

Comment highlighted in Red Font identifies issues that the Planning Board will focus on in its review of the Final Site Plan Application

**CITY OF BELFAST PLANNING BOARD
ADOPTED FINDINGS OF FACT
PRELIMINARY SITE PLAN PERMIT APPLICATION
APPLICANT: NORDIC AQUAFARMS, INC.
PROJECT: LAND BASED SALMON FARM
LOCATION: ROUTE ONE SOUTH (BELFAST WATER DISTRICT & ADJACENT
PROPERTIES)**

1. APPLICANT:

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

Engineer: Ransom Consulting (lead engineer)
Attn: Elizabeth Ransom
New Gloucester, ME 04260

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

2. OVERALL DESCRIPTION OF PROJECT AND LOCATION.

Nordic Aquafarms, Inc. has submitted an application 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. The applicant 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 about 1,205 gallons of freshwater per minute (gpm) and about 3,925 gallons of saltwater per minute. The freshwater is proposed to be obtained from three sources: the Belfast Water District (about 500 gpm), on-site groundwater wells (about 455 gpm) and the extraction of surficial water from Reservoir 1 on the Little River (about 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 PROJECT HISTORY

This synopsis is an overview of project activities that occurred prior to Nordic Aquafarms submission of a Site Plan Permit application to the Belfast Planning Board. This overview is provided to assist persons in having a better understanding of the timeline for public actions that have occurred regarding this project.

- a) Nordic makes initial contact with Belfast representatives. Late October 2017.
- b) City Council and Water District representatives independently meet with Nordic representatives to discuss project and potential land purchase agreements. October 2017 - January 2018.
- c) Nordic Press Conference announcing project. January 30, 2018.
- d) City Council, after a series of regular Council meetings and two public hearings, adopts amendments to City Zoning and Shoreland Ordinances to allow land-based aquaculture uses, and adopts accompanying amendments to adopted Comprehensive Plan. These amendments created an opportunity for Nordic to submit permit applications to the City. April 17, 2018.

- e) Lawsuit filed that challenges the process the City used to amend Zoning and Shoreland Ordinances and its Comprehensive Plan. June 2018
- f) City, in response to the lawsuit, begins a process to reconsider Ordinance amendments and to review amendments to Comprehensive Plan. Planning Board conducts a public hearing in August 2018, discusses the Ordinances and Comprehensive Plan in both August and September, and in September, adopts and presents its recommendations to the City Council regarding proposed Ordinance amendments and revisions to the Comprehensive Plan. The City Council, in September and October, conducts public hearings, and at its meeting of October 20, 2018, adopts the amendments that were recommended by the Planning Board to the April 17, 2018 Ordinances that were previously adopted by the Council. The October 20, 2018 Ordinance amendments adopted by the Council are now the controlling Ordinances for this project. June - Oct 2018.
- g) Nordic announces that it has acquired an additional 14.5 acres of land from Goldenrod Properties, Inc. (Matthews Brothers). This acquisition increases the size of the site to 56 acres, and helps form the project site identified in their future Site Plan application to the City.
- h) Nordic pursues a DEP Discharge permit for the proposed RAS system. Permit application filed on Oct 17, 2018. Nordic subsequently chooses to withdraw the discharge permit application and to pursue this DEP permit in conjunction with all other required DEP Permits through the Board of Environmental Protection. All required DEP permit applications were filed with the BEP in June 2019.
- i) Nordic pursues Submerged Land Lease Permit from State Dept. Agriculture, Conservation & Forestry for the location of their discharge and intake permits. Late Oct 2018. Belfast Harbor Committee reviews permit and offers recommendations to City Council in early December 2018. Council submits comments to the Department. Nordic subsequently withdraws this permit and later files an amended permit. Note - The Submerged Land Lease Permit remained under review through July 15, 2020 when the Board adopted these Findings of Fact.
- j) Bob Richards, Supt, Belfast Public Works Department, issues Conditional Road Opening Permits to Nordic for Route One (Feb 2019) and Perkins Road (March 2019).
- k) Nordic Aquafarms and City Code and Planning Department staff periodically discuss potential Nordic permit applications to the City. October 2018 – May 2019.
- l) Nordic Aquafarms submits Site Plan Permit application and accompanying Permit applications to the City. June 2019.
- m) Superior Court decision supports the process the City used to amend its Ordinances and Comprehensive Plan. This occurred on July 10, 2019, post the date that Nordic submitted its Permit applications to the City.

4. OVERALL DESCRIPTION OF CITY ZONING.

Most project development is located in the Route One South Business Park zoning district; a zoning district established pursuant to the amendments to the City Code of Ordinances, Chapter 102, Zoning, adopted by the City Council in October 2018. A section of the proposed water intake and effluent discharge pipes are located on the Ekrote property that is located on the easterly side of Route One. The Ekrote property is located in the Residential II zoning district.

A portion of the Nordic project is located in the Shoreland Zone. The land area that Nordic proposes to acquire from the Water District near the existing Belfast Water District offices is located in the General Development District of the Shoreland Zone. This Shoreland District, pursuant to the October 2018 Ordinance amendments adopted by the City Council, specifically allows land-based aquaculture operations. The Ekrote property is located in the Limited Residential District of the Shoreland Zone. This Shoreland District specifically allows the location of Water Intake and Water/Effluent Discharge pipes.

A very limited portion of the property, the existing Belfast Water District offices, is located in the Flood Zone, Zone A. However, no new structural development is proposed to occur in the Flood Zone, thus, Chapter 78, Floods, has limited applicability to this project.

5. ROLE OF PLANNING BOARD FOR NORDIC SITE PLAN APPLICATION.

The Belfast City Code of Ordinances, Chapter 90, Site Plan, identifies the requirements for when an applicant must submit a Site Plan application, and the role of the Belfast Planning Board in the review of an application.

The Nordic Site Plan Permit application qualifies as a Major Development and also qualifies as a project that would have a Substantial Impact on the Environment. Thus, the Nordic application is first subject to Planning Board review as a Preliminary Site Plan, and, if the Board approves or conditionally approves the Preliminary Plan, it is subsequently subject to Board review as a Final Site Plan. The Board, in conducting the above public processes, is required to conduct at least one public hearing at each stage of the review for the purposes of providing information to the public and receiving public comment.

Nordic Aquafarms submitted its Site Plan application to the Planning Board in June 2019. The Board initiated its review of the project in June 2019, and conducted a number of public hearings and Board meetings associated with its review of the Preliminary Site Plan for the project between June 2019 and July 2020. Pursuant to Chapter 90, Site Plan, requirements, the Board must make the following Findings:

- a) The application is complete for purposes of Board review. A complete application is an application that includes sufficient information to address standards and submission requirements in Chapter 90, Site Plan; particularly reference Section 90-71, Required Information and Format.

- b) The application addresses the criteria identified in Section 90-42, Criteria for Review by Planning Board.

Pursuant to Section 90-74, the Planning Board is required to take one of the following actions on a Preliminary Site Plan application, and to issue a written preliminary order:

- (1) Denying approval of the preliminary plan for the proposed development;
- (2) Granting approval of the preliminary plan for the development; or
- (3) Granting approval of the preliminary plan upon terms and conditions that the Planning Board considers advisable to comply with the provisions of this Chapter and all other applicable ordinances, codes and regulations adopted by the City.

These Findings of Fact describe the Planning Board's Findings of Fact on the Nordic Preliminary Site Plan Permit application and address the specific requirements the Board must consider. It is specifically noted that the Nordic Aquafarms project requires multiple permits from the City of Belfast. These Findings only address Site Plan requirements and are not the Board's definitive Findings on any other City Permit application.

6. COMPLETE APPLICATION

6.1 Actions by Code Enforcement Officer

Nordic Aquafarms, pursuant to requirements of Sec 90-9, submitted its pre-application to the Code and Planning Department on May 28, 2019. Department staff reviewed the application and met with Nordic Aquafarms staff on June 3, 2019 to identify issues that Nordic must address in its application submission.

Nordic Aquafarms submitted its Site Plan Permit application to the City on June 11, 2019. Wayne Marshall, Director, Code and Planning and appointed Code Enforcement Officer, issued Nordic a dated receipt. The City received 14 copies of the application as required by Chapter 90.

Wayne Marshall, in his capacity as appointed Code Enforcement Officer, issued a letter dated June 12, 2019 to Nordic Aquafarms indicating that he found the application complete for purposes of Planning Board review. This notification is required by Section 90-71. It is specifically noted that this finding by the Code Enforcement Officer is not binding on the Planning Board.

Mr. Marshall, in his letter dated June 12 to Nordic Aquafarms, also verified that per Sec 90-71 requirements, he would be providing notice on June 13 to the Belfast City Clerk and the Board of Selectmen in Northport regarding the upcoming Planning Board schedule for the review of this application.

Mr. Marshall, pursuant to requirements of Sec 90-71, provided notification to the DEP of the submission of the Nordic application on June 18, 2019.

6.2 Actions of Belfast Planning Board

The Belfast Planning Board commenced its review of the Nordic application at its meeting of June 26, 2019. This meeting involved a presentation by Wayne Marshall, Director, Code and Planning, regarding the Board process for review of the Nordic applications, and a presentation by Nordic representatives regarding the application. The Board did not accept public comment at this meeting and asked few questions of the applicant.

The Board conducted several initial meetings to learn more about the project and to discuss how to conduct its review. These meetings included the above referenced June 26, 2019 meeting, a July 10, 2019 site visit, and a July 11, 2019 organizational meeting. The Board commenced its formal review of the Site Plan Permit at its meeting of August 5, 2019, and between this date and July 15, 2020, it conducted 22 separate public hearings and 23 meetings on the project. Per its customary practice, the Board did not make a decision regarding the Preliminary Site Plan being complete until it had an opportunity to review and consider all aspects of the Permit application. The Board vote on the application being complete did not occur until the Board meeting of July 15, 2020.

The meetings and public hearings the Board conducted on the application provided the Board an opportunity to immerse itself in the review of the project and to do the following:

- to hear directly from Nordic Aquafarms representatives, including the professional consultants who prepared specific components of the application;
- to hear testimony from Parties-in-Interest approved by the Planning Board, including testimony from their experts;
- to hear testimony from the general public;
- to hear and consider testimony from professional consultants engaged by the City to assist the Board; and
- to review and deliberate on all components of the Permit application.

The Board, between June 26, 2019 and July 15, 2020, conducted the following meetings and public hearings on the Nordic Aquafarms Preliminary Site Plan application. Most of the 22 public hearings focused on specific elements of the Permit application, and at the last hearing, the Board accepted comment on all elements of the application. The Board also accepted written and email comment through-out the Board process associated with its review of the application, including comments submitted after the last scheduled public hearing.

- June 26, 2019. Planning Board meeting. Presentation by Wayne Marshall, Director, Code & Planning on Nordic application, Ordinance requirements, and Board responsibilities. Initial presentation from Nordic representatives to the Board on the overall Site Plan Permit application. Public is present, but there is no public hearing or public comment accepted.

- July 10, 2019. Planning Board Site Visit. Board walks the site with Nordic representatives. Public was present on the site walk, but could not ask questions to the Board or the applicant.
- July 11, 2019. Organizational meeting of the Board to discuss process for the review of permit applications. Board adopts Procedural Order # 1 regarding how to accept public comment on the issue of Right, Title and Interest.
- August 5, 2019. Board determines the following: Daisy Beal, alternate member, will vote on the Permit application in lieu of Steve Ryan, regular member (recused); who if granted status as a Party in Interest; and that Nordic has sufficient Right, Title and Interest to proceed (Public Hearing by Written Comment Only). Nordic makes presentation on Financial Capacity (Attachment 9), and the Board conducts a public hearing on this issue, as well as initial deliberations on the issue.
- August 19, 2019. After accepting public comment at a public hearing, the Board determines that the Nordic project qualifies as a permitted use in the respective Zoning and Shoreland Districts. The Board considers the issue of technical ability (Attachment 29), including presentation from Nordic, public hearing, and Board deliberations.
- September 5, 2019. Board hears presentation from Nordic representatives, conducts public hearings, and conducts initial deliberations on each of the following issues: Visual Assessment, Attachment 27; Buffers and Bufferyards, Attachment 28, Historic and Archeological Sites, Attachment 32, and Access to Sunlight, Attachment 33.
- September 23, 2019. Board hears presentation from Nordic representatives, conducts public hearings, and conducts initial deliberations of Attachment 23, hydrogeologic assessment, and Attachment 24, Water District capacity.
- October 9, 2019. Board hears presentation from Nordic representatives, conducts public hearings and conducts initial deliberations on the following issues: Attachment # 30, Noise; Attachment # 35, Odors; Attachment # 21, Solid Wastes; and Attachment # 18, Exterior Lighting.
- October 16, 2019. Board hears presentation from Nordic representatives, conducts public hearings and conducts initial deliberations on the following issues: Attachment # 11, Natural Resources; Attachment # 35, Wetlands and Streams; and Attachment # 19, Flooding.
- December 4, 2019. Board discussion of Nordic application and review schedule. No public hearing or public comment accepted.
- December 18, 2019. Presentation by Nordic to the Board on Air Emissions, Attachment #31, public hearing on this issue, and initial Board deliberations. Board accepts additional comment from Parties-in-Interest regarding issues discussed at public

hearings on October 9. Presentation by Nordic on updated Visual Assessment, public hearing on the updated Assessment and initial Board deliberations on such.

- January 8, 2020. Board conducts public hearing to accept public comment from Parties-in-Interest and the general public on all components of the Site Plan application.
- January 15, 2020. Board continues public hearing from January 8 meeting to accept public comment from Parties-in-Interest and the general public on all components of the Site Plan application. Board hears presentation from Nordic on Traffic, Attachment 17, conducts public hearing on this issue, and conducts initial deliberations. Board engages in initial discussion of overall Site Plan application.
- January 22, 2020. Board conducts public hearing to accept additional public comment from Parties-in-Interest. Board conducts deliberations on Traffic and other project concerns.
- January 29, 2020. Board conducts deliberations on project application. No public hearings at this meeting.
- February 5, 2020. Board conducts deliberations on the project application. No public hearings at this meeting.
- May 6, 2020. (ZOOM Meeting). Board conducts deliberations on project application. No public hearings at this meeting.
- May 13, 2020. (ZOOM Meeting). Board conducts deliberations on project application. No public hearings at this meeting.
- May 14, 2020. (ZOOM Meeting). Board conducts deliberations on project application. No public hearings at this meeting.
- May 27, 2020. (ZOOM Meeting). Board conducts deliberations on project application, with focus on proposed use of Groundwater from the site, Surface Water from the Little River, and public water from the Water District. No public hearings at this meeting.
- June 17, 2020. (ZOOM Meeting). Board initiates review of draft Findings of Fact for Preliminary Site Plan Permit prepared by Director, Code & Planning. No public hearings at this meeting.
- July 8, 2020 (ZOOM Meeting). Board continues review of draft Findings of Fact for Preliminary Site Plan Permit prepared by Director, Code and Planning, including updated information prepared to address Planning Board comments from Board meeting of June 17. No public hearings at this meeting.
- July 15, 2020 (ZOOM Meeting). Board continues review of draft Findings of Fact for Preliminary Site Plan Permit prepared by Director, Code and Planning, including

changes made to the July 8 draft to address comments from the Board at the July 8 meetings. Board, following its review, takes votes to find that the Site Plan Permit is complete for purposes of Board review, and to approve the Findings of Fact for the Preliminary Site Plan, as such were amended at the July 15 meeting. Board action on the Preliminary Site Plan Permit enables Nordic Aquafarms to submit a Final Site Plan Permit application. The Board did not conduct any public hearings at this meeting.

7. PROCEDURAL DECISIONS OF BELFAST PLANNING BOARD

7.1 Board Members Serving on Review of Nordic Application

Steve Ryan, who was serving as Chair of the Planning Board when the Nordic project was first announced, declared in January 2018 that he had a potential conflict in interest in serving on the review of this project because of his role as the Director for the Chamber of Commerce. Steve Ryan recused himself from the review of this project and did not participate in any discussions or meetings regarding the Nordic Aquafarms project or permit applications after February 2018. Ryan Harnden, who was serving as an alternate member in January 2018, also announced in January that he would be recusing himself from any participation in the Nordic review due to his employment. Mr. Harnden, however, resigned his seat on the Planning Board prior to the receipt of any Nordic Permit applications, thus, he never participated in any discussions of this project after January 2018.

Declan O'Connor, Board Secretary, served in the role of Acting Board Chair during any and all discussions of the Nordic application. In July, the Board determined that Daisy Beal, alternate member of the Board, would serve as a voting member to replace Steve Ryan (recused). The Board specifically noted that Hugh Townsend, the other alternate member on the Board, would actively be participating in all discussions of the Nordic application, however, he would not be a voting member unless one of the five voting members could no longer participate in the review of the project.

7.2 Procedural Orders of the Planning Board

The Board, at its meeting of July 11, 2019, adopted its First Procedural Order to govern how public comment must be submitted on the issue of Right, Title and Interest that the Board was scheduled to consider at its meeting of August 5, 2019. The Board subsequently adopted two additional procedural orders that applied to the Preliminary Site Plan application regarding the submission of public testimony; Second Order dated November 6, 2019 and the Third Order dated December 6, 2019.

7.3 Parties-in-Interest

The Board, at its meetings of August 5 and August 19, 2019, considered who should qualify as a Party-in-Interest. A Party-in-Interest, as described to the Board by William Kelly, City Attorney, is a person who could experience a particularized injury as a

result of the project. The Board determined that the following parties qualified for Party-in-Interest designation:

- Eleanor Daniels and Donna Broderick, Perkins Road property owners
- Jeffrey Mabee and Judith Grace, Northport Ave property owners
- Larry and Betty Theye, Northport Ave property owners
- Maine Lobstering Union and members David Black and Wayne Canning (Kim Ervin Tucker, Attorney)
- Upstream Watch
- Constance M. Brown, Town of Northport abutter

The Board denied applications for Party-in-Interest status from Jim Merkel, resident, Patterson Hill, and Mike Lannan, resident, Northport and Environmental Engineer.

Parties-in-Interest would be provided more time to present testimony to the Board at public hearings than the general public, and could potentially qualify to submit an appeal of a Planning Board decision.

7.4 Right, Title and Interest

An applicant must demonstrate that they have right, title and interest (control) to the property that they propose to develop. The Planning Board considered this issue at its meeting of August 5, 2019, including accepting written comment in accordance with Board Procedural Order # 1; no oral comment was accepted at the August 5 public hearing. William Kelly, City Attorney, described his review of all information submitted to the Board by the Applicant and other parties, and his review of recent findings by both the Department of Environmental Protection and the Department of Agriculture, Conservation and Forestry (Submerged Land Lease Permit) on this same issue, while stating that this ultimately is a decision of the Court. Attorney Kelly noted that an applicant, at this point, must demonstrate that they have sufficient interest in a property.

The Planning Board, at its meeting of August 5, 2019 adopted a motion to find that Nordic Aquafarms had submitted sufficient information to demonstrate that they have right, title and interest to the property that they propose to develop for the purposes of Planning Board review of all Permit applications.

8. DESCRIPTION OF PERMITS REQUIRED FOR PROJECT.

The Planning Board reviewed information provided by Wayne Marshall, Director, Code and Planning, and information in the permit applications submitted by Nordic Aquafarms, and determined that the Board is responsible for the review of the following permits for the Nordic project.

- a) Chapter 90, Site Plan. Project requires a Site Plan Permit for a project that may substantially affect the environment. This permit application is the main subject of these Findings.
- b) Chapter 102, Zoning. Project requires a Use Permit for a project that qualifies as a Site Plan. Most of project is in the Route One South Business Park zoning district and the Ekrote property easement area is in the Residential II zoning district.
- c) Chapter 102, Zoning. Project requires a permit for the location and use of Significant Groundwater Wells; reference Article VIII, Division 7.
- d) Chapter 102, Zoning. Project requires a permit for the location of Significant Water Intake and Significant Water Discharge/Outfall Pipe(s); reference Article IX, Division 2.
- e) Chapter 82, Shoreland. Shoreland Permit for construction of facilities in the Shoreland Zone, including but not limited to the proposed water intake and discharge pipes. Part of project site is in the General Development Shoreland district and the easement area on the Ekrote property is in the Limited Residential Shoreland district.

9. PLANNING BOARD DECISIONS ON PERMITTED USES.

A project must be a permitted use for the Planning Board to consider a permit application. Chapter 90, Site Plan, does not identify permitted and prohibited uses, thus, the Board reviewed standards in Chapter 102, Zoning, and Chapter 82, Shoreland, to determine if the uses proposed by Nordic Aquafarms qualify as permitted activities. The Board, at its meeting of August 19, 2019, made the following decisions regarding the uses and activities proposed by Nordic Aquafarms. The Board concluded that the activities proposed by Nordic are permitted uses.

- a) The Board found that the activities proposed by Nordic qualify as a land-based aquaculture use, and that land-based aquaculture is a permitted use in the Route One South Business Park zoning district. The Board relied upon the definition of land-based aquaculture in Chapter 66, General Provisions, and the list of permitted uses for the Route One South Business Park zoning district identified in Chapter 102, Zoning, Section 102-682, Subsection 3) in making its decision.
- b) The Board found that certain groundwater well extraction activities proposed by Nordic Aquafarms qualify as a permitted use in the Route One South Business Park zoning district. The Board relied upon the definition of a Significant Groundwater Well in Chapter 66, General Provisions, and the list of permitted uses for the Route One South Business Park district identified in Chapter 102, Zoning, Section 102-682, Subsection 9) in making its decision.
- c) The Board found that the water intake and water (effluent) discharge pipes proposed by Nordic qualify as a permitted use in the Route One South Business Park district, and in the Residential II zoning district. The Board relied upon the following Ordinance provisions in making its decision: the definition of a significant water intake/discharge pipe in Chapter 66, General Provisions; the list of permitted uses for the Route One South Business Park zoning district identified in Chapter 102, Zoning, Section 102-682,

Subsection 10); and the list of permitted uses identified in Chapter 102, Zoning, Section 102-422, Subsection (12) for the Residential II zoning district.

- d) The Board found that land-based aquaculture is a permitted use in the General Development District of the Shoreland Zone. The Board relied upon the Table of Uses identified in Chapter 82, Shoreland, reference Section 82-135, and the definition of land-based aquaculture identified in Section 82-1 in making this decision.
- e) The Board found that significant groundwater wells are a permitted use in the General Development Shoreland District. The Board relied upon the Table of Uses identified in Chapter 82, Shoreland, Section 82-135, Subsection (38) and the definition of a significant groundwater well found in Section 82-1 in making this decision.
- f) The Board found that a land-based aquaculture facility is a permitted use in the Limited Residential Shoreland District. The Board, in making this decision, relied on information in Chapter 82, Shoreland, Section 82-135, Table of Uses, Subsection (14) and the definition of land-based aquaculture in Section 82-1.
- g) The Board found that significant water intake and discharge pipes are a permitted use in the Limited Residential Shoreland District. The Board, in making its decision, relied on information in Chapter 82, Shoreland, Section 82-135, Subsection (39) and the definition for a significant water intake/discharge pipe found in Section 82-1.

CHAPTER 90, SECTION 90-42 PRELIMINARY SITE PLAN REVIEW CRITERIA

Chapter 90, Site Plan, requires the Board to prepare specific Findings regarding the Preliminary Site Plan Review Criteria (30 standards) identified in Section 90-42. Accordingly, the Board has prepared specific Findings on all 30 criteria, recognizing that the Board, during its review of a Final Site Plan application, will need to receive additional information from the applicant, hear and consider further testimony from Parties-in-Interest and the general public, and to conduct its final deliberations and to make a decision on the application. As such, the Board notes that it may choose to reconsider any and all of its Preliminary Plan Findings at the Final Site Plan review. If the Board chooses to approve the Final Site Plan application, the Board will prepare specific Conditions of Approval that would apply to the Site Plan Permit. If the Board chooses to deny the Site Plan Permit, the Board's findings must specifically identify all criteria that the Board determined the Applicant did not meet and why the Board reached that conclusion.

Sec 90-42(b)(1)Pollution. The proposed development will not result in undue water or air pollution. In making this determination, consideration shall be given to:

- a. The elevation of the land above sea level and its relation to the floodplain (compliance with chapter 78, article II).***

- b. The nature of soils and subsoils and their ability to adequately support waste disposal.***
- c. The slope of the land and its effect on effluents.***
- d. The availability of streams for disposal of effluents.***
- e. The applicable state and local health and water resource rules, regulations and codes.***

The Board found that this standard is quite specific in the factors the Board is to consider in determining if a proposed development will result in undue water or air pollution. The Board reviewed the five criteria identified in Sec. 90-42(1) and made the following findings.

- a. The elevation of the land above sea level and its relation to the floodplain (compliance with chapter 78, article II).***

The Board determined that the elevation of the land and its relation to the floodplain would not have an undue adverse impact on water or air pollution. The Board found that only a limited amount of the site that is proposed to be developed is within the identified flood zone. The only structure located in the flood zone is the existing Belfast Water District offices that will be converted to a Visitors Center. The Board made this Finding based on its review of information in the Nordic application and its review of City Flood Maps.

- b. The nature of soils and subsoils and their ability to adequately support waste disposal.***

The Board determined that the nature of on-site soils and subsoils will not have an adverse impact on water or air pollution with respect to the disposal of wastes. The Board noted that Nordic is using the City sewer system for the disposal of sanitary wastes, and that the effluent discharge from the RAS system will be discharged to Belfast Bay. The Board made this Finding based on its review of information in the Nordic application, its consideration of testimony offered at public hearings, and its deliberations on this issue and the application as a whole. The Board also recognized that the State DEP and U.S. ACOE have the authority to regulate activities with the discharge of effluents (wastewater) to Belfast Bay.

- c. The slope of the land and its effect on effluents.***

The Board found that the slope of the land will have minimal impact on managing effluents generated by project activities, and any resultant impact on air or water pollution. The main effluent from Nordic's operations will be discharged directly to Belfast Bay after being treated at the Nordic water treatment facility. These discharges are associated with activities that occur within the confines of several structures.

Stormwater is not specifically an effluent, however, stormwater is often associated with the transport of non-source pollutants. The Board noted that Nordic is installing facilities and is using approaches to manage water quality associated with stormwater flows. The Board found these approaches appropriate, and determined that Nordic's use of said approaches should address potential water pollution concerns associated with stormwater flows.

d. The availability of streams for disposal of effluents.

The Board found that Nordic is proposing to alter several intermittent streams and that it also proposes to implement measures to mitigate existing conditions with an on-site stream. The Board determined that Nordic will direct stormwater to several existing streams, and ultimately to the Little River and Belfast Bay, but will do so after it has treated the stormwater by various means of water quality treatment. The Board found that Nordic is employing appropriate measures to manage stormwater, and that no other 'effluents' will be directed to any stream.

e. The applicable state and local health and water resource rules, regulations and codes.

The Board determined that it is not prepared to make a specific finding on potential water pollution concerns that are associated with applicable State water resource regulations. The reason is because Nordic has a pending BEP/DEP and ACOE discharge permit application for the discharge of treated effluents to Belfast Bay. The Board determined that it would be best to further consider this standard during its review of a Final Site Plan application when more State direction on the required discharge permit is known.

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 Engineering, and William Kelly, City Attorney), information presented by City staff (Wayne Marshall, Director, Code and Planning, 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.

Sec. 90-42(b)(2) Sufficient water. The proposed development has sufficient water available for the reasonable foreseeable needs of the development and will not unreasonably affect other existing local drinking water resources.

The Planning Board found that Nordic Aquafarms has identified that they have access to the 1205 gpm of water they need to operate their facilities, both Phase 1 and Phase 2, and that their use of the identified water supplies should not unreasonably affect other existing local drinking water resources, both the municipal water supply supplied by the Belfast Water District from wells in the Goose River aquifer, and from individual water wells used by private property owners in the surrounding area. Also, while the lower reservoir of the Little River is no longer used as a public water supply, the Board found that Nordic provided an assessment of the amount of water that could regularly and safely be extracted from the Little River and the existing impoundment, and not adversely impact the amount of water flow in the River.

The Board stated its intent to establish specific conditions of approval for any permit that may be issued to address concerns regarding the supply of water for Nordic's operations and the potential impact of this amount of water use on other local drinking water resources. Conditions would include but are not necessarily limited to the following:

- a) Nordic shall work with the Belfast Water District to establish a good quality monitoring program regarding the use of water from the District's wells in the Goose River aquifer.
- b) Nordic shall establish a good quality monitoring program regarding the use of groundwater, including the a program that monitors potential adverse impacts on both water quality and water quantity from private wells located easterly of Herrick Road, southerly or northerly of Perkins Road, southerly of Reed Lane, and if warranted, from any other private property located within the potential area identified in the hydrogeologic reports included in the Nordic application.
- c) If the quality or quantity of water from a private water supply/well is adversely affected by Nordic's extraction of groundwater so that the quantity or quality of the water is diminished from conditions that existed prior to the start of Nordic's operations, Nordic shall be responsible for remedying the problem. Examples of remedies include but are not necessarily limited to: extending public water to the owner property and paying the cost of the public water service for the first five years of service; drilling a new well on the owner's property; and installing a filtration system to address water quality issues. The Board also determined that it may consider requiring Nordic to provide a performance guarantee/bond to the City to address potential adverse impacts to private water services.
- d) Nordic identified its intent to use surface water from the Little River for its operations, mostly as a back-up water source, and plans to install piping from the existing impoundment on the River to their proposed water treatment facility to enable the use of surface water. Nordic also noted that its purchase and sale agreement with the Belfast Water District allows Nordic a two-year window to conduct additional due diligence regarding their potential purchase of the dam. While Nordic's current application is based on the presence of the dam, Nordic has indicated that they have the ability to extract surface water if the dam is not present. If at some future date the dam is not present, the Board identified its intent to establish a Condition of Approval that would require Planning Board review and approval of how Nordic would extract water from the Little River.
- e) The Board determined that Nordic, in its Final Plan application, must submit additional information that clearly identifies the following: the amount of water needed for its operations, the sources of water it will use, the purpose of each source of water in its operations, and documentation that explains how removal of the dam would affect Nordic's operations and Nordic's concepts for addressing the removal of the dam.

Nordic presented information in their Site Plan application (Attachments 23 and 24) and presented information at the Board meetings at which water use was discussed, including the September 23, 2019 public hearings on groundwater and freshwater use, the Board's February 23, 2020 meeting with Keith Pooler, Superintendent, Belfast Water District, and the Board's May 6, 14 and 27, June 17 and July 8 meetings at which Nordic representatives were present. The Board engaged in deliberations on this issue at all of the above meetings.

Nordic representatives identified how they propose to use the three sources of freshwater, 1,205 gpm, as well as about 3,925 gpm of saltwater. The freshwater sources would be used as follows:

455 gpm of groundwater would mostly be used for fish rearing and production; 500 gpm of freshwater would mostly be used for processing fish for market and for sanitary needs; and the 250 gpm of water from the Little River impoundment would principally be used as a reserve water supply. Freshwater, typically groundwater, would be mixed with saltwater from Belfast Bay to support the rearing of salmon.

With respect to groundwater, the Board received testimony from Matt Reynolds, Drumlin Engineering, the firm it engaged to review Nordic's groundwater assessment. Mr. Reynolds provided testimony at the Board's September 23, 2019 meeting, and participated in the Board's May 27, 2020 deliberations on groundwater. Mr. Reynolds provided his assessment of the groundwater modeling work conducted by Nordic's consultants, and the DEP review of said work. He recommended that the Board require a comprehensive groundwater monitoring program similar to that identified in the Nordic application. **It also is noted that the Planning Board will more thoroughly consider the issue of groundwater in its review of a permit for a Significant Groundwater Well.**

The Board conducted a public hearing on groundwater concerns at its meeting of September 23, 2020. The Board, at this hearing, received testimony from Parties-in-Interest and the general public. The Board considered this testimony in its deliberations.

Sec. 90-42(b)(3) Municipal water supply. *The proposed development will not cause an unreasonable burden on an existing municipal water supply, if one is to be used.*

The Belfast Planning Board found that the Belfast Water District has sufficient water capacity to provide Nordic the maximum amount of water identified in the Nordic application, a maximum of 500 gpm.

Keith Pooler, Superintendent, Belfast Water District, and engineering consultants to the District, met with the Board on both September 23, 2019 and on February 26, 2020, to describe the District's operations and respond to questions from the Board regarding how the District can provide Nordic the identified amount of water from their existing two wells combined with installation of the new Talbot well located in the Goose River aquifer. A.E. Hodson, consulting engineers to the District, in a report dated February 27, 2018, identified the District's estimated sustainable pumping capacity, and how the amount of water the District regularly pumped in the 1960's and 1970's when the chicken processing plants were in full production was nearly equal to the amount of water that would now be needed to serve both Nordic and all other District customers. Further, the A.E. Hodson report identified that there would still be excess capacity that would enable the District to serve new customers if needed. Continuing, the District indicated that if there was an unanticipated shortage of water, that industrial operations, such as those proposed by Nordic, would be a low priority for service compared to residential customers and essential services. In addition, Superintendent Pooler indicated that the revenues the District receives from the water sold to Nordic would enable the District to address currently unmet capital project needs without needing to raise current water usage fees.

The Board, in conducting its review, noted that the District had to obtain the approval of the Maine Public Utilities Commission (PUC) to sell their current property to Nordic and that the terms of the water usage agreement is a component of the land sale. The PUC approved the sale of the District property to Nordic pursuant to terms in the negotiated sales agreement, which identified their support of information in the A.E. Hodson report.

Nordic representatives, in their application and in several presentations to the Board, identified that they intend to use the water from the Water District to process fish and to address sanitary needs at the facility. Nordic representatives also described measures they could institute to address a short-term reduction in the amount of water available from the District, such as using surface water from the lower reservoir.

The Board received public comment at the September 23, 2019 public hearing from both Parties-in-Interest and the general public. Some of the concerns raised included the amount of revenues that would be raised from the sale of water, the potential adverse impacts to the community's water supply from the amount of water that would be provided to Nordic, particularly with the uncertainties of climate change and potential drought conditions, long-term impacts to the Goose River watershed associated with the extraction of the volume of the water needed for Nordic's operations, and the District's capacity to provide good quality water to all current customers and future customers that may have a need for a greater volume of water. The Board determined that the representatives from the District provided good responses to concerns raised in public testimony and to questions asked by the Board. For example, Keith Pooler cited information in the A.E. Hodson report regarding the amount of water that was available in past drought conditions, and how the current amount of water use is less than 35% of the amount of water used from the existing wells in the late 1970's.

The Board indicated its intent to require the District to establish a good quality monitoring program regarding the amount of water usage from the Goose River wells to ensure that the wells can sustainably provide 500 gpm, and for the District to regularly provide such information to the City.

Sec. 90-42(b)(4) Soil erosion and sediment control. The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results. The criteria in the Maine Erosion and Sediment Control Handbook for Construction, Best Management Practices, prepared by Cumberland County SWCD and the state department of environmental protection, 1991, shall be followed.

The Board made a finding that Nordic, in its Site Plan applications, has identified that they will use appropriate and effective approaches to manage soil erosion and control sediments during project construction. The Board identified its intent to establish conditions such as but not necessarily limited to the following:

- a) Nordic shall comply with erosion and sediment control measures and procedures identified on the Site Plan. A key concern is their approach to open only a limited amount of the site at any point in time.

- b) The General Contractor shall regularly provide field reports to the City Code Enforcement Officer regarding measures employed on the site to manage erosion and control sediments.
- c) Nordic shall pay the costs of a City inspector to conduct regular inspections of construction activities and to monitor the effectiveness of all erosion control measures.

The Board based its findings on its review of the Site Plan application submitted by Nordic, 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), and 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 a significant amount of soils. The Board acknowledged this concern, but found that Nordic's approach to managing construction was an effective way to control erosion and sedimentation.

Sec. 90-42(b)(5) Highway or public road congestion. The proposed development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed, and, furthermore, the developer has made adequate provision for traffic movement of all types into, out of or within the development area. The board shall consider traffic movement both on-site and off-site. Before issuing a permit, the board shall find that any traffic increase attributable to the proposed development will not result in unreasonable congestion or unsafe conditions on a road in the vicinity of the proposed development. A traffic study may be required.

The Board found that the proposed Nordic development will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads. The amount and type of traffic associated with Nordic's operations of a land-based salmon farm will have little impact on overall traffic volumes on any adjacent road, particularly Route 1, and there are no existing intersections near the site that will experience a decrease in their current traffic rating. Nordic intends to use the current access road to the Belfast Water District to access its site from Route 1, and will construct a new internal service road to access most of its on-site facilities. Nordic is not proposing any other points of road access to the site.

With most development projects, the Board focuses solely on long-term traffic impacts associated with a project. The Board, however, also found it appropriate to consider traffic impacts associated with construction of the Nordic project because of the length of construction, activities (construction could occur for 4 or 5 years), and because Nordic has requested a road opening permit from the City to construct a temporary by-pass road on Route 1 to support installation of the water intake and discharge pipes within the Route 1 right-of-way. **The Board identified its intent to establish conditions of approval to address traffic impacts associated with construction activities.** These conditions would require Nordic to manage when and how trucks could enter/exit the site during construction to minimize traffic volumes at off-site intersections during high volume traffic times. The Board also noted that the City will use the road opening

permit that is required from the City Public Works Department to manage the lay-out, construction and removal of the temporary by-pass road.

The Board concurred with a recommendation in the traffic study dated June 3, 2019 prepared by Diane Morabito, Nordic traffic consultant, that the speed limit on Route 1 southbound of the current entrance to the Water District property should be reduced by 10 mph so that the traffic speed is consistent with the speed limit northbound of the entrance, and that the applicant and the City should both request that MDOT approve a reduction in speed limit. The Board also recognized her recommendation that Nordic regularly mow vegetation near the entrance to maintain sight distance.

The Board requested that Nordic Aquafarms, in its Final Site Plan application, examine potential adjustments in the lay-out of the entrance to the site to enhance truck traffic movements entering and exiting the site and visibility from the entrance. This request also could have some impact on the lay-out of the temporary bypass road, such as the regrading of the bank on the southerly side of the entrance.

The Board based its findings on its review of the Site Plan application submitted by Nordic (reference Attachment 17), particularly the Traffic Study prepared by Diane Morabito, its consideration of information presented to the Board by Nordic representatives at the Board meeting of January 15, 2020, and its consideration of public comment on traffic concerns from both Parties-in-Interest and the general public at the public hearing it conducted at its meeting of January 15, 2020. Further, the Board reviewed and discussed traffic issues at meetings it conducted post the January 15 public hearing, and considered information presented by Wayne Marshall, Director, Code and Planning, in making this finding.

Sec. 90-42(b)(6) Sewage waste disposal. The proposed development will provide adequate sewage waste disposal in compliance with federal, state and local laws, rules, ordinances and regulations.

The Planning Board did not make a definitive finding on this standard as part of its review of the Preliminary Plan application, mostly because a significant amount of the sewage disposal associated with this project is not subject to City regulation. At full production (Phase 1 and Phase 2), the Nordic project involves the intake and recirculation of about 3,925 gallons of saltwater per minute and the recirculation and use of about 800 – 1200 gallons of freshwater per minute, and the subsequent discharge of said waters to Belfast Bay, a total of about 7,000,000 gallons per day. This discharge will occur in off-shore waters that are subject to Department of Environmental Protection (DEP) and Army Corps of Engineers (ACOE) permitting authority. The DEP, through the Board of Environmental Protection, and ACOE are now in the final stages of their respective reviews of the required permits. The Planning Board determined that it would be best for the Board to consider the DEP and BEP permit decisions with respect to Standard 90-42(6) in its review of the Board's Final Site Plan application.

The Board noted that when an activity is not subject to City regulation, but is subject to regulation by other jurisdictions, that the Board typically requires an applicant to demonstrate that they have obtained and can comply with all such State and federal permit requirements. The Board also stated its intent to establish a condition of approval to require Nordic Aquafarms to regularly provide all permits and reports on monitoring activities performed pursuant to the DEP and ACOE permits to the City Code and Planning Department.

The Board, as described in its Findings regarding Site Plan Standard 90-42(7), Municipal Sewage Waste Disposal, found that the Nordic project can provide adequate sewage waste disposal with respect to sewage that will be delivered for treatment at the City Wastewater Treatment Plant.

The Board, in making this finding, considered information in the Nordic application and information presented to the Board by Nordic representatives, and comments submitted by Parties-in-Interest and the general public at several public hearings conducted by the Board.

Sec. 90-42(b)(7) Municipal solid waste and sewage waste disposal. *The proposed development will not cause an unreasonable burden on the city's ability to dispose of solid waste and sewage. If municipal services are to be utilized, a letter from the city indicating current capacity and availability of municipal sewer shall be submitted for the record.*

The Planning Board found that the Nordic project will not cause an unreasonable burden on the City's ability to dispose of solid waste and sewage.

With respect to solid wastes, Nordic will not be utilizing the City transfer station for the disposal of any solid wastes or any construction debris. Nordic, in its application (Attachment 21) and in supplemental information submitted to the Board, identified how it will collect and store wastes on the site, the contractors/firms it will use to dispose of solid wastes, and licensed off-site facilities that will be used for the long-term disposal of wastes. The Board found this information sufficient, and stated its intent to establish conditions of approval that would require Nordic to use good quality waste collection and disposal practices.

Nordic, in submitting its application to the City, worked with City officials, including but not limited to the City Wastewater Treatment Plant, Olver Associates (City Engineer), the Public Works Department and the Code and Planning Department to identify the type of wastes from their operations that could be properly treated at the City Wastewater Treatment Facility. The City determined that the only wastes the City would accept are sanitary wastes. Nordic intends to construct a private sewer line that would connect to the existing City system at the intersection of Perkins Road and Route One to deliver its sanitary wastes to the City system. The amount of sanitary wastes is quite low, and the Wastewater Treatment Plant has identified that it has the capacity to accept the identified volume of sanitary wastes. The Public Works Department also has issued a Conditional Road Opening Permit to allow the construction of a portion of the Nordic sewer line in Perkins Road. Nordic will be responsible for the construction and long-term operation and maintenance of its connection to the City sewer system.

The Planning Board conducted a public hearing on the solid waste issue at its meeting of October 9, 2019, and accepted comment from both Parties-in-Interest and the general public.

Sec. 90-42(b)(8) Aesthetic, cultural and natural values. The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, archeological sites, significant wildlife habitat identified by the state department of inland fisheries and wildlife or the city as rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.

The Board found that the Nordic project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or archeological sites. The Board, in making this finding, considered information in the application submitted by Nordic (reference Attachments 27 and 32), presentations by Nordic representatives at the Board meetings of August 26, 2019 and December 18, 2019, comments offered by Parties-in-Interest and the general public at public hearings that the Board conducted at its meetings of August 26, 2019 and December 18, 2019, and its deliberations on the requirements of this standard. The Board specifically noted that the adopted City Comprehensive Plan identified the view of the Little River dam (Reservoir 1) from Route One as an important scenic resource for the City. Nordic, in its initial application submitted to the Board and supplemental information provided for the Board meeting of December 18, 2019, presented an assessment of this scenic corridor conducted by its consultant, SMRT.

The Board, in deliberating on this issue, took particular note of language in the standard; ‘will the proposed development have an undue adverse impact’. As stated by many persons who offered comment to the Board, the project will result in the development of 30 plus acres of land that is now either forested or open fields. The Board, however, noted that land-based aquaculture is identified as a permitted use in the zoning district (Route One South Business Park), and that the City recognized that in allowing this type of activity in this area that there would be significant changes to the existing environment and landscape. Further, the Board recognized that the City has taken proactive steps to provide long-term protection of critical land areas by its intent to purchase about 40 acres of upland located within 250 feet of the lower reservoir; reference the land purchase agreement between the Belfast Water District, Nordic Aquafarms and City of Belfast Agreement, as such has been amended and extended. The City's purchase will protect most areas located within the Shoreland Zone near the development, about 24 acres in Belfast, and another 16 acres in Northport.

Continuing, the Comprehensive Plan identified the importance of the scenic view of the lower reservoir dam and current Water District offices. Nordic's application does not propose any changes to the dam and they intend to retain the Water District offices and convert such to a visitors center. The Board found that the location of Nordic's rearing and production facilities on the site respects this view. The Board also noted that the archaeological assessment performed by Northeast Archaeology Research Center, Inc. dated October 4, 2018 for Nordic did not identify any significant archaeological resources on the site that warranted protection.

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 offered at both an October 16, 2019 and January 8, 2020 public hearings by Parties-in-Interest and the general public, 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.

Continuing, this standard requires the Board to make a finding that the Nordic project will not have an undue adverse impact on rare and irreplaceable natural areas as identified by the City, or any public rights for physical and visual access to the shoreline. The City, in its adopted Comprehensive Plan, did not identify the area proposed to be developed by Nordic as a rare and irreplaceable natural area. The Board, during many of the hearings it conducted, received comment from both Parties-in-Interest and the general public regarding the importance of the natural values of the area that Nordic proposes to develop, with numerous references to the area as being 'old-growth' forest. The Board, similar to its Findings with respect to the aesthetics and natural beauty of the area, found that the project will not have an undue adverse impact with respect to these criteria. The Board noted that this area is not identified as a rare and irreplaceable natural area.

The Board particularly made note of the City's intent to purchase about 40 acres of land adjacent to the lower Reservoir. This area includes part of the Little River Trail, thus the Board found that the City is taking proactive steps to preserve both physical and visual access by the public to the shoreline of the Lower Reservoir. The Board also found that the Nordic project will not have an undue adverse impact on any physical public access rights to the coastline of Belfast Bay that may exist and will have no undue adverse impacts on any visual points of access to the coastline of the Bay.

Sec. 90-42(b)(9) Conformity with city ordinances and plans. *The proposed development conforms with the floodplain regulations (chapter 78, article II), the comprehensive plan, the zoning regulations (chapter 102), the shoreland zoning regulations (chapter 82), the subdivision ordinance, and the technical standards (chapter 98).*

The Board, at its meeting of August 19, 2019, and as noted in Section 9 of these Findings, determined that the uses proposed by Nordic are permitted uses in the two applicable zoning districts, Route One South Business Park and Residential II, and that the uses similarly are allowed in the General Development and Limited Residential districts of the Shoreland Zone. That said, as of the date that the Board adopted these Findings of Fact for the Preliminary Site

Plan application, the Board had not acted upon or made any final findings with respect to the Zoning and Shoreland Permit applications that it must consider. As such, the Board intends to revisit Standard (9) in its review of the Final Site Plan application. Project development also must comply with applicable Chapter 98, Technical Standard requirements. This project is not a subdivision, thus the Subdivision Ordinance does not apply.

The City Council, in April 2018, amended the City Comprehensive Plan to identify that the preferred land use designation for this area was Route One South Business Park. The Route One South Business Park land use area identifies land-based aquaculture as a desired type of use. The Board also noted that the Comprehensive Plan identifies the Little River dam and accompanying reservoir as a significant view corridor in the City. The Planning Board finds that this project will preserve much of this view corridor. Nordic plans to retain the existing Belfast Water District offices and to use the dam impoundment to provide up to 250 gpm of water for their operations. The City will be purchasing and preserving a 250 foot naturally vegetated buffer area adjacent to the Little River (about 24 acres), an approach that will preserve public access to the Little River Trail. The Board also noted that the City will be purchasing 14+ acres on the Northport side of the lower reservoir. The Board, in making this finding, referenced the view assessment prepared by SMRT provided in the Nordic application, as such was amended and presented to the Board. The Planning Board concluded that the Nordic application is consistent with the City Comprehensive Plan.

Sec. 90-42(b)(10) Financial and technical capacity. *The developer has adequate financial and technical ability to develop the project in a manner consistent with state and local performance, environmental and technical standards.*

The Planning Board found that Nordic has demonstrated that they have adequate financial ability to develop the project in a manner consistent with state and local performance, environmental and technical standards. Nordic has estimated that the development of both Phase 1 and Phase 2 will require an investment of about \$500 million. Nordic has stated their intent to use several methods of financing for project construction, including but not necessarily limited to raising private equity through shares issued through the parent company, debt/borrowing, and revenues generated from the project (Phase 1 revenues to benefit Phase 2). While Nordic does not currently have specific financing in place for the project, in its application (Attachment 9) Nordic identified how it would raise needed capital and their ability to raise such capital. Nordic representatives also described their approach to project financing and responded to Board questions at the Board meeting of August 5, 2019 and February 5, 2020, the latter of which was attended by Brenda Chandler, Chief Financial Officer, Nordic. The Board conducted a public hearing on this issue at its meeting of August 5, 2019 and received comment from both Parties-in-Interest and the general public.

The Board, in its deliberations regarding financial ability, decided that there were two key issues. One, how can the Board ensure that Nordic has sufficient financing prior to the start of any project construction, and two, what is an appropriate performance guarantee for the project. **The Board determined that the best approach to address these concerns was to establish specific**

conditions of approval. The Board identified its intent to establish a Condition of Approval that no project construction can occur on Phase 1 until Nordic has demonstrated that it has adequate financing in place to pay all costs associated with Phase 1 construction, and similarly, that no construction can occur on Phase 2 until Nordic provides financing for all Phase 2 construction. The Board also determined that it would require a performance guarantee (guarantee to City) for any construction/improvements proposed by Nordic that would directly affect any public infrastructure or that would adversely affect an abutting property if the improvement was not constructed. The Board identified the following as examples of construction/improvements that would be subject to a performance guarantee: construction of stormwater improvements, installation of buffering along property lines, and construction of the temporary bypass road. The Board chose not to require a 'decommissioning' performance guarantee as requested by some at the public hearing. The Board noted that the buildings and equipment are intended to be in operation for many years (30 years with no definite time period for obsolescence), and that the buildings and equipment could be repurposed.

The Board, for the purposes of this Preliminary Plan review, found that Nordic has demonstrated that they have adequate technical ability to construct and operate the proposed project. Nordic, in its application (Attachment 29), presented information regarding its Technical Ability, and Nordic representatives described such at an August 19, 2019 Board meeting. Nordic noted its three current RAS system operations and the background and quality of its staff and project/engineering consultants. The Planning Board conducted a public hearing on this issue at its meeting of August 19, 2019. The Board received comment from both Parties-in-Interest and the general public, with one of the most common concerns being the proposed size of the Belfast facility in comparison to other facilities that Nordic operates.

The Board determined that a critical issue regarding technical ability that applies to both project construction and operation will be Nordic's ongoing ability to demonstrate compliance with all regulatory conditions of approval established by state and federal agencies and the City. The Board identified its intent to establish Conditions of Approval to require appropriate third-party monitoring of project construction activities, such as but not necessarily limited to stormwater, soil and erosion control, and activities that disturb any public road. Additional conditions will apply to regular reporting on project operations, including but not necessarily limited to monitoring of groundwater wells, effluent discharge, chemical and antibiotic use, and the disposal of certain solid wastes.

The Board noted that the BEP is similarly reviewing Nordic's ability to demonstrate financial and technical ability and potential conditions that the BEP may establish in any permitting application. Thus, the Board identified its intent to review and consider any findings and conditions established by the BEP regarding financial and technical ability in its consideration of the Final Site Plan application. **Further, the Board, during its review of the Final Site Plan, will consider the review of Nordic's technical ability that is provided to the Planning Board by a third party source contracted by the City.**

Sec. 90-42(b)(11) Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great

pond or river as defined in 38 M.R.S.A. chapter 3, subchapter I, article 2-B, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.

The Board found that the impounded waters at the lower reservoir (reservoir # 1) do not qualify as a great pond (reference City Code of Ordinances, Chapter 66, General Provisions) and that there are no outstanding river segments in Belfast. The Board, however, found that the project site is located entirely within the watershed of the Little River, and that there are several intermittent and perennial streams on the site, as well as wetland areas, most of which are associated with the streams that flow either to the Little River or to Belfast Bay.

The Board found that the proposed development will not adversely affect the quality of the Little River, or unreasonably affect the shoreline of the Little River. Further, the Board found that while Nordic will disturb several on-site streams and permanently alter about 4.6 acres of wetland, the BEP has identified its intent to require Nordic to provide both on-site mitigation and financial compensation for the amount of wetland disturbance.

The Board, in making its findings, specifically noted that the City of Belfast has a purchase and sale agreement to acquire about 24 acres of upland located within 250 feet of the reservoir number 1, or nearly all of the shoreline located westerly of the existing Belfast Water District offices. Further, per setback requirements for the Route One South Business Park District, Nordic must retain an additional 50 foot wide buffer zone adjacent to the land that the City will purchase. This area is a minimum of 300 feet in depth, and it will remain naturally forested and assist in mitigating the intensity of project construction and maintaining existing surface water quality. In addition, Nordic is installing stormwater management facilities that will assist in maintaining the quantity of existing flows through several streams that are impacted, as well as the quality of the surface water run-off, and is constructing extensive mitigation improvements on stream 9 that has been adversely impacted by past development activities. The improvements to stream number 9 will benefit water quality in Belfast Bay (stream does not flow to the Little River).

The Board, in making this Preliminary Finding, noted that none of the on-site wetlands that are proposed to be disturbed are located in the Shoreland Zone, and that the BEP/DEP and ACOE have greater regulatory authority than the City regarding such wetland impacts. To date, neither the BEP/DEP or ACOE (through the BEP) have made specific Findings regarding the amount of wetland impact proposed by Nordic, or the specific Conditions of Approval that the BEP/DEP may establish regarding such impacts. **As such, the Board identified its intent to reconsider its Preliminary Findings post its receipt and review of the BEP/DEP Findings and Conditions. The Board did not identify any specific requests for additional information from the applicant regarding standard 11) during its review of the Preliminary Plan.**

The Board conducted a public hearing on wetland impacts at its meeting of October 16, 2019. The Board considered information in the Nordic application, Attachments 34, Wetland and Stream Surveys, and Attachment 15, Stormwater Management, to assist in its review of this issue and in making its Findings.

Sec. 90-42(b)(12) Groundwater. *The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater or any public or private water source.*

The Planning Board found that the Nordic project will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater or any public or private water source, provided Nordic conducts project operations as proposed, and provided Nordic complies with all conditions of approval established by the BEP and the City of Belfast.

The Planning Board, in making its finding, considered the following information:

- The Nordic application (Attachment 23);
- Presentations by Nordic representatives at the Board meetings of September 23, 2019 and May 27, 2020;
- A review of the Nordic proposal conducted for the BEP by Dr. John Hopeck, Division of Environmental Assessment, DEP;
- A DEP staff memorandum to the BEP dated May 13, 2020;
- A review of the Nordic application, DEP/BEP information, and City Ordinance requirements conducted by Matt Reynolds, P.E., Drumlin Engineering, consultant engaged by the City on behalf of the Planning Board, and presentations that he made to the Board at the Board meetings of September 23, 2019 and May 27, 2019; and
- Comments offered by Parties-in-Interest and the general public at the Board hearing of September 23, 2019, including comments offered by Mike Lannan, Environmental Tech, on behalf of Upstream Watch.

The Board noted that Nordic proposes to use about 455 gpm of groundwater from 3 on-site production wells that will be installed by Nordic. Nordic plans to use the groundwater wells to provide the main source of freshwater in the rearing of salmon. Nordic also may use up to 250 gpm of surface water from the Little River. The Board noted that the DEP has determined that this level of water use is within the sustainable level of withdrawals from the River. As such, there does not appear to be a strong likelihood that this level of surface water use would adversely affect groundwater levels in the area.

The Board, in conducting its review, noted that the Belfast Water District does not use or rely upon any groundwater or surface water supplies in the area as a public water source, and that many of the surrounding properties on Route 1 and on Perkins Road are served by public water. An area near the site that is served by private wells is Herrick Road.

The main potential concern identified by the Planning Board is that Nordic's extraction of groundwater could have an adverse impact on the quality and/or quantity of groundwater on adjacent private wells. The Board proposes to address this issue by adopting conditions of approval that would apply to the Nordic project, including but not necessarily limited to:

- a) requiring Nordic to conduct an ongoing monitoring program of its groundwater use and its impact on adjacent wells (including active monitoring of off-site wells) and regularly making such monitoring information available to the City and the public; and

b) requiring that Nordic make any property owner whose private well has been adversely impacted by Nordic's use of groundwater 'whole' by measures such as but not necessarily limited to connecting the property to public water, the installation of a water quality treatment system, or the drilling of a new well.

The Board also indicated that during its review of a Final Site Plan application it would consider the potential use of a performance guarantee/bond payable to the City to help make a property owner 'whole' if Nordic fails to act.

The Board also considered the issue of saltwater intrusion of a private well. While the Nordic hydrogeologic assessment identified saltwater intrusion as a potential concern in a limited area near Route One, the Board noted that properties in this area are connected to public water, thus, there is limited concern with potential adverse impacts to a private well from saltwater intrusion.

Lastly, the Board noted that it is responsible for the issuance of a City Significant Groundwater Permit, and that it will fully consider all Groundwater concerns in its deliberations regarding said Permit.

Sec. 90-42(b)(13) Flood areas. *If the development or any part of it is located in a floodprone area, based on the Federal Emergency Management Agency's flood boundary and floodway maps and flood insurance rate maps and information presented by the applicant, then the developer shall determine the 100-year flood elevation and flood hazard boundaries within the development. All structures in the proposed development must be constructed with their lowest floor, including the basement, at least two feet above the 100-year elevation.*

The Planning Board found that Nordic is not proposing to construct any new structures in an area that is identified on the FEMA maps. The existing Belfast Water District offices that Nordic will purchase and use for a future visitors center, however, is located in Zone A. The Board based its Findings on a review of information in the Nordic application (Attachment 19) and a review of the FEMA maps. There was no public testimony offered at the October 16, 2019 public hearing that the Board conducted on flooding. The Board stated its intent to adopt a Condition of Approval that would apply to any proposal to expand the building in which the Water District offices are located to ensure that any potential expansion complies with Chapter 78, Floodplain, requirements. The Board also expressed interest in better understanding how the management of the upper dam owned by the Belfast Water District could affect any likelihood of flooding in the downstream area if the dam at the upper Reservoir failed.

Sec 90-42(b)(14) Freshwater wetlands. *All mapped freshwater wetlands within the proposed development shall be identified on plans submitted as part of the application.*

The Board found that Nordic, in its application, identified the location of on-site wetlands; reference Attachment 34. The Board, in its review of the Nordic application, is aware that Nordic intends to disturb more than 3.5 acres of freshwater wetlands, and that this is an issue that

the BEP/DEP is considering in their review of the State permit applications. **The Board stated its intent to more specifically consider the issue of wetland impact in its review of the Final Site Plan application following its receipt of the BEP/DEP findings on the NRPA and SLODA applications and during its consideration of criteria identified in Section 90-42(30).**

Sec. 90-42(b)15) Rivers or streams. *Any river or stream within or abutting the proposed development shall be identified on maps submitted as part of the application. For purposes of this section, the terms "river" and "stream" are defined as provided in section 90-1.*

The Board found that Nordic, in its application, identified the location of all on-site perennial and intermittent streams; reference Attachment 34.

Sec. 90-42(b)16) Stormwater. *The proposed development will provide for adequate stormwater management.*

The Board found that the Nordic project will provide for adequate stormwater management. The Board considered the requirements of the Chapter 98, Technical Standards, in its review of this criteria; the Technical Standards identify the regulatory standards for how an applicant must address stormwater concerns. The Board found that Nordic's proposal satisfies the City requirement to have no greater off-site post development increase in stormwater compared to pre-development levels, and that their approach addresses BEP/DEP standards regarding maintaining water quality.

The Board stated its intent to establish Condition of Approvals to require third-party inspection during construction of all stormwater improvements, and to require regular monitoring of all stormwater improvements post construction, with all monitoring reports provided to the City.

The Board based its findings on the following: information in the Nordic application (Attachments 15 and 16); presentations by Ransom Consulting (Nordic consultant) to the Board at its meeting of September 4, 2019; and a review of the Nordic application by the City consultant, Mandy Olver, Olver Associates. Ms. Olver also reviewed all stormwater information submitted to the DEP. The Board specifically noted that no public comment was made at the public hearing that the Board conducted at its meeting of September 4, 2019.

Sec. 90-42(b)17). **Access to direct sunlight for abutting property owner for solar energy system.** *The Planning Board may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict or control development. The developer shall, on request of the Planning Board or code enforcement officer, submit development plans which include either one or a combination of the following:*

a. Restrictive covenants.

- b. *Height restrictions.*
- c. *Increased setback requirements.*

The Planning Board found that the Nordic project will not have an adverse impact on any abutting property owner's access to direct sunlight. The Board based its finding on its review information in the Nordic application (Attachment 33). The Board noted that the no building on the Nordic site will be located within 100 feet of any building on an abutting property and that most buildings on adjacent properties are located 250 feet or more from where Nordic will be constructing its facilities. Further, the height of the Nordic buildings are not so great as to block access to sunlight. The Board noted that no public comment was offered at the public hearing that the Board conducted on this issue at its meeting of September 26, 2019.

Sec. 90-42(b)(18) Solid waste management. *The proposed development will provide for adequate disposal of solid wastes. All solid waste will be disposed of at a licensed disposal facility having adequate capacity to accept the project's waste.*

The Planning Board found that Nordic can successfully manage all types of solid wastes generated by their proposed operation, and that Nordic can maintain safe and healthful conditions. The Board conducted a public hearing on the management of solid wastes at its meeting of October 9, 2019, and deliberated on this issue at its meetings in May 2020. The Board, in conducting its deliberations, particularly made note of public concerns raised regarding the collection and disposal of fish wastes. Nordic Aquafarms presented information to the Board (information in addition to that included in Attachment 21 of their application) to demonstrate that it can secure contractual services from experienced companies to safely and effectively dispose of solid wastes generated on the site, as well as potential wastes associates with typical fish die-offs and a catastrophic fish die-off. **The Board indicated its intent to require Nordic to satisfy a Condition of Approval to obtain contractual services to effectively manage all forms of solid waste disposal.**

Sec. 90-42(b)(19) Exterior lighting. *The proposed development will provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours if such use is contemplated. All exterior lighting will be designed and shielded to avoid undue glare and adverse impact on neighboring properties and rights-of-way.*

The Belfast Planning Board found that the exterior lighting that will be installed on the Nordic site is adequate for their use of the site and that said lighting will not cause undue glare and adverse impact on neighboring properties or any rights-of-way. The Board based its finding on its review of information in the Nordic application (Attachment 18). The Board noted that all light poles will be in the range of 16 feet to 20 feet in height, and that Nordic will use a system to manage (dim) the amount of light output at appropriate hours of the day. The Board also noted that there are only 7 residential houses located within 300 feet (and only 1 that is within 150 feet) of any building that will be constructed on the Nordic property, and that only one building

on the Nordic property, the Water Treatment facility, will be located within 150 feet of any public right-of-way. The Board did not identify any specific conditions that it intends to adopt to address lighting, except applicant compliance with standards identified in the application.

Sec. 90-42(b)(20) Buffering of adjacent uses. *The development will provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and/or a combination of these or other techniques.*

The Board found that the initial Preliminary Plan application and supplemental information submitted by Nordic during the Board's review of the application substantially provide for the buffering of adjacent uses where the Nordic project will abut several residential uses on Perkins Road and near the Nordic Water Treatment facility that is adjacent to Route One.

The Board, in its May 2020 review and deliberations on the Nordic application, **requested that Nordic submit additional information in its Final Plan application regarding the amount, type, and size of tree species and understory plantings that would be planted along the lot lines that it shares with several residences on Perkins Road, and more definitively identify when replanting will occur during the construction process.** The Board stated that its goal is to have the bufferyard planted as soon as practical during the construction process. The Board also encouraged Nordic to more fully explore opportunities with abutting property owners to plant trees on their private properties, if such are desired by the respective property owner, to increase the amount of buffering.

The Board, in its review of the Nordic application, found that Nordic is complying with City requirements regarding the minimum amount of bufferyard, reference Sec. 102-684c)(1) and all structure setbacks from lot lines, reference Sec. 102-684(b)(2) established for the Route One South Business Park zoning district. The Board noted that most of the Nordic lot line that directly abuts several residential properties on Perkins Road now consists of open fields and intermittent trees, and that Nordic, in its application, is proposing to plant new trees to create a buffer as required in City Ordinances.

The Board requested that Nordic, in its Final Plan application, better identify the species of replacement trees that will be planted near the new Water Treatment building and Route One to satisfy planting requirements for that buffer yard. The main issue is the number of existing trees that will be removed during construction of the temporary bypass road and the need for replacement plantings to restore the existing tree-line in this area.

In its overall assessment of the amount of bufferyard, the Board noted that the City of Belfast has an Agreement to purchase a 250 foot wide forested strip of land, nearly 24 acres, that will serve as a buffer between the Nordic development and the Lower Reservoir, an area that includes the Little River Trail. The Board also determined that the Nordic application complies with buffering/landscaping standards identified in the Chapter 98 Technical Standards regarding the screening of parking areas; reference 98-249(1).

The Board based its Findings on the following: information in the Nordic application (Attachment 28) and supplemental information submitted by Nordic; presentations by Nordic representatives at the Board meetings of August 26, 2019 and December 18, 2019; the review of the Nordic plans by Wayne Marshall, Director of Code and Planning and his assessment of City standards; and comment provided by Parties-in-Interest and the general public at the public hearing conducted by the Board at its meeting of August 26, 2019. The two main issues raised at the public hearing were the amount of bufferyard plantings adjacent to residential properties on Perkins Road and the amount of bufferyard plantings on Route One.

Sec. 90-42(b)(21) Noise. *The development will control noise levels such that it will not create unreasonable interference with use and enjoyment of neighboring properties.*

The Board found that Nordic has demonstrated the ability to successfully manage noise levels associated with the operation of the Nordic facility. The Board specifically noted that no regular operations are projected to exceed noise levels identified in the Chapter 102, Zoning, Article IX, Division 2, Environmental Standards that govern noise levels associated with any activities in the Route One South Business Park zoning district. The Board also noted that noise is an activity that is subject to DEP regulation, and that DEP noise regulations are stricter than the City noise standards. Thus, the Board stated its intent to establish a Condition of Approval for any City permit that would require Nordic to comply with DEP noise standards, meaning that the same standard would be enforceable by both the City and the DEP.

The Planning Board conducted a public hearing on this issue at its meeting of October 9, 20129. An issue that was raised at the hearing was the amount of noise associated with project construction. The City typically applies its Noise standard to operational concerns for a project, and not to construction activities. The Board also made note that the City Code of Ordinances, Chapter 34, Noise and Public Conduct Ordinance, identifies that construction activities are generally exempt from the amount of noise generated between the hours of 5:00 am and 10:00 pm. Further, the Noise and Public Conduct Ordinance identifies City ‘police powers’, and is not a standard that is enforced through the Zoning Ordinance. That said, the Planning Board, recognizing that project construction could occur over a significant number of years (four to six years), and that standard (21) speaks to “not creating unreasonable interference with the use and enjoyment of neighboring properties”, stated its intent to establish a Condition of Approval that limits construction activities to a time period of 6:30 am to 7:00 pm, and to a maximum of 6 days per week. The Board, however, stated its intent to allow ‘quiet’ construction activities located wholly within an enclosed structure to occur within the interior of a building. **Nordic Aquafarms is to submit a list of activities that it believes qualify as 'quiet' construction activities for Board review during the Final Site Plan application.**

Also, to the extent that certain DEP regulations may apply to construction activities, the City recognizes that Nordic will need to comply with the stricter of the DEP or City standards. Further, the Board stated its intent to require Nordic to provide information to property owners in the area regarding when construction activities will occur, particularly any blasting operations.

Sec. 90-42(b)(22) *Storage of materials.*

- a. *Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse shall have sufficient setbacks and screening, such as a stockade fence or a dense evergreen hedge, to provide a visual buffer sufficient to screen the proposed use from abutting residential uses and users of public streets.*
- b. *All dumpsters or similar large collection receptacles for trash or other waste shall be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it shall be screened by fencing or landscaping.*
- c. *Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises shall be provided and maintained in good condition.*

The Board found that the Nordic project complies with City requirements regarding the outside storage of materials and containers such as dumpsters. The Board specifically noted that all dumpsters will be located in areas that are not visible from neighboring properties and that Nordic will provide screening if the Code Enforcement Officer deems that screening is required to comply with Chapter 98 and Chapter 102 requirements. The Board also noted that this is an industrial site and that outside storage at industrial sites is not prohibited.

The Board based its findings on the following: information in the Nordic application (Attachment 20, Project Drawings); information provided by Nordic representatives to the Board; and information provided by Wayne Marshall, Director, Code and Planning, regarding City requirements. The Board did not conduct a specific hearing on the overall issue of outside storage, however, it did conduct a public hearing on solid waste management at its meeting of October 9, 2019, and conducted public hearings on January 8 and 15, 2020 on the overall project application.

Sec. 90-42(b)(23) *Landscaping.* *The development plan will provide for landscaping that breaks up parking areas, softens the appearance of the development and protects abutting properties from any significant adverse impacts of the development. (See chapter 98 for standards for landscaping parking lots.)*

The Board found that the Preliminary Plans and supplemental information submitted by Nordic substantially provide appropriate amounts of landscaping where the Nordic project will abut several residential uses on Perkins Road and near the Nordic Water Treatment facility that is adjacent to Route One. The landscaping provided also serves to ‘break-up’ and screen the parking areas on the site. **The Board, in its May 2020 review and deliberations on the Nordic application, requested that Nordic submit additional information in its Final Plan application regarding the amount, type and size of tree species and understory plantings that would be**

planted along the lot lines that it shares with several residences on Perkins Road. The Board also encouraged Nordic to more fully explore opportunities with abutting property owners to plant trees on their private properties, if such are desired by the respective property owner, to increase the amount of buffering.

The Board, in its review of the Nordic application, found that Nordic is complying with City requirements regarding the minimum amount of bufferyard, reference Sec. 102-684c)(1) and all structure setbacks from lot lines, reference Sec. 102-684(b)(2) established for the Route One South Business Park zoning district. Specific findings include:

- a) The Board noted that most of the Nordic lot line that directly abuts several residential properties on Perkins Road now consists of open fields and intermittent trees, and that Nordic, in its application, is proposing to plant new trees to create a buffer as required in City Ordinances.
- b) The Board determined that Nordic is retaining or planting an adequate number of trees between the new Water Treatment building and Route One to satisfy planting requirements for that buffer yard. Nordic also is planting landscaping on the site to soften the overall appearance of the buildings and to enhance the aesthetics of the property
- c) The Board determined that the Nordic application complies with landscaping standards in the Chapter 98 Technical Standards regarding the screening of parking areas; reference 98-249(1).
- d) The Board noted that the City of Belfast has an Agreement to purchase a 250 foot wide forested strip of land, nearly 24 acres, that will serve as a buffer between the Nordic development and the Lower Reservoir, an area that includes the Little River Trail. This buffer area will help screen development on the property from public view.

The Board based its Findings on the following: information in the Nordic application (Attachment 28) and supplemental information submitted by Nordic; presentations by Nordic representatives at the Board meetings of August 26 and December 18, 2019; the review of the Nordic plans by Wayne Marshall, Director, Code and Planning and his assessment of City standards; and comment provided by Parties-in-Interest and the general public at the public hearing conducted by the Board on August 26, 2019. The two main issues raised at the August 26 public hearing were the amount of bufferyard plantings/landscaping adjacent to residential properties on Perkins Road and the amount of bufferyard plantings/landscaping on Route One.

Sec. 90-42(b)(24) Buffering of residential uses.

- a. *Any lot within the urban compact line as now existing or as from time to time modified of the community that is used for nonresidential or multifamily residential purposes shall have a landscaped buffer on any property line that abuts a residential use or residentially zoned lot. The width of the buffer may vary depending on the treatment of the area. A buffer with dense planting, fencing, or changes in grade may be as little as five feet in width. A buffer with moderate levels of planting should be ten feet to 15 feet in width.*

b. In all residential settings, the width of the vegetated buffer should be increased to a minimum of 25 feet. Areas adjacent to service, loading, or storage areas should be screened by dense planting, berms, or a combination thereof.

The Board found that the Nordic application complies with this requirement. All of the Nordic site is within the Urban Compact line; the Belfast/Northport town boundary is the urban compact line. The Board specifically noted that this standard, (b), speaks to a vegetated buffer that is a minimum of 25 feet in width. The Route One South Business Park zoning district requires a minimum structure setback of 50 feet from all lines, and requires that a minimum of 80% of this setback area be a vegetated bufferyard. In short, the Board found that Chapter 102, Zoning standards require a greater setback than identified in Chapter 90, Site Plan, Sec 90-42(b)(24).

The Board based its Findings on the Site Drawings included in the Nordic application and its review of standards in Chapter 90, Site Plan and Chapter 102, Zoning.

Sec. 90-42(b)(25) Location of off-street parking. *See chapter 98.*

The Planning Board found that Nordic is providing an adequate number of parking spaces for project operations, including handicap spaces, and to satisfy requirements of the Nordic/Water District/City Agreement regarding the sale of Water District property to both Nordic and to the City. This Agreement requires Nordic to provide parking for persons who will use the Little River Trail system. The Board noted that the proposed location of parking spaces were well distributed on the site, that the spaces generally were located in areas with good quality screening, and that the dimensions for the spaces and drive aisles satisfied standards in the Chapter 98 Technical Standards. The Board requested that Nordic, in its Final Site Plan submission, reexamine the number of parking spaces located near the Water District offices that would be available for the proposed visitors center and Little River Trail. The Board did not identify its intent to establish any specific conditions that Nordic must satisfy, other than to require Nordic to construct the parking identified in the Preliminary Site Plan application.

Sec. 90-42(b)(26) Hazardous waste. *The applicant shall demonstrate compliance with federal and state laws and regulations when hazardous waste is generated or stored on-site.*

The Board found that Nordic has submitted adequate information to demonstrate that its operations will be in compliance with federal and state laws and regulations regarding the generation and storage of hazardous waste. The Board noted that Nordic's operations will not result in the generation of hazardous wastes, and that it will properly store any cleaning supplies that could be considered a 'dangerous' (although not hazardous) product.

The Board based its Findings on discussions it conducted with Nordic representatives at public meetings. The Board also stated its intent to address the requirements of this Standard by adopting Conditions of Approval that require the following:

- a) Nordic shall properly store, use and dispose of all materials and substances that are considered hazardous wastes by the state and federal government, and shall regularly provide a list to the Code Enforcement Officer regarding any hazardous materials stored or used on the site.
- b) Nordic shall immediately contact the Code Enforcement Officer and the DEP regarding any hazardous wastes that are located during construction activities and shall cease all construction until an approach to mitigate the problem is identified and corrective action is taken.

Sec. 90-42(b)(27) Prevention or control of air pollution. *No use shall be allowed which creates a substantial risk of air pollution, whether by dust, chemicals, odor or otherwise, which would pose a significant risk of harm to local populations within the city or injury to wildlife, vegetation or to property, or harm to use and enjoyment or surrounding property. It is not the intent of this provision to merely require compliance with state or federal air quality standards, but rather to enforce a standard which may be more encompassing and strict than those state and federal standards as presently constituted.*

The Planning Board did not make a conclusive finding on this issue during its review of the Preliminary Plan. The Board noted that the City does not have specific air emission standards, and that the Nordic application requires issuance of an Air Emissions Permit by the BEP/DEP. Nordic has a pending air emissions permit with the BEP. **Thus, the Board found that it would be best to more fully consider this standard during Board review of the Nordic Final Site Plan application when the BEP/DEP may have provided further direction on the State Permit application.**

The Board, in making this Finding, determined that Nordic, in its application, submitted information to address Air Emissions concerns (Attachment 31). Nordic representatives presented information to the Board on air emissions at the Board meeting of December 18, 2019, and the Board conducted a public hearing on this issue at this same meeting. The Board received public comment from Parties-in-Interest and from the general public. Mike Lannan, Environmental Tech, provided specific testimony on behalf of Upstream Watch.

Public concerns raised to the Board include but are not necessarily limited to: the height of the chimneys at the Nordic plants that will disburse emissions from the regular and emergency operation of several large generators at the Nordic facility, and the adverse impacts such emissions could have on surrounding properties and the general public. The Board recognized why Nordic is proposing the use of diesel generators, and found that BEP/DEP action on the required State Permit may provide the Board more guidance on the acceptability of the Nordic proposal.

Sec. 90-42(b)(28) Protection of public health and safety. *The proposed development shall provide for safe and healthful conditions. No proposed use may be approved which creates a substantial risk of causing damage to the public health or welfare.*

The Planning Board did not make a conclusive Finding regarding if the project protects the public health and safety during its review of the Preliminary Plan application. The Board found that Nordic, in its application, submitted sufficient information regarding project operations and public health and safety concerns to be considered a complete application, however, the Board found that it would be in a better position to more fully consider this standard when it is aware of BEP/DEP action on the required State Air Emissions and Discharge Permit applications. **Thus, the Board decided that it will reopen its consideration of this standard during its review of the Nordic Final Site Plan application when more information is known to the Board. The Board specifically noted that the City does not have any specific regulations regarding air emissions, and that the DEP and ACOE are responsible for the regulation of the proposed discharge of effluents to Belfast Bay.**

Sec. 90-42(b)(29) Adequacy of waste disposal. *The applicant shall clearly demonstrate to the Planning Board that all quantities and types of waste generated by the proposed use can be dealt with and disposed of while maintaining safe and healthful conditions.*

The Planning Board found that Nordic can successfully manage all types of solid wastes generated by their proposed operation, and that Nordic can maintain safe and healthful conditions in conducting these operations. The Board conducted a public hearing on the management of solid wastes at its meeting of October 9, 2020, and conducted deliberations on this issue at its meetings in May 2020. The Board, in conducting its deliberations, particularly made note of public concerns raised regarding the collection and disposal of fish wastes. Nordic Aquafarms presented information to the Board (information in addition to that included in Attachment 21 of their application) to demonstrate that it can secure contractual services from experienced companies to safely and effectively dispose of solid wastes generated on the site, as well as potential wastes associated with typical fish die-offs and a catastrophic fish die-off. The Board indicated its intent to require Nordic to satisfy a Condition of Approval to obtain contractual services to effectively manage all forms of solid waste disposal.

The Planning Board also found that this standard requires the Board to make a determination that Nordic has the ability to operate a land-based salmon farm and to maintain safe and healthful conditions in the disposal of all wastes. The Board found that one of the main wastes associated with the Nordic operation is the discharge of effluents into Belfast Bay from its Water Treatment facility. The Board noted that the City does not have specific regulatory authority to manage the discharge of effluents into the Bay, and that the BEP/DEP and ACOE are responsible for the issuance of permits to allow and monitor effluent discharges. **The Board anticipates that the BEP/DEP will soon be acting on the discharge permit applications submitted by Nordic, thus, the Board has determined that it would be best for the Board to more fully consider this standard during its review of the Final Site Plan application.**

Sec. 90-42(b)(30) *Additional standards for development that may substantially affect the environment. Additionally, if the proposed development meets the definition of development that may substantially affect the environment, as defined in 38 M.R.S.A. § 481 et seq., then section 484, Standards for Development, chapter 371, Definition of Terms used in the Site Location of Development Law and Regulations, chapter 372, Policies and procedures, chapter 373, Financial Capacity Standard, chapter 374, Traffic Movement Standard, chapter 375, No Adverse Environmental Effect Standard, chapter 376, Soil Types Standard, and chapter 377, Review of Roads and/or Major Development, and the provisions of section 90-17 shall apply.*

The Planning Board did not make any definitive findings with respect to Standard (30), Additional Standards, as part of its Preliminary Plan review. The Board found that this standard requires the Board to consider how the project addresses requirements in the Department of Environmental Protection, Site Location law. The Board noted that the Bureau of Environmental Protection (BEP) is responsible for the review of the Nordic Site Plan Permit application that has been submitted to the DEP, and that the BEP will be issuing Findings and Conditions on the Nordic Permit regarding these standards. While the Planning Board received public testimony, reviewed relevant information in the Nordic application, reviewed testimony submitted to the BEP, and DEP staff comment to the BEP, regarding the standards identified in (30), the Planning Board determined that it would be best to not complete its review and findings regarding these criteria at this time. **The Planning Board, noting that the City Planning Board process is a two-step review, Preliminary Plan and Final Plan, decided it would be best to review these issues more thoroughly during its review of the Nordic Final Site Plan Permit application, at which point there may be more definitive Findings from the BEP.**

DECISIONS OF BELFAST PLANNING BOARD

The City of Belfast Planning Board, at its meeting of July 15, 2020 took the following actions on the Preliminary Site Plan application.

Action # 1: The Planning Board found that Nordic Aquafarms submitted its Preliminary Site Plan application on June 11, 2019 and that Wayne Marshall, Code Enforcement Officer, City of Belfast, on June 12, 2019, found that the Plan was complete for purposes of submission to the Planning Board. The Planning Board, at numerous meetings between June 26, 2019 and July 15, 2020, reviewed Nordic's Preliminary Site Plan application (June 26 submission) and supplemental information submitted post June 26 by Nordic Aquafarms to the Board. The Board, at its meeting of July 15, 2020, unanimously adopted a motion to find that the Nordic Aquafarms application was complete for purpose of review by the Board. Motion by David Bond and seconded by Daisy Beal. The Board based its decision on its review of the original application and supplemental information submitted during its review of the application, and its consideration of submission requirements identified in Section 90-72, Required Information and Format.

Action # 2. The Planning Board found that the Preliminary Site Plan, including supplemental information submitted by Nordic Aquafarms, satisfies the Preliminary Site Plan criteria

identified in Section 90-42(b), Criteria for Review by Planning Board. The Board, pursuant to Section 90-74, 2), unanimously voted to approve the Preliminary Plan for the Nordic Aquafarms development. Motion by David Bond and seconded by Geoff Gilchist. The Board, prepared and adopted these Findings of Fact to identify its decision on the Preliminary Plan. The Board's Findings describe why it determined that the Nordic Aquafarms application satisfies the Preliminary Plan requirements, additional information that Nordic must submit for the Final Site Plan application, issues that the Board will consider further during Final Plan review process when it receives more information from the Bureau of Environmental Protection on State Permit applications, and potential conditions that the Board may establish for the Nordic Aquafarms project.

Action # 3: Planning Board action on the Preliminary Site Plan application means that Nordic Aquafarms can submit a Final Site Plan application for Board review pursuant to Chapter 90, Article IV, Final Plan. The Board unanimously adopted a motion to support Nordic Aquafarms submitting a Final Site Plan application. Motion by David Bond and seconded by Wayne Corey.

On behalf of the Belfast Planning Board

Declan O'Connor
Secretary and Acting Chair