

BOARD ACTION

SHORELAND PERMIT

No Board Action is Required on the Shoreland Permit at the Board meeting of December 22. The Board adopted the Shoreland Permit Findings and Conditions of Approval at its meeting of December 17.

PLANNING BOARD MOTIONS ON SHORELAND PERMIT (12-17-20)

Motion by David Bond, second by Geoff Gilchrest, to adopt the draft Findings of Fact for the Shoreland Permit, as such were amended at this meeting. Vote 5-0. Findings Adopted.

Motion by David Bond, second by Geoff Gilchrest, to adopt the Conditions of Approval for the Shoreland Permit, as such were amended at this meeting. Vote 5-0. Conditions Adopted.

Motion by David Bond, second by Geoff Gilchrest, to adopt the Shoreland Permit for Nordic Aquafarms. Vote 5. 0. Shoreland Permit approved.

**CITY OF BELFAST PLANNING BOARD
ADOPTED FINDINGS OF FACT & CONDITIONS
SHORELAND ZONING PERMITS
ADOPTED DECEMBER 17, 2020**

**APPLICANT: NORDIC AQUAFARMS, INC.
PROJECT: LAND BASED SALMON FARM
LOCATION: ROUTE ONE SOUTH
(BELFAST WATER DISTRICT & ADJACENT PROPERTIES)**

1. APPLICANT:

Owner: Nordic Aquafarms, Inc. (hereinafter Nordic)
Attn: Ed Cotter
Belfast, ME 04915

Principal Engineer: Ransom Consulting (lead engineer)
Attn: Elizabeth Ransom
Portland, ME 04101

Legal Counsel: Joanna Tourangeau
Drummond Woodson
84 Marginal Way Suite 600
Portland, ME 04011

2. OVERALL DESCRIPTION OF NORDIC PROJECT

Nordic Aquafarms, Inc (hereinafter Nordic), in June 2019, submitted an application to the Belfast Planning Board to develop a land-based salmon aquaculture facility on a 56-acre site located on the northwesterly side of Route One near the lower reservoir of the Little River. Nordic proposes to develop the project in two phases over 5 or more years. Total production capacity at build-out is estimated to be 72,732,000 pounds (33,000 metric tons) of salmon per year. Phase 1 involves the construction of about 414,450 square feet of buildings, and Phase 2 involves the construction of about 392,804 square feet of buildings; each phase involves rearing and processing a similar amount of salmon.

The facility would use a Recirculating Aquaculture System (RAS) to process water used in rearing the salmon in land-based tanks. At full build-out, the facility is projected to use up to 1,205 gallons of freshwater per minute (gpm) and up to 3,925 gallons of saltwater per minute. The freshwater is proposed to be obtained from three sources: the Belfast Water District (up to 500 gpm), on-site groundwater wells (up to 455 gpm) and the extraction of surficial water from Reservoir 1 on the Little River (up to 250 gpm). Saltwater will be obtained from Belfast Bay via two new off-shore water intake pipes that extend about 6,300 feet from the High Annual Tide into the Bay. The RAS system also involves Nordic Aquafarms treating and regularly discharging the freshwater and saltwater

(wastewater/effluent) used to rear salmon back into Belfast Bay via a discharge pipe that extends offshore about 3,400 feet from the High Annual Tide.

The 56-acre site that Nordic Aquafarms, Inc. proposes to develop includes parts of all of the following properties, as such are identified on the City of Belfast Tax Assessor maps:

- Map 29, Lot 39, located at 285 Northport Avenue that is owned by the Belfast Water District (about 29 acres):
- Map 4, Lot 104, located off of Northport Avenue that is owned by Sam Cassida (about 12.5 acres):
- Map 4, Lot 12A, located at 22 Perkins Road that is owned by Goldenrod Properties, LLC; [dba Mathews Brothers] (about 14.5 acres): and
- Map 29, Lot 36, located at 282 Northport Ave, that is owned by Richard Eckrote (easement for construction of water intake/wastewater discharge pipes).

3. OVERVIEW OF CITY SHORELAND ZONING REQUIREMENTS AND NORDIC ACTIVITIES IN THE SHORELAND ZONE.

The City of Belfast, like all Maine municipalities, has an adopted Shoreland Ordinance. The City, in April 2018, and again in October 2018, adopted certain amendments to its Shoreland Ordinance, Chapter 82 of the City Code of Ordinances, to clarify its standards regarding the regulation of aquaculture facilities, and to address potential concerns related to the installation of significant groundwater wells and significant water intake/discharge pipes in the Shoreland Zone.

The adopted amendments addressed the following concerns:

- a) The Shoreland Ordinance in effect prior to April 2018 allowed aquaculture facilities in most Shoreland Zoning districts. The 2018 amendments (April and October) adopted by the City Council better differentiated between the type of aquaculture operations that are permitted, including land-based operations, and identified the specific Shoreland districts in which the various types of aquaculture operations would be considered permitted activities.
- b) Prior to April 2018, Chapter 82, Shoreland, was silent on the issue of installing a significant groundwater well in a Shoreland regulated area. The 2018 amendments (April and October) established a definition for a significant groundwater well, identified the Shoreland districts in which a significant groundwater well would be allowed, and established specific standards for the regulation of such a well.
- c) Prior to April 2018, Chapter 82, Shoreland, was silent on the issue of installing a significant water intake/discharge pipe in a Shoreland regulated area. The 2018 amendments (April and October) established a definition for a significant water intake/discharge pipe, identified the Shoreland districts in which a significant water intake/discharge pipe would be allowed, and established specific standards for the regulation of such pipes.

The City, in adopting the above amendments, recognized that any proposed activity in a Shoreland regulated area would need to comply with the land use standards (performance

standards) in Chapter 82, Shoreland. The Planning Board considered the above amendments in its review of the Nordic application.

The Nordic project site is about 56 acres in size. Most of the site is located on the northwesterly side of Route One, however, Nordic also has an easement on the Ekrote property located on the easterly side of Route One to provide a corridor for the installation of their proposed water intake/discharge pipes to Belfast Bay. The total amount of the Nordic site that is located in the Shoreland Zone is about 2 acres in size, and includes about 350 feet of shore frontage, most of which is adjacent to the lower reservoir of the Little River. The Ekrote easement area that has shore frontage on Belfast Bay is only 40 feet in width.

The portion of the Nordic site located on the northwesterly side of Route One is located in the General Development District of the Shoreland Zone. The General Development District specifically allows land-based aquaculture uses, reference Chapter 82, Shoreland, Article IV, Districts, Section 82-135, Table of Uses, clause (14) Aquaculture, c. Land based. The only uses that Nordic proposes in the General Development District include: converting the current Belfast Water District offices to a Visitor's Center, using the existing parking area and access road to provide parking for the Visitor's Center and public use of the Little River Trail, and the installation of infrastructure associated with the use of surface water from the Little River.

The Ekrote easement area is located in the Limited Residential District of the Shoreland zone. Nordic proposes to install both a significant water discharge pipe and two significant water intake pipes in the Ekrote easement area. The Limited Residential District allows land-based aquaculture uses, reference Chapter 82, Shoreland, Article IV, Districts, Section 82-135, Table of Uses, clause (14) Aquaculture, c. Land based, and significant water intake or discharge/outfall pipes, reference clause (39) identified in the above Table of Uses.

4. CITY REVIEW PROCESS FOR NORDIC SHORELAND PERMIT.

Nordic submitted its Site Plan application to the Code and Planning Department and Belfast Planning Board on June 11, 2019. This application was found complete for purposes of Board review by Wayne Marshall, who was then serving as an appointed Code Enforcement Officer for the City. This application also included information required for a City Shoreland Permit; reference Attachment 6, Chapter 82, Shoreland Zone Standards.

The Table of Uses in Chapter 82, Shoreland, reference Section 82-135, Table of Uses, establishes that the Belfast Planning Board is responsible for the review of a request for a Shoreland Permit for a land-based aquaculture facility and a significant water intake/discharge pipe. In addition, Article II, Administration, Division 2, Permits, Section 82-54, Procedure for Permits Issued by the Planning Board, establishes the procedure for Board issued permits. Subsection (5) of Section 82-54, requires the Belfast Harbor Committee to review a permit for an aquaculture facility in Belfast Bay, to conduct a public hearing, and to make a recommendation to the Planning Board regarding project compliance with Shoreland standards identified in Section 82-204, Piers, Docks and other

Structures Projecting into or Over Waterbody or Wetland. Pursuant to requirements in Chapter 82, Shoreland, the Harbor Committee limited its review to the Nordic facilities located in the portions of Belfast Bay subject to Shoreland Zoning requirements. The Belfast Planning Board and Belfast Harbor Committee used the processes identified in Chapter 82, Shoreland to review the Nordic application.

Following is a synopsis of the City's overall review process for Nordic's Shoreland Permit application.

It is first noted that the Belfast Harbor Committee, prior to Nordic's submission of a Shoreland Permit application, met on December 5, 2018 to consider Nordic's application for a Submerged Land Permit from the State Department of Agriculture, Conservation and Forestry and to issue a recommendation on this Permit application to the Belfast City Council. The Harbor Committee conducted a public hearing as part of its December 5 meeting and offered its recommendation to the City Council. It is again noted that this Harbor Committee review occurred prior to the submission of Nordic's Shoreland Permit application to the Planning Board. None of the Harbor Committee's role was dictated by requirements of Chapter 82, Shoreland.

Nordic Aquafarms submitted its Site Plan application to the Belfast Planning Board on June 11, 2019. The Site Plan application included information (submissions) required in Chapter 82, Shoreland, for Board consideration of a Shoreland Permit; specifically reference Attachment 6, Chapter 82, Shoreland, Shoreland Zone Standards.

The Planning Board, at its meeting of June 26, 2019, initiated its review of the Nordic Site Plan application. The Site Plan process is a two-step process, Preliminary Plan and Final Plan, thus the Board's review first involved Preliminary Plan requirements. The initial meetings of the Board focused on the Board gaining a better understanding of the project and addressing certain procedural requirements identified in City Ordinances. In June – August 2019 the Board did the following:

- Conducted a site visit on July 10;
- Established the process the Board would use to review the application and conduct accompanying public hearings (July 11)
- Determined which Board members would vote on the Nordic applications (August 5);
- Determined the persons/organizations that qualified as 'Parties-in-Interest (August 5 and 19); and
- Determined that Nordic had provided sufficient evidence of Right, Title and Interest to allow the Board to consider the Nordic applications (August 5).
- After conducting a specific public hearing on the issue, determined that Nordic's proposed activities in the Shoreland Zone are permitted uses pursuant to provisions of Chapter 82, Shoreland.
- Approved certain third-party reviewers for the City on the Nordic application, including William Kelly, City Attorney, Mandy Olver, Olver Associates (City Engineer), and Matt Reynolds, Drumlin Environmental, who specifically was engaged to review Nordic's groundwater and water use proposals.

Beginning in August 2019 and continuing through January 2020, the Planning Board heard presentations from Nordic representatives on individual elements of its Site Plan application, including information relevant to other Permits that the Board had to consider, heard testimony from Parties-in-Interest and the general public at the numerous public hearings that the Board conducted on the specific issues presented by Nordic, and heard testimony from third-party experts engaged by the City and City Code and Planning Department staff. The Board also conducted initial deliberations on many of the issues considered at the respective meetings, and provided direction to Nordic and City representatives regarding additional information needed on the Nordic application.

The Belfast Harbor Committee met on October 24, 2019, to consider its required recommendation to the Planning Board regarding project compliance with Section 82-204 standards for Nordic's aquaculture activities located in or adjacent to Belfast Bay. The Harbor Committee heard a presentation from Nordic representatives, conducted a duly noticed public hearing at which it received oral and written testimony from Parties-in-Interest and the general public, deliberated on the information it heard/received, and then voted on its recommendation to the Belfast Planning Board. The Harbor Committee recommended that the Nordic project complied with Section 82-204 standards, and recommended that Nordic work with the Coast Guard to establish appropriate markers for the location of the submerged intake/discharge pipes.

The Planning Board, at its meetings of January 8, January 15 and January 22, 2020, conducted public hearings to accept public testimony from both Parties-in-Interest and the general public on all elements of the Nordic application, including the Shoreland Permit application. The public comment that was presented addressed concerns identified in the Shoreland standards, but little comment directly referenced Chapter 82, Shoreland requirements.

The Planning Board conducted its review of draft Findings of Fact for Nordic's Preliminary Site Plan Permit application, including issues and standards related to Chapter 82, Shoreland, at its meetings of June 17, July 8 and July 15, 2020. The Board conducted the above meetings, as it did all meetings conducted post the beginning of May 2020 via a ZOOM webinar. The Board, at its meeting of July 15, approved Nordic's Preliminary Site Plan application and adopted Findings of Fact that describe its decision. This action allowed Nordic to submit a Final Site Plan application and also led to the process whereby the Board would review the specific requirements of the other 4 Permits the Nordic project requires from the Planning Board, including the Shoreland Permit.

Nordic submitted its Final Site Plan application in late August. The Board initiated its review of this application on September 30, 2020, including conducting a public hearing for Parties-in-Interest on October 7, 2020, and a public hearing for the general public on October 8. The public hearing notice for the above hearings specifically referenced the Board's interest in receiving public comment on the Nordic Shoreland Permit application. These were the final overall hearings conducted on the Nordic application.

The Board initiated its review of specific requirements of the Shoreland Permit at its meeting of October 28, 2020, and identified its overall findings on the permit application. The Board, at both its October 28 and November 4 meeting, identified Conditions of Approval it wants to attach to the Shoreland Permit. The Board also reviewed the draft and final Orders from the Board/Department of Environmental Protection on the Nordic project, particularly the Discharge Permit and the NRPA/SLODA Permit, that specifically addressed issues related to the City issuance of a Shoreland Permit.

The Planning Board, through-out all stages of its review of the Nordic applications, considered issues associated with standards identified in Chapter 82, Shoreland. The Board, in its deliberations, considered the following: information in the Nordic application, particularly Attachment 6; additional information provided at Planning Board meetings by Nordic and its consultants; public testimony offered by all Parties-in-Interest and by the general public (oral and written comment); information in the DEP Site Location of Development Act/Natural Resources Protection Act and Maine Pollutant Discharge Elimination System Permits that are relevant to City Shoreland requirements; the assessment of the Nordic application provided by Mandy Olver, Olver Associates (City third-party review experts); comments offered by William Kelly, City Attorney, and Wayne Marshall, Project Planner, Code and Planning Department; and comments offered by individual Board members during the public review process.

5. SPECIFIC FINDINGS OF THE BELFAST PLANNING BOARD ON OVERALL SHORELAND PERMIT REQUIREMENTS.

The Planning Board made the following findings regarding the applicability of certain Shoreland standards in Chapter 82, Shoreland, for the Nordic application for a Shoreland Permit.

- a) The Board accepted the June 2019 determination by Wayne Marshall, alternate Code Enforcement Officer, that the Nordic Site Plan application, and by extension, the Shoreland Permit (reference Attachment 6 of the Site Plan application), were complete for purposes of the Board's initial review.
- b) The Board, at its meeting of August 19, 2019, found that a land-based aquaculture facility and certain accessory uses, including a visitor's center, is a permitted use in the General Development district of the Shoreland Zone; reference Chapter 82, Shoreland, Article IV, Districts, Section 82-135, Table of Uses, Subsection (14) Aquaculture, c) Land-based. The Board referenced the definition of a land-based aquaculture facility in Chapter 82, Shoreland, in rendering its decision. The Board also conducted a public hearing at its meeting of August 19, 2019 regarding this issue.
- c) The Board, at its meeting of August 19, 2019, determined that the Ekrote easement area that is proposed to be used to install significant water intake/discharge pipes is located in the Limited Residential district of the Shoreland Zone. The Board then found that a land-based aquaculture facility is a permitted use in the Limited Residential district of the Shoreland Zone; reference Chapter 82, Shoreland, Article IV, Districts, Section 82-

135, Table of Uses, Subsection (14) Aquaculture, c) Land-based, and that Significant Water Intake and Discharge/Outfall Pipes are a permitted use in this same Shoreland District, reference clause (38) in the above Table of Uses.

- d) The Board found that a request for a Shoreland Permit for certain Aquaculture Uses in the Ekrote easement area required the review of the Belfast Harbor Committee, reference 82-31, Administrative Bodies and Agents, and 82-54, Procedure for Permits Issued by the Planning Board, Subsection (5).
- e) The Board found that the Planning Board must consider the requirements of both Section 82-56, Standards for Review of Shoreland Permits, and the more specific provisions identified in Article V, Land Use Standards, Division 1 – Division 17 in rendering a decision on Nordic’s request for a Shoreland Permit.

The Board’s specific Findings on the Section 82-56 Standards are identified in Section 6 of these Findings, and its review of the Article V, Land Use Standards is described in Section 7 of these Findings.

6. PLANNING BOARD REVIEW OF SECTION 82-56, STANDARDS FOR REVIEW OF SHORELAND PERMITS.

Section 82-56 stipulates that the Code Enforcement Officer or Planning Board shall review a completed application and shall approve, approve it with conditions, or deny an application based on its findings regarding conformance with the following standards, reference (1) – (12) below. The Planning Board reviewed each of the following standards and made the following overall findings. The Board notes that its Findings regarding Nordic’s compliance with the Article V, Land Use Standards, provide additional information regarding its specific Findings regarding compliance with Shoreland requirements. The Board also notes that many of its Findings address Nordic’s overall project development, rather than the limited activities that are proposed to occur in the Shoreland Zone.

(1) *Will not result in unsafe conditions.*

The Board found that the project will be constructed in compliance with all applicable City, State, and Federal guidelines and permits and applicable regulations, including environmental standards and building codes. The Board noted it had some concerns regarding the safety of the Upper Reservoir Dam on the Little River (off-site dam that Nordic does not intend to own and that is not identified in its application as a source of impounded water), and referenced Condition of Approval 29 in its Site Plan Permit and Zoning Use Permit regarding measures Nordic must implement to address potential concerns regarding the safety of this dam and the establishment of the Visitors Center. The Board concluded that Nordic’s overall project will not result in unsafe conditions.

In making this determination, the Board considered the materials Nordic submitted as part of its applications and testimony, particularly the Wright Pierce dam report, the testimony and materials submitted by Parties in Interest and the general public, the Permits issued by the Maine Department of Environmental Protection (“DEP”), and the review of the above information by Olver Associates, City Attorney and the Project Planner for the Code and Planning Department.

(2) *Will not result in water pollution, erosion, or sedimentation to surface waters.*

The Board found that the Nordic project will not result in water pollution, erosion or sedimentation to surface waters. The Board thoroughly reviewed and considered each of the above issues in the information and testimony it considered through-out its review of Nordic’s Preliminary and Final Site Plan applications, including the technical review of Nordic’s plans offered by Mandy Olver, Olver Associates. The Board specifically noted that Nordic has prepared specific erosion and sedimentation control plans and stormwater management plans for its project, and that the Board has adopted Conditions of Approval that require Nordic to implement preventative measures identified in these plans. Further, the DEP has established similar Conditions in its NRPA/SLODA Permits, and has established discharge limits and accompanying monitoring and reporting requirements as part of the Maine Pollutant Elimination Discharge System (MPDES) Permit granted Nordic for the disposal of effluent to Belfast Bay.

(3) *Will adequately provide for the disposal of all wastewater.*

The Board found that Nordic will adequately provide for the disposal of all wastewater. The Board, noting that it has limited authority and no specific standards to manage wastewater discharges to Belfast Bay, particularly those that occur outside of waters within the City’s municipal boundaries, particularly relied on the Findings and Conditions the DEP identified in its Maine Pollutant Discharge Elimination System (MPDES) Permit and Waste Discharge License (issued November 19, 2020) in rendering its Findings. The Board also relied upon the review of the above DEP permit conducted by Mandy Olver, Olver Associates, and information in Nordic’s Site Plan application to the Planning Board and additional information submitted by Nordic at Board meetings, as well as public testimony offered by Parties-in-Interest and the general public. The Board established a specific Condition of Approval in its Site Plan Permit that requires Nordic to comply with the DEP MPDES Permit requirements, and to make information from its monitoring of its wastewater discharges available to the Code and Planning Department for review.

(4) *Will not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitat;*

The Planning Board found that the activities Nordic will conduct in designated Shoreland areas will not have an adverse impact on spawning grounds, fish, aquatic life, or bird or other wildlife habitat. The Harbor Committee, in its recommendations

to the Belfast Planning Board, made a similar finding. The Planning Board and the Harbor Committee particularly referenced the analysis of the Nordic project conducted by the Maine Department of Marine Resources (DMR), an analysis that was included in their submissions to the DEP.

This standard also requires that the Board determine if a project will have an undue adverse impact on significant wildlife habitat as determined by the State Department of Inland Fisheries and Wildlife (IF&W). The Board reviewed information in the Nordic application and the significant wildlife habitat maps prepared by IF&W. It also considered comment by Parties-in-Interest and the general public offered at both an October 16, 2019 and January 8, 2020 public hearing, including specific comment offered by Upstream Watch. In its review of the IF&W maps, the Board found that said maps did not identify any significant wildlife habitat areas on the site that Nordic intends to develop. The Board noted that the shoreland area located adjacent to Belfast Bay and the Lower Reservoir, like most of Belfast's coastline, is identified as significant habitat for waterfowl. In considering such, the Board determined that the extent of Nordic's construction activities on the coastline of Belfast Bay would be limited. The Board made an overall finding that the Nordic project would not have an undue adverse impact on significant wildlife habitat as such has been identified by IF&W.

The Board noted that it considered the following in making the above findings: information in the Nordic application and supplemental information submitted by Nordic representatives; information presented at Board meetings by Nordic staff and its representatives; information presented to the Board by City consultants (Mandy Olver, Olver Associates, Matthew Reynolds, Drumlin Environmental, and William Kelly, City Attorney), information presented by City staff (Wayne Marshall, Project Planner, Code and Planning (who served as Department Director for much of the Nordic review), and Jon Carmen, Supt, Wastewater Treatment Plant); information presented by the Belfast Water District, particularly Keith Pooler, its Superintendent; public testimony offered by several Parties-in-Interest and numerous members of the general public at public hearings conducted by the Board; and information gleaned from its own deliberations on this permit application.

(5) *Will conserve shoreland vegetation;*

The Board noted that Nordic does not propose to remove any shoreland vegetation associated with its conversion of the Belfast Water District office to a Visitor's Center, an area that is in the General Development Shoreland district, and that there will be limited removals of shoreland vegetation associated with the construction of the Intake/Discharge pipes, and that the vegetation that is removed within the Ekrote easement area should experience only temporary disruptions, meaning that Nordic will replant vegetation in the Ekrote easement area to foster restoration of vegetation in this area.

The Board also noted that the City of Belfast will be purchasing about 40 acres of land located adjacent to the lower reservoir of the Little River, an approach that will provide permanent protection of this area. The City's purchase includes about 24 acres of land in Belfast, and an additional 16 acres in Northport. Most of this area is forested. In Belfast, this area is 250 feet in depth and is located in the Resource Protection district of the Shoreland Zone. The City established specific Conditions of Approval in both this Shoreland Permit and in the Site Plan Permit that require the City's purchase of this property to allow Nordic to proceed to project construction.

The Board concluded that the Nordic project will conserve shoreland vegetation.

- (6) ***Will conserve visual points of access to inland and coastal waters, particularly those areas to which the City has retained a public right-of-way.***

The Board found that the Nordic project will conserve visual points of access to inland and coastal waters, particularly those areas to which the City has retained a public right-of-way. The Board particularly noted the City's intent to purchase 40 acres of land adjacent to the lower reservoir of the Little River as part of the joint purchase and sale agreement among the Belfast Water District, Nordic and City of Belfast associated with Nordic's purchase of lands from the Water District. This purchase will provide permanent protection of the Little River Trail, and allow public access on a trail system that is not now subject to permanent protection. This Trail system in Belfast, as well as other lands in Northport, will support conserving public views of inland waters.

The Board also noted that Nordic proposes no new development in a Shoreland area on its main development site, and that their project will not adversely impact current public views of the Lower Reservoir Dam that is enjoyed by travelers on Route One; a significant view corridor that is identified in the City's Comprehensive Plan.

Lastly, Nordic's installation of a Significant Water Intake/Discharge pipe within the Ekrote easement area should have no adverse impacts on the views from this private property or along the coastline because the pipes will be submerged.

- (7) ***Will conserve actual points of public access to inland and coastal waters, particularly those areas to which the City has retained a public right-of-way.***

As noted in (6) above, the City intends to purchase 40 acres of land located immediately adjacent to the Lower Reservoir Dam on the Little River and to provide permanent protection of this area. This purchase will foster and better conserve public access to the existing Little River Trail located in this area; it will establish public ownership of this property.

There are no public access points associated with the Ekrote easement area, although the Board did note that the ownership of the inter-tidal area is currently the subject of a Superior Court case, and that one of the interested parties has established certain

public access rights to lands along the coast in this area. The disposition of the Superior Court case will determine future ownership of this area.

(8) *Will not adversely impact archaeological and historical resources as designated in the Belfast Comprehensive Plan.*

The Shoreland area proposed to be developed by Nordic is not identified as an archaeological or historical resource in the Belfast Comprehensive Plan, thus, the Board found that no such resources will be adversely impacted by Nordic's proposed development.

The Board, in making its Finding, also considered information in the Nordic Site Plan application, Attachment 32, Maine Historic Preservation Commission Archaeological Study and Notice. Nordic provided information regarding its research of Maine Historic Preservation archives, as well as its outreach to the recognized Indian Tribes of Maine. Neither of these contacts identified significant known historical or archeological sites or structures. The Board did receive comment at its December 18, 2019 public hearing on this issue from one of the experts from a Party-in-Interest, however, the Board did not extensive archeological assessment.

(9) *Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities District.*

The Commercial Fisheries/Maritime Activities District is a specific designation under the Maine Shoreland Program. There are no designated Commercial Fisheries/Maritime Activities Districts identified in Chapter 82, Shoreland, in the City Code of Ordinances. Thus, the Board found that the Nordic project will not adversely affect any such district.

(10) *Will avoid problems associated with floodplain development and use.*

The Board found that the Nordic project involves no new structural development in an area that is in a designated flood zone. The Board, however, noted that the existing Belfast Water District offices are located on the edge of a designated flood zone, Zone A. Nordic proposes to renovate this building to serve as a visitor's center, a use that the Planning Board supports. The Board, recognizing that there is some risk, albeit undetermined, that this building could experience public safety issues associated with a catastrophic failure of the Upper Reservoir dam on the Little River, established a specific Conditions of Approval (Condition 29) in its Site Plan Permit to require Nordic to develop appropriate emergency response measures. The Board, in identifying this risk and establishing Condition 29, recognized that the Belfast Water District has safely used this building for its offices for more than 50 years. Overall, the Board found that Nordic is avoiding problems associated with floodplain development.

(11) Is in conformance with the provisions of Article V of this chapter pertaining to land use standards.

The Board found that the Nordic project is in conformance with provisions identified in Article V, reference the Board's findings in Section 7 of these Findings below.

(12) If the application involves a structure, the structure cannot be located in an unapproved subdivision, and must conform to any other local ordinance or regulation or any state law which the City is responsible for enforcing.

The Board found that the Nordic project does not involve any structures that are located in an unapproved subdivision. The only specific structure located in a Shoreland District is the existing Belfast Water District offices. The Board has established a Condition of Approval in its Site Plan Permit and Zoning Use Permit, reference Condition 27, regarding use of the Visitors Center, and also established an overall Condition, Condition 4, that requires Nordic to obtain and comply with all permits issued by the Code Enforcement Officer.

7. **PLANNING BOARD REVIEW OF ARTICLE V, LAND USE STANDARDS FOR A SHORELAND PERMIT.**

The Planning Board is responsible for making a finding regarding project compliance with the Article V, Land Use Standards. The Planning Board made the following specific findings regarding Nordic's compliance with requirements identified in the Article V, Land Use Standards.

DIVISION 2, Area Requirements.

Section 82-181, Minimum Lot Area and Shore Frontage.

The main Nordic site is 56 acres in size and will be developed as a single tract of land. Only a portion of this site, about 2 acres is located within the General Development District of the Shoreland Zone. This parcel also has a minimum of 350 lineal feet of shore frontage on the Little River, some of which is located to the rear of the Lower Reservoir dam. Some of the above Nordic site is being created from lands now owned by the Belfast Water District. The Water District intends to divide its lands into two parcels; one of which will be sold to Nordic and the other to the City of Belfast. A lot in the General Development Shoreland District must have a minimum of 150 feet of shore frontage. The Board determined that the Nordic parcel will have more than the minimum amount of shore frontage for a parcel in the General Development Shoreland District. The Board also determined that the 56-acre parcel more than satisfies the minimum lot area requirements for the General Development Shoreland District.

The Board determined that Nordic's intent to acquire a 40-foot-wide easement over the Ekrote property does not constitute a division of this property. The Ekrote property is 2.73 acres in size and has about 350 feet of shore frontage. The Ekrote property is located in

the Limited Residential district of the Shoreland Zone. A lot in this district must have a minimum of 30,000 square feet of land area and a minimum of 150 feet of shore frontage. The Ekrote property satisfies this minimum lot size area and shore frontage requirement.

DIVISION 3. Structures, including Sections 82-201 through 82-206.

Section 82-201. Setbacks, maximum height and lot coverage.

There is only one above ground structure, the existing Belfast Water District offices that will be converted to a Visitors Center, that is located in a Shoreland Zone; the General Development district. The minimum structure setback requirement for this building is 25 feet from the High Annual Tide. The existing building does not conform to this setback requirement. Thus, this building is a nonconforming structure and any proposed expansion of this structure must comply with the Nonconforming expansion provisions identified in Article III of Chapter 82; reference Planning Board Condition 3 of this Shoreland Permit.

The Board determined that the Belfast Water District offices are less than 50 feet in height, thus, the offices comply with the height requirements for the General Development district.

The amount of the Nordic property that is in the General Development district is about 2 acres. The maximum lot coverage for the General Development district is 70%, or about 32,000 square feet. The Board determined that the amount of impervious surface located on the portion of the Nordic site that is in the General Development district is considerably less than 32,000 square feet, and that the project complies with this standard.

Nordic also intends to construct significant water intake and discharge pipes within the bounds of the Ekrote easement area. These pipes are located in the Limited Residential district of the Shoreland Zone. The Board, in its decision on a Zoning Use Permit, determined that the pipes constitute a structure. That said, the Board, as part of this same Permit, determined that underground pipes do not need to satisfy minimum front or rear structure setbacks requirements stipulated in Chapter 102, Zoning. In the case of this Shoreland Permit, the Board determined that the underground pipes do not need to satisfy the minimum structure setback of 75 feet from the High Annual Tide (HAT) of Belfast Bay, finding that the pipes are a functionally water dependent use and as such, are exempt from a structure setback requirement. The Board noted that the basic purpose of the Nordic pipes is to convey water from or to Nordic's Water Treatment facility, across Route One, over the Ekrote easement and to Belfast Bay.

The Board determined that the underground pipes do not have a lot coverage requirement. The maximum impervious surface ratio for the Limited Residential district is 20%. The Ekrote property currently has a lot coverage of less than 5%. Continuing, the maximum height standard for the Limited Residential district (35 feet) does not apply to an underground structure.

Section 82-202. Reserved. No Standards on which the Board must act.

Section 82-203 Elevation.

This standard requires all structures in the flood zone to comply with Chapter 78, Flood requirements. The existing Belfast Water District offices are located on the edge of a designated Flood Zone, Zone A. Any proposal to renovate or expand the current office building shall require Nordic to comply with all Chapter 78, Flood requirements that may be applicable, and to obtain any required Flood permits from the Code Enforcement Officer. The Board determined that the construction of intake/discharge pipes does not require a flood permit because there is no habitable floor space associated with the pipe.

Section 82-204. Piers, Docks or other Structures Projecting into or over a water body or wetland, provided such structures are not subject to the contract rezoning process.

The Belfast Harbor Committee, at its meeting of October 24, 2019, and as required by Chapter 82, Shoreland, provided its recommendations to the Belfast Planning Board regarding Nordic compliance with requirements of Section 82-204. The Board considered the recommendations of the Belfast Harbor Committee in rendering its Findings on requirements of this Section.

The Board noted that the only structure that Nordic proposes to construct in the inter-tidal zone are the submerged significant water intake and significant water discharge/outfall pipes, and that the construction of said pipes is subject to the award of a specific permit from the Belfast Planning Board. The Board, in these Findings, makes reference to the Significant Water Intake/Discharge Permit it issued to Nordic on December 22, 2020, and the Conditions of Approval adopted for that Permit.

(1) Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

The Planning Board reviewed Nordic's approach to construct the intake/discharge pipes in off-shore and inter-tidal waters and found that Nordic's approach and construction measures should be effective in minimizing and managing erosion, sedimentation and turbidity issues during construction. The Board's review specifically considered concerns expressed by Parties-in-Interest and the general public regarding the potential dispersion and suspension of mercury from off-shore dredging activities and the potential adverse impacts that the dispersion of said mercury could have on aquatic plants, shellfish, fish, waters and human health. The Board acknowledged this concern, but found that Nordic's approach to managing construction was an effective way to control erosion and sedimentation (as discussed in an assessment provided by the Department of Marine Resources [DMR]), and that Maine DEP and ACOE implemented assessment and disposal criteria should be sufficient to ensure that mercury and other contaminants would not result in unreasonable adverse impacts to human health or the environment. The Board conditioned its Shoreland Permit on compliance with conditions recommended in the DMR Assessment.

The Board also found that Nordic will similarly use effective measures to bury the section of the intake/discharge pipe on lands within the Ekrote easement area located between Route 1 and the inter-tidal area.

The Board based its Findings on the following: information identified in the Nordic application and supplemental information provided by Nordic during the Board's review of their application; information provided by the DMR to the DEP, and the Board's review of the MPDES permit issued by the DEP; information that Nordic provided to the ACOE regarding testing for mercury in the project area; the review of the above information by Mandy Olver, Olver Associates (City Engineer); Board review of the recommendation from the Belfast Harbor Committee; and Board consideration of testimony offered by Parties-in-Interest and the general public

(2) The location shall not interfere with existing developed or natural beach areas.

The Board found that the intake/discharge pipes will not interfere with existing developed or natural beach areas. There is no existing development in the natural beach area adjacent to the Ekrote easement area in which the intake/discharge pipes will be buried. The Board found that any impacts to the natural beach area will be temporary and should be limited to the time period of project construction, and that long-term impacts will be mitigated by Nordic's approach of burying the intake/discharge pipes.

(3) The facility shall be located so as to minimize adverse effects on fisheries.

The Planning Board, as recommended by the Harbor Committee, found that Nordic's installation and use of the significant water intake/discharge pipes should minimize adverse effects on fisheries. The Board, in making its finding, specifically referenced the assessment from the Department of Marine Resources (DMR) regarding finfish and shellfish resources in the area. DMR found that the Nordic project, as proposed to be constructed, would not have an adverse impact on area fisheries. The Board acknowledged comment from Parties-in-Interest, particularly those from area fishermen, who challenged the DMR assessment, but found DMR's assessment credible. The Board also noted that Nordic changed the final construction approach to the intake/discharge pipes to address concerns raised by the DMR and the DEP. Lastly, the Board conditioned its Shoreland Permit on Nordic's compliance with permits issued by the DEP, and the yet to be issued ACOE Permit.

(4) The facility shall be no larger in dimension to carry on the activity and be consistent with existing conditions, use, and character of the area.

The Board found that the Nordic project is consistent with this standard.

The portion of the Project that extends beyond mean high water level is limited to buried/submerged aquaculture seawater pipes and associated intake structures that will not be visible. The pipes are sized to provide adequate flow capacities for the planned

operations, along with appropriate contingencies for settling of solids and other material in between maintenance periods. The intake structures have been designed to minimize flow at the intake to mitigate impingement risk for native finfish and benthic species. All structures are designed to be no bigger than necessary. Application Attachment 20; Application Attachment 11 (Natural Resources Report); Application Attachment 36; *see also* analysis above in Section 82-56(9) regarding the DMR Assessment and recommendations for avoiding interference with commercial fisheries.

Based on review of these materials, comments from Interested Parties and the general public, and review of the DEP permits and DMR Assessment, the Board finds that the buried/submerged aquaculture seawater pipelines and associated submerged intake structures are no larger in dimension than necessary to carry on the activity and are consistent with existing condition, use, and character of the area.

- (5) The facility shall not encroach into, interfere with, or pose a hazard to navigational channels, and shall not extend within 25 feet of the established channels in Belfast Harbor.***

The proposed facility will be located upland and require a minimal marine footprint consisting of 3 pipes for withdrawing and redepositing ocean water. These pipes will be located along the southern border of Belfast and will not be placed within 25 feet of the established channels in Belfast harbor. Plan sheet CS101 depicts the pipe route to be used; reference application Attachment 20.

The Board finds the aquaculture seawater piping and related structures will not encroach into, interfere with, or pose a hazard to navigational channels and will not extend within 25 feet of the established channels in Belfast Harbor. The Board, as recommended by the Harbor Committee, established a condition that requires Nordic to work with the U.S. Coast Guard to install markings to protect navigation.

- (6) The facility shall not interfere with access to and from existing mooring and berthing areas for both commercial and recreational uses in Belfast Harbor.***

The Belfast Harbor Committee considered this issue in offering its recommendation to the Belfast Planning Board. Katherine Pickering, Belfast Harbor Master, noted to the Harbor Committee that there are few existing moorings in the area and stated that the proposed location of the intake/discharge pipes should not have an adverse impact on any moorings used by area property owners, and noted that there are no private docks or piers in this area. The Planning Board found that the buried intake/discharge pipes should not interfere with access to and from any existing mooring and berthing areas.

- (7) The facility shall not displace or eliminate existing mooring and berthing areas, both public and private, for commercial and recreational uses in Belfast Harbor.***

The Planning Board found that the proposed pipelines are not located within or adjacent to any existing mooring or berthing areas. Further, because of the water depth where

the pipe emerges from burial below marine soils on the sea floor (- 30 feet NAV88) there will be no interference with commercial or recreational uses. Thus, the Board finds that the Nordic intake/discharge pipes will not displace or eliminate existing public or private mooring and berthing areas.

- (8) The facility shall not interfere with public access to and use of the waters of Belfast Harbor, including public rights of way and public and private launching ramps and related facilities.***

The Board found that there are no docks or launching facilities in the immediate vicinity of the project that will be impacted by the project. Consequently, the Board finds the aquaculture seawater piping and related structures will not interfere with public access to and use of the waters of Belfast harbor, including public rights of way and public and private launching ramps and related facilities.

- (9) All points and location of the facility shall comply with the following wharf line restrictions for Belfast Harbor established in the City Code of Ordinances.***

The Planning Board found that the Nordic project does not involve any structures that must comply with the wharf line restrictions, noting that these provisions apply to maximum length of docks and piers attached to shore.

- (10) The facility shall not interfere with or pose a hazard to navigation by obscuring visibility or by the display of distracting lights. The facility, if deemed appropriate, shall display appropriate warning lights to aid in navigation and public safety.***

The Board finds that the aquaculture seawater piping and related structures will not interfere with or pose a hazard to navigation by obscuring visibility or by the display of distracting lights; no lighting is proposed. This Permit is conditioned upon Nordic cooperation with the United States Coast Guard regarding appropriate markings to protect navigation and avoid fouling of fishing gear.

- (11) No new structure shall be built on, over or abutting a pier, dock, wharf or similar structure extending beyond the highwater line of a waterbody or within a wetland unless the structure requires direct access to the water as an operational necessity.***
- (12) No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal highwater line of a waterbody or within a wetland shall be converted to a residential structure in any district ---.***
- (13) Except in the General Development and Waterfront Development District, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a waterbody or within a wetland shall not exceed 20 feet in height above the pier, dock, or other structure.***

The Planning Board found that Nordic is not proposing the construction of any piers, docks, wharfs or similar structures and that standards (11), (12) and (13) do not apply to this project.

Section 82-205. Reserved. No standards on which the Board must act.

Section 82-206. Stairways and similar structures providing shoreline access.

The Nordic project does not involve any proposed stairways or similar structures in the Shoreland Zone.

DIVISION 4. Campgrounds and Campsites.

The Nordic project does not involve the development of campgrounds or campsites and this standard does not apply.

DIVISION 5. Commercial and Industrial Uses.

Section 82-241. Prohibited Uses.

This standard applies only to uses adjacent to Upper Mason Pond and the section of the Goose River that flows into this Pond. Thus, the Board determined that this standard does not apply to the Nordic project.

DIVISION 6. Parking Areas.

Section 82-261. Setbacks.

The Board found that some of the existing parking areas near the Belfast Water District offices (future Visitor's Center) may not fully conform with the structure setback requirement of 25 feet from the High Annual Tide (HAT) of the Little River. The Board determined that any existing parking area may remain and may be repaired and maintained, however, no existing parking area may be expanded (further) into the setback area and no new parking area may be constructed in the setback area; reference Condition of Approval 6.

Section 82-262. Design Generally.

The Planning Board found that Nordic will largely rely upon the existing parking areas that are located in the Shoreland Zone, and that the current Site Plan does not identify the construction of new parking areas in the Shoreland Zone. The only parking areas located in the Shoreland Zone are those near the Belfast Water District offices. The Board found that the parking in this area is adequately sized and that the parking is generally designed to slow the flow of stormwater directly into the Little River.

DIVISION 7. Roads and Driveways.

Sec. 82-282. Setbacks.

The Board found that some of the existing drive near the Belfast Water District offices is likely located within 25 feet of the High Annual Tide (HAT) of the Little River. The Board adopted Condition of Approval 6(a) that stipulated that no new roads may be constructed within 25 feet of the HAT, and no existing road may be expanded to be located within 25 feet of the HAT. The Board, however, also approved Condition 6(b) that allows the construction of a drive(s) within 25 feet of the HAT that is associated with the maintenance, repair and/or removal of the Lower Reservoir Dam, or the construction, maintenance and repair of water extraction infrastructure from the Reservoir or from the River if the dam is removed.

Section 82-283. Expansion of Existing Public Roads.

This standard applies specifically to public roads located within a legal road right-of-way. There are no public roads with a legal road right-of-way on the Nordic property, thus, the Board found that this standard does not apply.

Section 82-284. Reserved. No standards on which the Board must act.

Section 82-285. New Roads and Driveways in Resource Protection and Stream Protection Districts.

The Board found that there are no areas on the Nordic site that are in the Resource Protection or Stream Development Shoreland Districts, thus, this standard does not apply.

Section 82-286. Road Banks.

The Board found that all road banks are limited to a slope of 2:1 or less, as shown in Nordic's grading plans CG101- CG107. The Board finds the Project complies with the Shoreland road bank requirements. The Board, however, also noted that Nordic currently does not propose to construct any new roads located within a Shoreland area,

Section 82-287. Road Grades.

The Board noted that Nordic does not propose to construct any new roads in a Shoreland regulated area. The Board also noted that all new roads on the site, including roads located outside of the Shoreland Zone, shall involve road grades that are greater than 10%, except for short segments of less than 200 feet. Accordingly, the Board finds that the Project complies with the Shoreland road grade requirements.

Section 82-288. Drainage Buffer Strips.

The Board noted that Nordic does not propose to construct any new roads in a Shoreland regulated area. However, if Nordic proposes to construct any new roads in a Shoreland regulated area, Nordic shall comply with the requirements of Section 82-288. The Board, however, determined that this standard would not apply to any short stretch of driveway access constructed pursuant to Board Condition of Approval 6(b).

Section 82-289. Design of Drainage Structures.

The Board noted that Nordic does not propose to construct any new roads in a Shoreland regulated area. However, if Nordic proposes to construct any new roads in a Shoreland regulated area, Nordic shall comply with the requirements of Section 82-289. The Board, however, determined that this standard would not apply to any short stretch of driveway access constructed pursuant to Board Condition of Approval 6(b).

Section 82-299. Maintenance of Drainage Structures.

The Planning Board established a specific Shoreland Permit Condition of Approval, reference 6,c), that requires Nordic to effectively maintain all drainage structures associated with road construction.

DIVISION 8. Reserved. No standards on which the Board must act.

DIVISION 9. Stormwater Control.

Section 82-331 Required.

The Board found that Nordic Site Plan Permit application included an overall stormwater management plan for the Nordic site that was prepared by Ransom Consulting, reference Attachments 15 and 16 of the Nordic application. Mandy Olver, Olver Associates, reviewed this plan and determined that it was consistent with City requirements. The Board also reviewed the DEP SLODA/NRPA Permit and found that the DEP approved the Nordic stormwater plan, subject to compliance with Conditions established in said DEP Permit. Continuing, the Board noted that it received limited public comment from either Parties-in-Interest or the general public regarding stormwater concerns at any of the public hearings that the Board conducted. Further, while stormwater from the Nordic project will traverse areas in the Shoreland Zone, little of the Nordic site is located in a Shoreland regulated area and Nordic will be constructing a limited number of stormwater improvements in a Shoreland regulated area.

The Planning Board, based on its review of all information provided over the course of the Board's review of the Nordic application, found that the Nordic project complies with stormwater requirements identified in Section 82-331.

Section 82-332. Maintenance of Runoff Control Facilities.

The Board found that Nordic has submitted an adequate plan to manage and maintain stormwater management facilities (reference Attachment 16 in the Site Plan application). Further, the Board determined that it has established adequate Conditions of Approval in this Shoreland Permit and the Site Plan and Zoning Use Permit that it issued to Nordic, that require Nordic to manage on-site stormwater facilities, and to report any deficiencies to the Code Enforcement Officer. The Board also noted that the DEP has established Conditions in its NRPA/SLODA Permit regarding the maintenance of stormwater facilities.

DIVISION 10. Utilities.

Section 82-351. Subsurface Sewage Disposal Systems.

The Board found that these provisions do not apply to this project. Nordic does not propose to use a subsurface sewage disposal system.

Section 82-352. Essential Services.

While the Nordic project involves a significant amount of underground infrastructure and a carefully coordinated underground piping plan, only a limited amount of the infrastructure will be located in a Shoreland regulated area, and none of the infrastructure will be located in an area that is in a Resource Protection or Stream Protection Shoreland District. The Board, based on information included in Nordic's Site Plan application finds that Nordic's installation of essential services in the Shoreland Zone is generally limited to existing public ways and service corridors. There are two exceptions, including installation of the significant water intake/discharge pipe in the Ekrote easement and associated intertidal zone, and the installation of piping associated with Nordic's extraction of surface water from the Little River. The Board determined that there is no practical alternative to the location of this infrastructure in these shoreland regulated areas, and that the Board, through the Conditions of Approval it has established for this Shoreland Permit, and the Site Plan Permit, Zoning Use Permit and Significant Water Intake/Discharge Pipe Permit it has issued, has established appropriate conditions to limit potential adverse impacts on shoreland resources.

DIVISION 11. Mining.

Section 82-371. Mineral Exploration.

The Board has determined that the Nordic project does not involve mineral exploration and that this standard does not apply.

Section 82-372. Mineral Extraction.

The Nordic project involves the removal of a significant amount of on-site earthen materials, some of which may be considered gravel and rock. The Planning Board, consistent with recommendations of the Code and Planning Department and Board decisions regarding other (non-Nordic) projects, has found that other earthen removal activities in Belfast are the equivalent of mineral extraction, as such is defined in Chapter 66, General Provisions, of the City Code of Ordinances. As such, the Board determined that the Nordic project must comply with guidelines in Section 82-372.

The Board noted that nearly all of Nordic's extraction activities are located outside of a Shoreland regulated area, the main exception being the area in the Ekrote easement and associated intertidal area involved with the installation of the intake/discharge pipes. The Board also found the following: Nordic has identified an effective process associated with the removal of materials that involves opening up only limited areas of the site at any one time, and that this

approach will serve to minimize erosion and sedimentation; that Nordic, per requirements of this City Shoreland Permit, the City Site Plan Permit, and Zoning Use Permit, as well as the DEP Permits, must employ measures during the construction of the intake/discharge pipes to minimize erosion, sedimentation and turbidity; and that with the exception of the intake/discharge pipe, none of the extraction activities that will occur are located within 75 feet of a shoreland regulated stream or waterbody.

Thus, the Planning Board found that Nordic is avoiding mineral extraction activities to the greatest extent practical in a Shoreland regulated area, that the activities Nordic is conducting are utilizing appropriate best management practices, and that said activities are consistent with requirements established by both the DEP and the City. The Board relied upon Mandy Olver's, Olver Associates, review of the Nordic project, the Board's review of information in the DEP Permits, and information in the Nordic application in making its decision. The Board acknowledged that both Parties-in-Interest and the general public expressed concerns with the volume of earthen removals proposed by Nordic, but found that Nordic's operations are consistent with the requirements of this Section.

DIVISION 12. Agriculture, Timber Harvesting and Clearing of Vegetation.

Section 82-391. Agriculture.

The Board found that the Nordic operation does not qualify as an agricultural use, as such is defined in City Code of Ordinances, thus, this Section does not apply.

Section 82-392. Timber Harvesting.

The Board found that the Nordic project does not involve timber harvesting, as such is defined in Chapter 82, Shoreland, thus, this Section does not apply.

Section 82-393. Clearing of Vegetation for Development.

The Board found that the Nordic project involves limited amounts of new development in a Shoreland regulated area. The exception is the installation of the intake/discharge pipes in the Ekrote easement area and the adjacent inter-tidal zone. With the exception of construction in the Ekrote easement area, the Board found that the Nordic project, as shown in its Site Plan application, does not involve any clearing of vegetation openings that require Board consideration pursuant to Shoreland Permit requirements.

The Planning Board made the following findings with respect to the clearing of vegetation in the Ekrote easement area:

- The Ekrote easement is located in the Limited Residential district of the Shoreland zone, an area that is 250 feet in depth as measured from the High Annual Tide (HAT).
- The portion of the Ekrote easement area on the Ekrote property located in the Limited Residential district is about 10,000 square feet in size; 40 feet of easement width multiplied by 250 feet of depth.

- The Ekrote easement Nordic will acquire is part of the larger Ekrote property (2.73 acres), and that the Board should consider the total size of the property, and not just the easement area, to determine the amount of vegetation clearing that can occur on the overall Ekrote property.
- Section 82-393 establishes guidelines on the amount of clearing of vegetation and tree cutting that can occur on a property.
- The Board recognized that the construction of significant water intake/discharge pipes is a permitted use in the Limited Residential district and that vegetation clearing is allowed for a permitted use.
- Nordic has identified its plans to replant the disturbed area within the Ekrote easement and that it intends to restabilize the site after initial construction and to replant the area based on seasonal conditions.

The Board, in considering the above information, found that Nordic's proposal to clear vegetation within the Ekrote easement area is acceptable, subject to Board Condition of Approval 8 in this Permit. This Condition establishes certain limitations on the amount of vegetation that can be removed and Nordic's requirement to replant the area. The Board particularly relied upon information in the Nordic application and the comments of Wayne Marshall, Project Planner, in making this Finding.

DIVISION 13. Erosion and Sedimentation Control.

Section 82-411. Erosion and Sedimentation Control Plan.

The Board found that Nordic has prepared and submitted an erosion and sedimentation control plan as part of its Site Plan application, reference Attachment 14. The Board found that this plan satisfied requirements of Section 82-411. The Board based its findings on information in the Nordic application as well as supplemental information prepared by Nordic and information presented by Nordic at Board meetings, the review of this information by Mandy Olver, Olver Associates (City Engineer), information in the DEP NRPA/SLODA Permit and Findings regarding soil and erosion control and the Board's review of said information, its consideration of comments offered by Parties-in-Interest and the general public at public hearings conducted by the Board, comments offered by Code and Planning Department representatives, and its deliberations on this issue. The Board particularly noted that it considered issues related to soil and erosion control in all 5 permits that the Board considered for the Nordic project; this Shoreland Permit, a Site Plan Permit, a Zoning Use Permit, a Significant Groundwater Well Permit and a Significant Water Intake/Discharge Pipe Permit.

Section 82-412. Adaption to Existing Topography.

The Board found that Nordic's Soil Erosion and Sedimentation Control plan satisfactorily addressed concerns related to the adaption of said soil and erosion measures to the site's topography. Nordic particularly devoted attention to the size of cleared openings on the site.

Section 82-413. Control Measures to Apply to All Stages of Development.

The Board found that Nordic must comply with the soil and erosion control measures identified in their Site Plan application as such are addressed in Permit Conditions (Shoreland Permit and other City Permits) established by the Planning Board. The Board particularly noted the requirement for third-party inspectors established by both the City and the DEP regarding all project construction activities, specific requirements regarding the installation of the significant water intake/discharge pipes, and the requirement for regular construction meetings between Nordic and the City Code Enforcement Officer. The Board found that the Nordic project is compliant with this standard (Sec 82-413).

Section 82-414. Stabilization of Exposed Ground Areas.

The Board found that the soil and erosion control plan identified in the Nordic Site Plan application addresses all requirements of this Section.

Section 82-415. Drainageways and Drainage Outlets.

The Board found that the soil and erosion control plan identified in the Nordic Site Plan application addresses all requirements of this Section. The Board noted that Nordic modeled the 50 year, in addition to the 25-year storm event required in this Section, to comply with requirements in Chapter 102, Zoning, and that Mandy Olver, Olver Associates, reviewed and found Nordic's plans consistent with City requirements. The Board also considered information in the DEP SLODA/NRPA Permit and Findings in making this finding.

DIVISION 14. Natural Resources.

Section 82-431. Protection of Soils.

Nordic's application included a Class B High Intensity Soil Map prepared in accordance with the soil survey standards of the Maine Association for Professional Soil Scientists by Broadwater Environmental, LLC, whose owner is a Certified Soil Scientist in Maine; reference application Attachment 12. Nordic's application also included a full Geotechnical Investigation and Report. The geotechnical report identifies several specific conditions present at the site which cause limitations that the design must address. The most significant concern relates to the discovery of a glaciomarine deposit of silt and clay of varying thickness throughout the site. This layer of material is unsuitable for heavy loadings as will be encountered in the process of constructing on-site buildings, and the material will be removed and replaced with suitable structural fill per the engineers' recommendations. Unsuitable soils will be trucked off-site and disposed of at a properly licensed and registered facility. Some native silt and clay soils may be suitable for reuse as common fill on the site, provided the moisture content can be controlled and compaction can be achieved. The report concluded that excavation and replacement of the glaciomarine soils with compacted structural fill, and/or design of the buildings to bear at elevations corresponding to suitable bearing soils are geotechnically feasible alternatives to allow construction of the proposed buildings on conventional spread footing foundation systems; reference application Attachment 13.

The Planning Board found that Nordic's approach to managing construction was an effective way to control erosion and sedimentation. The Board based its findings on its review of the

Nordic application materials, its consideration of information presented to the Board by Nordic representatives at the Board meeting of September 4, 2019, the review of the Nordic application by Mandy Olver, Olver Associates (City Engineer), its review of the DEP SLODA/NRPA Permit Findings and Conditions, its consideration of comment offered by Parties-in-Interest and the general public at the Board's September 4, 2019 public hearing. A particular concern raised at the public hearing were impacts associated with the depth of construction activities and the removal of significant amount of soils. The Board acknowledged this concern, but determined that project construction warranted the removal of existing on-site soils and that Nordic had identified a good quality approach to managing potential soil and erosion control risks. The Board established Conditions of Approval in several City Permits to require Nordic to comply with provisions of its soil and erosion control plan.

Section 82-432. Protection of Water Quality.

The Planning Board found that the Nordic project will not deposit into the ground or discharge into the waters of the state any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body. The Board found that the main risk to water quality is associated with Nordic's discharge of effluent from its wastewater treatment facility to Belfast Bay via a discharge pipe. The DEP, as well as the ACOE, and not the City, are primarily responsible for the regulation of discharges to off-shore waters. The Planning Board reviewed the MPDES permit issued by the DEP to Nordic for its proposed discharge to the Bay, including information submitted to the DEP and the DEP's Permit Findings and Conditions. Mandy Olver, Olver Associates, review of this information on behalf of the Board and other written comment to the Board during the Board's review of the Nordic Final Site Plan Permit and this Shoreland Permit. The Board, primarily based on the above information, as well as its own deliberations, found that the Nordic project would adequately provide for the protection of water quality.

DIVISION 15. Archeological Sites.

Section 82-451. Approval of Development Affecting Historic Sites.

The Planning Board found that the Nordic project will not adversely affect any known historic sites. The Board based its finding on information in the Nordic application, reference Attachment 32, Maine Historic Preservation Commission Archeological Study and Notice. This Attachment referenced the outreach that Nordic's consultants made to both the Maine Historic Preservation Commission and Maine Indian Tribes, and the fact no historic sites were identified on the property. A Party-in-Interest, at the Board hearing on Attachment 32, requested that the Board require Nordic to undertake an extensive on-site archeological study, however, the Board deemed that this level of effort was not supported by the investigatory assessment conducted by Nordic.

DIVISION 16. Significant Groundwater Well.

The Planning Board found that Nordic does not plan to develop or operate any significant groundwater wells that are located in any Shoreland regulated area, thus, this Shoreland standard does not apply to this project.

DIVISION 17. Significant Water Intake or Significant Water Discharge/Outfall Pipe.

The Planning Board found that Nordic will be constructing and operating a significant water discharge/outfall pipe in the Limited Residential district of the Shoreland Zone. The pipe is located in an easement granted to Nordic by the Ekrote's and will be located in the adjacent waters of the intertidal zone. The Board determined that a significant water intake/discharge pipe is a permitted use in the Limited Residential district, and requires the issuance of a specific permit from the Belfast Planning Board. The Board found that the Planning Board issued the required Significant Water Intake/Discharge Pipe at its meeting of December 22, 2020, and determined that the Board decision on this Permit constitutes a Finding that Nordic has complied with requirements of Division 17.

DECISIONS OF BELFAST PLANNING BOARD

The City of Belfast Planning Board, at its meeting of December 17, 2020, took the following actions on Nordic's Shoreland Permit application:

- a) The Board found that Nordic submitted its Shoreland Permit application on June 11, 2019. This application was included as part of Nordic's Site Plan Permit application.
- b) The Board conducted several duly noticed public hearings for the purpose of accepting public testimony from both Parties-in-Interest and the general public regarding Nordic's proposal to obtain a Shoreland Permit. The specific dates of these hearings were January 8, 15 and 22, 2020, and October 7 and 8, 2020. The Board also notes that it conducted numerous other hearings that provided opportunities for public comment on specific elements of the Nordic project that are addressed in the Shoreland Permit.
- c) The Board determined that the Shoreland Zone allows the activities that Nordic proposes to construct in areas subject to Shoreland regulations. A portion of the main Nordic site is located in the General Development Shoreland District. This District allows land-based aquaculture and associated uses. The Ekrote easement area is located in the Limited Residential district of the Shoreland Zone. The only activity that will occur in this area is the construction and operation of a significant water intake/discharge pipe associated with Nordic's intake of water from Belfast Bay and discharge of effluent to the Bay. The Limited Residential district allows land-based aquaculture uses, as well as the location of significant water intake/discharge pipes.
- d) The Board determined that the Nordic application satisfied all submission requirements for a Shoreland Permit, reference Section 82-52, and that the Belfast Harbor Committee, as required by Section 82-54, reviewed the Nordic application and provided a recommendation to the Board regarding compliance with applicable Shoreland standards, mostly Section 82-204.

- e) The Planning Board determined that the Nordic project, subject to compliance with Conditions of Approval established by the Board for this Permit, complies with requirements of Section 82-56, Standards for Review of Shoreland Permits.
- f) The Planning Board determined that the Nordic project, subject to compliance with Conditions of Approval established by the Board for this Permit, complies with requirements of the Article V, Land Use Standards.

Therefore, the Belfast Planning Board, at its meeting of December 17, 2020, voted to approve the issuance of a Shoreland Permit to Nordic, and voted to approve the Conditions of Approval (Conditions are attached to these Findings) that Nordic must satisfy to comply with terms of the City Shoreland Permit. Further, the Board voted to adopt these Findings of Fact that describe why the Board determined that the Nordic project complies with requirements identified in Chapter 82, Shoreland.

While the Board voted to approve these Findings of Fact and the accompanying Conditions of Approval for the Shoreland Permit at the Board meeting of December 17, 2020, the Board determined that the formal date of the Board's action for the purposes of any appeal of the Board decision would be date of Board action on the Nordic Site Plan Permit application. The Board authorized Declan O'Connor, its Acting Chair for the Nordic project, to sign these Findings and Conditions on its behalf.

On behalf of the Belfast Planning Board

Richard (Declan) O'Connor
Acting Chair on the Nordic Project

This decision of the Planning Board is subject to an administrative appeal to the City of Belfast Zoning Board of Appeals pursuant to standards identified in the City Code of Ordinances, Chapter 102, Zoning, Article II, Administration, Division 4, Appeals and Variances.

**CITY OF BELFAST
ADOPTED CONDITIONS OF APPROVAL
SHORELAND ZONING PERMIT
ISSUED TO NORDIC AQUAFARMS, INC.**

The City of Belfast Planning Board approves the issuance of a Shoreland Permit to Nordic Aquafarms (hereinafter Nordic) to allow the company to conduct certain activities located within the Limited Residential Shoreland District (Eckrote easement area) and the General

Development Shoreland District (area near existing Belfast Water District offices). Planning Board issuance of this Shoreland Permit is subject to Nordic's compliance with the following Conditions of Approval adopted by the Board at its meeting of December 17, 2020.

1. Construction of Intake/Discharge Pipes and Nordic Compliance with City Intake/Discharge Pipe Permit, Site Plan Permit and Zoning Use Permit.

Nordic may construct the proposed Significant Water Intake and Significant Water Discharge Pipes in the location shown on their Site Plan application, some of which is located within the Limited Residential District of the Shoreland Zone, subject to Nordic's compliance with all requirements identified in the City Significant Water Intake and Significant Water Discharge Pipe Permit, Site Plan Permit and Zoning Use Permit approved by the Planning Board, and any amendment that may be approved by the Board to said Permit.

2. Nordic Compliance with State and Federal Permit Requirements regarding Construction of the Intake/Discharge Pipes.

Nordic proposes to install Significant Water Intake and Significant Water Discharge Pipes in the coastal waters of Belfast Bay. Nordic shall comply with all terms and conditions of permits issued by the Department of Environmental Protection, Maine Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, and the U.S. Army Corps of Engineers regarding the construction and operation of said pipes.

3. Nordic Visitor's Center.

Nordic, consistent with terms of its Site Plan application and the Site Plan Permit approved by the Belfast Planning Board, is authorized to convert the former Belfast Water District offices to a Visitors Center, and shall provide accompanying adequate parking for the Visitors Center and the Little River Trail. The Water District offices and the accompanying parking is located in the General Development District of the Shoreland Zone. If Nordic proposes to use the Belfast Water District offices for a use other than a Visitor's Center, Nordic shall obtain the approval of the Planning Board of said alternative use as an amendment to this Shoreland Permit.

The Water District offices do not comply with minimum structure setback requirements from the High Annual Tide for the Little River. The minimum structure setback requirement is 25 feet, thus, the existing building is nonconforming with respect to structure setback requirements. Any proposal by Nordic to expand the size of this building shall comply with the nonconforming structure expansion requirements identified in Article III of Chapter 82.

The existing Water District offices also are located on the edge of a designated flood zone; Zone A. Any proposal to renovate this building shall comply with applicable requirements of Chapter 78, Floods, and if warranted, shall require the issuance of a Flood Permit from the Code Enforcement Officer. Further, Condition of Approval 29 in the Site Plan Permit

issued to Nordic established certain conditions regarding the use of this building as a Visitors Center. The Board, as a Condition of this Shoreland Permit, requires Nordic to comply with requirements of Condition 29 in the Site Plan Permit.

4. Nordic Use of Surface Water from the Little River.

Nordic intends to use surface water from the Little River to assist in facility operations. The existing dam at the Lower Reservoir is located in the General Development District of the Shoreland Zone. Nordic's use of surface water from the existing dam impoundment on the Little River, or should the dam be proposed to be removed at some future date, and Nordic proposes to extract water directly from the surface flows of the River, shall require Nordic to comply with terms and conditions of the Site Plan Permit approved by the Belfast Planning Board.

5. City Purchase of Water District Property Adjacent to the Lower River Reservoir.

Planning Board approval of the Nordic Shoreland Permit is contingent on the sale of about 40 acres of land to the City of Belfast that is located adjacent to the Lower Reservoir. About 24 acres of this land is located in the City of Belfast, and an additional 16 acres are located in the Town of Northport. The lands that are located in the City of Belfast that the City would be purchasing are in the Resource Protection District of the Shoreland Zone. The City is committed to purchasing this property as part of the current Purchase and Sale Agreement between the Belfast Water District, Nordic Aquafarms and the City. The Planning Board determined that this sale to the City and the public ownership of the 40 acres is critical to providing public protection of critical Shoreland resources.

6. Internal Roads, Parking Areas and Sidewalks.

(a) The General Development Shoreland District requires a minimum setback of 25 feet for any road, parking area or sidewalk. The Board determined that some of the existing internal drives and parking areas on the site (Belfast Water District improvements) are likely located within 25 feet of the High Annual Tide (HAT) of the Little River. All existing roads, driveways and sidewalks that are nonconforming with respect to structure setbacks may be retained and repaired so that they are in good condition, however, no existing road, parking area or sidewalk can be expanded into the nonconforming setback area, and no new roads, parking areas, or sidewalks can be constructed in area that does not conform to the setback requirement.

(b) Notwithstanding the provisions of (a) above, and consistent with standards in Sec. 82-282 (c), Nordic shall be permitted to construct a new drive(s) or to expand an existing drive(s) to allow permanent or temporary access to the existing dam located at the Lower Reservoir for the purposes of maintaining, repairing or removing said dam, and to construct, maintain and repair facilities associated with the extraction of water from the Lower Reservoir or directly from the Little River should the dam be removed. The Belfast Code Enforcement Officer is authorized to approve the location and standards for the construction of such an access drive(s).

- c) Consistent with requirements of Section 82-290, Maintenance of Drainage Structures, Nordic shall be required to maintain and ensure the effective functioning of all ditches, culverts, bridges, dips, water turnouts and other stormwater runoff control installations that are associated with any roads/drives or parking areas located within a Shoreland regulated area, or that are located in a non-Shoreland area that rely on stormwater structures located in the Shoreland Zone to effectively manage stormwater.

7. Specific Activities that Require an Amendment to this Shoreland Permit

Any proposal by Nordic to construct new structures, to construct new parking areas or roads/drives, or to remove existing vegetation (in addition to areas of vegetation removal identified in the Planning Board approved Site Plan application) in excess of 500 square feet within the Shoreland Zone shall require the review and approval of the Belfast Planning Board. Vegetation removal that is less than 500 square feet in size is subject to the review and approval of the Code Enforcement Office, as is the proposed removal of dead or damaged trees.

8. Clearing of Vegetation and Replanting, Ekrote Easement Area.

The area within the Ekrote easement is located in the Limited Residential district of the Shoreland zone, an area that is 250 feet in depth as measured from the High Annual Tide (HAT). The portion of the Ekrote easement area on the Ekrote property located in the Limited Residential district is about 10,000 square feet in size; 40 feet of easement width multiplied by 250 feet of depth. Section 82-393 establishes guidelines on the amount of clearing of vegetation and tree cutting that can occur on a property. The Board, recognizing that the construction of significant water intake/discharge pipes is a permitted use in the Limited Residential district and that vegetation clearing is allowed for a permitted use, that the Ekrote easement Nordic will acquire is part of the larger Ekrote property (2.73 acres), that Section 82-393 allows certain amounts of vegetation and trees to be cleared in the Shoreland area, and that Nordic is required to replant this area to comply with Shoreland requirements (reference both this Condition and requirements of the City Water Intake/Discharge Pipe Permit), shall permit Nordic to remove existing vegetation in the Ekrote easement area subject to the following requirements:

- a) Nordic shall limit, to the greatest extent practical, all vegetation removal activities to the boundaries of the 40-foot easement it has acquired from the Ekrote's;
- b) Nordic shall not remove or 'limb-up' any trees outside of the easement area without the specific approval of the Belfast Code Enforcement Officer;
- c) Nordic shall regrade and hay and reseed (stabilize) the disturbed area within the Ekrote easement as construction activities are performed and completed;
- d) Nordic, within one growing season, shall replant the Ekrote easement area consistent with landscaping plans included in its Site Plan application; and
- e) Nordic shall be responsible for replanting (comparable plantings) any vegetation that dies within the first 3 years of Nordic's replanting program.

9. Class V Operator Required.

Nordic shall engage the services of a Class V Operator (as such is identified by the State of Maine) to operate and manage the on-site Water/Wastewater Treatment facility.

10. Work in Intertidal Area and Performance Guarantee to the City.

No work on the intake or discharge pipes that Nordic proposes to locate within the intertidal area adjacent to the Ekrote property shall commence until a final judgment issued by the Waldo County Superior Court, Docket No. RE-2019-18, effectively determines that Ekrote and/or Nordic have sufficient legal right, title or interest in and to the intertidal area, that is sufficient for Nordic to engage in the uses approved in all City permits, which specifically includes this Shoreland Permit. Additionally, prior to the commencement of construction, Nordic shall record a deed in the Waldo County Registry of Deeds which grants and conveys sufficient right, title or interest from Ekrote to Nordic that entitles Nordic to use the Ekrote property (upland and intertidal) for the uses approved in the City permits, which specifically includes in this Shoreland Permit.

The City, in its approval of permits issued to Nordic, does not hereby grant any permission or right to Nordic and/or the Eckrote's to impair or encumber any real property rights of any abutter, person or entity. Rather, the Planning Board has determined that Nordic has sufficiently met City review criteria stipulated in the respective City Ordinances to warrant issuance of the permits requested by Nordic, subject to certain conditions of approval for the respective permits that were imposed by the Board. The Planning Board, in its record, noted that Nordic is involved in pending litigation in the Waldo County Superior Court (Docket No. RE-2019-18 to determine right, title and interest of the intertidal area adjacent to the Ekrote property. Therefore, if Nordic chooses to proceed to exercise the rights obtained through the City permits prior to a final judgment from the Maine Law court, should an appeal be taken from the final Superior Court Judgment, Nordic shall indemnify and hold harmless the City of Belfast, the Planning Board and Zoning Board of Appeals (collectively "City") from any suit or action naming the City as a party, in which said suit or action a party seeks damages, fees and/or costs from the City, its agents, experts, employees, officers and/or officials relating to the permits issued by the City.

Further, while the Planning Board has established other permit conditions that require Nordic to provide an Irrevocable Letter of Credit (performance guarantee) to the City to complete infrastructure it deemed subject to existing Belfast Code of Ordinance performance guarantee requirements, the Planning Board finds that additional consideration must be made to fund the potential removal or modification of the intake and discharge pipes proposed to be installed within the intertidal area, in the event that Nordic elects to commence construction after a favorable Superior Court decision is issued, but in advance of the a final decision regarding any potential appeal to the Maine Law Court. In such circumstances, and prior to Nordic commencing any construction in the intertidal zone, Nordic shall provide a Performance Bond (or similar guarantee found acceptable by City Attorney and the Code and Planning Department) to the sole benefit of the City, in an

amount sufficient to fund the potential removal or modification of said intake and discharge piping that Nordic has chosen to construct within the intertidal area, and restoration of the area to its pre-construction condition (subject to such limitations, modifications and/or requirements as may be imposed by any State or Federal licensing, permitting or enforcement agency). Said Performance Guarantee funds may be used solely by the City in the event that a Maine Law Court decision substantively determines that neither Ekrote nor Nordic have sufficient right, title or interest to engage in the uses permitted in the intertidal zone, and said Performance Guarantee fund may be used by the City, in its sole discretion to remove or modify said intake and discharge pipes, provided that Nordic is first provided an opportunity to remove or modify the pipes at its own costs, but refuses or is unable to do so in an expeditious manner. Said Performance Guarantee requirement shall terminate at such time as the Maine Law Court determines that sufficient right, title or interest is vested in Ekrote and/or Nordic, such that Nordic may proceed with uses permitted by the City regarding said intake and discharge pipes in the intertidal area claimed by Ekrote and/or Nordic.

11. Board Consideration of Information in Issuance of Permit.

In granting this permit approval, the Planning Board has relied upon the oral and written representations of the Applicant, its agents, experts and officers, including representations on the record and as part of the application process, such as clarifying emails and communications to the Belfast Code and Planning Department. Material deviations or violations of the filings and representations may cause the approval to be subject to review by the Planning Board regarding compliance with its findings of fact, conclusions of law and conditions of approval.

12. City Enforcement of Permit Requirements.

Failure to comply with any Condition of Approval identified in this Permit may result in any or all of the following actions:

- a. Issuance of a Stop Work Order;
- b. Denial or revocation of any Building Permit;
- c. Review, modification or revocation, after hearing, of any permit or approval issued to this project by the Planning Board or Code Enforcement Officer;
- d. A requirement that Nordic conform with all performance standards and review criteria of all ordinances within the Belfast Code of Ordinances within a definite time period; and/or
- e. Referral to the Belfast Code Enforcement officer, or any State of Maine or Federal permitting agency or enforcement authority.