

**FW: Nordic Aquafarms - Twentieth Procedural Order**

Joanna B. Tourangeau &lt;JTourangeau@dwmlaw.com&gt;

Thu 7/30/2020 1:18 PM

To: Wayne Marshall &lt;wmarshall@cityofbelfast.org&gt;

Cc: 'William Kelly' &lt;bkelly11@bluestreakme.com&gt;

📎 1 attachments (96 KB)

2020-07-30 Nordic Twentieth Procedural Order.pdf;

For your file attached please find the Board of Environmental Protection denial of the MGL stay request.

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**From:** Bertocci, Cynthia S <Cynthia.S.Bertocci@maine.gov>**Sent:** Thursday, July 30, 2020 1:02 PM**To:** Kim Ervin Tucker <k.ervintucker@gmail.com>; Barry A. Costa-Pierce <bcostapierce@une.edu>; Bensinger, Peggy <Peggy.Bensinger@maine.gov>; Bertocci, Cynthia S <Cynthia.S.Bertocci@maine.gov>; Boak, Scott <Scott.Boak@maine.gov>; Brewer, Angela D <angela.d.brewer@maine.gov>; Burke, Ruth A <Ruth.A.Burke@maine.gov>; Carrie Byron <cbyron@une.edu>; Charles Tilburg <ctilburg@une.edu>; David Losee <david@loseelaw.com>; David Perkins <DPerkins@curtisthaxter.com>; DEP, Nordic Aqua Farms <NordicAquaFarms.DEP@maine.gov>; Diane Hunt Braybrook <dbraybrook@yahoo.com>; Donald W. Perkins, Jr. <don@gmri.org>; Donna Broderick <dl\_broderick@hotmail.com>; Ed Cotter <ec@nordicaquafarms.com>; Eleanor Daniels <ellie@greenstore.com>; Elizabeth M. Ransom <elizabeth.ransom@ransomenv.com>; Erik Heim <Erik.heim@nordicaquafarms.com>; Jacki Cassida <jc@nordicaquafarms.com>; Jensen, Laura <Laura.Jensen@maine.gov>; Joanna B. Tourangeau <JTourangeau@dwmlaw.com>; Kristin M. Racine <kracine@curtisthaxter.com>; Lawrence Reichard <lreichard@gmail.com>; Marianne Naess <mn@nordicaquafarms.com>; Martin, Kevin <Kevin.Martin@maine.gov>; Michael Lannan <mLannan@TechEnv.com>; Northport Village Corporation <nvcmaine@gmail.com>; Peter Tischbein <peter.tischbein@usace.army.mil>; Wood, Gregg <Gregg.Wood@maine.gov>**Subject:** Nordic Aquafarms - Twentieth Procedural Order

Dear Participants:

I have attached the Presiding Officer's Twentieth Procedural Order ruling on MGL's July 20<sup>th</sup> Amended Renewed Motion to Stay proceedings in the matter of Nordic Aquafarms' applications.

*Cynthia S. Bertocci**Executive Analyst, Board of Environmental Protection**17 State House Station, Augusta, Maine 04333-0017**Phone: (207) 287-2452**[Cynthia.s.bertocci@maine.gov](mailto:Cynthia.s.bertocci@maine.gov)*





STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION, AUGUSTA, MAINE 04333-0017

BOARD ORDER

IN THE MATTER OF

NORDIC AQUAFARMS, INC  
Belfast and Northport  
Waldo County, Maine

A-1146-71-A-N  
L-28319-26-A-N  
L-28319-TG-B-N  
L-28319-4E-C-N  
L-28319-L6-D-N  
L-28319-TW-E-N  
W-009200-6F-A-N

) APPLICATIONS FOR AIR EMISSION,  
) SITE LOCATION OF DEVELOPMENT,  
) NATURAL RESOURCES PROTECTION ACT, and  
) MAINE POLLUTANT DISCHARGE ELIMINATION  
) SYSTEM (MEPDES)/WASTE DISCHARGE LICENSE  
)  
)  
) TWENTIETH PROCEDURAL ORDER  
)  
)  
)

The Board of Environmental Protection (Board) held an adjudicatory hearing in Belfast from February 11 through February 14, 2020 on Nordic Aquafarms, Inc.'s (Nordic's) applications for permits for an Atlantic salmon land-based aquaculture facility proposed to be located in Belfast and Northport. This Procedural Order addresses intervenors Jeffrey R. Mabee, Judith B. Grace, and Lobstering Representatives' (MGL's) July 2020 renewed motion to stay the Board proceedings in this matter or dismiss Nordic's applications for lack of title, right or interest (TRI) in portions of the property proposed for development or use.

**Renewed Motion to Stay Proceedings or Dismiss Applications**

On July 13, 2020, on behalf of MGL, Kim Ervin Tucker filed a "Renewed Motion for Stay or Dismiss Pursuant to New Precedent Decided on July 7, 2020 Submitted by MGL Intervenors and Interested and Aggrieved Party the Friends of the Harriet L. Hartley Conservation Area."<sup>1</sup> The motion included twelve exhibits. Citing the July 7, 2020 Maine Supreme Judicial Court's decision in *Tomasino v. Town of Casco*, 2020 ME 96, -- A.3d --, MGL argues that the Board must stay or dismiss all of Nordic's pending license applications until the Waldo County Superior Court determines the parameters of the easement option granted to Nordic by the Eckrotes in the Eckrote-Nordic Purchase and Sale Agreement originally dated August 6, 2018, and its updates. MGL argues that the easement, which they contest, does not confer sufficient TRI for the Board to process Nordic's applications. With its filing, MGL provided the Board with a copy of its "Motion to Stay Permitting Proceedings in the Board of Environmental Protection Pursuant to New Precedent Issued on July 7, 2020 and Rule 80B(b)" filed on July 13, 2020 in Waldo County Superior Court, Docket No. AP-2020-03, which requested that the Court stay the Board's proceedings until the parameters of the Eckrote-Nordic easement are determined.

The deadline for parties to respond to MGL's motion was July 27, 2020.

<sup>1</sup> Friends of the Harriet L. Hartley Conservation Area is not a party to the Board's proceeding on Nordic's applications.

On July 17, 2020, on behalf of Nordic, Joanna Tourangeau filed a letter with the Board requesting that MGL voluntarily withdraw its motion to stay. As its Exhibit A, Nordic submitted the Waldo County Superior Court's July 14, 2020 dismissal of MGL's 80B petition.

On July 20, 2020, Ms. Ervin Tucker filed an "Amended Motion for Stay or Dismiss Pursuant to New Precedent Decided on July 7, 2020 and July 14, 2020 Superior Court Order in AP-2020-03 Submitted by MGL Intervenors and Interested and Aggrieved Party the Friends of the Harriet L. Hartley Conservation Area." This motion replaced MGL's July 13, 2020 motion and expanded upon MGL's arguments about the implications of *Tomasino* for the Board's proceeding.

Ms. Tourangeau filed "Nordic Response to MGL Requests to Enjoin Administrative Proceedings" on July 27, 2020, again appending as Exhibit A the Waldo County Superior Court's July 14, 2020 dismissal of MGL's 80B petition. Nordic argued that the Superior Court had rejected MGL's arguments for a stay of the Board's proceeding by concluding that any challenge to Nordic's TRI would be properly reviewable by a court in an 80C petition after the Board has taken final agency action in this matter.

On July 27, 2020, intervenor Lawrence Reichard submitted a response to Nordic's response to the motion.

Ruling. MGL's Amended Motion to Stay or Dismiss is denied. The Commissioner found that Nordic had demonstrated sufficient TRI to accept Nordic's applications as complete for processing. Over the course of this proceeding, the Board has considered and denied petitions by MGL to revisit the Commissioner's decision and stay the proceeding or return Nordic's applications based upon MGL's assertions that Nordic has not demonstrated sufficient TRI in the intertidal lands where Nordic's proposed pipelines would be located if permits were issued. As the Board has previously stated, the courts will ultimately decide the ownership of the intertidal area in question and any issues raised about the parameters of the Eckrote easement. The Court's decision in *Tomasino* is factually and procedurally distinct from the Nordic matter and does not stand for the proposition that the Board's TRI determination may be reviewed by a court prior to final agency action. The decision in *Tomasino* does not change the Board's assessment. The Board will complete its consideration of Nordic's applications and issue decisions.

DONE AND DATED AT AUGUSTA, MAINE THIS 30th DAY OF JULY, 2020.

BOARD OF ENVIRONMENTAL PROTECTION



BY: \_\_\_\_\_  
Robert S. Duchesne, Presiding Officer