

BOARD ACTION

AGENDA TOPIC 3.2

SIGNIFICANT WATER INTAKE/DISCHARGE PIPE PERMIT

The Board reviewed the final draft of the Conditions of Approval for this Permit at its meeting of December 17 and found such acceptable. The Board, at your meeting of October 21 provided verbal direction on your Findings of Fact, however, the December 22 meeting will be your first opportunity to review the specific written language for the Findings. Thus, the Board should concentrate its attention on the Findings.

The Board, at its meeting of December 22, will need to take final action to adopt these Findings and Conditions. Following is suggested language for the motions that the Board should consider adopting.

SUGGESTED PLANNING BOARD MOTIONS FOR THE SIGNIFICANT WATER INTAKE/DISCHARGE PIPE PERMIT APPLICATION (12-22-20)

Motion # 1: Motion to adopt the draft Findings of Fact for the Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit for Nordic Aquafarms, Inc. as presented (or as amended if amendments are made) at this meeting.

Motion # 2: Motion to adopt the Conditions of Approval for the Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit for Nordic Aquafarms, Inc. as such was presented (or as amended if amendments are made) at this meeting.

Motion # 3: Motion to adopt the Significant Groundwater Water Intake and Significant Water Discharge/Outfall Pipe Permit for Nordic Aquafarms, Inc., subject to Nordic's compliance with Conditions of Approval established by the Board for this Permit.

**CITY OF BELFAST PLANNING BOARD
FINDINGS OF FACT
SIGNIFICANT WATER INTAKE AND SIGNIFICANT WATER
DISCHARGE/OUTFALL PIPES PERMIT**

**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
Portland, ME 04101

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

2. OVERALL DESCRIPTION OF NORDIC PROJECT

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

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

6,300 feet from the High Annual Tide into the Bay. The RAS system also involves Nordic Aquafarms treating and regularly discharging the freshwater and saltwater (wastewater/effluent) used to rear salmon back into Belfast Bay via a discharge pipe that extends offshore about 3,700 feet from the High Annual Tide.

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

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

3. OVERVIEW OF CITY REQUIREMENTS REGARDING CONSTRUCTION OF INTAKE AND DISCHARGE PIPES AND NORDIC PROPOSAL TO INSTALL SIGNIFICANT WATER INTAKE AND DISCHARGE PIPES.

The City of Belfast, in April 2018 and again in October 2018, adopted amendments to the City Code of Ordinances, including Chapter 102, Zoning, Chapter 82, Shoreland, and Chapter 66, General Provisions, (Definitions) to establish specific regulations that would apply to a proposal to construct facilities that the City identifies as a significant water intake and/or a significant water discharge/outfall pipe. The main provisions of the adopted amendments include the following:

- Identified a definition for a significant water intake or significant water discharge pipe, including the amount of water use associated with a pipe being classified as 'significant';
- Identified the Zoning and Shoreland districts in which a significant water intake or significant water discharge pipe is a permitted use;
- Established that a proposal for a significant water intake or significant water discharge pipe would require a specific permit from the City and that the Planning Board would be responsible for the review and approval of a requested permit;
- Generally identified that a request for an Intake/Discharge Pipe Permit could be considered by the Board as part of its process to consider a request for a Zoning Use Permit, a Site Plan Permit and/or a Shoreland Permit;
- Identified the standards that a proposal to construct a significant water intake/discharge pipe permit must satisfy and that the Planning Board must review and consider in approving a Significant Water/Intake Permit pursuant to Chapter 102, Zoning and Chapter 82, Shoreland.

4. NORDIC APPLICATION FOR A SIGNIFICANT WATER INTAKE OR SIGNIFICANT WATER DISCHARGE/OUTFALL PIPE PERMIT AND THE PLANNING BOARD PROCESS ASSOCIATED WITH REVIEW OF PERMIT REQUIREMENTS.

Nordic Aquafarms submitted its Site Plan application to the Belfast Planning Board on June 11, 2019. The Site Plan application, as is allowed by City Ordinances, included information required by the Planning Board to consider a request for a Significant Water Intake or Significant Water Discharge/Outfall Pipe. Chapter 66, General Provisions of the City Code of Ordinances defines a Significant Water Intake or Significant Water Discharge/Outfall Pipe as follows:

"SIGNIFICANT WATER INTAKE OR SIGNIFICANT WATER DISCHARGE/ OUTFALL PIPE. A water intake or water discharge/outfall pipe used by a private person to service at least 50,400 gallons during any week and 36,000 gallons on any day that originates onshore and crosses above or below ground in or through a waterbody or land area identified on the City Official Shoreland Zoning Map or Official Zoning Map and that is subject to Shoreland regulation."

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

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

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

The Planning Board, at its meetings of January 8, January 15 and January 22, 2020, conducted public hearings to accept public testimony from both Parties-in-Interest and the general public on all elements of the Nordic application. These hearings presented an additional opportunity for the Board to receive comment on issues related to the location and construction of Nordic's proposed water intake/discharge pipes.

The Planning Board conducted its review of draft Findings of Fact for Nordic's Preliminary Site Plan Permit application, including standards related to the location of the proposed intake/discharge pipes, at its meetings of June 17, July 8 and July 15, 2020. The Board, at its meeting of July 15, approved Nordic's Preliminary Site Plan application and adopted Findings of Fact that describe its decision. This action allowed Nordic to submit a Final Site Plan application and also led to the process whereby the Board would review the specific requirements of the other 4 Permits the Nordic project requires from the Planning Board, including the Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit.

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

The Board initiated its review of specific requirements of the Significant Water Intake/Discharge Pipe Permit at its meeting of October 21, 2020, and continued its discussion of potential Conditions of Approval for this Permit at its meetings of November 4 and November 12, 2020. The Board, at its meeting of December 17, 2020, reviewed the final draft of the proposed Conditions of Approval for this Permit and expressed its support of this draft of the Conditions. The Board, in conducting its review of this Permit, reviewed both the draft and final Orders from the Board/Department of Environmental Protection on the Nordic project, including the Maine Pollutant Elimination Discharge System (MPEDS) Permit.

The Planning Board, through-out all stages of its review of the Nordic application, considered issues associated with Nordic's construction of the water intake and discharge pipes, and how the location and construction of said pipes may adversely affect coastal resources, private property owners in the area, and persons who use area waters for commercial fishing and recreation. The Board, in its deliberations, considered the following: information in the Nordic application; additional information provided at Planning Board meetings by Nordic and its consultants; public testimony offered by all Parties-in-Interest and by the general public (oral and written comment); information in the DEP MPEDS Permit; information Nordic submitted to the Army Corps of Engineers (ACOE) for the ACOE Permits, particularly information related sampling of the Bay for mercury and how construction of the pipes may dislodge mercury; the assessment of the Nordic application and MPEDS Permit performed by Mandy Olver, Olver Associates,

during the Board's review of Nordic's Final Site Plan application; comments offered by William Kelly, City Attorney, and Wayne Marshall, Project Planner, Code and Planning Department; and comments offered by individual Board members during the public review process.

5. SPECIFIC FINDINGS OF THE BELFAST PLANNING BOARD ON OVERALL SIGNIFICANT WATER INTAKE AND SIGNIFICANT WATER DISCHARGE/OUTFALL PIPE PERMIT REQUIREMENTS.

The Planning Board made the following findings regarding the applicability of certain zoning and shoreland standards for the Nordic application for a Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit:

- 5.1 The Board determined that the 2 water intake and 1 water discharge pipes proposed by Nordic qualify as Significant Water Intake and Significant Water Discharge Pipes as such are defined in Chapter 66, General Provisions. Nordic's intake and discharge pipes will transport considerably more gallons of water/effluent per day and per week than are identified in the City definition. For example, Nordic, in its application, identifies that the intake pipes will transport up to 3,925 gallons per minute of saltwater. The City standard to qualify as a significant water intake pipe is 36,000 gallons per day.
- 5.2 The Board determined that the intake/discharge pipes are located in two different zoning districts, and that both zoning districts allow significant water intake/discharge pipes. On the main Nordic site, the pipes are located in the Route One South Business Park zoning district. Chapter 102, Zoning, Article V, District Regulations, Division 19, Route One South Business Park, specifically allows Intake/Discharge Pipes; reference Section 102-682, Permitted Uses Requiring Planning Board Review, Subsection (10), Significant Water Intake or Significant Water Discharge/Outfall Pipes. The area located within the Ekrote easement is located in the Residential II zoning district; reference Chapter 102, Zoning, Article V, District Regulations, Division 7, Residential II. Section 102-422, Permitted Uses Requiring Planning Board Review, Subsection (12), Significant Water Intake or Significant Water Discharge or Outfall Pipes, similarly specifically allows the proposed pipes. The Board also determined that the intake/discharge pipes should be considered a principal use in both the Route One South Business Park and the Residential II zoning districts.
- 5.3 The Board determined that a portion of the proposed intake and discharge pipes are located in the Shoreland Zone. The area located within 250 feet of the High Annual Tide of Belfast Bay that is within the Ekrote easement area is in the Limited Residential District of the Shoreland Zone. The Planning Board found that Chapter 82, Shoreland, Article IV, Districts, reference the Section 82-135 Table of Uses, Clause (14)c. identifies that land-based Aquaculture is a permitted use, and Clause (39) identifies that Significant Water Intake/Discharge Pipes are a permitted use. The

Board also determined that a significant water intake/discharge pipe should be considered a principal use in the Limited Residential Shoreland District.

- 5.4 The Board noted that both Chapter 102, Zoning, and Chapter 82, Shoreland, establish specific performance standards that the installation and location of a significant water intake or discharge pipe must satisfy, and that the performance standards in both Ordinances are the same. The Board reviewed the performance standards identified in Chapter 102, Zoning, Article IX, Performance Standards, Division 2, Environmental Standards, Section 102-1138, Significant Water Intake or Significant Water Discharge/Outfall Pipe, and those identified in Chapter 82, Shoreland, Article V, Land Use Standards, Division 17, Significant Water Intake or Significant Water Discharge/Outfall Pipe, and found that the Nordic application satisfied these respective performance standards. The Board's specific findings are identified in Section 6 of these Findings, see below.

6. SPECIFIC FINDINGS OF THE BELFAST PLANNING BOARD ON THE CHAPTER 102, ZONING, SECTION 102-1138, AND CHAPTER 82, SHORELAND, DIVISION 17, PERFORMANCE STANDARDS.

The Planning Board is responsible for making a finding regarding project compliance with performance standards identified in both Chapter 102, Zoning and Chapter 82, Shoreland, regarding the construction and location of Significant Water Intake/Discharge Pipes. The performance standards in Chapter 102 and Chapter 82 are the same, thus, the Board, in its Findings, references both standards (at the same time) in its Findings regarding compliance with specific Performance Standards.

The Board, in making its decision on the following performance standards, considered the following information:

- Information in the Nordic application, including supplemental information provided by Nordic representatives during the course of the Board's review of the Nordic Permit applications;
- Comments offered by Parties-in-Interest and the general public at Board hearings;
- Permit Orders from the DEP on the MPDES, NRPA and SLODA Permits, and from the State Dept of Agriculture, Conservation and Forestry on a State Submerged Land Lease Permit;
- Information provided by Nordic regarding the permit applications they have submitted to the ACOE;
- The review of this Permit by City experts, including Mandy Olver, Olver Associates, and William Kelly, City Attorney, as well as comments provided by Wayne Marshall, Project Planner, Code and Planning Department.
- The requirements of City Ordinances; and
- The comments of Board members during the Board's deliberations on this and other City Permits.

The Planning Board is permitted to allow the construction and location of a significant water intake and/or significant water discharge/outfall pipe permit subject to Applicant compliance with the following standards.

Chapter 102, Zoning, Section 102-1138, (1) and Chapter 82, Shoreland, Division 17, (1): The installation of and physical location of the pipe or pipes does not have a significant adverse impact, if any, on a shoreland regulated area, and the amount of area disturbed by the installation of the pipe is minimized to the greatest extent practical.

The pipeline will be constructed to extend from the proposed site, under Route One and through the Ekrote easement area located on the Ekrote property located at 282 Northport Avenue and into Belfast Bay. The 2 intake pipes will extend about 6,400 feet from the High Annual Tide (HAT) line, and the discharge pipe will extend about 3,700 feet from the HAT.

The Board determined that it has the authority to regulate construction within the Shoreland Zone, however, the City has limited authority, if any, to regulate construction activities beyond the intertidal zone. As such, the Board determined that it would need to rely upon the jurisdictional authority of the DEP and the ACOE to regulate construction activities that occur outside the intertidal zone.

Normandeau Associates, (consultant to Nordic), in Attachment 11, Natural Resources Report, in the Nordic Site Plan application, described their survey of existing natural resources and anticipated impacts of the project. Three coastal wetlands were identified in this area, W10, W11, and W12. Construction of the pipeline would result in 2,611 square feet of temporary impact to the above coastal wetlands. The report concluded that these wetlands would be fully restored upon completion of construction. Nordic intends to use a three-sided sheet pile cofferdam in the area that an existing stream/shoreline interface to cross that area with the least impact. Normandeau also concluded that temporary impacts to salt marsh and cobble beach areas as a result of installing the intake and discharge pipes would be restored in place once the pipes are buried, and any wildlife habitats potentially disturbed during construction are expected to recover within months.

Nordic has identified that it will use Cianbro, a company that has extensive construction experience in Maine, to complete construction of the intake/discharge pipes. Cianbro is committed to using construction crews with qualified craftspeople to install and maintain the environmental best management practices (BMPs) stipulated in the DEP and ACOE Permits for work beyond the intertidal area, and similar requirements in the City application for work in both the intertidal area and on-shore. Further, all work will be subject to third party inspection to monitor compliance with permit conditions.

The Board finds that the above measures will ensure that the installation of and physical location of the pipes would not have a significant adverse impact on a shoreland regulated area, and that the amount of area disturbed by the installation of the pipe is minimized to the greatest extent practical. The Board noted that the Ekrote easement area is only 40

feet in width, and that the entire length of the on-shore area on the Ekrote property that will be traversed by the 3 pipes is only about 330 feet in length.

Chapter 102, Zoning, Section 102-1138, (2) and Chapter 82, Shoreland, Division 17, (2): The applicant restores the area disturbed by the installation of a significant water intake or significant water discharge/outfall pipe so as to prevent both short-term and long-term soil erosion and sedimentation and the area is revegetated to present a natural appearance that is consistent with the surrounding area.

The Board found that Nordic, pursuant to terms of Condition 7 of this Permit, must restore all on-shore areas that are disturbed by the construction of the intake/discharge pipe by revegetating the disturbed areas. The areas subject to revegetation requirements are all on-shore lands located within the Ekrote easement area, and land located between Route One and the Wastewater Treatment Plant. Nordic's submissions to the Planning Board identify specific revegetation measures that will be implemented in both areas.

The Board similarly found that Nordic will employ good quality measures to manage and control sedimentation and erosion during project construction. Conditions in this Permit (Condition 6) as well as in the Site Plan Permit and Zoning Use Permit issued by the Board to Nordic require Nordic to implement the erosion and sedimentation control measures identified in their Site Plan application. The Board found that the DEP, in its SLODA/NRPA Permit, is requiring Nordic to use similar approaches, and that both the City and the DEP will require third party inspection of Nordic's construction practices with respect to soil and erosion control measures.

Chapter 102, Zoning, Section 102-1138, (3) and Chapter 82, Shoreland, Division 17, (3): The location of any above ground structures associated with the intake or/discharge/outfall pipes complies with the minimum structure setback requirement for the respective Shoreland District, subject to consideration of structure setback requirements that apply to a structure that is a water dependent activity.

The Planning Board found that the intake and discharge pipes are exempt from Shoreland setback requirements for a structure from the High Annual Tide line. First, the pipes will be constructed underground in the Shoreland Zone, and the setback requirement in this standard only applies to above-ground structures. Secondly, the Board determined that the pipes are a functionally water dependent activity, and as such, Shoreland setbacks do not apply. The prime purpose of the pipes is to transport water and effluent to and from Belfast Bay.

The Planning Board also considered setback requirements for both the Route One South Business Park zoning district and the Residential II zoning district that may apply to the location of the pipes. The Board, based on its finding that the pipe is a structure, determined that the pipes, even though they are located underground, should observe the required 15 foot minimum side setback requirement from a property line for a structure located in the Residential II zoning district. The Board, noting that the pipes are intended to transport water across the Ekrote property from Route One to Belfast Bay determined

that the pipes do not need to satisfy either a front or rear structure setback requirement. The Board determined that the imposition of such a setback requirement would nullify the intent of Chapter 102, Zoning, to allow water intake/discharge pipes for the purpose for which they are intended. The Board also determined that the location of the pipes was greater than the amount of side setback requirement for a structure in the Route One South Business Park zoning district.

Chapter 102, Zoning, Section 102-1138, (4) and Chapter 82, Shoreland, Division 17, (4): A person who proposes to install a significant water intake or significant water discharge/outfall pipe shall provide evidence to the City that they can or have obtained any and all state and federal permits associated with the location and operation of the proposed water intake or discharge, including ongoing monitoring, that may be required.

The Board noted that most of the intake and discharge pipe will be located in waters in Belfast Bay that are not subject to City Shoreland jurisdiction. Thus, the City largely will rely upon the DEP and ACOE to regulate the location, construction and operation of the intake/discharge pipes in areas located outside the intertidal zone.

Nordic has applied for and received a conditional Submerged Land Lease Permit from the State Department of Agriculture, Conservation and Forestry to locate the proposed pipes in State waters. Nordic has applied for and received (November 19, 2020) a DEP MPDES and Waste Discharge License from the DEP, as well as a NRPA/SLODA Permit, that are associated the location, construction and operation of the proposed 3 pipelines. Lastly, Nordic has applied for required ACOE permits, however, to date, the ACOE has not acted on the permit applications. The Belfast Planning Board has established Condition of Approval 1 in this Permit that requires Nordic to provide evidence to the Board of its receipt of all required State and Federal Permits prior to the start of any project construction, and Nordic compliance with all such permit requirements.

The Board notes that it considered information that Nordic submitted to the State Dept of Agriculture, Conservation and Forestry, the DEP and the ACOE, in acting on this and other City Permits, as well as terms of the Submerged Land Lease, MPDES, and SLODA/NRPA Permits that have been granted to date.

DECISIONS OF BELFAST PLANNING BOARD

The City of Belfast Planning Board, at its meeting of December 22, 2020, took the following actions on Nordic's Shoreland Permit application:

- a) The Board found that Nordic submitted its Significant Water Intake and Significant Water Discharge Pipe Permit application on June 11, 2019. This application was included as part of Nordic's Site Plan Permit application.
- b) The Board conducted several duly noticed public hearings for the purpose of accepting public testimony from both Parties-in-Interest and the general public regarding Nordic's proposal to obtain a Significant Water Intake/Discharge Pipe Permit. The specific dates of these hearings were January 8, 15 and 22, 2020, and October 7 and 8, 2020. The Board

also notes that it conducted numerous other hearings that provided opportunities for public comment on specific elements of the Nordic project that are addressed in the Significant Water Intake and Significant Water Discharge Permit.

- c) The Board determined that the Route One South Business Park and Residential II zoning districts, and the Limited Residential district of the Shoreland Zone allow Significant Water Intake and Significant Water Discharge/Outfall Pipes as permitted uses, and that the construction of an intake or discharge pipe qualifies as a principal use in the above districts.
- d) The Planning Board determined that the Nordic project, subject to Nordic's compliance with Conditions of Approval established by the Board for this Permit, complies with requirements of both Chapter 102, Zoning, Section 102-1138, and Chapter 82, Shoreland, Article V, Land Use Standards, Division 17, to be issued a Significant Water Intake and/or Significant Water Discharge/Outfall Pipe Permit.

Therefore, the Belfast Planning Board, at its meeting of December 22, 2020, voted to approve the issuance of a Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit to Nordic, and voted to approve the Conditions of Approval (Conditions are attached to these Findings) that Nordic must satisfy to comply with terms of the City Significant Water Intake and Significant Water Discharge/Outfall Pipe Permit. Further, the Board voted to adopt these Findings of Fact that describe why the Board determined that the Nordic project complies with applicable requirements identified in both Chapter 102, Zoning, and Chapter 82, Shoreland.

On behalf of the Belfast Planning Board

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

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

**CITY OF BELFAST PLANNING BOARD
ADOPTED CONDITIONS OF APPROVAL
SIGNIFICANT WATER INTAKE AND SIGNIFICANT
WATER DISCHARGE PERMIT
ISSUED TO NORDIC AQUAFARMS, INC.**

The City of Belfast Planning Board approves the issuance of a Significant Water Intake and Significant Water Discharge/Outfall Permit to Nordic Aquafarms' (hereinafter Nordic) subject to

Nordic's compliance with the following Conditions of Approval adopted by the Board. This Permit will allow Nordic to construct and use the intake and discharge pipes in the location and manner identified in their application to the City. The pipes are located on properties in the Route One South Business Park zoning district, the Residential II zoning district, and the Limited Residential Shoreland District.

1. Nordic Evidence of State and Federal Permits.

Nordic, prior to the start of project construction pursuant to the City Significant Water Intake and Significant Water Discharge/Outfall Permit, shall provide evidence to the Code and Planning Department and Belfast Planning Board that Nordic has obtained any and all state and federal permits to construct the proposed intake and discharge pipes. Nordic shall provide the City copies of the issued permits, any amendments to said permits, and copies of orders and inspection reports issued by or to the respective agency regarding the permits. The Permits shall include the following: a Maine Department of Environmental Protection (DEP) Natural Resources Protection Act (NRPA) Permit, a DEP Site Location of Development Act (SLODA) Permit, a DEP Maine Pollutant Discharge Elimination System Permit (MPDES) and Waste Discharge License (WDL), a Maine Submerged Lands Lease Permit issued by the Maine Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, and a U.S. Army Corps of Engineers (ACOE), Section 404 and Section 10 Permits.

2. Construction of Pipes in Approved Locations.

Nordic shall install the Intake and Discharge pipes in the location and in the manner identified in its Site Plan Permit application to the City. A request to change the location of the installed pipe(s) shall require the review and approval of the Belfast Planning Board as an amendment to this Permit.

3. Compliance with Requirements of other City Permits.

Nordic shall comply with all Conditions of Approval identified in the City Site Plan Permit, Zoning Use Permit, and Shoreland Permit issued by the Planning Board that could affect the location and installation of the proposed Significant Water Intake and Significant Water Discharge pipes. These Conditions include but are not necessarily limited to: installation of the pipes within the bounds of the Route 1 right-of-way; the construction, use and removal of the temporary bypass road on Route 1; Nordic's construction and operation of the proposed water treatment facility; and the cutting and replanting of trees and other vegetation within the area affected by the Route 1 temporary bypass road, as well as within the Ekrote easement area.

4. Requirement to Comply with Construction Timeframes Identified in Permit Applications.

All construction activities associated with the installation of the Intake and Discharge Pipes in the area below the High Annual Tide (HAT) line shall comply with the time period for

construction identified in the DEP and ACOE Permits. All construction activities for the area within the Route One right-of-way shall be prohibited between Memorial Day and Labor Day, and shall comply with stipulations in the Road Opening Permit issued by the Belfast Superintendent of Public Works, or that may be stipulated by the Maine Department of Transportation. Construction activities for other sections of the intake/discharge pipes are not subject to work occurring during specific times of the year. Construction activities associated with installation of the intake/discharge pipes can occur seven days per week and 24 hours per day. Nordic may request that the Belfast Code Enforcement Officer allow exceptions to the standards identified above, provided that the City has the authority to grant an exception.

5. Pipes to Comply with Side Setback Requirement for Residential II Zone.

The location of the underground Intake and Discharge pipes shall comply with the minimum side structure setback requirement of fifteen (15) feet that applies to the Residential II zoning district. Thus, the Intake and Discharge Pipe must be located a minimum of fifteen (15) feet from the property line of the property located at 286 Northport Avenue, Map 29, Lot 37.

6. Soil and Erosion Control Measures.

Nordic shall implement the soil and erosion and sedimentation control measures identified in its Site Plan application to effectively manage potential soil and erosion in all areas subject to installation of the Intake and Discharge Pipes. Nordic's application of soil and erosion control measures in areas above the high annual tide and in the adjacent tidal flats shall be subject to monitoring by an independent inspector approved by the City (potential coordination with the DEP) and the City Code Enforcement Officer. Nordic shall be responsible for paying all costs associated with the City's use of an independent inspector.

7. Revegetation of Upland Areas.

Nordic shall be responsible for revegetating all upland areas that are disturbed by installation of the Intake and Discharge Pipes within the Eckrote easement area, and in the area between the Water Treatment facility and Route One. The revegetation of these areas shall be consistent with the Nordic Site Plan application, as such was amended. Nordic shall revegetate the area as soon as practical after construction of the intake/discharge pipes is completed, and no later than within the initial growing season after the completion of construction. The Code Enforcement Officer shall have the authority to determine the timeframe of the above referenced initial growing season.

8. Class V Operator Required.

Nordic shall engage the services of a Class V Operator to operate and manage the on-site Water/Wastewater Treatment facility.

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

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

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

Further, while the Planning Board has established other permit conditions that require Nordic to provide an Irrevocable Letter of Credit (performance guarantee) to the City to complete infrastructure it deemed subject to existing Belfast Code of Ordinance performance guarantee requirements, the Planning Board finds that additional consideration must be made to fund the potential removal or modification of the intake and discharge pipes proposed to be installed within the intertidal area, in the event that Nordic elects to commence construction after a favorable Superior Court decision is issued, but in advance of the a final decision regarding any potential appeal to the Maine Law Court. In such circumstances, and prior to Nordic commencing any construction in the intertidal zone, Nordic shall provide a Performance Bond (or similar guarantee found acceptable by City Attorney and the Code and Planning Department) to the sole benefit of the City, in an amount sufficient to fund the potential removal or modification of said intake and discharge piping that Nordic has chosen to construct within the intertidal area, and restoration of the area to its pre-construction condition (subject to such limitations, modifications and/or requirements as may be imposed by any State or Federal licensing, permitting or enforcement agency). Said Performance Guarantee funds may be used solely by the City in

the event that a Maine Law Court decision substantively determines that neither Ekrote nor Nordic have sufficient right, title or interest to engage in the uses permitted in the intertidal zone, and said Performance Guarantee fund may be used by the City, in its sole discretion to remove or modify said intake and discharge pipes, provided that Nordic is first provided an opportunity to remove or modify the pipes at its own costs, but refuses or is unable to do so in an expeditious manner. Said Performance Guarantee requirement shall terminate at such time as the Maine Law Court determines that sufficient right, title or interest is vested in Ekrote and/or Nordic, such that Nordic may proceed with uses permitted by the City regarding said intake and discharge pipes in the intertidal area claimed by Ekrote and/or Nordic.

10. Board Consideration of Information in Issuance of Permit.

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

11. City Enforcement of Permit Conditions.

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

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