April 29, 2019

Lisa Vickers and Tim Forrester
Atlantic Environmental, LLC
135 River Road
Woolwich, ME 04579

RE: Title, Right and Interest to Apply for NRPA Permit
Gregory and Salli Hinton, Buttermilk Cove, Brunswick

Dear Lisa and Tim:

I understand that Gregory R. Hinton and Salli P. Hinton (collectively “the Hintons”) intend to apply to the Maine Department of Environmental Protection (“MDEP”) for a permit to locate a dock and float on their property located on Buttermilk Cove in Brunswick.

I have researched and concluded that the Hintons have title, right and interest (“TRI”) to the intertidal zone adjoining their property. The Hintons’ deed, as is common for shorefront property in Maine, provides a property description that references the “high water line.” Their deed also indicates that they received title to the same property as that received by the Grantor in their deed (“McKenney”). McKenney, in turn, received title to the same property as that received by the Grantor in his deed (“McKenney Electric Co.”). McKenney Electric Co., in turn, received title to the same property as that received by the Grantor in its deed (“Coffin”). Finally, Coffin, received title to the same property as that received by the Grantor in her deed (“Leet”) and that deed described the property not by reference to the high water line but by reference “to and along the waters of Casco Bay.”

I. Gregory and Salli Hinton Have Sufficient Title, Right and Interest TRI to Give Standing for NRPA application review.

To analyze the Hintons’ TRI, one must analyze the title conveyed from Leet to Coffin that came forward to the Hintons and determine whether Coffin or any of her successors severed the lowlands from the adjacent uplands. The analysis of Coffin’s deed and the chain of title from Coffin into the Hintons is below. The chain of title demonstrates that notwithstanding the deed reference to “high
water mark" in the Hintons' deed, the Hintons' ownership includes the intertidal area adjoining their property. As such, the Hintons have TRI to proceed with an application to the MDEP.

A. Chain of Title

The Hintons' chain of title traces directly back to the 1979 deed from Leet to Coffin. The deeds are referenced below and attached for your review.

<table>
<thead>
<tr>
<th>Year</th>
<th>Grantor</th>
<th>Grantee</th>
<th>Book/Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1979</td>
<td>Leet</td>
<td>Coffin</td>
<td>4478/232</td>
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Relevant Description: "On the easterly side of Prince's Point, so called, opposite the Gurnet Bridge and adjoining Casco Bay and bounded and described as follows, viz: Beginning at the waters of Buttermilk Cove, formerly called Duck Cove, of Casco Bay....[thus northwesterly, thence northeasterly, thence southeasterly] parallel with the said first mentioned course and extending through another iron stake driven in the ground one hundred and fifty-eight (158) feet, more or less, to the said waters of said Cove and said Bay and thence southwesterly along the waters of said Cove to the point of beginning.

There are no out-conveyances from Coffin during her ownership that would have severed the lowlands from the uplands.

<table>
<thead>
<tr>
<th>Year</th>
<th>Grantor</th>
<th>Grantee</th>
<th>Book/Page</th>
</tr>
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<tbody>
<tr>
<td>1994</td>
<td>Coffin</td>
<td>McKenney Elec. Co.</td>
<td>11589/126</td>
</tr>
</tbody>
</table>

By 1994, when Coffin conveyed to McKenney Electrical Co., surveyed metes and bounds were used to describe the parcel with reference to pipes found and rebar set. It is in this deed that reference for the first time is made to the high water line but there is no mention in the deed of an intention to sever the lowlands from the highlands and for source of title Coffin refers back to her deed from Leet which has the description above.

There are no out-conveyances from McKenney Electrical Co. during its ownership that would have severed the lowlands from the uplands.
By 2001, additional survey work had been done, and McKenney Electrical Co. used a slightly adjusted surveyed description of the parcel using the same high water line reference as that in its deed above and for source of its title referred to its deed above.

There are no out-conveyances from McKenney during his ownership that would have severed the lowlands from the uplands.

The deed from McKenney into Hinton uses the same metes and bounds description as that contained in the McKenney deed above. For source of title it references the deed above.

There are no out-conveyances from the Hintons during their ownership that would have severed the lowlands from the uplands.

B. Analysis of TRI to the Intertidal Area

For an in-depth analysis of ownership along water bodies, see Maine Principles of Ownership Along Water Bodies, Knud E. Hermansen, Maine Law Review, vol. 47, #1 (2018). The article discusses common ambiguities in deeds along water bodies when boundary descriptions reference the “shore” given that the water line of the shore fluctuates with the tide. The “shore” is thus, on its own, an imprecise surveying description leaving the ownership of the intertidal area potentially in question. The ambiguity is often compounded by deed references made to stakes placed in the ground at the “high water mark.” The stakes set by surveyors are not necessarily set to establish the boundary at the high water mark but rather are setting the sideline boundary between neighbors at a point on the shore that can be observed even at high tide.

Certain principles have been established in Maine law to reconcile these ambiguities. A leading principle is that there is a presumption that the lowland portion of shore land has not been severed from upland portion unless there is a conveyance that expresses explicit intent otherwise. Hermansen at page 51, citations omitted. “Courts have been reluctant to interpret a conveyance as separating the lowlands from the highlands.” Id. “Uplands and shorelands benefit each other to such an extent that separation goes against common sense.” Id. Hermansen goes on to state that:
“Words such as “by,” “along,” or “side” are insufficient by themselves to convey the uplands without the lowlands. This is true even when the measurements given do not extend further toward the water than the edge of uplands. Furthermore, a description that cites only the area measuring the uplands is not persuasive as conveying only the uplands—since the custom with surveyors defining a complete property (both the uplands and shorelands) often has been to exclude from the description the area of flats and shore and to cite only the area of the uplands even though both may be intended to be conveyed.” *Hermansen, at p. 52* (citations omitted).

The presumption that the upland owner owns the lowlands is rooted in law tracing back to colonial grants of Maine coastal property to original proprietors. Maine’s law court in interpreting a deed on the shore reasoned as follows:

“In determining the construction of the description in a deed of land upon the seashore, certain well-established general principles must be applied. By Colonial Ordinance of 1641-7, it was provided that in such cases, ‘the proprietor of the land adjoined shall have propriety to low water mark.’ By reason of this ordinance the owner of the upland adjoining tide water prima facie owns to low water mark; and does so in fact, unless the presumption is rebutted by proof to the contrary.... *Dunton v. Parker* 97 Me 461, 467-68, 54 A. 1115, 1118 (1903). While the lowlands are governed by the public trust doctrine, and the scope of the public rights governed by that doctrine has been the subject of evolving law, the presumption that the upland owner owns to the low water mark has not changed.

The Hinton property, as described in Hinton’s deed, “adjoins Casco Bay” and “begins at the waters of Buttermilk Cove”. The property runs to the “waters of said Cove and said Bay and... along the waters of said Cove.” Some argue that the language “to the shore” is indicative of an intent to include the intertidal lands because “to” is a word of limitation. It is true that a call in a deed “to the land of Smith” limits the grant to the point where the land of Smith is reached and does not include any of the land of Smith. However, when a description is “to the shore” and then “along the shore,” “the conveyance extends ownership to the full limit of the grantor’s potential title in the water body.” *Hermansen, at p. 54* (citations omitted). See also *Snow v. Mt Desert Island Real Estate Co.* 84 Me. 14, 17, 24 A. 429, 430 (1891) holding that where the term “the shore” is used in a deed to designate a boundary, it includes the beach to the low water mark. *Hermansen, at p. 54,* note 66.

IV. Conclusion

The Hinton title ownership extends to the low water mark as is evidenced by the description of the parcel in the Leet to Hinton deed. None of the deeds in Hinton’s chain of title expressly retain or reserve ownership of the lowlands. No deeds are recorded purporting to convey just the lowlands to some third party. A court would be reluctant to find that any of these deeds expressly separated the lowlands from the uplands. If such were the intention of a grantor in the chain, one would expect to see some expression of what was intended for the separated lowlands. One would expect to see an express reservation of the lowlands for the benefit of the grantor or subsequent deeds conveying the separated lowlands. To the contrary, by deed reference, the chain of deeds into Hinton conveys the same
shorefront property that Leet conveyed to Coffin in 1979. A surveyor’s or draftsman’s decision to use the high water mark as a point of reference does not suffice to defeat the presumption that Hinton owns the lowlands adjoining their property. As such, Hinton has sufficient TRI to apply to the MDEP for placement of a dock and float on their property.

Sincerely,

[Signature]

Thomas B. Federle

Enc.: Deeds in Chain of Title
Know all Men by these Presents, that I, Robert A. Leet of Barrington, County of Bristol, State of Rhode Island, in consideration of one dollar paid by Barbara H. Coffin ofBrunswick, County ofCumberland, State ofMaine, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Barbara H. Coffin, her heirs and assigns forever, two certain lots or parcels of land in the Town ofBrunswick, County ofCumberland, State ofMaine:

Parcel 1: Beginning at the waters ofCasco Bay at a point opposite the divisional line between land of John Gatchell and the lot herein conveyed; thence running westerly over the bank past an iron rod and continuing eighty (80) feet westerly from said rod along said Gatchell's land to an iron rod driven in the ground, and land ofHarvey A. Tarr; thence southerly along said Tarr's land one hundred thirty-two (132) feet to another iron rod and land of said Tarr; thence easterly along the land of said Tarr about one (1) rod to another iron rod; thence southerly by said Tarr's land about four (4) rods more or less, to an iron rod and land ofMaine & Webster; thence easterly along said land ofMaine & Webster four (4) rods more or less, to the waters ofCasco Bay; thence along said waters ofCasco Bay to the point ofbeginning together with a right of way to said premises from the Town Road as said right of way is now travelled.

Being the same premises described in a certain deed made by Stillman W. Donnell to D. Ralph Gardner, dated September 21, 1790 and recorded in the Cumberland County Registry of Deeds in Book 1060, Page 305.

Parcel 2: On the easterly side ofPrince's Point, so-called, opposite the Garnet Bridge and adjoining Casco Bay and bounded and described as follows, viz: Beginning at the waters ofButtermilk Cove, formerly calledDuck Cove, ofCasco Bay where the same is intersected by the divisional line between lands of said John Gatchell, and lands of said D. Ralph Gardner, late of Stillman W. Donnell and formerly ofHarvey A. Tarr and running from thence northeasterly along said lands of D. Ralph Gardner and continuing along Lands of said Harvey A. Tarr, one hundred and fifty (150) feet more or less, to an iron stake driven in the ground; thence northeasterly at right angles or nearly so, to said last mentioned course sixty-six (66) feet to another iron stake driven in the ground; thence southeasterly parallel with the said first mentioned course and extending through another iron stake driven in the ground one hundred and fifty-eight (158) feet more or less, to the said waters of said Cove and said Bay and thence southeasterly along the waters of said Cove to the point or place of beginning.

Together with a right of way across other and adjacent lands of said John Gatchell, starting at the public highway and running as near as practicable along
the northeasterly line of said other lands southeasterly to the northeasterly line
of the cottage lots, some of which have been heretofore conveyed by said John
Gatchell, and extending along the northeasterly boundaries of said cottage lots
southeasterly to and along the northeasterly boundary of the lot of land herein-
before described and hereby conveyed.

And also a right of way over said lands of said John Gatchell extending southeasterly
from said first mentioned right of way to the shore of said Cove of said
Bay at a point called "Paul Doughty's rocks".

And also a right of way over lands of said John Gatchell to the said shore of
said Cove of said Bay, extending southeasterly from said first mentioned right
of way along the southeasterly line of the cottage lot heretofore conveyed by said
John Gatchell to Lelia Harstoller.

Being the same premises described in a certain deed by John Gatchell to D.
Ralph Gardner, dated September 9, 1922 and recorded in the Cumberland County
Registry of Deeds in Book 1118, Page 11.

Meaning and intending to convey and hereby conveying all and the same premises
which were conveyed to the within Grantor by certain deed of Jessie Miles Eddy,
dated March 10, 1956 and recorded in the Cumberland County Registry of Deeds,
in Book 2280, Page 35.

To have and to hold the aforesaid and bargained premises with all the privi-
leges and appurtenances thereof, to the said Barbara H. Coffin, her heirs and assigns,
to her and their use and behoof forever.

In Witness Whereof, I, the said Robert A. Leet and Suzanne F. Leet,
wife of the said Robert A. Leet, joining this deed as Grantor and relinquishing
and conveying all rights by descent and all other rights in the above described
premises, have hereunto set our hands and seals, this 17th day of August
in the year of our Lord one thousand nine hundred and seventy-nine.

Signed, Sealed and Delivered
in presence of

[Signatures]

State of Maine, Cumberland, ss.
August 17th 1979
Personally appeared the above named Robert A. Leet and acknowledged the
foregoing instrument to be his free act and deed.

Before me,

[Signature]
Notary Public

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE
Received at 8 H 30 M, and recorded in
BOOK 4787 PAG 233.

AUG. 20 1979
Register
Know all Men by these Presents, that I, Robert A. Lest of Barrington, County of Bristol, State of Rhode Island, in consideration of one dollar paid by Barbara H. Coffin of Brunswick, County of Cumberland, State of Maine, the receipt whereof I do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto the said Barbara H. Coffin, her heirs and assigns forever, two certain lots or parcels of land in the Town of Brunswick, County of Cumberland, State of Maine:

Parcel 1: Beginning at the waters of Casco Bay at a point opposite the divisional line between land of John Gatchell and the lot herein conveyed; thence running westerly over the bank past an iron rod and continuing eighty (80) feet westerly from said rod along said Gatchell's land to an iron rod driven in the ground, and land of Harvey A. Tarr; thence southerly along said Tarr's land one hundred thirty-two (132) feet to another iron rod and land of said Tarr; thence easterly along the land of said Tarr about one (1) rod to another iron rod; thence southerly by said Tarr's land about four (4) rods more or less, to an iron rod and land of Hains & Webber; thence easterly along said land of Hains & Webber four (4) rods more or less, to the waters of Casco Bay; thence along said waters of Casco Bay to the point of beginning together with a right of way to said premises from the Town Road as said right of way is now travelled.

Being the same premises described in a certain deed made by Stillman W. Donnell to D. Ralph Gardner, dated September 21, 1900 and recorded in the Cumberland County Registry of Deeds in Book 1060, Page 305.

Parcel 2: On the easterly side of Prince's Point, so-called, opposite the Garnet Bridge and adjoining Casco Bay and bounded and described as follows, viz: Beginning at the waters of Buttermilk Cove, formerly called Duck Cove, of Casco Bay where the same is intersected by the divisional line between lands of said John Gatchell, and lands of said D. Ralph Gardner, late of Stillman W. Donnell and formerly of Harvey A. Tarr and running from thence northeasterly along said lands of D. Ralph Gardner and continuing along lands of said Harvey A. Tarr, one hundred and fifty (150) feet more or less, to an iron stake driven in the ground; thence northeasterly at right angles or nearly so, to said last mentioned course sixty-six (66) feet to another iron stake driven in the ground; thence southeasterly parallel with the said first mentioned course and extending through another iron stake driven in the ground one hundred and fifty-eight (158) feet more or less, to the said waters of said Cove and said Bay and thence southeasterly along the waters of said Cove to the point or place of beginning.

Together with a right of way across other and adjacent lands of said John Gatchell, starting at the public highway and running as near as practicable along
the northeasterly line of said other lands southeasterly to the northeasterly line
of the cottage lots, some of which have been heretofore conveyed by said John
Gatchell, and extending along the northeasterly boundaries of said cottage lots
southeasterly to and along the northeasterly boundary of the lot of land hereina-
before described and hereby conveyed.

And also a right of way over said lands of said John Gatchell extending southeasterly from said first mentioned right of way to the shore of said Cove of said
Bay at a point called "Paul Doughty's rocks".

And also a right of way over lands of said John Gatchell to the said shore of
said Cove of said Bay, extending southeasterly from said first mentioned right of
way along the southeasterly line of the cottage lot heretofore conveyed by said
John Gatchell to Leila Harstaller.

Being the same premises described in a certain deed by John Gatchell to D.
Ralph Gardner, dated September 9, 1922 and recorded in the Cumberland County
Registry of Deeds in Book 1118, Page 11.

Meaning and intending to convey and hereby conveying all and the same premises
which were conveyed to the within Grantor by certain deed of Jessie Miles Eddy,
dated March 10, 1956 and recorded in the Cumberland County Registry of Deeds,
in Book 2280, Page 35.

To have and to hold the aforesaid and bargained premises with all the privil-
eges and appurtenances thereof, to the said Barbara M. Coffin, her heirs and assigns,
to her and their use and behoof forever.

In Witness Whereof, I, the said Robert A. Leet and Suzanne F. Leet,
wife of the said Robert A. Leet, joining this deed as Grantor and relinquishing
and conveying all rights by descent and all other rights in the above described
premises, have hereunto set our hands and seals, this 17th day of August
in the year of our Lord one thousand nine hundred and seventy-nine.

Signed, Sealed and Delivered
in presence of

[Signature]
Robert A. Leet

[Signature]
Suzanne F. Leet

State of Maine; Cumberland, ME,
August 17th 1979

Personally appeared the above named Robert A. Leet and acknowledged the
foregoing instrument to be his free act and deed.

Before me,

[Signature]
Notary Public

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE
RECEIVED AT 8 A.M. 30 JULY, 1979, and recorded in
BOOK 478 PAGE 233.