



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

June 13, 2019

Joanna Tourangeau
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, Maine 04101

RE: SITE LOCATION OF DEVELOPMENT ACT APPLICATION AND NATURAL RESOURCES PROTECTION ACT APPLICATION (DEP #L-28319-26-A-N/L-28319-TG-B-N/L-28319-4E-C-N/L-28319-L6-D-N/L-28319-TW-E-N), WASTE DISCHARGE LICENSE(WDL)/ MAINE POLLUTANT DISCHARGE ELIMINATION SYSTEM (MEPDES) PERMIT APPLICATION (DEP #W009200-6F-A-N / MEPDES PERMIT # ME0002771), CHAPTER 115 MINOR AIR EMISSIONS APPLICATION (DEP #A-1146-71-AN), BELFAST/NORTHPORT, MAINE

Dear Ms. Tourangeau:

The Department is in receipt of the applications filed by Nordic Aquafarms, Inc. (NAF) for a Site Location of Development Act permit, a Natural Resource Protection Act permit, a Maine Pollutant Discharge Elimination System (MEPDES) Permit/Maine Waste Discharge License, and a Chapter 115 Minor Air Emissions License. The Department has reviewed the applications and supporting documents filed by NAF and the filings by interested persons that are pertinent to the determination of whether the applications should be accepted as complete for processing.

As you are aware, the threshold issue of whether NAF has demonstrated title, right, or interest (TRI) in the land proposed for development or use, as required by Chapter 2 §11(D) of the Department’s rules, has been the subject of filings by interested persons, requests for additional information by the Department, and supplemental filings by NAF.

A determination that an applicant has demonstrated TRI sufficient for an application to be processed requires a showing of a legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permits being sought. The purpose of this requirement is to allow the Department to avoid wasting its finite resources reviewing applications for projects that can never be built. If the applicant is unable to show a sufficient property interest in the site proposed for the project, pursuant to the TRI threshold requirement in Chapter 2 §11(D), the Department can return the application at the outset without devoting time and resources to its processing. In any TRI analysis under Chapter 2, the Department may look beyond an applicant’s initial submissions and may request additional information and consider submissions of interested persons as necessary to judge whether adequate credible evidence has been submitted by the applicant and a sufficient showing of TRI has been made to warrant expending Department resources to process the application. The TRI provision cannot, however, be interpreted as compelling the Department to perform an exacting legal analysis of competing

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ownership claims to determine the ultimate ownership of a property. That ultimate conclusion can only be made by a court. Moreover, the Department rejects any such interpretation as directly counter to the purpose of the TRI provision and cannot afford to allow its permitting proceedings to be transformed into the equivalent of an administrative agency quiet title action. So long as the applicant is able to make a showing of TRI in the subject property that is sufficient to justify the processing of the application, the Department will generally consider this threshold requirement to be satisfied and move to evaluate the merits of the application.

With that understanding, the Department has reviewed the applications and the MEPDES application addendum (aligning the proposed project's pipe locations in the pending MEPDES application with the pipe locations in the other more recent applications) submitted by NAF and has considered all supplemental TRI material that both NAF and various interested persons have submitted. With respect to the intertidal portion of the property proposed for use, the Department finds that the deeds and other submissions, including NAF's option to purchase an easement over the Eckrote property and the succession of deeds in the Eckrote chain of title, when considered in the context of the common law presumption of conveyance of the intertidal area along with an upland conveyance, constitute a sufficient showing of TRI for the Department to process and take action on the pending applications. This determination is not an adjudication of property rights and may be reconsidered by the Department at any time during processing as applicants must have adequate and sufficient TRI throughout the application process. Accordingly, should a court adjudicate any property disputes or rights in a way that affects NAF's interest in the proposed project lands while the applications are being processed, the Department may revisit the issue of TRI and return the applications if appropriate.

In addition to TRI, the Department has reviewed the applications for other acceptance criteria required by Chapter 2 §11(B). These applications were deemed to be subject to the special fees requirements outlined in 38 M.R.S. § 352(3) in October 2018. NAF has provided information on all the substantive licensing criteria for each of the pending applications. The Department, therefore, finds each of the above applications complete for processing.

The permit applications for the proposed project will now be evaluated to determine whether a license can be issued. In a January 30th letter, the Department reconsidered its recommendation for Board of Environmental Protection jurisdiction and stated it would provide its recommendation to the Board upon acceptance of NAF's consolidated applications. The Department anticipates that the processing of the applications will be referred to the Board at the next regularly scheduled Board meeting following this determination, which will be the subject of another forthcoming Department letter. At that time the Board may initiate its adjudicatory process and set processing timelines for a decision.

Your client's applications have been given the above referenced numbers. Acceptance of applications does not preclude the Department from requesting additional information during processing. With regard to the MEPDES application, the Department acknowledges the amendment received updating the project description and proposed location and the Department takes that application off hold.

NAF's Notice of Intent for a Maine Construction General Permit was reviewed and approved May 31, 2019; however, as the activity requires a Site Location of Development permit, no construction related activity or any of the proposed activities currently under review may be started unless and until a Site Law permit is issued. If you have any questions the appropriate project manager may be reached at a project-specific email address:
NordicAquaFarms.DEP@maine.gov.

Sincerely,



Kevin Martin
Compliance & Procedures Specialist
Maine Department of Environmental Protection

cc:

Beth Callahan, Bureau of Land Resources
Gregg Wood, Bureau of Water Quality
Jane Gilbert, Bureau of Air Quality
Peggy Bensinger, AAG
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