee/Grace have provided a permissive easement over their upland lot (Lot 38) to the Harriet L. Hartley Conservation Area, for the use and enjoyment of the public, since the creation of the Conservation Easement.

105. The access path along the north side of Plaintiffs Mabee/Grace’s lot is marked by signs at Route 1 and along the path to the high-water mark of Lot 38.

106. Plaintiffs Mabee/Grace and Friends presently allow the public full rights of recreation within the intertidal land, in addition to the rights to fish and clam, fowl and navigate, that the public is guaranteed by the Colonial Ordinance, and access to the intertidal land is allowed over Plaintiffs Mabee/Grace’s upland (Lot 38).

107. The Eckrotes' property does not provide a significant public benefit, as this lot is constrained by two substantial streams on each side of the lot and the Eckrotes' lot does not have room for more than a few parking spaces, and does not increase the access that the public already has to the intertidal zone over Lot 38.

108. The traffic on U.S. Route 1 is heavy during summer months so that the public cannot safely walk from the BWD property on the west side of U.S. Route 1 to the Eckrotes' property on the east side of U.S. Route 1.

109. In addition, the City has already roughly seventeen points of public access to Penobscot Bay within the Belfast municipal boundaries as shown on the City website, <https://www.cityofbelfast.org/DocumentCenter/View/226/public-ways-map-list?bidId=>

110. On July 29, 2021, Plaintiffs responded to the July 12, 2021 Offer letters sent by the City's attorney, William Kelly.

111. In addition to detailing the defects in the City's valuation and offers, Plaintiffs Mabee/Grace and Friends made the City a counter-offer to sell to the City the permissive easement over Lot 38 as an alternative means of achieving the stated public purpose goals of providing and expanding public access to Penobscot Bay and the intertidal land.

112. Plaintiffs' counter-offer was for the City to acquire and maintain the easement for the access path to the Harriet L. Hartley Conservation Area for \$40,000.

113. A true and accurate copy of the Plaintiffs' July 29, 2021 response letter and counter-offer is attached as Exhibit P.

114. On July 30, 2021, Attorney Kelly, by email, categorically rejected Plaintiffs' counter-offer, seemingly without first even presenting this counter-offer to the City Council, in

Executive or public session, and in the absence of any publicly-noticed meeting by the Council at which this counter-offer was considered, discussed and voted upon.

115. A true and accurate copy of the July 30, 2021, email from Attorney Kelly is attached hereto as Exhibit Q.

116. Attorney Kelly never gave the City Council or public an opportunity to hear about or react to Plaintiffs' counteroffer.

117. On August 3, 2021, the City Council voted to take Plaintiffs Mabee/Grace's intertidal land by eminent domain.

118. On August 4, 2021, Attorney Kelly sent letters and Notices advising all property owners who received the July 12, 2021, offer letters that the City would hold a hearing regarding its intent to take their property by eminent domain.

119. The August 12, 2021, public hearing was held after the City Council had already decided at non-public meetings of the City Council to take Plaintiffs Mabee/Grace's intertidal land by eminent domain.

120. On August 12, 2021, the City Council unanimously voted again to take the Plaintiffs' land by eminent domain and adopted findings of fact that were not supported by any evidence in the record.

121. At the August 12, 2021, hearing, the City Council voted to use the power of eminent domain to deprive the Plaintiffs' of their property rights and interests in the intertidal land on which Lot 36 fronts and to grant NAF easements for the laying of their industrial water pipes in Lot 36 and on the Plaintiffs' intertidal land as provided in the notice of taking to divest the Plaintiffs of their title in the intertidal land and enforcement rights as Hartley assigns.

122. The City asserts that it is acting pursuant to 30-A M.R.S. § 3101 and 23 M.R.S. § 3023 in taking Plaintiffs Mabee/Grace's intertidal land, the restrictive covenants, and the conservation easement rights to allow NAF to lay its industrial pipes in the intertidal land without first obtaining a court order pursuant to the process mandated in 33 M.R.S. § 477-A(2)(A) & (B) and § 478.

123. A true and accurate copy of the City's Notice of Intent to Condemn Real Property Interests that was used by the City to condemn the intertidal land owned by Plaintiffs Mabee/Grace is attached hereto as Exhibit R.

124. The August 12, 2021 resolution of the City's Council authorizing the eminent domain taking, titled: "Order of Condemnation," is attached hereto as Exhibit S.

125. In that Order of Condemnation, at Schedule D: OUTLINE OF CERTAIN LEGISLATIVE FINDINGS OF THE BELFAST CITY COUNCIL" the City falsely asserts the following facts:

- All of the land including all of the intertidal area is located within the City of Belfast (¶ 8);
- The property interests described in Schedule A and B are not used for fishing or improved by residential homes and no one resides in a dwelling house located on the property interests described in Schedules A and B (¶ 9);
- Consistent with the facts in this matter, the direct and indirect benefits and public purposes . . . served by this condemnation are not prohibited, as referenced in 1 M.R.S. § 816(4) and 30-A M.R.S. § 3101 (¶ 12);
- There exists public exigency sufficient to support this condemnation (¶ 14); and
- The exercise of eminent domain is necessary to clear ongoing alleged title defects to its land described in Schedules A and B (¶ 14).

126. The City has improperly used its eminent domain powers to take the portion of intertidal land on which Belfast Tax Map 29, Lot 36 fronts, for the private benefit of NAF, a for-profit business entity, for the express, non-public purpose of granting NAF an easement that would allow commercial and industrial development of this environmentally sensitive land for

the placement of three industrial pipes in upland Lot 36 and the intertidal land on which Lot 36 fronts.

127. This taking was made without Plaintiffs' consent, or the payment or offer of just compensation, and without allowing Plaintiffs adequate time to respond to the City's offer and position on condemnation.

128. This taking violates the Fifth and Fourteenth Amendments to the United States Constitution, Article I, Section 21 of the Maine Constitution, and 1 M.R.S. § 816(1)(A) – (C), with or without an offer of just compensation.

129. The valuation used for this taking was flawed—failing to consider relevant comparable sales and evidence of value to the intended private beneficiary NAF, and failing to include damages for the diminution of value to Plaintiffs' remaining land if NAF is granted an easement and/or permits by the City to bury its industrial pipes in the intertidal land adjacent to Lot 36.

130. Further, the "public benefits" and "public purposes" the City gave for this taking are pretextual and made in bad faith.

131. The purpose of the City's taking of the Plaintiffs' intertidal land and related rights is to facilitate the private industrial development by NAF on the BWD parcel, as well as on upland Lot 36 and the intertidal land on which Lot 36 fronts.

132. The City does not have a comprehensive plan for the development of the condemned land and surrounding land.

133. The City's eminent domain taking described herein does not serve a public interest or purpose and is not based on a public exigency.

134. Instead, the City acts for the primary and dominant purpose of benefiting only NAF, a private for-profit business entity, by taking intertidal land that is part of a residential lot and is used by the public for fishing (among other protected uses), for the purpose of transferring the right to use this land for commercial or industrial development by granting NAF an easement to bury its industrial pipes in upland Lot 36 and the intertidal land on which Lot 36 fronts.

**COUNT I**  
**(VIOLATION OF 1 M.R.S. SECTION 816)**

135. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 134 above as if appearing herein.

136. The Mabee/Grace intertidal land is used by the public and Plaintiffs Mabee and Grace for fishing, both at present and at all relevant times in the past.

137. The fishing that occurs on the intertidal land has involved fishing by Jeffrey Mabee, and others including the public by right, and includes both clamming (when permitted) and standing on the shore and in the intertidal land and casting into both the mouth of the Little River and Penobscot Bay, as well as fishing from boats with poles and bait or using nets and seines.

138. The Eckrotes' land is improved with a residential home.

139. Plaintiffs Mabee/Grace's land is improved with a residential home located on a deeded parcel that includes intertidal land, including the portion of this parcel that the City seeks to take by eminent domain.

140. The land also is reserved for public use for fishing, fowling and navigation under the Colonial Ordinance of 1641-1647.

141. 1 M.R.S § 816(1)(A), (B) and (C), state in relevant part that: "the State and any other entity with eminent domain authority may not condemn land used for *fishing* or

*land improved with residential homes, commercial or industrial buildings or other structures . . . [f]or the purposes of . . . commercial [or] industrial . . . development, for the enhancement of tax revenue, or . . . [f]or transfer to . . . a for-profit business entity.”* (emphasis supplied).

142. 1 M.R.S. Section 816 prohibits the City from condemning land used for fishing or land improved with residential homes.

143. The City is condemning land used both for fishing and improved with residential homes within the meaning of 1 M.R.S. Section 816.

144. The actions of the City in taking the intertidal land violates 1 M.R.S. § 816.

145. The actions of the City in taking the intertidal land are not legally permissible pursuant to 1 M.R.S. § 816(4).

**COUNT II**  
**(VIOLATION OF MAINE CONSTITUTION)**

146. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 145 above as if appearing herein.

147. Article 1, Section 21 of the Constitution of the State of Maine provides that “private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.”

148. The Takings Clause in Article I, § 21 of the Maine Constitution prohibits taking private property through governmental action for private use, with or without compensation, except by the owner's consent.

149. The City's condemning the Plaintiffs' property for NAF's private industrial development purposes under the facts of this case is not a public use and therefore violates Article I, Section 21 of the Maine Constitution.

150. There is no public exigency supporting the City taking the intertidal land owned by Plaintiffs Mabee/Grace, taking the restrictive covenants owned by the upland property owners, and attempting to terminate the Conservation Easement of Plaintiff Friends.

151. The only exigency that the City has identified is that “the parties [to the Fourth Amendment (Nordic, the City and BWD)] “would like to clear the Alleged Title Defects in order to facilitate acquisition of Necessary Project Rights (hereinafter defined) on or before the Closing Date as more specifically described [in the Fourth Amendment].” (*See* Exhibit F (Fourth Amendment, p. 2, last full WHEREAS clause)).

152. The City’s acts of condemning the Plaintiffs’ property for private industrial development by NAF are an abuse of power and violates the public exigencies requirement of Article I, Section 21 of the Maine Constitution.

153. The actions of the City in exercising its power of eminent domain for the purpose of allowing NAF to lay its industrial pipes on the land owned by Plaintiffs constitute an unconstitutional taking of private property under the Maine Constitution.

**COUNT III**  
**(VIOLATION OF THE CONSTITUTION**  
**OF THE UNITED STATES OF AMERICA)**

154. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 153 above as if appearing herein.

155. The actions of the City in taking the Mabee/Grace intertidal land, depriving Mabee/Grace of the restrictive covenants that prohibit non-residential use by a for-profit business being conducted on upland Lot 36, and purporting to set aside the Conservation Easement held by Plaintiff Friends, violates the Fifth and Fourteenth Amendments to the United States Constitution.

156. The Fifth and Fourteenth Amendments to the United States Constitution prohibit the taking of the Plaintiffs' private property by the City under the facts of this case as there is no valid public purpose served by the taking – as the dominant and primary purpose of this taking is to benefit Nordic, not the public, and all claimed public benefits are pretextual and incidental.

157. Condemning the Plaintiffs' private property for private industrial development on the facts of this case is not a public use and therefore violates the Public Use clause of the Fifth Amendment, which is incorporated as to the states by the Fourteenth Amendment.

158. The City's violation of the United States Constitution has damaged Plaintiffs Mabee/Grace and Friends and wrongfully deprived them of their property.

**COUNT IV**  
**(BAD FAITH PRETEXT FOR TAKING)**

159. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 158 above as if appearing herein.

160. The City is conducting the taking of the intertidal land for the purpose of ensuring that NAF can install its discharge and intake pipes within upland Lot 36 and the intertidal land

owned by Plaintiffs Mabee/Grace, free of the Conservation Easement and the non-residential use restrictive covenant.

161. The City has acted in bad faith to claim that the taking is motivated by a public purpose of creating public access over the upland formerly owned by the Eckrotes, as well as a myriad of direct and indirect impacts that the City characterizes as benefits to BWD, the City or the general public.

162. These claims are belied by the Fourth Amendment and July 9, 2021 City-NAF Purchase and Sale Agreement, as well as the public statements made by the Council at the August 12, 2021 Public Hearing on Condemnation, at which the Council and Attorney Kelly justified the taking based on the alleged benefits that completion of the Nordic Project would allegedly bring to the City and BWD, including enhanced tax revenues.

163. The public presently has access to the intertidal land over a permissive easement on Lot 38 and use of the intertidal land for recreation, fishing, fowling and navigation pursuant to the Colonial Ordinance and the Friends' Conservation Easement, so there is no public benefit from, and no need for, the City to exercise eminent domain to take the intertidal land on which Lot 36 fronts.

164. Plaintiffs Mabee/Grace have offered to sell the City a permanent deeded access to the intertidal land for \$40,000 which is the same price that the City offered for buying the intertidal land.

165. The City, however, has ignored Plaintiffs Mabee/Grace's offer to sell the deeded right to the intertidal land.

166. Plaintiffs Mabee/Grace provide the public with unrestricted rights to use and enjoy the intertidal land now.

167. The Conservation Easement held by Plaintiff Friends is in effect to protect the right of the public to use and enjoy the intertidal land in the current undisturbed and natural state.

168. The City's stated public benefit of enhanced access to Penobscot Bay through the acquisition of the Mabee/Grace parcel is a pretext that is made in bad faith.

169. The taking is motivated solely by a desire to provide NAF with the right to lay its pipes in upland Lot 36 and the intertidal land on which Lot 36 fronts.

170. The claim that the taking is serving a public purpose is a bad-faith and false pretext which attempts to disguise the fact that the taking is being done to serve the interests of a private company, NAF, in obtaining rights to lay its pipes in the intertidal land.

171. Granting NAF the right to bury its pipes in Lot 36 and the intertidal land on which that lot fronts is the primary and dominant purpose of the City's use of eminent domain as expressly stated in the Fourth Amendment – the very document on which the City relies to justify this taking.

172. The taking of the right to enforce the 1946 "residential purposes" "understanding" does not enhance the public's access to Penobscot Bay and is unnecessary for the City to use Lot 36 as a park, since the negative easement only grants Hartley assigns the right to prohibit for-profit business being conducted on Lot 36 – it would not prevent this lot from being used as a park.

173. The eminent domain taking by the City should be prohibited based on the City's bad faith act of using a pretext to justify an unconstitutional taking of private citizens' property to benefit a foreign corporation.

**COUNT V**  
**(WRONGFUL TAKING OF LAND LOCATED**  
**OUTSIDE THE CITY LIMITS OF BELFAST)**

174. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 173 above as if appearing herein.

175. The Mabee/Grace intertidal land is located in both the City and the Town of Northport.

176. With its eminent domain taking, the City seeks to take property located outside the boundaries of Belfast as established by statute enacted in 1813.

177. The City has no right or authority to take land located outside the City limits of Belfast, as established by statute.

**COUNT VI**  
**(VIOLATION OF 30-A MRSA SECTION 3101)**

178. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 177 above as if appearing herein.

179. The City has authorized the taking of the intertidal land on which Lot 36 fronts for the alleged purpose of creating a public park on the Eckrotes' former property and providing access to the Mabee/Grace intertidal land.

180. 30-A M.R.S. Section 3101(2) provides: "land taken under this section may not be used for any purpose other than the purposes for which it was originally taken."

181. Given that the land was taken by the City for a public park and access to the intertidal land, the City cannot use the land for the purpose of granting NAF the right to install its industrial discharge and intake pipes.

182. Such use of the land is for a purpose other than the purpose for which the land was originally taken.

183. The City's actions of granting NAF easements for its pipes violates 30-A M.R.S. Section 3101(2).

**COUNT VII**  
**(INTERFERENCE WITH CONSERVATION EASEMENT)**

184. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 183 above as if appearing herein.

185. Plaintiff Friends holds a Conservation Easement on the intertidal land that the City seeks to take by eminent domain.

186. The City, with its eminent domain taking, is seeking to terminate the Conservation Easement held by Plaintiff Friends, without complying with the statutorily mandated process for terminating a conservation easement in 33 M.R.S. § 477-A(2)(A) & (B) and § 478.

187. If the City grant NAF an easement to bury its pipes in the intertidal land on which Lot 36 fronts, in contravention of the prohibitions in the Conservation Easement by treating the eminent domain taking of the City as a mechanism to terminate or nullify the Conservation Easement, the taking will materially detract from the conservation values intended for protection in the Conservation Easement.

188. The City was advised by the Attorney General's Office that it cannot evade the mandatory process in 33 M.R.S. §§ 477-A(2)(B) and 478, for amending or terminating a conservation easement, including the limitations in those provisions on who may bring an action to amend or terminate a conservation easement, through the use of eminent domain.

189. Pursuant to the above-referenced statutory provisions, no amendment nor termination of a conservation easement is possible without a court order, under the limited conditions in 33 M.R.S. § 478(3).

190. The Conservation Easement is intended to prohibit dredging and industrial activities, including the placement of industrial infrastructure like Nordic's pipes, within the conservation area and to prevent discharge of wastes within the nearby waters of Penobscot Bay.

191. The actions of the City in seeking to terminate, nullify and/or ignore the conservation easement, without complying with the statutorily mandated process for terminations of a conservation easement, violates 33 M.R.S.A. §§ 477-A and 478 and should be enjoined pursuant to 33 M.R.S. §478(3).

**COUNT VIII**  
**(42 U.S.C. §§ 1983 and 1988)**

192. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 191 above as if appearing herein.

193. At all relevant times, the City and its officials have been acting under color of state law.

194. The City and its officials have unlawfully deprived Plaintiffs of their private property in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

195. The City and its officials have retaliated against Plaintiffs for exercising their constitutional rights to seek redress of grievances and access to Courts, guaranteed by the First and Fourteenth Amendments, by using eminent domain to take Plaintiffs property and property rights, under the guise of "clearing Alleged Title Defects" by eminent domain rather than a declaratory judgment to quiet title by a court of competent jurisdiction, in contravention of law.

196. The City and its officials have attempted to interfere with Plaintiffs' deed restrictions and with the protections afforded by the Conservation Easement, all in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

197. The City has attempted to take property under the pretext of a public benefit, where its true purpose was to benefit a private for-profit business entity, and to take action primarily intended to further the plans of that private for-profit business entity.

198. The City's conduct was a direct and proximate cause of the constitutional deprivations suffered by the Plaintiffs.

**COUNT IX**  
**(DECLARATORY RELIEF)**

199. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 198 above as if appearing herein.

200. A controversy exists between the Plaintiffs and the City regarding whether the City has violated constitutional, statutory requirements, and the common law in: (i) exercising eminent domain pursuant to 30-A M.R.S. § 3101 and 23 M.R.S. § 3023 to take title to the intertidal land owned by Mabee/Grace and to terminate the conservation easement held by Friends, (ii) using eminent domain to take the portion of the intertidal land that is located outside the boundaries of the City of Belfast as established by statute enacted in 1813, and/or (iii) employing a pretext of a public purpose or exigency of obtaining the Eckrotes' upland or access to the intertidal land, when the clear purpose of the City in taking the Plaintiffs' property interests is to provide easements to Nordic Aquafarms, Inc. for laying its pipes on the Plaintiffs' intertidal land, over the Plaintiffs' objections and in contravention to the Conservation Easement Plaintiffs imposed on this land in April of 2019, to allow the development of a privately owned salmon processing plant – a commercial and industrial development by a for-profit business entity, that the City asserts will enhance its tax revenues, in violation of 1 M.R.S. § 816(1)(A) – (C).

201. Plaintiffs request that the Court issue declaratory relief pursuant to M.R. Civ. P. 57 and 14 M.R.S. §§ 5951-5963 on all constitutional, statutory, and common law issues relating to the eminent domain taking of the Plaintiffs' property and property interests and enforcement of Plaintiffs' Conservation Easement.

**COUNT X**  
**(INJUNCTIVE RELIEF)**

202. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 201 above as if appearing herein.

203. As described above, the City has abused its eminent domain authority by proceeding to take Plaintiffs' private property (intertidal land used now by the public for fishing, fowling and navigation), and property rights, for the benefit of Nordic, a private for-profit business entity, for the express purpose of commercial and industrial development (i.e. placing pipes into Penobscot Bay over Lot 36 and the intertidal land on which it fronts).

204. The City's actions were undertaken not in furtherance of any public use of this property but pursuant to an *ultra vires* contract (the Fourth Amendment), in which the City committed to use its eminent domain powers to benefit Nordic as detailed in the Fourth Amendment.

205. Plaintiffs will suffer irreparable harm if the City and Nordic are allowed to proceed.  
210. Plaintiffs are entitled to injunctive relief enjoining the City's improper use of eminent domain, pursuant to Amendments V and XIV of the U.S. Constitution, Article I, § 21 of the Maine Constitution, and 1 M.R.S. § 816(1)(A), (B) and (C).

**COUNT XI**  
**(INSUFFICIENT DAMAGES 23 M.R.S. § 3029)**

206. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 205 above as if appearing herein.

207. The amounts of the payments tendered by the City to Plaintiffs for the City's taking of their property were insufficient and do not constitute "just compensation."

208. The City has failed to comply with 23 M.R.S. § 3029.

209. As a result of the City's taking, Plaintiffs have been damaged.

**COUNT XII**  
**(RULE 80B RELIEF)**

210. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 209 above as if appearing herein.

211. The City has acted, and failed to act, as described above, in a manner that violates Maine Statutes, the Maine Constitution and the United States Constitution, and the common law.

212. The City's August 12, 2021 action, and the City's prior actions, authorizing the eminent domain taking were based on errors of law, unlawful procedures, and findings unsupported by the record.

213. The "record" cited by the City Council for their actions consisted entirely of recitations and opinions expressed by the City's attorney, William Kelly, Esq., memorialized as findings of fact in the Order of Condemnation that was drafted by Attorney Kelly prior to the August 12, 2021 "Public Hearing," and presented orally during the first hour of the hearing.

214. The City did not allow for evidence from the Plaintiffs or the public to be introduced prior to the City deciding to take the Plaintiffs' property through eminent domain condemnation.

215. In fact, the property owners whose property is to be taken by eminent domain had no opportunity to review the Order of Condemnation prior to August 12, 2021, no opportunity to respond to the factual allegations in that Order in Schedule D as submission of written information was barred after a noon deadline set for August 12, 2021, no opportunity to present evidence or argument through counsel – other than 3 minute statements like all members of the public during the hearing.

216. The Mayor gaveled down the statement by Friends' Vice President because she exceeded the 3-minute limit on speaking.

217. The City improperly and unlawfully made the decision to condemn by eminent domain the Plaintiffs' property interests in closed door, executive sessions of the City Council, allowing the Plaintiffs and the public comment only after the City had made the decision to condemn the Plaintiffs' property interests.

218. The City's unlawful actions have damaged the Plaintiffs.

219. Plaintiffs request that the Court grant Plaintiffs relief under Maine Rule of Civil Procedures Rule 80B.

**COUNT XIII**  
**(TRESPASS)**

220. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 219 above as if appearing herein.

221. The City has trespassed upon the property and property interests of the Plaintiffs.

222. The City's acts of trespass have damaged the Plaintiffs.

**COUNT XIV**  
**(VIOLATIONS OF 1 M.R.S. §§ 405 et seq. and 601)**

223. The Plaintiffs repeat and reallege the allegations in paragraphs 1 through 222 above as if appearing herein.

224. The City improperly and unlawfully made the decision to condemn by eminent domain the Plaintiffs' property interests in closed door, executive sessions of the City Council, allowing the Plaintiffs and the public comment only after the City had made the decision to condemn the Plaintiffs' property interests, in violation of 1 M.R.S. § 405.

225. The City violated 1 M.R.S. § 405 by discussing and deciding to adopt the eminent domain taking described herein, including the imposition of a July 22, 2021 deadline for response to the City's July 12, 2021 "Offer" letters that was not contained in any motion on which the council voted in public session, and creating the pretextual narrative for the taking in executive sessions that were improperly used for such discussions and decisions.

226. The City has refused to provide copies of public records, after requested by the Plaintiffs pursuant to the Maine Freedom of Access Act ("FOAA"), as required by 1 M.R.S. § 408-A.

227. On information and belief, the City failed to properly notice meetings, including the 8-12-2021 meeting by publication in newspapers of general circulation for the requisite number of days and failed to provide proof of publication when requested by Plaintiffs to do so pursuant to FOAA prior to the meeting, pursuant to 1 M.R.S. §§ 406 and 601.

228. The City's unlawful actions have damaged the Plaintiffs.

229. Plaintiffs request that the Court grant Plaintiffs relief 1 M.R.S. §§ 408-A through 410 and that damages, including attorneys' fees, and fines be issued against the City, pursuant to those provisions.

WHEREFORE, Plaintiffs respectfully request that this Court: (i) grant judgment in favor of the Plaintiffs and against the City on each count of this complaint, (ii) award damages to the Plaintiffs against the City on each count, (iii) declare that the exercise of eminent domain by the City violates the Maine Constitution, the United States Constitution, and Maine statutes, (iv) issue injunctive relief prohibiting the City, or its officials and agents, from taking, terminating, or receiving, any of the Plaintiffs' land, easements, restrictive covenants, conservation easements, and/or property interests of any kind, (v) declare that the conservation easement held by Friends has not been, and cannot be, terminated by the eminent domain actions of the City and declare that the conservation easement is legal and in full effect and that the conservation easement prohibits the City from granting easements to NAF for laying pipes within the intertidal land, (vi) order the City, and its officials, agents or assigns (including Nordic), to avoid and/or cease construction activities within any intertidal land including installing or laying of pipes within the intertidal land that is described in the City's notice of condemnation or on any land of the Plaintiffs and, if such work is commenced, require the City to remove any materials, fixtures, equipment, and or pipes from the intertidal land, (vii) award Plaintiffs punitive damages; (viii) award Plaintiffs attorneys' fees for violation of their federal constitutional rights, by the City and its officials acting under color of law, pursuant to 42 U.S.C. § 1988; (ix) grant such other relief as this Court deems just, including equitable relief, (x) determine that the City has violated 23 M.R.S. § 3029 by failing to provide the Plaintiffs with adequate compensation for the eminent domain taking, (xi) order that the City cease its acts of trespass, (xii) grant relief under Maine Rule of Civil Procedure 80B, (xiii) order that the City disclose all discussions and decisions (and the records thereof) improperly made in executive session in violation of 1 M.R.S. 405 et seq,

(xiv) award Plaintiffs their costs of suit including attorneys' fees, and (xv) and for such other and further relief as the Court Deems just and proper.

Dated: August 16, 2021

*/s/ Kimberly J. Ervin Tucker*

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