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Admitted to Practice:  
State of Maine  
State of Florida  
District of Columbia

United States Supreme Court  
U.S. Circuit Court First Circuit  
U.S. District Court Northern District of Florida  
U.S. District Court Middle District of Florida  
U.S. District Court District of Maine

May 13, 2019

Amanda Beal, Commissioner  
Maine Department of Agriculture,  
Conservation and Forestry  
22 State House Station  
Augusta, ME 04333-0022

Carol DiBello, Submerged Lands Coordinator  
DACF Bureau of Parks and Lands,  
Submerged Lands Program

RE: Nordic Aquafarms Inc. Submerged Lands Lease Application

Dear Commissioner Beal and Coordinator DiBello:

On behalf of Upstream Watch and the Maine Lobstering Union, we are submitting additional evidence relating to the pending submerged lands lease application and supplements submitted by Nordic Aquafarms Inc. (“NAF” or “Nordic”). This evidence is in the form of a Facebook post that Nordic posted on its own Facebook Page on May 8, 2019. This post contains a damning admission against interest by Nordic. Specifically, the post states in relevant part that:

“ . . . As far as the intertidal challenge is concerned, we are comfortable. What we find most interesting is that Amy Grant and one resident have attempted to claim a conservation easement in the intertidal across two other shoreline properties without speaking to the involved shoreline property owners. They have also in their crusade revealed that some shoreline owners do not own their intertidal, which may be an unpleasant surprise to some owners. ***We withheld our surveys when we became aware of this situation some months back – it was not our role to reveal such sensitive information to the community and owners.*** Some of these shoreline owners might have wanted to acquire rights to their intertidal, while Upstream Watch is now trying to take control of them. Is this how fellow citizens treat each other in this town? We think the majority would not.

(emphasis supplied).<sup>1</sup> The complete Facebook post is attached as Exhibit A.

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<sup>1</sup> It is absurd that Nordic would express faux outrage over the alleged failure of Jeffrey Mabee and Judith Grace -- the true owners of this intertidal land -- to speak with the “involved shoreline property owners” regarding their intent to place a Conservation Easement on their intertidal land, *prior to recording that Conservation Easement*. Notably, the only “involved shoreline property owners” are the Theyes, who were notified and are supportive of placing this land under the protection of a Conservation Easement; and the Eckrotes, who already knew they didn’t own this intertidal land. In contrast, Nordic (with the assistance of the Eckrotes and their counsel) have knowingly attempted to misappropriate the Mabee-Grace intertidal land, and cloud their title, by improperly seeking to obtain permits from the State to put industrial pipelines on, over and under this ecologically fragile private property. In addition, Nordic (with the assistance of the Eckrotes and their counsel) entered an option for an Easement Agreement and signed an Acknowledgements that were intended to: (i) further a scheme to take and use intertidal land NAF, the Eckrotes and their respective counsel knew was actually owned by Mabee-Grace; and (ii) evade the “residential use only” covenant in the 1946 Hartley-Poor deed, that was intended to benefit Mabee-Grace and the Theyes as assigns of Harriet Hartley.

We think the majority of Mainers, especially those in Belfast and Northport, would not countenance such treatment of their fellow citizens and such seeming contempt for the Rule of Law and private property rights.

In other words, Nordic has known for months that the Eckrotes did not own the intertidal land on which their lot fronts and, as a result, Nordic lacks and could never acquire any interest in the intertidal land sufficient to constitute the TRI required to file an application for a submerged lands lease. However, Nordic intentionally withheld this information (and the surveys demonstrating this fact) from the State and the public.

Contrary to Nordic's assertion in their post, it was in fact their "role to reveal such sensitive information." Indeed, it was Nordic's and their counsels' duty to reveal this information to the State agencies from which permits were being sought. Instead, Nordic, their counsel and their agents have intentionally misrepresented Nordic's administrative standing to obtain permits over land in which Nordic and their agents knew they had no title, right or interest, both to State agencies and the public.

Nordic's Facebook revelation demonstrates that Nordic, and the agents and counsel assisting Nordic, have shirked their obligation to exercise candor toward the Maine agencies responsible for considering their lease and permit applications, as well as to the people of Belfast and Northport, Maine.

With our filing submitted on May 1, 2019, Upstream Watch and the Maine Lobstering Union presented detailed evidence demonstrating that neither Janet and Richard Eckrote, nor Nordic Aquafarms Inc. (through the Easement option executed by the Eckrotes in August of 2018), have *any* interest, much less interest sufficient to claim title, right or interest ("TRI") in the intertidal land on which the Eckrotes' lot fronts. Nordic's claim of TRI is wholly fabricated and demonstrably false.

Most of the evidence that Upstream and the MLU submitted is based on the publicly available recorded deeds in the Waldo County Registry of Deeds. The Eckrotes' lack of any interest in the intertidal land is apparent from a review of the recorded deeds of the Eckrotes' predecessors in interest going back to 1946. Because this information was so readily available in the publicly recorded documents, Upstream and the Lobstering Union believed that Nordic and its agents knew, or ***should have known***, that they (and the Eckrotes) lacked TRI.

If Nordic did not know they (and the Eckrotes) lacked any interest in the intertidal land after reviewing these deeds, it would have indicated a troubling lack of competence. However, if Nordic knew, concealed this information from State officials and the public, and created a false claim, it would be more troubling and, quite arguably, would constitute perjury, fraud or both.

We now know, based on NAF's own admission in their Facebook post, that they have known that they lacked TRI for at least a year (since the April 2, 2018 Good Deeds survey of boundaries was completed) but chose to conceal that fact.

Notably, Nordic has had at least three surveys completed on the land in this area, that Nordic has incorporated by reference in the maps attached to its DACF and MEPDES application(s) and supplements. These surveys were completed by reputable, Maine-licensed surveyors with experience in applying the Colonial Ordinance of 1641-1647. It seemed inconceivable to us that those surveys would not have revealed that the Eckrotes did not own the intertidal land on which their land fronts. However, NAF has not recorded any of these surveys in the Waldo County Registry of Deeds, nor provided any of these surveys to the State or the public, despite repeated requests for Nordic to do so by Upstream Watch and the Maine Lobstering Union. As a result,

Upstream and the Maine Lobstering Union were unable to ascertain the extent of Nordic's prior knowledge of the Eckrotes' lack of TRI.

Upstream Watch and the Maine Lobstering Union have successfully challenged the first two routes in the intertidal zone that Nordic proposed for its pipelines, based on Nordic's lack of TRI in the intertidal land over which those routes crossed. Consequently, Nordic was aware of the need to provide substantive and credible proof to support its claim of TRI in its *third* proposed route.

So Upstream Watch and the Maine Lobstering Union became suspicious when we saw the curious, error-ridden letters submitted in March 2019 by NAF to demonstrate TRI. These letters did nothing more than assert that Nordic had the same rights to use U.S. Route 1 and the intertidal zone land on which the Eckrotes' lot fronts that the Eckrotes have – without ever confirming that the Eckrotes have *any* rights of ownership in the intertidal land on which their lot fronts, let alone any ownership rights in U.S. Route 1. Subsequently, our suspicions of Nordic's intentional concealment of the Eckrotes' and Nordic's lack of TRI were raised further when we inadvertently learned about the existence of the 2018 Hodge title search commissioned last year by “a Portland law firm” (presumably Nordic's lawyers, Drummond Woodsum). By happenstance, we contacted the same title searcher to do this work for us after we saw the strange letters.

While the title searcher never revealed who had retained her to do this work, it seemed inconceivable that anyone other than Nordic (or its counsel) would have retained someone to do this same title search. And it seemed beyond belief that Nordic would choose to submit the two bizarre, error-ridden letters filed in late March as Nordic's “proof” of TRI, rather than a professional title search, *if the title search supported a claim of TRI*. The only reason to withhold such a title search would be if that title search confirmed what Upstream Watch and the Maine Lobstering Union already knew, that the Eckrotes lacked any ownership interest in this intertidal land.

Similarly, a decision to intentionally conceal the truth about the Eckrotes' lack of TRI in the intertidal land would also explain why Nordic was withholding the 2012 and 2018 Good Deeds surveys, and the 2018 and 2019 Dorsky surveys.

Now Nordic has provided proof through its May 8<sup>th</sup> Facebook post that they did, in fact, make a calculated decision to conceal those surveys, because the surveys confirm that neither the Eckrotes nor Nordic had TRI in the intertidal land on which they have proposed to place their pipelines.

Last week, counsel for Upstream Watch and the Maine Lobstering Union were advised that the 2012 Good Deeds survey, that was incorporated-by-reference in the 2012 Deed from the Estate of Phyllis Poor to Janet and Richard Eckrote, confirms that the Eckrotes do not own the intertidal land on which their lot fronts. That survey was reviewed in the Belfast Good Deeds office last week and we have been advised that the waterside boundary of the Eckrotes' lot shown on that survey ends at the high water mark along Penobscot Bay. Thus, this 2012 Good Deeds survey identifies the boundary at the high water mark -- *as all deeds going back to 1946 require*. There is no legitimate reason for this document not to be included in the record of this application, recorded and made public. As noted in our First Comment submission, due process and due diligence require surveys that have been incorporated by reference in deeds to be produced.

Presumably, the other surveys and the 2018 Hodge title search all reveal that the Eckrotes do not own, and never have owned, the intertidal land where Nordic proposed to site their pipelines. Why else would Nordic withhold these surveys and the title search from the public and the State, when they are the best evidence of TRI – *if any arguable and legally cognizable interest in the intertidal land actually exists?*

The realization that NAF and their counsel have intentionally concealed the truth about who owns the intertidal land “for some months,” gives new meaning and significance to the arguments raised by NAF’s counsel in the January 3, 2019 letter filed by NAF’s counsel, Joanna Tourangeau. In that letter, submitted in opposition to our December 18, 2018 Motion to Dismiss NAF’s MEPDES and Submerged Lands lease applications for lack of TRI, NAF’s counsel states in relevant part that:

. . . This easement gives NAF the necessary title, right, or interest for the BPL to consider its Submerged Land Lease application. “[T]he owner of the upland adjoining tide water *prima facie* owns to low-water mark, and does so in fact unless the presumption is rebutted by proof to the contrary.” *Dunton v. Parker*, 97 Me. 461, 54 A. 1115, 1118 (1903). Thus, the property NAF acquired rights to use via its agreement with the Eckrotes through the Easement, whose side lot lines intersect with the “high water” mark, per se establishes right, title, and interest for the purposes of standing.

The BPL has no authority or jurisdiction to consider whether any other party can rebut this presumption. See *Southridge [Corp. v. Bd. of Env’tl. Prot.]*, 655 A.2d [345,] at 348 [(Me. 1995)]. Thus, even if Upstream and MLU were correct that other parties have future potential claim to rights in the intertidal or littoral zones, NAF has shown sufficient right, title or interest in the adjacent upland for purposes of the BPL submerged land lease.

This letter misrepresents the meaning of the Law Court’s holding in *Southridge*. Nordic’s counsel has misinterpreted this case to support the notion that DACF is required to issue a submerged lease, based on nothing more than a fabricated claim of title – even if that claim is demonstrably untrue and the applicant’s counsel knows the claim is false. However, the Law Court never endorsed fraud in deciding *Southridge*. NAF’s January 3 argument, viewed through the prism of the admission in Nordic’s Facebook post, appears to confirm that NAF and their counsel believe that they can legally withhold the truth about NAF’s (and the Eckrotes’) lack of TRI – even lie about knowingly attempting to take intertidal land the applicant and their counsel and agents know belongs to someone else -- in order to obtain a desired permit or lease. Maine law does not and should not countenance such connivance.

In sum, despite the fact that all of these applications and supplements were submitted to the State under penalty of perjury by Nordic’s counsel and agents, all of the claims of title, right or interest contained in these applications and supplements appear to have been knowingly false when submitted. Simply, contrary to the inference contained in this January 3 letter submission, NAF is not entitled to a submerged lands lease just because they have lied long enough about TRI to get their permits in hand.

In fact, DACF's rules state that a loss of TRI at any time after a lease is obtained will invalidate the DACF lease or easement. This rule states in relevant part that:

***“ . . . if the holder's right, title or interest in the upland terminates, then the lease or easement shall be invalid and all leasehold or easement interest in the Submerged Lands shall be extinguished.”***

See, 01-670 C.M.R. ch. 53, § 1.6.B.1 (emphasis supplied). If a lease is required to be *invalidated*, and all leasehold or easement interest *extinguished*, upon a holder's loss of TRI, surely no lease is required to be issued by DACF to an applicant who has never had TRI and can never obtain TRI.

Thus, Nordic's purpose in attempting to deceive DACF-BPL about the existence of TRI to obtain a submerged lands lease is puzzling, since obtaining the lease under false pretenses would not prevent the invalidation and loss of this lease as soon as the truth about the Eckrotes' and Nordic's lack of TRI in this intertidal land was revealed to the BPL. Yet Nordic continues to willfully mislead the public and relevant Maine agencies about having TRI — an assertion that is demonstrably false.

Nordic has now acknowledged that it withheld its surveys to conceal the Eckrotes' lack of ownership in the intertidal land needed for its proposed pipelines. According to the plan for the third pipelines route submitted by Nordic to DACF-BPL, the boundary and topographic survey that Nordic had done by Good Deeds was completed on April 2, 2018. Thus, for over a year, Nordic has been aware that the Eckrotes had no interest in the intertidal land, and could grant to Nordic no interest to the intertidal land. Yet, Nordic withheld this information for the City of Belfast while they obtained amendments to the City's land use ordinances to facilitate this project. And, Nordic submitted all of its State applications and supplements, containing claims that Nordic has TRI based on the Easement from the Eckrotes, when Nordic knew all along that the Eckrotes had no ownership right in the intertidal land on which their lot fronts and that he Easement conveyed no legally cognizable right to use this land in the manner the permits sought would authorize.

DACF must dismiss this application for lack of TRI. And, because of Nordic's intentional concealment of this information regarding their lack of TRI “for some months,” this dismissal should be *with prejudice*. In addition to requesting that Nordic's pending application(s) and supplements be dismissed, *with prejudice*, Upstream Watch and the Maine Lobstering Union also request that the State take action to punish those who have submitted false representations to the State of Maine *to the fullest extent of the law*.

We all support economic development in Maine, but Maine does not need dishonest people coming here to do business.

It is imperative that sanctions be imposed against all those who have attempted to defraud the State of Maine and its people by filing applications and supplements that knowingly contain false information regarding title, right or interest -- the threshold requirement for any applicant to have administrative standing. It is reasonable to require a higher level of candor than has been exhibited here, and it is reasonable to expect an appropriate level of truthfulness from applicants and the counsel who assist them in filing their applications.

Although we cast no aspersions upon the surveyors or title searcher (whose work has been concealed from public view by Nordic and its agents likely because it revealed the truth regarding Nordic's and the Eckrotes lack of TRI), Upstream Watch and the Maine Lobstering Union request that DACF require Nordic to make the 2018 title search and all surveys part of the record in this case or impose a negative inference from this applicant's refusal to do so. In the alternative, Upstream Watch and the Maine Lobstering Union request that BPL, or appropriate officials from the Office of the Attorney General, speak to the professionals who prepared the title search and the surveys to determine whether and when they advised Nordic of the Eckrotes' lack of TRI.

We believe that such discussions will confirm that Nordic, their counsel, and their agents were aware of their lack of TRI prior to these applications and supplements being filed with the State of Maine (as NAF's Facebook post also suggests). If this is confirmed, those responsible should be punished. If there is no price to be paid for knowingly submitting deliberately false statements on applications for permits and leases from the State, or for an applicant (and their counsel) deliberately and knowingly attempting to misappropriate land that they know belongs to someone else, this practice will continue — to the detriment of our environment and economy. Please refer this matter as may be appropriate or required by law, so that those who have attempted to conceal the truth from the State and Maine public can receive the sanctions they have earned.

Respectfully submitted,



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## EXHIBIT A

[https://www.facebook.com/Nordicaquafarms/?\\_tn\\_&eid=ARALXaV2Z1XqOp1zJk84o9M9GGkC7Hc\\_Abg5nW12S7yp6fwldgv3HXdwUExTLia0McP9YlJjfvqb3bPf&hc\\_ref=ARTq0sE1ohH-8gzbeyJx5enW7kyxjEdyPNH23V98AdQYxep8j38k6151b2\\_Jaiv3p-w&fref=nf](https://www.facebook.com/Nordicaquafarms/?_tn_&eid=ARALXaV2Z1XqOp1zJk84o9M9GGkC7Hc_Abg5nW12S7yp6fwldgv3HXdwUExTLia0McP9YlJjfvqb3bPf&hc_ref=ARTq0sE1ohH-8gzbeyJx5enW7kyxjEdyPNH23V98AdQYxep8j38k6151b2_Jaiv3p-w&fref=nf)

## Nordic Aquafarms Maine



[Nordic Aquafarms Maine](#)

[16 hrs](#) ·

Some people in Belfast still do not get it that Nordic Aquafarms was founded to protect the environment and to mitigate climate change effects. We are environmentalists that have found an avenue to attract significant investor capital. While some may refuse to believe it, many investors are going green, also in the US. Scaling up is also in some cases necessary to make a dent in our climate and food challenges.

We will continue to call out the few of neighbors who are acting like established environmental groups and who are spending other people's money based on misleading premises. Upstream Watch and Amy Grant sent out an email to many people yesterday with new misrepresentations of what has been communicated by us and about our project. Her email is full of errors. With this messaging she is asking her fellow citizens to donate money to her opposition effort. We recommend that the citizens of Belfast fact check claims that are made from us and others themselves, while also calling out false information. We will provide some assistance to Belfast and Northport residents in this regard in the next couple of days. Stay tuned.

As far as the intertidal challenge is concerned, we are comfortable. What we find most interesting is that Amy Grant and one resident have attempted to claim a conservation easement in the intertidal across two other shoreline properties without speaking to the involved shoreline property owners. They have also in their crusade revealed that some shoreline owners do not own their intertidal, which may be an unpleasant surprise to some owners. We withheld our surveys when we became aware of this situation some months back – it was not our role to reveal such sensitive information to the community and owners. Some of these shoreline owners might have wanted to acquire rights to their intertidal, while Upstream Watch is now trying to take control of them. Is this how fellow citizens treat each other in this town? We think the majority would not.

In any event, Amy Grant and Kim Tucker are making bold statements in the media without full information. We on the other hand feel no need to engage in that media crusade. We are sticking to our permitting plans, and feel no need to inform them about our position.

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