

STATE OF MAINE  
WALDO, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. WALSC-RE-2021-007

JEFFREY R. MABEE, JUDITH GRACE, )  
 THE FRIENDS OF THE HARRIET L. )  
 HARTLEY CONSERVATION AREA, and )  
 UPSTREAM WATCH, )  
 )  
 ) Petitioners/Plaintiffs, )  
 ) and )  
 )  
 ) AARON M. FREY, ATTORNEY GENERAL )  
 )  
 ) Intervenor-Plaintiff, )  
 ) v. )  
 )  
 ) CITY OF BELFAST, MAINE, )  
 )  
 ) Respondent/Defendant, )  
 ) and )  
 )  
 ) NORDIC AQUAFARMS, INC., )  
 )  
 ) Intervenor-Defendant. )

**ATTORNEY GENERAL'S  
 CONSENTED-TO MOTION TO  
 ENTER AND MAKE FINDINGS  
 ON THE PARTIES'  
 STIPULATED JUDGMENT AND  
 DISMISSAL WITHOUT  
 PREJUDICE**

NOW COMES Aaron M. Frey, Attorney General of the State of Maine (the Attorney General), and moves this Court, pursuant to Maine Rules of Civil Procedure 7, 41, and 54(b), to enter: 1) the Stipulated Judgment and Dismissal Without Prejudice (the Stipulation) submitted with this motion, which addresses all counts by the Attorney General and the counterclaim against the Attorney General by the City of Belfast, Maine (the City); and 2) a separate order as to the Stipulation that makes findings pursuant to Rules 41 and 54(b). All parties have agreed to and signed the Stipulation and consent to this motion and the requested relief. In support of this motion, the Attorney General states as follows:

1. The Attorney General filed a complaint in this matter on December 23, 2021 (the AG's Complaint) that pleaded two counts for declaratory relief involving the conservation

easement recorded in the Waldo County Registry of Deeds, Book 4367, Page 273 (the Conservation Easement).

2. The Conservation Easement was conveyed by Plaintiffs Jeffrey R. Mabee and Judith B. Grace to Plaintiff Upstream Watch and later assigned to Plaintiff The Friends of the Harriet L. Hartley Conservation Area.

3. The Conservation Easement states that it applies to certain intertidal land (the Intertidal Land) that Intervenor-Defendant Nordic Aquafarms, Inc. (Nordic) proposes to use as part of its proposed land-based aquaculture system.

4. Ownership of the Intertidal Land and the validity of the Conservation Easement are disputed and are the subject of a separate judgment by this Court in *Mabee v. Nordic Aquafarms, Inc.*, RE-2019-18 (Super. Ct., Waldo Cty.), which judgment has been appealed to the Maine Supreme Judicial Court, Dkt. No. WAL-22-19.

5. Count I of the AG's Complaint involves the process for amending or terminating the Conservation Easement, assuming it is valid, pursuant to Maine's conservation easement statute, 33 M.R.S. § 477-A(2) & (2)(B), and Count II of the AG's Complaint involves alleged violations of the Conservation Easement, assuming it is valid.

6. The City answered the AG's Complaint on January 11, 2022, and pleaded a Counterclaim against the AG (the City's Counterclaim) seeking alternative relief with respect to the modification or termination of the Conservation Easement, assuming it is valid.

7. As noted in the Stipulation, the parties expect that the validity of the Conservation Easement will be finally determined by the Maine Supreme Judicial Court sitting as the Law Court in Docket No. WAL-22-19, and seek to streamline this action and stipulate to the process for

amendment and termination of the Conservation Easement should it be finally determined to be valid.

8. On January 24, 2022, the Attorney General filed a motion to enlarge the deadline to answer or respond to the City's Counterclaim to February 28, 2022, to allow for discussions regarding a potential resolution of the Attorney General's counts and the City's Counterclaim. This Court granted that motion by order dated January 26, 2022. The Stipulation is the result of such discussions among the parties.

9. In the Stipulation, the parties stipulate to: judgment in favor of the AG and against the City on Count I of the AG's Complaint; certain declarations regarding the process required for amendment and termination of the Conservation Easement, assuming it is valid, as set forth in the Stipulation; and dismissal without prejudice of Count II of the AG's Complaint and the City's Counterclaim, as set forth in the Stipulation.

10. Resolution of the Attorney General's counts and the City's Counterclaim as set forth in the Stipulation is in the public interest and is an appropriate means of addressing such claims as they relate to the Conservation Easement, if valid. Entry of the attached Stipulation addresses all issues involving the Attorney General's counts and the City's Counterclaim.

11. Given the agreed-upon nature and the effect of the Stipulation, which addresses and resolves all of the Attorney General's counts and the City's Counterclaim, there is no just reason for delay as to the Court's entry of final judgment in favor of the AG on the Attorney General's Count I regarding the process required for amendment and termination of the Conservation Easement, assuming it is valid. The Court should so find pursuant to M.R. Civ. P. 54(b) and expressly direct entry of judgment in favor of the Attorney General on Count I through entry of the Stipulation.

12. Dismissal without prejudice of the Attorney General's Count II and the City's Counterclaim is also appropriate and warranted here pursuant to M.R. Civ. P. 41(a)(1) because all parties to this action have signed the Stipulation, and pursuant to M.R. Civ. P. 41(a)(2) should the Court enter the Stipulation as requested.

13. All parties have agreed to and signed the Stipulation. In addition, counsel for the City, plaintiffs, and Nordic Aquafarms, Inc. each represent that they consent to this motion and the requested relief.

Accordingly, the Attorney General, with the consent of all other parties, hereby moves the Court for entry of: 1) the Stipulation; and 2) the separate additional order referencing and making findings regarding the Stipulation.

Dated: February 18, 2022

Respectfully submitted,

AARON M. FREY,  
Attorney General



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**NOTICE**

**MATTER IN OPPOSITION TO THIS MOTION MUST BE FILED NOT LATER THAN 21 DAYS AFTER THE FILING OF THIS MOTION UNLESS ANOTHER TIME IS PROVIDED BY THE MAINE RULES OF CIVIL PROCEDURE OR IS SET BY THE COURT. FAILURE TO FILE TIMELY OPPOSITION WILL BE DEEMED A WAIVER OF ALL OBJECTIONS TO THE MOTION, WHICH MAY BE GRANTED WITHOUT FURTHER NOTICE OR HEARING.**



The parties' voluntary dismissal without prejudice of the Attorney General's Count II and the City's counterclaim set forth in the Stipulation complies with M.R. Civ. P. 41(a)(1) because all parties to this action have signed the Stipulation. Moreover, because the Court is separately entering the Stipulation, the dismissal without prejudice of those counts in the Stipulation also complies with M.R. Civ. P. 41(a)(2). The Attorney General's Count II and the City's counterclaim are hereby dismissed without prejudice under the terms of the Stipulation.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUSTICE, Superior Court