

**COMMONWEALTH OF MASSACHUSETTS  
LAND COURT  
DEPARTMENT OF THE TRIAL COURT**

PLYMOUTH, ss.

Case No. 20 MISC 000110 (DRR)

GRAVES LIGHT AND FOG STATION,  
LLC,

*Plaintiff,*

v.

TOWN OF HULL,

*Defendant.*

**DECISION**

In 2013, Graves Light and Fog Station, LLC (the “LLC”) purchased a rocky ledge in the Boston Harbor, featuring an approximately hundred-year-old lighthouse and known as The Graves, the Graves Ledge, or Graves Light (hereinafter, “Graves Ledge”). When the LLC purchased and began renovating the lighthouse, its manager quickly learned that the Town of Hull (the “Town” or “Hull”) was asserting jurisdiction over Graves Ledge and soon thereafter assessed taxes in 2019. In need of clarification, the LLC filed this action pursuant to G.L. c. 231A, § 1, seeking a declaratory judgment that Graves Ledge is not located within the municipal boundaries of the Town. The Town filed a Counterclaim seeking an opposing declaration.

For the reasons discussed below, I find and conclude that Graves Ledge is not within the municipal boundaries of the Town.

## PROCEDURAL BACKGROUND

The LLC filed its Complaint against the Town on February 28, 2020, with a single count seeking a declaration that the Graves Ledge is not within the municipal boundaries of the Town. The Town filed a Motion to Dismiss on July 3, 2020, seeking dismissal of the Complaint for failure to join necessary parties pursuant to Mass. R. Civ. P. Rules 12(b)(7) and 19. The court denied the motion to dismiss by docket entry on August 25, 2020, but addressed the Town's concern by directing that an amended complaint be filed to add as interested parties, the Commonwealth of Massachusetts and the municipalities of Boston, Winthrop, and Nahant.<sup>1</sup> Each of those interested parties was added when the Amended Complaint was filed on August 28, 2020.

The Town then filed its Answer on September 28, 2020, along with its Counterclaim, with Count I seeking a declaration that the Graves Ledge lies within the boundaries of the Town and Count II seeking injunctive relief directing that the LLC cease from performing any work at the Graves Ledge until all necessary permits have been obtained.<sup>2</sup> In response, the LLC filed a Motion to Dismiss Count II of the Counterclaim on October 16, 2020, and on October 19, 2020, the court directed that "Count II of the Defendant's counterclaim be STAYED until such time as an actual controversy arises relative to permits and/or approvals for the LLC's property." Each

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<sup>1</sup> The docket entry explained: "The court concludes that it is prudent to add these parties now in light of potential public health, safety, and taxation issues of municipal interest, the early stage of these proceedings, the LLC's contention that the Town of Hull does not have jurisdiction over Graves Island and the Hull Conservation Commission being asked to weigh in on recent restoration plans of the LLC. Based on the extensive, yet preliminary, documentation appended to the pleadings to date, the court concludes that these entities may also claim jurisdiction over The Graves and are situated such that disposition of this action without their participation may practically impair their interests. The court notes that Chapter 258 of the Acts of 1903, which originally ceded jurisdiction of The Graves to the federal government, retained concurrent jurisdiction in the Commonwealth, as well as a reversionary interest."

<sup>2</sup> The Answer and Counterclaim also asserted a jury demand, which was withdrawn via the Town of Hull's Withdrawal of Jury Claim, filed on November 30, 2020.

of the interested parties subsequently filed a Stipulation of Dismissal, disclaiming any interest in Graves Ledge.<sup>3</sup>

Following lengthy discovery, a pre-trial conference was scheduled. At that conference, the parties confirmed that the primary issue for trial was whether the Graves Ledge lies outside the corporate municipal boundaries of the Town. In addition, the Town raised a subsidiary legal issue of whether there can be land in Massachusetts that is not part of or within the municipal boundaries of a jurisdiction and is thus unincorporated. I took a view of Graves Ledge on June 13, 2022, from the deck of a boat which also navigated through and around the Boston Harbor Islands. Trial proceeded on June 21 and 22; July 26; and August 5, 2022. After receipt of transcripts, the filing of post-trial memoranda, and closing arguments held on December 8, 2022, I took this matter under advisement.

### **FINDINGS OF FACT**

Based on the facts stipulated by the parties, the documentary and testimonial evidence admitted at trial, my view of the Graves Ledge, and my assessment as the trier of fact of the credibility, weight, and inferences reasonably to be drawn from the evidence admitted at trial, I make factual findings as follows:

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<sup>3</sup> Party-In-Interest Town of Nahant's Appearance and Request for Dismissal, filed October 29, 2020, and allowed November 9, 2020, stated: "Town of Nahant does not believe that it has an interest in the Property in that it does not appear that the Property is located within the municipal boundaries of the Town of Nahant." The Stipulation of Dismissal of the Commonwealth of Massachusetts, filed November 9, 2020, stated: the "Commonwealth does not hold a present property interest at issue in the action . . . the Commonwealth ceded its title and interest to [Graves Ledge] to the United States. The Commonwealth, however, retained concurrent jurisdiction over [Graves Ledge] until such time as the property is no longer used for a light and fog signal station, at which time, exclusive jurisdiction will revert in the Commonwealth." The Stipulation of Dismissal of the City of Boston and Town of Winthrop, filed November 13, 2020, stated: the "City of Boston has determined that the subject property lies outside of the corporate limits of the City of Boston, and therefore makes no claim to jurisdiction. The Town of Winthrop has determined that the subject property is not located within the municipal boundaries of Winthrop, and therefore has no interest in the property." See Exs. 129-131.

Graves Ledge and the Outer Harbor Islands

1. Graves Ledge is largely comprised of a collection of rocks. It measures approximately 435,000 square feet, is located at 42° 21' 54" N, 70° 52' 8" W, and is only accessible by boat or helicopter. Revised Joint Pretrial Memorandum Agreed Statement of Facts ("SOF") ¶ 1.
2. Graves Ledge is barren of vegetation, and has been completely submerged under water at times, particularly during past storms. View; Undisputed Trial Exhibit ("Ex.") 113; Trial Transcript ("Tr.") Vol. I 74:21-75:11; Tr. Vol. III 148:23-149:3; Vol. IV 140:17-23.
3. To take a View of Graves Ledge, the court traveled by boat from a wharf maintained by the New England Aquarium, proceeding eastward through the inner harbor, by the north side of Thompson Island, Spectacle Island, and Long Island, in turn. The boat then continued eastward toward the outer harbor, passing to the north of Lovell Island and the Brewster Islands (Great Brewster, Middle Brewster, Outer Brewster, Calf Island, Little Calf Island, and Green Island)<sup>4</sup> and then passing to the north of a rocky outcropping called the Roaring Bulls. Travelling further eastward toward the open ocean, the boat traveled around Graves Ledge before turning southward and proceeding back to Long Wharf. On the return, the boat first passed on the other easterly side of the Brewster Islands, then Shag Rocks, and Allerton Point, the easternmost promontory of the Town of Hull. Finally, the boat passed to the south of Georges Island, between Lovell Island and Gallops Island, and returned to the wharf. As the boat passed near Allerton Point, Graves Ledge was barely visible. See

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<sup>4</sup> There is question about which islands constitute the "Brewster Islands," as discussed below. The Town includes the Roaring Bulls, Shag Rocks, and Graves Ledge within the Brewster Islands. The Town also prefers the term "the Brewsters," relying on that phrase appearing in some of the historical documents discussed in this Decision.

Decision Sketches 1 and 2, which show the layout of the inner and outer harbor islands (Sketch 1) and a close-up view of the islands north of Allerton Point, in Hull (Sketch 2).

4. As observed during the View, the islands identified above were each located at a slightly higher elevation than the ocean and had greenery and vegetation growing on them, including vegetation such as grass, shrubs, and trees. Several had sandy beaches. In contrast, these islands appeared distinct from Shag Rocks and Roaring Bulls, which are better described as craggy rock structures, protruding from the ocean. Graves Ledge also appeared as a cluster of craggy rock structures, grey and barren, with only some visible green (seaweed perhaps) at the waterline, but without upright growth or vegetation.
5. During the boat trips both eastward and westward, it was observed that Graves Ledge was located some distance from the other islands and rocky structures described above and shown on the Decision Sketches.

*Use as a U.S. Lighthouse & Sale to the LLC*

6. On April 22, 1903, the Commonwealth ceded whatever right, title, and interest it had in Graves Ledge to the United States, pursuant to 1903 Mass. Acts Chapter 258 (the “1903 Act”), for so long as the property was used as a “light and fog signal station.” A copy of the 1903 Act was recorded in the Suffolk District Registry of Deeds at Book 2901, Page 545. The 1903 Act did not refer to Suffolk or Plymouth County, but did refer to “Boston Light.”<sup>5</sup> SOF ¶¶ 3-4; Exs. 15-16.

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<sup>5</sup> The 1903 Act included the following proviso: “*provided, always*, that this Commonwealth shall and does retain concurrent jurisdiction with the United States in and over the tract of land aforesaid, so far as that all civil and criminal processes issuing under the authority of the Commonwealth may be executed on said land and in any buildings thereon, or which may be erected thereon, in the same manner as if the jurisdiction had not been granted as aforesaid; and *provided, also*, that the exclusive jurisdiction shall revert to and revest in the Commonwealth whenever the said land shall cease to be used for a light and fog signal station.” (emphasis original)

7. Shortly after Graves Ledge was ceded to the United States, work began to construct a lighthouse on the site. The lighthouse was completed in or around 1905. SOF ¶ 5.
8. The lighthouse itself is only accessible by scaling a 40-foot ladder. The main structure includes an engine room, kitchen, bunk room, watch room, and two top levels holding the light itself. There is also a small oil house, which is connected to the main structure by a bridge. The lighthouse's light and signaling functions were automated in the 1970s, at which time the last lighthouse keeper vacated the property. SOF ¶¶ 6-7.
9. In 2012, the United States, acting pursuant to the National Historic Lighthouse Preservation Act of 2000, codified at 54 U.S.C. §§ 305101–06 (the “Preservation Act”), declared Graves Ledge surplus, and chose to exercise its authority to transfer its right, title, and interest in Graves Ledge. SOF ¶ 9.
10. Thereafter, the United States issued a Notice of Availability for “The Graves Light Station.” The Notice of Availability Fact Sheet identified the property as “on the outermost island of the Boston Harbor Islands National Resource Area, east of Boston and Winthrop and North of Hull in Massachusetts Bay.” As provided by the Preservation Act, the United States first made Graves Ledge available to certain eligible entities, including local authorities, free of charge, and issued a Notice of Availability to that effect, pursuant to which the Town was notified of its ability to acquire Graves Ledge.<sup>6</sup> SOF ¶¶ 9-10; Ex. 17.
11. Neither the Town nor any other municipality or eligible entity successfully applied to acquire Graves Ledge. SOF ¶ 11.

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<sup>6</sup> The Notice of Availability states, among other things: “The Property is offered ‘AS IS’ and ‘WHERE IS’ without representation, warranty, or guarantee as to quality, quantity, title, character, condition, size or kind.”

12. Having received no successful applications from eligible entities, the United States General Services Administration (the “GSA”) issued an Auction Notice and put Graves Ledge up for public auction on June 10, 2013. That Auction Notice listed the “City, State” as “Hull, MA.” SOF ¶¶ 12-13; Exs. 18, 33.
13. As part of the auction process, and pursuant to the Preservation Act, the United States made a number of reports and documents available to interested parties. Those documents inconsistently placed Graves Ledge in a number of municipalities of the Commonwealth. For instance, the Attorney Report of Title, dated 2003 and prepared by Lieutenant Commander J. Peter Rascoe of the United States Coast Guard, stated: “The property is not located within the corporate limits of any municipality.”<sup>7</sup> SOF ¶ 14; Ex. 33.
14. The auction closed on August 30, 2013. The LLC was the high bidder, and its bid was accepted, as evidenced by a letter from the GSA. That letter identified Graves Ledge as located in Suffolk County.<sup>8</sup> SOF ¶ 15; Ex. 33; Tr. Vol. I 84:9-18.
15. David Waller, the manager of the LLC (“Waller”), testified that prior to purchase, he reviewed the Notice of Availability and other auction materials and understood Graves Ledge to be north of Hull and east of Boston and Winthrop in Massachusetts Bay, despite

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<sup>7</sup> Other documents included with the federal government offering placed Graves Ledge in a variety of inconsistent locations. See e.g., a letter dated September 12, 2022, from the United States Coast Guard to the Executive Director of the Massachusetts Historical Commission, placing Graves Ledge in Winthrop. See also U.S. General Services Administration Invitation for Bids (“The Graves Island Light Station ... is located at the entrance of the Broad Sound Channel, a major shipping channel into Boston Harbor, on the outermost island of the Boston Harbor Islands National Recreation Area, east of Boston and Winthrop and north of Hull in Massachusetts Bay”); National Register of Historic Places Inventory – Nomination Form identifies the “Location of Legal Description” as “Suffolk County Registry of Deeds.” Ex. 33.

<sup>8</sup> The specification of county arguably sheds some light on the issue before the court since Hull is located in Plymouth County. The letter states: “Your bid of \$933,888 for the purchase of the Graves Island Light Station, Suffolk County, Massachusetts, is hereby accepted subject to all the terms and conditions of the Invitation for Bids....” Ex. 33.

what he described as inconsistencies within the auction materials. Tr. Vol. I 76:13-16, 79:10-82:2, 131:11-132:15, 170:22-173:6; Exs. 17, 33, 90.

16. Two months after the auction, the General Services Administration sold Graves Ledge to the LLC via Quitclaim Deed, dated September 30, 2013, and recorded with the Suffolk County Registry of Deeds on October 1, 2013, at Book 52184, Page 263. The Quitclaim Deed describes the property conveyed as “that certain Government-owned personal property commonly known as the Graves Island Light Station...which is located at the entrance of Broad Sound Channel, a major shipping channel into Boston Harbor, on the outermost island of the Boston Harbor Islands National Recreation Area, in Suffolk County, Massachusetts Bay.” SOF ¶¶ 16-17; Ex. 19.

17. At trial, Waller recounted that there was some confusion when his wife personally attempted to record the deed with the Suffolk County Registry of Deeds, referencing notes that he had taken following the closing. Those notes read: “The clerk was confused about the address ‘well what street is it on?’ but after some Q+A he recorded it in Suffolk County.” His notes continued, “That should quiet down all the Hull people who have been clamoring for Graves to be included and taxed in Hull. The Graves is not part of any Municipality, but part of the Commonwealth. I’m sure this isn’t the end of the issue – only the beginning?!” Tr. Vol. I 91:5-92:19; Ex. 146.

*The Town Asserts Jurisdiction*

18. When the LLC acquired Graves Ledge in 2013, the property was not listed on the Town of Hull’s available and then-known Assessor’s Maps, including on Map 61 of the 2013 Town of Hull Assessor’s Map, dated June 30, 2013 (the portion of the Town Assessor’s Maps which depicts the islands within Hull’s jurisdiction). SOF ¶ 18; Ex. 91.



19. The Town Assessor's Maps were updated in or around September 2019 to add Graves Ledge to Map 61. SOF ¶ 19; Ex. 95 (dated September 19, 2019).

20. In a September 22 and 23, 2013, email exchange between Waller and Josh Goodwin of Goodwin Marine (aka Goodwin Company) regarding mooring permits for Graves Ledge, Mr. Goodwin stated: "I believe it is Hull waters so we would just get a Hull mooring permit. But I will check with the harbor master." Waller responded:

But best hold off asking the harbor master yet; it is very unclear on my paperwork just who has jurisdiction over the property, and it could even turn into a messy situation. It sits within the National Park boundaries, Hull shows it on some maps, it is inside Boston harbor, even Nahant has claimed it in the past. I'm sure it will all get settled but it might take some time.

SOF ¶ 20; Ex. 57.

21. In an email dated November 27, 2013, an attorney for City of Boston Assessing Department inquired of Hull's Assistant Assessor:

It has come to my attention that the Graves Lighthouse has been sold to a private entity, which means that it can now be taxed.

I am wondering if you have plans to tax it. Boston looked into it but it appears that the lighthouse is in closer proximity to Hull than Boston (about 9 miles from Boston and half that from Hull & Winthrop). The original transfer had the property listed as being in the Town of Hull, Plymouth County. However, the deed was registered in Suffolk County. Google maps show the light in Plymouth County water.

Hull's Assistant Assessor forwarded the email to Town Counsel, Attorney James Lampke, who replied on December 10, 2013, "My quick sense is that it is within Hull jurisdiction, as is Boston Light and some other islands in the area. I believe Hull used to be part of Suffolk County but then was moved over to Plymouth County – that is why some deeds for Hull may be filed in the Suffolk Registry." SOF ¶ 21; Ex. 42.

22. The City of Boston’s Assistant Assessor then reached out to the GSA. In response, a GSA Branch Chief referenced the inconsistent documentation and concluded that “jurisdiction is unclear.” Ex. 43.
23. The LLC began renovation of the lighthouse on Graves Ledge in 2014. The LLC did not seek any building or electrical permits from the Town for this work, and Waller did not recall the Town’s Building Department or Electrical Department inquiring as to the work. In 2018, the LLC applied to the Massachusetts Department of Environmental Protection (“DEP”) for a Chapter 91 Waterways License. On its application, under the heading entitled, “Facility, Site or Individual Requiring Approval,” the LLC filled in its address as “Graves Island Light House, One Broad Street” and listed the City/Town as “Unincorporated.” SOF ¶ 22; Ex. 50; Tr. Vol. I 93:16-94:16, 144:15-145:12, 173:7-23.
24. On July 20, 2018, a Certificate of the Secretary of Energy and Environmental Affairs on the Environment Notification Form issued, wherein the Secretary determined that an Environmental Impact Report was not required. That Certificate listed the “Project Municipality” as “Unincorporated – Outer Boston Harbor.” Ex. 55
25. On or about October 11, 2018, a representative of DEP, Jerome Grafe, called the Conservation Administrator for the Town, Christian “Chris” Krahforst (“Krahforst”) regarding the LLC’s Waterways License application. On that call, Krahforst indicated that he believed Graves Ledge did not lie within the Town’s corporate limits, while also clarifying that he was not responsible for making any determinations as to jurisdictional boundaries. Mr. Grafe confirmed that expressed view shortly after the October 11, 2018, call, via email to Krahforst. SOF ¶¶ 23-26; Tr. Vol. I 181:6-182:2, 217:1-7.

26. Shortly after the October 11, 2018, call and email, Krahforst spoke with the Town Manager, Philip Lemnios, and Attorney Lampke. As a result of these conversations, Krahforst notified DEP by email on October 15, 2018, that he “may have misspoke” with respect to “the potential of Hull’s jurisdiction on Graves.” SOF ¶¶ 27-28; Tr. Vol. I 189:20-194:1, 195:3-18; Ex. 118.
27. On October 24, 2018, Waller had an email exchange with Mr. Grafe, Michael Count of Foth Engineering (the LLC’s engineer), and Ben Lynch of the DEP, in which he asserted that Graves Ledge was in Suffolk County, that the islands between the Town and Graves Ledge are within Boston’s city limits, and that the Quitclaim Deed “certifies Graves Ledge as in ‘unincorporated waters’ off the Massachusetts coast.” In reply, Mr. Lynch said “this is a case of first impression for the waterways program. I have been part of the jurisdictional review (and licensing) of three or four lighthouses that the GSA has sold, and each one has been different. This is the first time we have ever encountered ‘unincorporated’ land in c. 91 jurisdiction, so we’re making sure that we touch all bases.” SOF ¶ 29; Ex. 58.
28. On November 14, 2018, Krahforst notified DEP that the Town believed that Graves Ledge was within its corporate boundaries. In so advising DEP, Krahforst based his conclusion solely on (i) conversations with the Town Manager and Attorney Lampke, and (ii) two documents provided by Sarah Clarren, the assistant to the Conservation Department as well as the Assistant Director of Community Development and Planning for the Town. Those two documents were an Atlas of Plymouth County, Massachusetts, dated 1879, published by Geo. H. Walker & Co., and an Atlas of Surveys of Plymouth County and Town of Cohasset, Norfolk County, Mass, dated 1903, published by L.J. Richards Co. SOF ¶¶ 30-31; Tr. Vol I 200:13-23; Ex. 116.

29. On December 5, 2018, Krahforst sent an email to Waller regarding the LLC's Request for Determination (RDA) to be submitted to DEP under the Wetlands Protection Act, in connection with the LLC's proposed repair and replacement of the existing walkway and pier for Graves Light. Krahforst filled out the application and requested that Waller sign it and add a phone number, and instructed that Waller could remove the representative information if so desired. When Waller signed and returned the waterways application, it listed the location of the proposed project as "Hull," but listed "N/A" when the form requested the Assessors Map/Plat Number and Parcel/Lot Number. Exs. 121-122; Tr. Vol. I 110:15-112:7, 208:13-209:11; 224:23-225:10.
30. On December 18, 2018, the LLC appeared before the Hull Conservation Commission relative to the RDA application. At this appearance, the LLC discussed the work that was the subject of the waterways application. SOF ¶ 32; Ex. 132; Tr. Vol. I 112:8-113:24. Waller testified it was his recollection that whether Graves Ledge is within Hull was not at issue at that hearing and that it was agreed they would "just talk about the actual construction and whether it was applicable or not." Tr. Vol. I 114:13-16.
31. Two days later, on December 20, 2018, the Town's Conservation Commission issued a Negative Determination of Applicability, concluding that the prospective work described in the RDA would not impact any protected area and would not require an Order of Conditions. DEP subsequently issued the Chapter 91 Waterways License. SOF ¶ 33.
32. In the summer of 2019, the Town's Office of Collector of Taxes sent the LLC a real estate tax bill for Graves Ledge for the fiscal year beginning July 1, 2019, and ending June 30, 2020 ("Fiscal Year 2020"). SOF ¶ 34; Exs. 38, 124.

33. Prior to Fiscal Year 2020, the Town had never attempted to assess any real estate taxes on, or with respect to, Graves Ledge. SOF ¶ 36.
34. By letter to the Town’s Collector of Taxes dated August 21, 2019, the LLC (through its attorney) objected to being taxed by the Town, enclosing six documents that it believed supported its objection, and requested that the Town provide any documents that it believed would support the Town’s own position. SOF ¶ 37; Ex. 133.
35. A Preliminary Notice Prior to Advertising of Past Due Real Estate Taxes was issued on April 22, 2021, for the fiscal year 2020. Ex. 123.

*Trial Testimony by Expert Surveyors*

36. Kevin Arsenault (“Arsenault”) testified as an expert for the LLC, detailing his 35 years of experience as a land surveyor, licensed in Massachusetts, New Hampshire, and Rhode Island, and discussing his current employment with Feldman Geospatial. Arsenault testified that he reviewed approximately 164 documents in connection with this matter, as identified in Exhibit 144. Based on Arsenault’s detailed, thoughtful, and analytical testimony, I credit his testimony as being accurate, reliable, thorough, and helpful. In particular, Arsenault had a firm and expansive grasp of both the historic materials introduced as exhibits and the geographic inter-relationship between Graves Ledge, the Town’s boundaries, and the Boston Harbor and its islands. Tr. Vol. I 239:16-242:4, 243:18-244:4; Exs. 126, 143-144.
37. Scott Cameron (“Cameron”), owner and proprietor of R.E. Cameron & Associates, professional land surveyors, testified as an expert for the Defendant, detailing over thirty years of professional land surveying experience. Tr. Vol. III 135:17-138:8. I credit Cameron’s testimony as being accurate and reliable, although I conclude that Cameron’s conclusions and opinions were less helpful than Arsenault’s in understanding the

jurisdictional issue before the court. I so conclude because at times, Cameron’s opinions were unsupported by the statutory, historical, and evidentiary record, as discussed below.

*Colonial Grants of Islands to the Town /1634 to 1694*

38. The recorded history of Graves Ledge begins with the first volume of the Records of the Governor and Company of the Massachusetts Bay in New England (the “Massachusetts Bay Colony Court”). In 1634, per an Act of the Massachusetts Bay Colony Court, “Peddocks Island is granted to the inhabitants of Charlton [probably Charlestown] . . . for the space of one & twenty years for the yearly rent of twenty shillings, prided that if there be a plantation in the meane tyme settled by the Court att Natascett, then this present graunt to be voyde.” SOF ¶ 41; Ex. 1.<sup>9</sup>
39. In 1641, the Massachusetts Bay Colony Court ordered that a plantation for the furthering of fishing be set up in Nantascot and that “the Iland called Pedocks Iland, & the other ilands there not otherwise disposed of, shall belong to Nantaskot, to bee to the use of the inhabitants & fisherman, so soone as they shall come to inhabite there.” (the “1641 Grant”). SOF ¶ 41; Ex. 2. Notably, Peddocks Island is immediately adjacent and to the west of Nantascot (known as Hull today).
40. In 1642, Massachusetts Bay Colony Court ordered the laying out of the plantation at Nantascot and further ordered the “beaches and places on Nantaskott or any of the islands that may bee fitt for setting up of stages for fishing to be left free for such purpose for these or any other persons that shall set on such a work, and the planation to be possessed &

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<sup>9</sup> Here and elsewhere, the court quotes from historic documents and uses the spellings and phraseology of those documents.

enjoyed by the persons aforesaid according to the order of Court above specified.” SOF ¶ 43; Ex. 3.

41. In 1643, the Massachusetts Bay Colony Court “again voted and confirmed,”<sup>10</sup> the former grant to Nantascot, and in 1644, it was ordered that Nantascot shall thereafter be called Hull. By 1647, the newly named Hull was declared a town, no longer a plantation, and fishing was encouraged. SOF ¶¶ 2, 44, Exs. 4 -6, 14.
42. Lovells Island or “Lovills Iland,” which lies to the north of Peddocks Island, was referred to in the 1652 Act of the Massachusetts Bay Colony Court as separate from Hull. Specifically, “[t]he inhabitants of Nantaskett complaying of some injury offred them, by reason of Lovills Iland being detayned from them, the Court orders them to have a hearing in the next General Court....” Ex. 7.
43. In 1652, upon the petition of Captain John Leveret, the Massachusetts Bay Colony Court granted to him “all those small ilands lying within the bay betweene Allerton Poynt & Nahant, not hereto fore graunted.” (the “First 1652 Leveret Grant”). SOF ¶ 45; Ex. 8.
44. Also in 1652, the Massachusetts Bay Colony Court “doth therefore graunt to Capt. Jn Leueret, his sonne all those smale ilands lying within the bay betweene Allirtons Pointe and Nahant not heretofore graunted.” (the “Second 1652 Leveret Grant,” and together with the First 1652 Leveret Grant, the “1652 Leveret Grants”).<sup>11</sup> SOF ¶ 46; Ex. 9.
45. Further, in 1652, in response to a petition from the inhabitants of Hull, the Massachusetts Bay Colony Court granted the Town a hearing regarding “those that detaijne any of those

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<sup>10</sup> Further, “& Hingham men willed to forbear troubeling the Cort any more about Nantaskot.”

<sup>11</sup> As reasons for this second grant, the Court explained: “Whereas the father of Capt Jn Leuret, deceased, as an adventurer with the first into these pts, by advancing monyes to the forwarding of the plantaceon, who neuer had an alloweance of and or otherwise for the same....”

islands legally granted to them . . . whereby their long complaint may have an end put to it.” SOF ¶ 47; Ex. 10.

46. By 1662, the records of Hull reveal that they had concluded that the Brewster Islands properly belonged to Hull, specifically, “in consideration whereof Brewsters Islands were formerly granted to ye said Major John Leueret, but since adjudged by this Court to belong to the town of Hull.” In apparent redress, the Massachusetts Bay Colony Court granted to Major Leueret a sum of money and land, 1662 records referencing now-Major John Leueret’s service to the country and also his father’s contributions. SOF ¶ 48; Ex. 11.

47. Similarly, a 1663 entry in the Records of the Massachusetts Bay Colony Court states:

In answer to the petitions of Major General John Leuerett & the inhabitants of Hull, for & concerning certain islands called Brewsters Islands, and their petitions being read, the Court ordered & appointed a hearing of the case in defence between them. The whole Court met together at the time appointed, i.e. 11 June, 63, having heard the case & considered the evidences produced on both sides, did judge that the islands now in question, called & known by the name Brewsters Islands, do of right belong unto the inhabitants of Hull.” (the “1663 Decision”).

SOF ¶ 49; Ex. 12.

48. The Records of the Massachusetts Bay Colony Court include a further entry on the result of the trial between Major General Leueret and the Town:

Whereas, on a trial had in this Court between Major General John Leueret & the Town of Hull, concerning their respective titles in & to claims made to Brewster Island & other islands adjacent the determination is passed for the town of Hull, this Court do, in law thereof, grant unto Major General Leueret five hundred acres of land, to be laid out in a free place not prejudicing former grants.

SOF ¶ 50; Ex. 13.

49. A hand drawn map of Boston Harbor dated 1681 (the “1681 Map”) labels Graves Ledge as “Graves Rocks,” and depicts it with a series of x’s, whereas other formations, such as the



“Bruisters,” Lovells Island, and Long Island are labeled as islands and depicted with enclosed oval or circular shapes. Ex. 60; Tr. Vol. II, 322:9-20.

50. Likewise, both a 1689 Map of Boston Harbor (the “1689 Map”) and a 1694 Draught (map) of Boston Harbor (the “1694 Map”) label Graves Ledge as “Graves” and depict it with a series of x’s, whereas other formations, such as the “Brusters” are labeled as “Iles” or “I” and are depicted as solid shapes enclosed by a dark outline. Exs. 61, 94; Tr. Vol II 324:17-325:5.

*Town’s Records From Colonial Times*

51. The Town records also provide a source of historical information about Graves Ledge and the islands of the outer harbor. Entry number 7 in the Town records for 1657 to 1841 describes the land and tenements owned by a Thomas Jones, including “one small piece of meadow given him by the towne lying on the northernmost Island of those Islands that are called by the name of Brewsters Island. Bound on the east and west with the sea and on the north and south with the upland part of the Island.”
52. The Town records for 1657 to 1841 contain an entry numbered 94 and dated the 27th of February 1700/1699, which states: “the proprietors of bruisters Islands met to draw lots for thayr land at the sayd Islands and then thay did agree that it should be in too divishans that is to say the grat Island in won divishan and the other three Islands in a second divishan.” Ex. 52.
53. Entry 99 in that same book of records states in part “the proprietors did agree that it should be laid in a general way and the lots began at the northeast end of the outer Island.” Ex. 2. Entry 100 then states, in part: “The 13 lot of the second divishan begins at the est end of the

midell Island,” and “the twentieth lot of the second divishon begin at the southeast end of the callf Island.” Ex. 52

The 1800’s:

The Harbor and Lands Commission & Russ v. Boston

54. In or around 1803, the Town was annexed to the County of Plymouth, though originally located within the County of Suffolk. SOF ¶ 2; Ex. 14.
55. By the 1879 Mass. Acts 591, c. 263, §§ 1-2, the Legislature created the Board of Harbor and Lands Commissioners (the “HLC”). Attachment B1 to the LLC’s History of Board of Harbor and Land Commissioners and MASSDOT (“HLC History”), filed with the Post-Trial Brief of Plaintiff Graves Light and Fog Station, LLC.
56. In 1881, the Legislature enacted a statute entitled, “An Act in Relation to the Boundaries of Cities and Towns Bordering the Sea,” by the 1881 Mass. Acts 518, c. 196 (the “1881 Act”), codified and amended as G. L. c. 42, § 1 et seq. Section 1 of Chapter 42, as amended as in 1933, established that the seaward boundary of municipalities bordering the sea extends to the marine boundary of the Commonwealth. HLC History, Att. B2.
57. Section 2 of the 1881 Act empowered the HLC to establish the boundaries between municipalities in the open water, as follows:

The [HLC] shall locate and define the courses of the boundary lines between the adjacent cities and towns bordering upon the sea and upon the arms of the sea from high water mark outward to the line of the Commonwealth. . . so that the same shall conform as nearly as may be to the course of the boundary lines between said adjacent cities and towns on the land; and they shall file a report of their doings with suitable plans and exhibits, showing the boundary lines of any town by them located and defined....in the office of the secretary of the Commonwealth.

Ex. 84.

58. The HLC issued a report in 1882 (the “1882 HLC Report”), describing its methodology and including the following pertinent excerpt regarding its charge:

[The Harbor and Lands Commission] is charged with the duty of an equitable division of the tide-water areas of the Commonwealth between the several cities and towns for purposes of municipal jurisdiction, and for the enjoyment of the rights and privileges which result therefrom. The board has no power to change the limits of their land jurisdiction. It leaves these as it finds them. But there is no apparent reason why one town may not have jurisdiction over an island surrounded wholly or in part by waters which are within the jurisdiction of another town. To hold that the land area of a town extends, for the purposes of water division, to the furthest point of its remotest island, would require, in some cases, the apportionment to such town, at the expense of another town, of hundreds or thousands of acres of water for each acre of island. The only equitable or practicable rule in such cases, is to draw the line of water division where it fairly belongs, taking all the other elements into account, and leave the islands to drop where they may.

SOF ¶ 51; Ex. 46.

59. The HLC issued Plan No. 7 in 1884, pertinent to the current dispute. Plan No. 7 is on file with the Secretary of the Commonwealth and entitled “Boundary Lines in Tide Water of Portions of the Counties of Plymouth and Norfolk and Towns Therein Bordering on the Sea, as located and defined by the Board of Harbor and Land Commissioners Pursuant to Chapter 196 of the Acts of 1881 and as Described in the Report of said Board of Even Date Filed herewith November 1, 1884” (the “1884 HLC Plan”). The 1884 HLC Plan depicts the tide water boundaries of the municipalities north and south of Boston extending generally eastward from those municipalities using straight blue lines. Those lines appear in radial fashion with Boston as the center point (or furthest westward point).
60. On the 1884 HLC Plan, Graves Ledge is depicted north of the blue line separating Boston and Hull and therefore outside of Hull’s boundaries and within Boston’s waters (for ease of reference, Graves Ledge is located directly above the letter “T” where the label “Boston” appears on the 1884 HLC Plan). The Brewster Islands are also depicted outside and north

of the Town's boundaries on the 1884 HLC Plan (appearing just below where the word "Boston" is printed). Ex. 87; Tr. Vol. I 263:6-265:15.

61. In 1892, the Supreme Judicial Court had an opportunity to consider whether Middle Brewster Island was located within the jurisdiction of the Town, in another tax collection case. In *Russ v. Boston*, 157 Mass. 60 (1892), discussed below, the Supreme Judicial Court concluded that Middle Brewster Island is "part of the town of Hull and of the county of Plymouth," even though northward of the HLC boundary line between Boston and Hull. In so concluding, the Supreme Judicial Court referenced and relied upon the Colonial Grants, recounting the history of the dispute between John Leveret and the Town regarding the Brewster Islands and the General Court's adjudication "that the islands now in question, belong unto the inhabitants of Hull." As such, Middle Brewster Island remained part of Hull, and was not relocated by virtue of the HLC's work. Ex. 34.
62. In 1901, the Legislature expanded the HLC's authority beyond apportioning tide waters, by enacting the 1901 Mass. Acts 401, c. 469, §§ 1-2. That 1901 Act granted the HLC the powers and duties that had previously been held by a separate commission on the topographical survey and map of Massachusetts, and abolished that commission. See 1884 Mass. Acts 390-91, c. 72 (forming the Topographical Commission and charging it with reviewing the U.S. Geological Survey's maps, adopting or rejecting them, and using them to help determine town boundaries); 1885 Mass. Acts 906, c. 29; 1886 Mass. Acts 26, c. 19, § 1; 1887 Mass Acts 47-48, c. 69, § 1 (allocating funds to the Topographical Commission for the determination of boundary lines of cities and towns and for selling and distributing maps). HLC History, Att. B8.

63. In 1901, the HLC produced an Atlas of the Boundary Lines of the Towns of Cohasset-Hingham, Hull-Weymouth (the “1901 HLC Atlas”). Ex. 45; Tr. Vol II, 257:7-17. The Preface to the 1901 HLC Atlas includes a heading entitled “Hull.” The 1901 HLC Atlas references the *Russ* decision:

Nantascot was set up as plantation June 2, 1641, and described as consisting of all the neck of land north of Hingham, which was cut off at each flow tide, making the dividing line follow Weir River and Straits pond. *This order also included Peddocks island and other islands not otherwise disposed of at that time. This latter phrase has since been construed by the Supreme Court to include the Brewster islands, although they lie within the tide-water limits of the city of Boston, as defined by the Harbor and Land Commissioners in 1884.* The plantation became a town on May 26, 1647, the name having been previously changed to Hull in 1644. The tide-water boundaries follow the lines defined by the Harbor and Land Commissioners in 1884, under authority of chapter 196 of the Acts of 1881. (emphasis supplied)

Ex. 45, Sheet A; Tr. Vol. I 260:17-261:2.

64. After first considering the land boundaries, the 1901 HLC Atlas then turned to the tide-water boundary lines, with both a narrative description and a map. Included at Sheet 1 is a map depicting the northerly tidal boundary of Hull.<sup>12</sup> That map shows the boundary of Hull’s tide waters as a line connecting triangulation points, which are labelled as numbers 34 through 41, inclusive. That line is southerly of the Brewster Islands (closer to the shoreline than the Brewster Islands), which appear as a cluster of five small islands beyond Hull’s jurisdictional waters. Ex. 45; Tr. Vol. I 258:10-20, 259:10-19.

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<sup>12</sup> In describing the line between the City of Quincy and Hull, the 1901 HLC Atlas includes a Note stating: “The original plans of the tide water boundaries may be found on file with the Secretary of the Commonwealth, also in the several registries of deeds.” Further, the numerical figures included in the boundary description refer to the index numbers of the points as shown on the triangulation plan, – Sheet 1.” Ex. 45, Sheet F; Tr. Vol. I 261:3-262:16.

*The Brewster Islands According to the Parties*

65. The parties agree that the following islands are located within the corporate boundaries of the Town of Hull:

- a. Great Brewster Island;
- b. Middle Brewster Island;
- c. Outer Brewster Island;
- d. Little Brewster Island;
- e. Calf Island;
- f. Little Calf Island;
- g. Green Island;
- h. Peddock's Island; and
- i. Bumpkin Island.

SOF ¶ 40; Ex. 51.<sup>13</sup>

*Hull's Boundaries According to Today's Highway Department & the Commonwealth*

66. Section 7 of G.L. c. 42 governs changes in boundaries of adjoining towns. It provides:

Proposed changes in the boundary lines between adjoining towns shall be submitted to each of the towns affected by the change for their concurrence at town meetings. If approved, they shall be submitted to the department of highways of the commonwealth for review as to clarity and engineering accuracy. Said department may recommend wording to accurately describe the proposed change, but may not alter the intent. The description as approved by said department, shall then be submitted to the next regular session of the general court. If ratified and accepted by the general court, the person, corporation, town, county, or state department initiating the change, shall, at his or its own expense, engage the services of a registered land surveyor to locate and define such change and determine the position of each angle and corner in such new boundary line. A

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<sup>13</sup> In 1973, the Commonwealth's Commissioner of Natural Resources took by eminent domain several islands located in Hull for recreation and conservation purposes, including Calf Island, Little Calf Island, Middle Brewster Island, Green Island, Outer Brewster Island, and Greater Brewster Island.

plan of the change and any computations pertaining to it shall be submitted to said department of highways for approval as to accuracy.

67. A Road Map of Massachusetts, Department of Public Works, Division of Highways, dated 1922, placed Graves Ledge north of the tidal boundary between Plymouth and Suffolk County. Exs. 89, 89A; Tr. Vol. IV 59:12-24.
68. The MassDOT website now includes an interactive map of the Commonwealth. Arsenault testified that when he clicked on the Hull mainland on this interactive map, the entire outline of Hull was outlined in the color cyan, but that neither Graves Ledge nor the Brewsters appeared in cyan. Ex. 138; Tr. Vol. I 270:12-271:13.
69. Arsenault further testified that he downloaded a file entitled “MASSGIS DATA LAYER TOWNSSURVEY\_SHP” from the MassGIS website (a geographic information system which ties a database to a map). According to Arsenault, Hull appears outlined in red, including the Brewster Islands, while Graves Ledge, shown as a dot above the Brewster Islands, remained in black. Ex. 139; Tr. Vol. I 269, 272:12-273:7.

*Additional Documents and Maps Depicting Graves Ledge*

A great number of other maps and documents were admitted into evidence as potentially bearing on the issue before the court, most at the request of the Town. These maps and documents include the following, in chronological order.

70. An 1819 Map of Boston and its Vicinity, by John G. Hales, appears to depict Graves Ledge in Plymouth County. The map shows the Brewster Islands and “Graves” in water shaded a darker grey, with “County of Plymouth” printed across the darker shading. Exs. 67, 67A.
71. A plan of Hull by John G. Hales, dated 1831, does not depict Graves Ledge. Ex. 68; Tr. Vol. IV 129:14-17.

72. An 1861 Topographical Map of the State of Massachusetts, prepared by Walling and Borden, includes Graves Ledge within Plymouth County. Exs. 70, 70A.
73. An Atlas of Plymouth County Massachusetts, published by Geo. H. Walker & Co., 1879, and “compiled from recent and actual surveys and records under the direction of the publishers” appears to depict Graves Ledge, Slate Island, and Sheep Island as within the boundaries of Hull. Ex. 71.
74. A Map of Boston and Vicinity including the Metropolitan Park System, published in 1895 by W.B. Clarke and copyrighted in 1894 by George Walker and Company appears to depict Graves Ledge as within Boston. Exs. 72, 72A; Tr. Vol. II 314:10-317:8.
75. A Boston Globe Article from September 9, 1900, entitled “Boston Harbor’s Outer Isles” describes the Brewster Islands as a “cluster of seven islands” belonging to Hull. Exs. 44, 44A.
76. An “Annual Report of Real Property Owned by the United States,” dated 1903 and prepared by the GSA, listed the Graves Light Station as within Hull, Plymouth County. SOF ¶ 55.
77. A U.S. Geological Survey Map for Massachusetts Boston Bay Quadrangle, dated August 15, 1903, depicts the Brewster Islands and Graves Ledge as outside the tidal boundaries of Hull. Ex. 93.
78. The Atlas of Surveys, Plymouth County, Town of Cohasset, Norfolk County, Mass., prepared by the L.J. Richards Co., 1903, Plates 19 and 21, states that it is “based upon, and carefully compiled from, the latest national, state and local engineering sources obtainable, and the personal investigations and surveys of the publishers’ Special Corps of Engineers.” That atlas depicts a dashed line labelled “Town Line Hull.” The line shows Slate Island and



Sheep Island as within the limits of Hull, however, the line stops next to where Middle Brewster is depicted and south of Graves Ledge. Exs. 105, 105A.

79. Documentation for the United States Census Enumeration District for 1920 and 1940 each listed Graves Ledge as being in Hull, Plymouth County. SOF ¶¶ 52-53; Ex. 23.
80. A map entitled “Massachusetts showing Locations of Wards and Boundaries in Tidewater” drawn and compiled by I.A. Chisholm in 1947 depicts the Plymouth county boundary line as shown in the 1884 HLC Plan, with both the Brewster Islands and Graves Ledge north of that line. Ex. 92.
81. A document entitled Historical Data Relating to Counties, Cities and Towns in Massachusetts, prepared by then Secretary of the Commonwealth John F.X. Davoren, 1966, and published by the Commonwealth, lists the “Breusters Islands” and “Bruisters Islands” as belonging to the Town. SOF ¶ 59; Ex. 20.
82. A portion of a Federal Register publication of May 11, 1982, vol. 47 No. 91, page 117, lists “Hull, Graves Light Station” under the heading “Plymouth County,” though the rest of the document was not available to the court. SOF ¶ 61; Ex. 29.
83. A document entitled “Historical Data Relating to Counties, Cities and Towns in Massachusetts”, prepared by Secretary of the Commonwealth William Francis Galvin in 1997, lists “The Graves” under the Town of Hull. SOF ¶ 60; Ex. 21.
84. The United States Coast Guard, in a Shore Facility Inventory Report dated November 4, 1997, lists the address of “Graves Rocks” as “Hull, MA.” SOF ¶ 58.
85. A variety of documents related to the National Register of Historic Places list the Graves Ledge as located in Hull, Plymouth, including the website for the National Register of Historic Places. See Exs. 22, 30, 31. However, there is also reference to Boston and Suffolk

County in forms relating to Graves Ledge that were filed with the U.S. Department of the Interior. Exs. 31, 40.

86. A number of documents prepared by the National Park Service place the Graves Ledge in Hull, and as part of the Brewsters. For example, a document titled “Boston Harbor Islands, A National Park Area, General Management Plan, Boston, Massachusetts, 2002,” prepared by the Boston Support Office of the Northeast Region, National Park Service, last accessed by the Defendant on November 3, 2021, stated that “The islands with management emphasis on natural features are all the Brewsters except Little Brewster, Great Brewster and The Graves.” A Boston Harbor Islands Comprehensive Plan, dated October 1972, prepared for the Massachusetts Department of Natural Resources by the Metropolitan Area Planning Council, similarly stated: “The outermost Islands of Boston Harbor are known collectively as the Brewsters. They include Great Brewster, Middle Brewster, Little Brewster, Calf, Little Calf, and Green Islands, Shag Rocks, and The Graves,” and that the Brewster Islands were “granted to the Town of Hull in 1641.” SOF ¶¶ 56, 62; Exs. 24, 26-28.
87. The Summary of the 2009 Census of American Oystercatchers in Massachusetts, compiled by Scott M. Melvin, Natural Heritage and Endangered Species Program, Massachusetts Division of Fisheries and Wildlife, July 30, 2010, lists “The Graves, Hull” as a location. Ex. 49.
88. Records of the United States Coast Guard, produced to Attorney Lampke upon his request, place the Graves Ledge in Hull, Plymouth County, but list “CG ANT Boston” as the responsible unit. Ex. 25.

89. A USGS US Topo 7.5-minute map for Hull, MA, dated July 19, 2018, depicts Graves Ledge as within Plymouth County, just below (or south of) the boundary line between Plymouth County and Suffolk County. Ex. 76.
90. In an email exchange between the Town Assessor's Office and the GSA on March 25, 2019, at the Town's request, the GSA sent a list of previously sold lighthouses along with the city/town and state of each, with "Hull" written next to "Graves Light." SOF ¶ 35; Ex. 39.
91. The Graves Light webpage lists Graves Ledge as part of the Brewster Islands, but states that Graves Ledge is in an unincorporated area of Suffolk County. I credit the testimony of Waller that the webpage is managed by his brother and that LLC does not approve its content prior to posting. Exs. 41, 136; Tr. Vol. I 121:23-126:23.

## **DISCUSSION**

### *Burden of Proof*

I begin by addressing which party has the burden of proof in this case. The LLC contends that the Town bears the burden of proof because the Town seeks to change its boundaries from those established by the HLC. The Town, on the other hand, contends that the LLC bears the burden of proof because it has filed suit seeking a declaration as to Graves Ledge's title. I concur with the Town because both parties seek a declaration as to where Graves Ledge lies in relation to the Town's boundary line. In other words, the parties ask the court to define the Town's boundary line relative to the location of Graves Ledge. Neither party has requested that the court move or modify any such boundary line. Nor would this court have authority to modify a boundary line. See Section 7 of G.L. c. 42 (changes in boundaries of adjoining towns must be

approved by the Legislature).<sup>14</sup> See also *Orleans v. Eastham*, 24 LCR 686, 688 (2016) (Misc. Case No. 15 MISC 000275) (Scheier, J.) (dismissing a lawsuit brought by Orleans against Eastham seeking to shift the municipal boundary line, because “[t]his court has the ability to define boundaries, but does not have the authority to change them in the manner Orleans urges. A change in boundaries under this section may only be achieved through legislative process.”).

A party who seeks a declaratory judgment as to title bears the burden of proving entitlement to the requested declaration. See *Stop & Shop, Inc. v. Ganem*, 347 Mass. 697 (1964) (substantive law of the case determines which party bears the burden in a declaratory judgment action). While I acknowledge that this case is unique and that the parties’ claims may not fit neatly into the typical category of title claims, nonetheless I conclude the parties’ claims are properly considered as such. Title includes all elements constituting the legal right to control and dispose of property. See Black’s Law Dictionary (11<sup>th</sup> ed. 2019). Such rights logically include the authority to assess taxes (or the obligation to pay taxes) and to require permits for use of the land (or the obligation to secure permits), which authority would depend on which municipality’s jurisdiction encompasses the land.

In actions to quiet title, “the plaintiff has the burden of establishing its title and not simply by demonstrating the weakness or nonexistence of the defendant’s title.” *Sheriff’s Meadow Found., Inc. v. Bay-Court Edgartown, Inc.*, 401 Mass 267, 269 (1987). Here, because the parties seek directly opposing declarations as to title, the parties have equal burdens. See

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<sup>14</sup> Section 7 provides: “Proposed changes in the boundary lines between adjoining towns shall be submitted to each of the towns affected by the change for their concurrence at town meetings. If approved, they shall be submitted to the department of highways of the commonwealth for review as to clarity and engineering accuracy. Said department may recommend wording to accurately describe the proposed change, but may not alter the intent. The description as approved by said department, shall then be submitted to the next regular session of the general court. If ratified and accepted by the general court, the person, corporation, town, county, or state department initiating the change, shall, at his or its own expense, engage the services of a registered land surveyor to locate and define such change and determine the position of each angle and corner in such new boundary line. A plan of the change and any computations pertaining to it shall be submitted to said department of highways for approval as to accuracy.”

*Burchell v. Marine Lumber Co.*, 12 LCR 314 (2004) (Reg. Case No. 39595, Misc. Case Nos. 276137, 286397) (Sands, J.) (where parties brought competing quiet title actions to the same lot, they had an equal burden of proof). See also *Rothschild v. Wolf*, 30 LCR 673, 675 (2020) (Misc. Case No. 20 MISC 000519) (Vhay, J.).<sup>15</sup>

*Chapter 42 of the General Laws & the HLC's Initial Work*

This case is properly before the land court for determination of a disputed municipal boundary pursuant to Section 12 of G.L. c. 42. Section 12 states:

If the true boundary between two or more adjacent counties, cities, towns or districts is doubtful or in dispute, the land court may determine the location thereof upon the petition of one or more of such counties, cities, towns and districts and after such notice to all other counties, cities, towns and districts interested as the court shall order...<sup>16</sup>

Chapter 42 was initially enacted as the 1881 Act and entitled, “An Act in Relation to the Boundaries of Cities and Towns Bordering the Sea.” 1881 Mass. Acts 518, c. 196. Section 1 of the 1881 Act (as amended as in 1933, without change material to the issues now before the court), established that the seaward boundary of municipalities bordering the sea extends to the marine boundary of the Commonwealth. Section 2 of the 1881 Act empowered the Harbor and Land Commissioners or HLC to establish the boundaries between municipalities in the open water, as follows:

The [HLC] shall locate and define the courses of the boundary lines between adjacent cities and towns bordering upon the sea and upon arms of the sea from high water mark outward to the line of the Commonwealth . . . so that the same shall conform as nearly as may be to the course of the boundary lines between said adjacent cities and towns on the land; and they shall file a report of their doings with suitable plans and

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<sup>15</sup> An argument could be made that the LLC bears the burden of proof, as the party seeking to show exemption from property taxes. See *Charlemont v. Shea*, 25 LCR 623 (2017) (Tax Lien Case No. 12 TL 144303) (Speicher, J.). Although not plead as a tax claim, this controversy arose when Hull began assessing taxes on Graves Ledge, and because the LLC now asserts that Graves Ledge is not within the municipal boundaries, it would not be subject to those taxes. Regardless, as discussed below, the LLC has met its burden.

<sup>16</sup> Although the complaint in this case was not brought upon the petition of “one or more of such counties, cities, towns and districts,” but rather by the LLC, the Town’s counterclaim falls squarely within Section 12 of G.L. c. 42.

exhibits, showing the boundary lines of any town by them located and defined ... in the office of the secretary of the Commonwealth.

In 1882, the HLC issued its Report of The Harbor and Lands Commissioners (the “1882 HLC Report”). Therein, the HLC described its charge as follows:

[The HLC] is charged with the duty of an equitable division of the tide-water areas of the Commonwealth between the several cities and towns for purposes of municipal jurisdiction, and for the enjoyment of the rights and privileges which result therefrom. The board has no power to change the limits of their land jurisdiction. It leaves these as it finds them. But there is no apparent reason why one town may not have jurisdiction over an island surrounded wholly or in part by waters which are within the jurisdiction of another town.

*Amendment of Chapter 42 & the HLC Atlas*

In 1901, after the HLC had issued the 1882 HLC Report establishing tide water boundaries, the Legislature enacted 1901 Mass. Acts 401, c. 469, §§ 1-2, expanding the HLC’s authority beyond apportioning tide waters. That 1901 Act granted the HLC the powers and duties that had previously been held by a separate legislatively created Topographical Commission to review the U.S. Geological Survey’s maps and use them to help determine landlocked town boundaries. 1884 Mass. Acts 390-91, c. 72. See also 1885 Mass. Acts 906, c. 29; 1886 Mass. Acts 26, c. 19, § 1; 1887 Mass. Acts 47-48, c. 69, § 1. In 1901, the Legislature abolished the Topographical Commission. See 1901 Mass. Acts 401, c. 469, §§ 1-2.

Also in 1901, the HLC produced the 1901 HLC Atlas. The 1901 HLC Atlas located both tide water boundary line and land boundary lines, reflecting the HLC’s expanded authority. With respect to the tide water boundary lines, the Atlas located Hull’s boundary line much like that in the 1884 HLC Report. Sheet 1 of the 1901 HLC Atlas shows the boundary of Hull’s tide waters as a line connecting triangulation points, which are labelled as numbers 34 through 41, inclusive. That boundary line is located below or south of the Brewster Islands, which appear as a cluster of

five islands. Graves Ledge appears to the north of the Brewster Islands, and so far north of the Town's boundary line that it is not shown on Sheet 1. As such, according to the pictorial portion of the 1901 HLC Atlas, the Brewster Islands and Graves Ledge lie north of Hull's tide water boundary line.

However, when the 1901 HLC Atlas turned to consideration of Hull's land boundaries in a narrative section, the Brewster Islands received special treatment. That special treatment was necessitated by decision of the Supreme Judicial Court in *Russ v. Boston*, 157 Mass. 60 (1892), discussed below. Specifically, the Preface to the 1901 HLC Atlas included a heading entitled "Hull," as follows:

Nantascot was set up as plantation June 2, 1641, and described as consisting of all the neck of land north of Hingham, which was cut off at each flow tide, making the dividing line follow Weir River and Straits pond. *This order also included Peddocks island and other islands not otherwise disposed of at that time. This latter phrase has since been construed by the Supreme Court to include the Brewster islands, although they lie within the tide-water limits of the city of Boston, as defined by the Harbor and Land Commissioners in 1884.* The plantation became a town on May 26, 1647, the name having been previously changed to Hull in 1644. The tide-water boundaries follow the lines defined by the Harbor and land Commissioners in 1884, under authority of chapter 196 of the Acts of 1881.

Before turning to the *Russ* decision, I note that when the Legislature amended Section 1 of Chapter 42 in 1933, it not only confirmed the boundaries set by the HLC. In addition, Section 1, as amended, also recognized that Legislative grants had varied those boundaries. Section 1, as amended, now provides in pertinent part:

The boundary lines in tide water between adjacent coastal municipalities, as located by the [HLC], except in so far as the boundary line so located and defined purported to vary boundary lines in tide water between municipalities theretofore established by the general court, together with such boundary lines theretofore so established, as such boundary lines have been subsequently changed by the general court or defined by decrees of the land court ... are hereby confirmed and established as the legal boundary lines in tide water between said adjacent municipalities ...

Accordingly, the statutory language of Section 1 directs this court’s inquiry into the location of Graves Ledge. That inquiry begins with the HLC’s work and then considers whether the Legislature varied the location of Graves Ledge to place it within the jurisdiction of Hull, as it did for Middle Brewster Island as determined by the Supreme Judicial Court in *Russ v. Boston*.

*Russ v. Boston*

*Russ* was decided in 1892, less than a decade after the issuance of the 1882 HLC Report and 1884 HLC Plan. Ex. 37. In *Russ*, the Supreme Judicial Court considered whether Middle Brewster Island was part of the City of Boston. That case also arose in the context of a tax collection dispute, when the owner of Middle Brewster Island paid taxes to the City of Boston under protest, claiming instead to be subject to the jurisdiction of Hull. The parties to that case agreed “in substance that the island is a part of the town of Hull, unless in 1884 it was made a part of the city of Boston by the report of the Harbor and Land Commissioners acting under the provisions of the St. of 1881, c. 196.” The owner of Middle Brewster Island contended that the Colonial Grants, specifically, the 1641 Grant and 1663 Decision, were determinative rather than the 1884 HLC Plan. More specifically, the owner of Middle Brewster Island relied on the 1663 Decision, wherein “the General Court adjudged ‘that the islands now in question, called & knoune by the name of Brewsters Islands, doe of right belong unto the inhabitants of Hull.’” *Id.* at 61, quoting the 1663 Decision.

*Russ* concluded that Middle Brewster Island was “part of the town of Hull and of the county of Plymouth,” even though northward of the HLC tide water boundary line between Boston and Hull. In so concluding, the Supreme Judicial Court noted that the report filed with the 1884 HLC Plan stated that it intended to “define the boundary line of tide water between Hull and Boston,” but did not intend to “affect in any way the boundaries on the land of the town or



Hull or in the city of Boston.” *Id.* at 61-62. *Russ* construed the 1884 HLC Plan and 1882 HLC Report, which stated that “[t]he board has no power to change the limits of their land jurisdiction. It leaves these as it finds them.”<sup>17</sup> Further quoting the 1882 HLC Report, *Russ* noted the HLC’s presentation of its charge:

[The HLC] is charged with the duty of an equitable division of the tide-water areas of the Commonwealth between the several cities and towns for purposes of municipal jurisdiction, and for the enjoyment of the rights and privileges which result therefrom. The board has no power to change the limits of their land jurisdiction. It leaves these as it finds them. But there is no apparent reason why one town may not have jurisdiction over an island surrounded wholly or in part by waters which are within the jurisdiction of another town.

The Supreme Judicial Court concluded that the 1881 Act did not “authorize the HLC to locate and define the courses of the boundary lines between adjacent cities and towns on land which is never covered by tide water, whether the land be an island or on the mainland.” *Id.* at 62. As such, Middle Brewster Island remained part of Hull, unaffected by the 1882 HLC Report and the 1884 HLC Plan. When the HLC issued the 1901 HLC Atlas, nine years after the *Russ* decision in 1892, that atlas reflected the decision in *Russ*. Specifically, the 1901 HLC Atlas on Sheet A describes Hull to include: “Peddocks island and other islands not otherwise disposed of at that time. This latter phrase, has since been construed by the Supreme Judicial Court to include the Brewster islands, although they lie within the tide-water limits of the city of Boston, as defined by the Harbor and Land Commissioners in 1884.” Ex. 45; Tr. Vol. I 260:17-261:2.

*Whether Graves Ledge is one of the Brewster Islands*

In this context, I agree with the LLC that the 1901 HLC Atlas is a legislatively authorized and confirmed depiction of the municipal boundaries in tidal waters, pursuant to G.L. c. 42, § 1.

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<sup>17</sup> The language cited in *Russ* is derived from the 1882 HLC Report, and the 1884 HLC Report refers to and incorporated the 1884 HLC Plan, which shows the boundary lines in plan form, as filed with the Secretary of State’s Office.

Indeed, Arsenault testified that the HLC's atlases are the "go-to resource for surveyors in the state when it comes to municipal boundaries." Tr. Vol. I 245:23-34, see also Tr. Vol. I 245:13-246:23. Likewise, Cameron concurred that the HLC had the legal authority to set the municipal boundary line between Boston and Hull. Tr. Vol. IV 57:2-6. In addition, although the Brewster Islands are depicted outside of the Town's tide water boundary line on the 1884 HLC Plan, both parties nevertheless agree that they fall within Hull's jurisdiction.

I turn to the Town's contention that even if Graves Ledge does not lie within the Town's tide waters, it is nevertheless within the Town's jurisdiction because it is part of the group of islands known as the Brewster Islands. According to the Town, the Brewster Islands consist of: Graves Ledge, Little Brewster Island, Outer Brewster Island, Middle Brewster Island, Great Brewster Island, Green Island, Calf Island, Little Calf Island, Shag Rocks, and Roaring Bulls. The LLC disagrees with this expanded definition of the Brewster Islands. The LLC, on the other hand, contends that Graves Ledge was not included in the colonial grants to the Town.

#### *The Colonial Grants*

Whether Graves Ledge was included in the colonial grants is a question of statutory interpretation. Basic rules of statutory interpretation require the court to start with the plain language of the bylaw or statute, giving words their ordinary meaning. See *Bynes v. School Comm. of Boston*, 411 Mass. 264, 268 (1991); see *Bronstein v. Prudential Ins. Co. of Am.*, 390 Mass. 701, 704 (1984) (where the statutory language is clear, it must be given its plain meaning, because "the statutory language is the principal source of insight into legislative purpose"). Courts may also consider legislative history to discern legislative intent. *Kobrin v. Gastfriend*, 443 Mass. 327, 335 (2005), quoting *Quincy City Hosp. v. Rate Setting Comm'n*, 406 Mass. 431, 443 (1990) ("Statutes are to be interpreted not based solely on simple, strict meaning of words,

but in connection with their development and history, and with the history of the times . . . .”). Given the age of these grants, I look to the understanding of the legislature at that particular time. *Commonwealth v. Zone Book, Inc.*, 372 Mass. 366, 369 (1977) (“We derive the words’ usual and accepted meanings from sources presumably known to the statute’s enactors, such as their use in other legal contexts and dictionary definitions.”); *Commonwealth v. Welosky*, 276 Mass. 398, 401 (1931) (statutes are to be interpreted according to “the history of the times” and “contemporary customs and conditions,” among other things).

For the following reasons, I find and conclude that the Graves Ledge was not conveyed to Hull in the colonial grants.

*Graves Ledge was not considered part of the Brewster Islands in Colonial Times.*

Although some relatively recent documents describe Graves Ledge as one of the Brewster Islands, the maps contemporaneous with the 17<sup>th</sup> century grants do not. Looking to contemporaneous maps, Graves Ledge is labeled separately from the Brewster Islands on both the 1681 Map and the 1689 Map. It is also labeled separately on maps dating from 1694, 1776, 1801, 1819, 1843, 1903, and 1932, a fact which Cameron did not dispute. See Exs. 61, 64, 93, 94, 97, 98, 99, 102, 128; Tr. Vol. IV 99:20-100:8. I credit the testimony of Arsenault that this contemporaneous, distinct, and consistent labeling is a strong indication that Graves Ledge was not considered to be part of the Brewster Islands at the time of the colonial grants. Tr. Vol. II 323:7-14, 325:1-5.

In addition, Arsenault testified that “nowhere in any of the documentation I have seen is the Graves included in the Brewsters except for some current day books or in a couple of government forms.” Tr. Vol. IV 79:8-13, 106:7-22. On cross-examination, Cameron conceded that he was unable to identify any documents or maps from the 17<sup>th</sup> century which labeled

Graves Ledge as part of the Brewster Islands. See. Tr. Vol. III 157-158; Tr. Vol. IV 97:20-24, 98:9-21, 100:9-101:18, 108:21-109:4. See also Ex. 24, 26-28; Tr. Vol. III 42:4-7. My review of the extensive historic documentary record before the court confirms it is devoid of any document from the Massachusetts Bay Colonies referencing Graves Ledge by name (except the old maps, with a series of x's denoting rocks).

The Town's own records from colonial times are also instructive. The Town's records from 1657 to 1841 state that the proprietors of the Brewster Islands met to draw lots, which would be in two divisions, with the Great Island in one division and the other three islands in the second division. That record then identifies the other three islands: Outer Island, Middle Island, and Calf Island. As such, the Town's own understanding in the 17<sup>th</sup> century was that only four islands were included within the Brewster Islands. I thus concur with Arsenault's conclusion that these Town records establish that Hull did not consider Graves Ledge to be a part of the Brewster Islands in the 17<sup>th</sup> century. Tr. Vol. II 340:3-341:4; Tr. Vol. IV 137:11-16, 137:24-138:3.<sup>18</sup>

Arsenault also directed the court's attention to entry number seven from that same Town record book. That entry includes a description of land owned by a Thomas Jones, that land described as: "one small piece of meadow given him by the towne lying[] on the northernmost Island of those Islands that are called by the name of Brewsters Island." I am persuaded by Arsenault's testimony that this description of Thomas Jones land on northernmost of the Brewster Islands could not be referring to Graves Ledge, because Graves Ledges does not have any meadowlands. As observed during the view and confirmed by the testimony at trial, Graves

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<sup>18</sup> According to Cameron, Graves Ledge was likely not referenced in these historic Town records because the entries were subdividing land to create areas to be inhabited, while Graves Ledge was not capable of being inhabited. This bolsters my conclusion that Graves Ledge was not one of the habitable islands granted to Hull. See. Tr. Vol. IV 31:2-32:1.

Ledge is rocky with perhaps some aquatic vegetation, but without trees or meadows. Tr. Vol. I 140:17-141:5; Tr. Vol. III 148:23-149:3; Vol. IV 140:17-23. Because Graves Ledge lies to the north of the northern most of the Brewster Islands, as understood by Town officials during the 17<sup>th</sup> century, it could not have been considered a Brewster Island at that time.

For these reasons, I find and conclude Graves Ledge was not considered part of the Brewster Islands in colonial times.

*Graves Ledge was not considered an Island in Colonial Times.* Each of the Colonial Grants (namely, the 1641 Grant, the First and Second 1652 Leveret Grants, and 1663 Decision) uses the term “islands” (“the other islands,” “those small islands,” for instance), whereas there is no indication that Graves Ledge was then considered to be an island. Nor did any documents from colonial times refer to Graves Ledge as an island. Tr. Vol. IV 81:14-21, 83:10-15. Indeed, Cameron, the Town’s expert, admitted that he has not seen any colonial map or document referring to Graves Ledge as an island, which is striking in light of his considerable experience and focus on this assignment. See Tr. Vol. IV 81:14-21, 83:10-15.

In addition, Graves Ledge and the Brewster Islands receive very different pictorial treatment in contemporaneous maps. Careful inspection of contemporaneous maps reveals that Graves Ledge was not labeled as an “island,” the 1681, 1689, and 1694 maps being the nearest contemporaneous maps available.<sup>19</sup> Rather, the 1681 Map labeled Graves Ledge as “graves rocks” and used a series of x’s to designate the location. In contrast, that same 1681 Map labeled the “Bruisters Ilands” as solid, ovoid shapes. Similarly, the 1689 and 1694 Maps each labeled Graves Ledge as “Graves” and marked its location with a series of x’s, while in contrast, the “Bruisters Iles” or “Brusters I” were shown as solid or enclosed shapes. Arsenault testified that

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<sup>19</sup> Tr. Vol. II 329:4-7.

this contrasting treatment was significant to him as an experienced surveyor. I concur and find that the use of different nomenclature and symbols indicates that the drafters of the maps in the colonial times considered Graves Ledge to be a collection of rocks, rather than an island. See Tr. Vol. II 322:10-323:4; 324:17-24. Cameron explained that the 1681 Map, for example, may have been used as an aid to navigation, and that the x's were used to show ledge outcroppings. Tr. Vol. III 187:8-14.

Lastly, this differential treatment is consistent with my observations during the view. The appearance of Graves Ledge from the boat deck was of foreboding and craggy rocks, without apparent soil or vegetation, while the Brewster Islands in contrast were much more sizable and included apparent sandy beach areas, as well as soil and vegetation. During the view, I also observed a collection of craggy rocks protruding from the ocean called the Shag Rocks, much like Graves Ledge. Shag Rocks also do not appear on the 1681 Map as islands, but rather as rocks marked with a series of x's. Likewise, the 1694 Map shows a number of rock structures labeled with a series of xxx's like Graves Ledge; for instance, Pigg Rocks near Marblehead and Nahant Rock near Nahant. For these reasons, while I make no finding as to whether the Graves Ledge is an island in the geological or scientific sense of the word, I conclude that the Graves Ledge was not considered an island by the 17<sup>th</sup> century colonial mapmakers or legislature.

*Graves Ledge was not adjacent to the "Brewster Island."* I next consider whether Graves Ledge was included in the phrase "Brewster Island & other islands adjacent," as argued by the Town. That phrase was used in the 1663 Decision and quoted in Russ. The 1663 Decision arose in the context of a dispute and trial between then Major General John Leveret and the Town about which owned the Brewster Islands. According to the Records of the Massachusetts Bay

Colony Court, the decision went for the Town, and Major General Leveret was thereafter granted other land. The entry at issue in those records is as follows:

Whereas, on a trial had in this Court between Major General John Leueret & the Town of Hull, concerning their respective titles in & to claimes made to *Brewster Island & other islands adjacent* the determination is passed for the toune of Hull, this Court doe, in leiw thereof, grant unto Major General Leueret five hundred acres of land, to be layd out in a free place not prejudicing former grants. (emphasis added).

Cameron opined that he interpreted this phrase (“Brewster Island & other islands adjacent”) to refer to the collection of Brewster Islands and the outer harbor islands, including Graves Ledge. Tr. Vol. IV 103:17-20. However, he did not provide any reasoned explanation for this conclusion and I give no weight to this opinion. Nevertheless, looking at the Agreed Facts from *Russ*, the Brewster Islands are listed as Middle Brewster, Great Brewster, Outer Brewster, Calf Island, and Green Island—and not Graves Ledge. Ex. 35. Most reasonably, the singular reference to the “Brewster Island” was meant to be to Middle Brewster Island, since this was at issue in *Russ* and bears a name with the word “Brewster” (the others being, Great Brewster Island, Middle Brewster Island, Outer Brewster Island, or Little Brewster Island). In which case, the “other islands adjacent” would be the other Brewster Islands. It is far less likely that the reference to a singular “Brewster Island” meant the small-sized Green Island or Roaring Bulls, which are the closest of the formations located next to Graves Ledge.

To the extent it is unclear which of the Brewster Islands is referenced in the 1663 Decision, what is apparent from several contemporaneous maps and plans is that Graves Ledge is located to the north of and at some distance from each of the so-named Brewster Islands. The word “adjacent” is defined as “not distant” or “having a common endpoint or border.” Merriam Webster Dictionary (2023). Based on the plain language of the 1663 Decision, together with

consideration of contemporaneous maps and plans, I conclude Graves Ledge is not adjacent to any of the cluster of Brewster Island, but rather is located at a distance and apart in open water.

*Graves Ledge was not inhabitable nor inhabited.* The stated purpose of the colonial grants also provides insight into whether Graves Ledge was then considered to be one of the Brewster Islands. The earliest of the pertinent grants from the Massachusetts Bay Colony Court, in 1641, ordered that a plantation for the furthering of fishing be set up in Nantascot and that “the Iland called Pedocks Iland, & the other ilands there not otherwise disposed of, shall belong to Nantaskot, to bee to the use of the inhabitants & fisherman, so soone as they shall come to inhabite there.”

Although the light house on Graves Ledge is currently habitable, this was not the case in the 17<sup>th</sup> century. Both Arsenault and Cameron testified that there is no basis to believe that Graves Ledge was inhabited during the 17<sup>th</sup>, 18<sup>th</sup>, or 19<sup>th</sup> centuries, or any time before the lighthouse was constructed in 1905. See Tr. Vol I 75:3-9; Tr. Vol. II 334:22-335:1; Tr. Vol. IV 31:9-12, 91:9-20. It thus follows that since Graves Ledge was not habitable nor inhabited in 1641 and since the 1641 Grant contemplated habitation, then Graves Ledge was not one of the islands included within the 1641 Grant.

*Graves Ledge is not “within the bay,” as referred to in the 1652 Leveret Grants.* In 1652, when the Massachusetts Bay Colony Court made a grant to John Leveret, it did so using a geographic reference. Specifically, the First 1652 Leverett Grant included “all those small ilands lying within the bay betweene Allerton Poynt & Nahant, not hereto fore graunted.” The Second 1652 Leveret Grant likewise: “therefore graunt to Capt. Jn Leueret, his sonne all those smale ilands lying within the bay betweene Allirtons Pointe and Nahant not heretofore graunted.”



These descriptions of the geographic location of the islands granted to John Leveret also provide insight into whether the grant included Graves Ledge.

According to Arsenault, the line between Allerton Point and Nahant equates with the concept of the bay of the City of Boston (“the bay” in the 1652 Leverett Grants). Here, again, reference to contemporaneous maps is useful to see whether Graves Ledge fell within a line drawn between Allerton Point and Nahant. Drawing a line between Allerton Point and Nahant on both the 1689 Map and the 1694 Map, which are within fifty years of the 1652 Leveret Grants, creates a bay which includes the Brewster Islands, but excludes the majority of the Graves.<sup>20</sup> See Ex. 94; Tr. Vol. III 65:8-14; 66:17-67:15. Indeed, on cross-examination Cameron conceded that on any geographically accurate map, Graves would not be on the line between the two points referenced in the 1652 Leveret Grants. Tr. Vol. IV 94:24-95:3.<sup>21</sup> Therefore, I conclude Graves Ledge is not “within the bay” as that term was used in the First and Second 1652 Leveret Grants.

*Additional Documents Referencing Graves Ledge*

As is evidenced by record before the court, there has been confusion in recent years about the location of Graves Ledge. Many documents and maps suggest or even state that Graves Ledge lies within the Town’s municipal boundaries. Those documents and maps are at odds with the Legislature’s confirmation and establishment of the HLC’s location of the boundary lines in tide water between adjacent coastal municipalities in Chapter 42. In light of this confusion and

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<sup>20</sup> Depending on how the line is drawn, it might include two of the sixteen “x’s” used to label the Graves Ledge on the 1694 Map.

<sup>21</sup> Arsenault also located the bay by drawing a line between Allerton Point and Nahant, using the U.S. Geological Survey Map for Massachusetts Boston Bay Quadrangle, dated August 15, 1903. That line cuts through the Brewster Islands, but places Roaring Bulls, Shag Rocks, and Graves Ledge to the east of the line and toward the vast expanse of the ocean. Exs. 93, 93B; Tr. Vol. II 327:4-13. I find this more modern map to be less probative as to the intent of the colonial legislature and therefore do not rely on it.

for the sake of completeness, I consider a few of these additional documents, but conclude they are not determinative of Graves Ledge's location.

Both expert surveyors testified they would ordinarily begin an assignment by looking at the deed to a property to determine location. Tr. Vol. I 245:6-12, 251:20-257:1; Tr. Vol. III 138:9-139:2. Here, the deed from the General Services Administration to the LLC was recorded with the Suffolk County Registry of Deeds and describes the property as "on the outermost island of the Boston Harbor Islands National Recreation Area, in Suffolk County, Massachusetts Bay." Arsenault testified that this deed supported his conclusion that Graves Ledge is not in Hull, since it does not mention Hull or Plymouth County, but instead refers to and is recorded in Suffolk County. While Cameron noted that the deed mentioned no city, town, or jurisdiction and that he could not find any prior conveyance, he did concede that there is no deed for Graves Ledge recorded in Plymouth County, only in Suffolk County, and that to date, he has never seen a deed recorded in the incorrect county.

Both expert surveyors agreed that it is also necessary to undertake due diligence regarding historic documents. They differed, however, in deciding which documents were accurate, true, and reliable. Arsenault testified that only Commonwealth documents and maps were authoritative to establish the jurisdiction boundaries of municipalities, such as the HLC Atlas. Tr. Vol. I 246:10-23, 248:2-9. He distinguished these Commonwealth documents and maps from private documents and maps, which might be authoritative to establish the boundary lines of privately owned property. Tr. Vol. I 274:19-275:1. He testified that has had occasion to rely on other HLC atlases in his surveying practice, and considers reliance on the HLC atlases to be common practice, when available and applicable. Tr. Vol. I 246:1-9.

On the other hand, Cameron testified that he considered all available documents and maps in his research, including private maps, and made case-by-case determinations about reliability. Tr. Vol. III 141:17, 152:8-154:8. Nonetheless, Cameron conceded that generally state or federal government commissioned maps are most reliable, followed by municipality commissioned maps, and then private maps, though each document would be independently analyzed for reliability. Tr. Vol. III 152:8-154:8; Vol. IV 50:11-54:8. Because of the plain language of Chapter 42, I agree with Arsenault’s view. I reject Cameron’s opinion and the Town’s position that an array of documents and maps prepared by private entities and the federal government are conclusive in determining the Town’s municipal boundaries. Although these documents and maps may be some evidence of the Town’s municipal boundaries, they cannot supplant the detailed and comprehensive compilation of legislatively directed materials discussed above.<sup>22</sup>

In particular, I reject Cameron’s reliance on several maps by private map makers. For instance, an 1819 map by John G. Hales states that it was “entered according to an Act of Congress” and appears to locate Graves Ledge as within Plymouth County. Ex. 67. Cameron

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<sup>22</sup> For instance, some documents and maps relied upon by the Town lacked not only any connection to Commonwealth authority, but also appeared inaccurate and unreliable. For instance, two maps created by the U.S. Geological Survey, a 1903 map and a 2018 map, differed as to boundary lines (the former located Graves Ledge outside of the Town’s boundaries, while the latter located Graves Ledge within the Town’s boundaries). See Exs. 76, 93; Tr. Vol. I 278:8-279:3. Similarly, a National Register of Historic Places Inventory Nomination Form filed in connection with the U.S. Department of the Interior National Park Service listed Graves Ledge’s location as within Hull and as within Boston—on different pages of the same document—and in the location field, actually stated “multiple locations.” Ex. 31; Tr. Vol. III 123:4-124:10. In other instances, there was simply not sufficient information for the court to determine the reliability of the proffered document. See e.g., Massachusetts Division of Fisheries and Wildlife National Heritage and Endangered Species Program, Summary of 2009 Census of American Oyster Catcher in Massachusetts. Ex. 49; Tr. Vol. I 249:6 - 250:14 (no indication of where the National Park Service got their source for stating Graves Ledge is in Hull); Record for the United States Coast Guard, First Coast Guard District, Shore Facility Inventory Form. Ex. 25; Tr. Vol. III 188:11 -190:13, Tr. Vol. IV 68:22-70:13 (for Coast Guard Records, no indication of qualifications of person who compiled the information or what the source of the information was).

testified that he found this map to be accurate and reliable because the above quoted language (“entered according to an Act of Congress”) indicates that it was filed with the U.S. Government as a map. Tr. Vol. III 168:13-170:9. That 1819 map, however, did not indicate any specific act of Congress authorizing the map or any confirmation of recording with the government. Tr. Vol. IV 129:22-131:4. This map also predates the HLC and the 1901 HLC Atlas. In addition, it is contradicted by an 1831 Plan of Hull by the same John G. Hales.

The Town also advanced an 1861 Topographical Map of the State of Massachusetts, prepared by private map maker Walling and Borden, which locates Graves Ledge within Plymouth County. Cameron testified that this 1861 map was created as a framework for all Massachusetts town maps to be compiled and was the most accurate map of the day. Ex. 70; Tr. Vol. III 174:13-176:20. I am not persuaded by this map because there was no evidence to establish that the Legislature approved the map, which predates the creation of the HLC in 1879 and the publishing of the 1901 HLC Atlas which has the force of legislative authority.

The Town also relied on two atlases from the turn of the 19<sup>th</sup> century: an Atlas of Plymouth County, Massachusetts, dated 1879, published by Geo. H. Walker & Co. (“Walker”), and an Atlas of Surveys of Plymouth County and Town of Cohasset, Norfolk County, Mass, dated 1903, published by L.J. Richards Co. Review of these atlases reveals why the Town might have been confused in 2018 when it began to research its jurisdiction, though these atlases fall short of convincing and reliable evidence. Both atlases, unlike the 1901 HLC Atlas, are privately produced without the authorization or approval of the Legislature. In addition, the 1903 Atlas provides no key or explanation as to how the red “Town Line Hull” was determined or placed. Exs. 105, 105A; Tr. Vol. II 298:18-301:6, 304:5-305:24; Tr. Vol. IV 56:7-11. That red line stops in the water on the west side of Calf Island and goes no further north toward Graves Ledge, so it

provides little, if any, support for the Town's position. Further, the atlas erroneously shows Slate Island and Sheep Island as located within the Town's boundaries, even though the parties concur they are actually located within Weymouth. Exs. 105, 105A; Tr. Vol. II 306:2-307:8; Tr. Vol. IV 127:11-16. Similarly, the 1879 Atlas has no key for its boundary lines. It appears to show Graves Ledge as located within the Town, along with Slate Island and Sheep Island, even though the latter two islands are located within Weymouth. Ex. 71; Tr. Vol. II 308:22-311:24; Tr. Vol IV 127:3-16.

Another map copyrighted by Walker was published in 1895. That map depicts several jurisdictional lines, but provides no key. I credit and concur with the testimony of Arsenault that it is "difficult to draw any conclusion from [that] map." Ex. 72; Tr. Vol. II 317:7-8, see 314:10 - 317:8. Cameron himself acknowledged during cross-examination, these two Walker Maps, so called, are not typically relied by on by surveyors for boundary line determinations. Tr. Vol. III 182:16-19; Vol. IV 53:2-11.

*Whether Graves Ledge is Unincorporated Land*

Shortly before trial and in support of its contention that Graves Ledge is located within the Town's boundaries, the Town raised the subsidiary issue of whether land in Massachusetts must fall within the boundaries of some municipal jurisdiction.<sup>23</sup> In other words, the Town argues that Graves Ledge must be located in Hull, because the municipalities of Boston, Nahant, and Winthrop had disclaimed any interest. In response, the LLC argues that Graves Ledge is unincorporated land.

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<sup>23</sup> The issue of whether Graves Ledge could be unincorporated land was first raised as a subsidiary issue in the parties' Joint Pre-Trial Memorandum.

I decline to wade into these deep waters, because I conclude this issue is not squarely before the court. The LLC's Amended Complaint includes only a single count, seeking a declaratory judgment that Graves Ledge is not within the corporate municipal boundaries of the Town. The Town's Counterclaim, in turn seeks a declaration that Graves Ledge is within its municipal boundaries. There is no claim pending before the court relating to unincorporated land and I conclude it may be prejudicial to the LLC and the disclaiming municipalities to decide that issue now. Indeed, Arsenault testified that he was not asked to research, or provide any expert testimony, as to whether Graves Ledges was unincorporated land, such that he did not have an expert opinion on whether land in Massachusetts can be unincorporated or where Graves Ledge might be located if not in Hull. Tr. Vol. III 17:2-18:19, 31:19-32:4, 33:5-8. This issue was not before the court when the Commonwealth, Nahant, Boston, and Winthrop were given notice of this dispute and each filed a stipulation of dismissal.<sup>24</sup>

For the sake of completeness, I briefly address each party's argument. The Town argues that there can be no unincorporated land in the Commonwealth. The primary basis for this argument is the taxation statute. According to this theory, all land is subject to taxation, unless exempt, and the process for taxing property is by the local government. See G.L. c. 59, §§ 2, 2A, 23A, 38; G.L. c. 60, § 2. According to the Town, Graves Ledge was exempt when it was owned by the United States, but after it was ceded and sold to LLC, it became subject to taxation and must be taxed by Hull, since the other surrounding municipalities have disclaimed their interest. The Town also cites to the Commonwealth's Comprehensive Emergency Management Plan, prepared by the Massachusetts Emergency Management Agency, which states that "there are no

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<sup>24</sup> The Commonwealth may also have an interest in whether there can be unincorporated land in Massachusetts, as may the cities and towns neighboring Hull.

unincorporated areas of the Commonwealth.” Cameron testified that in his experience as a professional land surveyor he has “never come across land that was not associated with any city or town in the Commonwealth.” Tr. Vol. III 193:4-7.

The LLC, on the other hand, contends that unincorporated land is not that unusual. The LLC directs the court to a number of references to unincorporated land in the Massachusetts Constitution and in historical state statutes, dating from 1807 to 1832 to support its position. See Const., Part II, c. 1, § 2, art. 2 (providing a process for legislative representation of “inhabitants of plantations unincorporated”); Const., Part II, c. 6, art. 10 (referencing “assessors of the unincorporated plantations”); Resolves Jan. 1832 – Apr. 1834, c. XXXVIII (Mar. 2, 1832); General Laws May 1828 – Mar. 1831, p. 544, c. XXXV (Feb. 7, 1831); General Laws 1837 – 1838, p. 426, c. CXXXIX, § 1 (Apr. 17, 1838); General Laws May 1805 – May 1809, pp. 27–28, c. XXV (June 16, 1807); General Laws May 1818 – Feb 1822, p. 515, c. LXII, § 1 (Feb. 13, 1821). The LLC also points out that being within the jurisdiction of a town is not a prerequisite to taxation, because the Massachusetts Constitution provides that the “oldest incorporated town adjacent to any unincorporated territory” is to “make valuation of the polls and estates of such unincorporated territory.” Const. Part II, c. 1, § 2, art. 2. It is of note, however, that the LLC’s citations predate the HLC’s authoritative 1901 HLC Atlas, which set municipal boundary lines for Hull, and other municipalities.

Based on the 1901 HLC Atlas and the record before the court, it appears that Graves Ledge lies within Boston’s tide waters, even though Boston filed a stipulation of dismissal in this case wherein it “determined that the subject property lies outside the corporate limits of the City of Boston, and therefore makes no claim to jurisdiction.” Indeed, Arsenault testified that if he had to wager a guess about where Graves Ledge might lie, that “it may be in Boston but [he]

can't give an expert opinion on that." Tr. Vol. III 19:2-3. This is consistent with the 1901 HLC Plan.

As discussed above, I decline to decide whether there can be unincorporated land in Massachusetts, having concluded the issues raised by the Amended Complaint and Counterclaim, and in light of the Town's late presentment of this issue which is not necessary to the disposition of this case. *Whitehouse v. Illinois Centr. R.R. Co.*, 349 U.S. 366, 372-373 (1955). Nor should that issue be decided without the Commonwealth and the City of Boston joined as parties to the case.

### **CONCLUSION**

For these reasons, I find that Graves Ledge lies neither within the municipal land nor tide water boundaries of the Town of Hull. Judgment to enter accordingly.

/s/ Diane R. Rubin  
Diane R. Rubin, Justice

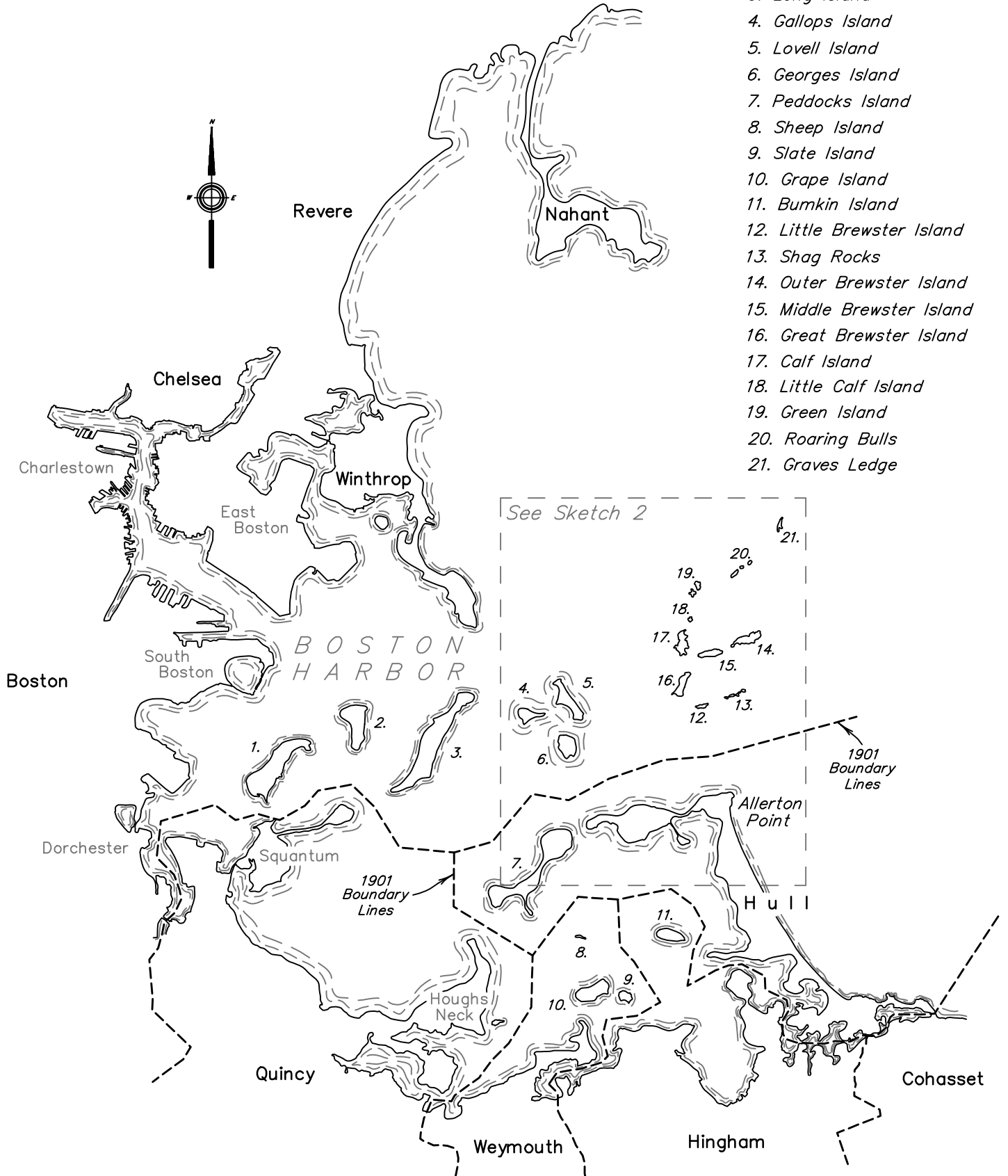
Dated: August 1, 2023



# SKETCH 1

## Graves v. Hull

1. Thompson Island
2. Spectacle Island
3. Long Island
4. Gallops Island
5. Lovell Island
6. Georges Island
7. Peddocks Island
8. Sheep Island
9. Slate Island
10. Grape Island
11. Bumkin Island
12. Little Brewster Island
13. Shag Rocks
14. Outer Brewster Island
15. Middle Brewster Island
16. Great Brewster Island
17. Calf Island
18. Little Calf Island
19. Green Island
20. Roaring Bulls
21. Graves Ledge



# SKETCH 2

Graves v. Hull

- 4. Gallops Island
- 5. Lovell Island
- 6. Georges Island
- 7. Peddocks Island
- 12. Little Brewster Island
- 13. Shag Rocks
- 14. Outer Brewster Island
- 15. Middle Brewster Island
- 16. Great Brewster Island
- 17. Calf Island
- 18. Little Calf Island
- 19. Green Island
- 20. Roaring Bulls
- 21. Graves Ledge

