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October 5, 2020

Hon. Robert S. Duchesne, Presiding Officer
Maine Board of Environmental Protection
17 State House Station
Augusta, ME 04330

File No:
A-14-781-A-N
L-28319-26-A-N
L-28319-TG-B-N
L-28319-4E-C-N
L-28319-L6-D-N
L-28319-TW-E-N-N
W-009200-6F-A-N

RE: SLODA Application Draft Findings of Facts and Conditions

To the Presiding Officer and Board of Environmental Protection:

We have now received all draft Findings and Conditions and it is now completely clear that this Applicant has not met its burden of proof with respect to air quality, wastewater discharge, and site suitability. We applaud DEP on their tireless efforts with this process. While we would all like to think that these efforts would result in a favorable permit for all involved, sometimes the only reasonable and logical result must be permit denial based solely on the information and studies provided to the record when that Applicant does not meet the threshold for permit approval.

It is unclear why this Applicant decided to ignore permit information requests from the DEP, the NVC, the public, other Intervenors, the Army Corps of Engineers, the Belfast Planning Board, and others, and refused to answer basic questions like "how much fresh water will they need?" during testimony at the February 2020 hearings.

In the end, however, BEP can only make its determinations on the information that actually has been provided and eliminate information that has been formally withdrawn or updated. The Northport Village Corporation (NVC) began this process with an open mind. Right at the onset of the Application process, some

residents in Bayside immediately began to support or oppose the project, but the NVC consistently has remained neutral with respect to endorsement or disapproval.

The NVC would like to begin these comments by correcting the misrepresentation of the NVC's involvement in this process. In the draft SLODA Findings of Facts on page 6, paragraph 4 it states that:

> *"Upstream/NVC are entities comprised of members who reside within close proximity to the project site and are opposed to the project."*

While we all can agree that the NVC is definitely within close proximity of the project, the NVC has never been "opposed" to the project. The NVC is, however, completely "opposed" to allowing any Applicant for any proposed project develop a major industrial process in our front yard without the proper due diligence required or without satisfying their burden of proof prior to approval.

The NVC has stated repeatedly that it is not "for" or "against" Nordic Aquafarms, or aquafarming in general. In fact, the NVC has a record of NOT opposing aquafarms that discharge into the Penobscot Bay. The NVC made no attempt to formally question or comment on the Whole Oceans aquafarm project approved in Bucksport, which also will ultimately discharge into the Penobscot Bay. The NVC (and other Intervenors) have been accused of hypocrisy publicly by the Applicant and many of the supporters in the Belfast area based upon questioning this Application but not Whole Oceans. To be clear, the NVC is questioning and commenting SPECIFICALLY on the Nordic Aquafarm's Application(s) and potential suitability of this site, and not for Whole Oceans, for three primary reasons:

(1) The Whole Oceans SLODA Application was predominately an industrial site change in use while Nordic's Application is for a newly rezoned use that is predominantly open space, residential or a light commercial area with no historical capacity for resources or discharges for an industrial project of this size or magnitude.

(2) The Whole Ocean's SLODA Application demonstrated that the proposed change in use will actually result in less impact than its previous industrial use, while the Nordic Aquafarm's Application clearly indicates an adverse impact on nearly all SLODA criteria such as groundwater, electrical power capacity, resources, open space, etc.

(3) The Whole Ocean's project will discharge into an existing outfall, into a free-flowing river, where near-field and far-field dilution will become negligible more than 10 miles from the NVC, while Nordic Aquafarms will need to install a new outfall, with unknown dilution, in an area with known but not studied oscillating tidal activity, where near-field and far-field dilution may not be completed before the discharge enters waters in and around the NVC's registered Historic District, our mooring field, our school, public and residential seashores, our Wharf, and our swimming areas.

As part of our due diligence for these comments to the SLODA Findings of Facts and conditions, we examined the SLODA Application for the Whole Ocean's Project and included a brief comparison to Nordic's Application, and although this comparison is not the focus of these comments, it is included in this comment letter specifically because as part of the site selection process, Nordic Aquafarms has claimed from the beginning that they performed a nationwide search, and this specific Belfast site selected was THE best choice. This claim inferred that as long as this is the "best" site, suitability must be automatic. Somehow the Applicant conflated their favorable site section matrix results with the needs of the actual permitting process.

Based upon the comparison between these two aquafarm SLODA applications, not only was the Belfast site not the best salmon aquafarm site in the country, state, or county, but it clearly is not even the best site selected for a salmon aquafarm project that will discharge into the Penobscot Bay.

Also included are comments on the incomplete application items previously entered into the record as part of the Applicant's Technical Ability, and whether the draft Findings of Facts addresses those items that were still missing when the record closed. These comments are arranged in order of the SLODA application sections in order to best comment on these concerns.

Section 1 – Development Description

The draft Findings of Facts and draft Conditions do not adequately identify which aspects of the Applicant's multiple submittals have been included or superseded. Not only is it impossible for the formal Intervenors that have followed this process closely and carefully throughout to understand the Application, but impossible for the public to follow. Many of the Applicant's resubmittals were incomplete, and then missing information was vetted in discussions with the DEP before they were considered acceptable for review, or before DEP required more information. While there is nothing wrong with DEP discussing supplemental information with the Applicant, it is then the responsibility of the Applicant to keep its permit Application and materials up to date. Simply because DEP did not ask specifically for updates, does not mean they would not be welcomed or anticipated. Regulatory agencies never object to Applicant's making things clearer. It makes their job's easier. Unfortunately, Nordic has done very little throughout this process to make it easy for DEP to obtain information for the overall process and individual equipment. [DELETE?Based upon the resubmittals and discussions about applicability of original information and replacement information.]

Eventually, after many rounds of supplemental information and revisions, this Applicant did not update any of their information. Therefore, it is not possible for formal Intervenors, much less members of the public, to know what facility description is proposed in the application. As a result, it is impossible to determine whether the Applicant has met the criteria in 06-096 Chapter 375, as stated in the Summary of these regulations [underlined emphasis added]:

> *SUMMARY: These regulations describe the scope of review of the Department in determining a developer's compliance with the "no adverse effect on the natural environment" standard of the Site Location Law (38 M.R.S.A. Section 484(3)); the information which shall be submitted, when appropriate, within an application for approval; and, the terms and conditions which the Department may impose on the approval of an application to ensure compliance with the standard.*

In other words, the Applicant must submit the information required with the application, so that DEP can determine compliance with "no adverse effect on the natural environment". This determination needs to be in the Findings of Facts, not after future studies specified in the Conditions are completed. Of course, that does not mean that there cannot, and should not be conditions, but Conditions must be Conditions ON approval, not Conditions FOR approval. In other words, the determination must stand alone, THEN and only then, can Standard or Special Conditions be added on top of the materials determination to ensure (i.e. guarantee) that the previous compliance determination is confirmed. Collecting ambient or background data and incorporating that data into the required data, studies, or designs that are needed to make the determination FOR approval cannot ENSURE Compliance, simply because the data MAY or MAY NOT ensure the Conditions. with any permit issued based solely upon the testimony in the record.

The Applicant has stated on many occasions that they have a good idea of what they expect, or anticipate, as their proposed project is built and after they collect the data, could take the required data, and use it to cure or correct the permit conditions after the fact. They are proposing to completely circumvent the Due Process of each and every resident, neighbor, and concerned citizen in the area. There is minimal to NO opportunity for public involvement, or to address public concerns, if future studies require changes to the Conditions.

This lack of understanding or desire to meet this simple and basic permitting requirement suggests that this permit must be denied based on this most rudimentary requirement alone. It also suggests that the Applicant's "Technical Ability" to satisfy the permitting requirements (Section 2) has not been met.

Please note that the Whole Oceans Application had two submittals: an original submittal and a revised submittal that was a complete update of the application. It was, and still is, extremely clear what remained in the Whole Oceans permit application, what was updated, and what was superseded.

Section 2 – Right, Title and Interest

The NVC will not spend a significant portion of these comments on the issue of right, title, and interest (RTI), as it is understood that this issue will be resolved in the court system.

The NVC will note however, that at no time in the application or testimony does Nordic formally claim that they can prove that they have rights to the land in question, but they have muddied the water sufficiently to suggest "someone" might, so the project could move forward. While the NVC has serious doubts about the actual RTI, the NVC does understand that the courts are better equipped to handle this dispute, and decide the issue.

The bottom line is that this Applicant has no agreement in the proposed neighborhood and therefore this item is incomplete. It does not seem reasonable to grant any permit without this being decided. It seems that taking this application to this juncture, where the draft permit has been reviewed, and the DEP can incorporate all comments and be ready to issue the final permit is as far as this process should proceed, until it has been legally decided. The original argument for moving forward was that it is not fair to any Applicant to delay the many steps required in the permitting process. Assuming the court were to find in Nordic's favor there is no time delay for them if DEP were to then issue any final permit, if BEP deems it appropriate.

There is no RTI dispute for Whole Oceans' Aquafarm Project.

Section 3 – Financial Capacity

The financial capacity criteria has not been met in multiple ways. First and foremost, the applicant does not have an updated final expected project cost. The initial cost was approximately $500 million dollars. The applicant is supposed to demonstrate that they have a certain percentage of that cost, set aside for the project in cash to allow permitting to proceed. Why is that even more important for this Applicant?

1. Even if a loan is to be approved, a substantial down payment would be necessary to secure a loan for this massive facility, especially one that has never been built at this size.
2. The applicant has claimed that the project needs to be this large because of overhead cost, but does not explain how the owner will finance those overhead costs. How will they pay for the start-up years (which could be 5 to 10 years) until they reach anywhere near the size they claim is necessary to be financially viable?
3. This Applicant cannot point to a profitable facility that they have run to date. The main contact for the Applicant used to sell insurance just a few years ago before this completely new adventure.
4. This is a virgin site that has many existing environmental conditions that will require either rebuilding or paying a fee in lieu of rebuilding them. Either way those can be costly.
5. There are many new design and equipment items that have been identified as required, such as removal of most of the soil on-site, odor control systems that were originally discussed as not necessary but added "in concept" at the hearings, a switch to all electric heating, added processes to

further reduce nitrogen, and a new surface water treatment plant that would need to be modified or moved if the dams are removed.

6. This Applicant is investing in other enterprises co-currently with this one, yet the financing justification provided for this project is not specifically earmarked for this project.
7. There was significantly more environmental due diligence required than supplied by this Applicant. Many of these studies and data collection items were required to meet the permitting requirements, but are now being proposed as "after the fact" conditions. These studies will take added funds that are not included in their initial construction estimate. Unfortunately, at this time, they could result in unknown added costs, so even more funding should be required that the original estimate.
8. This site is currently a virgin site and if the Applicant were to go out of business, money should be set aside in a financial assurance account to cover the cost to remove and restore the site until such time as the Applicant can demonstrate financial profitability.

This applicant chose to permit the facility in one step. The financial commitment and funding must be available for the ENTIRE project as per the Application, or the application process must be completed in two steps, one for each phase. This approach was entirely as proposed by the Applicant, therefore the financial requirements must be with respect to the whole project, as desired and as proposed. Furthermore, it must be dedicated to this project, and include: updated items that are now required for this site, operational funding for start-up, and any financial assurance plans required by the City or State.

The Whole Oceans project applied to permit their project in separate phases. At their site, most of the infrastructure exists, so the project is much less costly. Also, they provided an account of their available money and a loan guarantee for the project as permitted.

Section 4 – Technical Ability

As per the record, NVC and Upstream Watch submitted a detailed table showing the lack of specifics provided by the Applicant that are necessary to meet the burden of proof for approval. As previously included in testimony, there are two different thresholds for burden of proof. There is one threshold for "Administratively Complete" and a separate threshold for "Technically Complete". By design, these two thresholds have different requirements. The Administrative threshold is basically "is there information provided" and the "Technically Complete" threshold is "does the information required purport to address the criteria?" Initially it is not known in either case whether there is sufficient burden of proof provided so that DEP can make favorable permit approvals. In most cases additional information is necessary, especially for a project of this complexity, before the DEP can review and render a decision on burden of proof.

Unfortunately, for a majority of this permitting process, this Applicant refused to provide additional details during information requests, claiming that the DEP already found the Application "complete". The Applicant has consistently shown an inability to distinguish between the threshold for Application completeness thresholds and the information required to satisfy the burden of proof, possible and reasonable conditions. They have also failed to provide convincing information to state and local officials, and existing property owners and neighbors, that they have a handle on normal operations or unexpected conditions. This is all necessary so that a determination can be made that during all situations the facility can and would remain in compliance with the basic findings necessary to obtain a permit.

The remainder of these sections discuss many details of the permit incompleteness from the various SLODA sections, but this one in particular asks DEP to consider the application in the aggregate. While the NVC ascertains that many of the sections should result in a permit denial in and of themselves, everyone could

attempt to suggest that each and every one by itself could or would be a small adverse impact, but the focus of this section is to remind everyone that it does not matter whether the impact for one criteria or another may be debatable individually with respect to stopping the project. When one looks at the aggregate of all of these criteria, only one determination can be made. This is an unsuitable site and this project, as proposed and entered into the record by this applicant, has too many unknowns remaining, so the only choice is denial and resubmittal at a later date after many of the conditional studies proposed are completed and the potential viability and financial cost to address them have been determined. Until then, the project has not met its burden of proof.

Please note that this assertion does not suggest that the Technical Ability of the Engineering, Environmental, and Construction experts employed by the Applicant are insufficient. These experts have successfully completed many different projects in and around Maine, New England, and the country, and there is no doubt that their opinion about the project may be possible, but it was the Applicant's responsibility to demonstrate that is technically, financially, and reasonably feasible to do so. We do not know an Engineering, Environmental, or construction firm that would argue with a client or refuse to collect additional data to back up an opinion of burden of proof if approved. Therefore, the problem with inadequate data or missing data, should be considered first as a reflection of the Applicant, and not its experts. The fact that the following sections are so far from complete in the aggregate suggest a complete lack of technical ability for permitting and, given that this project as proposed has not yet been done anywhere else successfully, the Applicant's technical ability for permitting should result in a permit denial.

The table on the next page includes 7 columns, the first is the Administrative Completeness. The first column lists the first 25 criteria required for SLODA permitting approval. In column two a circle is provided for technical completeness. DEP noted that as required for permit submittal, the Applicant predetermined that Sections 1-19 and 21-25 were applicable. The third column shows the actual technical completeness of the final application with respect to predetermined burden of proof. The first three columns are in the record in the spreadsheet provided with respect to technical ability. Columns 2 and 3 use two "Consumer Reports" symbols to summarize the previous table in the record. An open circle indicates that the Applicant has not satisfied the permitting criteria and a full circle indicates that the Applicant has. The fourth column is not new testimony, but a summation of the NVC comments provided throughout this comment letter. It introduces a new "checkered" symbol. The checkered symbol indicates that additional study or data needs are proposed in the draft findings of facts or conditions to address the burden of proof. The fifth column simply concludes that if there were no outstanding items, then the Applicant met the burden of proof, and a closed circle is included. Conversely, if there were outstanding items previously identified that have not been addressed and/or the DEP asked for additional studies or data, the confirmation of site suitability for this item based upon the original application could not be complete at this time.

The sixth column includes a comparison to the SLODA application completeness for Whole Oceans, which is also public record. The last column, the seventh column, includes a simple summary note of the comparison comment, which is described in more detail in each of the following or preceding criteria section. As one can see the differences could not be starker between the two approaches to permitting completeness and the ability for DEP to approve the projects. Whole Oceans in most cases is reducing impact from an old industrial usage, while Nordic is destroying virgin land and ecology. This is why Nordic's NEXT project proposed in California is proposed for a suitable brownfields site like Whole Ocean's than the virgin site for Belfast.

Section 5 and 20 – Noise and Blasting

Noise for the project was supposedly considered in the Application process. The results of a study were provided, but NO design information was provided for any of the actual sound sources to review or comment on its applicability of completeness. Even after it was requested in multiple RFIs. In fact in one specific RFI, as the testimony shows, DEP again asked for this equipment with a justification for why it was necessary. This was not the first time it was requested and not the first time the Applicant's response did not provide the information. So it is extremely likely that the Applicant would once again try to sidestep the actual request for equipment cutsheets and noise data for all exterior equipment and any equipment that may be exposed to the outdoors, by providing many comments with respect to verbal justification. To make sure the request was clear this time, DEP asked again for ONLY the equipment and sound data in the very next question, in the same FRI, to which the Applicant replied "See above", which was a clear indication of the complete lack of desire to provide the required equipment and noise information necessary to confirm the noise report. As a result, this criteria has not been met, and the permit must be denied.

The report supposedly examined "construction, operations, and maintenance activities". The study did not include any actual equipment for any of these three activities, or where they were assumed to be located. From the results figure, it appeared that not only was the water and wastewater plant with multiple pumps stations included to withdraw and discharge wastewater and fresh water not adding to the sound, the building was actually shielding other sources on-site. This is simply not reasonable for a facility pushing, pulling and treating around 15 million gallon of water/wastewater around each day. As a result, this criteria has not been met, and the permit must be denied.

There was a generic assessment of construction sound from a few pieces of equipment stack on top of each other at the very middle of the site. The neighborhood surrounding the facility could only dream of this type of buffer between the construction site and the neighborhood. The real concern however from this cursory construction noise discussion is that it was submitted in the originally application well before it was known that thousands upon thousands of truckloads of soil will need to be removed. Not once did they update the construction schedule timeline, so even if somehow it is possible to remove this much soil in the time proposed, it must be done with significantly more redundant equipment operating simultaneously and much closer to the fencelines than the one piece of equipment offered in the generic discussion of construction sound. The Applicant did not update the study for this significant change, or any other changes, even sound changes proposed for the higher stacks and engines. As a result, this criteria has not been met, and the permit must be denied.

Lastly, the DEP may decide that noise nuisance is a topic better were compliance is better handled at the local level, but that does not remove the requirement for determining whether it will be an unreasonable adverse environmental impact during day/night, construction/operations, etc. This applicant has not demonstrated that it will not cause sounds that will impact the health and safety of the residents abutting and living near the facility. An increase above background that is significant would be an Unreasonable Adverse Impact. This applicant has done nothing to examine the combined noise from stationary and mobile sources from the future "No Build" to the future "Build" to make this determination.

The Applicant did suggest that blasting would be permitted by a reputable firm when required. While the whole site was included as a potential blast zone, specifics were once again limited. The largest concern with this approach to blasting per regulatory requirements is that it does no consider that those requirements may not prevent the old dams that are in need of repair dams from becoming a safety concern during an otherwise "normal" blast opportunity. As a result of no formal analysis of the dams, blasting is still a significant concern, and since the combined nuisance impacts of noise, odor, vibrations, dust etc. have not been considered, many criteria for this Application have not been met, and the permit must be denied.

The Whole Ocean project did not simply accept a determination that noise may or may not be applicable. Whole Oceans examined the sound and justified their study. Their power plant is only for emergency use and therefore not a concern for peak-shaving sound like Nordic's proposed facility. Furthermore, the Whole Oceans project will create much less noise and other nuisances than the previous industrial use.

Section 6 – Scenic Character

The applicant has proposed some trees and other items to buffer its site, but it must the allowable zoning height restriction for the stacks. The Applicant is attempting to propose some sort of enclosures to justify these as stacks but they have not been designed or approved. At a minimum, there is an adverse impact for this site, which may or may not be reasonable, if the applicant were to build as is proposed without addressing the dams.

Unfortunately, the existing dams are in bad shape and will not last as long as this proposed project without being addressed. Nordic had an offer to buy and maintain the dams for $1, but has publicly elected to keep that burden on the City. The city may or may not restore the dams and therefore not only is the quantify of surface water option in jeopardy, but any facilities built to capture and hold any water that is currently held back by the dam, and was used for justification for surface water usage continuously at 250 gpm, and also as the backup for 1200 gpm would very likely Adversely impact the scenic character of this area. Unfortunately, until the dams are addressed, this criteria cannot be considered met, and the permit must be denied.

When one compares this site to the Whole Oceans site it is again, night and day. Whole Oceans is building new open space, while Nordic is preserving some, but also talking about the removal instead of repair of the dam, which would drastically change the scenic character of the area. There is no denying that Whole Ocean's project will add to scenic character while this project will reduce it. The question remains, by how much in Nordic's case?

Section 7 – Wildlife and Fisheries

Nordic Aquafarms will have a significant impact on wildlife and fisheries from construction, to water use, to noise, to discharge. To begin, this site will essentially destroy all forested and wetland areas and a fee will be paid in lieu of recreating these wetlands. Unfortunately, the Applicant did not consider any reasonable options to reduce these impacts. Instead it has just jumped to the in lieu fee option. The DEP is required to review the project, "as proposed", but it is and was the Applicant's obligation to explore other others including stacking some processes or other ways to limit its process footprint, so that wetlands could be recreated. The Applicant did not provide any of this analysis into the record. If the Applicant decided simply that increasing open space to recreate wetlands was more costly than paying the in lieu fee, or that in their minds that meant, the process was cost prohibitive that is simply an example of the size and make-up of this site being unsuitable for their proposed facility, not justfication for the inlieu fee. But eliminating essentially all wetlands where the primary project buildings will be located with no reproduction, IS, by definition an Adverse Impact. Paying a fee does not change that fact.

Obviously, there are other wetlands and rivers in the area and in Maine, but that does not mean that the draft findings of Facts should not acknowledge that this site will have an adverse impact with respect to the current use. While these wetlands and the Little River are somewhat unique in the sense that they occur directly adjacent to, and discharge into, the ocean, again one can argue there are many wetland areas near the ocean. However, when one considered that this area, without the dam, which is the most likely "Future No Build Condition" was once a thriving spawning ground for natural fish, and that fish are returning to other rivers further down the bay as testimony stated, this project WILL most definitely create a significant impact

by removing the possibility to reinvigorate the natural spawning ground for Atlantic Salmon Unfortunately, until the dams are addressed, this criteria cannot be considered met, and the permit must be denied.

Whole Oceans will not impact the flow of any spawning fish, as there is no existing dam concern, furthermore the outfall exists and the river flow continuously at all tides. And lastly again, this new use will be significantly less polluting to existing wildlife and fisheries that the previous use.

Section 8 – Historic Sites

The NVC cannot understand why its historic designation was neve considered or mentioned in any of the permitting documents. Based upon the Applicant's estimated dilution modeling the discharge plume will impact areas adjacent to the NVC Historic District. ANY degradation in water quality could affect this Historic District since its history is based upon its location and proximity to the water. As a result, this application has not adequately considered the impact to the NVC.

Whole Oceans has identified concerns at their site and have proposed via permitting to insure that anything done during construction, operations or maintenance of the new use, will not make things worse in the area. Nordic cannot, and has not made any similar such assurance with respect to the mercury in the sediment in the bay or their discharge into bay of mercury and other constituents over time.

Section 9 and 10 – Unused Natural Areas/Buffers

Essentially this criteria for this Applicant's proposed site is "Not Applicable". They are using just about every inch of it, so there is little room for buffering. The applicant has set a aside the minimum for local zoning and for shoreland zoning but done really nothing else. In reality NONE of the site is used because the proposed facility will extract ground water for all areas under the site and into the surrounding area. This application has adequately considered the zoning buffers and has provided landscaping plans for these areas.

Whole Oceans previous use had already consumed most of the unused area, though they are adding new areas to their site that will be open space. Overall Whole Oceans impact will be lower and Nordic's will be higher simply because Nordic is destroying wetlands and forested area for their proposed site.

Section 11 – Soils

It is unclear how this project was not pulled and either moved to another location, or the application was not formally reconsidered, updated and resubmitted based upon soils criteria alone. The quantity of unsuitable soils discovered that must be removed and replace is hard to fathom. It is hard to visualize how over a few short months as the schedule proposes in the record, thousands upon thousands of trucks worth of soils being excavated, moved, stored, loaded, and hauled. It is even harder to understand why an existing wetlands and forested area that are perfectly stable for their current open space uses, could possibly be considered suitable. There is simply no way around this item. The site, as proposed in the Application is not suitable for this site, once the soils were determined to be unsuitable. This issue has a ripple effect throughout the process from Financial and technical ability, right through constructability, air, odor, noise, and dust impacts to local uses, traffic concerns, and protecting the areas that will remain open space. How does one remove thousands upon thousands of truckloads of soil and not affect the river basin, the groundwater flow, the wildlife? It simply can't. As a result, this criteria has not been met, and the permit must be denied.

Of course, Whole Oceans does not have this problem, as a majority of its site had an existing industrial use. While some soils may be removed and replaced at that site for the new buildings and tanks, the amount to be removed and replaced is truly minuscule when compared to the Nordic Site.

Section 12, 13, and 19 – Stormwater, and Urban Impaired Streams and Flooding

The NVC is completely impressed with the RFIs provided by DEP and the work Nordic's consultants did to correct and update the information provided in the original application. This one section was replaced in its entirety and adequately addresses the stormwater run-off per current rules and regulations. This is how all of the RFIs should have been addressed.

Unfortunately, the best runoff plan would be "no Build" as that would allow all the stormwater that natural flows across the site and through the existing wetlands to recharge the groundwater. As a result, this criteria will have an adverse effect on the environment with respect to stormwater infiltration as part of the natural water cycle, but will have limited to no effect on stormwater management.

The Urban Impaired streams was not applicable to either Aquafarms project. And flooding concerns will likely be reduced.

Of course, Whole Oceans already had this reduction by its existing industrial use, so there is no concern there as well.

Section 14 – Basic Standards

This section has many, many subsections and those have been included in the testimony throughout the permitting process. The key though is again that the Application was never revised so it is impossible to know what exactly is still in the Application, and what has been superseded with respect to basic requirements. As a result, this criteria has not been met in a manner that could result in an adequate summary in the Findings of Facts, and the permit must be denied.

Please note that the Whole Ocean Application had two submittals; an original submittal and a revised submittal that was a complete update of the application. It was, and still is extremely clear what remained in the Whole Ocean permit application, what was updated, and what was superseded.

Section 15 – Groundwater

Conflating "needs" for "supply" is a major concern. Nordic originally proposed a usage level that far exceeded the currently proposed usage. It is safe to say that the original application would have a significant and serious adverse impact on groundwater. The current plan still has not been adequately evaluated. An offer by an Applicant to finance the costs of adding local residents on to the public water supply because their wells might run dry is not a demonstration of no adverse impact. To the contrary, it suggests that they cannot make that demonstration in an area that was rezoned and has had no continuous groundwater withdrawal.

What is known is that currently wells in this area have shown signs of saltwater intrusion and that is with periods of little to no use each and every day for maximum recharge. Any proposed facility in this area has not demonstrated, and cannot demonstrate, that it will have no significant adverse effect on groundwater until it operates continuously for many, many seasons. That is just a basic fact. If this newly rezoned area was an area with existing large industrial sources that had been removing ground water for some time, one

might be able to extrapolate this real consideration, but again, it is not. This criteria has not been met, and simply cannot be met in realistically in the permitting phase, so the only way this facility could be permitted is if groundwater usage is "optional". Groundwater usage has not been proposed as optional, so the permit must be denied.

Whole Oceans will receive all of its water from an existing water supply hat has historically provided continuous supply 24 hours a day/7 days a week, so no groundwater wells will be impacted from its use.

Section 16 – Water Supply

This is an extremely detailed and convoluted topic for this Applicant. The Applicant has demonstrated that is cannot meet its demand by ANY of the following alone:

1. Groundwater,
2. City Water
3. Surface Water

This is an Achilles heel for this project. Like soils, the testimony and studies for this item alone demonstrate that this site is simply not suitable. The applicant has refused to answer the question with respect to actual needs because, the applicant knows that if it is provided, it is not possible to be met, based upon the information in the record.

Groundwater – As stated in the last section, no groundwater can possibly be assumed as continually available because that use has never been applied to groundwater in this area. Running a model is great to estimate it, but the bedrock in this area was shown through the modeling to be unique, as the applicant's experts testified. Although it is possible that there may be "some level" that may be possible for supply at all times, That analysis cannot evaluated through modeling without long-term draw down data over months and seasons, not just the hours monitored. There is NO MINIMUM THAT CAN BE ASSUMED AVAILABLE AT ALL TIMES to satisfy Nordics 1200 gpm steady-state desires.

City Water – There may be sufficient water available for the entire site in the current water supply water shed, but through testimony, there is no plan for the Applicant to pay to extract that water plus the amount of capacity necessary to have adequate redundancy/oversupply to handle the required fluctuations. A new well would be needed. Furthermore, the city water supply piping infrastructure cannot handle the demand as proposed by the Applicant, so the supply system would need to be upgraded. And lastly, Nordic is low on the priority list n a drought, so none of this water is guaranteed at all times. As a result, there is NO MINIMUM THAT CAN BE ASSUMED AVAILABLE AT ALL TIMES to satisfy Nordics 1200 gpm steady-state desires.

Surface Water – Nordic had an option to buy the but the existing dams for $1, with the obvious requirement to maintain them. They chose NOT to do so. As a result, it is unclear how much water could be available for Nordic's use for surface water. It is definitely not a primary use option or a back-up plan based upon the information in the record for to satisfy Nordics 1200 gpm steady-state desires.

Mathematically, what guarantee does that leave the Applicant with for water: A promise by Belfast to provide 500 gpm, unless it can't. A hope that it can pull some water from ground water continuously, unless it can't. And a hope to use surface water, unless it can't.

Nordic has no guarantee of water, and its fish operations on the larger scale may be able to handle a reduction in fresh water availability for the 1200 gpm desired, but salmon must start in freshwater, so there is a minimum need, even if Nordic refuses to define it. With no guaranteed water at this site location, the permit must be denied.

Whole Oceans will receive all of its water from an existing water supply hat has historically provided continuous supply 24 hours a day/7 days a week at well above their proposed demands, so there will be no adverse impact from its use.

Section 17 – Wastewater

Unfortunately, the Applicant chose NOT to provide any equipment cutsheets or layouts of the wastewater treatment building that must house many, many processes, even after request for information was made by DEP. There was no equipment layout information in the record that demonstrates that the proposed equipment will fit, or that any additional equipment could simply be "added on". In this building, with very limited space, the Applicant has claimed the following activities will somehow be housed:

a. ocean water pretreatment processes,
b. processes for groundwater pretreatment,
c. processes for surface water pretreatment,
d. processes for city water pretreatment,
e. sludge storage and handling,
f. redundant pumping systems for 7+ million gallons per day of discharge,
g. redundant pumping systems for 5+ million gallons per day of fresh ocean water,
h. redundant pumping systems for 2+ million gallons per day of freshwater, and
i. then, ultimately, the wastewater treatment process.

It is extremely expensive to install this equipment in tight areas and any additional nitrogen removal will add more costs. There has been no discussion about the actual water and wastewater equipment to be installed, its dimensions, how it could function at maximum efficiency at all times in this area, how the different codes for these different specific processes will be addressed, and cost for an optimal or potential now suboptimal layout in this building in the record, so the permit simply must be denied.

Whole Oceans will treat its water and discharge into an existing outfall that has historically has had higher discharge needs. This change in use will not only result in a lower discharge, it was proposed in multiple phases, so that permitting needs could be confirmed over time and as the facility grows. Nordic refused to approach permitting in Phases. Whole Oceans is also going to discharge into a moving river and not a tidal shelf of the bay. It was, and still is, extremely clear what remained in the Whole Ocean permit application, what was updated, and what was superseded.

Section 18 and 22 – Solid Waste and Odors

The solid waste plans for this facility are completely inadequate. Calling the waste an organic "commodity" does not adequately guarantee proper handling or disposal procedures. Furthermore, there is no application provided for the solid waste to be created by the dredging and disposal of excess and/or contaminated soils.

When one compares the Nordic Testimony to that of Whole Ocean's Similarity permit application there is an interesting similarity. Essentially, Nordic provided the exact same information as Whole Ocean. Yet, the Whole Oceans permit application was for a change in use, not for a new facility. While the NVC would consider the Whole Ocean application somewhat deficient, this is an example of one or a few minor items that COULD be addressed via conditions in a change in use for an area that is used to some level of air, odor,

noise, dust, and solid waste handling impacts. This not an example of what is necessary for a virgin site with no existing solid waste infrastructure and no understanding of the former residential area's tolerance for industrial nuisances. The Nordic Submittal therefore had a higher burden of proof for significant adverse impact that was simply not met.

Section 21 – Air Emissions

The Applicant has applied for a SLODA permit for a Large-Scale Aquaculture Facility, but only an Air Application for a peak-shaving power plant. If there is sufficient, or more than sufficient power available (like there is at the Whole Oceans Aquafarm site in Bucksport), peak shaving is typically not employed. Peak-shaving is necessary when there is insufficient power available in an area of peak demand.

Clearly, when Nordic's new, very-power intensive demand comes online, there will be some impact to the existing power infrastructure in an area that was not zoned for heavy industrial usage, until about a month before the first Nordic Application was submitted. And since Nordic has never provided the power demands to the Board, it is impossible to know how often peak-shaving will be necessary now, and in the future with growth.

The demand for peak-shaving highlights a major concern for the NVC with the current power network, as Bayside is on one single power line that is also shared with this area of Belfast. If, and when something happens to this line, on either end, power is diminished, (like earlier last week when it was very windy and we were experiencing brown outs at short power outages), how will this facility be affected, and in turn how will the whole power system in the area be impacted?

Nordic has not provided information on the impacts to the area from their normal daily use, or their peak demands, and therefore they have not met their burden of proof with respect to the viability of the any voluntary operational limits on its proposed power plant. Simply stating "it varies, and it is complicated", is insufficient. The NVC is very concerned that this draft Findings of Facts is relying on 10% of usage via their fuel restriction, is that enough? And if it is not, later the Applicant can simply ask for more fuel usage without any public input, as long as the facility remains a minor source.

The NVC does not want 10% of the days with poor air quality either exceeding or just reaching the limit, much less an untold number of more days, if it is determined, after permitting and construction that peak shaving needs plus emergency power needs or there is a new desire to produce their own power at any time, are greater than

Nordic's arbitrary fuel usage limit of 900,000 gallons per year corresponds to only 10% of the year of operation. Without any formal proposed peak-shaving limits or assumptions provided for emergency power needs, and the obvious safety factor needed for any assumption that must consider weather implications, there is a serious concern that the facility may actual need to run the power plant more than 10% of the year. Emergency engines are typically permitted for up to 500 hours per year. 10% of the year is 876 hours.

It is our understanding that the modeling performed by DEP confirmed that there is little to no room for other equipment on-site or in the area, but the other equipment in the area such as cars and trucks, or other commercial or industrial facilities, are not included in the modeling. Why? The other equipment is not included because it is undefined, temporary, portable, ignored, or hard to quantify. Why? Does the other equipment or vehicles not produce air pollution? We can understand the concept that sometimes it is possible that if the other pieces of equipment added are smaller by or compared to the levels in the neighborhood without them, that it is a given that they will not have an adverse impact. But if the power plant for the proposed facility itself is already using up all the available capacity for air pollution, how can there be room for more? How is it a given that their other smaller sources could not push this area over the allowable limit?

It was explained previously that the permit for the power plant exceeded state and national thresholds required to apply for a formal permit, but the smaller air emission pieces did not. We were told that the air permit application only focused on the major sources and the rest would be discussed as conditions or in the SLODA Application process. The NVC really thought that this permit was going to address the potential for adverse impact from the facility that applied for the SLODA permit. The facility applying for the SLODA Application is a fish farm, not a power plant. The Applicant is Nordic Aquafarms, not "a power plant to supply power to an industry nearby". Just because the Applicant's sources the exceeded the threshold to REQUIRE a permit, may have qualified for a permit, does not mean that the process is completed enough to demonstrate no adverse impact for the SLODA Application.

For the water discharge, there was an understanding that there would be an anti-degradation hearing if the water quality assumed 20% or more of the assimilated capacity. This permit is supposed to examine the adverse impact to air quality. The power plant alone will assume more than 90%, and yet this is not an unreasonable adverse impact. A significant lowering of air quality whenever er the power plant is operating IS an unreasonable impact. The other potential sources on-site and in the area along should be included in a model along with this single massive source of pollution before DEP could even consider whether this site would have an unreasonable adverse impact or not. Similarly, the air quality impact from the added traffic during construction and during normal operations has not been included, and would not to be considered with the other sources discussed above before DEP could even consider whether this site would have an unreasonable adverse impact or not. Based upon the information in the record, this Applicant has not demonstrated that it meet the "no unreasonable adverse impact" criteria in this section.

The same cannot be said for Whole Oceans by comparison. The Whole oceans SLODA Application was only for emergency power. There will be no unreasonable adverse air quality impact at Whole Oceans because there is no need for emergency AND peak-shaving power on a tight site with stack height restrictions. Emergency power demands do not typically always occur during peak-shaving demands of hazy, hot, and humid summer days when ambient air quality is already typically its worse. Whole Oceans has not claimed that everything on-site will be run by electricity, even though the site has more than enough existing electrical power available. The existing power has been proved reliable. Whole Ocean has proposed larger and more expensive engines, but significantly fewer engines which will better match emergency power needs and reliability. The Whole Oceans emergency power plant is not to be located near the end of an airport runway. The emergency power plant at Whole Oceans is to be in an area that has no local zoning heights.

Conclusions

The NVC's FUNDEMENTAL overarching concern stems from the basic fact that Nordic has provided no definitive "specs" for actual usage needs, so they have taken a "permit in reverse" approach. This fact is missing from the draft Findings of Facts for this, and all of the, Nordic Aquafarm permit application(s).

It is simply incredible that during the hearing that the Applicant would not answer the direct question posed multiple times, "what are your water usage needs?". They refuse repeatedly, and instead try to conflate "available" with "needs". As recently as last week during the Planning Board deliberations, they provide the same table of their MAXIMUM withdrawal expectations, and not their actual needs. Providing tables of what they think is available and what they would use initially, and how they could adjust the operations if the availability from their continuous draw is permanent or temporarily reduced from weather is NOT a statement of need. Without that no permitting authority can determine the potential for adverse impact.

They have decided to assess available resources in the area (i.e. size of the site, "available" water, room for air pollution, etc.) and then incrementally revise their original permit application(s) assumptions backwards to limit their "proposed use" (again, not needs) to that of availability. The have made it clear that they intend

to build a facility that produces 200,000 pounds a day of salmon "product" (i.e. possibly as fillet or deheaded/degutted fish), but have not defined their resource needs to do so. Furthermore, when they did incrementally adjust their potential usages downward, based upon DEP or public, they have not formally claimed to not use the original assumptions by submitting a revised application making their newly planned incremental usage clear. It is impossible to know what they are expecting or planning, as a result. There are no actual power demand, no actual water usage needs, no equipment or operating parameters, etc.

They filed a SLODA application that was considered administratively complete but was peppered with holes with respect to technical completeness, as per the matrix submitted to the record with respect to the Applicant's Technical Ability. The Applicant has provided process flow layouts typical of a conceptual design that were good to show completeness of application, but did not respond with sufficient information from multiple DEP RFI's with the actual site specific data so that DEP could actually determine the potential for Unreasonable Adverse impact to the neighborhood, resources, and the environment.

The missing or altered resource usage items was summarized in the matrix provided to the record, but that was only up to the hearing timeline in February 2020. Many of those items displayed in the matrix may have been updated via conversations or commitments to the State or City to what they feel they can now extract from available resources, but it is impossible to see how those compare with needs. Many items including freshwater usage and air pollution, went from "ideally" what they would like to use in their original application, but are now considered "too much", may or may not have been formally changed. There has been no updated project needs summary by Nordic, either through revising their application or acknowledging what parts of the original application are no longer valid prior to the record being closed. As a result each and every draft Finding of Facts is insufficient to summarize the project as submitted in the formal Application process. This is not a knock on DEP, but an acknowledgment that with updated materials for a project of this complexity, with this many changes, and a focus by the Applicant on resource "Supply Availability" and not on "Demand Needs", DEP must essentially update the application by including all of the actual proposed usages and equipment justifications in the draft Findings of Facts to make it clear. If not, then it really doesn't matter what potential conditions could be. The Application, as discussed in the draft Finding of Facts, is defined in a conflicting manner, and the permitting burden of proof cannot be definitively confirmed via the record. It certainly cannot be achieved with future confirmational conditional studies as well.

The facility, as proposed in the record, can only be built and operated in a trial and error fashion with millions of gallons a day of ocean water usage, millions of gallons a day of fresh water usage proven inadequate for <u>each one</u> of the three sources explored, millions of gallons of wastewater discharge, millions of watts of electricity required each day, and NO information provided with respect to the number one and number two factors with respect to pollution. This is simply an attenable approach for any facility, much less one of this size.

The most important concern with respect to inadequate burden of proof, is what Nordic would do during an upset condition or fish kill. The news is filled with large salmon fish farms were millions upon millions of fish die from disease or unfavorable grow conditions. Natural chemicals in the tanks, from their biological waste, or chemicals in the water, WILL vary, that is a given. Disease is readily available in all water sources, and will occur, and spread rapidly in a monoculture, that is a given as well, but there is NO plan for dealing with it. Simply suggesting that they have a list of some chemicals to adjust the conditions is not sufficient, and anything they do will take time. Simply stating that they will shut off resource usage (i.e. fresh water, ocean water usage, ocean water discharge, add peak-shaving power), may be a short-term aid, but it is not a solution. And again, as stated previously in testimony, reducing flow will likely exacerbate any imbalance and make things worse.

The variability of any farming operation is a huge reality for all of the aquaculture industry, so size does matter. The larger the facility the hard it is to adjust and control naturally varying conditions. Everyone has heard the term, "too Big to Fail", and that applies here. It is highly unlikely that the proposed response to a significant upset condition would be to risk millions upon millions as the first choice during an upset condition. Therefore, there has to be a response plan for dealing with upset conditions in the record, besides "shut off resources", but there is NONE. There will be long-term power outages, droughts, dam concerns, temperature and water quality fluctuations in the area that are "normal", as well, and Nordic has not addressed how it can remain in compliance during those normal events either, other than to suggest amorphously that it will make adjustments to needs. While the Applicant has suggested that it is impossible to fully identify each and every possible upset condition, that does not mean that the Applicant has a right to simply make that statement, nor does the DEP authority to approve this approach without some real plan up front, in the record, as part of the burden of proof.

And the most important concern with respect to pollution and adverse impact potential from this Application is that there simply IS NO SITE SPECIFIC ENVIRONMENTAL BASELINE CONDITION. There have been a few spot measurements made here and there, but no seasonal studies. They have not provided any substantial data for ambient metal, nutrient, or other discharge parameters for the pipeline or groundwater and surface water proposed, they have no real temperature profile. They do not have any firsthand flow or tidal data on this shelf in the bay. They do not know the nutrient loading variability in the Little River, the discharge area, or near the NVC's Historic District. Based upon the information in the record, it is impossible to develop conditions for this project to CONFIRM compliance, because they have not established the current conditions. Therefore they have not identified the "CURRENT CONDITION" and any future studies will not change that fact now at the deadline for demonstration for approval.

Furthermore, the bay continues to improve since the chicken industry and other environmental consequences have stressed the bay in this area and closed it to the shell fish industry. While DMR focusses more on protecting areas where shell fishing remain, DEP's focus must consider those areas as well, but in many ways its focus should be on the opposite; the areas previously unreasonably adversely impacted. DEP must protect areas of historical impact, even more so than the healthy or unstressed area, so they can naturally recover over time. Anyone from the NVC that boats can tell you how much the sea-life has improved in the bay just over the last ten years as a result of these closed industries no longer discharging. Without this project, this area of the bay will continue to improve, yet the Applicant has provided insufficient background data to even begin to project the "FUTURE NO BUILD CONDITION", which is the most important "baseline" condition for the NVC.

And lastly with no baseline condition, it is simply IMPOSSIBLE to predict the potential impact from the "FUTURE BUILD CONDITION" with the information in the record. While the DEP seems to have decided that many of the required background, ambient, or future use studies prior to permitting can be done later, via trial and error, they simply cannot be done once construction begins and the site is altered. Existing conditions for a project, that must demonstrate "No Unreasonable Adverse" impact for construction, operations, and maintenance of a proposed facility, by definition must be now, as it exists, BEFORE construction. This project cannot be collecting the required background and constructing the project.

Finally even if it did collect existing background conditions at later date, and somehow then determined its "FUTURE NO BUILD CONDITION", there is insufficient information in the record to determine the "FUTURE BUILD CONDITION". Of course, BOTH of these conditions must be well defined now, in order for DEP to make any Findings of Facts that are favorable for approval. There are also needed at this time to develop a permit approval with CONFIRMATORY conditions that would reinforce (not establish) the basis for approval. Therefore, based solely upon the information in the record, at the close of the comment period for all applications, this Application, and each and every Application for this facility can only be denied.

This is not to say that any facility could or could not go in at this site, or that aquafarming is, or is not a good idea for this site, but again, based upon the information in the record, this site has not been proven suitable. The site has not demonstrated that it has the resources available for the proposed process, and

As stated repeated the NVC is not “for” or “against” this project, or aquaculture at this site,but as one can see from these comments and the summary table provided in Section 4, there is a way to adequately permit a Salmon Aquafarms facility that will discharge in the Penobscot Bay (See Whole Ocean Project Under Construction in Bucksport) and a way to provide inadequate data, impact studies, or design information to meet the burden of proof (the Nordic Aquafarms proposed project on the Belfast/Northport line). Approval with ANY conditions, again simply based upon the information in the record, will not satisfy DEP rules, or federal or state laws, so this permit, and all Nordic Permits, must be denied.

This Applicant has been working on this proposed project for years, and they have had adequate time to collect and provide all the data necessary for this Application, but for one reason or another they chose not to do so. As a result, the permit should be denied based upon the inadequate information in the record today.

Sincerely,

John Spritz, President

Northport Village Corporation

Attachment 1 – NVC Summary Table of Technical Ability

Attachment 1

SLODA Application Completeness Comparison Summary Table
Nordic Aquafarms SLODA Application for New Use Versus Whole Oceans Change in Use SLODA Application

Sloda Section	Was Nordic Aquafarm's SLODA Application **Administatively Complete** as Posted?	Was Nordic Aquafarm's Application **Technically Complete** as Posted?	Could Nordic's Application be Determined to be Technically Complete but only After Draft Conditions Are Completed?	What Areas in Nordic's Application could be considered Technically Complete Without Draft Conditions?	What Areas in Whole Oceans Application could be considered Technically Complete Without Draft Conditions?	Whole Ocean's Site Suitability Versus Nordic Aquafarms
Section 1 - Development Description	●	○	◍	○	●	Whole Ocean's detailed description has not changed
Section 2 - Title, Right, and Interest	●	○	○	○	●	Whole Oceans proof is three pages long, plus completed deeds
Section 3 - Financial Capacity	●	○	◍	○	●	Whole Ocean provide proper funding proof from a fininal institution
Section 4 - Technical Ability	●	○	◍	○	●	Whole Ocean provided completed applications with one formal revision
Section 5 - Noise	●	○	◍	○	●	Whole Ocean's full compliance study and generators for emergency only
Section 6 - Visual and Scenic Character	●	○	◍	○	●	Whole Ocean will improve the current visual and scenic conditions
Section 7 - Wildlife and Fisheries	●	○	◍	○	●	Whole Ocean's impact will be less, not more than previous use
Section 8 - Historical Sites	●	●	●	○	●	Whole Ocean's impact will be less, not more than previous use
Section 9 - Unusual Natural Areas	●	●	◍	●	●	Whole Ocean's impact will be less, not more than previous use
Section 10 - Buffers	●	○	◍	●	●	Whole Ocean's impact will be less, and it fits in with Master Plan
Section 11 - Soils	●	○	◍	○	●	Whole Ocean's existing soils are suitable
Section 12 - Stormwater	●	○	◍	●	●	Whole Ocean's impact will be less, not more than previous use
Section 13 - Urban Impaired Stream	N/A	N/A	N/A	N/A	N/A	not applicable
Section 14 - Basic Standards	●	○	◍	○	●	Whole Ocean's land is sufficient to meet the Basic Requirements
Section 15 - Groundwater	●	○	◍	○	●	Whole Ocean will not use any groundwater under this permit.
Section 16 - Water Supply	●	○	◍	○	●	Whole Ocean's impact will be less, not more than previous use
Section 17 - Wastewater	●	○	◍	○	●	Whole Ocean's impact will be less, not more than previous use
Section 18 - Solid Waste	●	○	◍	○	●	Whole Ocean's impact will be less, not more than previous use
Section 19 - Flooding	●	●	●	●	●	Whole Ocean's impact will be less, not more than previous use
Section 20 - Blasting	●	○	◍	○	●	Whole Ocean's site has always been an industrial site
Section 21 - Air Emissions	●	○	◍	○	●	Whole Ocean has CMP substation, so does not need to peak shave
Section 22 - Odors	●	○	◍	○	●	Whole Ocean's historical use has established an odor tolerance
Section 23 - Water Vapor	●	○	●	○	●	Whole Ocean's not located in an airport flighhtpath
Section 24 - Sunlight	●	●	●	●	●	Whole Ocean's impact will be less, not more than previous use
Section 25 - Notices	●	●	●	○	●	Whole Ocean provided completed applications with one formal revision

● = Based on the record, the applicant has satisfied the site suitability permtting requirement

◍ = Could Possibly meet site suitability after conditions are implemented and the results were determined to be favorable

○ = Based upon the record has a incomplete anaysis, or has a negative site specific suitibility impact