STATE OF MAINE
WALDO, ss.

SUPERIOR COURT
DKT. NO. RE-19-18

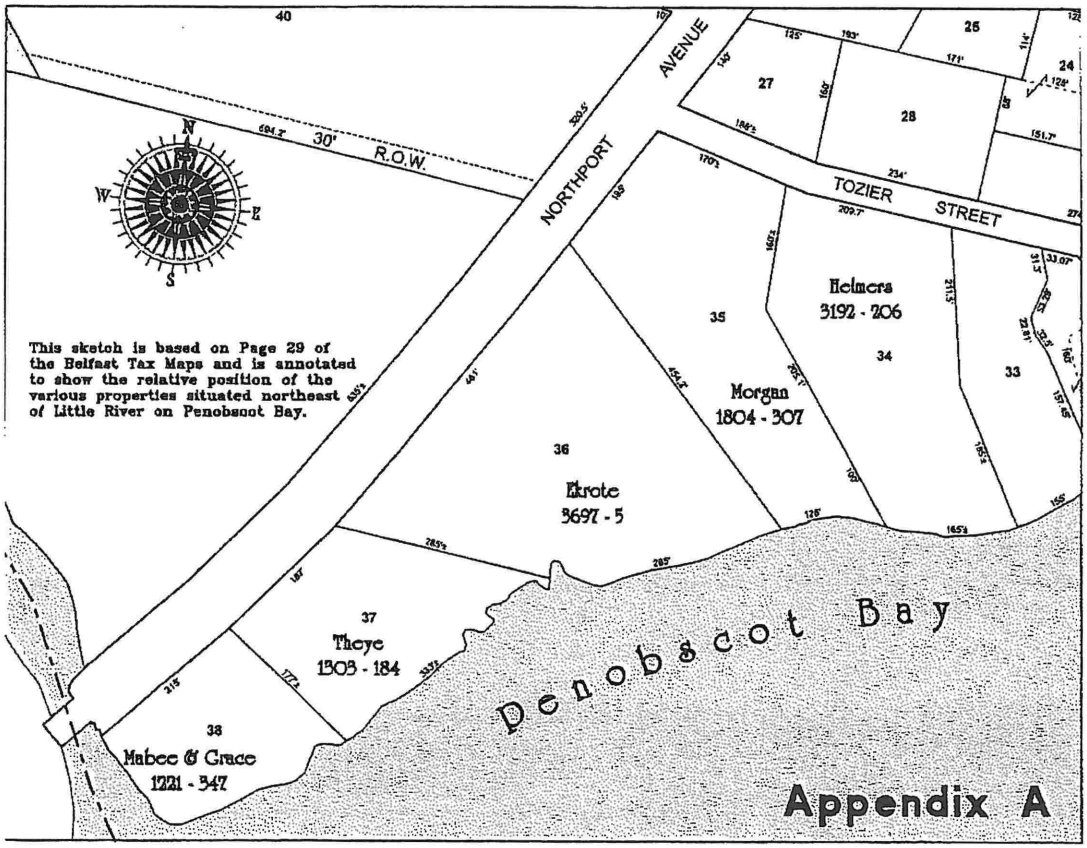
JEFFREY R. MABEE and JUDITH B. GRACE, Plaintiffs, v. NORDIC AQUAFARMS, INC., et al., Defendants.	)	**ORDER ON NAF'S 12(b) MOTION TO DISMISS**

Nordic Aquafarms, Inc. (NAF) filed a motion to dismiss pursuant to Maine's anti-SLAPP statute (14 M.R.S. § 556) in which it also raised separate rule 12(b) and 19 grounds.[1] The Court issued its order on the anti-SLAPP motion on December 20, 2019. As an initial matter, Plaintiffs Jeffrey Mabee and Judith Grace did not respond to the rule 12(b) and 19 arguments in their original opposition. They attempted to file a sur-reply, but, in reality, it functioned as a separate opposition. The Court **denies** Plaintiffs' motion to file a sur-reply and does not consider the arguments Plaintiffs raised in their attempted sur-reply. That being said, the Court proceeds to the merits of NAF's motion to dismiss because "Rule 7(c)(3) provides only that an adverse party who has not filed an opposition has waived any opposition to the motion; it does not obligate the court to act favorably on the motion." *Petit v. Lumb*, 2014 ME 117, ¶ 8, 103 A.3d 205. The Court is not prevented from independently considering the merits of NAF's suggested grounds for dismissal.

[1] The Ekrote Defendants joined NAF's motion to dismiss. Further, more than two months after service of the summons and complaint, the Ekrotes filed a motion to dismiss an "unpleaded" count for reformation of their deed. Notwithstanding apparent timeliness issues with the filing, it seems illogical that the Court could grant dismissal of something that is not pleaded as a legal claim and instead prayed for as relief if the Plaintiffs were to succeed on their declaratory judgment claim. Whether the Court would even have authority to "reform" the Ekrotes' deed is ultimately secondary to the legal question of what land was conveyed to whom in which deed spanning various chains of title.

BACKGROUND

Plaintiffs Jeffrey Mabee and Judith Grace are fee simple owners as joint tenants of a parcel of land in Belfast that can be found on Belfast Tax Map Page 29, Lot 38, and described in the Waldo County Registry of Deeds at Book 1221, Page 347. (Amnd. Compl. ¶ 2.) Mabee and Grace trace their title to Harriet and Arthur Hartley, who originally owned a larger parcel of land encompassing the upland lots 34, 35, 36, 37, and 38 on Belfast Tax Map 29, as well as the intertidal area[2] associated with those upland lots. (Amnd. Compl. ¶¶ 24-25.) For grounding purposes only, the Court includes the following illustration of the area in question that Mabee and Grace attached to their complaint:



[2] The Law Court's recent decision in *Almeder v. Town of Kennebunkport* provides a summary of the definitional terms regarding upland parcels and their relation to tidal bodies of water. 2019 ME 151, ¶ 8, ___A.3d___. Here, the parties have generally referred to the area at issue as the "intertidal land." While there can be a functional difference between the extent of the "beach"/"shore" and the "intertidal" area, *see id.*, the Court will refer to it as the "intertidal area" for the simplicity of this order.

Over the years, the Hartleys subdivided and conveyed lots 34, 35, 36, and 37, but retained ownership of lots 38 (to which Plaintiffs trace their title). (Amnd. Compl. ¶ 26.) As illustrated above, the Ekrotes own lots 36. (*See also* Amnd. Compl. ¶ 4.) There is a dispute regarding whether the deeds in the chains of title conveying these various parcels severed the upland parcels from the adjoining intertidal area for some or all of these lots—including the Ekrotes' lot—thereby causing ownership of the intertidal area to be retained by Plaintiffs predecessors in interest, the Hartleys. (Amnd. Compl. ¶¶ 4, 26-28, 30-31, 34, 40(a)-(d).)

Defendant NAF is a wholly owned subsidiary of Nordic Aquafarms, and Nordic Aquafarms is a land-based seafood producer with operating facilities in Norway and Denmark. (Heim Aff. ¶¶ 3-4.) NAF was incorporated in Delaware in 2017 as the legal entity for the U.S.-based business operations of Nordic Aquafarms. (Heim Aff. ¶ 6.) NAF seeks to build and operate a $500 million land-based salmon aquaculture facility in Belfast. (Heim Aff. ¶ 7.) This facility will require access to the Penobscot Bay for three seawater pipes (two 30" intake pipes and one 36" outfall/discharge pipe). (Heim Aff. ¶ 8.) In order to facilitate these seawater pipes, NAF engaged in discussions with waterfront landowners along the Penobscot Bay, including Plaintiffs and the Ekrotes. (Heim Aff. ¶ 15.) Eventually, NAF obtained an option to purchase an easement from the Ekrotes to place the intake and outfall pipes to access Penobscot Bay. (Heim Aff. ¶ 16.) It is necessary for the intake pipes to run underground through the intertidal area beyond the Ekrotes' upland property. (Amnd. Compl. ¶ 3; Heim Aff. ¶ 9.) The central issue in this case is Mabee and Grace's contention that they own the intertidal land which abuts the Ekrotes' upland lot. (Amnd. Compl. ¶¶ 8, 24-28, 72(a)-(b).)

As a result of the Court's ruling of NAF's anti-SLAPP motion,[3] the claims remaining in the

[3] To the extent NAF bases its 12(b) motion on Plaintiffs' purported challenge to NAF's administrative standing, the issue was functionally addressed by the Court's ruling on the anti-SLAPP portion of NAF's motion to dismiss. This order deals with the other issues stemming from Plaintiffs' claims to the intertidal area subject to this case.

case at issue are the portions of Count I for declaratory judgment seeking a declaration that they own in fee simple the intertidal area in front of lots 35-38 (and the related joinder issue for the owners of lots 35 and 37); Count II seeking to quiet title to that intertidal area; Count III seeking equitable and injunctive relief against defendants other than NAF, as the portions of Count III seeking to prevent NAF from proceeding administratively were dismissed as part of the anti-SLAPP order; and Count V for enforcement of a purported conservation easement.[4]

LEGAL STANDARD

"A motion to dismiss tests the legal sufficiency of the complaint, the material allegations of which must be taken as admitted . . . ." *Packgen, Inc. v. Bernstein, Shur, Sawyer & Nelson, P.A.*, 2019 ME 90, ¶ 16, 209 A.3d 116 (citations omitted). While the Court must accept as true all well-pleaded factual allegations in the complaint, it is "not bound to accept the complaint's legal conclusions." *Bowen v. Eastman*, 645 A.2d 5, 6 (Me. 1994) (citing *Robinson v. Washington Cnty.*, 529 A.2d 1357, 1359 (Me. 1987)). "A dismissal is only proper when it appears beyond doubt that [the] plaintiff is entitled to no relief under any set of facts that [it] might prove in support of [its] claim." *Packgen*, 2019 ME 90, ¶ 16, 209 A.3d 116 (alterations in original).

A complaint only needs to consist of a short and plain statement of the claim to provide fair notice of the cause of action. *Johnston v. Me. Energy Recovery Co., Ltd. P'ship*, 2010 ME 52, ¶ 16, 997 A.2d 741. While Maine is a notice pleading state, that does not mean a plaintiff can "proceed on a cause of action if that party's complaint has failed to allege facts that, if proved, would satisfy the elements of the cause of action." *Burns v. Architectural Doors & Windows*, 2011 ME 61, ¶¶ 16-17, 19 A.3d 823. Thus, the plaintiff must "allege facts sufficient to demonstrate that [he] has been injured in a way that entitles him or her to relief." *Id.* ¶ 17.

---

[4] The Court is aware there is an issue regarding enforcement of a purported restrictive covenant (to the extent it is pleaded in the complaint as it is not set forth as a standalone claim). Neither NAF nor the Ekrotes argued for dismissal of any purported claim for such.

When a motion to dismiss is brought on "jurisdictional"[5] grounds, *see* M.R. Civ. P. 12(b)(1), (h)(3), a court makes no inferences in favor of the plaintiff, as it does when reviewing a motion to dismiss for failure to state a claim. *Tomer v. Me. Human Rights Comm'n*, 2008 ME 190, ¶ 9, 962 A.2d 335. Courts may rely on material outside the pleadings without converting the motion to a motion for summary judgment. *Gutierrez v. Gutierrez*, 2007 ME 59, ¶ 10, 921 A.2d 153. "Whether a party has standing to bring a claim is a jurisdictional question." *N. E. Ins. Co. v. Young*, 2011 ME 89, ¶ 11, 26 A.3d 794.

DISCUSSION

1. Count I seeking a declaration that Plaintiffs own in fee simple the intertidal area in front of lots 35-38 and Count II seeking to quiet title to the intertidal area in front of lots 35-38.

Plaintiffs bring two separate counts related to ownership of the intertidal area between lots 35-38 and the Penobscot Bay. NAF did not raise any 12(b) grounds regarding Count I, instead relying on the anti-SLAPP portion of its motion to dismiss. Despite that, the Court includes Count I here because it is inextricably linked to Count II. The quiet title statute requires a plaintiff's complaint to allege uninterrupted possession of at least four years; allege the estate held and the source of the title;

---

[5] "[T]he words 'jurisdiction' and 'jurisdictional' are understood to have "'many, too many, meanings,'" and . . . '[c]ourts "have been less than meticulous" in using the term[s].'" *Homeward Residential, Inc. v. Gregor*, 2015 ME 108, ¶ 17, 122 A.3d 947 (quoting *Landmark Realty v. Leasure*, 2004 ME 85, ¶ 7, 853 A.2d 749 (quoting *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004))). Issues of justiciability have been termed "jurisdictional" in the sense of how they relate to a court's ability to hear the case in front of it, not whether the court broadly has subject matter jurisdiction. *See id.* ¶¶ 18-19; *see also Bank of Am., N.A. v. Greenleaf*, 2015 ME 127, ¶ 7, 124 A.3d 1122 (citations and quotation marks omitted) ("Although standing relates to the court's subject matter jurisdiction, it is an issue theoretically distinct and conceptually antecedent to the issue of whether the court has subject matter jurisdiction . . . . Subject matter jurisdiction is a principle of adjudicatory authority that refers to the power of a particular court to hear the type of case that is then before it."). The fact that a case is not justiciable does not mean that the court lacks subject matter jurisdiction. *See Greenleaf*, 2015 ME 127, ¶ 8, 124 A.3d 1122 (citations omitted) ("When discovered, a standing defect does not affect, let alone destroy, the court's authority to decide disputes that fall within its subject matter jurisdiction. A plaintiff's lack of standing renders that plaintiff's complaint nonjusticiable—i.e., incapable of judicial resolution."). When a case is nonjusticiable, it should be dismissed without prejudice because the court is not adjudicating the case on the merits. *See Gregor*, 2015 ME 108, ¶ 24, 122 A.3d 947. Because standing "relates to the court's subject matter jurisdiction," a motion to dismiss for lack of standing is more properly characterized as a 12(b)(1) motion. *See JPMorgan Chase Bank v. Harp*, 2011 ME 5, ¶ 7, 10 A.3d 718; M.R. Civ. P. 12(b)(1).

describe the premises with sufficient particularity to give the defendant notice of what land is at issue; and allege that the defendant "claim[s] or may claim some right, title or interest in the premises adverse to [their] said estate . . . ." 14 M.R.S. § 6651. NAF contends that the Court lacks jurisdiction[6] over Plaintiffs' quiet title claim because Plaintiffs have not "been in uninterrupted possession of [the subject intertidal area] for 4 years or more . . . ." *Id.*

The Plaintiffs' allegations and supporting deeds[7] present enough at this stage. Being that Maine is a notice-pleading state, the Court concludes that Plaintiffs' allegations regarding ownership of upland lot 38 and the intertidal area abutting lots 35-38 since being deeded upland lot 38 in 1991 is sufficient for pleading possession under the quiet title statute. *Cf. Lewien v. Cohen*, 432 A.2d 800, 803 (Me. 1981) ("Consistently with the command of M.R.Civ.P. 8(f) that 'all pleadings shall be so construed as to do substantial justice,' we understand plaintiff Lewien to have been demanding all the rights that go with ownership of the described real estate, including possession. By demanding the real estate she *inter alia* demanded possession of it."). Plaintiffs further alleged that they own the subject property in fee simple as joint tenants and included the entire chain that represents their source of title. The complaint and deeds describe the premises with sufficient particularity to give the defendants notice of what land is at issue. Lastly, Plaintiffs allege that the defendants have claimed an interest adverse to theirs. The quiet title count is pled sufficiently.

---

[6] In the context of the quiet title statute, the Court views this is a matter of pleading at this stage. *Cf. Marshall v. Walker*, 93 Me. 532, 535, 45 A. 497, 497 (1900); Gregory W. Powell, *Maine's Actions to Try Title: A Historical Perspective*, 32 Me. L. Rev. 355, 387-98 (1980).

[7] On a motion to dismiss for failure to state a claim, the Court generally cannot consider documents outside the pleadings without treating the motion as one for summary judgment. *See* M.R. Civ. P. 12(b); *see also Moody v. State Liquor & Lottery Comm'n*, 2004 ME 20, ¶ 8, 843 A.2d 43. However, the Court can consider "official public documents, documents that are central to the plaintiff's claim, and documents referred to in the complaint . . . when the authenticity of such documents is not challenged." *Id.* ¶ 11. When the Court does consider such documents, those documents merge into the pleadings. *Id.* ¶ 10. Among other documents that meet this requirement, the deeds in Plaintiffs' chain of title are central to their claims, are referred to in the complaint, and the authenticity of them is not challenged.

More crucially, however, Plaintiffs' declaratory judgment count not only encompasses the issue regarding ownership of the intertidal area abutting lots 35-37, but it is a more flexible and modern method of litigating title stemming from the interpretation of the various deeds. *See Hodgdon v. Campbell*, 411 A.2d 667, 669-70 (Me. 1980) (citations and quotation marks omitted) ("An action for declaratory judgment is an appropriate vehicle for establishing rights in real property. The Declaratory Judgments Act, 14 M.R.S.A. §§ 5951-63, is remedial in nature and should be liberally construed to provide a simple and effective means by which parties may secure a binding judicial determination of their legal rights, status or relations under statutes and written instruments where a justiciable controversy has arisen. The statute does not create a new cause of action; its purpose is to provide a more adequate and flexible remedy in cases where jurisdiction already exists. A source of jurisdiction to quiet title is found in 14 M.R.S.A. §§ 6651-61. The arcane intricacies found in the procedural requirements of these provisions represent a trap for the unwary. A proceeding for declaratory relief brought in accordance with the civil rules of procedure is a particularly efficacious method for quieting title to real property, especially in the frequently litigated boundary line dispute case."); *see also* 3 Harvey & Merritt, *Maine Civil Practice* § 80A:8 at 423 (3d, 2018- 2019 ed. 2018) ("Because of the complexity that surrounds the quiet title and real action statutes, it may be simpler to bring an action to try title under the Declaratory Judgments Act, 14 M.R.S.A. §§ 5951 to 5963."); *see generally* Gregory W. Powell, *Maine's Actions to Try Title: A Historical Perspective*, 32 Me. L. Rev. 355 (1980).

In this case, there is undoubtedly a justiciable controversy regarding the interpretation of the deeds doled out by the Hartleys over the years bearing on the ownership interests of the Plaintiffs, the Ekrotes, and the other owners of the upland lots on the Penobscot Bay at issue. Indeed, Plaintiffs are seeking a declaration that they "are the owners in fee simple of all of the intertidal land on which Belfast Tax Map 29, Lots 35, 36, 37, and 38 front," which is effectively what they seek through their quiet title count. (Amnd. Compl. ¶¶ 72(a), 73-76.) Because they are ultimately seeking a declaration

based on interpretation of various deeds, the Court construes these counts as seeking such a declaratory judgment with the quiet title statute serving as the jurisdictional basis. *Cf. Ricci v. Godin*, 523 A.2d 589, 591 & n.3 (Me. 1987) (noting, with seeming approval, the trial court's decision to construe a statutory quiet title claim and a statutory real action counterclaim as an action for declaratory judgment regarding the boundary in question); *Hodgdon*, 411 A.2d at 669-70 ("A source of jurisdiction to quiet title is found in 14 M.R.S.A. §§ 6651-61. . . . A proceeding for declaratory relief brought in accordance with the civil rules of procedure is a particularly efficacious method for quieting title to real property . . . .").

NAF's motion to dismiss is denied regarding Plaintiffs claims to ownership of the intertidal area abutting the upland lots 35-38.

2. Count V for enforcement of a purported conservation easement.

Upstream Watch is a non-profit corporation that holds the conservation easement at issue in this count.[8] (Amnd. Compl. ¶ 6.) On April 29, 2019, Plaintiffs put their intertidal land—which they allege includes the intertidal land adjoining lots 36 (the Ekrotes' lot), 37 (the Theyes' lot), and 38 (Plaintiffs' lot)[9]—under the protection of a conservation easement to preserve it in its natural condition for perpetuity. (Amnd. Comp. ¶ 14; Ex. 13-14.) The conservation easement further is intended to benefit the public by protecting and preserving the intertidal area in its present and

[8] The conservation easement deed was attached to the complaint by Plaintiffs. It is referenced in the complaint, central to Plaintiffs' claims, and its authenticity is not challenged (only its legal effect is). Whether NAF's motion on this count is properly viewed as a 12(b)(6) motion or a 12(b)(1) motion, as NAF challenges Plaintiffs' standing to bring an enforcement action but referenced 12(b)(6) as the basis for dismissal, (*See* NAF's Mot. Dismiss 15.), the conservation easement can be considered. *See Gutierrez v. Gutierrez*, 2007 ME 59, ¶ 10, 921 A.2d 153; *Moody*, 2004 ME 20, ¶¶ 8-10, 843 A.2d 43. Upstream Watch, as the holder of the conservation easement, is not a plaintiff in this matter, but is instead named as a party in interest. Presently pending before the Court is a motion to substitute Friends of the Harriet L. Hartley Conservation Area for Upstream Watch as party-in-interest and to intervene as a co-plaintiff. Defendants responded to the motion by requesting that the Court defer ruling on the motion until all pending potentially dispositive motions have been addressed. The Court only notes the existing issue here; it is not acting on the motion to substitute in this order.

[9] Though Plaintiffs allege ownership of the intertidal area adjoining lots 35-38, it appears that the intertidal area fronting lot 35 apparently is not covered by the conservation easement. (Amnd. Compl. Ex. 13-14.)

historic, primarily undeveloped, natural condition. (Amnd. Compl. Ex. 13, p. 2.) The conservation easement purports to give only Plaintiffs, as the grantors, and Upstream Watch, as the holder of the easement, the right to enforce the provisions of the easement. (Amnd. Compl. Ex. 13, p. 2.) NAF's proposed use of the intertidal area fronting the Ekrotes' upland lot would broadly fit within the uses prohibited by the conservation easement. (Amnd. Compl. Ex. 13, pp. 2-3.) The conservation easement is recorded in the Waldo County Registry of Deeds at Book 4367, Page 273. (Amnd. Compl. Ex. 13, p. 1.)

NAF contends that Count V seeking to enforce the conservation easement over the intertidal area must be dismissed due to a lack of standing. It contends only the holder of the easement—which, in this case, would be Upstream Watch, but Upstream Watch has not brought a claim for enforcement of the conservation easement—or the Attorney General can bring an enforcement action against someone in privity with the grantor of such easement.[10] As support, NAF cites to *Estate of Robbins v. Chebeague & Cumberland Land Tr.*, 2017 ME 17, 154 A.3d 1185. The Court does not read *Estate of Robbins* the same as NAF when considered in conjunction with the statute.

Pursuant to the conservation easement statute, "[a]n action affecting a conservation easement may be brought or intervened in by[, among others,] [a]n owner of an interest in the real property burdened by the easement . . . ." 33 M.R.S. § 478(1)(A). In *Estate of Robbins*, various entities owned land that was covered by a conservation easement in the Town of Cumberland, including the plaintiff, the Town, and a real estate developer. *Estate of Robbins*, 2017 ME 17, ¶ 4, 154 A.3d 1185. The Town intended to use the property it owned as a public beach, which the Land Trust (the holder of the easement) concluded was permitted under the terms of the conservation easement. *Id.* ¶¶ 5-6. The

[10] NAF also appears to take issue with the fact that conservation easement purportedly covers more than what Plaintiffs' deed granted them, i.e., that the conservation easement purports to encompass the intertidal area adjoining the Ekrotes' upland lot, but whether that is true is dependent on what appears to be a crucial question in this case: did the Hartleys sever the intertidal area at issue in this case from the subject abutting upland lots and retain ownership of said intertidal area?

plaintiff objected to the proposed use of the Town's property in this manner under the conservation easement, and therefore brought an action to enforcement the conservation easement. *Id.* ¶ 7. The plaintiff in *Estate of Robbins did not* own the land on which the use was proposed (the Town's land). *Id.* Accordingly, the question in the case was "whether '[a]n owner of an interest in *the* real property burdened by the easement,' [33 M.R.S.] § 478(1)(A) (emphasis added), includes the Estate, which does not own an interest in the Town-owned parcel on which enforcement is sought but does own an interest in land that is also burdened by the conservation easement." *Id.* ¶ 18. Crucially, the plaintiff there did not own the land on which it sought to enforce the conservation easement.

Unlike *Estate of Robbins*, however, Plaintiffs here contend that they *do* own the land that is subject to this enforcement action.[11] (Amnd. Compl. ¶¶ 2, 6, 24-28.) That is not to say that the statute authorizes "private attorney generals" to enforce conservation easements at will. *See Estate of Robbins*, 2017 ME 17, ¶¶ 24, 28 & n.9, 154 A.3d 1185. The statute and the *Estate of Robbins* case evince an undisputable preference that the "holder" of the easement—here, Upstream Watch—is the entity to enforce the easement. *Id.* ¶ 29. If a "holder" fails to fulfill its obligations under the conservation easement deed, the Attorney General is the preferred entity to enforce the conservation easement. *Id.* Nonetheless, at this stage in the litigation, the allegations appear to meet the Law Court's interpretation in *Estate of Robbins* of "[a]n action affecting a conservation easement . . . brought . . . by . . . [a]n owner of an interest in the real property burdened by the easement . . . ." 33 M.R.S. § 478(1)(A). Because of this, NAF's argument for dismissal fails, and its motion to dismiss this count must be denied.[12]

---

[11] At this procedural stage, the Court is not ruling on the merits of Plaintiffs' contention that they own the intertidal area at issue in this case.

[12] The Court does not read *Estate of Robbins* to say that conservation easements can only be enforced against parties in privity with those bound by the conservation easement. (NAF's Mot. Dismiss 4.) Further, the statute itself disclaims the necessity of privity for a conservation easement to be valid. *See* 33 M.R.S. § 479(7) ("A conservation easement is valid even though . . . [t]here is no privity of estate or of contract . . . .").

3. Plaintiffs must join the owners of lots 35 and 37 pursuant to Rule 19.[13]

The Court agrees with NAF that the owners of lots 35 and 37 are necessary parties and must be joined pursuant to Rule 19. Plaintiffs are seeking to obtain a declaration that they own the intertidal area adjoining lots 35-38, yet only the owners of lot 36 (the Ekrotes) have been named in this case. As the rule provides,

> A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party.

M.R. Civ. P. 19(a). Plaintiffs conceded that the intertidal area fronting lot 35 is at issue in this case. (Amnd. Compl. ¶¶ 13, 23.) Further, Plaintiffs concede that the deeds to lots 35 and 37 contain the same language they rely on to contend that the Ekrotes' upland parcel was severed from the intertidal area. (Amnd. Compl. ¶ 26.) "Clause (2) recognizes the importance of protecting an absentee from practical prejudice to his interests by an adjudication in his absence . . . ." M.R. Civ. P. 19 explanation of amendment to 1966 amend., November 1966, Me. Judicial Branch website/Rules & Administrative Orders/Rules (last visited Jan. 17, 2020).

The Court cannot see any reason why owners of upland property adjoining intertidal area to which Plaintiffs seek a declaration of ownership based on interpretation of deeds purportedly severing upland area from the generally contemporaneously conveyed intertidal area should not be parties to this litigation. *Cf. Almeder v. Town of Kennebunkport*, 2019 ME 151, ¶ 37, 217 A.3d 1111. Therefore, the owners of lots 35 and 37 must be joined to ensure that they are not prejudiced by an adjudication in

[13] Though the original Hartley tract also contained lot 34, Plaintiffs do not appear to be making any claim to ownership of the intertidal area in front of lot 34. (*See* Amnd. Compl. ¶¶ 26, 28, 72(a); Ex. 11.)

their absence. The Court orders that Plaintiffs must join the owners of lots 35 and 37.

CONCLUSION

Based on the foregoing, the Court denies NAF's 12(b) motion to dismiss. It does, however, order Plaintiffs to join necessary parties as stated herein pursuant to Rule 19(a).

The entry is:

1. Defendant NAF's motion to dismiss pursuant to Rule 12(b) is **DENIED**.
2. Plaintiffs are ordered pursuant to Rule 19 to join the owners of lots 35 and 37.
3. The Clerk is directed to incorporate this Order into the docket by reference pursuant to M.R. Civ. P. 79(a).

Dated: 1/24/2020

The Hon. Robert E. Murray
Justice, Maine Superior Court